

Nimvelo Phone customer terms

1. THIS AGREEMENT

- 1.1. This Agreement takes effect on the Start Date and continues until terminated in accordance with clause 21.
- 1.2. By creating an account to use our Services, you agree that this Agreement shall apply to those Services.
- 1.3. This Agreement set out all the terms agreed between us about the subject matter of this Agreement. This Agreement supersedes all previous negotiations, understandings and representations.
- 1.4. This Agreement is governed by English law.

2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Agreement, certain words and phrases have defined meanings:

Word or Phrase	Meaning
Agreement	This agreement
C o n f i d e n t i a l Information	the trade secrets, operations, processes, plans, intentions, product information, prices, know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of you or us. This Agreement is our Confidential Information
Intellectual Property Rights	copyright, database right, patents, registered and unregistered design rights, registered and unregistered trade marks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for any of these
Interest Rate	8% above Barclays Bank plc's base rate per annum
us; our; we	Sipcentric Ltd, trading as Nimvelo, a company registered in England and Wales with company number 07365592
Services	The internet telephony services provided by us to you under this Agreement
Software	any software that we provide to you
Start Date	the date on which you click "Create account"
Usage Policy	The policy on use of the Service, available at https://www.nimvelo.com/about/terms-and-policies/usage-policy/
you; your	You, our customer

- 2.2. In this Agreement:

- 2.2.1. References to clauses are to the clauses of this Agreement;
- 2.2.2. Headings are for ease of reference only;
- 2.2.3. Wherever the words "including", "include", or "includes" or are used they shall be deemed to be followed by the words "without limitation" unless the context otherwise requires; and
- 2.2.4. All rights and remedies referred to in this Agreement are cumulative and not to the exclusion of other rights and remedies, unless expressly stated otherwise.

3. IMPORTANT: EMERGENCY SERVICES ACCESS

- 3.1. The Services generally permit access to the emergency services. However, the Services are internet telephony services, and these are dependent on your connection to a suitable data network and the operation of that data network. If you do not have a connection to a suitable data network, or your data network is not functioning correctly, you will not be able to use the Services, including for the purposes of making calls to the emergency services. You must consider this and made appropriate arrangements.
- 3.2. We will, where possible, pass your location information to the emergency services. You are responsible for providing us with accurate location information, for onwards provision to the emergency services. You must notify us of any change to your location information promptly. You may be required to confirm your location to the emergency services verbally.

4. RESPONSIBILITY FOR CALLS MADE THROUGH YOUR ACCOUNT

- 4.1. You are liable for, and agree to pay us in full for, all calls which:
 - 4.1.1. originate from or appear to us to originate from your network;
 - 4.1.2. originate from or appear to us to originate directly from you; or
 - 4.1.3. present to us with your identifying data (including, but not limited to, your username and password),
irrespective of whether or not they were generated or authorised by you or your users, and including those generated as a result of fraudulent activity by a third party.
- 4.2. You are responsible for keeping your account credentials secret and for securing your network and equipment. If you become aware of a compromise, you must immediately change your account password(s) and other security devices and notify us. This does not limit your responsibility and liability under clause 4.1.

5. HOW WE VARY THIS AGREEMENT OR A SERVICE

- 5.1. We, but not you, may vary this Agreement or the Services by notifying you of the change by email or in writing. We will give you a reasonable period of notice of the variation.

6. WE DEPEND UPON EACH OTHER

- 6.1. If we fail to do something that we ought to do under this Agreement and that directly causes you to fail to do something that you ought to do under this Agreement, we will not treat your failure as a breach of the Agreement in those circumstances. You will treat us in the same way.

7. PHONE NUMBERS

- 7.1. You do not own any phone numbers or other identifiers which we allocate to you as part of the Services.
- 7.2. While we will use reasonable efforts to avoid doing so, and to give you such notice as is possible and reasonable in the circumstances if we intend to do so, we may change the phone numbers or other identifiers allocated to you. We are not responsible for any costs or losses suffered by you if we do so.

