

## Outbound Wholesale VoIP Terms and Conditions of Sale

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ORB Telemedia Ltd  
Incorporated and registered in UK  
Company number (SC) 400380  
Registered office: 38 Winton Crescent, Glasgow, G72 0QN

All use is subject to our Terms and conditions, which are subject to change without notice. This Web Site is operated by ORB Telemedia Ltd ("We", "Us" and "Our", as appropriate in the context).

**These terms of sale apply to Outbound Wholesale VoIP services supplied by ORB Telemedia Ltd.**

### **Outbound Wholesale VoIP Terms and Conditions**

#### **Calling Rates and Codes:**

General - rates are shown on ORB Telemedia Ltd website, and can be accessed via the customer simulator when enabled. Various tariff and call bands exist, any variations to the bundle or pricing are displayed on our website including any exceptions to our standard terms and conditions or specific destination variations within an individual service.

#### **Call Duration Pricing**

Rates are shown in terms of full minutes and calls are billed in one (1) second increments after the initial one (1) second call duration, unless otherwise specified. ORB Telemedia reserves the right to increase or decrease its rates and/or change destination codes at any time upon email notice; or within the rate simulators and notices on our website, any such decreases (other than by code deletion or addition) shall be effective immediately unless otherwise stated in the notice.

Wholesale rates fluctuate on a daily basis, and as such, rate changes can be made within one days notice, as such we also offer rate decks, with monthly pricing. Any rate increases and/or changes to destination codes on the monthly decks shall be effective no earlier than 12:01 a.m. Applicable Time (defined below) on the "Effective Date," where the Effective Date means the date on which such email notice is sent.

Notice of such changes shall be displayed on our website or sent via email to the email

address provided by Customer. It is Customer's sole responsibility to maintain and update such email address. All in-effect rates and codes will be listed on Customer's web portal in the appropriate simulator or file sections. The time zone(s) used for identifying effective times and dates for changes contained in any written notice, all peak, off peak and economy traffic, and invoicing and other time sensitive matters shall be Greenwich Mean time (GMT), which includes daylight saving time during relevant periods ("Applicable Time").

### **Currency**

Customer will be billed and invoiced and will make payments in U.S. Dollars (\$) or Euros (€) or Pounds sterling GBP, as such currency is selected at the time of sign up.

### **Resale of Services**

All Services are provided for resale to Customer's customers, end users or subscribers. Customer is responsible for billing and collection from its customers, end users and subscribers including all taxes and fees. Customer is responsible for obtaining and maintaining all licenses, approvals and other authorizations necessary for the resale of Services. Customer hereby agrees to execute such other documents (including but not limited to Universal Service Fund forms) as ORB Telemedia may reasonably request from time to time.

### **Interconnection**

The Parties shall connect their respective telecommunications switches via VoIP equipment which may be provided by a third party supplier ("Supplier"). Each Party shall be responsible for procuring its VoIP equipment from its chosen Supplier and for all contractual obligations with that Supplier. Each Party will notify the other of the date from which the notifying Party's connectivity will be available.

### **Prefix Routing**

Some Customers will be given access to ORB Telemedia's "prefix dialing feature", which will allow Customer to route each call to the desired call quality division by entering a dialing prefix as defined by ORB Telemedia. Failure to prefix a call properly will result in calls being billed at the "default" division rates, a setting Customer controls via the web portal.

### **Suspension of Services**

All Services are offered on a commercially reasonable basis only and are not guaranteed. In addition, ORB Telemedia reserves the right to immediately suspend all or any part of the Services if: (i) Customer engages in activities that, in ORB Telemedia's sole discretion, may cause disruption or damage to ORB Telemedia's network or facilities; (ii) ORB

Telemedia detects any suspected fraudulent use of the Services and/or Artificially Inflated Traffic (defined below), whether directly or indirectly; (iii) Customer's account is inactive (passes no billable calls) for ninety (90) consecutive days; (iv) ORB Telemedia requests identifying or other documentation from Customer for legal, administrative or regulatory purposes and Customer fails to provide appropriate documentation (in ORB Telemedia's sole discretion) within a reasonable time; (v) No Customer monies are deposited into Customer's account within thirty (30) days of account turn up; and/or (vi) Customer exceeds its credit limit.

