

CUSTOMER TERMS

1 SCOPE

1.1 The Customer Terms cover the following Products:

- (a) Business Broadband Bundles; and
- (b) Calls and Line Rental.

2 ORDERING PRODUCTS

2.1 Customer may submit a Product Order either electronically via Service Provider Website or orally by telephone. No terms Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing will apply to any Contract.

2.2 Service Provider may accept a Product Order by approving the Product Order, either electronically or orally. Nothing in these Customer Terms will oblige Service Provider to accept any Product Order, nor to provide any Product, until Service Provider accepts a Product Order. Upon acceptance by Service Provider, a Product Order will become the Contract which commences on the date of acceptance by Service Provider.

3 INSTALLATION AND SUPPLY OF PRODUCT AND EQUIPMENT

3.1 Upon commencement of the Contract in accordance with Clause 2.2, Service Provider will use reasonable endeavours to provision and/or install the Product and will inform Customer when the Product is connected ready for use.

3.2 Service Provider will supply the Product to Customer from the Connection Date with reasonable skill and care and in all material respects in accordance with the Contract, but Service Provider cannot, given the nature of the Product, guarantee that the Product will be continuously available or error free.

3.3 Service Provider reserves the right to cancel the Contract prior to the Connection Date or within a reasonable period of time thereafter where:

- (a) it becomes apparent that the Product cannot be delivered to or installed at the Site due to a geographic, practical or technical restraint; or
- (b) the cost of providing or installing the Product at the Site is materially higher than the usual cost of providing Product to a customer and Customer does not agree to pay any additional Charges requested by Service Provider.

3.4 Customer must report Incidents using the telephone number on the Service Provider Website or as otherwise provided by Service Provider.

3.5 Before contacting Service Provider about an Incident, Customer should make all reasonable efforts to rule out the possibility that it is caused by Customer Equipment.

4 USE OF THE PRODUCTS

4.1 The Products are provided for use by Customer and End Users in the course of Customer's business and on the condition that Customer does not resell or otherwise make the Product available to any other person.

4.2 Customer undertakes to use the Product, and to procure that each End User uses the Products, in accordance with:

- (a) the terms and conditions of the Contract and any Legislation applicable to Customer's use of the Product; and
- (b) any reasonable operating instructions as may be notified in writing to Customer by Service Provider from time to time.

4.3 Without limiting Clause 4.2, Customer will not, and will procure that each End User will not use a Product to:

- (a) send, communicate, knowingly receive, upload, download or use any material or make any calls that are offensive, abusive, indecent, defamatory, obscene, menacing, cause annoyance, inconvenience, needless anxiety or are intended to deceive;
- (b) download, possess or transmit in any way, illegal material;

(c) engage in criminal, illegal or unlawful activities;

(d) violate or infringe the rights or property of any person, including rights of copyright and any other intellectual property rights, privacy or confidentiality;

(e) intentionally impair or attempt to impair, without authorisation, the operation of any computer, prevent or hinder access to any program or data held in any computer or to impair the operation of any such program or the reliability of any such data; or

(f) artificially inflate traffic, send, communicate, knowingly receive, upload or download data or make any calls in such a way or in such amount that Customer knows or ought reasonably to know will have a material adverse effect on the Service Provider Network (or any part of it) or Service Provider' customers.

4.4 Customer indemnifies and promises to pay on demand Service Provider and its Affiliates for any settlement paid by, damages awarded against and reasonable legal costs and expenses suffered or incurred by Service Provider or its Affiliates arising out of or in connection with any claim made or threatened against Service Provider or an Affiliate of Service Provider by a third party arising out of or in connection with Customer's or End User's breach of this Clause 4.

5 MAINTENANCE AND PRODUCT MANAGEMENT

5.1 Service Provider will use reasonable endeavours to carry out any Maintenance during the Maintenance Window.

5.2 Service Provider will have the right to withdraw or change a Product and to terminate or vary the Contract for all customers to:

- (a) comply with any Legislation or safety requirement; or
- (b) take into account the withdrawal of or a significant change to the technology used to provide the Product.

5.3 In relation to any withdrawal or change under Clause 5.2, Service Provider will:

- (a) give Customer as much notice as reasonably practical, and in any event not less than three months' notice; and
- (b) use reasonable endeavours to avoid any material adverse impact on the nature or quality of the Products or any material increase in the Charges.

5.4 Where a change to a Product under Clause 5.3(b) results in a material adverse impact on the nature or quality of the Product or a material increase in the Charges, Customer may terminate the Contract in accordance with Clause 10.2 without incurring any Cancellation Charges.

5.5 Where a Product is withdrawn, Service Provider may offer an equivalent or better Product with the same Charges. Service Provider will be obliged to do so in respect of the Contract within its Contract Term where a Product is withdrawn under Clause 5.2(b) and pay Customer's reasonable demonstrable third party costs of moving to the replacement service, up to a maximum of the Recurring Charges payable in respect of the remainder of the Contract Term. Where such equivalent or better Product has lower Charges, Service Provider may allow Customer to benefit from such reduction, if Customer agrees to pay the costs of moving to the equivalent Product.

