

Leased Line and Broadband Services Agreement

Customer Contract,
Pricing Schedule

Background

A The Customer wishes to purchase equipment and broadband or leased lines from FCC and FCC wishes to supply and install that equipment and supply the broadband or leased line, all subject to the terms of this Agreement.

THE PARTIES AGREE:

1 Definitions and interpretation

Definitions

Access Fee	means the fee payable by the Customer to FCC for access to the Service Provider;
Acceptable Use Policy	means the policy designed to allow FCC to regulate the Customer's use of the Broadband Service in accordance Clause 4.11 below;
ADSL Broadband Services	means broadband delivered over a conventional copper telephone line including where appropriate the addition of ADSL 2 and ADSL 2+ which are enhancements to the basic ADSL service and/or the provision of AnnexM which enables the broadband user to increase the speed of connection;
Act	means the Communications Act 2003 and any amendments to the Act from time to time or any subsequent substitution thereof;
Additional Charges	means charges which may be charged in addition to the Charges;
Billing Period	means the period of 1 month;
Broadband	means a failure of the Broadband Service to operate in accordance with its
Incidents	published specification;
Broadband Services	means the provision of either ADSL Broadband Services or Fibre Broadband Services;
Broadband Service Levels	means the levels of support relating to Broadband Incidents as identified in the Services Schedule;
Business Day	means a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London;
Charges	means the charges for the installation and use of the Services together with any charges for additional services and equipment supplied to the Customer by FCC in accordance with the Services Schedule;
Circuit	means a Leased Line circuit whether for the provision of Internet Leased

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	Line Services or Point to Point Leased Line Services;
Customer Provided Equipment	means any equipment already owned and provided by the Customer (not being Services Equipment) to enable the Customer to use the Services;
Confidential Information	means any and all confidential information (whether in oral, written or electronic form) given including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any associate, person, firm, or organisation associated with that party;
Early Termination Charges	means the remaining rental charge for the outstanding period of the Minimum Term as at the date of the notice of termination;
Fibre Broadband Services	means the provision of FTTC and/or FTTP;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including without limitation war, revolution, terrorism, riot or civil commotion, or precautions against any such; strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions. Force Majeure does not include, without limitation, inability to pay, mechanical difficulties, shortage or increase of price of raw materials, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party;
FTTC	means fibre to the cabinet which is the running of fibre optic cables from the telephone exchange or distribution point to the nearest street cabinet together with a conventional copper telephone line between the cabinet and the Customer's premises;
FTTP	means fibre to the premises which is end to end fibre optic connection from the telephone exchange to the Customer's premises;
Go Live Date	means the date on which FCC notifies the Customer or any authorised user of the Customer that the Service or part thereof is ready for use or, if earlier, the date on which the Customer or any authorised user of the Customer first makes use of the Service of part thereof;

Help Desk	means the telephone helpdesk described in the Services Schedule;
Incident Report	means notification of an Incident which is raised by FCC or by the Customer;
Installation	means the physical installation of Services Equipment at the Installation Location;
Installation Charge	means the charges payable for installation of Services Equipment and for the commissioning and configuration of the Services, as specified in the Services Schedule or as subsequently varied in accordance with the terms of this Agreement;
Installation Location	means the location (including any additional Sites) for the installation of the Services Equipment as detailed in the Services Schedule;
Internet Leased Line Services	means a dedicated, private, fixed capacity circuit delivered from the FCC Network to the Customer Site with Internet connectivity. These Services may share infrastructure with the FCC network and/or that of other Service Providers. Internet Leased Line Services are delivered as a fully managed service with 24/7 remote monitoring and management by FCC network operations;
Intellectual Property Rights	<p>means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, the right to sue for passing off, utility models, domain names and all similar rights and, in each case:</p> <ul style="list-style-type: none"> (a) whether registered or not, (b) including any applications to protect or register such rights, (c) including all renewals and extensions of such rights or applications, (d) whether vested, contingent or future and (e) wherever existing;
Leased Line	means a Circuit provided by FCC which will provide the Leased Line Services;
Leased Line Incident	means a failure of the Leased Line Service to operate in accordance with its published specification;
Leased Line Services	means the provision of either Internet Leased Line Services or Point to Point Leased Line Services;
Leased Line Service Levels	means the levels of support relating to Incidents as identified in the Services Schedule;
Point to Point Leased Line	means a dedicated, private, fixed capacity circuit delivered point to point

