

# Peak Telecom

## Terms and Conditions

### 2018\_v10

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## Broadband and FTTC Terms and Conditions

### Definitions

1.1 "Peak Telecom" means Peak Telecom UK Limited whose registered office is at 5 Moat Close, Chipstead, Kent, TN13 2HZ. Registered in England with 3752064 and for VAT 703132391. "Customer" means the person who places the Order and uses the Services. "Telephone Line" means the telecommunications circuit that the Customer uses to obtain telecommunications services over the public switched telephone network at the Site as notified by the Customer to Peak Telecom. "Agreement" means these Terms, together with the order form. "Installation date" means the date when DSL service is installed in the site. "Consumer" means a person who enters into a contract other than in the course of a business. "Customer Equipment" means apparatus belonging to the Customer not forming part of the Peak Telecom Equipment but which may be connected to the Peak Telecom Equipment. "Order Form" means the Peak Telecom application form, written customer order or e-mailed customer order. "Peak Telecom Price List" means the Peak Telecom Price List in force from time to time and available from support@peaktelecom.co.uk. "Peak Telecom Equipment" means any apparatus or equipment provided by Peak Telecom or any third party to the Customer at the Site to enable provision of the Service under this Agreement. "Site" means the Customer Site where the Service is to be received. "Service" means the installation, connection and supply of a telecommunications circuit capable of supporting DSL services at the Site and the provision of telecommunication services over such circuit.

### 2. Commencement and Duration

2.1 This Agreement shall commence on the date when it has been signed by the Customer (Commencement Date) and shall continue for an initial period of 12 months unless otherwise stated, and will automatically renew for a further period of 12 months at the end of the initial period and every subsequent period thereafter subject to termination under Clauses 12.

### 3. Provisions of the Service

3.1 Peak Telecom shall provide or procure the provision of the Service to the Customer in accordance with the terms of this Agreement. The Customer acknowledges that it is technically impracticable to provide a fault free Service and Peak Telecom does not undertake to do so.

3.2 The provision of the Service to the Customer will be subject to the characteristics of the Customers Access Connection and the Carrier may determine that it is not possible to supply the Service over the Customers Access Connection. Where this is the case, Peak Telecom will immediately terminate this Agreement, Peak Telecom will not be liable to the Customer for such termination.

3.3 The Customer acknowledges that during the installation of the Peak Telecom Equipment for the provision of the Service the Customer Access Connection may suffer a temporary loss of telephone service, and /or interference to any other Access Connection services, which shall be reinstated following installation Peak Telecom will not be liable for any loss, interruption or interference during installation. The Customer also acknowledges that any telephone socket extensions that are incorrectly wired may be disconnected during installation, without liability to Peak Telecom.

3.4 Occasionally Peak Telecom and/or our suppliers may have to interrupt the Service or change the technical specification of the Service for operational reasons (such as maintenance or Service upgrades) or because of an emergency. In these circumstances where possible Peak Telecom will give notice to the Customer of any such interruption however, the Customer shall have no claim against Peak Telecom for any such interruption.

3.5 Except as otherwise expressly permitted under this Agreement, the Customer may not:

- modify the Service without Peak Telecoms prior written consent;
- redistribute copy or use the Service, or transfer rights to the use of the Service to any third party;
- disclose details of the Service, to any third party without Peak Telecoms prior written consent;
- Use the Service except in conjunction with Peak Telecoms recommended operating guidelines;

3.6 Peak Telecom shall use its reasonable endeavours to comply with the Customer's reasonable requests in respect of installation but Peak Telecom or our suppliers' decision on the routing of cables and wires and the positioning of outlets and other apparatus constituting the Peak Telecom Equipment shall be final and binding.

3.7 Peak Telecom shall use all reasonable endeavours to provide and install or procure the provision and installation of the Peak Telecom Equipment at the Site so that the Service can be provided on or before any installation date specified or agreed to by Peak Telecom. Any installation date is an estimate only and Peak Telecom shall not be liable for any failure to meet such installation date.

3.8 Installation of the Service may be subject to a survey carried out by Peak Telecom or our suppliers and the Service may not be provided where the survey carried out, is incomplete or unsatisfactory.

3.9 The customer accepts that the service is rate adaptive and will run at the most reliable speed. Speed can be affected by external conditions.

3.10 The customer accepts that peak and sustained throughput rates may be reduced by the network to provide the customer service.

#### **4. Use of the Service**

4.1 The Customer must not use the Service:

- in a way that does not comply with the terms of any legislation or any license applicable to the Customer or that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;
- in connection with the carrying out of a fraud or criminal offence against Peak Telecom, or any other public telecommunications operator;
- to send, knowingly receive, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing, or in breach of any copyright, confidence, privacy or any other rights;
- to send or procure the sending of any unsolicited advertising or promotional material other than in the case of the Customer to its own customers;
- in a way that does not comply with any instructions Peak Telecom or our supplier has given;
- or in a way that in Peak Telecom's reasonable opinion could materially affect the quality of any service, including the Service, provided by Peak Telecom or our supplier-in a way that in Peak Telecom's reasonable opinion could affect the experience of others on the network;
- including but not limited to, persistent heavy users of the service, who in Peak Telecom's reasonable opinion could be seen to be over-using their service, may at Peak Telecom's discretion find their available bandwidth restricted at certain times of the day.

4.2 Peak Telecom will be entitled to suspend the Service or terminate the Agreement where Peak Telecom, in its absolute discretion, believes the Customer is in breach of any provisions of Clause 4.1.

4.3 The Customer acknowledges and accepts the following technical limits relating to the Service:

- transmission performance of some metallic local loops will mean it is technically impracticable to provide Service to all Customers within the Service Availability Area;
- that the Service may also affect the performance of some PSTN customer premises equipment.
- that some technical limitations may not become apparent until after the Service has been installed and working for some time. In such circumstances the Service for some individual may need to be withdrawn.
- upload speeds (and download speeds for MAX) are dependent on distance from the exchange, atmospheric conditions and quality of the metallic path and may vary without notice to the customer.
- Rate adaptation can occur several times a day and may cause the link to the DSLAM to reset.

4.4 In the circumstances referred to in Clause 4.3 Peak Telecom will have no liability to the Customer relating to the provision of the Service (or Peak Telecom's inability to provide the Service), the performance of the Service, its effect on other services or equipment or the withdrawal of the Service.

4.5 The Customer will co-operate with Peak Telecom's reasonable requests for information regarding the Customer use of the Service and supply such information without delay.

4.6 The customer must adhere to the acceptable use policy obtained by emailing [support@peaktelecom.co.uk](mailto:support@peaktelecom.co.uk), which may change from time to time.

## 5. Charges

- 5.1 The charges for the Service will be calculated in accordance with the Peak Telecom Price List. Charging will begin on the Commencement Date for the Service. Charges will be calculated in accordance with details recorded by, or on behalf of, Peak Telecom.
- 5.2 Charges are payable by Direct Debit, unless agreed otherwise with Peak Telecom. If a Customer cancels an active Direct Debit without Peak Telecom's consent, an administration charge of £25 may be levied.
- 5.3 All charges exclude Value Added Tax (VAT) at the applicable rate, unless stated otherwise.
- 5.4 Peak Telecom may also make an additional charge (on the basis of additional charges detailed in the Peak Telecom Price List), on its own behalf or on behalf of a carrier in the following circumstances:
- an abortive visit charge may be incurred where incorrect information supplied by the Customer means it is technically impractical to provide the Service over the Customer's Access Connection;
  - where it is necessary to relocate the existing telephone master socket to provide the Service;
  - where Peak Telecom or our supplier are unable to gain access to the Site to carry out installation of the Service or the installation is aborted an abortive visit charge may be payable;
  - where certain order information provided by the Customer is inaccurate or incomplete an administration fee will be charged;
  - where Peak Telecom or a supplier or carrier provide the support to the Customer outside its normal support times in supply of the Service;
  - where a fault relates to equipment other than the supplied Equipment.
- 5.5 Peak Telecom may, in April of each year, apply an increase to Access Fees by the Retail Price Index ("RPI") published by the Office for National Statistics in January of that year. If the RPI rate is a decrease, Access Fees will not be adjusted and if that index is not published for the given month, Peak Telecom may use a substituted index or index figures published by that office for that month; and may change this Agreement (including changing or introducing new Charges or changing or withdrawing Services): where required to comply with Applicable Law or regulation; due to a change in Peak Telecom's or a Third Party Provider's charges, out-payments, operations or services; or where Peak Telecom reasonably determines the change is needed to maintain or improve quality of the Service.

## 6. Customer Obligations

- 6.1 To allow the installation and use of the Peak Telecom Equipment at the Site, the Customer will at the Customer's own expense:
- obtain all necessary consents, including consents for any necessary alterations to buildings;
  - take up or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers, as Peak Telecom or supplier advises are necessary, and carry out afterwards any making good or decorator's work required;
  - provide any electricity and connection points required by Peak Telecom or supplier. The criteria above must be completed in advance of any installation work.
- 6.2 The Peak Telecom Equipment shall remain the property of Peak Telecom or the supplier of such equipment (including our suppliers) and the Customer shall at all times make clear to third parties that the same is the property of Peak Telecom or a third-party supplier of such equipment. Peak Telecom may modify, substitute, renew or add to the Peak Telecom Equipment from time to time at its absolute discretion.
- 6.3 Peak Telecom shall supply the Customer with the relevant information to enable the Customer suitably to prepare the Site for delivery and installation of the Peak Telecom Equipment. The Customer shall at their own expense provide suitable accommodation, assistance, facilities and environmental conditions for the Peak Telecom Equipment and all necessary electrical and other installations and fittings.
- 6.4 A secure electricity supply is required at the Premises for the installation, operation and maintenance of the Peak Telecom Equipment at such points and with such connections as specified by Peak Telecom. Unless otherwise agreed, this power supply is to be provided by the Customer. Peak Telecom shall not be responsible for interruption or failure of the Services caused by a failure of such power supply.

- 6.5 The Customer is responsible for the Peak Telecom Equipment and must not add to, modify or in any way interfere with it nor allow anyone else (other than someone authorised by Peak Telecom) to do so. The Customer will be liable to Peak Telecom for any loss of or damage to the Peak Telecom Equipment, except where such loss or damage is due to fair wear and tear or is caused by Peak Telecom, or anyone acting on Peak Telecom's behalf.
- 6.6 Any Customer Equipment connected to or used with the Service must be connected and used in accordance with any instructions, safety and security procedures applicable to the use of that equipment. Any equipment which is attached (directly or indirectly) to the Service must be technically compatible with the Service and approved for that purpose under any relevant legislation or telecommunications industry standards.
- 6.7 To enable Peak Telecom to carry out its obligations under this Agreement, the Customer will at all reasonable times provide Peak Telecom employees, and anyone acting on Peak Telecom's behalf including our carrier, who produces a valid identity card, with access to any Site and any other premises outside of Peak Telecom's control. Peak Telecom will normally only require access during its usual working hours but may, on reasonable notice, require the Customer to provide access at other times. Peak Telecom may agree to work outside its usual working hours, but the Customer must pay Peak Telecom additional charges for doing so as detailed in Clauses and the Peak Telecom Price List.
- 6.8 If through no fault of Peak Telecom, Peak Telecom is unable to carry out an installation at, or gain access to, the Site or the installation is aborted, Peak Telecom will notify the Customer Nominated Contact and may raise an abortive visit charge.
- 6.9 The Customer hereby irrevocably gives permission to Peak Telecom or our suppliers and carriers and its employees, agents or contractors to:
- execute any works on the Premises for, or in connection with, the installation, maintenance, or removal of the Peak Telecom Equipment;
  - keep and operate telecommunication apparatus installed on, under or over the Premises;
  - enter the Premises to inspect any telecommunication apparatus kept on, the Site or elsewhere for the purposes of providing the Service.