6 SPECIFIC PROVISIONS RELATING TO BROADBAND PRODUCTS

6.1 Upon activation of a Broadband Product, Customer accepts it may experience a temporary loss of Customer's existing line.

6.2 Service Provider cannot guarantee the quality on the local loop section provided by any Third Party Operator and, therefore, cannot guarantee that a Connection can support the Transmission Speed specified in the Product Order.

6.3 To prevent spam from entering and affecting the operation of Service Provider' systems and the Broadband Product, Service Provider may take any reasonable measures or actions necessary to block access

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to or delivery of any e-mail which appears to be of an unsolicited nature or part of a bulk e-mail transmission. Service Provider may also use within its systems virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. However, Service Provider does not warrant that such technology will be effective against all virus attacks or unsolicited e-mails.

6.4 All Broadband Products are governed by the Customer Terms and any supplementary terms on Service Provider' Website.

7 SPECIFIC PROVISIONS OF TELEPHONY PRODUCTS

7.1 Nothing in the Contract gives Customer ownership of any CLI, dialling code or static IP address provided by Service Provider as part of the Product.

7.2 Customer may port CLIs to Service Provider and may also port CLIs from Service Provider to other Third Party Operators with whom Service Provider has a relevant porting agreement.

7.3 Customer must notify Service Provider five Business Days before any significant increase in traffic across the Service Provider Network will arise as a result of the use of the Telephony Product by Customer (for example ticket sales, marketing promotions, etc). For the purposes of this Clause, a significant increase will mean more than 5,000 calls in a 15 minute period to one phone number (or the aggregate of non-geographic numbers if they point to one number).

7.4 If a Telephony Product is subject to line rental, which is the provision of rented access to a telephone line and such ancillary extras as provided by Service Provider pursuant to the Contract, Customer will not divert calls from travelling across the Service Provider Network. The provisions of this Clause 7.4 will not apply where Service Provider is not currently able to provide the applicable Telephony Product, or as required by Legislation.

7.5 Service Provider cannot guarantee the correct function of any service not provided by Service Provider but which operates across a Telephony Product. A list of services as identified by Service Provider or any Third Party Operator as known to be incompatible with the provision of the applicable Telephony Product, is available from Service Provider but Customer acknowledges this is for illustrative purposes only as third party services are constantly changing.

7.6 If Customer takes a Telephone Preference Service Product, Service Provider will provide Customer with the facility to bar any calls made to CLIs that appear on the latest Telephone Preference Service Product data file made from each line connected to the Telephone Preference Service Product.

7.7 Service Provider accepts no responsibility arising from mistakes or omissions in data supplied to Service Provider by the Telephone Preference Service or any of its agents.

8 CHARGES AND PAYMENT

8.1 Service Provider will invoice Customer electronically for the Charges payable under the Contract and Customer will pay all invoices by direct debit within 14 days of the date of the invoice, subject to Clause 8.5.

8.2 Customer may request a paper or pdf invoice, subject to payment of a reasonable administration charge.

8.3 All amounts payable by Customer under the Contract are exclusive of Value Added Tax.

8.4 Unless otherwise stated in the Contract, Charges for the Product will be charged in accordance with the Price List.

8.5 If Customer in good faith disputes an invoice, Customer must notify Service Provider in writing of the dispute not more than 14 days after the date of the invoice providing reasonable details of the dispute to allow Service Provider to investigate. Customer must make payment in full of the invoice notwithstanding the dispute raised. If Service Provider finds that the invoice is incorrect, Service Provider will apply a credit to Customer's account.

8.6 Without limiting any other right or remedy of Service Provider:

(a) if Customer fails to make any payment due to Service Provider under the Contract by the due date for payment, Service Provider will have the right to charge interest on the overdue amount at the rate of 4% per cent per annum above the then current HSBC Bank plc base rate accruing on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly;

(b) if a direct debit is dishonoured or cancelled, Service Provider will have the right to make a reasonable administration charge; and

(c) Service Provider may set off any amount owing to it or its Affiliates by Customer against any amount payable by Service Provider to Customer.

8.7 For the purposes of this clause 8 "CPI" means the published Office for National Statistics Consumer Price Index rate percentage (but excluding any negative rate percentages).

8.8 Service Provider may amend the Charges at any time to match changes to charges from any Third Party Operator/provider (e.g. international call, text or data charges) or changing legal or regulatory requirements (e.g. Openreach regulated changes or VAT changes).

8.9 Separately to clause 8.8, with effect from 1st March each year, the Charges will be increased by:

(a) if applied, the CPI used by: (i) Openreach; or (ii) the relevant Third Party Operator/provider (where the underlying Product is provided by them) in each case to amend its charges to Service Provider in the year prior to such increase; plus

(b) irrespective of any change under clause 8.9(a), an amount of up to 3.7%.

8.10 Service Provider will give Customer not less than one month's notice for any price changes made pursuant to Clauses 8.8 or 8.9.

9 CREDIT LIMIT/SECURITY

9.1 Service Provider may perform a credit check on Customer at any time prior to or following acceptance of the Product Order and may impose a Credit Limit on Customer's account proportionate to the amount of Charges payable under the Contract. Any Credit Limit imposed can be amended without prior notice. If Customer exceeds such Credit Limit:

(a) Service Provider may demand immediate payment of all unpaid Charges (whether invoiced or not); and

(b) Customer will remain responsible for all Charges incurred including those exceeding the Credit Limit.

