

THE FOLLOWING IS A SUMMARY OF THE TERMS AND CONDITIONS WHICH APPLY TO THE PROVISION OF TELECOM AND DATA SERVICES AND EQUIPMENT TO BUSINESSES ("THE CONDITIONS"). PLEASE READ THE FULL CONDITIONS WHICH ARE AVAILABLE FROM OUR WEBSITE - www.diamondcommunications.co.uk.

DEFINITIONS

In the Conditions: "We"/ "Us"/ "Our" means Diamond Communications (UK) Ltd of Phoenix House, Desborough Park Road, High Wycombe, Buckinghamshire, HP12 3BQ; "You"/ "Your" means the individual, partnership, company or other organisation who wishes to be supplied with the Telecom Services and/or Equipment and is identified in the Service Agreement Form ("Form"); "Agreement" means the Conditions and the Form; "Authorised Person" means a person authorised by Us to carry out a function under the Agreement; "Broadband Service" means Our broadband services including but not limited to Asymmetric Digital Subscriber Line (ADSL), Symmetric Digital Subscriber Line (SDSL), Multiple Protocol Label Switching (MPLS), VDSL and Bonded xDSL; "Connection Date" the date of the connection of each of the Telecom Services on Our network; "Equipment" means any equipment We supply to You in accordance with the Agreement; "Form" the service agreement form; "Initial Period" the minimum term for each of the Telecom Services detailed on the Form starting from the Connection Date; "Intellectual Property Rights" means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know how, database rights, moral rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world; "Maintenance Services" means any maintenance and/or support related services for the System; "Property" means the site at which the System is to be installed and the Telecom Services are to be provided to You; "Small Business Customer" as defined by OFCOM General Conditions from time to time; "Subsequent Period" 12 months; "System" means any telephone system, comprised of items of Equipment, supplied by Us under the Agreement; "Technical Support Helpline" means the telephone technical support helpline for Broadband Services (details of which are on the Website); "Telecom Services" means Our telecommunication and data services, offered from time to time including, but not limited to, Broadband Services, IP Telephony Services, Integrated Services Digital Network (ISDN), Public Switched Telephone Network (PSTN), Direct Connects, Leased Lines and Digital Subscriber Line (DSL); "Website" means www.diamondcommunications.co.uk; "Working Day" means Monday to Friday 9am-5pm not including public holidays; "Working Hours" means between 9am and 5pm on a Working Day; "Your Material" means any documents, plans, drawings, specifications, details, pictures of any other record of information in any form provide by You to Us in connection with the Agreement.

- 1 **DURATION**
- 1.1 The Agreement shall take effect from the date You sign the Agreement or verbally accept it.
- 1.2 The Agreement shall continue for the following term:
 - 1.2.1 If you are a Small Business Customer, for the Initial Period unless terminated in accordance with its terms or by either party giving to the other not less than **THREE MONTHS** prior written notice. In order to be valid, such notice must not expire before the end of the Initial Period; or
 - 1.2.2 In all other cases, for the Initial Period and thereafter for further periods each equivalent to the Subsequent Period until terminated in accordance with its terms or by either party giving to the other not less than **THREE MONTHS** prior written notice. In order to be valid, such notice must not expire before the end of the Initial Period or each Subsequent Period.
- 1.3 If you purport to terminate the Agreement before the expiry of the term stated in clause 1.2, You will be regarded as having committed a material breach which is incapable of remedy, for the purposes of clause **Error! Reference source not found.**, and We may choose to terminate the Agreement in accordance with that clause and claim damages from You pursuant to clause **Error! Reference source not found.**
- 1.4 We shall use reasonable endeavours to activate the Telecom Services as soon as possible but We cannot guarantee that the Telecom Services will be activated by a particular date.
- 1.5 You shall not be entitled to change or cancel any Equipment You have ordered (as detailed in the Form) without Our prior written consent.

