



1st Callcom Ltd Broadband Agreement

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NB

Customer: _____ Ref: _____

Customer Details	Billing Details if different
Contact: _____	Contact: _____
Tel: _____	Tel: _____
Address: _____	Address: _____
_____	_____
Postcode: _____	Postcode: _____
Email: _____	Email: _____

Line(s) Broadband to be Routed on															
Number										Line Type	Speed	Monthly Rental		Connection Cost	
												£	+VAT	£	+VAT
												£	+VAT	£	+VAT
												£	+VAT	£	+VAT
												£	+VAT	£	+VAT

Is this a new Broadband or Migration: New Migration

If it is a Migration what is the MAC Code: _____

If it is a Migration who is the current Provider: _____

Is the broadband going on a new line install: _____

If it is a new line install, date of activation: _____

How many static IP addresses are required: _____

Is a wired modem required (£50 plus VAT): _____

Is a wireless modem/router required (£75 plus VAT): _____

Is professional installation required (£120 plus VAT): _____

Minimum contract period: _____ (Months)

Signature _____ Position _____

Print Name _____ Date _____

OFFICE USE ONLY:

Signed for on behalf of 1st Callcom Ltd: _____ Print Name: _____

Date: _____ Commencement Date: _____

TERMS AND CONDITIONS FOR THE PROVISION OF BROADBAND SERVICES

1. INTERPRETATION

1.1 In these Conditions:-
"Acceptable UsePolicy" means the Company's acceptable use policy for the use of the Services as notified by the Company to the Customer from time to time
"Charges" means the charges for the provision by the Company of Services during the Contract Period (and any continuation thereof) as amended from time to time in accordance with clause 5
"Company Equipment" means such equipment owned or used by the Company as is necessary to provide the Services
"Company Network" means the high speed network access to the internet
"Contract" means the contract for the provision of the Services subject to these Conditions
"Contract Period" means a period of months from the Service commencement date stated on the contract or a minimum term of 12 months whichever is greater
"Conditions" means the terms and conditions set out below
"Company" means 1st Callcom Ltd registered at Stronger House, Ravensham Way, Renishaw, S21 9WY
"Customer" means any person who uses the Services
"Customer Equipment" means any equipment (including without limitation cabling, wiring, personal computers, network interface cards and network interface adapters) not forming part of (but which may be connected to) the Company's Equipment and used by the Customer in conjunction with any Company Equipment in order to obtain or use the Services
"Equipment" means one or more of the Company Equipment and the Customer Equipment as applicable
"Force Majeure" means any circumstances preventing either party from performing any or all of its obligations which arises from and is attributable to acts, events or circumstances beyond the control of either party
"Installation Charge" means the charge for the installation of the Services in and in this contract and payable by the Customer for the installation of Company Equipment unless otherwise agreed by the parties
"Law" means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which a party is from time to time subject
"Order Form" means the Company's order form completed by (or on behalf of) the Customer and accepted by the Company to order the Services subject to the Contract
"Service Commencement Date" means the date:-
(i) the date the relevant Service is available for use by the Customer or
(ii) the date the Customer first uses the Services
"Service Care Level" means the service care level specified in the Customer's order and being either Standard Care (where the Company's response time for any Service failure is 40 clock hours) or Enhanced Care (where the Company's response time for any Service failure is 20 clock hours)
"Services" means the provision by the Company of such of the Company's Internet services and services to enable the Customer to access the Company Network, Internet services, helpdesk services and applications over and via the Company Network and shall include (where requested on the Order Form) by the Customer), the provision by the Company of such services to enable the Customer to obtain e-mail accounts, webspace, and/or domain name registration(s)
"Site" means the site (or sites) to which the Services shall be provided
"Survey" means any survey or other investigations carried out by or on behalf of the Company that the Company in its absolute discretion deems necessary prior to the provision of the Services

1.2 In these Conditions:-

1.2.1 headings shall not affect interpretation
1.2.2 a "person" includes a partnership, firm, company (as defined in Section 735 Companies Act 1985), body corporate or corporation (as defined in Section 740 Companies Act 1985) or organisation
1.2.3 references to "the Contract", "the Services" or any payment included in part of any of them.