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Services	between Customer nominated sites. Point to Point Leased Line Services do not share infrastructure with the FCC network and will be delivered as a stand alone service which will not be monitored by FCC;
Rental	means the rental payable by the Customer to FCC for the provision of Services and the Services Equipment as specified in the Services Schedule or as increased or decreased by FCC in accordance with the terms of this Agreement;
Services	means the provision of the Leased Line Services and/or the Broadband Services together with any Services Equipment by FCC to the Customer as specified in the Services Schedule;
Service Credit	means reductions in certain charges or compensation payments in respect of FCC failing to meet specified Leased Line Service Levels calculated in the manner as set out in this Agreement;
Service Provider	means any third party who from whom FCC procures services in order to provide the Services under this Agreement;
Services Equipment	means any apparatus, equipment and cabling provided by FCC at a Site as an essential part of providing Services under the terms of this Agreement;
Site	means the Customer's additional premises to that of the Installation Location at which the Services Equipment is to be installed and the Service is to be provided;
Target Go Live Date	means the target date agreed between FCC and the Customer for the commencement of Services as set out in the Service Schedule or as subsequently revised by the Customer in accordance with the terms of this Agreement;
Termination of Service (Broadband Only)	Termination of Service (ToS) is charged regardless of whether a service is migrated to another supplier or ceases altogether. The £50 one off fee is in addition to any other applicable termination fees.
Trouble Ticket System	a method in which to raise queries or report an Incident to FCC in relation to the Services;
Unique Reference Number	reference number generated automatically on the Trouble Ticket System and allocated to an Incident when the Incident is entered on the Trouble Ticket System or notified to the Help Desk;
VAT	means United Kingdom value added tax and any other tax imposed in substitution for it;

1.1 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.1.1 the singular includes the plural and vice versa;
- 1.1.2 references to subclauses, clauses, Schedules or Appendices (if any) are to subclauses, clauses, Schedules or Appendices, and references to paragraphs are to paragraphs in a Schedule or in an Appendix of this Agreement;
- 1.1.3 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.1.4 'including' (or similar words) means including without limitation;
- 1.1.5 clause headings do not affect their interpretation;
- 1.1.6 references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof;

2 Duration

- 2.1 This Agreement shall continue from the Commencement Date for a minimum period as outlined in the summary contract (the "Minimum Term") and thereafter for further periods each equivalent to the Minimum Term until it is terminated:
 - 2.1.1 by either party giving the other not less than ninety calendar days written notice expiring at the end of the Minimum Term or at the end of any subsequent period as appropriate; or
 - 2.1.2 in accordance with clause 19 (Termination) of this Agreement.
- 2.2 In the event the Customer terminates this Agreement prior to the end of any Minimum Term (unless it is terminated in accordance clauses 2.1.1 or 19.1) FCC shall be entitled to invoice and charge the Customer:
 - 2.2.1 any Early Termination Charges;
 - 2.2.2 the replacement cost of the Services Equipment where the Customer fails to return the Services Equipment at all or undamaged and in good order (save for fair wear and tear) to FCC in accordance clause 8; and
 - 2.2.3 any additional charges which FCC have been charged by the Service Provider as a result of the early termination

the Customer shall pay any such invoices in accordance clause 7.3.

3 Leased Line Services

- 3.1 FCC will provide the Leased Line Services subject to compliance by the Customer with the terms of this Agreement.
- 3.2 FCC shall not be liable to supply the Leased Line Services until the Customer has returned to FCC a technical requirements document. Within 10 Business Days after receipt of the technical requirements document by FCC, FCC will confirm whether the Leased Lines Services requested can be supplied and upon the dates requested. Unless this document is returned the Leased Line Services cannot be provided and Services Equipment will not be ordered. This may lead to a delay in installation and supply of the Leased Line Services for which FCC will not be liable.

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- 3.3 FCC shall:
- 3.3.1 subject to the provisions of clause 3.4, FCC shall use reasonable endeavours to provide, install and connect any Services Equipment to the Leased Line Services for the Customer at the Installation Location prior to the Target Go Live Date on the agreed installation date in a reliable manner and in accordance with good industry practice; and
 - 3.3.2 connect the Leased Line to the Service Provider in order to provide the Leased Line Services.
- 3.4 FCC shall not be liable for any delay in or failure of performance caused by:
- 3.4.1 the Customer's failure to: (i) make the Installation Location available, (ii) prepare the Installation Location in accordance with FCC's instructions or (iii) provide FCC with adequate instructions for performance or delivery or otherwise relating to the Services Equipment or Leased Line;
 - 3.4.2 Force Majeure
- 3.5 All dates for installation and connection to the Service Provider are however estimates only and FCC shall not be liable for any failure to meet any date.
- 3.6 FCC does not warrant that the provision of the Leased Line Services will be fault free. Any fault shall be investigated and repaired in accordance with the Leased Line Service Levels.
- 3.7 FCC shall not be liable for any fault or loss of Leased Line Services arising as a result of incorrect information provided by the Customer to FCC.
- 3.8 Any request by the Customer for an upgrade or downgrade in Leased Line Services to be provided will be considered upon acceptance of this change in writing by FCC to be an amendment of this Agreement.
- 3.9 FCC shall provide the Leased Line Services to the Customer in accordance with the Leased Line Service Levels. FCC shall have the right to make any changes to the Leased Line Service Levels which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Leased Line Service Levels, and FCC shall notify the Customer in any such event

4 Broadband Services

- 4.1 FCC will provide the Broadband Services subject to compliance by the Customer with the terms of this Agreement.
- 4.2 FCC shall not be liable to supply the Broadband Services until the Customer has returned to FCC a Broadband technical requirements document. Within 10 Business Days after receipt of the Broadband technical requirements document by FCC, FCC will confirm whether the Broadband Services requested can be supplied and upon the dates requested. Unless this document is returned the Broadband Services cannot be provided and Services Equipment will not be ordered. This may lead to a delay in installation and supply of the Broadband Services for which FCC will not be liable.
- 4.3 FCC shall:
- 4.3.1 subject to the provisions of clause 4.4, FCC shall use reasonable endeavours to provide, install and connect any Services Equipment to the Broadband Services for the Customer at the Installation Location prior to the Target Go Live Date on the agreed installation date in a reliable manner and in accordance with good industry practice; and

