

# TERMS AND CONDITIONS FOR THE PROVISION OF TELECOM AND DATA SERVICES AND EQUIPMENT TO BUSINESSES ("THE CONDITIONS")

## DEFINITIONS

In this Agreement the words below have the meanings next to them unless the context requires otherwise:

|                                     |                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>We/ Us/ Our</b>                  | Infinity System Solutions Limited (No. 08819202) of Phoenix House, Desborough Park Road, High Wycombe, Buckinghamshire, HP12 3BQ                                                                                                                                                                                         |
| <b>You/ Your</b>                    | the individual, partnership, company or other organisation who wishes to be supplied with the Telecom Services and/or Equipment and is identified in the Quotation                                                                                                                                                       |
| <b>Act</b>                          | the Communications Act 2003 and any amendments to the Act from time to time or any subsequent substitution thereof                                                                                                                                                                                                       |
| <b>Agreement</b>                    | these Conditions and the Quotation                                                                                                                                                                                                                                                                                       |
| <b>Authorised Person</b>            | a person authorised by Us to carry out a function under the Agreement                                                                                                                                                                                                                                                    |
| <b>Broadband Service</b>            | Our broadband services including but not limited to Asymmetric Digital Subscriber Line (ADSL), Symmetric Digital Subscriber Line (SDSL), Multiple Protocol Label Switching (MPLS), VxDSL and Bonded xDSL, Fibre To The Cabinet (FTTC), Fibre To The Premises (FTTP) and Leased Line.                                     |
| <b>Connection Date</b>              | the date of the connection of each of the Telecom Services on Our network                                                                                                                                                                                                                                                |
| <b>Equipment</b>                    | any equipment We supply to You in accordance with this Agreement                                                                                                                                                                                                                                                         |
| <b>Initial Period</b>               | the minimum term for each of the Telecom Services detailed on the Quotation starting from the Connection Date                                                                                                                                                                                                            |
| <b>Intellectual Property Rights</b> | all patents, copyrights, design rights, trade marks, service marks, trade secrets, know how, database rights, moral rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world                                  |
| <b>IP Telephony Services</b>        | our Internet Protocol telephony services including but not limited to Voice over Internet Protocol (VoIP) Services and Session Initiated Protocol (SIP) Trunks and associated cloud voice and data services                                                                                                              |
| <b>Maintenance Services</b>         | any maintenance, upgrades and/or support related services for the System provided in accordance with clause 5.15 or as indicated on the Quotation                                                                                                                                                                        |
| <b>Property</b>                     | the site at which the System is to be installed and the Telecom Services are to be provided to You                                                                                                                                                                                                                       |
| <b>Quotation</b>                    | the quotation listing the Telecoms Services                                                                                                                                                                                                                                                                              |
| <b>Small Business Customer</b>      | as defined by OFCOM General Conditions from time to time and currently means a customer who is neither himself a communications provider nor a person who is a customer in respect of an undertaking carried on by him for which more than 10 individuals work                                                           |
| <b>Subsequent Period</b>            | 12 months                                                                                                                                                                                                                                                                                                                |
| <b>System</b>                       | any telephone system, comprised of items of Equipment, supplied by Us under this Agreement                                                                                                                                                                                                                               |
| <b>Technical Support Helpline</b>   | the telephone technical support helpline for Broadband Services (details of which are on the Website)                                                                                                                                                                                                                    |
| <b>Telecom Services</b>             | Our telecommunication and data services, offered from time to time including, but not limited to, Broadband Services, IP Telephony Services, Integrated Services Maintenance Services, Digital Network (ISDN), Public Switched Telephone Network (PSTN), Direct Connects, Leased Lines and Digital Subscriber Line (DSL) |
| <b>Website</b>                      | <a href="http://www.infinitysystemsolutions.co.uk">www.infinitysystemsolutions.co.uk</a>                                                                                                                                                                                                                                 |

|                      |                                                                                                                                                                         |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Working Day</b>   | Monday to Friday 9am-5pm not including public holidays                                                                                                                  |
| <b>Working Hours</b> | between 9am and 5pm on a Working Day                                                                                                                                    |
| <b>Your Material</b> | any documents, plans, drawings, specifications, details, pictures of any other record of information in any form provide by You to Us in connection with this Agreement |

## **1 DURATION**

- 1.1 The Agreement shall take effect from the date You sign the Agreement or verbally accept it.
- 1.2 The Agreement shall continue for the following term:
  - 1.2.1 If You are a Small Business Customer, for the Initial Period unless terminated in accordance with its terms or by either party giving to the other not less than THREE MONTHS' prior written notice. In order to be valid, such notice must not expire before the end of the Initial Period; or
  - 1.2.2 In all other cases, for the Initial Period and thereafter for further periods each equivalent to the Subsequent Period until terminated in accordance with its terms or by either party giving to the other not less than THREE MONTHS' prior written notice. In order to be valid, such notice must not expire before the end of the Initial Period or each Subsequent Period.
- 1.3 If You purport to terminate the Agreement before the expiry of the term stated in Clause 1.2 above, You will be regarded as having committed a material breach which is incapable of remedy, for the purposes of clause 10.1.2, and We may chose to terminate the Agreement in accordance with that clause and claim damages from You pursuant to clause 10.4.
- 1.4 If a Small Business Customer fails to renew their agreement prior to the end of the Initial Period, We reserve the right to set the tariff to our standard rates applicable from time to time without further notice.
- 1.5 You authorise Us to activate and provide the Telecom Services to You, and You will be responsible for the payment of all charges relating to the supply of the Telecom Services from the date on which the relevant Telecom Service becomes operational.
- 1.6 We shall use reasonable endeavours to activate the Telecom Services as soon as possible after the commencement of the Agreement or, where appropriate, the completion of the installation of the System (whichever is earlier) but We cannot guarantee that the Telecom Services will be activated by a particular date.
- 1.7 You shall not be entitled to change or cancel any Equipment You have ordered (as detailed in the Quotation) without Our prior written consent.

## **2 THE TELECOM SERVICES**

- 2.1 We shall provide You with the Telecom Services in accordance with this Agreement using reasonable skill and care.
- 2.2 BY ENTERING INTO THIS AGREEMENT, YOU APPOINT US AS THE EXCLUSIVE SUPPLIER OF THE TELECOM SERVICES AND YOU SHALL NOT APPOINT A THIRD PARTY TO PROVIDE SERVICES SIMILAR TO OR IDENTICAL TO "THE TELECOM SERVICES" WITHOUT OUR PRIOR WRITTEN CONSENT (SUCH CONSENT WILL NOT BE WITHHELD WHERE WE ARE UNABLE TO PROVIDE THE SERVICES OFFERED BY THE THIRD PARTY).
- 2.3 We are willing to enter into this Agreement principally because of the monthly call spend which We anticipate You will generate. If at any time Your monthly call spend falls beneath 75% of the anticipated monthly call spend (other than due to circumstances beyond Your reasonable control), You will be regarded as having committed a material breach which is incapable of remedy, for the purposes of clause 10.1.2.
- 2.4 We cannot guarantee that the Telecom Services will operate free from any faults, however, where We are responsible, We shall use reasonable endeavours to correct faults as soon as is reasonably practicable and in accordance with any Maintenance Services which We have agreed to supply to You. Some faults in the Telecom Services will not be under Our control because they are due to a problem in a network or equipment provided by third parties. As a result, We are unable to guarantee that the Telecom Services will be secure, uninterrupted or error free, or that You will be able to access the Telecom Services at all times.
- 2.5 The parties acknowledge that in entering into this Agreement they have not relied on any representation, warranty, agreement or statement not set out in this Agreement and that (in the absence of fraud) the only remedy available for breach of this Agreement, is for breach of contract.
- 2.6 Where We allocate a telephone number to You as part of the Telecom Services, You acknowledge that You will not acquire legal, equitable or other rights in relation to any such telephone numbers. We reserve the right to withdraw or change any such telephone numbers at any time.

