

Broadband Agreement

Terms and Conditions

1. Definitions

1.1 In these conditions:

Accepted order: means an Order which has been accepted by the Company, acceptance being indicated by notice from the Company that the Service is to be provided.

Agreement: means any agreement made subject to these Conditions that shall incorporate these Conditions.

BT: means British Telecommunications PLC.

Company: means Futuretel Scotland Ltd of Suite 23, Ellismuir House, Ellismuir Way, Tannochside Park, Uddington, Scotland, G71 5PW. Company Number SC636000

Customer: means the person named overleaf.

Domain Name: means any name and appropriate classification and or geographic locator registered with an appropriate domain registry and converted to an Internet Address by means of a Domain Name Server (DNS).

Equipment: means any equipment owned by the Company and used in connection with the provision of a colocation service, or which is supplied by the Company for purchase by the Customer under an Accepted Order.

Initial Period: means, a period of 24 months.

Internet: means the global data network comprising interconnected networks using TCP/IP to which the Company's provider is connected in order to supply access to its Customers.

Internet Address: means such sequence of alpha numeric or numeric only characters as are used from time to time by the Customer to identify himself and or his computer or computers to other users of other computers to which the Company is from time to time connecting or otherwise forwarding data to and from the Customer.

ISP: means an Internet Service Provider.

Network Operator: means the legal entity or entities responsible for the operation of a communications network.

Password: means the alphanumeric characters chosen and used exclusively by the Customer at his own risk for the purpose of securing and maintaining the exclusivity of his access to the Company Service.

PDN: means the Public Data Network operated by a PTO as defined by the Telecommunications Act 1984.

Previously Paid Termination Charges: means any termination or settlement charges paid by the Supplier on behalf of the Customer to the Customer's previous broadband provider at any time before or after the Commencement Date.

PSTN: means the Public Switched Telephone Network operated by a PTO as defined by the Telecommunications Act 1984.

PTO: means a Public Telecommunications Operator as defined by the Telecommunications Act 1984.

Renewal Period: each successive 12-month period after the Initial Period for which this Agreement is renewed.

Service: means the Services described in the current Company literature together with such Value Added Services to be provided by the Company to the Customer but in any event include the provision of data network Services using TCP/IP. Representations made by the Company's employees or agents will not form part of this Agreement unless confirmed in writing by the Company prior to the purchase of this Service.

Service Commencement Date: means the date identified as the delivery date on the Company's first invoice to the Customer.

TCP/IP: is abbreviation for Transmission Control Protocol/Internet Protocol.

Usage/Usage Charges: means such charge for such predetermined unit of time and or volume of data together with any charges related to Value Added Services from time to time provided by the Company, in each case at the rates set out or referred to in the Company's published tariffs and or such as may be agreed in writing between the Customer and the Company. Unless stated otherwise, the monthly inclusive transfer is limited to either 100GB, 200GB, 500GB or 750GB dependent on the monthly package provided. Usage which exceeds the agreed allowance within the specified monthly package will be charged at the Company's standard rates of £1.50 + VAT per GB. All Usage Charges will be invoiced to the Customer monthly in arrears, and must be settled by Direct Debit.

User Name: means a sequence of alpha numeric characters as are used from time to time by the Customer to identify himself to other users of other computers to which the Company is from time to time connecting or otherwise forwarding data to and from the Customer.

Value Added Service: means non-core services, or in short, all services beyond standard voice calls and fax transmissions.

2. Usage

2.1 The Customer hereby agrees to: Accept and abide by the Futuretel Scotland Ltd Acceptable Use Policy as published on the Company website at www.futuretel.co.uk and as may from time to time be changed;

2.2 Refrain from transferring any illegal material (including but not limited to, material which may be deemed to be offensive, abusive, indecent, defamatory, obscene, menacing or in breach of copyright, privacy or other rights) to or from other users of the Service of the PDN and the other privately owned and operated Services to which the Company may from time to time provide access;

2.3 Refrain from sending menacing, offensive, abusive or annoying messages (commonly referred to as, but not exclusively, "spam" or Unsolicited Commercial Email (UCE), whilst using the Service via the Company or any other ISP;

2.4 Not divulge their Password to any third party and use all reasonable endeavours to keep the same confidential and inaccessible to third parties;

2.5 Keep the Company informed of any change to the Customer's address as set out overleaf and other such information as may affect the payment of charges due;

2.6 Immediately cease to use and return any Internet Address's allocated by the Company to the Customer on termination of this Agreement;

2.7 Not to announce by any means any and all Internet Address's allocated to or by the Customer by the Company as part of an autonomous system unless the addresses originate from inside the Company's network and the Customer has obtained permission from the Company to operate an autonomous system;

2.8 Not to use or permit the Usage of the Service in an unlawful manner or in contradiction of published legislation and regulations governing the Internet;

2.9 Include the above restrictions in all the Customer's on selling conditions using the Company's Service and not to resell a bandwidth greater than that purchased and contracted from the Company unless linked to the Internet through another provider in addition to the bandwidth provided by the Company (dual homed) when the restriction will apply at the aggregated data rate;

2.10 The Company reserves the right to restrict or block Internet traffic to or from a Customer server in the event of a failure to abide by the published terms of the Acceptable Use Policy. This may include, but not exclusively, the transmission of unsolicited email;

2.11 The Company reserves the right to make an administrative charge as a result of the Acceptable Use Policy; By default, FTTC is limited to 40MB downstream & 2MB upstream – packages providing up to 10MB upstream are available, pricing for which is available upon request.

