



# Professional Services

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This Schedule is a Schedule of Fusion Telecom's General Terms, and applies specifically to training, consultancy and digital engineering services supplied by Fusion Telecom. This Schedule forms part of the Contract between us and you.

Some of the words and phrases in this document mean specific things and they are capitalised all the way through and explained in the Defined Terms section at the end of this document, and where they are not, they are explained in the Defined Terms section in the General Terms document.

'FT', 'we', 'us' and 'our' mean Fusion Telecom Ltd, a company registered in England & Wales under Company Number 11608562.

'You' and 'your' mean the Client.

Phrases that refer to 'either', 'neither', 'each of us', 'both of us', 'we each' or 'we both' mean one or both of Fusion Telecom and the Client, whichever makes sense in the context of the sentence.

The words 'include' or 'including' do not limit something to just those examples that follow.

Any time either of us has a right or obligation that we "may" exercise or perform, then whether either of us chooses to exercise or perform that right or obligation will be in that party's sole discretion.

### 1. Service Summary

- 1.1. We will provide you with Professional Services as specified in the Order that may comprise of:
  - 1.1.1. Training; and/or
  - 1.1.2. Consultancy; and/or
  - 1.1.3. Digital engineering.
  - 1.1.4. Licenses that may exist to allow ongoing use of any deliverables specified on the Order.  
(“the Service”).
- 1.2. The Service will be provided in accordance with a Specification that is agreed by you and us, and is referenced on the Order.

- 1.3. The Specification will be constructed according to the following process:
  - 1.3.1. Initial consultations between us will occur during which we will ascertain and record your requirements in detail;
  - 1.3.2. An initial Specification will be drafted by us;
  - 1.3.3. We will present the initial Specification to you. You may either accept the initial Specification, or if you wish amendments to be made, there will be further consultations between both of us and subsequent revisions to the Specification will be made until the revised Specification is agreed by both of us;
  - 1.3.4. We will then provide a cost estimate to you based on the agreed Specification;
  - 1.3.5. You will either accept the cost estimate, or there will be further consultations between both of us and we will revise the Specification and cost estimate until the revised Specification and cost estimate is agreed by both of us;
  - 1.3.6. Both of us will sign the Specification and the Order. The Order will contain a reference to the Specification(s). The Order will also contain details of the Charges, which will be based on the cost estimate.
  - 1.3.7. Upon signing the Order we will begin the work with the intention of completing the work based on the Provisional Start date.
  - 1.3.8. Once the work has been completed by us we will supply any deliverables to you on the Actual Start Date;
  - 1.3.9. On receipt of any deliverables as specified in the Order, or upon notification by us that the work has been completed, within fourteen days:
    - 1.3.9.1. you will explicitly confirm the work has been completed according to the Specification and according to your satisfaction; or
    - 1.3.9.2. state your perceived discrepancies in full and in writing between the Specification and the work completed in which case both of us will enter into good faith negotiations and:
      - 1.3.9.2.1. if agreement is reached, we will perform any minor modifications agreed and you will confirm the work has been completed according to the Specification and according to your satisfaction.
      - 1.3.9.2.2. if agreement is not reached we will seek to reach an agreed settlement, and in the case an agreed settlement cannot be reached, we will refer the case to an independent arbitrator in order to reach a settlement. In such a case where an independent arbitrator is used, both of us will be liable for our own costs.
  - 1.3.10. If on your receipt of any deliverables as specified in the Order, or upon notification by us that the work has been completed, we have not received your explicit confirmation that the work has been completed according to the Specification and

according to your satisfaction, and we have not received your stated perceived discrepancies in full and in writing, you will be deemed to have:

- 1.3.10.1. accepted the work; and
- 1.3.10.2. agreed the work has been completed according to the Specification and according to your satisfaction.
- 1.4. Any changes required by you to the Specification after the Specification has been agreed by both of us and after the Order has been signed by both of us may delay the Provisional Start Date and you accept that you may incur additional Charges.
- 1.5. We will provide you with updates of the progress towards completion as and when you may reasonably request them.
- 1.6. We will not be liable for failure to, or delay in, supplying the Service if another supplier delays or refuses the supply of a service to us and no alternative service is available at reasonable cost.