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- 4.3.2 connect the Customer to the Service Provider in order to provide the Broadband Services.
- 4.4 FCC shall not be liable for any delay in or failure of performance caused by:
 - 4.4.1 the Customer's failure to: (i) make the Installation Location available, (ii) prepare the Installation Location in accordance with FCC's instructions or (iii) provide FCC with adequate instructions for performance or delivery or otherwise relating to the Services Equipment or Leased Line;
 - 4.4.2 Force Majeure
- 4.5 All dates for installation and connection to the Service Provider are however estimates only and FCC shall not be liable for any failure to meet any date.
- 4.6 FCC does not warrant that the provision of the Broadband Services will be fault free. Any fault shall be investigated and repaired in accordance with the Broadband Service Levels.
- 4.7 The Customer acknowledges that, in respect of any broadband speeds, any speeds quoted by FCC are approximate only and that the level of service that can be obtained by the Customer will be dependent on factors outside the control of FCC including but not limited to the geographical proximity of the Customer to the local exchange and the quality of the infrastructure serving the Customer's premises.
- 4.8 FCC shall not be liable for any fault or loss of Broadband Services arising as a result of incorrect information provided by the Customer to FCC.
- 4.9 Any request by the Customer for an upgrade or downgrade in Broadband Services to be provided will be considered upon acceptance of this change in writing by FCC to be an amendment of this Agreement.
- 4.10 FCC operates an Acceptable Use Policy in relation to the supply of Broadband to Customers. A very small percentage of customers can have a disproportionate effect on the cost of delivering the Broadband Service. The policy is designed to protect the level and quality of the Broadband Service that FCC offers to all of its customers. The acceptable use level is 500 GB. For the avoidance of doubt:
 - 4.10.1 FCC will not automatically suspend or terminate the Broadband Service if this limit is exceeded;
 - 4.10.2 FCC will highlight on a monthly basis the customers who exceed the 500GB limit to the relevant Service Provider who may want to investigate the excessive use as this may be linked to a hardware or network configuration issue. In the event no issue is identified by the Service Provider, **and the limit is exceeded on a regular basis**, FCC reserve the right to identify a more suitable Broadband Service for the Customer. Where FCC is unable to identify a suitable alternative broadband service or the Customer refuses to accept the suggested alternative, FCC reserves the right to restrict, suspend or terminate the Customer's access to the Broadband Service at its discretion.
- 4.11 FCC shall provide the Broadband Services to the Customer in accordance with the Broadband Service Levels. FCC shall have the right to make any changes to the Broadband Service Levels which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Broadband Service Levels, and FCC shall notify the Customer in any such event

5 Service Credits for Leased Line Services

- 5.1 FCC shall have the right to make any changes to the Leased Line Service Levels which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Leased Line Service Levels, and FCC shall notify the Customer in any such event.
- 5.2 In the event FCC fails to deliver the Leased Line Service by midnight on the Target Go Live Date, the Customer will be entitled to the following Service Credits:

No. of working days beyond Target Go Live Date	Percentage of Installation Charge for the Circuit to be credited to the Customer
1 – 10	5%
11 – 15	10%
16 – 20	15%
More than 20	20%

- 5.3 The maximum level of Service Credit the Customer may receive for delay in going live is 20% of the Installation Charge for the Circuit.
- 5.4 In the event that the Go Live Date of a Leased Line Service is delayed by more than sixty (60) days after the Target Go Live Date and it cannot be demonstrated that the delay is caused by circumstances beyond FCC's reasonable control, then in addition to the compensation set out in clause 5.2, the Customer shall have the right to terminate the Leased Line Service with immediate effect. The compensation and the right to terminate the Leased Line Service in the circumstances set out herein shall comprise the Customer's sole remedy in respect of such a delay of the Target Go Live Date.
- 5.5 FCC will clear Incidents which have been submitted by the Customer in accordance with the Leased Line Service Levels. Each Leased Line Incident will be assigned a Unique Reference Number.
- 5.6 Repair times for faults which are not covered by the Leased Line Service Levels will be agreed on a case by case basis. No Service Credits shall be payable for failure to repair faults which are not covered by the Leased Line Service Levels and which are not repaired within the target repair time, as defined in the Services Schedule.
- 5.7 FCC will provide Service Credits to the Customer for time that the Leased Line Services is unavailable as follows:

Measurement	Discount on Service monthly rental charge
Each hour or part of hour beyond the target threshold	10% of the monthly Rental

- 5.8 The maximum level of Service Credits the Customer can receive in relation to the Leased Line Services being unavailable in any month is an amount equal to 100% of the monthly Rental for that particular month in which the failure(s) occurred. The maximum aggregate amount of Service Credits the Customer may receive in any 12 month cycle is 35% of the annual Rental. The first 12

month cycle will commence on the Go Live Date and a new cycle shall commence on each anniversary thereafter.

