

## Terms and Conditions for BLUECHERRY TELECOM Broadband

This document sets out the Terms and Conditions of your use of the Broadband services provided by BLUECHERRY TELECOM ("BLUECHERRY TELECOM", "We", "Us", "Our") and comprises the entire agreement for your use of our Broadband services ("the Agreement"). Any changes or additions to these Terms and Conditions, the Broadband Services, or associated computer security or backup services and software must be agreed to in writing by BLUECHERRY TELECOM. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

**Tariff** - You will be charged for the rates shown in our Price and Tariff Guide shown at [www.bluecherrytelecom.com](http://www.bluecherrytelecom.com) or as agreed in writing. You will be charged £1.50 per 1Gb for every Gb over your agreed tariff. To upgrade your broadband package, please contact our customer service team on 01908 849 849

**Payment** - You shall pay our Invoices by direct debit. You will be charged an administration fee for any monthly payments tendered by other means. If you do not pay any of our invoices you will incur an administration fee that will be included on your next monthly bill. Other Charges may apply

**Contract length** - The Minimum Term, is specified in the Confirmation Letter that we post (or email) to you. This Agreement begins on the Effective Date and will continue in force until terminated by either of us in accordance with the Agreement.

**Cancellation Fee** - If you terminate the Agreement (or we terminate it because of your conduct) before the end of the Minimum Term, you will be charged a Cancellation Fee. Other Charges may apply to you.

### DEFINITIONS

"Agreement" means these terms and conditions.

"Cancellation Fee" means a, a reasonable disconnection fee per each broadband connection we have to disconnect. Our current cancellation fees are £99. Please note that other charges may apply

"Care Level" means our fault repair response times;

"Charges or fees" means our charges for providing you with the Services under this Agreement;

"Confirmation Letter" means our letter attaching these terms and conditions which will be posted or emailed to you within 3 days of our acceptance of your Order;

"Effective Date" means the date specified in your Confirmation Letter or Verification call;

"Larger Business" means any business that it is not a Small Business;

"MAC" means the migration authorisation code;

"Material Detriment" means variations to your Agreement which are likely to be of significant detriment to you, such as an increase in our package Charges for the Services by an amount which is more than the percentage increase in the retail prices index figure (or any future equivalent) in any twelve month period;

"Minimum Term" means, where applicable, the minimum term of this Agreement agreed with you in the Order and confirmed to you in our Confirmation Letter;

"Order" means any online order, your order via our telephone application process or you're signing of our order form;

"Parties" means BLUECHERRY TELECOM and you, our customer;

"Premises" means your premises in which we provide the Services to you;

"Price and Tariff Guide" means our schedule of rates available at; [www.bluecherrytelecom.com](http://www.bluecherrytelecom.com)

"Services" means the services specified in Clause 2;

"Service Start Date" means the date you are able to start using our Services;

“Small Business” means a business where no more than 10 individuals work (whether as employees or volunteers or otherwise);

“BLUECHERRY TELECOM”, “we”, “us”, or “our” means BLUECHERRY TELECOM Limited a limited company incorporated in England and Wales registered under Number 6661541 whose registered office is at 314 Midsummer Blvd, CMK, MK9 2UB

“BLUECHERRY TELECOM Equipment” means any equipment, including any software, owned or controlled by BLUECHERRY TELECOM and placed in your Premises to provide the Services; and

“you” and “your” or “customer” means you, our customer.

## **1. Commencement and Duration of this Agreement**

- 1.1. This Agreement commences on the date you accept these Terms and Conditions by signing the BLUECHERRY TELECOM Broadband application form, applying on-line, or via the telephone application process (the “Commencement Date”) and will continue for 12 months or the contracted length of time applicable for the Broadband tariff you have taken. These Terms and Conditions remain indefinitely thereafter unless terminated earlier by either party in accordance with Clause 12 of this Agreement.

