

HOME ADSL TERMS & CONDITIONS

1. DEFINITIONS

"Customer" means the person who places the Order and uses the Services.

"Telephone Line" means the telecommunications circuit that the Customer uses to obtain telecommunications services over the public switched telephone network at the Site as notified by the Customer to Intouch Advance.

"Agreement" means these Terms, together with the order form.

"BT" means British Telecommunications plc.

"Installation date" means the date when ADSL service is installed in the site.

"Consumer" means a person who enters into a contract other than in the course of a business

"Customer Equipment" means apparatus belonging to the Customer not forming part of the Intouch Advance Equipment but which may be connected to the Intouch Advance Equipment.

"Order Form" means the Intouch Advance application form, written customer order or e-mailed customer order.

"Intouch Advance Price List" means the Intouch Advance Price List in force from time to time and available on the Intouch Advance Website at www.intouchadvance.co.uk.

"Intouch Advance Equipment" means any apparatus or equipment provided by Intouch Advance or any third party to the Customer at the Site to enable provision of the Service under this Agreement.

"Site" means the Customer Site where the Service is to be received.

"Service" means the installation, connection and supply of a telecommunications circuit capable of supporting ADSL services at the Site and the provision of telecommunication services over such circuit.

2. COMMENCEMENT AND DURATION

This Agreement will commence on the Commencement Date and shall continue for an initial period of 1 month or 12 months dependant on which option is selected and will automatically renew subject to termination under Clauses 12.

3. PROVISIONS OF THE SERVICE

3.1

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

3.2

The provision of the Service to the Customer will be subject to the characteristics of the Customers Access Connection and BT may determine that it is not possible to supply the Service over the Customers Access Connection.

Where this is the case, Intouch Advance will immediately terminate this Agreement, Intouch Advance will not be liable to the Customer for such termination.

3.3

The Customer acknowledges that during the installation of the Intouch Advance Equipment for the provision of the Service the Customer Access Connection may suffer a temporary loss of telephone

service, and /or interference to any other Access Connection services, which shall be reinstated following installation Intouch Advance will not be liable for any loss, interruption or interference during installation. The Customer also acknowledges that any telephone socket extensions that are incorrectly wired may be disconnected during installation, without liability to Intouch Advance.

3.4

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

3.5

Except as otherwise expressly permitted under this Agreement, the Customer may not: modify the Service without Intouch Advance's prior written consent; redistribute, copy or use the Service, or transfer rights to the use of the Service to any third party; disclose details of the Service, to any third party without Intouch Advance's prior written consent; use the Service except in conjunction with Intouch Advance's recommended operating guidelines.

3.6

Intouch Advance shall use its reasonable endeavours to comply with the Customer's reasonable requests in respect of installation but Intouch Advance or BT's decision on the routing of cables and wires and the positioning of outlets and other apparatus constituting the Intouch Advance equipment shall be final and binding.

3.7

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

3.8

Installation of the Service may be subject to a survey carried out by Intouch Advance or BT and the Service may not be provided where the survey carried out, is incomplete or unsatisfactory.

3.9

The customer accepts that the service is rate adaptive and will run at the most reliable speed available up to 8Mbit/s. Speed can be affected by external conditions.

3.10

The customer accepts that peak and sustained throughput rates may be reduced by contention within the network the BT central or BT Central plus (as applicable) other components sourced by the customer to provide the customer service, end user speed control systems and the internet and by rate adaptation of modems and Line Rate for Max products.

4. USE OF THE SERVICE

4.1 The Customer must not use the Service:

- in a way that does not comply with the terms of any legislation or any license applicable to the Customer or that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;
- in connection with the carrying out of a fraud or criminal offence against Intouch Advance, or any other public telecommunications operator;
- to send, knowingly receive, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing, or in breach of any copyright, confidence, privacy or any other rights;
- to send or procure the sending of any unsolicited advertising or promotional material other than in the case of the Customer to its own customers;
- in a way that does not comply with any instructions Intouch Advance or BT has given; or in a way that in Intouch Advance's reasonable opinion could materially affect the quality of any service, including the Service, provided by Intouch Advance or BT.
- in a way that in Intouch Advance's reasonable opinion could affect the experience of other users on the network; including but not limited to; persistent heavy users of the service, who in Intouch Advance reasonable opinion could be seen to be over-using their contended service, may at Intouch Advance** discretion have their contention ratio increased without notice.

