

O2 Terms and Conditions for Business Customers

1. Application for Services

- O2 agrees, subject to acceptance by its agent Genesis of an Application for Service, to supply to the Customer the Wireless Services requested in that Application for Service under the terms and conditions contained in this Agreement and O2 undertakes to use all reasonable endeavours to fulfil any Application for Service as soon as reasonably practicable and if possible by the requested dates for delivery/commencement.
- All Applications for Service shall be subject only to the terms of this Agreement. Any alternative terms appearing on or referred to in any other communication, (whether oral, in writing or by electronic means) by the Customer for the purpose of placing Application for Services shall be ineffective.

2. Equipment

- O2 will not provide Equipment under the terms of this Agreement. Accordingly, O2 offers no warranty (either express or implied) in relation to any Equipment utilised by the Customer to operate the Wireless Services pursuant to this Agreement.
- The Customer agrees that O2 retains ownership of all SIM Cards provided to the Customer.

3. Wireless Services

- O2 agrees to provide the Wireless Services during the Wireless Services Period.
- The Customer agrees not to use SMS for the purpose of marketing or advertising anything to users of wireless services without the consent of those users.
- The Customer agrees that in respect of SMS, O2 is acting as a wireless service provider and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent to the Customer's SIM Cards, which do not originate from O2.
- Certain elements of the Wireless Services are dependent on the Customer having suitable infrastructure available and/or using an appropriate Device and in the event that the Customer is unable to provide suitable infrastructure, or fails to use an appropriate Device, then:
 - the Wireless Services may not function correctly ("the Affected Services");
 - O2 reserves the right not to provide the Customer with the Affected Services; and
 - O2 shall have no liability for the Customer's inability to receive the Affected Services.
- The Customer shall not be permitted to transfer a SIM Card from the tariff which that SIM Card was originally connected to under this Agreement to another tariff except where O2 or its agent Genesis as applicable, agrees to do so and confirms such a change in writing to the Customer.
- O2 cannot set usage limits and the Customer will be liable for all Charges incurred by its use of the Wireless Services. O2 may monitor the Customer's usage of the Wireless Services for the purpose of controlling O2's credit risk and the Customer's exposure to fraudulent usage.

4. Service Standards

- O2 warrants that it will perform its obligations in this Agreement with the reasonable skill and care of a competent wireless telecommunications service provider and warrants that the Wireless Services will conform in all material respects to their description in the Application for Service.
- The Customer acknowledges that the provision of Airtime is subject to the geographic extent of Airtime coverage and local geography, topography and/or atmospheric conditions and/or other physical or electromagnetic interference and/or the number of users trying to access the Wireless Services in any particular location that may from time to time adversely affect the provision of the Airtime in terms of availability, line clarity and call interference.
- O2 may, where reasonable, from time to time and without notice suspend the Wireless Services and at its discretion disconnect a SIM Card in any of the following circumstances without prejudice to its rights hereunder, provided that it shall use reasonable endeavours to restore the Wireless Services and reconnect the SIM Card as soon as reasonably practicable:
 - during any technical failure, modification or maintenance of the telecommunications systems by which the Wireless Services are provided; and/or
 - if the Customer fails to comply with the terms of this Agreement after being given written notice of its failure (including but not limited to failure to pay any sums due hereunder) until such failure to comply is remedied; and/or
 - if the Customer allows to be done anything which in O2's reasonable opinion may have the effect of jeopardising the operation of the Wireless Services, or the Wireless Services are being used in a manner prejudicial to the interest of the Customer and/or O2;
 - because of an emergency or upon instruction by emergency services or any government or appropriate authority (including the Network Operator) or for the Customer's own security.
- O2 can at its discretion suspend any SIM Card from making calls (other than to the emergency services) and disconnect any SIM Card from the Wireless Services if O2 has reasonable cause to suspect fraudulent use of the SIM Card or the Device, or either are identified as being stolen.
- During any period of suspension arising from the circumstances detailed in clauses 4.3.2 to 4.3.4 inclusive, or clause 4.4, the Customer shall remain liable for all Charges levied in accordance with this Agreement.

5. Disconnection of SIM Cards

- A Disconnection Notice may be given by the Customer in respect of a SIM Card at any time.
- Within 30 days from receipt of a Disconnection Notice O2 will disconnect the relevant SIM Card or SIM Cards from the Wireless Services.
- In the event that the Customer gives a Disconnection Notice resulting in disconnection of a SIM Card prior to the expiry of its Minimum Period, the Customer will pay to O2 or its agent Genesis as applicable, any applicable Termination Fee.