## 2. Specific Terms and Conditions

### 2.1. Our Additional Rights to Terminate

- 2.1.1. In addition to the termination provisions in the General Terms and this Schedule, we may terminate the Contract or the Service at any time on Notice to comply with a direction from any competent authority to suspend or cease the provision of the Service or any part of it.
- 2.1.2. You will advise us promptly if you receive any direction from any competent authority as set out in clause 2.1.1.

### 2.2. Liability

- 2.2.1. You hereby indemnify us and undertake to keep us indemnified and held harmless from and against any and all demands, Liabilities, damages, losses, costs and claims (including reasonable legal fees) asserted against us or our agents, suppliers, officers and employees that arise or result from any material or information that you supply that infringes (or is alleged to infringe) the Intellectual Property Rights of a third party.
- 2.2.2. You hereby indemnify us and undertake to keep us indemnified and held harmless from and against any and all demands, Liabilities, damages, losses, costs and claims (including reasonable legal fees) asserted against us or our agents, suppliers, officers and employees that arise or result from any erroneous information that is supplied by the Service or any reporting features of the Service that may be used by you from time to time to make decisions that affect your business operations.
- 2.2.3. For the avoidance of any doubt the following items are considered out of scope of the Services unless otherwise specified on the Order:
  - 2.2.3.1. any items not detailed in the Specification; and
  - 2.2.3.2. any deliverables not detailed in the Order.

### 2.3. Freedom of Information

- 2.3.1. We will mark Confidential Information given to you in connection with the Contract as "In Confidence".
- 2.3.2. You will not disclose Confidential Information marked as "In Confidence" to any person without our written consent.
- 2.3.3. Any breach of clause 2.3.2 will be:
  - 2.3.3.1. a breach not capable of remedy under clause 18.3.2 of the General Terms; and
  - 2.3.3.2. likely to prejudice our commercial interests.
- 2.3.4. For the reasons set out in clause 2.3.3 we believe that Confidential Information marked as "In Confidence" is exempt from the duty to confirm or deny, and from disclosure, under the Freedom of Information Act 2000.
- 2.3.5. You will:
  - 2.3.5.1. notify us, to the extent lawfully possible, of any request under the Freedom of Information Act 2000 which encompasses any information you hold provided by us in connection with the Contract; and
  - 2.3.5.2. allow us not less than fifteen Business Days in which to make representations.

### 2.4. Service Constraints

- 2.4.1. You acknowledge and agree that use of the Service may carry security risks to your systems and networks, ourselves and third parties including:
  - 2.4.1.1. misuse;
  - 2.4.1.2. unauthorised access;
  - 2.4.1.3. alterations;
  - 2.4.1.4. theft;
  - 2.4.1.5. fraud;
  - 2.4.1.6. destruction;
  - 2.4.1.7. corruption; and
  - 2.4.1.8. attacks, ("Occurrences").
- 2.4.2. You will at your own expense, to take security measures including use of:
  - 2.4.2.1. firewalls;
  - 2.4.2.2. passwords;
  - 2.4.2.3. access restrictions;
  - 2.4.2.4. encryption;
  - 2.4.2.5. policies; and
  - 2.4.2.6. physical access restrictions,

to protect from Occurrences all Service related traffic, equipment, software, data and systems in your control and used in connection with the Service, whether owned by you or not.

2.4.3. You acknowledge and agree that you and your Users are responsible for all security measures, even if your Users use a third party or us to configure and implement them provided that in our case, we have correctly implemented the instructions given by you.

us has terminated the Contract or Service or any part of the Service in accordance with clause 2.5.5,

you will be deemed to have accepted the changes and the changes will take effect from the Provisional Start Date.