3. Equipment

3.1 Customer Equipment shall:

3.1.1 At all times be at the Customer's risk;

3.1.2 Be insured by the Customer against all risks;

3.1.3 Be subject to the terms and conditions of the landlord or owner of the building in which the Equipment is located; and

3.2 Customer Equipment which is supplied by the Company pursuant to a purchase order shall:

3.2.1 Remain the property of the Company until full payment for the Customer Equipment in cleared funds has been received by the Company, at which time title to the relevant Customer Equipment shall pass to the Customer; and

3.2.2 Be supplied without any warranty, representation or condition, whether expressed or implied by common law or statute and all such warranties, representations and conditions are excluded to the fullest extent permitted by law, save that any manufacturers' or suppliers' warranties that are capable of assignment shall be assigned by the Company to the Customer.

4. Liability

4.1 The Company shall not be liable for the following to the extent permitted by the applicable law:

4.1.1 Indirect damages, loss of profits, business revenue, goodwill or any economic loss;

4.1.2 Any claim made against the Customer by another third party that does not follow a breach of these Conditions by the Company;

4.1.3 Any loss or damage to the Customer caused by or arising from any act or omission of the Customer, any PTO or Value Added Service supplier, or other Customers or persons; or

4.1.4 Any act caused as a result of force majeure or beyond the Company's control.

4.2 The Company's total liability for any loss or damage suffered by the Customer if applicable, shall not exceed the aggregate of all charges payable or paid by the Customer for the Service supplied in the 12 month period beginning on the Service Commencement Date or its anniversary in which the event giving rise to the claim occurs.

4.3 Neither party excludes or limits its liability to the other for death or personal injury resulting from the proven negligence of either party, its employees or agents.

5. Changes to The Service

5.1 If any Network Operator shall discontinue the provision of telecommunications Services to the Company or shall alter by modification, expansion, improvement, maintenance or repair the telecommunications Services or any part thereof provided to the Company or shall disconnect the Customer's apparatus from the PSTN, PDN or Internet, the Company shall be entitled to discontinue, alter, modify, expand, improve, maintain, repair, suspend, disconnect or otherwise change the Services as necessary.

6. Suspension

6.1 The Service may be suspended, or suspended during peak times by the Company without notice and without prejudice to the Company's rights of termination under condition 7 in the event of the following:

6.1.1 Failure by the Customer to make any payment to be made to the Company on its due date.

6.1.2 If the Customer does anything which jeopardises the Service or any network to which the Customer is from time to time connected.

6.1.3 If the Customer's credit limit has been exceeded or if the Customer is otherwise in breach of these conditions.

6.1.4 No such suspension shall affect the liability of the Customer to pay charges and other amounts to the Company, and without limitation, the annual subscription charge will continue to accrue. During suspension the Company reserves the right to refuse to release the Customer's Internet Address as issued by the Company.

7. Termination

7.1 This Agreement shall remain in force for the Initial Period for all products, from the date of an Accepted Order. The term of the Agreement shall automatically be extended for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period, unless a party gives written notice to the other party. Termination can be effected as follows:

7.1.1 By the Customer: The Customer may terminate this Agreement by giving 3 month's written notice, which may expire at any time following the minimum term, or other term as shown on the Service Agreement, from the Service Commencement Date. Such notice must be sent to the Company's place of business, must be in writing, marked for the attention of the Managing Director and sent by recorded delivery.

7.2 By the Company: The Company may terminate this Agreement at any time and without notice if:

7.2.1 The Customer commits any breach of this Agreement including, but without limitation, non-payment of any subscription charges; or

7.2.2 By at least one month's written notice to the Customer; or

7.2.3 The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a limited Company) goes into liquidation; or an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or the Customer ceases, or threatens to cease, to carry on business; or the Supplier reasonably apprehends that any of these events is about to occur in relation to the Customer and notifies the Customer accordingly.

7.3 The Customer shall on demand, in addition to its payment obligations in this condition 7, reimburse the Supplier any Previously Paid Termination Charges upon early termination within the initial term.

7.4 The Company reserves the right to invalidate any Customer's User Name and Internet Address issued to the Customer following termination of this Agreement.

7.5 Domain name hosting and transfer requests for DNS records must be in writing with the authorised signature of the domain owner. There is no charge for the transfer, but a small charge may be made for administration.

