

Terms & Conditions of Service

THE SCHEDULE for the supply of Leased Line Service(s)

1. Description of the Service

This Schedule and the MASTER SERVICES AGREEMENT FOR THE PROVISION OF TELEPHONY, COMMUNICATIONS, INFRASTRUCTURE SERVICES and INFORMATION TECHNOLOGY SERVICES and the Order together form the Contract for the Service(s) to be supplied by the Supplier to the Customer.

This Agreement is made between the Supplier (X.Communications Limited registered in England & Wales under number 02139995) and the Customer, as specified on the Supplier's Order form.

The Supplier agrees to provide Leased Line Services as specified under this Schedule.

Where a conflict exists between this Schedule and the Master Services Agreement, the Master Service Agreement will take precedence

2. Definitions

In this Agreement the following terms shall have the following meanings:

Access: means an internet or data or other form of electrical or optical transmission Circuit which is provided via a dedicated cable and used exclusively by you for the purposes of data transmission / Internet access.

Activation Date: means the date upon which the Supplier confirms to the Customer that the Leased Line Service is available for use.

"the Act"; means the Communications Act 2003;

Back-up services: means a Service of either a Backup Circuit or a Backup Broadband Service to be used if the Circuit has a fault.

Circuit: means a Leased Line circuit whether for the provision of Internet Access or Point to Point between Customer Sites or other locations.

"the Code"; means any Code of Practice relevant to the Services issued by PhonepayPlus or Ofcom as amended from time to time;

CPE: means Customer Premise Equipment which is located at the Customer site.

ECC: means Excess Construction Charges.

Excess Construction Charges: means additional charges to be applied to the Installation Charge to cover unexpected network or construction upgrades to enable the Circuit to be delivered to the Customer.

EFM: means Ethernet in the First Mile which is an internet connection provided over copper and can consist of multiple copper pairs and uses Ethernet protocols up to the customer premises.

EoFTTC Means Ethernet over Fibre to the Cabinet utilising a hybrid of copper and fibre. A phone line is supplied as part of this circuit. EoFTTC is the name TalkTalk apply to this service.

GEA; is the name BT Wholesale apply to the EoFTTC product. A phone line needs to be present in order to install this service.

Fault; means Service downtime (other than a Planned Outage) with a total loss of Service where it is not possible to transmit internet data or any other form of data or any other such fault (as agreed by the Supplier) that impairs the Service

Fix Times: means the time taken to fix a fault on the circuit.

Fix time targets physical fault: means 5 hours from Customer reporting fault.

Fix time targets on infrastructure physical faults: 48 hours from Customer reporting fault.

"Go Live Date"; means the date on which the Supplier notifies the Customer the Service or part thereof are ready for use or, if earlier, the date on which the Customer or any User first makes use of the Service of part thereof.

LAN; means Local Area Network

Leased Line circuit: means a Circuit used either to provide Dedicated Internet Access or Private point to point Leased Line Services between Customer sites.

Managed Leased Line Services: means the Supplier supplies the Circuit and a Router to enable the Customer to access the Internet. The Router is Managed by the Supplier 24/7 via remote monitoring and management by the Supplier Support department

Maintenance Window: means a period of time within a set time frame in which planned works to the Service will take place and have been identified to the Customer and where the Service may not be available for the period of the Maintenance Window.

Maintenance period: Means the start and the end time of the Maintenance Window.

NTE; means Network Termination Equipment

Outage Time: means the time duration of the Fault.

Planned Outage: means any Service downtime that has been prior notified to the Customer for the purposes of Maintenance or service changes.

Planned Maintenance: means Planned Outage.

Point-to-Point Leased Line Services means; a dedicated, private, fixed capacity circuit delivered point to point between Customer nominated sites. Point-to-Point Leased Line Services do not share infrastructure and will be delivered as a stand-alone Service which will not be monitored by the Supplier.

Protected Circuit: means a Leased Line Circuit delivered over multiple lines to deliver a resilient Service.

Response time: means the time taken to respond to a Customer-notified fault on the Circuit.

Response time target: means 1 hour from when the fault is reported.

Rights of Access approval: means the legal approval by the land or premises or Site owner of any route and any required construction or alterations to the land or premises or Site to allow the circuit to be installed.

Resilient Circuit: means a Leased Line Circuit delivered via more than 1 Circuit to provide a resilient service.

Service Provider: means any third party who the Supplier may use to provide the Service.

Set Up: means Installation or Install.

Service Credits: Service Credits to which the Customer may be entitled, in accordance with this Schedule, in relation to disruption to a Leased Line Service.

Site Survey: means the physical or logical surveying of the Customer site and proposed network infrastructure to be used to enable the installation of the Circuit and where any ECC charges may be advised.

SLA: means Service Level Agreement as described in this Schedule.

Terminating Device: means a router or other device that is used to terminate the Circuit. In the case of an Unmanaged Leased Line Services the demarcation point will be the NTE. In the case of a **Managed Leased Line Service** the demarcation line is the LAN side of the router

Target Go Live Date: means an indicative date agreed with the Customer for the commencement of Services as described on the Order.