Where this Agreement or the Service is terminated for any reason Peak Telecom or our suppliers and carriers will be entitled to enter the site to remove Peak Telecom equipment installed there.

- 6.10 The Customer undertakes: -
- to comply with all instructions Peak Telecom may notify to the Customer for use of the Peak Telecom Equipment;
  - not to allow the Peak Telecom Equipment to be repaired or maintained other than by an authorised representative of Peak Telecom;
  - not to damage the Peak Telecom Equipment and not to add modify or in any way interfere with the performance of the Peak Telecom Equipment;
  - not to attempt to sell the Peak Telecom Equipment;
  - not to remove any identification mark affixed to the Peak Telecom Equipment showing that it is the property of Peak Telecom or other third-party supplier of such equipment.

6.11 The Customer shall be responsible for the repair and maintenance of any Customer Apparatus used in order to obtain or use the Service.

## 7. Support of the Service

Technical support for the Service is available by telephoning Peak Telecom or by sending e-mail to [support@peaktelecom.co.uk](mailto:support@peaktelecom.co.uk). Technical support is available during normal Peak Telecom office hours.

## 8. Intellectual Property Rights

8.1 The Customer acknowledges that the Customer shall have no rights to any intellectual property rights arising as a result of any use of the Service.

8.2 Any and all intellectual property rights used or embodied in or in connection with the Service shall be and remain the sole property of Peak Telecom or Peak Telecom licensors. No title or intellectual property rights therein or in any modification or extension thereof shall pass to the Customer unless specifically stated under the Agreement.

8.3 The Customer acknowledges such title, interest and rights and the Customer shall not take any action to jeopardize, limit or interfere in any manner with Peak Telecom (or any third-party suppliers') title, interests or rights with respect to the Service, including but not limited to, using Peak Telecoms or our suppliers and carriers trademarks or trade name.

8.4 Where software is provided to enable the Customer or to use the Service, Peak Telecom grants the Customer, for the duration of this Agreement, a non-exclusive, non-transferable license to use the software for that purpose.

## **9. Warranties**

9.1 The service will be provided without warranty or representation of any kind, whether express or implied Peak Telecom disclaims and excludes all such warranties and representations including without limitation any warranty or representation that the Service is free of defects, of satisfactory quality, fit for a particular purpose or non-infringing of third party rights. The Customer accepts all risks and liabilities associated with the use of the Service.

## **10. Limitation of Liability**

10.1 Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.

10.2 Neither party shall be liable in contract, tort, pre-contract or other representations (other than fraudulent or negligent misrepresentations) arising out of or in connection with this Agreement for:

- any economic losses (including, without limitation, loss of revenues, profits, contracts, or business); or
- any special, indirect or consequential losses or any destruction of data, arising out of or in connection with the provisions of this Agreement.

10.3 Subject to clauses 10.1 and 10.2 Peak Telecom liability to the Customer in contract, tort, negligence, pre-contract or other representations arising out of or in connection with this Agreement or the performance or observation of its obligations under this Agreement shall be limited in aggregate to the charges paid, by the Customer under this Agreement.

10.4 Each provision of this Agreement, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

10.5 The Customer indemnifies Peak Telecom and its suppliers including any carriers against any claims or damages arising from the Customers access to or use of the Service and any information, data or material produced, transmitted or downloaded on the Service.

## **11. Force Majeure**

11.1 If either party is unable to perform any obligation under this Agreement because of a matter beyond that party's reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving that party's employees), or acts of local or central Government or other Competent authorities or events beyond the reasonable control of that party's suppliers, the party will have no liability to the other for that failure to perform.

11.2 If any of the events detailed in paragraph 11.1 continue for more than 3 months either party may serve notice on the other terminating this Contract.

## **12. Termination**

12.1 The Customer may terminate this agreement after the initial term by giving 30 days written notice to Peak Telecom. The termination fee for each service provided under this agreement is £30. If the initial or any subsequent 12-month period is terminated early The Customer will pay Peak Telecom the remaining charges for the service or services in full. Upon termination Peak Telecom shall be entitled to raise invoices for all sums due and all invoices (whenever raised) shall become due for payment immediately

12.2 Either party may terminate this Agreement or the Service provided under it immediately, on notice, if the other:

- commits a material breach of this Contract, which is capable of remedy, and fails to remedy the breach within 15 days of a written notice to do so;
- commits a material breach of this Contract which cannot be remedied;
- is repeatedly in breach of this Contract;
- or with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administrator is appointed over their assets.

12.3 Migrations away from the service do not attract a charge notwithstanding any early termination fees due under 12.1.

12.4 Peak Telecom may terminate this Agreement immediately upon written notice to the Customer if:

- Peak Telecom is informed by our suppliers or carriers supporting the Service that our suppliers and carriers is required to cease the Service by a competent regulatory authority;
- or our suppliers and carriers supporting the Service ceases to do so for whatever reason or changes the terms its provision of telecommunications services to Peak Telecom for the Service beyond the reasonable control of Peak Telecom;
- the Customer fails to comply with any of the material terms or conditions of the Agreement and the Customer does not remedy such failure within 15 days of a request to do so.

12.5 Upon termination of this Agreement the Customer shall immediately stop using the Service and the Customer right to use the Service shall immediately terminate.

12.6 If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.

### **13. Confidentiality**

13.1 The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under or in connection with this Agreement or the Service and will not without the written consent of the other party disclose that information to any person (other than their employees or professional advisers, or in the case of Peak Telecom the employees of a Peak Telecom Group Company or their suppliers, who need to know the information).

13.2 This Clause 13.1 will not apply to:

- any information, which has been, published other than through a breach of this Agreement;
- information lawfully in the possession of the recipient before the disclosure under this Agreement took place;
- information obtained from a third party who is free to disclose it; and
- information, which a party is, requested to disclose and, if it did not, would be required by law to do so.

13.3 This Clause 13.1 will remain in effect for 6 years after the termination of this Agreement.

### **14. Data Protection**

14.1 Peak Telecom and the Customer each agree to comply with their respective obligations under applicable data protection legislation and maintain all relevant registrations, including (in relation to the Customer) such registrations and consents as the Customer should obtain and maintain to enable Peak Telecom to process personal data in connection with the performance by Peak Telecom of its obligations under this Contract.

14.2 The Customer agrees that Peak Telecom may put their name and other details obtained from the Order Form into a computerized directory for internal use and to enable Peak Telecom to provide the Service.

14.3 Rights of subject access will be in accordance with the Data Protection Act 1998 and upon request in writing.

14.4 Any and all data supplied by Customers is held in accordance with Peak Telecoms current Privacy Policy available at [support@peaktelecom.co.uk](mailto:support@peaktelecom.co.uk).

14.5 Third parties service providers working on our behalf are used to fulfil the contract and supply the service. The details of these providers are;

- Gamma Telecom Ltd. The Data Protection Officer can be reached using the following details;  
Data Protection Officer, Gamma Telecom, Kings House, Kings Road West, Newbury RG14 5BY.  
DPO@gamma.co.uk / <https://www.gamma.co.uk/privacy/>
- BT Group. The Data Protection Officer can be reached using the following details;  
PO Box 2681, BT Centre, 81 Newgate Street, London, EC1A 7AJ. cpo@bt.com /  
<https://www.productsandservices.bt.com/privacy-policy/>
- TalkTalk Business. The Data Protection Officer can be reached writing to;  
TalkTalk Business Customer Services, PO Box 674, Salford, M5 0NJ /  
<https://www.talktalkbusiness.co.uk/legal/privacy-policy/>
- Interoute Communications Ltd. The Data Protection Officer can be reached using the following details;  
[info@interoute.com](mailto:info@interoute.com) / <https://www.interoute.com/privacy-policy>
- FLR Spectron Ltd. The Data Protection Officer can be reached using the following details;  
[info@flrs.co.uk](mailto:info@flrs.co.uk) / <https://flrs.co.uk/privacy-policy/>

## 15. Notices

15.1 Notices given under this Agreement must be in writing and may be delivered by hand, or by courier or first-class post to the following address: Stamford House, 57 Liddon Road, Bromley, Kent, BR1 2SR.

15.1.1 To Peak Telecom at the address of the Peak Telecom office shown on the Order Form or any alternative address which Peak Telecom notifies to the Customer;

15.1.2 To the Customer at the address to which the Customer asks Peak Telecom to send invoices, the address of the Customer's premises, or, if the Customer is a limited company, its registered office.

## 16. General Provisions

16.1 The Agreement will constitute the entire agreement between the parties and will supersede all prior and contemporaneous agreements, communications and representations (except for fraudulent or negligent misrepresentations) whether oral or written, between the parties.

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

16.3 In the event of a dispute between the parties, the parties will attempt in good faith to resolve the dispute or claim arising out of or relating to the Agreement promptly through negotiations between the respective representatives of the parties who have authority to settle the same.

16.4 If any provision of the Agreement (whether in part or in whole) is held by a court of competent jurisdiction to be illegal, invalid or unenforceable the remaining provisions of the Agreement shall remain in full force and effect.

16.5 Any waiver of any breach of any provision of the Agreement will not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Agreement.

16.6 The Customer may not assign or otherwise transfer, by operation of law or otherwise, the Agreement or any rights or obligations therein without the prior express written consent of Peak Telecom.

16.7 The headings to the sections of this Agreement are for convenience only.

## 17. Law

17.1 The Agreement shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.



## Ethernet Terms and Conditions

YOUR AGREEMENT WITH US (this "AGREEMENT") IS MADE UP OF THE FOLLOWING DOCUMENTS:

- (i) THESE CONDITIONS FOR ETHERNET SERVICES;
- (ii) THE PEAK TELECOM UK LTD CONDITIONS FOR COMMUNICATION SERVICES;
- (iii) THE PEAK TELECOM UK LTD SERVICE AGREEMENT(S);
- (iv) THE RELEVANT PEAK TELECOM UK LTD TARIFF(S) FOR THE SERVICES WE AGREE TO PROVIDE TO YOU; AND
- (v) ANY FURTHER PEAK TELECOM UK LTD CONDITIONS RELATING TO SPECIFIC SERVICES.

The terms of this agreement form part of the conditions of sale, and shall be incorporated into the Service Agreement signed by the customer. These terms are to be read in conjunction with the Conditions for Communication Services. No individual set of terms will individually constitute a full service contract for this Service. In the event of any conflict or inconsistency between the terms within these conditions and the Conditions for Communication Services, then the terms within these conditions will prevail.

### 1. The Service

- 1.1 We will supply you with the services in accordance with our conditions and the accompanying signed Service Agreement and fully completed customer requirements form. The combination of which will form a service contract between the parties.
- 1.2 All details specified on the Service Agreement are based on information supplied by you and/or collected during a site survey and may be subject to amendment in accordance with Clauses 1.4 to 1.6 below.
- 1.3 We and/or our subcontractors may conduct surveys to clarify whether the Service, Equipment, Service Commencement Date, Installation Fee, or Service Fee require amending.
- 1.4 Where we determine that amendments are required, we will submit to you a replacement Service Agreement, reflecting any such changes. If the replacement Service Agreement is agreed by you, that replacement Service Agreement will immediately supersede the original Service Agreement (which will be immediately cancelled). If you do not agree the replacement Service Agreement, both the original Service Agreement and replacement Service Agreement will be cancelled by us 14 days after notification of such amendments. In some cases we will not provide a replacement Service Agreement and any amendments to the Service or the charges may be agreed instead by email correspondence.
- 1.5 Following the completion of the surveys and, if required, the agreeing of the replacement Service Agreement or email confirmation, we will confirm the Contractual Delivery Date to you. The Contractual Delivery Date may be later than your Required Date if the Required Date falls before the minimum order lead times.
- 1.6 We will use reasonable endeavours to meet any agreed times or dates, but time is not of the essence in respect of those times or dates and you acknowledge that all timeframes are estimates only and that service levels are target service levels only.
- 1.7 Throughout the provisioning process, we will need to communicate with named member(s) of your staff to arrange access to your premises. Any delays to these requests by you will delay Service Commencement Date and we will not be liable for any such delay.
- 1.8 To enable us to provide the Installation Service, you will:
  - prepare the Sites and your networks in accordance with our instructions. For the installation a minimum of two 13 amp AC outlets will be required for each NTE. The installing engineer will require access to further sockets for test equipment and commissioning. You are responsible, at your own cost, for the power supply and arranging alternative power supplies if any temporary supply fails. Installing engineers may refuse to install equipment if they perceive a hazard or risk,
  - connect any tail circuits to your network in accordance with our instructions,

- provide us with full access to your sites and networks and make available such office and technology facilities as may be necessary for us to provide the Service,
- provide a suitable operating environment for the equipment in accordance with the manufacturer's operating instructions,
- promptly furnish us with such information and documents as we may reasonably require for the proper performance of the Services,
- obtain all third party consents, licenses and rights reasonably required in order to allow us or our subcontractor to provide the Service and be responsible for complying with any applicable laws, statutes, regulations and codes of practice, in relation to the Services, and
- put in place adequate security and virus checking procedures in relation to any computer facilities to which it provides us with access.

