

Microcare Systems Ltd
Terms and Conditions for Data Services
For Business Customers
Dated 1st August 2011

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1. DEFINITIONS:

In these Terms and Conditions unless the context otherwise requires:

Completion

means Microcare's confirmation of successful completion of the Data Service;

Completion Date

means the date upon which Completion takes place;

Customer Requirement Form

means the order form supplied by Microcare;

Data Services

means the Internet Access Services, the Managed Internet Device Services and the Engineering Services.

Early Termination Charge

means the recurring Charges which would have been payable by the Customer for the terminated Data Service from the date of termination up to the expiry of the Committed Period;

Engineering Services

means the engineering services more particularly described in section 5;

Excess Construction Charges

means additional Charges applicable to an Order because resources (including equipment) are required to provide the Data Service to the Site that exceed the level of resources normally required to provide a Data Service to a Site.

Incident Ticket

means the log opened and maintained notifying Microcare of an issue with a Data Service.

Internet Access Services

means the internet access services more particularly described in section 5;

Managed Internet Device Services

means the rental of certain equipment to the Customer as more particularly described in section 5;

Microcare means Microcare Systems Limited (Company number 3204267) whose registered office is at Hamilton House, Warth Road, Bury, Lancashire, BL9 9NB.

Network Available

means the Network is able to receive and send data packages across the Network;

Price List

means the prices detailed in the Microcare tariff schedule (excluding VAT);

Resolved

means the status that a helpdesk call is changed to when Microcare believes the incident is fixed or when Microcare has not received an update from the Customer after the status has been Pending Requestor Information for three days;

Service Start Date

The date the relevant service is available for use by the customer

Small Business Customer

means a customer of Microcare who carries on an undertaking for which no more than ten individuals work (wether as employees or volunteers or otherwise), but who is not himself a Communications Provider;

Working Hours

means 08.30 – 17.30 (UK time) on Business Days.

2.DATA SERVICES PROVISIONING

2.1 The Customer shall submit Orders to the sales team of Microcare by the means of a fully completed an order.

2.2 Microcare shall action Orders in the order that they are received by Microcare and shall use reasonable endeavours to accept an Order within one Business Day of receipt.

2.3 For some services, Excess Construction Charges (ECCs) may be payable by the Customer to complete delivery of a Data Service. If applicable, Excess Construction Charges shall be identified during the Site survey. If Excess Construction Charges are identified, they must be accepted by the Customer before work on the Order can continue. The Customer may elect to not accept the Excess Construction Charges and the Order shall be cancelled. If the Customer does not accept the Excess Construction Charges within 25 Business Days of notification by Microcare, the Excess Construction Charges shall be deemed rejected and the Order cancelled. Microcare shall notify the Customer before such cancellation.

2.4 Excess Construction Charges are indicative and are subject to change once the external works commence. Any changes to ECCs shall be communicated to the Customer via Microcare and would be subject to section 2.3 above.

2.5 The period from the point of ECC identification to the completion of the external works is outside the standard lead time.

2.6 The planning stage ends after the Site surveys and any ECCs have been completed. Upon completion of the planning stage, Microcare shall notify the Customer of the estimated Completion Date.

2.7 Microcare shall inform the Customer by email when the Data Service has successfully been installed.

3.TERM**Minimum Period**

3.1 The Minimum Period is 36 months, and starts from the Service Start Date.

3.2 Upon expiry of the Minimum Term, or any anniversary thereafter, this Contract will renew automatically for a further subsequent term of 36 months ("Subsequent Term") unless terminated by either Party giving no less than 90 days notice, such notice to expire before the end of the Minimum Term.

3.3 A Party may give the other Party not less than ninety (90) days' written notice to terminate this Service Schedule.

3.4 Each Order shall become effective on the service start date and shall continue for the minimum period, which shall be 36 months from the service start date unless otherwise agreed in writing by Microcare, or until the Order is terminated in accordance with the terms set out in this Service Schedule.

3.5 A Party may give the other Party not less than 10 days' written notice to terminate an Order. In the event that the Customer cancels an Order before the end of the minimum period, the Customer shall be liable to for Early Termination Charges.

3.6 Where the Customer is a Small Business Customer, upon expiry of the Minimum Term or any anniversary thereafter, this Contract will only renew with the consent of the Customer. Microcare will be entitled to seek the Customers' consent no less than 90 days before the end of the Minimum Term.

4.CHARGES AND PAYMENTS

4.1 Microcare's standard Charges for the Data Services are set out in the tariff schedule which can be provided on request. The Charges relating to each specific Data Service are set out in the quotation for the Order. Microcare may change the Charges in accordance with the provisions of the data service.

4.2 Microcare shall provide an invoice to the Customer. Microcare shall deliver this via email.

5.SERVICE DESCRIPTIONS**Internet Access Services**

5.1 The Internet Access Services provide all or most of the physical and logical infrastructure to give the Customer the ability to transmit Internet Protocol (IP) traffic between a single UK Site and the global internet infrastructure and include all ADSL, SDSL, Leased Line, EFM and Ethernet Products.

5.2 One or two Internet Access Services are usually provided from a Site to the Microcare Network.

5.3 The CPE, which can be used in conjunction with the Internet Access Services, is listed in the Internet Access Service Definition.

5.4 The lease of RIPE-allocated IP addresses associated with the connectivity system to enable internet access are included in an Internet Access Service. The number of IP addresses and whether they are static or dynamic depends on the Internet Access Service selected.

Engineering Services

5.5 Non Project Deployment Services:

- a) pre-configuration and shipping, which includes parts of or all of the following according to the Customer requirements:
 - device pre-configuration soak test;
 - shipment to a UK Site;
 - IP routing;
 - firewall; and
 - VPN.
- a) on-site installation, which includes:
 - device pre-configuration;
 - soak test;
 - installation to a UK Site;
 - readiness testing; and
 - sign-off.

