

Terms and Conditions

1. DEFINITIONS

- "Contact Email" means the email address You provided to Us in the relevant Order.
- "Payment" means the fees payable by You to Us for use of the Service which include the Annual Subscription Charges and Telephony Charges, if applicable.
- "Contract" means the same as set out in section 2.2.
- "Contract Term" means the agreed period from commencement of the relevant Contract or successive term for a minimum of 12 months (as the case may be);
- "Order" means the same as set out in section 2.1.
- "Service" means the messaging service to be supplied by Us to You under these terms and conditions and as set out on the website in the relevant Order.
- "Subscription Charges" means the recurring annual charge You pay to Us for use of the Service as set out in the relevant Order.
- "Telephony Charges" means any additional charges that you may incur when using the Service that You pay to Us as set out in the relevant order.
- "We" or "Us" means Callmy Ltd.
- "You" means the customer to whom We provide the Service in accordance with these terms and conditions.
- "Website" means www.callmy.com

2. THE SERVICE

- 2.1. These terms and conditions contain general terms relating to the provision by Us to You of the Services and should be read in conjunction with the information included on the Callmy Order Form completed by You ("Order").
- 2.2. Each Order will form a separate contract (a "Contract") between You and Us on the terms contained in the Order and in these terms and conditions. Each Contract will be separately terminable by either party in accordance with sections 2.3 and 10.
- 2.3. We have the right to terminate any Contract upon written notice to You in the event that You materially breach any sections of these terms and conditions. For the avoidance of doubt, breach of section 4.1 will constitute a material breach. You also have the right to terminate any Contract upon written notice to Us in the event that We materially breach any sections of these terms and conditions.
- 2.4. You agree that We shall not be liable to provide the Service unless and until an Order has been agreed in relation to the Service.

3. THE OBLIGATIONS YOU HAVE TO US

- 3.1. You shall ensure that you do not use the Service for unlawful purposes, including (but not limited to) the transmission of material that is defamatory or which infringes on the intellectual property rights of any third party.
- 3.2. You will be provided with passwords for accessing or using the Service and you must treat such passwords as confidential and must not reveal them to any third party. You are responsible for all activities that occur under the passwords that You have. You shall ensure that the passwords that You have are changed regularly.

4. CHARGES AND PAYMENTS

- 4.1. In each case the Order will set out the Subscription Charges for the Service which will be billed either monthly or quarterly in advance.
- 4.2. We reserve the right to revise the Charges with one month's notice, notifying you by email to the address provided by You for the Contact Email (if you do not respond to any such notice prior to implementation of the revised prices then we shall deem you to have accepted them). Charges will not increase by more than the current Retail Price Index (RPI).
- 4.3. If any invoice becomes overdue we reserve the right to charge interest at 3% above the base rate of the Royal Bank of Scotland and suspend the Service if such invoice remains overdue for four weeks.

5. PROPRIETARY PROTECTION

- 5.1. The intellectual property rights and/or other proprietary rights in the information (including hard copy and electronic, human-readable and otherwise) used or created by Us in providing the Service will be owned by Us or the licensors We have. Nothing in this section 5 will limit either party's obligations with regard to data protection in section 9.1.

6. REPRESENTATIONS AND WARRANTIES

- 6.1. Each party warrants to the other that it has the full and sufficient right and authority to enter into these terms and conditions and to grant the rights and licences granted herein.
- 6.2. We warrant that the Service will be provided with reasonable care and skill.
- 6.3. You agree that We do not warrant or enter into any other term to the effect that any software will be entirely free from defects or that its operation will be entirely error free.
- 6.4. Apart from the terms set out in this section 6, no conditions, warranties or other terms apply to the Service or to anything else supplied under these terms and conditions. In particular, the terms implied by sections 3 to 5 of the supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these terms and conditions.

