

# Prepay Terms & Conditions

## 1.1 In these Terms and Conditions:

- "Account" means the account which records details of the amount of pre-paid credit you have, from time to time;
- "Acceptable Use Policy" means any policy published by O2 from time to time on the Website that sets how you may use the Service.
- "Charges" means all charges associated with your use of the Service in accordance with the current Price Plan;
- "Content" means textual, visual or other information, software, photos, video, graphics, music, sound and other material appearing on or available through the Service including all information supplied by O2 ("O2 Content") or part of a Third Party Service ("Third Party Content") from time to time;
- "Location Data" means any information processed by O2, indicating the geographic position of the Mobile Phone or device used by you on our Network;
- "Mobile Phone" means the cellular mobile telephone and a SIM Card in the Prepay Pack used for connection to our Network;
- "Network" means the cellular telecommunication system run by us;
- "O2", "We", "us" and "our" means Telefónica O2 Ireland Limited of 28/29 Sir John Rogerson's Quay, Dublin 2;
- "Pack" means the Prepay Pack, Upgrade Pack or SIM Pack.
- "Privacy Policy" means O2's Privacy Policy set out at [www.o2.ie/privacy](http://www.o2.ie/privacy);
- "Price Plan" means our periodically updated list of Charges for the provision of the Service to customers;
- "Registration" means the provision by you of complete, accurate and up to date information relating to you requested by us;
- "Roaming" means use of the Service on a telecommunications network with whom O2 has a Roaming agreement.
- "Service" means the basic Prepay Service made generally available to all Prepay customers and any Service Options;
- "Service Options" means any optional services, in addition to the Prepay Service, including, competitions, promotions, and other value added services.
- "SIM Card" means the card supplied to you in the Pack bearing a unique telephone number programmed to allow a Mobile Phone to access the Service;
- "SIM Pack" means a pack containing a SIM Card, documentation and packaging purchased by you for accessing the Service.
- "Prepay Pack" means a pack containing a Mobile Phone, SIM Card and all documentation devices and packaging purchased by you for accessing the Service;
- "Terms and Conditions" means these terms and conditions;
- "Top-up" means pre-purchased credit you buy and place on your Account
- "Traffic Data" the information relating to your use of the Service processed for the purpose of the conveyance of a communication (calls, messages, data, etc.) or for the billing of these, including the information relating to the date, time and duration of these communications, the identity of the SIM Card and Mobil Phone or device used to make or receive the communication and the other networks on which the communication originated, terminated, or was routed through.
- "Third Party Service" means any service provided by a third party to you over the Network.
- "User Guide(s)" means either (i) any guides or documentation supplied with your Pack by us which explain to you how the Service works, how to purchase Credit; or, (ii) provided by the manufacturer of your Mobile Phone, which explains how to use your Mobile Phone;
- "Upgrade Pack" means a pack containing a Mobile Phone, and all documentation, devices and packaging purchased by you for accessing the Service;

- "You" means the customer to whom these Terms and Conditions and the Agreement apply, and it includes a person who we reasonably believe is acting with your authority;
- "Website" means [www.o2.ie](http://www.o2.ie)

1.2. These Terms and Conditions, the terms and conditions of any applicable Service Options, the Acceptable Use Policy and the terms and conditions of any applicable Price Plan(s) constitute a legally binding agreement ("Agreement") between you and O2. You will be deemed to have accepted these Terms and Conditions when you use the Service. You will be deemed to have accepted the terms and conditions of any Service Options when you avail of such Service Options.

1.3. Your use of the Service indicates your agreement to these Terms and Conditions. If you do not agree to these Terms and Conditions, you may not use the Service. You may return your Pack within 5 days of the date of purchase to the original place of purchase for a full refund, provided that all the contents of the Pack are returned undamaged, unused and in a sellable condition and that no credit on your Account has been used. If credit or the Service has been used, or if the contents of the Pack are damaged or are not in a sellable condition then no refund will be given.

