



Terms and Conditions for Network Services

If the Contract includes the provision of Network Services, the following terms and conditions shall also apply.

Any defined terms not set out below, shall have the same meaning as set out in the Conditions.

1. Network Services

- 1.1 Any order for Network Services which is accepted by Fusion Networks is conditional on the following:
 - 1.1.1 Fusion or a third party network provider carrying out a survey which reveals to Fusion Network's satisfaction that it is possible for Fusion Networks to supply the Network Services and that any details or information used by Fusion Networks to determine the fees applicable or any other terms of the Contract, whether supplied by the Customer or otherwise, are accurate and not misleading. The fees may change depending on the results of such survey; and
 - 1.1.2 that the Network Services can be provided; Fusion Networks makes no warranty that the Network Services can be provided until lines have been installed and are operational.
- 1.2 The Customer acknowledges and accepts that, as part of the Network Services, minimum terms for line rental may be imposed by third party network providers. The Customer shall be responsible for the continued payment of any such line rentals for the whole of such minimum term.
- 1.3 Fusion Networks undertakes to use reasonable endeavours to supply the Network Services to the Customer and to provide the Network Services with due skill and care subject to the Contract. The Customer acknowledges that the Network Services cannot be provided fault free and Fusion Networks does not warrant error free or uninterrupted use of the Network Services. Notwithstanding any other provision of the Contract, Fusion Networks shall not be liable to the Customer in contract, tort, or otherwise for any acts or omissions of third party service providers which affect or otherwise impact the Network Services.
- 1.4 Fusion Networks reserves the right to modify the Network Services and, in its sole discretion and without liability, change or modify the features and functionalities of the Network Services or modify or replace any hardware or software which are part of the System, provided that this does not have a material adverse effect on the Network Services.
- 1.5 The speed of any broadband element (if any) of the Network Services depends on a number of factors including distance from the exchange, local availability and line test. Fusion Networks cannot guarantee that the Customer's line(s) will produce top speeds of up to the maximum speed that may be advertised as the final speed is governed by factors that are beyond Fusion Network's reasonable control.

- 1.6 The Customer warrants, represents and undertakes that it is the owner of, or that it is authorised by the owner of, any trade mark or name that the Customer wishes to use as its registered domain names ("**Domain Names**") and use as part of the Customer's uniform resource locator ("**URL**").
- 1.7 If Fusion Networks undertakes Domain Names and URL registration on behalf of the Customer, the Customer will reimburse Fusion Networks for any registration fees paid by Fusion Networks to the internet registration authorities. Fusion Networks does not guarantee that any Domain Names or URL requested by the Customer will be available.
- 1.8 Fusion Networks may require the Customer to select replacement Domain Names or URL and may either refuse to provide or may suspend the Services if Fusion Networks reasonably believes that the Domain Names or URL is, or is likely to be, offensive, abusive, defamatory or obscene.

2. **Supply of Telephone numbers**

- 2.1 The Customer hereby acknowledges and accepts that under the general conditions of entitlement set out in the notification issued by the Director General for Telecommunications on 22 July 2003 (in accordance with s.48(1) of the Communications Act 2003) the Director General has the power to withdraw an allocation of telephone numbers and the third party service provider may withdraw an allocation of telephone numbers to Fusion Networks and therefore any new telephone numbers provided to the Customer under the Contract prior to their connection cannot be guaranteed as available and therefore Fusion Networks shall not be liable for any costs incurred by the Customer in the use of such telephone number (including, without limitation, in the advertising of such telephone number).
- 2.2 The Customer acknowledges it does not own or have any right to sell any number provided to it by Fusion Networks.
- 2.3 Fusion Networks cannot guarantee the portability of telephone numbers and shall not be liable for any associated costs if the Customer is unable to transfer existing telephone numbers.
- 2.4 Where the Customer utilises a capped price call tariff, Fusion Networks may, upon notice to the Customer:
 - 2.4.1 limit call price caps to the first four hours of call per day; and/or
 - 2.4.2 amend the relevant call price caps from the Customer's pricing and tariff should the Customer's call profile deviate significantly from Fusion Network's standard call profiles.
- 2.5 Where the Customer utilises a bundled minute call package, Fusion Networks may, upon notice to the Customer amend the relevant call price caps from the Customer's pricing and tariff should the Customer's call profile deviate significantly from Fusion Network's standard call profiles and use over 75% of its bundled minutes in any month.