Unmanaged Leased Line Services: means the Supplier supplies the Circuit and the Customer provides a Router to enable the Customer to access the Internet means; The Router is not managed by the Supplier and no remote monitoring and management by the Supplier Support department takes place

Unprotected Circuit: means a Leased Line Service delivered over a single Leased Line.

Wan; means Wide Area Network

Wayleave approval: means Rights of Access approval.

Zen Internet Fibre Broadband – Specific Terms and Conditions

Issue date: 15 February 2016

Definitions

1.1 These Specific Terms and Conditions are to be read in conjunction with our General Terms and Conditions of Supply.

1.2 In the event of any conflict between these Specific Terms and Conditions and the General Terms and Conditions of Supply, the provisions of these Specific Terms and Conditions shall apply.

1.3 All definitions contained within these Specific Terms and Conditions have the same meaning as those set out in the General Terms and Conditions of Supply unless specified below:

Distance Selling Regulations – Consumer Protection (Distance Selling) Regulations 2000

FTTC Service – The Fibre to the Cabinet service (including the Unlimited Fibre Office Services) which provides a fibre optic connection to the Internet from the telephone exchange to your local street cabinet and a copper cable connection from the cabinet to your Premises.

FTTP Service – The Fibre to the Premises service which provides an end-to-end fibre optic connection to the Internet from the telephone exchange to your Premises.

Fibre Broadband Services – The FTTC or FTTP Service provided to you in accordance with these Terms and Conditions.

Fibre Broadband and Phone Package – The Fibre Broadband Services and the Phone Services.

Minimum Cancellation Notice Period – 14 days to expire any time on or after the Minimum Service Period.

Minimum Service Period – 12 months.

Phone Services – The Zen Home and/or Business Phone Services provided by Zen pursuant to the Zen Phone Services Specific Terms and Conditions

Unlimited Fibre Office Services – The Fibre to the Cabinet service which delivers “up to 76Mbps” download speed and “up to 19Mbps” upload speeds with Truly Unlimited usage and builds on this with a set of unique assurances through our Zen Critical Care service level.

2 THE SERVICES

- 2.1 The Fibre Broadband Services will be provided to you at the Premises specified in your Customer Application.

3 ACCEPTANCE OF YOUR ORDER

3.1 Before we can accept your Customer Application, we need to be certain that we can provide you with the Fibre Broadband Services. To do this, we need to successfully

- a) determine that fibre broadband is available in your area and that your telephone line is in a fibre broadband enabled location;
- b) check that the line qualification indicates that a minimum line rate for the Fibre Broadband Service is likely to be achieved; and
- c) complete the installation and activation of the Fibre Broadband Services.

3.2 Your Customer Application will be rejected if:

- a) you do not have a BT or Zen provided PSTN line;
- b) the line length test shows that your premises are outside the transmission limitation of the Fibre Broadband Service; or
- c) your line is not in a Fibre Broadband Service availability area.

3.3 If it is not possible to provide the Fibre Broadband Services because one or more of the checks at clauses 3.1 and/or 3.2 cannot be completed successfully, we will notify you as soon as possible. We will also refund any charges for the Fibre Broadband Services that you may have paid in advance, apart from any Abortive Visit Charges that may have been incurred.

3.4 If you rent your premises, you must have a valid contract for a BT or Zen provided PSTN line. The contract for the PSTN line must be with you and not your landlord.

4 INSTALLATION

4.1 Before accepting your Customer Application, we may give you some advice on any necessary preparation. You will need to provide a suitable location for any Equipment which is purchased from us, or which you supply yourself.

For FTTP Services, we will contact you to arrange an appointment for an engineer (the “Engineer”) to visit your Premises to install the Fibre Broadband Services.

4.2 Two installation appointments will be required. The first appointment will be performed by an external Engineer and we will let you know if your presence is required. The second appointment will require internal work at your Premises and your presence will be required.

4.3 You will be contacted by the Engineer prior to the booked appointment(s) to discuss the proposed installation and to confirm the appointment(s) slot. If necessary, the Engineer will re-arrange the appointment(s) at your request. Please note that you will not be contacted in respect of a first appointment for FTTP Services in the event that such appointment does not require your presence.

4.4 The Engineer will call you on the day of the appointment prior to starting work at the street cabinet. However, the Engineer will not commence work unless you have confirmed your availability. If you are not contactable or available, you will be charged an Abortive Visit Charge as set out at clause 15.1

4.5 As part of the installation for the FTTP Service the Engineer will install an Optical Network Termination device (“ONT”) within 20m of the existing copper entry point. This distance can be extended to up to 30m, subject to additional charges.

4.6 The ONT must be within reach of a power supply (within 1m) and must remain connected to the power supply at all times. The ONT is a required component of the FTTP service and, if it is removed, we will be unable to provide further support.

