

Terms and Conditions

for

**Solway Communications
Limited, Connect Online
Management Limited and
Connect Online Limited**

1st June 2019.

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These terms and conditions (the "Conditions") between you,

- **the Customer** identified in your application ("you" or "the Customer"), and
- **Solway Communications Limited**, registered at Atlantic House, Parkhouse, Carlisle, CA3 0LJ under No. 07308930 (we or "the Company")

are the terms which you and we agree together constitute with the SOLWAYAUP and SOLWAYFUP and the Standards of Service our agreement (the Agreement) and shall govern our provision to you of the Service (as defined below).

1. DEFINITIONS

- 1.1 Please note some terms used in these Terms and Conditions have defined meanings as follows:
- 1.1.1 **"we"** and cognate terms refer to the Company; and
- 1.1.2 **"you"** and cognate terms refer to the Customer who orders the Service.
- 1.1.3 **"Acceptance of Order"** means the letter or email from the Company to the Customer which confirms the order and sets out the fees and other features of the Service which you have ordered;
- 1.1.4 **"Account Password"** means a secret password that we may ask you to set up which you will be required to cite to prove your identity before you may make changes to this Agreement or to your payment arrangements or to your account with us;
- 1.1.5 **"Agreement Date"** means the date on which the Company accepts an Order from the Customer requesting the provision of Service;
- 1.1.6 **"Authorised Person"** means, in relation to Your Online Account, a person identified by you to us as authorised by you to give and receive instructions, receipts and acknowledgements under this agreement;
- 1.1.7 **"Business Customer"** means (i) a person who uses the Service in connection with his or her trade, business or profession; and/or (ii) a company, partnership, trust, statutory body, governmental entity or other organisation;
- 1.1.8 **"Carrier"** means any supplier of telecommunications services utilised by the Company to assist in the delivery of the Service;
- 1.1.9 **"Charges"** means any of the charges (including without limitation any supplementary charges pursuant to Clause 3.9) payable by the Customer for the provision of the Services pursuant to this Agreement and as set out in the Order and/or the Schedule and/or any amendment thereto in accordance with this Agreement;
- 1.1.10 **"Company Equipment"** means any apparatus or equipment owned by the Company and provided by the Company or any third party to the Customer for the Company's use at the Premises as part of the Service including without limitation any, router, repeater, telephone, or onward transmitter and/or CPE so provided;
- 1.1.11 **"Company System"** means the telecommunication system and network operated by the for the purpose of this Agreement, any apparatus leased by, or otherwise obtained by, the Company from a third party;
- 1.1.12 **"CPE"** (Customer Premises Equipment) means any Company Equipment which is made available by the Company for your use at the Premises;
- 1.1.13 **"Customer Apparatus"** means apparatus not owned by the Company which may be connected to the Company Equipment directly or indirectly,

including without limitation any router and/or switch or telephone, which may be used by the Customer in conjunction with the Company Equipment in order to obtain the Service;

- 1.1.14 "**Due Date**" means the date for payment for the Service as set out in Paragraph 3.4.
- 1.1.15 "**Electrical Supply**" means, a stable 5 amp 50Hz alternating supply of electricity at 230 volts at a wall-mounted double socket within five metres of the location for the CPE which we have accepted as suitable for the provision of the Service;
- 1.1.16 "**Fixed Contract Term**" means the period specified in the Order for the provision of the Service beginning on the Service Commencement Date or, if applicable, if it is later than the Service Commencement Date, the date when the Company informs you that Service is available in terms of Clause 5.10;
- 1.1.17 "**Internet**" means the interconnected system of networks that connects computers around the world through an established protocol enabling the transmission and exchange of electronic information and data;
- 1.1.18 "**Internet Service**" means connection of your CPE to the Internet
- 1.1.19 "**Order**" means the instruction which you give to us for the provision of the Service, by whatever means;
- 1.1.20 "**PPPOE Username and Password**" means two confidential codes which we shall enter into the CPE and at your request make available to you that will permit your CPE to connect to the Company's Service;
- 1.1.21 "**Premises**" means the premises specified in the Order where the Service is to be provided;
- 1.1.22 "**RIPE NCC**" means the RIPE Network Coordination Centre, an organisation that maintains a database of European IP networks and their management information;
- 1.1.23 "**Schedule**" means the schedule attached to these Terms and Conditions;
- 1.1.24 "**Service**" means the installation (where applicable), connection and supply of a telecommunications circuit capable of providing a data and or a voice connection at the Premises in accordance with the Order and the provision of such a connection over such a circuit at termination point provided by the Company available for connection of the router, telephone or any other appropriate device. For the avoidance of doubt, Service does not include the connection through any router, telephone or other Customer Equipment in or on the Premises whether made available or provided by the Company or not.
- 1.1.25 "**Service Commencement Date**" means the date (or dates) from which the Company advises the Customer that the Service is available;
- 1.1.26 "**SOLWAYAUP**" means the Company's Acceptable Usage Policy as amended by the Company and available on the Company's website www.solwaycomms.com outlining what we consider to be acceptable and unacceptable use of the Service by our customers so that we can take appropriate steps against any abuser of the Service as amended by the Company from time to time;
- 1.1.27 "**SOLWAYFUP**" means the Company's Fair Usage Policy as amended by the Company from time to time and available on request from the Company

outlining what limits and/or restrictions that Company may apply to Customers' usage of the Service;