## 2.5. Changes to the Contract

- 2.5.1. In addition to the provisions of clause 5.2 of the General Terms, we may change this Contract at any time by giving at least ten days' Notice before the change takes effect in order to:
- 2.5.1.1. comply with any legal or regulatory obligation (except where our compliance with that legal or regulatory obligation requires a shorter period of Notice);
  - 2.5.1.2. protect the use of the FT company brand;
  - 2.5.1.3. introduce new or improved Service Levels;
  - 2.5.1.4. introduce process changes or change the technical specification of the Service (including Service upgrades), provided that they are not to your material detriment;
  - 2.5.1.5. maintain the integrity or security of the Service or FT Network;
  - 2.5.1.6. improve clarity, or make corrections to typographical errors; or
- providing that the changes in clauses 2.5.1.4 to 2.5.1.7 inclusive, will not unreasonably affect the Service according to the Specification.
- 2.5.2. We will not require the signature of a new contract for the changes set out in clause 2.5.
- 2.5.3. We may propose changes to the Contract at any time for matters not falling within clauses 2.5.1 and 2.5.2 by giving you ten days' written Notice before the date the changes are proposed to take effect ("Notice to Amend").
- 2.5.4. Within ten days of any Notice to Amend, you may provide us Notice:
- 2.5.4.1. agreeing to the changes we proposed, in which case those changes will apply from the Provisional Start Date; or
  - 2.5.4.2. stating your objections to the proposed changes in which case both of us will enter into good faith negotiations and, if agreement is reached, the agreed changes will apply from the Provisional Start Date or any other date as may be agreed between both of us.
- 2.5.5. If both of us have not reached agreement within fourteen days of your Notice of objection under clause 2.5.4.2 either of us may terminate the Contract or Service or any part of the Service by giving the other thirty days' Notice of termination.
- 2.5.6. If:
- 2.5.6.1. you do not serve a Notice within the period set out in clause 2.5.4; or
  - 2.5.6.2. both of us have not reached agreement within fourteen days of your Notice of objection under clause 2.5.4.2 and neither of

## 2.6. Transfer to Third Parties

- 2.6.1. You may transfer your rights and obligations by way of a novation to an eligible Affiliate subject to our Policy for Credit Vetting and the signing of a novation agreement in such format as we reasonably require.
- 2.6.2. You will pay any reasonable charges notified to you in writing associated with the administration of:
- 2.6.2.1. your name changes; and/or
  - 2.6.2.2. your contract novations.

## 2.7. Non-Contractual Documents

- 2.7.1. Unless specifically stated otherwise in the Contract the following documents (if applicable) do not contractually form part of the Contract:
- 2.7.1.1. Any Specifications not referenced on the Order; and
  - 2.7.1.2. Any manuals or materials relating to the Service.
- 2.7.2. We may refer to these documents in relation to our provision and operation of the relevant Service but any such reference will be for guidance only.
- 2.7.3. We may amend these non-contractual documents and we will provide reasonable notice of any significant/material amendment.

## 3. Our Obligations

### 3.1. Service Delivery

- 3.1.1. Before the Actual Start Date and, where applicable, throughout the provision of the Service, we:
- 3.1.1.1. will comply with all reasonable health and safety rules and regulations and reasonable security requirements that apply at a Site and are notified to us in writing. We will not be liable if, as a result of any such compliance, we are in breach of any of our obligations under this Contract;
  - 3.1.1.2. will provide you with a date on which delivery of the Service (or each part of the Service, including to each Site) is due to happen, the Provisional Start Date, and will use commercially reasonable endeavours to meet any date, but will have no liability for a failure to do so;
  - 3.1.1.3. will provide you with copies of (and provide access to if held on a web interface) documentation necessary for you to access and use the Service as contemplated by the Contract; and

- 3.1.1.4. may reject an Order for a Service if any information you submit is illegible, inaccurate, incomplete or incorrect.
- 3.1.1.5. Before the Actual Start Date, we will if relevant, conduct a series of standard tests on the Service to ensure that it is completed according to the Specification; and
- 3.1.2. On and from the Actual Start Date, we:
  - 3.1.2.1. will work to resolve any issues or defect you encounter and report to us as soon as practicable based on the target Service Levels described in the SLA;
  - 3.1.2.2. will take all reasonable steps (including testing with the latest commercially available virus detection software) to ensure that any Software used with or in conjunction with the Service is not infected by viruses and/or logic bombs, worms, trojan horses and any other type of disruptive, destructive or nuisance programs.

fraudulent, indecent, menacing, nuisance or hoax calls or in furtherance of the commission of any criminal offence.

