

Fuse 2 Communications Limited General Terms and Conditions

These General Terms apply to all Order(s) for Services accepted by us. These General Terms together with the relevant Order(s) will form the Contract between us once they have been signed by both of us. References in this Contract to “us” and “we” will mean Fuse 2 Communications Limited or any assignee of ours and references to “you” will mean the customer named in the relevant Order(S).

1 Definitions

In this contract:

“Acceptable Use Policy” means our policy for the use of internet related Services set out on our Website, as may be revised by us from time to time by posting any updated version on our Website. <http://www.fuse2.net/FUSE2-AUP.pdf>

“Agreed Usage” means the monthly minimum call traffic, if any, specified in the Order.

“Charges” mean the charges payable by you to us for the provision of the Services as set out in the Order or any revised version of the Order notified to you in accordance with Clause 8.2, together with all applicable taxes and any interest due in accordance with Clause 8.5.

“Committed Period” means, in respect of each Service, the period of 12 calendar months (or if longer the number of calendar months specified overleaf) commencing on the date when both parties have executed the Order.

“Contract” means these General Terms and Conditions, the Order and any other document specifically incorporated in to this contract in writing.

“Facility Limit” means the monthly financial limit applied for charges incurred under this contract (125% of estimated call spend or the previous months bill)

“Order” means a schedule which sets out the scope of the Service, the relevant Charges and any special terms which are particular to that Service.

“Service Failures” means any failure, error or defect in the provision of the Services by us but excludes failures, errors or defects arising from, caused by or contributed to by your acts or omissions or third parties including other providers of telecommunications, computers or other equipment or services including internet services or any failure, error or defect arising as a result of causes beyond our reasonable control.

“Service” means any one of the services described in an Order and “Services” means any combination of two or more such services.

“Software” means the software provided by us to you for the purposes of enabling you to use the Services including all associated documentation.

2 Services Provided by Us

2.1 We will provide the Services in accordance with the terms of this Contract.

2.2 We will use reasonable skill and care when providing the Services.

2.3 The Services are provided for use by you in the course of your business.

2.4 Developments in Network technology (known as Local Loop Unbundling or “LLU”) may enable us to provide fixed line Services to you by using this new technology. We may transfer you to our LLU service but we will still offer the same Services to you as those which you received from us before the transfer.

2.5 On the day that we transfer you to our LLU service, you may experience a temporary loss of Service of up to 24 hours. Afterwards, you may also have to re-set your access numbers and/or passwords and may no longer be able to access some telecommunication services you purchase from other providers.

3 Service Levels

3.1 We do not guarantee that the Services will be continuously available to you or free from Service Failures. Copy found here; <http://www.fuse2.net/FUSE2-SLA.pdf>

3.2 Where you believe that you are experiencing a Service Failure you must immediately report this to us via the Fuse 2 Communications Limited Service Help desk, providing sufficient information to enable us to investigate the problem. We will log the time of receipt of all such reports.

3.3 Where we spend time investigating a fault reported by you and conclude that there has been no Service Failure we reserve the right to charge you for all reasonable costs and expenses incurred in investigating the report and you agree to pay such charges.

4 Your Use of Services

4.1 You agree that you will not use the Services in a way which would:-

(a) Contravene or cause us to contravene any Legislation;

(b) Contravene our Acceptable Use Policy (where applicable);

(c) Compromise the security of our Equipment or other systems, including by introducing viruses or failing to employ appropriate security procedures;

(d) Enable or permit unauthorised access by you or third parties to data stored on the network;

(e) Cause a degradation of service to any of our other customers;

(f) Involve the sending of unsolicited marketing or advertising materials;

(g) Result in the transmission or storage of any material of a pornographic, obscene, defamatory, menacing or offensive nature or which would result in the breach of any third party’s intellectual property rights, confidential information or privacy;

(h) Breach or cause us to breach any applicable data protection legislation including, but not limited to, the Data Protection Act 1998;

(i) Exceed your Facility Limit or cause an overload of our network;

(j) Lose or cause us to lose or breach or cause us to breach our Authorisation;

(k) Exceed Fuse 2 Communications Limited or its suppliers’ fair usage policy on applicable services (internet) as published on the appropriate website.

4.2 You will indemnify us against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by you arising from any breach of your obligations under this Contract, including this Clause 4, and for all costs and expenses reasonably incurred by us in investigating and defending ourselves in relation to any such claims, proceedings or threatened proceedings.