5.6 LAN infrastructure audit.

5.7 LAN device hardware maintenance.

5.8 Onsite and off-site professional services:

- a) technical services, which fall into three categories:
 - general;
 - documentation; and
 - 3rd party liaison;
- a) engineering services, which fall into four categories:
 - moderate;
 - device configuration;
 - upgrades; and
 - audits; and
- a) consultancy services, which fall into four categories:
 - complex;
 - security;
 - prototyping; and
 - troubleshooting.

Managed Internet Device Services

5.9 The Managed Internet Device Services comprises of rented hardware for a combined annual service charge.

5.10 The selection of hardware available as part of the Managed Internet Device Services is detailed in the tariff schedule. The hardware remains the property of Microcare.

5.11 The Customer can elect to purchase additional Engineering Services if it requires Microcare to install the hardware.

6. INTERNET ACCESS SERVICE LEVEL AGREEMENT

This schedule sets out the Service Level Agreement for the Internet Access Services.

Microcare Service Operating Hours

6.1 Microcare's service levels and telephone helpdesk operates during Working Hours, except as provided in Paragraph 6.1.1 below.

6.1.1 Where the Internet Access Service is a Premium, Express or Enhanced Internet Access Service (as defined in the Internet Access Service Definition); Microcare shall manage severity level 1 incidents and severity level 2 incidents 7 days per week 08:30am to 05:30pm.

Responsibilities

6.2 Microcare is responsible for:

- a) provision of a helpdesk for call handling; and
- b) incident resolution and escalation.

6.2.1 In addition for fixed line services, Microcare shall be responsible for:

- a) proactive monitoring of access availability;
- b) outage alerts by email; and
- c) utilisation statistics of access circuits.

6.2.2 The Customer is responsible for:

- a) notifying Microcare of any changes to Site and contact details;
- b) basic troubleshooting;
- c) reporting incidents with the Internet Access Service; and
- d) access to sites for incident resolution

Microcare Network Characteristics

6.3 Microcare Network metrics do not include the Internet Access Service or any off-net service.

Internet Access Platform Metric	Target
Microcare Network availability	99.99%
Microcare Network packet loss	< 0.1%

6.3.1 Microcare Network availability is measured annually using the following formula:

$$\frac{(A-B) \times 100}{C}$$

Where:

A = number of minutes that Microcare Network is classed as Network Available

B = actual downtime excluding any downtime attributable to any of the causes set out in Paragraph 6.3.3 below.

C = number of minutes where Microcare Network could be Network Available.

6.3.2 Microcare Network packet loss is measured annually using the following formula:

$$\frac{D}{E} \times 100$$

Where:

D = Number of lost packets over Microcare Network

E = Number of packets received successfully

6.3.3 Internet Access Platform metrics shall not include any failure attributable to:

- a) scheduled network maintenance; and
- b) Force Majeure Events.

6.3.4 As Service Credits are claimed on a per incident basis, the above metrics are for network planning and account review purposes only.

Incident Severity

6.4 Incident severity is classified as follows:

Level	Class	Description
1	Emergency	Total loss of service (e.g. total circuit or equipment failure)
2	Major	Significant degradation or intermittent service (e.g. significant packet loss, significant degradation in throughput or loss of a particular component service)
3	Minor	Minor degradation of service (e.g. small or intermittent packet loss, reduction in throughput)
4	Change request	Non urgent change request (e.g. modification to configurations of equipment)

6.4.1 Microcare shall initially determine the incident severity and log an Incident Ticket. Microcare may change the severity level during repairs. For example, if a severity level 1 incident is temporarily repaired, then the incident may be reduced to severity level 2. The new classification shall determine the course of actions thereafter.

6.4.2 Once Microcare believes that the Customer's incident is fixed, or if Microcare has requested vital information from the Customer and the Customer has not responded within three days the incident Ticket status become Resolved.

Fault Reporting

6.5 Incidents may be reported by telephone to Microcare on 0800 515 513.

6.5.1 The Customer shall need to provide the following:

- a) company name and contact name;
- b) contact telephone number;
- c) Site address where the incident is;
- d) circuit number;
- e) description of the incident;
- f) what happened prior to the incident; and
- g) how the incident been diagnosed.

6.5.2 The primary method of reporting severity level 1 incidents and severity level 2 incidents to Microcare should be by telephone. Incidents reported by email may not be allocated to a support engineer in an appropriate timescale to provide the desired level of response.

Level	By telephone	Email
1	1 hour	Inappropriate (4 hours)
2	2 hours	Inappropriate (4 hours)
3	6 hours	6 hours
4	48 hours	48 hours

6.5.3 For severity level 3 incidents and severity level 4 incidents, or as an alternative to calling, the Customer may email servicedesk@microcare-systems.co.uk.

6.5.4 The response time clock starts when a helpdesk call is created on the Microcare system via the mechanisms above.

6.5.5 Subject to Paragraph 6.1.1 above, should an incident be raised outside the Working Hours, the measurement of the response time shall not start until Working Hours recommence.

Target Fix Times

6.6 Target restoration times depend on the access technology employed at each Site.

6.6.1 Premium Internet Access Services

Internet Access Services in the premium category are defined in the Internet Access Service Definition.

Level	Service Restoration
1	6 hours
2	10 hours
3	Next day
4	N/A

6.6.2 Express

Internet Access services in the express category are defined in the Internet Access Service Definition.

