

## Agreement

kwak agrees to provide a service to you upon the terms and conditions of this agreement enabling Callers to dial Premium Rate Numbers, domestic geographic numbers or Freecall Numbers. (as such terms are defined in separate order confirmations or by activation of the numbers in our system).

It is agreed as follows:

## Interpretation

The following provisions shall have effect for the interpretation of this agreement, unless the context requires otherwise.

## Definitions:

”*Agreement*” means an agreement entered into between kwak and the client, subject to the terms herein.

”*Carrier*” A national telephone carrier or another supplier for telephone numbers and connections.

”*Code of Conduct*” Any code of any independent body approved for the supervision of telephone information services recognised by the different countries where the services are provided;

”*Intellectual Property Rights*” Any patent, registered design, registered trade or service mark, copyright, design right, semiconductor topography right, know-how or any similar right exercisable in any part of the world including any application therefore;

”*Numbers*” The premium rate numbers or Freephone numbers allocated to the client;

”*Order Confirmation*” means kwak’s confirmation on any future order from the client. Every order confirmation will become part of this contract;

”*Rates*” The payouts or fees specified in order confirmations where applicable;

”*Secured e-mail address*” is an encrypted or non-encrypted e-mail address where messages or documents can be sent to, binding the client.

”*Traffic*” are the calls generated on the numbers kwak provides to the clients

## Obligations of kwak

kwak shall forward incoming calls to geographic numbers and pay out the rates specified in the order confirmation (Premium rate numbers only). The geographic numbers will be provided by the client. kwak will provide statistical data about call volume and minutes, generated by kwak's or the carriers systems. kwak will provide the client with username and password for logon to these statistics. Statistics are informational only. The carrier's bill is the basis for the bill or credit note issued by kwak.

## Obligations of the Client

The Client shall provide services to the callers using the numbers allocated in the order confirmations.

The client will pay kwak's bills within a time of 14 days.

The Client shall be responsible for the quality and delivery of the content of the services and that these services comply with the National Telecommunications Legislation, a Code of Conduct (where applicable) and this agreement.

The Client shall obtain all necessary approvals, permissions or authorisations for use of the numbers.

The Client shall neither acquire any right, title or interest in the numbers.

The client shall inform kwak about the services rendered.

The Client shall ensure that the services neither infringe any intellectual property right nor are defamatory.

The Client shall reimburse kwak in full for any fines or charges incurred from any third party in connection with the client's failure to comply with the relevant rules and regulations issued by the relevant third party.

## Rates and Payments

kwak shall pay the client in respect of calls to allocated numbers, according to the rates defined in the order confirmations. Payment will be made at the date set forth in the order confirmation. All rates mentioned are exclusive of value added tax, with the exception of the information about caller rates, which normally are inclusive VAT.

In case of premium rate numbers ordered kwak will pay out the rate agreed upon. Setup costs, monthly fees, routing costs, chargebacks and other costs (if applicable)

will be deducted from the monthly payment. If the payout is lower than the costs billed the client agrees to pay the difference within 14 days after issue of the invoice.

kwak reserves the right to cut or delay the payout if there are chargebacks pending or foreseeable and to change the pricing and rates mentioned in this document or in annexes or confirmations upon seven (7) days after written notice. If retrospective price changes are implanted by the network provider that result in kwak having effectively overpaid the client, then kwak reserves the right to deduct amounts from subsequent payouts to address the balance of payments overpaid during the period affected by the retrospective changes.

kwak will not pay the client for traffic which is not paid by the carrier for any reason. For instances where this applies, appropriate written documents must be produced by kwak to prove this. kwak will also not pay for traffic where kwak itself can prove it to be fraudulent.

### **Arbitrage, illegal Use of Numbers**

In case of justified doubt of systematic commercial use of volatile margin building in international linkup markets (arbitrage) by the contracting party or a third party, the client shall keep kwak clear of any loss. The client shall assume the sole responsibility against kwak in regard of the legitimacy of such use. All inquiries, queries or complaints in connection with arbitrage will be forwarded from kwak to the client.

The client and not kwak bears the responsibility of the correctness of the contents behind or the use of the numbers. In case of legal action with regard of a number provided by kwak to the client, the client shall be part of such legal action and shall bear the risk as well as costs. The client is responsible to provide the necessary documentation, like legally binding declarations about endclients, usage and the client's responsibility towards authorities and courts, if possible after previous approval from kwak.

If kwak suspects a violation of the contract, especially of illegal use or arbitrage, it has the right to suspend all payments to the client, even if kwak has been paid by the carrier, until a legally binding or official decision is taken, which confirms the legality of the client's actions, or use of the numbers.

## **Term and Termination**

This agreement shall commence from the date hereof and shall remain in force until either party submits a written notice of termination of at least ninety (90) days in advance. Either party may terminate or suspend this agreement at any time by giving written notice to the other where either party has committed a breach of this agreement and fails to remedy such breach within 30 days of receipt of notice requiring to do so.

The Company may immediately terminate this agreement if there is adverse publicity against the company in connection with the client's services.

Termination, suspension, or expiry of this agreement for any reason shall be without prejudice to any of each party's respective rights and obligations accruing up to and including the date of such termination, suspension or expiry.

Neither party shall be held to be in breach of its obligations under the agreement nor be liable to the other party for any loss or damage that may be suffered by the other party due to force majeure.

## **Entire Agreement**

This agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all prior agreement, representations or understandings by either party whether oral or written.

## **No Waiver**

Failure by either party to exercise or enforce any right conferred by the agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or any other right on any later occasion.

## Liability

The service, its operation, its use and the results of such use shall be performed in a workmanlike manner. To the fullest extent permissible pursuant to applicable law, kwak disclaims all warranties express or implied, including, but not limited to, implied warranties of merchantability and fitness for an particular purpose, in relation to the service, its use and the results of such use. Without limitings the foregoing, kwak specifically disclaims any warranty

- (a) that the service will be uninterrupted or error-free,
- (b) that defects will be corrected,
- (c) that there are no viruses or other harmful components,
- (d) that the security methods will be sufficient regarding correctness, accuracy, or reliability.

## Notices

Any notice, other document which may be given under the agreement shall be deemed to have been duly given if left at or sent by mail to the usual or last place of business of the recipient party. This is applicable also to notices, invoices or other documents sent to the client's secured e-mail address.

## Intellectual Property Rights

The parties' respective intellectual property rights shall remain the property of whichever creates or owns the same and nothing in this agreement shall be deemed to confer any assignment or licence of the intellectual property rights of the other party, save that the intellectual property rights or goodwill in the numbers shall hereby be vested in or assigned to The Company.

## Governing Law

This agreement shall be governed by German law (except for conflict of law provisions). The exclusive forum for any actions brought in connection with this agreement shall be in Germany and the client consents to such jurisdiction. However, kwak, 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.

The application of the United Nations Convention on the International Sale of Goods is expressly excluded.