

## Terms and Conditions of Broadband Service for Business Customers

September 2018

We are Gigaclear plc a company incorporated in England with Company registration number 07476617. Our registered office is at Windrush Court, Abingdon, Oxfordshire, OX14 1SY.

You are a Business Customer; the name and contact details on the Order Confirmation belong to a person authorised to enter into contracts for your business and accept liability to pay our charges. The address stated in the Order Confirmation is the location where our service will be activated for use. If your registered office/billing address is at a different location, please specify this.

You can [contact us](#) by telephoning our customer care team on 01865 591131 or by emailing us at [support@gigaclear.com](mailto:support@gigaclear.com) or by using the form on the 'Contact us' page of our website.

### 1. Contract

- 1.1 The Order Confirmation describes the details and prices of our services which you require. You accept that by submitting an order via our website or by signing a Service Agreement Form you have placed an order with us for that service according to these terms and conditions.
- 1.1 Our acceptance of your order will take place when we email your Order Confirmation at which point this Contract will be effective. All orders are accepted subject to the availability of our broadband service and our installation service and to these terms and conditions. No terms, conditions or limitations put forward by you shall be binding on us.
- 1.2 You accept that these terms and the details stated on the Order Confirmation constitute the entire understanding between us and supersede any prior promise, representation, undertaking or understanding of any kind.

### 2. Service Installation & Activation

- 2.1 We will contact you when the Connection Point outside your premises is live to arrange for installation into your premises.
- 2.2 If you do not allow the installation team to access your property as arranged (and you do not have a good reason for this) the installation may be cancelled and you may be charged a cancellation fee.
- 2.3 Non-standard installations will require a separate on-site visit by an installation technician who will prepare a written quotation for the installation cost. We will discuss the installation cost with you before the installation can commence. If you agree to go ahead with the installation, the installation charges will be confirmed to you in writing and once the network is installed then our service can be delivered to you according to your order. The agreed installation charge will be taken as part of your first monthly payment.
- 2.4 More information is available in '[Your Gigaclear Installation](#)' about the safety requirements for installations. If the technician decides that it is not possible to carry out the installation safely, or if there is no one over the age of 18 present at the property, you will be informed and given the opportunity to make alternative arrangements.
- 2.5 Please note that if you change your requirements, this may affect your eligibility for a standard installation. If there has been an error in assessing the criteria for your installation, which means you do not qualify for standard

installation, the technician will inform us and we will discuss and agree with you how to proceed and the charges which may apply.

- 2.6 The technician will do everything possible to achieve your installation at the arranged time, but if it is not possible to continue with the installation because of safety issues, the complexity or the materials required, the technician will inform us and will ask you to confirm your acceptance that a further appointment will be required. We may charge you reasonable costs incurred by us as a result. If, despite our reasonable efforts, we are unable to contact you or re-arrange access to your property we may end the contract.
- 2.7 Once our service is installed at your property, or where you have taken over a property with an existing installation, we will activate your service. As soon as we have activated your service, you will be charged a one-off Activation Fee, and we will commence charging for our service in accordance with clause 3 below.

