

These terms and conditions (the "Conditions") govern your use of the Service (as defined below); the content, features and functionality of the Service are described on the Order Form and further defined at:

<http://www.demon.net/vob>. The Service is supplied by THUS plc, registered office 1-2 Berkeley Square, 99 Berkeley Street, Glasgow G3 7HR, Scotland, Company No. SC192666 (the "Company").

# Demon Voice over Broadband

## Terms and Conditions

### 1 DEFINITIONS

- 1.1 In these Conditions the following words and expressions shall, unless the context otherwise requires, have the following meanings:
- "ADSL" means Asymmetric Digital Subscriber Line;
- "Agreement" means the agreement between the Customer and the Company for the provision of the Services, incorporating these Conditions and your Order Form;
- "Agreement Date" means, notwithstanding the date that any emails are sent to you by the Company confirming receipt of your Order or confirming that insofar as the Company is aware, the Service will be able to be provided to you, the date on which the email is sent to you advising you of your login details;
- "BT" means British Telecommunications plc;
- "Business Customer" means you are (i) a person who uses the Service in connection with your trade, business or profession; or (ii) a company, partnership or other organisation other than a Consumer;
- "Business Days" means Monday to Friday between the hours of 09:00 and 17:00, excluding public UK holidays and "Business Day" shall be construed accordingly;
- "Carrier" means any supplier of telecommunications services utilised by the Company to assist in the delivery of the Service;
- "Charges" means any of the charges payable by the Customer for the provision of the Services pursuant to this Agreement;
- "Company Equipment" means any equipment which is provided at the Premises by the Company or any third party in order to provide the Services which is and will remain at all times the property of the Company (or a third party);
- "Company System" means the telecommunication system and network operated by the Company in accordance with the General Conditions or other such permission granted to the Company as may be amended from time to time and, for the purpose of this Agreement, any apparatus leased by, or otherwise obtained by, the Company from a third party;
- "Consumer" means that your use of the Service is for personal use only and you do not use the Service as a Business Customer; if you change your use during the term of this Agreement from consumer to business use, the Business Customer provisions of this Agreement will apply to you;
- "Customer" means the Consumer or Business Customer named as the Customer in the Order Form;
- "Customer Apparatus" means any apparatus situated at the Customer Premises, not being Company Equipment and which may be used by the Customer in order to obtain the Service;
- "CPE" (Customer Premises Equipment) means, where applicable, the customer premises equipment which is supplied to you by the Company following you indicating in your Order that you wish the Company to supply you with such equipment;
- "Demon" means the brand of the Company utilised by the Company in the provision of certain of its products and services;
- "General Conditions" means the general conditions of entitlement as set out in the notification issued by the Director General for Telecommunications on 22nd July 2003, in accordance with section 48(1) of the Communications Act 2003, pursuant to section 45 of said Act, as may be amended from time to time;
- "Initial Period" means the period of 12 months, beginning on the Agreement Date;
- "Online Control Panel" means the tool available for Customers to log on and manage their Services;
- "Order" means the application which you place for the provision of the Services, either by completing and submitting an Order Form or by ordering by telephone;
- "Order Form" means the form which you complete and return to the Company, to apply to receive the Service (or which is completed on your behalf if you order the Service by telephone);
- "Physical Characteristics" means the requirement that you have and maintain throughout the Agreement sufficient power and appropriate power sockets to enable you to receive the Service and a working broadband ADSL connection supplied by the Company or another provider;
- "Premises" means your premises specified in the Order Form where the Service is to be received;
- "PSTN" means public switched telephone network;
- "RIPE NCC" means the RIPE Network Coordination Centre, an organisation that maintains a database of European IP networks and their management information;
- "Service" means the services to be provided by the Company as set out in the Order Form and as may be amended from time to time pursuant to Clause 20 and Service shall be construed accordingly;

"Special Conditions" means any promotional terms and conditions applicable to your Agreement;

"we" "us" and "our" means the Company and belonging to the Company as the case may be; and

"you" and "you" means the Customer who orders the Service and belonging to the Customer as the case may be.