- 5.9 Service Credits payable to the Customer in accordance clause 5.2 will be shown as a deduction from the Installation Charge on FCC's invoice relating to the Installation Charge.
- 5.10 Service Credits payable to the Customer in accordance clause 5.7 will be credited on the invoice for Rental in the following Billing Period unless the Agreement is terminated in which case a specific payment to the Customer will be made.
- 5.11 FCC may offset all or part of any such amounts against any outstanding amounts due from the Customer for the Leased Line Service which has not been paid except where these amounts may be in dispute.
- 5.12 Service credits will not be provided where the Leased Line Incident relates to:
 - 5.12.1 planned or emergency service outages;
 - 5.12.2 downtime resulting from any breach of this Agreement or any acts or omissions by the Customer or any user authorised by the Customer;
 - 5.12.3 any failure or defect of the Customer's own network or equipment or any other network or equipment outside FCC's Network; or
 - 5.12.4 FCC suspending the Leased Line Services or any part of it in accordance with this Agreement; or
 - 5.12.5 FCC being unable to carry out any necessary work at the Customer's Installation Location or Site due to:
 - (a) Force Majeure;
 - (b) FCC being unable to gain access to the Installation Location or Site;
 - (c) The Customer cancelling an appointment date; or
 - (d) The work is aborted.
 - 5.12.6 the delay of the Target Go Live Date as a result of the parties agreeing a new timescale for performance of the Leased Line Service;
 - 5.12.7 the delay in the provision of the Services which is as a result of the Customer or any authorised user of the Customer failing to provide to FCC with any reasonable assistance or information which is reasonably requested by FCC;
 - 5.12.8 FCC being unable (through no fault of its own), to obtain any necessary permissions or consents required in connection with the performance of a particular service level;
 - 5.12.9 the failure is due to a Force Majeure event;
 - 5.12.10 inaccurate information for the Leased Line Services being submitted by the Customer; or
 - 5.12.11 the fault not being reported in accordance with Incident reporting requirements contained in the Service Schedule for Point to Point Leased Line Services.
- 5.13 The Customer agrees that Service Credits represent a reasonable assessment of any loss and damage incurred by the Customer in consequence of any faults with the Leased Line Service and

that no other remedy will be available to the Customer or required by the Customer for such loss or damage.

6 Customer obligations

6.1 The Customer shall:

- 6.1.1 provide accurate and complete information to FCC to enable FCC to perform the Services.
- 6.1.2 provide or procure for FCC and/or FCC personnel reasonable access to premises and facilities at the locations for delivery and installation of the Services Equipment;
- 6.1.3 provide or procure for FCC and/or FCC personnel reasonable access to and cooperation by Customer personnel and those of its third party representatives (if any);
- 6.1.4 ensure that reasonable precautions shall be in place to protect the health and safety of FCC personnel while at the Installation Location;
- 6.1.5 ensure that the Services Equipment is used in a normal and proper manner;
- 6.1.6 ensure any Customer Provided Equipment to be connected to the Service is technically compatible for the provision of the Services and will not harm FCC's network, the Service or Service Equipment or any third party's network or equipment;
- 6.1.7 ensure that it follows the reasonable instructions provided by FCC in relation to the use, operation of the Services Equipment and Services;
- 6.1.8 obtain and maintain all necessary licences, permissions and consents which may be required to enable FCC to perform the Services;
- 6.1.9 respond promptly from time to time to the reasonable requests of FCC for relevant information, instructions and assistance

in each case as reasonably necessary for FCC to perform its obligations under this Agreement.

6.2 The Customer shall be responsible for the safe keeping and safe and proper use of the Services and any related equipment after installation of the Services and the Customer undertakes in particular:

- 6.2.1 not to cause any attachments other than those approved for connection by FCC to be connected to any Service Equipment;
- 6.2.2 not to contravene the Act or any other relevant regulations or licences;
- 6.2.3 not to allow any unauthorised access to the Services Equipment or the Services.

6.3 The Customer hereby agrees that any Customer Provided Equipment shall at all times conform to the standard or standards (if any) for the time being designated under the Act and FCC shall not be under any obligation to connect or keep connected any Customer Provided Equipment if it does not comply or if in the reasonable opinion of FCC it is likely to cause death, personal injury, damage or to impair the quality of any Services provided by FCC.

6.4 The Customer shall prepare the Installation Location in accordance with FCC's instructions and provide proper environmental and operational conditions for the Services Equipment prior to delivery. The Customer shall be responsible for:

- 6.4.1 any costs relating to the preparation of the Installation Location; and

- 6.4.2 any costs relating to the making good of the Installation Location including replacing and re-sitting items and decoration.
- 6.5 If FCC's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
 - 6.5.1 FCC shall without limiting its other rights or remedies have the right to suspend the performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays FCC's performance of any of its obligations;
 - 6.5.2 FCC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from FCC's failure or delay to perform any of its obligations as set out in this clause 6.3; and
 - 6.5.3 the Customer shall reimburse FCC on written demand for any costs or losses sustained or incurred by FCC arising directly or indirectly from the Customer Default.
- 7 Charges**
 - 7.1 In consideration of FCC providing the Services in accordance with this Agreement, the Customer will pay to FCC:
 - 7.1.1 the Installation Charge which shall be invoiced in the first Billing Period commencing with the Go Live Date;
 - 7.1.2 the Rental in accordance with the Service Schedule and which shall be invoiced monthly in advance commencing from the Go Live Date; and
 - 7.1.3 any Additional Charges.
 - 7.2 All amounts due under this Agreement are exclusive of VAT, sales or other tax applicable which shall be paid in addition by the Customer at the rate and in the manner for the time being prescribed by law.
 - 7.3 The Customer shall pay all invoices:
 - 7.3.1 in full without deduction or set-off, in cleared funds within 14 days of the date of each invoice; and
 - 7.3.2 to the bank account nominated by FCC.
 - 7.4 Time of payment is of the essence. Where sums due under this Agreement are not paid in full by the due date:
 - 7.4.1 FCC may, without limiting its other rights, charge interest on such sums at 3% a year above the base rate of Lloyds Bank from time to time in force, and
 - 7.4.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
 - 7.5 FCC may increase its charges at any time by giving the Customer not less than 30 Business Days' notice in writing provided that the increase does not exceed 10% of the charges in effect immediately prior to the increase.

- 7.6 Where there is a delay in the Go Live Date as a result of the Customer Default (as defined in Clause 6.5) or the Customer's request, FCC shall still be entitled to invoice the Customer for the first month of Rental and the Installation Charge, which shall be payable no later than the new Target Go Live Date which has been agreed in writing between the parties.
- 7.7 Any charges levied against FCC by a Service Provider as a result of the Customer's or a Customer's authorised user's use of the Services shall be charged to the Customer on a cost plus basis (adding 15%).
- 7.8 With effect from 01 April each year, FCC will increase the Access Fee. Such increase will be in line with the Retail Price Index rate published in January of the relevant year. The rate increase will be published on FCC's website and FCC shall provide the Customer with not less than 30 Business Days' notice in writing of the proposed increase.

8 Services Equipment

- 8.1 All Services Equipment supplied by FCC remains the property of FCC and must be made available for collection on the expiry or termination of this Agreement.
- 8.2 The Customer is responsible for the Services Equipment and agrees to take reasonable steps to ensure that nobody (other than someone authorised by FCC) adds to, modifies or in any way interferes with it. The Customer will be liable to FCC for any loss of or damage to the Service Equipment, except where such loss or damage is due to fair wear and tear or is caused by FCC, or anyone acting on FCC's behalf.

9 Moving Site

- 9.1 If the Customer is moving from the Installation Location or any Site:
- 9.1.1 the Customer may not remove the Services Equipment from the Installation Location without FCC's prior written consent. Such consent not to be unreasonably withheld;
 - 9.1.2 the Customer must inform FCC as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Customer's Services and Services Equipment.
- 9.2 If the Customer leaves the Services Equipment at the Site for the new occupier, the Customer is required to inform the new occupier that the relevant Services will be discontinued if FCC is not contacted by the new occupier within seventy-two hours for the purpose of entering into a new contract with FCC for such services and subject in any event to the agreement of such a contract.
- 9.3 The Customer must allow FCC access to the Installation Location and/or Sites before the Customer vacates the premises to enable FCC to collect the Services Equipment. In the event the Customer fails to allow FCC access to the Installation Location and/or Sites, the Customer will be liable to pay to FCC the replacement cost of the Services Equipment.

10 Software

- 10.1 Where FCC provides software to the Customer to enable the Customer to use the Services ("Software"), FCC will grant the Customer a non-exclusive, non-transferable licence to use the Software solely for the term and purposes of this Agreement (and to extent necessary to use the relevant Services). If required by FCC, the Customer shall sign such end user licence agreement as may be reasonably required by the owner of the copyright in the Software to protect the owner's interest in that Software and for the Customer to be able to use the Software.

- 10.2 Except as permitted by applicable law or as expressly permitted under the Contract the Customer shall not de-compile reverse-engineer or modify the Software, or copy the relevant manuals or documentation

11 Limits on liability

- 11.1 Nothing in this Agreement shall operate to exclude or limit either party's liability for:

11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

11.1.2 fraud or fraudulent misrepresentation;

11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

11.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

- 11.2 Subject to clause 11:

11.2.1 FCC shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), for misrepresentation (whether innocent or negligent), for breach of statutory duty, or otherwise, for any loss of profit, business opportunity, goodwill, data, anticipated savings or any special, indirect or consequential loss arising under or in connection with this Agreement even if foreseeable or if FCC has been advised of the possibility of such damage; and

11.2.2 FCC's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total Charges due under this Agreement during the 12-month period immediately preceding the date on which the cause of action first arose.

- 11.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

- 11.4 This clause 11 shall survive termination of the Agreement.

12 Warranty

- 12.1 FCC represents and warrants to the Customer that:

12.1.1 the Services shall be performed:

- (a) by an appropriate number of suitably qualified and experienced personnel;
- (b) using all reasonable skill and care; and
- (c) in accordance with all applicable laws and regulations in force from time to time.

12.1.2 FCC has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, this Agreement.

- 12.2 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.