3. **Use of the Network Services**

- 3.1 The Customer shall be responsible for the safe custody and safe use of the Network Services and without prejudice to the generality of the foregoing the Customer agrees and undertakes:
 - 3.1.1 to use the Network Services in accordance with such conditions as may be notified to it in Writing by Fusion Networks from time to time;

- 3.1.2 not to cause any attachments other than those that meet the appropriate essential requirements of regulation 4 of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (as amended from time to time) or any other requirements to be connected to the Network Services and Fusion Networks shall not be under any obligation to connect or keep connected any Customer apparatus if it does not so conform or if in the reasonable opinion of Fusion Networks it is liable to cause death, personal injury or damage or to impair the quality of the Network Services;
 - 3.1.3 not to contravene any relevant regulations or licences granted thereunder;
 - 3.1.4 not to use the Network Services as a means of communication for a purpose other than that for which the Network Services is provided and as may be set out in any relevant literature supplied by Fusion Networks from time to time;
 - 3.1.5 not to interfere with or disrupt other users of the Network Services;
 - 3.1.6 not to use the Network Services to communicate, deliver, knowingly receive, upload, download, use or re-use any material or information which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, inconvenience or worry to any person or which in Fusion Networks opinion brings Fusion Networks name into disrepute or which in any way causes damage to or disruption to the Network Services;
 - 3.1.7 not to use the Network Services in a manner which constitutes a violation or infringement of the rights of any other party;
 - 3.1.8 to maintain its telecommunications apparatus at all times during the period of the Contract in good working order and in conformity with any relevant regulatory standards or approvals for the item as from time to time applicable;
 - 3.1.9 to provide Fusion Networks with all such information as it reasonably requests relating to the Customer's telecommunications apparatus;
 - 3.1.10 to implement adequate control and security over the Network Services provided to the Customer including but not limited to the prevention of viruses, worms, Trojan horses and/ or any calls generated by rogue diallers or hackers;
 - 3.1.11 not to use the Network Services in a way that breaches any legislation, regulation or code (including without limitation the Code of Practice issued by PhonepayPlus or any guidelines, regulations or instructions of PhonepayPlus) or any licence applicable to the Customer or that is in any way unlawful or fraudulent; and
 - 3.1.12 not to send or procure the sending of any unsolicited advertising or promotional material.
- 3.2 Any equipment installed or provided by or on behalf of Fusion Networks for the purposes of providing the Network Services (excluding for the avoidance of doubt any Equipment purchased under a Contract by the Customer) shall at all times remain the property of Fusion Networks and shall be returned to Fusion Networks immediately upon request. The Customer shall be liable to Fusion Networks for all losses, costs and expenses incurred by Fusion Networks for the recovery, replacement or repair of such equipment.