9.2 Service Provider may require Customer to provide it with a deposit or other security as a condition of providing the Products. Service Provider may hold this deposit or security until Customer has paid all sums due to Service Provider under the Contract. No interest is payable on any deposit held by Service Provider.

10 TERMINATION

10.1 A Party may terminate the Contract by providing the other Party with no less than 30 days notice. In the case of Service Provider, such notice must expire on or after the end of the Contract Term.

10.2 Customer may terminate the Contract, by giving notice in writing to Service Provider if:

(a) Service Provider is in material breach of the Contract, which if capable of remedy has not been remedied within 30 days of receipt of written notice specifying the breach in reasonable detail and requiring its remedy;

(b) Customer exercises their right of exit in accordance with the Ofcom Business Broadband Speeds Code of Practice; or

(c) the circumstances in Clauses 5.4, 16.2 or 24.2 arise.

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- 10.3 Service Provider may terminate the Contract by giving notice in writing to Customer if:
- (a) Customer fails to pay any sums due to Service Provider within 14 days of the date of the invoice;
 - (b) Customer is in material breach of the Contract, which if capable of remedy has not been remedied within 30 days of receipt of written notice specifying the breach in reasonable detail and requiring its remedy;
 - (c) Customer makes any voluntary arrangements with its creditors or becomes subject to an administration order or goes into liquidation, whether voluntary or compulsory (other than for the purposes of a solvent reconstruction or amalgamation), or an encumbrancer takes possession of or a receiver is appointed in respect of any of its assets;
 - (d) Customer fails to give any deposit or security required by Service Provider under Clause 9.2; or
 - (e) the circumstances in Clause 16.2 arise.
- 10.4 If the Contract is terminated by Customer within the Contract Term other than under Clause 10.2, Service Provider may invoice Customer the Cancellation Charges. Customer agrees that the Cancellation Charges are a fair assessment of the losses and damage that Service Provider will suffer as a result of the termination.
- 10.5 If the Contract is terminated outside of the relevant Contract Term Service Provider will either:
- (a) refund any amount in credit on Customer's account after Service Provider has deducted any amount owed to it by Customer; or
 - (b) issue an invoice for the amount owed to Service Provider by Customer as at the date of termination.
- ### 11 SUSPENSION
- 11.1 Service Provider may, without prejudice to any other right which it might have, elect to suspend the provision of Products under the Contract until further notice on notifying Customer either orally (confirming such notification in writing) or in writing if:
- (a) Service Provider is entitled to terminate the Contract;
 - (b) Service Provider has reasonable grounds to believe that Customer or an End User is using the Product in breach of Clause 4;
 - (c) Service Provider or any third party providing equipment or services to Service Provider in connection with the provision of the Product is obliged to comply with an order, instruction or request of government, regulatory authority, emergency services organisation or other competent authority; or
 - (d) Customer exceeds the Credit Limit under Clause 9 and has not remedied this situation within five Business Days of receiving written notice from Service Provider requiring Customer to do so.
- 11.2 If Service Provider exercises its rights under Clause 11.1 as a consequence of the breach, fault, act or omission of Customer or an End User, the Charges will be continue to be payable and Customer will pay to Service Provider all reasonable costs and expenses incurred by the implementation of such suspension and any recommencement of the provision of Product.
- ### 12 LIABILITY
- 12.1 Nothing in the Contract will exclude or limit a Party's liability arising from or in connection with:
- (a) any death or personal injury caused by the negligence of such Party, its agents, subcontractors, officers, directors or employees;
 - (b) any fraudulent acts or omissions of or fraudulent representations made by such Party, its agents, subcontractors, officers, directors or employees;
 - (c) any breach of statutory implied terms as to title;
 - (d) any other liability which cannot be excluded or limited by law;
 - (e) any indemnity given by such Party in the Contract unless otherwise expressly agreed in writing;
 - (f) any breach of Clauses 17 or 18; and
 - (g) any liability to pay the Charges.
- 12.2 Subject to Clause 12.1, a Party will not be liable to the other Party in contract, tort (including negligence), breach of statutory duty or otherwise for:
- (a) indirect, consequential or special loss or damage;
 - (b) loss of opportunity (whether direct or indirect);
 - (c) loss of anticipated savings (whether direct or indirect);
 - (d) loss arising from or damage to a brand, reputation or goodwill (whether direct or indirect);
 - (e) loss of profit or anticipated profit (whether direct or indirect);
 - (f) loss of business or contracts (whether direct or indirect);
 - (g) loss of revenue or anticipated revenue (whether direct or indirect);
 - (h) loss arising from the loss or degradation of data (whether direct or indirect); and
 - (i) subject to Clause 22.1, claims brought by or ex-gratia payments made to Customer's customers or any other third party (whether direct or indirect).
- 12.3 Subject to Clauses 12.1 and 12.2, a Party's total liability to the other Party in respect of all Losses arising under or in connection with the Contract in contract, tort (including negligence), breach of statutory duty or otherwise, will in no circumstances exceed the greater of:
- (a) the Recurring Charges paid by Customer under the Contract during the 12 months preceding the claim; and
 - (b) £1,000.
- 12.4 Where the provisions of the Contract are inconsistent with any rights or remedies Customer has under any Legislation because it is a Small Business Customer which cannot be varied, Customer's rights under such Legislation will apply instead of the provisions of the Contract to the extent they are inconsistent.
- 12.5 Service Provider will not be liable to Customer for any failure of the Product as a result of any:
- (a) act or omission of Customer, End Users or Customer's employees, agents or subcontractors;
 - (b) Customer Equipment;
 - (c) failure by Customer to implement any reasonable instructions issued by Service Provider; or
 - (d) suspension of the Product under Clause 11.
- 12.6 Except as expressly set out in the Contract and to the extent permissible by law all other warranties, terms and conditions, guarantees as to quality or fitness for a particular purpose of the Products or any other conditions or guarantees whether express or implied by law, custom or otherwise are excluded.
- ### 13 EQUIPMENT
- 13.1 Property in and ownership of:

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- (a) the Service Provider Equipment remains the property of Service Provider or its suppliers at all times; and
- (b) the Customer Equipment remains the property of Customer at all times.

Customer must clearly identify any Service Provider Equipment at the Site.

13.2 Risk in and liability for Service Provider Equipment passes to Customer on delivery of each item thereof. Customer must insure the Service Provider Equipment in respect of all relevant risks from delivery. Customer will provide a copy of the insurance policy to Service Provider upon request.

13.3 Customer must:

- (a) not, nor permit any other person, to sell, let, transfer, dispose of, mortgage, charge, modify, repair, service, tamper with, remove or interfere with the Service Provider Equipment or suffer any distress, seizure or execution to be levied against any Service Provider Equipment;
- (b) keep the Service Provider Equipment at the Site and stationary at all times;
- (c) house, keep and use any Service Provider Equipment in accordance with any written instructions notified to Customer by Service Provider from time to time or, in the absence of such instructions, to the same standard as a reasonable owner of the Service Provider Equipment would if it were their property;
- (d) in the case of an emergency, take whatever steps as are reasonably necessary to safeguard the Service Provider Equipment and notify Service Provider as soon as possible of the circumstances of such emergency;
- (e) not remove, tamper with or obliterate any words or labels on the Service Provider Equipment or any part thereof; and
- (f) permit Service Provider or its agent to inspect, test and maintain the Service Provider Equipment at all reasonable times and on reasonable notice.

13.4 Customer must immediately notify Service Provider of any loss or damage to any Service Provider Equipment. Without prejudice to Service Provider' other rights and remedies, where Customer breaches the provisions of this Clause 13:

- (a) Customer indemnifies and promises to pay on demand Service Provider for the costs of repairing or replacing any Service Provider Equipment damaged by Customer's or End User's breach of this Clause 13; and
- (b) Service Provider will not be liable to Customer for any failure to provide the Product as a result thereof.

13.5 Service Provider does not provide any warranty in respect of any Service Provider Equipment but, where possible, will provide Customer with the benefit of any manufacturer's warranty.

13.6 Customer is responsible for the compatibility of the Product with Customer Equipment. Service Provider will not be liable to Customer where any Customer Equipment warranties become invalidated as a result of work carried out by Customer, Service Provider or its agents in order to provide the Product

13.7 Service Provider will be entitled, after termination (for any reason whatsoever) of the Contract by giving notice of its intention to repossess the Service Provider Equipment, to:

- (a) require Customer (at Customer's cost and risk) to immediately return the Service Provider Equipment to Service Provider; or
- (b) enter upon any premises with such transport as may be necessary and repossess any Service Provider Equipment.

14 SITES AND ACCESS

14.1 Customer must procure at its own expense all permissions, licences, waivers, consents, registrations and approvals necessary for Service Provider to deliver, install and provide the Products at the Site.

14.2 Where Service Provider Equipment is required to be installed at the Site, Customer must prepare the Site in accordance with Service Provider' reasonable instructions.

14.3 To enable Service Provider to carry out its obligations and exercise its rights under the Contract, Customer must upon request of Service Provider permit or procure permission for Service Provider or anyone acting on Service Provider' behalf to access the Site at all reasonable times. Service Provider will not be liable for any failure to provide the Product to the extent caused by Customer's failure to comply with this Clause 14.3.

14.4 Customer will provide or procure a safe working environment at the Site for Service Provider employees and anyone acting on Service Provider' behalf. Service Provider employees or anyone acting on Service Provider' behalf will observe the reasonable regulations affecting the Site as previously advised in writing to Service Provider.

15 SECURITY AND PASSWORDS

15.1 Customer is responsible for the security of the use of the Product including protecting all passwords, backing-up all data, employing appropriate security devices, including virus checking software, and having disaster recovery processes in place.

15.2 Where Customer is or becomes aware of any matters which it knows or ought reasonably be expected to know constitute a threat to the security of the Product will immediately advise Service Provider of such matters.

16 EVENTS OUTSIDE THE PARTIES' REASONABLE CONTROL

16.1 A Party will be not liable for any delay in performing or failure to perform any of its obligations under the Contract (other than Customer's obligation to pay the Charges) which occurs as a result of a Force Majeure Event.

