

These terms and conditions (the "Conditions") govern your use of the Service (as defined below); the content, features and functionality of the Service are described on the Order Form and at: Ecotele Limited, registered office 145-157 St John Street, London EC1V 4PY (the "Company").

By submitting a completed Order Form to the Company, you confirm to us that you have read, understood and accepted these conditions,

## 1 DEFINITIONS

1.1 Please note some terms used in these Conditions will have a certain meaning:

**"Access Line"** means the BT telecommunications circuit that you use to obtain telecommunications services over the public switched telephone network at the Premises as notified by you to the Company;

**"Data Line"** means Asymmetric Digital Subscriber Line, Annex M, SIP Trunk, Leased Line, FTTC, EFM the use of which enables the high speed transmission of digital data on the Internet over a telephone line;

**"Agreement"** means the agreement between the Customer and the Company for the provision of the Services authorised on the Order Form.

**"Agreement Date"** means the earlier of (i) the date of last signature of this Agreement by the parties to the Agreement or (ii) the date on which the service is connected.

**"Authorised User"** means, in relation to the individual(s) appointed by the Customer as responsible for the payment of the Company's invoices.

**"BT"** means British Telecommunications plc;

**"Business Customer"** means you are (i) a person who uses the Service in connection with your trade, business or profession; or (ii) a company, partnership or other organisation other than a Consumer;

**"Business Days"** means Monday to Friday between the hours of 09:00 and 17:00, excluding public UK holidays;

**"Carrier"** means any supplier of telecommunications services utilised by the Company to assist in the delivery of the Service;

**"Charges"** means any of the charges (including without limitation any supplementary charges pursuant to Clause 3.9) payable by the Customer for the provision of the Services pursuant to this Agreement as set out in the Schedule and/or the Order Form and/or the Welcome Letter;

**"Company System"** means the telecommunication system and network operated by the Company in accordance with the General Conditions or other such permission granted to the Company as may be amended from time to time and, for the purpose of this Agreement, any apparatus leased by, or otherwise obtained by, the Company from a third party;

**"Consumer"** means that your use of the Service is for personal use only and you do not use the Service as a Business Customer; if you change your use during the term of this Agreement from consumer to business use, the Business Customer provisions of this Agreement will apply to you;

**"Customer"** means the Consumer or Business Customer named as the Customer in the Order Form;

**"Customer Apparatus"** means apparatus owned by the Customer not forming part of the Equipment but which may be connected to the Equipment directly or indirectly, including without limitation any microfilter, router and/or modem you may purchase for a self-installation version of the Service, but not including CPE, which may be used by the Customer in conjunction with the Company Equipment in order to obtain the Service;

**"CPE"** (Customer Premises Equipment) means any equipment which is supplied to you by the Company following you indicating in your Order Form that you wish the Company to supply you with such equipment; Eg Telecommunications hardware, including PBX, IPPBX, Handsets, Routers, POE Switches & Hosted VoIP or cloud services.

**"Ecotele"** means the brand of the Company utilised by the Company in the provision of certain of its products and services;

**"Equipment"** means any apparatus or equipment provided by the Company or any third party to the Customer at the Premises as part of the Service including without limitation any microfilter, router and/or modem so provided;

**"General Conditions"** means the general conditions of entitlement as set out in the notification issued by the Director General for Telecommunications on 22nd July 2003, in accordance with section 48(1) of the Communications Act 2003, pursuant to section 45 of said Act, as may be amended from time to time;

**"Initial Period & Auto Roll"** means the period set out in your Order Form, which in any case shall be no less than 12 months, beginning on the Service Commencement Date or, if applicable, if it is later than the Service Commencement Date, the date when the Company informs you of successful completion of the Standard Tests in terms of Clause 6.5; In the event of the official notice period not being provided by the business customer by email or letter to head office, (& acknowledged), all contracts with the exception of maintenance contracts will automatically roll over at the original contract price for a further 12 month period to ensure no loss of service or business interruption.

**"Internet"** means the interconnected system of networks that connects computers around the world through an established protocol enabling the transmission and exchange of electronic information and data;

**"Order"** means the application which you place for the provision of the Services, either by completing and submitting an Order Form or by ordering by telephone;

**"Order Form"** means the form which you complete and return to the Company, to apply to receive the Service;

**"Physical Characteristics"** means, for customers who self-install the Service, sufficient power and appropriate power sockets to enable the customer to receive the Service, and an existing BT analogue telephone line; for customers whose Service is installed on behalf of the Company, a wall mounted power socket within two (2) metres of the master phone socket and an existing BT analogue telephone line;

**"Premises"** means your premises (excluding Remote Access Locations) specified in the Order Form where the Service is to be received;

**"RIPE NCC"** means the RIPE Network Coordination Centre, an organisation that maintains a database of European IP networks and their management information;

**"Schedule"** means the schedule attached to these Conditions;

**"Service"** means the installation (where applicable), connection and supply of a telecommunications circuit capable of supporting data services at the Premises, the provision of telecommunications services over such a circuit and, if applicable, access to such services at Remote Access Locations.

