

**Microcare Systems Ltd**  
**Terms and Conditions for LLU Broadband**  
**Services For Business Customers**  
Dated 1<sup>st</sup> June 2010

1. Definitions
2. THE SERVICE
  - LLU (Local Loop Unbundling)
3. COMMENCEMENT
4. DURATION
  - Minimum period
5. PROVISION OF THE SERVICE
  - Preparation of the Premises for Access and Installation of Equipment
  - Faults
  - Modem Support
  - Broadband Speeds
  - Domain Names
  - Static IP Address
  - Alarm Systems
6. EQUIPMENT
7. USE OF THE SERVICE
8. CHARGE FOR THE SERVICE
9. PAYMENT FOR THE SERVICE
  - Disputed Invoices
10. CHANGES TO THE CONTRACT
11. TERMINATING THE CONTRACT
12. SUSPENSION OR TERMINATION OF SERVICE FOLLOWING BREACH
13. LIMITATION OF LIABILITY
14. CONFIDENTIALITY AND USE OF CUSTOMER'S INFORMATION
15. MOVING PREMISES
16. USER NAMES AND PASSWORDS
17. GENERAL TERMS
  - Matters Beyond Reasonable Control
  - Dispute Resolution
  - Customer's Instructions
  - Assignment
  - Severability
  - Entire Agreement Clause
  - Waiver
  - Rights of Third Parties.
  - Notices
  - Law and Jurisdiction

**1. Definitions**

In these Terms and Conditions unless the context otherwise requires:

- "Acceptable Use Policy"** means the policy referring to the use of any Microcare broadband products which can be found on the Website
- "Contract"** means the agreement entered into between Microcare and the Customer in respect of the Service subject to these Terms and Conditions
- "Business Customer"** any customer Microcare makes this Contract with in respect of with where the Service is to be provided to a place of business for business purposes. It includes a person who Microcare reasonably believes is acting with the Customer's authority or knowledge
- "Charges"** means all sums (plus VAT) payable by the Customer to Microcare in respect of the Service including but not limited to the connection charge (in respect of the Customer being connected to the Network), the line rental and any other charges for any other services provided by Microcare as identified in the Tariff Schedule
- "Customer"** means the customer who purchases the Service from Microcare and who enters into this Contract with Microcare. It includes a person who Microcare reasonably believes is acting with the Customer's authority or knowledge
- "Microcare"** means Microcare Systems Limited (Company number 3204267) whose registered office is at Hamilton House, Warth Road, Bury, Lancashire, BL9 9NB.
- "Early Termination Charges"** means the charges (plus VAT) for early termination calculated in accordance with clause 11.6 and any changes to the charges shall be notified on the Website from time to time in addition to an administration charge of £70.00
- "Equipment"** means equipment that is not part of the Network and which the Customer uses or intends to use with the Service
- "Fault"** means the continuous total loss of the Service
- "Line"** means a connection to the Network

**“Microcare Equipment”** means any equipment owned by Microcare which shall be used to provide the Service  
**“Minimum Term”** means the period of 36 months as notified to the Customer by Microcare on entering into this Contract and in the Notification Letter

**“Network”** means the fixed line telecommunications network operated by the Network Operator

**“Network Operator”** means the network operator who operates a network to which the Line is connected in accordance with an agreement between the Network Operator and Microcare

**“Notification Letter”** means the letter sent by Microcare confirming that it is taking over the Service from a third party provider

**“Order”** means the Customer’s order for the Service as set out in the Customer’s written acceptance of Microcare’s quotation

**“Parties”** means Microcare and the Customer and references to “Party” shall be construed accordingly

**“Premises”** means the place where the Service is or will be provided, usually the Customer’s place of business unless agreed otherwise

**“Service”** means all or part of the service explained in this Contract and any related services listed in the Tariff Schedule that Microcare agrees to provide to the Customer under this Contract and “Services” shall be construed accordingly.

**“Service Start Date”** The date the relevant service is available for use by the Customer.

**“Terms and Conditions”** means these terms and conditions as amended from time to time

**“Website”** means the website [www.microcare-systems.co.uk](http://www.microcare-systems.co.uk)

**“Working Days”** means a day other than a Saturday, Sunday or public holiday when banks in London are open for business

## **2. THE SERVICE**

2.1 The Service is the facility for the Customer to be able to access internet services, obtain e-mail accounts, webspace and/or domain name registration over and via the Microcare Broadband network.

