

# Terms & Conditions for the use of Eclipse Broadband Services

The Terms below set out the basis on which We will provide services to You. You must read these Terms carefully and, if You wish to proceed, confirm Your acceptance of these Terms by clicking on the button marked "Accept" below (online) or signing or agreeing on the telephone with us where appropriate (offline). Part A contains the general terms and Part B contains terms relating to specific services.

By accepting these Terms, You have placed an order for the Services. Following on from your order, We shall contact You by post or email to confirm the details of the Services You have agreed to take. Your order represents an offer from You to Us to purchase the Services. We shall send confirmation by way of Our welcome mail to You, by post or email, when Your order is accepted by Us. Our acceptance of Your order (being the date of the welcome pack) will create the Agreement between You and Us for the Services.

All orders are subject to these Terms. If You do not agree with any of these Terms and you are a consumer, You should notify Us of Your intention to cancel Your order as detailed in clause 6.9 and 6.10 of Part A below.

## Part A

### 1. DEFINITIONS

1.1 In these Terms, the following words shall (unless the context otherwise requires) have the following meanings:

- **Acceptable Use Policy** – the acceptable use policy posted on Our Web Site (as amended from time to time);
- **Additional Charges** - any charges additional to the Fees that may be invoiced by Us to You in accordance with these Terms (whether by virtue of a specific provision or otherwise and including, without limitation, the Cease Charge fee as detailed in Part B), which will be charged at Our current standard rates or otherwise calculated on a time and materials basis, as amended from time to time;
- **Agreement** - these Terms and the Order Form;
- **BT** - British Telecommunications PLC;
- **Carrier** - any supplier to Us from time to time of telecommunications services in respect of the Service;
- **Early Termination Fee** – shall have the meaning given to it for the particular Service, as detailed in Part B;
- **Equipment** – any hardware supplied by Us to You in order for You to receive the Service;
- **Fair Use Policy** – the fair use policy posted on Our Web Site (as amended from time to time);
- **Fees** - the amount(s) payable by You (excluding VAT) for or relating to the Services set out in Part B;
- **IPR** - all patents, copyright, moral rights, design rights, know-how, Confidential Information, database rights, trademarks and service marks together with applications to register any of the above (where applicable);
- **Order Form** - the on-line form completed by You or on Your behalf by Us in respect of the Services;
- **Party** - You and Us;
- **Services** - the services listed on the Order Form and in respect of each specific terms are set out in Part B and the detailed specifications are set out in the relevant Product Information Sheet displayed on our Web Site;
- **Start Date** - the earliest of the Start Dates set out in Part B;
- **Terms** - these terms and conditions consisting of Part A and Part B;
- **Us, We, Our** - Eclipse Broadband Ltd, whose registered office is at: 60b Queen Street, Horsham, RH13 5AD (registered number: 12761508);
- **Eclipse Broadband Ltd** - Us, Our holding company, Our subsidiaries and any subsidiaries of our holding company. The terms "subsidiary" and "holding company" have the meanings ascribed to them by Section 736 and 736A of the Companies Act 1985 (as amended);
- **Your, You** - the organisation or person requiring the Services whose details are set out in the Order Form;
- **Web Site** – www.eclipsebroadband.co.uk.

1.2 Words in the singular include the plural and vice versa. A reference to one gender includes a reference to the other gender.

### 2. OUR OBLIGATIONS

2.1 We agree to provide to You the Services for the Fees. To avoid doubt, either BT or another provider will still bill You for the rental of your exchange line unless You purchase Eclipse Line Rental / PSTN Services.

- 2.2** We will use reasonable endeavors to provide the Services without interruption and materially error free.
- 2.3** You acknowledge that our obligations may be carried out on our behalf by a Carrier or other sub-contractor or agent.
- 2.4** Your bill will be calculated using data recorded by Us and not from Your own records. Our billing systems will meet standards of accuracy approved by our industry regulator.

