

CARRIER2

General Terms & Conditions

Carrier2



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1. DEFINITIONS

Customer means the customer of Carrier2

End-User means an individual retail or business user of Customer's services.

Licensed Software means any software made available to Customer by Carrier2 for the use of the Services.

Renewal Date means the date upon which the Initial Term of this agreement ends. **Carrier2 Network** means the service providers that utilise the Services.

2. SERVICES

2.1. Carrier2 shall provide the Services to Customer to facilitate exchange of traffic for IP communication pursuant to this Agreement.

2.2. Customer undertakes to comply at all times with all applicable laws and regulations.

2.3. Customer undertakes that it will use best efforts to ensure that it and (where appropriate and so far as it is reasonably able) its End Users: (i) will not use the Services for any improper or unlawful purposes, nor allow others to do so; (ii) will comply with any reasonable instructions issued by Carrier2 which concern the use of the Services; and (iii) will hold, at all relevant times for the duration of this Agreement, all the appropriate licences, consents and other permissions for the use of the Services.

3. TERM & DURATION

3.1. The initial term of this agreement is twelve months ("Initial Term") from the date of execution. On expiry of the Initial Term the Agreement and Services will automatically renew for further 12 month terms, until and unless terminated by either party by not less than 60 days written notice.

4. Carrier 2 OBLIGATIONS

4.1. Carrier2 will use all reasonable endeavours to maintain the operations of the Carrier2 infrastructure, and provide the Services detailed in the incorporated Schedules.

5. CUSTOMER OBLIGATIONS

5.1. Customer will use all reasonable endeavours to maintain the operations of the Customer infrastructure, and provide the Services detailed in the incorporated Schedules.

5.2 In case of a legal interconnection Customer forecasts its volume and dedicated routes to Carrier2 to maintain a level to swap, or net the amount of traffic in volume and/or Euro.

6. JOINT OBLIGATIONS

6.1. Each Party will use reasonable efforts to ensure that usage of the Services is not detrimental to the other Party's operations.

6.1.1. Each Party accepts that if the other Party identifies non standard traffic patterns (e.g. potential fraud, spam etc.) or invalid signalling messages, the receiving Party reserves the right to suspend the services or block such traffic or end-users, in order to maintain the affected Party's Network and system integrity.

6.2. To enable delivery of the Services, Carrier2 and Customer will use reasonable efforts to devote the resources necessary to establish an interconnect using mutually acceptable technical standards.

6.3. In the event that the Parties, having devoted resources in good faith, cannot establish an interconnect using mutually agreed technical standards, then either Party may terminate this Agreement with 30 days' notice to the other Party.

6.4. Each Party will be responsible for bearing its own bandwidth and transport costs relating to the interconnect.

7. PAYMENT AND INVOICING

7.1. Each Party shall pay the fees in the signed Schedules or as varied according to the terms therein by the due dates ("Charges").

7.2. All amounts in respect of Charges shall be paid in the currency in which Charges are specified and shall be paid in full without any right of set-off, free of any deduction or withholding (save to the extent provided for in Clause 9.1 below, or required by applicable law). To the extent that any deduction or withholding is required by applicable law, Customer shall increase the amount of such payment to ensure that Carrier2 receives the amount it would have received had no deduction or withholding been required.

7.3. Interest shall be paid by either Party on any amount invoiced and not paid at the rate of two percent (2%) per month from the due date, until the date on which such invoice is paid in full. Such charge shall accrue day by day, shall be compounded and payable on demand.

7.4. Where the parties invoice each other for services, invoices shall be netted against each other on the agreed billing period to determine a single settlement amount and the Party owing the net balance shall make payment of that amount to the net creditor to the agreed payment terms or within 30 days whichever is the shorter. In case of a formal interconnection or swap deal; Carrier2 is entitled to nett the forecast based on the volume on average send in the previous billing period and to set it as a minimum spend of volume/ euro in the coming months to nett the swap or interconnection levels.