2. BASIS OF SERVICES PROVISION

2.1 The Customer shall send the Customer purchase the Services set out on the Order Form subject to these Conditions which supersede any other terms and which govern the Contract to the exclusion of any terms and conditions which the Customer purports to apply or which are implied by trade, custom or course of dealing.
2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer's order or other document will form part of the Contract simply as a result of such document being delivered to the Company or referred to in the Contract.
2.3 Any variation to these Conditions set of no effect unless agreed in writing by a director of the Company.
2.4 These Conditions constitute the entire agreement between the Customer and Company for the provision of the Services.
2.5 Any advice or recommendation given by the Company or its employees or agents to the Customer as to the application or use of the Services which is not confirmed in writing by a director of the Company is followed or acted upon entirely at the Customer's own risk.

2.6 Any geographical, clerical or other error or omission in any document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
2.7 The Customer acknowledges that the Services are being purchased as part of a business to business transaction and that the Consumer Protection (Distance Selling) Regulations 2000 do not apply.

3. QUOTATIONS, ORDERS AND SPECIFICATIONS

3.1 A quotation by the Company is not an offer. Quotations are valid for 30 days only and subject to withdrawal or revision at any time before acceptance of the Customer's order by the Company.
3.2 Each order for Services by the Customer is an offer by the Customer to purchase the Services subject to these Conditions. To order Services, the Customer must complete and submit the Order Form to the Company.
3.3 No Order Form submitted by the Customer by whatever means is accepted by the Company until the Company confirms its written acceptance or (if earlier) the Company supplies the Services to the Customer.

3.4 The Customer must ensure that the terms of any order included on an Order Form (including any specification) are complete and accurate and that the Company is provided with any necessary information relating to the provision of Services with sufficient time to enable the Company duly to perform the Contract.
3.5 Notwithstanding clause 3.2, if the Customer places an order other than on its standard Order Form (a "Customer Order Form") or if the Customer installs a Service without having received from the Customer an order and/or accepted either the Company's standard Order Form or a Customer Order Form, the Services shall be provided in accordance with the standard 1stCallcom terms and conditions.

3.6 The Customer reserves the right to make any changes in the specification of the Services which are required for such Services to conform with any applicable Law or where the Company Equipment or Services are to be supplied to the Customer's specification, which do not materially affect their quality or performance.
3.7 Subject to satisfactory Survey, the Company shall use its reasonable endeavours to connect any Company Equipment so that the Services are available by any requested service date. An order may be cancelled by the Company without liability if the results of any Survey are, in the Company's reasonable opinion, unsatisfactory or if it is not technically feasible to implement and/or support the Services by the requested service date.

4. CUSTOMER EQUIPMENT

4.1 The Company shall have no liability for any loss or damage arising directly or indirectly from use of the Customer Equipment whether or not the Company shall have recommended the use and/or performance of such Customer Equipment.
4.2 Unless otherwise agreed in writing, the Customer is responsible for ensuring that the Customer Equipment is programmed, equipped, compatible and connected for use of the Services in accordance with the Company's reasonable instructions and any other instructions or safety and security procedures applicable to the use of Customer Equipment.
4.3 The Customer must ensure that all Customer Equipment is in good working order and complies with applicable standards, approval and any relevant Law. The Company may require the Customer to disconnect (in which case the Customer must do so promptly) or may itself disconnect any Customer Equipment if in the Company's reasonable opinion:-

4.3.1 it does not conform to applicable standards, approvals or any relevant Law for the time being in force; or
4.3.2 it may cause injury to any person or material damage to property; or
4.3.3 it may materially impair the quality of any Services provided by the Company.

4.4 The Company has no liability whatsoever where any inability to use the Services is due to incompatibility between Customer Equipment and the Company Equipment or for any breakdown or failure in Customer Equipment.

5. SERVICE REQUIREMENTS

5.1 Before the Company can agree the Customer's request to subscribe to the Services, the Customer:-
5.1.1 must ensure it has an existing telephone line suitable for installation of broadband at the location to which the Customer has requested that the Company provide the Services. The Customer must ensure that the telephone lines with no other services or attachments. Lines must specifically not be used for "redcare" alarms or be auxiliary working. The Customer may request that the Company provide such line.
5.1.2 shall cancel any other broadband access service supplied by another company through any existing telephone line that the Customer wishes to use to receive the Services.

5.1.3 must ensure it has a suitable computer and compatible cables from the Customer's telephone socket to the Customer's modem and computer.
5.1.4 may be subject to a direct reference check carried out by the Company if the Company, in its sole discretion, considers this necessary.
5.2 In certain limited circumstances, the Company may not be able to provide the Customer with the Services for technical reasons. If this happens the Company shall use its reasonable endeavours to promptly inform the Customer of this.