4.7 In the event that there is a significant build associated with the installation of the FTTP Services, excess charges may be payable. These charges will be communicated to you prior to the installation taking place.

4.8 You agree to pay for any and all charges in relation to any additional work necessary for the installation of the FTTP Services. However, prior to incurring such costs, you will be presented with a revised quotation and given the option to proceed or not with the installation work. If you elect not to proceed with the installation of an individual circuit pursuant to this paragraph no costs will be incurred by you in relation to that individual circuit, however, such cancellation shall not cancel any other circuits that you have ordered from Zen, or discharge your obligation to pay the Charges for such circuits, whether or not such orders have been fulfilled.

4.9 For FTTC Services, certain equipment may need to be installed at your Premises. Before accepting your Order, we may give you some advice on any necessary preparation. You will need to provide a suitable location for any hardware which is purchased from us, or which you supply yourself. Please refer to the Broadband Service Requirements page on our Website for further details.

4.10 It is your responsibility to make sure that there are enough mains socket outlets at your premises to provide a power supply for any equipment which may form part of the Fibre Broadband Services.

4.11 After installation of the Fibre Broadband Services you may notice a slight change to how your telephone sounds. This is normal for Broadband products and is not a fault.

4.12 The Fibre Broadband Service may affect:

- a) the performance of some PSTN equipment and voice band modems used by fax machines and by personal computers may operate at a lower speed; and
- b) security or burglar alarm systems that use the PSTN service You are responsible for checking the compatibility of such systems before arranging for connection.

4.13 Non-standard house wiring may affect the quality of the Fibre Broadband Services delivered to telephone extension sockets in your premises.

5 ACTIVATION

5.1 We will use our reasonable efforts to activate the Fibre Broadband Services by the date notified to you following acceptance of your Customer Application, however, all dates are estimates and we cannot guarantee that they will be met.

5.2 When the FTTC Services are being activated at your Premises, you may lose your telephone service for up to an hour. This is because your existing connection needs to be adjusted to allow you to access the Fibre Broadband Services.

5.3 If you select the FTTP Services and your Premises is served by an overhead cable, an engineer will need to replace the cable to avoid overloading. This will mean that you may lose your telephone service for up to an hour.

5.4 We will use our reasonable endeavours to make any loss of telephone service as brief as possible, but you acknowledge that the timing of the activation and the period of the loss of service are the sole responsibility of a third party contractor and are, therefore, outside of our control.

5.5 We cannot accept any liability for any costs, expenses, losses, damages or other liabilities (howsoever arising) which you may incur as a result of the timing of the activation or the period of any loss of service referred to at Clause 5.2 above.

5.6 The Fibre Broadband Service is rate adaptive and as such the speed of service may change over time. The quoted speeds for each product specified by us refer to the maximum available download bandwidth. Upload and download bandwidth speeds for the Fibre Broadband Service may vary depending upon:

- a) the distance between your premises and the street cabinet (for FTTC Services only); and
- b) the number of other users using the common cabling.

6 HOUSE AND OFFICE MOVES

6.1 If you move home or offices within the Minimum Service Period and you wish to have Fibre Broadband Services to your new premises, you will need to pay an early termination charge to terminate this contract. The early termination charge will be calculated on the basis of a flat fee per month or part thereof remaining on your existing Minimum Service Period.

6.2 As you will not be able to transfer your existing Fibre Broadband Services will remain in full force and effect and you will remain liable for the charges payable for the Fibre Broadband Services for the remainder of the Minimum Service Period.

7 FIBRE BROADBAND AND PHONE PACKAGE

7.1 This clause applies where you have purchased a Fibre Broadband and Phone Package.

7.2 The activation date for a Fibre Broadband and Phone Package shall be the date upon which the Fibre Broadband Service is successfully installed at your Premises.

7.3 If you wish to convert your existing Fibre Broadband Services to a Fibre Broadband and Phone Package:

- a) the Minimum Service Period for your existing Fibre Broadband Services will be reset; and
- b) the new Minimum Service Period for the Fibre Broadband and Phone Package will be:
 - 12 months commencing on the date the service is transferred (where your existing contract was 12 months); or
 - the later of the original contract end date or 12 months from the date the service is transferred (where your existing contract was 24 months).

7.4 In the event that you wish to terminate the Fibre Broadband element of a Fibre Broadband and Phone Package within the Minimum Service Period:

1. a) you will remain liable for the charges payable for the Fibre Broadband Services for the remainder of the Minimum Service Period; and
2. b) your Phone Service will continue to be provided to you.

7.5 In the event that you wish to terminate the Fibre Broadband element of a Fibre Broadband and Phone Package once the Minimum Service Period has expired:

1. a) you must give notice at least equal to the Minimum Cancellation Notice Period;
2. b) your Phone Service will continue to be provided to you.

8 YOUR WEB SPACE

1. 8.1 As part of the Fibre Broadband Services, you are provided with Web space to enable you to upload your own Web site(s).
2. 8.2 Your use of such Web Space is governed by our General Terms and Conditions of Supply.