- 1.9 All Equipment provided by us will remain our property and we reserve the right to request return of the Equipment at your cost. You agree to return the equipment to us on termination of your contract for any reason.
- 1.10 We reserve the right not to provide the Service to any Site and to withdraw our provisional acceptance of an order for reasons including, but not limited to:
- the distance between a site and the point of presence of Peak Telecom UK Ltd or its underlying service provider,
  - if a site survey finds that a site is not suitable for the provision of the Service,
  - if you do not agree to pay the excess construction charges or any other charges reasonably levied by us in addition to the charges initially proposed.
- 1.11 We or our nominated subcontractor will install the Service and will perform a series of commissioning tests to ensure that the configured Service is functioning correctly. On successful conclusion of the commissioning tests and, where applicable, the router installation the Service will be deemed to be ready for use and we shall be entitled to invoice you for such Service from this date ("the Installation Date"). The Service Commencement Date is subject to the installation of the required router (whether such is supplied and / or installed by us or not) and the completion of successful testing of the final installation with us and may be subsequent to the date when the Service is deemed ready for use as set out above. Where the Service is being used to provide connectivity to an IP telephony service the Service Commencement Date will be further contingent on you having successfully completed all necessary work on the provision of such IP telephony service.
- 1.12 Provision of the Service will be subject to the completion of a satisfactory site survey(s) by us or our subcontractor. You acknowledge that it will be necessary for us or our subcontractor to visit the installation Site or Sites to conduct such survey(s) and for the purposes of installation.
- 1.13 Where an appointment is made for us or our subcontractor to visit your Site, including for the purposes of a site survey or for installation and the visit cannot be successfully completed due to:
- the inability of us or our subcontractor, through no fault of our / their own, to complete the work,
  - the inability of us or our subcontractor to gain access to the site or sites or any part thereof which is necessary for the work,
  - the appointment is broken by the you,
  - your failure to prepare the site in accordance with Clause 1.8 or any other preparatory instructions we may have given you, or
  - any other reason where we or our subcontractor is not at fault,
- 1.14 we will charge you with our standard aborted visit charge which may be applicable at the time. Rescheduled appointments following an aborted visit will be subject to new lead-times and will be confirmed to you at the time.
- 1.15 Unless otherwise agreed in writing between the parties you must agree an appointment for installation at a Site within 14 days of notification by us of our preferred installation date. In the event that you do not agree such an appointment, the appointment will be deemed to have been fixed for our preferred installation date unless a revised Required Date is subsequently agreed.

- 1.16 Unless you have ordered an installation of the router, it is your responsibility to install a router at the Site or Sites where this is required and neither we nor our designated subcontractor shall bear any liability for failure to meet any Service Commencement Date due to delay in the installation of such router.
- 1.17 We will maintain your Service to the Service Demarcation Point.
- 1.18 Where we agree you may use/supply your own router for the Service then you agree that all responsibility and liability for such equipment remains with you. Should we or our subcontractor visit your Site due to a fault which is later found to be caused by equipment not provided by us then we will charge you for such site visit and any additional costs incurred as a direct result.
- 1.19 If you request and we agree to upgrade your bandwidth then additional charges may apply and we will advise you of these at the time.
- 1.20 The FTTC Ethernet Service requires a Peak Telecom UK Ltd PSTN line for service delivery and that line should have no other services or features attached to the line. The line should have a minimum Level 4 maintenance care. We will not accept an order for this Service if no such line is present. Where we install a new PSTN line for the Service this will affect the lead times for delivery of the service. The line will be subject to a separate charge.
- 1.21 Any FTTC Ethernet Service will cease automatically if the underlying PSTN line is ceased. However you will remain liable for any recurring fixed charges for the remainder of the contract for the affected FTTC Ethernet Service.
- 1.22 Any internal line shift carried out on the underlying PSTN line supporting the FTTC Ethernet Service may impact on the FTTC Ethernet speed (either slower or faster speed).
- 1.23 The fault resolution time for the FTTC Ethernet Service does not include any time taken to first resolve any PSTN faults affecting the availability or performance of the FTTC Ethernet Service. The target fault resolution time will commence from the time that it is established that the PSTN line is in working order and is not affecting the FTTC Ethernet Service. If you do not have Level 4 maintenance care then you accept and agree that any fault resolution will be in accordance with the specific care level on the line at the time.
- 1.24 Orders for the FTTC Ethernet Service will only be accepted where the predicted line speed is greater than 2Mbps in the downstream direction. Any orders with a predicted line speed below this will be cancelled and any Charges invoiced to you will be credited.
- 1.25 Actual available FTTC Ethernet line speed will be confirmed during the provisioning process. If the maximum upstream line speed is lower than originally ordered, we will process the order to allow the confirmed highest available downstream speed. For example, if a 20Mbps service is ordered but the maximum available upstream line speed is 18Mbps, the order will be processed as a 20Mbps service however the actual usable line speeds will be 20Mbps in the downstream direction and 18Mbps in the upstream direction.
- 1.26 The Broadband backup service requires a live analogue line provided by us and clear of any other Broadband services for service delivery. This line must also be located within 2 metres of the Ethernet termination point and router location.
- 1.27 The Broadband backup option is based on underlying Broadband technology and as such does not carry the same guaranteed service levels as the Ethernet Service. If the requirement is for a guaranteed secondary service then a secondary Ethernet Service should be considered.
- 1.28 The Broadband backup Service is offered based on suitability. In the event that the backup Service should prove inadequate following installation, we will modify the backup Service to an alternative backup Service or cease the original backup Service and supply an alternative, backup Service where availability permits. We reserve the right to charge a reasonable price for the installation of any such alternative backup Service.
- 1.29 Maximum line speeds for the Broadband backup Service are constrained by the maximum line speed subject to the availability of the same as set out in BT's advertised coverage of exchanges in the UK.
- 1.30 Simultaneous provision of the BT line together with the Broadband backup option is not available.
- 1.31 For a Fibre Ethernet with Fibre Ethernet backup Service, the actual resilient path of both fibre connections will only be confirmed following a site survey. In the event that, following such site survey, it is found that the two connections would have a shared route (or partial shared route) you have the option of cancelling the Order.

- 1.32 For a Fibre Ethernet with an EFM backup Service, both services will terminate in the same exchange as it is not possible to route to different exchanges (Fibre with Fibre backup must be used for this requirement).
- 1.33 FTTC Ethernet is not currently available as a backup to either Fibre Ethernet or EFM.
- 1.34 In the event of a fault on the primary Ethernet service, the Broadband backup services will automatically become effective. Use of the secondary backup service is not permitted other than in the event of a primary link failure. In the event of a failure of both the primary and secondary links, we will initially resolve the fault on the primary Ethernet link in accordance with our SLA.
- 1.35 If you fail to connect both the primary and secondary services to the router, the SLA will not come in to effect until such failure has been remedied.
- 1.36 The router we provide for the broadband backup service may be a refurbished router.
- 1.37 Where the Broadband backup Service is taken both the Ethernet primary Service and the Broadband backup Service will be delivered on the same day. If you opt to take delivery of these services on different days and also opt for the onsite router installation option, each visit will incur our standard visit charge unless you opt to connect the second service to the Peak Telecom UK Ltd provided router. For the avoidance of doubt where the Broadband backup Service is added to an existing Ethernet primary Service and you require the onsite router installation such addition and installation will be subject to our standard charge for such work available on request.

## **2. Acceptance**

- 2.1 We will notify you when the Installation Service has been completed. Within five (5) Working Days of the date of such notification, you will inspect and test the Service for the purpose of Acceptance ("Acceptance Testing").
- 2.2 During Acceptance Testing, you may notify us by email, telephone or fax of any material non-conformity of the Service.
- 2.3 To the extent that such non-conformities will have, in our opinion, a material detrimental effect on the Service, we will use its reasonable endeavours to remedy such non-conformities.
- 2.4 Acceptance shall take place on the earlier of:
  - your written confirmation to us or our subcontractor that the Acceptance Testing has been completed,
  - where you have not notified us under Clause 2.2, five (5) Working Days from the date of our notification to you that the Installation Service has been completed, or
  - where you have notified us under Clause 2.2 of material non-conformities, five (5) Working Days from the date on which the notified non-conformities were remedied, or immediately upon our demonstration that the notified non-conformities will not, in our opinion, have a detrimental effect on the Service.
- 2.5 Any additional time incurred by us remedying non-conformities notified by you under Clause 2.2 above shall, at our sole discretion, be reflected in corresponding extensions to the Service Commencement Date and the affected timescales in the project plan (if any). Any additional time incurred by us investigating any notified non-conformities which later are found not to exist, will be charged to you as a professional service on a time and materials basis in accordance with our then current standard rates.

## **3. Your Obligations**

- 3.1 You will be responsible for procuring any third party consents that may be required by us (and/or our subcontractors) to provide the Installation Service and/or the Service, including, for example, landlord consents, wayleave consents, tail circuit installation consents, and access consents. You will be responsible for the costs of procuring any such third party consents.
- 3.2 You will be responsible for providing named contacts (and any replacement contact(s)) and ensuring that they have the appropriate level of authority to make decisions relating to the Installation Service and the Service.

3.3 Where any part of the Service is a professional service to be provided at a Site, you will ensure that our staff and contractors have a safe place to work, and you will notify us (and our contractors where applicable) of any health and safety rules which apply to that Site. We will use our reasonable endeavours to ensure that our staff and contractors comply with such rules when working on your premises.

3.4 You will:

- perform all your obligations under the Contract,
- follow our reasonable instructions,
- provide us with up-to-date information, cooperation, support, and access, at your cost, to enable us to perform our obligations under the Contract,
- provide us with office, information technology, and telecommunications facilities (including full remote access), at your cost, to enable us to perform our obligations under the Contract,
- supply on an ongoing basis, at your cost, all space, power supply access points, cables, trunking, electricity, air conditioning and any other facility as may be defined following the site survey required to receive the Installation Service and the Service, and
- keep full and up-to-date secure backup copies of the data on the Network in accordance with good industry practice;
- comply with and maintain compliance with all such laws and regulations that relate to their provision of telecommunications and other products or services supplied by us.

3.5 You will not allow any unauthorised user or any third party to access or use the Equipment and / or the Service, and shall take all reasonable security precautions to avoid such unauthorised access or use, and / or add to, modify, or interfere with in any way, the Equipment and / or the Service.

#### **4. Your Use of the Service**

4.1 You will not use the Service in any way that would constitute or contribute to the commission of a crime, tort, fraud, or other unlawful activity (including activities deemed unlawful under a complainant's legal jurisdiction) ("Laws"). You will indemnify, and keep us fully indemnified, against all costs, claims, demands, expenses, and liabilities arising out of, or in connection with, any claim that the Service (or its use) infringes any Laws.