**"we" "us" and "our"** means the Company and belonging to the Company as the case may be; and

**"you" and "your"** means the Customer who orders the Service and belonging to the Customer as the case may be.

1.0 By submitting a completed Order Form to the Company, you confirm to us that you have read, understood and accepted these Conditions,

## 2 PROVISION OF THE SERVICE

- 2.1 The Service is described in the Order Form. From time to time we may alter the features and functions made available as part of the Service in accordance with Clause 20, but we shall endeavour to keep the overall quality, quantity and variety of features and functions consistent.
- 2.2 To receive the Service, you will need to submit a completed Order Form. You warrant and undertake to us that all of your personal data, payment and contact details are accurate and complete and that you will notify us immediately of any change to your personal data by sending us an email to: [accounts@ecotele.co.uk](mailto:accounts@ecotele.co.uk) in accordance with Clause 16.
- 2.3 When placing your Order, we will ask you to set up a password and a security phrase (together being your "Account"). This is required so that we can identify you and make changes to your Service over the phone, having verified your identity. It is your responsibility to keep these confidential and not to disclose them to any other person for any reason. If you disclose your password or security phrase you will be liable for any losses you incur if they are misused; we will accept your password or security phrase as authority to make any changes to your Service or Account. You are fully responsible for all action taken in respect of your Account whether or not the use is made by you or by someone else using your password. You shall notify the Company immediately if any unauthorised third party becomes aware of your Account details. The Company shall be entitled to suspend your Account if at any time it considers that there has been or is likely to be a breach of security. Any breach of this Agreement by any user of your Service may be treated by the Company as a breach by you.
- 2.4 This Agreement shall come into effect on the Agreement Date and shall continue in full force and effect for the Initial Period and thereafter for successive 12 month periods unless and until terminated in accordance with Clause 11 of these Conditions.
- 2.5 The Company shall use its reasonable endeavours to provide the Service to you by the Service Commencement Date or such later date as may be notified to you by the Company, subject to you obtaining (at your own expense) all consents, approvals, servitudes, rights of way necessary for the provision of the Services to the Customer Premises and other similar rights relating to installation of the Equipment.
- 2.6 You must have an Access Line which:
- 2.6.1 is a suitable BT analogue exchange line which has no incompatible services operating on it; and
- 2.6.2 is connected to a suitably equipped BT exchange at which there is appropriate capacity.
- Provisioning of the Service by the Company is subject to distance limitations and survey by BT. If you change from or do not maintain adequate Physical Characteristics we cannot be held responsible if you cannot or cease to be able to receive the Service. The Company supplies the Service to you on the condition that you are the person or entity contracting with BT for the BT phone line associated with the Service.
- 2.7 In the event that the Company agrees to provide new or additional services or change the Services (including without limitation upgrades or re-grades to the Services or moving the Services to other Customer premises or within the Premises beyond the maximum distances stated in the Schedule) under this Agreement a new initial period of 12 months shall apply to each new, additional or changed service(s) from the new service commencement date as advised by the Company and you shall be required to pay the relevant Charges as detailed in the Schedule or as otherwise notified to you by the Company.
- 2.8 The Company shall provide the Service to you according to the terms of this Agreement. The Company may obtain services from a Carrier in order to supply the Service to you. You accept that it is technically impracticable to provide services which are entirely free of faults and the Company does not undertake to do so. You also accept that you may not be able to receive the Service due to certain technical restrictions. If such technical restrictions are discovered after the Agreement Date, the Company has a right to terminate the Agreement in accordance with Clause 11.2.3.
- 2.9 You agree that your use of the Service is at your sole risk. The Company makes no warranty that the Service will meet your requirements.
- 2.10 The Service is provided to you on an "as is" and "as available" basis and to the fullest extent permitted by applicable laws we exclude all and any warranties and conditions of any kind, whether express or implied, in respect of the Service and any content or data obtained or downloaded from it. This Clause does not affect any statutory or other rights available at law to you.
- 2.11 The Company may occasionally have to interrupt the Service or change the technical specification of the Service for operational or planned maintenance reasons, for upgrades or because of an emergency. Where possible, the Company will comply with the notice requirements set out in Clause 16, however, where this is not possible the Company will give you as much notice as practically possible of any planned interruption of your Service. In such circumstances, you shall have no claim against the Company for any such interruption.
- 2.12 The Company will use reasonable endeavours to correct reported faults as soon as possible.
- 2.13 The Company may include links from time to time from the Service to other Internet sites. The Company has no control over the content of such sites and disclaims any liability in respect of your use of such sites. You may wish to use one of the available filtering software products to help prevent access to certain web content.

- 2.14 The Company reserves the right to suspend or terminate the Service under Clauses 10 and 11 or such other Clause as may be applicable in the circumstances.