### **3 USE OF THE TELECOM SERVICES AND THE SYSTEM**

- 3.1 You shall be responsible for the proper use of the Telecom Services and any System which we supply and in particular You agree:
- 3.1.1 not to cause any attachments other than those approved for use with the Telecom Services and/or the System to be connected to the Telecom Services and/or the System (if You have any queries regarding the suitability of attachments, You should contact Us);
  - 3.1.2 not to contravene any applicable laws or any relevant regulations, authorisations or licences in using the Telecom Services and/or the System;
  - 3.1.3 to use the Services in accordance with the Act and Our acceptable use policy and fair usage policy (see Appendix 1 below).
- 3.2 Your equipment shall at all times conform to any relevant standard(s) for the time being for such equipment and the Telecom Services and We shall not be under any obligation to connect or keep connected any of Your equipment if it does not conform or if in Our reasonable opinion it is liable to cause death, personal injury, damage or to impair the quality of any Telecom Services provided by Us.
- 3.3 You shall not resell the Telecom Services and shall ensure that nobody at the Property uses the System or the Telecom Services:
- 3.3.1 as a means of communication for a purpose other than that for which the Telecom Services and/or the System are provided, and
  - 3.3.2 for any purposes which are unlawful, offensive, abusive, obscene, indecent, threatening, menacing, defamatory, a nuisance, an annoyance, an inconvenience, a hoax or which are intended to cause distress or worry;
  - 3.3.3 fraudulently or in connection with a criminal offence or in violation of a person's rights
  - 3.3.4 contrary to a reasonable instruction given by Us or an Authorised Person;
  - 3.3.5 to knowingly make available or upload, files that contain software or other material, data or information not owned by or licensed to You;
  - 3.3.6 to knowingly make available or upload files that contain a virus or corrupt data;
  - 3.3.7 to falsify the true ownership of software or other material or information contained in a file that You make available via the Broadband Service;
  - 3.3.8 to "spam" or deliberately abuse any part of the network used to provide the Telecom Services;
  - 3.3.9 in a manner which allows third parties to interfere with or corrupt the Broadband Service and/or the network;
  - 3.3.10 to obtain access to notified restricted areas of the network used to provide the Telecom Services.

### **4 ACCESS TO PREMISES AND PROVISION OF INFORMATION**

- 4.1 To enable Us to perform Our obligations under this Agreement:
- 4.1.1 You will ensure that We and any Authorised Person have the necessary access to the Property and all facilities, equipment and telephone lines in order to satisfy Our rights and obligations under this Agreement, including a right to remove Our Equipment when the Agreement ends. You will also give Us and any Authorised Person such assistance as may reasonably be requested;
  - 4.1.2 wherever appropriate, You duly authorise Us, or an Authorised Person, to program and/or remove existing access equipment, in order to enable Us to install the System and provide the Telecom Services;
  - 4.1.3 We or an Authorised Person will normally carry out work by appointment on a Working Day, but where necessary may request You to provide access to the Property at other times;
  - 4.1.4 at Your request, We may agree to work other than on a Working Day and/or outside Working Hours, provided that You pay Our reasonable charges for complying with such a request; and
  - 4.1.5 You will provide such information as We reasonably require.
- 4.2 You warrant:
- 4.2.1 the accuracy and suitability of Your Material, any instruction or advice submitted by You or any third party on Your behalf in relation to the Equipment and/or the Telecom Services at any time;
  - 4.2.2 that You shall at Your own expense provide Us with Your Material within a sufficient time to enable Us to perform Our obligations under this Agreement;
  - 4.2.3 You shall secure and pay for all necessary mains power supply, wayleaves, permits and/or any network charges;
  - 4.2.4 You shall use and maintain the System and any Equipment installed by Us under this Agreement with all reasonable care and keep it dry, clean, free from dust and extremes of temperature and protected from all harmful materials.
- 4.3 You shall indemnify Us in full and on demand against all loss, damages, costs (including professional fees) and expenses awarded against or incurred, suffered or sustained by Us as a result of a breach by You of Your obligations under clause 4.2.
- 4.4 We reserve the right not to use any of Your Material which We deem to be inappropriate, or, to make any changes in the specification of the Equipment which are required for the Equipment to comply

with any applicable statutory or regulatory requirements, or where the Equipment is to be supplied to Our specification, which do not materially affect its quality or performance.

## **5 THE EQUIPMENT**

- 5.1 Unless otherwise agreed in writing by Us, all specifications and particulars of the Equipment provided by Us are approximate only and any samples, drawings, models, illustrations or other descriptive matter, whether contained on the Website, catalogues, price lists or otherwise shall be regarded as indicative only and not binding as to detail.
- 5.2 Unless otherwise agreed in writing by Us, We shall deliver the Equipment and carry out the installation of the System (the "Installation Services") at the Property. We shall use Our reasonable endeavours to agree a date for the installation of the System with You but any date is an estimate only and shall be subject to You and/or any relevant third parties acting on Your behalf performing any necessary acts and/or, where necessary, supplying Your Material and facilities in due time to enable the delivery of the Equipment and the performance of the Installation Services. We shall not be liable for any delay in the delivery of the Equipment and/or the performance of the Installation Services however caused and time for delivery and installation shall not be of the essence. The Equipment may be delivered and/or the Installation Services performed by Us in advance of the quoted delivery date on giving You reasonable prior notice.
- 5.3 If We fail to deliver the Equipment and/or perform the Installation Services for any reason other than any cause beyond Our reasonable control or Your fault, any liability on Our part shall be limited to the cost (if any) to You (in the cheapest available market) of similar equipment and installation services over the price of the Equipment and the Installation Services.

### Title and Risk

- 5.4 Any Equipment supplied by Us further to a rental agreement remains Our property and must be made available for collection on expiry or termination of this agreement.
- 5.5 Except as may be otherwise agreed with Us in writing and subject to Clause 5.4, risk of damage to or loss of the Equipment shall pass to you on the installation of the Equipment.
- 5.6 Notwithstanding the installation and the passing of risk in the Equipment, or any other provision in this Agreement, title in the Equipment shall not pass to You until We have received payment in full of the price of the Equipment and/or the Installation Services and all other equipment sold or agreed to be sold by Us to You for which payment becomes due. Where the cost of any Equipment is not paid upfront and is included as part of the monthly cost for the Telecom Services, title to the Equipment shall only pass on the expiry of the Initial Period.
- 5.7 Until such time as the title in the Equipment passes to You, You shall hold the Equipment on our behalf and shall keep the Equipment separate from any other equipment at the Property and properly stored, protected and insured for its full price and identified as Our property. Subject to Your obligations under this clause 5.7, You may use the Equipment in the ordinary course of Your business.
- 5.8 Upon request by Us in writing, You shall disclose to Us the location of any of the Equipment which remains Our property. Until title in the Equipment passes to You, We may at any time require You to deliver up the Equipment to Us and if You fail to do so, You grant Us or any Authorised Person an irrevocable licence to enter the Property or any third party premises where the Equipment is stored and repossess the Equipment. You will indemnify Us in full for all costs and expenses, liabilities or expenses incurred or due to such third party and arising out of the exercise by Us of our rights pursuant to such licence.
- 5.9 You shall not be entitled to sell, lease, hire, loan, give others the use of, pledge or in any way charge by way of security for any indebtedness any of the Equipment which remains Our property, and if You do so, all monies owing by You to Us (whether under this Agreement or otherwise and without limiting any of Our rights or remedies) shall become immediately due and payable.
- 5.10 You shall immediately notify Us in writing upon the occurrence of any of the events in Clause 10.1.1 and/or upon any third party asserting or attempting to assert any claim over any of the Equipment which remains Our property. You shall notify any creditor, trustee in bankruptcy, administrator, liquidator, receiver or third party (as the case may be) of Our rights of ownership of the Equipment.