- 1.1.28 "**Standards of Service**" means those provisions in the document entitled Standards of Service relating to the level of service indicated in the Order on the Company's website, www.solwaycomms.com ;
 - 1.1.29 "**Standard Tests**" means the tests carried out by the Company or by a third party appointed by the Company to determine whether the Service is ready;
 - 1.1.30 "**VoIP Username and Password**" "means two confidential codes which we shall make available to you that will permit your Customer Equipment to connect to a VoIP switch for the purpose of making telephone calls over the Internet;
 - 1.1.31 "**Website**" means the Company's website to which these terms and conditions are linked (www.solwaycommunications.com) unless expressly excluded by their own terms and conditions
 - 1.1.32 "**Wi-fi Username and Password**" means two confidential codes which we shall enter into any router we may provide to you and at your request make available to you that will permit that router to connect to other devices that emit those codes within its range.
 - 1.1.33 "**Working Hours**" means the Company's hours as advertised from-time-to-time on the Company's website;
 - 1.1.34 "**Your Online Account**" means arrangements for the submission of invoices and statements by the Company to the Customer and the arrangements for payment on any website provided by the Company for that purpose from time to time;
- 1.2 These Terms and Conditions, together with the Solway Acceptable Use Policy ("**SOLWAYAUP**") (found at www.solwaycomms.com) and the SOLWAY Fair Usage Policy ("**SOLWAYFUP**") (found at: www.solwaycomms.com) explain our responsibilities to you and your responsibilities to the Company and to other users of the Company' services and of the Internet ("**Users**"). The Company reserves the right to amend the SOLWAYAUP and/or the SOLWAYFUP and/or the Standards of Service at any time in accordance with the provisions of Clause 18. You shall be responsible for ensuring that you comply with the latest version of the SOLWAYAUP and the SOLWAYFUP.
- 1.3 Reference to any statute shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made or given thereunder.
- 1.4 Reference to words importing the singular only also includes the plural and vice versa where the context requires.
- 1.5 The headings in this Agreement are for ease of reference only and shall not be considered in the construction or interpretation of this Agreement.
- 1.6 By submitting a completed Order to the Company, you confirm to us that you have read, understood and accepted these Terms and Conditions, the SOLWAYAUP, the SOLWAYFUP and all other documents forming part of this Agreement. If there is anything you do not understand, please telephone us on 01228 217171 during Working Hours, or email us at sales@solwaycomms.com.
- 1.7 If you are a natural person and not a Company, you must be 18 years or older to register for the Service and you may have a right to cancel your Order as detailed in Clause 11.

2. PROVISION OF THE SERVICE

- 2.1 The Service is described in the Standards of Service document which is published on the Company's Website www.solwaycomms.com and available on demand from the Company at its registered address. From time to time we may alter the features and functions made available as part of the Service in accordance with Clause 18, but we shall endeavour to keep the overall quality, quantity and variety of features and functions consistent.
- 2.2 You warrant and undertake to us
 - 2.2.1 that all of the personal data, payment and contact details that you have provided are accurate and complete
 - 2.2.2 that you have the authority to purchase and pay for the Service; and
 - 2.2.3 that you will notify us immediately of any change to these by sending us an email to sales@solwaycomms.com in accordance with Clause 15.
- 2.3 We will accept your Account Password as authority to make any changes to the Service or your Account.
- 2.4 We shall provide our Internet Service for your account to the termination point provided by the Company at the Premises in response to your valid PPPOE Username and password.
- 2.5 We shall provide our VoIP service, if we have agreed with you to include it in the Service in response to your valid VoIP Username and Password.
- 2.6 If we provide a wireless router to you, we shall also provide you with a Wi-fi Username and Password which will enable it to connect with your Customer Apparatus.
- 2.7 It is your responsibility to keep your usernames and your passwords confidential and not to disclose them to any other person for any reason. If you disclose your password or security phrase you will be liable for any losses, you incur if they are misused. We are entitled to presume in the absence of clear evidence to the contrary that any use of the password by any party is the result of your disclosure of such password to that third party either intentionally or as a result of your failure to keep it confidential. You are fully responsible for all actions taken and charges incurred in circumstances in which your Account Password, your PPPOE Username and Password or your VoIP Username and Password has been provided in respect of your account whether or not the use is made by you or by someone else using any of your usernames and/or your passwords.
- 2.8 You must notify the Company immediately if any unauthorised third party becomes aware of your Account details. The Company shall be entitled to suspend your Account if at any time it considers that there has been or is likely to be a breach of security. Any breach of this Agreement by any user of the Service may be treated by the Company as a breach by you.
- 2.9 This Agreement shall come into effect on the Agreement Date and shall continue in full force and effect for the Fixed Contract Term and thereafter for successive monthly periods at the Company's monthly rate of charge (which may be at the Company's discretion from time to time higher than the rate for a longer period of commitment) unless and until terminated in accordance with Clause 11 of these Terms and Conditions or such other Clause as may be applicable in the circumstances.
- 2.10 The Company shall use its reasonable endeavours to provide the Service to you by the Service Commencement Date or such later date as may be notified to you by the Company, subject to your obtaining (at your own expense) all consents,

approvals, servitudes and rights of way necessary for the provision of the Service and other similar rights relating to installation of the Company Equipment.