## 3 FEES

- 3.1 The Company shall provide you with the Service, and you agree to pay, without any deduction, withholding or set-off whatsoever, to the Company the Charges. Payment must be made using the method specified by you when completing the Order Form.
- 3.2 The Company shall be entitled to review the Charges on notice to you from time to time. Other than in the event of cancellation pursuant to Clause 3.10, in the event that any proposed increases to the Charges are not acceptable to you:
- 3.2.1 if you are a Consumer, you will be entitled to terminate the Agreement by serving notice in writing to the Company, stating the reason for the termination in accordance with the notice process set out in Clause 16 within fourteen (14) days of such notification of an increase to the Charges; or
- 3.2.2 if you are a Business Customer, you will have the right within seven (7) days of such notice from the Company to terminate this Agreement by one month's notice in writing stating the reason for the termination in accordance with the notice process set out in Clause 16.
- 3.3 The Company shall issue invoices to you at the billing address specified in the Order Form, or such other address as notified to the Company by you. Payment shall be due within 14 days of invoice.
- 3.4 The Customer's Authorised User will be allocated an individual security user name and password by the Company, if required.
- 3.5 The Authorised User shall not share use of security details or any part of it with any other person including, if the Authorised User is a company, any person who is an officer of or contracted to the company, whether directly or indirectly, other than in accordance with these Conditions.
- 3.6 The Authorised User shall maintain the security of its allocated security user name and password and will not disclose such to any third party for any purpose other than in accordance with these Conditions. The Authorised User shall immediately notify the Company and change any password which may have been compromised, or is reasonably believed to have been so compromised.
- 3.7 Acting in good faith you shall notify the Company in writing of any disputed invoice amount within 7 days of the date of the invoice. If you are a Business Customer and you fail to pay the Company any sum due pursuant to the Agreement you will be liable to pay interest to the Company on such sum from the Due Date at the annual rate of 3% above the base lending rate from time to time of The Royal Bank of Scotland plc, accruing on a daily basis until payment is made, whether before or after any judgement.
- 3.8 You shall not be entitled to any reduction in the Charges in the event that you do not use all or any part of the Services.
- 3.9 The Charges set out in this Agreement are subject to survey prior to installation of the Service. Where, following such survey:
- 3.9.1 in order to meet your requirements the Company reasonably considers it appropriate or necessary in the circumstances to provide the Service, wholly or in part, utilising non-standard equipment, more expensive methods or requiring additional work than it normally incurs; or
- 3.9.2 at your request, the Service is provided at greater expense by reason of the type of materials used, the duration or the manner of installation, than the Company normally incurs,
- then the Company may in addition to the Charges set out in this Agreement, determine a supplementary rate of connection or rental charge or both to be payable in relation to the relevant Service.
- 3.10 The Company will inform you by notice in writing of such supplementary charges and you may, in a case where Clause 3.9.1 applies:
- 3.10.1 if you are a Consumer, within 14 days of the date of the Company's notice, cancel the Service by written notice to the Company stating the reason for the termination in accordance with the notice process set out in Clause 16; or
- 3.10.2 if you are a Business Customer, within 7 days of the date of the Company's notice, cancel the Service by written notice to the Company stating the reason for the termination in accordance with the notice process set out in Clause 16.
- 3.11 A rate of rental or other charge determined under Clause 3.9 may be in addition to or instead of any applicable Charges for Service set out in this Agreement.
- 3.12 If the Company carries out work in response to a fault in the Service reported by you and following such work the Company determines that (i) there is no fault found in the Service or (ii) the fault was due to your act or omission, then the Company shall be entitled to charge you for any such work carried out.

## 4 ACCESS

- 4.1 You shall at your own expense permit, or procure all permissions, licenses, registration and approvals necessary for the Company and its employees, agents or contractors to have free and safe access to the Premises in order to:
- 4.1.1 execute any works on the Premises for, or in connection with, the installation, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of the Equipment;
- 4.1.2 keep and operate the Equipment installed on, under or over the Premises; and
- 4.1.3 enter the Premises to inspect any telecommunication apparatus kept on, under or over the Premises or elsewhere for the purposes of maintaining the Company System and/or providing the Services.
- The permissions set out in Clause 4.1 above shall continue in force after

termination of this Agreement until such time as the Company and/or any Carrier has removed all Equipment from the Premises.

- 4.2 You must allow the Company and/or any Carrier to have access to the Premises at all reasonable hours for the purpose of testing or maintaining any of the Equipment (if Equipment has been installed by the Company or any Carrier) and/or the Service and provide a safe and suitable environment for such access visits.