4.2 You warrant that any material and / or communication transmitted, hosted, or otherwise processed using the Service will not be menacing, of a junk mail or spam like nature, illegal, obscene, threatening, defamatory, discriminatory, promote illegal or unlawful activity, or be otherwise actionable or in violation of any rules, regulations, or laws to which the Service is subject, and will not infringe the intellectual property rights of Peak Telecom UK Ltd Business Communications or any third party. You will indemnify and keep us fully indemnified against all costs, claims, demands, expenses and liabilities arising out of or in connection with any breach or reasonably suspected breach of this Clause 4.2.

#### **5. Equipment Maintenance**

5.1 If ordered, the Equipment Maintenance service level will be as detailed in the Service Agreement or customer requirements form.

5.2 Equipment Maintenance covers Equipment provided as part of the Installation Service but for the avoidance of doubt it excludes, but is not limited to, the following: Ethernet routers, cabling or telephone handsets where provided.

5.3 Equipment Maintenance cover must be taken at the time of ordering the Service and cannot be added subsequently.

- 5.4 Equipment Maintenance cover is provided in accordance with the Equipment Maintenance Service Description which is available on request.
- 5.5 Equipment Maintenance cover is provided for the duration of the initial minimum term as specified on the Service Agreement. At the end of the initial minimum term, the contract will automatically renew for a further period of twelve (12) months, on a rolling twelve (12) month basis, unless we receive prior notice from you giving a minimum of sixty (60) days written notice of your wish to terminate the Equipment Maintenance cover. Termination of the Equipment Maintenance cover does not constitute termination of the Service unless specifically requested by you.
- 5.6 We shall not be liable for any failure to achieve the required service level to the extent that such failure results from: 5.5.1 your breach of any of your obligations under these terms,
- a failure attributable solely to the use of public telecommunications links,
  - an event of force majeure or matter beyond our reasonable control as defined in our Conditions for Communication Services.
- 5.7 Without prejudice to any other right or remedy you may have under this Agreement, if we fail to meet any of the service level commitments we will use reasonable endeavours to remedy such failures which will include us or our subcontractor:
- investigating the cause of the failure or problem and discussing investigation results with you;
  - finding a solution to such failures that is acceptable to you;
  - advising you of the status of all remedial efforts.
- 5.8 In the event that the failure to achieve the required service level is only partially the result of any matter falling within clause 5.5 the actual performance of us or our subcontractor in relation to the required service level shall be adjusted to such level as the parties agree would have been achieved but for the impact of such matters. In the event that the parties are unable to agree upon the appropriate adjustment the matter shall be referred to an expert for determination.
- 5.9 Equipment Maintenance is subject to a fair use policy. We may have to curb the usage of the Equipment Maintenance service should you become a persistently high user of the Equipment Maintenance service whereby it can be shown that the causes of the usage are down to configuration changes initiated by you and not network faults or errors. We will engage with you to ascertain the reason for persistent high usage and work on solutions that will allow the usage to return to a more reasonable level. In cases of sustained high usage due to configuration changes initiated by you then we reserve the right to notify you that the work will become chargeable and then charge you the hourly rate as applicable at the time.
- 5.10 If Equipment Maintenance has not been ordered, then the replacement of the faulty Equipment is dependent upon the warranty offered by the relevant manufacturer. If an additional engineer visit is required, then this will be chargeable to you and will be arranged within usual working hours. Except where a relevant Equipment Maintenance contract is entered into, we will provide assistance to you in dealing with manufacturers but we will accept no liability in respect of any defect or breakdown of Equipment or any losses, financial or otherwise, as a direct result of such defect or breakdown.
- 5.11 Save as expressly provided by this Clause 5 we do not give any warranty condition or undertaking as to the state of such Equipment other than that the configuration work will be performed correctly.

## **6. Risk and Warranty**

- 6.1 On delivery of the Equipment to you full risk of damage to, or loss of, such equipment shall pass to you.
- 6.2 For a minimum period of thirty (30) days from delivery, if any Equipment materially fails to comply with the manufacturer's specifications (a "defect"), you will immediately notify us of such defect, and we will investigate such defect. If we agree that the Equipment has a defect, we will replace the Equipment.
- 6.3 Where a fault reported is deemed to be caused by a router provided by us, we will replace this as long as the current router is within its warranty period. We will despatch a new router to you as soon as possible, pre-configured with the username and password and any IP Addressing requested on the original order. At this point a charge for the new router will be raised and only credited back on receipt of the original faulty router. If the router is outside of the warranty period, we will provide a new router and the new router will be chargeable in accordance with the tariff applicable at the time.
- 6.4 Where we agree you may provide your own router at the outset or as a replacement, you will, at your own cost, be responsible for repairing, maintaining, and replacing any equipment that no longer operates in accordance with its manufacturer's specifications. Where you replace the Equipment, the replacement shall be (i) equivalent to the original's functionality and performance, and (ii) approved by us in writing. You will be responsible, at your own cost, for (i) reconfiguring any replacement of the Equipment to the same or equivalent configuration as the original (if agreed by the parties, such reconfiguration work may be provided by us as a professional services at our then current standard rates), and (ii) installing such reconfigured replacement in place of the original.
- 6.5 Any impact on the Service caused by substandard performance or non-availability of the Equipment under Clauses 6.2 or 6.3 shall be excluded from our service level obligations under the Agreement, and such exclusion shall continue for as long as any of the circumstances in Clauses 6.2 or 6.3 continues.

## **7. Fees and Payment**

- 7.1 All pricing will be indicative only and is not binding until confirmed by us. The pricing given is valid at the point of quote, but it can only be confirmed at the point of order with the tail provider. Additional charges, such as but not limited to excess construction charges, may be applied, following the site survey. All prices are quoted are exclusive of VAT. Prices are valid for 30 days only. You will have ten (10) days to accept or refuse any excess construction charges, failure to do so will result in immediate cancellation of your order. Although excess construction charges are typically identified following site survey, it is possible in certain circumstances that they may arise later on during the provisioning process if, following an attempt to deliver the Service, additional infrastructure, work is required to provide the Service.
- 7.2 Unless otherwise specified on the Service Agreement, starting from the Service Commencement Date, you must pay the Service Fee monthly in advance, the Installation Fee upfront and any usage fees, if applicable, monthly in arrears.
- 7.3 Unless otherwise agreed by us in writing, any discount specified on the Service Agreement shall only apply during the Initial Term, and shall not apply to subsequent Service periods.
- 7.4 After the Initial Term, we shall be entitled to revise any fees under the Service Agreement with effect from any anniversary of the Service Commencement Date to reflect our then current standard rates by giving you not less than thirty (30) days' written notice.
- 7.5 We shall be entitled to increase the Service Fee at any time with immediate effect where we can reasonably demonstrate that such an increase is due to an increased cost of providing the Service caused by a third party supplier, or legal or regulatory change. Any such increase in the Service Fee will not exceed the increased cost incurred by us in providing the Service.
- 7.6 We may require you to pay a deposit and / or require you to procure that your parent company or related company guarantees the payment of any fees under the Agreement. You agree to enter into (and / or procure the execution of) any agreement or deed reasonably required for any such purpose.

## 8. Service Suspension

8.1 By giving reasonable notice to you, or if this is not practicable, such notice as is reasonably practicable in the circumstances, we may suspend the Service (or any part of the Service) for reasons to include but not limited to:

- for operational reasons in accordance with the service levels, or
- if required because of a regulatory or legal change, or
- if we are obliged to comply with the order, instruction, or request of a court, government, agency, emergency service organisation, or other competent administrative or regulatory authority, requiring suspension to the Service, or
- if your use of the Service may damage or disrupt the proper functioning of the infrastructure and / or equipment used to provide services to our other Customers, or
- if we have reasonable grounds to believe that you are in breach of your obligations, and you either fail to remedy that breach or fail to demonstrate to our reasonable satisfaction that no breach took place within two (2) Working Days of written notice of the suspected breach for a serious breach (serious breach to include, but not limited to, a breach likely to cause serious damage to us or our brand, or that of our contractors, or result in legal action by a third party) or within ten (10) Working Days of written notice of the suspected breach for other breach, or
- if an undisputed invoice (or an undisputed part of an invoice) is not paid in full by the due date, provided that we have given you at least five (5) Working Days' notice of such non-payment.

8.2 Suspension of the Service shall cause our service level obligations to be excluded for the period of the suspension. Such suspension of the Service shall continue for as long as any of the circumstances in Clauses 8 continues.

## 9. Term and Termination

9.1 The term of the contract as indicated on the Service Agreement will not start until the Service Commencement Date but you agree that you may be charged from the Installation Date. The contract will then continue for the initial minimum term stipulated within the Service Agreement. For the avoidance of doubt, if not specified on the Service Agreement the initial minimum term of contract is 12 months. At the end of the initial minimum term, the contract will automatically renew for a further period of twelve (12) months, on a rolling twelve (12) month basis, unless we receive prior notice from you giving a minimum of sixty (60) days written notice of your wish to terminate the Service. Such termination is not to take place earlier than the expiry of the current term or renewed term.

9.2 We shall have the right, by giving written notice to you, to terminate the Agreement immediately if you:

- commit any material breach of your obligations, and fail to remedy that breach within twenty-eight (28) days of written notice of that breach the twenty-eight (28) day period only applies where a breach is capable of remedy; if it is incapable of remedy, the Agreement may be terminated by written notice immediately), or
- have a winding up petition presented, or enter into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency), or make an arrangement with your creditors or petitions for an administration order, or has a receiver or manager appointed over any of your assets, or generally becomes unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986.



- 9.3 We may terminate the Service or part thereof on 60 days written notice to you provided that such notice extends the termination date beyond the end of the minimum term as set out in the Service Agreement.
- 9.4 Where the Agreement is terminated or otherwise brought to an end, all Service Fees for the remainder of the initial term or the renewed term (as applicable) shall become payable immediately.
- 9.5 If you cancel an ordered Service or any part of it, notwithstanding that such order has only been provisionally accepted by us, you agree to reimburse us for any costs we have incurred in preparing to deliver the Service in addition to the standard cancellation charge, as may be applicable at the time. We will take all reasonable steps to mitigate any such costs. If you have had a site survey you will pay the full site survey charges. If the Service includes any excess construction charges such charges will be payable in full by you on cancellation of an ordered Service. If we have provided you with any Equipment you will return such Equipment to us immediately in full working order at your cost.
- 9.6 If you request a change to the Required Date and/or the Contractual Delivery Date (and this has been accepted by us) and you subsequently cancel the order any cancellation charge will be calculated on the later of the revised Required Date or Contractual Delivery Date, as the case may be.
- 9.7 If the cancellation of the order is due to our failure to provide the Service within a reasonable time after the agreed Required Date or Contractual Delivery Date, if later, no cancellation charge will be levied.
- 9.8 We shall have the right to terminate the Agreement immediately if required because of a regulatory or legal change or are required to do so by a direction of Ofcom.
- 9.9 Any broadband backup service is provided on a minimum 12 month term. Where a service is added to a live Ethernet primary connection that has a remaining contract period of less than 12 months, the broadband backup service minimum 12 month term will still apply and we shall have the right to invoice you for any unexpired part of such minimum term should the Service be terminated within this period.