### Equipment Warranty

- 5.11 Subject to clauses 5.12 to 5.14 (inclusive), We warrant to You that the Equipment will correspond with any agreed specification at the date We complete installation and for a period of 12 months from that date and that the Installation Services and the Maintenance Services will be performed with reasonable care and skill.
- 5.12 We shall have no liability for any loss, damage, costs, expenses or other claims:

- 5.12.1 in respect of any defect in the Equipment and/or the performance of the Installation Services and/or the Maintenance Services arising from any instructions, advice, Your Material or other information supplied by You or any third party on Your behalf which is incomplete, inaccurate, illegible, out of date, out of sequence or in the wrong form, or arising from their non-arrival or any other fault caused by You;
- 5.12.2 in respect of any defect arising from wilful damage, negligence, failure to follow Our instructions, misuse or alteration of the Equipment without Our prior written approval;
- 5.12.3 if You have not paid for the Equipment, and/or the Maintenance Services in full by the due date for payment;
- 5.12.4 for Equipment not manufactured by Us, in respect of which You shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Us.
- 5.13 Any claim by You under the warranty in clause 5.10 must be notified to Us within 14 days from the date of completion of the installation of the Equipment or, where the defect or failure was not apparent on reasonable inspection, within 21 days of the failure becoming apparent. If the Equipment is not refused and You do not notify Us within such 14 day period, You shall not be entitled to reject the Equipment and You shall be bound to pay the price as if the Equipment had been supplied and installed in accordance with this Agreement. If, having given notice of any rejection of the Equipment, You deal with the Equipment as owner or if Your conduct is inconsistent with such rejection or with the ownership of the Equipment by Us, You shall be deemed to have accepted the Equipment, and be bound to pay for it. If You do not notify Us within such 21 day period of any defect or failure of the Equipment which subsequently becomes apparent, We shall have no liability for such defect or failure.
- 5.14 Where a valid claim in respect of any of the Equipment which is based on a defect in the quality or condition of the Equipment or its failure to meet the specification or any defect in the Installation Services or the Maintenance Services is notified to Us in accordance with this Agreement, We may at Our sole discretion:
- 5.14.1 replace and/or modify the Equipment and/or make good any defect in the Installation Services or the Maintenance Services free of charge;
- 5.14.2 refund to You the price of the Equipment and/or the Installation Services or the Maintenance Services (or a proportionate part of the price); or
- 5.14.3 issue You a credit on any amount invoiced equal to the price of the Equipment and/or the Installation Services or the Maintenance Services (or a proportionate part of the price) in which case We shall have no further liability to You.

#### Maintenance Services

- 5.15 You shall ensure that any System is continuously maintained by a maintainer approved in writing by Us. Unless you provide evidence of satisfactory maintenance cover within 7 days of installation of the System, We will provide Maintenance Services to you at the cost detailed below for the duration of the Agreement save that the first 3 months Maintenance Services will be provided free of charge. You shall not allow anyone else to carry out maintenance on the System without Our prior consent. Maintenance Services will only be carried out on any System supplied by Us under this Agreement. Whenever an upgrade to the System is required due to operational or technical reasons, We shall carry out the upgrade at Your cost, calculated at our standard rate then in force.
- 5.16 The annual charge for the Maintenance Services covers remote telephone and online support and the cost of minor parts (subject to clause 5.21). Such telephone and online support is subject to a limit of 3 hours in any calendar month.
- 5.17 You agree to notify Us of (i) any fault in any Maintenance Services carried out by Us and (ii) of any fault in any System which is subject to the Maintenance Services. We will use Our reasonable endeavours to fix any reported fault in the System either by telephone or by remote access to the System. Where We reasonably consider that it is appropriate we will arrange for an engineer to visit the Property.
- 5.18 We shall undertake any adjustments or repairs necessary to the System on the following terms:
- 5.18.1 We shall undertake the Maintenance Services only on Working Days (with the exception of Gold Plus Cover) unless otherwise agreed by Us in writing;
- 5.18.2 where it is necessary to send an engineer to the Property We shall use Our reasonable endeavours to respond to reported faults within the following response times:

| Cover               | Details of Cover                                                                                                                                                                                                                      | Cost of Cover**                                                                                                            |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| <b>Silver Cover</b> | <ul style="list-style-type: none"> <li>Monday to Friday; 9:00am to 5:00pm excluding Bank holidays.</li> <li>16 working hours response on all non-critical faults</li> <li>4 working hours response on all critical faults*</li> </ul> | <ul style="list-style-type: none"> <li>7.5% per annum of the total system cost (including any initial payment).</li> </ul> |

|                        |                                                                                                                                                                                                                                                                           |                                                                                                                             |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| <b>Gold Cover</b>      | <ul style="list-style-type: none"> <li>Monday to Friday; 9:00am to 5:00pm excluding Bank holidays.</li> <li>Saturday; 9:00am to 1:00pm</li> <li>12 working hours response on all non-critical faults</li> <li>3 working hours response on all critical faults*</li> </ul> | <ul style="list-style-type: none"> <li>12.5% per annum of the total system cost (including any initial payment).</li> </ul> |
| <b>Gold Plus Cover</b> | <ul style="list-style-type: none"> <li>Monday to Saturday; 9:00am to 5:00pm including Bank Holidays</li> <li>8 working hours response on all non-critical faults</li> <li>3 working hours response on all critical faults*</li> </ul>                                     | <ul style="list-style-type: none"> <li>17.5% per annum of the total system cost (including any initial payment).</li> </ul> |

\* Critical fault is defined as 70% or more of lines or extensions out of service

\*\* Subject to a minimum monthly payment of £56.92 plus VAT. The cost of the maintenance cover will increase by 5% per annum with effect from the first anniversary of the Agreement.

5.18.3 in this clause "response time" shall mean the time by which we will respond to Your notification of a fault in the System and not the repair of the fault. We shall use Our reasonable endeavours to rectify any reported faults as soon as possible;

5.18.4 where it is necessary to send an Engineer to the Property or where you request an Engineer to attend the Property and the fault is not relating to the System, We will charge You:

5.18.4.1 a call-out fee; and

5.18.4.2 for the time spent by any Engineer at the Property

both such charges shall be at Our standard rates from time to time in force.

5.19 You shall be liable to Us for the full cost of any aborted visits to the Property at Our standard rates then in force.

5.20 All alterations, additions or modifications to the System may only be carried out by Us or an Authorised Person. We may terminate this Agreement immediately by serving notice in writing in the event that You are in breach of this provision and You shall remain responsible for the balance of any Charges for Maintenance Services for the remaining term of the Agreement.

5.21 We shall use Our reasonable endeavours to supply minor spare parts and replacement components required to maintain the System in good working order as part of Our Charges for the Maintenance Services. If We determine that (i) the total cost of minor spare part(s) exceeds £25 per visit or, where there are a series of visits, 60% of our annual Charges for the Maintenance Services; (ii) the System requires replacement parts or components other than as a result of fair wear and tear or (iii) the System requires the replacement of a major part or component, We reserve the right to charge You for the cost of such parts and labour to install.