4.3 You will ensure that your usage of the Services does not exceed the Facility Limit or cause congestion or otherwise disrupt the network. You will give us not less than 2 days written notice of any advertising, promotion or other campaigns which may result in abnormal demands being placed in our network.

4.4 You are solely responsible for safeguarding your data by taking back up copies, maintaining a disaster recovery process and through any other means you believe appropriate.

4.5 To enable us to perform our obligations under this Contract, you will obtain all requisite licenses, consents and permissions and permit or procedure permission for us or our agents to have access to your premises and will provide such reasonable assistance and information as we request from time to time. We will routinely work during normal office hours. Any request by us to carry our work at other times may be refused by you. Any request by you that we carry our work at other times may be refused by us, but if accepted such work will be charged to you at our then current standard rates.

5 Our Equipment

5.1 Our equipment is owned by us, or our suppliers or licensors, and no title in any of our Equipment will pass to you under this Contract. We grant you a non-exclusive license to use the Equipment at the premises specified in the Order whilst the Services to which the Equipment relates are being provided to you under this Contract.

5.2 Where our Equipment is being provided for use at your site you will be responsible for its maintenance and prompt return to us on the termination of the Services. Unless we agree otherwise, you will be responsible for the installation of any Equipment. Where we are to install Equipment you grant us and our agents a right of access to your site, on reasonable notice, to install our Equipment and in all cases to inspect, test, maintain or otherwise deal with our Equipment and to recover it in the event that you fail to return it on request.

5.3 Risk in respect of Equipment will pass to you on delivery of the Equipment to you and you will obtain and maintain all risks insurance cover sufficient to protect our interests in relation to the Equipment.

5.4 You will indemnify us against any claims, proceedings or threatened proceedings from third parties (including our customers) and against any loss or damage suffered by us arising from your use of our Equipment where such claims and/or losses arise from the acts or omissions of you or your agents or subcontractors, and for all costs and expenses reasonably incurred by us in investigating and defending ourselves in relation to any such claims, proceedings or threatened proceedings.

6 Customer Equipment

6.1 Except as expressly set out in this Contract, you will be responsible for providing all necessary hardware, software, network facilities and telecommunications services to access and make use of the Services provided by us.

6.2 You will ensure that your telecommunications equipment conforms at all time with the Legislation. We will not be under any obligation to connect or keep connected any Customer Equipment if it does not so conform or if in our reasonable opinion it is liable to cause death, personal injury or damage to property or to impair the quality of the Services provided by us or to cause us to lose our Authorisation or to put us in breach of our obligation to any third party.

6.3 You are responsible for:-

(a) Ensuring that the Customer Equipment meets the minimum technical specifications as notified by us required to be compatible with the Services;

(b) Ensuring that the Customer Equipment is supplied and maintained in a safe condition, in good working order and that it complies with all applicable legislation or regulations;

(c) Obtaining all required licenses or other consents to enable us to have access to and use of the Customer Equipment for the purpose of providing the Services including, but not limited to, any license rights in respect of software which forms a part of the Customer Equipment. You are solely responsible for any costs associated with obtaining such licenses and consents;

7 Allocation and use of Telephone Numbers

7.1 Where we allocate you any telephone numbers or codes as part of the Services, you acknowledge that you will not acquire any legal, equitable or other rights in relation to any numbers or codes. We may on giving you notice withdraw or change any such numbers or codes. You may not sell or transfer or seek to sell or transfer any numbers or codes allocated by us. You may port numbers to us and may also port numbers to other carriers with whom we have porting agreements. All intellectual property rights or other rights in any numbers or codes allocated by us shall at all times, as between ourselves and you, remain vested in us.

8 Charges and Payment

8.1 You will pay us the Charges as specified in the Order or as subsequently notified to you in accordance with Clause 8.2. Charges will be payable with effect from the date what a Service or any part of a Service is first made available to you for commercial use.

8.2 We may change the Charges for any Service by giving you 30 days’ notice of such change. The revised Charges will apply to all Services provided after the effective date of the notice of change.

8.3 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. You will be responsible for paying VAT and other applicable taxes which will be included in our invoices at the applicable rate(s).

8.4 We will issue invoices for the Services in accordance with the payment terms specified in the Order.

8.5 You will pay invoices within 14 days of the date of the invoice, unless otherwise agreed. We may charge interest on all overdue amounts from time to time on a daily basis at a rate of 4% above the base rate of the HSBC, to run from the due date of payment until receipt by us of the full amount (including any accrued interest) whether before or after judgment in respect of the overdue amount.

