



These General Terms apply to all Order(s) for Services accepted by us. These General Terms and Conditions together with the relevant Order(s) will form the Agreement between us once they have been signed by both of us. References in this Agreement 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 and Interpretation

- 1.1. Unless the context otherwise requires, each reference in this Agreement to:
  - 1.1.1. “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.1.2. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.1.3. “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
  - 1.1.4. a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.2. The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.3. Words imparting the singular number shall include the plural and vice versa.
- 1.4. References to any gender shall include any other gender.
- 1.5. References to persons shall include corporations.
- 1.6. In this Agreement:

“**Acceptable Use Policy**” or “**AUP**” means our policy for acceptable the use of Services set out on our website, as may be revised by us from time to time at our sole discretion by posting any updated version on our website.

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

“**Agreement**” means these General Terms and Conditions, the Order(s) and any other document specifically incorporated into this Agreement in writing.

“**Associated Company**” means a company which is from time to time a subsidiary or a holding company of a Party or a subsidiary of a holding company of a Party. In this definition "subsidiary" and "holding company" have the same meaning as in section 1159 of the Companies Act 2006.

**“Authorisation”** means the right to operate Public Electronic Communications Networks and/or Services (as defined in the Communications Act 2003) and any commensurate provision in jurisdictions other than the United Kingdom.

**“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 or notified to you in accordance with clause 8.2 of this Agreement, together with all applicable taxes and any interest due in accordance with clause 8.3 of this Agreement.

**“Committed Period”** means, in respect of each Service, the period specified in an Order Form, the Charges, or in writing between the Parties, or, if unspecified, a period of twelve (12) calendar months, in each case commencing on the date when both parties have executed the Order. In the event you are reselling the Services, or acquiring additional units of the Services, the Committed Period may vary between individual Services or individual orders for quantities of the Services, as defined in the Order, the Charges or otherwise agreed in writing.

**“Competent Authority”** means any Government, Government department or agency, regulatory or judicial body in any jurisdiction in which the Services are used.

**“Confidential Information”** means information that falls within the types of information which has been designated as confidential by either you or us or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either party, and all personal data within the meaning of the Data Protection Act 2018.

**“Customer Equipment”** means any hardware provided or procured by you to enable the use of the Services.

**“Facility Limit”** means the monthly financial limit applied for charges incurred under this Agreement which is set by us at our sole discretion.

**“Insolvency Event”** means a notice being issued to propose a resolution or a petition being presented for winding up or dissolution, or such a resolution being passed or any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness or an administrator or receiver being appointed over a party or all or any of its assets or any action anywhere similar or analogous to any of the foregoing;

**“Interconnection Partner”** means a supplier to us involved in the provision of Rebate Services.

**“Knowledgebase”** means the articles available at [], or other support materials we may publish from time to time on our website.

**“Legislation”** means any relevant Act of Parliament, relevant associated secondary legislation, or instruments lawfully enacted by any Competent Authority in any jurisdiction in which the Services are used.

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

**“Our Equipment”** means any hardware which is provided by us as an integral part of the Services.

**“Rebate Service”** is defined in clause 8.2 of this Agreement.

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

**“Service Credit”** is defined in any relevant service level agreement incorporated into this Agreement.

**“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.

**“Signals”** shall have the meaning in section 32 of the Communications Act 2003;

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

**“Third-Party Products”** means the provision of any software or hardware which we provide to you which has not been incorporated into the Services.

## **2. Services Provided by Us**

- 2.1. We will provide the Services in accordance with the terms of this Agreement.
- 2.2. We will use reasonable skill and care when providing the Services.
- 2.3. We will use reasonable endeavours to ensure that any of Our Equipment or Third Party Products comply with the Legislation at the time we provide Our Equipment or Third Party Products to you. We make no warranty as to the on-going fitness of purpose of compliance with the Legislation of Our Equipment or Third Party Products after they have been provided to you, including during the remainder of any Committed Period.

- 2.4. The Services are provided for use by you in the course of your business, which, for the avoidance of doubt, subject to the terms of this Agreement, includes the resale of the Services to third parties as a non-exclusive reseller of the Services.
- 2.5. We may monitor your use of the Services, including the content of Signals, only to the extent necessary to comply with Legislation, monitor compliance with this Agreement (where we have a reasonable suspicion that there is a breach) and to diagnose and remedy a Service Fault.
- 2.6. We may vary how we provide the Services to you at our sole discretion; in varying how we by which provide the Services pursuant to this clause 2.6, we shall offer the same Services to you as those which you received from us before any such variation.