5.3 Once the Company confirms its agreement to the Customer's request to subscribe to Services, the Company will arrange for the Customer to start to receive the Services within approximately 10 days. Although the Company will use reasonable efforts to meet this date, it is not able to guarantee this date. The Company shall use its reasonable endeavours to inform the Customer of any delay.
5.4 If the Customer moves location or changes the telephone number of the telephone line to which the Customer connects to the Services, the Customer must inform the Company immediately. The Customer may still be able to continue to receive the Services, however the Company may charge the Customer an additional fee for doing this. The Company will not be responsible for any loss of service or disruption of service to the Customer. In the event that the Customer moves location or changes the Customer's telephone number, the Customer's contract with the Company for the Services will continue until it is ended in accordance with clause 14, below.

5.5 Where the Customer is provided with software or where the Customer downloads software from the Internet to enable use of the Services, the Company agrees to indemnify the Customer in respect of such software. The Customer shall be responsible for ensuring that the software is used in accordance with the terms of the software. The Customer must not make additional copies or modify the Company's software in any way without the Company's permission. The Company may from time to time offer the Customer updates to such software.
5.6 The Company will use its reasonable endeavours to provide the Services to the Customer up to the data transmission speed requested by the Customer. However the Customer agrees and understands that by signing the contract, the Customer fully accepts that transmission speeds are dictated by many external factors such as the length and quality of the cable and the telephone line and the Company cannot guarantee any particular speed therefore, in particular, the Company will not in any circumstances accept any liability or responsibility whatsoever in respect of actual received transmission speeds if they differ in any way from the speed of Service actually supplied from the public telephone exchange equipment.

6. COMPANY EQUIPMENT

6.1 Title in any Company Equipment remains with the Company at all times.
6.2 The Company Equipment is at the risk of the Customer from the time of delivery. If the Customer damages or loses the Company Equipment or any part thereof, the Company may require the Customer to reimburse its reasonable charges for the repair or replacement of such Company Equipment, or part thereof.
6.3 The Customer must:-
6.3.1 maintain the Company Equipment in a satisfactory condition insured on the Company's behalf for their full price against all risks;
6.3.2 hold the proceeds of insurance referred to in clause 6.3.1 on trust for the Company and not mixing with any other money not pay the proceeds into an overdraft account.

6.4 In order to verify the Customer's compliance with its obligations under clause 6.3 and to exercise its rights in clause 6.5, the Company shall be entitled by its employees or agents without notice to enter the Customer's Site or such other premises where the Company Equipment is located.
6.5 The Customer's right to possession of the Company Equipment terminates immediately if any of the events set out in clause 14 occurs and in such circumstances the Customer must return such equipment to the Company (at the Company's expense) on request. In the event that the Customer fails to return any Company Equipment when requested to do so, the Customer shall be responsible for the replacement of such equipment at the Company's expense.
6.6 The Customer shall provide a suitable place and conditions for the Company Equipment (including a continuous mains electricity supply and connection points at the Customer's own expense whether the Company Equipment require such services) at the Customer's Site or in such other locations as may be nominated by the Customer so as to enable the Company to supply and continue to supply the Services (without cost to the Company) and shall prepare such site or location at its own expense in accordance with the Company's reasonable instructions.

6.7 In order to provide the Customer with software to enable the Customer to access and use the Company Network and the Services, the Customer shall not copy or modify such software without the Company's prior written consent. Any software provided by the Company is for the Customer's use only. The Customer shall not sell, transfer, assign or sub licence the software or any part of it to any third party.

7. CANCELLATION AND DELAY

7.1 No order may be cancelled by the Customer once accepted by the Company except with the Company's written agreement and on terms that the Customer shall indemnify the Company against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
7.2 If the Customer extends or delays the Contract or fails to take delivery of any Company Equipment at the agreed time then the Customer shall indemnify the Company against all loss (including loss of profit) costs (including the cost of storage and all labour and materials used), damages, charges and expenses incurred by the Company as a result of such extension, delay or failure.
7.3 The Customer reserves the right to defer the date of performance or to cancel the Contract without liability to the Customer if it is prevented from or delayed in carrying on its business by reason of Force Majeure. In such circumstances, the Customer may also give written notice to cancel the Contract if the cause in question persists for a continuous period in excess of 180 days but in any event shall remain liable to pay for Services delivered or supplied prior to such cancellation by the Company or the Customer.