7.6 Domain names shall remain the property of the Company until all outstanding amounts have been paid by the Customer except in such situations where the Domain name has been previously registered and paid for in full by the Customer or third party.

7.8 No refund of subscription charges will be made to the Customer upon termination of the Agreement by either the Company or the Customer.

7.9 The Customer shall at his own cost return to the Company all Equipment, cables and literature belonging to the Company within five days of final completion of the Agreement and ensure that it arrives in good working order.

7.10 The Company has the right to terminate the Contract immediately if the Customer or any of its employees or agents in any conduct that is prejudicial to the Company or in the event of non-payment of the Fees by the Customer within thirty days of the due date for payment.

7.11 Upon receipt by the Company of Notice of Termination, all invoices, including the termination invoice, will become due for immediate payment.

7.12 Upon termination, the provision of the Services shall immediately cease and the Customer shall:

7.12.1 Pay all outstanding fees and charges due under this Contract for the full duration, including (but not limited to) Contract administration cost of £100 and excess bandwidth charges;

7.12.2 At its own cost, remove all its Equipment from the premises without delay (providing all outstanding fees under this Contract are paid);

7.12.3 Return to the Company any materials and restricted information belonging to the Company.

7.13 The Company reserves the right to impose a charge equal to the full cost of Broadband Service activation or of Broadband migration should the Customer terminate Service within 12 months of Service delivery.

8.0 Notices

8.1 Suspension notices for non-payment of charges will be delivered via email.

8.2 The Company may change the Terms of this Broadband Agreement (including the charges) at any time. The Company will publish details online on the Company Website www.futuretel.co.uk at least two weeks before the change is to take place, thus giving the Customer reasonable notice of any variation before it takes place.

9.0 Price and Payment

9.1 The Customer shall pay to the Company all costs and expenses (so that any legal fees shall be based on an indemnity basis) incurred by the Company in enforcing any of these Conditions, or exercising any of its other rights and remedies under the Agreement, including (without prejudice to the generality) all costs incurred in tracing the Customer in the event that legal processes cannot be enforced at the address last notified to the Company.

9.2 The Company reserves the right to charge an administration fee as follows: £15 plus VAT per invoice, if the Customer has cancelled its Direct Debit instruction, opts not to pay via Direct Debit or has insufficient funds in its bank account on the Direct Debit due date, without informing the Customer in advance.

9.3 The Company shall invoice the Customer monthly in arrears. The Company may at its discretion submit invoices to the Customer via email. The Customer may also view its invoices online via Futuretel Scotland Ltd Customer Area Webportal.

10. Providing The Service

10.1 During the term the Company shall use reasonable endeavours to provide the Services to the Customer.

10.2 Any performance dates specified in the Contract and Accepted Order shall be estimates only.

10.3 The Company may require that a survey of the Customer's site is carried out before the commencement of Services.

10.4 The Company may, without liability to the Customer, change or withdraw some or part of the Services and determine or change how the Services are presented, delivered or made available to the Customer.

10.5 The Customer understands and accepts that the Company cannot guarantee that the Services will be available without interruption or free from error. The Services have not been developed to meet the Customer's individual requirements and it is therefore the Customer's responsibility to ensure that the facilities and functions of the Services meet their requirements. The Company relies upon the ISP's co-operation in providing the Services. The Company therefore gives no warranty, representation or undertaking as to the speed, quality or availability of the Services.

10.6 The Customer shall report any fault to the Company, where it will be investigated within four working hours. Company working hours for fault repair reporting are 8:30 am and 5pm Mondays to Thursdays and 8:30am and 4:30pm Fridays, excluding weekends and public holidays or such other hours as the Company and Customer agree in writing (which will attract additional charges).

10.7 If the Customer reports a fault and the Company finds that there is none, or that the Customer has caused the fault, the Company has no obligation to repair the fault and may charge the Customer for any work undertaken to investigate the reported fault.

11. General

11.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formulation (including non-contractual disputes or claims) shall, subject as hereinafter provided, be governed by, and construed in accordance with, English Law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales. Where the Customer is (a) a limited company, or a limited liability partnership, with a registered office located in Scotland or (b) one or more individuals carrying an unlimited liability business (whether alone, in partnership or as part of a joint venture, or otherwise) having at least one place of business located in Scotland, then the Supplier (but not the Customer) may in its absolute discretion in relation to proceedings relating to the Contract brought by it against the Customer (or against it by the Customer), elect that the parties shall submit to the jurisdiction of the Scottish Courts. Such an election by the Supplier shall (a) be exercised by the Supplier no later than immediately prior to commencement of any proceedings against the Customer or (as the case may be) within a reasonable time of it being notified by the Customer or the Customer's intention to bring proceedings against the Supplier, (b) be irrevocable, (c) not affect the application of English law and (d) bind the parties only in relation to the proceedings in relation to which the Supplier exercised its election and shall not bind the Supplier in relation to other proceedings between the parties that may occur at any time thereafter.

11.2 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the contract. The Customer may not assign its right and obligations.