Level	Service Restoration
1	7 hours
2	Next day
3	Three days
4	N/A

6.6.3 Enhanced

Internet Access services in the enhanced category are defined in the Internet Access Service Definition

Level	Service Restoration
1	Next day
2	Three days
3	No guarantee
4	N/A

6.6.4 Standard

Internet Access services in the standard category are defined in the Internet Access Service Definition

Level	Service Restoration
1	Three days
2	Five days
3	No guarantee
4	N/A

Service Restoration Clock

6.6.5

- The service restoration clock starts when a helpdesk call has been allocated, the Customer contacted, a severity level assigned and the initial diagnosis work has been completed.
- Helpdesk calls may be left open, post service restoration, for monitoring purposes. Thus the clock stops when the helpdesk call is closed or when a member of the Microcare Technical Support Centre (TSC) informs the Customer of service restoration, whichever is sooner.
- Subject to paragraph 2.2 above, should an incident be raised outside the Working Hours, the measurement of the service restoration time shall not start until Working Hours recommence.

Multiple Short Service Failures

6.6.6 If the same circuit experiences multiple failures within the same month, Microcare shall consider this a single outage event for the purposes of service restoration and Service Credits. The service restoration clock shall be restarted from the point the subsequent failure has been diagnosed.

Outages and Maintenance

6.7 Network maintenance shall normally be performed outside of service level operating hours.

6.7.1 Should maintenance be service affecting, the affected Customer shall be notified with three Business Days' notice via the nominated email contact detailing the work to be carried out and any effect on the Internet Access Service.

6.7.2 All network maintenance on the Microcare Network is also published on our website.

6.7.3 Under exceptional circumstances it may be necessary to perform emergency engineering work without prior notice. In that event, Microcare shall use its best efforts to limit any resultant adverse effects on the Customer's service.

Emergency and Major Fault Escalation

6.8 General

- Escalation means that more senior support staff shall be made aware of the Customer's incident and provide additional assurance to the Customer.
- For continuity, the Customer's point of contact with the Microcare Technical Support Centre (TSC) remains the same throughout the repair.
- Microcare shall automatically escalate severity level 1 incidents and severity level 2 incidents using the procedure below. Escalation automatically starts once 75% of the service restoration target time has passed.

6.9 Time Before Escalation Starts

Level	Premium	Express	Enhanced	Standard
Time	4hrs	6hrs	24 hrs	48 hrs

Incidents are further escalated, one tier at a time, after a certain number of elapsed Working Hours with no resolution. The interval between each escalation event depends on the severity of the incident and the access technology employed at the Site according to the following table.

6.10 Interval Between Further Escalation Events

Level	Premium	Express	Enhanced	Standard
1	1 hr	2hrs	4 hrs	8 hrs
2	2 hr	4hrs	8 hrs	10 hrs
3	N/A	N/A	N/A	N/A
4	N/A	N/A	N/A	N/A

6.11 Escalation Path

Tier	Job role
1	Helpdesk Engineer
2	Engineering Supervisor
3	Operations Manager
4	Network Services Manager
5	Managing Director

The above escalation is also used if, at any point, the Customer feels that the problem is not being addressed in a satisfactory manner.

6.12 Management Escalation Path

When target quality parameters are not met, or when a Customer is dissatisfied, they can use the following management escalation path.

Tier	Job role
1	Sales Team Leader
2	Sales Manager
3	Managing Director

Callout Charge for Non Microcare Business Incidents

6.13 Fault resolution sometimes means an engineer has to visit the Site. If, while the engineer is onsite, the incident is discovered not to be a hardware or circuit failure under Microcare' control (e.g. the managed device has been unplugged, or there is an incident with Customer's equipment or facilities), Microcare reserves the right to charge the Customer a callout fee of £250 together with a £30 per half hour travel charge to the premises plus, if required, a £95 charge for each subsequent hour at the premises.

Making A Claim

6.14 A claim should be made in any month where there are one or more incidences where the agreed service restoration target was not met.

6.15 A claim should be made in writing to your Account Manager. The deadline for making a claim is 1 Business Day after the end of the month for which credit is requested.

Service Credits

6.16 If, in the event the network agrees in their reasonable opinion, the target time for service restoration for an incident is exceeded the SLA, the Customer shall be entitled to a Service Credit for the failure according to the following schedule:

Service restored	Service credit
Within 2 Business Day of the service restoration target.	12.5% of the total monthly recurring Charges due for the relevant Internet Access Service
More than one Business Day beyond the service restoration target.	25% of the total monthly recurring Charges due for the relevant Internet Access Service

6.16.1 Total Service Credits per month are limited to 50% of the total monthly recurring Charges due for the relevant Internet Access Service and any associated NetAssure Service.

6.16.2 The Customer has notified Microcare in writing within 30 Business Days after the end of the month for which the Service Credit is requested.

6.16.3 Service Credits shall be applied as a credit to the Customer's account and, as such, shall be deducted from the value of the next invoice.

6.16.4 Service Credits shall not be granted if there is any amount owing by the Customer to Microcare under this Service Schedule or otherwise and such amount is overdue.

7. USE OF THE SERVICE

7.1 The Customer agrees that the Service is provided solely for their use and agrees not resell or attempt to resell the Service (or any part of it) to any third party. If the Customer has a mail server, the Customer agrees not to allow relay emails from outside the Customer's domain from its mail server.

7.2 Microcare does not warrant or guarantee the accuracy or completeness of any of the information, sound, software and any other materials (in whatever form) and services made available to the Customer as part of the Service (the "Content") or any further information or results which may be derived from it. The Customer

acknowledges that it will not rely on any Content in making any business or other decision and that the Customer's use of the Content is at their sole risk.

7.3 The Customer acknowledges that there may be additional conditions (either Microcare's or those of a third party) displayed online relating to particular Content. These conditions will also form part of this Contract should the Customer access such Content.

7.4 The Customer agrees that it is entirely responsible for evaluating any goods or services offered by third parties via the Service or on the internet. Microcare will not be a party to or in any way be held responsible to the Customer for any transaction between the Customer and third parties.

7.5 The Customer warrants that any information it makes available on its website, both about itself ("Customer Information") or that of a third party ("Third Party Content") is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.