### **3. YOUR OBLIGATIONS**

- 3.1** You agree to pay the Fees as shown on the Order Form. We will bill You for all: (a) Fees; and (b) calls made at the rates set out on our Web Site, as amended from time to time in accordance with this Agreement.
- 3.2** We will issue invoices to You for the Fees electronically. We will either (i) send the invoice to You as a pdf attachment to an email; or (ii) notify You that Your invoice is available by email, to the email address stated in Your account. You must ensure that the email address is correct and shall notify Us immediately if Your email address changes. The invoice shall be deemed received by You, upon sending (i) the email attaching Your invoice or (ii) the email notifying that Your invoice is available (to the email address provided by You). We reserve the right to issue a paper invoice to You should We deem it appropriate in Our sole discretion. Any request to send Your invoices to You by post, instead of issuing Your invoices electronically, shall be subject to Our express agreement to do so. You agree that You shall pay an Additional Charge for each invoice issued to You by post.
- 3.3** We may change our charges from time to time but will aim to let You know at least 30 days in advance of any change We are making. We will announce any changes to Our charges through one or more of the following means:
- We will publish details as soon as possible on Our Web Site;
  - We may include details of such changes on Your bill;
  - We may send notice to You by email, if You have registered an email address with Us;
  - We may send notice to You by post.

Such changes may be necessary to take into account any changes We make to the Services We provide to You, any changes to the costs We incur in providing the Services, any changes to the way in which We operate Our business, any changes to the agreements We have with third parties that enable Us to supply Our Services, or any changes to any relevant laws, regulations or codes of practice.

If the changes We make to Our charges are significant We will always send You notice by either post or email at least 30 days before the changes take place. You may terminate this Agreement by providing Us with 30 days' notice following Our notice to You of the significant change to charges. If You exercise this right to terminate Your Agreement You will not have to pay any Early Termination Charges. If We increase the amount of the fixed monthly charges You pay for the Service, fail to pass on any reduction in VAT (or any other direct and/or mandatory taxation) or reduce the services We provide to You without making a proportionate reduction in the Charges, We will always treat this as a change that is significant. If You do not provide notice to terminate the Agreement within 30 days following Our notice of the change to You, You will be deemed to have accepted the change. You must pay either by Credit or Debit Card or by Direct Debit from a bank account. We may vary these methods from time to time. You must provide Us with all necessary information and authority We need to set up a variable Direct Debit. We shall be entitled to withhold Our Services if Your bank has not confirmed that the Direct Debit has been established.

- 3.4** You are responsible for the cost of all charges You incur while Using the Services (whether You make the calls or someone else does). We may apply a usage limit to Your account. If You reach Your usage limit during any billing period We will inform You promptly and, if You do not immediately pay at least half the charges incurred, We may suspend the Services. However, You will still be responsible for all charges incurred using the Services, including those that exceed the limit.
- 3.5** All Fees due under this Agreement will be payable within 14 days of the date of the relevant invoice, (the "Due Date") and will be paid in full without any set-off, deduction or withholding of any kind. If You have chosen to make payment of the Fees by Direct Debit, We will give You 10 working days prior notice of Our intention to request payment from Your bank account.
- 3.6** If You have not paid the Fees or any Additional Charges due pursuant to this Agreement by the Due Date, We shall be entitled to: (i) suspend the Services, until We receive payment from You; (ii) add a late payment charge to Your next bill; and/or (iii) charge interest on any overdue amounts payable from the due date until payment of all sums owing including interest (whether before or after judgment) at the rate of 4 percent per annum above the base rate of the Royal Bank of Scotland plc from time to time. We may also charge You for any dishonored Direct Debit or cheque payments, and any late payments. Charges are set out in the Price List available on the Legal pages of our website. If You have not paid the Fees due pursuant to this Agreement by the Due Date, We may instruct a debt-collection agency to collect payment on Our behalf. If We do, You will have to pay Us an extra amount. This will not be more than the reasonable costs We have to pay the agency, who will add the amount to Your debt on Our behalf. This clause will apply even if the Agreement between You and Us has ended.
- 3.7** If You dispute payment of the Fees or Additional Charges, in whole or in part, You should contact Us immediately, and no later than 10 Working Days following receipt of Your invoice or prior to Our collecting payment from You, to discuss Your complaint. Any disputes regarding the Fees should be made in accordance with Clause 12. Subject to You notifying Us of Your dispute and making payment of any Fees or Additional Charges that You do not dispute, in accordance with this Agreement, We will suspend payment of any interest or late payment charges and will not instruct a debt-collection agent, until We resolve the dispute with You.
- 3.8** You agree that all information You have given to Us is correct and that You will inform Us if it changes. You accept that You will be liable for Additional Charges if You give Us incorrect information that We act on.
- 3.9** You agree to indemnify Us and any Carrier against any loss either of Us may suffer from Your use of the Services.
- 3.10** You agree that You will:
- 3.10.1** comply with any reasonable instructions or directions issued by Us from time to time in respect of the Services and that You will comply at all times with all relevant policies that we publish on Our Web Site as may be varied from time to time including but not limited to our Fair Usage Policy and Acceptable Use Policy;