## **2. Our Provision Of The Services**

- 2.1. We will provide the Broadband services to you with reasonable skill and care and in accordance with the provisions of this Agreement. Whilst we will use our reasonable endeavors to begin providing these Broadband Services by any date provisionally agreed with you, we have no liability for any failure to meet any date. We can only provide services in areas of the United Kingdom in which we are technically able to offer Broadband services from time to time.
- 2.2. In order to use the Broadband Services, you need an existing analogue telephone line on the BT network and a personal computer of a minimum specification as per Clause 4. You must also ensure that compatible cables and extension leads are used to and from your telephone socket, modem and PC in order to use the service. You acknowledge that we are dependent upon certain third parties to install and provide the Broadband Services to you. You also acknowledge that there may be technical limits that prevent us from delivering an operational service to you. We will endeavor to provide the Broadband Services to you at the access rate you choose but, due to congestion within the network, the ability of your analogue line to carry data services, distance from the exchange; the speed of service may be reduced at times.
- 2.3. You must cancel any other broadband service supplied by another company through the analogue telephone landline that you wish to use to receive our broadband service and your analogue telephone landline at your location must be clear of your former supplier's broadband service. Alternatively, you must provide us with a valid migration code to transfer the broadband service from your current supplier.
- 2.4. We do not undertake to provide a fault free service. If, however, a fault occurs, you should report the fault by telephone, electronic mail or in writing to the Support Service. We will use our best endeavors to correct any defect or fault in the services provided to you as soon as possible. We will let you know as soon as reasonably practicable of any periods of downtime of the Support Service.
- 2.5. BLUECHERRY TELECOM will not be responsible for any Faults arising from customer's premises equipment. A call out charge of up to £250 will be applied to engineering visits where the fault is found to be with your equipment or where an engineer attends and find no fault.
- 2.6. Modem Support: Modems purchased directly from BLUECHERRY TELECOM will receive technical support within their warranty period. 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 BLUECHERRY TELECOM.
- 2.7. We may suspend the Broadband Services including during scheduled periods of downtime where necessary for operational reasons such as repair, maintenance or improvement of the Broadband Services or because of an emergency. BLUECHERRY TELECOM will restore the Broadband Services as soon as it reasonably can after suspension.
- 2.8. We may, for operational or other reasons, change any codes or the numbers allocated to you or the specification of the Broadband Services but any such changes will not materially affect the Broadband Services.
- 2.9. We reserve the right to vary the Content (as defined in clause 5.2 below) from time to time in our sole discretion and do not guarantee or warrant that any particular item or items of Content will be available at any given time or at the commencement of the Broadband Services.
- 2.10. We may immediately suspend your access to the Broadband Services in the event that you do not pay an invoice in accordance with Clause 3.
- 2.11. If you currently receive a Broadband service from an alternative supplier you are responsible for any contractual agreement you have with them and any liabilities you may incur for terminating your current agreement.

## **3. Charges**

- 3.1. BLUECHERRY TELECOM charges you for using the Broadband Services covered by this Agreement. Initially you are charged at the rates specified on the application form or published in our price lists. All charges are exclusive of any VAT. Please note:
  - 3.1.1. BLUECHERRY TELECOM will charge £99.99 + VAT to reinstate lines that have been ceased due to non-payment
  - 3.1.2. If you change address, you may transfer the Broadband Services to your new address on payment of the moving fee of £51.99 + VAT.
  - 3.1.3. Charges for your Broadband Services will be incorporated into your monthly BLUECHERRY TELECOM invoice. We will send your invoice to the address on your registration details. We also reserve the right to send your invoice by email every month.
  - 3.1.4. BLUECHERRY TELECOM will charge a £99.99 + VAT disconnection fee should the agreement be terminated due to non-payment.
  - 3.1.5. In the event that all telephone lines on the said agreement have transferred away or been ceased but the broadband connection is still billing on that said agreement your current tariff will increase by £3 + VAT.
  - 3.1.6. BLUECHERRY TELECOM will charge £99.99 + VAT cancellation fee should the agreement be terminated within the agreed contract period length from the Commencement Date.
  - 3.1.7. If you end your contract for Broadband Services with us and do not request and use a MAC, we reserve the right to charge, and you agree to pay us a cessation fee to cover any cancellation charge that we must pay BT and our associated administration costs. The cessation charge will not be payable if you are moving home and either you have subscribed to our Broadband Services at your new address or we are unable to provide the Broadband Services at your new address.

