

## RESIDENTIAL TERMS AND CONDITIONS

These Terms and Conditions shall apply to the provision of Eclipse Broadband Ltd services (as specified below) to the Customer. In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Customer or otherwise), the former shall prevail unless expressly otherwise agreed by Eclipse Broadband in writing.

### TERMS SPECIFIED IN THESE TERMS AND CONDITIONS

**“Agreement”** means the contract for the supply of the Service comprising these terms and the Request for Service included in your Customer Service Agreement (hereafter also referred to as “the Agreement”).

**“Charges”** means the invoice value attributable to the Service provided under the Agreement.

**“Customer”** means you the Customer who is entering into the Agreement.

**“Fair Use Policy”** means “unlimited” call allowance subject to a fair use policy.

**“Eclipse Broadband”** means services which are provided by Eclipse Broadband.

**“Plan”** means your service package provided by Eclipse Broadband.

**“Service Provider”** means any third-party service provider Eclipse Broadband uses, to provide the Services under the Agreement.

**“Service(s)”** means Eclipse Broadband’s Broadband and any other consumer services and any equipment we provide via Eclipse Broadband’s nominated service provider(s).

**“Home Flex”** means the broadband service package offered by Eclipse Broadband on a 60-day rolling contract basis, specifically designed for customers whose tenure at a property is governed by a residential tenancy agreement. The discounted rate applicable to this Plan is set out in the Tariffs and Charges on the Website.

**“Term”** means the Agreement duration for the Service as specified in the Agreement.

**“The Line”** means the connection between the installed premises and the network.

**“Website”** means the website [eclipsebroadband.co.uk](http://eclipsebroadband.co.uk).

**“In Writing”** means written communication by post. Where specified in this agreement Customers may communicate in writing to the following:

**By post to:** Eclipse Broadband Customer Services, Telecom Acquisitions, 8 Piries Place, Horsham, RH12 1EH.

## 1. ECLIPSE BROADBAND SERVICES

### 1.1 Eclipse Broadband agrees:

- 1.1.1 To provide you the Customer with your chosen Services, including Telephony, Broadband and any other consumer Services and any equipment we provide.
- 1.1.2 To use all reasonable endeavours to complete its obligations under these Terms and Conditions, but time will not be of the essence in the performance of these obligations.
- 1.1.3 To deliver the Service and any equipment to the UK address you give us.
- 1.1.4 To provide the Service in the UK unless the Service terms say otherwise.
- 1.1.5 To provide the Service at the agreed installation costs subject to an Openreach (or other provider) survey. Should there be any additional charges you will be asked to accept these charges before we progress the order.
- 1.1.6 To ensure that all equipment used by the Customer in conjunction with the Service conform to the relevant standards and approvals (e.g. European Consumer Equipment Standards 'CE' mark).
- 1.1.7 Where the Customer has subscribed to the Home Flex Plan, Eclipse Broadband agrees to provide the Service on a 60-day rolling contract basis, subject to the specific terms set out in Section 15 of these Terms and Conditions.

## 2. THE CUSTOMER'S RESPONSIBILITIES

### 2.1 The Customer agrees:

- 2.1.1 To ensure the safe use and custody of all equipment provided by Eclipse Broadband. To ensure that equipment used by the Customer in conjunction with the Service conforms to the relevant standards and approvals (e.g. European Consumer Equipment Standards 'CE' mark).
- 2.1.2 To ensure that Eclipse Broadband has such rights of access, and such facilities as Eclipse Broadband reasonably requires, to perform its obligations under this Agreement. You also agree, where relevant, to get permission from any interested third party if we must cross their land or position our equipment on their premises to deliver your Service.
- 2.1.3 To comply with Eclipse Broadband's reasonable instructions to modify its equipment in order to receive the Service.
- 2.1.4 Any equipment we provide is loaned to you and remains the property of Eclipse Broadband. This includes but is not limited to, the router we provide at the outset of our agreement and any device we may lend during the course of customer support. Any property not returned within 14

days of Eclipse Broadband requesting it to be returned will be chargeable. Charges can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

2.1.5 Any router supplied with our Service must be connected to the master socket in the premises or Eclipse Broadband cannot accept any responsibility for deterioration in Service which may result (e.g. poor or inferior wiring on the customer's premises).

2.1.6 To accept that if we provide you with a telephone number that you do not own that phone number and will not transfer it to anyone else or try to do so.

2.1.7 To accept that if you have internet access provided by us that your use of the internet is at your own risk. You are responsible for ensuring that any equipment used to access the service is protected against viruses and agree that Eclipse Broadband is not responsible for any equipment you have connected to the service that has not been provided by Eclipse Broadband (this includes any device you chose to connect to the service whether that connection is made via Ethernet cable or wirelessly).

2.1.8 To accept that it is the responsibility of the Customer for proper use of any user ID's, personal identification numbers (PINs) and passwords needed for the Service. The Customer must take all necessary steps to make sure that these records are kept confidential, secure and not available to unauthorised people.

2.1.9 To accept that once the initial contract term has been fulfilled, the contract will move onto a monthly rolling contract until the customer gives notice as set out in section 8 of the Terms and Conditions. Where a Customer is on a Home Flex Plan, the contract shall operate on a 60-day rolling basis from the Service Commencement Date. Notice of termination must be provided in accordance with clause 15.3.

2.1.10 Where a tariff/bundle includes "Unlimited" calls, only calls made to standard UK mobile or landlines numbers from a UK landline are included in the "unlimited" allowance. Calls to other destinations such as premium rate or international numbers are excluded from the allowance.

The "Unlimited" call allowance is subject to a fair use policy of 10,000 minutes per monthly bill cycle. Calls exceeding 10,000 minutes will be charged at standard call rates.

2.2 The Customer agrees not to:

2.2.1 Use the Service for any illegal or improper purpose, nor allow another to do so.

2.2.2 Assign or transfer the Agreement, or any part of it, without the prior written consent of Eclipse Broadband.

2.2.3 Use the services and equipment provided to you under these terms for business purposes.

### 3. LINE RENTAL & OTHER SERVICES

3.1 Where the appropriate sections have been satisfactorily completed on the Agreement:

3.1.1 Eclipse Broadband will, in return for payment of the Charges, provide agreed services from the Service Commencement Date.

3.1.2 The Customer will pay Eclipse Broadband the Charges in accordance with the terms of this Agreement.

3.1.3 Eclipse Broadband will be responsible for maintaining the Service.

3.2 Eclipse Broadband do not guarantee that the Service will be free of faults, but Eclipse Broadband will endeavour to correct any faults once reported to us.

3.3 The Customer must report all faults on the Service to Eclipse Broadband by contacting our Technical Support Help Desk on 0345 122 4111 or visit [eclipsebroadband.co.uk](http://eclipsebroadband.co.uk).

3.4 The Customer may not use an alternative Carrier or Service on the Line without our written permission. Such permission shall be at our absolute discretion and in the event that the Customer makes such use of the Line, Eclipse Broadband reserve the right to terminate this Agreement at any time, without being liable to the Customer for any loss or liability incurred by the Customer as a consequence, and you agree to indemnify us against all loss and keep us indemnified.

3.5 Eclipse Broadband reserves the right to use such Carrier or Carriers as Eclipse Broadband consider appropriate to deliver the Service.

3.6 Eclipse Broadband or any Carrier who may be supplying Services may at any time need to audit the Line to check its operational status and effectiveness and the Customer agrees to co-operate with such audit promptly and fully.

3.7 In the event that the Line is already rented by the Customer on a contract with another provider, which conflicts with this Agreement (e.g. the contract still has part of a fixed term left to run), Eclipse Broadband reserves the right, at its discretion to terminate this Agreement and the Customer agrees to indemnify Eclipse Broadband for any resulting costs.

3.8 Eclipse Broadband rents the Line from another party and Eclipse Broadband cannot guarantee a particular quality of service on the Line.

3.9 This part of the Agreement is conditional upon:

3.9.1 Any Service Provider as may be relevant, carrying out a full site survey which it or they consider to be satisfactory.

3.9.2 Any survey or enquiry which Eclipse Broadband carries out being in our opinion satisfactory.

3.9.3 Eclipse Broadband reserve the right to delay implementation of this Agreement until such satisfactory survey or enquiry is completed and notified to Eclipse Broadband without being liable to the Customer for any loss incurred by the Customer.

3.9.4 In the event of any such survey or enquiry not being satisfactory Eclipse Broadband reserve the right to terminate this Agreement at any time without being liable to the Customer for any loss incurred by the Customer.

3.9.5 The Customer agrees to indemnify Eclipse Broadband for any loss incurred as a result of such survey enquiry or termination.

3.10 This Agreement is subject to a Service Provider's terms and conditions of business which may vary from time to time.

3.11 In the event that a Service Provider terminates the Line Rental, Eclipse Broadband reserve the right to terminate this Agreement at any time without being liable to the Customer for any loss incurred by the Customer or any third party.

3.12 The Customer may not misuse the Line, exceed its technical parameters or interfere with it. If the Customer does any of these things Eclipse Broadband reserves the right to terminate this Agreement at any time without being liable for any loss to the Customer. The Customer agrees to indemnify Eclipse Broadband for any loss incurred as a consequence.

3.13 Eclipse Broadband may terminate this Agreement at any time at its absolute discretion in the event that the Customer is in breach of any other agreement the Customer has with Eclipse Broadband.

3.14 Should the Customer amend their installation date within 2 working days of that scheduled installation, Eclipse Broadband will charge an administration fee. These fees can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

#### **4. SUSPENSION OF THE SERVICE**

4.1 Eclipse Broadband may, at its discretion and upon giving the Customer reasonable written notice, suspend the Service without compensation if Eclipse Broadband:

4.1.1 Is entitled to terminate the Agreement.

4.1.2 Is required to do so in order to avoid a breach of its Service.

4.1.3 Believes the Service is being used in connection with any illegal or improper purpose.

4.1.4 Reasonably believe that the Customer will fail to pay any amount due under this Agreement.

4.1.5 The Customer shall reimburse Eclipse Broadband for all reasonable costs and expenses incurred as a result of such suspension and any re-commencement of the Service as appropriate.

4.2 Where suspension is implemented as a result of any act or omission of the Customer. Eclipse Broadband may at its discretion apply a charge on the Customer's next invoice to recover these costs.

4.3 In the event that the Customer fails to pay or pays late, Eclipse Broadband will apply a fee. This can be found on the Eclipse Broadband website under [Tariffs and Charges](#).

4.4 Eclipse Broadband reserves the right to recover all outstanding charges by passing them on to an external debt collection agency (DCA). The customer will receive notice from Eclipse Broadband of our actions in passing on the Customer's details to the debt collection agency (DCA). This may incur additional charges to the Customer.

4.5 The Customer must be aware that this may be passed over to the County Court to recover outstanding debt.

## 5. FAULT RESOLUTION & COMPLAINTS

5.1 The Customer shall notify Eclipse Broadband of any material fault in the Service and Eclipse Broadband shall use all reasonable endeavours to remedy the fault as quickly as practical.

5.2 The Customer may be charged for any repair work and any reasonable costs incurred by Eclipse Broadband if such repair work results from the Customer's own act or omission or is requested by the Customer but is found by Eclipse Broadband to be unnecessary.

5.3 We make every effort to ensure that our Customers are happy with the level of service, and the products and Service they receive from us. However, despite our best efforts, things can go wrong. We take customer complaints very seriously and aim to resolve them quickly and efficiently. If you have a complaint about any part of our service, please contact our Customer Care Team [eclipsebroadband.co.uk](http://eclipsebroadband.co.uk) or by letter to the address specified on our website.

5.4 Eclipse Broadband will not be responsible for the performance of any equipment connected to the Service that has not been supplied by Eclipse Broadband or for the performance of internal cabling within the customer's premises beyond the master telephone socket. We make every effort to support customer issues through our customer support service and the support material we provide on our website (Help and Support section). Eclipse Broadband also offer a premium support help line which aims to provide support for any related client issue that is not covered under the Terms and Conditions of the Service (please see our website for further details).

5.5 The Customer may be charged for any engineer visit or call out fee reasonably incurred by Eclipse Broadband. If an engineer attends your property and finds that they cannot gain access or there is no

fault found on the Service Provider's network, then the network engineers will charge a call out/missed appointment fee. If the fault is caused by any of your own equipment, internal wiring, extension sockets, fax machine, telephone or any other device on your premises then this would also be chargeable but not fixed by the network engineers. Click here to view Eclipse Broadband's [Tariffs and Charges](#).

## 6. LIABILITY

6.1 As Eclipse Broadband is not aware how a breakdown or a defect in the Service might affect the running of the Customer's affairs, Eclipse Broadband will not be responsible for any financial loss associated with an interruption to the Service. As you (the Customer) are aware of your own requirements, if you think you require protection against this risk, you should insure yourselves against it and/or make appropriate arrangements for any disruption to your Service. The charges for delivery of the Service have been worked out on the basis that Eclipse Broadband is not responsible for this risk, even if such a loss is the fault of Eclipse Broadband.

6.2 Eclipse Broadband will not be liable under the terms of this contract for:

6.2.1 Use of your Wireless Router or equipment to access any other internet service.

6.2.2 Your use of any modem, wireless router, or any other equipment that we have not supplied to you.

6.2.3 Slow speeds, caused by factors such as, but not limited to, the following: the quality of your line, faulty or poor internal wiring, if you're using a wireless connection, faulty equipment, network capacity and the number of customers on the network or any particular website at any one time. If the speeds are continuously or regularly significantly lower than the estimate you should refer to the contact us section of the Eclipse Broadband website.

6.2.4 Providing a wireless service as this is affected by numerous factors such as the following: thick walls, radiators, mirrors, home environment, other wireless devices within range of the router. If you are experiencing difficulties connecting over wireless, please contact us on 0345 122 4111.

## 7. CHARGES AND PAYMENT

7.1 Charges shall be set out in the Agreement, associated quotations, or on Eclipse Broadband's website where pricing for products referenced in the Agreement are published on the Eclipse Broadband website. Eclipse Broadband may vary the charges by giving 30 days' notice to the Customer in writing and on the Eclipse Broadband website.

7.2 Customers will be invoiced electronically, using the email address provided in the Agreement. Paper bills can also be provided to the Customer, these are chargeable, this can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

7.3 Each invoice shall be paid by the Customer by Direct Debit unless agreed otherwise. Direct Debits will be taken on or around your agreed payment date. Any due amounts from previous months will be displayed on the Customer's monthly invoice and will be collected by Direct Debit in that month.

7.3.1 A direct debit instruction must be set up. If this has not been set up, the order will be canceled or suspended until a direct debit is in place.

7.4 The Customer shall pay all invoices by Direct Debit unless otherwise permitted by Eclipse Broadband in writing. If Eclipse Broadband permits the Customer to pay by a different option other than by Direct Debit, Eclipse Broadband reserves the right to charge the Customer an additional administrative fee. This can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

In the event the Customer cancels any established Direct Debit payment arrangement, Eclipse Broadband reserves the right to suspend all services, as well as charge the Customer an administrative fee. A schedule of current charges is maintained on the Eclipse Broadband website.

7.5 The customer shall pay all invoices by the agreed collection date unless otherwise permitted by Eclipse Broadband in writing.

7.6 If the customer continuously fails to pay invoices on the agreed collection date, Eclipse Broadband reserves the right to suspend all services and terminate the agreement.

7.7 Any overdue payments to Eclipse Broadband will incur a late payment fee, this can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

7.8 No payment shall be considered made until it is received by Eclipse Broadband or its collection agency in cleared funds.

7.9 Interest shall accrue on overdue invoices from the Due Date until payment (whether before or after judgment) at the annual rate of 2 percent above the prevailing base lending rate of the Royal Bank of Scotland. Interest shall accrue even if the Agreement is terminated for whatever reason.

7.10 All charges which are periodic in nature shall, where relevant, be prorated on the basis of a 30-day month for the first and last calendar month of the supply of the Service.

7.11 All sums due to Eclipse Broadband are inclusive of Value Added Tax and any other applicable sales tax or duty which shall be invoiced at the prevailing rate. The Customer shall pay Value Added Tax due to Eclipse Broadband upon presentation of a valid invoice.