2 THE TELECOM SERVICES

- 2.1 BY ENTERING INTO THE AGREEMENT, YOU APPOINT US AS THE EXCLUSIVE SUPPLIER OF THE TELECOM SERVICES AND YOU SHALL NOT APPOINT A THIRD PARTY TO PROVIDE SERVICES SIMILAR TO OR IDENTICAL TO "THE TELECOM SERVICES" WITHOUT OUR PRIOR WRITTEN CONSENT (SUCH CONSENT WILL NOT BE WITHHELD WHERE WE ARE UNABLE TO PROVIDE THE SERVICES OFFERED BY THE THIRD PARTY).
- 2.2 We cannot guarantee that the Telecom Services will operate free from any faults, however, where We are responsible, We shall use reasonable endeavours to correct faults as soon as is reasonably practicable.

3 USE OF THE TELECOM SERVICES AND THE SYSTEM

- 3.1 You shall be responsible for the proper use of the Telecom Services and any System which we supply and You agree not to contravene any applicable laws or any relevant regulations, authorisations or licences in using the Telecom Services and/or the System. You shall not resell the Telecom Services.

4 ACCESS TO PREMISES AND PROVISION OF INFORMATION

- 4.1 For Us to perform Our obligations and satisfy our rights under the Agreement You will ensure that We and any Authorised Person have the necessary access to the Property and all facilities, equipment and telephone lines. You will also give Us and any Authorised Person such assistance as may reasonably be requested.

5 THE EQUIPMENT

- 5.1 All specifications of the Equipment provided by Us are approximate only and any samples, models, illustrations or other descriptive matter shall be regarded as indicative only and not binding as to detail.
- 5.2 Unless otherwise agreed in writing by Us, We shall deliver the Equipment and carry out the installation of the System (the "Installation Services") at the Property. We shall use Our reasonable endeavours to agree a date for the installation of the System with You but any date is an estimate only and shall be subject to You and/or any relevant third parties acting on Your behalf performing any necessary acts and/or, where necessary, supplying Your Material and facilities so as to enable the delivery of the Equipment and the performance of the Installation Services.

Title and Risk

- 5.3 Any Equipment supplied by Us further to a rental agreement remains Our property and must be made available for collection on expiry or termination of this agreement.
- 5.4 Subject to clause 5.3, risk of loss or damage to the Equipment shall pass to you on installation of the Equipment.
- 5.5 Title in the Equipment shall not pass to You until We have received payment in full of the price of the Equipment and/or the Installation Services and all other equipment sold or agreed to be sold by Us to You for which payment becomes due.
- 5.6 Until title in the Equipment passes to You, We may at any time require You to deliver up the Equipment to Us and if You fail to do so, you grant Us or any Authorised Person an irrevocable licence to enter the Property or any third party premises where the Equipment is stored and repossess the Equipment.
- 5.7 You shall not be entitled to sell, lease, hire, loan, give others the use of, pledge or in any way charge by way of security for any indebtedness any of the Equipment which remains Our property.

Equipment Warranty

- 5.8 Subject to the following, We warrant to You that the Equipment will correspond with any agreed specification at the date We complete installation and for a period of 12 months from that date.
- 5.9 We shall have no liability for any loss, damage, costs, expenses or other claims:
 - 5.9.1 in respect of any defect in the Equipment and/or the performance of the Installation Services and/or the Maintenance Services arising from any instructions, advice, Your Material or other information supplied by You or any third party on Your behalf which is incomplete or inaccurate or arising from their non-arrival or any other fault caused by You;
 - 5.9.2 in respect of any defect arising from willful damage, negligence, failure to follow Our instructions, misuse or alteration of the Equipment without Our prior written approval;
 - 5.9.3 if You have not paid for the Equipment, and/or the Maintenance Services in full by the due date for payment;
 - 5.9.4 for Equipment not manufactured by Us, in respect of which You shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Us.
- 5.10 Any claim by You under the above warranty must be notified to Us within 14 days from the date of completion of the installation of the Equipment or, where the defect or failure was not apparent on reasonable inspection, within 21 days of the failure becoming apparent.
- 5.11 Where a valid claim in respect of any of the Equipment which is based on a defect in the quality or condition of the Equipment or its failure to meet the specification or any defect in the Installation Services or the Maintenance Services is notified to Us in accordance with this Agreement, We may at Our sole discretion:
 - 5.11.1 replace and/or modify the Equipment and/or make good any defect in the Installation Services or the Maintenance Services free of charge;
 - 5.11.2 refund to You the price of the Equipment and/or the Installation Services or the Maintenance Services (or a proportionate part of the price); or
 - 5.11.3 issue You a credit on any amount invoiced equal to the price of the Equipment and/or the Installation Services or the Maintenance Services (or a proportionate part of the price) in which case We shall have no further liability to You.