7.6 The Customer also warrants that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on its website including those notified by Microcare to the Customer.

7.7 The Customer agrees not to use the Service, including associated computer security or backup services and software:

7.7.1 in any way that breaches any legislation or any licence applicable to Microcare or that is in any way unlawful or fraudulent; or

7.7.2 to deliver, knowingly receive, upload, download, use or re-use any information or material which is abusive, defamatory, obscene or menacing, or in breach of any copyright, privacy or any other rights; or

7.7.3 to send or procure the sending of any chain letters or unsolicited advertising or promotional material ("spamming"); or

7.7.4 in a way that does not comply with Microcare's specific instructions.

7.7.5 to propagate computer worms or viruses

7.7.6 to attempt to gain unauthorised entry to any site or network

7.7.7 to distribute child pornography, obscene or defamatory material

7.8 The Customer agrees to fully indemnify Microcare against all losses, damages, amounts paid by way of settlement, costs and expenses (including legal fees) of whatsoever nature suffered or incurred by Microcare arising out of or in connection with any actual or potential claims or legal proceedings against Microcare by a third party because of the Customer's use of the Service in breach of the provisions of this Clause 7. Microcare shall notify the Customer of any such claims or proceedings and inform the Customer regularly as to the progress of such claims or proceedings.

7.9 The Customer acknowledges that the Service is provided to other users and that Microcare owes a duty to these users as a whole to preserve Microcare's network integrity and avoid network degradation. If, in Microcare's reasonable opinion, the Customer's use of the Service has or may adversely affect such network integrity or may cause network degradation Microcare may manage the Customer's transmission speed, the type of traffic the Customer is passing, and/or suspend the Service.

7.10 Microcare operates an Acceptable Use Policy to protect the quality of service to its customers. If Microcare believes that the Customer's use of the Service is adversely affecting our network (or any part of it) or our other customers' use of its services or if the Customer's usage is significantly different from what Microcare would expect from a business customer, Microcare reserves the right to manage or regulate the Customer's usage in accordance with the Acceptable Use Policy. Microcare will not impose any restrictions on the Customer or impose an additional charge without prior notice. If, after Microcare has sent the Customer notice, Microcare believes that the Customer's use of the Service continues to adversely affect Microcare's network (or any part of it) or Microcare's other customers' use of Microcare's services or if the Customer's usage continues to be significantly different from what Microcare would expect from a business customer then Microcare may:

7.10.1 Restrict the download and upload speeds;

7.10.2 Apply additional charges for additional high bandwidth usage;

7.10.3 Suspend the service; and

7.10.4 Cease the service.

7.11 Microcare may require the Customer to reimburse Microcare for any reasonable and foreseeable losses, costs and expenses which Microcare incurs as a direct result of the misuse of the Service either by the Customer or by someone the Customer has knowingly allowed to use the Service Microcare provides to the Customer.

7.12. Microcare may change the Acceptable Use Policy at any time by publishing the changes on the Website 14 days before the change is to take effect.

8. CHARGE FOR THE SERVICE

8.1 The Customer agrees to pay the Charges for the provision of the Service in accordance with Microcare's Tariff Schedule.

8.2 Microcare's full tariff schedule is available upon request,

8.3 Microcare will give the Customer written notice of any changes to the Charges and the tariff schedule, if prices are to vary at the end of the minimum period.

9. PAYMENT FOR THE SERVICE

General

9.1 The Customer agrees to pay all of the Charges due in respect of the Service which are calculated using the details recorded by Microcare or its service carrier not by reference to any data recorded or logged by the Customer.

9.2 Microcare will calculate the Charges using the details recorded at the telephone exchange. All charges will normally be invoiced monthly in advance.

9.3 Microcare will send invoices in advance to the Customer via email (Microcare e-billing) to the e-mail address notified by the Customer to Microcare. If the Customer does not give a valid email address, the invoice will be sent to the registered address of the Customer at additional cost to the Customer

9.4 The Customer will be liable for the Charges for the Service from the Service Start Date.

9.5 Unless otherwise provided in the Notification Letter, all charges are exclusive of VAT which is chargeable at the applicable rate from time to time in force.

9.6 Unless otherwise agreed between the Customer and Microcare, payment is due on the date specified on the invoice and the Customer must pay all charges by direct debit or by credit card. The Customer authorizes Microcare to vary the amount, frequency and time of any Direct Debit to such level as Microcare deem reasonably appropriate. Invoices paid by credit card will incur an additional charge of £5 or 3% charge of the transaction whichever is the greater.

9.7 If the Customer does not pay the invoice within 14 days of the invoice an administration fee of £45 will be charged and Microcare may charge the Customer daily interest on late payments at a rate equal to 8% per annum above the base lending rate of Barclays Bank PLC for the period beginning on the date on which payment is due and ending on the date on which payment is made.

9.8 The Charges are payable from the Service Start Date, monthly in advance.

9.9 If the Customer orders a temporary Service, Microcare may charge the Customer for any supplementary charges incurred, plus the line rental in advance for the whole period of the temporary Service. Visit charges and, time related charges still apply as appropriate.

9.10 The Customer must pay all Charges in accordance with their direct debit authority, or in accordance with the time for payment detailed in the invoice. The Customer must pay all deposits upon demand from Microcare.

9.11 If Microcare is unable, for whatever reason, to recover the sums due under the Customer's account within 4 days following the due date for payment, Microcare reserves the right to suspend the Service in accordance with clause 9.

9.12 On the fifth day following the due date for payment, a letter will be sent to the Customer's address requiring the account to be discharged in full within 10 days of receipt of the letter.