5.22 All spare parts and replacement components supplied by Us shall become part of the System and any parts or components removed from the System shall belong to Us, unless otherwise agreed in writing between the parties.

5.23 If it is necessary to move the System or any part of it from the Property in order to carry out Maintenance Services and this substantially affects the operations of Your business, We shall use all reasonable endeavours to loan You an equivalent System or part of a System while we carry out the Maintenance Services.

5.24 The Maintenance Services shall not apply to any design defect in the System, nor any defect or malfunction which is due to faulty materials or workmanship in manufacture, or which in Our opinion has arisen as a result of:

5.24.1 electrical work external to the System;

5.24.2 transportation or relocation of the System not performed by or on Our behalf;

5.24.3 any error or omission in relation to the operation of the System;

5.24.4 any modification, adjustment or repair to the System made by You or a third party without Our prior written consent;

5.24.5 the subjection of the System to unusual physical or electrical stress, the neglect or misuse of the System or any failure or fluctuation of electrical power, air conditioning, humidity control or other environmental controls;

5.24.6 any other cause (except the fair wear and tear) which is not due to the neglect or default of Us.

5.24.7 an error caused by You; or

5.24.8 any failure or defective working of the Equipment due to any fault, failure or change in the electricity supply and/or Network service and connections and/or host PABX systems.

The above faults or damage which are outside the terms of the Maintenance Services may be repaired by Us at Your cost, calculated at our standard rate then in force.

- 5.25 The wiring between the network connection point as defined in the relevant legislation and any extension socket is covered by this Agreement providing it meets BS6701 requirements. Any underground or overhead routes unless specified and costs agreed on the Quotation will not be covered under this Agreement. The cost of any repairs to site wiring other than for a fault in correctly installed wiring shall be borne by You at Our current charging rates for materials from time to time in force. Extension sockets that are found to be faulty will be replaced with Our standard socket and faceplate. If You require faceplates to match décor, you will be liable for any additional costs.
- 5.26 If We reasonably determine that there is no fault or that any defect in or malfunction of the System is the result of any of the matters referred to in clause 5.24, You shall be liable for all Our costs in attending the Property, investigating the fault and determining its cause.
- 5.27 If any part of the System can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the System is damaged beyond economic repair (otherwise than as a result of Our breach of this Agreement), We reserve the right to terminate the performance of the Maintenance Services with immediate effect by notice in writing in respect of the whole or any part of the System which can no longer be maintained, in which case We shall repay to You a fair proportion of any Charges for the Maintenance Services which have been paid in advance.
- 5.28 You shall:
- 5.28.1 at all times keep the System in the environmental conditions recommended by the manufacturer of the System;
  - 5.28.2 not move the System from the Property without obtaining Our prior written consent;
  - 5.28.3 use the System only in accordance with such instructions and recommendations relating to the care and operation of the System as may be issued by the manufacturer of the System or as may from time to time be advised by Us;
  - 5.28.4 not allow any person other than Us or any Authorised Person to adjust, maintain, repair, replace or remove any part of the System;
  - 5.28.5 You shall keep all records of equipment, installation details and visit reports in a site log folder for reference to, by Us.
- 5.29 You shall ensure that any Authorised Person has full and free access to the System and to any records of its use kept by You to enable Us to perform the Maintenance Services.
- 5.30 You shall provide Us with such information concerning the System, its application, use, location and environment as We may reasonably request to enable Us to carry out the Maintenance Services.
- 5.31 You shall take all such steps as may be necessary to ensure the safety of Us and each Authorised Person who visits the Property.
- 5.32 The following Equipment and services are excluded from the terms of the Maintenance Services:
- 5.32.1 Cordless handsets (DECT) and batteries;
  - 5.32.2 Non-system terminals, for example, SLT handsets, i.e. PDQ's, modems, faxes, and loud ringing bells;
  - 5.32.3 Additional programming (including remote modem access changes) and the resolving and support of non-system terminals (such services to be charged at our standard rate then in force);
  - 5.32.4 Overhead and underground cables;
  - 5.32.5 ADSL and Network related issues.

## **6 SUSPENSION OF SERVICES AND CHANGES**

- 6.1 We may at Our sole discretion suspend immediately the provision of the Telecom Services and/or the Maintenance Services until further notice with no obligation to give the reason for such suspension. We will endeavour to give reasonable notice where practicable.
- 6.2 You will reimburse Us for all reasonable costs and expenses incurred by the implementation of such suspension and/or the recommencement of the provision of the Telecom Services and/or the Maintenance Services as appropriate. This shall not apply where the suspension is implemented otherwise than due to Your breach or fault or omission.
- 6.3 Occasionally We may have to:
- 6.3.1 change the technical specification of the Telecom Services or the codes or numbers allocated to You for operational reasons or to comply with safety, regulatory or statutory requirements;
  - 6.3.2 interrupt the Telecom Services for operational reasons, such as repairs, maintenance or improvements or because of an emergency or a legal obligation to comply with an order, instruction or request of a government or other competent authority;
  - 6.3.3 give You instructions that We believe are necessary for health or safety, or for the quality of the Telecom Services that We supply to You or to other customers.
- 6.4 If We have to interrupt or suspend the Telecom Services and/or the Maintenance Services for operational reasons We will restore them as quickly as it can.

## **7 INTELLECTUAL PROPERTY RIGHTS**

### **7.1 The Intellectual Property Rights in:**

- 7.1.1 Your Material shall (subject to the rights of any third party) belong to You; and
- 7.1.2 any documents, plans, drawings, specifications and data provided by Us ("Our Materials"), or anything produced or used by Us in the supply of the Equipment and/or the Telecom Services, the Quotation, and/or this Agreement shall vest solely with Us and may not be reproduced without Our prior written consent.

7.2 You warrant that Your Material and its use by Us for the purposes of this Agreement will not infringe the Intellectual Property Rights or other rights of any third party and You shall indemnify Us in full and on demand against all losses, damages, legal fees, costs, expenses or other claims arising from any such infringement or alleged infringement.

7.3 In the event of any claim or action against Us on the grounds that the Equipment infringes the Intellectual Property Rights of any third party, We may, at Our sole discretion and where the infringement arises from Our Materials, replace or modify the Equipment or terminate the Agreement or part of the Agreement without any further liability to You.

7.4 You shall promptly notify Us of any claim or action by a third party alleging the Equipment infringes any Intellectual Property Rights. In the event of any such claim or action against You arising as a result of Our alleged infringement, We shall be entitled to defend such action or take legal action against that third party or take any such action that We deem appropriate and You agree to give Us Your full co-operation in respect of any such action.

## **8 LIABILITY**

8.1 Nothing in this Agreement shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or that of Our employees while acting in the course of their employment.

8.2 If the Telecom Services fail to operate and You switch to another supplier, We will not be responsible for that supplier's charges. You will switch back to Us as soon as reasonably practicable once the Telecom Services are operating.

8.3 We shall not be liable to You by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law or under the express terms of this Agreement for any loss of revenue, profit, opportunity, goodwill, data, business, contracts, anticipated savings or any indirect or consequential loss or damage howsoever arising in connection with this Agreement (whether by breach of contract, tort, breach of statutory duty or otherwise of Us, Our employees, agents or subcontractors).