### **3. Our charges and your payments**

- 3.1 The amount you pay for our broadband service depends on the level of service you have ordered and is shown on your Order Confirmation, payable in advance monthly. Payment of all charges under this Contract must be made by direct debit and be made in full and free from any deductions, rights of set-off, counterclaims or liens. The Order Confirmation also sets out the amount payable for installation (where applicable) and is in addition to the charges for our broadband service.
- 3.2 You agree that you will pay for our broadband service for a Minimum Term commencing on your Activation Date. The Minimum Term which applies to your contract is shown on your Order Confirmation. If you end the contract during the Minimum Term, you may have to pay an early termination charge (see clause 7.1 below).
- 3.3 We will give you at least one month's notice of any changes to our prices and you will be entitled to contact us to terminate our Contract in the event that you do not agree to accept our price changes.
- 3.4 VAT will be added to the charges shown on the Order Confirmation at the applicable rate. If the rate of VAT changes between your order date and the Activation Date, or during the time we are supplying services to you, we will adjust the rate of VAT that you pay and show this on your bill.
- 3.5 We are not responsible or liable for any 3<sup>rd</sup> party charges from other organisations (such as telephone or content providers) which you may incur while using the services.
- 3.6 If you do not pay us for our services when payment is due and you still do not make payment within 7 days of us reminding you that payment is due, we may suspend supply of the services until you have paid us the outstanding amounts.
- 3.7 If you do not make any payment to us by the due date, we may charge interest to you on the overdue amount at the rate of 4% a year above the base lending rate of Barclays Bank from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.
- 3.8 If you think an invoice is wrong, please contact us promptly to let us know and we may exercise our discretion not to charge you interest until we have resolved the issue.

#### **4. Using our service**

- 4.1 We warrant that we have the authority to provide the service as set out under the terms of this Contract and that we will provide the services in with reasonable care and skill and in accordance with good industry practice
- 4.2 The router supplied to you to connect to our service remains our property. You are responsible for maintaining all the equipment we supply to you in good order. You should also ensure that you are aware of the installation route of the network apparatus across your property and draw this to the attention of any third party doing work on your property. If you report a fault which we trace within your property boundary, we will make an appointment to carry out repairs or replace faulty equipment but if, in the reasonable opinion of the engineer, the fault was not caused by us then a charge may be made.
- 4.3 We cannot guarantee fault-free performance. Due to shared use of networks and factors outside our control such as access to 3rd party content and services your internet access availability and speed of our service may vary from time to time. In addition, the speed and limitations of your equipment (your router position, wall thickness, device capability etc) may affect the actual speed that you experience. We do not warrant, represent or guarantee in any way whatsoever that the equipment we supply or our service will be virus-free, worm-free, spam-free or inaccessible to malicious code or malignant third parties.
- 4.4 You agree to abide by our [Acceptable Use Policy](#). You may only use our network for lawful purposes. You agree that we may intermittently monitor your use of our services including data volume and type of traffic (whether authorised by statute or other legislation or otherwise) to ensure lawful use and to assist our traffic management. If you use our network improperly, negligently or in a way which interferes with other customer's use of our network, we may exercise our right to suspend your use of our network (see clause 5 below) or end our Contract (see clause 7 below). We may immediately remove any material placed on our servers by you or other users which breaches this contract or is otherwise harmful to our interests or the interests of our other customers.
- 4.5 You agree that you are liable for all use of our service, whether you gave your permission or not. For example, if someone has access to your broadband service, we would consider them to be within your control and you could be liable for unlawful use such as illegally downloading or transmitting copyright material. You should only allow access to your wi-fi and network to people you trust and you must accept responsibility for their use of our services.
- 4.6 You agree to take responsibility for all liabilities, claims and losses which are in any way connected with misusing the Services supplied under this Contract, and you agree to indemnify us if we suffer any losses as a result of your misuse of our service.
- 4.7 Unless you have ordered a static IP address (which will be shown on your Order Confirmation), we may vary the internet address we allocate to you at any time and it will at all times belong to us. You may not sell or agree to transfer the internet address to any person. We grant to you a non-transferable licence to use the Internet address while you receive internet access from us which will end if this Contract ends.

#### **5. Non-availability of our service**

- 5.1 We will use reasonable endeavours to carry out necessary maintenance and support work overnight and we will try to give you at reasonable warning by email prior to such work being carried out, although this may not always be possible if the problem is urgent or an emergency.

5.2 If there is a fault on our network, we will do our best to diagnose and repair it within the timescales specified in our Service Level Agreement, which may be amended from time to time. The service level which you have selected to apply to this contract is shown on your Order Confirmation.