16.2 In the event that a Force Majeure Event continues for a period of 60 days, the other Party will have the right to terminate in accordance with Clause 10.2.

17 CONFIDENTIALITY

17.1 Neither Party will disclose to any third party without the prior written consent of the other Party any Confidential Information which is received from the other Party as a result of the Contract. Both Parties agree that any Confidential Information received from the other Party will only be used for the purposes of performing its obligations under the Contract. These restrictions will not apply to any information which is:

- (a) or becomes generally available to the public other than as a result of a breach of an obligation under this Clause 17; or
- (b) acquired from a third party who owes no obligation of confidence in respect of the information; or
- (c) or has been independently developed by the recipient without use of the other Party's Confidential Information.

17.2 Notwithstanding Clause 17.1, either Party will be entitled to disclose the Confidential Information of the other Party to a third party to the extent that this is required by any court of competent jurisdiction or by a governmental or regulatory authority, or where there is a legal duty or requirement (other than a contractual duty or requirement) to disclose such Confidential Information.

18 INTELLECTUAL PROPERTY

18.1 All Intellectual Property Rights in the Products will be owned by Service Provider and its Affiliates save to the extent that any of the same contain Intellectual Property Rights owned by third parties.

18.2 Service Provider grants to Customer a non-exclusive, royalty free, licence to use Service Provider's Intellectual Property Rights within

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the United Kingdom, for the purpose of utilising the Product in accordance with the terms of the Contract and any usage guidelines that Service Provider may provide from time to time.

18.3 Customer grants to Service Provider and its Affiliates a non-exclusive, royalty free, licence to use, copy and interface with any Intellectual Property Rights within the United Kingdom in any Customer Equipment and the information and data in the Product for the purpose of performing Service Provider's obligations under the Contract.

18.4 Notwithstanding Clause 18.2, Customer will not be entitled to use the name, trade mark, trade name, or other proprietary identifying marks or symbols of Service Provider or its Affiliates without Service Provider's prior written consent.

18.5 In the event that the Product contains Intellectual Property Rights owned by third parties which Service Provider is not entitled to sub-licence to Customer, Service Provider will use reasonable endeavours to assist Customer, at Customer's cost and expense, in obtaining a licence to use those Intellectual Property Rights owned by third parties on terms that are acceptable to Customer.

18.6 In the event that Customer Equipment contains Intellectual Property Rights owned by third parties which Customer is not entitled to sub-licence to Service Provider, Customer will use reasonable endeavours to assist Service Provider, at Service Provider's cost and expense, in obtaining a licence to use those Intellectual Property Rights owned by third parties on terms that are acceptable to Service Provider.

18.7 Customer will not, and will procure that its personnel and, where used, its sub-contractors and their personnel do not, do anything (whether by omission or commission) during the Contract or at any time thereafter to affect or imperil the validity of any Intellectual Property Rights belonging to Service Provider or its Affiliates.

18.8 Customer will not obtain any rights in respect of any of Service Provider's Intellectual Property Rights by virtue of the Contract.

19 DATA PROTECTION

19.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation.

19.2 In most cases, when Service Provider and Customer Process Personal Data pursuant to a Contract, they will be acting as independent Controllers. In rare circumstances, Service Provider may also act as a Processor, with Customer being the Controller.

19.3 Where Service Provider is acting as an independent Controller, it will do so in accordance with its Privacy Policy.

19.4 Where Service Provider is acting as a Processor:

(a) the Personal Data Annex sets out the scope, nature and purpose of Processing that may be carried out by Service Provider, the duration of such Processing, the types of Personal Data and the categories of Data Subject;

(b) without prejudice to the generality of Clause 19.1:

(i) Customer will ensure that it has all necessary appropriate lawful reasons and notices in place to enable lawful transfer of the Personal Data to Service Provider for the purposes of the Contract; and

(ii) Service Provider will:

(A) Process Personal Data only on the written instructions of Customer, including regarding transfers of Personal Data outside of the United Kingdom, unless Service Provider is required to do so by a legal obligation and, if so, Service Provider will notify Customer of this before such Processing, unless a legal obligation prohibits this;

(B) ensure that all personnel authorised by Service Provider to Process Personal Data are obliged to keep the Personal Data confidential;

(C) ensure that it has in place appropriate technical and organisational measures designed to protect against a Personal Data Breach, appropriate to the harm that might result from such Personal Data Breach and the nature of the Personal Data to be protected. Service Provider shall have regard to the state of technological development and the cost of implementing any measures, including, where appropriate:

- 1) pseudonymising and encrypting Personal Data;
- 2) ensuring confidentiality, integrity, availability and resilience of its systems and services;
- 3) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- 4) regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;

(D) notify Customer without undue delay if it becomes aware of a Personal Data Breach;

(E) assist Customer in responding to any requests from Data Subjects and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with regulators, save that if this is not within the reasonable remit of the Products, this will be at Customer's cost;

(F) at Customer's written direction, delete (or put Beyond Use) or return Personal Data to Customer once provision of the Products has ceased, provided that Service Provider may keep such limited copies of Personal Data as are strictly required for legal, regulatory, internal or external compliance and back-up purposes; and