- 3.3 Should the Customer use an alternative carrier for calls once the Contract has commenced, or prevent Fusion Networks from carrying calls in any monthly period so that the call charges are significantly reduced in comparison to the Customer's previous average invoicing profile, the Customer agrees that Fusion Networks may charge the Customer the differential between the average monthly spend on calls prior to such commencement or prevention and the subsequent monthly spend on calls (if any).
- 3.4 The Network Services are provided solely for the Customer's use and the Customer cannot resell or attempt to resell the Network Services (or any part of them) to any third party. In addition, if the Customer has a mail server, the Customer must not allow relay emails from outside its domain from the Customer's mail server.
- 3.5 Fusion Networks does not warrant or guarantee the accuracy or completeness of any of the information, sound, software and any other materials (in whatever form) and services made available to the Customer as part of the Network Services (the "**Content**") or any further information or results which may be derived from it. The Customer acknowledges that it will not rely on any Content in making any business or other decision and that the Customer uses of the Content is at its sole risk.
- 3.6 The Content is protected by copyright, trademark and other Intellectual Property Rights. The Customer must not and must not permit anyone else to copy, store, modify, distribute externally, broadcast or publish any part of the Content, and the Content may only be used for the Customer's own purposes.
- 3.7 The Customer is entirely responsible for evaluating any goods or services offered by third parties via the Services or on the internet. Fusion Networks will not be a party to or in any way be held responsible to the Customer for any transaction between the Customer and third parties.
- 3.8 The Customer warrants, represents and undertakes that any information the Customer makes available on its website, both the Customer's ("**Customer Information**") or that of a third party ("**Third Party Content**") is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.
- 3.9 The Customer also warrants, represents and undertakes that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on the Customer's website including those notified by Fusion Networks to the Customer.
- 3.10 Both parties agree to fully co-operate with the police and any other relevant authorities (including but not limited to the Inland Revenue, Trading Standards and/or OFCOM and their successors from time to time) in connection with any misuse or suspected misuse of the Network Services and the Customer consents to Fusion Networks co-operating with any other telecommunications operators in connection with any suspected fraudulent activity related to or connected with the Network Services and agree that Fusion Networks will be entitled to divulge the name and address and account information relating to the Customer to such third parties.
- 3.11 The Customer acknowledges that the broadband element (if any) of the Network Services is provided to other users and Fusion Networks owes a duty to these users as a whole to preserve its network integrity and avoid network degradation. If, in Fusion Network's reasonable opinion, Fusion Networks believes that the Customer's use of the Services has or may adversely affect such network integrity or may cause network degradation Fusion Networks may change the Customer's chosen access rate or manage the Customer's Services as Fusion Networks reasonably sees fit in the circumstances.

- 3.12 To prevent spam from entering and affecting the operation of Fusion Network's systems and the Network Services, Fusion Networks may take any reasonable measures or actions necessary to block access to, or delivery of, any e-mail which appears to be of an unsolicited nature and / or part of a bulk e-mail transmission. Fusion Networks may also use virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. Fusion Networks gives no warranties whatsoever that such technology will be effective in any way, including against unsolicited emails or against any viruses, worms, Trojan horses or other programs or devices that are apparently intended to access and modify, delete or damage data file(s) or computer program(s).
- 3.13 Fusion Network's suppliers have developed a "Broadband Acceptable Use Policy" relating to the broadband element of the Network Services. The Customer shall comply with the Broadband Acceptable Use Policy. Fusion Network's suppliers may change the Broadband Acceptable Use Policy at any time by publishing the changes on its website (www.daisyplc.com) 14 days before the change is to take effect.
- 3.14 In order to use the broadband element (if any) of the Network Services, the Customer needs an existing telephone line (if not provided under the Contract) and a personal computer (PC) of a minimum specification suitable for the application. The Customer must also ensure that compatible cables and extension leads are used to and from its telephone socket, modem and PC in order to use the Service.
- 3.15 In circumstances where the Customer receives the broadband element of the Network Services, the Customer remains responsible for all rental charges made by the Customer's line rental provider relating to the Customer's telephone line (together with any repair and maintenance charges (unless caused by Fusion Network's negligence) and all call charges from the Customer's fixed line telephony service provider.
- 3.16 The Customer agrees that PhonepayPlus may monitor any service at any time.
- 3.17 In respect of each Service which requires the approval of PhonepayPlus pursuant to any regulation or code of practice, the Customer shall, before such Service (or any change thereto) is made available to callers, submit to the Fusion Networks written evidence of such approval.
- 3.18 The Customer will not misuse the Network Services in any way and will use all reasonable endeavours to ensure that the number of telephone calls made to its number(s) do not significantly exceed the Customer's capability to answer such calls or cause congestion (the existence of congestion to be reasonably determined by Fusion Networks taking into account normal levels of traffic on the network) and, in particular, shall give Fusion Networks at least one Working Day's notice of any intention to advertise in the media or otherwise to publicise the number(s). Where Fusion Networks notifies the Customer of the occurrence of any such congestion or misuse, then the Customer shall immediately take all reasonable steps (which shall include, but not be limited to, arranging additional network capacity, adjusting the Customer's promotional activities or using call bureau, for the relevant period) to prevent such congestion and/or misuse continuing.