- 3.10.2 conform to such protocols and standards as are issued from time to time in respect of the use of the Internet or the Services;
- 3.10.3 fully indemnify Us against any costs and claims from any third party resulting from Your acts or omissions in respect of the Services; and
- 3.10.4 comply with all applicable legislation (including but not limited to matters arising under the General Data Protection Regulation and the Regulation of Investigatory Powers Act 2000)
- 3.11 You agree that You will not (and You will ensure that Your employees, agents and sub-contractors do not):
  - 3.11.1 use the Services for any unlawful purpose or in contravention of any English or other law. This includes but is not limited to:
    - a. any act or omission which will or is likely to infringe the intellectual property rights of a third party;
    - b. the transmission, display, downloading or uploading of any material or text which is or is likely to be construed as defamatory, offensive, abusive, obscene or which will or is likely to cause unnecessary anxiety or inconvenience to a third party;
    - c. use of the Services in any way which is or is likely to violate or infringe the rights of any individual, firm or company in the United Kingdom or elsewhere.
  - 3.11.2 send or procure the sending of unsolicited advertising or promotional material; or
  - 3.11.3 use the Services in a way that does not comply with any instructions given by Us for reasons of health, safety or the quality of the Carrier's telecommunications services or our system; or
  - 3.11.4 use the Services in any way that will or is likely to make excessive use of our network (including but not limited to spamming).
- 3.12 The person signing or agreeing to the Order Form warrants his or her authority to bind You to this Agreement.
- 3.13 We reserve the right from time to time to pass on to You any charges levied against us by a Carrier or any other third party supplier.

#### 4. LIABILITY

- 4.1 Save as required by law and as expressly provided in these Terms, We do not warrant the Services or the Equipment against failure of performance. We disclaim and you waive all other warranties, express or implied, with respect to the services or the equipment, arising by law or otherwise, including, without limitation any implied warranty of satisfactory quality, fitness for a particular purpose and any obligation, liability, right, remedy, claim in tort, notwithstanding any fault, negligence, strict liability or product liability of us (whether express or implied) so far as the law permits.
- 4.2 You agree that We are not liable in contract or tort (other than fraudulent or negligent misrepresentation) or otherwise arising out of or in connection with these Terms for economic loss (including, without limitation, loss of revenue, profits, contracts, business or anticipated savings), loss of goodwill or reputation, indirect or consequential losses whether or not such losses were within our contemplation, suffered or incurred by You or any third party arising out or in connection with the provisions of the Services (or any part of them).
- 4.3 Subject to clause 4.4 our total aggregate liability to You arising out of or in connection with this Agreement and the performance or observation of our obligations under it shall be limited to the greater of: (a) the amount paid by You to Us in the twelve months prior to the date on which Your claim arose; and (b) £1,000.
- 4.4 **Nothing in this Agreement shall: (a) exclude or limit liability for death or personal injury resulting from our negligence or that of the carrier, our employees or sub-contractors; or (b) affect Your statutory rights if You are a consumer.**
- 4.5 We will not be liable to You in any circumstances for or in connection with any merchandise, information, and/or products provided or accessed via the internet.

