

ADSL Service Agreement

Terms & Conditions

1. 1. DEFINITIONS

1.1 "company:-

"Customers" means the person who places the Order and uses the Services.

"Agreement" means these Terms, together with the order form.

"Installation Date" means the date when service is installed.

"Consumer" means a person who enters into a contract other than in the course of a business.

"Customer Equipment" means apparatus belonging to the Customer not forming part of the CMC Digital Limited Equipment but which may be connected to the CMC Digital Limited Equipment.

"Order Form" means the CMC Digital Limited application form, written customer order or e-mailed customer order or Migration Code.

"CMC Digital Limited Prices" means the CMC Digital Limited Prices in force from time to time.

"CMC Digital Limited Equipment" means any apparatus or equipment provided by CMC Digital Limited or any third party to the Customer to enable provision of the Service under this Agreement.

"Service" means the services described in section 2 and section 3 of the Order Form.

2. Commencement and Duration

2.1 This Agreement will commence on the Commencement Date and shall continue for an initial period as stated in the contract section 3 and will automatically renew subject to termination under Clauses 12.

3. Provision of the Service

3.1 CMC Digital Limited shall provide or procure the provision of the Service to the Customer in accordance with the terms of this Agreement. The Customer acknowledges that it is technically impracticable to provide a fault free Service and CMC Digital Limited does not undertake to do so.

3.2 Occasionally CMC Digital Limited may have to interrupt the Service or change the technical specification of the Service for operational reasons (such as maintenance or Service upgrades) or because of an emergency. In these circumstances where possible CMC Digital limited will give notice to the Customer of any such interruption however, the Customer shall have no claim against CMC Digital Limited for any such Interruption.

3.3 Except as otherwise expressly permitted under this Agreement, the Customer may not:

- modify the Service without CMC Digital Limited's prior written consent
- redistribute, copy or use the Service, or transfer rights to the use of the Service to any third party;
- Disclose details of the Service, to any third party without CMC Digital Limited's prior written

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consent;

- Use the Service except in conjunction with CMC Digital Limited's recommended operating guidelines;

4. Use of the Service

4.1 The Customer must not use the Service

- in a way that does not comply with the terms of any legislation or any license applicable to the Customer or that is any way unlawful or fraudulent or has any unlawful or fraudulent purpose of effect;

- in connection with the carrying out of a fraud or criminal offence against CMC Digital Limited, or any other public telecommunications operator;

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

- to send or procure the sending of any unsolicited advertising or promotional material other than in the case of the Customer to its own customers;

- in a way that does not comply with any instructions CMC Digital Limited has given; or

- in a way that in CMC Digital Limited's reasonable opinion could materially affect the quality of any service provided by CMC Digital Limited

4.2 CMC Digital Limited will be entitled to suspend the Service or terminate the Agreement where CMC Digital Limited, in its absolute discretion, believes the Customer is in breach of any provisions of Clause 4.1.

4.3 The Customer will co-operate with CMC Digital Limited's reasonable requests for information regarding the Customer use of the Service and supply such information without delay.

5. Charges

5.1 The charges for the Service will be calculated in accordance with the CMC Digital Limited Price List. Charging will begin on the Commencement Date for the Service. Charges will be calculated in accordance with details recorded by, or on behalf of CMC Digital Limited.

5.2 The Customer will pay the charges within 30 days of the date of CMC Digital Limited's invoice. CMC Digital Limited may charge daily interest on late payments at a rate equal to 4% per annum above the base-lending rate of Barclays Bank PLC and / or a £25 administration fee.

5.3 All Charges exclude Value Added Tax (VAT) at the applicable rate, unless stated otherwise.

5.4 CMC Digital Limited may also make an additional charge (on the basis of additional

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charges detailed in the CMC Digital Limited Prices), in the following circumstances:-

- where certain order information provided by the Customer is illegible, inaccurate or incomplete an administration fee will be charged;
- where a fault relates to equipment or software other than that supplied as part of the Service.