- 4.2.1.3. monitor and maintain any Client Equipment used in connection with a Service;
- 4.2.1.4. where we are to run a training course:
  - 4.2.1.4.1. ensure that you have the CPE available to participate in the training courses where we are to run the training course on your Site;
  - 4.2.1.4.2. ensure that the appropriate nominated personnel attend the training courses; and
  - 4.2.1.4.3. give a minimum of ten Business Days' Notice to us of any change or cancellation of dates agreed for training. Failure to provide such Notice will result in you being charged at the additional training day rates set out in the Order;
- 4.2.1.5. not use the Service, and will take all reasonable steps to ensure that the Users' do not use the Service:

## 4. Your Obligations

### 4.1. Service Delivery

- 4.1.1. During the Specification drafting phase and before the Actual Start Date and, where applicable, throughout the provision of the Service by us, you will:
  - 4.1.1.1. as part of the Client establishment process provide us, in the Order, with the names and contact details of any individuals as Authorised Contact(s) authorised to act on your behalf, but we may also accept instructions from a person who we reasonably believe is acting with your authority. Your Authorised Contact will be the point of liaison with us and you will notify us of any changes to these details;
  - 4.1.1.2. provide us with any information reasonably required without undue delay;
  - 4.1.1.3. complete any preparation activities that we may request to enable you to receive the Services promptly and in accordance with any reasonable timescales;
  - 4.1.1.4. provide a suitable and safe working environment for our employees and anyone acting on our behalf at your Site.

- 4.2.1.5.1. to send, knowingly receive, upload, download, use or re-use material which is offensive, indecent, defamatory, obscene or menacing;
- 4.2.1.5.2. contrary to our Acceptable Use Policy;
- 4.2.1.5.3. in a manner that is in any way unlawful, fraudulent or in bad faith or, to your knowledge, has any unlawful, fraudulent or bad faith purpose or effect;
- 4.2.1.5.4. in a manner which is contrary to clause 14 of the General Terms;
- 4.2.1.6. take all reasonable steps (including testing with the latest commercially available virus detection software) to ensure that any software used with or in conjunction with the Service is not infected by viruses and/or logic bombs, worms, trojan horses and any other type of disruptive, destructive or nuisance programs;

### 4.2. Service Operation

- 4.2.1. In addition to your obligations in clause 6.9 of the General Terms, you will:
  - 4.2.1.1. not copy, modify, reverse engineer, decompile or otherwise endeavour to obtain the source code (except to the extent permitted by law).
  - 4.2.1.2. take all reasonable steps to ensure that your employees, agents and subcontractors do not use the Services for making offensive,

### 4.3. Personal Data

- 4.3.1. You agree and authorise us to use your personal information in accordance with the Data Protection Act 1998, and to disclose your personal information to our agents, Associated Companies, credit reporting agencies, credit providers, carriers, carriage service providers and any relevant regulatory authorities for the following purposes:
  - 4.3.1.1. considering or applying Fusion Telecom credit policy and maintaining credit records about you. This information may be used for debt tracing and fraud prevention;
  - 4.3.1.2. management of your account, including billing and collection of overdue payments;

- 4.3.1.3. providing, operating and administering the Services;
- 4.3.1.4. collating statistical and performance information about the Service for use by us in anonymised form in marketing and advertising our services to others;
- 4.3.1.5. informing you about new related products and services we reasonably believe may be of interest to you.

## 5. Notification of Incidents

- 5.1. Where you become aware of an Incident after the supply by us of any deliverables detailed on the Order:
  - 5.1.1. if you cannot resolve the issue then your Accredited Personnel will report it to us according to the procedures in the SLA, providing the following:
    - 5.1.1.1. the date and time at which the Incident occurred;
    - 5.1.1.2. the impact of the Incident on the Service including a detailed description of the Incident;
  - 5.1.2. we will give you a unique reference number for the Incident ("Case");
  - 5.1.3. you will ensure that your Accredited Personnel will be available for all subsequent Incident management communications;
  - 5.1.4. we will inform you when we believe the Incident is cleared, and will close the Case when:
    - 5.1.4.1. you confirm that the Incident is cleared within twenty four hours of being informed; or
    - 5.1.4.2. we have attempted unsuccessfully to contact you, in the way agreed between both of us, in relation to the Incident and you have not responded within four Business Days of our attempt to contact you; and
  - 5.1.5. if you confirm that the Incident is not cleared within twenty-four hours of being informed, the Case will remain open, and we will continue to work to resolve the Incident.