## **10. Liability**

- 10.1 We shall not be liable for any delay or failure in performing our obligations or failure to meet any dates under the Agreement caused by any circumstances beyond our reasonable control (such circumstances including, without limitation, any regulatory or legal change).
- 10.2 All warranties, conditions, obligations, or implied terms which are implied into the Agreement by statute, custom, or law are hereby excluded to the maximum extent permissible in law.
- 10.3 We do not exclude or limit our liability for death or personal injury caused by our negligence, and/or
- breach of the obligations arising from section 12 of the Sale of Goods Act 1979 (seller's implied undertaking as to title, etc.), and / or
  - breach of the obligations arising from section 2 of the Supply of Goods and Service Act 1982 (implied terms about title, etc. in certain contracts for the transfer of property in goods), and / or
  - fraudulent misrepresentation,
- 10.4 We shall not be liable to you for any loss of profit, loss of revenue, loss of anticipated savings, loss of goodwill, loss of data and / or perceived damage to reputation.
- 10.5 We have no liability for any failure to meet the Contractual Delivery Date or for any failure to meet any service levels or to repair a fault within any given timeframe.

## 11. Definitions

- 11.1 “Acceptance” – acceptance by you that the Service has been completed successfully, in accordance with Clause 2.3. “Contractual Delivery Date” means the date the physical tail circuit is connected to your site.
- 11.2 “Equipment” – the router, switches, power over ethernet switches (POE) or any other Equipment we may provide as part of the Service.
- 11.3 “Equipment Maintenance” – an optional feature providing on-going maintenance of some Equipment provided as part of the Service and the Installation Service as further detailed in the “Equipment Maintenance Service Description”. “Network(s)” – the Local Area Network, network equipment, computer systems, and local cable infrastructure, at the Sites, to which the Service will be connected.
- 11.4 “Installation Fee” – the combined charge for the survey, equipment and the Installation Service, including excess construction charges, as specified on the Service Agreement or other amended documentation following site survey. “Installation Service” – the work (if any) carried out by us or our subcontractor at each Site to enable you to receive the Service, normally carried out between 0900 and 1730 on a Working Day.
- 11.5 “Installation Service Commencement Date” – the date on which the Installation Service will start, as may be specified on the Service Agreement and / or customer requirements form. “Required Date” – the date you wish the Service to commence. “Service Agreement” – our completed and signed order form for services and / or products incorporating the product order form(s) and customer requirements form(s).
- 11.6 “Service” – the services, as specified on the Service Agreement, and as may be further detailed in the Order Form and / or the Customer Requirements Form detailing the Sites, Installation Service, Equipment, and Service, the related configuration, solution design, and setup of these, and any project documentation for the Installation Service.
- 11.7 “Service Commencement Date” – the date on which the Service will start, provisionally set as the target service commencement date and confirmed by us during the Installation Service.
- 11.8 “Service Demarcation Point” - is the customer port of the Peak Telecom UK Ltd-supplied router. Your local area network, its configuration and management is your responsibility.
- 11.9 “Service Fee” – the fee for the provision of the Service, as specified on the Service Agreement.
- 11.10 “Site” – each of your sites where the Installation Service and the Service will be provided, as may be specified in the Customer Requirements Form.
- 11.11 “Working Day” – any day falling on or between Monday to Friday, but excluding all English public and bank holidays.
- 11.12 “You” – the entity which contracts with us.
- 11.13 “We” or “Us” – Peak Telecom UK Ltd, incorporating Peak Telecom UK Ltd Network Services, and / or our chosen subcontractor(s).

## BT Lines, SIP trunks and Inbound Services Terms and Conditions

### 1. Definitions

- 1.1 “The Act” means the Communications Act 2003 and any Amendments to the Act that may be made from time to time or any subsequent substitution thereof. “The Agreement” means the agreement between Peak Telecom and the Customer for the provision of the Services in accordance with those terms and conditions. “Commencement Date” means the date the Customer signs the agreement for fixed line and broadband services and accepts the terms and conditions outlined below. “Customer” means the Customer whose details are set out overleaf.

“Peak Telecom” means Peak Telecom UK Limited (Company No: 3752064) whose registered office is at 5 Moat Close, Chipstead, Kent, TN13 2HZ.  
“Minimum Term” means the period of 12 Months from the Commencement Date. In the case of BT Line Rental transfers, the 12-month minimum term for each individual line will commence on the date the line is transferred to Peak Telecom by BT (this date may vary from the date on the front of this agreement). “Services” means Peak Telecom’s provision of telephony services as listed and described in Peak Telecom’s product literature and publications from time to time.

## 2. The Service

2.1 Peak Telecom undertakes to provide the Customer with Peak Telecom’s services as listed on the order form.

## 3. Duration

3.1 This agreement shall come into existence on the Commencement Date and, subject to clause 9 of this Agreement, shall continue for the Minimum Term and thereafter until terminated by either party upon the giving of 30 days notice to the other, such notice to take effect following the Minimum Term and on the anniversary of the Commencement Date.

3.2 Upon expiry of the Minimum Term, or any anniversary thereafter, this Agreement will renew automatically for a further period of 12 months (“Subsequent Terms”) unless terminated by either Party in accordance with the terms of this Agreement.

3.3 All BT Line Rental Transfers or new installations will automatically enter into a new 12-month agreement with Peak Telecom. For bespoke packages, this term may be extended to either 24 months or 36 months. In the case of a bespoke package, this will be clearly indicated on the order form.

## 4. Use of the Services

4.1 The Customer shall be responsible for the safe keeping and safe use of the Services any related equipment after installation of the Services and the Customer undertakes in particular;

- not to cause any attachments other than those approved for connection under the Act to be connected to the equipment supplied hereunder.
- not to contravene the Act or any other relevant regulations or licences.

4.2 Customer apparatus shall at all times conform to the standard or standards (if any) for the time being designated under the Act and Peak Telecom shall not be under any obligation to connect or keep connected any Customer apparatus if it does not comply or if in the reasonable opinion of Peak Telecom it is likely to cause death, personal injury, damage or to impair the quality of any Services provided by Peak Telecom.

4.3 The Customer undertakes to use the Services in accordance with the Act. Without limitation the Customer undertakes to use its reasonable endeavours not to use the Services;

- as a means of communication for a purpose other than that for which the Services are provided, and
- for the transmission of any materials which are defamatory, offensive or of an abusive or menacing character.

4.4 The Customer shall not assign or delegate or otherwise deal with all or any of its rights and obligations under this Agreement without Peak Telecom’s prior consent, such consent not to be unreasonably withheld. Peak Telecom shall have the right to assign or otherwise delegate all or any of its rights and obligations under this Agreement.

## 5. Access to Premises and Provision of Information

5.1 To enable Peak Telecom to comply with its obligations under the Agreement;

- The Customer shall allow or procure permission for Peak Telecom and any other person(s) authorised by Peak Telecom to have reasonable access to their premises and the Services connection points and shall provide such reasonable assistance as Peak Telecom requests.
- Peak Telecom will normally carry out work by appointment and during normal working hours, but may request the Customer to provide access at other times but such requests shall not oblige the Customer to provide such access.

5.2 If the customer requests maintenance or repair work which is found to be unnecessary, the Customer may be charged for the work and the costs incurred.

5.3 Wherever appropriate the Customer duly authorises Peak Telecom, its dealers, agents or personnel to reprogram and / or remove existing access equipment in order to provide the Services.

5.4 Wherever the appropriate, the Customer duly authorises Peak Telecom's personnel to complete any necessary paperwork in order to provide the Services.

## **6. Suspension of Services**

6.1 In the event that the Customer is in breach of a material term of this Agreement, Peak Telecom may at its sole discretion and upon giving the Customer notice elect to suspend the provision of Services until further notice, without compensation. Such notice may be given either orally or in writing, but if given orally shall be confirmed in writing. In the event that the breach of the Agreement is remedied by the Customer (if capable of remedy) within the 14-day period as set out in Peak Telecom's notice, then Peak Telecom shall recommence the provision of the Services. In the event that the material breach is not remedied within the period of 14 days, then Peak Telecom shall have the option of either terminating this Agreement under the provision of clause 9.1 below or of continuing the Service, whichever it shall elect.

## **7. Liability**

7.1 Nothing in the Contract will exclude or restrict Peak Telecom's liability for death or personal injury resulting from the negligence of Peak Telecom or of its employees while acting in the course of their employment.

7.2 In the event that the Peak Telecom Service fails to operate and the Customer diverts traffic to another carrier, Peak Telecom will not be responsible for that Carriers' charge.

7.3 Neither party shall be responsible to the other in contract, tort or otherwise for any loss of business, contracts, anticipated savings or profits or for any other indirect or consequential loss whatsoever.

7.4 Each party's liability in tort, contract or otherwise arising out of or in connection with the performance of either parties' obligations under this Agreement shall be limited to £500 for any one incident and £1,000 in aggregate.

7.5 Neither party shall be liable to the other for any damage or loss which may be incurred by the other party due to any cause beyond the first party's reasonable control including without limitation any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways, authorities, other public telecommunications operators or other competent authority production or supply of services by third parties.

## **8. Charges and Payment**

8.1 Charges are payable by Direct Debit, unless agreed otherwise with Peak Telecom. If a Customer cancels an active Direct Debit without Peak Telecom's consent, an administration charge of £25 may be levied.

8.2 Usage charges will be such charges for the use of the Services by the Customer as Peak Telecom notify to the Customer from time to time.

8.3 Usage charges payable shall be calculated by reference to any data recorded or logged by Peak Telecom and not by reference to any data recorded or logged by the customer.

8.4 Peak Telecom reserves the right to charge interest on amounts outstanding 14 days after invoice until payment in full is received, at a rate equal to 2 per cent per annum above the NatWest Bank PLC Base Lending Rate current from time to time, whether before or after judgement. Interest shall continue to accrue notwithstanding termination of this Agreement.

8.5 All sums referred to in this Agreement are exclusive of Value Added Tax and any other taxes of a similar nature, which may from time to time be introduced.

8.6 Peak Telecom may, in April of each year, apply an increase to Access Fees by the Retail Price Index ("RPI") published by the Office for National Statistics in January of that year. If the RPI rate is a decrease, Access Fees will not be adjusted and if that index is not published for the given month, Peak Telecom may use a substituted index or index figures published by that office for that month; and may change this Agreement (including changing or introducing new Charges or changing or withdrawing Services): where required to comply with Applicable Law or

regulation; due to a change in Peak Telecom's or a Third Party Provider's charges, out-payments, operations or services; or where Peak Telecom reasonably determines the change is needed to maintain or improve quality of the Service.

## 9. Termination

9.1 Notwithstanding anything to the contrary expressed or implied in the Agreement, either party (without prejudice to its other rights) may terminate this Agreement forthwith in the event that:

- a liquidator (appointed other than for the purpose of amalgamation or reconstruction of a solvent company), trustee in bankruptcy, administrator, receiver or receiver and manager is appointed in respect of the whole or any part of the assets and / or undertaking of the Customer or the Customer enters into an arrangement or composition with its creditors, or if the Customer enters into an arrangement or composition with its creditors, or if the Customer becomes unable to pay its debts within the meaning of s123 of the insolvency Act 1986, or other circumstances arise which entitle a Court or Creditor to appoint a receiver or administrator or to make a winding up order; or,
- the other party is in breach of a material term of this Agreement and upon being given notice of that breach in writing fails to remedy that breach within 14 days.

9.2 Notwithstanding anything to the contrary expressed or implied in this Agreement, Peak Telecom (without prejudice to their other rights) may terminate this Agreement forthwith in the event that any licence under which the Customer has the right to run its telecommunications systems and connect it to the Peak Telecom system is revoked, amended or otherwise ceases to be valid.

9.3 In the event that the Customer terminates this agreement before the end of the Minimum Term or any Subsequent Terms and fails to give one month's written notice in accordance with clause 3.1, Peak Telecom reserves the right to raise a charge to recover its lost revenue for the short notice given for the balance of the term based upon the Customer's last three full calendar month's bills (or such lesser period as is available). The Customer shall also pay any outstanding bills for Services received.

## 10. General

10.1 This Agreement represents the entire understanding between parties in relation to the subject matter hereof and supersedes all other agreements and representations made by either party, whether oral or written and this Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party hereto. Neither party excludes or seeks to exclude liability to the other by reason of fraud or fraudulent misrepresentation pursuant to this clause 9 or any other clause of this Agreement.

