

Final– 22 October 2021

**GENERAL TERMS AND CONDITIONS
AND SERVICES SCHEDULES**

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Borderlink General Terms and Conditions of Service (Business Customers)

These terms and conditions and attached schedules (the "**General Terms and Conditions**") apply to the provision of Services by the Company to the Customer, which together with the applicable Service Schedule, any applicable Service Level Agreement, the Miscellaneous Charges, the Acceptable Use Policy and the Order Acceptance Form and (where applicable) any EULA, as amended from time to time, comprise the "**Agreement**".

1 DEFINITIONS AND INTERPRETATIONS

1.1 In these General Terms and Conditions, except to the extent that the context otherwise requires, the following expressions shall have the following meanings:

"Acceptable Use Policy" or **"AUP"** means the Company's network management and fair acceptable use policy (as may be amended from time to time) published on the Company's website located <https://pages.gofibre.co.uk/hubfs/B2B%20Terms/borderlink%20acceptable%20use%20policy.pdf>

"Acceptance Tests" means, where applicable, a series of installation and testing procedures to be carried out by the Company prior to the delivery of the Services and **"Acceptance Testing"** shall be construed accordingly.

"Annual Rental" means the annual charges payable by the Customer as set out in the Order Acceptance Form. **"Associate"** means any company associated with the Company, including any entity that directly or indirectly controls, is controlled by, or under common control of the Company.

"CA 2003" means the Communications Act 2003 and any successor legislation.

"Charges" means the Annual Rental, the Miscellaneous Charges and other charges payable to the Company pursuant to the Agreement and the Order Acceptance Form.

"Company": means Borderlink Broadband Limited (whether trading as Borderlink or GoFibre), a company incorporated and registered in Scotland (company number SC582522) and whose registered office is Blackadder West Farm, Blackadder, Duns, Scotland, TD11 3LX.

"Confidential Information" means confidential information either party (or each of the Parties officers, employees, agents, subcontractors, suppliers, advisers or Associates) gives the other before or after the date of the Agreement, no matter how it is recorded, stored or disclosed and includes: (a) the Agreement; (b) information about technical or commercial know-how, specifications, inventions, processes or initiatives; or (c) any information a reasonable business person would see as confidential about: (i) the business, affairs, customers, clients, subcontractors, suppliers, plans or strategy of either party or its Associates; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of either of party or its Associates;

"Consultancy Services" means the advisory and consultancy services (if any) to be provided by the Company to the Customer under the Agreement, as described in more detail in the Order Acceptance Form (as modified or substituted by the Company from time to time).

"Customer" the company named in the Order Acceptance Form.

"Customer Apparatus" means any passive equipment or apparatus, on or in the Premise, which does not form part of the Customer-Premise Equipment (but which may be connected to the Customer-Premise Equipment) and is used by the Customer in conjunction with the Customer-Premise Equipment in order to obtain or use the Services.

"Customer Data" means the data processed by the Customer using the Services.

"Customer-Premise Equipment" (or **"CPE"**) means any hardware, software, underlying infrastructure or any other equipment that the Company has agreed to provide to the Customer as part of the Service pursuant to the Agreement from time to time, whether owned by the Company or a third party supplier, but excluding any equipment, which is bought by the Customer and specified in the Order Acceptance Form. Such equipment may include an appropriate switch and/or router to be supplied by the Company to the Customer, if agreed between the Parties and/or indicated as required on the Order Acceptance Form.

"Customer Supplied Equipment" (or **"CSE"**) means any equipment or apparatus (including but not limited to routers) specified in the Order Acceptance Form to be supplied by the Customer (but which may be connected to the Equipment) and is used by the Customer in conjunction with the Equipment to obtain or use the Services.

"Data Controller" has the same meaning given to the term in the DPA.

"Data Processor" has the same meaning given to the term in the DPA.

"Data Protection Legislation" means the DPA, UK GDPR (as defined in the DPA), the Regulation of Investigatory Powers Act 2016, the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy from time to time.

"Data Subject" has the same meaning given to the term in the DPA.

"Disclosing Party" means the party disclosing any Confidential Information (in writing, orally or by any other means, whether directly or indirectly) to the Receiving Party under the Agreement.

"DPA" means the Data Protection Act 2018 (as amended) and any successor legislation.

"Interest Rate" means the rate of interest rate of 4% above the base rate of Royal Bank of Scotland.

"Due Date" means the due date for payment of an invoice pursuant to clause 13.

"Emergency" means any event or circumstance which results or could reasonably be expected to result in a risk of personal injury or death or material damage to property and, without prejudice to the generality of the foregoing, an event or circumstance defined as an Emergency in CA 2003.

"EULA" means the end user licence agreement applicable to any Programs provided to the Customer as part of the Services as stipulated by the manufacturer of the Programs.

"Equipment" means the Customer-Premise Equipment and Customer Apparatus.

"Force Majeure" means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under the Agreement including act of God, insurrection or civil disorder, terrorism, war or military operations, national or local emergency, epidemic, pandemic acts or omissions of government, highway authority, industrial disputes of any kind (not involving employees of the affected party or of sub- contractors working for that affected party pursuant to the Agreement), fire, lightning, explosion, subsidence, inclement weather, insolvency of a supplier, acts or omissions of persons or bodies for whom the affected party is not responsible (which shall include, but not be limited to, third party communication suppliers to the Company), restricted access to the Premises, third party equipment, or apparatus, supply chain issues (whether due to cost or unavailability of supplies) or any other cause whether similar or dissimilar outside the reasonable control of that affected party.

"General Conditions of Entitlement" means the general conditions of entitlement set by OFCOM in accordance with the CA 2003, as may be amended, modified or replaced from time to time.

"Group" in relation to a body corporate, means the body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company as defined in s1159 Companies Act 2006.

"Handover Date" has the meaning specified in clause 4.7.

"Installed Apparatus" has the meaning specified in clause 3.2.1.

"Intellectual Property Rights" means all intellectual property rights of whatever nature subsisting at any time in any part of the world including without limitation, patents, copyrights, design rights, registered designs, trademarks, service marks and know-how, rights in respect of confidential information, rights in respect of the EULA, rights in respect of databases, the rights to apply for any of the foregoing and applications for any of the foregoing.

"Law" means CA 2003 and any other law, statute or regulation, country specific regulations, General Conditions of Entitlement, code of conduct (whether or not having the force of law), copyright or other

third party rights, obligation in contract or any term of any licence to which the Company or the Customer is from time to time subject.

"Managed Firewall" means the virtual or physical firewall which may be offered as part of the Company's managed security solution as set out in the Company's product service description document. For the avoidance of doubt, the Company shall retain responsibility for the hardware, licensing and any high availability configuration while the Customer shall remain responsible for the configured policy and rule set and its suitability for the Customer's own environment.

"Minimum Period" means, in relation to each Service, the minimum period of the Agreement, as it relates to that Service as stated in the Order Acceptance Form, starting from the relevant Service Start Date.

"Miscellaneous Charges" means the miscellaneous charges set out in Schedule 1.

"Order" means an order form submitted by the Customer to the Company in response to the Company's proposal.

"Order Acceptance Form" means the order acceptance form issued by the Company to the Customer containing details of the Services to be supplied to the Customer, together with any additional order acceptance form submitted by the Customer and accepted by the Company.

"Order Cancellation Fee" means the one-off charges payable by the Customer in accordance with clause 15.2, as specified on the Order Acceptance Form.

"Personal Data" has the same meaning given to the term in the DPA.

"Parties" means the Customer and the Company.

"Premises" means the building or buildings where Equipment is located, and whether or not occupied by the Customer.

"Processing" has the same meaning given to the term in the DPA.

"Processing Details" the processing details set out in Schedule 3 which sets out the scope, nature and purpose of Processing by the Company, the duration of the Processing, the types of Personal Data and the categories of Data Subject.

"Programs" any circuits, computer program or software forming part of the Services.

"Receiving Party" means the party receiving any Confidential Information disclosed by the Disclosing Party under the Agreement.

"Services" means the internet services and/or other communication services, or cloud services and/or Consultancy Services described in the Services Schedule as are provided by the Company from time

to time and set out in the Order Acceptance Form. For the avoidance of doubt any Service may be provided by the Company and/or an Associate.

"Service Level Agreement" means the Company's standard service levels from time to time for providing the Services, the current version of which is set out in the appendix to the relevant Part of the Services Schedule.

"Services Schedule" the services schedule set out in Schedule 4 containing specific service levels and terms and conditions which relate to a Service.

"Service Termination Fee" means the one-off charges payable by the Customer on demand, as specified on the Order Acceptance Form.

"Service Start Date" means the date on which Customer receives or is deemed to have received the Service (and any Equipment) and installation has been completed in accordance with clause 4.8 and 4.9.

"Small Moves and Changes ("SMAC") means any ad hoc small moves and changes or works to the Service and/or relevant Equipment after the Service Start Date (including but not limited to adjustment, repair, alteration, relocation, replacement, renewal or removal to the Equipment and/or Service).

"Subprocessor" means any person (including any third party and any Associate but excluding an employee of the Company) appointed by or on behalf of the Company or an Associate to process Personal Data on behalf of the Customer in connection with the Agreement.

"Term" means, in relation to each Service, the period from the relevant Service Start Date until termination of the Agreement in relation to such Service.

"Third Party Code" means software and/or code created by third parties, including without limitation "open source".

"Viruses" means anything (including any device, software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses, harmful or malicious code, and other similar things or devices.

"Working Day" means any day excluding Saturdays, Sundays and the usual bank holidays in Scotland.

1.2 References herein to clauses are to clauses in the Agreement.

- 1.3 A reference in the Agreement to a statutory provision will, unless expressly provided otherwise, be interpreted as a reference to such provision as amended, consolidated, replaced or re-enacted.
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 The headings are for convenience only and do not affect the interpretation of the Agreement.
- 1.6 References to the Company in the Agreement shall include an Associate where such Associate provides any of the Services.
- 1.7 If there is a conflict between the General Terms and Conditions and any other terms and conditions, or documents forming part of the Agreement, then the order of precedence shall (unless expressly stated to the contrary) be as follows:
- 1.7.1 the Order Acceptance Form;
 - 1.7.2 the relevant Services Schedule;
 - 1.7.3 the General Terms and Conditions;
 - 1.7.4 any applicable Service Level Agreement;
 - 1.7.5 the Miscellaneous Charges; and
 - 1.7.6 the Acceptable Use Policy.

2 PURPOSE OF THE AGREEMENT

- 2.1 Subject to the terms of the Agreement:
- 2.1.1 in consideration of the payment of the Charges made by the Customer to the Company and the Customer's compliance with the terms of the Agreement, the Company shall provide the Customer with the Services and, where agreed, maintenance of the Equipment as set out in the Agreement;
 - 2.1.2 the Customer shall make the relevant payments to the Company, as set out in clauses 12 and 13, and the Order Acceptance Form and any subsequent Order Acceptance Form submitted by the Customer and accepted by the Company.

3 ACCESS TO PREMIES AND CONSENT TO INSTALL THE EQUIPMENT

- 3.1 The Customer warrants that it is the current occupier of the Premises and either the freeholder of the Premises or a tenant under a lease with permission to install the Equipment at the Premises from the freeholder.

- 3.2 The Customer hereby:
- 3.2.1 grants to the Company a licence to perform such works as may be required to install any apparatus ("**Installed Apparatus**") (including but not limited to the Equipment and additional equipment) at the Premises and/or any Customer Supplied Equipment, to retain and use such Installed Apparatus so-installed and to connect to, maintain, alter, replace and/or remove the same and
 - 3.2.2 agrees to grant access to the Premises for the Company, its employees, agents and/or contractors to inspect the Installed Apparatus and perform the tasks set out in 3.2.1.
- 3.3 The Company shall cause as little disturbance at the Premises as reasonably practicable and shall repair, to the Customer's reasonable satisfaction, any damage occasioned by it. The Customer shall follow any reasonable instructions given by the Company in relation to the Installed Apparatus and shall ensure that a representative is present at the Premises whenever access is required.
- 3.4 The Customer shall comply with all applicable laws, including health and safety laws.
- 3.5 The Customer shall obtain any consent, approval or permission throughout the Term necessary for the Company to deliver, install and maintain the Equipment for the provision of the Services and / or that might be required from a third party to cross their land or install Equipment on their Premises or such other location as detailed in the Order Acceptance Form, including procuring signature of a wayleave agreement in such form as the Company may reasonably require. The Company is not obliged to install or provide the Services unless all consents and permissions have been obtained. If the Customer fails to procure any necessary consent or permission, the Company may terminate the Agreement and shall repay any Miscellaneous Charges and any other costs incurred by the Company prior to the date of termination.
- 3.6 If the Company's performance of any of its obligations under the Agreement is prevented by any act or omission by the Customer the Company shall have the right to suspend performance of the Services until the Customer remedies the default and the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in these General Terms and Conditions and the Customer shall reimburse the Company for any reasonable costs or losses sustained or incurred by is arising from the default.
- 3.7 Where the Company or any appointed third party is required to install Equipment on the Premises the Customer hereby irrevocably gives permission to the Company and its employees, agents or contractors on reasonable notice at such reasonable times to execute any works on the Premises in connection with the installation, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of the Equipment.

4 ORDERING AND PROVISION OF SERVICES

- 4.1 If the Customer wishes to order Services it may submit an Order to the Company sales team at sales@gofibre.co.uk The Customer acknowledges that the Company may utilise facilities by, and provision all or any part of the Services from, an Associate or a third party.
- 4.2 If an Order is submitted to the Company pursuant to clause 4.1, the Company shall use all reasonable endeavours to respond in writing within 20 Working Days. At the Company's sole discretion, a credit check may be conducted against the Customer.
- 4.3 Where the Company is willing to provide the Services to the Customers requested in the Order, the Company will issue an Order Acceptance Form to the Customer. On the execution of the Order Acceptance Form by the Customer and the Company thereafter confirming receipt and acceptance to the Customer by email, the Order Acceptance Form will be deemed to be a binding contract for the provision of the Services in accordance with and subject to the terms of the Agreement.
- 4.4 Subject to clauses 14 and 15 below, the Agreement for the provision of the Services shall continue for the Term.
- 4.5 The Company shall use its reasonable endeavours to meet any dates specified in the Agreement and/or the Order Acceptance Form but for the avoidance of doubt, time shall not be of the essence in delivering any Services under the Agreement.
- 4.6 Subject to the existence of any relevant third party consent (if applicable), the Company shall provide the Customer with the Services in accordance with the terms set out in the Agreement and the Order Acceptance Form.
- 4.7 Following the delivery of the Service, the Company will hand over the Service to the Customer (the "**Handover Date**") and Acceptance Testing shall be carried out by the Parties to ensure that the Services are ready for use. If the Services are not ready for use by the date agreed between the Parties, the Company shall either repair or replace, at its sole option, any defective Equipment or any part thereof and repeat the Acceptance Testing. All Acceptance Testing shall, if appropriate, be carried out in the presence of a duly authorised representative of the Customer provided the representative is available at such reasonable times as the Company may specify. For clarification, to assist with the Acceptance Testing the Customer must check the Service the Company has provided is working properly.
- 4.8 The Company shall on successful completion of the Acceptance Testing notify the Customer. The Customer will be deemed to have accepted the Services unless within 5 Working Days from the Handover Date, the Customer notifies the Company to the contrary and specifies in such notice the grounds for rejection. If Customer does not notify the Company within these timescales and the Customer reports an issue with the Service, the Company shall not be liable to refund any Charges or

issue (where applicable) any service credits under the applicable Services Schedule relating to the Service.