#### 5. PROPRIETARY RIGHTS

- 5.1 All title, rights and interest (including but not limited to ownership and IPR) in the Services remain with Us the Carrier and our suppliers. You acknowledge such title, interest and rights and You shall not take any action or omit to take any action which will or is likely to jeopardise, limit or interfere in any manner such title, right or interest.
- 5.2 Title and related rights in any content accessed through the Service are the property of the applicable content owner and are protected by applicable laws. The right to use granted to You under clause 2.1 gives You no rights to such content. If You wish to use such content, You must ensure that You have the appropriate consent or licence of the content owner.
- 5.3 You acknowledge that You shall have no rights to any IPR in the Services.
- 5.4 Title in any Equipment We provide to You, in connection with the Services, will pass to You: (i) on Our receipt of payment of the Fees for the Equipment in full; (ii) on expiry of the Fixed Period; or (iii) on Our receipt of payment of the Early Termination Fee, if You cancel the Services during the Fixed Period, whichever occurs earlier.

#### 6. TERMINATION/SUSPENSION AND SERVICE REGRADES

- 6.1 Independent of any additional rights to terminate set out in Part B, We may terminate or suspend Your use of the Services (or any of them) at any time, at our sole discretion and without notice, if You breach any term of these Terms or we have reason to believe that You have or may have breached any of these Terms (including but not limited to where a third party has alleged that there has been some act or omission by You that may amount to a breach).
- 6.2 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 broadband or ELR/PSTN Agreement to go to another services provider and you transfer Your Service(s) using a recognised migration process, 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)
- 6.3 Termination by You in certain circumstances may incur an Early Termination Fee and a Cease Charge fee. Where this is the case this will be set out in Part B. We will not charge an Early Termination Fee if You terminate the Service pursuant to clause 3.3, or 8.11 where We have made a significant change to Our charges or Our Terms.

- 6.4** If We are in material breach of these Terms, You may terminate this Agreement by giving Us reasonable written notice.
- 6.5** Upon termination of this Agreement for any reason Your right to use the Service(s) shall immediately terminate and You shall immediately stop using the Service.
- 6.6** Within a reasonable time following termination of the Agreement (i) any node name allocated to You by Us for use with the Services, or any email address that You choose to create, will be deleted and/or made available to any of Our other customers; and (ii) Your web space will be automatically deleted. We will not be liable for any losses You incur as a result of this.
- 6.7** We can also end the Agreement immediately if: (a) You become bankrupt, or (b) the Services are used for any illegal or fraudulent purposes, or (c) You have broken any term of the Agreement (but, if it can be remedied, We will give You 7 days to put that breach right); and/ or (d) any payment is not made when it is due. In addition to Our rights set out elsewhere in this Agreement, We may terminate any or all of the Services for Our convenience by giving You a minimum of 4 (four) months' prior written notice.
- 6.8** We may suspend any Service to You if We reasonably consider that the charges that You are incurring are higher than usual for the type of service that You are receiving (or Your usage is higher than normal) and/or We have reasonable grounds to doubt that You will be able to pay Your bill.
- 6.9** If you have bought the Services for personal use (as opposed to for business use), then You are entitled to a statutory "cooling-off" period and certain statutory cancellation rights as set out in Our Consumer Rights Information document on Our Web Site.
- 6.10** If You decide to purchase Equipment from Us to use with the Service, and You have bought the Service for personal use (as opposed to for business use), You will also have statutory cancellation rights as set out in Our Consumer Rights Information document on Our Web Site.
- 6.11** You can ask to change to a different Service or bundle of Services at any time by calling Customer Services. If you change to a different service or bundle of services you may have to pay an Additional Charge, as described on Our Website. If you change to a different service bundle of services you may have to take the service or bundle of services for a new minimum period starting on the date you change service, as described on Our Web Site.
- 6.12** Termination of the Services, or a Service Regrade (as defined below) which results in a Service downgrade, will automatically terminate any other services that We supply to You as an inclusive element of the terminated or downgraded Services and which are not an inclusive element of the Service that You have requested. You will be required to pay an Early Termination Fee for such services as detailed elsewhere in these Terms or in the relevant service terms and conditions. Should You require any services that We supply to You as an inclusive element of the terminated or downgraded Services to continue following termination of the Services or the Service Regrade, You will be required to notify Us of this request. Please note that if You request any such services to continue following the termination of the Services or the Service Regrade, You will be liable to pay the full Fees for the provision of such services.
- 6.13** Subject to any provisions set out in the relevant Part B, in respect of the Services, You shall be able to request changes to the Services, at any time through the Web Site. Such changes shall be called "Service Regrades". We shall either accept or reject Your request by email as soon as reasonably possible following Our receipt of Your request for a Service Regrade. There may be limitations with the Services that may require Us to reject Your Service Regrade request. In such circumstances, We may suggest a Service Regrade that We are able to supply to You. Once We have reached agreement regarding the Service Regrade, We shall make the Service Regrade required available to You, subject to these Terms. If you have bought the Services for personal use (as opposed to for business use), then You will have the statutory cancellation rights set out in clauses 6.9 and 6.10 in respect of any material upgrade.
- 7. CONFIDENTIALITY**
- 7.1** Each of Us shall while We are providing Services under these Terms and thereafter keep secret and confidential all business, technical or commercial information disclosed to one of Us by the other or otherwise which belongs to the other its sub-contractors, carriers, telecommunication providers or clients (and shall procure that its agents and/or employees are similarly bound) and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of these Terms or save as expressly authorised in writing to be disclosed by the other.
- 7.2** The obligation of confidentiality contained in clause 7.1 shall not apply or (as the case may be) shall cease to apply to business, technical or commercial information which:
- 7.2.1** at the time of its disclosure by the disclosing Party is already in the public domain or which subsequently enters the public domain other than by the breach of these Terms; and/or