8.4 Our liability (whether for breach of contract, tort, breach of statutory duty or otherwise) arising out of or in connection with the performance or non-performance of Our obligations under this Agreement shall be limited to the higher of any amount recovered by Us under a relevant policy of insurance or £500,000 in respect of any one incident or a series of related incidents and £1,000,000 in total in any 12 month period.

8.5 You shall indemnify Us against any claims, losses, expenses, damages and liability incurred by or awarded against Us arising out of any act, omission or breach by You, Your employees, agents or subcontractors relating to the Telecom Services, the supply of Equipment, Installation Services and Maintenance Services and/or this Agreement.

8.6 Neither party shall be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control ("**Force Majeure**") including without limitation any act of God, inclement weather, failure or shortage or power supplies, flood, drought, lightning, fire, strike, lock-out, trade dispute or labour disturbance, terrorism, any act or omission of Government, highways authorities, other public telecommunication operators or other competent authority, or failure of supply of services by third parties. This clause 8.6 shall not apply to a requirement on either party to pay a sum to the other.

8.7 In accordance with Clause 13, You will be liable for any fraudulent activity arising at Your Property. Controlling unauthorised access (including fraudulent access) to PBX, trunking or other equipment or resource shall be Your sole responsibility.

## **9 CHARGES AND PAYMENT**

9.1 You must pay Our charges for the Telecom Services and, where applicable, the Equipment, the Installation Services and the Maintenance Services ("the **Charges**"). You can request the details of the applicable Charges from Our Customer Care Department. We may change the Charges at any time upon giving You at least 14 days prior notice, provided that in exceptional circumstances we may change the Charges on less than 14 days notice. Such exceptional circumstances may include where Our suppliers change their charges to Us on less than 14 days notice.

- 9.2 Where a Monthly Service Charge is detailed on the Quotation, this is the minimum amount payable by You per month for the term of the Agreement. If you decide to cease or transfer any of the services for any reason the Monthly Service Charge will not be varied. Any additional Telecom Services not included within the Monthly Service Charge will be charged at the agreed rate.
- 9.3 In addition to the Charges, You shall pay Us any additional sums which are agreed by Us and You, or any sums which, in Our sole discretion are required, including, without limitation as a result of:
- 9.3.1 any change in delivery and installation dates, designs, quantities or specifications for the Equipment which is requested by You;
  - 9.3.2 any delay caused by Your instructions or Your failure to give Us adequate information or instructions;
  - 9.3.3 unexpected or unforeseen complications arising;
  - 9.3.4 the inaccuracy of Your Material;
  - 9.3.5 any other cause attributable to You.
- 9.4 You remain liable for all Charges whether You or someone else used the Telecom Services and whether the Telecom Services were used with Your knowledge and consent or otherwise including but not limited to fraudulent calls made by rogue callers and calls made by any third party who had gained unauthorised access to Your Equipment. Any calls that are routed by any means beyond Our control and for which You are invoiced by another communications provider remains Your responsibility.
- 9.5 Unless otherwise detailed on the Quotation, calls are subject to a minimum call charge (currently 4.8ppm) and/or a connection charge (currently 2ppm local/national and 7ppm mobiles).
- 9.6 Whether payment of the Charges is in advance or in arrears generally depends upon the nature of the Telecom Services or other services selected. However, We reserve the right to require You to pay the Charges in advance. Any Charges for the Maintenance Services shall be billed monthly in advance.
- 9.7 You agree to pay all Charges billed by Us within 14 days of the date of each bill by direct debit unless alternative terms are agreed in writing by Us at the time the Agreement is entered into. If you do not pay the Charges when they fall due We may, at Our sole discretion, immediately suspend the provision of the Telecom Services and/or the Maintenance Services until the Charges have been paid in full.
- 9.8 Where BT Openreach charges Us for repairs (and/or engineering call out to Your Property), We reserve the right to invoice You for the amount together with an administration fee.
- 9.9 You shall sign and maintain for the duration of the Agreement a variable direct debit mandate which will enable Us to withdraw the amount of the Charges from Your nominated bank account. If You allow a direct debit mandate to lapse, We reserve the right to charge an additional fee to cover any administrative costs which we incur in collecting payment by alternative means.
- 9.10 You understand and agree that any adjustment to any System used by You will require an adjustment in the Charges for the Maintenance Services and We reserve the right to implement any such adjustment at any time. Notwithstanding the foregoing, We reserve the right to adjust, without notification, the Charges for the Maintenance Services at the end of each 12 month period from the date of the Agreement.
- 9.11 If at any time during the Agreement We have reasonable cause to doubt Your credit worthiness, We may require You to make payment in advance of the whole or part of the Charges for Equipment and/or the Telecom Services, or at Our discretion to provide reliable security to the value of such sum or sums as are owed or will become payable to us under the Agreement.
- 9.12 We shall prepare and send bills for usage Charges in such form and manner as shall be agreed between You and Us (or in the absence of agreement, as determined by Us). Usage Charges payable by You shall be calculated with reference to data recorded, logged or obtained by Us whether or not the Telecom Services have been used by or with Your authority and irrespective of any fraud and not by reference to any data logged or recorded by You.
- 9.13 All sums referred to in this Agreement are exclusive of Value Added Tax and any other taxes of a similar nature which may from time to time be introduced, and which shall be charged in addition.
- 9.14 If this Agreement is terminated part way through a month, no refund shall be due to You and nor shall We pro rata any Charges payable by You in respect of that month for the Telecom Services, Maintenance Services and/or the Equipment.
- 9.15 If You fail to make payment of any amount on the due date then, without limiting any other right or remedy available to Us, We may:
- 9.15.1 terminate the Agreement or suspend any further deliveries of Equipment and/or performance of the Maintenance Services and/or the Telecom Services to You and We shall have no liability to You in respect of the suspension, nor in respect of any loss or damage caused to You as a result of it; and/or

- 9.15.2 appropriate any payment made by You to such of the Equipment (or any equipment supplied under any other agreement between Us and You), Maintenance Services and/or Telecom Services or any additional sums payable as We may think fit (notwithstanding any purported appropriation by You); and/or
- 9.15.3 charge You for all the legal or debt collection costs incurred by Us (both in and out of Court) which shall be a minimum of 15% of the unpaid amount on a full indemnity basis.
- 9.16 In addition to the Charges, and any Termination Fee due pursuant to clause 10.4, the following sums shall be payable to Us by You:
  - 9.16.1 If You request Us to cease any Broadband Service or you instruct another communications provider to transfer your Broadband Service, You will pay a "Cease Service Charge" of £39.34 per broadband line for ADSL products and £80 per broadband line for fibre products;
  - 9.16.2 If you request to port any number you will be charged a fee of £12.50 per number (which includes each individual CLI and DDI) or £25 per mobile number;
  - 9.16.3 in order to provide the Maintenance Services, the Software Assurance Licence for the System must be up to date. The Software Assurance Licence shall be updated annually and the cost of the same will be added to your invoice at the standard rate;
  - 9.16.4 "Select Services" charged at £1.99 per calendar month in respect of maintenance charges for any router supplied by Us;
  - 9.16.5 If you move address and request the transfer of any Broadband Service to your new address, We will charge the following moving fee:
    - 9.16.5.1 £39.34 for all ISS2+SOHO and ISS2+Business products;
    - 9.16.5.2 for all ISS Fibre and ISS Fibre products, if within the first 12 months £80.00, otherwise £39.34;
    - 9.16.5.3 £399.34 for all ISS Business Connect products;
  - 9.16.6 We will charge £69.94 to reinstate Broadband Services that have been ceased due to non payment;
  - 9.16.7 You will be charged for any visit by an Openreach SFI Engineer (including an abortive visit) based on Openreach's current charge at the time of drafting being £135.24 for ADSL service and £165.21 fibre service including, but not limited to, the following circumstances:
    - 9.16.7.1 where an engineer attends an incorrect address which has been provided by You;
    - 9.16.7.2 where the engineer established that the fault does not lie with the Broadband Service;
    - 9.16.7.3 where the fault is found to be with Your equipment;
    - 9.16.7.4 where You refuse Us entry to carry out the agreed work;
    - 9.16.7.5 where You advise Us at the point of installation that you no longer want the Broadband Service;
    - 9.16.7.6 if You seek to change or amend Your order less than 24 hours prior to the agreed installation/live date (as applicable).
  - 9.16.8 You will be charged a fee for failure to return a router. This charge will vary depending on the service however will be in the region of £400 per router;
  - 9.16.9 Postage and packing for the sending or returning of any Equipment will be charges at £9.95.