9.13 If payment details are provided by the Customer to enable Microcare to collect the sums due on their account, Microcare will re-apply for payment and charge an administration fee of £45 plus VAT. If the Customer's proposed payment method is still rejected, invalid or unavailable or if the Customer's account remains outstanding for any other reason 18 days after the original due date for payment, then:

(i) the Customer will be charged a further administration fee of £45.00 plus VAT together with an additional fee for the provision of a subsequent warning letter, and

(ii) Microcare will contact the Customer in writing requiring discharge of the Customer's account in full within 7 days of receipt of the letter, failing which Microcare reserve the right to refer the outstanding account to Microcare's credit control department.

9.14 If the Customer's account remains unpaid for a period of 25 days after the original due date for payment a security deposit of six times the average monthly invoice or payment in full for the first year will be required before Microcare will reinstate the Service.

9.15 If the Customer's account remains unpaid for a period of 32 days after the original due date for payment, the Service will then be terminated and the Customer's account will be referred to Microcare's credit control department for it to take the appropriate action to collect the outstanding sums.

9.16 If Microcare is required to instruct a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay Microcare an additional sum. This sum will not exceed the reasonable costs Microcare has to pay the agency, who will add the sum to the Customer's outstanding debt.

9.17 The Customer is required to ensure that the name of the account holder is the same as the name on the payment details provided.

9.18 If the Customer makes a valid claim regarding excess invoice charges for any part of the Service and that such an excess is due to an error on Microcare's part, the excess charge will be refunded by credit to the Customer's account. A maximum credit equivalent to three months excess applies to this clause.

9.19 If the Customer cancels an active Direct Debit instruction once the Contract has commenced an additional administration fee of £15.00 will be added to the monthly invoice until the Direct Debit is reinstated

9.20 If any sum owed by the Customer to Microcare under the Contract or any contract with Microcare is not paid by the due date, Microcare may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with Microcare.

Disputed Invoices

9.22 If the Customer intends to dispute any charge on an invoice the Customer must do so in writing to Microcare within 14 days of the date of the invoice and provide Microcare with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to:

(a) less than 5% of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or

(b) more than 5% of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute. Any disputes will be resolved promptly and the resolved amount if any is payable immediately.

9.23 The Customer remains liable for all Charges whether the Customer or someone else used the Service and whether the Service was used with the Customer's knowledge and consent or otherwise including and not limited to usage made by a third party who has gained unauthorized access to the Customer's system.

10. CHANGES TO THE CONTRACT

10.1. Microcare can change the Contract (including the charges) at any time and will publish any change in line with clause 10.2.

10.2 Microcare will publish any changes to the Contract (including the Charges) at Phoenix House, 100 Brierley Street, Bury, BL9 9HN and on the Website, as follows:

(a) at least 14 days before the change is to take effect for changes that are to be made to the significant detriment of the Customer; and

(b) at least one day before the change is to take effect for all other changes.

10.3 If the Customer wishes to object to any proposed change in respect of clause 10.2 (a), the Customer must notify Microcare within 14 days of publication on the Website or receipt of the notice of the proposed increase, otherwise the Customer will be deemed to have accepted the proposed change.

10.4 The Customer may request changes to the Contract. Such requests must be made in writing and submitted to Microcare.

10.5 If Microcare agrees to the changes contained in the written request a letter will be sent to the Customer confirming the agreed changes. The Contract is to be considered to be amended on the date that the letter confirming Microcare's agreement to the changes is received by the Customer, or, in the absence of proof of receipt, the deemed date of receipt. Any such letter shall be deemed to have been received in accordance with clause 17.10

11. TERMINATING THE CONTRACT

11.1 The Customer may cancel the Contract or any part of the Service within ten Working Days from the date that the Customer agrees to proceed with the contract without additional charge, other than those charges actually incurred by under clause 11.6. Thereafter, if the Customer cancels the Contract or any part of the Service any time before Microcare provides the Service the Customer will pay Microcare the Early Termination Charges calculated in accordance with clause 11.6.

11.2 The Contract may be ended by either party upon giving the other one calendar month's prior written notice to the other.

11.3 If the Customer or Microcare ends the Contract during the Minimum Period the Customer will pay Microcare the early termination charges set out in clause 11.6. This clause will not apply if:

(a) the Customer ends the Contract during the Minimum Period because Microcare is in material breach of the Contract and fails to remedy such breach within 30 days of receiving a request from the Customer to remedy the breach (subject to the breach being capable of being remedied by Microcare); or

(b) the Customer gives notice to end the Contract within 14 days of Microcare notifying the Customer of an increase to the charges or changes to the Terms and Conditions in either case to the Customer's significant detriment; or

(c) a Customer, as a Business Customer, wishes to cancel the Contract at any time prior to the Service Start Date by giving written notice to Microcare or contacting Microcare's Customer Services. Microcare will inform the Customer of the Service Start Date by issuing a Notification Letter to the Customer. For the avoidance of doubt, any costs incurred by the Customer prior to the cancellation of the Contract shall be charged to the Customer and become payable in accordance with clause 11.6.

(d) Microcare ends the Contract of the Service during the Minimum Period for any reason other than because of a default of the Customer

(e) the Contract ends because clause 17.1 applies

11.4 The Customer may end the Contract if:

(a) Microcare materially breaches the Contract and fails to remedy the breach within 30 days of receiving a request from the Customer to remedy the breach (subject to the breach being capable of being remedied by Microcare); or

(b) insolvency proceedings are brought against Microcare or Microcare makes an arrangement with its creditors or a receiver, an administrative receiver or an administrator is appointed over any of Microcare's assets or Microcare goes into liquidation.

11.5 If the Customer terminates this Contract prior to expiry of the Minimum Period, other than in respect of termination by the Customer pursuant to clauses 11.3 and 11.4, the Customer shall pay the early termination charges, calculated in accordance with clause 11.6.

11.6 The early termination charges shall be, for each data connection that a Customer cancels:-

(a) the sum of the data monthly charges payable by the Customer from the date of actual termination until the date of expiry of the Minimum Period; and

(b) any actual overage Charges accrued up to and including the date of termination.