- 2.11 In the event that the Company agrees with you to provide new or additional services or change the Service under this Agreement a new Fixed Contract Term shall apply to each new, additional or changed service(s) from the new Service Commencement Date as advised by the Company and you shall be required to pay the relevant Charges as notified to you by the Company.
- 2.12 The Company shall provide the Service to you according to the terms of this Agreement. The Company may obtain services from Carriers and suppliers in order to supply the Service to you. You accept that it is technically impracticable to provide services which are entirely free of faults and the Company does not undertake to do so. You accept also that the Company may cease to be able to provide the Service to you for technical reasons. If such technical reasons are discovered after the Agreement Date, you and/or the Company have the right to terminate the Agreement in accordance with Clause 10.
- 2.13 You agree that your use of the Service is at your sole risk. The Company makes no warranty that the Service will meet your requirements.
- 2.14 Although the Company will endeavour to provide services in accordance with the Company's Standards of Service, the Service is provided to you on an "as is" and "as available" basis and to the fullest extent permitted by applicable laws we exclude all and any warranties and conditions of any kind, whether express or implied, in respect of the Service and any content or data obtained or downloaded from it. This Clause does not affect any statutory or other rights available to you at law.
- 2.15 The Company may occasionally have to interrupt the Service or change the technical specification of the Service for operational or planned maintenance reasons, for upgrades or because of an emergency. Where possible, the Company will endeavour to give reasonable advance notice of any foreseen interruption of the Service. You accept that it may sometimes not be practicable to give you notice of an interruption and, in such circumstances, you shall have no claim against the Company for any such interruption. The Company reserves the right to restrict or prioritise the Service at its absolute discretion and in particular and without limitation to the foregoing the right to limit the Service if you use the Service in contravention of the SOLWAYFUP.
- 2.16 Should you encounter a fault with the Service you should report this to the Company on 01228 217181 or if a connection is available by other means by email to support@solwaycomms.com . The Company will investigate the fault and will use its best endeavours to correct the fault in accordance with the applicable provisions of the Standards of Service.
- 2.17 The Company may implement systems designed to reject undesired communications (including unsolicited commercial email) or delete them before delivery. The Company does not warrant or guarantee that such systems will prevent all undesired email (including unsolicited commercial email) from being delivered, nor does it guarantee that it will not inadvertently block pieces of normal or desired mail.
- 2.18 The Company reserves the right to suspend or terminate the Service under Clauses 9 and 10 or such other Clause as may be applicable in the circumstances.

3. CHARGES

- 3.1 You agree to pay, without any deduction, withholding or set-off whatsoever, to the Company the Charges by direct debit or by other means agreed with the Company.
- 3.2 The Company shall be entitled to change the Charges on notice to you from time to time. In the event that any proposed increases to the Charges are not acceptable to you, you will be entitled to terminate the Agreement by serving notice in writing to the Company, stating the reason for the termination in accordance with the notice process set out in Clause 18 within fourteen (14) days of such notification of an increase to the Charges.
- 3.3 The Company will not attempt to install your service until it has received from you the payment for any installation charge. In the event that it proves impossible at the time of installation to provide the contracted service for any reason, the Company will refund such charge.
- 3.4 Payment for the Service for any period shall be due in advance by the start of the relevant period of service ("Due Date"). Unless otherwise agreed by the Company in writing, all payments for Service will be due monthly. Any payment in advance for a month or other agreed period shall be for that period or part of that period so that no part refund will be due in the event of termination.
- 3.5 The Company shall make invoices available to you on request at the billing address specified in the Order or at Your Online Account.
- 3.6 If you wish to dispute an invoice you must notify the Company in writing of any within 30 days of the date of the invoice. If you are a Business Customer and you fail to pay the Company any sum due pursuant to the Agreement, you will be liable to pay interest to the Company on such sum from the Due Date at the annual rate of 6% above the base lending rate from time to time of NatWest Bank plc, accruing on a daily basis until payment is made, whether before or after any judgement.
- 3.7 You shall not be entitled to any reduction in the Charges on the ground that you do not use all or any part of the Service.
- 3.8 The Charges for the Service set out in this Agreement are subject to survey prior to installation of the Service. Where, following such survey:
 - 3.8.1 in order to meet your requirements, the Company considers it appropriate or necessary in the circumstances to provide the Service, wholly or in part, by using non-standard equipment, by using more expensive methods or by doing more work than normal; or
 - 3.8.2 at your request, the Service is provided at greater expense than the Company normally incurs by reason of the type of materials used or of the duration or manner of installation,then the Company may require, in addition to the Charges set out in this Agreement, a supplementary charge for connection or supplementary rental or both for the Service. The Company will obtain your agreement to any such supplementary charges before incurring such expense.
- 3.9 A rate of rental or other charge determined under Clause 3.8 may be in addition to or instead of any applicable Charges for Service set out in this Agreement.
- 3.10 If the Company carries out work in response to an alleged fault in the Service reported by you and following such work the Company determines that (i) there is no fault in the Service or (ii) the fault was due to your act or omission, then the

Company shall be entitled to charge you for any such work carried out at the rates set out in the Schedule.

- 3.11 Save in the case of demonstrable error all charges in relation to Clause 3.10 shall be calculated in accordance with data recorded or logged by, or on behalf of, the Company.

4. ACCESS TO PREMISES

- 4.1 You shall at your own expense permit, or procure all permissions, licenses, registration and approvals necessary for the Company and its employees, agents or contractors to have free and safe access to the Premises in order to:
- 4.1.1 Execute any works on the Premises for, or in connection with, the installation, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of the Company Equipment;
 - 4.1.2 Keep and operate the Company Equipment installed in, on, under or over the Premises; and
 - 4.1.3 Enter the Premises to inspect any telecommunication apparatus kept in, on, under or over the Premises or elsewhere for the purposes of maintaining the Company System and/or providing the Services.
- 4.2 The permissions set out in this Clause 4 shall continue in force after termination of this Agreement until such time as the Company and/or any Carrier has removed all Company Equipment from the Premises.
- 4.3 You shall allow the Company and/or any Carrier to have access to the Premises at all reasonable hours for the purpose of testing or maintaining or replacing or removing any of the Company Equipment and/or the Service and provide a safe and suitable environment for such access visits. Wherever possible the Company will use its best reasonable endeavours to give 24 hours' notice of requiring such access.