## **10 TERMINATION**

- 10.1 We can suspend the Telecom Services and/or the Maintenance Services or end the Agreement in whole or in part at any time without giving advance notice to You if:
  - 10.1.1 a liquidator (other than for the purpose of amalgamation or reconstruction), trustee in bankruptcy, administrator, receiver or receiver and manager is appointed in respect of the whole or part of Your assets and/or undertaking or You enter into an arrangement or composition with Your creditors, or if You become unable to pay Your debts within the meaning of S123 of the Insolvency Act 1986 or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order;
  - 10.1.2 You are materially in breach of a term of the Agreement and upon being given notice of that breach in writing fail to remedy that breach, if capable of remedy, within 14 days; or
  - 10.1.3 an event of Force Majeure (as referred to in clause 8.6) prevents a party from performing its obligations under this Agreement for a continuous period of 30 days or more.
- 10.2 Notwithstanding anything to the contrary in the Agreement, We (without prejudice to Our rights) may terminate this Agreement immediately if any authorisation or licence under which You have the right to run Your telecommunication system and connect it to Our system is revoked, amended or otherwise ceases to be valid.
- 10.3 If the Agreement is terminated for any reason, You shall return any Equipment which You have not paid for in full and, except as otherwise provided in this Agreement, shall pay any outstanding charges or costs to Us within 14 days of the date of termination of this Agreement.
- 10.4 Where We terminate this Agreement under clause 10.1.2, without prejudice to any other claims We may have, We may claim our loss of profit arising from such termination calculated by the formula:

$$\text{Termination Fee} = (A \times B) + (C + D)$$

Where:

- 10.4.1 A equals the remainder of the Initial Term or Subsequent Period (as appropriate) for each of the Telecom Services plus any un-served notice period (where appropriate); and
- 10.4.2 B equals the Company's gross margin earned on the Average Monthly Charges; and
- 10.4.3 C equals any early termination charges from Your previous communications provider which were paid by Us on Your behalf (or credited to Your account with Us) or any connection charges levied by our suppliers; and
- 10.4.4 D equals any costs levied by Our suppliers as a result of the termination of this Agreement; together the "**Liquidated Damages**".

The Average Monthly Charges shall be the average of the Charges billed by Us during the 6 months immediately prior to such termination of the Agreement, plus an administration fee of £100. Where such termination is within 6 months of the commencement of the Agreement, the Average Monthly Charges shall be an amount equal to Our standard Charges, for those Services listed on the Quotation, together with an amount equal to Your estimated call spend. The Customer agrees that the Liquidated Damages shall be recoverable by the Company as a debt due from the Customer and agrees that the Liquidated Damages are a genuine pre-estimate of the loss of profit likely to be suffered by the Company.

- 10.5 If We suspend the provision of the Telecom Services and/or the Maintenance Services due to the reasons set out in clause 10.1.1, title of the telephone numbers will revert to Us and cannot be transferred away from Us without our prior written consent and may be subject to a transfer fee. The Telecom Services and/or Maintenance Services may, at Our sole discretion, be reinstated if We receive:
  - 10.5.1 an undertaking for payment signed by a liquidator, administrator, trustee in bankruptcy (or such other persons as We consider suitable); or
  - 10.5.2 a new signed Agreement.

## **11 IP TELEPHONY SERVICE**

The provisions of this clause 11 apply where the IP Telephony Service is provided by Us.

- 11.1 In selecting the IP Telephony Service You acknowledge that the IP Telephony Service may not offer all of the features of a traditional phone line and may sometimes be unavailable as a result of things outside Our control, for example, power disruptions and failures of Your Internet Service Provider or broadband connection. You must maintain Your broadband connection or other connections e.g. leased lines, SIP trunks etc. in order to use the IP Telephony Service.
- 11.2 **IMPORTANT** - If the IP Telephony Service is fully operational, 999/112 public emergency call services can be accessed. However, there may be some limitations as set out in the following clauses.
  - 11.2.1 If there is a power failure, failure of the broadband connection or other IP Telephony Service outage for any reason, such failure or outage may prevent access to 999/112 dialling.
  - 11.2.2 It may or may not be possible for emergency operators and authorities to identify a location and phone number when 999/112 is dialled. The users of the IP Telephony Service will need to state their location and phone number promptly and clearly, as emergency operators and authorities may not have this information.
  - 11.2.3 Emergency operators and authorities may or may not be able to identify the user's phone number in order to call back if the call is unable to be completed, is dropped or disconnected, or if the user is unable to speak to tell them his/her phone number and/or if the IP Telephony Service is not operational for any reason. Emergency operators and authorities may also not be able to hold the line open in the event the user hangs up.
  - 11.2.4 You are responsible for informing potential users of the IP Telephony Service of the above limitations and You should ensure that there is always an alternative means of accessing 999/112 emergency services.
  - 11.2.5 If You suspend the IP Telephony Service in accordance with this Agreement, You may not be able to dial 999/112.
- 11.3 Number portability may be available with the IP Telephony Service. In accordance with clause 8.3, We shall not be held responsible for any loss of business during the porting process. If You move Your telecom service to or from Us or to or from another provider You may not be able to keep your telephone number. Where, for the purposes of the IP Telephony Service, any telephone number is ported to Us or where We assign any telephone number to You, We shall own such number(s).
- 11.4 If, at any time, the IP Telephony Service is affected or unavailable other than due to Our fault, You will continue to be billed for the IP Telephony Service.

## **12 BROADBAND SERVICES**

The provisions of this clause 12 shall apply where the Broadband Service is provided by Us.