4.2

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

4.3

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

- transmission performance of some metallic local loops will mean it is technically impracticable to provide Service to all Customers within the Service Availability Area;
- currently, until such time as Intouch Advance advises otherwise, the Service cannot be provided over the same Access Connection as certain other telecommunications services as listed on the Intouch Advance Website.
- the Service is not available to Sites where all or part of the Access Connection is provided over fibre optic cable or radio systems.
- that the Service may also affect the performance of some PSTN customer premises equipment.
- that some technical limitations may not become apparent until after the Service has been installed and working for some time. In such circumstances the Service for some individual may need to be withdrawn.
- that in the case of any rate adaptive product, including CopperStream Homeworker and Office 500, 1000, 2000 and MAX ADSL services, upload speeds (and download speeds for MAX services) are dependant on distance from the exchange, atmospheric conditions and quality of the metallic path and may vary with out notice to the customer.
- Rate adaptation can occur several times a day and may cause the link to the DSLAM to reset.

- that in the case of any rate adaptive product, such as ADSL MAX services, throughput guarantees will relate only to the actual rated speed of an individual connection, not any implied speed of service.

4.4

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

4.5

The Customer will cooperate with Intouch Advance's reasonable requests for information regarding the Customer use of the Service and supply such information without delay.

4.6

The customer must adhere to the acceptable use policy located on the web site, which may change from time to time.

5. CHARGES

5.1

The charges for the Service will be calculated in accordance with the Intouch Advance Price List. Charging will begin on the Commencement Date for the Service.

Charges will be calculated in accordance with details recorded by, or on behalf of, Intouch Advance.

5.2

The Customer will pay the charges within 30 days of the date of Intouch Advance's invoice. Intouch Advance may charge daily interest on late payments at a rate equal to 4% per annum above the base-lending rate of Barclays Bank Plc and/or a £ 15 administration fee is applicable to late payments.

5.3

All charges exclude Value Added Tax (VAT) at the applicable rate, unless stated otherwise.

5.4

Intouch Advance may also make an additional charge (on the basis of additional charges detailed in the Intouch Advance Price List), on its own behalf or on behalf of a BT in the following circumstances:

- an abortive visit charge may be incurred where incorrect information supplied by the Customer means it is technically impractical to provide the Service over the Customers Access Connection;
- where it is necessary to relocate the existing telephone master socket to provide the Service;
- where Intouch Advance or BT are unable to gain access to the Site to carry out installation of the Service or the installation is aborted an abortive visit charge may be payable;
- where certain order information provided by the Customer is illegible, inaccurate or incomplete an administration fee will be charged;
- where Intouch Advance or BT provide the support to the Customer outside its normal support times in supply of the Service;
- where a fault relates to equipment other than the supplied Equipment.

6. CUSTOMER OBLIGATIONS

6.1

To allow the installation and use of the Intouch Advance Equipment at the Site, the Customer will at the Customer's own expense:

- obtain all necessary consents, including consents for any necessary alterations to buildings;
- take up or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers, as Intouch Advance or BT advises are necessary, and carry out afterwards any making good or decorator's work required; and
- provide any electricity and connection points required by Intouch Advance or BT. The criteria above must be completed in advance of any installation work.

6.2

The Intouch Advance Equipment shall remain the property of Intouch Advance or the supplier of such equipment (including BT) and the Customer shall at all times make clear to third parties that the same is the property of Intouch Advance or a third party supplier of such equipment. Intouch Advance may modify, substitute, renew or add to the Intouch Advance Equipment from time to time at its absolute discretion.

6.3

Intouch Advance shall supply the Customer with the relevant information to enable the Customer suitably to prepare the Site for delivery and installation of the Intouch Advance Equipment. The Customer shall at their own expense provide suitable accommodation, assistance, facilities and environmental conditions for the Intouch Advance Equipment and all necessary electrical and other installations and fittings.