8. CHARGES

8.1 The Charges for the provision of Services are the Company's quoted Charges or, where no Charges have been quoted (or a quoted Charge is no longer valid), the Charges listed in the Company's Price Guide at the date of provision of Services.
8.2 The Company reserves the right at any time before delivery or performance to amend the Charges for the Services to take into account any variation in cost to the Company.
8.3 The Charges are exclusive of any applicable VAT.
8.4 The Charges exclude the Installation Charge which is payable on the installation of any Company Equipment unless otherwise agreed by the parties.

8.5 Charges for the Services are payable on a monthly basis in arrears subject to the following:-
8.5.1 If the Customer is a company, the Company, if following any Survey (or other investigation) the Company concludes that it will incur unusual additional costs in providing the Services, the Company shall be entitled, on notification to the Customer, to increase the Charges by the amount of such costs. Where the Customer does not accept such increased Charges, the Contract will come to an end.
8.5.2 If the Customer is not a company the Company may increase or implement new Charges by giving the Customer 30 days' written notice. Without limitation such notices may be contained in billing information provided to the Customer by the Company. The Company may decrease charges at any time without notice.
8.7 The Customer acknowledges that the Charges for the Services are comprised of a number of components, including (but not limited to), minimum charges, connection costs, configuration costs and minimum access times. The Customer further acknowledges that the Charges levied for the Service components are subject to change by any increase or decrease in such component Charges payable or recovered by the Company as a result of changes implemented by the Company or third party suppliers shall be deemed to be the Company's responsibility.

8.8 Failure by the Customer to accept the Company Network and Services at any time shall not relieve the Customer of its obligation to pay the Charges so long as this Contract remains in force.
8.9 PAYMENT OF THE CHARGES
8.9.1 Payment of the Charges for the Services (unless otherwise agreed in writing by a director of the Company) shall be paid by direct debit or such other means of electronic funds transfer as the Company shall decide and shall be due 10 days after the date of the Company's invoice.
8.9.2 Unless otherwise agreed by the parties, payment of any Installation Charge is due immediately upon installation of any Company Equipment.
8.9.3 The Customer authorises the Company to alter the Customer's direct debit instructions according to the relevant Charges from time to time applicable to the Services. On proper termination of the Contract the Customer following notification of such changes by the Company.
8.9.4 Failure by the Customer to provide the Company with a valid direct debit instruction or other authorisations for periodic payment for the Company. Except on proper termination of the Contract the Customer acknowledges that it must inform the Company immediately if it proposes to cancel any direct debit instructions. Cancellation of any direct debit instruction shall entitle the Company to suspend and/or terminate the Contract without notice.
8.9.5 Time of payment is of the essence of the Contract.
8.9.6 For the purposes of this contract, payment is received when the Company receives it in cleared funds.
8.9.7 Payment by the Customer or on its behalf shall be made without any deduction or set off.
8.9.8 The Company reserves the right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 in respect of any payment of the Company.
8.9.9 Despite any provision allowing credit, payment is due and payable to the Company immediately upon cancellation or termination of the Contract.
8.9.10 If the Customer fails to make any payment on the due date then Charges for all Equipment or Services provided or agreed to be provided to the Customer shall

be immediately due and payable without demand and the Company may:-
9.9.1 cancel the Contract or suspend performance to the Customer in accordance with clause 10; and/or
9.9.2 appropriate any payment made by the Customer to such of the Services (or the goods or services supplied under the Contract and the Company) as the Company thinks fit.

9.10 The Company is entitled to set off sums owed by the Customer to the Company against sums owed by the Customer to the Company.
9.11 If payments received from the Customer are not stated to refer to a particular invoice the Company may appropriate such payments to any outstanding invoice.