- 4.9 In the event of valid rejection of the Services, the Company, without additional charge, will carry out the necessary work to remedy such discrepancy and will notify the Customer when such Services are ready for further Acceptance Testing. The same process as set out in clause 4.7 and 4.8 will apply to such testing. If it is not possible to remedy the discrepancy the Company shall have the right to terminate the Agreement in accordance with clause 15.2. This clause 4.9 sets out the Customer's exclusive remedy (and the Company's exclusive obligations) if the Services do not pass the Acceptance Tests or there is a rejection of the Services.
- 4.10 The Company shall be entitled to sub-contract the whole or any part of the performance of the Services to any person provided that the Company remains responsible to the Customer for the performance of the Services in accordance with the terms of the Agreement.
- 4.11 Where the Services include a Managed Firewall (as specified in the Order Acceptance Form), the rule sets used by the Managed Firewall to control access shall be configured in accordance with the Customer's instructions. The Customer shall be entitled to change the configuration from time to time, either itself in accordance with the documentation provided by the Company, or by making a request to the Company via the support process. The Customer acknowledges that the Company does not provide an advisory service as to how the Managed Firewall should be configured and that the configuration is entirely within the Customer's discretion and at the Customer's own risk.
- 4.12 Where the Customer retains responsibility for managing its own security firewall the Customer will retain liability for managing the firewall platform and the Company shall not accept any responsibility for any failure with the firewall platform.

5 SERVICE LEVELS

- 5.1 Unless otherwise stated in the applicable Services Schedule and the Service Level Agreement, the Company shall use its reasonable endeavours to ensure that the Services are available for use twenty-four (24) hours a day throughout the Term. The Company will provide support in respect of each Service in accordance with the contracted package of support selected by the Customer and detailed in the Order Acceptance Form. The Company shall use its reasonable endeavours to provide the minimum service levels as set out in the Services Schedule and applicable Service Level Agreement.
- 5.2 If the Services are not available as set out in clause 5.1 (other than for a planned outage or for a Force Majeure event or as otherwise set out in the Agreement when the Company shall have no liability), the Company shall be liable as set out in the Services Schedule, which shall be the total of the Company's liability hereunder or otherwise for lack of the Services.
- 5.3 Should a fault or issue with the Service arise, the support available to the Customer is as outlined in the Services Schedule and the relevant level of support the Customer has selected. If the Customer

is unhappy with the provision of the Services the Customer may issue a formal complaint to the Company in writing. The Parties will, if required, follow the escalation procedure outlined in clause 27.1 to resolve any complaints.

6 CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall comply with the Acceptable Use Policy and shall procure that any other party using the Services shall comply with the Acceptable Use Policy. The Customer acknowledges that it shall be responsible for any and all use of the Services provided to it by the Company.
- 6.2 The Customer shall supply to the Company any documents, materials, assistance, data or other information ("**Input Materials**") required in connection with the Consultancy Services. The Input Materials shall be supplied within sufficient time to enable the Company to perform the Consultancy Services in accordance with the Agreement.
- 6.3 The Company shall not be liable or deemed to be in breach of contract if the Input Materials are delayed, incomplete or inaccurate and the Company will be entitled to charge the Customer for any additional services necessary as a result.
- 6.4 Any recommendations or suggestions proposed by the Company in the performance of the Consultancy Services are given in good faith, but the Customer is solely responsible for satisfying itself of the suitability of any ideas, strategies, equipment or products recommended or suggested by the Company for its own particular purposes (notwithstanding that such purposes are known to the Company), and all such recommendations and suggestions are acted upon entirely at the Customer's own risk.
- 6.5 The Customer undertakes not to, and not to allow third parties, to:
- 6.5.1 sublicense, lease, rent, loan, or otherwise transfer the Programs to any third party;
 - 6.5.2 accept to the extent permitted by law, decompile, disassemble, decrypt, extract or otherwise reverse engineer or attempt to reconstruct or discover any source code of, or any underlying ideas in, the Programs; or
 - 6.5.3 modify, adapt, or prepare derivative works from the Programs and / or Services.
- 6.6 The Customer shall in respect of any Programs relating to the Services comply with any relevant licence terms relating to the use of the Programs provided that the Company has provided a copy of such licence terms to the Customer.

7 EQUIPMENT

- 7.1 The Equipment shall remain the property of the Company or its nominee at all times and the Company may modify, substitute, renew or add to the Equipment from time to time at its sole discretion provided

that such modifications, substitutions, renewals or additions shall not affect the supply of Services. Where such modification would impact on the Services then modifications will be carried out as a planned outage.

- 7.2 Where Equipment is installed at the Customer's Premises the Customer shall be responsible for ensuring at all times the safe keeping and proper use of the Equipment and shall be liable for any loss or damage to the Equipment pursuant to clause 7.3. In particular, (but without prejudice to the generality of the foregoing) the Customer covenants with the Company:
- 7.2.1 to comply with all reasonable instructions as the Company may notify to the Customer;
 - 7.2.2 not to (and to ensure that no other person shall) sell, let, transfer, dispose of, mortgage, charge, modify, repair, service, tamper with, remove or interfere with the Equipment or suffer any distress, seizure of, or execution to be levied against, the Equipment or otherwise do anything prejudicial to the Company's rights in the Equipment;
 - 7.2.3 to keep the Equipment at the Premises stationary at all times;
 - 7.2.4 not to add to, modify, or in any way interfere with, the Equipment and to keep and, where the Company is not responsible for the maintenance of the Equipment, to maintain the Equipment in good repair and condition;
 - 7.2.5 notwithstanding clauses 7.2.3 and 7.2.4, in the case of an Emergency, to take whatever steps as are reasonably necessary to safeguard the Equipment and to notify the Company as soon as possible of the circumstances of such Emergency;
 - 7.2.6 other than in the event of an Emergency not to cause the Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of the Company;
 - 7.2.7 not to do anything or allow to subsist any circumstance, matter or thing, which is likely to damage the Equipment or detract from or impair its performance or operation;
 - 7.2.8 not to remove, tamper with or obliterate any words or labels on the Equipment or any part thereof and in any event to ensure the Equipment can be identified as belonging to the Company or its supplier; and
 - 7.2.9 to permit the Company to inspect or test the Equipment at all reasonable times and without notice in the event of Emergency.
- 7.3 To avoid unnecessary costs, the Customer should not arrange for any third party IT support professionals to attend on the installation date as the Company cannot guarantee the time of completion of the works. The Customer's existing broadband services will not be affected by the work undertaken by the Company. In the event the Customer instructs third party IT support professionals, the Company will not be held responsible for any costs incurred by any such IT professionals.

- 7.4 The Customer shall be responsible for any Miscellaneous Charges incurred by the Company in relation to any SMAC including but not limited to lift and shift, rehosting and/or installation of the Equipment or Service which is requested by the Customer or required to deliver the Services. In the event of any Miscellaneous Charges for any work associated with a SMAC will confirmed in advance before the work is performed. . In the event the Customer requests any SMAC the Company will confirm if such work constitutes a supplementary Service or feature and any associated Charges which will apply.
- 7.5 The Customer shall maintain insurance of the Equipment which is located on the Customer Premises and insurance for public liability, material damage and business interruption. At request of the Company, the Customer will produce evidence to the Company that the Customer is maintaining suitable insurance in respect of the Equipment and the Customer-Premises Equipment.

8 CUSTOMER EQUIPMENT

- 8.1 Where the Customer is required to provide equipment to enable any of the Services to be delivered the Customer shall be responsible for procuring that the Customer Supplied Equipment is programmed, equipped, compatible and connected for the operation of the Services in accordance with the Company's reasonable instructions. Where required, the Customer shall be responsible for procuring the connection of the Customer Supplied Equipment to the Company's system.
- 8.2 The Customer acknowledges that the Company shall not be responsible for the repair and maintenance of Customer Supplied Equipment unless this is delivered as part of the Company managed service as specified in the Order Acceptance Form and the Customer Supplied Equipment shall be at the Customer's risk at all times. The Customer shall also insure the Customer Supplied Equipment against all risks.
- 8.3 The Customer shall ensure or procure that all other Customer Supplied Equipment that it uses complies with all relevant Laws and applicable industry standards for the time being in force. The Customer shall disconnect any Customer Supplied Equipment if such apparatus does not, or ceases to, conform to any relevant Law or to any applicable and industry standards for the time being in force.
- 8.4 The Company reserves the right to disconnect any Customer Supplied Equipment if the Customer does not fulfil any of its obligations under this clause 8 or, if in the reasonable opinion of the Company, such apparatus does not comply with any relevant Law or applicable industry standard for the time being in force or may cause the death of or any personal injury to any person, or material damage to property or materially impair the quality of the Services or any electronic communication service provided by means of the Company's system.

9 MAINTENANCE

- 9.1 Unless otherwise stated in the Order Acceptance Form or the Services Schedule, the Company shall provide such maintenance services for the proper functioning of the Services and, where appropriate,

the switching and routing equipment supplied by the Company, as are reasonably required to provide the Services in accordance with the Agreement.

- 9.2 The Customer shall permit the Company or its agents upon reasonable notice (except in an Emergency, when no notice is required) to enter the Premises for the purpose of monitoring and maintaining the Equipment.
- 9.3 If the Customer detects any defect or impairment in the operation or performance of the Services, it shall notify the Company of the nature of such defect or impairment. The Company shall respond promptly after such notification and shall make the necessary corrections in accordance with any applicable service levels.
- 9.4 If the Company detects any defect or impairment in the operation or performance of the Equipment, it shall notify the Customer of the nature of such defect or impairment. The Customer shall after such notification comply with the Company's reasonable instructions.
- 9.5 Subject to clauses 9.1 and 9.6, charges for maintenance are included in the Annual Rental.
- 9.6 The Company will be entitled to charge the Customer and the Customer will pay any reasonable costs to the extent that the need for any maintenance results from any one or more of the following:
- 9.6.1 misuse or neglect of, or accidental or wilful damage to, the Equipment where such misuse, neglect or damage is caused by the Customer; or
 - 9.6.2 failure by the Customer to comply with any of the provisions of the Agreement; or
 - 9.6.3 fault in, or other problem associated with the Customer's system provided that in the case of any event referred to in clause 9.6 the Company shall have given the Customer reasonable written notice of its intention to charge such costs.
- 9.7 In the event that the Customer prevents or delays the performance of maintenance services as described in the Agreement, the Company shall have the right to charge the Customer all reasonable costs incurred by such delay or prevention.

10 USE OF SERVICES AND PERFORMANCE OF CONSULTANCY SERVICES

- 10.1 The Customer shall at all times comply with the Acceptable Use Policy and particularly undertakes not to use or permit anyone else to use the Services:
- 10.1.1 to send a message or communication which is offensive, abusive, indecent, obscene or menacing; or
 - 10.1.2 to cause annoyance or inconvenience; or
 - 10.1.3 in a manner which is contrary to any applicable Law.

- 10.2 The Customer shall keep the Company indemnified against all liabilities, claims, damages, losses, proceedings, compensation, costs and expenses arising out of, or in any way connected with, any such use of the Services by the Customer or any third party which infringes the Acceptable Use Policy, provided that the Company shall not compromise, admit or settle any such actions without the prior written consent of the Customer which is not to be unreasonably withheld or delayed.
- 10.3 If the Customer can prove to the Company's reasonable satisfaction that, due to the Company's own act or omission, the Company has failed to perform the Consultancy Services in accordance with the Agreement, then the Company may at its option remedy such breach:
- 10.3.1 by re-executing the relevant part of the Consultancy Services free of charge up to the amount of the Charges received by the Company for the provision of such Consultancy Services (exclusive of any VAT); or
 - 10.3.2 by repaying or crediting to the Customer that part of the Charges paid by the Customer to the Company relating to the provision of the relevant part of the Consultancy Services (exclusive of any VAT),

and any such action shall discharge in full the Company's liability to the Customer for such failure to perform the Consultancy Services.

- 10.4 The use of the Services are provided solely for the Customer's own use and the Customer may not resell, transfer, assign or sub-license them or any part of the Services to any other person. The Company will not be responsible for any sites, content, goods or services offered or made available by the Customer via the Services (whether provided by the Company or any other third parties), nor for any Virus, cookies or anything similar transmitted to the Customer via the Services by such third party sites or otherwise through our provision of the Services. The Company will not be responsible for the content of newsgroup or chat areas or any similar services, whether moderated by the Company or not. By entering the Agreement, the Customer agrees to waive any claims against the Company for any distress, injury, loss, liability, damage and expense arising from or in connection with the Customer's use of these areas and their contents. The Customer shall keep the Company indemnified against all liabilities, claims, damages, losses, proceedings, compensation, costs and expenses arising out of, or in any way connected with, any such use of by the Customer of the areas or any content of the areas, which the Customer posts, or creates.

11 SUSPENSION OF SERVICES

- 11.1 Without prejudice to the Parties' other rights and remedies under the Agreement and otherwise at Law and subject to clause 11.2, the Company may suspend the performance of its obligations under the Agreement on prior written notice to the Customer (such notice not to apply with respect to 11.1.1, 11.1.2 and 11.2) in the event that:
- 11.1.1 the Customer has failed to pay the Charges in full; or

- 11.1.2 the Customer has failed to comply with the Acceptable Use Policy;
- 11.1.3 the Company is entitled to terminate the Agreement in accordance with clause 15; or
- 11.1.4 the Company is required to suspend such performance in order to comply with any Law or request of any governmental department, emergency services organisation or other competent administrative authority provided if the Company is entitled to suspend the Agreement pursuant to this clause 11.1.4, the Company shall use its reasonable endeavours to minimise such period of suspension.

- 11.2 In the event of an Emergency, the Company may at its sole discretion interrupt or suspend its obligations hereunder for so long as the Emergency lasts (but no longer) without giving any notice to the Customer but shall notify the Customer as soon as reasonably practicable following the start of the interruption or suspension and shall use its reasonable endeavours to minimise the period of such interruption or suspension.
- 11.3 Where the suspension is implemented as a consequence of the breach, fault, act or omission of the Customer, the Customer shall reimburse the Company for all reasonable costs and expenses incurred by the Company in connection with the implementation of such suspension (including a re-connection fee as set in Schedule 1).

12 CHARGES

- 12.1 In consideration for the provision by the Company of the Services in accordance with the Agreement, the Customer will pay the Charges in respect of the Services to which it is subscribed and provided by the Company under the Agreement.
- 12.2 Subject to clauses 12.5, 12.6 and 12.7 the Annual Rental relating to the Services shall remain fixed during the Minimum Period.
- 12.3 Following the expiry of the Minimum Period, the Company shall be entitled to increase the Charges on giving the Customer not less than one (1) month's prior notice. Any revised Charges shall become payable from the date set out in the notice served by the Company.
- 12.4 The Company reserves the right to impose any of the Miscellaneous Charges and reserves the right to increase such Miscellaneous Charges.
- 12.5 The Company shall be entitled to increase the Charges on the anniversary of the Service Start Date and each subsequent year of the Term by the same increase in the Retail Prices Index for the previous 12 months announced by the Office for National Statistics (or successor body). Changes to the Charges will be published on the Company's website or notified to the Customer from time to time.
- 12.6 If the Company is required to replace any Equipment as a result of changes in the Law, the Customer shall pay all reasonable costs incurred by the Company in replacing the Equipment.

- 12.7 The Company reserves the right to adjust the Charges by giving notice to the Customer at any time before the contemplated delivery date due to (i) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other third party supplier costs or supply chain issues); or (ii) any request by the Customer to change the delivery date(s), specification, quantities or types of Equipment or Services. In these events the Company shall have the right to adjust the Charges accordingly or apply Miscellaneous Charges.

13 PAYMENT AND REVIEW

- 13.1 All Charges payable under the Agreement shall be payable in full by direct debit (without any set off or deduction) or by BACS transfer, in full and cleared funds, to the bank account nominated by the Company within 30 days of the date of the invoice from the Company. The payment method will be set out in the Order.
- 13.2 Any installation charges set out in the Order Acceptance Form shall be invoiced by the Company on the date the relevant Service is installed provided that the Company shall in its absolute discretion have the right to request that the installation charge is paid in full prior to the date of the installation. If it is necessary to install the Service on a different Premises (for example as a result of the Customer moving office or premises) or to relocate the Service at the Premises at any time, the Customer will be required to pay Miscellaneous Charges.
- 13.3 All Charges set out in the Order Acceptance Form shall be invoiced by the Company monthly in advance and the first payment due under the Agreement shall be payable with effect from the Services Start Date.
- 13.4 All Charges expressed to be payable under the Agreement shall be exclusive of VAT and the Customer shall also pay to the Company such additional amounts of VAT and any other taxes arising in any jurisdiction in which the Service is provided.
- 13.5 If the Customer shall fail to pay any amount due under the Agreement by the Due Date, the Company shall be entitled to charge interest in respect of any such amount outstanding at the Interest Rate (whether before or after judgment) as at the Due Date. Such interest shall be payable from and including the day after the Due Date until and including the date of payment in full. Such interest shall accrue day by day and shall be compounded quarterly.
- 13.6 In the event that the Company is unable to proceed with the delivery of the Services due to acts or omissions of the Customer which prevent or delay the delivery beyond an agreed date, the Company shall have the right to invoice the Customer (which invoice the Customer shall pay within 15 days of the date of the invoice from the Company) for all additional costs incurred by the Company because of the Customer's acts or omissions.