2.2 Developments in Network technology (known as Local Loop Unbundling or “**LLU**”) may enable Microcare to provide the Service to the Customer through Microcare’s partner Network rather than a third party Network. The Customer’s telephone line from the exchange to the Customer’s premises will continue to be maintained and repaired by BT Openreach.

2.3 The Service may be ordered online on the Website or by the Customer completing, signing and returning the Network Services Quotation and Sales Agreement (or such other form as Microcare shall require), to Microcare’s registered office at Hamilton House, Warth Road, Bury, Lancashire, BL9 9NB.

2.4 The Order constitutes an offer by the Customer to purchase the Service from Microcare in accordance with these Terms and Conditions

2.5 Any quotation by Microcare shall not constitute an offer and is only valid for a period of 20 Working Days

2.6 On acceptance of the Order Microcare may transfer the Customer to our LLU network.

2.7 On the day that Microcare transfers the Customer to Microcare’s LLU network, the Customer acknowledges it may experience a short temporary loss of Service and afterwards, the Customer may also have to re-set its access numbers and/or passwords.

2.8 Microcare will seek the Customer’s express consent before transferring the Customer to our LLU network if the Customer takes a broadband service from another provider on the same telephone line at the time of transfer. The Customer agrees to give Microcare authority to act as its agent to arrange connection to Microcare’s network.

2.9 The Customer acknowledges that once they have been transferred to Microcare’s partner LLU network, that:

a. they may no longer be able to use some telecommunications services that the Customer may have purchased from other telephone providers, such as indirect access services (whether using the BT 1280 Featureline or other indirect access codes);

b. they will no longer be able to use Broadband or Line Rental Services from other providers. Microcare will not be liable for any charges which may arise as a result of the termination of the Customer’s contracts with its existing providers for those services;

c. if the Customer wants to switch one or more of Microcare services to another telephone provider, Microcare may have to provide the Customer’s remaining Service(s) through another Network. The Customer accepts that they may have to pay additional charges for receiving the Service from Microcare in that case.

2.10 If Microcare does not provide the Customer’s Line Rental Service over Microcare’s LLU network the Customer may use another provider for broadband services but the Customer will need to continue paying them in order to receive that particular service.

2.11 The Customer shall:

2.11.1 ensure that the terms of the Order and any information it provides to Microcare are complete and accurate

2.11.2 co-operate with Microcare in all matters relating to the Service

2.11.3 provide Microcare with such information and materials as Microcare may reasonably require supplying the Service, and ensuring that such information is accurate in all material respects

## **3. COMMENCEMENT**

3.1 The Contract begins on the date on which the Order is accepted by Microcare in writing for the Service and continues until terminated by the Customer or Microcare in accordance with the Contract.

3.2 Unless otherwise stated in the Contract, the Service commences on the Service Start Date.

#### **4. DURATION**

##### **Minimum Period**

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

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

#### **5. PROVISION OF THE SERVICE**

##### **5.1 Preparation of the Premises for Access and Installation of Equipment**

The Customer agrees to provide an existing BT analogue telephone line or other non cable network telephone line and a personal computer of a minimum specification as per Clause 6 in order to be able to access the Service.

5.2 The Customer agrees to ensure that compatible cables, micro filters and extension leads are used to and from the Customer's telephone socket, modem and PC in order to use the Service.

5.3 The Customer acknowledges that provision of the Service and acceptance of the Order is subject to testing by Microcare to its satisfaction of the Customer's telephone line to ensure that broadband is available in the Customers' area and can be activated.

5.4 The Customer acknowledges that in certain limited circumstances that Microcare may not be able to set up the Service for technical reasons beyond its control. If this happens Microcare will notify the Customer as soon as possible and the Contract will end. In such circumstances Microcare will provide the Customer with a full refund for any charges the Customer has already paid to Microcare.