(G) maintain records and information to demonstrate its compliance with Clauses 19.4(b)(ii), 19.4(c) and 19.4(d) and, where this is not sufficient, allow for audits by Customer or Customer's auditor solely to demonstrate compliance, at Customer's cost, provided that:

1) Customer:

a) will not exercise its audit rights more than once in any 3 year period, save where Customer reasonably believes that a further audit is required due to a Personal Data Breach;

b) gives at least 30 days' written notice of its intention to audit, including specific details on the scope of the audit and any required evidence;

c) conducts its audit during normal business hours and limits its audit to a maximum of 2 Business Days; and

d) takes all reasonable measures to prevent material business interruption to Service Provider;

2) such audit is subject to the confidentiality provisions of the Contract; and

3) Service Provider may demonstrate its compliance with Clauses 19.4(b)(ii), 19.4(c) and 19.4(d) by complying with an approved code of conduct or by obtaining an approved certification;

(c) Customer consents to Service Provider appointing the Third-Party Processors to assist it in providing the Products. If Service Provider intends to change any of the Third-Party Processors, it

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will notify Customer by updating the Third-Party Processor List thereby giving Customer the opportunity to object to such change; and

- (d) Service Provider shall ensure that all agreements with the Third-Party Processors will incorporate terms that are substantially similar to those set out in this Clause 19. If a Third-Party Processor fails to fulfil its data protection obligations to Customer, Service Provider will remain fully liable to Customer for such Third-Party Processor's obligations.

20 ASSIGNMENT AND SUBCONTRACTING

- 20.1 Subject to Clause 20.2, neither Party will assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the other Party.
- 20.2 Service Provider may assign, transfer or subcontract any or all of its rights and obligations under the Contract a third party provided that Service Provider remains primarily liable for the acts and omissions of such third party subject to the terms and conditions of the Contract.
- 20.3 Service Provider may at its sole discretion provide the Products to Customer directly and/or through its Affiliates, agents and subcontractors, provided that Service Provider remains primarily liable for the acts and omissions of its Affiliates, agents and subcontractors subject to the terms and conditions of the Contract.

21 WAIVER

- 21.1 A waiver of any right or remedy under a Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent breach or default, except as set out in Clause 21.3.
- 21.2 A failure or delay by a Party to exercise any right or remedy provided under a Contract or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law will prevent or restrict the further exercise of that or any other right or remedy, except as set out in Clause 21.3.
- 21.3 Customer must bring any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) within 12 calendar months of the date it first became aware or ought reasonably to have become aware of the facts giving rise to the liability or alleged liability or within the relevant statutory limitation period, whichever is the earlier or such dispute or claim will be barred.

22 THIRD PARTY RIGHTS

- 22.1 The Contract will inure for the benefit of Service Provider and its Affiliates from time to time.
- 22.2 Except as expressly provided in Clause 22.1, a person who is not a Party to a Contract will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 22.3 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.

23 NOTICES

- 23.1 All notices to be given to a Party under the Contract will be in writing in English and will be marked for the attention of the person, and delivered by hand, or sent by first class prepaid post, or by email, as detailed for the Party below:

- (a) in the case of Service Provider:

Address: Soapworks, Ordsall Lane, Salford, M5 3TT

Attention: Head of Legal

Email: contractnotices@talktalkplc.com; and

- (b) in the case of Customer: using the details set out on the quote attached to these Customer Terms.

- 23.2 A Party may change the details recorded for it in this Clause 23 by notice to the other in accordance with Clause 23.1.

- 23.3 A notice will be treated as having been received:

- (a) if delivered by hand during Office Hours on a Business Day, when so delivered; and if delivered by hand outside Office Hours, at the start of Office Hours on the next Business Day;
- (b) if sent by first class post, at the start of Office Hours on the second Business Day after posting if posted on a Business Day and at the start of Office Hours on the third Business Day after posting if not posted on a Business Day;
- (c) if sent by email, at the time of receiving a successful delivery receipt, provided a confirmatory copy of the notice is sent by first class post within 24 hours of sending the email, and
- (d) for the purposes of Clause 10.3(a), at the time of a verbal notification to Customer's finance department.

24 VARIATIONS

- 24.1 Subject to Clause 5.2, Service Provider may need to change these terms (including Charges) from time to time. Where changes to Charges are being made pursuant to Clauses 8.7 - 8.10 then they will be made in accordance with that process. Where any other change is made Service Provider will publish such change by publishing a notice or updated terms and conditions on its website.
- 24.2 Unless a change under Clause 24.1 is made pursuant to Clauses 8.7 - 8.10 or falls within the scope of or 24.3, Service Provider will give Customer not less than one month's notice in writing and Customer may terminate the Contract in accordance with Clause 10.2.
- 24.3 Clause 24.2 does not apply to any change which is:
- (a) exclusively to the benefit of Customer;
- (b) purely administrative with no negative effect on Customer (e.g. change of contact address); or
- (c) directly imposed by Legislation, approved by Ofcom or set out in Ofcom's General Conditions of Entitlement.

25 ENTIRE AGREEMENT

- 25.1 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 25.2 Each Party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 25.3 Each Party agrees that it will have no claim for innocent or negligent misrepresentation or misstatement based on any statement in the Contract.