10. SERVICE PROVISION AND USE OF THE SERVICES

10.1 The Company shall provide the Services in accordance with the Contract.
10.2 The Company shall provide the Services in accordance with all information and materials reasonably required by the Company to supply the Services.
10.3 The Company shall use the reasonable skill and care of a competent internet service provider in providing the Services. However the Customer accepts that it is technically impracticable to provide the Services entirely free of faults and the Company does not undertake to do so.
10.4 The Company shall issue the Customer with a user name and password for each user account registered to receive the Services. The Customer agrees to keep and use such user name and password confidential and to use them only in accordance with the Company's instructions.
10.5 The Customer undertakes to comply with the Acceptable Use Policy when accessing the Company Network and using the Services.
10.6 The Customer undertakes to use the Equipment and Services in accordance with such conditions and/or instructions as may be notified in writing to the Customer by the Company from time to time and in accordance with Law and the Contract. The Company may from time to time vary the technical and/or operational procedures for use of the Services.
10.7 If the Company, acting reasonably, suspects a breach of security or misuse of a user account, it may:-
10.7.1 change any password allocated to the Customer provided that the Company will always notify the Customer of such a change and/or;
10.7.2 suspend username and password access to the Services.
10.8 The Customer shall notify the Company as soon as it is reasonably possible upon becoming aware that any username or password allocated to it has become known by someone not authorised to use it, or if any password has been or is likely to be used in an unauthorised way.

10.9 The Customer must not use or allow anyone else to use the Services:-
10.9.1 to send or receive a communication which is offensive, abusive, indecent, obscene or menacing;
10.9.2 to cause annoyance, inconvenience or needless anxiety to anyone;
10.9.3 to spam or send or provide promotional, advertising or promotional material, or knowingly to receive responses to any spam, unsolicited advertising or promotional material sent or provided by any third party;
10.9.4 to violate or infringe the rights of any person;

10.9.5 in a way that does not comply with the Acceptable Use Policy and/or the Company's instructions;
10.9.6 in breach of the Contract; or
10.9.7 in breach of Law.

10.10 The Customer shall not sell, transfer, assign or sub-licence any aspect of the Services or any associated software to any third party.
10.11 The Company may at its discretion suspend the Services and/or terminate the Contract if the Customer is in breach of the Contract. The Customer must indemnify the Company against all liabilities, claims, damages, losses and proceedings arising out of or in any way connected with any use of the Services in contravention of clause 10.9.

10.12 Where, in accordance with the Contract the Company suspends performance of or access to the Services in accordance with clause 10.11 or any username or password in accordance with clause 10.7:-
10.12.1 site-barring may be implemented, restricting access to and/or from the Company Network;
10.12.2 the Services may be "designated" temporarily out of service; and
10.12.3 disconnection of the Services and the Customer's ability to access the Company Network.

10.13 Following a suspension of Services or any username/password and a rectification by the Customer of any breach of contract or any security breach (as applicable), the Company shall use its reasonable endeavours to resume access to the Services for the Customer within a reasonable time. The Customer acknowledges that the Company may not be resumed in dependence upon the manner of suspension employed by the Company and, as a minimum, periods for resumption of Services would be as follows:-
10.13.1 site-barring or reactivation of username/password – 8 hours;
10.13.2 user accounts temporarily out of service – 48 hours; and
10.13.3 disconnected user accounts – 14 days.

10.14 The Customer acknowledges that following a suspension of Services resulting in disconnection under clause 10.12, a re-connection charge may (at the discretion of the Company) be levied by the Company in accordance with its price list in force from time to time.

10.15 In order to maintain the quality and safety of the Services, the Company may from time to time suspend, close down or restrict the whole or any part of the Services in order to carry out maintenance, repairs, maintenance and/or improvements to or prevent overload of the Company Network and to preserve safety, security or integrity of the Services and any internet traffic conveyed. The Company will give the Customer as much notice as is reasonably possible before doing so and will endeavour to carry out such works within its scheduled maintenance periods as published by the Company from time to time.

10.16 The Company shall provide (or procure the provision of) Service Care Level in relation to the Services or Company Equipment as the Customer has requested on the Order Form. If no service care is specified on the Order Form then a "wires only" service is deemed to be in force.
10.17 The Company will test the service using the available remote diagnostic equipment and may request the Customer to perform some basic end-user checks to arrive at a diagnosis. In the case of wires only service this is the extent of the service and support that is applicable.
10.17.2 Where an enhanced service care level applies, where a fault is diagnosed, the Company may supply replacement equipment or arrange an engineering visit to the Customer's premises to diagnose and/or repair the fault.

10.17.3 By signing a contract for Service the Customer accepts that Charges will be made in respect of maintenance visits where customer error or act of God (ie lightning strikes etc) is proven.
10.18 The Company shall not be entitled by its employees or agents without notice to enter the Customer's Site premises where the Services are being provided from time to time for the purpose of carrying out a survey or inspection, maintenance or upgrade of the Services or Company Equipment in accordance with clause 6.4. Each party shall use its reasonable endeavours to minimise the disruption caused to the other party and its business when arranging and conducting any such access.