8. YOUR OBLIGATIONS

- 8.1. You shall:
 - 8.1.1. Comply with our reasonable instructions, guidelines and directions about the use of the Services, including our Usage Policy. You shall not, and you must ensure that your end users do not, use the Services:
 - 8.1.1.1. for the transmission of material which is unlawful, abusive, harmful, threatening, defamatory, pornographic or which in any way infringes intellectual property rights, or which may cause offence in any way;

- 8.1.1.2. in a way that does not comply with the terms of any legislation, code of practice, regulations, or licence, or which causes us to breach any legislation, code of practice, regulations, or licence;
- 8.1.1.3. in a way that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;
- 8.1.1.4. in a way that constitutes artificial inflation of traffic (as set out in Annex E of BT's Network Charge Control Standard Interconnect Agreement);
- 8.1.1.5. in a way that could, in our reasonable opinion, materially affect the quality or operation of any networks or services provided by us or any third party;
- 8.1.1.6. in a way that causes annoyance to the receiver, is a hoax call, or is of an offensive, spiteful, abusive, indecent, defamatory, obscene, or menacing nature;
- 8.1.1.7. in a way which is inconsistent with privacy or data protections laws, or laws relating to direct marketing;
- 8.1.1.8. to threaten, harass, stalk, abuse, disrupt or otherwise violate or infringe the rights of others;
- 8.1.1.9. obtain access, through whatever means, to restricted areas of the underlying network; or
- 8.1.1.10. in a way which could, in our reasonable opinion, bring our name, or the name of any third party, into disrepute.

- 8.1.2. Behave at all times in a polite and professional manner towards us and our staff;
- 8.1.3. Maintain such disaster recovery and resiliency plans as you consider appropriate;
- 8.1.4. Not sell, deal, transfer, or otherwise make available the Software or the Services to any third party for any purposes except as expressly permitted by this Agreement;
- 8.1.5. ensure that all equipment which is used in conjunction with the Services conforms to all relevant standards or approvals; and
- 8.1.6. Comply with all applicable law.

8.2. You warrant that you have the full power and authority to enter into this Agreement.

8.3. You agree that any breach of this clause 8 shall be a material breach of this Agreement.

9. **SERVICE ACCESS**

9.1. While we will use our reasonable efforts to maintain and operate the Services, we make no promises that they will always be available or functioning, nor that the Services will be fault-free.

9.2. We may suspend all or part of the Services if, in our reasonable opinion, it is necessary to do so to stop or mitigate any problem or attack affecting our network, equipment, or services (including any network, equipment, or services provided to another customer), or to deal with behaviour which, in our reasonable opinion, amounts to misuse of the Services or breach of our Usage Policy.

10. **TECHNICAL SUPPORT**

10.1. During the term of the Agreement, and provided that you are up to date with all payments to us under this Agreement, we will provide you with reasonable technical support for the Services.

11. **CONFIDENTIALITY**

11.1. Each of us shall, for the Confidential Information for which we are the recipient:

- 11.1.1. Keep the Confidential Information strictly confidential and not disclose any part of it to any person except as permitted by or as required for the performance of the recipient's obligations under this Agreement;

- 11.1.2. Take all reasonable steps to prevent unauthorised access to the Confidential Information; and
 - 11.1.3. Not use the Confidential Information other than for the purposes set out in this Agreement.
- 11.2. A recipient may disclose the Confidential Information to, and allow its use in accordance with this Agreement by the following (as long as the conditions in clause 11.3 are met):
- 11.2.1. Employees and officers of the recipient who require it for the recipient to perform its obligations under this Agreement; and
 - 11.2.2. The recipient's auditors and professional advisors solely for the purposes of providing professional advice.
- 11.3. As a condition of the rights set out in clause 11.2 the party wishing to exercise the rights must:
- 11.3.1. Ensure that any party to whom it discloses Confidential Information is under an obligation of confidentiality about such Confidential Information; and
 - 11.3.2. Procure that such persons observe the restrictions in this clause 11.
- 11.4. With the exception of the Software and the Services, the restrictions in clause 11.1 do not apply to any information to the extent that it:
- 11.4.1. Is in, or comes into, the public domain other than through a breach of clause 11.1;
 - 11.4.2. Is in the recipient's possession (with full right to disclose) before receiving it from the other party;
 - 11.4.3. Is lawfully received from a third party (with full right to disclose); or
 - 11.4.4. Is independently developed by the recipient without access to or use of the Confidential Information.

12. **INTELLECTUAL PROPERTY RIGHTS**

- 12.1. We, or our licensors, own all Intellectual Property Rights in the Services and the Software, and our business and goodwill. You shall acquire no rights to our Intellectual Property Rights.
- 12.2. Where we license Software to you, you agree that you shall comply with the licence terms of that Software.