- 13.7 The Customer agrees not to cancel or amend any direct debit instruction without the consent of the Company.
- 13.8 If specified in the Order Acceptance Form the Customer shall pay a deposit in the amount specified in the Order Acceptance Form. Any deposit shall be payable with the first payment of the Annual Rental.
- 13.9 The Company may, at its discretion, set off such deposit against any Charges or other amounts owing to the Company from time to time. No interest shall be payable in respect of the deposit. Any deposit remaining at the end of the Minimum Period which is not set off against any Charges shall be returned to the Customer upon return of any Equipment to the Company in satisfactory condition.
- 13.10 If the Company has set off any deposit under clause 13.9 the Customer shall be required to top up the deposit to the original amount specified in the Order Acceptance Form.
- 13.11 In the event the Company has provided a credit facility to the Customer, the Company shall have the right in its absolute discretion to withdraw the credit facility on 5 days' prior notice to the Customer.
- 13.12 The Company reserves the right to refer any unpaid Charges to a debt collection agency to collect payment, interest and any late payment charges on its behalf. The Customer must pay the Company's costs payable to the agency, who will add such costs to the total debt outstanding.

14 DURATION

- 14.1 The Agreement shall come into force on the date the Customer signs the Order Acceptance Form, the Company shall provide the Services from the Service Start Date on and subject to the terms of this Agreement and the Services shall continue, unless it is terminated in accordance with clause 15, for the Term.
- 14.2 Either Party shall have the right to terminate the Agreement at the end of the Minimum Period by serving not less than 3 month's prior written notice such notice to expire at the end of the Minimum Period. If the Agreement is not terminated at the end of the Minimum Period it shall automatically extend for 12 months or such other period as the parties agree in writing (the "**Extended Period**") at the end of the Minimum Period and at the end of each Extended Period unless it is terminated in accordance with clause 15.

15 TERMINATION

- 15.1 The Company may terminate the Agreement in relation to any Service without liability at any time prior to the Service Start Date, if:
- 15.1.1 the Company is unable to provide the Services to the Premises;
- 15.1.2 the Customer fails any preliminary financial or credit checks or provides any incorrect or inaccurate payment details; or

- 15.1.3 for any reason and / or any other reason at its sole discretion.
- 15.2 In the event the Customer wishes to cancel the Services at any time prior to the relevant Service Start Date in accordance with clause 4.9, the Customer will be subject to an Order Cancellation Fee unless the Company decides (at its sole discretion) to waive such fees.
- 15.3 The Customer may terminate the Agreement or any relevant Service at any time after the first anniversary of the Services Start Date on 30 days' written notice (from receipt by the Company of the same), provided that termination of any Service shall be subject to payment of the Service Termination Fee in respect of that Service.
- 15.4 Notwithstanding anything to the contrary in the Agreement, either Party (without prejudice to its other rights) shall be entitled to terminate the Agreement forthwith by 30 days' notice to the other Party if:
- 15.4.1 any licence granted to the Company for the provision of the Services is revoked or otherwise varied for any reason whatsoever and is not immediately replaced by a licence that would permit the Company to continue to provide the Services on the same terms and conditions as set out in the Agreement, in which event the Company shall give the Customer the maximum period of notice of termination practicable in the circumstances; or
- 15.4.2 any action or proceedings under insolvency law is taken against the other Party or the other Party makes any arrangement or compromise with its creditors, or ceases to carry on business or suffers any execution or distress over its assets, or shall be the subject of a voluntary or compulsory liquidation (other than for the purpose of reconstruction or amalgamation) or an administrator or administrative receiver is appointed; or
- 15.4.3 the other Party commits a material breach of any of the provisions of the Agreement (including without limitation, non-payment of the Charges or a breach of the Acceptable Use Policy and/or breach of intellectual property right by the Customer and/or breach of any Law) and, in the case of a material breach of any of the provisions which is capable of remedy, the defaulting party fails to remedy the same within 30 days after receipt of a notice in writing from the other Party giving particulars of the breach and requiring it to be remedied.
- 15.5 The Company (without prejudice to its other rights) shall be entitled to terminate the Agreement forthwith by notice to the Customer:
- 15.5.1 if the Customer fails to comply with the AUP;
- 15.5.2 if the Customer fails to pay the Charges, any invoice or monies due or otherwise cancels payment for the Services without agreeing another form of payment;

- 15.5.3 if the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 15.5.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy; or
 - 15.5.5 in the event of any fault or failure caused by the action or inaction of a third party supplier, and despite the Company's reasonable endeavours is unable to appoint a suitable alternative supplier (acting reasonably); or
 - 15.5.6 If the Customer and/or the owner and/or the landlord of the Premises, or loss of line of sight to the Equipment, prevents the Company from delivering the Services or the Customer is unable to meet any conditions referred to in the Order Acceptance Form.
- 15.6 The right to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of any breach or any rights, obligations or liabilities accrued prior to termination.
- 15.7 Upon the termination of the Agreement, the Customer will immediately cease to use the Service and the Company will, subject to the Company having a right of set off for any payment due to the Company repay to the Customer the appropriate proportion of any Charges paid in advance for any period ending after the Customer's liability to pay such Charges ceases provided that the Company shall not be liable to repay any Charges where the Agreement is terminated as a result of the Customer's breach. In the event the Company terminates a Service for breach then, in addition to payment of all outstanding Charges for Service rendered, the Customer will be responsible for payment of the Service Termination Fee in respect of that Service.
- 15.8 Cancellation of a Service which formed part of a bundled package offer may affect the rate applied to the total Charge for the remaining Services. The Company reserves the right to amend the Charges for the remaining Services in such circumstances.
- 15.9 Without prejudice to the Parties' other rights and remedies under the Agreement or otherwise at law, if the Agreement is terminated by the Company in accordance with clauses 15.4.2, 15.4.3 and 15.5 the Customer shall pay the Company all arrears of Charges and sums due and payable to the Company under the Agreement until the expiry of the Minimum Period or the date of termination (if longer).
- 15.10 The obligations of the Parties under the Agreement, which are of a continuing nature and capable of surviving expiry or termination of the Agreement, shall continue in full force and effect notwithstanding such expiry or termination.

16 FORCE MAJEURE

- 16.1 Neither Party (for the purpose of this clause, the "**Affected Party**") shall be liable for any failure to perform its obligations under the Agreement caused by an event of Force Majeure the Agreement provided that, in such circumstances the Affected Party can demonstrate that it has taken all reasonable steps to continue to perform its obligations under the Agreement.
- 16.2 The Affected Party shall promptly notify the other Party of the estimated extent and duration of such inability to perform all or part of its obligations (for the purposes of this clause 16, a "**Force Majeure Notification**").
- 16.3 The Affected Party shall notify the other Party whenever the delay or failure resulting from the event of Force Majeure ends.
- 16.4 Subject to clause 16.5 if the performance of the Affected Party's obligations under the Agreement is only partially affected by the Force Majeure event, such Affected Party shall nevertheless remain liable for the performance of those obligations not affected by the event of Force Majeure.
- 16.5 In the case of an Affected Party issuing a Force Majeure Notification then:
- 16.5.1 where the delay or failure caused by the event of Force Majeure lasts for a continuous period of three (3) months or less from the date of the Force Majeure Notification any obligation outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the event of Force Majeure has ended (whether or not notice of cessation has been given pursuant to clause 16.3), save to the extent that such fulfilment is no longer possible or is not required by the other Party; or
- 16.5.2 where a notice of cessation has not been given pursuant to clause 16.3 and the delay or failure caused by the event of Force Majeure lasts for more than three (3) months from the date of the Force Majeure Notification and the Force Majeure events prevents the Affected Party from performing its obligations in whole or in part during that period, the other party shall be entitled (but not obliged) to terminate the Agreement by giving not less than thirty (30) Working Days' written notice to the Affected Party on expiry of the said three (3) months period unless a notice of cessation of the event of Force Majeure given pursuant to clause 16.3 is received by the other Party prior to the expiry of the thirty (30) Working Days' written notice.
- 16.6 If the Agreement is not terminated in accordance with the provisions of clause 16.5.2 then any obligations outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the event of Force Majeure has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

- 16.7 Irrespective of the occurrence of any Force Majeure event, the Customer shall continue to pay all Charges due under the Agreement unless the Customer is unable to use the Services in which case the Charges, or part thereof depending on the extent to which the Customer is unable to use the Services, shall cease until the Services, or relevant part, are available for use.

17 LIMITATIONS OF LIABILITY

- 17.1 Nothing herein shall limit either Party's liability for death or personal injury resulting from its own negligence or that of its employees, agents or contractors while acting in the course of their employment, for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or for any liability of either Party which cannot by law be excluded or restricted.
- 17.2 Subject to clauses 10.2, 17.1, 17.3, 20.4 and 21.14, the aggregate liability of each Party to the other or any third party (whether in contract, tort, breach of statutory duty or otherwise) arising by reason of, or in connection with, the Agreement shall be limited to one year's Annual Rental payable under the Order Acceptance Form in the relevant year in which the relevant claim arises, or where such liability arises in the provision of the Consultancy Services, the aggregate liability of the Company shall be limited to the Company's charges for the Consultancy Services.
- 17.3 Subject to clauses 17.1, neither Party shall be liable to the other or any third party in contract, tort (including liability for negligence), breach of statutory duty or to, loss or corruption of, or damage to, computer software and/or data, wasted management time, loss of revenue, loss of profits, loss of anticipated savings, business or goodwill or loss of turnover or otherwise for any indirect, consequential or special loss howsoever arising.
- 17.4 The provision of the Services under the Agreement is supplied in accordance with the Service Level Agreement and the Company's sole obligations and liabilities in respect of the provision of the Services are as stated in the Agreement and all other innocent or negligent representations (but not fraudulent), conditions, warranties and terms express or implied whether by statute, law or otherwise are hereby excluded to the fullest extent permitted by law.
- 17.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 17.6 This clause 17 shall survive termination of the Agreement.

18 CONFIDENTIALITY

- 18.1 During the term of the Agreement and after the termination or expiration of the Agreement for any reason, the Receiving Party:

- 18.1.1 May not use Confidential Information for a purpose other than the performance of its obligations under the Agreement; and
 - 18.1.2 May not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party.
- 18.2 Clause 18.1 does not apply to Confidential Information which:
- 18.2.1 Is at the date of the Agreement or, at any time after that date, becomes publicly known other than by the Receiving Party's breach of the Agreement; or
 - 18.2.2 Can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or
 - 18.2.3 Is required to be disclosed under any Law or by any stock exchange or other regulatory requirements.
- 18.3 This clause 18 shall remain in force for five (5) years following the termination or expiration of the Agreement.

19 PUBLICITY

The Parties may not, either directly or indirectly, make public announcements, give releases or statements to the press, television, radio or other media relating to, or connected with, the Agreement without the prior consent of the other Party.

20 INTELLECTUAL PROPERTY RIGHTS

- 20.1 The Customer grants, or shall procure the grant, to the Company of a non-exclusive, personal licence to use such of the Intellectual Property Rights of the Customer as may be necessary for the sole purpose of undertaking the Services, such licence to terminate immediately on termination of the Agreement for whatever reason.
- 20.2 Subject to payment of the Charges, with the exception of Third Party Code, the Company grants (or shall procure the grant of) to the Customer a non-exclusive, non-transferable, royalty-free licence, personal licence to use such of the Intellectual Property Rights of the Company for the sole purpose of receipt of the Services and use of any Programs with the intent that such licence shall take effect on any such copyright or other Intellectual Property Rights coming into existence pursuant to the provision of the Services. The licence granted or procured under this clause 20.2 shall terminate immediately on termination of the Agreement.
- 20.3 Use of Third Party Code will be subject to the terms imposed by the relevant third party and the Customer is responsible for familiarising itself with and abiding by such terms and the Customer shall

indemnify and shall keep the Company and any Associate fully and effectively indemnified on demand against all costs, claims, demands, expenses and liabilities (including legal fees and expenses) of whatsoever nature arising out of or in connection with any claim by a relevant third party in respect of the use of such Third Party Code by or on behalf of the Customer and/or infringement by the Customer of the Company's (or those of its licensors) Intellectual Property Rights and/or Programs.

20.4 The Company shall indemnify and shall keep the Customer fully and effectively indemnified on demand against all costs, claims, demands, expenses and liabilities (including legal fees and expenses) of whatsoever nature arising out of or in connection with any claim that the receipt and use of the Services by the Customer infringes the Intellectual Property Rights of any third party (a "**Claim**") (other than Claims in respect of the provision or use of Third Party Code or where a Claim is caused by the act or omission of the Customer) to a value not to exceed £100,000, provided that the Customer shall:

20.4.1 notify the Company in writing of any alleged infringement of which it becomes aware;

20.4.2 not make any admission or statement in respect of such Claim;

20.4.3 allow the Company to defend the Claim; and

20.4.4 provide the Company (at the Company's cost) with such reasonable assistance as it may request.

21 DATA PROTECTION AND CUSTOMER DATA

21.1 The Customer shall own all rights, title and interest in and to the Customer Data and shall have sole responsibility for ensuring the security, legality, reliability, integrity, accuracy and quality of the Customer Data.

21.2 Both Parties shall ensure that they, their employees, agents and Subprocessors shall observe the requirements of the Data Protection Legislation and shall comply with any request made or direction given to the other which is directly due to the requirements of the Data Protection Legislation.

21.3 The Company will be either Controller, Processor or both under the Contract depending on the type of Personal Data Processed and the purpose of the Processing. The Parties agree that for the purposes of the Data Protection Legislation the Customer shall, in respect of all Customer Data which is Personal Data, be the Data Controller and the Company shall be the Data Processor.

21.4 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer and processing of any Personal Data.