- These Conditions explain our responsibilities to you and your responsibilities to the Company and to other users of the Service ("Users").
- 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 thereunder.
- Reference to words importing the singular only also includes the plural and vice versa where the context requires.
- The headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- By submitting a completed Order Form to the Company, you confirm to us that you have read, understood and accepted these Conditions and all other documents forming part of this Agreement. If there is anything you do not understand, please phone us via our Customer Service Department on: 0845 009 0080 between 9.00am and 5.30pm from Monday to Friday inclusive, or email us at: [broadbandvoice@demon.net](mailto:broadbandvoice@demon.net).
- If you are a Consumer, you must be 18 years or older to register for the Service and you have a right to cancel your Order as detailed below.
- In case of conflict between these Conditions and the Order Form, the foregoing order of precedence shall prevail.

### 2 DURATION

- This Agreement shall come into effect on the Agreement Date and shall continue in full force and effect for the Initial Period and thereafter unless and until terminated in accordance with Clause 11 of the Conditions or such other Clause as may be applicable in the circumstances.
- The Company shall use its reasonable endeavours to provide the Service to you from the Agreement Date or such later date as may be notified to you by the Company, subject to you obtaining (at your own expense) all consents, approvals, servitudes, rights of way necessary for the provision of the Services to the Customer Premises and, if applicable, other similar rights relating to installation of any Company Equipment.
- In the event that the Company agrees to provide new or additional services or change the Services (including without limitation upgrades or re-grades to the Services) under this Agreement a new minimum term of 12 months shall apply to each new, additional or changed services from the new service commencement date as advised by the Company.

### 3 PROVISION OF THE SERVICE

- The Service is described in the Order Form and more fully described at: <http://www.demon.net/vob>. From time to time we may alter the features and functions made available as part of the Service, but we shall endeavour to keep the overall quality, quantity and variety of features and functions consistent.
- To receive the Service, you will need to submit an Order requesting the Service whereby you will supply us with certain details. You warrant and undertake to us that all of your personal data, payment and contact details are accurate and complete and that you will notify us immediately of any change to your personal data by sending us an email to: [broadbandvoice@demon.net](mailto:broadbandvoice@demon.net). For the avoidance of doubt, the identity of the Customer to this Agreement cannot be changed except in accordance with Clause 17.2. We may send notices or other information to you at the address you give us. We will respect the privacy of this information and will comply with applicable data protection legislation in respect of it.
- Following acceptance of your Order, we will send you an email advising you of your login details which you require to use to access the Online Control Panel. It is your responsibility to keep these confidential and not to disclose them to any other person for any reason. If you disclose your login details you will be liable for any losses you incur if they are misused. You are fully responsible for all action taken in respect of your Services whether or not the use is made by you or by someone else using your login details. You shall notify the Company immediately if any unauthorised third party becomes aware of your login details details. The Company shall be entitled to suspend your Services 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 your Service may be treated by the Company as a breach by you.

## 4 SERVICE

- 4.1** The Company shall provide the Service to you according to the terms of this Agreement. The Company may obtain services from a Carrier 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. Service Availability is not guaranteed. You also accept that you may not be able to receive the Service due to certain technical restrictions. If such technical restrictions are discovered after the Agreement Date, the Company has a right to terminate the Agreement in accordance with Clause 11.2.3. You acknowledge that the quality and performance of the Service may deteriorate when other applications are being run over the broadband ADSL connection at the same time.
- 4.2** You agree that your use of the Service is at your sole risk. The Company make no warranty that the Service will meet your requirements.
- 4.3** 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 at law to you.
- 4.4** This is a voice over data network service. If your broadband ADSL connection fails your voice service will also fail. Your Service may cease to function if there is a power cut or failure.
- 4.5** 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. The Company will give you as much notice as practically possible of any planned interruption of your Service. In such circumstances, you shall have no claim against the Company for any such interruption.
- 4.6** The Company will use reasonable endeavours to correct reported faults as soon as possible. Should you encounter a fault with the Service you should report this to the Company at telephone number: **0845 009 0080**. The Company shall investigate the fault and will actively deal with the fault report during Business Days.
- 4.7** You acknowledge and agree that the Service is intended to be used as a secondary line and not as a replacement to your main PSTN line. Please note the Service cannot be used to make emergency calls.
- 4.8** The Company reserves the right to suspend or terminate the Service under Clauses 10 and 11.