### **3. Service Levels**

- 3.1. We do not guarantee that the Services will be continuously available to you or free from Service Failures. Our service level agreements can be found at [www.fuse2.net/support/legal/](http://www.fuse2.net/support/legal/) . We may vary our service level agreements from time to time at our sole discretion and without notice.
- 3.2. Where you believe that you are experiencing a Service Failure you must attempt to diagnose the Service Failure and take remedial action in accordance with the instructions on the Knowledgebase we publish from time to time and only when it is apparent that the Service Failure cannot be remedied without our assistance report this to us via the Fuse 2 Communications Limited Service help desk (the details of which will be provided by us to you from time to time), 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, or that the Service Failure (alleged or otherwise) could have been resolved through the instructions published by us on the Knowledgebase reserve the right to charge you for all reasonable costs and expenses incurred by us 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 (or allow the Services to be used) in a way which would:-
  - 4.1.1. Contravene or cause us to contravene any Legislation;
  - 4.1.2. Contravene our Acceptable Use Policy;
  - 4.1.3. Compromise the security of our Equipment or other systems (including those of other providers we are interconnect with), including by introducing viruses or failing to employ appropriate security procedures;
  - 4.1.4. Enable or permit unauthorised access by you or third parties to the network;
  - 4.1.5. Exceed your Facility Limit;
  - 4.1.6. Lose or cause us to lose or breach or cause us to breach our Authorisation;
  - 4.1.7. Exceed Fuse 2 Communications Limited or (where relevant) its suppliers' fair usage policy or acceptable use policies on applicable services as published by us from time to time;

- 4.2. You agree to comply with any reasonable instructions in relation to your relationship with us or the use of the Services given to you by us from time to time, including but not limited to;
  - 4.2.1. providing assistance in investigating any breach, or alleged breach, of this Agreement by you or your customers;
  - 4.2.2. providing assistance to any Competent Authority or law enforcement agency reasonably requested in the investigation of any unlawful use of the Services.
- 4.3. 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 Agreement, 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.
- 4.4. 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 Agreement, you will obtain all requisite licenses, consents and permissions and permit or procedure permission for us or our agents to have access to the required 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 out 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, agents or licensors, and no title in any of Our Equipment will pass to you under this Agreement. We grant you a non-exclusive license to use the Equipment at the premises specified in the Order while the Services to which Our Equipment relates are being provided to you under this Agreement.
- 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 Our Equipment. Where we are to install Our Equipment you grant us and our agents (or shall procure us and our agents) a right of access to the required premises, 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 Our Equipment will pass to you on delivery of Our Equipment to you and you will obtain and maintain all risks insurance cover sufficient to protect our interests in relation to Our 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 customers, 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.
- 5.5. You shall not grant any person, nor permit any person, to allow any charge or lien to be placed on Our Equipment, nor to allow Our Equipment to be pledged as any form of security.

## **6. Customer Equipment**

- 6.1. Except as expressly set out in this Agreement, 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 the Customer Equipment conforms at all times 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 (or risk us to lose) our Authorisation or to put us in breach of our obligation to any third party.
- 6.3. You are responsible for:-
  - 6.3.1. Ensuring that the Customer Equipment meets the minimum technical specifications as notified by us required to be compatible with the Services;
  - 6.3.2. Ensuring that the Customer Equipment is supplied and maintained in a safe condition, and in good working order;
  - 6.3.3. 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;
- 6.4. 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 Customer Equipment where such claims and/or losses arise from the acts or omissions of you or your customers, 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.

## **7. Third Party Equipment**

- 7.1. Where we provide Third Party Equipment, it is sold to you on an 'as-is' basis. We give no warranty as to its fitness of purpose in relation to the Services or any other application, save as we are expressly required to by the Legislation.
- 7.2. Title to the Third-Party Equipment shall only pass to you on receipt of cleared funds for the Third-Party Equipment.
- 7.3. You are required to ensure that the Third-Party Equipment is adequately insured against all perils between it coming into your possession and title passing to you. You shall not allow any charge or lien to all over any Third-Party Equipment, nor promise it as a form of security, nor pass title to another party on any Third-Party Equipment until clause 7.2 of this Agreement is satisfied.