7.12 Agreed Annual Price Adjustment: Your monthly charges will increase with your April bill each year. We will provide you with a minimum of 30 days' notice regarding the precise increase each year or set

out the amount at the point you enter this or a new agreement. The most recent increase or the planned amount of increase is shown in the Tariffs and Charges document on the website. Customers on the Home Flex plan should refer to clause 15.4 regarding the transition from discounted to standard rates after 12 and 24 months of service.

7.13 Call charges shall be calculated with reference to data recorded or logged by Eclipse Broadband and not by reference to any data recorded or logged by the Customer, nor by reference to any information provided by Eclipse Broadband to the Customer for information purposes only.

7.14 All payments must be received by the designated payment date, failure to do this will incur charges and may result in your services being suspended.

## **8. TERM AND TERMINATION OF THE AGREEMENT**

8.1 You can sign up for the Service online on Eclipse Broadband's website, over the telephone, or by completing and sending a signed paper version of our Customer Service Agreement. The Agreement shall start when Eclipse Broadband have provided you with written acceptance of your order. Written acceptance will be communicated to you to your chosen email account or by post to your current address if you have not supplied an email address. The length of the Agreement shall be in accordance with the Term specified in the Agreement.

8.1.1 Notwithstanding clause 8.1, once the services have been installed the contract for the supply of services shall commence. The initial term of the agreement and the charges for that service will then take effect from completion of the installation.

8.2 Prior to the installation of your service your cancellation rights and the consequences of cancelling are as follows:

8.2.1 You have the right to cancel your agreement with Eclipse Broadband within 14 days ("cooling off period") from receiving your contract and terms and conditions by calling our Customer Care Team on 0345 122 4111.

8.2.2 If you cancel your contract within the cooling off period you are entitled to a full refund of any monies paid, including the costs of delivery of any equipment you ordered. The only exception to this clause will be where you have requested to have your services installed, prior to the completion of the 14-day cooling-off period. In this instance you must pay us an amount which is proportionate to the service provided up to the point you cancelled the order. You will also need to pay any connection or activation charges associated with that service – including the full cost of charges that were discounted or advertised as free as a condition of taking the service on the terms that you agreed when we accepted your order.

8.2.3 The charges for the installation are dependent on the network area and from time-to-time, individual circumstances. A list of these charges be found on Eclipse Broadband's website under [Tariffs and Charges](#).

8.2.4 If you do not cancel your order before 12pm two working days before your installation is due to take place, you will be responsible for paying a charge for the engineer appointment for the costs incurred from a wasted engineer visit. This can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

8.2.5 If you cancel a contract, you are responsible for returning any equipment within 14 days of cancelling the order to avoid being charged for that equipment. A list of these charges can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

8.2.6 We will make any refund due to you (less any deductions due to us) without undue delay and not later than the earliest of 14 days after the day we either completed the cancellation request with you or if applicable received the equipment back from you.

8.2.7 If you cancel your order outside of your cooling off period, you will not receive a refund for any once-off fees or activation fees. This can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

8.3 Once the customers' service has been installed the Customer may terminate this Agreement at any time by providing 30 days' notice by calling our Customer Care Team 0345 122 4111 however it should be noted that if this termination is served within the period of the agreed contract term early termination charges will apply (see clause 8.4). Customers on the Home Flex Plan should refer to clause 15.3 regarding the applicable notice period for termination.

8.4 Early termination charges will be payable if you cancel your contract within your agreed contract Term. The early termination charges are set out in our charges tariff, this can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

8.4.1 If you have received an upgrade and cancel early within your contract, charges will be payable.

8.5 If you decide to terminate this Agreement upon receiving notification that we will be or have applied the annual price adjustment to your tariff, then early termination charges will apply for the remainder of the term of your Agreement.

8.6 Eclipse Broadband may terminate the Agreement:

8.6.1 At any time by providing 30 days' notice given that the initial Term has been fulfilled and forthwith following any suspension of Service.

8.7 Either Party may terminate the Agreement forthwith if:

8.7.1 The other Party has committed a material breach which is incapable of remedy.

8.7.2 The other Party has committed a material breach which is capable of remedy but which it fails to remedy within 15 days.

8.7.3 The other Party becomes unable to pay its debts as stated in section 123 of the Insolvency Act 1986 (including any amendments).

8.7.4 A liquidator (or any other professional relevant to bankruptcy) is appointed to manage all or some of the Parts assets (other than for the purpose of solvent amalgamation or reconstruction).

8.7.5 The other Party enters into an arrangement or composition with its creditors.

8.8 Either Party may terminate the Agreement if the Service is interrupted for a period exceeding 1 month due to any event occurring outside the reasonable control of the parties.

8.9 Termination of the Agreement shall not relieve the Customer of its obligation to pay any charges incurred or affect in any way the continuation in force of paragraphs 5, 6 and 8.

8.10 Notwithstanding clause 8.4, if you end your contract for broadband services with us and do not transfer your broadband services and telephone line to another provider via a recognised transfer process, you agree to pay us a disconnection charge. This can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

## 9. MOVING HOUSE

9.1 Moving home costs are set by the standard installation fees advertised on our website. The installation fee will be dependent on the contract length taken, package chosen and the area you are moving to. We will then arrange a new agreed contract term with you for your new address, to which a separate minimum contract term will apply. Please also note that if you move home, your contract with us for your current Services will continue until it is ended in the way set out in condition 8.3 "Term and Termination".

If you have our Fibre to the Property Service, then you cannot move home with your Services within the first 12 months of your contract. If you do move home then the full 12 months minimum term is payable, plus moving home costs.

9.2 You must contact the Customer Services team and ask Eclipse Broadband to disconnect the services at your current address. This will usually take effect within two to five working days of making contact and please note that you will then not have access to either internet services or inbound/outbound calls, including calls to the emergency services, at the current address.

9.3 Moving home costs are set out by reducing your current agreed contract term to match the duration of time you have had the services at the installation address. We will then arrange a new

agreed contract term with you for your new address to which any installation fees may be applied with any agreed discounts.

9.4 If we are unable to provide the services at your new address for any reason, the charges for the contract will be payable in line with section 8 of these terms. Your obligation to pay for the services and any cancellation fees still apply in line with the original terms of the contract.

## 10. CHANGES TO YOUR CONTRACT AND UPGRADES

10.1 If you plan to upgrade or change the services, you receive from us then you must speak to our Customer Services team. You may be able to change or upgrade your services, however we may charge you an additional fee for doing this where we incur costs for any reason. We will tell you what the amount of this fee is prior to charging you. It may take up to 31 calendar days to change or upgrade the services and you may experience a loss of service during this time. You will continue to be responsible for the Charges for your current Services at all times during the upgrade and change process.

10.2 The costs to upgrade are set by the standard installation fees advertised on our website. The installation fee will be dependent on the contract length taken and the area you live in. We will then arrange a new agreed contract term with you, to which a separate minimum contract term will apply.

10.3 Notwithstanding clause 2.2.2, Eclipse Broadband may charge an administrative charge for assigning the contract to another individual. This can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

10.4 Once the initial contract term has been fulfilled, the Customer may request to change the contract term and amend any additional items by giving a minimum 30 days' notice. We will then arrange a new agreed contract term with you, to which a separate minimum contract term will apply.

10.5 If you plan to upgrade your existing package to our 24-month broadband "Take it with you broadband", there will be no upgrade charges applied to your account.

## 11. DATA PROTECTION & CONFIDENTIALITY

Data protection legislation means collectively:

- i) any applicable laws of the EU;
- ii) any applicable laws relating to the processing or personal data and the protection of an individual's privacy;
- iii) The Data Protection Act 2018 and any amendment or replacement to it. Eclipse Broadband privacy policy means that the policy that Eclipse Broadband has implemented and may be

updated from time to time on how it processes personal data. Document can be found on the Eclipse Broadband website [eclipsebroadband.co.uk](http://eclipsebroadband.co.uk) under [Privacy Policy](#).

iv) Data protection legislation means the Data Protection Act 1998 superseded by the Data Protection Act 2018;

11.1 If the Customer is an individual about whom Eclipse Broadband processes personal data (as defined in the Data Protection Act 2018), the following shall apply:

11.1.1 Eclipse Broadband may process such personal data for the purposes of administering the relationship.

11.1.2 Eclipse Broadband may also, from time to time, use such personal data to provide the Customer, whether by telephone, facsimile, electronic mail or other means of communication, with details of products and services of Eclipse Broadband and/or Eclipse Broadband Affiliates which may be of interest to the Customer.

11.1.3 Eclipse Broadband reserves the right to record all incoming and outgoing calls made with its clients for the purpose of administering the relationship with the client. Calls may also be recorded for training purposes. In the event that a call has been recorded it is our policy to hold recordings for a 6 month period after which time recordings are deleted.

11.2 By entering into the Agreement, the Customer expressly agrees to the use of personal data for the purposes described above.

## 12. GENERAL

12.1 Eclipse Broadband may use sub-contractors to perform its obligations under the Agreement.

12.2 Eclipse Broadband may at any time assign, transfer, charge or deal in any other manner with the Agreement or any of its rights under it or sub-contract any or all of its obligations under it.

12.3 If any provisions of the Agreement terms and conditions are held by a court or any government agency or authority to be invalid or unenforceable, the remainder of the Agreement terms and conditions shall to the extent possible remain valid and enforceable.

12.4 In the event that the Service fails, and the Customer has to use the services of another organisation, Eclipse Broadband will not be responsible for any charges that the other organisation should make.

12.5 Neither party shall be liable to the other for any loss or damage that is caused by an event beyond its reasonable control. Such events include, but are not limited to, acts of God, lightning damage, fires, deficient power supplies, labour disturbances, loss of service on exchange lines provided by other

telecommunications operators and any acts or omissions of Government, highways authorities, other telecommunications operators or third parties generally.

12.6 The Agreement shall be modified only by written agreement of both Parties.

12.7 Failure by either party to exercise or enforce any right under the Agreement shall not deprive either Party of the right to exercise or enforce any rights under the Agreement on any later occasion.

12.8 Except in the case of fraudulent misrepresentation, the Agreement expresses the entire understanding of the Parties in relation to the Service and replaces any and all former agreements, understanding, offers and representations (both written and oral) relating to the Service.

12.9 The Agreement shall be governed by English law and the Parties irrevocably agree to the exclusive jurisdiction of the English courts.

### 13. SUPPORTPLUS

This service is available to all Customers, whereby the Customer will be issued a different telephone number for our after-sales department. Charges for this service can be found on Eclipse Broadband's website under [Tariffs and Charges](#).

### 14. CALL PACKAGES

When calling from your landline to a mobile number, please be aware that your call package includes only calls to the following service provider networks:

- Mobile - O2
- Mobile - Virgin
- Mobile - T-Mobile
- Mobile - Orange
- Mobile - Vodafone
- Mobile - Hutchinson G3
- Mobile - Opal
- Mobile - BT Fusion

Calls to other operators that are not listed above are not included in your call package. This could potentially mean that you incur additional call charges if the mobile number you are calling is associated to a service provider that is not part of your call package.

If you are looking to cancel your contract before installation, simply call us on 0345 122 4111 where a member of our Customer Care Team will be more than happy to help.

### 15. HOME FLEX

**15.1** The Home Flex Plan is available to residential customers who hold, or are entering into, a residential tenancy agreement at the installation address. Eclipse Broadband reserves the right to request evidence of a tenancy agreement at any time.

### **15.2 Contract Term**

The Home Flex Plan operates on a 2-month rolling contract. There is no minimum fixed initial term. The 2-month rolling period begins from the Service Commencement Date and automatically renews every 2 months unless notice is given in accordance with clause 15.3.

### **15.3 Termination**

The Customer may terminate their Home Flex Plan at any time by giving a minimum of 2 months' notice by calling our Customer Care Team on 01403 216133. No early termination charges will apply provided the required 2-month notice period is served. During the notice period, the Customer remains liable for all Charges.

### **15.4 Discounted Rate and Price Review**

Home Flex is offered at a discounted rate as set out in the Tariffs and Charges on the Website. This discounted rate is available for the first 12 months of continuous service at the same installation address.

After 12 months of continuous service, the charges will be subject to a price review and will move to the standard rate applicable to the equivalent broadband package at that time, as published in the Tariffs and Charges on the Website.

After 24 months of continuous service, the charges will be subject to a further price review and will move to the standard rate applicable to the equivalent broadband package at that time, as published in the Tariffs and Charges on the Website.

### **15.5 Moving Home**

If a Customer on the Home Flex Plan moves to a new address, they may request to transfer the Plan to the new address, subject to service availability. A new 2-month rolling contract will commence at the new address. The provisions of Section 9 (Moving House) shall apply, save that no early termination charges shall be levied in respect of the original address provided the Customer gives the required 2 months' notice.

### **15.6 Annual Price Adjustment**

Notwithstanding clause 7.12, no annual price adjustment will apply to the Home Flex Plan during the first 36 months of continuous service at the same installation address. Following the expiry of this 36-month period, the standard annual price adjustment as set out in clause 7.12 will apply.



### **15.7 Eligibility**

The Home Flex Plan is available to residential customers only and may not be used for business purposes. Eclipse Broadband reserves the right to withdraw this Plan or amend eligibility criteria upon 30 days' written notice to affected Customers.

## Part B – BROADBAND SERVICES

### BACKGROUND

- This section of Part B relates solely to the supply of the Broadband Service.
- We will be relying on third party telecommunication suppliers (the Carrier) and our ability to provide You with the Broadband Service is, in part, reliant on them.

### 1 DEFINITIONS

1.1 In this Part, the following terms shall have the following meanings:

- Acceptance Test - the tests carried out by Us or our representatives to determine the proper operation of the Service;
- Act – the Communications Act 2003, the Telecommunications Act 1984 (as amended) and the Electronic Communications Act 2000;
- Approved Router – a router that has been approved by BT Openreach for use with the Business Fibre Services or the Home Fibre Services, as applicable;
- Business Fibre Services– those fibre services available to business customers namely Fibre and Fibre Pro;
- The Carrier – BT or any other third party provider through whom we will provide the Broadband Service.
- Cease Charge fee – the fee which We reserve the right to charge You in the circumstances set out in clause

8.2 below.

- Communications Line - the telecommunications system that You have notified Us that You use to obtain telecommunications services over Your telephone network at the Premises;
- Start Date - the date when the first Acceptance Test is satisfactorily completed;
- Move Date - the date following Your home/office move when the Acceptance Test is satisfactorily completed;
- KCOM Group Networking System - the telecommunication system including any apparatus leased by or obtained by Us from a third party;
- Fee - the amount as set out in the Order Form (or as detailed on Our Web Site), which may include a set-up charge, a regrade charge and/or Usage fees;
- Early Termination Fee – means, if you are a business customer, either (i) the Fees payable by You from the date of termination to the expiry of the Fixed Period; (ii) the actual costs incurred by Us in terminating the Services at Your current Premises, if You request a home/office move

following the expiry of the Fixed Period at Your current Premises; or (iii) the actual costs incurred by Us in terminating the Services prior to Your Start Date, if You cancel the Services prior to the Start Date, without limiting any rights You may have pursuant to clause 6.9 or 6.10 of Part 1.. If You are a residential customer the Early Termination Fee means the Fees payable by You from the date of termination to the expiry of the Fixed Period less any costs saved by Us as a result of Your termination;

- Home Fibre Services– those fibre services available to residential customers;
- Premises - the Site address identified in the order form;
- Service - the supply of a telecommunications system (either by Us or by a Carrier chosen by Us), including in the case of the 'Managed Installation' Services' the installation of the telecommunications system, capable of supporting Broadband services to You at the Premises and the provision of the telecommunication services over such system;
- Fixed Period - a period of 1 month, 12 months, 18 months or 24 months, as defined in the product description, commencing on the Start Date (or the Move Date for any home/office move);
- Business Broadband – a Service provided to Business customers;
- Home Broadband – a Service provided to Residential customers;
- Home/Office Broadband - a Service provided to Business customers with ROAM Wireless

Broadband Services (as detailed in Part B - ROAM Wireless Broadband);

- Usage - the amount of data transferred over the Service to You measured in gigabytes (GB) (both downloads and uploads);
- Usage Upgrade – the purchase of an upgrade to increase the amount of data that You shall be permitted to transfer over the Service without incurring a fee for exceeding the Usage;
- Usage Downgrade – a reduction in the amount of data that You shall be permitted to transfer over the Service as may be requested by You in accordance with the terms of this Agreement;
- Monthly Usage Allowance - the Usage included with the Home Broadband Service, the Business Broadband and/or the Home/Office Broadband Service, as defined in the product description
- DSLAM – digital subscriber line access multiplexer;
- Line Rate - the rate of connection between Your Equipment and the Carrier's equipment (DSLAM) located at the local exchange.
- Maximum Stable Rate - the maximum Line Rate the Service is expected to achieve on Your Communications Line, calculated on a per line basis as further detailed in the product description.