## 5 INSTALLATION

### INSTALLATION VIA the Company Clauses 5.1 to 5.5 apply to Customers whose Service is installed by the Company

- 5.1 The Company shall contact you to agree suitable dates for the installation of the Service. The Company shall attempt to provide and install or procure the provision and installation of the Equipment at the Premises so that the Service can be provided on or before any installation date specified or agreed to by the Company. Any installation date given is an estimate only and the Company shall not be liable for any failure to meet such installation date.
- 5.2 The Company shall supply you with the relevant information to enable you suitably to prepare the Premises for delivery and installation of the Equipment. You shall at your expense provide suitable accommodation, facilities and environmental conditions for the Equipment.
- 5.3 The Company shall attempt to comply with your reasonable requests in respect of installation but the Company's decision on the routing of cables and wires and the positioning of outlets and the Equipment shall be final.
- 5.4 A secure electricity supply is required at the Premises for the installation, operation and maintenance of the Equipment at such points and with such connections as specified by the Company. Unless otherwise agreed, this power supply is to be provided by you. The Company shall not be responsible for interruption or failure of the Services caused by a failure of such power supply.
- 5.5 You acknowledge that during the installation of the Equipment for the provision of the Service your Access Line and/or any other Customer Apparatus may suffer a temporary loss of service and/or interference which shall be reinstated and/or resolved following installation of the Equipment without any liability to the Company.

### INSTALLATION BY THE CUSTOMER

#### Clauses 5.6 to 5.8 apply solely to Customers who SELF-INSTALL the Service

- 5.6 You are fully responsible for:
- 5.6.1 connecting a suitable microfilter to the Carrier's master socket (and any extension sockets) at your Premises;
- 5.6.2 connecting a suitable router/modem to the relevant port on the microfilter; and
- 5.6.3 if applicable, connecting a suitable modem for an analogue phone line or an ISDN adapter at the Remote Access Location to enable access to the Service.
- 5.7 The Company accepts no liability whatsoever for any loss you or any third party may suffer as a result of:
- 5.7.1 your installation, and/or setting up of your equipment to receive the Service, including but not limited to loss caused by your installation of any Customer Apparatus or CPE; or
- 5.7.2 any faulty Customer Apparatus, notwithstanding any list of suitable Customer Apparatus which the Company may publish.
- 5.8 If the Company supplies you with CPE, you must agree to the terms of the relevant end-user software licence agreement or such other agreement as may be applicable to govern your use of the CPE. You shall be responsible for any liability incurred by the Company as a result of any failure by you in this regard. Other than where required by law, any such CPE is supplied "as is" with no warranty as to its fitness for purpose or otherwise. The Company shall use reasonable endeavours to assist with reasonable queries you may have in respect of initial installation of the Service. However, to the extent that such queries relate to any problems which, following an initial diagnosis, may be outwith the Company's control or ability to remedy (including but not limited to Customer Apparatus or CPE), the Company does not guarantee that it shall be able to help resolve any such difficulties, such limited support shall be provided to you by telephone by you calling the telephone number listed in your Welcome Pack.
- 5.9 The Company does not warrant that any particular Customer Apparatus shall be compatible with the Service and the Company shall not be responsible for supporting any Customer Apparatus.

## 6 EQUIPMENT

- 6.1 Unless otherwise purchased, the Equipment shall at all times remain the property of the Company or the relevant third party supplier of such Equipment notwithstanding that it may be situated on the Premises or affixed thereto and you shall at all times make clear to third parties that such Equipment is the property of the Company or a third party supplier of such Equipment.
- 6.2 Notwithstanding Clause 6.1 above, you shall be responsible for ensuring at all times the safekeeping and proper use of the Equipment after delivery and installation at the Premises. You shall be liable to the Company for any loss or damage to the Equipment (except where it can be shown that such loss or damage was caused by the negligence of the Company or due to fair wear and tear). You will notify the Company immediately of any such loss or damage in particular (without prejudice to the generality of the foregoing) you undertake:
- 6.2.1 to keep the Equipment at the Premises and not to move it;
- 6.2.2 to comply with all instructions the Company may notify to you and/or with the manufacturer's instructions relating to the Equipment;
- 6.2.3 to refrain from altering, adjusting, repairing, maintaining or otherwise interfering in any way with the Equipment except by an authorised representative of the Company unless the Company has given its written consent save in the case of emergency and provided that you advise the Company forthwith thereafter of the emergency action taken and circumstances requiring it. You shall indemnify the Company

against any losses the Company may incur due to such Customer action;