5.5 The Customer agrees to cancel any other broadband service supplied by another company through the BT telephone landline that is to be used to receive the Service and this BT telephone landline at the Customer's premises must be clear of any other supplier's broadband service. The Customer agrees that they are responsible for checking any such existing contracts and for paying any ongoing charges or charges on termination that may be due to their old service provider. The Customer acknowledges that these will be in addition to Microcare's charges.

5.6 If the Customer is changing suppliers they agree to obtain a Migration Authorisation Code ("MAC") from their current broadband provider in order to move to the Service. This MAC will be valid only for a limited period and can only be used once. The Customer accepts that Microcare may charge £35 for moving their broadband from another provider to Microcare. For further details about MAC's or of these charges the Customer shall call Microcare's Customer Services or visit the Website.

5.7 The Customer agrees to uninstall any computer security services from the computer to be used to connect to the Service.

5.8 The Customer agrees to prepare the Premises in accordance with any requirements Microcare may have prior to installation and to provide Microcare or any representative nominated by Microcare with all necessary access to the Premises for the purposes complying with the terms of the Contract. The Customer agrees to provide, at its expense, a suitable location and conditions for Microcare Equipment and, where required, continuous mains electricity supply and connecting points. All costs of reprogramming or removing existing access equipment will be paid for by the Customer.

5.9 The Customer is responsible for obtaining all necessary consents and permissions for Microcare to carry out any work necessary to provide the Service on the Premises including the installation of Microcare Equipment.

5.10 The Customer and Microcare agree to comply with each other's reasonable health & safety and security requirements when on the Premises. If Microcare's or the Network Operator's engineers are required to enter the Premises they will show their identity cards. The Customer and Microcare agree to look after each other's equipment on the Premises. If the Customer or Microcare damages the other's equipment it must pay for any repair or replacement needed. This clause does not apply where the damage results from normal use.

5.11 Microcare will use its reasonable endeavours to provide the Service by the date agreed with the Customer, but all dates are estimates unless confirmed otherwise in the Notification Letter.

5.12 The Customer is responsible for making the Premises good after any work undertaken by Microcare at the Premises, including replacing and re-siting items and for re-decorating.

##### **Faults**

5.13 Microcare does not undertake to provide a Fault free service. Microcare will use the reasonable skill and care of a competent telecommunications service provider to provide the Service, however from time to time Faults may occur as other third party companies provide the Network.

5.14 If the Customer reports a Fault in the Service, Microcare will report the Fault to the Network Operator as soon as is reasonably practicable so that the Network Operator can arrange for an engineer to be dispatched to repair the Fault as soon as possible.

5.15 Microcare will not be responsible for any Faults arising from Customer's premises equipment. A £195 call out charge, together with a £30 per half hour travel charge to the Premises plus, if required, a £95 charge for each subsequent hour at the Premises, will be applied to engineering visits where the Fault is found to be with the Customer's equipment or where an engineer attends and finds no Fault.

##### **Modem Support**

5.16 Modems purchased directly from Microcare will receive technical support within their warranty period.

5.17 Technical support for modems acquired from any other source is therefore the responsibility solely of the modem manufacturer, or will be charged if support is received by Microcare.

## **Broadband Speeds**

5.18. There are a number of reasons why the Customer may not receive the broadband connection speed advertised. The Customer acknowledges that the main reason is that for most broadband customers the maximum speed available declines the further the Customer is from the telephone exchange. The Customer further acknowledges that other factors which can affect broadband speeds include the quality of the Customer's line, the capacity of the network, the number of subscribers sharing the network, and the number of people accessing a particular website.

5.19. Microcare will try to give the Customer the 'download' Transmission Speed that the Customer has signed for. This may be 8mbps but Microcare cannot guarantee that the Customer will always be able to get this Transmission Speed. If Microcare cannot provide the Customer with the Transmission Speed that they have signed up for, the Customer acknowledges that Microcare will give the Customer the next available lower Transmission Speed. The Transmission Speed may also change if the Customer moves premises because they are dependent on the Customer's proximity to their local telephone exchange. The Customer accepts that 'upload' speeds will always be slower than the 'download' speeds.

## **Domain Names**

5.20. The Customer warrants that it is the owner of, or that it is authorised by the owner of, any trade mark or name that the Customer wishes to use as its registered Domain Name ("Domain Names") and use as part of the Customer's uniform resource locator ("URL").