- Rate Adaptation – the automatic negotiation of the best Line Rate between the DSLAM and Your Equipment, based on the settings within the Carrier Network, line characteristics and conditions. Rate adaptation can occur several times a day, thus resetting the rate between Your Equipment and the DSLAM.
- Stabilisation Period - a period of up to 10 calendar days commencing from the date that You first use the Service following the Start Date, during which time the Maximum Stable Rate will be established for Your connection.

## **2 INSTALLATION**

2.1 We will endeavour to provide the Service as soon as possible.

2.2 Where you have selected 'Self-Installation', an engineer will not attend the Premises to install the Services. However, if a fault occurs during the transition from ADSL services to the Services, We may need to send an engineer to the Premises and if We determine that the fault was caused in whole or in part by a router that is not an Approved Router, You shall be required to pay Us an Additional Charge for sending Our engineer to the Premises].

2.3 Where you have selected 'Managed Installation', We shall use reasonable endeavours to install or procure the installation of the Equipment at the Premises on or before any installation date specified or agreed to by Us. Any installation date is, however, an estimate only and time shall not be of the essence.

2.4 Notwithstanding whether You have selected 'Self Installation' or 'Managed Installation', You shall be required to supply an Approved Router for use with the Services. You may purchase an Approved Router from Us for Use with the Services. If You choose to use a router that is not an Approved Router with the Services, You acknowledge that this may affect the Services We supply to You and We shall not be liable to You for any faults or non-availability of the Services.

2.5 You acknowledge and agree that:

2.5.1 the Service will depend upon Your particular Communications Line. If the Carrier determines that it is not practicable to supply the Service We shall have the right to terminate this agreement without any liability to You; and

2.5.2 during and after the activation of Your Communications Line You may suffer a temporary loss of telephone service. This will be reinstated following installation as soon as reasonably possible without any liability to Us.

2.6 We shall supply You with the relevant information to enable You suitably to prepare the Premises for the activation of Your line.

2.7 You acknowledge and agree the speed and the stability of the operation of the Service is determined:

2.7.1 by the characteristics of Your Communications Line, which include its physical length, quality and susceptibility to interference from other Communications Lines;

2.7.2 electrical, electromagnetic or radio frequency interference;

2.7.3 Rate Adaptation and the Line Rate of Your Equipment;

2.7.4 the capacity available within the KCOM Group Networking System, any third party network or the internet generally;

2.7.5 the specific IP application protocol used; and/or

2.7.6 Our management of the network traffic and the priority that may be applied to the Service that You have purchased from Us and/or the type of traffic that You generate. Further details about the way We manage network traffic is available on Our Website at <http://eclipse.net.uk/broadband-and-connectivity/traffic-management>.

2.8 If, for any reason, We are unable to supply the Service requested by You on the Order Form, We shall notify You that we are unable to supply the Service and shall suggest alternative Services that We are able to offer, if any.

2.9 If, for any reason, the Carrier should be required to visit Your Premises to assist with the Installation or any fault reported thereafter, You may incur an Additional Charge. For the avoidance of doubt, where You have selected 'Managed Installation' the Carrier will be required to visit Your Premises to assist with the Installation of Our Fibre Services. You agree to pay any Additional Charges arising as a consequence of the Carrier responding to a fault and the Carrier (i) determining that such fault has not occurred as a consequence of the Carrier or their network; (ii) determining that the fault was caused in whole or in part by a router that is not an Approved Router; or (iii) the visit being aborted for any reason. You agree to pay any Additional Charges arising as a consequence of any visit by the Carrier to install Our Fibre Services at Your Premises being cancelled by You or as a consequence of You failing to be in attendance for the visit by the Carrier. Further You agree to pay any Additional Charges arising as a consequence of any visit by the Carrier to install Our Fibre Services being abandoned due to Your failure to suitably prepare the Premises for the activation of Your line where We have provided the relevant information pursuant to clause 2.6, including without limitation any visit being abandoned due to Your failure to provide an Approved Router for the purposes of the installation.

2.10 if Our engineer attends Your Premises to rectify a Fault and identifies that the Fault was caused in whole or in part by router that is not an Approved Modem/Router, You shall be required to pay an Additional Charge for sending Our engineer to Your Premises.

### **3 OUR BROADBAND SERVICES GUARANTEE**

3.1 The Line Rates We quote for Our broadband services are estimates only. The actual Line Rate the Service gives You will vary depending on a number of factors, as described in clause 2.7. Once Your broadband service has settled down (usually within

10 working days after it has been installed), if You are always getting a Line Rate that is lower than the range that We quote for the Service You should contact Customer Services. We will try to resolve any problems affecting Your Service and improve the Line Rate You are receiving. You must follow any reasonable advice We give to improve the service. In particular You must make sure You use any router We provide with the Service You are taking or, where You have purchased Home Fibre Services or Business Fibre Services, use an Approved Router with the Service You are taking.

3.2 If We are not able to improve Your Line Rate so that it achieves the minimum Line Rate We quote for Your Service, You can cancel Your Contract without penalty. You can do this by contacting the Customer Services Team. You will only be able to cancel your Contract in this way during the first three months after your broadband service has been installed.

3.3 If You exercise this right to cancel Your Contract, You will not have to pay any early termination charges. However, You will have to pay Our charges for the Service You have taken up to the termination date.

3.4 The range of Line Rates You can expect to receive for the broadband service You are taking will be confirmed to You when You take the Service.

### **4. YOUR OBLIGATIONS**

4.1 You must notify Us immediately in writing of any allegation of infringement of any intellectual property rights prompted by Your use of the Service. You may not make an admission relating to an alleged infringement. You must allow Us, or at our election, the Carrier to conduct all negotiations and proceedings and give Us or the Carrier all reasonable assistance in doing so. You must allow any part of the Service to be modified so as to avoid continuation of the alleged infringement.

4.2 You will co-operate with our reasonable requests for information regarding Your use of the Service and supply such information without delay.

4.3 You will undertake not to resell the usage of Your Service to third parties.

### **5 REGRADES**

5.1 If You request a Service Regrade from and to, one of Our current broadband Services prior to the expiry of the Fixed Period, You shall be entitled to carry over the unused portion of the Fixed Period for the benefit of the Service Regrade. You acknowledge that You shall not be able to request a Service Regrade from one of Our Fibre Services to one of Our current broadband Services.

5.2 If You are a Business Fibre customer You acknowledge that You shall not be entitled to request a Usage Upgrade during the first month of the Fixed Period of Your contract. You shall be entitled to request a Usage Upgrade once a month after the expiry of the first month of the Fixed Period.

## 6 Rate ADAPTATION AND STABILISATION

6.1 You acknowledge that Your Line Rate will be subject to Rate Adaptation. Rate Adaptation can occur several times each day and may change the Line Rate available to You. Such changes in the Line Rate may re-set Your connection to the KCOM Group Networking System or the DSLAM/MSAN.

6.2 The Service may provide upstream (and downstream) Rate Adaptation. If so, the maximum and minimum Line Rate available for the Service You are taking will be confirmed to You when You take the Service.

6.3 If applicable, You acknowledge that the Stabilisation Period cannot commence and that the Carrier will not be able to establish a Maximum Stable Rate until you have installed the appropriate Equipment and the Communications Line is synchronised to the relevant DSLAM/MSAN. We will notify You once a Maximum Stable Rate has been established. However, You acknowledge that the Maximum Stable Rate may be subject to change as further detailed in the product description.

## 7 FEES

7.1 If the Service You receive is subject to a Monthly Usage Allowance, You shall have sole responsibility for the monitoring of Your Usage and shall pay the Fees for each gigabyte or part thereof, of Usage over and above the Monthly Usage Allowance for the Service as further described on Our Website. We do not accept any liability or responsibility for the Fees that You may incur as a result of Usage of the Service, whether made innocently or with, or without, Your consent or knowledge. We will send regular warnings to You by notice to Your Account Address when You reach and/or exceed certain triggers of Your Monthly Usage Allowance, as described on Our Web Site. You must ensure that You access the email address associated with Your Eclipse Broadband admin account regularly in order to receive such notices.

7.2 You shall be entitled to request Us to 'fast-track' Your Order for the Services, subject to the payment of an Additional Charge.

## 8 TERMINATION

8.1 We may terminate this Agreement immediately upon written notice to You if (for whatever reason):

8.1.1 it becomes unlawful for Us or the Carrier to continue to provide or support the Service; or

8.1.2 the Carrier supporting the Service ceases to do so for whatever reason or changes the terms in respect of the provision of telecommunications services to Us for the Service for reasons beyond our reasonable control.

8.2 You agree to pay any Additional Charges including the Cease Charge fee (or and other fees that Our Carrier levies against Us in such circumstances), and/or an Early Termination Fee, if applicable, if: a) You terminate the Service or the Service ends for any reason; or (b) You request a home/office move.

## **9 FURTHER OBLIGATIONS**

9.1 You shall obtain at Your expense all permissions, licences, registrations and approvals necessary for, or considered desirable by Us to deliver, install and maintain the Equipment or to provide the Services.

### **10 BROADBAND PROMOTION TERMS (PROMOTIONAL CODE(S))**

10.1 In addition to the provisions of this Part B, the following terms and conditions shall apply if You are a residential consumer or a business and You request Us to supply Services benefiting from a Broadband Promotion (Promotional Code) (a "Promotional Code"). These Broadband Promotion (Promotional Code) terms shall take precedence in the event of any conflict with the provisions of Part B.

10.2 Some Promotional Codes are only valid for a limited period of time. Where such Promotional Codes are only valid for a limited period of time, the expiry date of that Promotional Code will be published with the relevant Promotional Code.

10.3 If You place an Order for certain of Our Services, You enter the relevant Promotional Code at the time of placing Your Order and We accept Your Order, We agree to provide You with a gift voucher ("Gift Voucher"). The value of the Gift Voucher shall depend upon which Service You have purchased and will be published with the relevant Promotional Code. You must enter the relevant Promotional Code at the time of placing your Order on Our website.

10.4 Promotional Codes are only valid for Orders placed on Our website. Only one Promotion Code can be used per Order. Promotion codes are not valid in conjunction with any other promotion or offer. We reserve the right to terminate the validity of any promotional code at any time.

10.5 The provision of any Gift Voucher shall be subject to You entering into a contract with Us for a Fixed Period.

10.6 The following persons are excluded from the offer, and as such will not benefit from the Broadband Promotion:

(i) existing customers: and (ii) re-sellers of Our Services.

10.7 This offer is limited to one Gift Voucher per customer irrespective of the number of Orders that You place. We reserve the right to reject or accept any Order where, in Our opinion, the Promotional Code is invalid for the Order being placed. We reserve the right to amend or withdraw this offer at any time.

## 11 BUNDLE PROMOTION TERMS (PROMOTIONAL CODE(S))

11.1 In addition to the provisions of this Part B, the following terms and conditions shall apply if You: (i) are an existing residential customer of Eclipse Broadband who has purchased Broadband Services from Us; and (ii) re-grade Your existing Broadband Service to one of the Services set out in clause 11.3 (the "Bundle Services") by calling Us on 0345 122 4111; and (iii) quote the bundle promotional code supplied by Us to You (the "Bundle Promotional Code") when You contact Us pursuant to subsection (ii) of this clause 11.10 prior to the expiry date of the Bundle Promotional Code .

For the avoidance of doubt, if You place Your order for the Bundle Services through the Website or My Eclipse portal You shall not benefit from the Bundle Promotion.

11.2 These Bundle Promotion terms shall take precedence in the event of any conflict with the provisions of Part B.

11.3 The Bundle Services are as follows: (i) Home Bundle 20GB; (ii) Home Bundle 50GB' and (iii) Home Bundle Unlimited Usage

11.4 The provision of the Bundle Services shall be subject to You entering into a new contract with Us for a Fixed Period.

11.5 If You re-grade Your Broadband Service to a Bundle Service in accordance with clause 11.1, We will supply the Bundle Services to You free of charge for the first month of the Fixed Period of Your Bundle Service contract. After the expiry of the first month of the Fixed Period of Your Bundle Service contract, the Fees shall revert to Our standard monthly charge as detailed on Our Web Site.

11.6 You can only use a Bundle Promotional Code once per Communications Line. For the avoidance of doubt, if You re-grade Your Bundle Service to an alternative Bundle Service during the Fixed Period, You shall not be able to use a further Bundle Promotional Code and You will be required to enter into a new contract with Us for that Bundle Service. For the avoidance of doubt, that new contract shall be subject to a new Fixed Period.

11.7 This Bundle Promotion is only available to You if You currently receive broadband services from Eclipse Broadband and have a Communications Line.

11.8 We reserve the right to reject or accept any Order where, in Our opinion, the Bundle Promotional Code is invalid for the Order being placed. We reserve the right to amend or withdraw the Bundle Promotion at any time. The expiry date of the Bundle Promotional Code will be published with the relevant Bundle Promotional Code

11.9 You shall not be able to benefit from any other promotion in conjunction with this Bundle Promotion.

## **Part B – ECLIPSE BONDED DSL PRODUCT**

BACKGROUND • This section of Part B relates only to the provision of Bonded DSL Services, where such services are requested by You. These terms are in addition to the terms set out in Part A above and in addition to the terms set out in

**Part B 'Broadband Services'. Where there is a difference between the terms in Part A and these following terms, and/or a difference between the terms in Part B 'Broadband Services' and these following terms, these following terms shall apply.**

1 DEFINITIONS • Eclipse Equipment - the equipment located on Our premises that We use to deliver the Service to You but which We shall also use to provide services to Our other customers • Equipment the Customer Equipment and the Eclipse Equipment collectively • Fees – the fees for the Software as posted on the Web Site from time to time; • Licence – the licence to use the Software as set out in Clause 2.1 of this section below. • Service – the licence of the Software on the Services Equipment to enable the bonding of up to four of Your standard broadband lines together, thereby creating a single virtual broadband connection to the internet; • Services Equipment the preconfigured router that we supply to you as part of the Services and the Software thereon that is dedicated to You for the duration of the Agreement and which We use in addition to the Eclipse Equipment to provide and deliver the Service to You including embedded firmware and any updates, upgrades and other modifications which We provide under this Contract and any associated user manuals and other documentation; • Software – the software on the Services Equipment and any modification, update or upgrade which is acquired by You and/or provided by Us during the term of this Licence as described in the product data sheet posted on the Web Site.

- Usage - the amount of data transferred over the Service to You measured in gigabytes (GB) (both downloads and uploads); • Monthly Usage Allowance - the Usage included with the Service as set out on the Price list 2. LICENCE, TERM AND FEES

2.1 In consideration of the Fees paid by You to Us We grant to You a non-exclusive licence for a minimum term of 12 months (starting on the date that You complete the Online Order Form and We accept Your order) to use the Software in object code form for personal use only for the purpose of using the Service. After the minimum term, You may terminate the Service by giving Us 30 days' prior written notice.

2.2 Where the Services are subject to a Monthly Usage Allowance, You shall have sole responsibility for the monitoring of Your Usage and shall pay the Fees for each gigabyte or part thereof, of Usage over and above the Monthly Usage Allowance for the Service. We do not accept any liability or responsibility for the Fees that You may incur as a result of Usage of the Service, whether made innocently or with, or

without, Your consent or knowledge. We will send regular warnings to You by notice to Your Account Address when You reach and/or exceed certain triggers of Your Monthly Usage Allowance, as described on Our Web Site. You must ensure that You access Your Eclipse admin account regularly in order to receive such notices.