7. LIMITATION OF LIABILITY

- 7.1. Neither party shall be liable (whether for breach of contract, tort (including without limitation negligence), or for any other reason) arising out of or in connection with these terms and conditions for any: (i) loss of profits, sales and/or revenue; (ii) goodwill and/or reputation; (iii) loss or waste of management or staff time; and/or (iv) indirect, consequential or special loss.
- 7.2. We shall not be liable for any failure in the Service which arises because of any circumstances which we cannot reasonably be expected to control. The payment obligations You have will be suspended for the period of any such circumstances which causes a default or delay in the performance of the obligations we have to You under these terms and conditions.
- 7.3. Subject to section 7.1, the total aggregate liability we have to You under each Contract and in relation to anything which We may have done or not done in connection with the Contract concerned (and whether the liability arises because of breach of Contract, negligence or for any other reason) in respect of any Contract shall be limited to 125% of all amounts payable by You under the Contract concerned in the relevant Contract Year. Subject to section 7.1, the total aggregate liability You have to Us under each Contract and in relation to anything which You may have done or not done in connection with the Contract concerned (and whether the liability arises because of breach of Contract, negligence or for any other reason) in respect of any Contract shall be limited to 125% of all amounts payable by Us under the Contract concerned in the relevant Contract Year.
- 7.4. Neither party's liability: (i) for death or personal injury caused by its negligence; (ii) for fraudulent misrepresentation or for any other fraudulent act or omission; and/or (iii) for any other liability which may not lawfully be excluded or limited, is excluded or limited by these terms and conditions, even if any other term of these terms and conditions would otherwise suggest that this might be the case.

8. SUSPENSION OF SERVICE

- 8.1. Apart from any other rights which We might have, We reserve the right to suspend the Service without notice if We believe the Service is being used by You in breach of these terms and conditions, You fail to pay us by the due date as stated on each invoice and/or You notify Us that someone has gained unauthorised access to the Service.

9. DATA PROTECTION

- 9.1. To the extent that We process any Personal Data (as defined in the EU General Data Protection Regulation) in connection with the Service, We will: (i) only process to the extent necessary to provide the Service; (ii) comply with instructions You give to Us; and (iii) keep it secure in accordance with Article 5 of the GDPR.

10. TERM AND TERMINATION

- 10.1. Each Contract shall commence on the date set out in the Order and shall continue for the Initial Term set out in the Order (and if none is provided, such Term shall be 12 months) and thereafter renew automatically for successive terms of 12 months unless terminated by either party giving the other not less 90 days written notice to that effect to expire on the next renewal date, or unless terminated sooner in accordance with its terms. This clause 10.1 is without prejudice to the right We have to terminate under section 2.3.
- 10.2. You may cancel this agreement, with 30 days written notice, if the charges increase more than the current RPI.
- 10.3. Termination of each Contract will not affect any accrued rights or liabilities which either You or Us may have by the time termination takes effect.

11. GENERAL

- 11.1. You may not sub-licence or assign any of the rights or obligations which You have under these terms and conditions.
- 11.2. These terms and conditions and any relevant Order sets out all of the terms that have been agreed between You and Us in relation to the subjects covered by it. No other representations or terms shall apply or form part of any Contract between the parties. You acknowledge that You have not been influenced to enter into these terms and conditions by anything We have said or done or committed to do, except as expressly recorded herein.
- 11.3. In the event of any provision in these terms and conditions being held to be void, voidable or unenforceable this shall not affect the validity or enforceability of any other section of these terms and conditions or of the remainder of these terms and conditions as a whole.
- 11.4. No term of these terms and conditions is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to these terms and conditions.
- 11.5. These terms and conditions shall be governed and construed in accordance with English law. Both parties submit to the exclusive jurisdiction of the English courts in relation to any dispute arising out of or in connection with these terms and conditions, but We are also entitled to apply to any court worldwide for injunctive or other remedies in order to protect or enforce the intellectual property rights that We have.