9 PRODUCT REGRADES

9.1 Speed of service upgrades between our range of Fibre Broadband Services take between 1 and 5 working days to process from the order being received.

9.2 Speed of service downgrades between our range of Fibre Broadband Services will occur at the next billing date.

9.3 Regrades are available upon request and are subject to the table below. Please find your current service on the left hand side of the table and work across to your right to find the consequences of a regrade. For example, a regrade from Zen Fibre Active to Zen Fibre 1 will result in a new 12 month contract and early termination charges if you are currently within your Minimum Service Period:

9.4 Withdrawn

9.5 For the avoidance of doubt, where a new contract is specified, the Minimum Service Period for your new contract will be:

a) 12 months commencing on the date the service is regraded (where your existing contract was 12 months); or

b) the later of the original contract end date or 12 months from the date the service is regraded (where your existing contract was 24 months).

10 HARDWARE

10.1 You acknowledge that some routers may not be compatible with the Fibre Broadband Service and that you may have to purchase an alternative router at your own cost in order to be able to access the Fibre Broadband Service.

10.2 For the avoidance of doubt, we can only offer support and assistance in respect of Zen supplied routers. If you choose to purchase a router from a third party, you will be responsible for ensuring that you have access to appropriate support and assistance in respect of that router.

10.3 All Fibre Broadband routers that you purchase from us are covered by a one year warranty.

11 FAULT REPORTING

11.1 Any fault(s) you may detect in relation to your Fibre Broadband Services must be reported to us as soon as possible by calling Technical Support on 01706 902 001 or visiting our Website.

12 TERMINATION

12.1 Subject to clause 12.2, you may end the Agreement at any time before the Service is activated and available for you to use.

12.2 The following cancellation charges shall apply for orders which have not yet been activated but which have been processed:

1. a) where cancellation is more than 2 days before your order delivery date, a charge of £10.00 (plus VAT) will be payable; and
2. b) where cancellation is 2 or fewer days before order delivery date, a cancellation charge of £85 (plus VAT) will apply.

12.3 Subject to clause 12.7, once the Fibre Broadband Services have been activated and are available for you to use, you may only end this Agreement by notice equal to the Minimum Cancellation Notice Period to expire any time on or after the Minimum Service Period.

12.4 Subject to clause 12.7, where the Fibre Broadband Service is terminated within the Minimum Service Period, you will remain liable for the charges for the remainder of the term. This will be in addition to any cease charges for termination of the Fibre Broadband Service itself.

12.5 If we or BT deem that your telecommunications line is not capable, or becomes incapable, of supporting the Fibre Broadband Services we reserve the right to terminate the Fibre Broadband Services immediately without notice and issue a refund for any Fibre Broadband Services not provided. Examples include;

- a) your line is too far away from the telephone exchange;
- b) your line is directly connected to the telephone exchange rather than via a street cabinet; or
- c) the quality of your line is too poor.

12.6 Notwithstanding the provisions of clause 12.5, we reserve the right to move you onto a different product at no additional cost to you, if, in our reasonable opinion, it would mean that your service would perform better, provided always that such alternative product shall be of equivalent price to your existing product.

12.7 You may terminate this agreement without charge in the event that within 90 days of the Fibre Broadband Services being activated and are available for you to use:

- a) the upstream speed of 20Mbit/s or 10Mbit/s speed drops below 2Mbit/s;

b) for services initially synchronising at downstream speeds at 15 Mbit/s or above, if the service falls below 2 Mbit/s or the line rate drops by more than 25% over a 14 day continuous period; or

c) for services initially synchronising at downstream speeds below 15 Mbit/s but above 2 Mbit/s, if the service falls below 2 Mbit/s at any other time in each provided that such fault has been reported to us and our investigation has failed to resolve the problem.

13 TELEPHONE LINES

13.1 A BT or Zen telephone line is required for the provision of the FTTC Service and must remain active throughout the Service Period. In the event such telephone line:

a) is cancelled;

b) ceases to be active;

c) or if there is a change of ownership of such telephone line, your FTTC Service will be terminated and any remaining Charges will become immediately due and payable.

13.2 A BT or Zen telephone line is required for the provision of the FTTP Service and must remain active throughout the Service Period. In the event such telephone line:

a) is cancelled,

b) ceases to be active; or

c) if there is a change of ownership of such telephone line, you will become liable to pay an additional monthly charge equal to the monthly line rental for Zen's Phone Service.

14 EFFECTS OF TERMINATION

14.1 In the event of termination of the FTTC Services, any disconnection work will take place at your street cabinet and not your Premises. A jiffy bag will be sent to you to return the Active NTE. Please note that the SSFP

and any data extension kit will not be removed. These items are compatible with ADSL services, however, while the SSFP is in place that will be the only point of connection for any ADSL services and you will not be able to use any micro-filters on any other telephone connection points.