21.5 The Company shall take all measures required pursuant to the Data Protection Legislation and also appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data. The

Company shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

- 21.6 The Company shall not transfer any Personal Data outside of the United Kingdom or a country or territory in respect of which there is a finding of adequacy under Data Protection Legislation unless the prior written consent of the Customer has been obtained and shall comply with reasonable instructions notified to it in advance by the Customer with respect to the processing of Personal Data.
- 21.7 The Company shall assist the Customer, at the Customer's cost, with all Data Subject access requests under the Data Protection Legislation which may be received from the Data Subject of any Personal Data forming part of the Customer Data.
- 21.8 The Company shall notify the Customer without undue delay of and about any actual incident of unlawful destruction or accidental loss or disclosure or access to the Customer Data.
- 21.9 The Company shall make available to the Customer all information reasonably necessary to demonstrate compliance with its obligations under the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer. Notwithstanding any rights of the Customer under the Data Protection Legislation to inspect and audit the Company's data processing activities, the Company may, in its absolute discretion, use independent third party auditors to verify the adequacy of the security controls that apply to the Services and the Company's compliance with its obligations under the Agreement.
- 21.10 At the written direction of the Customer, the Company shall delete or return to the Customer, at the Customer's cost, all Personal Data on termination of the Agreement unless required by any Law to store the Personal Data.
- 21.11 The Customer warrants and represents to the Company:
- 21.11.1 it has the right to licence the processing of the Customer Data that may be processed under the Agreement;
 - 21.11.2 the processing of the Customer Data will not infringe the intellectual property rights of any third party;
 - 21.11.3 the processing of the Personal Data from time to time has been carried out in accordance with the Data Protection Legislation;
 - 21.11.4 it is not aware of any circumstances likely to give rise to breach of any Data Protection Legislation in the future;
 - 21.11.5 the Company is entitled to process the Personal Data under the terms of the Agreement and such use will comply with all Data Protection Legislation;

- 21.11.6 all Data Subjects have given their valid, informed consent to the processing of such Personal Data.
 - 21.11.7 all Customer Data is necessary, accurate and up to date; and
 - 21.11.8 it is registered with the relevant data protection authorities (where applicable) to process the Personal Data.
- 21.12 Without limiting the effect of clause 17 of the Agreement the Company does not give any guarantee that any processed data:
- 21.12.1 is or are accurate, complete, reliable, useful, fit for purpose or timely;
 - 21.12.2 has or have been tested for use by the Customer or any third party; or
 - 21.12.3 will be suitable for or capable of being used by the Customer or any third party.
- 21.13 The Parties agree the following provisions so far as they relate to Subprocessors:
- 21.13.1 the Customer authorises the Company to appoint (and permit each Subprocessor to appoint) Subprocessors in accordance with this clause 21.15;
 - 21.13.2 the Company may continue to use those Subprocessors already engaged by the Company or an Associate as at the date of the Agreement;
 - 21.13.3 the Company shall ensure its agreements with Subprocessors incorporate terms similar to the data protection provisions contained in this clause 21;
 - 21.13.4 the Company shall give the Customer as much notice as is reasonably practicable of the appointment of any new Subprocessor including details of the processing to be undertaken. If, within 5 Working Days of receipt of this notice, the Customer notifies the Company in writing of any objections (on reasonable grounds) to the proposed appointment the Company and the Customer shall work together in good faith to make available any commercially reasonable change in the provision of the Services which avoids the use of that Subprocessor;
 - 21.13.5 if the Company is unable to make the required change to the Services under the provisions of clause 21.13.4 within 20 Working Days from receipt of the Customer's notice objecting to the proposed appointment of the Subprocessor, the Customer may terminate the Agreement on 1 months' notice to the extent it relates to the Services which require the use of the proposed Subprocessor.
- 21.14 Each party shall indemnify the other against all claims, liabilities, costs, expenses, damages and losses and all other reasonable professional costs and expenses suffered or incurred by the

indemnified party arising out of, or in connection with, the processing of any Personal Data under the Agreement except to the extent where any such claims arise as a result of the indemnified party's negligence or breach of this clause 21 provided each party's aggregate liability under this clause 21.14 shall be limited to a maximum of £250,000.

21.15 The Customer acknowledges that:

21.15.1 the Company is reliant on the Customer for direction as to the extent to which the Company is entitled to use and process Personal Data; and

21.15.2 claims against the Company referred to under clause 21.14 include any claim or action brought by a Data Subject arising from any action or omission by the Company, to the extent such action or omission resulted directly or indirectly from the Customer's instructions.

21.16 The Processing Details sets out the scope, nature and purpose of Processing by the Company, the duration of the Processing, the types of Personal Data and the categories of Data Subject. The Customer agrees to keep the Company updated as to the types of Personal Data and categories of Data Subjects that may be included in the processing of Personal Data on the Customer's behalf.

21.17 If the Company acts as a Controller:

21.17.1 the Company may collect, Process, use or share Personal Data with the Company Associates and Subprocessors, within or outside the country of origin in order to do any or all of the following:

21.17.1.1 administer, track and fulfil Orders for the Service;

21.17.1.2 implement or manage the Service and resilience of any the Equipment and the Services;

21.17.1.3 manage, track and resolve security incidents with the Service;

21.17.1.4 manage the Agreement and resolve any disputes relating to it;

21.17.1.5 respond to general queries relating to the Service or

21.17.1.6 comply with applicable Law;

21.17.2 the Company will Process the Personal Data in accordance with applicable Data Protection Legislation and as set out in the Company's privacy policy.

21.18 For the avoidance of doubt where the Company is required to retain or disclose Personal Data to satisfy its duties under applicable Law, the Company shall be a Controller in respect of such Personal Data.

22 ANTI-BRIBERY LAWS

22.1 Each Party shall:

22.1.1 Comply with all laws relating to anti-bribery and anti-corruption including without limitation the Bribery Act 2010 (Anti-Bribery Laws) and shall not do, or omit to do, any act that will cause the other party to be in breach of the Anti-Bribery Laws.

22.1.2 Not engage in any activity, practice or conduct which would constitute an offence under the Anti-Bribery Laws if such activity, practice or conduct had been carried out in the United Kingdom.

22.1.3 Promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of the Agreement.

22.2 Maintain throughout the term of the Agreement its own anti-bribery policy including without limitation adequate procedures (as defined in section 7(2) Bribery Act 2010) to ensure compliance with the Anti-Bribery Laws and shall enforce such policy and procedures where appropriate.

23 ASSIGNMENT

23.1 Subject to clause 23.2, the Customer shall not assign, novate, delegate or otherwise deal with all or any of its rights or obligations under the Agreement (apart from on a solvent amalgamation or reorganisation) without the prior written agreement of the Company which is not to be unreasonably withheld or delayed. The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement without the consent of the Customer.

23.2 Either Party may assign the Agreement to a member of its Group. The Company may also assign, novate or transfer the Agreement to any entity to whom it transfers all or a substantial part of its business.

23.3 Each party shall do or sign all such things as are needed to give effect to any permitted assignment, novation or transfer. If the Customer wishes to transfer its rights and liabilities to another Party and the Company is required to enter into a deed of novation the Customer shall pay the Company's reasonable legal costs for approving the deed of novation.

24 ENTIRE AGREEMENT AND VARIATIONS

24.1 The Agreement and any documents referred to in it constitutes the entire Agreement between the Parties relating to the subject matter of the Agreement and supersedes any previous agreements and all prior representations made between the Parties, whether orally or in writing.

24.2 A variation of the Agreement is valid only if it is in writing and signed on behalf of each Party.

24.3 Each Party agrees that it did not rely on any statement made by the other Party before the signature of the Agreement in entering into the Agreement and hereby waives any remedy which but for this clause 24.3 might otherwise be available to it in respect of any untrue statement (whether made innocently or negligently) before the signature of the Agreement.

25 GENERAL

25.1 No one other than a Party to the Agreement and an Associate shall have any right to enforce any of its terms under the Contract (Third Party Rights) (Scotland) Act 2017.

25.2 Failure by either Party at any time to enforce any of the provisions of the Agreement shall not be construed as a waiver by such Party of any such provision or in any way affect the validity of the Agreement or any part hereof.

25.3 No granting of time or other forbearance or indulgence by either Party to the other Party shall in any way release, discharge or otherwise affect the liability of the other Party under the Agreement.

25.4 If any provision of the Agreement shall be prohibited or adjudged by a court of competent jurisdiction to be unlawful, void or unenforceable, such provision shall to the extent required be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement and shall not in any way affect any other circumstances or the validity or enforcement of the Agreement.

25.5 The Company shall be entitled to amend the General Terms and Conditions and/or any service specific conditions at any time and will notify the Customer in writing. The Agreement shall be amended accordingly with effect from the date of notification. If the relevant amendment is not required by law and materially affects the Services the Customer shall (subject to payment of any Service Termination Fee unless the Company expressly agrees (at its sole discretion) to waive such fee) have the right to terminate the Agreement and any affected Service by serving on the Company not less than 14 days' written notice to terminate the Agreement, provided that such notice is served within the period of 14 days commencing on the date of notification online. In all other cases the Customer will be deemed to have accepted the amendment. For clarification, the service of notice by the Customer under this clause 25.5 shall not constitute or deem to constitute evidence that the relevant change materially affects the Services.

25.6 The Company may for operational reasons introduce service features and/or process changes and/or change the way in which the Services are delivered provided such changes do not have a material adverse effect on the performance or provision of the Services.

25.7 By entering into the Agreement the Customer confirms it has read and understood the Company's privacy policy, which can be found at <https://gofibre.co.uk/privacy-policy/>

26 NOTICES

Any notice, invoice or other document or communication given by the Customer under the Agreement shall be given by e-mail or to such other email address of which notice has previously been notified by the Company to the Customer. Any notice given by the Company under the Agreement shall be given by email to the Customer's address specified in the Order Acceptance Form.

27 RESOLUTION OF DISPUTES

27.1 In the event of any dispute between the Parties arising out of the Agreement, the Parties shall first use their respective reasonable endeavours in good faith to resolve any such dispute by escalation as follows:

27.1.1 initially, by negotiation between the Parties' account managers;

27.1.2 if the account managers shall fail to resolve the dispute within 14 days of the dispute being referred to them, by the referral to, and negotiation between, directors of the Parties;

27.1.3 if the directors shall fail to resolve the dispute within 14 days of the dispute being referred to them, by the referral to, and negotiation between, the managing directors of the Parties; and

27.1.4 if the managing directors shall fail to resolve the dispute within 14 days of the dispute being referred to them, by referring to a mediator approved by mutual agreement or failing mutual agreement by the President from time to time of The Chartered Institute for IT (BCS) who shall consider the resolution of the dispute in a prompt and expeditious manner, in the English language and unless agreed otherwise, the mediation will happen in Edinburgh, Scotland.

27.1.5 Both Parties agree to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge his duties and to bear equally between them the fees and expenses of the mediator.

28 GOVERNING LAW AND JURISDICTION

The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Scotland. The Agreement shall be governed by and construed in accordance with the Law of Scotland and the Parties hereby irrevocably agree to submit to the non-exclusive jurisdiction of the Scottish courts..

SCHEDULE 1
MISCELLANEOUS CHARGES

Service	Description	Charge (excluding VAT)
LOS or Installation Survey.	Carried out in connection with a re-location by the Customer.	£150
Installation	One off charge payable to install Service	Charged at the amount agreed in advance with the Customer and specified in the Order Acceptance Form.
Relocation Installation.	Carried out in connection with a re-location by the Customer.	£100
Re-connection of service.	Following the suspension of the supply/performance of the Services as a result of the Customer's breach.	£25
Reappointment due to failed attendance by Customer.	Where the Customer fails to attend a pre-arranged site visit and has failed to notify the Company by 2.00pm the previous day. Assumes 1 hour on site for 2 engineers.	£25
Cancelled appointment.	Where the Customer cancels an appointment less than 72 hours before an agreed date and time for the Company to attend the Customer's premises.	£25
Abandoned Call Out due to Customer not arranging access or access is prevented.	Where the Customer has failed to arrange access for the Company and the Company is unable to gain access to the Customer's premises or the building in which the Customer's premises form part.	£100
Engineer call out and no-fault found with the Company supplied and managed Customer Supplied Equipment.	Where the Customer reports a Fault under the Service Level Agreement and the Equipment is found not to be faulty.	£75
The preparation of a risk assessment and method statement.	Where the Agreement is terminated or the service cancelled because the Customer has prevented the Company delivering the service, or the Customer is unable to meet the conditions set out in the Order Acceptance Form or this Agreement.	£50

Service	Description	Charge (excluding VAT)
Replacement of equipment.	Where necessary as a result of damage caused by the Customer.	£150
Additional sundries.	Where a non-planned cable run exceeds "5" metres.	£150
Missed payment fee.	The Customer fails to pay an amount due under the Agreement.	£50
Administration fee.	Paying by method other than by direct debit.	£25
Paper billing.	Where the Customer insists on receiving a paper bill.	£25
Non-return of Equipment.	At the end of the contractual term.	£50
SMAC	Any ad-hoc small work once service provided,	Charged at the amount agreed in advance with the Customer and specified in the Order Acceptance Form.
Order Cancellation Fee	Cancellation of any Service element or this Agreement prior to the Services Start Date.	Charged as the amount specified in the Order Acceptance Form
Service Termination Fee	Cancelation any Service element or this Agreement after the Minimum Period [or Extended Period during the Term].	Charged as the amount specified on the Order Acceptance Form.
Support Charges – Bronze, Silver, Gold	<p>Bronze – Business hours and weekdays only (8am – 6pm)</p> <p>- Silver – 24hrs per day during weekdays only, excluding public holidays</p> <p>- Gold – 24x7x365 cover</p>	Charged at the amount agreed in advance with the Customer and specified in the Order Acceptance Form.

SCHEDULE 2
THE COMPANY SUPPORT DESK

ESCALATION	CONTACT DETAILS
Level 1:	<p>Company Support Desk Tel: 01361413333 Email: support@borderlink.co.uk Support Desk operating hours are 24 hours a day, seven days a week.</p> <p>Change Requests: Please email details to support@borderlink.co.uk.</p> <p>Faults and Urgent Changes: Please email details to support@borderlink.co.uk and follow up with a phone call to 01361413333</p> <p>Out of Hours support: please call 01361413333, to be put through to the on call support team.</p>
Level 2:	<p>Support Desk Team Leader Tel: 01361413333 Email: support@borderlink.co.uk</p>
Level 3:	<p>Technical Support Manager Tel: 01361413333 Email: support@borderlink.co.uk</p>
Level 4:	<p>Chief Technology Officer Tel: 01361413333 Email: support@borderlink.co.uk</p>

SCHEDULE 3 PROCESSING DETAILS

Scope of processing

The Company processes Personal Data to enable it to provide the services under the Agreement and to comply with any legal obligations imposed upon it.

Nature and purpose of processing

- Use of Personal Data to set up, operate, monitor and provide the services under the Agreement;
- Perform day to day management of accounts and products the Company provides to the Customer;
- Record consent (e.g. in respect of marketing of products and services or any other consent the Customer provides which the Company is obliged to record);
- Uploading any fixes or upgrades to the services the Company provide (where the Company is obliged to carry out fixes and/or upgrades);
- Back up of Personal Data;
- Computer processing of Personal Data, including data transmission, data retrieval, data access;
- Complying with the Company's statutory obligations;
- Providing access to online platforms (if any);
- Network access to allow transfer of Personal Data;
- Execution of the Customer's written instructions in accordance with the above provisions and/or the Agreement;
- Administration of accounts to manage user permissions.

Categories of Personal Data

- Account data such as account number, device ID, IP address, service history etc.
- Personal data such as name, address, date of birth, email address, telephone number, circuit ID;
- Professional information such as job title, details of the Customer's professional body;
- Financial data such as credit or debit card details, bank account details;

- History product data and information;
- Company data where this identifies a Data Subject;
- Identification data (where required);
- Special categories of Personal Data.

Categories of Data Subjects

- Employees, contractors, temporary workers, agents, the Customer's clients and suppliers or other individuals having Personal Data to be Processed as part of the Company's service to the Customer.
- End users or their authorised representatives.

Duration of Processing

The Company shall process Personal Data no longer than is necessary in order to perform its obligations under the Agreement or in order to comply with any legal requirement regarding the Processing of Personal Data.

SCHEDULE 4 SERVICES SCHEDULE

This is the Services Schedule to the foregoing Agreement between the Company and the Customer consisting of seven parts.

PART 1 –FIBRE TO THE PREMISES

In this Part 1 unless listed below all words and phrases shall have the same meaning as defined in clause 1 of the General Terms and Conditions. The following terms shall have the following meanings:

"FTTP" means Fibre to the Premises and is a fibre broadband connection from the exchange, into your business premises using fibre optic cables. It offers higher broadband speeds to specific premises in areas that have been enabled for FTTP, is asynchronous in terms of bandwidth and operates as a contended service.

"Availability" means the time for which the Service is available (the uptime Service availability) from the Services Start Date (unless exempt as specified in paragraph 2.1.1 of the FTTP Service Level Agreement). A connection shall be deemed unavailable if it is completely interrupted for greater than 60 consecutive seconds.

"Business Hours" means 8am – 6pm on any Working Day.

"Outage" means an event or action (not attributable to the act or omission of the Customer or arising at the request of the Customer), which prevents or restricts Service.

"Packaged Hours of Support" means the Bronze, Silver or Gold package of contracted support hours specified in the Order Acceptance Form.

"Planned Outage" means an event or action that has been planned when Service and / or network maintenance or upgrades may be required by the Company from time to time.

"Performance Measurement Period" means a period of one calendar month basis, calculated from the Service Start Date

"Repair Target" means the target length of time to restore Services which is measured from the time the unique fault reference number is registered by the Company's support desk as set out in the Service Level Agreement in the Appendix to this Part 1, provided the Customer performs all reasonable steps and in-house testing as specified by the Company and co-operates with the support desk to identify the fault.

"Service Level Agreement" means the Company's standard service levels from time to time for providing the FTTP Service as set out in the appendix to this Part 1.