## **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 of this Agreement. Unless specified in writing to the contrary, 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 thirty (30) calendar 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 billing periods and methods specified in the Order. If no such terms are specified, then recurring charges shall be invoiced monthly in advance and usage charges shall be invoiced monthly in arrears.
- 8.5. You will pay invoices within thirty (30) calendar days of the date of the invoice, unless otherwise agreed in writing. We may charge interest on all overdue amounts from time to time on a daily basis at a rate of 4% per year above the base rate of HSBC, to run on a pro-rata basis 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 use reasonable endeavours to notify you of the amount of rebate due for each calendar month or other applicable period within fifteen (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 the on the later of;
  - 8.6.1. 45 days following the date of your invoice or;
  - 8.6.2. within fourteen (14) days of the date of receipt by us of sums from our Interconnection Partners 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 the Phonepaid Standards Authority (or other Competent Authority) relating to a Rebate Service, or where we have reasonable grounds to suspect you have breached any of the obligations of this Agreement, 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 lawfully payable to us to any Competent Authority.
- 8.8. Where a network operator (including, without limitation, BT) withholds, or threatens to withhold, 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 calculating the amount due to you for a Rebate Service under clause 8.6 of this Agreement, we may deduct any reasonable cost we incurred in defending the Rebate Service to any Interconnection Partner, Competent Authority or third party, including deducting any settlement that we enter into, which we may do from time to time, acting reasonably. You hereby warrant that you will provide all reasonable assistance to us in defending a Rebate Service used by you and hereby irrevocably agree to abide by any decision we make in reaching a settlement with an Interconnection Partner, Competent Authority or relevant interested party.
- 8.10. If the Customer wishes to dispute an invoice, or any part of an invoice issued by Fuse 2 Communications Limited, it must do so, in writing, within twenty-one (21) days of the date of the invoice after which time it shall be deemed to have

irrevocably accepted the accuracy of the invoice and precluded from raising any such dispute. Any such dispute raised pursuant to this clause 8.10 must;

- 8.10.1. be accompanied by sufficient detail to justify the dispute; and
- 8.10.2. relate only to the magnitude of the Charges or the volume of the Services invoiced or a Service Credit;
- 8.10.3. not relate to any Charges incurred by you as a result of unauthorised access to the Services;
- 8.11. Payment for all sums not in dispute shall be made on the due date.
- 8.12. All Charges for the Services shall be chargeable and payable by you in all circumstances, including, without limitation;
  - 8.12.1. whether any usage of the Services was accidental or by any unauthorised person or persons;
  - 8.12.2. alleged or actual fraud (including short-stopping);
  - 8.12.3. non-payment of monies owed to you by your customers;
  - 8.12.4. any Facility Limit being exceeded.

## **9. Security and Back up Services**

- 9.1. You are responsible for the security of your use of the Services including, but not limited to, protecting all passwords (and ensuring all passwords meet industry accepted thresholds for security), backing-up all data, employing appropriate security devices, including virus checking software, monitoring for unauthorised access, and having disaster recovery processes in place.
- 9.2. Where you are or become aware of any matters which you know constitute a threat to the security of Services, you will immediately advise us of such matters.

## **10. Commencement**

- 10.1. This Agreement 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.
- 10.2. 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 Agreement are estimates and are provided for planning purposes only. We therefore have no liability for failure to meet Start or other dates.

## **11. Termination**

- 11.1. If you fail to pay any Charges or fail to comply with your obligations under clause 4 of this Agreement, these failures will be deemed to be material breaches for the purposes of clause 11.2 below;
- 11.2. We may terminate this Agreement with immediate effect by notice in writing if you:
  - 11.2.1. Fail to pay any sums due to us within seven (7) days of receiving written notice from us indicating the sums due and demanding payment;
  - 11.2.2. Fail to reach the Agreed Usage for a period of 90 consecutive days;



- 11.2.3. Are in material breach of this Agreement where the breach is capable of remedy and fail to remedy that breach within 30 days of receiving the notice specifying the breach;
  - 11.2.4. Are in material breach of this Agreement and that breach cannot be remedied;
  - 11.2.5. Commit persistent breaches of the Agreement;
  - 11.2.6. Have any Authorisation under which you have the right to run your telecommunication system and connect it to our system removed, revoked or amended;
  - 11.2.7. An Insolvency Event occurs to you;
  - 11.2.8. We may terminate this Agreement 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.
- 11.3. Either Party may terminate this Agreement, or an Order made under this Agreement, by giving us thirty (30) days written notice, such notice not to expire before the end of any Committed Period. If we do not receive notice to terminate the Agreement or an Order from you (and do not ourselves terminate the Agreement pursuant to this clause 11.3) this Agreement, or Order, will automatically renew for another Committed Period at the end of the Committed Period for a further period equal to the original Committed Period.

## **12. Consequences of Termination**

- 12.1. In the event that this Agreement is terminated (for whatever reason) during the Committed Period we reserve the right to raise a charge to recover our lost revenue for the remainder of the Committed Period. 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 Committed Period. Average monthly bill will be based on your last three full calendar monthly bills.
- 12.2. In the event that we terminate this Agreement (for whatever reason) and we have reasonable to believe that a consequence of the termination shall be a disruption in the use of the Services by your customers, you shall provide all reasonable endeavours and assistance in assigning, novating or transferring (in a manner we specify, in our sole discretion) your affected customers to Services offered to them directly by us or our Associated Companies. Any such assignment, novation or transfer or otherwise under this clause 12.2 shall occur at your expense with no recompense, compensation or otherwise due to you from us.
- 12.3. On termination of the Agreement each party will return to the other party any Confidential Information which it has in its possession.