5.21 If Microcare undertakes Domain Name and URL registration on behalf of the Customer, the Customer agrees to reimburse Microcare for any registration fees paid by Microcare to the Internet registration authorities. Microcare does not guarantee that any Domain Names or URL requested by the Customer will be available.

5.22 Microcare may require the Customer to select a replacement Domain Name or URL and may either refuse to provide or may suspend the Service if Microcare reasonably believes that the Domain Names or URL chosen by the Customer is, or is likely to be, offensive, abusive, defamatory or obscene or in breach of the provisions of Clause 7.7.

5.23 The Customer acknowledges that any Domain names provided by Microcare are offered on a rental basis only and remain the property of Microcare at all times.

## **Static IP Address**

5.24 The Customer agrees to pay Microcare for the provision of a static IP address.

5.25 The Customer acknowledges that all static IP addresses allocated to it by Microcare are offered on a rental basis only and remain the property of Microcare at all times.

## **Alarm Systems**

5.26 The Customer acknowledges that it has the responsibility to make sure that the Service does not affect any alarm system in the Premises. Microcare cannot be responsible for any loss or damage arising out from the Customer's failure to make adequate provision for their security.

## **6. EQUIPMENT**

6.1 The Customer agrees that any equipment that will be attached (directly or indirectly) to the Service is technically compatible with the Service and that its use does not breach any relevant legislation or telecommunications industry standards.

6.2 The minimum PC computer requirements are:

Windows 98 SE (Second Edition), Windows Me (Millennium Edition), Windows, 2000 or Windows XP or Macintosh operating system versions 9.1 or later  
550MHz or above CPU

A minimum of 20 GB available hard disk space

A minimum of 128 MB RAM

An available USB port or an Ethernet port

6.3 On acceptance by Microcare of the Order the Customer will be supplied by Microcare with a wired Modem or a wireless Modem at a cost to the Customer as listed in the current Tariff Schedule, as applicable. Microcare will try and make sure that the Modem is delivered to the Premises before the Service is activated.

6.4 The Customer agrees to inspect the Modem as soon as it is received and inform Microcare if it is damaged or missing items within seven (7) days by calling Microcare Customer Services. Microcare will then send a new Modem, and the Customer agrees to return the faulty one to Microcare. Microcare will also repair or replace the Modem, free of charge, if it becomes faulty during the first 12 months of the Contract, but Microcare will not replace any faulty Modem if the Customer is responsible for the fault (including without limitation as a result of the Customer's failure to follow the manufacturer's instructions or mis-use or alteration of the Modem without Microcare's our approval). In that case the Customer agrees to pay for a new Modem in order to receive the Service.

6.5 If Microcare sends a replacement Modem, the Customer agrees to return to Microcare the faulty Modem (including all cables and software that came with it) within thirty (30) days of receipt of the replacement Modem. The Customer accepts that Microcare will charge them for the replacement Modem if the Customer does not return the faulty Modem (including all cables and software that came with it). Microcare will accept proof of postage as proof that the Customer has sent Microcare the faulty Modem. The Customer agrees to keep the original box and packaging for the Modem in good condition and ensure that the Modem is stored in accordance with the manufacturer's recommendations. Microcare agrees to refund the reasonable cost of returning the faulty Modem to Microcare by post.

6.6 If the Customer wishes to use a modem, filters or any other equipment that Microcare has not supplied, Microcare cannot guarantee that the Service will work with that modem or equipment and cannot support any Faults that may arise as a result.

6.7 The Customer agrees not to connect equipment to Microcare's network that may harm it or other customers' equipment and agrees to disconnect such equipment immediately, or allow Microcare to do so at the Customer's expense.

6.8 Where the Customer is provided with software on a CD or where the Customer downloads software from the internet to enable use of the Service, Microcare agrees to the Customer's use of such software on the basis that the Customer uses it solely for the purpose of receiving the Service and, in particular, the Customer agrees not to make additional copies or modify Microcare's software in any way without Microcare's permission. The Customer agrees not to sell, transfer, assign or sub licence the software or any part of it to any third party.

6.9 Any equipment provided by Microcare may only be altered or amended by Microcare. In the event that such equipment be altered or amended by any other party (including for the avoidance of doubt the Customer) Microcare may terminate this contract.