11.7 If the Customer terminates this Contract during the Subsequent Term the provisions of clauses 10.2 to 10.6 shall apply with the phrase "Subsequent Term" replacing the phrase "Minimum Period".

11.8 If the Contract ends, Microcare will refund any money owed to the Customer, after first deducting any money the Customer owes to Microcare under this Contract or any other agreement Microcare has with the Customer.

11.9 If Customer terminates any Service prior to expiry of the Minimum Period, other than in respect of termination by the Customer pursuant to clauses 11.3 and 11.4, Microcare shall be entitled to charge the Customer an amount that would be reasonable in covering Microcare's losses as a result of such a termination.

12. SUSPENSION OR TERMINATION OF SERVICE FOLLOWING BREACH

12.1 Microcare may suspend the Service or end the Contract, or both, at any time without notifying the Customer and without prejudice to Microcare's other rights and remedies, if:

- (a) The Customer breaches the Contract or any other contractual arrangement that the Customer has with Microcare and, if the breach is capable of remedy, fails to put right the breach within 14 days of being requested by Microcare so to do (subject to the breach being capable of being remedied by the Customer. A breach in this clause includes non-payment of any valid invoice by the due date; or
- (b) Microcare reasonably believes that the Service is being used in breach of clause 7.7, irrespective of the whether the Customer is aware of the breach or not; or
- (c) Bankruptcy or insolvency proceedings are brought against the Customer or the Customer does not comply with a payment order of the Court or the Customer makes an arrangement with its creditors or a receiver, an administrative receiver or an administrator is appointed over any of the Customer's assets or the Customer goes into liquidation; or
- (d) Microcare are required to suspend the Service or terminate the Contract under any an order, instruction or request of any authorised government body or authority or emergency service; or
- (e) The direct debit information provided by the Customer are found to be invalid or are subsequently cancelled; or
- (f) A contract that Microcare has with a third party, which insists in providing the Service, is terminated.
- (g) Microcare in its sole opinion suspects that the Service is being used, or is about to be used, for purposes that are fraudulent or for purposes deemed to be excessive for the type of account in operation and, if the Service is suspended, will keep the account suspended until such time as a bond, or other such payment as is agreed between the Parties, is received by Microcare.

The Customer will continue to pay the charges during any period of suspension.

12.2 If the Customer fails to pay an invoice in accordance with clauses 9.1 and 9.7, Microcare reserves the right to suspend the Service.

12.3 Microcare will lift the suspension(s) following full payment of the outstanding amount being made by the Customer.

12.4 If the Service is suspended pursuant to clause 12 (except clauses 12.1(d) and 12.1(f)), Microcare will not recommence provision of the Service until the Customer rectifies the breach of this Contract or otherwise satisfies Microcare that the Service will not be used in a way that is in breach of this Contract.

12.5 The Customer remains liable to pay the Charges applicable to any period of suspension of the Service (other than in respect of a suspension pursuant to clauses 12.1(d) and 12.1(f))

12.6 If the Service is suspended under clause 12.1(e) above, Microcare reserves the right to charge the Customer an administration fee of £45 payable within 14 days of the suspension of the Service. This sum is in addition to any outstanding payment for invoices that may have been submitted previously.

12.7 Upon reconnection of the Service, Microcare reserves the right to charge a reconnection fee of £70 plus VAT per broadband connection affected (other than pursuant to suspension pursuant to clauses 12.1(d) and 12.1(f)).

12.8 Microcare shall use its reasonable endeavours following suspension of Services to resume access to the Service for the Customer within a reasonable time. The Customer acknowledges that the period of time to enable Services to be resumed is dependant upon the manner of suspension employed by Microcare and, as a minimum, periods for resumption of the Service would be as follows:

12.8.1 site-barring or reactivation of username/password-8 hours

12.8.2 user accounts temporarily out of service-48 hours

12.8.3 disconnected user accounts- 14 days

13. LIMITATION OF LIABILITY

13.1 Microcare accepts liability as set out in the Contract. Microcare does not guarantee that the Service will be free from Faults as other third party companies may provide the Network. Matters affecting the Network are beyond Microcare's reasonable control and are therefore not liable for Faults arising as a result of the actions of the aforementioned third parties. If the service fails to operate or the Customer diverts traffic to another carrier, Microcare will have no liability and will not be responsible for that carrier's charges.

13.2. Microcare does not accept liability for the acts or omissions of other providers of telecommunications services (including but not limited to the Network Operator) unless those providers have been specifically engaged by Microcare as subcontractors or assignees in respect of performing Microcare obligations under this Contract.

13.3 Microcare does not accept liability for any charge incurred as a direct result of the Customer failing to utilise any new line within 30 days of the line being activated.

13.4 Microcare does not exclude or restrict its liability for death or personal injury caused by its own negligence or the negligence of its employees or agents acting in the course of their employment or agency or for any fraudulent misrepresentation or to any extent not permitted by law.

13.5 Unless otherwise expressly stated in the Contract Microcare shall not be liable to the Customer in contract, tort (including negligence), breach of statutory duty or otherwise for any direct, indirect or consequential loss of profit, revenue, time, opportunity, contracts, data, use, business, any loss of or damage to reputation or goodwill, any loss of anticipated savings, wasted expenditure, loss of or damage to physical property, business interruption or for any other direct, indirect or consequential loss or punitive damages which may arise in relation to the Contract whether or not Microcare was advised in advance of the possibility of such loss or damage.

13.6 Microcare accepts liability to the Customer, as follows, subject to clauses 13.2, 13.3 and 13.5:-

- (a) in respect of its failure to report a Fault to the Network Operator as soon as is reasonably practicable, where Microcare have previously been notified of such a Fault by the Customer; or
- (b) for any actual loss or damage suffered by the Customer where the loss or damage suffered was reasonably foreseeable.