Overview

1. FTTP Services

- 1.1 The Company is responsible for the installation and ongoing provision and maintenance of the FTTP Service for the duration of the Term. Where FTTP is provided by a third party, the Company shall liaise directly with this third party on the Customers behalf, but cannot be held responsible for poor installation or provision of service.
- 1.2 The Customer must allow access and provide relevant information to the Company any appointed third party provider, agent or contractor to the Premises to execute any works for the purpose of providing the FTTP Service (including the installation, operation, maintenance, SMAC or inspection of any Equipment). Upon such cancellation or termination of the Service, the Customer must give the Company or its appointed third party provider, agent or contractors all reasonable access to the Premises to remove the Equipment. The Customer must sign appropriate consents prior to any such works being conducted and comply with the reasonable instructions and requirements of the Company. The Company will not be liable for any damages as a result of poor installation of the Equipment or performance of Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf).
- 1.3 The Company is only responsible for the support and maintenance of any Equipment supplied to the Customer by the Company as part of the Service, for the duration of the Agreement. Customer Supplied Equipment will remain the responsibility of the Customer, unless expressly agreed by the Company in writing.
- 1.4 Before providing the FTTP Service the Company or appointed third party provider may conduct a location survey and provide relevant information requested to establish whether the FTTP Service can be provided to the Premises and the Customer may be responsible for any Installation and/or Miscellaneous Charges.
- 1.5 The Customer must allow access to the Company and/or any appointed third party provider, agent or contractor to the Premises for the purpose of maintenance of the FTTP Service. The Company will not be held liable for any damages as a result of poor provision of maintenance of the Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf) .

Appendix to Part 1

FTTP SERVICE LEVEL AGREEMENT**1. Reporting Faults and Fault Management**

Our support desk opening times and contact methods are set out in Schedule 2 and published on the Company's website. Customer support will be handled in accordance with the Packaged Hours of Support.

A summary of the support packages is as follows:

- Bronze – 8am – 6pm, Monday to Friday excluding bank holidays in Scotland
- Silver – 24 hours per day, during Monday to Friday only, excluding public holidays in Scotland;
- Gold – 24 hours per day, every day, 365 days a year.

Faults may be reported to the Company support desk (as detailed in Schedule 2), and a fault reference number will be issued to the Customer within 2 hours of the fault being logged

The Repair Target time for a material fault affecting the Service is set out at section 2.

Service levels and performance will be measured on a per service line basis detailed on the Order Acceptance Form.

2. Repair Targets

The Repair Target time for any material fault affecting the Service the Repair Target is set out below. If a Repair Target for a service is not specified below, the Company shall initially respond within 4 Business Hours.

2.1 Availability

The Company shall target 99.9% availability for the FTTP Service. The calculation used is based on the total measurement time minus the unavailable time divided by the total time (total time minus total unavailable time) x100) ÷ total time) within the Performance Measurement Period.

2.1.1 Exemptions from the Availability target include:

- Where a fault occurs outside Packaged Hours of Support, the SLA measurement will stop until such time as the Packaged Hours of Support resume.
- The SLA measurement will stop for the duration of any Planned Outages.

Where a Customer has selected the Bronze Packaged Hours of Support, the Company will use reasonable endeavours to perform Planned Outages outside Business Hours.

The service levels do not apply

- if the Customer does not provide access, delays providing access or denies permission for the Company or its agents and suppliers to repair the Service;
- during any trial period of the Service, or for Service or any part of the Service which has a Minimum Period of Service less than 12 Months;
- to failures due to matters beyond the Company's reasonable control as detailed in clause 16 of the General Terms and Conditions;
- to any incident not reported in accordance with the Company's reporting procedures; or
- if the Customer has not complied with the Agreement.

The Company Repair Target is 8 Business Hours for a material fault affecting the availability of the FTTP Service .

For a fault which does not cause a material interruption to the FTTP Service the Repair Target will be 20 Working Days.

2.2 Equipment and Customer Supplied Equipment

2.2.1 Equipment

The Company Repair Target is 1 Working Day from the point in time at which a fault reference number is issued, for a material fault on any Equipment which is maintained by the Company under the terms of this Agreement.

2.2.2 Customer Supplied Equipment

Unless expressly agreed by the Company as part of a managed service agreement, the Company shall not be responsible for the maintenance, support or security of Customer Supplied Equipment, both physical or software related.

The Equipment supplied by the Company shall remain the property of the Company at all times. The Customer-Premises Equipment must be returned to the Company upon cessation of the Agreement.

2.3 Customer responsible faults

The Company is not responsible for any fault identified as attributable to the Premises or the site, a breach of this Agreement by the Customer, a disruption of the Customer's power supplies or the action or inaction of the Customer, and / or the Customer's employees or agents, or a failure of the Customer to provide access to the site and/or the Premises. In such event, the Repair Target the Repair Target measurements shall not be applied to the Company and the Customer may incur additional support charges.

2.4 Third party attributable faults

If a fault is identified as being attributable to a third party (i.e. neither the Customer or the Company), including any fault in the Customer Supplied Equipment, Repair Target measurements shall not apply. In such event, the Company will use reasonable endeavours to restore the Services within the Repair Target but will not be liable to pay the Customer any service credits as a result of any fault attributable to a third party.

3. Outages/Re-routing

In maintaining the Service, the Company may with reasonable notice, request a Planned Outage or re-routing of the Service. Wherever possible the Company will notify the Customer of the Planned Outage or re-routing at least 10 Working Days prior to the planned event and will endeavour to co-operate with the Customer as to the timing of the Planned Outage or re-routing.

The Customer acknowledges that it may not be possible to provide advance notice and in such event will not be entitled to any service credits and Repair Target measurements will not apply.

4. Escalation

In the event of the Company's normal point of contact (nominated and/or as may be amended from time to time) not being able to respond satisfactorily, the following priority order of contact should be followed:

Level 1. Support Desk

Level 2. Support Desk Team Leader

Level 3. Technical Support Manager

Level 4. Chief Technology Officer

5. Service Credits

The service levels apply to each Premises and each element of the Service (for example each product or circuit at the Premises) unless otherwise stated in the Order Acceptance Form.

Service credits shall be applicable on the basis of the below availability position and calculated in relation to a percentage of the Charges for that element of the Service, being the monthly cost for the relevant service line at the Premises in the relevant Performance Measurement Period.

<u>Level</u>	<u>Availability</u>	<u>Service Credit</u>
<u>0</u>	<u>100% - 99.9%</u>	<u>0%</u>
<u>1</u>	<u>99.89% - 98.9%</u>	<u>10%</u>
<u>2</u>	<u>98.89% - 97.9%</u>	<u>20%</u>
<u>3</u>	<u>< 97.89%</u>	<u>30%</u>

6. Claims Procedure:

All claims for service credits must be submitted in writing providing details of the reason for the claim to the Company within 30 days of the date of the fault reference number is issued. The Company will investigate claims to determine the validity of such claims and enter into discussions with the Customer regarding such claims. The Company will issue a credit note to the Customer within 3 months of the Company receiving a valid claim.

If the Customer fails to submit a claim for service credits within 30 days, payment of compensation will be entirely at the Company's discretion.

Failure to meet the service levels is not a material breach of the Agreement.

Service Credits are limited in accordance with clause 17.2 and are the Customer's sole right and remedy if the Company does not meet the service levels outlined in this Service Level Agreement.

PART 2 – LEASED LINES

In this Part 2 unless listed below all words and phrases shall have the same meaning as defined in clause 1 of the General Terms and Conditions. The following terms shall have the following meanings:

"Leased Lines" means a premium connectivity product delivered over fibre-optic cables directly to the Customer's business premises; the service can be delivered as a direct internet access service or point-to-point, is a fully synchronous service in relation to bandwidth and is uncontended

"Availability" means the time for which the Service is available (the uptime Service availability) from the Services Start Date (unless exempt as specified in paragraph 2.1.1 of the Leased Lines Service Level Agreement). A connection shall be deemed unavailable if it is completely interrupted for greater than 60 consecutive seconds.

"Business Hours" means 8am – 6pm on any Working Day.

"Outage" means an event or action (not attributable to the act or omission of the Customer or arising at the request of the Customer), which prevents or restricts Service.

"Packaged Hours of Support" means the Bronze, Silver or Gold package of contracted support hours specified in the Order Acceptance Form.

"Planned Outage" means an event or action that has been planned when Service and / or network maintenance or upgrades may be required by the Company from time to time.

"Performance Measurement Period" means a period of one calendar month basis, calculated from the Service Start Date

"Repair Target" means the target length of time to restore Services which is measured from the time the unique fault reference number is registered by the Company's support desk as set out in the Service Level Agreement in the Appendix to this Part 2, provided the Customer performs all reasonable steps and in-house testing as specified by the Company and co-operates with the support desk to identify the fault.

"Service Level Agreement" means the Company's standard service levels from time to time for providing the Leased Line Service as set out in the appendix to this Part 2.

Overview

1. Leased Lines

- 1.1 The Company is responsible for the installation and ongoing provision and maintenance of the Leased Line Service for the duration of the Term. Where Leased Lines are provided by a third party, the Company shall liaise directly with this third party on the Customers behalf, but cannot be held responsible for poor installation or provision of Service.

- 1.2 The Customer must allow access and provide relevant information to the Company and/or any appointed third party provider, agent or contractor to the Premises to execute any works for the purpose of providing the FTTP Service (including the installation, operation, maintenance, SMAC or inspection of any Equipment). Upon such cancellation or termination of the Service, the Customer must give the Company or its appointed third party provider, agent or contractors all reasonable access to the Premises to remove the Equipment. The Customer must sign appropriate consents prior to any works being conducted. The Company will not be liable for any damages as a result of poor installation of the Equipment or performance of Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf).
- 1.3 The Company is only responsible for the support and maintenance of any Equipment supplied to the Customer by the Company as part of the Service, for the duration of the Agreement. Customer Supplied Equipment will remain the responsibility of the Customer, unless expressly agreed by the Company in writing.
- 1.4 Before providing the Leased Line Service the Company or appointed third party provider may conduct a location survey and provide relevant information requested to establish whether the Leased Line Service can be provided to the Premises and the Customer may be responsible for any Installation/Miscellaneous Charges.
- 1.5 The Customer must allow access to the Company and/or any appointed third party provider, agent or contractor to the Premises for the purpose of maintenance of the Leased Line Service. The Company will not be held liable for any damages as a result of poor provision of maintenance of the Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf) .

Appendix to Part 2

LEASED LINES SERVICE LEVEL AGREEMENT**1. Reporting Faults and Fault Management**

Our support desk opening times and contact methods are set out in Schedule 2 and published on the Company's website. Customer support will be handled in accordance with the Packaged Hours of Support:

A summary of the support packages is as follows:

- Bronze – 8am – 6pm, Monday to Friday excluding bank holidays in Scotland
- Silver – 24 hours per day, during Monday to Friday only, excluding public holidays in Scotland;
- Gold – 24 hours per day, every day, 365 days a year.

Faults may be reported to the Company support desk (as detailed in Schedule 2) and a fault reference number will be issued to the Customer in accordance with the Repair Target.

The Repair Target time for a Service affecting fault is set out at section 2 below.

Service levels and performance will be measured on a per service line basis detailed on the Order Acceptance Form.

2. Repair Targets

The Repair Target for any material fault affecting the Service is set out below.

If a Repair Target the Repair Target for a service is not specific, the Company shall initially respond within 4 Business Hours (within the Packaged Hours of Support) calculated from the time the fault reference number is issued.

2.1 Availability

The Company shall target 99.95% availability for the Leased Line Service. The calculation used is based on the total measurement time minus the unavailable time divided by the total time ((total time minus total unavailable time) x100) ÷ total time) within the Performance Measurement Period.

2.1.1 Exemptions from the Availability target include:

- Where a fault occurs outside Packaged Hours of Support, the SLA measurement will stop until such time as the Packaged Hours of Support resume.
- The SLA measurement will stop for the duration of any Planned Outages.

Where a Customer has selected the Bronze Packaged Hours of Support, the Company will use reasonable endeavours to perform Planned Outages outside Business Hours.

The service levels do not apply

- if the Customer does not provide access, delays providing access or denies permission for the Company or its agents and suppliers to repair the Service;
- during any trial period of the Service, or for Service or any part of the Service which has a Minimum Period of Service less than 12 Months;
- to failures due to matters beyond the Company's reasonable control as detailed in clause 16 of the General Terms and Conditions;
- to any incident not reported in accordance with the Company's reporting procedures; or
- if the Customer has not complied with the Agreement.

2.1.2 The following Repair Target to repair material faults with the Leased Line availability is in relation to priority of fault:

Priority	Description	Target time to initial response	Target time to repair
P1 – Critical Service Affecting	Complete outage of service	1 Hours from the time the Customer reports the incident by phone	5 Business Hours from the time the Customer reports the incident by phone
P2 – Major Service Affecting	Significant degradation of service	2 Hours from the time the Customer reports the incident by phone	8 Business Hours from the time the Customer reports the incident by phone
P3 – Minor Service Affecting	Minor degradation of service, but functional	1 Business Day	10 Working Days
P4 – Non-Service Affecting	No impact to service	3 Working Days	20 Working Days

2.2 Equipment and Customer Supplied Equipment

2.2.1 Equipment

The Company Repair Target is 1 Working Day from the point in time at which a fault reference number is issued, for a material fault on any Equipment which is maintained by the Company under the terms of this Agreement.

2.2.2 Customer Supplied Equipment

Unless expressly agreed by the Company as part of a managed service agreement, the Company shall not be responsible for the maintenance, support or security of Customer Supplied Equipment, both physical or software related.

The Equipment supplied by the Company shall remain the property of the Company at all times. The Customer-Premises Equipment must be returned to the Company upon cessation of the Agreement.

2.3 Customer responsible faults

The Company is not responsible for any fault identified as attributable to the premises, the site, the Customer-Premises Equipment, a breach of this agreement by the Customer, a disruption of the Customer's power supplies or the action or inaction of the Customer and /or the Customer's employees and/or agents, or a failure of the Customer to provide access to the Site and/or the Premises. In such event, the Repair Target the Repair Target measurements shall not be applied to the Company and the Customer may incur additional support charges.

2.4 Third party attributable faults

If a fault is identified as being attributable to a third party (i.e. neither the Customer or the Company), including any fault in the Customer Supplied Equipment, Repair Target measurements shall not apply. In such event, the Company will use reasonable endeavours to restore Leased Line Services within the Repair Target but will not be liable to pay the Customer any service credits or any other compensation as a result of any fault attributable to a third party.

3. Outages/Re-routing

In maintaining the service, the Company may with reasonable notice, request a Planned Outage or re-routing of services. Wherever possible the Company will notify the Customer of the Planned Outage or re-routing at least 10 Working Days prior to the planned event and will endeavour to co-operate with the Customer as to the timing of the Planned Outage or re-routing.

The Customer acknowledges that it may not be possible to provide advance notice and in such event will not be entitled to any service credits or any other compensation and the Repair Target measurements will not apply.

4. Escalation

In the event of the Company's normal point of contact (nominated and/or as may be amended from time to time) not being able to respond satisfactorily, the following priority order of contact should be followed:

Level 1. Support Desk

Level 2. Support Desk Team Leader

Level 3. Technical Support Manager

Level 4. Chief Technology Officer

5. Service Credits

The service levels apply to each Premises and each element of the Service (for example each product or circuit at the Premises) unless otherwise stated in the Order Acceptance Form.

Service credits shall be applicable on the basis of the below availability position and calculated in relation to a percentage of the Charges for that element of the Service, being the monthly cost for the relevant service line at the Premises in the relevant Performance Measurement Period.

<u>Level</u>	<u>Availability</u>	<u>Service Credit</u>
<u>0</u>	<u>100% - 99.95%</u>	<u>0%</u>
<u>1</u>	<u>99.94% - 98.95%</u>	<u>10%</u>
<u>2</u>	<u>98.94% - 97.95%</u>	<u>20%</u>
<u>3</u>	<u>< 97.94%</u>	<u>30%</u>

6. Claims Procedure

All claims for service credits must be submitted in writing providing details of the reason for the claim to the Company within 30 days of the date of the fault reference number is issued. The Company will investigate claims to determine the validity of such claims and enter into discussions with the Customer regarding such claims. The Company will issue a credit note to the Customer within 3 months of the Company receiving a valid claim.