5. INSTALLATION AND CESSATION OF THE SERVICE AND REMOVAL OF COMPANY EQUIPMENT

- 5.1 The Company shall agree with you a suitable date for the installation of the Service. The Company shall attempt to provide and install or procure the provision and installation of the Company Equipment at the Premises so that the Service can be provided on or before any installation date specified or agreed to by the Company. Any installation date given is an estimate only and the Company shall not be liable for any failure to meet such installation date. The company will use its best reasonable endeavours to give 24 hours' notice of any change to the agreed date for installation except in the event of unforeseeable obstacles.
- 5.2 You must procure before installation at your own expense all necessary permissions for such installation and by authorising the start of an installation, you warrant to the Company that you have full authority to authorise such installation. You indemnify and hold us harmless against any loss or damage that we may suffer as a result of installing equipment at your property.
- 5.3 The Company shall supply you with any relevant information necessary to enable you to prepare the Premises suitably for delivery and installation of the Company Equipment. You shall at your expense provide suitable accommodation, facilities and environmental conditions for the Company Equipment and for its safe installation.

- 5.4 The Company shall attempt to comply with your reasonable requests in respect of the installation but the Company's decision on the routing of cables and wires and the positioning of outlets and the Company Equipment shall be final.
- 5.5 You must make available an Electrical Supply at the Premises for the installation, operation and maintenance of the Company Equipment. The Company shall not be responsible for interruption or failure of the Services caused by a failure of such Electrical Supply.
- 5.6 You acknowledge that during the installation of the Company Equipment for the provision of the Service other Customer Apparatus may suffer a temporary loss of service and/or interference. The Company will not carry out and is not responsible for any work on or adjustment to any equipment other than the CPE and the Company's own network equipment.
- 5.7 You agree to comply with the terms of any relevant end-user software licence agreement, or such other agreement as may be applicable to govern your use of the CPE. You shall be responsible for any liability incurred by the Company as a result of any failure by you in this regard. Other than where required by law, any such CPE is supplied "as is" with no warranty as to its fitness for purpose or otherwise.
- 5.8 The Company shall use reasonable endeavours to assist by telephone with reasonable queries you may have in respect of initial installation of the Service but does not guarantee that it will be able to help resolve any such difficulties. Furthermore, the Company cannot accept any responsibility to address any queries or problems related to Customer Apparatus or CPE or that are shown by an initial diagnosis to be out with the Company's control or ability to remedy.
- 5.9 The Company does not warrant that any particular Customer Apparatus will be compatible with the Service and the Company shall not be responsible for supporting any Customer Apparatus.
- 5.10 Following installation of the Company Equipment, you will be entitled to use the Services only after the Company has informed you of successful completion of the Standard Tests to ensure that the Service is ready for use at the Premises. If the Company determines in its absolute discretion that the Service cannot be made ready for use, at the sole option of the Company, the Company may decide that it is not possible to provide the Services at the Premises and shall be permitted to terminate this Agreement and remove its Equipment.
- 5.11 If your contract is terminated for any reason except the Company's inability or failure to provide the service in contravention of this Agreement during a Fixed Contract Period, the Company shall be entitled but not obliged to remove the Company Equipment from your premises and to make a reasonable charge for the cost of manpower and equipment for such removal

6. THE COMPANY EQUIPMENT AND ITS USE

- 6.1 The Company will install the Company Equipment at the Premises to provide the Service and may include in such installation any devices specified by the Company in its absolute discretion for receiving and transmitting radio and other signals of any kind for any purpose.
- 6.2 The Company Equipment shall at all times remain the property of the Company or the third party supplier of such equipment designated by the Company notwithstanding that it may be situated on the Premises or affixed thereto and you shall at all times make clear to third parties that such Company Equipment is the property of the Company or a third party supplier of such Company Equipment. In particular, you shall not remove or obscure, or attempt to remove or obscure, from

the Company Equipment any marking or label indicating our ownership of the Company Equipment.

- 6.3 Notwithstanding Clause 6.2 above, you shall be responsible for ensuring at all times the safekeeping and proper use of the Company Equipment after delivery and installation at the Premises. You shall be liable to the Company for any loss or damage to the Company Equipment (except where it can be shown that such loss or damage was caused by the negligence of the Company or was due to fair wear and tear). You will notify the Company immediately of any such loss or damage in particular (without prejudice to the generality of the foregoing) you undertake:
- 6.3.1 to keep the Company Equipment at the Premises and not to move it;
 - 6.3.2 to comply with all instructions the Company may notify to you and/or with the manufacturer's instructions relating to the Company Equipment;
 - 6.3.3 to refrain from altering, adjusting, repairing, maintaining or otherwise interfering in any way with the Company Equipment unless the Company has given its written consent save in the case of emergency and you undertake that in such case you will advise the Company forthwith thereafter of the emergency action taken and circumstances requiring it and indemnify the Company against any losses the Company may incur due to such Customer action;
 - 6.3.4 not to cause to be connected (directly or indirectly) to the Company Equipment or used with the Service any equipment which is not technically compatible with the Service, or is not approved for that purpose under any relevant legislation or telecommunications industry standards;
 - 6.3.5 not to do anything nor to allow to subsist any circumstances likely to damage the Company Equipment or detract from or impair its performance or operation and not to add, modify, or in any way interfere with or impair the performance of the Company Equipment; and
 - 6.3.6 not to attempt to sell, transfer, dispose of, let, mortgage or charge the Company Equipment or suffer any distress, seizure or execution to be levied against the Company Equipment or otherwise do anything prejudicial to the Company or the owner's rights in the Company Equipment.
- 6.4 You shall adequately insure the Company Equipment which is situated on the Premises or within your control and will provide written evidence of such insurance to the Company on request. The Company may specify the nature and level of such insurance and specify the insurance company to be used.
- 6.5 You shall at your own expense provide and maintain for the duration of this Agreement, a suitable environment, accommodation, facilities and electrical power for the Company Equipment in accordance with the relevant installation standards and regulations in order for the Company to be able to provide the Services.
- 6.6 The Company may operate the Company Equipment as part of its network to receive and transmit signals of all kinds with it whether or not related to the Service at the Premises.
- 6.7 You agree not to do or allow anything to be done to the Premises that may cause damage to, or interfere with, the Company Equipment or prevent its operation by the Company or easy access to it and to inform the Company immediately if any such damage or interference is reasonably foreseeable or has actually occurred.