1.4. We reserve the right to amend any of the Terms and Conditions as required by legislation, COMREG or other relevant authority. We will notify you of any such mandatory changes and where practical, in advance. We reserve the right to amend any of the Terms and Conditions for our own technical, maintenance or other valid reason, subject to notifying you on such amendments 30 days in advance. Such notification may be, without limitation by way of advertisement in the national media, by our website, by email, by post, by text messages to your handset, via the O2 Customer Care centre or by other reasonable means. Your continued use of the Service signifies your acceptance of any amendment.

## **2. Your right to return the Mobile Phone/Pack**

2.1. You may only use your Mobile Phone, and other apparatus supplied, in accordance with the Users Guide. O2 is not the manufacturer of the Mobile Phone and do not give any warranty in relation to the functionality, merchantability, suitability or fitness for purpose of such a handset. You are solely responsible for any fault with the Mobile Phone or interference or problems with the Service caused by use contrary to the manufacturer's User Guide.

2.2. In the event that your Pack is faulty or deficient at the time of purchase and you return the Pack to us in accordance with our Returns Procedure your Pack will be repaired, or wholly or partly replaced. Details of the Returns Procedure is available on our Website.

2.3. As a consumer of goods and services you are entitled to certain statutory rights. The provisions of the Agreement do not affect your statutory rights

## **3. Your Information**

3.1. Your information, including Traffic Data and Location Data, your Mobile Phone number, and any other information you may provide to us ("Personal Information") may be processed by O2 for its own business purposes and in accordance with O2's Privacy Policy. By entering into this Agreement, you explicitly consent to the use of your Personal Information for these purposes, which include, without limitation, administration, account management, billing, risk assessment, customer profiling, market research, Service and product development and marketing, customer care.

3.2. Your Personal Information will be retained in a secure environment.

3.3. Your calls to O2 may be recorded for training and quality control purposes.

3.4. It will be necessary to disclose your Personal Information to other licensed telecommunications operators and our agents for the purposes of providing the Service and carrying out those purposes set out in 3.1.

3.5. It may be necessary to disclose your Personal Information to third parties (including other telecommunications operators) for the purposes of fraud prevention and insurance claims processing.

3.6. Your Personal Information is not disclosed to third parties otherwise than in accordance with 3.4 and 3.5, save where required or permitted by law.

3.7. We, or our agents, may from time to time contact you by post, telephone, e-mail or text message regarding details of specific promotions or information on various O2 products or services or for research purposes. You explicitly consent to such contact. O2 may also contact you for a reasonable period after you cease to be a customer, with information on/offers of products and service which may be of interest to you. If you do not want to be contacted for such purpose, you should contact O2 Customer Care at 1747.

3.8. If you are under 18 years of age, your parent or guardian may, in accordance with our Guardian/Parental Authorisation Process, register with O2 as an authorised person on your Account. Subject to compliance with the Process, O2 will release certain limited Personal Information about the your Account, including your usage, to the authorised person and will allow the authorised person to make certain changes to the Account or Service. When you are over 18 years of age, upon request from you, we will cancel the authorised person's access to your Account.

3.9. The Service does not include the provision of periodic or itemised statements of your Account, or record of any use of the Service, including but not limited to calls made or received or Top-up information.

3.10 You may in accordance with our Privacy Policy ask for a copy of your Personal Information held about you, for which we will charge you a fee. You have a right to request us to correct any inaccuracies in such Personal Information.

#### **4. Provision of the Service**

4.1. We will use reasonable efforts to make Service available to you, but the Service is a radio based service and owing to the nature of mobile telecommunications, it is impossible to provide a fault-free service. The Service may not be available in all parts of the Republic of Ireland, nor in all other countries and may be restricted to certain areas within those countries. We are not liable for a call being cut off for any reason, or for any failure, delay, suspension, restriction or interruption of Service.

4.2. Our Network may from time to time require upgrading, modification, maintenance or other work which may result in partial or complete non-availability of the Service. O2 will use reasonable efforts to minimise the disruption to Service.