6. Basis of Charges

- The Charges payable by the Customer to O2 or its agent Genesis as applicable, are as set out in the Application for Service.
- The Charges are exclusive of Value Added Tax which will be charged at the prevailing rate.
- The Charges detailed in the Application for Service are available, subject to the Customer fulfilling all of its commitments as set out in the Application for Service, including without limitation as to the Minimum Holding.
- Any credits accrued in the Airtime Account may be used solely for the purposes of offsetting Charges for Airtime, do not have any monetary value, and the Customer is not entitled to:
 - offset any credits accrued in the Airtime Account against any outstanding debt; or
 - any payments from any credits accrued in the Airtime Account; or
 - any future use of credits accrued in the Airtime Account upon termination of this Agreement.
- All Charges shall be based upon call and billing data recorded by O2.
- The Customer acknowledges that roaming calls may take longer to be billed than other types of calls.

7. Billing Arrangements

- O2 or its agent Genesis as applicable, shall, on a monthly basis, submit to the Customer one or more invoice(s) which shall itemise Charges for the Wireless Services. Without prejudice to any other rights of O2 in the event of the Customer failing to pay any sums due to O2 or its agent Genesis as applicable, on time or at all notwithstanding notification by O2 or its agent Genesis as applicable, of the overdue debt to the Customer, O2 or its agent Genesis as applicable, shall be entitled to:
 - charge interest (both before and after any judgement) on amounts overdue from the Customer under this Agreement from the due date until the payment is actually made at the rate of 2% per annum over the base rate of HSBC Bank plc for the time being during the relevant period; and
 - suspend the provision of the Wireless Services, and/or disconnect SIM Cards or equipment from the Wireless Services until such time as all payments due including all interest accrued has been paid and satisfied in full.
- O2 or its agent Genesis as applicable, reserves the right to review any credit applied to this Agreement. O2 or its agent Genesis as applicable, may require from the Customer a deposit as security for payment of Charges. The Customer may request the return of any deposit paid at the expiry of any 12 month period but the decision to return any deposit prior to termination of the Agreement will be at the discretion of O2 or its agent Genesis as applicable. O2 or its agent Genesis as applicable, reserves the right to set off any deposit against the Charges. O2 or its agent Genesis as applicable, may require the Customer to pay by Direct Debit.
- If the parties agree that payments of the Charges to O2 or its agent Genesis as applicable, are to be made by credit card and if payments of Charges are not made on the due date O2 or its agent Genesis as applicable, is authorised to debit the Customer's nominated credit card company with all Charges due and payable.
- Unless otherwise stated in the Application for Service call prices are quoted by the minute. The duration of each call is measured in whole seconds, any part thereof will be rounded up to the next whole second. Each call is charged excluding VAT. Based on the duration, the Ex VAT cost of each call is then calculated and the result rounded up to the nearest penny. VAT is then added where applicable to the total of all charges on the Customer's invoice.
- Unless otherwise stated in the Application for Service all calls are subject to a minimum Charge of 1.71p.
- Unless otherwise stated in the Application for Service Peak rate call Charges apply from 07:00 to 19:00, Monday to Friday; Weekend rate call Charges apply from midnight on Friday to midnight on Sunday and Off Peak rate call Charges apply at all times when Peak or Weekend call Charges do not apply.
- The Customer hereby agrees to pay the Charges (including any Termination Fees) in full without any deduction or set off to O2 or its agent Genesis as applicable, within 30 days following the date of O2 or its agent Genesis as applicable's invoice for such Charges.