- 6.2.4 not to cause any equipment to be connected (directly or indirectly) to the Equipment or used with the Service which is not technically compatible with the Service, or is not approved for that purpose under any relevant legislation or telecommunications industry standards;
- 6.2.5 not to do anything nor to allow to subsist any circumstances likely to damage the Equipment or detract from or impair its performance or operation and not to add, modify, or in any way interfere with or impair the performance of the Equipment;
- 6.2.6 not to attempt to sell, transfer, dispose of, let, mortgage or charge the Equipment or suffer any distress, seizure or execution to be levied against the Equipment or otherwise do anything prejudicial to the Company or the owner's rights in the Equipment.
- 6.3 You shall adequately insure the Equipment which is situated on the Premises or within your control and will provide written evidence of such insurance to the Company on request.
- 6.4 You shall at your own expense provide and maintain for the duration of this Agreement, a suitable environment, accommodation, facilities and electrical power for the Equipment in accordance with the relevant installation standards and regulations in order for the Company to be able to provide the Services.
- 6.5 Following installation of the Equipment, Standard Tests shall be carried out by the Company to ensure that the Service is ready for use. If the Service is not ready for use, the Company shall either repair or replace, at its sole option, the Equipment or any part thereof and repeat the Standard Tests. If the Service is still not ready for use after the Standard Tests have been repeated, at the sole option of the Company, the Company may decide that it is not possible to provide the Services at the Customer Premises and shall be permitted to terminate this Agreement. You shall be entitled to use the Services following the Company informing you of successful completion of the Standard Tests.
- 6.6 You agree not to do or allow anything to be done to the Premises that may cause damage to, or interfere with, the Equipment or prevent easy access to it.
- 6.7 If you purchase a router from the Company we will:  
C onfigure it for you and deliver it to your Premises. While the Company will use reasonable endeavours to deliver the router to you within such timescales as may have been advised to you verbally, the Company does not guarantee that such timescales will be achieved and time is not of the essence in respect of such delivery; and
- 6.8 The Company accepts no liability whatsoever for any loss you or any third party may suffer as a result of your misuse of the Equipment or CPE or for any accidental damage thereto. For the avoidance of doubt the provisions set out in Clause 13 shall apply to the sale of CPE by the Company other than the fact that the Company's total liability in respect of any CPE, shall be limited to the value of the CPE.

## 7 INFORMATION AND CUSTOMER APPARATUS

- 7.1 On request by the Company, you shall provide the Company with information concerning the Customer Apparatus and any other information the Company reasonably requires in order to install the Equipment and provide the Services.
- 7.2 Your Customer Apparatus must be technically compatible with the Service and approved for that purpose under any relevant legislation or telecommunications industry standards. You shall at your own expense modify the Customer Apparatus in accordance with the Company's instructions provided that such modifications are necessary to enable the Company to provide the Services. You shall be responsible for the repair and maintenance of any Customer Apparatus used in order to obtain or use the Service.
- 7.3 You shall be responsible for ensuring compliance with all statutes and other regulatory requirements relating to the Customer Apparatus and for obtaining all consents, approvals, servitudes, rights of way and other similar rights in relation to the Premises or any premises of which the Premises form part and which are required for the purpose of installing the Equipment and connecting the Company System to the Customer Apparatus.
- 7.4 The Company reserves the right to disconnect any Customer Apparatus if you do not fulfil your obligations under this Clause 7.
- 7.5 The Company accepts no liability whatsoever for any loss you may suffer as a result of your use or misuse of the Customer Apparatus or as a result of any faults in your Customer Apparatus. In particular, the Company is not liable whatsoever if you damage or incorrectly reconfigure any Customer Apparatus, for example a router, which you have purchased for use with the Service.
- 7.6 For the avoidance of doubt, if you do anything to the Customer Apparatus including, by way of example without limitation adjusting or altering it in any way following the commencement of the Service there is a risk that such action will impact upon your ability to receive the Service. You shall be responsible for ensuring at all times that no action is taken in relation to Customer Apparatus which is likely to impact upon your ability to receive the Service. If any such action does take place and you subsequently require the Company to reconfigure the Service in any way, then any reasonable costs incurred by the Company in this regard shall be borne by you.

## 8 YOUR USE OF THE SERVICE

- 8.1 You must NOT use the Service or any part thereof:
- 8.1.1 in a way that does not comply with the Agreement or any legislation or applicable licence or that is in any way unlawful or fraudulent or, to your knowledge, has any unlawful or fraudulent purpose or effect; or
- 8.1.2 in breach of any reasonable and lawful instructions the Company might give to you from time to time which are necessary in the interests of

health, safety, the quality of the Service, or the quality of the Carrier's telecommunications services; or