For the avoidance of doubt Microcare shall not be liable for any delay in the repair of the Fault except to the extent that such a delay was a direct result of Microcare failing to reporting the Fault to the relevant Network Operator as soon as was reasonably practicable.

13.7 Except as set out expressly in this Contract, all conditions warranties, undertakings and obligations implied by statute, common law, custom, and trade or otherwise are excluded to the fullest extent permissible in English Law.

13.8 Subject to clause 13.4, Microcare's total liability to the Customer in respect of all other losses arising under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed £1,000.

14. CONFIDENTIALITY AND USE OF CUSTOMER'S INFORMATION

14.1 Microcare and the Customer will keep in confidence any information, whether written or oral, of a confidential nature obtained under or in connection with the Contract except to the extent any disclosure is required by law. The Customer and Microcare will not, without the consent of the other, disclose such information to any person other than:

- (a) the employees or professional advisers who shall require the information in order for the Customer or Microcare to fulfil its obligations under the Contract; or
- (b) in the case of the Customer, its users of the Service to the extent that they are required to use or access the Service.

14.2 Information shall not be treated as confidential if it is:

- (a) lawfully in the public domain other than in breach of the Contract; or
- (b) lawfully in the possession of the Customer or Microcare before disclosure has taken place; or
- (c) obtained from a third person who is entitled to disclose it; or
- (d) replicated independently by someone without access or knowledge of the information.

14.3 If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by Microcare in connection with the Contract the Customer will notify Microcare immediately of the request and give Microcare at least 10 Working Days to make representations before releasing the requested information.

14.4 Microcare will only use Personal Data (as defined within the Data Protection Act 1998) obtained from the Customer following provision of the Service for the following purposes:-

- (a) administering the Customer's account;
- (b) notifying the Customer of changes to the Service;
- (c) enabling Microcare to supply the Service to the Customer; and,
- (d) for invoicing purposes.

14.5 Microcare will not pass Personal Data obtained from the Customer to any third parties for marketing purposes but may send the Customer information about Microcare own products and services which it considers may be of interest to the Customer, unless the Customer specifically requests in writing that Microcare does not do so.

14.6 Any request under clause 14.5, either by the Customer, the Customer's User or by the Customer on behalf of the User should be submitted in writing to Microcare Data Controller at Phoenix House, 100 Brierley Street, Bury, BL9 9HN.

14.7 In assessing applications for and making decisions about credit, in respect of the Customer, Microcare may make the following searches for information pertaining to the Customer:-

- (a) the files of credit reference agencies. The credit reference agency will keep a record of any search undertaken.
- (b) identity and anti-fraud checks with fraud prevention agencies. If the Customer gives false or inaccurate information fraud is suspected, Microcare shall make a written note. Details of how the Customer conducts their account may also be disclosed to those agencies.

14.8 Information obtained from the agencies referred to in clause 14.7 may be used by Microcare and other parties for:

- (a) checking the Customer's identity,
- (b) obtaining statistical analysis about credit or, fraud, and
- (c) to manage the Customer's account.

14.9 Microcare may also perform subsequent searches for the purpose of risk assessment, debt collection and fraud prevention with one or more credit reference agencies and/or fraud prevention agencies whilst the Customer retains a financial obligation to Microcare.

14.10 Information held about the Customer by credit reference agencies may be linked to records relating to the Customer's financial associate(s). The Customer declares that the Customer and the Customer's financial associate(s) are financially independent and the Customer requests that their application for the Service be assessed without reference to any "associated" records, although the Customer recognises that this may adversely affect the outcome of the application. The Customer confirms to the best of their knowledge that there is no

information relating to their financial associates that is likely to affect Microcare's willingness to offer the Services to them.

14.11 By agreeing to these Terms and Conditions, the Customer authorises Microcare to check the validity of this declaration with credit reference agencies and if Microcare discover any associated records, which would affect the accuracy of this declaration Microcare may suspend the Service or terminate this Contract with immediate effect. For the purpose of clauses 14.10 and 14.11 a "financial associate" is someone with whom the Customer has a financial link, for example, a spouse, partner or family member.

14.12 The Customer authorises Microcare to disclose, in the UK and globally, all pertinent information about them, their use of the Service and how they conduct their account for the purposes of providing the Customer with the Service or as required for reasons of national security or under any legal duty pass such information to associated companies, partners or agents, any telecommunications company, debt collection agency, credit reference agency, fraud prevention agency or governmental agency and other users of these agencies who may use this information for the same purpose as Microcare. The Customer agrees to this information being obtained by Microcare for credit control purpose and fraud and crime detection and prevention.

14.13 Any Customer who wishes to have details of the credit reference or the fraud prevention agencies Microcare uses to obtain information about the Customer or receive a copy of the information holds about them may do so by submitting a request in writing for a copy of the information to the Data Controller at Microcare at the address detailed in clause 14.6, stating the Customers full name, address, account number and phone. (Microcare may charge a reasonable administration fee for providing such information)

15. MOVING PREMISES

15.1 If the Customer is moving the Premises, Microcare must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Customer's data connection.

15.2 If the new installation or moving Premises involves the visit of an engineer to facilitate the new installation the Customer will be responsible for the costs incurred by Microcare (currently £195 for the first hour and £95 per hour thereafter with a £30 charge for half hour of travelling time plus VAT). There will be a charge for any missed appointment due to the Customer's failure to attend (currently £195.00 plus a travel charge of £30 per half hour) together with an administration fee of £45.00

15.3 If the Customer moves Premises and leaves the installation for the new owner/tenant the Customer is required to inform them that the Service will be discontinued if Microcare are not contacted by the new owner/tenant within 72 hours for the purpose of entering into a new Contract.