4.3. We may vary Content or the technical specification of Service from time to time.

4.4. When Roaming, the Service may be limited by the technical limitations of the network on which you are Roaming.

4.5. We will use reasonable endeavours to maintain O2 Content but it may be incomplete, out of date or inaccurate and is provided on an "as is" basis. It is a condition of us allowing you access to O2 Content that you accept that we will not be liable for any action you take in reliance on such Content.

4.6. O2 makes no representation and gives no warranty as to the quality, availability, suitability or timeliness of any Third Party Service or Third Party Content. O2 reserves the right to suspend or withdraw access to all or any such Third Party Services or Third Party Content on a temporary or permanent basis at any time. The Customer's use of such Third Party Services or access of Third Party Content is at the Customer's sole risk and O2 shall not be responsible or liable for any loss or damage suffered by the Customer arising from the use of such services.

4.7. Certain calls/services are excluded from the Service. We reserve the right to limit telephone numbers/services which can be accessed using the Service;

4.8. We may have to:

alter the number of your Mobile Phone, or any other name, code or number associated with the Service for reasons beyond our control such as where requested to do so by a governmental authority or regulatory body or where we reasonably believe that the alteration will enhance your use of the Service;

temporarily suspend the Service (or any part of it) for operational reasons or in an emergency or for your security;

bar certain numbers from the Service on a temporary or permanent basis in order to prevent fraud or in circumstances where we would suffer loss.

4.9. O2 may need to suspend or terminate the provision of Service to Mobile Phones that O2 reasonably deems to be obsolete. O2 will endeavour to notify you in advance of doing so.

## **5. Payment**

5.1. You pay for the Service by purchasing pre-paid credit, which you add to your Account.

5.2. As you use the Service, Charges are incurred and are deducted from the credit in your Account. When all the credit in your account has been used up, you will no longer be able to use chargeable Services until you Top-up your Account. This credit is a pre-payment by you to use the Service. It is not a loan to us by you, and we do not hold any such credit as trustee for you. Payments are not refundable.

5.3. You shall be liable for all Charges incurred on your Account, whether or not incurred by you personally, unless and up until you report it lost or stolen to us.

5.4. You may Top-up your Account using the Top-up methods made available from time to time. Terms and conditions apply to each of these methods. O2 has no liability for any delays in your Account being credited using any of the Top-up methods.

5.5. We may notify you when your Account reaches a certain minimum level.

5.6. We may limit the maximum amount you may Top-up your phone by certain Top-up methods;

5.7. You may not transfer your Account credit balance to a third party;

5.8. Your Price Plan is set out in the Welcome Book contained in the Pack, which are the Charges that apply at time of purchase. We reserve the right to alter the Price Plans and such updated Price Plan can be found on our Website or by calling customer care on 1747 (from your Handset) or 1850 60 1747 (from any other handset in Ireland).

5.9. If delays occur in updating your Account this may result in negative credit on your Account and an immediate reduction in credit when next you Top-up.

5.10. Should your access to the Service be suspended or terminated in any of the circumstances outlined in 7.1 or 7.2, we reserve the right to levy the then applicable connection fee for any reconnection to the Service.

5.11. Text Messages are charged per 160 character message. Each MMS text message is charged based on the volume of data sent. Whilst O2 will make every effort to ensure delivery of each message, due to the nature of mobile telecommunications, we cannot guarantee delivery and you will be charged even if not delivered. You acknowledge that if you send an MMS message, and the intended recipient is unable to access it for any reason, the message may be placed on [www.o2.ie](http://www.o2.ie) in a password-protected area to allow the recipient to see it.

## **6. Your Obligations/Responsibilities**

6.1. You agree:-

- That you are solely responsible for all uses of the Service and all Charges incurred on your Sim Card and Mobile Phone, whether used or incurred by you or a third party, unless and up until you report it lost or stolen to us
- The use by you of the Service is governed by the Acceptable Use Policy, which forms part of the Agreement.
- That all factual information you provide to us as part of your Registration is correct and complete;
- To take adequate precautions to prevent damage to, or unauthorised use, or theft of the SIM Card or your Mobile Phone;
- That the SIM Card is supplied to you under licence and shall at all times remain our property;
- To inform O2 immediately by telephone if the SIM Card or your Mobile Phone is lost, stolen, damaged or destroyed or likely to be used in an unauthorised manner and to cooperate with us in our reasonable security and other checks.