**7.2.2** is required to be disclosed under applicable law or order of a court of competent jurisdiction or government department or agency or by the London Stock Exchange, provided that prior to such disclosure the receiving Party shall advise to the disclosing Party of the proposed form of disclosure.

## **8. GENERAL**

**8.1** You accept that We may have to disclose information about You to governmental organisations (including the police) or to other third parties, in respect of Your use of the Services. If We are requested to disclose such information, We will do so in accordance with Our obligations as set out in legislation or as required by an order of the court. Subject to any legal prohibitions to the contrary, We will notify You of such disclosure as soon as reasonably possible.

**8.2** We may from time to time wish to notify You of additional services provided by Us or third parties that We believe may be of interest to You. If You do not want to receive such information please write to Us at the address for notice.

**8.3** We shall not be liable for any breach of our obligations hereunder resulting from causes beyond our reasonable control including but not limited to fires, strikes (of own or other employees) insurrection, or riots, embargoes or delays in transportation, inability to obtain supplies, acts of local or central Government or other competent authorities or acts or omissions of third party telecommunications service providers.

**8.4** Unless these Terms provide otherwise any notice required or permitted under the Terms must be in English and be sent to Us for the attention of the Company Secretary at any of the following addresses:

**Eclipse Broadband Ltd, 60b Queen Street, Horsham, RH13 5AD** or [customer@eclipsebroadband.co.uk](mailto:customer@eclipsebroadband.co.uk)

Any notice to be sent to You will be sent to the address which You provide when applying for the Services unless You notify Us otherwise. Any notices given in relation to this Agreement must be delivered by hand, post, fax or email and will be treated as having been delivered: (a) on the day of delivery if delivered by hand, or (b) 2 days after posting if sent by post, or (c) on the day of transmission if sent by fax, or (d) on the day of transmission if sent by e-mail. You should contact the Customer Services Team by telephone to inform Us of Your intention to send a notice to Us.