14.2 In the event of termination of the FTTP Services, any disconnection work will take place at your street cabinet and not your Premises. The ONT and any associated wiring will be disconnected, but shall remain in situ.

14.3 Any Equipment purchased or provided by us to enable you to receive the Fibre Broadband Service must also be returned at our request, in the pre-paid postage jiffy bag that we send to you, in accordance with instructions given in our RMA Document. Upon receipt of the completed document, we will credit you with any payment we have received from you for such Equipment (where applicable).

15 CHARGES

15.1 For business customers, all amounts payable for the Fibre Broadband Services and/or the Fibre Broadband and Phone Package shall be payable either by direct debit, debit or credit card, cheque, BACS or CHAPS. All such amounts shall be exclusive of Value Added Tax (“VAT”), or any other applicable tax or duty, which shall be charged at the prevailing rate and shall be payable in addition to all such amounts due.

15.2 For residential customers, all amounts payable for the Fibre Broadband Services and/or the Fibre Broadband and Phone Package shall be payable by direct debit and shall be inclusive of Value Added Tax (“VAT”), or any other applicable tax or duty, which shall be charged at the prevailing rate.

15.3 We reserve the right to raise an ‘Abortive Visit Charge’ of £90 plus VAT if:

- a) entry to your Premises is refused; or
- b) no access can be gained despite you having agreed that we or any other person may access your Premises.

15.4 In the event that an Engineer is called to repair a fault to your Fibre Broadband Services, we will implement the following procedure:

a) when you call into our Support team to register a fault with your service we will conduct an investigation into the fault. During this process you may be asked to check and advise on details about your service. This will include directions to carry out simple tests and to report back the status following the tests. All of the requests will be explained and it is your responsibility to carry out the tests at your premises and provide accurate feedback; and

b) based on your feedback, we will decide if an Engineer visit is required and our Support team will advise you of the chosen course of action and associated costs. You can then decide if you want the Engineer visit to go ahead.

15.5 In the event that an Engineer is called to repair a fault to your Fibre Broadband Service, a charge of £165 plus VAT will be made in respect of:

a) repairing faults (where this work is not already covered under your Agreement with us);

b) providing or rearranging services where standard BT charges are not available;

c) internal and external shifts; and

d) where a fault is found not to be with any BT service or equipment. In particular this covers the situation where no fault is found, or the fault is found to be on non-BT equipment, or is due to damage caused by someone at your Premises, or due to theft, loss or removal of equipment, or in the case of equipment owned or rented by you or faults caused by external or environmental factors (eg lightning, electrical surges or floods).

16 SERVICE LEVEL AGREEMENT

16.1 The service levels offered in respect of the Unlimited Fibre Office Services are contained in the Unlimited Fibre Office SLA.

17 DATA PROTECTION

17.1 In order to provide you with the Fibre Broadband Service, we need to share your personal details with our suppliers, including but not limited to, BT Openreach.

17.2 Our suppliers may write to or call you directly about any changes to your order fulfilment, about the repair of your Fibre Broadband Service or to confirm the time of their Engineers' arrival for appointments.

17.3 Both we and our suppliers will comply with the Data Protection Act with regards to any data we hold about you.

18 FIBRE BROADBAND OFFER – NO CURRENT OFFERS

18.1 The following clauses only apply to orders placed for the Fibre Broadband Service between Monday, 7 January 2013 and Sunday, 31 March 2013 (the "Offer").

18.2 The Offer is available to new customers and existing customers upgrading to the Fibre Broadband Service.

18.3 The Offer details are as follows:

a) Free Installation – worth £80 (ex VAT);

b) Offer based on 24 month contract with monthly price from £23 (ex VAT);

18.4 The Offer is only available on a minimum 24 month contract and is subject to Fibre Broadband Services availability. For the avoidance of doubt, the Minimum Service Period specified at clause 12.3 shall not apply to the Offer.

18.5 Except as expressly set out in this clause, the remainder of these Fibre Broadband Specific Terms and Conditions shall remain in full force and affect.

3. Services

- 3.1. Subject to compliance by the Customer with its obligations under this agreement, the Supplier shall provide the Services to the Customer during the currency of the Contract for the supply of the Services as detailed on the Customer Order form with reasonable care and skill as expected of a competent communications provider.

4. Term

- 4.1. This Contract for the supply of the Service shall subsist for the Minimum Period and may only be terminated by no less than sixty (60) Business Days' notice in writing by the Customer to the Supplier before the end of the Minimum Period or any Renewal Period.