6.8 The Company accepts no liability whatsoever for any loss that you or any third party may suffer as a result of your misuse of the Company Equipment or CPE or for any accidental damage thereto.

7. INFORMATION AND CUSTOMER APPARATUS

- 7.1 On request by the Company, you shall provide to the Company information concerning the Customer Apparatus and any other information that the Company reasonably requires in order to install the Company Equipment and provide the Services.
- 7.2 Your Customer Apparatus must be technically compatible with the Service and approved for that purpose under any relevant legislation or telecommunications industry standards. You shall at your own expense modify the Customer Apparatus in accordance with the Company's instructions if such modifications are necessary to enable the Company to provide the Services. You shall be responsible for the repair and maintenance of any Customer Apparatus used in order to obtain or use the Service.
- 7.3 You shall be responsible for ensuring compliance with all statutes and other regulatory requirements relating to the Customer Apparatus and for obtaining all consents, approvals, servitudes, rights of way and other similar rights in relation to the Premises or any premises of which the Premises form part and which are required for the purpose of installing the Company Equipment and connecting the Company System to the Customer Apparatus.
- 7.4 The Company reserves the right to disconnect any Customer Apparatus if you do not fulfil your obligations under this Clause 7.
- 7.5 The Company accepts no liability whatsoever for any loss you may suffer as a result of your use or misuse of the Customer Apparatus or as a result of any faults in your Customer Apparatus. In particular, the Company is not liable in any way whatsoever if you damage or incorrectly reconfigure any Customer Apparatus, for example a router, which you have purchased for use with the Service.
- 7.6 You shall be responsible for ensuring at all times that no action is taken in relation to Customer Apparatus which is likely to impact upon your ability to receive the Service. If any such action does take place and you subsequently require the Company to reconfigure the Service in any way, then any costs incurred by the Company in this regard shall be borne by you.

8. YOUR USE OF THE SERVICE

- 8.1 The Service or any part thereof may not be used:
- 8.1.1 in any way that does not comply with the Agreement or with any legislation or applicable licence or that is in any way unlawful or fraudulent or, to your knowledge, has any unlawful or fraudulent purpose or effect; or
 - 8.1.2 in breach of the SOLWAYAUP or any other reasonable and lawful instructions the Company might give to you from time to time which are necessary in the interests of health, safety, the quality of the Service, or the quality of the Carrier's telecommunications services; or
 - 8.1.3 in connection with the carrying out of a dishonest, tortious or criminal action; or
 - 8.1.4 to send, knowingly receive, encourage the receipt of, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights or which may contain viruses or other similar programs, or which causes overloads to the Company System; or

- 8.1.5 to send or procure the sending of unsolicited advertising or promotional material;
 - 8.1.6 or attempt to use the Service in any way that modifies, decompiles or reconfigures the Service or any Company Equipment (if relevant) or software or copy any manual or documentation relating to the Service, without the Company's prior written consent, except as set out in this Agreement or;
 - 8.1.7 in any way that in the reasonable opinion of the Company could materially affect the quality of any telecommunications service, including the Service, provided by the Company or any Carrier.
- 8.2 You shall indemnify the Company against any claims or legal proceedings which are brought or threatened against the Company by a third party on the grounds that the Service is or has been used in breach of Clauses 8.1.1 to 8.1.7 above. The Company reserves the right to block without notice any type of traffic which it judges in its absolute discretion to contravene Clause 8.1.
- 8.3 You shall be responsible for insuring against all loss of or damage to your data stored on or transmitted using the Service or the Company System.
- 8.4 You shall be responsible for adopting appropriate security measures for the protection of computer systems and the Company shall not be liable to you for any loss or damage that you suffer as a result of any virus or other hostile computer programme being introduced into your computers or computer systems as a result of your use of the Service and/or the Company System.
- 8.5 You shall not share use of the Service, or any part of it, with any other person, except that
- 8.5.1 if you are a natural person, you may share the Service with members of your own household at the same Premises or
 - 8.5.2 if you are a Business Customer you may share the Service with any person employed by, or contracted to, you or by or to any subsidiary of yourselves but not from the Premises to any other premises,
- 8.6 You shall not re-sell or on-sell the Service or any part of the Service to any person.
- 8.7 You are responsible for any misuse of the Service or breach of the Agreement by anyone with whom you share use of the Service. You shall ensure that any person with whom you share use of the Service under Clause 8.5 complies in full with this Agreement as if they were an original party to it. You agree to keep full and accurate records of any and all operating units on or in connection with which the Service is enabled and shall permit the Company to review and evaluate such records from time to time to ensure your compliance with your obligations in this Clause 8.7.
- 8.8 You will co-operate with the Company's reasonable requests for information regarding your use of the Service and supply such information without delay.
- 8.9 You will abide by the SOLWAYAUP, the SOLWAYFUP and the reasonable use policies or terms and conditions imposed by the operators of networks and services that you reach through the Service.
- 8.10 The Company reserves the right to disconnect the Service if your use of the Service does not comply with your obligations under this Agreement
- 8.11 Where you change from or do not maintain adequate Physical Characteristics, the Company will not be responsible if you cease to be able to receive the Service.