**8.5** These Terms do not create a partnership, joint venture, agency or franchise relationship.

**8.6** Notwithstanding anything to the contrary, You may not sell, lease, sub-licence, assign or otherwise transfer, whether in whole or in part, by operation of law or otherwise, the rights or obligations (including the Services) arising under these Terms without our prior written consent.

**8.7** Notwithstanding any provision to the contrary, nothing in these Terms will create or confer any rights or other benefits whether in accordance with the Contracts (Rights of Third Parties) Act 1999 or otherwise in favour of any person other than You, Us or the Carrier.

**8.8** The headings to the sections of these Terms are for convenience only and have no substantive meaning.

**8.9** These Terms are governed by the laws of England and Wales and both parties submit to the exclusive jurisdiction of the English Courts.

**8.10** If and in so far as any part or provision of these Terms is or becomes void or unenforceable it should be deemed not to be and never to have been nor formed a part of these Terms and the remaining provisions of these Terms shall continue in full force and effect. In such an event, We shall meet with You to discuss the void and unenforceable provisions and shall substitute therefore a lawful and enforceable provision which so far as possible results in the same economic effects.

**8.11** We can change the Terms that apply to Your Agreement and We can change the product description and/or withdraw, update or vary products and their specifications at any time and for any reason. Such changes may, without limitation, be necessary to take into account any changes to the services We provide to You, any changes to the way in which We operate Our business, any changes to the agreements We have with third parties that enable Us to supply Our services, or changes to any relevant laws, regulations or codes of practice.

We will announce any changes to Your Agreement through one or more of the following means:

- We will publish details as soon as possible on Our website;
- We may include details of such changes on Your bill;
- We may send notice to You by email, if You have registered an email address with Us; or
- We may send notice to You by post.

If the changes We make to Your agreement have a significant effect on Our services or the way in which You use Our services, We will always send You notice by either email or post at least 30 days before the changes take place.

If the changes We make to Your agreement have a significant effect on Our services or the way in which You use Our services, You will be able to terminate Your Agreement. You will only be able to cancel Your Agreement in this way during the 30 day period after We announce the relevant change.

If You exercise this right to terminate Your Agreement, You will not have to pay any Early Termination Fee. However, You will have to pay Our charges for the Service You have taken up to the termination date.

**8.12** The failure by Us to insist on the performance of any of the provisions of these Terms shall not be construed as a waiver or a relinquishment of that our rights to future performance of such provisions and Your obligation in respect of such future performance shall continue in full force and effect.

- 8.13** Both parties agree to comply with the General Data Protection Regulation.

Notwithstanding anything to the contrary, You acknowledge and agree that We may use Your information (which may include Your or Your suppliers', customers', affiliates' or contractors' personal data and/or personal data relating to Your or Your suppliers', customers', affiliates' or contractors' employees or staff) ("**Customer Information**") for the purpose of supplying the Services to You, administering this Agreement including handling orders, billing, processing payments, payment collection and communicating with You regarding the Services and You further acknowledge and agree that We may pass this Customer Information on to third parties (including, without limitation, transferring and processing Customer Information outside of the European Economic Area) or other members of the Eclipse Broadband Ltd: (a) to undertake these functions on Our behalf; or (b) if required by law. You will ensure that all necessary consents are obtained for the use of Customer Information in accordance with this clause.

- 8.14** This Agreement supersedes any previous agreement between Us and You in relation to the matters dealt with in it and You acknowledge and agree that You have not entered into this Agreement in reliance upon any representation, or statement or whether oral or written) made or alleged to have been made by Us or our agents.

- 8.15** For the avoidance of doubt, where You are ordering, and We have agreed to provide to You, a Service and You are one of Our resellers of Our Services ("**Partner**"), You will always be a business customer notwithstanding the status of Your end-user(s) that will benefit from the relevant Services. Any breach of these Terms by Your end-users shall be deemed a breach by You. You must ensure that Your end-users comply with these Terms, as applicable.

## **9. FAULTS IN THE SERVICE**

- 9.1** You will immediately upon becoming aware of the same report any fault in the Equipment or the Service to Us by e-mail customer@eclipsebroadband.co.uk or by telephone on the number published at www.eclipsebroadband.co.uk.