## **7. Our rights to suspend or terminate the Service.**

7.1. We may, without notice, suspend the Service to you wholly or partially where you fail to observe any of your obligation/responsibilities of the Agreement (and in particular the obligations referred to in Clause 6) or any relevant law.

7.2. We may terminate the Agreement and cease to provide the Service to you, where:-

- there is a serious failure by you to observe or perform any term or obligation of the Agreement (and in particular the Customer Obligations referred to in Clause 6) or any relevant law;

- You fail to rectify a situation which has given rise to a suspension of the Service under Clause 7.1 within 14 days of the suspension being imposed;
- You supply at any time false, inaccurate or misleading factual information
- if, for any reason, we are unable to provide the Service to you.
- we have reasonable cause to suspect fraudulent use of a credit card/debit card, your SIM Card or Mobile Phone;
- you inform that your SIM Card or your Mobile Phone is lost, stolen, damaged or destroyed

7.3. If you do not Top-up or make a chargeable use of your Account (being a use which results in a reduction of the credit on your Account or use of a pre-purchased Service such as Text Bundles or any other pre-purchased service that O2 may provide from time to time) at least once in any six (6) month period O2 reserves the right to suspend the Service. If your Account is suspended for seven (7) months the Service will be terminated and any credit left on your Account will be forfeited. If, following termination, you become an O2 customer again, you will not be allocated your previous number.

7.4. Upon suspension or termination of this Agreement, O2 shall disconnect you from the Network.

7.5. On termination, your number will be available for allocation to new O2 customers.

## **8. Exclusion and Limitation of Liability**

8.1. We have no liability to you other than to exercise the reasonable skill and care of a competent mobile telecommunications provider.

8.2. Insofar as it is permissible by law, we will not be liable for any injury, loss or damage, whether foreseen or unforeseen, directly resulting from:-

any failure, interruption, delay, suspension or restriction in providing the Service to you which is due to any act of God, government control restrictions or prohibitions, any other act or omission of any public or regulatory authority (whether local, national, international or supranational), an act of default of any supplier, agent or other person, strikes, work stoppages or labour disputes or any other cause whatsoever which is beyond our reasonable control;

any use which is unlawful or is in violation of the Agreement whether by you or any third party (whether such third party is authorised by you or not);

any reliance placed by you or any third party on the content of any call or message;

any suspension of the Service, restriction on use of the Service, or termination of the Agreement;

any loss, theft or malfunction of the SIM Card or Mobile Phone;

any claim arising in relation to the provision (or non-provision), maintenance or use of Network or Service or arising out of calls being dropped or messages of any kind being undelivered for any reason;

8.3. We will not be liable for any indirect or consequential loss or damage whatsoever, whether it is foreseen or unforeseen, including but not limited to loss of profits, data, revenue, business, anticipated savings or goodwill. Nothing herein shall have the effect of excluding or limiting our liability for death or personal injury resulting solely from our

negligent act or omission. Otherwise, any liability to you under this Agreement shall not exceed e750.00.

8.4. Except as expressly provided in this Agreement, all conditions, terms, warranties and representations whether express or implied by law in relation to the provision of the Service are excluded to the fullest extent permitted by law. Where you deal as a consumer, your statutory rights are not affected.

## **9. Number SIM Card and Mobile Phone**

9.1. You acknowledge that you have no proprietary rights to the Mobile Phone number or SIM Card allocated to you and you acknowledge our ownership of these and the fact that these are used by you on the basis of a license from us. We reserve the right to withdraw this number or SIM Card at any time.

9.2. The Mobile Phone and SIM Card is locked onto the Network, preventing use on any other network. Should you wish to use the Mobile Phone on any other network, or the SIM card in any other Mobile Phone, you must meet certain qualifying criteria before we supply you with an unlocking code. Such criteria may include a requirement that you top-up your Account to a minimum amount (in addition to any free credit which may have been provided to you). Details of this amount are available by calling customer care on 1747 (from your Handset) or 1850 60 1747 (from any other handset in Ireland).

