

Terms of Business

By using any of our Services or any Equipment provided by Max Talk Communication to confirm you agree to the terms of this Agreement so you should read them carefully.

1. Definitions:

“Act” means the Communications Act 2003 and any amendments to the Act from time to time or any subsequent substitution thereof.

“Airtime Service Provider” means a third party supplying airtime services to the Customer.

“Max Talk Communication” whose registered office is at 71-75 SHELTON STREET, COVENT GARDEN, LONDON, WC2H 9JQ (Registered number 11145020)

“Customer” means the person so named on the agreement. Max Talk Communication reserves the right to deal with anyone reasonably appearing to Max Talk Communication to be acting with the Customer’s authority or permission.

“Customer Equipment” means any equipment, including any software, for use with the Services that is not Equipment provided by us and which is owned or controlled by you;

“Direct Debit” means any request(s) for any payment or series of payments by bank direct debit payment method.

“Equipment” means any equipment we provide to you in connection with the Services.

“Fair Use Policy” means our fair use policy available on our Website.

“Minimum Term” means the minimum term during which we will provide you the Services as agreed with you (usually confirmed to you in our Confirmation Letter)

“Premises” means your premises in which we provide the Services to you.

“Price and Tariff Guide” means our schedule of rates available on our Website. (or as made available or notified to you by any other means).

“Services” means the provision of telecom services and/or Equipment and/or fraud monitor and services provided by us relating to the Internet and any related service provided by Max Talk Communication to the Customer under this agreement.

2. The Services and Equipment

2.1 Save as provided in these terms and conditions Max Talk Communication shall provide the Customer with such Services and Equipment as are requested by the Customer and any use of the Services or payment for the Services is deemed acceptance of these terms and conditions. In respect of fraud monitor and other services the additional terms and conditions set out on our website shall be deemed to be incorporated herein. Max Talk Communication shall only become liable to supply Services to the Customer once satisfactory responses to credit checks and criminal bureau checks have been received by Max Talk Communication and (where appropriate) any airtime service provider. Max Talk Communication will monitor and record information relating to a customer’s trade performance and such records will be made available to credit reference agencies, who may share that information with other businesses in assessing applications for credit and fraud prevention.

2.2 The Customer shall be responsible for the safe keeping and safe and proper use of the Services and any related Equipment after installation of the Services and the Customer undertakes in particular:

2.2.1 Not to cause any attachments other than those approved for connection under the Act to be connected to any Equipment.

2.2.2 Not to contravene the Act or any other relevant regulations or licenses.

2.2.3 Not to allow any unauthorized access to the Equipment or the Services.

2.3 The Customer hereby agrees that its apparatus shall at all times conform to the standard or standards (if any) for the time being designated under the Act and Max Talk Communication shall not be under any obligation to connect or keep connected any Customer apparatus if it does not comply or if in the reasonable opinion of Max Talk Communication it is likely to cause death, personal injury, damage or to impair the quality of any Services provided by Max Talk Communication.

2.4 The Customer undertakes to use the Services in accordance with the Act and Max Talk Communication’s acceptable use policy and fair usage policy (as published from time to time at www.maxtalk.co.uk) and the Customer further undertakes not to use the Services and to procure that none of its employees use the Services:

2.4.1 as a means of communication for a purpose other than that for which the Services are provided, and

2.4.2 for the transmission or receipt of any material which is defamatory offensive or of an abusive or menacing character or otherwise is in breach of Max Talk Communication’s acceptable use policy.

2.5 Any Equipment supplied by Max Talk Communication further to a rental agreement remains the property of Max Talk Communication and must be made available for collection on the expiry or termination of this agreement.

2.6 The Customer will not procure or be party to an agreement or arrangement to provide or receive telecommunications material, Services or services similar to the Services by way of telecommunication provision via the Equipment without the permission of Max Talk Communication in writing and the prior payment in full for the Equipment. For the avoidance of doubt the use and/or provision of services using the Equipment and/or Services which may be deemed by the airtime services provider as a gateway is a material breach of this agreement.