6.4

A secure electricity supply is required at the Premises for the installation, operation and maintenance of the Intouch Advance Equipment at such points and with such connections as specified by Intouch Advance. Unless otherwise agreed, this power supply is to be provided by the Customer. Intouch Advance shall not be responsible for interruption or failure of the Services caused by a failure of such power supply.

6.5

The Customer is responsible for the Intouch Advance Equipment and must not add to, modify or in any way interfere with it nor allow anyone else (other than someone authorised by Intouch Advance) to do so. The Customer will be liable to Intouch Advance for any loss of or damage to the Intouch Advance Equipment, except where such loss or damage is due to fair wear and tear or is caused by Intouch Advance, or anyone acting on Intouch Advance's behalf.

6.6

Any Customer Equipment connected to or used with the Service must be connected and used in accordance with any instructions, safety and security procedures applicable to the use of that equipment. Any equipment which is attached (directly or indirectly) to the Service must be technically compatible with the Service and approved for that purpose under any relevant legislation or telecommunications industry standards.

6.7

To enable Intouch Advance to carry out its obligations under this Agreement, the Customer will at all reasonable times provide Intouch Advance employees, and anyone acting on Intouch Advance's behalf including BT, who produces a valid identity card, with access to any Site and any other premises outside of Intouch Advance's control. Intouch Advance will normally only require access during its usual working hours but may, on reasonable notice, require the Customer to provide access at other times. Intouch Advance may agree to work outside its usual working hours, but the Customer must pay Intouch Advance's additional charges for doing so as detailed in Clauses and the Intouch Advance Price List.

6.8

If through no fault of Intouch Advance, Intouch Advance is unable to carry out an installation at, or gain access to, the Site or the installation is aborted, Intouch Advance will notify the Customer Nominated Contact and may raise an abortive visit charge.

6.9

The Customer hereby irrevocably gives permission to Intouch Advance or BT and its employees, agents or contractors to:

- execute any works on the Premises for, or in connection with, the installation, maintenance, or removal of the Intouch Advance Equipment;
- keep and operate telecommunication apparatus installed on, under or over the Premises;
- enter the Premises to inspect any telecommunication apparatus kept on, the Site or elsewhere for the purposes of providing the Service.

Where this Agreement or the Service is terminated for any reason Intouch Advance or BT will be entitled to enter the Site to remove Intouch Advance Equipment installed there.

6.10 The Customer under takes:

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

6.11

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

7. SUPPORT OF THE SERVICE

Technical support for the Service is available by telephoning 0870 804 0804 or by sending email to customerservice@intouchadvance.co.uk

Technical support is available during normal Intouch Advance office hours.

8. INTELLECTUAL PROPERTY RIGHTS

8.1

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

8.2

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

8.3

The Customer acknowledges such title, interest and rights and the Customer shall not take any action to jeopardize, limit or interfere in any manner with Intouch Advance's (or any third party suppliers') title, interests or rights with respect to the Service, including but not limited to, using Intouch Advance's or BTs trademarks or trade name.

8.4

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

9. WARRANTIES

9.1

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

10. LIMITATION OF LIABILITY

10.1

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

10.2

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

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

10.3

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

10.4

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

10.5

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

11. FORCE MAJEURE

11.1

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

11.2

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

12. TERMINATION

12.1

The Customer may terminate this agreement after the initial term by giving 30 days written notice to Griffin. If a 12 month contract is terminated early Griffin will charge the customer the remaining fees in full, including the cancellation fee detailed in 12.3

12.2

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

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

12.3

Cancellation in the form of a cease of the service, placed by either party under terms 12.1 and 12.2, will raise a charge of £33.75 to the customer. Migrations away from the service in the form of a 'Migration Authority Code' assisted migration do not attract the cancellation charge.

12.4

Intouch Advance may terminate this Agreement immediately upon written notice to the Customer if:

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

12.5

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

12.6

If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that.