10.2 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operates so as to bar the exercise or enforcement thereof or any other right on any later occasion.

10.3 Any notice, invoice or other document which may be given by Peak Telecom under this Agreement shall be deemed to have been duly given if left at or sent by post to an address notified to Peak Telecom in writing by the Customer as an address to which notices, invoices or other documents may be sent, or the Customer's usual or last known place of abode or business, or if the Customer is a limited company, its registered office.

10.4 Any notice which may be given by the Customer to Peak Telecom under this Agreement shall be given by prepaid recorded delivery letter to such address as is shown on the last invoice rendered to the Customer or such address as Peak Telecom may prescribe for this purpose.

10.5 This Agreement shall be governed by, and construed and interpreted in accordance with English law, and the parties hereby submit to the jurisdiction of the English Courts.

10.6 All rates quoted exclude VAT at the current rate

## 11. Third Party Rights Act

11.1 A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 12. Data Protection

- 12.1 Peak Telecom and the Customer each agree to comply with their respective obligations under applicable data protection legislation and maintain all relevant registrations, including (in relation to the Customer) such registrations and consents as the Customer should obtain and maintain to enable Peak Telecom to process personal data in connection with the performance by Peak Telecom of its obligations under this Contract.
- 12.2 The Customer agrees that Peak Telecom may put their name and other details obtained from the Order Form into a computerized directory for internal use and to enable Peak Telecom to provide the Service.
- 12.3 Rights of subject access will be in accordance with the Data Protection Act 1998 and upon request in writing.
- 12.4 Any and all data supplied by Customers is held in accordance with Peak Telecoms current Privacy Policy available at [privacy@peaktelecom.co.uk](mailto:privacy@peaktelecom.co.uk).
- 12.5 Third parties service providers and partners working on our behalf are used to fulfil the contract and supply the service. The details of these providers are;
- Gamma Telecom Ltd. The Data Protection Officer can be reached using the following details;  
Data Protection Officer, Gamma Telecom, Kings House, Kings Road West, Newbury RG14 5BY.  
DPO@gamma.co.uk / <https://www.gamma.co.uk/privacy/>
  - BT Group. The Data Protection Officer can be reached using the following details;  
PO Box 2681, BT Centre, 81 Newgate Street, London, EC1A 7AJ. cpo@bt.com /  
<https://www.productsandservices.bt.com/privacy-policy/>
  - TalkTalk Business. The Data Protection Officer can be reached writing to;  
TalkTalk Business Customer Services, PO Box 674, Salford, M5 0NJ /  
<https://www.talktalkbusiness.co.uk/legal/privacy-policy/>
  - Interoute Communications Ltd. The Data Protection Officer can be reached using the following details;  
[info@interoute.com](mailto:info@interoute.com) / <https://www.interoute.com/privacy-policy>
  - FLR Spectron Ltd. The Data Protection Officer can be reached using the following details;  
[info@flrs.co.uk](mailto:info@flrs.co.uk) / <https://flrs.co.uk/privacy-policy/>

## Mobile Devices, SIM Cards and MDM Terms and Conditions

### 1. Agreement Structure

- 1.1. The Agreement shall comprise of: (1) each set of Commercial Terms; (2) the Service Terms; (3) any applicable Price Plan Guide(s); (4) these Peak Telecom General Terms; (5) Peak Telecom's Standard Price List; and (6) any other document expressly referred to in this Agreement; which apply in decreasing order of precedence.

### 2. Definitions

- 2.1 The defined terms in the Agreement shall have the following meanings:

**Actual Spend** – For applicable Agreements specifying a Target Spend, the aggregate amount of Charges incurred and paid by The Customer during the Minimum Term for the Service which the Target Spend relates, but excluding Equipment Charges.

**Access Fee** – A periodic fee payable by The Customer for use of the Services.

**Bearer Service** – The method of transport used to carry communication information over the Network and the provision of access for external communications to the Network. Speeds may vary significantly and are dependent on coverage.

**Business Day** – Any day which is not a Saturday, a Sunday or a public holiday in England.

**Charge** - Access Fees, fees for Equipment, Software Licence fees, Recovery Charges, and all other fees payable by The Customer for use of the Services.

**Commencement Date** – The date of Peak Telecom’s acceptance of the Commercial Terms. Where acceptance is not express, acceptance is deemed when Peak Telecom begins to provide the Services and/or Equipment to The Customer. Except for Target Spend Services, if The Customer makes further orders after the initial Commencement Date, the commencement date for the ordered Services shall be the date Peak Telecom begins to provide the ordered Services and/or Equipment to The Customer.

**Commercial Terms** – The document headed ‘The Customer Agreement’ or ‘Order Form’ together with the Connection Schedule which details the commercial offer to The Customer for the Services, and which incorporates any applicable Service Terms and Price Plan Guides and these Peak Telecom General Terms.

**Confidential Information** – Information which would reasonably be regarded as confidential by a business person concerning the operations, business, services, know-how, suppliers, the Customers, or products of the disclosing Party disclosed by a Party to the other Party before or after the Commencement Date.

**Connection** – A SIM Card that has been configured to attach to the Network, with a price plan associated with it.

**Connection Schedule** – (if applicable) forms part of the Commercial Terms.

**Content Service Pass** – A virtual pass to access content services as part of The Customer’s price plan (where applicable).

**The Customer Affiliate(s)** – Any corporate body registered in the UK in which the Customer has the beneficial ownership of more than 50% of the issued share capital, or the legal power to direct the general management of that company.

**The Customer** – The contracting party set out in the Commercial Terms.

**The Customer Equipment** – Any tangible material not supplied by Peak Telecom to The Customer which The Customer uses to access the Services.

**Due Date** – As specified in the Commercial Terms, and if not specified 14 days from the date of invoice by direct debit.

**Equipment** – Any tangible material, but not a SIM Card, supplied by Peak Telecom to The Customer, such as a mobile phone or a connecting cable.

**GSM Gateway** - Any equipment containing a SIM Card which enables calls from a fixed network (landline) to be routed via a GSM link to a mobile network establishing a mobile-to-mobile (‘on-net’) call.

**Insolvency Event** – An event where the other Party goes into liquidation, makes an arrangement with creditors, appoints a receiver or administrator, or has bankruptcy or insolvency proceedings brought against it; or suffers a similar event in any jurisdiction.

**Intellectual Property Rights** - Rights in, and in relation to, any patents, registered designs, design rights, trademarks, trade and business names (including all goodwill associated with any trademarks or trade and business names), copyright, moral rights, databases, domain names, topography rights and utility models, and including the benefit of all registrations of, applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable; rights in the nature of unfair competition rights and to sue for passing off; and trade secrets, confidentiality and other proprietary rights, including rights to know-how and other technical information.

**Minimum Term** – The minimum term which The Customer commits to receive a Service measured from the Commencement Date, as specified in the Commercial Terms.

**Network** - The telecommunication systems Peak Telecom uses to provide the Services.

**Partner** - a third party authorised by Peak Telecom who may have sold Equipment or Services to the Customer.

**Party** – Peak Telecom or the Customer, together ‘the Parties’.

**Port** - The transfer of a mobile number that is connected to the Network under this Agreement to a different network provided by another supplier.

**Price Plan Guide** – A document which details out of bundle Charges and individual terms for a particular standard price plan, as updated from time to time.

**Recovery Charge** – Where a Target Spend is specified in the Commercial Terms the recovery charge shall be calculated as the greater of: (a) Target Spend ÷ Minimum Term (in months) x number of months left in Minimum Term from date of termination; or (b) Target Spend – Actual Spend. If a Target Spend is not specified in the Commercial Terms the recovery charge shall be calculated as: Access Fee x number of months left in Minimum Term.

**Service(s)** – A service provided by Peak Telecom pursuant to the Agreement as described in the relevant Service Terms and Commercial Terms.

**Service Terms** – A schedule that sets out service specific information such as terms and conditions, specifications and technical information.

**SIM Card(s)** – A subscriber identity module card is an integrated circuit storing user specific data to allow use of equipment on the Network.

**Software** – A machine executable computer program, software module or software package or any part thereof (in object code only), for example mobile device management licences, supplied by Peak Telecom or its licensors to The Customer irrespective of how it is stored or executed.

**Software Licence** – The terms and conditions that prescribe: how The Customer shall use the Software, the rights of the Software owner or licensor, and the rights of the Software user, in relation to such Software.

**Standard List Price** – Peak Telecom’s standard unsubsidised Charges for Services as advised to The Customer by Peak Telecom and/or as made available on request by Peak Telecom (as amended by Peak Telecom from time to time).

**Target Spend** – The amount of money specified in the Commercial Terms for a particular Service (where applicable).

**Third Party Services** – Those Services provided by third parties which are charged in addition to The Customer’s inclusive price plan allowance. Third Party Services may include premium rate services, content services, calls to non-geographic numbers, calls to call forwarding numbers, using The Customer Equipment or Equipment abroad, or making calls and sending texts to a country outside the UK.

**UK** – England, Wales, Scotland, Northern Ireland and adjacent islands (e.g. Isle of Wight) but excluding the Channel Islands and the Isle of Man.

**User** – An individual end user of the Equipment and/or Services under this Agreement.

**Peak Telecom** – Peak Telecom UK Limited, registered number 03752064 and registered office Peak Telecom, 5 Moat Close, Chipstead, Kent, TN13 2HZ

### 3. **Peak Telecom’s Obligations**

3.1 Peak Telecom shall use reasonable endeavours to supply The Customer with the Services according to the standard of skill and care expected of a competent telecommunications provider.

3.2 The Customer acknowledges that, due to the nature of mobile technology, it is impossible to provide a fault-free Service. For example, the Services may be affected by local terrain (trees, hills and buildings), weather, electromagnetic interference, arrangement of and number of users accessing a base station, and compatibility and availability of any equipment, systems and third-party services used by The Customer.

3.3 Peak Telecom shall use reasonable endeavours to give The Customer access to networks outside the UK; however, because these overseas networks are not controlled by Peak Telecom, Peak Telecom shall not be responsible for their performance or functionality.

3.4 If content services are included in The Customer’s price plan, Peak Telecom shall provide The Customer with the Content Service Pass which the content service provider shall accept to give The Customer access to The Customer’s selected content.

### 4. **Use of Services**

4.1 Peak Telecom may suspend the Services: (a) for any maintenance, modification, or technical failure of the Network; (b) to safeguard the security and integrity of the Network; (c) for any breach of The Customer’s obligations in clause 4.3; (d) where it is necessary to comply with



law or regulation (including any orders by law enforcement or regulatory agencies); or (e) where The Customer has exceeded the credit limit on its account.

4.2 Peak Telecom shall keep all suspensions to a minimum and shall give The Customer prior notice of such suspensions where reasonably practicable.

4.3 The Customer shall not: (a) use any Equipment or Service for any purpose that may be abusive, a nuisance, illegal, or fraudulent; (b) do anything that causes the Network to be impaired; (c) use automated means to make calls, texts or send data (including via a GSM Gateway); or (d) use the Services in a way which is inconsistent with good faith commercial practice to Peak Telecom's detriment.

4.4 The Customer may supply the Equipment and Services to Users and (subject to clause 19.9) The Customer Affiliates, but The Customer shall not resell or otherwise distribute the Equipment or Services. The Customer is responsible for all obligations relating to the Equipment and Services including the compliance of Users and The Customer Affiliates with the terms of this Agreement and all applicable laws.

## 5. **Equipment supplied by Peak Telecom**

5.1 Title to Equipment shall pass to The Customer when Peak Telecom receives payment for it in full. Peak Telecom shall bear the risk of loss or damage to Equipment and SIM Cards until the point of delivery to The Customer and The Customer shall bear the risk of loss or damage to Equipment and SIM Cards from the time of delivery to The Customer.