If the Customer fails to submit a claim for service credits within 30 days, payment of compensation will be entirely at the Company's discretion.

Failure to meet the service levels is not a material breach of the Agreement.

Service Credits are limited in accordance with clause 17.2 and are the Customer's sole right and remedy if the Company does not meet the service levels outlined in this Service Level Agreement.

PART 3 – FIXED WIRELESS ACCESS INTERNET CONNECTIVITY

In this Part 3 unless listed below all words and phrases shall have the same meaning as defined in clause 1 of the General Terms and Conditions. The following terms shall have the following meanings:

"Fixed wireless access" (or **"FWA"**) means the process of providing wireless connectivity using radio links between two fixed points.

"Availability" means the time for which the Service is available (the uptime Service availability) from the Services Start Date (unless exempt as specified in paragraph 2.1.1 of the FWA Service Level Agreement). A connection shall be deemed unavailable if it is completely interrupted for greater than 60 consecutive seconds.

"Business Hours" means 8am – 6pm on any Working Day.

"Outage" means an event or action (not attributable to the act or omission of the Customer or arising at the request of the Customer), which prevents or restricts Service.

"Packaged Hours of Support" means the Bronze, Silver or Gold package of contracted support hours specified in the Order Acceptance Form.

"Planned Outage" means an event or action that has been planned when Service and / or network maintenance or upgrades may be required by the Company from time to time.

"Performance Measurement Period" means a period of one calendar month basis, calculated from the Service Start Date

"Repair Target" means the target length of time to restore Services which is measured from the time the unique fault reference number is registered by the Company's support desk as set out in the Service Level Agreement in the Appendix to this Part 3, provided the Customer performs all reasonable steps and in-house testing as specified by the Company and co-operates with the support desk to identify the fault.

"Service Level Agreement" means the Company's standard service levels from time to time for providing the FWA Service asset out in the appendix to this Part 3.

Overview

1. Fixed Wireless Access

- 1.1 The Company is responsible for the installation and ongoing provision and maintenance of the FWA Service for the duration of the Term. Where Fixed Wireless Access connections are provided by a third party, the Company shall liaise directly with this third party on the Customers behalf, but cannot be held responsible for poor installation or provision of service.
- 1.2 The Customer must allow access and provide relevant information to the Company and/or any appointed third party provider, agent or contractor to the Premises to execute any works for the

purpose of providing the FWA Service (including the installation, operation, maintenance, SMAC or inspection of any Equipment). Upon such cancellation or termination of the Service, the Customer must give the Company or its appointed third party provider, agent or contractors all reasonable access to the Premises to remove the Equipment. The Customer must sign appropriate consents prior to any works being conducted. The Company will not be liable for any damages as a result of poor installation of the Equipment or performance of Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf).

- 1.3 The Company is only responsible for the support and maintenance of any Equipment supplied to the Customer by the Company as part of the Service, for the duration of the Agreement. Customer Supplied Equipment will remain the responsibility of the Customer, unless expressly agreed by the Company in writing.
- 1.4 Before providing the FWA Service the Company or appointed third party provider may conduct a location survey and provide relevant information requested to establish whether the FWA Service can be provided to the Premises and the Customer may be responsible for any Install/Miscellaneous Charges.
- 1.5 The Customer must allow access to the Company and/or any appointed third party provider, agent or contractor to the Premises for the purpose of maintenance of the Service or Equipment. If any maintenance is required to any equipment owned by a third party, the Customer shall not prevent or delay any maintenance services to that equipment. The Company will not be held liable for any damages as a result of poor provision of maintenance of the Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf) .

Appendix to Part 3

FIXED WIRELESS INTERNET CONNECTIVITY SERVICE LEVEL AGREEMENT**1. Reporting Faults and Fault Management.**

Our support desk opening times and contact methods are set out in Schedule 2 and published on the Company's website. Customer support will be handled in accordance with the Packaged Hours of Support :

A summary of the support packages is as follows:

- Bronze – 8am – 6pm, Monday to Friday excluding bank holidays in Scotland
- Silver – 24 hours per day, during Monday to Friday only, excluding public holidays in Scotland;
- Gold – 24 hours per day, every day, 365 days a year.

Faults may be reported to the Company support desk (as detailed in Schedule 2), at which time a fault reference number will be issued to the Customer in accordance with the Repair Targets in section 2.

Service levels and performance will be measured on a per service line basis, detailed on the Order Acceptance Form.

2. Repair Targets

The Repair Target time for any material fault affecting the Service is set out below.

If a Repair Target for a service is not specified below, the Company shall initially respond within 4 Business Hours (within the Packaged Hours of Support) calculated from the time the fault reference number is issued.

2.1 Availability

The Company shall target 99.9% availability for the Fixed Wireless Service. The calculation used is based on the total measurement time minus the unavailable time divided by the total time ((total time minus total unavailable time) x100) ÷ total time within the Performance Measurement Period.

2.1.1 Exemptions from the Availability target include:

- Where a fault occurs outside Packaged Hours of Support, the SLA measurement will stop until such time as the Packaged Hours of Support resume.
- The SLA measurement will stop for the duration of any Planned Outages.

Where a Customer has selected the Bronze Packaged Hours of Support, the Company will use reasonable endeavours to perform Planned Outages outside Business Hours.

The service levels do not apply

- if the Customer does not provide access, delays providing access or denies permission for the Company or its agents and suppliers to repair the Service;
- during any trial period of the Service, or for Service or any part of the Service which has a Minimum Period of Service less than 12 Months;
- to failures due to matters beyond the Company's reasonable control as detailed in clause 16 of the General Terms and Conditions;
- to any incident not reported in accordance with the Company's reporting procedures; or
- if the Customer has not complied with the Agreement.

2.1.2 The Company Repair Target for a material fault affecting the availability of the FWA Service is along with the following targets in relation to priority of fault:

Priority	Description	Target time to initial response	Target time to repair
P1 – Critical Service Affecting	Complete outage of service	1 Hours from the time the Customer reports the incident by phone	5 Hours from the time the Customer reports the incident by phone
P2 – Major Service Affecting	Significant degradation of service	2 Hours from the time the Customer reports the incident by phone	8 Hours from the time the Customer reports the incident by phone
P3 – Minor Service Affecting	Minor degradation of service, but functional	1 Business Day	10 Working Days
P4 – Non-Service Affecting	No impact to service	3 Working Days	20 Working Days

2.2 Equipment and Customer Supplied Equipment

2.2.1 Equipment

The Company Repair Target is 1 Working Day from the point in time at which a fault reference number is issued, for a material fault on any Equipment which is maintained by the Company under the terms of this Agreement.

2.2.2 Customer Supplied Equipment

Unless expressly agreed by the Company as part of a managed service agreement, the Company shall not be responsible for the maintenance, support or security of Customer Supplied Equipment, both physical or software related.

The Equipment supplied by the Company shall remain the property of the Company at all times. The Customer-Premises Equipment must be returned to the Company upon cessation of the Agreement.

2.3 Customer responsible faults

The Company is not responsible for any fault identified as attributable to the premises, the site, the customers equipment, a breach of this agreement by the Customer, a disruption of the Customer's power supplies or the action or inaction of the Customer and /or the Customer's employees and/or agents or a failure of the Customer to provide access to the Site and/or the Premises. In such event, the Repair Target the Repair Target measurements shall not be applied to the Company and the Customer may incur additional support charges.

2.4 Third party attributable faults

If a fault is identified as being attributable to a third party (i.e. neither the Customer or the Company), including any fault in the Customer Supplied Equipment, the Repair Target the Repair Target measurements shall not apply. In such event, the Company will use reasonable endeavours to restore the Services within the Repair Target the Repair Target but will not be liable to pay the Customer service credits or any other compensation as a result of any fault attributable to a third party.

3. Outages/Re-routing

In maintaining the service, the Company may with reasonable notice, request a Planned Outage or re-routing of services. Wherever possible the Company will notify the Customer of the Planned Outage or re-routing at least 10 Working Days prior to the planned event and will endeavour to co-operate with the customer as to the timing of the Planned Outage or re-routing.

The Customer acknowledges that it may not be possible to provide advance notice and in such event will not be entitled to service credits or any other compensation and the Repair Target the Repair Target will not apply.

4. Escalation

In the event of the Company's normal point of contact (nominated and/or as may be amended from time to time) not being able to respond satisfactorily, the following priority order of contact should be followed:

Level 1. Support Desk

Level 2. Support Desk Team Leader

Level 3. Technical Support Manager

Level 4. Chief Technology Officer

5. Service Credits

The service levels apply to each Premises and each element of the Service (for example each product or circuit at the Premises) unless otherwise stated in the Order Acceptance Form.

Service credits shall be applicable on the basis of the below availability position and calculated in relation to a percentage of the Charges for that element of the Service, being the monthly cost for the relevant service line at the Premises in the relevant Performance Measurement Period.

<u>Level</u>	<u>Availability</u>	<u>Service Credit</u>
<u>0</u>	<u>100% - 99.9%</u>	<u>0%</u>
<u>1</u>	<u>99.89% - 98.9%</u>	<u>10%</u>
<u>2</u>	<u>98.89% - 97.9%</u>	<u>20%</u>
<u>3</u>	<u>< 97.89%</u>	<u>30%</u>

6. Claims Procedure

All claims for service credits must be submitted in writing providing details of the reason for the claim to the Company within 30 days of the date of the fault reference number is issued. The Company will investigate claims to determine the validity of such claims and enter into discussions with the Customer regarding such claims. The Company will issue a credit note to the Customer within 3 months of the Company receiving a valid claim.

If the Customer fails to submit a claim for service credits within 30 days, payment of compensation will be entirely at the Company's discretion.

Failure to meet the service levels is not a material breach of the Agreement.

Service Credits are limited in accordance with clause 17.2 and are the Customer's sole right and remedy if the Company does not meet the service levels outlined in this Service Level Agreement.

PART 4 – DARK FIBRE

In this Part 4 unless listed below all words and phrases shall have the same meaning as defined in clause 1 of the General Terms and Conditions. The following terms shall have the following meanings:

"Dark Fibre" means unlit fibre optic spans, unconnected to any active equipment. To generate a signal for the sending and receiving of data, optical equipment has to be connected to the fibres by the customer. Dark Fibre spans are not contended or shared with anyone else.

"Availability" means the time for which the Service is available (the uptime Service availability) from the Services Start Date (unless exempt as specified in paragraph 2.1.1 of the Dark Fibre Service Level Agreement). A connection shall be deemed unavailable if it is completely interrupted for greater than 60 consecutive seconds.

"Business Hours" means 8am – 6pm on any Working Day.

"Outage" means an event or action (not attributable to the act or omission of the Customer or arising at the request of the Customer), which prevents or restricts Service.

"Packaged Hours of Support" means the Bronze, Silver or Gold package of contracted support hours specified in the Order Acceptance Form.

"Planned Outage" means an event or action that has been planned when Service and / or network maintenance or upgrades may be required by the Company from time to time.

"Performance Measurement Period" means a period of one calendar month basis, calculated from the Service Start Date

"Repair Target" means the target length of time to restore Services which is measured from the time the unique fault reference number is registered by the Company's support desk as set out in the Service Level Agreement in the Appendix to this Part 4, provided the Customer performs all reasonable steps and in-house testing as specified by the Company and co-operates with the support desk to identify the fault.

"Service Level Agreement" means the Company's standard service levels from time to time for providing the Dark Fibre Service set out in the appendix to this Part 4.

Overview

1. Dark Fibre

- 1.1 The Company is responsible for the installation and ongoing provision and maintenance of the Dark Fibre Service for the duration of the Term. Where Dark Fibre connections are provided by a third party, the Company shall liaise directly with this third party on the Customers behalf, but cannot be held responsible for poor installation or provision of service.

- 1.2 The Customer must allow access and provide relevant information to the Company and/or any appointed third party provider, agent or contractor to the Premises to execute any works for the purpose of providing the Dark Fibre Service (including the installation, operation, maintenance, SMAC or inspection of any Equipment). Upon such cancellation or termination of the Service, the Customer must give the Company or its appointed third party provider, agent or contractors all reasonable access to the Premises to remove the Equipment. The Customer must sign appropriate consents prior to any works being conducted. The Company will not be liable for any damages as a result of poor installation of the Equipment or performance of Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf).
- 1.3 The Company is only responsible for the support and maintenance of any Equipment supplied to the Customer by the Company as part of the Service, for the duration of the Agreement. Customer Supplied Equipment will remain the responsibility of the Customer, unless expressly agreed by the Company in writing.
- 1.4 Before providing the Dark Fibre Service the Company or appointed third party provider may conduct a location survey and provide relevant information requested to establish whether the Dark Fibre Service can be provided to the Premises and the Customer may be responsible for any Installation /Miscellaneous Charges.
- 1.5 The Customer must allow access to the Company and/or any appointed third party provider, agent or contractor to the Premises for the purpose of maintenance of the Dark Fibre Service or Equipment. If any maintenance is required to any equipment owned by a third party, the Customer shall not prevent or delay any maintenance services to that equipment. The Company will not be held liable for any damages as a result of poor provision of maintenance of the Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf) .

Appendix to Part 4

DARK FIBRE SERVICE LEVEL AGREEMENT**1. Reporting Faults and Fault Management**

Our support desk opening times and contact methods are set out in Schedule 2 and published on the Company's website. Customer support will be handled in accordance with the Packaged Hours of Support.

A summary of the support packages is as follows:

- Bronze – 8am – 6pm, Monday to Friday excluding bank holidays in Scotland
- Silver – 24 hours per day, during Monday to Friday only, excluding public holidays in Scotland;
- Gold – 24 hours per day, every day, 365 days a year.

Faults may be reported to the Company support desk (as detailed in Schedule 2), at which time a fault reference number will be issued to the Customer in accordance with the Repair Target the Repair Target set out in section 2.

Service levels and performance will be measured on a per service line basis detailed on the Order Acceptance Form.

2. Repair Targets

The Repair Target time for any material fault affecting the Service is set out below.

If the Repair Target for a service is not specific, the Company shall initially respond within 4 Business Hours (within the Packaged Hours of Support) calculated from the time the fault refence number is issued.

2.1. Availability

The Company shall target 99.95% Availability for the Dark Fibre Service. The calculation used is based on the total measurement time minus the unavailable time divided by the total time ((total time minus total unavailable time) x100) ÷ total time) within the Performance Measurement Period.

2.1.1 Exemptions from the availability target include:

- Where a fault occurs outside Packaged Hours of Support, the SLA measurement will stop until such time as the Packaged Hours of Support resume.
- The SLA measurement will stop for the duration of any Planned Outages.

Where a Customer has selected the Bronze Packaged Hours of Support, the Company will use reasonable endeavours to perform Planned Outages outside Business Hours.

The service levels do not apply

- if the Customer does not provide access, delays providing access or denies permission for the Company or its agents and suppliers to repair the Service;
- during any trial period of the Service, or for Service or any part of the Service which has a Minimum Period of Service less than 12 Months;
- to failures due to matters beyond the Company's reasonable control as detailed in clause 16 of the General Terms and Conditions;
- to any incident not reported in accordance with the Company's reporting procedures; or
- if the Customer has not complied with the Agreement.

2.1.2 The Company Repair Target for a material fault affecting the availability of the Dark Fibre Service is along with the following target times in relation to priority of fault:

Priority	Description	Target time to initial response	Target time to repair
P1 – Critical Service Affecting	Complete outage of service	2 Hours from the time the Customer reports the incident by phone	12 Working Hours from the time the Customer reports the incident by phone
P2 – Major Service Affecting	Significant degradation of service	4 Hours from the time the Customer reports the incident by phone	14 Hours from the time the Customer reports the incident by phone
P3 – Minor Service Affecting	Minor degradation of service, but functional	1 Business Day	12 Working Days
P4 – Non-Service Affecting	No impact to service	3 Working Days	24 Working Days

2.2 Equipment and Customer Supplied Equipment

2.2.1 Equipment

The Company Repair Target is 1 Working Day from the point in time at which a fault reference number is issued, for a material fault on any Equipment which is maintained by the Company under the terms of this Agreement.