15.4 If the Customer currently receives services from an alternative supplier the Customer is responsible for any contractual agreement the Customer has with them and any liabilities the Customer may incur for terminating the Customer's current agreement.

16. USER NAMES AND PASSWORDS

16.1 Microcare will provide the Customer with a username and password which will remain the property of Microcare in order to access the Service. The Customer agrees to keep this username and password confidential and agrees to take all necessary steps to ensure their confidentiality and that they are not disclosed to any unauthorised third parties.

16.2 The Customer agrees to inform Microcare if they become aware of or suspect any unauthorised use of their username and password and agrees to take all necessary steps (or such steps as may be requested by Microcare) to prevent such use.

16.3 The Customer agrees not to change or attempt to change a user name without Microcare's written consent.

16.4 Microcare reserves the right (at its sole discretion):

16.4.1 to suspend or change user names and password access to the data Services if at any time Microcare thinks that there has been or is likely to be a breach of security; and

16.4.2 to ask the Customer to change any or all of the usernames and passwords they use in connection with the Service.

16.5 The Customer accepts and acknowledges that the Service, like other internet applications, is not secure and that Microcare does not guarantee the prevention or detection of any unauthorised attempts to access or use the Service.

17. GENERAL TERMS

Matters Beyond Reasonable Control

17.1 (a) If Microcare is prevented from, or is delayed in performing, any obligation under the Contract because of something beyond its reasonable control including without limitation act of God, storm, lightning, flood, exceptionally severe weather, fire, explosion, failure or shortage of power supplies, default of suppliers or subcontractors, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, war, riot, civil disorder, malicious damage, strikes, lock-outs or other industrial disputes (whether involving the workforce of Microcare or any other party) or acts or omissions of local or central government, highways, OFCOM or any other Network Provider or other competent authorities, or beyond the reasonable control of its suppliers, it will have no liability to the Customer for that failure or delay in performing.

(b) Microcare will not be liable for failure to or delay in supplying the Service if legal or regulatory restrictions are imposed that prevent Microcare from supplying the Service.

Dispute Resolution

17.2 (a) Microcare will attempt to resolve any dispute that the Customer may have with Microcare under Microcare's Complaints Handling and Dispute Resolution Code of Practice, a copy of which can be obtained from the Complaints Handler, Phoenix House, 100 Brierley Street, Bury, BL9 9HN. If the dispute cannot be resolved within 12 weeks of the Customer raising the dispute with Microcare, then the Customer may refer the matter to:

(i) the Telecommunications Ombudsman, via the website (www.otelo.org.uk) or by telephone on 0845 050 1614; or
(ii) OFCOM, the communications regulator via the website www.ofcom.org.uk or by telephone on 020 7981 3040 or 0300 123 3333.

(b) Any dispute must be submitted in writing to Microcare's Customer Services Centre giving all relevant details including the nature and extent of the dispute.

(c) Nothing in this clause 17.2 shall prevent the Customer or Microcare from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Contract.

Customer's Instructions

17.3 Microcare may take instructions from any person whom it reasonably believes is acting with the Customer's authorisation.

Assignment

17.4 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Microcare. Microcare may at any time assign, transfer charge, subcontract, delegate or deal in any other manner with all or any of its rights or obligations under this Contract without the consent of the Customer.

17.5 Nothing in this contract shall be deemed to grant to the Customer a licence to use any software or other intellectual property right other than strictly in accordance with the terms of this Contract. For the avoidance of doubt, the Customer shall not be entitled to sub-license any such software or intellectual property right.

Severability

17.6 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be unenforceable, invalid or illegal, the other provisions of the Contract shall not be affected. If any unenforceable, invalid or illegal provision would be enforceable, valid or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intentions of the parties.

Entire Agreement

17.7 (a) The Contract and any documents referred to in it constitute the entire agreement between the Customer and Microcare and replaces all previous negotiations, representations, proposals, understanding and agreements between them whether written or oral relating to the subject matter of the Contract.

(b) Each party acknowledges and agrees that, in entering into this Contract and the documents referred to in it:

(i) it has not relied upon any statement, representation, warranty or other assurance of any person (whether a party to this Contract or not) not expressly incorporated in this Contract or those documents; and

(ii) in connection with the Contract the only rights and remedies available to it in relation to any statement, representation, warranty or other assurance are for breach of contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

Waiver

17.8 (a) A failure or delay by the Customer or Microcare to enforce any right, remedy provided under this Contract or act upon a breach under the Contract shall not be deemed to be a waiver of that right, remedy or breach or any other right, remedy or breach.

(b) If the Customer or Microcare waives a right, remedy or breach of the Contract, that waiver is limited to the particular right or breach.

(c) The single or partial exercise of any right or remedy by the Customer or Microcare does not operate as a bar to the exercise or enforcement of any right, power or remedy on any later occasion.

Rights of Third Parties

17.9 A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. However, this does not affect any right or remedy of a third party that exists or is available apart from that Act.

Notices

17.10 Unless otherwise stated in the Contract, notices given under the Contract must be in writing and delivered by hand, sent by e-mail or sent by prepaid first class post or recorded delivery or by commercial courier to:

(a) Microcare at Phoenix House, 100 Brierley Street, Bury, BL9 9HN or such other address as may be communicated to the Customer; or

(b) the Customer at the address to which the Customer asks Microcare of Phoenix House, 100 Brierley Street, Bury, BL9 9HN to send correspondence and bills.

17.11 The Customer must inform Microcare at Phoenix House, 100 Brierley Street, Bury, BL9 9HN immediately if there is any change to any of the contact information previously supplied.

Law and Jurisdiction

17.12 (a) This Contract and any disputes or claims arising out of or in connection with its subject matter shall be governed by and interpreted in accordance with English law.

(b) The Customer and Microcare irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim, which may arise out of, under, or in connection with this Contract.