6. Customer Obligations

6.1 The CMC Digital Limited Equipment shall remain the property of CMC Digital Limited or the supplier of such equipment and the Customer shall at all times make clear to third parties that the same is the property of CMC Digital Limited or a third party supplier of such equipment. CMC Digital Limited may modify, substitute, renew or add to the CMC Digital Limited Equipment from time to time at its absolute discretion.

6.2 Any Customer Equipment connected to or used with the Service must be connected and used in accordance with any instructions, safety and security procedures applicable to the use of the equipment. Any equipment, which is attached (directly or indirectly) to the service must be technically compatible with the Service and approved for the purpose under any relevant legislation or telecommunications industry standards.

6.3 The Customer undertakes:-

- to comply with all instructions CMC Digital Limited may notify to the Customer for use of the CMC Digital Limited Equipment.
- not to allow the CMC Digital Limited Equipment to be repaired or maintained other than by an authorised representative of CMC Digital Limited.
- not to damage the CMC Digital Limited Equipment and not to add modify or in any way interfere with the performance of the CMC Digital Limited Equipment;
- not to attempt to sell the CMC Digital Limited Equipment;
- not to remove any identification mark affixed to the CMC Digital Limited Equipment showing that it is the property of CMC Digital Limited or other third party supplier of such equipment.

7. Support of the Service

Technical support for the Service is available by telephoning CMC Digital Limited or by sending e-mail to CMC Digital Limited.

Technical support is available during normal CMC Digital Limited office hours. Outside normal office hours emergency technical support is available by calling 07885761957.

8. Intellectual Property Rights

8.1 The Customer acknowledges that the Customer shall have no rights to any intellectual property rights arising as a result of any uses of the Service.

8.2 Any and all intellectual property rights used or embodied in or in connection with the Service shall be and remain the sole property of CMC Digital Limited or CMC Digital Limited's

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licensors. No title or intellectual property rights therein or in any modification or extension thereof shall pass to the Customer unless specifically stated under the Agreement.

8.3 The Customer acknowledges such title, interest and rights and the Customer shall not take any action to jeopardize, limit or interfere in any manner with CMC Digital Limited's (or any third party suppliers) title, interests or rights with respect to the Service, including but not limited to, using CMC Digital Limited's trademarks or trade name.

8.4 Where software is provided to enable the Customer or to use the Service, CMC Digital Limited grants the Customer, for the duration of this Agreement, a non-exclusive, non-transferable license to use the software for that purpose.

9. Warranties

9.1 With exception of the provisions on the enhanced care SLA, the Service will be provided without warranty or representation of any kind, whether express or implied CMC Digital Limited disclaims and excludes all such warranties and representations including without limitation any warranty or representation that the Service is free of defects, of satisfactory quality, fit for a particular purpose or non-infringing of third party rights. The Customer accepts all risks and liabilities associated with the use of the Service.

10. Limitation of Liability

10.1 Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.

10.2 Neither party shall be liable in contract, tort, pre-contract or other representations (other than fraudulent or negligent misrepresentations) arising out of or in connection with this Agreement for:

- any economic losses (including, without limitation, loss of revenues, profits, contracts, or business); or

- any special, indirect or consequential losses or any destruction, of data, arising out of or in connection with the provisions of this Agreement.

10.3 Subject to clauses 10.1 and 10.2 CMC Digital Limited's liability to the Customer in contract, tort, negligence, pre-contract or other representations arising out of or in connection with this Agreement or the performance or observation of its obligations under this Agreement shall be limited in aggregate to the charges paid, by the Customer under this Agreement.

10.4 Each provision of this Agreement, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

10.5 The Customer indemnifies CMC Digital Limited and its suppliers against any claims or damages arising from the Customers access to or use of the Service and any information, data or material produced, transmitted or downloaded on the Service.

11. Force Majeure

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11.1 If either party is unable to perform any obligation under this Agreement because of a matter beyond that party's reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving that party's employees), or acts of local or central Government or other competent authorities or events beyond the reasonable control of that party's suppliers, the party will have no liability to the other for the failure to perform.

11.2 If any of the events detailed in paragraph 11.1 continue for more than 3 months either party may serve notice on the other terminating this Contract.