## **7. USE OF THE SERVICE**

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

7.2 Microcare does not warrant or guarantee the accuracy or completeness of any of the information, sound, software and any other materials (in whatever form) and services made available to the Customer as part of the Service (the "Content") or any further information or results which may be derived from it. The Customer acknowledges that it will not rely on any Content in making any business or other decision and that the Customer's use of the Content is at their sole risk.

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

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

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

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

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

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

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

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

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

7.7.5 to propagate computer worms or viruses

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

7.7.7 to distribute child pornography, obscene or defamatory material

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

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

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

- 7.10.1 Restrict the download and upload speeds;
- 7.10.2 Apply additional charges for additional high bandwidth usage;
- 7.10.3 Suspend the service; and
- 7.10.4 Cease the service.

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

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

## **8. CHARGE FOR THE SERVICE**

8.1 The Customer agrees to pay the Charges for the provision of the Service that includes a Gb allowance for monthly usage in accordance with Microcare's Tariff Schedule.

8.2 Microcare's full tariff schedule is shown (including any updates) at [www.microcare-systems.co.uk](http://www.microcare-systems.co.uk).

8.3 Microcare will give the Customer written notice of any changes to the Charges and the tariff schedule from time to time by e-mail or by post 1 month before the proposed date of change. If the change is not acceptable to the Customer, it will notify Microcare in writing within 28 days of the date of the notice and clause

8.4 The Customer may obtain the current charge by emailing Microcare at [enquiries@microcare-systems.co.uk](mailto:enquiries@microcare-systems.co.uk) with full account details.

## **9. PAYMENT FOR THE SERVICE**

### **General**

9.1 The Customer agrees to pay all of the Charges due in respect of the Service which are calculated using the details recorded by Microcare or its service carrier not by reference to any data recorded or logged by the Customer. This includes all overage Charges incurred during the use of the Service by the Customer or any third party using the Service at the Premises in excess of the contracted and agreed Gb allowance agreed at the start of the Contract.

9.2 Microcare will calculate the Charges using the details recorded at the telephone exchange. All charges will normally be invoiced monthly in advance. Wherever possible, overage charges per Gb in excess of the agreed Gb allowance will appear on the Customer's next invoice.

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

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

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

9.6 The first invoice will be issued to the address provided by the Customer shortly after receipt of the Order to include all set up charges.

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

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

9.9 If, after commencement of the Contract, the Customer exceeds the agreed Gb allowance, Microcare may issue the Customer with an interim invoice. A deposit may also be sought by Microcare as security for payment of future invoices.

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

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

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

9.13 If Microcare is unable, for whatever reason, to recover the sums due under the Customer's account within 4 days following the due date for payment, Microcare reserves the right to suspend the Service in accordance with clause 7.

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

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

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

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

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

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

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

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

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

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

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

#### **Disputed Invoices**

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

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

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

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

#### **10. CHANGES TO THE CONTRACT**

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

10.2 Microcare will publish any changes to the Contract (including the Charges) at Hamilton House, Warth Road, Bury, Lancashire and on the Website, as follows:

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

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

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

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

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

#### **11. TERMINATING THE CONTRACT**

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

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

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

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

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

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

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

(e) the Contract ends because clause 17.1 applies

11.4 The Customer may end the Contract if:

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

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

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

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

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

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

(c) an administration charge of £70.00 (seventy pounds) plus VAT.

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

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

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

## **12. SUSPENSION OR TERMINATION OF SERVICE FOLLOWING BREACH**

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

(a) The Customer breaches the Contract or any other contractual arrangement that the Customer has with Microcare and, if the breach is capable of remedy, fails to put right the breach within 14 days of being requested by Microcare so to do (subject to the breach being capable of being remedied by the Customer. A breach in this clause includes non-payment of any valid invoice by the due date; or

(b) Microcare reasonably believes that the Service is being used in breach of clause 7.7, irrespective of the whether the Customer is aware of the breach or not; or

(c) Bankruptcy or insolvency proceedings are brought against the Customer or the Customer does not comply with a payment order of the Court or the Customer makes an arrangement with its creditors or a receiver, an administrative receiver or an administrator is appointed over any of the Customer's assets or the Customer goes into liquidation; or

(d) Microcare are required to suspend the Service or terminate the Contract under any an order, instruction or request of any authorised government body or authority or emergency service; or

(e) The direct debit information provided by the Customer are found to be invalid or are subsequently cancelled; or

(f) A contract that Microcare has with a third party, which insists in providing the Service, is terminated.