#### **4. Equipment**

- 4.1. You will ensure that any equipment that you attach (directly or indirectly) to the Broadband Services is technically compatible with the Broadband Services and that its use does not breach any relevant legislation or telecommunications industry standards.
- 4.2. Minimum system requirements:
  - 4.2.1. - Windows 98 SE (Second Edition), Windows Me (Millennium Edition), Windows, 2000 or Windows XP or Macintosh operating system versions 9.1 or later
  - 4.2.2. - 1GHz or above CPU
  - 4.2.3. - A minimum of 20 GB available hard disk space
  - 4.2.4. - A minimum of 500 MB RAM
  - 4.2.5. - An available Ethernet port

#### **5. Your Use of the Broadband Services**

- 5.1. These Broadband Services are provided solely for your use and you must not resell or attempt to resell the Broadband Services (or any part of it) to any third party. In addition, if you have a mail server, you must not allow relay emails from outside your domain from your mail server.
- 5.2. We do 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 you as part of the Broadband Services (the "Content") or any further information or results which may be derived from it. You acknowledge that you will not rely on any Content in making any business or other decision and that your use of the Content is at your sole risk.
- 5.3. Please note that there may be additional conditions (either ours or those of a third party) displayed on line relating to particular Content. These conditions will also form part of this agreement should you access such Content.
- 5.4. You are entirely responsible for evaluating any goods or services offered by third parties via the Broadband Services or on the Internet. We will not be a party to or in any way be held responsible to you for any transaction between you and third parties.
- 5.5. You warrant that any information you make available on a website served on our broadband network, both yours ("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.
- 5.6. You also warrant that you will comply with all consumers and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on your website including those notified by us to you.
- 5.7. You must not use the Broadband Services:
  - 5.7.1. in a way that breaches any legislation or any licence applicable to you or that is in any way unlawful or fraudulent; or
  - 5.7.2. 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
  - 5.7.3. to send or procure the sending of any chain letters or unsolicited advertising or promotional material ("spamming"); or
  - 5.7.4. in a way that does not comply with our specific instructions.

- 5.7.5. to propagate computer worms or viruses
- 5.7.6. to attempt to gain unauthorised entry to any site or network
- 5.7.7. to distribute child pornography, obscene or defamatory material
- 5.8. You will fully indemnify us against all losses, damages, amounts paid by way of settlement, costs and expenses (including legal fees) of whatsoever nature suffered or incurred by us arising out of or in connection with any actual or potential claims or legal proceedings against us by a third party because of your use of the Broadband Services in breach of the provisions of this Clause 5. We shall notify you of any such claims or proceedings and inform you regularly as to the progress of such claims or proceedings.
- 5.9. You acknowledge that Broadband Services are provided to other users and we owe a duty to these users as a whole to preserve our network integrity and avoid network degradation. If, in our reasonable opinion, we believe that your use of the Broadband Services has or may adversely affect such network integrity or may cause network degradation we may manage your transmission speed, the type of traffic you are passing, and/or suspend your service.
- 5.10. We operate a fair usage policy to protect the quality of service to our customers. If we believe that your use of the Broadband Service is adversely affecting our network (or any part of it) or our other customers use of our services or if your usage is significantly different from what we would expect from a business customer, we reserve the right to manage or regulate your usage in accordance with the fair usage policy. We will not impose any restrictions on you or impose an additional charge without prior notice. If after we have sent you notice, we believe that your use of the Broadband Service continues to adversely affect our network (or any part of it) or our other customers use of our services or if your usage continues to be significantly different from what we would expect from a business customer then we may:
  - 5.10.1. Restrict your download and upload speeds;
  - 5.10.2. Apply additional charges for additional high bandwidth usage;
  - 5.10.3. Suspend your service; and
  - 5.10.4. Cease your service.
- 5.11. We may require you to reimburse us for any reasonable and foreseeable losses, costs and expenses which we incur as a direct result of the misuse of the broadband service either by yourself or by someone you have knowingly allowed to use the Broadband Service we provide to you.