26 SURVIVAL OF CLAUSES

- 26.1 The expiry or termination of the Contract will not affect any provisions of it as are expressed to operate or have effect after its termination and will be without prejudice to any right of action already accrued to either Party in respect of any breach of the Contract by the other Party.

27 COMPLAINTS

- 27.1 For any complaints, Customer should refer to the Service Provider Small Business Complaints Code, which is found in the 'Contact Us' section of the Service Provider website.

28 GOVERNING LAW AND JURISDICTION

- 28.1 The Contract is governed by and will be interpreted in accordance with the laws of England and Wales.
- 28.2 Each Party irrevocably agrees that the courts of England & Wales will have exclusive jurisdiction to settle any dispute or claim arising out

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of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

29 DEFINITIONS AND INTERPRETATION

29.1 In the Contract:

- (a) words and phrases used with capital letters have the meanings given in the glossary at the end of these Customer Terms, unless otherwise defined in a Product Order;
- (b) references to:
 - (i) Clauses are to Clauses in these Customer Terms and to Paragraphs are to paragraphs of any supplementary terms agreed by the Service Provider;
 - (ii) a person includes a corporate or unincorporated body (whether or not having a separate legal personality);
 - (iii) one gender will include a reference to any other gender;
 - (iv) a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and will include all subordinate legislation made from time to time under that statute or statutory provision;
 - (v) writing or written does not include faxes;
 - (vi) the Contract or to any other agreement or document referred to in the Contract is a reference to the Contract or

such other agreement or document as varied or novated (in each case, other than in breach of the provisions of the Contract) from time to time;

- (c) words in the singular will include the plural and vice versa;
- (d) other than Customer's obligation to pay the Charges in accordance with Clause 8.1, time will not be of the essence and any dates given are estimates only;
- (e) the words "**include(s)**", "**including**" or "**in particular**" are deemed to have the words "without limitation" following them; and
- (f) any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

29.2 In the case of conflict or ambiguity, the order of precedence for a Contract and any documents attached to or referred to in it will be as follows, in descending order of importance:

- (a) the Product Order; then
- (b) any supplemental terms agreed by Service Provider; then
- (c) these Customer Terms; then
- (d) documents attached or referred to in the Contract.

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PERSONAL DATA ANNEX

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| Scope of Processing | Service Provider Processes Personal Data to enable it to provide, manage, enhance, review and service the Products and to discharge any legal obligations imposed upon it. |
| Nature and Purpose of Processing | Service Provider Processes the Personal Data to: <ul style="list-style-type: none">(a) identify, manage and help resolve certain Incidents and problems;(b) receive, manage and help resolve certain requests, queries, complaints and claims;(c) provide certain Products;(d) help Customer analyse and understand Product availability and speeds; and(e) deal with other ad-hoc requests from Customer. |
| Categories of Personal Data | The Personal Data Processed shall concern the following categories of Personal Data only: <ul style="list-style-type: none">(a) account data e.g. caller line identification/telephone numbers, account number, device ID, IP address, service history and usage data;(b) personal data e.g. name, title, date of birth, address and circuit ID;(c) company data where this identifies a Data Subject e.g. company name and company registered number;(d) contact information e.g. email address;(e) professional life data e.g. job title and employer;(f) Product information e.g. speed logs; and(g) special categories of Personal Data e.g. data relating to physical or mental health and biometric data for voice recognition software or the implementation of security measures. |
| Categories of Data Subject | The Personal Data Processed shall concern the following categories of Data Subjects only: <ul style="list-style-type: none">(a) officers and staff of Customer, including employees, consultants, volunteers, agents, temporary workers, casual workers and other individuals authorised to act on behalf of Customer; and(b) End Users or their authorised representatives. |
| Duration of Processing | Service Provider shall Process Personal Data for no longer than is necessary for the purposes for which it is Processed. |