## 5 FEES

- 5.1** The Company shall provide you with the Service, and you agree to pay, without any deduction, withholding or set-off whatsoever, to the Company the Charges set out in the Order Form. Payment must be made using one of the methods specified on the Order Form, as specified by you when placing your Order.
- 5.2** The Company shall be entitled to review 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:
- 5.2.1** if you are a Consumer, you will be entitled to terminate the Agreement by serving notice in writing to the Company if you are unhappy with any proposed increase in the Charges provided you notify the Company in accordance with the notice process set out in Clause 16 of the Conditions within fourteen (14) Business Days of such notification of price variation; or
- 5.2.2** if you are a Business Customer, you will have the right within seven days of such notice from the Company to terminate this Agreement by one month's notice in writing.
- 5.3** The Company shall render invoices to you at the intervals as set out in this Agreement. The Company shall issue invoices to you at the billing address specified in the Order Form or such other address as notified to the Company by you from time to time. For the avoidance of doubt, the Company may render invoices to the email address which you provided when your Order Form was submitted. Payment shall be due within 30 days of issue to you of an invoice or as otherwise specified in the Agreement ("Due Date").
- 5.4** Acting in good faith you shall notify the Company in writing of any disputed invoice amount within 10 days of the date of the invoice. If you are a Business Customer and you fail to pay the Company any undisputed 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 3% above the base lending rate from time to time of the Royal Bank of Scotland plc, accruing on a daily basis until payment is made, whether before or after any judgement.
- 5.5** You shall not be entitled to any reduction in charges in the event that you do not use all or any part of the Services.
- 5.6** All amounts payable by you are exclusive of Value Added Tax and you shall pay in addition any Value Added Tax applicable thereto from time to time.
- 5.7** If the Company carries out work in response to a fault in the Service reported by you and following such work the Company determines that (i) there is no fault found 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.
- 5.8** Save in the case of demonstrable error all Charges shall be calculated in accordance with data recorded or logged by, or on behalf of, the Company.
- 5.9** You agree to access your itemised telephone and revenue statements via the Online Control Panel or if this method is not available on your Service to provide a valid email address to receive such statements. We will not be liable for any losses resulting from your failure to provide such an email address and we will not re-send statements if undelivered for this reason.
- 5.10** You acknowledge and accept that the Online Control Panel may not accurately reflect your account information at all times.
- 5.11** You agree to restrict access to the Online Control Panel to authorised account users and that we will not be liable for any loss or damage arising from unauthorised use.

## 6 INSTALLATION

### 6.1 You are fully responsible for:

- 6.1.1** connecting a suitable microfilter to the Carrier's master socket (and any extension sockets) at your Premises;
- 6.1.2** connecting a suitable router/modem to the relevant port on the microfilter;
- 6.1.3** maintaining a suitable ADSL connection; and
- 6.1.4** maintaining a suitable power supply.

- 6.2** The Company accepts no liability whatsoever for any loss you or any third party may suffer as a result of:
- 6.2.1** your installation, and/or setting up your equipment to receive the Service, including but not limited to loss caused by your installation of any Customer Apparatus; or
- 6.2.2** any faulty Customer Apparatus, notwithstanding any list of suitable Customer Apparatus which the Company may publish.
- 6.3** If the Company supplies you with CPE, you must agree to the terms of the relevant end-user licence agreement 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. The Company shall use reasonable endeavours to assist with reasonable queries you may have in respect of initial installation of the Service. However, to the extent that such queries relate to any problems which, following an initial diagnosis, may be outwith the Company's control or ability to remedy (including but not limited to Customer Apparatus or CPE), the Company does not guarantee that it shall be able to help resolve any such difficulties. Such limited support shall be provided to you by telephone by you calling: **0845 009 0080**.
- 6.4** The Company does not warrant that any particular Customer Apparatus shall be compatible with the Service and the Company shall not be responsible for supporting any Customer Apparatus.