5. Usage

- 5.1. **Improper Use.** The Customer shall use its reasonable endeavours to ensure that nothing is transmitted by or on behalf of the Customer or using the Customer's equipment through the Service or downloaded in violation of any UK or International law, regulation or treaty or the Supplier's Acceptable Use Policy or in breach of the intellectual property or other legal rights of any person. The Customer shall at all times ensure that such information and material complies with the laws of all applicable jurisdictions and shall keep the Supplier fully and effectively indemnified from and against all costs, claims, liabilities and demands relating to or arising from:
- i. any breach by the Customer of this clause or
 - ii. any criminal or civil legal action brought against the Supplier as a result of the actions of the. A breach of this clause and/or the Supplier's Acceptable Use Policy will also be grounds for the Supplier to terminate this Agreement without notice and with immediate effect, at the Supplier's discretion.
- 5.2. **Offending Material.** Without prejudice to any of its other rights, the Supplier shall be entitled to disable the Service or any other part of it immediately and without notice or to take such action as it may in its discretion think appropriate to ensure that any material which the Supplier in its reasonable opinion considers to offend is not capable of being transmitted or downloaded. The Supplier shall not however be obliged to take, or consider whether it should take, any such action. The Supplier shall inform the Customer of any such action and the reasons for the same.
- 5.3. **Customer-Only Traffic.** The right to use the Service is to the Customer, and those members of its staff and others engaged by the Customer, to perform work for the Customer.
- 5.4. **Bandwidth.** The Customer acknowledges that the Supplier has no direct control over the availability of bandwidth over the entirety of the Internet and that while it will use such endeavours as the Supplier, in its absolute discretion, deems appropriate to facilitate the Service at all times, the Supplier shall not be responsible for delays caused by overuse or lack of such bandwidth.
- 5.5. The Customer agrees that any usage of the Service is controlled by the Customer and over usage resulting in poor performance will be the responsibility of the Customer. In such cases where continued overuse is present the Customer may ask the Supplier for a Service upgrade which may result in additional charges applying.

6. Description of Leased Line Services

- 6.1. Leased Line Services are provided as:
- 6.1.1. **Internet Leased Line Services** – a dedicated private, fixed capacity circuit delivered from the Supplier or its Agents or its Subcontractors Network to the Client Site with Internet connectivity.
 - 6.1.2. **Managed Internet Leased Line Services** are delivered as a Fully Managed Service with supplied router, 24/7 remote monitoring and management by the Supplier.
 - 6.1.3. **Unmanaged Internet Leased Line Services** – a dedicated, private, fixed capacity circuit delivered from the Supplier or its Agents or its Subcontractors Network to the Client Site with Internet connectivity. Internet Leased Line Services are delivered to the customers premises, but it is the customers responsibly to supply the termination equipment and to monitor.
 - 6.1.4. **Point-to-Point Leased Line Services** is a dedicated, private, fixed capacity circuit delivered point to point between Client nominated sites and will be delivered as a stand-alone Service which will not be monitored by the Supplier.

7. Orders for Leased Line Services shall be completed according to process set out in this clause.

- 7.1. All quotations made by the Supplier shall be deemed to be made subject to the terms and conditions of this Contract for the Supply of the Services and any required survey.
- 7.2. If Excess Construction Charges (ECC) are applicable in order to provide the Services, the Supplier shall notify the Customer in writing of the charges and the reasons for them. The Customer shall indicate acceptance of the excess construction charges in writing. Full payment of the ECC charges will be required to be paid prior to the Supplier confirming acceptance to the carrier. If ECC charges are not accepted, then the order can be cancelled without penalty.
- 7.3. If no ECC charges are identified the order will proceed and the ability to cancel free of charge is no longer available.
- 7.4. No Order shall be binding on the Supplier until that Order has been accepted by the Supplier in writing by notice to the Customer.
- 7.5. Upon acceptance by the Supplier the Services shall be provided under the terms of the Supplier Contract.
- 7.6. A request for the upgrade or downgrade of an existing Service shall not be considered a request for new services but on acceptance by the Supplier it will be deemed an amendment of the existing Order under which those Services are provided.

8. Support

- 8.1. During the period of the Contract the Supplier will provide support to the Customer during normal business hours and outside of normal business hours where "Out of Hours" support is noted on the Customer Order form.
- 8.2. Support will normally be via telephone or email but where it is deemed necessary and at the sole discretion of the Supplier an on-site engineering visit may be required to be undertaken by the Supplier.
- 8.3. Where required the Supplier will liaise with any Network Service Provider or Carrier to ascertain the situation with regard any Service issue and feed this information back to the Customer.

9. Customer Equipment and Network

- 9.1. The Customer agrees that from the Start Date, it will have available all necessary Customer Equipment for which it is responsible, to allow effective installation and continuation of the Service.
- 9.2. It is the sole responsibility of the Customer and not the Supplier to provide security with respect to and of the Customer's facilities or the facilities of others. The Customer shall be solely responsible for maintaining user access security and network access security of the Service.
- 9.3. From time to time the Supplier or its Agents may interrupt the Service to maintain, update or enhance software Equipment or other aspects of the Service and/or the Supplier Network ("Maintenance Events"). the Supplier will, where possible, give the Customer a minimum of 2 Business Days advance notice of such events, and where possible will schedule Maintenance Events so as to cause minimum interruption of the Service. For the avoidance of doubt, it may not be possible to give such notice where interruption to the Service is necessary to deal with Incidents occurring in connection with the Service.
- 9.4. From time to time the Supplier or its Agents may interrupt the Service to carry out emergency maintenance to the Supplier or its Agents Network in order to maintain appropriate levels of service quality and to provide where possible minimum impact to the Service.
- 9.5. The Customer shall give all reasonable assistance to the Supplier to enable Maintenance Events to commence on the planned date and for them to be completed efficiently.
- 9.6. Any Maintenance Events which occur during Normal Business Hours, and which were not requested by the Customer, shall not be considered downtime for the purpose of service availability measurements.