9. BREACH OF CONDITIONS

- 9.1 We shall investigate any suspected or alleged breach of this Agreement or any suspected compromise to the systems or security of our network or of that of others to which we are connected. You expressly authorise us to use your personal data and other Account information, without limitation, in connection with any such investigation, including by disclosing it to any third party whom we consider has a legitimate interest in any such investigation or its outcome.
- 9.2 If we decide that you have breached the Agreement, we will use reasonable endeavours to give you twenty-eight (28) days' notice of our intention to suspend or end the Service and, if the breach is capable of remedy by you, you will have the opportunity to remedy the breach before the end of the twenty-eight (28) day notice period. If the breach is incapable of remedy, or you fail to remedy it, we reserve the right to suspend the Service or terminate the Agreement at our sole discretion without refund, and make an additional charge for all reasonable costs incurred due to investigating and dealing with the misuse and/or blocking access to any component(s) of the Service. However, it may be necessary, if the breach is serious, to suspend or end the Service while details of the breach are investigated further. Without limitation, particular examples of breaches which are incapable of remedy include jeopardising or compromising the security or integrity of our network and serious breach of the SOLWAYAUP, including, for example, the posting or transmission of defamatory content through or in connection with the Service.
- 9.3 We reserve the right, if you commit a serious breach of this Agreement, to take any action that we in our absolute discretion deem appropriate to the breach.

10. TERMINATION

- 10.1 Without prejudice to the other rights and remedies of the Company and the Customer under this Agreement either party may terminate this Agreement forthwith in the event that:
- 10.1.1 the other party is in material breach of this Agreement (including any failure to pay any sum due hereunder) and (in the case of remediable breach) the other party fails to remedy the breach within twenty-eight (28) days of receiving notice to that effect from the first party; or
- 10.1.2 the Company is no longer authorised to operate the Company System.
- 10.2 The Company may end this Agreement or suspend the service immediately upon written notice to you if:
- 10.2.1 it becomes unlawful for the Company or any Carrier supporting the Service to continue to provide the Service or the Company or any Carrier supporting the Service is required to cease the Service by a competent regulatory authority; and/or
- 10.2.2 any Carrier supporting the Service ceases to do so for whatever reason or materially changes the terms of its provision of telecommunications services to the Company for the Service beyond the reasonable control of the Company; and/or
- 10.2.3 you become insolvent or have a receiving order made against you or commence a winding-up process (not being a members' voluntary winding up for the purpose of a solvent reconstruction or amalgamation) or you grant a trust deed in favour of your creditors or any of them; or

- 10.2.4 it will not be reasonably possible to provide the Service to you, for any reason out with the control of the Company.
- 10.3 In the event of termination in accordance with Clause 10.2, the Company shall repay to you a due proportion of any fees which you have paid in advance for the Service and any period of Service you have not already received.
- 10.4 Either party may end this Agreement after a Fixed Contract Term by giving the other party not less than one month's written notice. Neither party shall be required to give any reason for such termination. If you wish to end this Agreement other than after the expiry of the Fixed Contract Term or in accordance with Clauses 3.2, 5.10, 10.1, 12.8 and 18, the Company shall be entitled to the Charges which would have been payable by you for the balance of the Fixed Contract Term or notice period as the case may be.
- 10.5 If you move from the Premises, the Company shall be entitled to the Charges which would have been payable by you for the balance of the contract period at the Premises. If you wish to receive the Service at a new location, the Company may require you to start a new contract for Service at your new premises.
- 10.6 Without prejudice to its other rights in terms of this Clause 10, the Company may, at its sole discretion elect to suspend provision of the Service or any part thereof forthwith until further notice if the Company is entitled to terminate or if you are otherwise in breach of the terms of this Agreement or if the Company is obliged to comply with any relevant order or instruction of the Government or other regulatory authority or if any way-leave or other consent required for the purposes of providing the Services is withdrawn, revoked or otherwise ceases to have effect.
- 10.7 If the Service is suspended on account of your default, you shall continue to be liable to pay the Charges during such suspension.
- 10.8 You shall reimburse the Company in respect of all costs and expenses incurred in carrying out such suspension and any re-commencing of the Service save where such suspension is required as a result of any breach of this Agreement by the Company.
- 10.9 Your right to use the Service shall immediately come to an end when this Agreement comes to an end.

11. RIGHT TO CANCEL

- 11.1 If you are a natural person resident in the European Union and have ordered the Service either online or by telephone and not for business use, you have a right to cancel the Service within fourteen calendar days from the Agreement Date. Such right will be subject any waiver you may have given when you placed your order
- 11.2 Any use of the Service by you during said period of fourteen calendar days from the Agreement Date will constitute a waiver of this right to cancel.
- 11.3 Other than as set out in Clause 11.1 and 11.2 above, you shall not have the right to cancel the Service after an Agreement Date before expiry of the Fixed Contract Term.
- 11.4 Other than cancellation under Clauses 3.2, 5.10, 10.2, 11.1, 12.8 and 18, if you attempt cancellation after the Agreement Date, you may be liable to pay:
- 11.4.1 the cancellation fees set out in the Schedule at the end of these Terms and Conditions if you cancel prior to the start of the Fixed Contract Term; or
- 11.4.2 the Charges for the Services for the Fixed Contract Term if you cancel after the start of the Fixed Contract Term.

