



Wireless Broadband – Terms and Conditions

Terms and Conditions for Provision of Britezone Wireless Broadband Services

1. Definitions and Interpretation

1.1 **Definitions:** In these terms and conditions the following terms shall have the following meanings:

"Agreement"	means these terms and conditions, which acts as a confirmation of order and the Britezone services service level agreement ("SLA")
"Commencement Date"	means the date specified on Agreement.
"Confidential Information"	means the confidential information of a Party which relates to the subject matter of this Agreement and includes: <ul style="list-style-type: none">(a) confidential information relating to the design of the Services; and(b) information relating to the personnel, policies or business strategies of the Parties;(c) information relating to the terms of this Agreement.
"the Helpline Times"	09:00hrs – 17:00 hrs Monday to Friday
"Intellectual Property"	means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights, intellectual property right of BRITEYELLOW Limited in respect of the Service (whether registered or unregistered) and all applications for the same, anywhere in the world
"Intellectual Property Rights"	means a Party's rights to its intellectual property
"Maintenance Times"	means any time outside the hours of 08:00hrs - 18:00 hrs on weekdays
"Modifications"	any change or amendment to the Services during a scheduled upload that includes bug fixes, upgrade or new versions of the Service; or any new release of the Service which (in either case) from time to time is publicly marketed and offered for access or use by BRITEYELLOW in the course of its normal business
"Party/Parties"	means either BRITEYELLOW Limited or the Client as the context dictates
"Permitted Purposes"	means to allow Users to use the Services in order to connect to the internet, or utilise other components of the Britezone Services.
"Response Criteria"	the priority placed on a call made to the telephone helpline as detailed in the SLA
"Service/s"	means the service/s specified on the Agreement
"Client"	means the customer specified on the Agreement
"Subscription period"	means the period of agreed months starting from the Commencement Date
"User"	means an employee or client of the Client (or any of its subsidiaries)
"User Fee"	means payment as specified on the Agreement

In this Agreement unless the context requires otherwise:

- 1.1.1 any reference to BRITEYELLOW shall include its affiliates, subsidiaries and holding companies;
- 1.1.2 words importing the singular number shall include the plural and vice versa;
- 1.1.3 words importing any particular gender shall include all other genders;
- 1.1.4 references to persons shall include bodies of persons whether corporate or incorporate;



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- 1.1.5 words importing the whole shall be treated as including as reference to any part of the whole;
- 1.1.6 references to any party include their permitted successors and assigns.
- 1.2 Any reference in the Agreement to any statute or statutory successors and assigns referring to that statute or statutory provision as it may from time to time be amended, modified, extended, re-enacted or replaced (whether before or after the date of this Agreement) including all subordinate legislation from time to time made under it.
- 1.3 References in the Agreement to clauses schedules and exhibits to this Agreement except where otherwise expressly stated.
- 1.4 Headings are used in this Agreement for the convenience of the parties only and shall not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses schedules or exhibits to which they relate.
2. **Grant of Rights**
- 2.1 Subject to the terms of this Agreement and in consideration of the payment of the User Fee(s) BRITEYELLOW Limited grants to the Client a non-exclusive, non-transferrable subscription to use the Service.
3. **Modifications**
- 3.1 BRITEYELLOW will inform the Client of any Modifications no later than 48 hours after they have been made.
- 3.2 BRITEYELLOW hereby grants permission to the Client to use any Modifications subject to the terms of this Agreement.
4. **Fees and Payment**
- 4.1 The Client will pay the fees specified on the Agreement to BRITEYELLOW within 14 days of the date of invoice.
- 4.2 In the event of late payment in respect of any sum due by the Client to BRITEYELLOW, BRITEYELLOW shall reserve the right to charge the Client interest at the rate of 4% over the prevailing base rate of Royal Bank of Scotland, such interest shall accrue from the due date until payment is made in full.
- 4.3 The fees specified on the Agreement shall remain fixed for the Subscription Period but thereafter BRITEYELLOW reserves the right to increase them at a reasonable rate at any time after the Subscription Period, not more than once in any successive 12-month period and upon giving the Client not less than 30 days notice in writing.
- 4.4 All payments referred to in this Agreement exclude VAT and expenses which will be charged at the prevailing rate and cost respectively.
5. **Support Services**
- 5.1 With effect from the Commencement Date, BRITEYELLOW shall provide telephone and email support to the nominated Users relating to faults or enquiries in respect of the Services. This service will be provided during Helpdesk Times and subject to the Response Criteria.

