

1. General

- 1.1. By accepting the terms of service, the **User** agrees to accept and be bound by all of the terms and conditions of this agreement.
- 1.2. These terms and conditions of service for use of NetFuse call origination servers, the '**agreement**', constitute a legally binding contract between NetFuse and the User.

2. Charges and Payment

- 2.1. All accounts are to operate on a pre-paid basis. Credit paid should equal at least £250 plus VAT and will operate on a 'run-down' arrangement. It is the sole responsibility of the User to ensure sufficient credit remains on the account for traffic. Credit will only be added to an account upon confirmation of **cleared funds** being in NetFuse bank account.
- 2.2. All invoices must be paid within the terms stated on the invoice when issued. Hardware invoices must be paid in full prior to product dispatch. NetFuse offer terms of 4/7 net 30, i.e. all invoicing relating to services other than call credit and hardware operate on 30 day terms unless indicated otherwise. A discount of 4% is available if payment is received within 7 days of the invoice issue date.
- 2.3. Late payments of invoices will be subject to charges as follows. 15% of the total invoice value (inc. VAT) will be due for payments made over 30 days from the invoice issue date. 25% of the total invoice value will be due for payments made over 60 days from the invoice issue date.
- 2.4. NetFuse reserve the right to suspend all services provided to the User with no prior warning if payment for an invoice remains outstanding following a period of 60 days from the invoice issue date.
- 2.5. NetFuse call charges change generally on the first day of each month however NetFuse reserve the right to alter prices at other times giving 7 days notice. Pricing is on a per minute basis however, all calls are billed by the second.
- 2.6. In exceptional circumstances and with the agreement of the User on a case by case basis the User agrees to accept immediate price notification changes.
- 2.7. All call charges commence on the receipt of an answer signal from our connected carriers. Netfuse will not be held responsible for any situation where this is generated in error.
- 2.8. Call charges cease on the receipt of a call clear message from either the Users equipment or the connected carriers. Especially in the case of VoIP connected Users, it is the responsibility of the Customer to ensure that this signal is received by NetFuse.
- 2.9. The call charge rates used will be those given and defined and published on the NetFuse website and updated by NetFuse from time to time. It is the responsibility of the User to check these rates.
- 2.10. In the event that geographic numbers are issued for inbound services under this agreement, the User accepts full responsibility for any services or charges incurred by NetFuse from other telecommunication operators which are outside the scope of the normal payment methods. Any such charges will be invoiced to the Customer subject to an additional handling charge of 25%.
- 2.11. NetFuse reserve to levy a 5 pence minimum call charge for each call originated through their network.

3. Indemnity

- 3.1. Access to NetFuse's call origination servers is being provided on an 'as is' and 'as available' basis, and NetFuse makes no representations or warranties of any kind, whether express or implied, with respect to User's access of the server, including but not limited to warranties of merchantability, non-infringement, title or fitness for a particular purpose.
- 3.2. Further, NetFuse makes no representations or warranties that the call origination server, or user's access thereto, will be available at any given time, or will be free from errors, defects, omissions, inaccuracies, or failures or delays in delivery of data.

- 3.3. The User assumes, and NetFuse disclaim, total risk, responsibility, and liability for User's access to and use of the call origination server.
- 3.4. Access to NetFuse call origination servers is being provided on a non-exclusive basis.
- 3.5. NetFuse make no guarantees regarding the availability or functionality thereof. User may not sublicense its access rights to the call origination servers to any third party.
- 3.6. User agrees to indemnify, defend and hold NetFuse, its affiliates, directors, officers, employees, agents and licensors harmless from and against any and all claims, actions, expenses, losses, and liabilities (including courts costs and reasonable attorneys' fees), arising from or relating to this agreement including User's access to and use of the call origination servers to the maximum extent permitted by applicable law. In no event shall NetFuse or any of its licensors, be liable for any indirect, special, punitive, exemplary, or consequential damages arising out of the access to or use of or inability to access or use the call origination server, or that result from mistakes, omissions, interruptions, deletions of files, errors, defects, delays in transmission or operation or any failure of performance, even if advised of the possibility of such damages.
- 3.7. The NetFuse telephony service is not intended as a substitute of the PSTN telephony service. Users of the service must ensure a PSTN telephony line is available at the location from which they use the service.