### **3 USE OF THE SOFTWARE**

3.1 You have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error connections to the Software in whole or in part except as permitted by law. You will indemnify and keep Us indemnified against any costs, losses, damages, or liability that We may incur due to You amending or in any way, altering such software or documentation, or using it for a purpose not permitted by this Agreement

3.2 You have no right to resell, sub-license or to assign the benefit or burden of this Licence in whole or in part, or to allow the Software to become the subject of any charge, lien or encumbrance.

3.3 We may sub-license, assign, charge or otherwise transfer any of Our rights or obligations under this Licence, acting in Our entire discretion.

3.4 You must take appropriate security measures to safeguard the use of or access to the Service by any unauthorised person. You are responsible for any person who has access to the Service and You must ensure that they comply with the Terms.

3.5 If You are in breach of the Terms, including but not limited to if You (or anyone who has access to the Services Equipment) use the Service in an Unlawful manner, in breach of any third party rights or send or knowingly receive, upload, download or use any material which is offensive, abusive, indecent, defamatory obscene or menacing, then in addition to any other rights We may have, We may suspend or end the Service immediately without notice, even if You were not aware of the breach.

### **4 WARRANTIES AND LIMITS OF LIABILITY**

4.1 We will use our reasonable endeavours to provide the Service to you, however faults may occasionally occur. We do not warrant that the use of the Software will be uninterrupted or error-free. If the Service is materially impaired due to a problem with the Software then We shall, at Our option, do one of the following: (a) repair the Software; or (b) replace the Software; or (c) terminate this Service immediately by notice in writing to You and refund any of the Fees paid by You as at the date of termination (less a reasonable sum in respect of Your use of the Service to the date of termination) on return of the Software (and all copies) provided You provide all the information that may be necessary to assist Us in resolving the defect or fault, including sufficient information to enable Us to re-create the defect or fault.

4.2 We warrant that We have the right to grant You the Licence as contemplated by these Terms.

4.3 The extent of Our Liability to Your for the Service is set out in Part A, Clause 4 of these Terms.

## **5 INTELLECTUAL PROPERTY RIGHTS**

5.1 Any software contained on the Eclipse Equipment or the Services Equipment and any software or documentation provided by Us in connection with the provision of the Service is, and will remain, Our property or that of Our licensors.

5.2 You agree to be bound and comply with the licensing terms of Our licensors as set out in clause 8 (the End User Licence Terms).

5.3 You acknowledge that certain modules of the Software incorporate open source third party software which has been used in accordance with the terms of Version 2 of the GNU General Public Licence as published by the Free Software Foundation. Such third party scheme is provided subject to the GNU Licence (Version 2), and You shall ensure that You comply with such Licence.

5.4 For the avoidance of doubt, the third party software referred to in clause 5.3 above, together with any other third party software which forms part of the system in respect of which the Software constitutes a component part, is not licensed to You under this Agreement. You shall comply with the separate licence terms and conditions applicable to such third party software and shall indemnify Us against all claims, losses, damages or similar proceedings brought against as suffered by Us as a result of You failing to adhere to any separate licence terms and conditions.

5.5 Upon termination of this Agreement, each party shall immediately cease to use the others software and/or documentation supplied under this Agreement and (at the others absolute discretion) shall return or destroy thesame.

5.6 You acknowledge that all Intellectual Property Rights in the Software belong to Us or Our supplier(s) and You shall have no rights in or to the Software other than the right to use it in accordance with the Licence.

## **6 SUPPORT AND OTHER TERMS**

6.1 In case of any difficulties, Our technical team will use its reasonable endeavours to provide support during the hours posted on the Web Site. Unfortunately We cannot guarantee that We will be able to resolve or give advice on all issues. We cannot accept liability for any issues arising from Your failure to follow our advice and recommendations or non-compliance with these Terms.

6.2 The support service does not cover maintenance of hardware or software purchased from other vendors or software generated by You, or support outside the usual hours of support (as advertised on the Web Site).

6.3 You agree to co-operate with Us or Our Carrier or suppliers in diagnosing faults including but not limited to carrying out any diagnostic and test routines yourself and allowing remote diagnostic tests if required.

6.4 We may temporarily suspend the Service for emergency or operational reasons or for maintenance or improvements to the Service. We will inform You as soon as practicable of any planner suspension.

## **7 TERMINATION**

7.1 In addition to any other rights or remedies We may have, We may terminate this Licence at any time on written notice to you if: (a) You are in material or persistent breach of any of the terms of the Licence and either that breach is incapable of remedy, or You fail to remedy that breach within 30 days after receiving written notice requiring You to remedy that breach; or (b) You are unable to pay Your debts (within the meaning of section 123 of the Insolvency Act 1986), or become insolvent, or are subject to an order or a resolution for Your liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or You have an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of Your assets, or You enter into or propose any composition or arrangement with Your creditors generally, or You are subject to any analogous event or proceeding in any applicable jurisdiction; or (c) You cease to receive a broadband service for any reason (whether supplied by Us or another supplier); (d) In the event that Our contract with the Licensor for the provision of the Software is terminated; or (e) We are entitled to terminate any or all other Services which We supply to you from time to time. 7.2 Termination by either party shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

7.3 On termination for any reason: (a) all rights granted to You under this Licence shall cease; (b) You shall cease all activities authorised by this Licence; (c) You shall immediately pay to Us any sums due to Us under this Licence; and (d) You shall immediately destroy or return to Us (at Our option) all copies of the Software then in Your possession, custody or control and, in the case of destruction, certify to Us that You have done so; and (e) We will have the right to destroy all data stored on the Server on or after the date of termination without any liability for loss or damage.

## **8 END USER LICENCE TERMS**

SHAREDBAND SOFTWARE HAS BEEN PRE-INSTALLED ON THE ROUTER OR CAN BE DOWNLOADED FROM SHAREDBAND'S WEBSITE (WWW.SHAREDBAND.COM) OR THE WEBSITE OF YOUR SHAREDBAND SERVICE PROVIDER. BEFORE YOU DOWNLOAD THE SOFTWARE OR USE THE ROUTER CAREFULLY READ THE TERMS AND CONDITIONS OF THIS LICENCE. BY DOWNLOADING, COPYING, INSTALLING

**OR OTHERWISE USING THE SOFTWARE YOU AGREE TO BE BOUND BY AND ARE BECOMING THE**

LICENSEE TO THIS LICENCE WHICH CONSTITUTES A LEGALLY BINDING CONTRACT BETWEEN THE LICENSEE (“YOU”) AND THE LICENSOR, SHAREDDBAND LIMITED, (HEREINAFTER REFERRED TO AS “SHAREDDBAND”).

## 1. LICENCE AND GRANT

1.1 In this Licence, Software means the object code versions of the Sharedband Software Modules and all associated media, printed materials, “online” or electronic documentation and bundled software.

1.2 The Software is not sold but licensed to You for use only in accordance with this Licence. Sharedband transfers no title to or ownership in the Software to You or any third party and Sharedband reserves all rights not expressly granted to You.

1.3 If You do not agree to the terms of this Licence You must not use the Software and must immediately delete any and all copies of the Software in Your possession.

1.4 Sharedband hereby grants You a non-exclusive licence to use the Software subject to the following conditions.

1.5 You may transfer the Software or otherwise make it available to third parties provided always that you procure that the person to whom the Software is transferred accepts the terms of this licence prior to making any use of the Software by visiting Sharedband’s website ([www.Sharedband.com](http://www.Sharedband.com)) or the website of Your Sharedband service provider and following the on-screen instructions for registration and acceptance of an end user licence.

## 2. LICENCE FEE

2.1 There is no licence fee payable by You for use of the Software.

2.2 Certain modules of the Software are open source and can be redistributed and/or modified under the terms of Version 2 of the GNU General Public Licence as published by the Free Software Foundation. Such modules are distributed in the hope that they will be useful, but without any warranty or even the implied warranty of merchantability or fitness for a particular purpose – see the GNU General Public Licence (Version 2) for more details. If You did not receive a copy of the GNU General Public Licence with this Software please write to Free Software Foundation Inc., 51 Franklin Street, Fifth Floor, Boston, MA 02110-

1301 USA or visit [www.gnu.org/licences](http://www.gnu.org/licences)

2.3 Upon request we will provide you with details of those modules of the Software which are open source and a machine readable copy of the source code for such modules in accordance with the terms of the GNU General Public Licence (Version 2).

## 3. YOUR OBLIGATIONS 3.1 By accepting this Licence You undertake:-

3.2 not to use, exploit or copy the Software except as agreed by Sharedband or expressly set forth in this licence;

3.3 not to disclose, make available or use the Software for the benefit of any third party, nor to sell, assign, lease, rent or otherwise commercially exploit the Software with or without charge;

3.4 not to copy, modify, translate, decompile, disassemble or otherwise reverse engineer the Software nor to permit the whole or any part of the Software to be combined with or become incorporated in any other programs or otherwise determine or attempt to determine source code or protocols from the executable code of the Software or create derivative works based upon the Software;

3.5 not to use the Software for immoral, illegal or for any other purpose which may be termed abusive or harmful;

3.6 within 14 days after the date of determination or discontinuance of this Licence for whatever reason to destroy the Software and all upgrades or copies. 4. INTELLECTUAL PROPERTY RIGHTS

4.1 The Software is protected by copyright and other intellectual property laws and international treaties. Title to, ownership of, and all rights and interests to any and every part of the Software and all copies thereof shall remain at all times vested in Sharedband. 5. NO WARRANTY

5.1 You acknowledge that the Software is still under development and that it is provided "as is" without any warranty express or implied including but not limited to the implied warranties of satisfactory quality, fitness for a particular purpose, title and non-infringement. Sharedband does not warrant that the Software will be error-free or that such errors will be corrected and You are solely responsible for all costs and expenses associated with the rectification, repair or damage caused by such errors.

5.2 Sharedband may create new versions of the Software ("Upgrades") which may correct such errors and although Sharedband has no obligation to notify existing licensees of such Upgrades, the same will be made available free of charge.

5.3 Sharedband shall not be liable to You or any other party for any loss or damage arising directly or indirectly in connection with this Licence, the Software, its use or otherwise except to the extent that such liability may not be lawfully excluded under the applicable law. In particular, Sharedband accept no responsibility for any losses arising from You installing the Software on Your computer or router.

5.4 Notwithstanding the generality of clauses 5.3 above, Sharedband expressly excludes liability for indirect, special, incidental or consequential loss or damage howsoever arising. 6. TERMINATION

6.1 You may terminate this Licence at any time by destroying the Software, documentation or copies. Sharedband may terminate this Licence at any time if You are found to be in breach of any of the terms of this Licence or if Sharedband is notified by Your Sharedband service provider that any subscription for the provision of a line or lines is overdue. If You are notified of such termination You must comply with the provisions of clause 3.6 above.

6.2 Sharedband reserves the right to disable the Software without this resulting in termination of the Licence upon the occurrence of any one of the events described in clause 6.1 above. 7. LAW This Licence shall be governed in all respects by English law and You agree to submit to the exclusive jurisdiction of the English courts.

## **9 BONDED DSL PROMOTION TERMS**

9.1 In addition to the provisions of this Part B, the following terms and conditions shall apply if You are a business customer and You request Us to supply Services benefiting from the Bonded DSL Promotion. These Bonded DSL Promotion terms shall take precedence in the event of any conflict with the provisions of Part B.

9.2 If You place an Order for certain of Our Services during the Bonded DSL Promotion period as detailed on Our Web Site (the "Qualifying Period") and We accept Your Order, We agree to agree to refund to You any installation charges that You have paid to Us in respect of the Eclipse Bonded DSL Services, such refund to be issued to You within 60 days of Our receipt of the installation charges. The relevant installation charges are published on Our Web Site at the time of placing Your Order.

9.3 The Eclipse Bonded DSL Promotion is subject to You entering into a contract with Us for the duration of the Fixed Period

9.4 The following persons are excluded from the offer, and as such will not benefit from the Eclipse Bonded DSL Promotion: (i) existing customers; (ii) residential customers; (iii) re-sellers of Our Services

## **Part B - WEB HOSTING**

### **BACKGROUND**

- This section of Part B relates only to Web Hosting Services.

### **1 DEFINITIONS**

1.1 In this Part, the following terms shall have the following meanings:

- Service - the provision of Web Hosting;
- Start Date - the date upon which Your domain name is transferred to Us or registered with Us.

2 We agree to provide the Service to You from the Start Date.

3 If You receive notification from Us or any third party that any material on Your web site is defamatory, in breach of copyright or illegal You will inform Us forthwith and, if so requested, remove the same. 4. If the size of Your website exceeds the maximum limit on the amount of space, We shall either request

You to remove some content or purchase additional space from Us. If You fail to do so, We shall be entitled to suspend and/or terminate the Service without notice. 5. YOUR OBLIGATIONS

5.1 You agree that you will keep secure the login name and password specified on your online customer order form and not to pass that information to any unauthorised person. In the event of your login name and password being used by any unauthorised person, we accept no responsibility and you will be liable for additional charges arising therefrom.

5.2 It is your sole responsibility to make regular back-ups of your data and files used in connection with the Services. Even though we may make our own periodic back-ups for server maintenance purposes we are not responsible whatsoever for your data or files.

4.3 You agree that you will not:

5.3.1 perform any action that will reduce performance of our servers to the detriment of other users;

5.3.2 upload any virus to the Web Site which could infect our server or other equipment;

5.3.3 allow a virus to enter the Internet by allowing Internet users to download files containing viruses or (knowingly or otherwise) from their web space which is on our server;

5.3.4 upload any material which infringes the intellectual property rights of any other party. We accept no responsibility for your actions in either uploading material to the Internet or in your transferral of any material to other Web Sites (or vice versa);

5.3.5 upload any material which may be considered to be contrary to public decency and morality including (but not limited to) pornographic, barbaric and overtly tasteless material. We reserve the right to randomly inspect the Web Site and in the event that any unauthorised material has been uploaded to that Web Site, we reserve the right to inform the relevant authorities and to terminate this Contact forthwith;

5.3.6 cause or permit or in any way assist in any unauthorised publication or any dissemination of defamatory material or any material which could be considered to be in breach of the civil or criminal laws of England and Wales;

5.3.7 commit any act whereby access is gained by you to any information or resources of any person, body corporate individual, partnership, government agency, national institution, charity or recognised organisation without first having obtained authority from those persons or institutions;

5.3.8 use our servers or network to send unsolicited or spam e-mail to other Internet users regardless of whether we are referred to or not either directly or indirectly in such postings. Failure to meet this obligation would result in the termination of this Contract without refund;

5.3.9 not to use our servers or network either directly or indirectly in a way that would have a detrimental effect on network performance;

5.3.10 do any act or omission the result of which would have the effect of bringing us into disrepute.

## 6. HIGH RESOURCE USAGE POLICY

6.1 In the rare circumstances that a user utilizes our server resources to such an extent that it may jeopardize server performance and resources for other users then we reserve the right to implement the following High Resource User Policy at our sole discretion: Where a service is delivered with bandwidth restrictions and/or limitations we reserve the right at our sole discretion to restrict usage further as a protective measure

6.1.1 Resources are defined as bandwidth, processor utilization or disk space;

6.1.2 We reserve the right to suspend or terminate any Web Site immediately in order to prevent the misuse of our servers and to maintain maximum availability for other users. You may be offered alternate hosting options including us hosting the Web Site for an additional fee.

## Part B - E-MAIL

BACKGROUND • This section of Part B relates only to E-mail Services.

### 1 DEFINITIONS

1.1 In this Part, the following terms shall have the following meanings:

- Service - the provision of E-mail Services;
- Start Date - the date upon which Your e-mail domain name is transferred to Us or registered by Us and We provide connection details to You.

2 We agree to provide the Service to You from the Start Date.

2.1 The E-mail Service We provide enables You to send electronic messages containing rich media content, including, but not limited to, images, videos, music, sound clips and other audiovisual and/or interactive features. Any new feature, enhancement, addition, change or upgrade to the current Service shall be subject to the terms and conditions set out in this document.

2.2 Please note that although we take all appropriate actions to provide a reliable and secure service we cannot guarantee that the internet E- mail is a secure communications medium. In the interests of preserving confidentiality in your personal details, We strongly advise that You take this into consideration before You send any information by E-mail. By proceeding, You agree that You will send information by email at Your own risk.