8. Obligations of the Customer

- The Customer undertakes with O2, that throughout the Wireless Service Period it will use its reasonable endeavours to:
 - provide O2 or its agent Genesis as applicable, with such information as O2 or its agent Genesis as applicable, reasonably request in connection with this Agreement; and
 - notify O2 or its agent Genesis as applicable, immediately (and to confirm in writing) on becoming aware that any Device or SIM Card has been lost or stolen or that any person is making improper or illegal use of the Device, SIM Card or the Wireless Services. The Customer will be responsible for any Charges incurred as a result of unauthorised use of any Device, or SIM Card, or the information contained within a SIM Card, until O2 has received a request from the Customer to suspend the Wireless Services to that Device or SIM Card.
- The Customer undertakes with O2 that throughout the Wireless Service Period it will, and will take all reasonable steps to ensure that its employees will:
 - use the End-User Licensed Software in accordance with any user guide or other reasonable instruction of any manufacturer or supplier of the same or reasonable instruction of O2 or its agent Genesis as applicable, and not to copy, reverse engineer or modify the End-User Licensed Software in any way save as permitted by law;
 - not use the Service in any way to generate AIT;
 - not, without the prior written consent of O2 which may be withheld at O2's absolute discretion, establish, install or use a GSM Gateway so that telecommunication services are provided via the GSM Gateway to third parties; and
 - not use the Wireless Services in a manner which is inconsistent with a reasonable customer's good faith use of the Wireless Services or the O2 cellular telecommunications network;
 - not use the Wireless Services fraudulently or in connection with a criminal offence or for the purpose of initiating unsolicited communications or storing and/or communicating any material which is offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax or which breaches any person's intellectual property rights or rights of privacy or is otherwise unlawful; and
 - not use the Wireless Services in any way which causes annoyance, inconvenience or needless anxiety as set out in the Communications Act 2003.
- The Customer agrees that it is procuring the SIM Cards and Wireless Services solely for its own use and that it will not resell or otherwise act as any form of distributor in respect of the SIM Card or the Wireless Services.
- The Customer recognises that the Wireless Services may be dependent upon End-User Licensed Software and if the Customer does not accept the licence terms relating to any End-User Licensed Software, O2 shall have no liability whatsoever for any failure to provide the Wireless Services to the Customer where the Wireless Services depend on the use of End-User Licensed Software.
- Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within this Agreement relating to End-User Licensed Software and shall exclusively comprise the Customer's sole rights and remedies in respect of such End-User Licensed Software.

9. Duration and Termination

- This Agreement shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter throughout the Wireless Service Period until the same is brought to an end by means of a Termination Notice or as provided in clause 9.6.
- A Termination Notice may be given by either party and the Agreement terminated forthwith if:
 - the other party is in material breach, and the breach is capable of remedy and the party in breach shall have failed to remedy the breach within thirty (30) days of written notice specifying the breach and requiring its remedy, or the breach is not capable of remedy; or
 - bankruptcy or insolvency proceedings are brought against the other party, or if an arrangement with creditors is made, or a receiver or administrator is appointed over any of the other party's assets, or the other party goes into liquidation.
- A Termination Notice may be given to O2 or its agent Genesis as applicable, under the circumstances set out in clause 18.2 at any time by the Customer and the Agreement terminated 30 days thereafter, if O2 increases prices or tariffs in respect of Airtime from the Charges set out in the Application for Service to the Customer's material disadvantage or substantially varies these terms to the Customer's material disadvantage other than where such increases in prices or tariffs or change to these terms arise as a consequence of a change in prices, tariffs, terms or otherwise made or requested by third party manufacturers or suppliers, or a regulatory body.
- In addition to a party's right to terminate in accordance with clauses 9.2 and 9.3, at any time during the Wireless Service Period:
 - the Customer may serve on O2 or its agent Genesis as applicable, a Termination Notice with a minimum of 30 days' notice and the Customer shall be liable for any applicable Termination Fee; or
 - O2 or its agent Genesis as applicable, may serve on the Customer a Termination Notice with a minimum of 30 days' notice and the Customer shall not be liable for any applicable Termination Fee.
- Upon the expiry of any Termination Notice or otherwise upon the termination of this Agreement O2 will disconnect all SIM Cards, from the Wireless Services and the Customer will pay to O2 or its agent Genesis as applicable, any applicable Termination Fee.
- This Agreement will automatically terminate upon the disconnection of the last SIM Card from the Wireless Services.
- If this Agreement is terminated and the Customer wishes to transfer to another service provider, O2 will provide reasonable assistance to the Customer in respect of the transfer of the Customer's service in accordance with standard industry practice.

10. Ownership

- Except as expressly provided in this Agreement, nothing in this Agreement will be deemed to or require O2 to transfer, assign or license any intellectual property rights to the Customer.
- The Customer will not be entitled to use in the course of trade or otherwise in relation to any goods or services of the Customer any registered or unregistered trademark, logotype or abbreviation of the name of O2 or any part of O2 so that any person might reasonably import a connection between those goods or services and O2 or any part of O2. The Customer also agrees not to infringe any copyright, or registered or unregistered Trademark rights belonging to any third party in respect of any Device and/or other equipment.
- All information or materials supplied to O2 by the Customer in connection with the Agreement, together with the copyright therein, will remain the property of the Customer and will, if the Customer so requires, be returned to the Customer on termination of the Agreement.