2.7 The Customer shall not publicize any number in any way or commit to any advertising or publicity until such time as it has received from Max Talk Communication in writing confirmation that the number is live and tested. Max Talk Communication will use reasonable endeavours to provide you with the Services by the dates agreed with you and to continue to provide the services until this agreement is terminated. Max Talk Communication will not be liable for any loss or damage should the Service not commence or restart on the agreed date. Where Max Talk Communication is supplying network services as part of the Services the Customer must provide to Max Talk Communication details of all the related services that it wishes to receive relating to any telephone number that the Customer wishes to use. Max Talk Communication will provide network Services through such party as it deems appropriate.

2.8 The Customer shall give Max Talk Communication at least 30 days written notice in the event that above average use of the Services is likely to occur. Max Talk Communication shall not be liable for failure/withdrawal of any part of the Services should such notice not be given.

2.9 Max Talk Communication's acceptable use policy and fair usage policy form part of this agreement and includes any restrictions imposed on Max Talk Communication by the provider to it of the Services and/or Equipment and is designed to protect the level and quality of the services that Max Talk Communication offers to all of its customers and permits Max Talk Communication to regulate the Customer's use of the Services. The Customer acknowledges that, in respect of any broadband speeds, any speeds quoted by Max Talk Communication are approximate only and that the level of service that can be obtained by the Customer will be dependent on factors outside the control of Max Talk Communication including but not limited to the geographical proximity of the Customer to the local exchange and the quality of the infrastructure serving the Customer's premises.

2.10 The Customer hereby specifically authorizes Max Talk Communication to send/resend CPS during the continuance of this agreement, and hereby waives Max Talk Communication's obligation to notify it of the same being done. If the Customer wishes to receive such notification then it must so inform Max Talk Communication in writing.

2.11 Where Max Talk Communication provides software to the Customer as part of the Services and/or Equipment Max Talk Communication hereby licenses the software to the Customer solely for the use of the same by the Customer in connection with the Services and/or Equipment. This license automatically terminates on termination of this agreement. Max Talk Communication does not warrant that the software will be error-free and the Customer hereby agrees to make proper back-ups of all data.

2.12 Where Max Talk Communication incur site survey, provisioning, engineering or other fees (whether its own or to a third party) associated with meeting the customer's requirements and/or subsequently the line does not become operational for any reason then Max Talk Communication have the right to charge the customer fees of up to £120.95 per line together with any charges levied on Max Talk Communication by a third party in bringing the associated infrastructure up to the relevant standard.

2.13 Where the Customer is a consumer within the definition of the Ofcom regulations the Customer has the right to cancel the agreement within 10 working days of the date of the contract. Cancellation can be made by notifying Max Talk Communication by fax, email or telephone. Any services used within this period will be chargeable. Any third party costs incurred by Max Talk Communication within this period at the request of the Customer will be chargeable. Cancellation charges may apply if the service is terminated outside of prescribed timescale.

2.13.1 Where the Customer is not a consumer within the definition of the Ofcom regulations but is entitled or permitted by Max Talk Communication to cancel the agreement during any initial cancellation period, any services used within this period will be chargeable and any third party costs (including cancellation fees) incurred by Max Talk Communication within this period at the request of the Customer will be chargeable. Cancellation charges may apply if the service is terminated outside of prescribed timescale.

2.14 Where the Customer is a consumer within the definition of the Ofcom regulations the Customer has the right to take unresolved complaints to an approved Alternative Dispute Resolution agency eight weeks after the complaint was made. CISAS and OTELO is an independent approved Alternative Dispute Resolution agency which provides this service free of charge.

2.15 You agree that we may prevent your transfer to another provider if you have not provided us with at least one months' written notice to end this Agreement at the end of the initial period or at the end of any subsequent year of supply.

3. Term

3.1 This agreement commences on the Effective Date and subject to the remaining terms of this Clause 3 shall continue for the Minimum Term and thereafter if you expressly agree for further periods each equivalent to the Minimum Term until terminated by either party giving to the other not less than 30 days prior written notice but not greater than 60 days prior written notice expiring at the end of the Minimum Term or at the end of any subsequent period as appropriate, such notice to be sent by recorded delivery mail effective on the date the notice is received by Max Talk Communication.