4. Termination

- 4.1. If User commits, in NetFuse's sole determination, a default of these terms and conditions, NetFuse may immediately terminate user's access to the call origination server. Furthermore, NetFuse reserve the right to discontinue offering access to the call origination servers at any time.
- 4.2. User may not assign its rights hereunder without the prior written consent of NetFuse. User agrees to comply with all laws, regulations and other legal requirements that apply to these terms and conditions.
- 4.3. If any provision of this agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to comply with applicable laws, and the remainder shall remain in full force and effect.
- 4.4. Any failure of NetFuse to enforce any provision of this agreement shall not constitute a waiver of any rights under such provision or any other provision of this agreement.
- 4.5. User acknowledges that it has read this agreement, understands it, and agrees that it is the complete and exclusive statement of the entire agreement between company and NetFuse with respect to the subject matter herein, and supersedes all prior and contemporaneous proposals, discussions, agreements, understandings, and communications, whether written or oral and may be amended only in a writing executed by both the user and NetFuse.

5. General Terms

- 5.1. NetFuse will take all reasonable steps to restore Service in accordance with this agreement.
- 5.2. Neither party shall be liable to the other for failure to perform any obligation under this Agreement (other than an obligation to pay) where such failure was outside such party's reasonable control, including without limitation, the consequence of natural phenomenon, war, civil disorder, inclement weather, fire, failure or shortage of power supplies, seller failure, breach, or delay, industrial disputes, acts or omissions of government, acts or omissions of other telecommunications operators, compliance with statutory obligation, or any other cause beyond NetFuse's reasonable control.
- 5.3. Nothing in this Agreement shall create or be deemed to create a partnership or the relationship of principal and agent between the parties.

5.4. If any provision of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part the other provisions of this Agreement and the remainder of the affected provision shall continue to be valid.

5.5. The rights of NetFuse under this Agreement are cumulative and in addition to any other right or remedy available to it at law or in equity.

5.6. This Agreement shall be governed by and construed in accordance with the laws of England.

6. Fault Categories

6.1. Category A (Critical): All inbound numbers have ceased to work; termination to all destinations has ceased.

6.2. Category B: Customers are unable to interface with NetFuse's network; one, or a batch of, inbound numbers are failing.

6.3. Category C: Poor call quality is experienced to any destination.

7. Response Time

7.1. From the time of reporting, the target times to respond to Category A faults are:

During office hours: 2 hours

Out of office hours: 4 hours

7.2. From the time of reporting, the target time to respond to Category B faults is as follows:

During office hours: 5 hours

Out of office hours: 8 hours

7.3. From the time of reporting, the target time to respond to a Category C fault is one working day.

8. Fault Reporting

8.1. Category A (Critical) faults may be reported to 07890 448 227, 24 hours a day, 7 days a week. The User will be asked to leave details and a member of our technical team will be contacted as a matter of urgency. Please note that non-Category A calls will not be taken on this number.

8.2. Category B faults should be reported to 05601 056 056. We request that all out of hours faults reported by telephone be followed up with an email to support@netfuse.org to ensure that details can be logged accurately.

8.3. Category C faults are to be reported by email only to support@netfuse.org.

8.4. Before reporting a fault to NetFuse, the User will carry out full and comprehensive tests to determine the extent and location of the fault. All details to be included in fault report to assist with prompt resolution. It is the responsibility of the customer to use the correct reporting method for the grade of fault to be reported.

8.5. Once the fault has been logged fault investigation will begin. NetFuse will contact and liaise as appropriate with any 3rd party carrier/operator or service provider. Regular updates will be provided to the user as per agreed timescales and based on severity of the problem. Details of expected time to fix (if available) will also be provided by NetFuse.

8.6. On successful identification and rectification of the fault by NetFuse, the User will be notified (where applicable), and will be requested to carry out a test to ensure that the fault has been cleared to their satisfaction. If it is identified that a fault is still apparent NetFuse must be notified accordingly, if no notification is received the fault will assumed to be clear.

9. Maintenance Outages

- 9.1. Planned network maintenance or upgrades may be required from time to time. 7 days notice will be given to all customers that may be affected by this type of outage.
 - 9.2. NetFuse will use all reasonable endeavours to carry out this work with little or no disruption to customers but if NetFuse and the User cannot agree the timing of the outage then NetFuse's decision shall be final.
 - 9.3. Under exceptional circumstances, it may be necessary to perform emergency maintenance, without prior notice. NetFuse will endeavour to provide as much notification as possible for emergency maintenance.
10. **Third-party Attributable Faults**
- 10.1. If a fault is identified as being attributable to a third party (i.e. neither the User nor NetFuse), the fault shall be deemed to be the responsibility of NetFuse but no downtime will be included in Service reliability calculations. In such event, NetFuse will use all reasonable endeavours to restore the Service within the target times to repair the fault.