8.6 Where the Services comprises or includes services in respect of which rebates are payable by us to you (“Rebate Service”), we will notify you of the amount of rebate due for each calendar month or other applicable period within 15 days of the end of each billing period. It is then your responsibility to issue an invoice to us for payment of the rebate due. We will pay the rebate 45 days following the date of your invoice or (if later) within 14 days of the date of receipt by us of sums from British Telecommunications plc. (Or other relevant carrier) paid to us in respect of the applicable Service. You do not have the right to deduct rebates payable by us to you from the payment of Charges due from you to us.

8.7 Following a decision or request from Phonepay plus relating to a Rebate Service, we may withhold from any rebate payable to you or demand payment by you of such sums as are sufficient to meet any fines, administrative charges or other sums payable to us to Phonepay plus and to which Phonepay plus claim entitlement under the Phonepay plus Code.

8.8 Where a network operator (including, without limitation, BT) withholds payment of any sum (in whole or in part) due to us in relation to a Rebate Service or subsequently claims repayment of any sum (in whole or in part) paid to us in relation to a Rebate Service, we may deduct from any rebate payable to you and keep or demand payment by you of a sum equal to the amount delayed, withheld or claimed until such network operator makes payment of the same in full to us.

8.9 In the event that the customer wishes to dispute an invoice, or any part of an invoice issued Fuse 2 Communications Limited Limited it must do so within sixty days of the date of the invoice after which time it shall be precluded from raising any such dispute. Payment for all sums not in dispute shall be made on the due date.

9 Changes to Services and Contract

9.1 We may at any time on 15 days written notice to you vary any of the General Terms and Conditions, the Charges or any other provisions of this Contract including the technical specification of the Services.

10 Security and Back up Services

10.1 You are responsible for the security of your use of the Services including, but not limited to, protecting all passwords, backing-up all data, employing appropriate security devices, including virus checking software, and having disaster recovery processes in place.

10.2 Where you are or become aware of any matters which you know or ought to reasonably be expected to know, constitute a threat to the security of Services, you will immediately advise us of such matters.

11 Contract Terms and Start Date

11.1 This Contract will commence on the date when both parties have executed the Order and will continue for the Committed Period and thereafter until terminated in accordance with its terms.

11.2 We will use our reasonable efforts to begin providing the Services by the Start Date, if any, stated in the Order. However, the Start Date and any other dates given in this Contract are estimates and are provided for planning purposes only. We therefore have no liability for failure to meet Start or other dates.

11.3 You may end this contract by giving us 30 days written notice, such notice not to expire before the end of the committed period. If we do not receive notice your agreement will automatically renew at the end of the committed period for a further period equal to the minimum contract term.

11.4 In the event that the customer terminates this agreement during the minimum term we reserve the right to raise a charge to recover our lost revenue for the remainder of the minimum term. This will be the higher of either the average monthly bill or committed monthly spend multiplied by the number of months remaining to end of the agreed contract period. Average monthly bill will be based on the customer’s last three full calendar monthly bills.

11.5 Where you request a tariff renew and we agree to amend your tariff, a new committed period of the chosen duration will be deemed to start from the date upon which the tariff is amended.

12 Termination

12.1 If you fail to pay any Charges or fail to comply with our obligations under Clause 8 these failures will be deemed to be material breaches for the purposes of Clause 12.2;

12.2 We may terminate this Contract with immediate effect by notice in writing if you:

- (a) Fail to pay any sums due to us within 7 days of receiving written notice from us indicating the sums due and demanding payment;
- (b) Fail to reach the Agreed Usage for a period of 90 consecutive days;
- (c) Are in material breach of this Contract where the breach is capable of remedy and fail to remedy that breach within 30 days of receiving the notice specifying the breach;
- (d) Are in material breach of this Contract and that breach cannot be remedied;
- (e) Commit persistent breaches of the Contract;
- (f) Have any Authorisation under which you have the right to run your telecommunication system and connect it to our system removed, revoked or amended;
- (g) Make any voluntary arrangements with your creditors or become subject to an administrative order or go into liquidation, whether voluntary or compulsory.

12.3 In the event of termination by us in accordance with this Clause during the Committed Period you will, in addition to paying any unpaid Charges due as at the date of termination, be liable to pay us the cancellation charges as specified in the Order.