3.2 Either party shall be entitled forthwith to terminate this agreement by giving 30 days prior written notice to the other if:

3.2.1 the other commits a continuing or material breach of this agreement and, if the breach is capable of remedy, fails to remedy it within 14 days after receipt of a written notice giving full particulars of the breach

and requiring it to be remedied; or 3.2.2 an administrator takes possession or a receiver is appointed over any of the property or assets of the other party, the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order, the other party becomes bankrupt or goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganization and so that the company resulting from the reorganization effectively agrees to be bound by or to assume the obligations imposed on the other party under this agreement); or

3.2.3 The other party ceases, or threatens to cease, to carry on business and/or will no longer be responsible for the Number. We will then cease the number on the advised date and the number may then be allocated to someone else.

3.3 Max Talk Communication may terminate this agreement immediately if:

3.3.1 any license or agreement under which Max Talk Communication or the Customer has the right to run its telecommunications system and in the case of the Customer connect it to the Max Talk Communication system is revoked, amended or otherwise ceases to be valid; or

3.3.2 The Customer is suspected, in the reasonable opinion of Max Talk Communication, of involvement with fraud or attempted fraud in connection with use of the Services or this Agreement; or

3.3.3 Max Talk Communication reasonably suspects that the Customer is unable to pay or is refusing to pay Max Talk Communication charges and/or budget plan payments.

3.4 For the purpose of clause 3.2, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

3.5 A waiver by either party of a breach of a provision of this agreement shall not be considered as a waiver of a subsequent breach of the same or another provision.

3.6 If the Customer gives less than the specified amount of written notice to terminate this agreement (as per Clause 3.1) or ceases to use the Services or a part thereof (including reduced usage) or attempts to terminate this Agreement prior to the expiry of the Minimum Term or any subsequent period equivalent to the Minimum Term or fails to achieve any minimum call spend as set out overleaf, or if the Customer is in breach of this Agreement Max Talk Communication reserves the right to charge Termination fee of £299 per Line/Channel for Fixed line telephony, £99 for each Broadband connection and £199 for each fiber broadband connection, £70 for each router from customer Upon termination. Max Talk Communication shall be entitled to raise invoices for all sums due and all invoices (whenever raised) shall become due for payment immediately.

3.7 In the event of termination by either party for any reason:

(a) Max Talk Communication shall be entitled to recover from the Customer:

(i) The Equipment or cost thereof as appropriate including, where appropriate, but not limited to the cost of installing or removing the Equipment;

(ii) All liabilities, claims, costs, losses and expenses incurred by Max Talk Communication (including the initial CPS and engineering costs and of providing the Services); and

(iii) All losses suffered by Max Talk Communication by way of third party claw-back where such claw-back is due to the breach by the Customer of this agreement or the third party agreement.

3.7.1 Until such time as the Customer has transferred to a new provider, Max Talk Communication shall be entitled to amend its charges to it's the standard published usage charges.

3.7.2 Leased lines and certain other services may incur additional charges as a result of third party termination costs incurred by Max Talk Communication. Please enquire for details of applicable charges

3.8 The rights to terminate this agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach. Continued use of the Services post termination will result in Max Talk Communication levying its standard published usage charges for all Services used, which charges the Customer shall pay immediately upon demand.

3.9 Where the Customer cancels part only of a bundle of Services, Max Talk Communication reserves the right (in addition to its rights under clause 3.7) to charge the Customer for the Services so cancelled in accordance with Clause 3.6 and to amend charges to the Customer for the remaining Services to its standard rates.

3.10 Max Talk Communication Ltd, 'Terms of Business,' may be altered on occasion and updated on www.maxtalk.co.uk. Amendments to tariffs and services will be communicated in writing to you.