4. Transfers from third party suppliers

- 4.1 Where the transfer of lines and services from third party suppliers is selected by the Customer then the provision of any and all existing services supplied to the Customer by such third party supplier will be automatically transferred to Fusion Networks and charged for in Fusion Network's invoices.

- 4.2 The Customer hereby acknowledges and accepts that it is the Customer and not Fusion Networks who is liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly identified and agreed in writing on the Order Form at the time of the Customer signing such Order Form that Fusion Networks will pay for specified charges.
- 4.3 If the Customer is migrating to the broadband element of the Network Services from a third party provider of an alternative broadband service, the Customer will need to obtain a Migration Authorisation Code (“MAC”) from that service provider. This MAC will be valid for thirty days from the date of issue and can only be used once. It is the Customer’s responsibility to obtain this code and to ensure that the Customer provides it to Fusion Networks in sufficient time to process the Customer’s migration. Fusion Networks will not be responsible for any delay, costs, expenses, loss or damage arising or incurred by the Customer through failure to connect the Customer to the broadband element of the Network Services.
- 4.4 Where Fusion Networks has a right to suspend the Network Services pursuant to clause **Error! Reference source not found.** of the Conditions, the Customer shall reimburse Fusion Networks for all reasonable costs and expenses incurred by the implementation of a suspension and/or the recommencement of the provision of the Network Services as appropriate.
- 4.5 Without prejudice to any other right of termination under the Conditions, Fusion Networks may terminate the Contract for Network Services with immediate effect in the event that its right or the right of the relevant third party network service provider to provide the Network Services is withdrawn.

5. **Voice Over Internet Protocol (VOIP) Network Services**

- 5.1 Any order for VOIP services which is accepted by Fusion Networks is conditional on the Customer acknowledging that the VOIP service:
- 5.1.1 may not offer all the features or resilience the Customer may expect from a conventional phone line; and
 - 5.1.2 is not a Publicly Available Telephony Service (PATS) and as a result, may sometimes be limited, unavailable or disrupted due to events beyond Fusion Network’s control e.g. power disruptions, failures or the quality of the broadband connection.

6. **Publishing of Customer details**

- 6.1 If applicable, Fusion Networks will, as soon as is reasonably possible, arrange to publish the Customer’s name address and the telephone number for the Network Services in the relevant phone book serving the Customer’s area and make the said telephone number available from a directory enquiries service unless the Customer requests Fusion Networks not to do so within 14 days of entering into the Contract.
- 6.2 If the Customer requests a special entry to be placed in the relevant phone book issued by the third party network service provider it shall inform Fusion Networks at the earliest available opportunity. Where Fusion Networks agrees to use its reasonable endeavours to register a special entry, the Customer may be required to pay an additional charge and sign a separate contract in respect of that entry.

7. **Dispute Resolution**

- 7.1 Fusion Networks will attempt to resolve any dispute that the Customer may have with Fusion Networks. If a dispute relating to telecommunications services cannot be resolved within 12 weeks of the Customer raising the dispute with Fusion Networks, then the Customer may refer the matter to:
- 7.1.1 the Telecommunications Ombudsman, via the website (www.otelo.org.uk) or by telephone on 0330 440 1614; or
 - 7.1.2 OFCOM, the communications regulator via the website www.ofcom.org.uk or by telephone on 020 7981 3040 or 0300 123 3333.
- 7.2 Nothing in paragraph 7.1 above shall prevent either party from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Contract.

8. **ADSL Services**

In the event that the Customer procures ADSL services, in addition to these Additional Terms and Conditions for Network Services, the following terms and conditions shall also apply.