12.4 We may terminate this Contract if we cease to be Authorised or if our Authorisation is revoked or modified in any way which has a material impact on our ability to provide the Services or any of them or if we are prohibited from providing or restricted in our entitlement to provide the whole or any part of the Services.

12.5 On termination of the Contract each party will return to the other party any confidential information which it has in its possession.

13 Cancellation and Suspension

13.1 Subject to Clause 11.1 you may cancel any individual Service or this Contract at any time by giving us 90 days written notice of cancellation.

13.2 Subject to Clause 13.3, where you cancel a Service during the Committed Period for that Service or cancel the Contract during the Committed Period for any Service, you will pay the charges applicable to the unexpired portion of the Committed Period(s).

13.3 We may suspend the provision of any Services if:

- (a) You fail to meet any of your obligations under this Contract including your obligations in relation to the Facility Limit and notice requirements concerning abnormal demands on our network;
- (b) We have reasonable cause to believe that you or any third party is acting in breach of the Acceptable Use Policy;
- (c) Technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;
- (d) If and to the extent that in our opinion your conduct is likely to result in the breach of any law or is otherwise prejudicial to our interests;
- (e) Necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance; and;
- (f) We are obliged to comply with any order, instruction or request of a competent governmental regulatory or other authority.
- (g) We will, where practical, give you notice of our intention to suspend the Services and, in relation to suspension for the reasons stated in Clauses 13.4 (c) – (f) above, will restore the Services as so on as we are reasonably able to do so. If we exercise our right to suspend the Services this will not restrict our rights to terminate the Contract.

13.4 When numbers are ported away from Fuse 2 Communications Limited (01 and 08 numbers) a charge of £6.25 will be applied.

13.5 Cancellation of Broadband services will incur in addition to 13.2 a charge of £35.

14 Force Majeure

14.1 Neither party will be liable to the other for any delay in performing or failure to perform any of its obligations under this Contract (other than the obligation to pay for Charges) which occurs as a result of circumstances beyond a party's reasonable control. For the avoidance of doubt, circumstances beyond our reasonable control include but are not limited to power failures, non-availability of any third party telecommunication services, breakdown of any equipment not supplied by us.

15 Intellectual Property

15.1 Except as expressly set out in this Contract, all intellectual property rights in our Equipment will remain with us or our suppliers or licensors.

15.2 Where Software is provided to enable you to make use of the Services, we grant to you a non-exclusive non-transferable licence to use the Software solely for the purpose of receiving the Services. Where any additional terms and conditions apply to your use of Software we will make these known to you and you will, if requested, sign any agreement reasonably required to protect the owner's rights in the Software.

15.3 You will not copy, de-compile or modify the Software without our prior written consent (except as permitted by law) and will not distribute or disclose the Software to any third party.

15.4 You acknowledge that we have no obligation to review or edit any of your information or third party information which you store on or transmit through our Equipment or use in connection with the Services. However, we reserve the right to access, retain and disclose copies of such information for the purposes of:-

- (a) Correcting, maintaining and improving the Services;
- (b) Complying with any Legislation, conditions of our Authorisation or the Terms of our Contracts;
- (c) Observing the performance of the Services including for Service Level monitoring;
- (d) Retaining a record of activity on our Equipment or systems;
- (e) Complying with any request for information or disclosure from a court or other appropriately authorised body;
- (f) Ensuring that you are complying with our Acceptable Use Policy.

16 Confidentiality

16.1 Neither party will disclose to any third party without the prior written consent of the other party any confidential information which is received from the other party as a result of this Contract. Both parties agree that any confidential information received from the other party will only be used for the purposes of providing or receiving services. These restrictions will not apply to any information which:-

- (a) Is or becomes generally available to the public other than as a result of the breach of an obligation under this Clause 16; or
- (b) Is acquired from a third party who owes no obligation of confidence in respect of the information; or
- (c) Is or has been independently developed by the recipient.

16.2 Notwithstanding Clause 16.1, we will be entitled to disclose your confidential information to a third party to the extent that this is required by any court of competent jurisdiction or by a governmental or regulatory authority, or where there is a legal right, duty or requirement to disclose such confidential information.

17 Limitation of Liability

17.1 We are not liable to you whether under this Contract, tort (including negligence) or otherwise for direct or indirect loss of profits, anticipated profits, business, goodwill or anticipated savings, or for any indirect or consequential loss or damage including, but not limited to, claims against you from third

parties and loss of or damage to your data even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the loss.