5.2 The Customer shall notify Peak Telecom in writing within 7 Business Days of receiving damaged or incorrectly fulfilled new Equipment or SIM Cards, and within 10 Business Days if The Customer does not receive the Equipment or SIM cards. Following this notification, Peak Telecom shall replace such Equipment or SIM Cards free of charge.

5.3 Where Equipment becomes faulty due to a defect inherent in the Equipment within the manufacturer's warranty period, The Customer shall return such Equipment to Peak Telecom and Peak Telecom shall repair or replace the Equipment in accordance with Peak Telecom's Recovery Policy. Any out-of-warranty repairs shall be as set out in the Recovery Policy. The Customer acknowledges that The Customer Equipment not authorised for use on the Network may result in an impaired User experience.

5.4 Peak Telecom shall pass on the benefit of any warranties it receives from the Equipment manufacturer to the Customer. The Customer acknowledges that any attempt to repair, service or tamper with the Equipment by a person other than Peak Telecom or the applicable manufacturer may invalidate the manufacturer's warranty and may result in an impaired User experience. Peak Telecom's supply of Equipment shall be subject to availability.

5.5 Any The Customer Equipment or other hardware supplied to the Customer by a Partner shall be subject to the terms of the agreement between The Customer and Partner and Peak Telecom shall have no liability for such The Customer Equipment or its failure to operate on the Network.

## 6. **Charges**

6.1 Unless specified otherwise, Peak Telecom states all Charges exclusive of VAT which is charged at the current rate. Any Charges not specified in the Commercial Terms shall be at Standard List Price. Rounding and minimum charges apply as set out in the Commercial Terms and/or the applicable Price Plan Guide.

6.2 Access Fees shall be invoiced by Peak Telecom monthly in advance and all other Charges shall be invoiced monthly in arrears. The Customer shall pay all invoices by Direct Debit on the Due Date.

6.3 If The Customer reasonably and in good faith disputes an invoice or part of it, The Customer shall use reasonable endeavours to notify Peak Telecom of such dispute before the Due Date, providing explicit details of why the invoiced amount is incorrect and how much The Customer considers is due.

6.4 Where Peak Telecom has not received payment for undisputed Charges by the Due Date, Peak Telecom shall: (a) contact The Customer's accounts payable department (or other contact advised to Peak Telecom in writing) to request payment; and (b) be entitled to charge interest on the overdue undisputed Charges at 4% per annum above the base rate of the Bank of England. Where Peak Telecom has not received

payment within 7 calendar days of the Due Date, Peak Telecom shall contact The Customer again to request payment and give notice of the actions Peak Telecom will take under clause 6.5 if payment is not received.

- 6.5 Where Peak Telecom has not received payment within 7 calendar days of the Due Date, Peak Telecom may take all or any of the following actions until such time as payment, including any interest due, has been received: (a) withhold any sums owing to The Customer by Peak Telecom; (b) suspend The Customer's and/or User's use of the Services in relation to which Charges are outstanding; and (c) subject to Peak Telecom having taken one of the actions above, issue a notice under clause 10.3.
- 6.6 Peak Telecom may credit assess The Customer from time to time as reasonably required to assess Peak Telecom's risk. Each credit assessment shall entitle The Customer to have a credit limit on The Customer's Peak Telecom account (details of which are available on request). Peak Telecom may release this information to the Partner responsible for managing your account.
- 6.7 Peak Telecom may, in April of each year, either apply an increase to Access Fees by the Retail Price Index ("RPI") or the Consumer Price Index ("CPI") + 3.9%. The RPI and CPI are published by the Office for National Statistics in January of that year. If the RPI or CPI rate is a decrease, Access Fees will not be adjusted. If either index is not published for the given month, Peak Telecom may use a substituted index. Peak Telecom may change this Agreement (including changing or introducing new Charges or changing or withdrawing Services): where required to comply with Applicable Law or regulation; due to a change in Peak Telecom's or a Third Party Provider's charges, out-payments, operations or services; or where Peak Telecom reasonably determines the change is needed to maintain or improve quality of the Service.
- 6.8 Peak Telecom's prices on some products, services and software are based on the Manufacturer Suggested Retail Price ("MSRP"). MSRP are subject to change, in this event Peak Telecom may increase pricing to both in-contract and out of contract services.

## 7. SIM cards and telephone numbers

- 7.1 The Customer shall use reasonable endeavours to ensure that SIM Cards are only used with The Customer's authorisation and shall inform Peak Telecom as soon as is reasonably practicable after The Customer becomes aware that a SIM Card is lost, stolen or damaged. The Customer shall be liable for any loss or damage suffered by The Customer as a result of unauthorised use of SIM Cards (including due to loss or theft) up to the time that The Customer has notified Peak Telecom that such SIM Card is being used without The Customer's authorisation.
- 7.2 SIM Cards shall remain the property of Peak Telecom, but Peak Telecom grants The Customer a licence to use the SIM Cards (including any Software they contain) to the extent necessary to use the Services. Faulty SIM Cards shall be replaced free of charge. The Customer may disconnect SIM Cards by providing Peak Telecom 30 days' notice.
- 7.3 Peak Telecom shall allocate telephone numbers to The Customer for The Customer's use of the Services. Peak Telecom may reallocate, withdraw or change such telephone numbers as a result of applicable law or instructions from a regulatory authority, but will take reasonable steps to minimise any disruption to The Customer.
- 7.4 If The Customer decides to Port a mobile telephone number allocated to The Customer by Peak Telecom, Peak Telecom shall transfer The Customer's mobile telephone numbers to The Customer's nominated mobile network operator for The Customer's use according to applicable law and regulation.

## 8. Software Licence

- 8.1 Subject to the terms of the Agreement and any Software Licence provided with the Equipment or Services, Peak Telecom shall grant or will ensure that the licensor will grant to The Customer, a non-transferable, non-sublicensable, and non-exclusive licence to use the Software during the Minimum Term for the applicable Service in object code form for the Customer's internal use.
- 8.2 Where Peak Telecom provides The Customer with Equipment or Services which contain Software subject to a Software Licence and The Customer does not accept the terms of the Software Licence, The Customer will not be able to use the relevant feature of the Service or Equipment to which the Software Licence relates and Peak Telecom shall not be liable for any failure to provide the Services which rely on acceptance of the Software Licence.
- 8.3 Where Software is subject to a Software Licence, the terms of the Software Licence shall comprise the Customer's sole rights and remedies in respect of the Software to which it applies.

8.4 The Customer shall not copy, modify, reverse engineer, adapt, translate, decompile, disassemble, make error corrections, license, sub-license, or resell any Software in whole or part, unless expressly permitted to do so by Peak Telecom or by relevant law.

## 9. **Ordering**

9.1 The Customer shall order Services and Equipment by email, or by such other means as Peak Telecom may permit.

9.2 Orders are binding on both Parties from the date of acceptance by Peak Telecom as set out above.

## 10. **Termination**

10.1 The Agreement shall commence on the Commencement Date and shall continue until the relevant Services are terminated in accordance with the Agreement.

10.2 Each Party shall have the right to terminate the Agreement in whole or in part by giving the other Party 30 days' written notice of termination. The Customer may stop using content services at any time, but The Customer shall still pay the Charges for the Services.

10.3 The Parties shall each have the right to terminate this Agreement in whole or part with immediate effect (by serving written notice of termination to the other Party): (a) if the other Party becomes subject to an Insolvency Event; or (b) if the other Party is in material breach of this Agreement (provided that where such breach is capable of remedy, the breaching Party is given 30 days to rectify such breach from the date that notice of any breach is deemed received from the non-infringing Party).

10.4 Peak Telecom may terminate this Agreement in whole or part with immediate effect, by giving written notice to The Customer where Peak Telecom has suspended the Services under clause 4.1(c) or clause 6.5.

10.5 Upon the termination of the Agreement (in whole or in part) the following termination fees are payable:

(a) If all or part of the Agreement terminates for any other reason and the Minimum SIM Contract Term and/ or the Minimum Data Pool Contract Term has not expired (and will not expire during the notice period), the following Charges are payable:

(i) the amount of unpaid line rental and other fixed Charges remaining in respect of each of the relevant SIM Cards, Data Pools, Software Licences terminated for the period from the date of expiry of the notice period up to and including the last day of the Minimum Contract Term; and

(ii) all outstanding Charges due up to and including the date of the termination of the Agreement; and

(iii) an administration fee for each SIM Card to be terminated, in each case such administration fee levied in respect of Peak Telecom's administrative and other costs of disconnecting the SIM Card from the Services and the relevant telecommunications network.

(b) If all or part of the Agreement terminates for any other reason and the Minimum Contract Term of the Agreement has expired (or will expire during the notice period) the following Charges are payable:

(i) the amount of the Charges up to and including the date upon which the relevant notice period expires;

(ii) all outstanding Charges due up to and including the date of the termination of the Agreement; and

(iii) an administration fee for each SIM Card to be terminated, in each case such administration fee levied in respect of Peak Telecom's administrative and other costs of disconnecting the SIM Card from the Services and the relevant telecommunications network.

10.6 If the Customer elects to port or migrate their mobile phone number(s) Peak Telecom reserves the right to charge the Customer an administration fee per SIM Card in addition to any charges for termination charged by the relevant Network Provider that may be applicable and levied by that Network Provider against Peak Telecom.

10.7 Unless Peak Telecom notifies The Customer otherwise, any content services included in The Customer's price plan shall start at the same time as the Commencement Date, regardless of when The Customer starts to use the Content Service Pass, and shall end after the Minimum Term set out in the Commercial Terms. If a content service included in The Customer's particular price plan is provided for less than the Minimum Term, the content service may become a monthly paid subscription from the date the content service ends unless The Customer cancels it.

## 11. Consequences of Termination

- 11.1 Subject to clause 19.2 below, on termination of the Agreement (in whole or part), the following shall apply to all or part of the Agreement terminated: (a) The Customer shall cease use of the Service(s) and Software (except Software which is embedded in Equipment to which The Customer has title); (b) Peak Telecom shall cease to provide the Services(s); (c) the Parties shall promptly upon request return or destroy all Confidential Information (except one copy which is necessary to keep in order to ensure compliance with this Agreement), and provide written confirmation of this upon request; and (d) The Customer shall pay Peak Telecom all sums due, including any applicable Recovery Charge.
- 11.2 Except where The Customer validly terminates the Agreement, a price plan or Connection in accordance with clause 10.3, clause 13.3, or clause 19.11, or where Peak Telecom terminates the Agreement, a price plan or a Connection in accordance with clause 10.2, if this Agreement, a Connection or a price plan is terminated prior to the expiry of a Minimum Term, The Customer shall pay Peak Telecom a Recovery Charge.
- 11.3 If The Customer validly terminates the Agreement, a price plan or Connection in accordance with clause 10.3, clause 13.3 or clause 19.11, The Customer will not have to pay the Recovery Charge but may have to make a payment for its Equipment. If this applies, Peak Telecom will let The Customer know in its Commercial Terms and inform The Customer of the original value of the Equipment. The payment will be calculated as 1/24 of the original value of The Customer's Equipment, less any initial payment The Customer made towards it, multiplied by the number of months left in until the end of the Minimum Term.