11. DOMAIN NAME SERVICES

11.1 Where the Customer agrees to provide the Customer with domain name services as part of the Services, the following provisions will apply:-
11.1.1 The Customer warrants that it is the owner of, and/or it has the full rights to use any trade or other name or mark requested by or allocated to it;
11.1.2 The Company cannot guarantee that any domain name requested by the Customer will be available for use by the Customer;
11.1.3 in the event that the Company has reasonable grounds to believe that the use by the Customer of any domain name allocated to it is or is likely to breach clause 11.1, above, the Company in its sole discretion may cease to provide such domain name and ask the Customer to choose a replacement;
11.1.4 The Company shall not be responsible for any loss or damage arising from the use of domain names registered and/or provided in accordance with all terms and conditions issued by the regulatory body responsible for the registration and maintenance of such domain names and the Customer agrees to comply with all terms and conditions issued by such regulatory bodies.

11.5 The Company accepts no responsibility in respect of the use of any domain name by the Customer and any dispute between the Customer and any other individual or organisation in connection with the use of such domain names shall be referred to the parties concerned and the Company will take no part in any such dispute; and
11.6 The Customer acknowledges that all static IP addresses allocated to it by the Company are offered on a rental basis only and remain the property of the Company at all times.

12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

12.1 The following set out the entire final liability of the Company, including its liability for the acts or omissions of its employees, agents or subcontractors to the Customer in respect of any breach of these Conditions, any representation, statement or act or omission (including negligence) arising under or in connection with the Contract and in respect of any contemplated performance or lack of performance.
12.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.
12.3 The following set out the entire final liability of the Customer, including its liability for the acts or omissions of its employees, agents or subcontractors to the Customer in respect of any breach of these Conditions or exceeds or limits the Company's liability for death or personal injury caused by the Customer's negligence or for fraudulent misrepresentation.

12.4 Subject to clauses 12.2 and 12.3:-
12.4.1 the Company shall not be liable to the Customer for any loss of profit, loss of production, financial loss, depletion of goodwill or for any loss or corruption of data or any indirect loss, damage, costs or expenses whatsoever which arise out of or in connection with the Contract, its contemplated performance or lack of performance, or any breach of the Services, in accordance with clause 10; and 12.4.2 subject to clause 12.4.1, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of this Contract shall be limited to the Charges incurred by the Customer in any 12 month period.
12.5 The Customer acknowledges that access to and use of the Internet is at its own risk and accordingly the Company accepts no liability in respect of any goods, services, information or software or other material obtained by the Customer when using the internet, nor in relation to the publication, transmission or reception of any material or information of any kind other than that provided by the Company.

12.6 The Company can not be held responsible or guaranteed the speed of any broadband service stated.
12.7 The Company can not be held responsible for any loss in the quality of the service from any third party.
12.8 INDEMNITY
The Customer agrees to indemnify the Company against any damages, losses, costs, claims or expenses incurred by the Company towards a third party arising out of or in connection with the Services provided by the Company or their operation or use and whether arising by reason of the negligence of the Company or otherwise and any allegation by a third party that the use of the Services and/or Equipment by the Customer or pursuant to this Contract, has infringed any intellectual property rights or other rights of that third party.

13. DURATION OF CONTRACT

14.1 In relation to the Services, the Contract shall come into effect on the earliest of the dates the Customer signs the Order Form or the Service Commencement Date.
14.2 The Contract shall continue in force unless either party terminates the Contract by giving the other party 90 days' written notice, or such shorter period as the Order Form may specify. Such notice period shall be in writing unless it is given orally on or after the last day of the Contract Period.
14.3 Notwithstanding clause 14.2 the Company may terminate the Contract immediately on written notice if:-
14.3.1 any Survey is not, in the Company's discretion, satisfactorily completed;
14.3.2 the Customer is the subject of bankruptcy or insolvency proceedings in the United Kingdom or elsewhere, a liquidator, trustee in bankruptcy, receiver or administrator (or equivalent) or other material insolvency proceedings are initiated against the Customer or the Customer enters into any formal or informal composition or arrangement (or equivalent) with the creditors of the Customer or the Company reasonably believes that such events are reasonably likely to occur. For the purposes of this clause 14.3.2 the Customer shall include the Customer's direct and/or indirect parent company and "Customer" shall be interpreted accordingly;
14.3.3 the Customer makes a material mis-statement in the details the Customer has supplied to the Company to enable the Company to provide the Services;
14.3.4 the Customer fails to pay the Company any amount due to the Company within the time specified in the Contract or fails to pay any amount due to the Company or to have with the Company or a member of the Company's group;
14.3.5 the Company suspects on reasonable grounds that the Customer may have committed or may be committing:- (a) a breach of Law; and/or (b) any fraud against the Company or any third party.