17.2 If all or any part of the services are faulty, unavailable, or interrupted The Company will use its reasonable endeavours to restore the services. The company will not be liable for faults in your telecommunication equipment which prevent access except expressly set out in this Contract and to the extent permissible by law all other warranties, terms and conditions whether express or implied by law, custom or otherwise are excluded.

17.3 We are not liable to you in contract or tort (including negligence) for any acts or omissions of you or any party other than us, including other providers of telecommunications, computers or other equipment or services including internet services.

17.4 Each provision of this Contract excluding or limiting our liability operates separately. If any provision of this Contract is held to be invalid in whole or part such provision will be deemed not to form a part of the Contract. In any event the enforceability of the remainder of the Contract will not be affected.

17.5 You must bring any legal proceedings against us arising from this Contract within 90 days from the date when you first become aware or ought reasonably to have become aware of the facts giving rise to the liability or alleged liability or within the relevant statutory limitation period whichever is the earlier.

17.6 Subject to Clause 17.4, no delay in enforcing any of the provisions of this Contract will affect or restrict either party's rights arising under this Contract. No waiver of any provision of this Contract will be effective unless made in writing.

18 Use and Disclosure of Information

18.1 We may use any information supplied by you to us to search the files of credit reference agencies which will keep a record of that search. We may also carry out identity and anti-fraud checks with fraud prevention agencies. If you give false or inaccurate information to us and we suspect fraud, we will record this. Details of how you conduct your account may also be disclosed to those agencies. The information may be used by us and other parties in assessing applications for and making decisions about credit, credit related services and insurance from you and for debt tracing, debt recovery, credit management and crime, fraud and money laundering detections and prevention. Information may be used by us and other parties for checking your identity, statistical analysis about credit, insurance, fraud and to manage account and insurance policies. We may also perform subsequent searches for the purpose of risk assessment, debt collection and fraud prevention with one or more credit reference agencies and/or fraud prevention agencies whilst you retain a financial obligation to us.

18.2 You authorise us to use and disclose in the UK and abroad, information about you and your use of the Services and how you conduct your account for the purposes of operating the account and providing you with the Services or as required by law to Associated Companies, partners or agents, any telecommunications company, debt collection agency or credit reference agency, fraud prevention agency and other users of these agencies who may use this information for the same purpose as us. You agree to this information being used by us for credit control purposes and fraud and crime detection and prevention. You can obtain further details from public registration held by the Information Commissioner. If you wish to have details of the credit reference or the fraud prevention agencies from whom we obtain and with whom we record information about you or receive a copy (we may charge a fee) of information we hold about you please contact us by writing to our Data Controller. We may also disclose any information about you or your use of Services in order to assist the investigation of any criminal offence, any offence under the Data Protection Act or any offence or contravention of the Legislation to the police, the Information Commissioner, OFCOM and/or any other relevant organisations. In this clause "Associated Companies" means any company within our Group of companies from time to time.

18.3 You also agree to the information described in paragraph 18.2 being used, analysed and assessed by us and the other parties identified in paragraph 18.2 and selected third parties for marketing purposes including amongst other things to identify and offer you products, services and offers which we think might interest you. If you do not wish your details to be used for marketing purposes please write to the Data Controller, Registered Office:

Suite 23
Blackburn Enterprise Centre
Furthergate
Blackburn
BB1 3HQ

19 Assignment

19.1 We may assign, sub-contract or otherwise transfer this Contract or any part of it to any third party in our absolute discretion.

19.2 You may assign, sub-licence or otherwise transfer this Contract or any of your rights or obligations arising under it without our written consent.

20 Entire Agreement

20.1 This Contract supersedes all prior agreements, undertakings and representations between the parties and constitutes the entire agreement between the parties relating to its subject matter (except that neither party excludes liability for any fraudulent pre-contractual misrepresentations on which the other party can be shown to have relied).

20.2 A third party which is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

20.3 In the event and to the extent of any conflict between the General Terms and the Order then Our General Terms will take precedence as published on our website at www.fuse2.net

21 Law and Disputes

21.1 This Contract will be construed in accordance with and governed by the laws of England.

21.2 In the event of any dispute relating to or arising from this Contract the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

22 Notices

22.1 Notices must be in writing and delivered by pre-paid first class post, or registered post, or recorded delivery addressed to the other party at the address shown in the Services Agreement or any other address as notified in accordance with this Clause.

22.2 Notices will be deemed to be served on the second day after sending