- 12.1 We can only supply the Broadband Service to You if:
  - 12.1.1 You have an existing line or one is installed by Us;
  - 12.1.2 each PC to be connected to the Broadband Service is of a minimum specification, which an Authorised Person will advise to You;

- 12.1.3 You have the necessary ancillary equipment such as telephone sockets, modems and compatible extension leads and cables;
  - 12.1.4 You pass any credit check which We carry out;
  - 12.1.5 You provide Us with correct and complete information as part of the process to register You for the Broadband Service.
- 12.2 If You cannot satisfy the requirements of clause 12.1 or if the Broadband Service cannot reasonably be supplied to the Property having due regard to any technical issues arising and the parties cannot agree a resolution of the problems, then either party may terminate this Agreement by giving to the other party 14 days notice in writing.
- 12.3 Our fair usage policy form part of this agreement and includes any restrictions imposed on Us by Our service provider and is designed to protect the level and quality of the services that We offer to all of Our customers and permits Us to regulate Your use of the Services. You acknowledge that, in respect of any broadband speeds, any speeds quoted are approximate only and that the level of service that can be obtained by You will be dependent on factors outside Our control including but not limited to the geographical proximity to the local exchange and the quality of the infrastructure serving Your Property.
- 12.4 We will offer a Technical Support Helpline to provide information and advice to You on any technical issues relating to Your use of the Broadband Service. Calls to the Technical Support Helpline are charged at premium rate. All calls may be monitored and recorded for training and security purposes
- 12.5 Given that We do not produce the information, results, sound, software or any other materials and services made available to You as part of the Broadband Service ("the Content"), We do not guarantee or warrant the completeness or accuracy of the Content.
- 12.6 You must ensure that passwords and user names used in connection with the Broadband Service are kept confidential and are only used by You or people authorised by You. You must inform Us immediately if You know or suspect that a user name or password has been disclosed to an unauthorised person or is being used in an unauthorised way. You must not change or attempt to change a user name without Our written consent.
- 12.7 We reserve the right to:
- 12.7.1 suspend user names and password access to the Broadband Service if at any time We think that there has been or is likely to be a breach of security;
  - 12.7.2 ask You to change any or all of the passwords You use in relation to the Broadband Service.
- 12.8 We do not guarantee that the Broadband Service is secure and We do not guarantee the prevention or detection of any unauthorised attempts to access the Broadband Service.
- 12.9 You must use the Broadband Service at all times in accordance with Our Fair Use Policy as set out in the Appendix below.
- 12.10 You must be the owner or authorised user of any trademark or name that You wish to use as Your registered domain name ("Domain Name") and use as part of its uniform resource locator ("URL").
- 12.11 If We register Domain Names or URLs on Your behalf, You will reimburse Us for any fees paid by Us to the internet registration authorities. We cannot guarantee that any Domain Names or URLs requested by You will be available.
- 12.12 We may require You to select a replacement Domain Name or URL and may either refuse to provide or may suspend the Broadband Service if We reasonably believe that the Domain Name or URL is, or is likely to be, offensive or abusive or otherwise in breach of clause 3.3.
- 12.13 Where We provide software to You to enable You to use the Broadband Service ("the Software"), You will have a non-exclusive, non-transferable licence to use the Software solely for the term and purposes of the Agreement. You may need to sign agreements reasonably required by the owner of the copyright in the Software to protect the owner's interest in that Software for You to be able to use that Software.
- 12.14 Except as permitted by applicable law or as expressly permitted under this Agreement You cannot de-compile or modify the Software, or copy the manuals or documentation.
- 12.15 We may offer updates or modifications to the Software or documentation and We will notify You of any applicable charges for such updates or modifications at the time We supply them to You.

### **13 FRAUD**

- 13.1 For the avoidance of doubt, fraudulent activity includes but is not limited to:
- 13.1.1 calls made from Your Equipment without Your knowledge;
  - 13.1.2 calls made utilising Your authentication details;
  - 13.1.3 calls made from an authenticated IP address.
- 13.2 You acknowledge that any setting or fraud monitoring carried out by Us is not a fraud prevention system and does not prevent unauthorised access to the Equipment. It is Your sole responsibility to

setup and maintain Your own security independently and therefore We accept no liability whatsoever for any costs incurred as a result of a breach of security.

- 13.3 For the avoidance of any doubt, Your responsibilities include but are not limited to;
- 13.3.1 secure implementation and management of Your Equipment including any hardware not provided by Us such as firewalls or PBX systems.
  - 13.3.2 maintaining security and confidentiality of authentication details for online service portals and other services.
  - 13.3.3 mitigate exposure to any suspected or known security breach by resetting passwords, Us that accounts are disabled and reporting the incident to Us.
  - 13.3.4 reporting the incident to the Police / Action Fraud.
- 13.4 We reserve the right to invoice You for any fraudulent activity made in accordance with clauses 8.7 and 13.1.
- 13.5 You accept full and complete liability for any costs, losses or damages incurred as a result of fraud and agree to indemnify Us against any costs, losses or damage suffered by Us arising from any fraudulent activity made in accordance with clauses 8.7 and 13.1 including any costs and expenses reasonably incurred by Us in investigating any such fraudulent activity.

## **14 GENERAL**

- 14.1 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations (except for fraudulent misrepresentation) made by either party whether oral or written and this Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party thereto.
- 14.2 Any typographical, clerical or other error or omission in any sales literature, Quotation, the Charges, bill or any other document issued by Us shall be subject to correction without any liability to You.
- 14.3 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- 14.4 Any notice, bill or other document which may be given by Us under this Agreement shall be deemed to have been duly given if left at or sent by post to an address notified to Us in writing by You as an address (including e-mail address) to which notices, bills or other documents may be sent, or Your usual or last known place of abode or business, or if You are a limited company, its registered office.
- 14.5 Our address for the service of any notice by You under this Agreement shall be such address as is shown on the last bill rendered to You or such address as We may prescribe for that purpose.
- 14.6 You shall not assign or delegate or otherwise deal with all or any of Your rights and obligations under this Agreement without Our prior written consent.
- 14.7 We will not, unless otherwise agreed in writing, transfer any telephone numbers made available to You under the terms of this Agreement to any third party, unless and until all outstanding charges and costs due under this Agreement have been paid in full. Any transfer to a third party will be at Our sole discretion.
- 14.8 If You have a complaint in relation to the Telecom Services, You should contact Our Customer Care Department. In accordance with Ofcom regulations, a Code of Practice for Complaints is in place. The procedure set out in this Code will be followed should a complaint be received. Please contact Our Customer Services Department for a copy.
- 14.9 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 14.10 If any provision of this Agreement is held to be illegal, void or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is not to be affected.
- 14.11 Any director or representative who signs the Agreement on Your behalf will be deemed to be an authorised signatory and We shall be entitled to rely on such signatory as binding You to the terms of the Agreement.
- 14.12 This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby submit to the jurisdiction of the English courts.

## APPENDIX 1

### FAIR USAGE POLICY

#### Introduction

Our Fair Usage Policy is designed to ensure You and all Our customers experience the best on demand, quick and reliable internet service as possible. This policy, including its usage restrictions, is in addition to the terms set out in this Agreement.

Due to the shared nature of broadband connectivity, the actions of Our customers affect the connectivity and performance of others utilising the Broadband Service. While We make significant efforts to ensure that all Our customers receive acceptable bandwidth availability, there is the possibility that neighbouring customers may capitalise on the available bandwidth. To limit this possibility, this Fair Usage Policy has been introduced.

#### The purpose of a Fair Usage Policy

It is important to understand that without any Fair Usage Policy it is not unusual for ISP's to have 5% of their customer base utilising in excess of 50% of the available capacity. This has an ongoing detrimental effect on the remaining 95% of the customers who are using the broadband connection within acceptable limits.

Employing this Fair Usage Policy ensures that Your experience is at its best at all times and allows Us to remain competitive with our prices. As a provider that distinguishes itself on quality connectivity for use with convergent applications such as IP Telephony Services, We are not prepared to compromise the Broadband Service for a relatively small proportion of the client base and as a result of this policy the majority of Our customers will benefit from faster speeds, less contention and an improved service level.

It is almost commercially impossible to offer a truly "unlimited" Broadband Service due to the way raw wholesale services are sold by organisations such as BT Wholesale.