## 7 CPE

### Clause 7 applies to Customers who order CPE when ordering the Services.

- 7.1** The Company will make up to two (2) attempts to deliver the CPE to you. The cost of any further delivery attempts shall be borne by you. For the avoidance of doubt, risk in CPE shall pass to you on delivery to your Premises or any other delivery address notified by you. Property in and title to the CPE shall pass to you when, but not until, the applicable charge has been paid in full to the Company.
- 7.2** You shall inspect the CPE immediately on delivery and shall within 48 hours of delivery notify our Customer Services Department of any damage to or fault with the CPE on: **0845 009 0080**. In the event of any damage to or fault with the CPE, the CPE must be returned to the Company within 14 days of delivery.
- 7.3** Prior to returning the CPE to the Company for whatever reason, the following returns procedure shall apply:
- 7.3.1** In the event that any CPE is faulty, you should call our Customer Services Department on: **0845 009 0080**, or such other telephone number as may be advertised by the Company from time to time.
- 7.3.2** If the fault is a CPE fault which is not resolved within 3 Business Days from notification to our Customer Services Department, you will be allowed a period of 14 days following expiry of the 3 Business Day period to return the faulty CPE. Within the said 14 day period you must return the CPE together with all items included in the original sale ("Equipment Package") to: Demon, 173 Sunbridge Road, Bradford BD1 2HB, or such other address as may be advertised from time to time, by recorded delivery, registered post or courier.
- 7.3.3** The Equipment Package must be wrapped in adequate packing to prevent damage during transit. You will remain liable for any damage to the Equipment Package caused during transit resulting from inadequate packaging.
- 7.3.4** The Company does not accept liability for any Equipment Package lost or damaged during transit and proof of postage is not proof of delivery. As you will remain liable for any loss or damage caused until receipt of the Equipment Package by the Company, including costs of a replacement Equipment Package you are strongly advised to maintain sufficient insurance to cover the value of the Equipment Package. The cost of return carriage is to be borne by you. This will be refunded if the contents of the returned Equipment Package is/are proved to be defective.
- 7.3.5** On receipt of the Equipment Package, at the address specified in these Conditions, it will be tested against the stated fault (if any). If no fault is located and the contents of the Equipment Package are found to be in full working order, the Equipment Package will be returned to you at your expense.
- 7.4** The Company offers no guarantee that it will be able to remedy any difficulty that you may be experiencing and will not be liable to you in any way for such failure to remedy the difficulty.
- 7.5** Subject to the terms of this Agreement, within a period of 12 months from the date of delivery of CPE the Company will make good by repair or replacement (at its sole option) the CPE which, under proper use, is or becomes defective.
- 7.6** The warranty available under Clauses 7.4 and 7.5 does not extend to defects resulting from:
- 7.6.1** natural disasters, fire or flooding occurring after delivery; or
- 7.6.2** shock, fall or incorrect handling; or
- 7.6.3** connection, installation or use not conforming to the instructions or specifications detailed in the Order Form or advised to you at the time of placing your Order; or
- 7.6.4** the effect of over voltages, insufficient protection against humidity, heat or frost, modification, defect in or non-compatibility of hardware connected to the CPE; or
- 7.6.5** intervention by a third party not approved by the Company.
- 7.7** Any CPE repaired or replaced, during the said 12 month period, will be guaranteed for the unexpired portion of the said period.
- 7.8** The Company accepts no liability whatsoever for any loss you or any third party may suffer as a result of your misuse of the CPE or for any accidental damage thereto. For the avoidance of doubt the provisions set out in Clause 13 shall apply to the sale of CPE by the Company other than the fact that the Company' total liability in respect of any CPE, shall be limited to the value of the CPE.