11. Confidentiality

- The parties will each keep confidential any proprietary information and/or any information obtained from the other in connection with this Agreement (including for the avoidance of doubt details of the Customer's employees) which is reasonably identified by either party as commercially confidential or which is obviously confidential in nature and neither will divulge the same to any third party except such of its employees contractors and agents as may need to know the same for the purposes of the implementation of this Agreement and who agree to be bound by the provisions of this clause without the consent in writing of the other.
- The obligations aforesaid shall not apply to any material or information which is in the public domain (other than as a result of a breach of this Agreement); or, already known to the receiving party; or, lawfully received from a third party and/or ordered to be disclosed by any court or other tribunal or regulatory authority of competent jurisdiction.

12. Limitation of Liability

- Subject to clauses 12.3 and 12.4, neither party shall be liable to the other in respect of any matter arising out of or in connection with this Agreement in contract or tort or otherwise for any loss (whether direct or indirect) of profit, business, revenue, anticipated savings, goodwill or any loss or corruption of data, or for any indirect or consequential loss or damage whatsoever.
- Subject to clauses 12.1, 12.3 and 12.4, O2's aggregate liability of any sort resulting from O2's negligence or otherwise arising in connection with this Agreement shall be limited in respect of all claims arising in each Year to the greater of:
 - the sum of £500,000; or
 - an amount equal to the Annual Agreement Value;where the "Annual Agreement Value" means: (i) the total Charges paid or payable by the Customer in the Year prior to the Year in which any claim arises; or (ii) where a claim arises during the first Year of this Agreement, the Charges paid or payable up to the date on which the Customer's right to take action in respect of the first claim made by the Customer in the first Year arose; and "Year" means the first, and each subsequent, consecutive period of 12 months of this Agreement commencing on the Commencement Date.
- Nothing in this Agreement shall exclude or restrict the liability of either party for:
 - death or personal injury resulting from that party's negligence;
 - claims in respect of the Customer's liability under clause 8.6;
 - for breach of any implied term as to title or quiet enjoyment arising out of section 12 Sale of Goods Act 1979; or
 - fraud or fraudulent misrepresentation.
- Nothing in this Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.
- Subject to clauses 12.3 and 12.4, the express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- O2 does not accept liability for the acts or omissions of other providers of telecommunication services unless such other providers have been specifically engaged by O2 as subcontractors or assignees in respect of performing O2's obligations under this Agreement.

13. Matters beyond the Parties reasonable Control

- Neither party to this Agreement shall be deemed in default or liable to the other party for any matter whatsoever for any delays in performance or from failure to perform or comply with the terms of this Agreement due to any cause beyond that party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, telecommunications network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce).

14. Assignment

- The Customer shall not assign or transfer the benefit of this Agreement to any third party without the prior written consent of O2, such consent not to be unreasonably withheld or delayed.
- O2 may assign or transfer this Agreement to any third party and may subcontract the performance of all or part of the same.

15. Entire Agreement

- This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the subject matter of this Agreement.
- Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

16. Invalidity

- If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In any such circumstances the parties shall negotiate in good faith in order to agree the terms of a mutual satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision which is found to be invalid, illegal or unenforceable.

17. Waiver

- The failure or delay by either party to this Agreement to exercise or enforce any right, power or remedy under this Agreement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

18. Changes to Charges and this Agreement

- It is the policy of O2 to continually review the charges it makes and the terms upon which it contracts with customers in order to maintain a competitive advantage over other providers of services similar to the Wireless Services and O2 accordingly reserves the right to vary its prices and tariffs as set out in the Application for Service and this Agreement from time to time.
- In the event that O2 changes the terms of this Agreement or the Application for Service O2 or its agent Genesis as applicable, will provide the Customer with 28 days' notice of such change or, in either case, as much notice as is reasonably practicable where such change arises as a consequence of changes imposed by third party manufacturers or suppliers, or a regulatory body.

19. Data Protection

- O2 operates in accordance with the Data Protection Act 1998 as updated or amended from time to time. The Customer agrees that its details, or those of its users may be used by O2 and its agent Genesis and disclosed by O2 for the purposes of this Agreement and for marketing purposes including informing the Customer and its users from time to time about other Wireless Services or associated technologies. If the Customer or a user does not want its details, or, in the case of the Customer those details of its users to be used for direct marketing purposes in this way then the Customer should contact O2 or its agent Genesis as applicable.

20. No Partnership

- Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties.