13 Packet Guarantee for Leased Line Services

- 13.1 FCC's aim is to successfully deliver packets through FCC's IP network with such packets meeting or exceeding 99% between FCC's designated IP backbone paths for Leased Line Services. Unsuccessful packets are deemed to be those dropped due to transmission errors or router overload.
- 13.2 The measurement of successful delivery consists of 50 100-byte pings sent every 15 minutes. A daily average will be calculated using these 96 samples. The daily measurements will be averaged to calculate a monthly average.
- 13.3 In the event FCC fails to meet or exceed 99% successful delivery of packets between FCC's designated IP backbone paths for Leased Line Services in two consecutive calendar months, the Customer will be entitled to a one (1) day prorated credit of the Rental for the second month and an additional one (1) day prorated credit for any consecutive month in which the Packet Guarantee is not met.
- 13.4 To receive the credit the Client must contact FCC's customer service group within 30 days of the end of the month for which credit is requested. Credits will be paid to the Client in terms of clause 5.10.

14 Latency Level Guarantee for Leased Line Services

- 14.1 The FCC Latency Level Guarantee is based on an average round-trip transmission between FCC's designated backbone POPs for FCC's services. Latency shall be measured by FCC averaging sample measurements taken during a calendar month between such backbone POPs. The measurement consists of 50 100-byte pings sent every 15 minutes. A daily average will be calculated using these 96 samples. The daily measurements will be averaged to calculate a monthly average
- 14.2 In the event Latency of 50ms or less occurs in two consecutive calendar months the Customer will be entitled to a one (1) day prorated credit of the Rental for the second month and an additional one (1) day prorated credit for any consecutive month in which the Packet Guarantee is not met.
- 14.3 To receive the credit the Client must contact FCC's customer service group within 30 days of the end of the month for which credit is requested. Credits will be paid to the Client in terms of clause 5.10.

15 Intellectual Property Rights

- 15.1 Unless otherwise expressly agreed in this Agreement, no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement. Subject to any other terms expressly agreed by the parties, each party grants the other a license of such of its Intellectual Property Rights as are necessary to enable the other party to fulfil its obligations under this Agreement or make use of the Services Equipment supplied under this Agreement but not otherwise.
- 15.2 Each party shall be entitled to use in any way it deems fit any skills, techniques or know how acquired or developed or used in performance of this Agreement provided always that such skills, techniques or know how do not infringe the other party's Intellectual Property Rights or disclose or breach the confidentiality of the other party's Confidential Information.

16 Entire agreement

- 16.1 This Agreement contains the whole agreement between the parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference in this Agreement. Each party acknowledges that it has not relied on, and shall have no remedy in respect of, any representation (whether innocent or

negligent) made but not expressly embodied in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.

17 Force Majeure

- 17.1 A party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure, provided that it promptly notifies the other of the Force Majeure event and its expected duration, and uses reasonable endeavours to minimise the effects of that event.
- 17.2 If, due to Force Majeure, a party is unable to perform a material obligation, or is delayed in or prevented from performing its obligations for a continuous period of more than 90 days, the other party may, within a further ten days terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect.

18 Suspension of Services

- 18.1 FCC may without terminating this Agreement, suspend the Services if any of the following apply:
- 18.1.1 FCC believes or has been advised of technical problems or safety problems;
 - 18.1.2 FCC believes it necessary in order to prevent fraud taking place;
 - 18.1.3 FCC has been ordered to comply with an instruction or request from a Government agency, emergency service organisation or other competent administrative or regulatory body;
 - 18.1.4 there is a need to maintain or upgrade the FCC network at the Installation Location;
 - 18.1.5 the Customer's total charges incurred are more than the Customer's agreed credit limit (where one has been agreed).
- 18.2 FCC will use reasonable endeavours to provide the Customer with as much notice as possible of the suspension and to maintain the suspension for as short a period as is reasonably possible. However, the Customer acknowledges and agrees that in certain circumstances it may not be possible to provide notice of the suspension.
- 18.3 If suspension occurs for technical reasons or to prevent fraud and that suspension lasts for more than 24 hours, the Customer will receive a pro-rata credit against the Rental for the period of the suspension.
- 18.4 If the Customer fails to pay a sum due under the terms of the Agreement then FCC reserves the right to suspend the Services and levy an administration fee of £50 for lifting such a suspension.

19 Termination

- 19.1 Either party may, without prejudice to its other rights and remedies, by notice in writing to the other party, immediately terminate this Agreement if the other:
- 19.1.1 is in material or persistent breach of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
 - 19.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or

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arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.

19.2 FCC may without prejudice to its other rights and remedies, by notice in writing to Customer, immediately terminate this Agreement if:

- 19.2.1 the Customer fails to pay any sum due under the terms of this Agreement and such sum remains unpaid for 14 days after written notice from FCC that such sum has not been paid;
- 19.2.2 any licence or agreement under which FCC or the Customer has the right to run the Services and in the case of the Customer connect it to the FCC system is revoked, amended or otherwise ceases to be valid;
- 19.2.3 the Customer is suspected, in the reasonable opinion of FCC, of involvement with fraud or attempted fraud in connection with use of the Services or this Agreement;
- 19.2.4 FCC are instructed by OFCOM or any other competent legal or regulatory authority to stop providing the Services to the Customer.