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GLOSSARY

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| Affiliate | In relation to Service Provider, any company which is a Subsidiary or a Holding Company or which is a Subsidiary of any such Holding Company from time to time (where 'Subsidiary' and 'Holding Company' have the meanings given in section 1159 and Schedule 6 of the Companies Act 2006). |
| Ancillary Charges | Any third party charges incurred by Service Provider relating to the provision of a Product that are not Installation Charges, Recurring Charges, Usage Charges or Cancellation Charges. |
| Beyond Use | As specified in accordance with guidance issued by the Information Commissioner's Office from time to time. |
| Broadband Product | The broadband services provided by Service Provider to Customer, to access the internet using the Service Provider Network, pursuant to the Contract. |
| Business Day | A day which is not Saturday, Sunday or a public holiday in England and Wales. |
| Cancellation Charges | The charges (if any) set out in the Price List payable by Customer to Service Provider as a result of cancelling the Contract during the Contract Term. |
| Change of Control | Any material change in the exercise, control or holding of the voting shares in Customer of any holding company of Customer (otherwise than solely for the purposes of a group re-organisation of a solvent group). |
| Charges | The Installation Charges, the Recurring Charges, the Usage Charges, the Ancillary Charges and the Cancellation Charges. |
| CLI | The telephone number of a calling party. |
| Confidential Information | All business and trade secrets, methods of doing business, customer lists, tariffs and pricing information and all other confidential information and material disclosed by or obtained from the other Party in connection with the Contract. |
| Connection | The connection of the Product to the Service Provider Network and "Connected" will be construed accordingly. |
| Connection Date | The date Service Provider notifies Customer a Product will be ready for use by Customer or, where a Connection will be connected to the Service Provider Network or if earlier the date upon which Customer first uses the Product or Connection. |
| Contract | Product Order and any terms set out in it, which has been accepted by Service Provider in accordance with Clause 2.2, incorporating these Customer Terms. |
| Contract Term | The period commencing on the date of the Contract and expiring after the period from the Connection Date specified in the Product Order. |
| Controller | As defined in the Data Protection Legislation. |
| Credit Limit | A monthly financial limit on the Charges which may be incurred under the Contract. |
| Customer Equipment | Any equipment, apparatus, software, systems and cabling provided by Customer and used to access the Products. |
| Customer Terms | These terms and conditions. |
| Data Protection Legislation | GDPR, the Data Protection Act 2018 and UK GDPR. |
| Data Subject | As defined in the Data Protection Legislation. |
| End User | Any person authorised by Customer to use the Product. |
| Force Majeure Event | Any circumstances beyond a Party's reasonable control including acts of God, theft, war or riot, civil disobedience, national emergency, strikes and other labour disputes (other than concerning the Party affected by the Force Majeure Event), fire, flood, act of terrorism, power failures, non-availability of any third party communication services, or the internet or breakdown of any equipment not supplied under a Contract and acts of government or other competent authority. |
| GDPR | The General Data Protection Regulation ((EU) 2016/679). |
| Incident | An unplanned interruption or a reduction in the quality of a Product. |
| Installation Charges | The charges incurred as a result of or arising from the installation of the Product by Service Provider at the Site. |
| Intellectual Property Rights | Patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| Legislation | Any legislation, authorisations, permissions, rules, regulations, codes of practice, orders and guidelines relating to the provision, marketing or use of the Products, including any directives or other requirements issued by any regulator from time to time. |
| Losses | Liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses). |
| Maintenance | Proactive maintenance of a Product to minimise Incidents. |
| Maintenance Window | The hours of 00:00 and 06:00, seven days a week. |
| Office Hours | 9.00am-5.30pm on any Business Day. |
| Party | Service Provider or Customer and together the "Parties". |

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| Personal Data | As defined in the Data Protection Legislation. |
| Personal Data Annex | The section of these Customer Terms headed "Personal Data Annex" and which may be updated by Service Provider by posting an update at https://www.talktalkbusiness.co.uk/legal/processing-particulars . |
| Personal Data Breach | As defined in the Data Protection Legislation. |
| Price List | The price list of Charges for the Product available on Service Provider Website, and as such are periodically updated and made available to Customer from time to time. |
| Privacy Policy | Service Provider's privacy policy located at https://business.talktalk.co.uk/privacy-policy/ , as may be updated by Service Provider from time to time by posting an update at such URL. |
| Processing | As defined in the Data Protection Legislation and the word " Process " shall be construed accordingly. |
| Processor | As defined in the Data Protection Legislation. |
| Product | Any service, package of services and Service Provider Equipment, provided by Service Provider to Customer pursuant to the Contract and " Products " will be construed accordingly. |
| Product Order | Each proper request for a Product made pursuant to these Customer Terms. |
| Recurring Charges | The regular charges for a Product that are incurred periodically in the same amount, such as line rental. |
| Service Provider | TalkTalk Business Direct Limited, a company registered in England & Wales with company number 11347230. |
| Service Provider Equipment | Any equipment, apparatus, software, systems and cabling provided by Service Provider to provide a Product at the Site. The Service Provider Equipment does not include the Service Provider Network. |
| Service Provider Network | The public electronic communications network operated by Service Provider or its Affiliates from time to time. |
| Service Provider Website | The website located at www.talktalkbusiness.co.uk as may be amended from time to time. |
| Site | Any premises, not owned or controlled by Service Provider, at which the Product is to be provided. |
| Small Business Customer | A Customer who is neither a communications provider nor a person for which more than ten individuals work (whether as employees, volunteers or otherwise). |
| Telephone Preference Service | The call screening service provided by Service Provider as more particularly described in the Contract. |
| Telephony Product | The services provided by Service Provider to enable Customer, to make and receive calls over the Service Provider Network, pursuant to the Contract. |
| Third Party Operator | The operator of any electronic communications network or provider of any electronic communications services over which or through Service Provider may provide Products. |
| Third-Party Processor List | A list of the Third-Party Processors, which is available at https://www.talktalkbusiness.co.uk/legal/third-party-processor-list/ . |
| Third-Party Processors | Service Provider' third-party processors, who may Process Personal Data outside of the European Economic Area, as detailed on the Third-Party Processor List. |
| Transmission Speed | The rate either in Kbps or Mbps that data is transferred between the Service Provider Equipment and the Broadband Product. |
| UK GDPR | Has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018. |
| Usage Charges | The charges that are incurred based on use of the Product, such as call charges or bandwidth usage charges. This covers all charges incurred including where the Product is used without Customer's knowledge, consent or otherwise. |