## **13. Cancellation and Suspension**

- 13.1. We may suspend the provision of any Services if:
  - 13.1.1. You fail to meet any of your obligations under this Agreement including your obligations in relation to the Facility Limit;
  - 13.1.2. We have reasonable cause to believe that you, or any third party, is acting in breach of any of the obligations in clause 4.1 of this Agreement;

- 13.1.3. Technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;
  - 13.1.4. Necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance;
  - 13.1.5. We are obliged to comply with any order, instruction or request of a Competent Authority;
  - 13.1.6. 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;
  - 13.1.7. You or your customers cause, or permit to be caused, any defamation or disrepute to us, our agents or suppliers; or
  - 13.1.8. Notwithstanding clause 13.1.2 above, we have reasonable cause to believe that your, or your customers', conduct would, or may imminently, give rise to our right to terminate this Agreement pursuant to clause 11 of this Agreement.
- 13.2. 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 13.1.3 or 13.1.4 above, will restore the Services as soon as we are reasonably able to do so. If we exercise our rights to suspend the Services this will not restrict our rights to terminate the Agreement.

#### **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 Agreement (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 part telecommunication services, breakdown of any equipment not supplied by us.

#### **15. Intellectual Property**

- 15.1. Except as expressly set out in this Agreement, all intellectual property rights in our Services or 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:-
- 15.4.1. Correcting, maintaining and improving the Services;
  - 15.4.2. Complying with any Legislation, conditions of our Authorisation or the Terms of our Contracts;

- 15.4.3. Observing the performance of the Services including for Service Level monitoring;
- 15.4.4. Retaining a record of activity on our Equipment or systems;
- 15.4.5. Complying with any request for information or disclosure from a court or other appropriately authorised body;
- 15.4.6. 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 Agreement. 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:-
  - 16.1.1. Is or becomes generally available to the public other than as a result of the breach of an obligation under this clause 16; or
  - 16.1.2. Is acquired from a third party who owes no obligation of confidence in respect of the information; or
  - 16.1.3. Is or has been independently developed by the recipient.
- 16.2. Notwithstanding clause 16.1 of this Agreement, either Party shall be entitled to disclose 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.
- 16.3. This clause 16 shall survive the termination of this Agreement for a period of three (3) years.

## **17. Limitation of Liability**

- 17.1. We are not liable to you whether under this Agreement, 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 we will use its reasonable endeavours to restore the Services. We will not be liable for faults in your telecommunication equipment which prevent access except expressly set out in this Agreement 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 Agreement excluding or limiting our liability operates separately. If any provision of this Agreement is held to be invalid in whole or part such provision will be deemed not to form a part of the Agreement. In any event the enforceability of the remainder of the Agreement will not be affected.

- 17.5. You must bring any legal proceedings against us arising from this Agreement within ninety (90) days from the date when you first 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 of this Agreement, no delay in enforcing any of the provisions of this Agreement will affect or restrict either party's rights arising under this Agreement. No waiver of any provision of this Agreement will be effective unless made in writing.

## **18. Non-Solicitation**

- 18.1. Neither Party shall, and shall procure that any Associated Company shall not:
- 18.1.1. employ or engage, or attempt to employ or engage, any employee of the other Party; or.
  - 18.1.2. solicit the business of the other Party's customers (save for where clause 12.2 of this Agreement applies);
- for the duration of this Agreement and for one (1) year following its termination
- 18.2. Clause 18 of this Agreement shall not apply where the employee or customer of a Party has responded to an advertisement placed by the other Party or responded to any agent acting for the other Party, where the advertisement has been placed, or the agent is acting, in good faith.

## **19. Assignment**

- 19.1. We may assign, sub-contract or otherwise transfer this Agreement or any part of it to any third party in our absolute discretion provided that, for a transfer or an assignment, the transferee or the assignee is an affiliate.
- 19.2. You may not assign, sub-licence or otherwise transfer this Agreement or any of your rights or obligations arising under it without our prior written consent.

## **20. Variation**

- 20.1. We may vary this Agreement upon written notice to you to effect to any relevant decision by a Competent Authority;
- 20.2. Any other variation to this Agreement shall only be valid if made in writing between the Parties.

## **21. Entire Agreement**

- 21.1. This Agreement 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).
- 21.2. A third party which is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 21.3. 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](http://www.fuse2.net)

## **22. Law and Disputes**

- 22.1. This Agreement will be construed in accordance with and governed by the laws of England.
- 22.2. In the event of any dispute relating to or arising from this Agreement the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

## **23. Notices**

- 23.1. 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 Order or any other address as notified in in writing between the parties for the purposes of serving notices.
- 23.2. Notices will be deemed to be served on the second day after sending.