The system administrators, and only the named system administrators, of the Client may contact the BRITEYELLOW helpdesk on normal business days as follows:

- By telephone: 0870 121 3664.
- By e-mail: support@briteyellow.com

The helpdesk shall record the following details:

- Name of caller
- Phone number and email address
- Name of Client
- Features or Component in Use



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- Full Description of the problem or incident being reported
- Any additional relevant information

The helpdesk shall provide the Client with a unique log number. This number shall be required in subsequent calls to the Helpdesk concerning this fault.

The helpdesk shall maintain a call logging system on which all details of the incident and related problem investigation and resolution shall be recorded.

The helpdesk shall update the Client with all progress made with the incident. The frequency of updates shall be agreed when the incident is first reported. In addition, the Client shall be informed of any escalation activity. The incident can only be closed after consultation with the Client.

All incidents will be assigned one of three priority levels as

- Priority High – Service has suffered a complete failure or significant partial loss of service.
- Priority Medium – Service is suffering problems which affect normal usage but a workaround exists or problem affects one user only.
- Priority Low – Work request (a simple non urgent request for work to be carried out), Non urgent faults (faults that are non urgent), or requests for information (Information request)

The Helpdesk response targets are

High Priority

- Provide an initial response within 30 minutes of the call being logged;
- Provide a plan of action within 1 hour of the call being logged if requested;
- Provide an hourly update.

Medium Priority

- Provide an initial response within 4 hours of the call being logged;
- Provide a daily update.

Low Priority

- Provide an initial response within 1 day of the call being logged;
- Provide a daily update.

Dispute Resolution and Mediation

Both parties agree that, in the case of dispute, an agreed third party or mediation board will provide mediation services. Both parties agree that the decision of this entity will be binding

- 5.2 Should the Client wish BRITEYELLOW to provide further support services, BRITEYELLOW will agree to do so as necessary in consideration of the payment of the relevant charges specified on the order form.
- 5.3 The additional charges shall be paid within 14 days of receipt of an invoice from BRITEYELLOW.

6. BRITEYELLOW's Obligations

- 6.1 BRITEYELLOW shall use reasonable endeavours to maintain continuous and uninterrupted access for the Users to the Service as detailed in the SLA.
- 6.2 BRITEYELLOW warrants that the correction of any errors or faults in respect of the Services will be performed by competent persons and will be carried out with reasonable care and skill within the timescales detailed in the SLA.
- 6.3 BRITEYELLOW shall procure that any maintenance or uploading at which time the Service is not available shall take place during the Maintenance Times.
- 6.4 BRITEYELLOW does not guarantee fault free performance of the Service and makes no warranty that the Service will meet the requirements of the Client or be error free.
- 6.5 The Client agrees that the express obligations and warranties made by BRITEYELLOW in the Agreement are in lieu of and to the exclusion of any warranty, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or the Services provided under or in connection with the Agreement including (without limitation) as to the condition, quality, performance, merchantability or fitness for purpose of the Service.