## 8 INFORMATION AND CUSTOMER APPARATUS

- 8.1** On request by the Company, you shall provide the Company with information concerning the Customer Apparatus and any other information the Company reasonably requires in order to provide the Services.
- 8.2** Your Customer Apparatus must be technically compatible with the Service. You shall at your own expense modify the Customer Apparatus in accordance with the Company's instructions provided that 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.

- 8.3 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 Customer Premises or any premises of which the Customer Premises form part and which are required for the purpose of provision of the Service by the Company to you.
- 8.4 The Company reserves the right to suspend and/or terminate your Service if you do not fulfil your obligations under this Clause 8.
- 8.5 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 whatsoever if you damage or incorrectly reconfigure any Customer Apparatus, for example a router, which you have purchased for use with the Service.
- 8.6 For the avoidance of doubt, if you do anything to the Customer Apparatus including, by way of example without limitation adjusting or altering it in any way following the commencement of the Service there is a risk that such action will impact upon your ability to receive the Service. 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 re-configure the Service in any way, then any reasonable costs incurred by the Company in this regard shall be borne by you.

## 9 YOUR USE OF THE SERVICE

- 9.1 You must NOT use the Service:
- 9.1.1 in a way that does not comply with the Conditions or 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
- 9.1.2 in breach of any 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
- 9.1.3 in connection with the carrying out of a fraud or criminal offence against any public telecommunications operator; or
- 9.1.4 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
- 9.1.5 to send or procure the sending of unsolicited advertising or promotional material; or
- 9.1.6 attempt to use the Service in any way that modifies, decompiles or reconfigures the Service or, if relevant, any Company Equipment 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,
- 9.1.7 in a way that in the reasonable opinion of BT could materially affect the quality of any telecommunications service, including the Service, provided by BT, as notified to you by the Company.
- 9.2 You shall indemnify the Company against any claims or legal proceedings which are brought or threatened against the Company by a third party because the Service is used by you in breach of Clauses 9.1.1 - 9.1.7 above. To maintain the quality of Service for other users, the Company reserve the right to block certain types of traffic without notice where they appear to contravene Clause 9.1.
- 9.3 You shall be responsible for insuring against all loss of or damage to data stored on or transmitted using the Service or the Company System.
- 9.4 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.
- 9.5 You shall not share use of the Service, or any part of it, with any other person, or if you are a company with any person not a member of your company (or contracted to your company), whether directly or indirectly, including by means of radio or other wireless technology of any kind, except that if you are a Consumer you may share the Service with members of your own household at the same address.
- 9.6 You shall ensure that any person with whom you share use of the Service under Clause 9.5 complies in full with this Agreement as if they were an original party to it. You are responsible for any misuse of the Service by anyone with whom you share use of the Service.
- 9.7 **If you are a Business Customer**, you may not make any unauthorised commercial use of the Service.
- 9.8 **If you are a Consumer**, the Service is supplied to you for your personal use. You may not commercialise it or use it in connection with any occupation, trade or profession without the Company's prior written consent.
- 9.9 You will co-operate with the Company's reasonable requests for information regarding your use of the Service and supply such information without delay.
- 9.10 The Company reserves the right to disconnect the Service if you do not fulfil your obligations under this Agreement.
- 9.11 Where you use the Service to reach networks and services not operated by the Company, you will abide by the acceptable use policies or terms and conditions imposed by the operators of those networks and services.
- 9.12 Where you change from or do not maintain adequate Physical Characteristics, the Company will not be responsible if you cannot or cease to be able to receive the Service.

## 10 BREACH OF CONDITIONS

- 10.1 We shall investigate any suspected or alleged breach of this Agreement or any suspected compromise to our network systems or security and in doing so we will act reasonably and fairly at all times. Without limitation, you expressly authorise us to use your personal data and other information which you have provided us with 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.
- 10.2 We reserve the right to take any action we deem appropriate and proportionate to the breach of this Agreement.
- If you are a Business Customer:**
- 10.3 If we decide that you have breached the Agreement, we will use reasonable endeavours to ensure that you are made aware of the breach without suspension or termination of the Service. However it may be necessary, due to the severity of the breach, to suspend or end the Service while details of the breach are investigated further. We reserve the right to suspend or end your account 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.