2.3 Messages sent by E-mail may not be secure and may be intercepted by third parties. If You disregard this warning and choose to send confidential information, You agree that You do so at Your own risk and that You will not hold Us responsible for any loss that You suffer as a result.

2.4 We may, at our discretion, remove this service at any time by providing You with 30 days notice. This notice may be provided electronically to the email address associated with the E-mail service, so it is important that you regularly check the E-mail account for messages. In addition, when a Free E-mail account is not used or logged into for an extended period, we reserve the right to delete any emails contained within the mailbox. We therefore recommend that you download messages to Your local computer and backup any essential or important emails to reduce the risk of loss.

2.5 Where offered, the Free E-mail and Webhosting service is provided as a free add-on to a broadband service. You are under no obligation to take this service from us. We do not provide a backup of the Free E-mail and Webhosting services and items that are deleted from the server, whether intentionally or otherwise, are unable to be recovered.

### 3 The Virus Scanning Service

#### 3.1 Description of the Service

- We will carry out anti-virus scanning on all inbound and outbound mail.
- The scanning is integrated into our messaging servers and delays will normally be in the order of a few minutes.
- We will update our virus profiles automatically and frequently.
- Further details are available on Our Web Site.

#### 3.2 Procedure

- Where a virus is detected in an incoming message to You, the message will be quarantined and a virus detected notification will be sent to the original sender. You will not be notified, as the sender of the virus will be false or the message generated automatically and deemed noise.
- If an outgoing message contains a virus the message will be quarantined and You will be notified.
- If You are running Your own SMTP mail servers, such as Microsoft Exchange Server, You must configure Your server so that it rejects any SMTP connection from addresses other than the 82.153.252.0/24 and 212.104.129.0/24 IP address ranges. Failure to do so may result in Your server operating as an open relay and result in the Service being registered with an email/domain blacklist. In the event of this happening We will restrict your ability to send email until the issue is resolved

#### 3.3 Limitations

- This service scans Your email, checking for known viruses. There is always a risk that a virus is new and won't be detected or that our system is circumvented by a virus. Accordingly We do not promise to trap all viruses and You should employ Your own virus protection.
- This service does not protect You from viruses downloaded from web sites, or loaded from removable media.
- We will scan zipped or archived files including but not limited to .zip, .tar, .gz, gz2, .arj, .rar, .arc, .zoo and .lha files.
- We are unable to scan protected files and these will be passed through without being scanned. Accordingly You should take extra precautions with encrypted or password protected files.
- You must ensure that the size of your email mailbox does not exceed 50MB. Whilst your mailox exceeds this amount, all further email messages sent to You will be returned to the sender along with a message from Us stating that Your email inbox has exceeded its limit. In addition, you will be unable to send email until the mailbox size is reduced

## **Part B - DOMAIN NAME REGISTRATION**

### **BACKGROUND**

- This section of Part B relates only to Domain Name Registration and does not take effect if no domain name registration is requested.

### **1 DEFINITIONS**

1.1 In this Part, the following terms shall have the following meanings:

- Fixed Period - a period of either 12 or 24 months commencing on the Start Date, or each annual or biennial anniversary thereof, depending on the domain name registered and as detailed on Our Web Site;
- Early Termination Fee – means, if you are a business customer the Fees payable by You from the date of termination to the expiry of the Fixed Period. If You are a residential customer the Early Termination Fee means the Fees payable by You from the date of termination to the expiry of the Fixed Period less any costs saved by Us as a result of Your termination;
- Service - the registration of domain names;
- Start Date - the date of acceptance by Us of the order form.

### **2 REGISTRATION**

2.1 We agree to register such domain name(s) that You request on the Start Date and for the initial Fixed Period, subject to these Terms. This registration must be one of the suffixes set out on the order form. The registrations will be charged at the rate set out on our Web Site.

2.2 In the event that the domain name You require is not available then We will inform You of this and request alternatives.

2.3 You must have an IP address that is validated in the United Kingdom to register a domain name using the Domain Name Registration services described in this section of Part B.

2.4 We reserve the right to refuse to register any domain name for any reason (acting in our entire discretion) including but not limited to any domain name which: (a) We believe is being registered in bad faith; (b) contains a word or words identical or similar to any of Our (or Eclipse Broadband Ltd's) trade marks or trading names or other words that may be associated with Eclipse Broadband Ltd; or (c) may in Our opinion be likely to infringe Our rights or the rights of any third party.

### **3 TERM AND TERMINATION**

3.1 The Service shall be provided to You during the Fixed Period and thereafter as may be agreed.

3.2 On the expiry of the Fixed Period, We will either:

3.2.1 renew Your Domain name registration and the Charges for the Service shall be payable by You; and You will enter into a further Fixed Period for the provision of the Service, in accordance with these Terms; or

3.2.2 You may request Us to transfer Your Domain name without charge.

3.3 If any domain name registered by Us is transferred during the Fixed Period, We will charge to You an Early Termination Fee.

4 TLD AND ccTLD ADDITIONAL TERMS You acknowledge that We act as agent for the registrar of the TLD, ccTLD and/or sub-level domain registries. We may also act as agent for Our third party registrars, appointed by the applicable registry for the purpose of registering domain names. As a consequence, in addition to the Terms set out in this Part B (Domain Name Registration) and Part A, You agree to be bound by Our third party registrars and/or the applicable registry's terms for the provision of the Services and dispute resolution procedures, as follows:

4.1 .com, .org, .net, .info, .biz and .eu Our third party registrar's terms for the registration of the Service, available at [HUhttp://resellers.tucows.com/contracts/tld/exhibitaUH](http://resellers.tucows.com/contracts/tld/exhibitaUH) and the registry's policy governing the process of dispute resolution available at [H Uhttp://www.icann.org/dndr/udrp/policy.htmUH](http://www.icann.org/dndr/udrp/policy.htmUH)

4.2 .co.uk, .ltd.uk, .org.uk and .plc.uk The registry's terms for the registration of the Service, available at [H Uhttp://www.nic.uk/registrants/aboutdomainnames/legal/terms/UH](http://www.nic.uk/registrants/aboutdomainnames/legal/terms/UH), the registry's dispute resolution policy available at [HUhttp://www.nic.uk/disputes/drs/policy/UH](http://www.nic.uk/disputes/drs/policy/UH), the process for dispute resolution, available at: [HU http://www.nic.uk/disputes/drs/procedure/UH](http://www.nic.uk/disputes/drs/procedure/UH) and the rules of registration available at: [HU http://www.nic.uk/registrants/aboutdomainnames/rules/UH](http://www.nic.uk/registrants/aboutdomainnames/rules/UH)

4.3 .gov.uk and .ac.uk The registry's terms for the registration of the Service available at <http://www.ja.net/services/connections/domain/index.html>. Specific attention is drawn to the sections entitled, as follows: Eligibility Guidelines (<http://www.cabinetoffice.gov.uk/e-government/resources/handbook/html/1-9-2.asp>) or <http://www.ja.net/services/connections/domain/registering-ac/eligibility/index.html>), Procedure (<http://www.ja.net/services/connections/domain/registering-gov/gov-procedure.html>) or <http://www.ja.net/services/connections/domain/registering-ac/ac-procedure.html>), Appeals (<http://www.ja.net/services/connections/domain/registering-gov/gov-appeals.html>) or

<http://www.ja.net/services/connections/domain/registering-ac/ac-appeals.html>) and Data Protection, available at: <http://www.ja.net/services/connections/domain/data-protection.html>

4.4 .uk.com, .uk.net, .eu.com, .gb.com and .gb.net The registry's terms for the registration of the Service, available at <http://www.centralnic.com/terms> and the registry's policy governing the process of dispute resolution available at <http://www.centralnic.com/support/dispute/policy> and the rules governing the process available at <http://www.centralnic.com/support/dispute/rules>.

4.5 General (i) You acknowledge and understand that Our third party registrar's and the applicable registry may update its terms and/or policies from time to time. As such, You should consult the terms from time to time to ensure that You are aware of the most current version of such terms. (ii) You will indemnify Us against all claims, losses and liabilities incurred by Us as a result of Your failure to comply with Our third party registry's and/or the registrar's terms for the supply of the Services.

## **Part B – TALKMORE (Business and Residential Customers) (Not Available for New Supply)**

BACKGROUND • This section of Part B relates only to the provision of the TalkMore product, where such services are requested by You. These terms are in addition to the terms set out in Part A above. Where there is a difference between the terms in Part A and these following terms, these following terms shall apply.

### **1 DEFINITIONS**

1.1 In this Part, the following terms shall have the following meanings:

- Call Charges – the pence per minute rates set out in the tariff sheets provided for download via Our portal, which are calculated on a pence per second basis unless otherwise agreed.
- Our Network - the telecommunications systems We use to provide our Services to You;

- Services - the TalkMore services (Business or Residential, as applicable) being the provision of direct access to Our Network (defined above) over a BT exchange line enabling Your voice, facsimile and data calls to be made Using Our Network; and
  - Start Date - the date that the Services will commence set out in the welcome letter provided by Us to You.
2. ADDITIONAL TERMS AND CONDITIONS relating to the Services

2.1 The Services can only be provided on one designated telephone line which has an active Broadband service installed and provided by Us. Residential TalkMore Services may only be provided to You if We supply You with a residential Broadband package. Business TalkMore Services may only be supplied if We supply You with a Business Broadband package.

2.2 Occasionally We may not be able to provide the Service to You for technical reasons. In these circumstances we may terminate Our Agreement with You without penalty If You have provided Us with any incorrect information then this may cause delays in setting up the Services and We cannot be held responsible for such delay.

2.3 If You change Your designated telephone number the Agreement will come to an end automatically. You will then need to enter into a new agreement with Us to receive the Services on Your new telephone number. How the Agreement Begins and Ends

2.4 Your Agreement with us starts once You have accepted these Terms and Conditions (whether over the Web Site or otherwise).

2.5 In order for Us to set up the Services for You, You must tell Us Your telephone number and postcode exactly as they appear on Your most recent BT telephone bill (even if they are incorrect on that bill).

2.6 We may terminate Your Agreement immediately on notice (without any penalty or charge to Us) if:

2.6.1 We cannot provide You with the Services (for example if You use BT's 'Light user Scheme', if You do not have a BT exchange line, if You do not pay line rental to BT or if Your BT line is set only to accept incoming calls); or

2.6.2 You are bankrupt or owe Us any money; or

2.6.3 We have the right to do so in accordance with the Terms.

2.7 We will let You know when Your Start Date should be. The Services will normally be available from the Start Date but may be delayed if there are operational difficulties. You should also receive a letter from BT. If You have any queries relating to the switch-over, please contact the Customer Services Team.

2.8 If You change Your mind and You are a business customer, You can cancel the Agreement by giving notice to Us during the cancellation period. The cancellation period is 10 working days from the date

that You enter into this Agreement. If You cancel the Agreement within the cancellation period, You will not have to pay Us. If You start to use the Services within the cancellation period, You will lose Your right to cancel.

2.9 If You are a consumer, You will have the statutory rights on cancellation set out in Our Consumer Rights Information document available on Our Web Site.

2.10 Where You want to end the Agreement (at any time after the relevant cancellation period), You must tell Us in writing 30 days in advance of leaving Us. However, if You are terminating Your Agreement to go to another services provider, We will consider that You have given Us appropriate notice as soon as We receive notice from Your new services provider (so You will not be required to give Us 30 days' written notice in this instance). The provision of the ELR/PSTN Services is subject to You entering into a contract with Us for the Fixed Period. Therefore, in the event that You terminate Your Agreement, or Your Agreement is terminated, during the Fixed Period You agree to pay the Early Termination Fee. After the expiry of the Fixed Period, We can end the Agreement by giving You not less than 30 days' prior written notice.

2.11 When the Agreement ends You must still pay any outstanding charges for the use of the Services.  
Things You Must and Must Not Do

2.12 You must not use or allow anyone else to use the Services to make hoax, malicious, indecent, obscene, menacing or nuisance calls or any other calls that are in any way calculated to cause damage or disruption to Our Network and any other networks or systems connected to it.

2.13 You must tell Us promptly in writing if You amend any bank account details that may affect Your payment arrangements.

2.14 You must not use the Services for any criminal or other illegal activity.

2.15 You must not use the Services for any business purposes if You use the TalkMore Residential Service.

2.16 You must tell Us if You want Us to bar calls to any numbers Using the Services (for example premium rate numbers) even if You have already told BT to do this.

#### Further Terms

2.17 We may vary the Services if We need to do so to maintain or improve their quality or to comply with any law or regulation. Before making any variation We will inform You about it.

2.18 The Services do not include:

2.18.1 the supply or maintenance of Your exchange line or any equipment; nor

2.18.2 services associated with Your exchange line such as numbering, directory entries and facilities for receiving incoming calls.

2.19 If You use the TalkMore Business Service then the first 1,000 minutes of calls You make every month on Your designated telephone number to national 01 and 02 numbers are free. After that, calls You make to these numbers will be charged at the rates set out on the Web Site from time to time

2.20 The call charges for the TalkMore Residential Services are charged at the rates set out on the Web Site from time to time or as stated in Your calling plan located on Our portal;

2.21 Your telephony service will allow you to make calls to the emergency services.

2.22 If you take a TalkMore Service on the same line as a Eclipse Line Rental Service, then we reserve the right to terminate the provision of the Eclipse Line Rental Service on the same date as the provision of the TalkMore Service terminates.

## PART B – ECLIPSE LINE RENTAL / PSTN

BACKGROUND • This section of Part B relates only to the provision of the Eclipse Line Rental (“ELR”) / PSTN products, where such services are requested by You. These terms are in addition to the terms set out in Part A above. Where there is a difference between the terms in Part A and these following terms, these following terms shall apply (unless any part of Part A expressly states that it will prevail).

### 1 DEFINITIONS

1.1 In this Part, the following terms shall have the following meanings:

- Call Charges – the pence per minute rates set out in the tariff sheets provided for download via Our portal, which are calculated on a pence per second basis unless otherwise agreed.
- Customer Equipment – any equipment located at the site where the ELR/PSTN Services are to be delivered owned by You or a third party which when operated in conjunction with Our equipment allows You to obtain and/or receive the ELR/PSTN Service;
- Data Only ELR/PSTN Data Service – the provision by Us of a data only line service, for use in the delivery of broadband or other data services, comprising of the provision of a single telephone line to a premises, on a recurring monthly rental, and delivered only as a line with call barring applied restricting all outbound call traffic (including, without limitation, calls to Emergency numbers (112 and 999)).
- Early Termination Fee – means, if you are a business customer, either (i) the Line Rental Charges payable by You from (a) the date of termination; or (b) the date that Your service is transferred to a new telephony services provider pursuant to clause 2.17, as applicable, to the expiry of the Fixed Period or (ii) the actual costs incurred by Us in terminating the ELR/PSTN Service prior to

Your Start Date, if You cancel the Services prior to the Start Date, without limiting any rights You may have pursuant to clause

6.9 or 6.10 of Part A. If You are a residential customer the Early Termination Fee means the Fees payable by You from the date of termination to the expiry of the Fixed Period less any costs saved by Us as a result of Your termination (without limiting any rights You may have pursuant to clause 6.9 or 6.10 of Part A);

- ELR/PSTN Services - the Eclipse line rental or wholesale line rental services (Partner, Business or Residential, as applicable) that We agree to provide to You where we rent the line from BT (including, without limitation, the Data Only ELR/PSTN Data Service where We are providing such to You);
  - Fixed Period - a period of 12 months, commencing on the Start Date;
  - Line Rental Charges – the line rental charges as set out in the residential or business ELR/PSTN Tariff Sheet available on Our Website or the Partner portal (as applicable) or as otherwise made available to You;
  - Our Network - the telecommunications systems We use to provide the ELR/PSTN Services to You;
  - Partner – has the meaning given to it in clause 8.15 of Part A;
  - Service Standard – if applicable, the service levels set out on Our website or the Partner portal (as applicable); and
  - Start Date - the date that the ELR/PSTN Services will commence set out in the welcome letter provided by Us to You.
2. ADDITIONAL TERMS AND CONDITIONS RELATING TO THE ELR/PSTN SERVICES

2.1 The ELR/PSTN Services can only be provided to You if there is an active Broadband service installed and provided by Us (unless We agree otherwise). We will use reasonable endeavours to provide the ELR/PSTN Service in accordance with the Service Standard and will use reasonable skill and care in the provision of the ELR/PSTN Service. However, You acknowledge that the ELR/PSTN Service cannot be provided fault free and We do not warrant error free or uninterrupted use of the ELR/PSTN Service.