4. Access to premises

4.1 To enable Max Talk Communication to comply with its obligations under the Agreement.

4.1.1 The Customer shall allow or procure permission for Max Talk Communication and any other person(s) authorized by Max Talk Communication to have reasonable access to the Customer's premises and the Services' connection points or, where network connection services form part of the Services, such location on the Customer's premises and/or any neighboring premises as Max Talk Communication reasonably requires and shall at all times provide such reasonable assistance as Max Talk Communication requests.

4.1.2 Max Talk Communication will endeavour to carry out work by appointment and during normal working hours, but may request the Customer to provide access at other times. If at the request of the Customer Max Talk Communication carries out work outside its normal working hours the Customer will be responsible for Max Talk Communication's reasonable additional charges.

4.1.3 Unless otherwise agreed the Customer shall at its own expense carry out such site preparations as Max Talk Communication may reasonably require. Where a site survey is carried out the costs thereof and of any required work identified in the site survey shall be borne by the Customer.

4.2 If the Customer requests maintenance or repair work which is found to be unnecessary or results from an act or omission of the Customer, Max Talk Communication will charge for the work and the costs incurred.

4.3 The Customer hereby duly authorizes Max Talk Communication, its dealers and agents to reprogram and or remove existing access equipment in order to provide the Services. In the event that the work is undertaken by the Customer's existing telephone system maintainer and not Max Talk Communication, Max Talk Communication will pay a maximum contribution of £75 plus vat towards any charges raised by the Customer's existing telephone system maintainer. The Customer is to pay all other costs.

4.4 Where BT Openreach charges Max Talk Communication for repairs (and/or engineering call out), and the fault is due to damage to the Customer's equipment, Max Talk Communication reserves the right to invoice the Customer for the amount of such BT Openreach charge together with an administration charge of £25.

4.5 Where required by Max Talk Communication, the Customer shall ensure that environmental conditions are maintained for Equipment.

5. Charges and Payment

5.1 Following the expiration of a trial period that may be provided to you at the sole discretion of Max Talk Communication and unless otherwise specified in writing by Max Talk Communication the Customer agrees to pay Max Talk Communication's charges and/or budget plan payments monthly by Direct Debit, the first payment to be made at the discretion of Max Talk Communication within thirty days of the start of the provision of the Services and in accordance with the applicable tariffs. Where network connection and/or line rental services form part of the Services the charges shall be paid in advance.

5.2 Usage charges will be such charges for the use of the Services by the Customer as Max Talk Communication may notify to the Customer from time to time by e-mail or by post. Details of the Customer's current charges can be obtained by emailing Max Talk Communication at support@maxtalk.co.uk with full account details. There will be a minimum monthly usage charge and low usage charge for each Service as set out in Max Talk Communication's price list from time to time. Usage charges payable shall be calculated by reference to any data recorded or logged by Max Talk Communication or its service carrier and not by reference to any data recorded or logged by the Customer. Max Talk Communication shall be entitled to estimate the usage charges in circumstances where the relevant data is not available to Max Talk Communication in a timely manner, and any estimated usage charge shall be reconciled on a subsequent invoice.

5.2.1 Unless otherwise stated all other amounts due from the Customer to Max Talk Communication shall be paid within 7 days of the date of Max Talk Communication's invoice.

5.3 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to Max Talk Communication (such failure to pay being a material breach of this agreement), Max Talk Communication may charge the Customer (i) an administration fee of £15 and/or statutory compensation at the prevailing rate and (ii) interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Royal Bank of Scotland/Barclays Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 The price for the Services is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to Max Talk Communication.

5.5 The Customer agrees to pay Max Talk Communication in full without any set-off all sums due to Max Talk Communication under this Agreement.

5.6 Max Talk Communication shall be entitled to require the Customer to pay a deposit in respect of future usage charges and the Customer shall pay the amount so required within 7 days of a request for the same.

5.7 The Customer authorizes Max Talk Communication to vary the amount, frequency and time of any Direct Debit to such level as Max Talk Communication deem reasonably appropriate (a) to take account of either an increase or decrease in usage of the Services by the Customer (b) to reduce such indebtedness of the Customer to Max Talk Communication and/or (c) to such other operational matter affecting the Services as Max Talk Communication shall in its discretion deem reasonable.