12. LIMITATION ON LIABILITY

- 12.1 The Company's liability in contract, tort (or delict) or otherwise (including liability for negligence) under or in connection with this Agreement is limited to £1,000 for any event or series of related events and £1,500 for all events in any consecutive period of 12 months.
- 12.2 Except as expressly set out in this Agreement, all warranties, conditions, undertakings or terms implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.
- 12.3 Nothing in this Agreement shall exclude or limit the liability of the Company for death or personal injury arising as a result of the Company's negligence or for fraudulent misrepresentation.
- 12.4 The Customer is solely responsible for any liability arising out of any content provided by the Customer and/or any material to which other Users can link to through such content.
- 12.5 Any data included in the Company Equipment upon installation by the Company is for testing use only and the Company hereby disclaims any and all liability arising therefrom.
- 12.6 The Company shall not be liable to you in any circumstances for any loss of revenue, loss of profit, loss of use, loss of contract or loss of goodwill or any indirect or consequential loss including without prejudice to the generality of the foregoing loss or corruption of data transmitted over the Company System or otherwise arising out of or in connection with this Agreement.
- 12.7 Neither party shall be liable for any breach of this Agreement or any delay in performance of its obligations (other than the obligation to pay) to the extent that such breach is caused by circumstances beyond that party's reasonable control including Acts of God, fire, lightning, explosion, war, terrorism, disorder, flood, industrial disputes (whether or not involving their employees), severe weather or acts of local or central Government or other competent authorities. If either party is affected by circumstances beyond its reasonable control, it shall notify the other party and shall use reasonable endeavours to overcome the effects.
- 12.8 If any of the events detailed in Clause 12.7 continues for more than 3 months either party may serve notice on the other terminating this Agreement without further liability.
- 12.9 You shall be liable for and shall fully indemnify the Company in respect of any business rates or similar liabilities and/or charges imposed by any competent authority which arise in respect of your connection or your use of the Services.

13. INDEMNITY

- 13.1 You agree to indemnify and hold us harmless for all claims and associated costs, damages or expenses that may arise from (a) any breach of the Agreement by you including without limitation any breach of the SOLWAYAUP; and (b) any transmission or receipt of any content or message which you have requested or made using the Service, including, but not limited to claims in respect of defamation, breach of copyright or other intellectual property right infringement) which are brought or threatened against us by another person where you are at fault.

14. DATA PROTECTION/PERSONAL DETAILS/MONITORING

- 14.1 We shall hold information provided by you to us in accordance with our Privacy Policy which is available on our website. We may retain the data which you

provide during the course of the Agreement, and you authorise us to use your personal data, for the following purposes:

- 14.1.1 the provision of the Service to you;
 - 14.1.2 the keeping of a record for a reasonable period after termination of your Service;
 - 14.1.3 the operation and enforcement of the Agreement;
 - 14.1.4 maintenance of your Service including Company Equipment and CPE;
 - 14.1.5 providing you with information about other services we offer, subject to your right to 'opt out' of receiving such information;
 - 14.1.6 transferring the information to another company in the event of a sale of the Company or any of its subsidiaries or its business or any part of its business;
 - 14.1.7 Investigation and prevention of phishing attacks, malware, cyber-attacks and other mis-use of telecommunications;
 - 14.1.8 compliance with the law and any applicable regulation in any jurisdiction; and
 - 14.1.9 transferring it to RIPE NCC as part of a general requirement for provision of these services within Europe.
- 14.2 The Company shall be entitled to publicise the fact of its installation of the Service.
- 14.3 Both parties shall comply with applicable data protection legislation with respect to any personal data supplied in connection with the Service. Where applicable, the Customer shall inform its employees of the processing of personal data by the Company and shall ensure such employees have consented to such processing. The Customer warrants that all such personal data are accurate and complete.
- 14.4 You may be subject to a credit check. The information that you provide may be disclosed to a licensed credit reference agency (which will retain a record of the search) and you authorise the Company to make such disclosures.

15. NOTICES

- 15.1 Any notice to the Company required or permitted under this Agreement must be in English and in writing and sent by post or by hand courier to:

Solway Communications Limited,
Atlantic House,
Parkhouse,
CARLISLE,
CA3 0LJ

or to such other address or contact details as the Company may notify the Customer of from time to time. Email, fax and other electronic communications will not constitute legal notice.

- 15.2 Any notice to you will be sent by post or by hand courier to the address which you provide when submitting your Order and as contained on the Acceptance of Order or to the email address or to such other address as you shall have given written notice of as the billing address or to such other address or contact details as you may notify the Company of from time to time.
- 15.3 Such notices shall be deemed to have been received three (3) Business Days after posting if forwarded by post, and the following business day if hand-delivered provided that if any such notice, demand or other communication would otherwise be deemed to be given or made outside a Business Day, such notice,

demand or other communication will be deemed to be given or made on the next Business Day.

16. ASSIGNMENT

- 16.1 The Company reserves the right to assign or sub-contract any or all of its rights and obligations under this Agreement without your further consent to such assignment or sub-contract. You may not sell, lease, sub-licence, assign or otherwise transfer, whether in whole or in part, by operation of law or otherwise, the Agreement or any rights or obligations therein without the prior written consent of the Company.

17. PROPRIETARY RIGHTS

- 17.1 All title, interests, and rights (including intellectual property rights) in the Service and the material on the Website remain in the Company and/or its suppliers. You acknowledge such title, interest and rights and you shall not take any action to jeopardise, limit or interfere in any manner with the Company's (or any third party supplier's) title, interests or rights with respect to the Service including, but not limited to, using the Company's trademarks or trade name.
- 17.2 Subject to Chapter III of the Copyright, Designs and Patents Act 1988, you may not reproduce, copy, distribute or store or in any fashion re-use material from the Website without the Company's permission in writing.
- 17.3 Title and related rights in any content accessed through the Service are the property of the applicable content owner and are protected by applicable law. The Agreement does not give the Customer any interests or rights in such content.
- 17.4 The Company disclaims any and all responsibility for the contents of websites for which links are present on the Website.