### **If you are a Consumer:**

- 10.4 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 or end the Service 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. Particular examples of breaches which are incapable of remedy include jeopardising or compromising the security or integrity of our network. However it may be necessary, due to the severity of the breach, to suspend or end the Service while details of the breach are investigated further.

## 11 TERMINATION

- 11.1 Without prejudice to the rights and remedies of the Company and the Customer under this Agreement either party may terminate this Agreement forthwith in the event that:
- 11.1.1 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) fails to remedy the breach within 28 days of receiving notice to that effect from the other party; or
- 11.1.2 either party becomes insolvent or has a receiving order made against it or commences to be wound up (not being a members voluntary winding up for the purpose of a solvent reconstruction or amalgamation) or grants a trust deed on behalf of its creditors or any of them; or
- 11.1.3 the Company is no longer authorised to operate the Company System.
- 11.2 The Company may end this Agreement immediately upon written notice to you if:
- 11.2.1 it becomes unlawful for the Company or the Carrier supporting the Service to continue to provide the Service or the Company or the Carrier supporting the Service is required to cease the Service by a competent regulatory authority; or
- 11.2.2 the 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; or
- 11.2.3 it transpires following the Agreement Date that, for any reason outwith the control of the Company, the Services will not be able to be provided to you. In the event of termination in accordance with this Clause 11.2.3, the Company shall repay to you any fees which you have paid in advance for the Services.
- 11.3 Either party may end this Agreement after the Initial Period by giving the other party not less than thirty (30) days prior written notice such notice not to expire before the end of the Initial Period. Except in accordance with Clause 5.2, 11.1, 12.1, 21.1 and 21.2, if you wish to end this Agreement before the end of the Initial Period, the Company shall be entitled to invoice you for the Charges which would have been payable by you for the balance of the Initial Period. If you move from your Premises, the Company shall be entitled to charge you fees which would have been payable by you for the balance of the Initial Period at the Premises.
- 11.4 Without prejudice to its other rights in terms of this Clause 11, the Company may, at its sole discretion elect to suspend provision of the Services 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 wayleave or other consent required for the purposes of providing the Services is withdrawn, revoked or otherwise ceases to have effect.
- 11.5 You shall continue to be liable to pay the Charges during such suspension if the Service is suspended pursuant to your default.
- 11.6 You shall reimburse the Company in respect of all costs and expenses incurred in carrying out such suspension and re-commencing the provision of Services thereafter save where such suspension is required as a result of any breach of this Agreement by the Company.
- 11.7 Your right to use the Service shall immediately terminate when this Agreement comes to an end.

## 12 RIGHT TO CANCEL

- 12.1 **If you are a Consumer** who has ordered the Service by telephone, you have a right to cancel the Service within seven Business Days of the Agreement Date. Any use of the Service by you, during this said period, will act as a waiver of this right to cancel.
- 12.2 **If you are a Consumer who has ordered CPE with the Services**, you shall have the right to cancel your Order for the CPE prior to the expiry of the period of seven (7) Business Days, beginning on the day after the Equipment Package has been delivered to you. In the event that you exercise this right to cancel your order for CPE you must serve a Notice of Cancellation on the Company, retain possession of the Equipment Package, take reasonable care of the Equipment Package and within fourteen (14) Business Days of serving such Notice of Cancellation, return the Equipment Package quoting your reference details to: Demon, 173 Sunbridge Road, BD1 2HB by recorded delivery, registered post or courier. You will be responsible for all costs incurred in returning the Equipment Package or for any costs incurred by the Company in recovering the Equipment Package. Any CPE being returned must be in no worse a condition than it was at the time of delivery to you.
- 12.3 Other than cancellation under Clauses 12.1 and 12.2, if you attempt cancellation after the Agreement Date, you may be liable to pay the Service fee set out on the Order Form for the Initial Period and/or the Charges which would have been payable by you for the balance of the Initial Period if you cancel after the start of the Initial Period prior to expiry of the Initial Period.