## **10 Directory Services and Calling Line Identification**

10.1. Upon request by you we will include your name and Mobile Phone number in national directory enquiries the 'National Directory Database'. You may, when you request us to include your name and Mobile Phone number on the National Directory Database, also request that we indicate your preference on the National Directory Database to receive third party marketing calls on your Mobile Phone.

10.2. Our network may allow the display of your Mobile Phone number on receiving handsets, unless you have requested us to refrain from doing so.

## **11. Roaming**

You may only use the Service outside of the Republic of Ireland on networks with which O2 has a Roaming Agreement.

## **12. O2 Active Service and O2 i-mode® Service**

12.1. The following terms and conditions of the O2 Active Service are in addition to and form part of the Terms and Conditions. In the event of any conflict, these terms and conditions shall prevail.

12.2. The O2 Active Service enable you to access Content either by way of Downloading or by Streaming to a Mobile Phone, personal computer, personal digital assistant or other access device (an "Access Device").

12.3. Downloading is where a copy of the Content is installed onto your Access Device for future use you in accordance with the applicable terms and conditions.

12.4. Streaming is a live feed of data from an external source to your Access Device where no copy of the Content is installed onto your Access Device (other than temporarily to display the Content).

12.5. Where Content is delivered by way of Downloading, you may save the Content on your Access Device but (unless expressly permitted) you are prohibited from saving the Content elsewhere; and each request by you to download that Content (i.e. each copy sent to them) will be separately Charged.

12.6. Where Content is delivered by way of Streaming: you are prohibited from saving the Content on any device (including the Access Device); each request for that Content (i.e. each viewing) will be separately Charged.

12.7. You acknowledge and accept that the Content is protected by copyright, trade mark and other intellectual property rights. You are prohibited from editing or modifying the Content, copying, distributing or forwarding the Content to one or more third parties or allowing third parties to access it.

12.8. Prior to you requesting the O2 Active Service, you should ensure that: (a) your Access Device is compatible and appropriately enabled to receive the selected Content. (b) (where the Content is to be Downloaded) you have sufficient memory capacity available to receive and save the Content once Downloaded; (c) your Access Device remains switched on and connected to the Network for the duration of the Download/Streaming.

12.9. Your dealings with, and interest in, promotions, services, or merchants found by using the Internet, unless explicitly stated by us, are solely between you and the person with whom you are dealing. We will not be responsible for any losses or damages that may arise from any such dealings with third parties.

12.10. Access to secure financial transactions may be dependent on the make and model of your Access Device and the third party supplier of Content.

12.11. O2 i-mode® Service

Your use of the O2 i-mode® Service is governed by the terms and conditions of use furnished with your i-mode® Mobile Phone or Pack. i-mode® and the i-mode® logo are trademarks or registered trademarks of NTT DoCoMo, Inc. in Japan and other countries.

## **13 General**

13.1. This agreement represents the entire agreement between you and us in relation to the Service. It takes precedence over all prior agreements (oral or written), and all representations or other communication between you or us. Our dealers are not authorised by us to amend this Agreement or to agree any terms which is inconsistent with these Terms and Conditions;

13.2. The Agreement is personal to you. You may only transfer the Agreement with our written consent. You may transfer your Account with us to a third party provided you first telephone our O2 Customer Service number to tell us and the third party calls us to register with us. Once the third party has registered with us, he/she will be deemed to have accepted the terms and conditions. We shall be entitled to assign or transfer our rights under this Agreement or any part of it on the same terms to any third party.

13.3. Any waiver, delay or concession given to you by us does not affect our rights under the Agreement in any other way or our ability to enforce those rights at any later time;

13.4. If a clause or condition of this Agreement is not legally effective, the remainder of this Agreement shall be effective, and a clause or condition that is not legally effective will be substituted with a clause or condition of similar meaning or intention that is, or as close to that meaning or intention as is possible;

13.5. This Agreement is governed by laws of the Republic of Ireland and you and O2 agree to submit to the exclusive jurisdiction of the Courts of Ireland.