8. DISPUTED CHARGES

8.1. Invoices shall be settled in full by the due date, even if disputed unless:

8.1.1. The amount in dispute represents 2 per cent (2%) or more of the total amount (excluding VAT or VAT equivalent) of the relevant invoice, in which case the amount disputed (up to a maximum of 2% of the invoice total) may be withheld until the dispute is resolved, provided the balance is paid by the due date; or

8.1.2. The parties are in agreement as regards the error and have agreed a corrected amount prior to the due date.

8.2. Subject to clause 9.1, all disputes shall be handled in accordance with the following procedure. If either Party, in good faith, disputes the appropriateness of any charge included in an invoice from the other, it must notify the other Party in writing ("Written Notice") of the disputed charge within forty-five (45) days of the date of the invoice and provide the following documentation reasonably required to resolve the dispute: (a) Rate Dispute – documentation identifying the time period, appropriate rate, total minutes and currency amount in dispute for each country and documentation detailing the rate agreed upon or (b) Minute Dispute – the disputing Party

must provide the billing Party with a hard copy of the type of minute dispute being issued. All minute disputes must be accompanied by a call detail record from the disputing Party's call detail records supporting the erroneous calls or minute duration variances.

8.3. No charge may be disputed more than forty five (45) days after the date of the invoice on which a charge appears. Any payment of a charge timely disputed and in the manner required will not deprive a Party of its right to dispute the charge.

8.4. The invoicing party shall promptly investigate the disputed charges and the Parties will exercise reasonable, good faith efforts to resolve the disputed charges within thirty (30) days of receipt of the other's Written Notice, served in accordance with the provisions of this Section 9, of the dispute setting out the information required by Clause 9.2.,

8.5. If a disputed amount withheld is determined to have been a legitimate charge, interest at the rate of 2% per month may be charged either: (i) on the amount not paid within the original Payment Period or (ii) the amount of any overpayment made. The Party must pay the total amount or refund any overpayment due and owing within five (5) business days of resolution of the dispute.

8.6. If the dispute is not resolved by such date, either Party shall be entitled to commence legal proceedings subject to two business days' notice.

9. CREDIT LIMITS AND SECURITIES FOR PAYMENT

9.1. Each Party shall allow the other Party to incur charges up to an agreed credit limit. If, at any time charges exceed that credit limit, the invoicing Party shall be entitled to issue the invoiced Party with an interim invoice and/or request an immediate payment on account from the invoiced Party. If the invoiced Party fails to make the payment on account or interim invoice within seven days of date of the interim invoice or request for payment on account, the invoicing Party shall be entitled to suspend the services until such time as payment is made in full by the invoiced Party or the Agreement is terminated, whichever occurs first. Any extension of credit allowed to the invoiced Party may be revoked at any time.

9.2. Each Party reserves the right to require prior to and during the performance of this Agreement any of the following: a deposit payment on account in advance; a bank guarantee in a form to be agreed; a letter of credit; or any other measure ("Security") which is acceptable to it. Such Party reserves the right to use this Security to offset any unpaid or late Charges.

9.3. If, at any time during this Agreement, the invoicing Party's credit rating of the invoiced Party shall have deteriorated, the invoicing Party shall have the right to reduce the credit limit and/or render interim invoices to the invoiced Party or to require the provision of security for payment by the invoiced Party in a form acceptable to the invoicing Party.

10. LICENSED SOFTWARE

10.1. Carrier2 may provide the Licensed Software for use by Customer where necessary in order to facilitate the Services. Carrier2 grants Customer a non-exclusive, non-transferable licence without the right to sublicense, solely to use Licensed Software with the Services.

10.2. To the extent additional Licensed Software is sourced from a third party provided, such licence shall be subject to the terms of the applicable software licence provided via Carrier2.

10.3. Customer shall not (i) seek to copy, data-mine, cache, reverse engineer, decompile, disassemble or otherwise extract data from the Licensed Software except as agreed herein; (ii) obtain or claim any ownership

in any Licensed Software (or in any derivation thereto or improvement thereof); (iii) sell, lease, licence or sublicense the Licensed Software; (iv) create, write or develop any derivative software or any other software based on the Licensed Software; (v) take any action prohibited by the Licensed Software owner.

11. TERMINATION

11.1. Either Party may terminate this Membership Agreement with immediate effect in the event of (i) a material breach of the obligations by the other Party, and which breach if capable of remedy, has not been so remedied within 45 days of being notified; or (ii) the other Party has entered liquidation, receivership or administration or similar insolvency event.

11.2. In the event of termination, all fees due to either Party shall remain due in full and any payments made in excess of fees due by either Party to the other shall be refunded.