- 8.1 All prices quoted for ADSL are subject to delivery charges, and survey.
- 8.2 ADSL is a non-guaranteed service and can occasionally be subject to faults that may take longer than 24 hours to remedy.
- 8.3 The quoted speeds for each product refer to the maximum available download bandwidth. Upload bandwidth for all standard DSL services may vary up to a maximum of 256Kbps - 1Mbps. If the Customer is located more than 3.5km away from its local exchange, the service will automatically be classed at rate adaptive and the maximum upload speed may be lower than 256Kbps. In almost all cases this reduced upload speed will not be noticeable.
- 8.4 ADSL is a contended service and so bandwidth, ping times and latency cannot be guaranteed in any way.
- 8.5 ADSL is not recommended where Internet access is business critical. In such an instance the Customer should consider an alternative back up for the ADSL connection, or using an alternative service with better guarantees, such as a leased line.
- 8.6 The quality and speed of ADSL services may vary from exchange to exchange across the network. This means that the Customer's own service may perform better or worse than a third party's in another part of the country and this may be subject to variation at different times of the day. This is an unavoidable 'feature' of ADSL.
- 8.7 In some rare cases, the quality of the ADSL service may reduce to the point of becoming unacceptable, due to line quality problems beyond Fusion Network's control. Where this is the case, Fusion Networks reserves the right to terminate the Customer's ADSL service and issue a refund for any services not provided.
- 8.8 The ADSL service will be delivered to the Customer over an existing analogue telephone line. Please note that the Customer's normal call charges and line rental are not included in this ADSL contract and are not charged for by Fusion Networks. In the event that the Customer cancels or changes ownership of its telephone line, the ADSL service will be terminated and any remaining charges for the ADSL contract will become due immediately.
- 8.9 It is the Customer's responsibility to ensure that where it needs to make any changes to its telephone line (including renumber, change of tariff, billing address) it confirms to the supplier that it wishes to continue with the ADSL service.

- 8.10 ADSL should not affect normal voice telephone calls, but the Customer should be aware that ADSL may affect other related services such as fax machines and security or burglar alarms. Such systems should be tested once ADSL has been installed.
- 8.11 In the event that the Customer experiences problems with the ADSL line, Fusion Networks shall use reasonable endeavours to fix the problem.
- 8.12 Due to the variable nature of ADSL, Fusion Networks is unable to provide refunds, goodwill gestures, or other compensation related to performance which proves to be lower than the Customer's expectations.

9. Termination

- 9.1 If the parties agree to exclude a telephone number from the Contract prior to connection, the Customer shall reimburse to Fusion any circuit cancellation charges levied on Fusion by the Carrier for that telephone number and the Customer shall pay to Fusion an administration fee of £50 per telephone number within fourteen (14) days of such cancellation.
- 9.2 Fusion reserves the right to cancel an order where BT or the Carrier rejects the order after the site survey has been completed, and to invoice the Customer for all costs levied on Fusion related to the order.
- 9.3 Without prejudice to any of Fusion's rights and remedies, if the Customer ceases to route its calls over the Carrier without providing notice of disconnection or termination under clause 4.1, the Customer shall remain liable for the cost of any calls made via its equipment or premises (including made fraudulently by third parties).
- 9.4 Fusion may suspend or withdraw the SIP "Presentation CLI" Service without liability to the Customer where:
 - 9.4.1 following the configuration change the Customer fails to make at least one test call within twenty (20) working days;
 - 9.4.2 the Customer reverses the configuration change;
 - 9.4.3 information in the Customer's signed certification statement is, or becomes, inaccurate;
 - 9.4.4 the presentation number is being misused in any way; and/or the presentation number is connected to a revenue sharing number that generates excessive or unexpected call charges

10. Consequences of termination and minimum spend

- 10.1 If a Service is disconnected, or the Contract is terminated, prior to expiry of the Minimum Term or any Renewal Term, the Customer shall pay to Fusion Networks liquidated damages to compensate it for its lost revenue equal to:
 - 10.1.1 in respect of line rental, the Minimum Month's Line Rental per month for the period from such early disconnection/termination to the earliest date that the Agreement could have been terminated by the Customer in accordance with its terms; and
 - 10.1.2 in respect of call and other non-periodic charges, the Minimum Month's Call Charges per month for the period from such termination to the

earliest date that the Agreement could have been terminated by the Customer in accordance with its terms; and

10.1.3 any termination charge imposed on Fusion Networks by the Carrier