7. Limitation of Liability

- 7.1 The Client is responsible for the consequences of any use of the Service.
- 7.2 BRITEYELLOW shall not be responsible for any deficiency or alleged deficiency in the Service which is attributable to:
- 7.2.1 incorrect information provided by the Client; or
 - 7.2.2 failure by the Client to provide relevant information.
- 7.3 The following provisions set out BRITEYELLOW's entire liability (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Client in respect of:
- 7.3.1 any breach of its contractual obligations arising under this Agreement; and
 - 7.3.2 any representation statement of tortious act or omission including negligence arising under or in connection with this Agreement.
- 7.4 Any act or omission on the part of BRITEYELLOW or its employees, agents or sub-contractors falling within the scope of clause 7.3 above shall be for the purposes of this clause 7 be known as an "Event of Default".
- 7.5 BRITEYELLOW's liability to the Client for death or personal injury resulting from its own or that of its employees' agents' or sub-contractors' negligence shall be limited to the aggregate total of the User Fees received from the Client under this Agreement.
- 7.6 Subject to the limits set out in clause 7.7 below BRITEYELLOW shall accept liability to the Client in respect of damage to the tangible property of the Client resulting from the negligence of BRITEYELLOW or its employees agents or sub-contractors.
- 7.7 Subject to the provisions of clause 7.5 above BRITEYELLOW's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the aggregate of the User Fees paid to BRITEYELLOW during the immediately preceding period of 6 months.
- 7.8 Subject to clause 7.5 above BRITEYELLOW shall not be liable to the Client in respect of any Event of Default for any loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Client as a result of an action brought by a third party).
- 7.9 The Client hereby agrees to afford BRITEYELLOW not less than 14 days (following notification thereof by the Client) in which to remedy any Event of Default hereunder.
- 7.10 Except in the case of an Event of Default arising under clause 7.5 above BRITEYELLOW shall have no liability to the Client in respect of any Event of Default unless the Client shall have served notice of the same to BRITEYELLOW within 1 year of the date that it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.

8. Client's Obligations



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- 8.1 The Client will comply with all relevant national and international law and regulations in its use of the Service and will indemnify BRITEYELLOW in respect of any breaches of the same and any claims and costs in relation to such breaches.
- 8.2 The Client will not in any way make representation or warranties regarding the Service other than those from time to time agreed by BRITEYELLOW in writing, and comply with all reasonable requirements, procedures, policies and regulations of BRITEYELLOW issues from time to time in relation to the use or operation of the Service.
- 8.3 The Client undertakes;
- 8.3.1 not to use the Service for illegal and/or wrongful purposes; and
 - 8.3.2 not to alter, modify, adapt or make any change whatsoever to the Service without BRITEYELLOW's express permission in writing; and
 - 8.3.3 not to resell or offer in any manner to a third party the use of or access to the Service save in accordance with the provisions of this Agreement;
 - 8.3.4 not to use the Service for any purpose other than the Permitted Purposes.
- 8.4 The Client shall not:
- 8.4.1 copy the whole or any part or parts of the Service except for back-up and recovery purposes;
 - 8.4.2 adapt, modify or alter in any way the whole or any part or parts of the Service;
 - 8.4.3 convert the whole or any part or parts of the Service from object code into source code, except to the extent permitted by law;
 - 8.4.4 reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part or parts of the Service;
 - 8.4.5 merge or combine the whole or any part or parts of the Service with any other computer software unless developed by BRITEYELLOW to do so;
 - 8.4.6 use any of the confidential information of BRITEYELLOW contained in or derived from the Service to develop or market any software which is substantially similar in its function or expression to any part of the Service; and
 - 8.4.7 through any act or omission on its part damage or impair the source code to the Service and shall comply immediately with all directions given to it by BRITEYELLOW regarding those security systems required to ensure the protection of the Service.
- 8.5 The Client shall make best endeavours that the Service is protected at all times from misuse, damage, destruction or any form of unauthorised use.

10. Confidential Information

- 10.1 A Party shall not, without prior written approval of the other Party, disclose other Party's Confidential Information.
- 10.2 A Party shall not be in breach of clause 10.1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- 10.3 Each Party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Agreement, do not make public or disclose the other Party's Confidential Information.
- 10.4 This clause shall survive the termination of the Agreement.