### **Post-Paying Customers**

Payment: ORB Telemedia shall, in its sole and absolute discretion, establish and modify payment terms and a credit limit for Customer. Such information shall be listed on Customer's web portal or notified by email. Customer shall make payment to ORB Telemedia via bank transfer, of U.S. Dollars or Euros or pounds in accordance with the "Credit Limit," "Payment Terms" and "Invoice Due Date" fields set forth on Customer's web portal or by email. All bank transfer or Western Union fees shall be borne by Customer and ORB Telemedia must receive the full amount of the invoice.

Any payment shall be deemed valid only when it reaches ORB Telemedia's account as cleared funds. If payment is not made in full by the due date, ORB Telemedia shall have the right to suspend or terminate the delivery of all or any part of the Services provided hereunder without notice or demand until such time as payment, including applicable interest, is paid in full.

Any payments not received by ORB Telemedia by the due date will bear interest at a rate of one and one-half percent (1½ %) per month above the bank of England's base rate or the maximum rate permitted by law, whichever is less, from the due date until paid in full. Any payments received that are less than the total amount due will be applied first to interest and collection fees, then the oldest invoice(s) outstanding.

### **Credit Limit**

Credit Limit shall be defined as all unpaid amounts invoiced to Customer plus non-invoiced usage. Customer's service shall be suspended without notice when the Credit Limit is reached or exceeded unless (a) an interim payment is made prior to the due date; or (b) a credit limit increase has been applied for by Customer and granted by ORB Telemedia at its sole discretion prior to the due date. To ensure that the Credit Limit is not exceeded over a weekend or holiday, Customer shall make all interim payments so that cleared funds are in ORB Telemedia's account by the immediately preceding Thursday before 5pm GMT London time.

## **Pre-paying Customers**

### **Prepayment**

Customer shall prepay ORB Telemedia for all Services via bank transfer or online payment gateway of U.S. Dollars or Euros or Pounds. All bank transfer, Western Union, or credit card user fees (including foreign currency or international transaction fees) shall be borne by Customer and ORB Telemedia must receive the full amount of the invoice. In the event the prepayment amount reaches \$/€0, Services shall be automatically suspended. In such event, ORB Telemedia may (but is not obligated to) reinstitute Services to Customer once the prepayment has been replenished. Any suspension or termination shall not relieve Customer of its obligation to pay any amounts due hereunder.

A prepayment replenishment shall be deemed valid only when such replenishment is in ORB Telemedia's account as cleared funds. Notwithstanding the foregoing, for weekend usage, Customer shall ensure that the prepayment replenishment is in ORB Telemedia's account as cleared funds by the immediately preceding Friday before 5pm London time. ORB Telemedia may in its sole discretion require Customer to increase the prepayment in the event of any increase or anticipated increase in Services provided to Customer. ORB Telemedia may offset against the prepayment any amounts due by Customer that remain unpaid after expiration of any applicable notice or cure periods set forth herein. ORB reserves the right to charge a wholesale carrier setup fee of 200 USD,EUR,GBP. Such Fee shall be waived so long as: (i) Customer's account is not suspended or terminated by ORB Telemedia during the first year from the date of Service activation; and (ii) Customer does not request a refund of any portion of its initial prepayment during the first year from the date of Service activation. If Customer's account is inactive for a period of ninety (90) consecutive days, then ORB Telemedia reserves the right to expire the Customer's account and all Customer funds will become the property of ORB Telemedia. Notification of expiration will be made prior to and on the day of the suspension of Services.

### **Taxes and Fees**

All Services under this Agreement are provided exclusive of any applicable federal, state, local, or foreign taxes, duties, or charges imposed by any governmental authority, or as otherwise provided pursuant to this Agreement. Such taxes, duties, or charges shall be paid directly by Customer.

All amounts payable by Customer under this Agreement shall be made without deduction or counterclaim and, except to the extent required by any law or regulation, shall be made free and clear of any deduction or withholding on account of any tax, duty

or other charges of whatever nature imposed by any taxing or governmental agency or authority.

If Customer is required by any law or regulation to make any such deduction or withholding, Customer shall, together with the relevant payment, pay such additional amount as will ensure that ORB Telemedia actually receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required. ORB Telemedia may impose any governmental or regulatory fees on a retroactive basis.