#### What are the Fair Usage Limits?

We have introduced the following fair usage limits below. These limits are for each calendar month and are not from the time of activation of the Telecom Services.

| Type of Connection                                                                                                                                                                                                                                                                             | Fair Usage Limit                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Home, SOHO and Business Connections;<br>Including;<br>500 Pro/Plus - 512kbps,<br>1000 Pro/Plus - 1MB,<br>2000 Pro/Plus - 2MB,<br>8000 Pro/Plus - up to 8MB<br>16000 Pro/Plus - up to 16 MB ADSL2+<br>ISS2+SOHO 40GB /Business 40GB<br>ISS Fibre / Enhanced UP<br>ISS SDSL/Enhanced UP /SDSL(M) | 40GB per month                                                                                                                                                                                                                                                                                                                    |
| ISS Fibre 100<br>ISS Fibre2 100                                                                                                                                                                                                                                                                | 100GB per month                                                                                                                                                                                                                                                                                                                   |
| ISS Fibre 200<br>ISS Fibre2 200                                                                                                                                                                                                                                                                | 200GB per month                                                                                                                                                                                                                                                                                                                   |
| ISS Together<br>ISS Residential Broadband                                                                                                                                                                                                                                                      | 10GB per month                                                                                                                                                                                                                                                                                                                    |
| ISS2+SOHO /Business / Business Unlimited<br>ISS Fibre Unlimited<br>ISS Fibre2 Unlimited                                                                                                                                                                                                        | Unlimited Packages are subject to a 200GB (for Market 1 and 2 connections) and 500GB (for Market 3 connections) fair usage. If you exceed this limit or, in Our opinion, your activities are excessive and other customers may be detrimentally affected, We may limit, suspend or terminate your Broadband Services (see below). |

#### How much usage actually is this?

To provide You with some information on how much data this actually represents some details have been included below.

| Data Use                                                             | 10GB        | 40GB          | 100GB        | 200GB        |
|----------------------------------------------------------------------|-------------|---------------|--------------|--------------|
| Standard text/HTML emails                                            | 7500 email  | 30,000 emails | 75000 email  | 150000 email |
| Transferring Digital Photos                                          | 2500 photos | 10,000 photos | 25000 photos | 50000 photos |
| Standard Surfing (hours across 1 PC connected to the broadband link) | 1250 hours  | 5,000 hours   | 12500 hours  | 25000 hours  |
| Download mp3 music (around 6 MB per song )                           | 1700 songs  | 6800 songs    | 17000 songs  | 34000 songs  |
| Download movies ( 2 GB per movie )                                   | 5 Movies    | 20 Movies     | 50 Movies    | 100 Movies   |
| Watching BBC iPlayer/YouTube ( 1.5 GB per hour HD)                   | 6 Hours     | 26 Hours      | 60 Hours     | 120 Hours    |

#### What will happen if you exceed the Fair Usage Policy?

Usage quota levels are dynamically calculated for each user. We will continue to review network usage levels and inform You if we feel Your usage hinders the operation of a high quality service for Our other users and discuss potential ways this could be reduced.

Where a data service is specified as unmetered or unlimited, reasonable usage is considered to be within 500GB per month for Market 3 products and 200 GB for Market 1 & 2 products. Where this usage is exceeded, We reserve

the right to apply policies in traffic management to limit or restrict the usage above this level or to terminate Your access to the Broadband Service if the limits continue to be exceeded after notification has been given to You.

You must use the Broadband Service in accordance with any download or capacity limits stated in the specific plan that you subscribe to for the use of that Broadband Service. We may, without notice, limit, suspend or terminate the Broadband Service if You unreasonably exceed such limits or excessively use the capacity or resources of Our network in a manner which may hinder or prevent us from providing the Broadband Service to other customers (including, but not limited to, excessive bandwidth, disk space utilisation or high CPU loads) are adversely affecting or which may pose a threat to the integrity of Our Network or systems. We also reserve the right to transfer Your Broadband Service to another service provider and/or make excess usage charges for any exceptionally unusual activity (charged at £1.50 per GB over the Fair Usage Limit).

Our Fair Usage Policy is applicable to all customers however this policy will only actually affect You if You make inappropriate use of the Broadband Service.

### **Broadband Speeds**

We will always offer the best speed possible on the line based on the selected product. However, download speeds may vary and the actual download speed will fall within a range. Any estimated information is based on the speeds achieved by lines of a similar type with a similar broadband service. The actual speed will generally be within 1-2Mbps higher or lower than your estimated speed.

The actual speed is dependent on several factors. For example:

- the chosen product option;
- the number and speed of devices using the connection at the same time;
- whether a wireless or wired connection is used;
- the speed of the websites visited;
- the time of day (speeds can be lower at peak times (evenings and weekends)).

Estimates based on postcode (rather than phone number) are less accurate and should be treated with caution. Where we are able to provide a date for future fibre optic broadband availability, it is indicative only and subject to change.

### **Broadband Traffic Management Policy (QoS – Quality of Service)**

We undertake traffic management to ensure that our customers receive optimum performance at all times. The policy applied is as follows.

#### **Traffic management**

Our broadband products are subject to traffic management to ensure you receive optimum performance at all times.

Like other providers, we deliver the Broadband Service over a shared network. To provide a sustainable quality Broadband Service to all our customers we have to manage the network.

The principles of our network management policies are:

- To make sure that real-time-critical applications like Voice over Internet Protocol (**VoIP**) are always prioritised;
- To protect interactive applications like web-browsing and Virtual Private Network (**VPN**) from non-time sensitive download traffic;
- To balance the network under demand to cope with exceptional peaks and troughs from day to day and month to month;
- Provides a 'quality of service' effect, meaning multiple applications running on the same line interact with each other effectively, and use of high demand protocols like Peer-to-Peer (**P2P**) doesn't swamp time-sensitive traffic such as a VoIP call.

Traffic types are identified in real-time based on a combination of port, source IP address and DPI signature detection. This allows us at any given time to see exactly what traffic is on the network and who is doing what. At times we may prioritise time sensitive traffic such as VoIP by reducing the throughput of the standard traffic.

#### **QoS Traffic Classifications:**

Traffic is prioritised according to time sensitivity. The following table outlines the standard prioritisation classes:

| <b>Top</b> | <b>High</b> | <b>Middle</b>      | <b>Standard</b> |
|------------|-------------|--------------------|-----------------|
| VOIP       | HTTP        | HTTP Download      | P2P             |
| VPN        |             | iPlayer & You Tube | Binary usenet   |
|            |             | FTP                |                 |
|            |             | Email              |                 |
|            |             | Generic streaming  |                 |

**Broadband Stabilisation Period**

During the first ten days of the new service, the speed may go up and down as the broadband equipment tests the reliability of the line to achieve the most stable speed. The broadband router should be left on during this time.

During the first 24 to 48 hours as the service adapts to the characteristics of your line you may experience some fluctuation in performance along with occasional (brief) connection drops. This is normal and the service will soon stabilise. If the problem persists after this time, please contact us.

**SPAM**

Also known as junk mail or Unsolicited Commercial Email (**UCE**), the term "spam" refers to submitting a commercial email or SMS messages to a large number of recipients who have not requested or opted to receive it and have no reasonable expectation to receiving email or SMS from the sender.

Email or SMS sent by a company or an organisation with whom the recipient has established a relationship or which was requested or accepted (opt-in requirement) by the recipient is not considered spam. Spamming is not only harmful because of its negative impact on consumer attitudes toward Us, but also because it can overload Our network and disrupt service to other customer/subscribers.

As a user of Our service platforms, you must comply with any regulation in force that covers direct marketing regulations if you are sending communications to large multiple lists of users.

In the absence of positive, verifiable proof to the contrary, We will consider complaints by recipients of emails or SMS messages to be conclusive that the recipient did not subscribe or otherwise request the email(s) or SMS about which a complaint was generated.