5.8 If any payment is cancelled or returned unpaid by the Customer's bank or if the Customer fails to discharge any invoice within 7 days of its date, then without prejudice to any right or remedies under this Agreement, Max Talk Communication shall from the time of such failure provide the Services at the standard published usage charges and in addition the Customer agrees to pay Max Talk Communication an administration fee of £25.00. For the avoidance of doubt the time of payment is of the essence of this Agreement and a failure to pay on time or the cancellation of a Direct Debit shall be a material breach of contract allowing Max Talk Communication to terminate this Agreement immediately. Invoices paid by credit card incur an additional £5 or 3% charge of the transaction whichever is the greater.

5.9 Should the Customer have any dispute with regard to the usage charges or any other charges, the Customer shall give written notice to Max Talk Communication of the amount in dispute and the reason for the dispute. Any rectification or amendment of such disputed charges are limited to the 6 months prior to the written notification being received by Max Talk Communication and remains at Max Talk Communication's sole discretion such discretion not to be unreasonably withheld. Such notice must be received prior to the Customer not paying any amount due to Max Talk Communication, failing which the Customer shall be deemed to be in breach of contract and clause 3.3.3 shall apply together with clause 5.8 and clause 5.3 in respect of the entire balance. The Customer shall remain liable to pay all amounts not in dispute in accordance with the terms of this agreement.

5.10 The Customer remains liable for all charges whether the Customer or someone else used the services and whether the services were used with the Customer's knowledge and consent or otherwise including and not limited to calls made by a rogue callers and calls made by any third party who has gained unauthorized access to the Customer's system.

5.11 Max Talk Communication retain the right to vary the charges set out in the tariff at any time upon giving the Customer 7 days' notice such notice to be given either on the monthly invoice or on www.maxtalk.co.uk and continued use of the Service is deemed acceptance of these changes.

5.12 Any calls that are routed by any means beyond the control of Max Talk Communication and for which you are invoiced by another provider will remain the responsibility of the customer.

5.13 Calls are billed per minute.

5.14 All business and residential prices exclude VAT.

5.15 Call Connection Fee apply on all calls except inclusive call package, 16p for mobile calls and 14p for all other calls.

5.16 Postal charge of £5 applicable for any request to be put to post except contract papers and invoices.

5.17 Fair Usage policy applies on unlimited tariffs. Our Fair Usage policy is 1200 minutes in Business Unlimited and 1000 minutes in Home Unlimited and Home Basic.

5.18 Calls listed as free are limited to 60 minutes and thereafter calls will be charged at standard tariff. You may disconnect and re-dial before 60 minutes have elapsed.

5.19 Fair Usage Policy for Unlimited Broadband is limited to 100GB every month.

5.20 Our services "Business Assurance" and "Care Level 2" comes at a nominal monthly price for all the lines you have with Max Talk Communication. Business Assurance saves you from the expensive engineer call out charge and Care Level 2 gives you expedited response in the event there is a fault on the line. These services are added to your contract as standard however you can opt out of them should you not wish to have them.

6. Suspension of the Services

6.1 Max Talk Communication shall be entitled, for business, operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on Max Talk Communication by its licence or by any other competent authority (including any network provider), to withdraw or change any telephone number or code or group of numbers or codes allocated to the Customer whether on a temporary or permanent basis provided that Max Talk Communication gives the Customer the maximum period of notice in writing thereof practicable in the circumstances.

6.2 If the Customer is in breach of a material term of this agreement Max Talk Communication may at its sole discretion and upon giving the Customer written notice elect to suspend without compensation the provision of Services for a period not exceeding 14 days. If the breach is capable of remedy and is remedied by the Customer within the 14-day period then Max Talk Communication shall recommence the provision of Services. If the breach is not capable of remedy or if so capable is not remedied within the period of 14 days, then Max Talk Communication shall have the option of either terminating this Agreement under the provision of clause 6.1 or of continuing the Services.