Maintenance Services

- 5.12 You shall ensure that any System is continuously maintained by a maintainer approved in writing by Us. Unless you provide evidence of satisfactory maintenance cover within 7 days of installation of the System, We will provide Maintenance Services to you at the cost detailed below for the duration of the Agreement save that the first 3 months Maintenance Services will be provided free of charge. You shall not allow anyone else to carry out maintenance on the System without Our prior consent. Maintenance Services will only be carried out on any System supplied by Us under this Agreement. Whenever an upgrade to the System is required due to operational or technical reasons, We shall carry out the upgrade at Your cost, calculated at our standard rate then in force.
- 5.13 The annual charge for the Maintenance Services covers remote telephone and online support and the cost of minor parts. Such telephone and online support is subject to a limit of 3 hours in any calendar month.
- 5.14 We shall undertake any adjustments or repairs necessary to the System on the following terms:
 - 5.14.1 We shall undertake the Maintenance Services only on Working Days (with the exception of Gold Plus Cover) unless otherwise agreed by Us in writing;
 - 5.14.2 where it is necessary to send an engineer to the Property We shall use Our reasonable endeavours to respond to reported faults within the following response times:

Cover	Details of Cover	Cost of Cover **
Silver Cover	<ul style="list-style-type: none"> Monday to Friday; 9:00am to 5:00pm excluding Bank holidays. 16 working hours response on all non-critical faults 4 working hours response on all critical faults* 	<ul style="list-style-type: none"> 7.5% per annum of the total system cost (including any initial payment).
Gold Cover	<ul style="list-style-type: none"> Monday to Friday; 9:00am to 5:00pm excluding Bank holidays. 9:00am to 1:00pm 12 working hours response on all non-critical faults 3 working hours response on all critical faults* 	<ul style="list-style-type: none"> 12.5% per annum of the total system cost (including any initial payment).
Gold Plus Cover	<ul style="list-style-type: none"> Monday to Saturday; 9:00am to 5:00pm including Bank Holidays 8 working hours response on all non-critical faults 3 working hours response on all critical faults* 	<ul style="list-style-type: none"> 17.5% per annum of the total system cost (including any initial payment).

- * Critical fault is defined as 70% or more of lines or extensions out of service
- ** Subject to a minimum monthly payment of £40.46 plus VAT. The cost of the maintenance cover will increase by 5% per annum with effect from the first anniversary of the Agreement.
- 5.14.3 in this clause "response time" shall mean the time by which we will respond to Your notification of a fault in the System and not the repair of the fault. We shall use Our reasonable endeavours to rectify any reported faults as soon as possible;
- 5.14.4 where it is necessary to send an Engineer to the Property or where you request an Engineer to attend the Property and the fault is not relating to the System, We will charge You (i) a call-out fee; and (ii) for the time spent by any Engineer at the Property, both such charges shall be at Our standard rates from time to time in force.
- 5.15 You shall be liable to Us for the full cost of any aborted visits to the Property at Our standard rates then in force.
- 5.16 The Maintenance Services shall not apply to any design defect in the System, nor any defect or malfunction which is due to faulty materials or workmanship in manufacture, or which in Our opinion has arisen as a result of: (i) electrical work external to the System; (ii) transportation or relocation of the System not performed by or on Our behalf; (iii) any error or omission in relation to the operation of the System; (iv) any modification, adjustment or repair to the System made by You or a third party without Our prior written consent; (v) the subtraction of the System to unusual physical or electrical stress, the neglect or misuse of the System or any failure or fluctuation of electrical power, air conditioning, humidity control or other environmental controls; (vi) any other cause (except the fair wear and tear) which is not due to the neglect or default of Us; (vii) an error caused by You; or (viii) any failure or defective working of the Equipment due to any fault, failure or change in the electricity supply and/or Network Service and connections and/or host PABX systems.
- The above faults or damage which are outside the terms of the Maintenance Services may be repaired by Us at Your cost, calculated at our standard rate then in force.
- 5.17 If We reasonably determine that there is no fault or that any defect in or malfunction of the System is the result of any of the matters referred to in clause 5.16, You shall be liable for all Our costs in attending the Property, investigating the fault and determining its cause.
- 5.18 You shall ensure that any Authorised Person has full and free access to the System and to any records of its use kept by You to enable Us to perform the Maintenance Services. You shall ensure the safety of such Authorised Persons.