2.2 Reprogramming or removal of Customer Equipment will be Your responsibility. Where an alternative service provider's equipment is used to access the ELR/PSTN Services, We will not take over ownership or responsibility of that equipment.

2.3 You acknowledge that if there is an internet service provided via an indirect access service, it may no longer be possible to access that service.

2.4 You acknowledge that certain services are incompatible with the ELR/PSTN Service, such services will be

excluded from the ELR/PSTN Service. In addition, any technical limitations associated with ELR/PSTN such as limitations on certain exchanges, will be withdrawn.

2.5 New connections and work deemed necessary to transfer an existing line to ensure provision of the ELR/PSTN Services will be undertaken during a working day. If We agree to work outside those hours, We may charge You an Additional Charge.

2.6 All intellectual property rights in Our data capture tool belong to Us or Our licensors) and nothing in this Agreement shall transfer or assign any right, benefit, title or interest in such intellectual property rights to You.

2.7 If it is necessary to make repairs to the external line because You or others damage it or because You or others mis-operate it, We may charge You for engineering charges we may incur.

2.8 If You or We choose to cease Your lines it will result in complete disconnection unless You make alternative arrangements with another telephony service provider.

2.9 Occasionally We may not be able to provide the ELR/PSTN Service to You for technical reasons. In these circumstances We may terminate Our Agreement with You without penalty. In the event that, due to technical limitations, We can provide the ELR/PSTN Service on less lines than anticipated prior to this Agreement coming into effect, We reserve the right to alter the Line Rental Charges by a reasonable amount. You accept that Our Line Rental Charges were calculated on the basis that all Your lines ordered for the ELR/PSTN Service would be able to be transferred to the ELR/PSTN Service and accordingly that it is reasonable for Us to alter Our Line Rental Charges in this way.

2.10 If You change Your designated telephone number (where applicable to the ELR/PSTN Service provided) the Agreement will come to an end automatically. You will then need to enter into a new agreement with Us to receive the ELR/PSTN Services on Your new telephone number.

2.11 Call Charges will apply if calls are made over the ELR/PSTN Service and the additional terms set out for the Talkmore Service will apply with respect to such calls. How the Agreement Begins and Ends

2.12 Your Agreement with us starts once You have accepted these Terms and Conditions (whether over the Web Site or otherwise).

2.13 In order for Us to set up the ELR/PSTN Services for You, You must provide Us with all information necessary and do and procure the doing of all things We require to enable implementation. In addition You also consent to the release of information held by BT or other relevant providers relating to products that are to be retained, reallocated to an equipment only account or removed.

2.14 We may terminate Your Agreement immediately on notice (without any penalty or charge to Us) if:

2.14.1 We cannot provide You with the ELR/PSTN Services; or

2.14.2 You are bankrupt or owe Us any money; or

2.14.3 We have the right to do so in accordance with the Terms.

2.15 We will let You know when Your Start Date should be. The ELR/PSTN Services will normally be available from the Start Date but may be delayed if there are operational difficulties. You should also receive a letter from your existing provider. If You have any queries relating to the switch-over, please contact the Customer Services Team.

2.16 If You change Your mind and You are a business customer, You can cancel the Agreement by giving notice to Us during the cancellation period. The cancellation period is 10 days from the date that You enter into this Agreement. If You cancel the Agreement within the cancellation period, You will not have to pay Us. If You start to use the ELR/PSTN Services within the cancellation period, You will lose Your right to cancel.

2.17 If You are a consumer, You will have the statutory rights on cancellation set out in Our Consumer Rights Information document available on Our Web Site.

2.18 Where You want to end the Agreement (at any time after the relevant cancellation period), You must tell Us in writing 30 days in advance of leaving Us. However, if You are terminating Your Agreement to go to another services provider, We will consider that You have given Us appropriate notice as soon as We receive notice from Your new services provider (so You will not be required to give Us 30 days' written notice in this instance). The provision of the ELR/PSTN Services is subject to You entering into a contract with Us for the Fixed Period. Therefore, in the event that You terminate Your Agreement, or Your Agreement is terminated, during the Fixed Period You agree to pay the Early Termination Fee. After the expiry of the Fixed Period, We can end the Agreement by giving You not less than 30 days' prior written notice.

2.19 When the Agreement ends You must still pay any outstanding charges for the use of the ELR/PSTN Services. Things You Must and Must Not Do

2.20 You agree to terminate, and ensure the termination of, the existing contract for equivalent services with the existing line and calls provider (as applicable).

2.21 Without prejudice to clause 2.26 in respect of the Data Only ELR/PSTN Data Service, You must not and must not allow others to route any calls via another provider using an indirect access code. You must ensure all other providers' indirect access codes are deactivated. If You fail to do this, You or others will not be able to use the ELR/PSTN Service. If You or others route any calls solely over BT's network We may charge You an additional charge.

2.22 You must not use or allow anyone else to use the ELR/PSTN Services to make hoax, malicious, indecent, obscene, menacing or nuisance calls or any other calls that are in any way calculated to cause damage or disruption to Our Network and any other networks or systems connected to it.

2.23 You must tell Us promptly in writing if You amend any bank account details that may affect Your payment arrangements.

2.24 You must not and must ensure others do not use the ELR/PSTN Services for any criminal or other illegal activity.

2.25 You must not use the ELR/PSTN Services for any business purposes if You use a residential ELR/PSTN Service.

2.26 Except where We are providing You with the Data Only ELR/PSTN Data Service (where clause 2.26 will apply), You must tell Us if You want Us to bar calls to any numbers using the ELR/PSTN Services (for example premium rate numbers).

2.27 The following applies where You have taken the Data Only ELR/PSTN Data Service:

2.27.1 You must not, and must not permit any person or entity to, make any outbound calls of any kind or attempt to or find a way to get around or bypass the call barring applied by Us or the Carrier to the Data Only ELR/PSTN Data Service.

2.27.2 If You make, or any person or entity makes, any outbound call, You will be liable for, and must pay to Us on demand, any associated call charges.

2.28 Unless We are providing You with the relevant broadband or other data services, You are solely responsible and liable for the broadband and data services that You or other persons or entities use with the ELR/PSTN Service. Any such broadband and/or data services do not form part of the ELR/PSTN Service. You agree that We will not be liable or responsible in any way to You or any other party for any faults or problems with any such broadband and/or data services unless the fault or problem is directly due to a fault or problem with the ELR/PSTN Service (and then solely to the extent that We are liable to You for problems or faults with the ELR/PSTN Service under and in accordance with these Terms).

2.29 You will indemnify Us, keep Us indemnified, and hold Us harmless for and against any and all claims, losses, damages, costs and expenses that We incur or suffer in connection with or as a result of any damage to or faults or problems with the ELR/PSTN Service and/or any equipment and/or communications lines provided as part of the ELR/PSTN Service where such damage, faults or problems are directly or indirectly caused by any broadband or data services used by You or other persons or entities with the ELR/PSTN Service

(except where We are providing the relevant broadband or data services and the damage, fault or problem is due to Our breach of these Terms). Phone numbers and directories

2.30 We will tell You the phone number for the exchange line, as necessary. This number does not belong to You or any user, so You or users must not try to transfer it to anyone else. However, in some cases You can keep the number if You change to another communications supplier.

2.31 We will pass details of Your or users' name, address and telephone number on to BT, as detailed further below. BT will normally include these details in any local telephone directory they publish for the area.

2.32 Except in respect of the Data Only ELR/PSTN Data Service (where clause 2.34 applies), You can ask to go Ex-Directory so that Your or users' name, address and phone number do not appear in any telephone directories. You can also ask for part or all of Your or users' address to be excluded from the entry in any telephone directories.

2.33 We provide Our directory information to BT Directory Solutions, the collator of such information from all communications network providers. BT Directory Solutions make the information available to providers of directories, information providers and directory enquiry services. We shall not have any responsibility for (i) any failure of BT Directory Solutions to store, update and/or make our directory information available to third party service providers (unless caused as a result of our failure to supply such information); or (ii) other providers of directories, information providers or directory enquiry services making directory information available to the public.

2.34 You should inform us as soon as You become aware of any error in Your or users' name, address or telephone number information so that We can notify BT Directory Solutions.

2.35 Notwithstanding clauses 2.30 and 2.31, the line for Data Only ELR/PSTN Data Services will be automatically provisioned as an Ex Directory with no calls line, as it is for data only use.

2.36 If You have asked to be Ex-Directory or are automatically Ex-Directory in accordance with clause 2.34:

- Your or users' name, address and number will not appear in any telephone directories;
- We will still make the relevant name and address available to other information providers, as detailed below, so they can tell their customers You or users are Ex-Directory;
- We will not give the phone number to people who ask for it, except for the police and other organisations who have a legal right to it.

2.37 Your telephony service will allow calls to be made to the emergency services (112/999) unless You have taken the Data Only ELR/PSTN Data Service.

2.38 All call charges applicable to Your ELR/PSTN Service are set out on Our Web Site or are as otherwise made available to You. You will pay all such charges, whether You make the calls or someone else does (including, without limitation, where clause 2.26.2 applies in respect of the Data Only ELR/PSTN Data Service), and You shall also pay the Line Rental Charges. You must also pay Us all engineering costs that We incur as part of providing the ELR/PSTN Services. Further Terms

2.39 We may vary the ELR/PSTN Services if We need to do so to maintain or improve their quality or to comply with any law or regulation. Before making any variation We will inform You about it.

2.40 The ELR/PSTN Services do not include:

2.40.1 the supply or maintenance of the exchange line or any equipment; nor

2.40.2 services associated with the exchange line such as numbering, directory entries and facilities for receiving incoming calls.

## **Part B - ESTORE AND WEB BUILDER SERVICES**

BACKGROUND • This section of Part B relates only to Eclipse eStore and Web Builder Services.

### **1 DEFINITIONS**

1.1 In this Part, the following terms shall have the following meanings:

- Buyer means a person who enters into or is invited to enter into any transaction with You by means of the Service.
- Content - the content placed on the eStore or Web Builder Site for which You remain fully responsible (whether by You or by a third party User);
- Cure Period - has the meaning given in clause 2.5;
- eStore Site/ Web Builder Site – the web site(s) You create using the Service;
- Fixed Period - the period of time, which shall be no less than 12 months, which commences at the end of the Trial Period and “Term” means the Trial Period and the Fixed Period, together with any further period during which We provide Service to You pursuant to clause 2.1;
- Early Termination Fee – means, if you are a business customer, either (i) the Fees payable by You from the date of termination to the expiry of the Fixed Period; or (ii) the actual costs incurred by Us in terminating the Services prior to the Start Date, if You cancel the Services prior to the Start Date, without limiting any rights You may have pursuant to clause 6.9 or 6.10 of Part 1. If You are a residential customer the Early Termination Fee means the Fees payable by You from the date of termination to the expiry of the Fixed Period less any costs saved by Us as a result of Your termination;
- Legislation - all Acts of Parliament and statutory regulations, instruments or orders and codes of practice and all applicable European Union laws, treaties, directives and other legislation as any of the same may be amended or replaced from time to time;
- Personal Data and Sensitive Personal Data - have the meaning given to those terms under the Data Protection Act 1998; and the goods, services or information which You promote via the Service.

- Service Misuse - the circumstances set out in clause 2.3 which entitles Us to suspend the Service without notice unless and until You cure the cause of the Service suspension within the required Cure Period;
- Service - the provision of those eStore or Web Builder services that are selected by You
- Start Date - the date on which We activate Your access to the Service in accordance with clause 2.1.
- Trial Period – the period of 30 days commencing on the Start Date,
- Welcome Pack – the welcome pack We send to You by email once We have accepted Your order for the Service.

## **2 PROVISION OF THE SERVICE**

2.1 Once We have accepted Your order for the Service, We shall send You the Welcome Pack and activate Your access to the Service.

2.2 We shall be entitled to: (a) change the technical specification of the Service where necessary for technical regulatory or operational reasons (provided that such changes do not materially affect the performance of the Service); (b) modify the Service (at no cost to You) provided that such changes do not materially affect the performance of the Service; (c) amend Our Acceptable Use Policy from time to time. If We change Our Acceptable Use policy We will place Our current Acceptable Use Policy on Our Web Site; and (d) give You instructions which We reasonably believe to be necessary for health and safety or security reasons or for maintaining the quality of the Service.

### **2.3 Suspension of Service**

We shall be entitled to suspend Service: (a) with Your prior agreement or in the absence of Your agreement upon reasonable notice for planned maintenance to Our networks or infrastructure, (b) without notice when necessary for operational or security reasons, or in case of emergency; (c) to comply with any Legislation, court order or other governmental request or order requiring immediate action; (d) to prevent interference with, damage to, or degradation of Our networks or infrastructure; (e) to eliminate a hazardous condition; (f) if You use the Service in a manner that will, does, or may expose Us to legal liability or that violates any applicable Legislation or breaches Our then current Acceptable Use Policy and whether such use is by You, or any other entity or person using the Service, and whether or not such use is authorised by You; (g) without notice where We reasonably believe there has been a breach of clause 6.1 of these Terms; and (h) if You fail to pay an amount when due and You still do not pay the amount due within 14 days after You receive a written notice from Us that an amount is due.

2.4 You accept that We have the right to audit Your use of the Service for the purpose of verifying that You are complying fully with the provisions of this Contract and You will co-operate with Us to allow Us to exercise this right. We will use reasonable endeavours to ensure that any such audit causes minimal inconvenience to You.

2.5 If We suspend the affected Service for any of the reasons outlined in 2.3(g) or 2.3(h) and You cure the cause of the Service suspension within the Cure Period after receiving a notice from Us specifying the breach and the action required We will resume the Service once You have paid Our reasonable charges associated with resuming the affected Service. We may terminate this Agreement and/or the affected Service if You do not cure the cause of a Service suspension within the Cure Period or You do not pay the associated charges for Us resuming the Service. If such termination is effective prior to the expiry of the Fixed Period, You will also pay Us the Early Termination Fee.

2.6 If You intend to use the any payment provider services with the Service, You will need to enter into a separate contract with the relevant payment provider(s) and pay any charges or commissions due to the payment provider(s) under that contract. The Service does not include the provision of a payment service for use by Buyers.

### **3 YOUR OBLIGATIONS**

3.1 In order to enable Us to fulfil Our obligations under these Terms You shall, at Your own cost: (a) co-operate with all reasonable instructions We may provide from time to time in order to enable Us to provide the Service or otherwise perform Our obligations under these Terms;

(b) manage, vet and retain responsibility for the Content You place on Your eStore or Web Builder Site, whether authorised by You.

(c) adhere at all time with Our current Acceptable Use Policy (to the extent applicable to the Service);

(d) comply with all applicable Legislation relating to Your use of the Service; and (e) provide Us with full, accurate and up to date information on any matter which We reasonably believe is relevant to Our provision of the Service to You and provide such information within a reasonable time of being requested by Us to do so.

### **4 SUPPORT SERVICES**

4.1 We will provide a helpdesk facility to You which can be accessed via telephone, e-mail, and by raising a ticket in the customer Portal.

4.2 You will be able to report any faults with the Service to Us as directed by the "My Eclipse" pages of Web Site.

4.3 We shall use Our reasonable endeavours to resolve any faults with the Service logged by You in accordance with clause 4.2 within 48 working hours.

4.4 We will use reasonable endeavours to provide a minimum of 72 working hours' notice of any planned maintenance activity. Any notices with regard to planned maintenance will be published on the website and/or holding pages within the Shop Administration site

## **5 OUR OBLIGATIONS**

5.1 You accept and agree that the Service that We provide to You is based on Your requirements as agreed and that if the information You gave Us is incomplete, incorrect or inaccurate: (a) We will not be responsible for providing a Service that fails to meet Your needs; (b) We may review the Service and suggest changes which may have a price impact; and (c) We may revise or replace any agreed proposal with You.