21. Notices

- Any notice or other communication required or permitted under this Agreement to be given in writing to the address of the recipient stipulated herein or as notified from time to time and will be deemed to have been given or made: when delivered personally; or, if properly addressed and posted by first class mail in England within two business days of posting; or, if sent by facsimile upon being sent; or, if sent by e-mail or other electronic means upon such communication being acknowledged as having been received.

22. No Third Party Rights

- Save as provided by the terms of this Agreement a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from by that Act.

23. Survival

- The termination of this Agreement shall not affect any of the following:
 - the rights or liabilities of either party accrued prior to and including the date of termination ; or
 - the continued existence and validity of the rights and liabilities of the parties under those clauses which are intended expressly or by implication to survive termination or expiry and any other provisions of this Agreement necessary for its interpretation or enforcement.

24. Operative Law

- This Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English courts to which both parties hereby submit.

25. Definitions

- In these Terms and Conditions the following definitions shall apply:

"AIT"	means Artificially Inflated Traffic and occurs where the flow of calls to any particular revenue share service is, as a result of any activity on or on behalf of the party operating that revenue share service, disproportionate to the flow of calls which would be expected from good faith commercial practice and usage of the network.
"Agreement"	means these terms, any Schedules, and any amendments to these terms agreed with the Customer by O2.
"Airtime"	means wireless airtime and network capacity.
"Airtime Account"	means a notional account set up by O2 to accrue credits owing to the Customer from which Airtime can be purchased from O2 by the Customer.
"Application for Service"	means a request by the Customer for the provision of Wireless Services or a change in respect of the same (but not a disconnection).
"Charges"	means the charges for Wireless Services payable to O2 or its agent Genesis as applicable, by the Customer in accordance with clause 6.
"Commencement Date"	means the date upon which Wireless Services are first provided to the Customer pursuant to this Agreement and in the event that Wireless Services have not been provided shall mean the date of signature of this Agreement by the Customer.
"Customer Service Charter"	means the applicable service plan as determined by O2, which can be provided to the Customer by O2 or its agent Genesis as applicable, on request and as updated from time to time.
"Device"	means a wireless device.
"Disconnection Notice"	means a notice to disconnect one or more SIM Cards from the Wireless Services given pursuant to clause 5.1.
"End-User Licensed Software"	means any software, the licence terms for which are governed by a separate agreement with the licensor of such software typically by means of a "click-wrap" or "shrink-wrap" licence agreement.
"Genesis"	means Genesis Communications Limited.
"GSM Gateway"	means a device (not designed or adapted to be capable of being used whilst in motion) for wireless telegraphy designed or adapted to be connected by wireless telegraphy to the O2 wireless telecommunications network or the wireless telecommunications system of another network operator and used solely for the purpose of sending and receiving messages conveyed by means of the O2 wireless telecommunications network or the wireless telecommunications system of another network operator.
"Line Rental Charge"	means the non-usage dependent part of the Charges, payable on a monthly basis per SIM Card.
"Minimum Holding"	means the minimum number of SIM Cards as detailed in the Application for Service which must remain connected to the Wireless Services in total, or to a particular service as specified in the Application for Service.
"Minimum Period"	means the minimum number of months each SIM Card provided under this Agreement must remain connected to the Wireless Service, which shall be 12 months or such other period as is referred to in the Application for Service.
"Minimum Term"	means the term of 12 months from the Commencement Date or such other period as is referred to in the Application for Service.
"Network Operator"	means the network operator who operates the wireless network or networks to which the SIM Cards are connected.
"Numbers"	means the numbers allocated to O2 by the Network Operator and in turn allocated by O2 to SIM Cards.
"SIM Card"	means the subscriber identity module supplied by the Network Operator (and which shall at all times remain the property of the Network Operator), which is allocated to the Customer by O2 or its agent Genesis as applicable, and which contains the Number.
"SMS"	means the short message service, which enables text messages to be sent to, and received from Devices.
"Termination Fee"	means the Line Rental Charges applicable to the remainder of the Minimum Period in respect of early termination of this Agreement or disconnection of a SIM Card.
"Termination Notice"	means written notice to terminate this Agreement.
"Wireless Service Period"	means the period commencing on the Commencement Date and ending on the date this Agreement is terminated, during which period the Wireless Services will be provided by O2 to the Customer pursuant to this Agreement.
"Wireless Services"	means the provision by O2 to the Customer of Airtime, GPRS Bearer, SMS, and/or any other wireless services, which O2 may from time to time provide.