19.3 In the event of termination of this Agreement for any reason:

- 19.3.1 the Customer will immediately pay all monies then outstanding;
- 19.3.2 the customer will immediately cease use of the Services Equipment and Services;
- 19.3.3 allow FCC access to the Sites and Installation Location to remove the Services Equipment. In the event FCC are denied access, FCC shall be entitled to recover the cost of the Services Equipment from the Customer;
- 19.3.4 FCC will be entitled to recover from the Customer any charges incurred by FCC as a result of third party termination or disconnection costs, as applicable;
- 19.3.5 each party shall within seven days of such termination return (or, at the other party's option, destroy) all the other party's Confidential Information in its possession or under its control and all copies of such information;
- 19.3.6 the accrued rights and liabilities of the parties will not be affected; and
- 19.3.7 clauses which expressly or by implication are to survive termination will do so.

20 Notices

20.1 Notices under this Agreement must be in writing and sent to the other party's registered office (or such other applicable address for service agreed by the parties from time to time in writing). Notices may be given, and will be deemed received if correctly addressed:

- 20.1.1 by first-class post: two Business Days after posting;
- 20.1.2 by airmail: seven Business Days after posting;
- 20.1.3 by hand: on delivery;
- 20.1.4 by facsimile: on receipt of a successful transmission report from the correct number, and
- 20.1.5 by email: on receipt of a read return mail from the correct address within 24 hours from delivery if no notice of delivery failure is received.

21 Confidential Information

- 21.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.
- 21.2 Each party undertakes to:
- 21.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors (including FCC personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and
 - 21.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.
- 21.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 21.4 The provisions of this clause shall not apply to information which:
- 21.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - 21.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
 - 21.4.3 is independently developed by the recipient, without access to or use of such information; or
 - 21.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 21.5 The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of five years thereafter.

22 General

- 22.1 Except for the payments specifically agreed in this Agreement, each party is responsible for its legal and other costs in relation to the preparation and performance of this Agreement.
- 22.2 Provisions which by their terms or intent are to survive termination of this Agreement will do so.
- 22.3 The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.
- 22.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. However, this does not affect any rights or remedy of such a person that exists or is available apart from that Act.
- 22.5 FCC may freely assign, delegate, sub-contract or otherwise transfer its rights and obligations under this Agreement or to any company with which it may merge or to any company to which it may transfer its assets and undertaking, provided that it gives prior written notice to the Customer. The Customer may not assign, subcontract or encumber any right or obligation under this Agreement

without the prior written consent of FCC (such consent not to be unreasonably withheld or delayed).

- 22.6 No amendment or variation of this Agreement will be valid unless agreed in writing by an authorised signatory of each party.
- 22.7 If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced), the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable, and the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.
- 22.8 Unless otherwise expressly agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 22.9 All payments under this Agreement will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction.
- 22.10 The amounts due under this Agreement shall not change except as mutually agreed by the parties.
- 22.11 Each party will, at its own cost, do all further acts and execute all further documents necessary to give effect to this Agreement.

23 Governing law and jurisdiction

- 23.1 This **Agreement** and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 23.2 The parties irrevocably agree that the courts of England and Wales shall have **exclusive** jurisdiction to settle any dispute or claim arising out of, or in connection with, this **Agreement**, its subject matter or formation (including non-contractual disputes or claims).

24 Data Processing Schedule

- 24.1 Each party shall comply with its respective obligations, and may exercise its respective rights and remedies, under the Data Processing Schedule.

Service Levels for Broadband

For the reporting of faults BT will acknowledge receipt of a fault report logged by FCC and BT will clear the fault within 40 clock hours of receipt of the fault report, excluding any allowable parked time. For engineering visits by BT to a Site (customer or end user premises or BT exchange), it operates between 0800-1800 Monday to Saturday (excluding Regional Public and Bank Holidays).

Service Levels for Leased Lines

1) Help Desk Support

During the hours of Service specified in paragraph 2, FCC will provide a client service and administration telephone help desk facility (“**Help Desk**”) for the benefit of the Customer. FCC shall accept calls for English language telephone support in connection with orders and Incidents during the hours of Service specified in paragraph 2 of this Schedule. For the avoidance of doubt, FCC shall be under no obligation to provide any technical assistance to the Customer’s users or additional users.

2) Hours of Service

Office Hours

The Helpdesk will be available to receive calls for English language telephone Support (Second Level Support) between 8am – 6pm Monday – Friday excluding Bank Holidays. Proactive notifications for both support and provide activities will occur during these hours.

Out of Hours

Outside Normal Business Hours, no proactive updates will be supplied via the Trouble Ticket System on Standard Care Products. Outside Normal Business Hours support is only available for response to new and open Enhanced and Premium Care Incidents that are raised via the Portal or by a call into the support team. Enhanced and Premium Care Incidents should be raised in accordance with the CSP.

3) Scheduled and Emergency Maintenance

FCC may interrupt the Service to maintain, update or enhance software Equipment or other aspects of the Service and/or the FCC Network (“Maintenance Events”).

FCC will, where possible, give the Customer a minimum of 5 Business Days advance notice of such events, and where possible will schedule Maintenance Events so as to cause minimum interruption of the Service.