## **6. User names and Passwords**

- 6.1. You must ensure that user names and passwords used in connection with the Broadband Services are kept confidential and are only used by authorised users. Please inform us immediately if you know or suspect that a user name or password has been disclosed to an unauthorised user or is being used in an unauthorised way.
- 6.2. We reserve the right (at our sole discretion):
  - 6.2.1. to suspend user names and password access to the Broadband Services if at any time we think that there has been or is likely to be a breach of security; and
  - 6.2.2. to ask you to change any or all of the usernames and passwords you use in connection with the Broadband Services.
- 6.3. You must inform us immediately of any subsequent changes to the information you supply to us when you register for the Broadband Services.
- 6.4. You accept and acknowledge that the Broadband Services, like other Internet applications, are not secure and we do not guarantee the prevention or detection of any unauthorised attempts to access the Broadband Services.

## **7. Personal Data**

- 7.1. We may contact you before, during and after the term of this Agreement in order to administer, evaluate, develop and maintain the Broadband Services. Please note that we may record your telephone calls with us and we will keep a record of personal information you provide to us in connection with the Broadband Services.
- 7.2. We will comply with our obligations under the Data Protection Act 1998 and other any applicable data protection legislation. You are also required to comply with all data protection legislation. In addition, you must maintain all required registrations, including those reasonably requested by us to enable us to process your personal data in connection with our performance of our obligations under this Agreement.
- 7.3. By registering for the Broadband Services you consent to our using and/or disclosing your personal information for the following purposes:
  - 7.3.1. processing your application (which may involve credit checking by a licensed credit reference agency who may record that a credit check has been made and disclosing certain personal and account details to a bank for the purposes of setting up a direct debit account);
  - 7.3.2. providing or arranging for third parties to provide Customer Care/Help Desk facilities and billing you for the Broadband Services (which may involve disclosing your information to third parties solely for those purposes); and
  - 7.3.3. to selected third parties for the purposes of providing and operating the Broadband Services.

## **8. Intellectual Property Rights**

- 8.1. You warrant that you are the owner of, or that you are authorised by the owner of, any trade mark or name that you wish to use as your registered Domain Names ("Domain Names") and use as part of your uniform resource locator ("URL") to be hosted on our broadband network.
- 8.2. If we undertake Domain Names and URL registration on behalf of you, you will reimburse us for any registration fees paid by BLUECHERRY TELECOM to the Internet registration authorities. We do not guarantee that any Domain Names or URL requested by you will be available.
- 8.3. We may require you to select a replacement Domain Names or URL and may either refuse to provide or may suspend the Broadband Services if we reasonably believe that the Domain Names or URL is, or is likely to be, offensive, abusive, defamatory or obscene or in breach of the provisions of Clause 5.7.
- 8.4. Any patents, design rights, know-how, copyrights, trademarks, the right to use software and all other similar intellectual property proprietary rights (whether registered or unregistered) worldwide ("Intellectual Property Rights") relating to the Broadband Services, including backup and computer security software packages, or arising during the development of the Broadband Services, belong to us or to a relevant third party.
- 8.5. The Content is protected by copyright, trademark and other Intellectual Property Rights, as applicable. You must not and must not permit anyone else to copy, store, modify, distribute externally, broadcast or publish any part of the Content, and the Content may only be used for your own purposes.