## **6 USE**

6.1 You will not use or permit any third party to use the Service or the eStore or Web Builder Site for the purposes of sending, posting, publishing, distributing, disseminating or transmitting, storing, or in any way in connection with, any message communication or material which is offensive, abusive, indecent, obscene, harassing or menacing or which does, or is intended to, cause annoyance, inconvenience or worry or which is fraudulent or defamatory or contains or breaches another party's proprietary information (including trademarks or other copyright material) or is otherwise unlawful or which (in Our reasonable opinion) brings the name of Eclipse Broadband Ltd into disrepute or in any way which intentionally causes damage or disruption to the Service or which damages, or may damage, Our brand and/or Our reputation.

6.2 Both parties agree to fully co-operate with the Police and any other relevant authorities (the "Regulatory Authorities") in connection with any misuse or suspected misuse of the Service and You consent to Our co-operating with any Regulatory Authorities in connection with any suspected illegal and/or fraudulent activity related to or connected with the Service and You agree that We may divulge such information as the Regulatory Authorities may reasonably require in relation to this Agreement.

6.3 You are solely responsible for any information, products or services provided to or any transactions of any kind entered into with any Buyer accessing or acting in reliance on the Service, the Content. You accept that We will have no liability with respect to such transactions.

6.4 You must comply with all consumer protection or other legislation, instructions or guidelines issued by regulatory authorities, relevant licences and any other codes of practice which apply to You in connection with the Service.

6.5 At Your discretion, You may give third parties access to Your password and allow them to access and deal with the Service on Your behalf. You will remain responsible for the security of Your password at all times and will be responsible for the actions of any third party You allow to access the Service using Your password.

6.6 You will not resell, rent, license, lend, transfer or otherwise grant access to or use the Service or attempt to do so (or any part or facility of it including without limitation the Software) to any third party.

6.8 You agree to keep secure any information relating to the Buyers that You acquire through use of the Service.

## **7 ACCESS TO SERVICE**

7.1 You must have or obtain a suitable Internet access service to access the Service, either provided by Us or another service provider. Any Internet access service provided by Us will be subject to separate terms and conditions and charges.

7.2 You acknowledge that the Buyers' access and use of the eStore or Web Builder Site will be via the Buyers' own Internet service provider(s).

7.3 The Service is accessed and delivered via the Internet. The Internet is separate from the Service and its use is solely at Your risk and subject to all applicable Legislation. We have no responsibility for any information, software, services (other than those parts of the Service delivered via the Internet) or other materials obtained by You using the Internet. 7.4 You shall only be entitled to access the Service using the single administrative account and log-in process advised to You by Us.

## **8 CHANGES TO THE SERVICE**

8.1 We may from time to time make changes to the specifications in the Service. Such changes will be notified to You not less than 30 days prior to their taking effect and if any such changes are considered material adverse changes, the parties will endeavour to agree such changes. If the parties fail to agree such changes, You may terminate this Agreement upon 30 days notice.

## **9 FEES AND PAYMENT TERMS**

9.1 The Fees in relation to the Service shall comprise an ongoing monthly recurring service charge. This service charge will be payable monthly in advance commencing at the end of the Trial Period.

9.2 We may increase the Fees by giving You 45 days prior notice. You may terminate this Agreement on 30 days written notice if You do not want to pay the increased Fees.

## **10 INTELLECTUAL PROPERTY**

10.1 Any software or documentation provided by Us in connection with the provision of the Service is, and will remain, Our property or that of Our licensors.

10.2 You are granted a non-exclusive, non-transferable right to use such software and documentation only for the purpose of using the Service.

10.3 You will not make any modifications to such software or documentation. You will indemnify and keep Us indemnified against any costs, losses, damages, or liability that We may incur due to You

amending or in any way, altering such software or documentation, or using it for a purpose not permitted by these Terms.

10.4 Any Content, software or documentation You provide under these Terms is, and will remain, Your property or that of Your licensors.

10.5 Upon termination of this Agreement, each party shall immediately cease to use the others software and/or documentation supplied under these Terms and (at the others absolute discretion) shall return or destroy the same.

## **11 DATA PROTECTION**

11.1 It is agreed that You are the Data Controller and We are the Data Processor with those expressions having the meaning given to them in the General Data Protection Regulation (the "GDPR").

11.2 The parties acknowledge that in providing Service to You, We may process Personal Data relating to You, Your employees and/or Buyers including without limit disclosing it to any third party service providers We use to provide the Service. You agree that We, or such third parties, may process such Personal Data outside the European Economic Area.

11.3 We shall: (a) put in place adequate, technical and organisational security measures so that the confidentiality of this processing complies with the GDPR; and (b) only act in accordance with Your instructions as reasonably necessary for the provision of the Service when processing Personal Data.

11.4 You shall: (a) comply fully with all of Your obligations under the GDPR and not cause Us to be in breach of the GDPR; (b) obtain adequate consents from Buyers and/or employees for any processing of Personal Data; and (c) be responsible for the instructions You may give Us regarding the processing of Personal Data.

## **12 SECURITY**

12.1 You are responsible for the security and proper use of all passwords, or other security devices used in connection with the Service (including changing passwords on a regular basis) and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people.

## **13 DOMAIN NAME**

13.1 We will issue a web address to You to use in connection with the Service. If You want to use a different web address in connection with the Service, You must follow the procedure for this set out in the help and support materials for the Service, which are available on the Web Site.

## **14 TRANSACTIONS**

14.1 You acknowledge and accept that You are exclusively responsible for checking the accuracy of each transaction or computation carried out using the Service, including the calculation and imposition

of any applicable taxes, duties and charges of whatever nature and for all documentation relating to such transactions and computations, including without limitation and as applicable the creation of invoices, VAT or other tax records and shipping documentation.

14.2 You agree that for the purposes of the matters set out in clause 14.1, the Service shall be deemed to be under Your control and We shall have no liability for any loss or liability incurred by You relating to clause 12.

## **15 LIABILITY AND INDEMNITY**

15.1 You accept that We are neither obligated nor able to edit, review or modify the Content You make available to Buyers on the eStore or Web Builder Site or otherwise by using the Service. However, We may request that You remove any Content if We reasonably believe that the Content breaches the terms of this Agreement. If You fail to comply with any such request, We reserve the right to suspend the Service until such time as the relevant Content has been removed.

15.2 We exclude all liability of any kind in respect of the Content which can be accessed using the Service and are not responsible in any way for any goods (including software) or services provided, advertised, stored, sold or otherwise made available by means of the Service.

15.3 You must indemnify Us against any claims or legal proceedings which are brought or threatened against Us relating to the Service being used in breach of clause 6. We will notify You of any such claims or proceedings and keep You informed as to the progress of such claims or proceedings

## **16 EXPORT CONTROL**

16.1 You agree to comply with any applicable export or re-export laws and regulations of any country, including obtaining written authority from the US Government if You intend at any time to re-export any items of US origin to any proscribed destination.

## **17 TRIAL**

17.1 Following on from the Start Date, You will be entitled to use the Service free of charge until the end of the Trial Period. You shall be entitled to terminate Your use of the Service at any time during the Trial Period by giving notice to Us. If You fail to give Us notice to terminate the Service prior to the expiry of the Trial Period, You will have entered into an agreement to take the Service for the Fixed Period.

17.2 You shall not be entitled to use the Service to sell any Products to Buyers during the free Trial Period. If You want to start selling Products using the Service prior to the end of the Trial Period You will need to give Us notice that You want to terminate the Trial Period early and commit to taking the Service for the Fixed Period. You must give Us any such notice in accordance with clause 8.4 of Part A of these terms and conditions or any other online process that We provide.

## **18 UPGRADES**

18.1 You can ask Us to upgrade Your Service from the Web Builder package to an eStore package or from the eStore Business Service package to the eStore Pro Service package at any time by giving Us notice. If You upgrade Your service in this way the Fixed Period for Your Service will be extended so that it terminates 12 months after the date the Service is upgraded.

18.2 You shall not be entitled to downgrade Your Service to a lower value package at any time during the Fixed Period for your Service. You shall be entitled to downgrade Your Service at any time after the expiry of the Fixed Period by giving Us notice.

19 STORAGE LIMITS 19.1 The total file space available for Your Web Builder Site or eStore Site (as applicable) will be limited as follows;

(a) if You take the Web Builder or eStore Starter Service, the storage limit will be 240 MB; (b) if You take the eStore Business Service, the storage limit will be 1200 MB; and (c) if You take the eStore Pro Service, the storage limit will be 6000 MB; We reserve the right to remove any Content that exceeds these storage limits. These storage limits include all text, images and associated documents that are uploaded to Your eStore or Web Builder Site from time to time.

## **20 ECLIPSE ESTORE AND WEB BUILDER SERVICES PROMOTION**

20.1 In addition to the provisions of this Part B, the following terms and conditions shall apply if You request Us to supply Services benefiting from the Eclipse Estore and Web Builder Services Promotion. These Eclipse Estore and Web Builder Services Promotion terms shall take precedence in the event of any conflict with the provisions of Part B.

20.2 If You place an Order for Eclipse Estore or Web Builder Services during the Eclipse Estore and Web Builder Services Promotion period as detailed on Our web site (the "Qualifying Period") and We accept Your Order, We agree to refund to You each of the first two monthly instalments of the Charges that You pay to Us in respect of the Eclipse Estore / or Web Builder Service, such refunds to be issued to You within 60 days of our receipt of the relevant monthly instalment; and

20.3 The Eclipse Estore and Web Builder Services Promotion is subject to You entering into a contract with Us for the duration of the Fixed Period. In the event that Your Agreement is terminated during the Fixed Period You shall be liable to pay the first two monthly instalment charges that have been refunded to You pursuant to clause 20.2.

20.4 The Eclipse Estore and Web Builder Services Promotion cannot be used in conjunction with any other offer. We reserve the right to amend or withdraw this offer at any time.

## **Part B – ECLIPSE PC BACKUP SERVICE (Residential Customers Only)**

BACKGROUND • This section of Part B relates only to the PC Backup software and support service.

1 DEFINITIONS • Data – the data that You choose to backup using the Service; • Fees – the fees for the Software as posted on the Web Site from time to time; • Licence – the licence to use the Software as set out in Clause 3.1 of this section below. • Server – the server(s) upon which We store Your Data; • Service – the licence of the Software to enable the on-line PC Backup, retrieval and restoration of Your data via a secure, fast transmission over the internet to remote data centres which can then be accessed by You at any time, from any location, and associated support; and • Software – the PC Backup software and any modification, update or upgrade which is acquired by You and/or provided by Us during the term of this Licence as described in the product data sheet posted on the Web Site.

## **2 FREE TRIAL PERIOD TERMS AND CONDITIONS**

2.1 We grant You a licence to use the Software for a period of 30 days free of charge for the purpose of assessing the Service (“Trial Period”).

2.2 The Trial Period will commence on the date that You order the trial online by completing and submitting the Order Form and not the date that You choose to install the software once You have received the installation link from Us.

2.3 You may only take advantage of this trial once per Communications Line.

2.4 To purchase the Service You must access “My Eclipse” and select an upgrade to the 5 GB or 20 GB account during the Trial Period. If You do not upgrade within the Trial Period the at the end of the trial Period the Service will cease and Your Data will be automatically deleted from the Server.

2.5 Please note that during the Trial Period, the Software is provided “as is” without any warranty or acceptance of any liability by Us (save for death or personal injury cause by Our negligence or for fraud or any other liability that cannot be limited or excluded by law.)

2.6 In all other respects Your use of the Service will be subject to the Terms.

2.7 We reserve the right to amend or withdraw this offer at any time. 2. LICENCE, TERM AND FEES

2.1 In consideration of the Fees paid by You to Us We grant to You a non-exclusive licence for a minimum term of 1 month (starting on the date that You complete the Online Order Form and We accept Your order) to use the Software in object code form for personal use only on one personal computer or laptop for the purpose of backing up on-line, retrieving and restoring Your Data. After the minimum term, You may terminate the Service by giving Us 30 days’ prior written notice.

2.2 Once We have accepted Your order, We will send You an e-mail including instructions on how to download the Software from the Internet. You must download the Software in accordance with the instructions.

2.3 The Fees include the amount of data storage you choose when completing the Online Order Form. Additional storage shall be charged at the rates set out on the Web Site. We will invoice You from the date You place Your order with Us by completing and submitting the Order Form.

2.4 Your Data will be stored on Our storage system until You cancel the Service in accordance with clause 3.1 above. At the end of the notice period, You will no longer be able to use the Service and all Your Data will be removed from the Server.

#### **4 USE OF THE SOFTWARE**

4.1 To Use the Software:

4.1.1 You must at all time have suitable computer hardware, software and telecommunications services and equipment including but not limited to the following: (a) Windows: 95 / 98 / NT / ME/ 2000 / 2003 / XP but support is limited to ME / 2000 / 2003 & XP; (b) Memory: 256MB; (c) Disk Space: 110MB; and (d) Broadband: any Broadband service that runs TCP/IP network protocol for Your laptop or PC;

4.1.2 The software must only be installed and used on a laptop or PC with a single user with Administrator rights (Admin User). Please note: if the Software is installed on a multiple user laptop or PC then each user will be able to browse Your Data; and

4.1.3 You must comply with the instructions for use of the Software, including ensuring that the Software is running and Your laptop/PC is connected to the Internet.

4.2 You may make back-up copies of the Software only as may be necessary for its lawful use. You shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.

4.3 You have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error connections to the Software in whole or in part except as permitted by law.

4.4 You have no right to resell, sub-license or to assign the benefit or burden of this Licence in whole or in part, or to allow the Software to become the subject of any charge, lien or encumbrance.

4.5 We may sub-license, assign, charge or otherwise transfer any of Our rights or obligations under this Licence, acting in Our entire discretion.

4.6 You acknowledge that You must continue to take appropriate security precautions and maintenance to maintain and safeguard Your Data for example (but not limited to) by regularly backing-up Your Data, regularly ensuring that Your Data has been backed up successfully and by running current up to date desktop firewall and anti-virus software with appropriate security updates. If You discover that Your Data has not been backed-up successfully, then You must inform Us

immediately by contacting Customer Services. (To check the files that have been backed up, press the “restore” button.)

4.7 You must take appropriate security measures to safeguard the use of or access to the Service by any unauthorised person. You are responsible for any person who has access to the Service and You must ensure that they comply with the Terms.

4.8 If You are in breach of the Terms, including but not limited to if You (or anyone who has access to Your PC or laptop) use the Service in an Unlawful manner, in breach of any third party rights or send or knowingly receive, upload, download or use any material which is offensive, abusive, indecent, defamatory obscene or menacing, then in addition to any other rights We may have, We may suspend or end the Service immediately without notice, even if You were not aware of the breach.

## **5 WARRANTIES AND LIMITS OF LIABILITY**

5.1 We will use our reasonable endeavours to provide the Service to you, however faults may occasionally occur. We do not warrant that the use of the Software will be uninterrupted or error-free. If the Service is materially impaired due to a problem with the Software then We shall, at Our option, do one of the following: (a) repair the Software; or (b) replace the Software; or (c) terminate this Service immediately by notice in writing to You and refund any of the Fees paid by You as at the date of termination (less a reasonable sum in respect of Your use of the Service to the date of termination) on return of the Software (and all copies). provided the You provide all the information that may be necessary to assist Us in resolving the defect or fault, including sufficient information to enable Us to re-create the defect or fault.

5.2 We warrant that We have the right to grant to You the Licence as contemplated by these Term.

5.3 The extent of Our Liability to You for the Service is set out in Part A, Clause 4 of these Terms.

## **6 INTELLECTUAL PROPERTY RIGHTS**

6.1 You acknowledge that all Intellectual Property Rights in the Software belong to Us or Our supplier(s) and You shall have no rights in or to the Software other than the right to use it in accordance with the Licence.

## **7 SUPPORT AND OTHER TERMS**

7.1 In case of any difficulties, Our technical team will use its reasonable endeavours to provide support during the hours posted on the Web Site. Unfortunately We cannot guarantee that We will be able to resolve or give advice on all issues. We cannot accept liability for any issues arising from Your failure to follow our advice and recommendations or non-compliance with these Terms.