For the avoidance of doubt, it may not be possible to give such notice where interruption to the Service is necessary to deal with Incidents occurring in connection with the Service.

From time to time FCC may interrupt the Service to carry out emergency maintenance to the FCC Network in order to maintain appropriate levels of service quality and to provide where possible minimum impact to the Service.

FCC shall use reasonable endeavours to ensure that:

- scheduled Maintenance Events will not exceed 3 hours in any calendar month;
- emergency Maintenance Events will not exceed 3 hours in any calendar month.

Provided That the Customer accepts that it may not be possible for FCC to provide the Customer with advanced notification of emergency Maintenance Events.

Any Maintenance Events which occur during Normal Business Hours, and which were not requested by the Customer, shall be considered downtime for the purpose of service availability measurement set out in Clause 5.8 of the agreement.

4) Incident Reporting

4.1 FCC shall supply monitoring and management of Internet Leased Line Services 24 hours a day 7 days a week together with pre-emptive Incident reporting to the Customer whenever reasonably possible. In the event that any Incident is experienced by the Customer that it has not been identified

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by FCC, the Customer must submit an Incident Report to the Help Desk by telephone or via the Trouble Ticket System.

4.2 For Point to Point Leased Line Services paragraph 4.1 of this Schedule does not apply and the Customer will be responsible for the submission of Incident Reports to FCC.

4.3 All Incident Reports submitted by the Customer must provide a complete description of the Incident and any information reasonably requested by FCC.

4.4 The Help Desk will allocate a Unique Reference Number to identify an Incident after first line diagnostics have been performed as an initial assessment of the cause of an Incident. The Help Desk will require the Customer to conduct first line diagnostics with any of its Users where appropriate.

4.5 After allocation of a Unique Reference Number, all corresponding communications made by the Customer to the Help Desk must include that Number. Updates to the Trouble Ticket System will be made via the Help Desk in accordance with the guidelines within the Operations Manual.

4.6 If the Customer reports any Incident via the Trouble Ticket System outside of Normal Business Hours, the Customer must place a follow up call to the Help Desk in order to notify the FCC engineer of the nature of the Incident.

5) Incident Report Priority Levels

FCC shall assign a Priority Level to any Incident reported to the Customer in accordance with the Incident Classification Matrix in paragraph 8 of this Schedule.

6) Incident Response Timescales

FCC shall use best endeavours to assign an Incident to an appropriate FCC engineer within 30 minutes of the generation or receipt of an Incident Report for no less than 95% of Incidents properly submitted to FCC by the Customer in accordance with paragraph 4.1 of this Schedule.

FCC shall use best endeavours to make an update on an Incident available to the Customer via the Trouble Ticket System within the response times specified in paragraph 8 of this Schedule.

7) Incident Resolution Targets

FCC shall use reasonable endeavours to clear Incidents within the time scales specified within the Incident classification matrix set out in paragraph 8 below.

8) Incident Classification Matrix

The Incident classification matrix set out below outlines the description, resolution and scheduled updates frequencies for the associated Incident priorities.

Priority Level	Description	Target Resolution Time	Response Time
High	Total loss of Service resulting from a single event. User has total loss of Service/product or degraded beyond usable limits. Degraded Service. E.g. Errors, packet loss to router interface, Inability to transmit/receive where Business operations are severely impacted	5 hours- Ethernet#* 7 hours for Other services**# *	½ hour followed by updates each hour
Medium	Partial loss of Service or degradation of Service, resulting from one event. Partial loss where Service is intermittent or slow throughput. Dribbling errors; packet loss less than 25%; slow throughput;	24 hours *	4 hours
Low	Service Enhancement* that requires a change to the existing Service and/or FCC Network components that will facilitate Service. (*Service Enhancements exclude speed upgrades which are considered on a case-by-case basis and the FCC shall endeavour to resolve such requests within 10 Business Days) Service requests or changes etc	3 Business Days*	

**** Other services are Etherway Copper, Superfast GEA, EFM.**

time for resolution is extended to 15 hours if it is the result of a Fibre break.

*Virgin Media is 6 hours target resolution time on total loss of service and best endeavours for degraded service or all other.

The Customer understands and accepts that it may be necessary to extend the timescales in the Incident classification matrix above due to the complexity of the Incident or where FCC is dependent on a third party for resolution of the Incident. In such circumstances, FCC shall use reasonable endeavours to eliminate or reduce the impact of the Incident on the Service by provision of a workaround, with permanent correction to follow.

9) Clearance of Incidents

FCC will clear an Incident reported to FCC by the Customer in accordance with this Agreement and the Customer Service Plan and an Incident Report will be considered to have been cleared where either:

- a) it is corrected by FCC (including the provision of a temporary fix); or
- b) FCC has investigated the Incident and FCC's initial fault diagnostic testing indicates that the Incident is not found and/or is not the fault of FCC

and this has been confirmed by FCC to the Customer.

10) Escalation Process

FCC will provide an escalation process where an Incident is understood as a clear request for the support of a higher technical or management level in order to clear the Incident. If the Incident is considered to be not progressing in a satisfactory manner or if it is foreseen that the targeted time to repair will not be met, either Party may escalate the Incident in the manner set out in the Operations Manual.