## **9. Intellectual Property Right Indemnity**

- 9.1. You will fully indemnify and hold us harmless against all losses, damages, amounts paid by way of settlement, costs and expenses (including legal fees), of whatsoever nature, suffered or incurred by us as a result of any claims or proceedings arising from infringement of any third party's Intellectual Property Rights by reason of your use or publication of the Customer Information, the Content or Third Party Content.

## **10. Software**

- 10.1. Where we provide software to you to enable you to use the Broadband Services, including backup and computer security services ("Software"), we grant you a non-exclusive, non-transferable licence to use the Software solely for the term and purposes of the Agreement. You use this software at your own risk. You agree to use the software only in accordance with the End User License Agreement, which you will be required to accept in order to install the software.
- 10.2. Any software provided to you as part of the Broadband Services is provided for your use only. You must not re-sell, rent, transfer, assign or sub-license the software to anyone else. You may make one copy of the software for back up purposes, but are not otherwise allowed to copy, decompile or modify the software (in whole or in part) for any purpose unless specifically permitted by law. You may not adapt, transmit, distribute externally, play or show in public, broadcast or publish any part of the software. Except as permitted by applicable law or as expressly permitted under this Agreement you must not copy, de-compile or modify the Software (in whole or in part), or copy the manuals or documentation (in whole or in part).
- 10.3. We may offer updates or modifications to the Software or documentation and we will notify you of any applicable charges for such updates or modifications at the time we offer them to you.

## **11. Limitation of Liability**

- 11.1. Nothing in this Agreement excludes or limits each party's liability with respect to death or personal injury resulting from the negligence of that party, its employees, agents or subcontractors or for fraudulent misrepresentation or under the tort of deceit.
- 11.2. We shall not be liable to you, whether in contract, tort (including negligence) or otherwise, for direct or indirect loss of profits, business, revenue, any contract, opportunity, or anticipated savings, loss of goodwill or injury to reputation, nor for any indirect or consequential or special loss or damage or for any destruction or loss of use of any data, including any corruption of data or losses arising from your use of or failure to use the computer security or backup services or software, whether any such losses could be reasonably foreseen by us or not.
- 11.3. Subject to Clauses 11.1 and 11.2, our liability to you in contract, tort, negligence or otherwise arising out of or in connection with this Agreement shall for any one incident or series of related incidents be limited to the annual fees paid by you to using the year in which the liability first arose.
- 11.4. We are under no obligation to edit, review or modify Customer Information or Third Party Content. However, we reserve the right to remove any Customer Information or Third Party Information without notice.
- 11.5. We exclude all liability of any kind in respect of:
  - 11.5.1. Customer Information, Third-party Content, Content and any other material on the Internet which can be accessed using the Broadband Services and we are not responsible in any way for any goods (including software) or services provided by third parties advertised, sold or otherwise made available by means of the Broadband Services or on the Internet;
  - 11.5.2. the accuracy, completeness or suitability for any purpose of any Content; and
  - 11.5.3. the acts or omissions of other providers of telecommunications or Internet services (including Domain Name registration authorities) or for faults in or failures of their equipment.

## **12. Termination of this Agreement**

- 12.1. We may at our sole discretion terminate this Agreement or suspend the Broadband Services immediately, in the event that:

- 12.1.1. we are directed by any competent authority to cease the provision of the Broadband Services or any part of it; or
- 12.1.2. you fail to pay any charges for the Broadband Services; or
- 12.1.3. any credit card or direct debit details submitted by you for payment are found not to be or cease to be valid; or
- 12.1.4. if you use the Broadband Services in contravention of any of Clauses 5,6 and 8; or
- 12.1.5. your contract with us or your telecoms provider for your direct analogue exchange line is terminated; or
- 12.1.6. our contract with any third party who assists us in providing the Broadband Services to you is terminated; or
- 12.1.7. we become aware of any breach of third party Intellectual Property Rights caused by the Customer Information or the Third Party Content; or
- 12.1.8. you are in breach of our Fair Usage Policy If we suspend the Broadband Services in accordance with this Clause, we may, at any time following such suspension (and if the circumstance in Clause remains) immediately terminate the Agreement.
- 12.2. You have the right to cancel this Agreement by giving written notice within 5 days from the date of acceptance of this Agreement. If we have supplied you with a Modem as part of a promotional offer you must either pay for the Modem or return such Modem to us unused and in the original undamaged packaging.
- 12.3. You may terminate this Agreement on giving at least 1 months' notice, such notice to be effective no earlier than the end of the first 12 months period or the length of time applicable to the Broadband contract you have taken from the Commencement Date. You must pay all Fees for the Broadband Services until the date on which the termination notice expires.
- 12.4. Either party may terminate this Agreement immediately, on notice, if the other commits a material breach of this Agreement and fails to remedy the breach within 28 days of a written notice to do so, or if the other goes into liquidation, becomes bankrupt, has a receiver appointed, makes a composition or voluntary arrangement with creditors or enters into administration, or a moratorium comes into force in respect of the other (within the meaning of the Insolvency Act 1986).
- 12.5. Upon termination or expiration of this Agreement registration to any of our services or those of third parties provided in the course of and/or for the purposes of the Broadband Services will cease at such time as the provision of the Broadband Services ends.

### **13. Force Majeure**

- 13.1. Neither party will be liable to the other for any failure to deliver the Broadband Services or for any breach by it of this Agreement, where such failure or breach is due to a reason outside the reasonable control of such party, including, but not limited to: lightning, exceptionally severe weather, fire, explosion, war, industrial disputes, government action or regulation or national or local emergency. If such failure to deliver continues for more than 3 months after the commencement of such failure, then either party may terminate this Agreement on notice in writing to the other party.

### **14. General Provisions**

- 14.1. We may change the provisions of this Agreement (including the charges) at any time, provided that we will give you notice of the changes at least 14 days before the change is to take effect at which time you may terminate this Agreement if the change materially affects the Broadband Services.
- 14.2. This Agreement represents the entire agreement between the parties in relation to its subject matter and supersedes all agreements and representations made by either party, whether oral or written.
- 14.3. The parties acknowledge and agree that:
  - 14.3.1. the parties have not been induced to enter into this Agreement by any representation, warranty or other assurance not expressly incorporated into it; and
  - 14.3.2. in connection with this Agreement the parties' only rights and remedies in relation to any representation, warranty or other assurance are for breach of this Agreement and that all other rights and remedies are excluded, except in the case of fraud.
- 14.4. This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 that are enforceable by any person who is not a party to it but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 14.5. Notices given under this Agreement must be in writing and may be delivered by hand, courier or first class post, by fax or e-mail to the following addresses:
  - 14.5.1. to us at the relevant address provided during the registration process for BLUECHERRY TELECOM or any alternative address which BLUECHERRY TELECOM notifies to you;
  - 14.5.2. to you at the relevant postal or email address provided as part of the details which you submit during the registration process or any alternative address that you provide to BLUECHERRY TELECOM.
- 14.6. You may not assign sub-contract or transfer any of your rights or obligations under this Agreement.
- 14.7. If any part, term or provision of this Agreement is held to be illegal or unenforceable the validity or enforceability of the remainder of this Agreement will not be affected.
- 14.8. If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.

### **15. Law**

15.1. This Agreement will be governed by and construed and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts for the determination of any dispute or other matter which arises out of or in connection with this Agreement.

**16. Access to End-User Premises**

16.1. To enable BLUECHERRY TELECOM to carry out its obligations under the Agreement, the End-Users must provide to representatives of BLUECHERRY TELECOM and any Broadband Access Provider access to all End-User Premises at all reasonable times, including access for the purposes of installation, inspection, maintenance, replacement, upgrade, or removal of the Broadband Access Connection and any equipment associated with it.