### **Disputed Charges**

If Customer, in good faith, disputes the amount of any charge included in an invoice, Customer must notify ORB Telemedia in writing of the disputed charge within thirty (30) days of the date of invoice and provide documentation reasonably required to resolve the dispute. Failure to contest a charge within thirty (30) days of the date of the invoice will create an irrefutable presumption of the correctness of the charge and Customer shall have waived its right to dispute that invoice. In addition, for prepaying Customers, if payment is made via credit card, any credits or refund made to Customer's account must have ORB Telemedia's written authorization.

### **Termination**

ORB Telemedia reserves the right to terminate the Services, or any portion thereof, upon a breach of any of these terms of use by Customer. Upon termination, ORB Telemedia will be entitled to immediately cease providing Services. Notwithstanding termination, the provisions that, by their nature survive termination, will continue to apply.

### **Force Majeure**

Neither Party shall be responsible nor liable for any obligations (except for the obligation to make payment when due) arising out of, in connection with or relating to any matter occasioned by or due to fire, flood, water, the elements, acts of God, war and threat of imminent war, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond such Party's reasonable control.

### **Limitation of Liability**

In no event shall ORB Telemedia be liable for any indirect, incidental, consequential, exemplary, punitive, reliance or special damages, or for any loss of revenue, profits, use, data, goodwill or business opportunities of any kind or nature whatsoever, arising in any manner from the Services. ORB Telemedia shall not be liable for any damages, whether

direct or indirect, caused by services or equipment that is not furnished or managed solely by ORB Telemedia. The Parties acknowledge that the limitations on liability set out in this clause have been negotiated between the Parties and are regarded by the Parties as being reasonable in all circumstances.

### **No Warranty**

Except as specifically set forth herein, ORB Telemedia makes no warranty to Customer or any other person or entity, whether express or implied or statutory, as to the description, quality, merchantability, non-infringement, completeness or fitness for a particular use of any of the Services, all such warranties hereby being expressly excluded and disclaimed.

### **Fraudulent Calls and Artificially Inflated Traffic**

Customer shall not dispute any charges or withhold payment on the basis that Fraudulent Calls or Artificially Inflated Traffic comprised a portion of the traffic volume. Customer shall be responsible for all charges associated with any Fraudulent Calls and Artificially Inflated Traffic. It is Customer's sole responsibility to take immediate action to block any Fraudulent Calls and Artificially Inflated Traffic. For purposes of this Agreement, "Fraudulent Calls" shall include, but not be limited to, deliberate exploitation of systemic errors in ORB Telemedia's routing system. For purposes of this Agreement, "Artificially Inflated Traffic" means any activity which: (i) has the effect, intended effect or likely effect of preventing ORB Telemedia's billing system from capturing any necessary billing information (in relation to the conveyance of a call); (ii) causes incorrect billing by ORB Telemedia's billing system, or of an associated party; (iii) any situation where any person or entity is misled into making, receiving or prolonging calls; or (iv) is determined by ORB Telemedia, in its sole and absolute discretion, to be bad faith usage of the Services. In the event Fraudulent Calls and/or Artificially Inflated Traffic causes ORB Telemedia to be charged more by its terminating partners than the rate(s) quoted by ORB Telemedia to Customer, then in addition to ORB Telemedia's right to seek all remedies available to it at law or in equity, ORB Telemedia reserves the right to re-rate all such traffic at the higher termination rate for the destination(s) in question and Customer agrees to pay all such re-rated charges.

### **Indemnity**

Customer shall indemnify and hold harmless ORB Telemedia and all of its officers, agents, directors, shareholders, subcontractors, subsidiaries, employees and affiliates from and against any claim, cost, damage, demand, liability, loss, penalty, proceeding and reasonable attorney's fees imposed upon ORB Telemedia by reason of any claims or damages arising out of or related to: (i) Customer's own customers, end users or subscribers use of the Services; (ii) any fraudulent use of the Services, including but not

limited to Fraudulent Calls and Artificially Inflated Traffic; (iii) any other act or omission by the Customer, including without limitation breach of any material obligation herein; and (iv) Customer's or any of its affiliates violation of the Anti-Bribery clause below. Customer will not settle any claims, demands, suits, proceedings or actions without ORB Telemedia's prior written consent, which consent shall not be unreasonably withheld or delayed.