2.2.2 Customer Supplied Equipment

Unless expressly agreed by the Company as part of a managed service agreement, the Company shall not be responsible for the maintenance, support or security of Customer Supplied Equipment, both physical or software related.

The Equipment supplied by the Company shall remain the property of the Company at all times. The Customer-Premises Equipment must be returned to the Company upon cessation of the Agreement.

2.3 Customer responsible faults

The Company is not responsible for any fault identified as attributable to the premises, the site, the customers equipment, a breach of this agreement by the Customer, a disruption of the Customer's power supplies or the action or inaction of the Customer and /or the Customer's employees and/or agents or a failure of the Customer to provide access to the Site and/or the Premises. In such event, neither shall the Repair Target the Repair Target measurements be applied to the Company and which may incur additional support charges.

2.4 Third party attributable faults

If a fault is identified as being attributable to a third party (i.e. neither the Customer or the Company), including any fault in the Customer Supplied Equipment, the Repair Target measurements shall not apply. In such event, the Company will use reasonable endeavours to restore services within the Repair Target the Repair Target but will not be liable to pay the Customer compensation as a result of any fault attributable to a third party.

3. Outages/Re-routing

In maintaining the service, the Company may with reasonable notice, request a Planned Outage or re-routing of services. Wherever possible the Company will notify the Customer of the Planned Outage or re-routing at least 10 Working Days prior to the planned event and will endeavour to co-operate with the customer as to the timing of the Planned Outage or re-routing.

The Customer thereby acknowledges that it may not be possible to provide advance notice and in such event will not be entitled to any compensation and the Repair Target the Repair Target measurements will not apply.

4. Escalation

In the event of the Company's normal point of contact (nominated and/or as may be amended from time to time) not being able to respond satisfactorily, the following priority order of contact should be followed:

Level 1. Support Desk

Level 2. Support Desk Team Leader

Level 3. Technical Support Manager

Level 4. Chief Technology Officer

5. Service Credits

The service levels apply to each Premises and each element of the Service (for example each product or circuit at the Premises) unless otherwise stated in the Order Acceptance Form.

Service credits shall be applicable on the basis of the below availability position and calculated in relation to a percentage of the Charges for that element of the Service, being the monthly cost for the relevant service line at the Premises in the relevant Performance Measurement Period.

<u>Level</u>	<u>Availability</u>	<u>Service Credit</u>
<u>0</u>	<u>100% - 99.95%</u>	<u>0%</u>
<u>1</u>	<u>99.94% - 98.95%</u>	<u>10%</u>
<u>2</u>	<u>98.94% - 97.95%</u>	<u>20%</u>
<u>3</u>	<u>< 97.94%</u>	<u>30%</u>

6. Claims Procedure

All claims for service credits must be submitted in writing providing details of the reason for the claim to the Company within 30 days of the date of the fault reference number is issued. The Company will investigate claims to determine the validity of such claims and enter into discussions with the Customer regarding such claims. The Company will issue a credit note to the Customer within 3 months of the Company receiving a valid claim.

If the Customer fails to submit a claim for service credits within 30 days, payment of compensation will be entirely at the Company's discretion.

Failure to meet the service levels is not a material breach of the Agreement.

Service Credits are limited in accordance with clause 17.2 and are the Customer's sole right and remedy if the Company does not meet the service levels outlined in this Service Level Agreement.

PART 5 – THE PHYSICAL INFRASTRUCTURE SERVICES

In this Part 5 unless listed below all words and phrases shall have the same meaning as defined in clause 1 of the General Terms and Conditions. The following terms shall have the following meanings:

"Duct Infrastructure" means the installation or use of primary, sub-duct or microduct in order to carry the cabling for connectivity services to the Customer's business premises.

"Availability" means the time for which the Service is available (the uptime Service availability) from the Services Start Date (unless exempt as specified in paragraph 2.1.1 of the Duct Infrastructure Service Level Agreement). A connection shall be deemed unavailable if it is completely interrupted for greater than 60 consecutive seconds.

"Business Hours" means 8am – 6pm on any Working Day.

"Outage" means an event or action (not attributable to the act or omission of the Customer or arising at the request of the Customer), which prevents or restricts Service.

"Packaged Hours of Support" means the Bronze, Silver or Gold package of contracted support hours specified in the Order Acceptance Form.

"Planned Outage" means an event or action that has been planned when Service and / or network maintenance or upgrades may be required by the Company from time to time.

"Performance Measurement Period" means a period of one calendar month basis, calculated from the Service Start Date

"Repair Target" means the target length of time to restore Services which is measured from the time the unique fault reference number is registered by the Company's support desk as set out in the Service Level Agreement in the Appendix to this Part 5, provided the Customer performs all reasonable steps and in-house testing as specified by the Company and co-operates with the support desk to identify the fault.

"Service Level Agreement" means the Company's standard service levels from time to time for providing the Duct Infrastructure Service set out in the appendix to this Part 5.

Overview

1. Duct Infrastructure

- 1.1 The Company is responsible for the installation and ongoing provision and maintenance of Physical Infrastructure services (e.g. Duct, Pole, Cabinet) for the duration of the Agreement. Where Physical Infrastructure services are provided by a third party, the Company shall liaise directly with this third party on the Customers behalf, but cannot be held responsible for poor installation or provision of service.

- 1.2 [The Customer must allow access and provide relevant information to the Company and/or any appointed third party provider, agent or contractor to the Premises to execute any works for the purpose of providing the FTTP Service (including the installation, operation, maintenance, SMAC or inspection of any Equipment). Upon such cancellation or termination of the Service, the Customer must give the Company or its appointed third party provider, agent or contractors all reasonable access to the Premises to remove the Equipment. The Customer must sign appropriate consents prior to any works being conducted. The Company will not be liable for any damages as a result of poor installation of the Equipment or performance of Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf).
- 1.3 The Company is only responsible for the support and maintenance of any Equipment supplied to the Customer by the Company as part of the Service, for the duration of the Agreement. Customer Supplied Equipment will remain the responsibility of the Customer, unless expressly agreed by the Company in writing.
- 1.4 Before providing the Duct Infrastructure Service the Company or appointed third party provider may conduct a location survey and provide relevant information requested to establish whether the Duct Infrastructure Service can be provided to the Premises and the Customer may be responsible for any Installation /Miscellaneous Charges.
- 1.5 The Customer must allow access to the Company and/or any appointed third party provider, agent or contractor to the Premises for the purpose of maintenance of the Duct Infrastructure Service or Equipment. If any maintenance is required to any equipment owned by a third party, the Customer shall not prevent or delay any maintenance services to that equipment. The Company will not be held liable for any damages as a result of poor provision of maintenance of the Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf).

Appendix to Part 5

THE PHYSICAL INFRASTRUCTURE SERVICES SERVICE LEVEL AGREEMENT**Fault Management**

Our support desk opening times and contact methods are set out in Schedule 2 and published on the Company's website. Customer support will be handled in accordance with the Packaged Hours of Support.

A summary of the support packages is as follows:

- Bronze – 8am – 6pm, Monday to Friday excluding bank holidays in Scotland
- Silver – 24 hours per day, during Monday to Friday only, excluding public holidays in Scotland;
- Gold – 24 hours per day, every day, 365 days a year.

Faults may be reported to the Company support desk (as detailed in Schedule 2), at which time a fault reference number will be issued to the Customer in accordance with the Repair Target in section 2 below.

Service levels and performance will be measured on a per service line basis detailed on the Order Acceptance Form.

2. Repair Targets

The Repair Target time for any material fault affecting the Service is set out below.

If the Repair Target for a service is not specified, the Company shall initially respond within 4 Business Hours (within the Packaged Hours of Support) calculated from the time the fault reference number is issued.

2.1. Availability

The Company shall target 99.95% availability for the Duct Infrastructure Service. The calculation used is based on the total measurement time minus the unavailable time divided by the total time ((total time minus total unavailable time) x100) ÷ total time) within the Performance Measurement Period.

2.1.1 Exemptions from the Availability target include:

- Where a fault occurs outside Packaged Hours of Support, the SLA measurement will stop until such time as the Packaged Hours of Support resume.
- The SLA measurement will stop for the duration of any Planned Outages.

Where a Customer has selected the Bronze Packaged Hours of Support, the Company will use reasonable endeavours to perform Planned Outages outside Business Hours.

The service levels do not apply

- if the Customer does not provide access, delays providing access or denies permission for the Company or its agents and suppliers to repair the Service;
- during any trial period of the Service, or for Service or any part of the Service which has a Minimum Period of Service less than 12 Months;
- to failures due to matters beyond the Company's reasonable control as detailed in clause 16 of the General Terms and Conditions;
- to any incident not reported in accordance with the Company's reporting procedures; or
- if the Customer has not complied with the Agreement.

2.1.2 The Company Repair Target for a material fault affecting the availability of the Duct Infrastructure Service is along with the following target times to repair in relation to priority of fault:

Priority	Description	Target time to initial response	Target time to repair
P1 – Critical Service Affecting	Complete outage of service	2 Hours from the time the Customer reports the incident by phone	12 Working Hours from the time the Customer reports the incident by phone
P2 – Major Service Affecting	Significant degradation of service	4 Hours from the time the Customer reports the incident by phone	14 Hours from the time the Customer reports the incident by phone
P3 – Minor Service Affecting	Minor degradation of service, but functional	1 Business Day	12 Working Days
P4 – Non-Service Affecting	No impact to service	3 Working Days	24 Working Days

2.2. Equipment and Customer Supplied Equipment

2.2.1 Equipment

The Company Repair Target is 1 Working Day from the point in time at which a fault reference number is issued, for a material fault on any Equipment which is maintained by the Company under the terms of this Agreement.

2.2.2 Customer Supplied Equipment

Unless expressly agreed by the Company as part of a managed service agreement, the Company shall not be responsible for the maintenance, support or security of Customer Supplied Equipment, both physical or software related.

The Equipment supplied by the Company shall remain the property of the Company at all times. The Customer-Premises Equipment must be returned to the Company upon cessation of the Agreement.

2.3 Customer responsible faults

The Company is not responsible for any fault identified as attributable to the premises, the site, the customers Customer-Premises Equipment, a breach of this agreement by the Customer, a disruption of the Customer's power supplies or the action or inaction of the Customer and/ or the Customer's employees and/or agents or a failure of the Customer to provide access to the Site and/or the Premises. In such event, neither shall the Repair Target measurements shall not be applied to the Company and the Customer may incur additional support charges.

2.4 Third party attributable faults

If a fault is identified as being attributable to a third party (i.e. neither the Customer or the Company), including any fault in the Customer Supplied Equipment, the Repair Target measurements shall not apply. In such event, the Company will use reasonable endeavours to restore the Services within the Repair Target but will not be liable to pay the Customer any service credits or any other compensation as a result of any fault attributable to a third party.

3. Outages/Re-routing

In maintaining the service, the Company may with reasonable notice, request a Planned Outage or re-routing of the Services. Wherever possible the Company will notify the Customer of the Planned Outage or re-routing at least 10 Working Days prior to the planned event and will endeavour to co-operate with the customer as to the timing of the Planned Outage or re-routing.

The Customer acknowledges that it may not be possible to provide advance notice and in such event will not be entitled to any service credit or compensation and the Repair Target measurements will not apply.

4. Escalation

In the event of the Company's normal point of contact (nominated and/or as may be amended from time to time) not being able to respond satisfactorily, the following priority order of contact should be followed:

Level 1. Support Desk

Level 2. Support Desk Team Leader

Level 3. Technical Support Manager

Level 4. Chief Technology Officer

5. Service Credits

The service levels apply to each Premises and each element of the Service (for example each product or circuit at the Premises) unless otherwise stated in the Order Acceptance Form.

Service credits shall be applicable on the basis of the below availability position and calculated in relation to a percentage of the Charges for that element of the Service, being the monthly cost for the relevant service line at the Premises in the relevant Performance Measurement Period.

<u>Level</u>	<u>Availability</u>	<u>Service Credit</u>
<u>0</u>	<u>100% - 99.95%</u>	<u>0%</u>
<u>1</u>	<u>99.94% - 98.95%</u>	<u>10%</u>
<u>2</u>	<u>98.94% - 97.95%</u>	<u>20%</u>
<u>3</u>	<u>< 97.94%</u>	<u>30%</u>

6. Claims Procedure

All claims for service credits must be submitted in writing providing details of the reason for the claim to the Company within 30 days of the date of the fault reference number is issued. The Company will investigate claims to determine the validity of such claims and enter into discussions with the Customer regarding such claims. The Company will issue a credit note to the Customer within 3 months of the Company receiving a valid claim.

If the Customer fails to submit a claim for service credits within 30 days, payment of compensation will be entirely at the Company's discretion.

Failure to meet the service levels is not a material breach of the Agreement.

Service Credits are limited in accordance with clause 17.2 and are the Customer's sole right and remedy if the Company does not meet the service levels outlined in this Service Level Agreement.

PART 6 – MANAGED FIREWALL SERVICES

In this Part 6 unless listed below all words and phrases shall have the same meaning as defined in clause 1 of the General Terms and Conditions. The following terms shall have the following meanings:

"Managed Firewall Services" means the provision, management, monitoring, support and alerting for managed firewall services .

"Availability" means the time for which the Service is available (the uptime Service availability) from the Services Start Date (unless exempt as specified in paragraph 2.1.1 of the Managed Firewall Services Service Level Agreement). A connection shall be deemed unavailable if it is completely interrupted for greater than 60 consecutive seconds.

"Business Hours" means 8am – 6pm on any Working Day.

"Outage" means an event or action (not attributable to the act or omission of the Customer or arising at the request of the Customer), which prevents or restricts Service.

"Packaged Hours of Support" means the Bronze, Silver or Gold package of contracted support hours specified in the Order Acceptance Form.

"Planned Outage" means an event or action that has been planned when Service and / or network maintenance or upgrades may be required by the Company from time to time.

"Performance Measurement Period" means a period of one calendar month basis, calculated from the Service Start Date

"Repair Target" means the target length of time to restore Services which is measured from the time the unique fault reference number is registered by the Company's support desk as set out in the Service Level Agreement in the Appendix to this Part 6, provided the Customer performs all reasonable steps and in-house testing as specified by the Company and co-operates with the support desk to identify the fault.

"Service Level Agreement" means the Company's standard service levels from time to time for providing the Managed Firewall Service set out in the appendix to this Part 6.

Overview

1. Managed Firewall Services

- 1.1 The Company is responsible for the installation and ongoing provision and maintenance of the Managed Firewall service for the duration of the Agreement. Where Managed Firewall services are provided by a third party, the Company shall liaise directly with this third party on the Customers behalf, but cannot be held responsible for poor installation or provision of service.

- 1.2 The Customer must allow access and provide relevant information to the Company and/or any appointed third party provider, agent or contractor to the Premises to execute any works for the purpose of providing the FTTP Service (including the installation, operation, maintenance, SMAC or inspection of any Equipment). Upon such cancellation or termination of the Service, the Customer must give the Company or its appointed third party provider, agent or contractors all reasonable access to the Premises to remove the Equipment. The Company will not be liable for any damages as a result of poor installation of the Equipment or performance of Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf).
- 1.3 The Company is only responsible for the support and maintenance of any Equipment supplied to the Customer by the Company as part of the Service, for the duration of the Agreement. Customer Supplied Equipment will remain the responsibility of the Customer, unless expressly agreed by the Company in writing.
- 1.4 Before providing the Managed Firewall Service the Company or appointed third party provider may conduct a location survey and provide relevant information requested to establish whether the Managed Firewall Service can be provided to the Premises and the Customer may be responsible for any Installation /Miscellaneous Charges.
- 1.5 The Customer must allow access to the Company and/or any appointed third party provider, agent or contractor to the Premises for the purpose of maintenance of the Managed Firewall Service or Equipment. If any maintenance is required to any equipment owned by a third party, the Customer shall not prevent or delay any maintenance services to that equipment. The Company will not be held liable for any damages as a result of poor provision of maintenance of the Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf) .

Appendix to Part 6

MANAGED FIREWAL SERVICES SERVICE LEVEL AGREEMENT**Fault Management.**

Our support desk opening times and contact methods are set out in Schedule 2 and published on the Company's website. Customer support will be handled in accordance with the Packaged Hours of Support.