- 9.2** You acknowledge that occasionally We and/or our Carrier may have to temporarily interrupt the Service or change the specification of the Service for operational reasons or because of an emergency. In these circumstances You shall have no claim against Us for any such interruption or change.

- 9.3** We warrant that the Equipment will be of satisfactory quality and reasonably fit for the purpose intended for a period of 12 months from the Start Date (the "**Warranty Period**"). If during the Warranty Period the Equipment becomes defective, You should return it to Us, at no charge to You. We shall repair the Equipment or replace it, at our sole discretion and subject to any manufacturer's warranty, with Equipment of no less quality than the Equipment being replaced. The replacement Equipment shall benefit from the remaining term of the Warranty Period. If, in our reasonable opinion, We discover that (i) the defects to the Equipment have been caused as a result of Your negligent acts or omissions; or (ii) there are no defects to the Equipment, We shall be entitled to charge You for the cost of the Equipment and such of Our reasonable costs as We may have incurred, including the costs of the postage of the Equipment, pursuant to this clause 9.3.

## **10. CHANGE OF CARRIER**

- 10.1** You acknowledge that We may change the Carrier of the Services from time to time. You accept that We may do so for commercial, operational or any other reasons, in Our sole discretion. Subject to the provisions in clause 10.2 and 10.3 below, You should not experience any disruption to the ongoing supply of the Services to You. Following the successful migration of the Services, You should experience a Service of at least equivalent, if not improved Service provision.

- 10.2** Due to the nature in which the Services are provided, You acknowledge and agree that during the process of change of Carrier, We may need to disconnect Your Communications Line. You accept that this may temporarily interrupt any other services that You receive from Us or any third party through Your Communications Line. We will use Our reasonable endeavours to reconnect Your Communications Line without delay.

- 10.3** To the extent that We need to make any changes to this Agreement, as a consequence of Our change of Carrier, We will do so by sending notice to You in accordance with clause 8.4.

## **11. REFERRALS (Not available for new supply)**

- 11.1** If You wish to join our referral scheme then additional terms (as posted on Our Web Site and as amended from time to time) shall apply. By joining the referral scheme You agree to comply with these additional terms.

## **12. COMPLAINTS AND DISPUTES**

- 12.1** Our Complaints Code of Practice sets out full details of how We handle complaints and resolve disputes relating to Our Services. If You have a complaint about any of Our Services You should raise it with Us in accordance with the details set out in this Code of Practice. You can find a full copy of Our Complaints Code of Practice on the Website.



## 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 the same.

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](http://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, SHAREDBAND LIMITED, (HEREINAFTER REFERRED TO AS "SHAREDBAND").**

### **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/licenses](http://www.gnu.org/licenses)
- 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 derivate 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 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 mailbox 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 <http://resellers.tucows.com/contracts/tld/exhibita> and the registry's policy governing the process of dispute resolution available at <http://www.icann.org/dndr/udrp/policy.htm>

#### 4.2 .co.uk, .ltd.uk, .org.uk and .plc.uk

The registry's terms for the registration of the Service, available at <http://www.nic.uk/registrants/aboutdomainnames/legal/terms/>, the registry's dispute resolution policy available at <http://www.nic.uk/disputes/drs/policy/>, the process for dispute resolution, available at: <http://www.nic.uk/disputes/drs/procedure/> and the rules of registration available at: <http://www.nic.uk/registrants/aboutdomainnames/rules/>

#### 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 planner 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:

- 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);
- modify the Service (at no cost to You) provided that such changes do not materially affect the performance of the Service;
- 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
- 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:

- with Your prior agreement or in the absence of Your agreement upon reasonable notice for planned maintenance to Our networks or infrastructure,
- without notice when necessary for operational or security reasons, or in case of emergency;
- 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;
- to eliminate a hazardous condition;
- 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;
- without notice where We reasonably believe there has been a breach of clause 5.1 of these Terms; and
- 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) 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) adhere at all time 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.