## 6. Charges

- 6.1. We will invoice you for the Charges for the Service as set out in this clause 6 in the amounts and currency specified in any Orders.
  - 6.1.1. Training Charges as detailed on the Order;
  - 6.1.2. Consultancy Charges as specified on the Order;
  - 6.1.3. Engineering Charges as specified on the Order;
  - 6.1.4. Any ongoing Fixed or Variable Charges, and or Licenses, associated with the ongoing use of any deliverables as specified on the Order;
  - 6.1.5. any Termination Charges incurred in accordance with clause 18 of the General Terms upon termination of the relevant Service; and

- 6.1.6. the total amount of Charges less any applicable discounts as set out in the Order;

## 6.2. Additional Charges

- 6.2.1. We may invoice you for any of the following Charges in addition to those set out in the Order:
  - 6.2.1.1. Charges for investigating Incidents that you report to us where we find no Incident or that the Incident is caused by something for which we are not responsible under the Contract;
  - 6.2.1.2. Charges for expediting provision of the Service at your request after you have been informed of the Provisional Start date; and
  - 6.2.1.3. any other Charges set out in any applicable Order or as otherwise agreed between both of us.

## 6.3. Prices

- 6.3.1. The prices in the Order are effective from the date the Order is signed by you, or the Order is signed by us, whichever is the latter, or in the case the Order is not signed, then on the date you start using the Service or any deliverables detailed on the Order.

## 7. IP Addresses, Domain Names and IPR

- 7.1. Except for IP Addresses and Domain Names expressly registered in your name, all IP Addresses and Domain Names made available with the Service, if any, will at all times remain our property or the property of our suppliers and will be non-transferable. All of your rights to use such IP Addresses and/or Domain Names will cease on termination or expiration of the Service.
- 7.2. You acknowledge and agree that we and/or our licensors own all Intellectual Property Rights in the Service and the Documentation. Except as expressly stated, this Contract does not grant you any rights to, or in, such Intellectual Property Rights.
- 7.3. We confirm that we have all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Contract.

## 8. Defined Terms

In addition to the defined terms in the General Terms, capitalised terms in this Schedule will have the following meanings (and in the case of conflict between these defined terms and the defined terms in the General Terms, these defined terms will take precedence for the purposes of this Schedule):

"Accredited Personnel" means your personnel that have completed all mandatory operational and technical training courses.

"Client Equipment" means any equipment including any CPE and any software, other than our equipment, used by you in connection with a Service.



“CPE” means any equipment (including software) owned or operated by you and either connected to or used in conjunction with the Service.

“Domain Name” means a readable name on an Internet page that is linked to a numeric IP Address.

“Incident” means an unplanned interruption to, or a reduction in the quality of, the Service or particular element of the Service.

“Intellectual Property Rights” and “IPR” means patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Internet” means a global system of interconnected networks that use a standard Internet Protocol to link devices worldwide.

“Internet Protocol” or “IP” means a communications protocol for devices connected to the Internet that specifies the format for addresses and units of transmitted data.

“IP Address” means a unique number on the Internet of a network card or controller that identifies a device and is visible by all other devices on the Internet.

“Liabilities” means all awards, compensation, costs, expenses, losses, liabilities, damages, claims, proceedings, awards, fines, orders, demands, actions, payments by way of settlement, penalties, tribunal awards and other liabilities (including legal and other professional fees and expenses on an indemnity basis) whenever or however arising or brought.

“Licence” means the non-exclusive, non-transferable right, while and only while the Contract is in force, for you to access the Service. This right does not operate to transfer any Intellectual Property Rights to you.

“Notice to Amend” has the meaning given in clause 2.5.3.

“Occurrences” has the meaning given in clause 2.4.1.

“Policy for Credit Vetting” means the policy we apply for credit vetting set out on the FT Website.

“Professional Services” means the services we supply you as detailed in clause 1.

“FT Network” means the communications network owned or leased by us and used to provide the Service.

“Service” has the meaning given in clause 1.1.

“Specification” means the document or documents that contain a detailed description of the Professional Services we will supply you, and that are referenced on any applicable Order;

“Uniform Resource Locator” or “URL” means a character string that points to a resource on an intranet or the Internet.

“User” means a person or entity using the Service, whether directly or indirectly on your behalf.

## End of Schedule: Professional Services