## 12. Intellectual Property

- 12.1 The Intellectual Property Rights that exist in, or which are created by Peak Telecom during the provision of the Services, Software and Equipment are owned by Peak Telecom or its licensors. Other than as is necessary for use permitted under this Agreement, no other right, licence or transfer is granted or implied under such Intellectual Property Rights. The Customer shall not do anything to jeopardise Peak Telecom's or its licensors' Intellectual Property Rights.
- 12.2 The Intellectual Property Rights that relate to The Customer's documentation, processes, procedures, know-how and anything else to which the Customer has title are owned by The Customer or its licensors, and other than as is necessary for use permitted under this Agreement, no other right, licence or transfer is granted or implied under such Intellectual Property Rights. Peak Telecom shall not do anything to jeopardise The Customer's or The Customer's licensor's Intellectual Property Rights.
- 12.3 Subject to the rest of this clause, Peak Telecom shall indemnify The Customer for all losses (including reasonable professional costs) payable to a third party arising out of any proven infringement of third party Intellectual Property Rights as a direct result of the use by The Customer of the Equipment or Services under this Agreement (a "Relevant Claim"). The Customer shall: (a) promptly, taking into account any set deadlines, notify (giving details) of any Relevant Claim to Peak Telecom; (b) not admit liability, take any action which may prejudice the defence of any Relevant Claim or make any agreement or settlement in relation to the claim (unless required by law) without Peak Telecom's prior written consent; (c) give Peak Telecom all reasonable assistance to enable Peak Telecom to defend the claim; (d) mitigate its losses following a Relevant Claim; and (e) give Peak Telecom sole conduct of the Relevant Claim. Peak Telecom shall have no liability under this clause if the Relevant Claim results from or relates to: (a) the use of equipment, services or software not provided by Peak Telecom; (b) Peak Telecom's compliance with the Customer's requirements, designs or instructions; (c) the combination of the Services or Equipment with products or services not provided by Peak Telecom; (d) the use of the Services or Equipment which is not in accordance with Peak Telecom's instructions or this Agreement; (e) modifications by The Customer or any third party to the Services or Equipment; (f) a breach by The Customer, The Customer Affiliate or User of the provisions of this Agreement; or (g) the use of any original Equipment or Services after a later release is made available to the Customer and communicated by Peak Telecom to avoid a Relevant Claim. This indemnity shall be The Customer's sole remedy for any Relevant Claim.

## 13. Changing this Agreement

- 13.1 Peak Telecom may change this Agreement (including changing or introducing new Charges or changing or withdrawing the Services or Third Party Services) where required: (a) to comply with applicable law or regulation; (b) because of a change imposed by a third party supplier; or (c) due to a change in Peak Telecom's operations or services, where such change affects at least 90% of its relevant the Customer base.

13.2 Peak Telecom shall provide The Customer as much written notice as is reasonably practicable of a change made under clause 13.1(a), and at least 30 days' written notice for a change made under clauses 13.1(b) or 13.1(c). Peak Telecom shall not notify The Customer of a change if it relates to a Third-Party Service which The Customer does not regularly use, but shall (where applicable) update the relevant Price Plan Guide. Peak Telecom may update or withdraw its Services without notice only where such change (in Peak Telecom's reasonable opinion) does not cause The Customer any detriment or where The Customer does not regularly use that Service.

13.3 The Customer may terminate the affected part of the Agreement where a change under clause 13.1(b) or clause 13.1(c) causes the Customer a material detriment which cannot be offset by Peak Telecom to the Customer's reasonable satisfaction on 30 days' written notice to Peak Telecom. This right to terminate ends 30 days after the effective date of the change. The following shall be a material detriment for the purposes of this clause: (a) an increase in The Customer's UK monthly Charges of more than 10% in a 12 month period; (b) an increase in The Customer's monthly inclusive price plan Charges; or (c) a withdrawal of the core Services or an adverse change to the core Services. However, this clause does not apply if the change or withdrawal relates to a Third-Party Service which The Customer may stop using or cancel without ending this Agreement.

13.4 Save as set out in clause 13.1, changes to this Agreement must be made by written agreement of both Parties.

#### **14. Confidentiality**

14.1 Neither Party shall disclose the Confidential Information of the other Party to any other party for the duration of this Agreement and for 3 years after termination except as permitted below. A Party may disclose the Confidential Information to any director, officer, employee, contractor, or adviser, of the receiving Party and Peak Telecom may disclose such information to Partners where necessary to fulfil the purpose of this Agreement provided that the receiving Party ensures those recipients comply with this clause 14.

14.2 Confidential Information shall not include information that: (a) is publicly available other than through breach of this Agreement; (b) is lawfully in the possession of the receiving Party before disclosure under this Agreement; (c) has been obtained from a third party who is free to disclose it; (d) is independently developed without access to the Confidential Information; or (e) a Party is required to disclose by law or regulatory authority.

14.3 Upon written request, as soon as reasonably practicable, a Party shall return all Confidential Information (as far as technically reasonably possible) to the Disclosing Party. The Receiving Party may retain Confidential Information as required by law or as required for archive purposes. This Agreement will continue to apply to any retained Confidential Information.

#### **15. Liability**

15.1 Nothing in this Agreement restricts either Party's liability for: death or personal injury resulting from negligence; claims for non-payment; the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability); liability for fraud or fraudulent misrepresentation; breach of confidence; and anything which cannot be restricted by law.

15.2 Except for clause 15.1, each Party's liability under this Agreement, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, indemnity or otherwise): (a) is excluded for: (i) any loss (whether direct or indirect) of: profit, revenue, business, data, anticipated savings or goodwill; and (ii) any indirect or consequential losses, regardless of whether such losses were contemplated; and (b) for all other losses is limited in total to 100% of the value of the Charges paid or payable by The Customer in the first 12 months of the Agreement, or if this Agreement has not been in place for 12 months, the average monthly Charges payable for the months from the Commencement Date of the Agreement to the date of the first claim, multiplied by 12.

15.3 Unless expressly set out in this Agreement, all other warranties, terms, conditions, statements and representations (whether expressed or implied by statute, common law, custom, usage or otherwise) are excluded to the fullest extent permitted by law.

#### **16. Transferring this Agreement**

16.1 Either Party may transfer, novate, or assign (in whole or in part) this Agreement with the other Party's prior written consent, such consent not to be unreasonably withheld or delayed.

16.2 Despite clause 16.1, Peak Telecom may transfer, novate, or assign this Agreement (in whole or part) without consent to: (a) a company within Peak Telecom's Group; or (b) a debt collection agency where Peak Telecom has terminated this Agreement for The Customer's non-payment.

16.3 Peak Telecom may use sub-contractors to perform any of its obligations under this Agreement but remains responsible for their performance.

16.4 Unless expressly provided in this Agreement, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## 17. Data Protection

17.1 Both Parties shall comply with applicable privacy law. The Customer acknowledges that Peak Telecom will process personal data and traffic data when it provides the Services and that Peak Telecom is the Controller of these data under the Data Protection Act 1998.

17.2 Where required, The Customer authorises Peak Telecom to process these data and agrees to use reasonable endeavours to notify its Users about Peak Telecom: (a) processing data for maintaining the security, integrity and quality of the Network (including interception, monitoring or recording of communications in accordance with applicable law); (b) processing data for its own market research and analysis in order to develop Peak Telecom's products, but this does not include providing personal data to third parties or making it publicly available; and (c) disclosing data to third parties only: (i) if required by applicable law or regulation; or (ii) where the third parties are sub-contracted processors of Peak Telecom, including Partners.

17.3 The Customer agrees that where it is reasonably requested by a Partner, Peak Telecom may provide The Customer's billing and contract information to the relevant Partner for the purposes of management, calculating commissions and administration of the account.

17.4 Third parties service providers and partners working on our behalf are used to fulfil the contract and supply the service. The details of these providers are;

- EE Ltd. The Data Protection Officer can be reached using the following details;  
PO Box 2681, BT Centre, 81 Newgate Street, London, EC1A 7AJ  
cpo@bt.com / <https://ee.co.uk/help/help-new/general/privacy/ee-privacy-policy>
- Vodafone Ltd. The Data Protection Officer can be reached using the following details;  
the Customerdataquery@Vodafone.com / <https://www.vodafone.co.uk/privacy>
- Telefónica UK Limited. The Data Protection Officer can be reached by writing to;  
Data Controller, Telefonica UK Ltd, 5 Reynoldston Close, Brackmills Industrial Estate, Northampton, NN4 7BX /  
<https://www.o2.co.uk/termsandconditions/privacy-policy>
- Nimans Ltd. The Data Protection Officer can be reached by writing to;  
Nimans, Data Protection Officer, Agecroft Road, Pendlebury, Manchester, M27 8SB  
<https://www.nimans.net/main/eu-cookie-law>
- Abzorb Ltd. The Data Protection Officer can be reached using the following details;  
contactus@abzorb.co.uk / <http://www.abzorb.co.uk/cookie-policy/>
- Sprint Communications Ltd. The Data Protection Officer can be reached using the following details;  
Head Office, 6 Honeywood Road, Business Park, Basildon, Essex, SS14 3HW  
info@sprintcomms.co.uk/ <https://sprintcomms.co.uk/sprintbusiness/legal-documentation/>

## 18. Notices

18.1 All notices to Peak Telecom under this Agreement shall be in writing and sent to Peak Telecom's registered office. All notices to The Customer under this Agreement shall be in writing and sent to the Customer's address or email address set out in the Commercial Terms. Notices will be deemed given 2 working days after dispatch, unless time of delivery can be proved:

## 19. General Terms

19.1 Neither Party shall lose any right under this Agreement if it fails to use that right, or delays in using it. For a waiver of a right to be valid, it must be written and will not give rise to an on-going waiver of that right unless it is expressly stated to do so.

- 19.2 Termination of this Agreement (in whole or part), shall not affect the accrued rights and liabilities of either Party. Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement (in whole or part) shall continue in force.
- 19.3 This Agreement is governed by the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England.
- 19.4 Subject to clause 15.1, this Agreement represents the entire agreement between the Parties relating to the subject matter and supersedes any previous agreement related to the subject matter. The Parties have not relied on any statement, representation, warranty or understanding, other than expressly set out in this Agreement.
- 19.5 The Customer shall ensure its systems, equipment and processes are compatible for use with the Services. Peak Telecom shall not be liable to support the Services if The Customer's systems, equipment, or processes are incompatible with the Services. Peak Telecom shall use reasonable endeavours to advise The Customer of relevant requirements on request.
- 19.6 If a provision or part-provision is illegal, invalid or unenforceable, that provision or part-provision shall be treated as having been modified to the minimum extent necessary to make it valid, legal or enforceable and to ensure it achieves the intended commercial result of the original provision. If modification is not possible, the relevant provision or part-provision shall be deleted. Any modification to or deletion shall not affect the validity of the rest of this Agreement.
- 19.7 Equipment and Services used by The Customer but not stated in the Commercial Terms shall be governed by this Agreement unless the Parties agree otherwise.
- 19.8 Both Parties shall use reasonable endeavours to resolve any dispute under this Agreement. Nothing in this Agreement prevents a Party from seeking a remedy through the courts.
- 19.9 A The Customer Affiliate is entitled to purchase Services or Equipment from Peak Telecom under this Agreement, provided The Customer: (a) gives Peak Telecom prior written notice of the identity of the Customer Affiliate; (b) gives any other information reasonably required by Peak Telecom; (c) ensures that the Customer Affiliate complies with this Agreement; (d) remains liable to Peak Telecom for all obligations, acts and omissions of the Customer Affiliate (including payment for any Services or Equipment provided to the Customer Affiliate); and (e) obtains Peak Telecom's acceptance (not to be unreasonably withheld) of the inclusion of the Customer Affiliate under this Agreement.
- 19.10 Peak Telecom shall comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption and shall not give or receive any bribes, including in relation to any foreign public official.
- 19.11 Neither Party will be responsible or liable for the failure or delay in the performance of its obligations due to a cause beyond its reasonable control. If the cause ends, the Party shall perform its obligations and the time for performance will be extended by the duration of the cause. If delay in performance persists for a period of more than 30 days, the unaffected Party will be entitled to terminate this Agreement on written notice.
- 19.12 The Customer may use the Equipment and/or Services to access the internet and services not provided under this Agreement. Peak Telecom accepts no responsibility for these services. The Customer shall take appropriate measures to back up data and otherwise protect against loss of data under this Agreement and keep secret any passwords.