6 SUSPENSION OF SERVICES AND CHANGES

- 6.1 We may suspend immediately the provision of the Telecom Services and/or the Maintenance Services until further notice with no obligation to give the reason for such suspension. We will endeavour to give reasonable notice where practicable. You will be liable for Our costs and expenses arising from the suspension and/or commencement where the suspension is due to Your breach, fault or omission.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Intellectual Property Rights in (i) Your Material shall (subject to the rights of any third party) belong to You; and (ii) any documents, plans, drawings, specifications and data provided by Us ("Our Materials"), or anything produced or used by Us in the supply of the Equipment and/or the Telecom Services, the Form, and/or this Agreement belong to Us and may not be reproduced without Our prior written consent.

8 LIABILITY

- 8.1 Nothing in the Agreement shall restrict Our liability for death or personal injury resulting from Our negligence or that of Our employees while acting in the course of their employment.
- 8.2 We shall not be liable to You for any loss of revenue, profit, opportunity, goodwill, data, business, contracts, anticipated savings or any indirect or consequential loss or damage howsoever arising in connection with this Agreement (whether by breach of contract, tort, breach of statutory duty or otherwise of Us, Our employees, agents or subcontractors).
- 8.3 Our liability (whether for breach of contract, tort, breach of statutory duty or otherwise) arising out of or in connection with the performance or non-performance of Our obligations under this Agreement shall be limited to the higher of any amount recovered by Us under a relevant policy of insurance or £500,000 in respect of any one incident or a series of related incidents and £1,000,000 in total in any 12 month period.
- 8.4 You shall indemnify Us against any claims, losses, expenses, damages and liability incurred by or awarded against Us arising out of any act, omission or breach by You, Your employees, agents or subcontractors relating to the Telecom Services, the supply of Equipment, Installation Services and Maintenance Services and/or this Agreement.
- 8.5 Neither party shall be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control ("Force Majeure").

9 CHARGES AND PAYMENT

- 9.1 You must pay Our charges for the Telecom Services and, where applicable, the Equipment, the Installation Services and the Maintenance Services ("the Charges"). You can request the details of the applicable Charges from Our Customer Care Department. All Charges quoted prior to the commencement of this Agreement are valid for 30 days only, after which time they may be altered by Us without giving notice to You.
- 9.2 Where a Monthly Service Charge is detailed on the Form, this is the minimum amount payable by You per month for the term of the Agreement. If you decide to cease or transfer any of the services for any reason the Monthly Service Charge will not be varied. Any additional Telecom Services not included within the Monthly Service Charge will be charged at the agreed rate.
- 9.3 You remain liable for all Charges whether You or someone else used the Telecom Services and whether the Telecom Services were used with Your knowledge and consent or otherwise including but not limited to fraudulent calls made by rogue callers and calls made by any third party who had gained unauthorised access to Your Equipment.
- 9.4 Unless otherwise detailed on the Form, calls are subject to a minimum call charge and/or a connection charge.
- 9.5 We may change the Charges at any time upon giving You at least 14 days prior notice, provided that in exceptional circumstances we may change the Charges on less than 14 days notice. Such exceptional circumstances may include where Our suppliers change their charges to Us on less than 14 days notice.
- 9.6 You agree to pay all Charges billed by Us within 14 days of the date of each bill by direct debit unless otherwise agreed in writing by Us. You shall sign and maintain for the duration of the Agreement a variable direct debit mandate which will enable Us to withdraw the amount of the Charges from Your nominated bank account.
- 9.7 We reserve the right to adjust, without notification, the Charges for the Maintenance Services at the end of each 12 month period from the date of the Agreement.
- 9.8 Usage Charges payable by You shall be calculated with reference to data recorded, logged or obtained by Us whether or not the Telecom Services have been used by or with Your authority and irrespective of any fraud and not by reference to any data logged or recorded by You.
- 9.9 All sums referred to in the Agreement are exclusive of Value Added Tax and any other taxes of a similar nature which may from time to time be introduced, and which shall be charged in addition.
- 9.10 If the Agreement is terminated part way through a month, no refund shall be due to You and nor shall We pro rata any Charges payable by You in respect of that month for the Telecom Services, Maintenance Services and/or the Equipment.