### **Anti-Bribery**

Customer hereby represents, warrants and covenants that it will not, under any circumstances, and at all relevant times, make, or cause or authorize any third party acting on its behalf to make, directly or indirectly, any prohibited bribes, offers, promises or payments of money, or anything of value, to any foreign official (including but not limited to government officials, government employees, any political party or political party official, any candidate for political office, or any person otherwise acting in an official capacity) pursuant to all applicable laws (including but not limited to any local anti-bribery laws), or any other third party, for the purpose of influencing such party's acts or decisions or in order to obtain or retain business or secure an unfair business advantage for Customer in performing its duties and obligations hereunder. Customer expressly agrees that its use of the Services is the result of arms-length negotiations, and that it has not entered into these terms of use with a corrupt motive to obtain or retain business or to secure an unfair business advantage. Customer warrants and undertakes that it shall, at all times, keep and maintain accurate and up to date accounting records to ensure that all transactions relating to the Services are sufficiently documented.

### **Short Duration Calls**

The parties agree that: (a) calculated on a daily basis, if average call duration for any location falls below 1 minute, then ORB Telemedia may append, at a later date and time, surcharges of an additional \$/€/GBP 0.02 on all daily minutes sent; and (b) Calculated on a daily basis, for all calls under twelve (12) seconds in length ("Short Duration Calls"), ORB Telemedia may charge each Short Duration Call an additional \$/€/GBP 0.02 surcharge per call. The calculations set forth above shall be applied on a mutually exclusive basis to: (i) calls terminating in the United States; and (ii) calls terminating in international locations.

### **Miscellaneous**

The Parties hereby acknowledge that during the course of the Parties relationship, either Party may acquire information regarding the other or its business activities, whether oral or written, of a confidential and proprietary nature (hereinafter "Confidential Information"). Each Party shall hold the Confidential Information in strict confidence and shall not reveal the Confidential Information, or any portion thereof to any third party.

This confidentiality obligation shall survive expiration or termination of this Agreement for a period of one (1) year. Each Party agrees that, without the other Party's written consent, it will not use the name, trademarks, trade names, service marks or logos of the other Party or of any of its affiliated companies in any advertising, publicity, press releases or sales presentations. It is expressly understood that the Parties hereto are acting hereunder as independent contractors. The failure of either Party to give notice of default or to enforce compliance with any of the terms or conditions of these terms of use, the waiver of any term or condition of these terms of use, or the granting of an extension of time for performance, will not constitute a permanent waiver of any term or condition of these terms of use. No amendment by Customer of the provisions set forth herein shall be binding unless made in writing and signed by a duly authorized representative of ORB Telemedia. ORB Telemedia may assign these terms of use or any rights hereunder upon notice to Customer. Customer may not assign these terms of use or any rights hereunder without the prior written consent of ORB Telemedia. In the event it is determined that any part or provision of these terms of use is invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of these terms of use. Nothing in these terms of use will prevent ORB Telemedia or Customer from entering into similar arrangements with, or otherwise providing Services to, any other person or entity. These terms of use, including any exhibits attached hereto, sets forth the entire agreement and understanding of the Parties hereto related to the subject matter hereof.

**Notices**

Except as set forth herein, all notices and communications from ORB Telemedia to Customer under this Agreement will be given via email to the email address provided by Customer on the web portal. All formal notices and communications from Customer to ORB Telemedia under this Agreement will be given in writing to ORB Telemedia's address listed above, Attention: ORB Telemedia Ltd, Customer Service Team.

**Account Activation**

Prepaid Customers understand and agree that a full activation (not a test account) of Customer's account is subject to ORB Telemedia's receipt of Customer's initial prepayment and ORB Telemedia's performance of certain background checks on Customer. Post-paid Customers understand and agree that a full activation (not a test account) of Customer's account is subject to full credit approval by ORB Telemedia's finance department. ORB Telemedia reserves the right to suspend and/or terminate Services at any time in the event ORB Telemedia determines, in its sole discretion, that it cannot verify Customer's background information.



**Governing Law/Dispute Resolution**

These terms of use and the relationship between the Parties hereto will be governed by the Laws of Scotland and the Scottish Courts shall have non-exclusive jurisdiction in any disputes between you and us. However, ORB Telemedia, in its sole discretion, can take any legal action against the client in the country where he has his legal presence, under the law governing this country.

Revision 1.0

25th August 2014