10. Incident Reporting

- 10.1. On Managed Internet Leased Line Services the Supplier shall supply monitoring and management of Internet Leased Line Services 24 hours a day 7 days a week together with pre-emptive Incident reporting to the Customer whenever reasonably possible. In the event that any Incident is experienced by the Customer that it has not been identified by the Supplier the Customer must submit an Incident Report to our support teams by telephone or via email.

- 10.2. For Point to Point Leased Line and Unmanaged Leased Line Services clause 10.1 does not apply and the Customer will be responsible for the submission of Incident Reports to the Supplier.
- 10.3. All Incident Reports submitted by the Customer must provide a complete description of the Incident and any information reasonably requested by the Supplier.
- 10.4. The Support team will require the Customer to conduct first line diagnostics with any of its Users where appropriate.
- 10.5. If the Customer reports any Incident which requires urgent assistance outside of Normal Business Hours, the Customer must place a follow up call to the out of hours number in order to notify the Supplier engineer of the nature of the Incident.
- 10.6. All faults must be logged via the Supplier service desk portal.

11. Incident Response Timescales

- 11.1. The Supplier shall use best endeavours to notify the Customer of acceptance of the incident within 60 minutes of the support request being raised.
- 11.2. The Supplier will have an additional 60 minutes before an engineer will be assigned to look into the incident
- 11.3. the Supplier shall use best endeavours to make an update on an Incident available to the Customer via email within the response times specified.
- 11.4. The Customer understands and accepts that the Supplier is dependent on a third party for resolution of the Incident. In such circumstances, the Supplier shall use reasonable endeavours to eliminate or reduce the impact of the Incident on the Service by provision of a workaround, with permanent correction to follow if possible.

12. Clearance of Incidents

- 12.1. The Supplier will clear an Incident reported to the Supplier by the Customer in accordance with this Agreement
- 12.2. the Supplier has investigated the Incident and the Suppliers initial fault diagnostic testing indicates that the Incident is not found and/or is not the fault of the Supplier; and this has been confirmed by the Supplier with the Customer.
- 12.3. The fault has cleared.

13. Equipment and installation and site access

- 13.1. All Services Equipment remains the property of the Supplier at all times.
- 13.2. The Customer agrees to:
 - 13.2.1. prepare the Site and provide a suitable place, conditions, connection points and electricity for the Supplier or its Agents Equipment at the Site in accordance with the Suppliers reasonable instructions, if any; and
 - 13.2.2. obtain all necessary consents, including but not limited to , consents for any necessary alterations to buildings, permission to cross other people's land or permission to put the Suppliers/carrier Equipment on their property. The Customer accepts that the Supplier has no authority to proceed with the Installation of the Services until such permissions including but not limited to Wayleave / Rights of Access, Building Control have been officially granted and that any additional requirements including but not limited to Health and Safety reports or Asbestos Registers or other are all supplied, completed and agreed by the Supplier or its Agents or the Carrier prior to any installation work being undertaken.
 - 13.2.3. The Customer is responsible for the Supplier/ Carrier equipment and agrees to take reasonable steps to ensure that nobody (other than someone authorised by the Supplier) adds to, modifies or in any way interferes with it. The Customer will be liable to the Supplier for any loss of or damage to the Supplier or Carriers Equipment, except where such loss or damage is due to fair wear and tear or is caused by the Supplier or its Agents or the Carrier and on the Suppliers behalf.

- 13.2.4. The Customer agrees to take reasonable steps to provide access to the Site including for the purpose of installation and use of the Supplier equipment at the Customer Site
- 13.2.5. The Supplier agrees to observe the Customer reasonable Site safety and security requirements.
- 13.2.6. The Customer agrees to provide and agrees to take reasonable steps to ensure a suitable and safe working environment for the Supplier at Site.
- 13.2.7. It is the responsibility of the Customer to carry out any making good or decorator's work required as a result of the Installation of the Services

14. Domain Name and Network Number

- 14.1. The Supplier has no control over the availability of domain names and accepts no responsibility for the availability of any domain name.
- 14.2. The Supplier will provide IP Addresses as required and as available and in line with industry practice. However these IP addresses do not become the property of the Customer and upon the Contract for the Supply of the Service terminating the IP addresses supplied by the Supplier to the Customer will also terminate.
- 14.3. In respect of any actions taken by the Supplier pursuant to this clause 14, the Supplier may levy additional charges on the Customer as agreed in advance.