## 13 LIMITATION ON LIABILITY

- 13.1 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 £10,000 for any event or series of related events and £25,000 for all events in any period of 12 months.
- 13.2 **If you are a Business Customer**, except as expressly set out in this Agreement, the Company provides no warranties, conditions, terms or undertakings as to the description or quality of the Service, including without limitation non-infringement of third party rights, satisfactory quality, or fitness for any particular purpose and all warranties, conditions, terms or undertakings 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.

- 13.3** Nothing in this Agreement shall exclude or limit the liability of either party for death or personal injury arising as a result of that party's negligence or for fraudulent misrepresentation.
- 13.4** 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.
- 13.5** 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, acts of terrorism, disorder, flood, industrial disputes (whether or not involving their employees), extremely 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.
- 13.6** If any of the events detailed in Clause 13.5 continue for more than 3 months either party may serve notice on the other terminating this Agreement without further liability.
- 13.7** 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 use of the Services.

## 14 INDEMNITY

- 14.1** If you are a Business Customer, 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 these Conditions or other act or omission by you under or in relation to this Agreement or your use of the Service; and (b) any transmission or receipt of any content or message which you have requested or made using the Service.
- 14.2** If you are a Consumer, you must indemnify us against any claims and associated costs, damages or expenses arising from your use of the Service or use of your Service under this Agreement (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.

## 15 DATA PROTECTION/PERSONAL DETAILS

- 15.1** We may retain your personal data, and you authorise us to use your personal data, for the following purposes:
- 15.1.1** provision of the Service to you;
  - 15.1.2** keeping of a record for a reasonable period after termination of your Service;
  - 15.1.3** operation and enforcement of these Conditions;
  - 15.1.4** technical maintenance;
  - 15.1.5** providing you with information about other services we offer, subject to your right to opt out of receiving such information on the Order Form or by exercising this right when placing an Order by telephone;
  - 15.1.6** transferring it to another company in the event of a sale of the Company;
  - 15.1.7** legal compliance including disclosing it to any third party who we reasonably consider has a legitimate interest in any such investigation or its outcome; and
  - 15.1.8** transferring it to RIPE NCC as part of a general requirement for provision of these services within Europe.
- 15.2** 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.
- 15.3** You may be subject to a standard 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.

## 16 NOTICES

- 16.1** Any notice required or permitted under this Agreement must be in English and in writing and sent either:
- by post to:** Customer Services, Demon, Riversway House, Morecambe Road, Lancaster, Lancashire LA1 2SS. Attention: Customer Relations Team; or
- by email to:** [broadbandvoice@demon.net](mailto:broadbandvoice@demon.net).
- 16.2** Any notice to be sent to you will be sent to the address which you provide when submitting your Order or such other address as you shall have given written notice of as the billing address.
- 16.3** Such notices shall be deemed to have been received 3 Business Days after mailing if forwarded by mail, and the following Business Day if forwarded by email, or hand-delivered.

## 17 ASSIGNATION

- 17.1** The Company reserves the right to assign or sub-contract any or all of our rights and obligations under this Agreement without your further consent to such assignment or sub-contract.
- 17.2** 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.

## 18 TELEPHONE NUMBERS

- 18.1** The Customer shall not acquire any title or interest in any telephone numbers allocated by the Company and shall not be entitled to sell or transfer such numbers without the Company's prior written consent.
- 18.2** The Company shall comply with its obligations under the General Conditions and other relevant regulatory instructions in relation to telephone numbers. Please note however that the porting of telephone numbers does not form part of this Service.

- 18.3** Subject to the Company using its reasonable endeavours to provide the Customer with reasonable prior notice, the Company shall be entitled to modify or withdraw any telephone numbers allocated to the Customer or introduce additional codes if this is required for regulatory, operational or technical reasons.

- 18.4** If you do not use a telephone number for a period of 12 months or more, the Company shall be entitled to withdraw your right to use said number by providing you with 30 days prior notice.

## 19 PROPRIETARY RIGHTS

- 19.1** All title, interests, and rights (including intellectual property rights) in the Service 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 tradename.
- 19.2** Title and related rights in any content accessed through the Service are the property of the applicable content owner and are protected by applicable law. The Agreement does not give the Customer any interests or rights in such content.