- 8.1.3 in connection with the carrying out of a fraud or criminal offence against any public telecommunications operator; or
  - 8.1.4 to send, knowingly receive, encourage the receipt of, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights or which may contain viruses or other similar programs, or which causes overloads to the Company System; or
  - 8.1.5 to send or procure the sending of unsolicited advertising or promotional material;
  - 8.1.6 or attempt to use the Service in any way that modifies, decompiles or reconfigures the Service or any Equipment (if relevant) or software or copy any manual or documentation relating to the Service, without the Company's prior written consent, except as set out in this Agreement; or
  - 8.1.7 in a way that in the reasonable opinion of BT could materially affect the quality of any telecommunications service, including the Service, provided by BT, as notified to you by the Company.
- 8.2 You shall indemnify the Company against any claims or legal proceedings which are brought or threatened against the Company by a third party because the Service is used by you in breach of Clauses 8.1.1 to 8.1.7 above. To maintain the quality of the Service for other users, the Company reserve the right to block certain types of traffic without notice where they appear to contravene Clause 8.1.
- 8.3 You shall be responsible for insuring against all loss of or damage to data stored on or transmitted using the Service or the Company System.
- 8.4 You shall be responsible for adopting appropriate security measures for the protection of computer systems and the Company shall not be liable to you for any loss or damage that you suffer as a result of any virus or other hostile computer programme being introduced into your computers or computer systems as a result of your use of the Service and/or the Company System.
- 8.5 You shall not share use of the Service, or any part of it, with any other person, or if you are a company with any person not a member of your company (or contracted to your company), whether directly or indirectly, including by means of radio or other wireless technology of any kind, except that if you are a Consumer you may share the Service with members of your own household at the same Premises.
- 8.6 You shall ensure that any person with whom you share use of the Service under Clause 8.5 complies in full with this Agreement as if they were an original party to it. You are responsible for any misuse of the Service or breach of the Agreement by anyone with whom you share use of the Service.
- 8.7 **If you are a Business Customer**, you may not make any unauthorised commercial use of the Service. You agree to keep full and accurate records of any and all operating units on or in connection with which the Service is enabled and shall permit the Company to review and evaluate such records from time to time to ensure your compliance with your obligations in this Clause 8.7.
- 8.8 **If you are a Consumer**, the Service is supplied to you for your personal use. You may not commercialise it or use it in connection with any occupation, trade or profession without the Company's prior written consent.
- 8.9 You will co-operate with the Company's reasonable requests for information regarding your use of the Service and supply such information without delay.
- 8.10 The Company reserves the right to disconnect the Service if you do not fulfil your obligations under this Agreement.
- 8.11 Where you use the Service to reach networks and services not operated by the Company, you will abide by the acceptable use policies or terms and conditions imposed by the operators of those networks and services.
- 8.12 Where you change from or do not maintain adequate Physical Characteristics, the Company will not be responsible if you cannot or cease to be able to receive the Service.

## 9 BREACH OF CONDITIONS

- 9.1 We shall investigate any suspected or alleged breach of this Agreement or any suspected compromise to our network systems or security and in doing so we will act reasonably and fairly at all times. Without limitation.
- 9.2 We reserve the right to take any action we deem appropriate and proportionate to the breach of this Agreement.
- If you are a Business Customer:**
- 9.3 If we decide that you have breached the Agreement, we will use reasonable endeavours to ensure that you are made aware of the breach without suspension or termination of the Service. However it may be necessary, due

to the severity of the breach, to suspend or end the Service while details of the breach are investigated further. We reserve the right to suspend the Service or terminate the Agreement at our sole discretion without refund, and make an additional charge for all reasonable costs incurred due to investigating and dealing with the misuse and/or blocking access to any component(s) of the Service.

### **If you are a Consumer:**

- 9.4 If we decide that you have breached the Agreement, we will use reasonable endeavours to give you twenty eight (28) days notice of our intention to suspend or end the Service and, if the breach is capable of remedy by you, you will have the opportunity to remedy the breach before the end of the twenty eight (28) day notice period. If the breach is incapable of remedy, or you fail to remedy it, we reserve the right to suspend the Service or terminate the Agreement at our sole discretion without refund, and make an additional charge for all reasonable costs incurred due to investigating and dealing with the misuse and/or blocking access to any component(s) of the Service. However it may be necessary, due to the severity of the breach, to suspend or end the Service while details of the breach are investigated further.

## 10 TERMINATION

- 10.1 Without prejudice to the rights and remedies of the Company and the Customer under this Agreement either party may terminate this Agreement forthwith in the event that:
- 10.1.1 the other party is in material breach of this Agreement (including any failure to pay any sum due hereunder) and (in the case of remediable breach) fails to remedy the breach within 28 days of receiving notice to that effect from the other party; or
  - 10.1.2 either party becomes insolvent or has a receiving order made against it or commences to be wound up (not being a members voluntary winding up for the purpose of a solvent reconstruction or amalgamation) or grants a trust deed on behalf of its creditors or any of them; or
  - 10.1.3 the Company is no longer authorised to operate the Company System.
- 10.2 The Company may end this Agreement immediately upon written notice to you if:
- 10.2.1 it becomes unlawful for the Company or the Carrier supporting the Service to continue to provide the Service or the Company or the Carrier supporting the Service is required to cease the Service by a competent regulatory authority; or
  - 10.2.2 the Carrier supporting the Service ceases to do so for whatever reason or materially changes the terms of its provision of telecommunications services to the Company for the Service beyond the reasonable control of the Company;
  - 10.2.3 it transpires following the Agreement Date that, for any reason outwith the control of the Company, the Services will not be able to be provided to you. In the event of termination in accordance with this Clause 11.2.3, the Company shall repay to you any fees which you have paid in advance for the Services.
- 10.3 **Either party may end this Agreement after the Initial Period by giving the other party not less than ninety (90) days prior written notice, such notice not to expire before the end of the Initial Period. If no notice period is requested clause 10.8 (auto roll) will apply. If you wish to end this Agreement before the end of the Initial Period, the Company shall be entitled to invoice you in relation to the Charges which would have been payable by you for the balance of the Initial Period. If you move from your Premises, the Company shall be entitled to invoice you for the Charges which would have been payable by you for the balance of the Initial Period at the Premises. If you wish to receive the Service at a new location, you are required to start a new contract for Service at your new premises.**
- 10.4 Without prejudice to its other rights in terms of this Clause 11, the Company may, at its sole discretion elect to suspend provision of the Services or any part thereof forthwith until further notice if the Company is entitled to terminate or if you are otherwise in breach of the terms of this Agreement or if the Company is obliged to comply with any relevant order or instruction of the Government or other regulatory authority or if any wayleave or other consent required for the purposes of providing the Services is withdrawn, revoked or otherwise ceases to have effect.
- 10.5 You shall continue to be liable to pay the Charges during such suspension if the Service is suspended pursuant to your default.
- 10.6 You shall reimburse the Company in respect of all costs and expenses incurred in carrying out such suspension and re-commencing the provision of Services thereafter save where such suspension is required as a result of any breach of this Agreement by the Company.
- 10.7 Your right to use the Service shall immediately terminate when this Agreement comes to an end.
  - 10.8 **Auto Rolling Contract. In the event of the official notice period not being provided in line with clause 10.3 by the business customer by email or letter to head office, (& acknowledged), all contracts with the exception of maintenance contracts will automatically roll over at the original contract price for a further 12 month period to ensure no loss of service or business interruption.**