13. **HARDWARE**

- 13.1. If you purchase any hardware from us, in addition to any manufacturer's guarantee which may apply, we offer a warranty that the hardware will function in accordance the description set out on our website for a period of one year from the date of purchase. This warranty applies only to normal use of the hardware in an office environment. This warranty does not apply if anyone makes, or attempts to make, any modifications to the hardware or any Software running on it and, if you attempt to make a claim under this warranty, you agree to tell us if anyone has made, or has attempted to make, any such modifications. If you need to make a claim under this warranty, you must notify us in accordance with clause 13.3.
- 13.2. You may only return hardware purchased from us for a refund if it is returned to us, unsealed and unopened and in pristine condition, within 7 days of your receipt of it. If you wish to return hardware to us, you must notify us in accordance with clause 13.3.
- 13.3. You must obtain from us an RMA code from us before returning any item. You must put this RMA code in a prominent place on the outer packaging of the relevant item. You are responsible for the costs associated with returning the item to us, and you must pack it and send it appropriately, so that we receive it in pristine condition. If you do not comply with this clause 13.3, your item will not be treated as returned. We will assess your returned item promptly after receiving it, and we will notify you if it is eligible for a refund.

14. INDEMNITIES

- 14.1. You agree to fully indemnify and keep us fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by us and arising from any of the following:
- 14.1.1. Your breach of this Agreement, negligence or other act, omission or default;
 - 14.1.2. The operation or break down of any equipment or software owned or used by you (except for the Software);
 - 14.1.3. Any fraud, or artificial inflation of traffic (as set out in Annex E of BT's Network Charge Control Standard Interconnect Agreement);
 - 14.1.4. Any claim brought against us by any third party alleging that its Intellectual Property Rights are infringed by the use by you of the Services or Software; and
 - 14.1.5. Your use or misuse of the Services or the Software.

15. LIMITS ON LIABILITY

- 15.1. Save as expressly set out in this Agreement, all other conditions, warranties or other terms which might have effect between you and us or be implied or incorporated into this Agreement, whether by statute, common law or otherwise, are hereby excluded to the extent permitted by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 15.2. Neither party limits or excludes its liability to the other for personal injury or death caused by its negligence, for fraud or fraudulent misrepresentation, or for any matter for which, at law, a party cannot limit or exclude its liability.
- 15.3. You do not limit or exclude your liability for the indemnities set out in clause 14, or for sums due under this Agreement.
- 15.4. Subject to clauses 15.2 and 15.3, neither party shall be liable to the other for special, indirect, or consequential losses, nor for the following types of loss, whether direct, indirect, special or consequential, in each case however caused:
- 15.4.1. Financial loss, including loss of profits, earnings, business, goodwill, business interruption;
 - 15.4.2. Expected or incidental losses; loss of expected savings; loss of sales; failure to reduce bad debt; reduction in the value of an asset;
 - 15.4.3. Loss of, or corruption to, data.
- 15.5. Subject to clauses 15.1 - 15.4 and 16.13, our aggregate liability to you under this Agreement shall be limited to the amount of fees paid by you under this Agreement in the twelve month period preceding the day on in which the first claim arose.
- 15.6. You agree that the provisions of this clause 15 are fair and reasonable.

16. PAYMENTS AND INVOICING

- 16.1. You must pay the fees for the Services, including any applicable setup fees, and all other sums due under this Agreement.
- 16.2. All prices and charges are exclusive of VAT, which we charge in addition where it applies at the prevailing rate.
- 16.3. Our standard call charges are set out at <https://www.nimvelo.com/internet-phone-service/call-charges/>.
- 16.4. If you purchase calling credit, this credit is valid for a period of 12 months from the date of purchase, after which it will expire automatically. We may, but are not obliged to, notify you of expiry of your credit.