(g) Microcare in its sole opinion suspects that the Service is being used, or is about to be used, for purposes that are fraudulent or for purposes deemed to be excessive for the type of account in operation and, if the Service is suspended, will keep the account suspended until such time as a bond, or other such payment as is agreed between the Parties, is received by Microcare.

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

12.2 If the Customer exceeds the agreed Gb allowance prior to submission of the next monthly invoice, Microcare will inform the Customer of the amount the Customer has spent and agree any necessary action. Microcare reserves the right to suspend the Service pending payment of charges accrued on Microcare's invoicing system if the Customer exceeds the agreed usage level prior to payment of the first three 3 invoices submitted in respect of the Service.

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

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

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

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

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

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

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

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

12.9.2 user accounts temporarily out of service-48 hours

12.9.3 disconnected user accounts- 14 days

### **13. LIMITATION OF LIABILITY**

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

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

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

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

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

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

(a) in respect of its failure to report a Fault to the Network Operator as soon as is reasonably practicable, where Microcare have previously been notified of such a Fault by the Customer; or

(b) for any actual loss or damage suffered by the Customer where the loss or damage suffered was reasonably foreseeable.

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

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

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

### **14. CONFIDENTIALITY AND USE OF CUSTOMER'S INFORMATION**

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

(a) the employees or professional advisers who shall require the information in order for the Customer or Microcare to fulfil its obligations under the Contract; or

(b) in the case of the Customer, its users of the Service to the extent that they are required to use or access the Service.

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

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

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

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

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

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

14.6 Any request under clause 14.5, either by the Customer, the Customer's User or by the Customer on behalf of the User should be submitted in writing to Microcare Data Controller at Hamilton House, Warth Road, Bury, Lancashire, BL9 9NB.

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

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

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

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

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

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

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

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

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

## **15. MOVING PREMISES**

15.1 If the Customer is moving the Premises, Microcare must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Customer's broadband connection. Unless otherwise requested, Microcare, in addition to moving the Line, will also endeavour to retain the Customer's existing telephone number. If Microcare can transfer the Customer's existing number to the new Premises the existing Contract will continue under the same Terms and Conditions. If Microcare cannot transfer the Customer's existing number to the new Premises, installation of a new Line will be required at the new Premises, or if the Customer requires any additional new Lines, this will attract new Line connection charges and a new contract for a minimum term of 12 months.

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

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

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

## **16. USER NAMES AND PASSWORDS**

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

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

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

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

16.4.1 to suspend or change user names and password access to the Broadband Services if at any time

Microcare thinks that there has been or is likely to be a breach of security; and

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

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

## **17. GENERAL TERMS**

### **Matters Beyond Reasonable Control**

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

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

### **Dispute Resolution**

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

(i) the Telecommunications Ombudsman, via the website ([www.otelo.org.uk](http://www.otelo.org.uk)) or by telephone on 0845 050 1614; or

(ii) OFCOM, the communications regulator via the website [www.ofcom.org.uk](http://www.ofcom.org.uk) or by telephone on 020 7981 3040 or 0300 123 3333.

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

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

### **Customer's Instructions**

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

**Assignment**

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

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

**Severability**

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

**Entire Agreement**

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

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

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

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

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

**Waiver**

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

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

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

**Rights of Third Parties**

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

**Notices**

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

(a) Microcare at Hamilton House, Warth Road, Bury, Lancashire, BL9 9NB or such other address as may be communicated to the Customer; or

(b) the Customer at the address to which the Customer asks Microcare of Hamilton House, Warth Road, Bury, Lancashire, BL9 9NB to send correspondence and bills.

17.11 The Customer must inform Microcare at Hamilton House, Warth Road, Bury, Lancashire, BL9 9NB immediately if there is any change to any of the contact information previously supplied.

**Law and Jurisdiction**

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

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