6.3 If the Customer's call charges exceed the estimated call spend or the credit limit given to the Customer by Max Talk Communication, whichever is the lower, then Max Talk Communication reserves the right to request immediate payment of the excess amount and to demand in accordance with clause 5.6 a deposit be paid in such amount as Max Talk Communication shall deem to be reasonable. If payment is not made forthwith by the Customer, Max Talk Communication shall be entitled to suspend all or any of the Services until payment of the excess amount is made in full.

6.4 Notwithstanding and without prejudice to any of its rights under this Agreement, Max Talk Communication reserves the right to withdraw the Services or any part thereof at any time if the monthly charges to the Customer are not, in the opinion of Max Talk Communication, sufficient to make provision of the Services viable for Max Talk Communication.

6.5 An overdue balance on any account associated to you, the account holder, may result in the suspension of all services associated to you, the account holder, until payment is made in full.

7. Liability

7.1 Nothing in this agreement shall exclude or restrict the liability of either party for death or personal injury resulting from its negligence.

7.2 If the Services fails to operate or the Customer diverts traffic to another carrier, Max Talk Communication will not be responsible for that carrier's charges.

7.3 Neither party shall be responsible to the other in contract, tort or otherwise for any loss of business, loss of data, contracts, anticipated savings or profits or for any other indirect or consequential loss whatsoever save that this exclusion shall not apply to the fraudulent activities of either party nor to any claw-back or other loss suffered by Max Talk Communication pursuant to the determination by an airtime services provider that the Customer has used and/or provided services using the Equipment and/or Services which it deems a gateway.

7.4 Neither party shall be liable to the other for any damage or loss which may be incurred by the other party due to any cause beyond the first party's reasonable control including without limitation any act of God failure or shortage of power supplies, trade dispute, any act or omission of Government, highways, regulatory bodies, other public telecommunication operators or other competent authority, or supply of services by third parties.

7.5 Controlling unauthorized access (including fraudulent access) to PABX, trunking or other equipment or resource shall be the sole responsibility of the Customer.; Max Talk Communication shall have no responsibility whatsoever for any such access, or for the bills resulting from Customer's failure to control such access (which shall remain the Customer's obligation). The Customer acknowledges that the Service known as "fraud monitor" is not a fraud prevention system and does not prevent unauthorized access to the Equipment. Max Talk Communication advises the Customer to obtain proper security advice with regard to its PABX, trunking or other equipment or resource.

8. Broadband Services

9. General

9.1 Max Talk Communication reserves the right to change the provider of the Services to it at any time; further Max Talk Communication reserves the right to change these terms and conditions at its sole discretion by giving the Customer not less than 14 days' notice (usually on the front page of the monthly bill and/or on its website at www.maxtalk.co.uk), and continued use of the Services thereafter will be deemed acceptance of such changes.

9.2 A notice required or permitted to be given by either party to the other under this agreement shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and, save in respect of a notice pursuant to clause 3.1, shall be deemed served on the second after the same has been posted.

9.3 If any provision of this agreement is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this agreement and the remainder of the provision in question shall not be affected

9.4 The Customer shall not assign sub-license, delegate or otherwise deal with all or any of its rights and obligations under this agreement without Max Talk Communication's prior written consent, such consent not to be unreasonably withheld. Nothing in this agreement shall be deemed to grant to the Customer a license to use any software or other intellectual property right (which shall include the Max Talk Communication trade marks) other than strictly in accordance with the terms of this agreement. For the avoidance of doubt, the Customer shall not be entitled to sub-license any such software or other intellectual property right.

9.5 These terms and conditions together with any terms set out in the order constitute the entire agreement between the parties, supersede any previous agreement or understanding and, subject to clause 9.1 and 5.2, may not be varied except in writing and signed by Max Talk Communication or varied orally and then confirmed in writing by Max Talk Communication. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law. In entering into this agreement the Customer acknowledges that it does not rely on any representations which are not confirmed in the terms of this agreement, but nothing in this agreement affects the liability of either party for fraudulent misrepresentation.

9.6 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.

9.7 The laws of England shall govern this agreement, and the Customer agrees to submit to the exclusive jurisdiction of the English Court.