- 16.5. You must have a valid payment mechanism set up with us. This can be either a debit or credit card. You grant us the right to take payments from that card, where such payments are due in accordance with this Agreement.
- 16.6. You can amend your stored debit or credit card details at any time via your account on our website. You must only store a card which is registered in your name and in respect of which you have the right to make charges. You must ensure that your stored card is valid, has not expired, and has sufficient funds available.
- 16.7. For Services which are billed monthly, payment is due on the first day of each new monthly period, for that next month's Services. We will attempt to notify you in advance of this date, but our failure to do so, or your failure to receive such a notice, does not affect your obligation to pay.
- 16.8. For automatic top-ups, payment is due at the time of the top-up.
- 16.9. We will attempt to charge your debit or credit card on the due date. You are responsible for ensuring that payment is made.
- 16.10. If, for any reason (including our failure to charge your card), we do not receive your payment in full within 5 working days of the due date, we may do any or all of the following:
- 16.10.1. Send you reminders by email and post at regular intervals. We may charge you a fee of £5 per reminder to cover a small proportion of the costs we incur in seeking payment of the overdue amount;
 - 16.10.2. Suspend the Services;
 - 16.10.3. Charge you interest on the overdue amount at the Interest Rate from the due date up to the date of actual payment (whether before or after any court judgement); and
 - 16.10.4. Charge you our reasonable costs and expenses (including legal costs) for seeking payment of the overdue amount.
- 16.11. In the event of a card chargeback, we may do any or all of the following:
- 16.11.1. Suspend the Services; and
 - 16.11.2. Charge you a fee of £25 per instance.
- 16.12. If, for any reason (including our failure to charge your card), we do not receive your payment in full within 30 days of the due date, we may terminate this Agreement and/or the Services.
- 16.13. If we suspend or terminate the Services in accordance with clauses 16.10 to 16.12:
- 16.13.1. We shall not be liable for any losses to you arising from this suspension or termination;
 - 16.13.2. You will lose any calling credit;
 - 16.13.3. You will lose (and will not be able to recover) any phone numbers; and
 - 16.13.4. We are not obliged to reactivate those Services; reactivation shall be at our sole discretion. If you wish us to reactivate the Services, we will notify you of the costs associated with doing so, and you can decide at that point whether you wish to proceed.
- 16.14. We may increase our fees for any or all Services, including our call charges, at any time.

17. **EVENTS OUTSIDE REASONABLE CONTROL**

- 17.1. Neither of us will be liable to the other for any delay or failure in the performance of our contractual obligations caused by events outside our reasonable control. However, for either of us to rely on this clause, we must promptly notify the other of the circumstances of the event. This clause 17.1 does not apply to your obligation to pay any sums due under this Agreement.

17.2.If the event persists for 28 days or more, the party not affected by the event may give notice to the other to terminate this Agreement with effect from a date specified in the notice without penalty or other liability (except for any liability on your part to pay our invoices).

18. NOTICES

18.1.Any notice (except for the service of court proceedings) shall be sent to the other party's nominated email address for service. In our case, this will be hello@nimvelo.com.

18.2.If either of us wants to change our email address for service, we must notify the other party of the change of email address in accordance with clause 18.1. You may also change your email address via your account on our website or phoning us. In the case of you notifying us, the change will take effect from the date on which we confirm that we have changed your email address.

18.3.We both consider that notice has been given:

18.3.1. In the case of us notifying you, one clear day after the time of sending the email; and

18.3.2. In the case of you notifying us, one clear day after you receive confirmation from us that we received such notification.

18.4.Notice for the service of court proceedings shall be by a signed-for postal service which provides proof of delivery, or by courier, and such notice shall be addressed:

18.4.1. To us, addressed to the Managing Director, and sent to Faraday Wharf, Innovation Birmingham Campus, Holt Street, Birmingham Science Park Aston, Birmingham, B7 4BB, United Kingdom; and

18.4.2. To you, to the most recent address which we have on file for you or, where no such address exists, to an address which we reasonably believe is linked with you.

19. DISPUTE RESOLUTION PROCEDURE

19.1.Our Customer Complaints Code is available at <https://www.nimvelo.com/about/terms-and-policies/complaints-code/>.

19.2.You agree that we shall deal with any disputes or claims arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) as follows:

19.2.1. The issue in dispute shall be referred for discussion to, in your case, the name of the main account holder, and in our case, our support team (<https://www.nimvelo.com/about/contact/>);

19.2.2. If the dispute is not resolved, the managing directors (or equivalent) of each of us shall discuss the dispute;

19.2.3. If the dispute is not resolved:

19.2.3.1.if you are entitled to refer the dispute to alternative dispute resolution, you may do so. Details of alternative dispute resolution are available at <https://www.nimvelo.com/about/terms-and-policies/complaints-code/>.

19.2.3.2.if you are ineligible to use alternative dispute resolution or do not do so, or if we wish to bring proceedings, you agree that the English courts have exclusive jurisdiction to settle the dispute.

19.3.We shall both bear our own costs for elements of the dispute resolution procedure up to the involvement of the courts under clause 19.2.3.2.

20. DATA PROTECTION

20.1.References in this clause 20 to a Regulation are to regulation 2016/679/EC. References to an Article are to an Article of the Regulation. Capitalised terms in this clause have the meaning defined by the Regulation unless otherwise defined in this Agreement.