7.2 You will be required to give a username and password for the purposes of using the Software. You may choose to add an additional password which encrypts Your Data for additional security but please

note that if You do so, We will be unable to access Your account and will be unable to assist with restoring Your Data if you forget this password.

7.3 The support service does not cover maintenance of hardware or software purchased from other vendors or software generated by You, or support outside the usual hours of support (as advertised on the Web Site).

7.4 You agree to co-operate with Us or Our Carrier or suppliers in diagnosing faults including but not limited to carrying out any diagnostic and test routines yourself and allowing remote diagnostic tests if required.

7.5 We may temporarily suspend the Service for emergency or operational reasons or for maintenance or improvements to the Service. We will inform You as soon as practicable of any planned suspension.

7.6 We will use our reasonable endeavours to maintain the confidentiality of Your Data (but please note clause 4.1.2 above regarding multiple users). We will not view the content of Your Data unless we have good reason to, for example (but not limited to): (a) for technical or maintenance purposes; (b) if We reasonably believe that there has been a breach of these Terms; or (c) if We are required to do so by law.

7.7 We will not conduct any cryptographic analysis of Your Data nor will We sell Your Data to a third party.

## **8 TERMINATION**

8.1 In addition to any other rights or remedies We may have, We may terminate this Licence at any time on written notice to you if: (a) You are in material or persistent breach of any of the terms of the Licence and either that breach is incapable of remedy, or You fail to remedy that breach within 30 days after receiving written notice requiring You to remedy that breach; or (b) You are unable to pay Your debts (within the meaning of section 123 of the Insolvency Act 1986), or become insolvent, or are subject to an order or a resolution for Your liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or You have an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of Your assets, or You enter into or propose any composition or arrangement with Your creditors generally, or You are subject to any analogous event or proceeding in any applicable jurisdiction; or (c) You cease to receive a broadband service for any reason (whether supplied by Us or another supplier); or (d) We are entitled to terminate any or all other Services which We supply to you from time to time.

8.2 Termination by either party shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

8.3 On termination for any reason: (a) all rights granted to You under this Licence shall cease; (b) You shall cease all activities authorised by this Licence;

(c) You shall immediately pay to Us any sums due to Us under this Licence; and (d) You shall immediately destroy or return to Us (at Our option) all copies of the Software then in Your possession, custody or control and, in the case of destruction, certify to Us that You have done so; and

(e) We will have the right to destroy all data stored on the Server on or after the date of termination without any liability for loss or damage.

## **Part B – ECLIPSE SENTINEL BACKGROUND**

- This section of Part B relates only to the Eclipse Sentinel Service. 1. DEFINITIONS
- DSL Service – means ADSL or Fibre (VDSL) Services supplied by Us to You;
- Early Termination Fee – means, if you are a business customer, either (i) the Fees payable by You from the date of termination to the expiry of the Fixed Period; or (ii) the actual costs incurred by Us in terminating the Services prior to the Start Date, if You cancel the Services prior to the Start Date, without limiting any rights You may have pursuant to clause 6.9 or 6.10 of Part 1. If You are a residential customer the Early Termination Fee means the Fees payable by You from the date of termination to the expiry of the Fixed Period less any costs saved by Us as a result of Your termination;
- Fees – the fees for the Services as posted on the Web Site from time to time or displayed in your invoice, accessible via the customer portal;
- Fixed Period - a period of 12 months commencing on the Start Date together with any further period during which We provide Service to You;
- Legislation - all Acts of Parliament and statutory regulations, instruments or orders and codes of practice and all applicable European Union laws, treaties, directives and other legislation as any of

the same may be amended or replaced from time to time;

- Sentinel Alerts – a monthly subscription purchased on a per connection basis, that means We shall send to You via email or via text message to an email address and/or phone number as directed by You, notifying You of any problems with Your DSL Service connectivity and notifying You of any other significant performance issues with Your DSL Service;
- Service Misuse - the circumstances set out in clause 2.3 which entitles Us to suspend the Service without notice unless and until You cure the cause of the Service suspension within the required Cure Period;

- Service - the provision of a web based monitoring tool which will enable You to access information relating to the performance of Your DSL Services which can be accessed by You at any time and from any location;
  - Start Date - the date on which We activate Your access to the Service.
- ## 2. PROVISION OF THE SERVICES

2.1 We will use Our reasonable skill and care in the provision of the Service however, You acknowledge that the Service cannot be provided fault free and We do not warrant free or uninterrupted use of the Service nor guarantee the continued availability of the Service.

2.2 We shall be entitled to: (a) change the technical specification of the Service where necessary for technical regulatory or operational reasons (provided that such changes do not materially affect the performance of the Service); (b) modify the Service (at no cost to You) provided that such changes do not materially affect the performance of the Service; (c) amend Our Acceptable Use Policy from time to time. If We change Our Acceptable Use policy We will place Our current Acceptable Use Policy on Our Web Site; and (d) give You instructions which We reasonably believe to be necessary for health and safety or security reasons or for maintaining the quality of the Service.

2.3 Suspension of Service We shall be entitled to suspend Service: (a) with Your prior agreement or in the absence of Your agreement upon reasonable notice for planned maintenance to Our networks or infrastructure, (b) without notice when necessary for operational or security reasons, or in case of emergency; (c) to comply with any Legislation, court order or other governmental request or order requiring immediate action;

(d) to prevent interference with, damage to, or degradation of Our networks or infrastructure; (e) to eliminate a hazardous condition; (f) if You use the Service in a manner that will, does, or may expose Us to legal liability or that violates any applicable Legislation or breaches Our then current Acceptable Use Policy and whether such use is by You, or any other entity or person using the Service, and whether or not such use is authorised by You; (g) without notice where We reasonably believe there has been a breach of clause 5.1 of these Terms; and (h) if You fail to pay an amount when due and You still do not pay the amount due within 14 days after You receive a written notice from Us that an amount is due.

2.4 You accept that We have the right to audit Your use of the Service for the purpose of verifying that You are complying fully with the provisions of this Contract and You will co-operate with Us to allow Us to exercise this right. We will use reasonable endeavours to ensure that any such audit causes minimal inconvenience to You.

2.5 If We suspend the affected Service for any of the reasons outlined in 2.3(g) or 2.3(h) and You cure the cause of the Service suspension within the Cure Period after receiving a notice from Us specifying the breach and the action required We will resume the Service once You have paid Our reasonable

charges associated with resuming the affected Service. We may terminate this Agreement and/or the affected Service if You do not cure the cause of a Service suspension within the Cure Period or You do not pay the associated charges for Us resuming the Service. If such termination is effective prior to the expiry of the Fixed Period, You will also pay Us the Early Termination Fee.

### **3 YOUR OBLIGATIONS**

3.1 In order to enable Us to fulfil Our obligations under these Terms You shall, at Your own cost: (a) cooperate with all reasonable instructions We may provide from time to time in order to enable Us to provide the Service or otherwise perform Our obligations under these Terms; (b) adhere at all times with Our current Acceptable Use Policy (to the extent applicable to the Service); (c) comply with all applicable Legislation relating to Your use of the Service; and (d) provide Us with full, accurate and up to date information on any matter which We reasonably believe is relevant to Our provision of the Service to You and provide such information within a reasonable time of being requested by Us to do so.

### **4 SUPPORT SERVICES**

4.1 In case of any difficulties, Our technical team will use its reasonable endeavours to provide support during the hours posted on the Web Site. Unfortunately We cannot guarantee that We will be able to resolve or give advice on all issues. We cannot accept liability for any issues arising from Your failure to follow our advice and recommendations or non-compliance with the Contract.

### **5 USE**

5.1 You are solely responsible for any actions that You take when acting in reliance on the Service. You accept that We will have no liability with respect to such actions.

5.2 You must comply with all consumer protection or other legislation, instructions or guidelines issued by regulatory authorities, relevant licences and any other codes of practice which apply to You in connection with the Service.

5.3 You will not resell, rent, license, lend, transfer or otherwise grant access to or use the Service or attempt to do so (or any part or facility of it) to any third party.

### **6 ACCESS TO SERVICE**

6.1 You acknowledge that in order to use the Services You must have an Agreement in place with Us for the provision of DSL Services. For the avoidance of doubt, the Services and any Service Alerts shall only be provided in respect of those DSL Services that We supply to You. You further acknowledge that if You cancel Your Agreement with Us for the provision of DSL Services, the Service shall cease to function. You may terminate the Agreement for the provision of Services pursuant to this clause 6.1 but You acknowledge that You shall be liable to pay an Early Termination Fee if such termination occurs during the Fixed Period.

6.2 You must have or obtain a suitable internet access service to access the Service that is provided by Us. Any Internet access service provided by Us will be subject to separate terms and conditions and charges.

6.3 The Service is accessed and delivered via the Internet. The Internet is separate from the Service and its use is solely at Your risk and subject to all applicable Legislation. We have no responsibility for any information, software, services (other than those parts of the Service delivered via the Internet) or other materials obtained by You using the Internet.

6.4 You shall only be entitled to access the Service using the single administrative account and log-in process advised to You by Us.

## **7 CHANGES TO THE SERVICE**

7.1 We may from time to time make changes to the specifications in the Service. Such changes will be notified to You not less than 30 days prior to their taking effect and if any such changes are considered material adverse changes, the parties will endeavour to agree such changes. If the parties fail to agree such changes, You may terminate this Agreement upon 30 days notice.

## **8 FEES AND PAYMENT TERMS**

8.1 The Fees in relation to the Service shall comprise: (i) an ongoing monthly recurring service charge for access to the Service. This service charge will be payable monthly in advance commencing at the end of the first month of the Fixed Period; and (ii) if you elect to receive Sentinel Alerts, an ongoing monthly recurring charge for receipt of such alerts. For the avoidance of doubt, the Sentinel Alerts monthly fee enables a specific connection (DSL) to be alerted during that month, via email or text message, if there is a problem affecting that connection. Emails and text messages sent during the month are included in the Sentinel Alerts monthly fee, and are unlimited, however, if no alerts are sent the Sentinel Alerts monthly fee is still applicable. You shall be entitled to cancel the Monthly Alerts by providing not less than 30 days' notice at any time. For the avoidance of doubt, the provision of the Sentinel Alerts service is not subject to a Fixed Period and You shall not be liable to pay any Early Termination Fee for the cancellation of the Sentinel Alerts service pursuant to this clause 8.1.

8.2 We may increase the Fees by giving You 45 days prior notice. You may terminate this Agreement on 30 days written notice if You do not want to pay the increased Fees.

8.3 Subject to clause 8.1, the provision of the Services is subject to You entering into a contract with Us for the Fixed Period. Therefore, in the event that You terminate Your Agreement, or Your Agreement is terminated during the Fixed Period You agree to pay the Early Termination Fee.

## **9 INTELLECTUAL PROPERTY**

9.1 Any software or documentation provided by Us in connection with the provision of the Service is, and will remain, Our property or that of Our licensors.

9.2 You are granted a non-exclusive, non-transferable right to use such software and documentation only for the purpose of using the Service.

9.3 You will not make any modifications to such software or documentation. You will indemnify and keep Us indemnified against any costs, losses, damages, or liability that We may incur due to You amending or in any way, altering such software or documentation, or using it for a purpose not permitted by these Terms.

9.4 Upon termination of this Agreement, each party shall immediately cease to use the others software and/or documentation supplied under these Terms and (at the others absolute discretion) shall return or destroy the same.

## **10 SECURITY**

10.1 You are responsible for the security and proper use of all passwords, or other security devices used in connection with the Service (including changing passwords on a regular basis) and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people.

## **11 LIABILITY AND INDEMNITY**

11.1 We exclude all liability of any kind in respect of Your use or reliance on the data which can be accessed using the Service and are not responsible in any way for any further actions that You elect to take on the basis of data supplied by means of the Service.

11.2 We will use Our reasonable endeavours to provide the Service to you, however faults may occasionally occur. We do not warrant that the use of the Service will be uninterrupted or error-free. If the Service is materially impaired due to a problem with the Service then We shall, at Our option, do one of the

following: (a) repair the Service; or (b) terminate this Service immediately by notice in writing to You and refund any of the Fees paid by You as at the date of termination (less a reasonable sum in respect of Your use of the Service to the date of termination).

11.3 You must indemnify Us against any claims or legal proceedings which are brought or threatened against Us relating to the Service being used in breach of clause 5. We will notify You of any such claims or proceedings and keep You informed as to the progress of such claims or proceedings.

## **Part B –TRANSACT & BROWSE AND TRANSACT & BROWSE 3G BACKUP**

BACKGROUND This section of Part B relates only to the provision of the Transact & Browse and Transact & Browse 3G Backup services. These terms are in addition to the terms set out in Part A above and in addition to the terms set out in

**Part B 'Broadband Services'. Where there is a difference between the terms in Part A and these following terms, and/or a difference between the terms in Part B 'Broadband Services' and these following terms, these following terms shall apply. 1. DEFINITIONS • Early Termination Fee – means, if you are a business customer, either (i) the Fees payable by You from the date of termination to the expiry of the Fixed Period; or (ii) the actual costs incurred by Us in terminating the Services prior to the Start Date, if You cancel the Services prior to the Start Date, without limiting any rights You may have pursuant to clause 6.9 or 6.10 of Part 1. If You are a residential customer the Early Termination Fee means the Fees payable by You from the date of termination to the expiry of the Fixed Period less any costs saved by Us as a result of Your termination; • Fees – the fees for the Services as posted on the Web Site from time to time; • Fixed Period – means (i) in respect of Transact & Browse, a period of 18 months commencing on the Start Date together with any further period during which We provide Service to You; or (ii) in respect of Transact & Browse 3G Backup, a period of 24 months commencing on the Start Date together with any further period during which We provide Service to You; • Service – means the provision of Transact & Browse or Transact & Browse 3G Backup as applicable; • Start Date - the date on which We activate Your access to the Service. • Transact & Browse – means, subject to clause 2.2, the ADSL Services supplied by Us to Our business customers as further described on Our Website; • Transact & Browse 3G Backup – means, subject to clause 2.2, the ADSL Services supplied by Us to Our business customers as further described on Our Website; and • Streamline –the trading name of WorldPay (UK) Limited. WorldPay (UK) Limited is a company registered in England number 07316500 2. PROVISION OF THE SERVICES**

2.1 We shall supply the Service to You from the Service Start Date until this Agreement is terminated.

2.2 You acknowledge that You must have a contract in place with Streamline for payment processing services in order to purchase the Services. In the event that Your contract with Streamline for payment processing services is terminated for any reason, We reserve the right to terminate this Agreement. Subject to clause 2.3, if such termination is effective prior to the expiry of the Fixed Period, You will pay Us the Early Termination Fee.

2.3 In the event that this Agreement is terminated pursuant to clause 2.2, We may, at Our discretion, permit You to re-grade to one of Our alternative packages. If We permit You to re-grade to an alternative package pursuant to this clause 2.3, You shall not be liable to pay the Early Termination Fee which

would otherwise have been payable pursuant to clause 2.2. 3. TRANSFER OF DATA TO STREAMLINE

3.1 You hereby authorise Us to use, share and release Your Personal Data, as defined in the General Data Protection Regulation, and any other information relating to You or the Services (or, if instructed by Us, You shall provide such data or information or procure that such data or information is provided) to Streamline: (a) for the purpose of fulfilling Our obligations under the Agreement or otherwise as required by Legislation; (b) to assess financial and insurance risks; (c) in relation to any breach of, or to enforce, this Agreement; (d) to recover debt or in relation to your insolvency; (e) to develop customer relationships, services and systems; (f) to prevent and detect fraud or crime; (g) in the course of any investigation by Us, any other financial institution or any third party into any suspected criminal activity; or (h) regarding information security, the risk of fraud, sector risk and credit risk.

3.2 You acknowledge and agree that Eclipse and Streamline may share information regarding the termination of this Agreement. 4. TERM AND TERMINATION

4.1 You may terminate this Agreement at any time on providing 30 days' written notice. In the event that You terminate this Agreement pursuant to this clause 4.1 prior to the expiry of the Fixed Period, You shall be liable to pay the Early Termination Fee and a Cease Charge fee.