12. Termination

12.1 The Customer may terminate this agreement after the initial term by giving 90 days written notice to CMC Digital Limited.

12.2 Either party may terminate this Agreement or the Service provided under it immediately, on notice, if the other:

- commits a material breach of this Contract, which is capable of remedy, and fails to remedy the breach within 15 days of a written notice to do so;

- is repeatedly in breach of this Contract; or

- is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administrator is appointed over their assets.

12.3 If any of the events detailed in 12.2 occur as a result of Customer default, CMC Digital Limited may suspend the Service without prejudice to its right to terminate this Contract. Where Service is suspended under this paragraph 12.3 the Customer must pay the charges for the Service until this Contract is terminated.

12.4 CMC Digital Limited may terminate this Agreement immediately upon written notice to the Customer if the Customer fails to comply with any of the material terms or conditions of this Agreement and the Customer does not remedy such failure within 15 days of a request to do so.

12.5 Upon termination of this Agreement the Customer shall immediately stop using the Service and the Customer right to use the Service shall immediately terminate.

12.6 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.

13. Confidentiality

13.1 The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under or in connection with this Agreement or the Service and will not without the written consent of the other party disclose that information to any person (other than their employees or professional advisers, or in the case of CMC Digital Limited the employees of a CMC Digital Limited Company or

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their suppliers, who need to know the information).

13.2 This Clause 13.1 will not apply to:

- any information, which has been, published other than through a breach of this Agreement;
- information lawfully in the possession of the recipient before the disclosure under this Agreement took place;
- information obtained from a third party who is free to disclose it; and
- information, which a party is, requested to disclose and, if it did not, would be required by law to do so.

13.3 This Clause 13.1 will remain in effect for 2 years after the termination of this Agreement.

14. Data Protection

14.1 CMC Digital Limited and the Customer each agree to comply with their respective obligations under applicable data protection legislation and maintain all relevant registrations, including (in relation to the Customer) such registrations and consents as the Customer should obtain and maintain to enable CMC Digital Limited to process personal data in connection with the performance by CMC Digital Limited of its obligations under this Contract.

14.2 The Customer agrees that CMC Digital Limited may put their name and other details obtained from the Order Form into a computerized directory for internal use and to enable CMC Digital Limited to provide the Service.

14.3 Rights of subject access will be in accordance with the Data Protection Act 1998 and upon request in writing and payment of the appropriate fee.

14.4 Any and all data supplied by Customers is held in accordance with CMC Digital Limited's current Privacy Policy available upon request

15. Consumers

Where you are purchasing the Service as a Consumer the exclusion of the implied terms in Clause 9 and the provisions of Clause 14.1 will not apply.

16. Notices

16.1 Notices given under this Agreement must be in writing and may be delivered by hand, or by courier or first class post to the following addresses:

16.1.1 To CMC Digital Limited at the address of the CMC Digital Limited office shown on the Order Form or any alternative address which CMC Digital Limited notifies to the Customer;

16.1.2 To the Customer at the address to which the Customer asks CMC Digital Limited to send invoices, the address of the Customer's premises, or, if the Customer is a limited company, its registered office.

17. General Provisions

All prices exclude VAT.

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17.1 The Agreement will constitute the entire agreement between the parties and will supersede all prior and contemporaneous agreements, communications and representations (except for fraudulent or negligent misrepresentations) whether oral or written, between the parties.

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

17.3 In the event of a dispute between the parties, the parties will attempt in good faith to resolve the dispute or claim arising out of or relating to the Agreement promptly through negotiations between the respective representatives of the parties who have authority to settle the same.

17.4 If any provision of the Agreement (whether in part or in whole) is held by a court of competent jurisdiction to be illegal, invalid or unenforceable the remaining provisions of the Agreement shall remain in full force and effect.

17.5 Any waiver of any breach of any provision of this Agreement will not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Agreement.

17.6 The Customer may not assign or otherwise transfer, by operation of law or otherwise, the Agreement or any rights or obligations therein without the prior express written consent of CMC Digital Limited.

17.7 The headings to the sections of this Agreement are for convenience only.

18. Law

This Agreement shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.