- 20.2. If, in the course of providing the Services, you are a Controller and we are your Processor in respect of any Personal Data, we will:
- 20.2.1. Process Personal Data in accordance with all applicable law;
 - 20.2.2. Process the Personal Data only on your documented instructions as set out in this Agreement, including with regard to transfers of Personal Data to a third country or an international organisation;
 - 20.2.3. Unless prohibited by law, notify you if we are required by any law of the European Union or the law of one of the Member States of the European Union to act other than in accordance with your instructions or if, in our opinion, any of your instructions infringes the Regulation or other Union or Member State data protection provisions;
 - 20.2.4. Have your general authorisation to obtain other Processors and shall respect the conditions referred to in paragraphs 2 and 4 of Article 28 for any such engagement. Subject to clause 15, we shall be liable for the acts and omissions of its Sub-processors, and we shall ensure that the Sub-processor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, this clause 20;
 - 20.2.5. Comply with clause 11 (confidentiality) in respect of such Processing, and the Personal Data shall be "Confidential Information";
 - 20.2.6. Take all measures required pursuant to Article 32;
 - 20.2.7. Taking into account the nature of the Processing, assist you, at your cost, by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the Regulation;
 - 20.2.8. Provide, at your cost, reasonable assistance on written request by you in ensuring compliance with your obligations pursuant to Articles 32 to 36, taking into account the nature of Processing and the information available to us;
 - 20.2.9. At your choice and cost, delete or return all the Personal Data to you after the end of the provision of the Services relating to the Processing, and delete existing copies unless Union or Member State law requires storage of the Personal Data;
 - 20.2.10. At your cost and following written agreement as to the details, make available to you all information necessary to demonstrate compliance with the obligations laid down in Article 28, and allow for and contribute to audits, including inspections, conducted by your or another auditor mandated by you; and
 - 20.2.11. Notify you without undue delay if we become aware of a Personal Data Breach for which we are responsible.
- 20.3. Notwithstanding this clause 20, you are responsible for ensuring that your configuration of the Services, any software you install, and any services that you provide (whether to yourself or others) comply with your obligations under data protection law.

21. **TERMINATION**

21.1. You may terminate this Agreement at any time by notifying us.

21.2. We may terminate this Agreement immediately by notifying you if:

- 21.2.1. we are entitled to do so under clauses 16, 17.2 or 18.2;
- 21.2.2. you commit a material breach of an obligation under this Agreement which is not capable of remedy, including any breach of clause 7;
- 21.2.3. you commit a material breach of an obligation under this Agreement which is not remedied within 20 days after receipt of a notice from us specifying the breach, requiring its remedy and making clear that failure to remedy may result in termination; or

21.2.4. you:

- 21.2.4.1. appoint a receiver or manager over any assets;
- 21.2.4.2. take any steps for the appointment of an administrator;
- 21.2.4.3. present a petition or the passing of a resolution to wind up;
- 21.2.4.4. are unable to pay its debts in terms of s123 of the Insolvency Act 1986; or
- 21.2.4.5. cease to trade.

21.3. If you terminate the Agreement under clause 21.1 or we terminate it under clause 21.2, you are not entitled to a refund of any fees paid, including any calling credit, and you will automatically, immediately, and irrevocably, lose access to any phone numbers relating to the Services.

21.4. We may terminate this Agreement and/or any Services at any time and for any reason whatsoever by giving you reasonable notice of such termination. Unless termination is for your breach of an obligation under this Agreement, we will refund you a proportion of the fees representing the number of paid-for days of Services that you will not be receiving due to termination, and any unused calling credit.

21.5. Subject to clause 21.3, termination of this Agreement (or of any element of it) shall not affect any rights, obligations or liabilities of either party that have accrued before termination or that are intended to continue to have effect beyond termination.

21.6. The following clauses shall survive termination of this Agreement: 14, 15, 16, 18, 19, and 22.

22. MISCELLANEOUS TERMS

22.1. A person who is not a party to this Agreement shall have no rights under this Agreement.

22.2. If any part of this Agreement is found to be invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other provisions of this Agreement and such other provisions shall remain in full force and effect.

22.3. If either of us fails to exercise a right or remedy that it has or which arises under this Agreement, such failure shall not prevent us from exercising that right or remedy subsequently for that or any other incident.

22.4. A waiver of any breach or provision of this Agreement shall only be effective if made by email or in writing.

22.5. We may assign, transfer, charge, sub-contract or deal in any other manner with any of our rights or obligations under the Agreement. You may not do these things without our prior written consent.

22.6. Each Party shall

- 22.6.1. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and
- 22.6.2. not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010, or would do so if such activity, practice or conduct had been carried out in the UK.

22.7. Nothing in this Agreement establishes any partnership, joint venture, or agency.