14.3.6 the Customer fails to maintain a reasonable standard of creditworthiness; or
14.3.7 any contract between the Company and a third party provider of telecommunications services is terminated where such termination affects the provision of the Services.
14.4 If the Company requests the Customer to do so but the Customer fails to return to the Company (or as otherwise notified to the Customer by the Company) the Order Form duly signed by the Customer within 14 days of the Service Commencement Date (or any other date notified to the Customer by the Company) the Company shall terminate the Contract (but not obliged) without notice to terminate the Contract, or without prejudice to its right so to terminate, to downgrade or suspend the Services as it thinks fit.

14.5 Although the Company carries out a line test on the Customer's telephone line prior to accepting the Customer's request to receive the Services, in certain limited circumstances that are beyond the Company's control this line test may prove false. As a result the Customer will not be able to provide the Services to the Customer. The Customer shall be responsible for the cost of any such test and the Company shall be responsible for the cost of any such test and the Contract end. In such circumstances, the Company will provide the Customer with a full refund for any charges the Customer has already paid to the Company. **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

14.6 On termination of the Contract by reason of the Customer's breach of the Contract or other default, the Customer shall be liable to pay to the Company 50% of the Charges that would otherwise have been payable by the Customer during the Contract Period. Such sum to be calculated by taking the average monthly Charges incurred during the period from the Service Commencement Date to the date of termination multiplied by the number of months remaining in the Contract Period. Such sums shall be paid by way of liquidated and ascertained damages by the Customer to the Company and such sums are accepted by the parties as being a genuine pre-estimate of the net losses likely to be suffered by the Company in such an event.

14.7 Sanctions where the Contract is terminated by the Company in accordance with clause 14.5 on termination or expiry of the Contract the Customer shall remain liable for all Charges incurred by the Company in connection with the use of the Company Network, including transmission of the Services to an alternative provider and for the installation charge for any Company Equipment installed at its premises unless it has been paid or the requirement to pay such charge has been waived by the Company.
14.8 The right to terminate the Contract shall not prejudice any other right or remedy of the Parties in respect of any rights, obligations or liabilities accrued prior to termination (including without limitation, termination under clause 7.3).

15. HEALTH AND SAFETY

The Customer agrees to:-
15.1 pay due regard to all information supplied by the Company relating to the use of the Equipment necessary to ensure the Equipment will be safe and without risk to health at all times when using a domestic set, used, cleaned or maintained by any person.
15.2 indemnify the Company in respect of any and all claims arising from the Equipment being unsafe as a result of the Customer's activities.

16. GENERAL

16.1 Each right or remedy of the Customer under the Contract is not prejudiced by any other right or remedy of the Company, whether or not under the Contract.
16.2 The Company shall not be liable for any loss or damage arising from the use of the Services or any associated software, whether or not under the Contract, except insofar as such liability shall (subject to termination at the discretion of the Company), continue in full force and effect.
16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.
16.4 Any dispute between the parties arising out of or in connection with the Contract shall be determined in accordance with the Company's service charter in force from time to time, which is available upon request.

16.5 Any waiver by the Company of any breach by the Customer is not a waiver of any subsequent breach.
16.7 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.
16.8 Notices addressed to the Company shall be marked for the attention of the Company Secretary.
16.9 Notices shall be delivered personally or sent by first class post or sent by facsimile transmission.
16.10 A notice is deemed to have been received:-
16.10.1 if delivered personally, at the time of delivery;
16.10.2 if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting);
16.10.3 if sent by facsimile transmission, on the second working day after posting (exclusive of the day of posting) and otherwise on the next working day.

16.11 The Contract does not create, confer, confer power to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.
17. ASSIGNMENT
17.1 The Customer may assign, subcontract or otherwise transfer the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.
17.2 The Customer may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it.

18. ENGLISH LAW

18.1 Subject to clause 16.5, the Contract shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts.
18.2 Clause 18.1 is for the benefit of the Company only and as a result, the Company shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.