5.3 If we suspend the supply of your service because:

- (a) you fail to pay our charges or any amount due to us when due;
- (b) you misuse our network or do not comply with our acceptable use policy (see clause 4);
- (c) you break our Contract in any way, or any laws which apply to the use of our network;

we will not be liable to you for the loss of service and we will charge you for re-activating your service at the end of the period of suspension.

## **6. Limitation of liability**

6.1 We are not responsible if you are not able to use the services because your equipment (for example, any PC, mobile device, network interface card, printer, switch, local area network or other equipment) does not work properly, is not compatible with the system, does not conform to the relevant standard or does not meet the minimum specifications or because of faults in any 3<sup>rd</sup> party networks over which we have no responsibility.

6.2 We have no control over the data which passes to or from you over the internet, and we are not responsible for any loss or damage to that data and we are not responsible for any loss or damage to your own equipment caused by the use of our service to access the internet.

6.3 We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation. Except as expressly set out in these terms all warranties, terms and conditions, whether oral or written, express or implied by statute, common law, or otherwise (including but not limited to any warranties, terms and conditions of fitness for purpose, description or quality) are hereby excluded.

6.4 We have no liability to you for any loss of profit, loss of business, business interruption, loss of anticipated savings, loss of sales or turnover, loss of, or damage to reputation, loss of contract, loss of customers, wasted management or other staff time, losses or liabilities under or in relation to any other contract, nor any indirect, consequential loss or damage of any kind arising from this Contract.

6.5 We are not liable to you for loss or damage you suffer that is a not foreseeable or which arises from an event beyond our reasonable control. In the case of suspension of service due to our fault, your sole remedy is set out in our Service Level Agreement. Subject to clauses 6.1 – 6.4, our liability for all other claims arising under this Contract (whether such liability arises due to negligence, breach of contract, misrepresentation, or for any other reason excluding fraudulent misrepresentation) is limited to the net amount you have paid in charges in the 12 months preceding your claim.

## **7. Termination of this Contract**

7.1 This Contract will remain in force for the duration of the Minimum Term and thereafter can be terminated by either party giving to the other 3 months' notice in writing (such notice not to expire before the end of the Minimum Term). If you terminate during the Minimum Term, other than for a material breach by us (clause 7.3 below) we are entitled to charge you a cancellation fee equivalent to the remaining charges for the Minimum Term.

- 7.2 Either party may terminate this Contract forthwith if an order is made or an effective resolution passed for the liquidation, winding up, dissolution or bankruptcy (other than by way of members' voluntary liquidation or pursuant to any amalgamation or reconstruction on mutually agreed terms) of either party or a receiver, administrative receiver, administrator or trustee in bankruptcy is appointed over all or any of the revenues or assets of either party.
- 7.3 Either party may terminate this Contract immediately by giving notice in writing to the other party if the other party commits a material breach of this Contract and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of other party's intention to terminate).
- 7.4 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall remain in full force and effect.
- 7.5 Termination of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

## **8. Privacy & Data Protection**

- 8.1 We will use the personal information you provide to us in accordance with our [Privacy Policy](#) which is available for you to read on our website.
- 8.2 We may monitor and record phone conversations which you have with us so that we can shape our training and compliance.

## **9. General terms**

- 9.1 We may transfer our rights and obligations under these terms to another organisation. You may only transfer your rights or your obligations under these terms to another person or entity if we agree to this in writing.
- 9.2 This contract is between you and us. No other person shall have any rights to enforce any of its terms. Neither of us will need to get the agreement of any other person in order to end the contract or make any changes to these terms.
- 9.3 We have the right to vary these terms or the terms of the Service Level Agreement from time to time on giving you at least 30 days' notice in writing.
- 9.4 Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 9.5 If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.
- 9.6 These terms are governed by English law and both parties agree that the courts in England and Wales shall have exclusive jurisdiction to settle any dispute of claim arising under or in connection with this Contract.