18. AMENDMENT OF THIS AGREEMENT

- 18.1 The Company reserves the right to add to and/or amend the Terms and Conditions or any other aspect of this Agreement at any time. If the Company amends these Terms and Conditions or any other aspect of this Agreement, we will send you a letter or email advising of the amendment at least seven (7) days before the amendment is to take effect. If you do not accept any such amendment, you may end your use of the Service by sending us written notice to this effect to the address specified in Clause 15, such notice to be received within thirty (30) days of receiving our notification. We will then reimburse you any fees paid to us for Service after such end date. If you continue to use the Service after any amendments to these Terms and Conditions or any other aspect of this Agreement have been notified to you and after the thirty (30) day period has expired, you will be deemed to have accepted such amendments.

19. ENTIRE AGREEMENT

- 19.1 This Agreement and the documents referred to in it constitute the entire agreement and understanding between the parties in relation to the subject matter hereof. Those items supersede all other agreements and representations made by either party whether oral or written relating to the subject matter of the Agreement.
- 19.2 Without limiting the broad application of paragraph 19.1, no statements made in the Website form part of this agreement except those setting out
- 19.2.1 Description of Service
- 19.2.2 The Standards of Service

19.2.3 Working Hours

19.2.4 Arrangements for Payment

19.2.5 The Company's Privacy Policy

- 19.3 You and the Company each acknowledge and agree that in entering into this agreement, and the documents referred to in it, neither the Company nor You relies on, or will claim any remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in this agreement. The only remedy available to either party for breach of the warranties shall be for breach of contract under the terms of this Agreement. Nothing in this sub-clause shall, however, operate to limit or exclude any liability for fraud.

20. NO WAIVER

- 20.1 Failure or delay by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- 20.2 In the event either party agrees to waive a breach of this Agreement by the other party, that waiver is limited to that particular breach.

21. LAW AND ARBITRATION

- 21.1 This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.
- 21.2 The parties shall use their reasonable endeavours to resolve any dispute arising under this Agreement by direct negotiations between the parties. If any dispute is not resolved within twenty-eight (28) days through direct negotiation the parties will attempt in good faith to resolve the matter by as early a reference as possible to the Alternative Dispute Resolution (ADR) procedure as recommended to the parties

International Dispute Resolution Centre
70 Fleet Street,
London,
EC4Y 1EU,

- 21.3 If the matter has not been resolved by an ADR procedure within twenty-eight (28) days from the start of the same procedure, or if either party fails to participate in such ADR procedure within such twenty-eight (28) day period, the dispute shall be referred to binding arbitration in accordance with the rules and procedure of The Chartered Institute of Arbitrators 12 Bloomsbury Square, London, WC1A 2LP by an arbitrator appointed by the President of that institute.
- 21.4 Notwithstanding the foregoing it is acknowledged and agreed that either party shall be entitled to seek injunctive or other equitable relief in any court of competent jurisdiction if the other party is in breach of any of the terms hereof.

22. RIGHTS OF THIRD PARTIES

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

23. GENERAL CONDITIONS

- 23.1 The rights and remedies provided by this Agreement exclude to the furthest extent permitted by applicable law all other rights and remedies (whether express or implied) provided by common law including negligence claims in tort or delict or statute in respect of the subject matter of this Agreement.
- 23.2 The termination or expiry of this Agreement shall be without prejudice to the rights of either party which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive.
- 23.3 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision omitted.
- 23.4 Where this contract is entered into on behalf of a Limited Company, each signatory confirms that he or she gives a personal guarantee to pay any sum properly due to the Company under this contract should the Limited Company be unable or unwilling to pay such sum for any reason.

THE SCHEDULE OF CHARGES

1. INSTALLATION CHARGE

1.1 You must make for installation of the service a single payment in advance of an amount indicated on the paper or electronic order form completed by you at the time of your application for the service.

2. SUBSCRIPTION

2.1 You must pay monthly, quarterly or annually in advance the subscription charge indicated on the paper or electronic order form completed by you at the time of your application for the service or the charge subsequently agreed with you by telephone, by email, through the website or in person on renewal or at any other point.

3. CANCELLATION FEES

3.1 If you decide you no longer want the Service after your Order has been accepted by the company but before any visit by the Company's personnel to the Premises the Charge is **£100.00 + VAT**

3.2 If you decide you no longer want the Service after the first visit by the Company's personnel to the Premises but before the installation of any CPE the Charge is **£200.00 + VAT**

4. CHARGE FOR MOVING THE CPE

4.1 If you want to shift the CPE from one place to another at the Premises the charge is **£200.00 + VAT**.

5. ABORTIVE VISIT CHARGE

5.1 For an abortive visit to the Premises including

- 5.1.1 attendance at an incorrect address provided by you,
- 5.1.2 instances when the Premises do not meet the Physical Characteristics (or any other requirements specified by the Carrier),
- 5.1.3 visits at the appointed time as agreed between you and the Company but when you have not been present to take the Service, and
- 5.1.4 visits at your request to remedy a claimed defect in the Equipment or the Service which is not properly attributable to a defect in the Equipment or in the Service.

the charge is **£100.00 + VAT** per visit

6. ADMINISTRATION CHARGE

6.1 Where order details received from you are illegible, materially incorrect or incomplete or a second visit has to be arranged or special arrangements made for installation the charge is **£25.00 + VAT** per hour worked by the Company's personnel.

7. ENGINEERING AND TECHNICAL CHARGE

7.1 In the event that either you request work to correct an alleged fault in the service and there can be shown to be no fault in the Service or you request the Company to carry out other work, the Charge is **£50.00 + VAT** per hour worked by the Company's personnel plus the costs of travel and materials plus any third party charges incurred.