A summary of the support packages is as follows:

- Bronze – 8am – 6pm, Monday to Friday excluding bank holidays in Scotland
- Silver – 24 hours per day, during Monday to Friday only, excluding public holidays in Scotland;
- Gold – 24 hours per day, every day, 365 days a year.

Faults may be reported to the Company support desk (as detailed in Schedule 2), at which time a fault reference number will be issued to the Customer in accordance with the Repair Target in section 2 below.

Service levels and performance will be measured on a per service line detailed on the Order Acceptance Form.

2. Repair Targets

The Repair Target time for any material fault affecting the Service is set out below.

If the Repair Target for a service is not specified, the Company shall initially respond within 4 Business Hours (within the Packaged Hours of Support) calculated from the time the fault reference number is issued.

2.1. Availability

The Company shall target 99.95% availability for the Managed Firewall Service. The calculation used is based on the total measurement time minus the unavailable time divided by the total time ((total time minus total unavailable time) x100) ÷ total time) within the Performance Measurement Period.

2.1.1 Exemptions from the Availability target include:

- Where a fault occurs outside Packaged Hours of Support, the SLA measurement will stop until such time as the Packaged Hours of Support resume.
- The SLA measurement will stop for the duration of any Planned Outages.

Where a Customer has selected the Bronze Packaged Hours of Support, the Company will use reasonable endeavours to perform Planned Outages outside Business Hours.

The service levels do not apply

- if the Customer does not provide access, delays providing access or denies permission for the Company or its agents and suppliers to repair the Service;
- during any trial period of the Service, or for Service or any part of the Service which has a Minimum Period of Service less than 12 Months;
- to failures due to matters beyond the Company's reasonable control as detailed in clause 16 of the General Terms and Conditions;
- to any incident not reported in accordance with the Company's reporting procedures; or
- if the Customer has not complied with the Agreement.

2.1.2 The Company Repair Target for repair a material fault affecting the availability of the Managed Firewall Service is along with the following target times to repair in relation to priority of fault:

Priority	Description	Target time to initial response	Target time to repair
P1 – Critical Service Affecting	Complete outage of service	1 Hours from the time the Customer reports the incident by phone	5 Hours from the time the Customer reports the incident by phone
P2 – Major Service Affecting	Significant degradation of service	2 Hours from the time the Customer reports the incident by phone	8 Hours from the time the Customer reports the incident by phone
P3 – Minor Service Affecting	Minor degradation of service, but functional	1 Business Day	10 Working Days
P4 – Non-Service Affecting	No impact to service	3 Working Days	20 Working Days

2.2 Equipment and Customer Supplied Equipment

2.2.1 Equipment

The Company Repair Target is 1 Working Day from the point in time at which a fault reference number is issued, for a material fault on any Equipment which is maintained by the Company under the terms of this Agreement.

2.2.2 Customer Supplied Equipment

Unless expressly agreed by the Company as part of a managed service agreement, the Company shall not be responsible for the maintenance, support or security of Customer Supplied Equipment, both physical or software related.

The Equipment supplied by the Company shall remain the property of the Company at all times. The Customer-Premises Equipment must be returned to the Company upon cessation of the Agreement.

2.3 Customer responsible faults

The Company is not responsible for any fault identified as attributable to the premises, the site, the customers Customer-Premises Equipment, a breach of this agreement by the Customer, a disruption of the Customer's power supplies or the action or inaction of the Customer and / or the Customer's employees and/or agents or a failure of the Customer to provide access to the Site and/or the Premises. In such event, neither shall the Repair Target measurements shall not be applied to the Company and the Customer may incur additional support charges.

2.4 Third party attributable faults

If a fault is identified as being attributable to a third party (i.e. neither the Customer or the Company), including any fault in the Customer Supplied Equipment, the Repair Target measurements shall not apply. In such event, the Company will use reasonable endeavours to restore Services within the Repair Target but will not be liable to pay the Customer any service credits or any other compensation as a result of any fault attributable to a third party.

3. Outages/Re-routing

In maintaining the service, the Company may with reasonable notice, request a Planned Outage or re-

routing of Services. Wherever possible the Company will notify the Customer of the Planned Outage or re-routing at least 10 Working Days prior to the planned event and will endeavour to co-operate with the customer as to the timing of the Planned Outage or re-routing.

The Customer thereby acknowledges that it may not be possible to provide advance notice and in such event will not be entitled to any compensation and the Repair Target measurements will not apply.

4. Firewall / Security Policy

The Company is not responsible for any fault or liability identified as attributable to the Customers firewall/security policy, unless expressly stated within the Agreement. In such event, neither shall the Repair Target measurements be applied to the Company and which may incur additional support charges.

5. Escalation

In the event of the Company's normal point of contact (nominated and/or as may be amended from time to time) not being able to respond satisfactorily, the following priority order of contact should be followed:

1. Support Desk
2. Support Desk Team Leader
3. Technical Support Manager
4. Chief Technology Officer

6. Service Credits

The service levels apply to each Premises and each element of the Service (for example each product or circuit at the Premises) unless otherwise stated in the Order Acceptance Form.

Service credits shall be applicable on the basis of the below availability position and calculated in relation to a percentage of the Charges for that element of the Service, being the monthly cost for the relevant service line at the Premises in the relevant Performance Measurement Period.

<u>Level</u>	<u>Availability</u>	<u>Service Credit</u>
<u>0</u>	<u>100% - 99.95%</u>	<u>0%</u>
<u>1</u>	<u>99.94% - 98.95%</u>	<u>10%</u>
<u>2</u>	<u>98.94% - 97.95%</u>	<u>20%</u>
<u>3</u>	<u>< 97.94%</u>	<u>30%</u>

7. Claims Procedure:

All claims for service credits must be submitted in writing providing details of the reason for the claim to the Company within 30 days of the date of the fault reference number is issued. The Company will investigate claims to determine the validity of such claims and enter into discussions with the Customer regarding such claims. The Company will issue a credit note to the Customer within 3 months of the Company receiving a valid claim.

If the Customer fails to submit a claim for service credits within 30 days, payment of compensation will be entirely at the Company's discretion.

Failure to meet the service levels is not a material breach of the Agreement.

Service Credits are limited in accordance with clause 17.2 and are the Customer's sole right and remedy if the Company does not meet the service levels outlined in this Service Level Agreement.

PART 7 – WAN/LAN SERVICES

In this Part 7 unless listed below all words and phrases shall have the same meaning as defined in clause 1 of the General Terms and Conditions. The following terms shall have the following meanings:

"WAN" means Wide Area Network, a large telecommunications networks of information that is not tied to a single physical location. WANs can facilitate communication, the sharing of information and much more between devices from around the world through a WAN service provider.

"LAN" means Local Area Network, a telecommunications networks of information that is tied to a location, such as ethernet and wireless networks .

"Availability" means the time for which the Service is available (the uptime Service availability) from the Services Start Date (unless exempt as specified in paragraph 2.1.1 of the WAN / LAN Service Level Agreement). A connection shall be deemed unavailable if it is completely interrupted for greater than 60 consecutive seconds.

"Business Hours" means 8am – 6pm on any Working Day.

"Outage" means an event or action (not attributable to the act or omission of the Customer or arising at the request of the Customer), which prevents or restricts Service.

"Packaged Hours of Support" means the Bronze, Silver or Gold package of contracted support hours specified in the Order Acceptance Form.

"Planned Outage" means an event or action that has been planned when Service and / or network maintenance or upgrades may be required by the Company from time to time.

"Performance Measurement Period" means a period of one calendar month basis, calculated from the Service Start Date

"Repair Target" means the target length of time to restore Services which is measured from the time the unique fault reference number is registered by the Company's support desk as set out in the Service Level Agreement in the Appendix to this Part 7, provided the Customer performs all reasonable steps and in-house testing as specified by the Company and co-operates with the support desk to identify the fault.

"Service Level Agreement" means the Company's standard service levels from time to time for providing the WAN / LAN Service set out in the appendix to this Part 7.

Overview

1. WAN/LAN Services

- 1.1 The Company is responsible for the installation and ongoing provision and maintenance of the WAN/LAN Service for the duration of the Agreement. Where WAN/LAN services are provided by a

third party, the Company shall liaise directly with this third party on the Customers behalf, but cannot be held responsible for poor installation or provision of the WAN/LAN service.

- 1.2 The Customer must allow access and provide relevant information to the Company and/or any appointed third party provider, agent or contractor to the Premises to execute any works for the purpose of providing the WAN / LAN Service (including the installation, operation, maintenance, SMAC or inspection of any Equipment). Upon such cancellation or termination of the Service, the Customer must give the Company or its appointed third party provider, agent or contractors all reasonable access to the Premises to remove the Equipment. The Company will not be liable for any damages as a result of poor installation of the Equipment or performance of Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf).
- 1.3 The Company is only responsible for the support and maintenance of any Equipment supplied to the Customer by the Company as part of the Service, for the duration of the Agreement. Customer Supplied Equipment will remain the responsibility of the Customer, unless expressly agreed by the Company in writing.
- 1.4 Before providing the WAN/LAN Service the Company or appointed third party provider may conduct a location survey and provide relevant information requested to establish whether the WAN/LAN Service can be provided to the Premises and the Customer will be responsible for any Miscellaneous Charges.
- 1.5 The Customer must allow access to the Company and/or any appointed third party provider, agent or contractor to the Premises for the purpose of maintenance of the WAN/LAN Service or Equipment. If any maintenance is required to any equipment owned by a third party, the Customer shall not prevent or delay any maintenance services to that equipment. The Company will not be held liable for any damages as a result of poor provision of maintenance of the Service provided by any appointed third party provider, agent or contractor on the Company's (whether directly or on the Company's behalf).

Appendix to Part 7

WAN/LAN SERVICE LEVEL AGREEMENT**Fault Management**

Our support desk opening times and contact methods are set out in Schedule 2 and published on the Company's website. Customer support will be handled in accordance with the Packaged Hours of Support:

A summary of the support packages is as follows:

- Bronze – 8am – 6pm, Monday to Friday excluding bank holidays in Scotland
- Silver – 24 hours per day, during Monday to Friday only, excluding public holidays in Scotland;
- Gold – 24 hours per day, every day, 365 days a year.

Faults may be reported to the Company support desk (as detailed in Schedule 2), and a fault reference number will be issued to the Customer in accordance with the Repair Target set out at section 2 below.

Service levels and performance will be measured on a per service line basis detailed on the Order Acceptance Form.

2. Repair Targets

The Repair Target time for any material fault affecting the Service is set out below.

If a Repair Target for a service is not specified below, the Company shall initially respond within 4 Business Hours (within the Packaged Hours of Support) calculated from the time the fault reference number is issued.

2.1. Availability

The Company shall target 99.95% availability for the WAN/LAN Service. The calculation used is based on the total measurement time minus the unavailable time divided by the total time ((total time minus total unavailable time) x100) ÷ total time) within the Performance Measurement Period.

2.1.1 Exemptions from the Availability target include:

- Where a fault occurs outside Packaged Hours of Support, the SLA measurement will stop until such time as the Packaged Hours of Support resume.
- The SLA measurement will stop for the duration of any Planned Outages.

Where a Customer has selected the Bronze Packaged Hours of Support, the Company will use reasonable endeavours to perform Planned Outages outside Business Hours.

The service levels do not apply

- if the Customer does not provide access, delays providing access or denies permission for the Company or its agents and suppliers to repair the Service;
- during any trial period of the Service, or for Service or any part of the Service which has a Minimum Period of Service less than 12 Months;
- to failures due to matters beyond the Company's reasonable control as detailed in clause 16 of the General Terms and Conditions;
- to any incident not reported in accordance with the Company's reporting procedures; or
- if the Customer has not complied with the Agreement.

2.1.2 The Company Repair Target for material interruption to the availability for the WAN/LAN Service is along with the following target times to repair in relation to priority of fault:

Priority	Description	Target time to initial response	Target time to repair
P1 – Critical Service Affecting	Complete outage of service	1 Hours from the time the Customer reports the incident by phone	5 Hours from the time the Customer reports the incident by phone
P2 – Major Service Affecting	Significant degradation of service	2 Hours from the time the Customer reports the incident by phone	8 Hours from the time the Customer reports the incident by phone
P3 – Minor Service Affecting	Minor degradation of service, but functional	1 Business Day	10 Working Days
P4 – Non-Service Affecting	No impact to service	3 Working Days	20 Working Days

2.2. Equipment and Customer Supplied Equipment

2.2.1 Equipment

The Company Repair Target is 1 Working Day from the point in time at which a fault reference number is issued, for a material fault on any Equipment which is maintained by the Company under the terms of this Agreement.

2.2.2 Customer Supplied Equipment

Unless expressly agreed by the Company as part of a managed service agreement, the Company shall not be responsible for the maintenance, support or security of Customer Supplied Equipment, both physical or software related.

The Equipment supplied by the Company shall remain the property of the Company at all times. The Customer-Premises Equipment must be returned to the Company upon cessation of the Agreement.

2.3 Customer responsible faults

The Company is not responsible for any fault identified as attributable to the Premises, the site, the customers Customer-Premises Equipment, a breach of this agreement by the Customer, a disruption of the Customer's power supplies or the action or inaction of the Customer and / or the Customer's employees and/or agents or a failure of the Customer to provide access to the Site and/or the Premises. In such event, the Repair Target measurements shall not be applied to the Company and the Customer may incur additional support charges.

2.4 Third party attributable faults

If a fault is identified as being attributable to a third party (i.e. neither the Customer or the Company), including any fault in the Customer Supplied Equipment, the Repair Target measurements shall not apply. In such event, the Company will use reasonable endeavours to restore services within the Repair Target but will not be liable to pay the Customer compensation as a result of any fault attributable to a third party.

3. Outages/Re-routing

In maintaining the service, the Company may with reasonable notice, request a Planned Outage or re-

routing of Services. Wherever possible the Company will notify the Customer of the Planned Outage or re-routing at least 10 Working Days prior to the planned event and will endeavour to co-operate with the Customer as to the timing of the Planned Outage or re-routing.

The Customer acknowledges that it may not be possible to provide advance notice and in such event will not be entitled to any service credits or any other compensation and the Repair Target measurements will not apply.

4. WAN/LAN Changes

The Company is not responsible for any fault or liability identified as attributable to a Customer operated change, unless expressly stated within the Agreement. In such event, the Repair Target measurements shall not be applied to the Company and the Customer may incur additional support charges.

5. Escalation

In the event of the Company's normal point of contact (nominated and/or as may be amended from time to time) not being able to respond satisfactorily, the following priority order of contact should be followed:

Level 1. Support Desk

Level 2. Support Desk Team Leader

Level 3. Technical Support Manager

Level 4. Chief Technology Officer

6. Service Credits

The service levels apply to each Premises and each element of the Service (for example each product or circuit at the Premises) unless otherwise stated in the Order Acceptance Form.

Service credits shall be applicable on the basis of the below availability position and calculated in relation to a percentage of the Charges for that element of the Service, being the monthly cost for the relevant service line at the Premises in the relevant Performance Measurement Period.

<u>Level</u>	<u>Availability</u>	<u>Service Credit</u>
<u>0</u>	<u>100% - 99.95%</u>	<u>0%</u>
<u>1</u>	<u>99.94% - 98.95%</u>	<u>10%</u>
<u>2</u>	<u>98.94% - 97.95%</u>	<u>20%</u>
<u>3</u>	<u>< 97.94%</u>	<u>30%</u>

7. Claims Procedure:

All claims for service credits must be submitted in writing providing details of the reason for the claim to the Company within 30 days of the date of the fault reference number is issued. The Company will investigate claims to determine the validity of such claims and enter into discussions with the Customer regarding such claims. The Company will issue a credit note to the Customer within 3 months of the Company receiving a valid claim.

If the Customer fails to submit a claim for service credits within 30 days, payment of compensation will be entirely at the Company's discretion.

Failure to meet the service levels is not a material breach of the Agreement.

Service Credits are limited in accordance with clause 17.2 and are the Customer's sole right and remedy if the Company does not meet the service levels outlined in this Service Level Agreement.