## 11 RIGHT TO CANCEL

- 11.1 **If you are a Consumer** who has ordered the Service either online or by telephone, you have a right to cancel the Service within seven (7) Business Days of the Agreement Date. Any use of the Service by you, including the opening of the Foil Envelope, during said period will act as a waiver of this right to cancel.
- 11.2 You shall not have the right to cancel the Service after the Agreement Date before expiry of the Initial Period as provisioning of the Service by the Company and the Carrier will have been initiated.

## 12 LIMITATION ON LIABILITY

- 12.1 Except as expressly set out in this Agreement, all warranties, conditions, undertakings or terms implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.
- 12.2 Nothing in this Agreement shall exclude or limit the liability of the Company for death or personal injury arising as a result of the Company's negligence or for fraudulent misrepresentation.
- 12.3 The Customer is solely responsible for any liability arising out of any content provided by the Customer and/or any material to which other users can link to through such content.
- 12.4 Any data included in the Equipment upon installation by the Company is for testing use only and the Company hereby disclaims any and all liability arising therefrom.
- 12.5 The Company shall not be liable to you in any circumstances for any loss of revenue, loss of profit, loss of use, loss of contract or loss of goodwill or any indirect or consequential loss including without prejudice to the generality of the foregoing loss or corruption of data transmitted over the Company System or otherwise arising out of or in connection with this Agreement.
- 12.6 Neither party shall be liable for any breach of this Agreement or any delay in performance of its obligations (other than the obligation to pay) to the extent that such breach is caused by circumstances beyond that party's reasonable control including Acts of God, fire, lightning, explosion, war, terrorism, disorder, flood, industrial disputes (whether or not involving their employees), extremely severe weather or acts of local or central Government or other competent authorities. If either party is affected by circumstances beyond its reasonable control, it shall notify the other party and shall use reasonable endeavours to overcome the effects.
- 12.7 If any of the events detailed in Clause 13.7 continue for more than 3 months either party may serve notice on the other terminating this Agreement without further liability.
- 12.8 You shall be liable for and shall fully indemnify the Company in respect of any business rates or similar liabilities and/or charges imposed by any competent authority which arise in respect of your use of the Services.

## 13 INDEMNITY

- 13.1 If you are a Business Customer, you agree to indemnify and hold us harmless for all claims and associated costs, damages or expenses that may arise.
- 13.2 If you are a Consumer, you must indemnify us against any claims and associated costs, damages or expenses arising from any breach by you of this Agreement.

## 14 DATA PROTECTION/PERSONAL DETAILS

- 14.1 We may retain the data which you submit on a completed Order Form or which you otherwise provide during the course of the Agreement, and you authorise us to use your personal data, for the following purposes:
- 14.1.1 provision of the Service to you;
  - 14.1.2 keeping of a record for a reasonable period after termination of your Service;
  - 14.1.3 operation and enforcement of the Agreement;
  - 14.1.4 technical maintenance;
  - 14.1.5 providing you with information about other services we offer, subject to your right to 'opt out' of receiving such information on the Order Form or by exercising this right when placing an Order by telephone or subsequently;
  - 14.1.6 transferring it to another company in the event of a sale of the Company;
  - 14.1.7 legal compliance including disclosing it to any third party who we reasonably consider has a legitimate interest in any such investigation or its outcome; and
  - 14.1.8 transferring it to RIPE NCC as part of a general requirement for provision of these services within Europe.
- 14.2 Both parties shall comply with applicable data protection legislation with respect to any personal data supplied in connection with the Service. Where applicable, the Customer shall inform its employees of the processing of personal data by the Company and shall ensure such employees have consented to such processing. The Customer warrants that all such personal data are accurate and complete.
- 14.3 You may be subject to a standard credit check. The information that you provide may be disclosed to a licensed credit reference agency (which will retain a record of the search) and you authorise the Company to make such disclosures.