15. Historical Archive and backup

- 15.1. While the Supplier backs up its server computers as a regular part of its internal systems administration, the Supplier does not guarantee any storage or backup of Customer data unless such a Service has been requested on an Order form which has become an Accepted Order.

16. Service Pricing

- 16.1. Upon an Order becoming an Accepted Order the Installation Charges for the below will become due:
 - 16.1.1. The Supplier's set up fee(s), upgrade fee(s) (as applicable) payable with order;
 - 16.1.2. The Supplier's service fees for the Minimum Period (including any options selected by the Customer on the Customer Order Form);
 - 16.1.3. Domain Name Charges (as applicable);
 - 16.1.4. Equipment Lease Fees (as applicable);
 - 16.1.5. Equipment Purchase Charges (as applicable);
 - 16.1.6. Other Charges as identified on the Order

17. Service Pricing Renewal Period

- 17.1. The Supplier will increase the charges of the Service by 15% for the 1st Renewal Period (which is normally at the end of a 36 month Minimum period term) and any further subsequent Renewal Periods will also have an automatic price increase of 5% added to the charge for the Service. This increase is to cover the effects of inflation and the Suppliers Internal cost rises during the Minimum Period, any costs in additional or replacement equipment and any other costs that may from time to time arise to ensure the smooth running of the Service.
- 17.2. Should a Customer order more than 1 Service the pricing of each Service may differ depending on the Network Operator / Carrier costs associated to providing the Service and any additional or included Service enhancements including but not limited to the number of included or not included IP Addresses provided with the Service.

18. Additional Service Terms

18.1. To enable the Supplier to provide the Service, the Customer agrees to abide by the Supplier's prior agreed recommendations and specifications regarding the existence, configuration and maintenance of equipment used by the Customer (if any), the software used by the Customer and cabling required to integrate the Customer's host or local area network (LAN) into the Supplier's wide area network (WAN). The Customer's equipment must comply with the relevant portions of such recommendations and specifications. Such recommendations and specifications, if any, are given solely for the protection of the Supplier's equipment and not the Customer's and the Customer may not therefore rely upon such recommendations and specifications in the design, maintenance or service of the Customer's equipment or system.

18.2. The Customer is responsible for any of the Supplier equipment located at its premises and will only use the Supplier equipment and any associated software in accordance with any instructions and/or software license provided from time to time. The Customer may not add to, modify or in any way interfere with the Supplier equipment and the Supplier will not be liable for any repairs of the Supplier equipment other than those arising as a result of its normal and proper use. The Customer will insure any of the Supplier equipment located on its premises from all risks equal to the full replacement value of the equipment.

19. Support

19.1. The Supplier's helpdesk will provide reasonable telephone and email support on problems experienced by the Customer in relation to the Service. Requests for advice and assistance can be submitted to support@xcomm.co.uk

20. Service Level

20.1. The Customer accepts the Supply of the Service is via 3rd Party Network Operators and not the Supplier. Therefore, the Supplier has no control over the Supply of the Service and no visibility into the Network Operators Systems or Networks. The Supplier in the event of a fault occurring with the Service will use all reasonable endeavours to provide the Customer with feedback associated to the fault and an indication of the fault resolution timescales. The Customer accepts that the Supplier cannot be held responsible for any faults relating to the Service.

21. Network Infrastructure

21.1. From time to time the Supplier or its Partners or 3rd party suppliers may upgrade their network infrastructure. This may require the Customer to upgrade some of its equipment if the Service is to be continued. In that event, the Customer agrees to make within thirty (30) days such reasonable upgrades to its hardware or software as the Supplier's technical staff may from time to time reasonably specify by written notice to the Customer. The Supplier shall not be responsible for degradation of or disruption to the Service if the Customer does not make the required upgrade.

22. Warranty

22.1. Where any Service includes a "burstable" element, the provision of the Service beyond the "bursting" bandwidth is subject to the Supplier or its partner and its suppliers having spare bandwidth available. All Services are subject to any "maximum traffic per service" limits.

22.2. The Customer is solely responsible for the use of any information or other material obtained through the Service. The Supplier specifically excludes any responsibility for the accuracy or quality of any information obtained through the Service, or that any other material obtained through the Service, may be used in any way by the Customer without infringing the rights of any third parties. The Customer further acknowledges that these matters are outside the control of the Supplier.

23. Service level agreement: Leased Lines

The Supplier Network Availability Service Level Guarantee

The Supplier cannot guarantee the Service will be available 100% of the time. The Supplier network is the combination of the Supplier-operated equipment, servers, circuits, and other data transmission facilities plus Third Party Network Operators, Carriers (IP and Telephony), International Transit providers and many other organisations around the world that enable services i.e. calls and data packets to be delivered.

The Supplier Telephone Support Service

The Supplier's telephone support will be available during business hours and the Supplier will endeavour to get back to the Customer within one hour of a report being logged.