12. CONFIDENTIALITY

12.1. For the duration of this Agreement and for three years post termination, all information regarding the other Party's business and affairs will be regarded as, and kept, confidential at all times unless (i) the recipient Party is compelled to disclose it by law (ii) it comes into the public domain without breach of this Agreement; (iii) it was in its possession or known to it prior to receipt from the Disclosing Party; or (iv) it is disclosed in accordance with the prior written approval of the disclosing Party.

12.2. Customer shall permit Carrier2: (i) to publish Customer's name, address and logo in Press Releases, on the Carrier2 Web Sites and other marketing material to promote Customer's participation in the Carrier2 Network and; (ii) to publish aggregate information about the Carrier2 Network (i.e. not specific information regarding any one Member) about ENUM base, traffic stats etc.

13. PRIVACY

13.1. The Parties shall comply with all applicable data protection laws concerning data processed, controlled, supplied or transferred pursuant to this Agreement.

14. INTELLECTUAL PROPERTY

14.1. Except as expressly provided otherwise in this Agreement, any intellectual property rights shall remain the property of the Party creating or assisting the same and nothing in this Agreement shall be deemed to confer any assignment or licence of any intellectual property rights whatsoever of one Party to the other Party.

14.2. For clarification, all Carrier2 information, including but not limited to, logos, images, documents, source code, know how, systems, solutions, information, and data belongs exclusively to Carrier2. Customer's use of Carrier2's data is to be used solely in connection with the Services provided in this Agreement unless specifically agreed to the contrary. No caching or data mining is allowed. This includes ownership of any IPR or any copyright material that arises out of the provision of the Services in whatever form.

15. LIABILITY AND INDEMNITY

15.1. Except as otherwise set out in this Agreement, Carrier2 makes no warranties, representations or other agreements, express or implied with respect to the Services, including but not limited to, the implied warranties of merchantability or fitness for a particular purpose. Carrier2 shall use commercially reasonable efforts to provide and maintain the Services to Customer as specified herein. In no event shall either Party be liable for special, incidental, consequential, indirect or punitive damages, loss of revenue or profit, loss of income, loss of data, loss of use of any property, cost of substitute performance, equipment or service and downtime costs.

15.2. Carrier2 shall have no liability or responsibility for the contents of any communications transmitted via the Services or for any information or content on the Internet, and Customer will hold Carrier2 harmless from any and all claims related to such content or information as a result of the provision or use of the Services.

15.3. Carrier2 provides no warranty and accepts no liability regarding the availability of the Services or functionality of the Licenced Software and accepts no liability in the event of outages, save for any credits provided under the SLA in a particular Schedule.

15.4. The Parties liability for fraud, wilful misconduct, death or personal injury resulting from their negligence, or any liability of the Parties under Clauses, 11, 13, 14, or 15 or in respect of non payment of Charges shall be unlimited

15.5. Subject to sub-Clause 16.4, the maximum aggregate liability of each Party under this Agreement in respect of any causes of action (whether in contract, tort (including negligence) or otherwise shall be limited to the equivalent of the previous 3 months Charges.

16. FORCE MAJEURE

16.1. A Party shall not be deemed in default of any of its obligations under this Agreement, if, and to the extent that, performance of such obligation is prevented or delayed by an event of force majeure, provided that such event is not caused by the negligence of that Party, and that Party has notified the other in writing of the event of force majeure. The notifying Party shall use all reasonable endeavours to avoid or minimise the effects and if an event of force majeure continues for a continuous period of more than 45 days, the other Party shall be entitled to terminate this Agreement.

17. SEVERABILITY

17.1. If any provision of this Agreement is held to be void, invalid or unenforceable, such provision shall, to the extent permitted by applicable law, be deemed to be deleted from this Agreement to the intent that the remaining provisions shall continue in full force and effect.

18. ENTIRE AGREEMENT

18.1. This Agreement comprises the entire understanding among the Parties regarding its subject matter and supersedes any prior agreement, understanding, representation or arrangement between the parties, whether oral or in writing. This Agreement may not be varied save with the express signed written consent of the parties.

19. ENFORCEMENT

19.1. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance of such provision.

20. ASSIGNMENT

20.1. Either Party may assign this agreement to any other company within its group of companies without consent. Assignment to any third party requires the other Parties consent, and such consent shall not to be unreasonably withheld

21. GOVERNING LAW AND DISPUTE RESOLUTION

21.1. This Agreement shall be construed in accordance with and shall be governed by the laws of the Netherlands and the Parties submit to the nonexclusive jurisdiction of the Dutch courts.