11. Intellectual Property

- 11.1 All Intellectual Property Rights in the Service whether vested, contingent or future shall belong to BRITEYELLOW.
- 11.2 The Client shall not use the Intellectual Property Rights of BRITEYELLOW otherwise than as permitted by this Agreement.
- 11.3 Subject to clause 11.5 & 11.6 BRITEYELLOW shall indemnify the Client from and against any claim or action that the possession, use, development, modification or maintenance of the Service (or any part thereof) or any software required to enable the operation of the Service provided for in this Agreement infringes the Intellectual Property Rights of a third party.
- 11.4 BRITEYELLOW will not indemnify the Client as provided in sub-clause 11.3 unless the Client:
- 11.4.1 notifies BRITEYELLOW in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
 - 11.4.2 gives BRITEYELLOW the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings whilst informing the Client of the proposed settlement;



- 11.4.3 provides BRITEYELLOW with reasonable assistance (but not supporting the cost) in conducting the defence of such a claim.
- 11.5 BRITEYELLOW shall not indemnify the Client if infringement, suspected infringement or alleged infringement of a third party's Intellectual Property Rights in the Service arises from:
- 11.5.1 failure by the Client to comply with the terms of this Agreement;
 - 11.5.2 infringing material for inclusion on the Service and/or the failure of the Client to obtain any necessary permission, authorisation, licence or consent of a third party in relation to the use and the incorporation of third party material into the Service.
- 11.6 The Client shall indemnify BRITEYELLOW against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging an infringement of Intellectual Property Rights in the Service if:
- 11.6.1 the claim arises from an event specified in clause 11.5; or
 - 11.6.2 the ability of BRITEYELLOW to defend the claim has been prejudiced by the failure of the Client to comply with the provisions of clause 11.6.

12. Termination

- 12.1 Without limiting the generality of any other clause in the Agreement, either Party may terminate the Agreement immediately by notice in writing if:
- 12.1.1 either Party is in breach of any term of the Agreement and such breach is not remedied within thirty (30) days of notifying BRITEYELLOW;
 - 12.1.2 either Party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
 - 12.1.3 either Party being in partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - 12.1.4 either Party ceases or threatens to cease conducting its business in the normal manner.
- 12.2 If notice is given to the Client pursuant to clause 12.1, BRITEYELLOW may, in addition to terminating the Agreement:
- 12.2.1 repossess any of its property in the possession, custody or control of the Client;
 - 12.2.2 retain any moneys paid and collect any moneys due;
 - 12.2.3 be regarded as discharged from any further obligations under the Agreement; and
 - 12.2.4 pursue any additional or alternative remedies provided by law.
- 12.4 If notice is given to BRITEYELLOW by the Client pursuant to clause 12.1, the Client must:
- 12.4.1 return any of BRITEYELLOW's property in its possession, custody or control;
 - 12.4.2 pay any moneys due under the terms of this Agreement.

In the event BRITEYELLOW becomes subject to any form of insolvency administration the Subscription hereby granted shall continue in full force and effect.

13. Force Majeure

- 13.1 Neither Party shall be liable for any failure or delay in performance of the Agreement which is caused by circumstances beyond reasonable control of a Party (including, without limitation any strike, lock out or other industrial action, act of God, war, prohibition or restriction by governments or other legal authority).
- 13.2 Where a party claims that it is unable to perform its obligations under these conditions or the Agreement (either on time or at all) as a result of the circumstances set out in clause 13.1, it must immediately notify the other party of the nature and extent of the circumstances in question.

14. Waiver

- 14.1 No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party.
- 14.2 A waiver made by either party pursuant to clause 14.1 will not prejudice its rights in respect of any subsequent breach of the Agreement by the other party.
- 14.3 Subject to clause 14.1, any failure by either party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the one party to the other, will not be construed as a waiver of the other party's rights under this Agreement.



15. Severability

15.1 If any provision of this Agreement is held invalid unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

16. Amendments

16.1 Any amendment or variation of this Agreement shall not be binding on the Parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties.

17. Notices

17.1 Any notice, consent or the like required or permitted to be given under this Agreement shall not be binding unless in writing. Notices can only be sent by recorded mail, fax, e-mail or hand delivery and must be sent to the address set out for each Party in this Agreement.

18. Entire Agreement

18.1 This Agreement and any documents attached or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

19. Governing Law and Jurisdiction

19.1 This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English Courts.

20. Contracts (Rights of Third Parties) Act 1999

20.1 A person who is not party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

SIGNED FOR AND ON BEHALF OF THE CLIENT

Authorised Signature

Name

Title

Date