10 TERMINATION

- 10.1 We can suspend the Telecom Services and/or the Maintenance Services or end the Agreement in whole or in part at any time without giving advance notice to You if (i) You become insolvent or unable to pay Your debts as they fall due; (ii) You are materially in breach of a term of the Agreement and upon being given notice of that breach in writing fail to remedy that breach, if capable of remedy, within 14 days; or (iii) an event of Force Majeure prevents a party from performing its obligations under this Agreement for a continuous period of 30 days or more.
- 10.2 Termination Fee = (A x B) + (C + D)
 Where (i) A equals the remainder of the Initial Term or Subsequent Period (as appropriate) for each of the Telecom Services plus any unreserved initial period (where appropriate); and (ii) B equals the Company's gross margin earned on the Average Monthly Charges; and (iii) C equals any early termination charges from Your previous communications provider which were paid by Us on Your behalf (or credited to Your account with Us) or any connection charges levied by our suppliers; and (iv) D equals any costs levied by Our suppliers as a result of the termination of this Agreement; together the "Liquidated Damages".
- 10.3 If the Agreement is terminated, You shall return any Equipment which You have not paid for in full and, except as otherwise provided in this Agreement, shall pay any outstanding charges or costs to Us within 14 days of the date of termination.

11 BROADBAND SERVICES

- 11.1 The provisions of this clause 11 shall apply where the Broadband Service is provided by Us.
- 11.2 We can only supply the Broadband Service to You if You (i) have the necessary lines and equipment; (ii) pass any credit check which we carry out; and (iii) You provide Us with correct and complete information as part of the process to register You for the Broadband Service.
- 11.3 We will offer a Technical Support Helpline to provide information and advice to You on any technical issues relating to Your use of the Broadband Service. All calls may be monitored and recorded for training and security purposes
- 11.4 Given that We do not produce the content made available to You as part of the Broadband Service, We do not guarantee or warrant the completeness or accuracy of the content.
- 11.5 You must ensure that passwords and user names used in connection with the Broadband Service are kept confidential and are only used by You or people authorised by You. You must inform Us immediately if You know or suspect that a user name or password has been disclosed to an unauthorised person or is being used in an unauthorised way. You must not change or attempt to change a user name without Our written consent.
- 11.6 We reserve the right to (i) suspend user names and password access to the Broadband Service if at any time We think that there has been or is likely to be a breach of security; and (ii) ask You to change any or all of the passwords You use in relation to the Broadband Service.
- 11.7 We do not guarantee that the Broadband Service is secure and We do not guarantee the prevention or detection of any unauthorised attempts to access the Broadband Service.
- 11.8 You must use the Broadband Service at all times in accordance with Our Fair Use Policy as published on Our Website from time to time. Failure to do so will entitle Us to take the action set out in our Fair Use Policy.
- 11.9 Where We provide software to You to enable You to use the Broadband Service, You will have a non-exclusive, non-transferable licence to use such Software solely for the term and purposes of the Agreement.

12 GENERAL

- 12.1 The Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations (except for fraudulent misrepresentation).
- 12.2 If you have a complaint in relation to the Telecom Services, You should contact Our Customer Care Department. In accordance with Ofcom regulations, a Code of Practice for Complaints is in place. The procedure set out in this Code will be followed should a complaint be received. Please contact Our Customer Services Department for a copy.
- 12.3 A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 12.4 The Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby submit to the jurisdiction of the English courts.