## 20 CONFIDENTIAL INFORMATION

- 20.1** Each party shall keep confidential and shall not, without the other party's prior written consent, copy or disclose to any third party any Confidential Information acquired from the other party or otherwise made available to such party pursuant to this Agreement and such Confidential Information shall be used only for the purposes of this Agreement, provided however that nothing shall prevent either party from disclosing any Confidential Information which is:
- 20.1.1** in its possession prior to receiving it from the other party; or
  - 20.1.2** is or becomes public knowledge other than as a result of breach of this Clause 20; or
  - 20.1.3** is received independently from a third party with the full right to disclose; or
  - 20.1.4** is required to be disclosed by law.
- 20.2** Each party shall, be entitled to disclose the Confidential Information to such of its employees, agents, directors or other authorised representatives who have a need to know such Confidential Information for the purposes of performing any obligations under this Agreement, provided that either party shall procure that such persons accept confidentiality undertakings on no less onerous terms than those set out in Clause 20.1 above.
- 20.3** Each party shall obtain the prior written approval of the other, such approval not to be unreasonably withheld or delayed in relation to the content of any news releases, articles, brochures, advertisements or other information releases relating to this Agreement.

## 21 AMENDMENT OF THESE CONDITIONS

- 21.1** If you are a Business Customer, we reserve the right to add to and/or amend the Conditions at any time. If we amend these Conditions, we will notify you by sending you a letter or email advising of the amendment thirty (30) days before the amendment is to take effect. If you continue to use the Service after any amendments to these Conditions have been notified to you, you will be deemed to have accepted such amendments.
- 21.2** If you are a Consumer, we reserve the right to add to and/or amend the Conditions at any time. If we amend these Conditions, we will send you a letter or email advising of the amendment at least one calendar month (which for the avoidance of doubt shall mean thirty (30) days) before the amendment is to take effect. If unhappy with any such amendment, you may end your use of the Service by sending us an email to: [broadbandvoice@demon.net](mailto:broadbandvoice@demon.net) 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 Conditions have been notified to you and after the thirty (30) day period has expired, you will be deemed to have accepted such amendments.

## 22 ENTIRE AGREEMENT

- 22.1** This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and other than in relation to any fraudulent misrepresentations supersedes all other agreements and representations made by either party whether oral or written.
- 22.2** Except as provided otherwise in these Conditions, for example without limitation in Clause 2.3 or Clause 21, any amendment to the Agreement shall be in writing and signed by a duly authorised representative of each party.

## 23 NO WAIVER

- 23.1** 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.
- 23.2** 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.

## 24 LAW AND ARBITRATION

- 24.1** The 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.
- 24.2** 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 14 days through direct negotiation the parties will attempt to resolve the matter through the Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution. If the matter has not been resolved by an ADR procedure within 30 days, or if either party will not participate in an ADR procedure within such thirty day period, the dispute shall be referred to litigation in accordance with Clause 24.1. Notwithstanding the foregoing it is acknowledged and agreed that either party shall be entitled to seek injunctive relief in any court of competent jurisdiction if the other party is in breach of any of the terms hereof.

**25 RIGHTS OF THIRD PARTIES**

- 25.1** 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.

**26 GENERAL CONDITIONS**

- 26.1** The rights and remedies provided by this Agreement are exclusive and not cumulative and exclude 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.
- 26.2** 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.
- 26.3** If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

**27 SPECIAL OFFERS**

- 27.1** Where you enter this Agreement in accordance with a promotional offer, your Agreement may be subject to additional Special Conditions.
- 27.2** For the avoidance of doubt:
- 27.2.1** following the expiry of any promotional charges, the normal Charges (as detailed in your order Form) will apply from the date upon which the promotional charges expire;
- 27.2.2** following the expiry of any free trial period, the normal Charges (as detailed in your order Form) will apply from the date upon which the free trial period expired;
- 27.2.3** Special Conditions will only be applicable to your Agreement until expiry of the promotional period.