## 15 NOTICES

- 15.1 Any notice required or permitted under this Agreement must be in English and in writing and sent either:  
**by post to:** Ecotele 145-157 St John Street, London EC1V 4PY  
or to such other address or contact details as the Company may notify the Customer of from time to time.
- 15.2 Any notice to be sent to you will be sent to the address which you provide

## 20 NO WAIVER

- 20.1 Failure or delay by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- 20.2 In the event either party agrees to waive a breach of this Agreement by the other party, that waiver is limited to that particular breach.

## 21 LAW AND ARBITRATION

- 15.3 Such notices shall be deemed to have been received 3 Business Days after mailing if forwarded by mail, and the following business day if hand-delivered or when dispatched if sent by email provided that if any such notice, demand or other communication would otherwise be deemed to be given or made outside a Business Day, such notice, demand or other communication will be deemed to be given or made on the next Business Day.

## 16 ASSIGNMENT

- 16.1 The Company reserves the right to assign or sub-contract any or all of its rights and obligations under this Agreement without your further consent to such assignment or sub-contract. You may not sell, lease, sub-licence, assign or otherwise transfer, whether in whole or in part, by operation of law or otherwise, the Agreement or any rights or obligations therein without the prior written consent of the Company.

## 17 PROPRIETARY RIGHTS

- 17.1 All title, interests, and rights (including intellectual property rights) in the Service remain in the Company and/or its suppliers. You acknowledge such title, interest and rights and you shall not take any action to jeopardise, limit or interfere in any manner with the Company's (or any third party supplier's) title, interests or rights with respect to the Service including, but not limited to, using the Company's trademarks or tradename.
- 17.2 Any IP or other network addresses allocated by the Company to you are for use only in connection with the Service and all rights in such addresses belong to the Company and shall revert to the Company upon termination of this Agreement. IP addresses are assigned in accordance with guidelines laid down by RIPE NCC. In order to comply with these guidelines, the Company will require you to explain and justify its usage of any IP address(es), before the Company is able to issue any IP address(es) to you.
- 17.3 You are the registered owner of your domain name for the Service and can transfer it upon termination of this Agreement to another Internet service provider.
- 17.4 Title and related rights in any content accessed through the Service are the property of the applicable content owner and are protected by applicable law. The Agreement does not give the Customer any interests or rights in such content.

## 18 AMENDMENT OF THIS AGREEMENT

- 18.1 If you are a Business Customer, we reserve the right to add to and/or amend the Conditions or any other aspect of this Agreement at any time. If we amend these Conditions, we will notify you by sending you a letter or email advising of the amendment thirty (30) days before the amendment is to take effect. If you continue to use the Service after any amendments to these Conditions or any other aspect of this Agreement have been notified to you, you will be deemed to have accepted such amendments.
- 18.2 If you are a Consumer, we reserve the right to add to and/or amend the Conditions or any other aspect of this Agreement at any time. If we amend these Conditions or any other aspect of this Agreement, we will send you a letter or email advising of the amendment at least one (1) calendar month (which for the avoidance of doubt shall mean thirty (30) days) before the amendment is to take effect. If unhappy with any such amendment, you may end your use of the Service by sending us written notice to this effect to the address listed in Clause 16, such notice to be received within thirty (30) days of receiving our notification except in relation to Clauses 3.2 and 3.10. We will then reimburse you any fees paid to us for Service after such end date. If you continue to use the Service after any amendments to these Conditions or any other aspect of this Agreement have been notified to you and after the thirty (30) day period has expired, you will be deemed to have accepted such amendments.

## 19 ENTIRE AGREEMENT

- 19.1 This Agreement and the documents referred to in it constitutes the entire agreement and understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations made by either party whether oral or written relating to the subject matter of the Agreement.
- 19.2 Each of the parties acknowledges and agrees that in entering into this agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in this agreement as a warranty. The only remedy available to it for breach of the warranties shall be for breach of contract under the terms of this Agreement.

- 21.1 The Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.
- 21.2 The parties shall use their reasonable endeavours to resolve any dispute arising under this Agreement by direct negotiations between the parties. If any dispute is not resolved within fourteen (14) days through direct negotiation the parties will attempt to resolve the matter through the Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution. If the matter has not been resolved by an ADR procedure within thirty (30) days, or if either party will not participate in an ADR procedure within such thirty day period, the dispute shall be referred to litigation in accordance with Clause 23.1.
- 21.3 Notwithstanding the foregoing it is acknowledged and agreed that either party shall be entitled to seek injunctive relief in any court of competent jurisdiction if the other party is in breach of any of the terms hereof.

## **22 RIGHTS OF THIRD PARTIES**

- 22.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **23 GENERAL CONDITIONS**

- 23.1 The rights and remedies provided by this Agreement exclude to the furthest extent permitted by applicable law all other rights and remedies (whether express or implied) provided by common law including negligence claims in tort or delict or statute in respect of the subject matter of this Agreement.
- 23.2 The termination or expiry of this Agreement shall be without prejudice to the rights of either party which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive.
- 23.3 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision omitted.