

## 1. DEFINITIONS AND INTERPRETATION

- 1.1. These terms and conditions are additional to the Wholesale Terms & Conditions. Unless otherwise defined herein, capitalised terms have the meaning given to them in the Wholesale Terms & Conditions. In addition, the following definitions apply:

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| <b>Charges</b>                   | means, to the extent that they are not covered by the Wholesale Price List, the charges for the Data Services in the Data Service Price List separately notified by Fibrus Networks to the Retail Service Provider or as otherwise specified in a Purchase Order, and any charges relating to Non-standard Services;                                                               |
| <b>Data Services</b>             | means:<br>(a) Leased lines;<br>(b) Dedicated Internet Access;<br>(c) Other data solutions offered by Fibrus Networks;                                                                                                                                                                                                                                                              |
| <b>Equipment</b>                 | means the Network Equipment and the Service Equipment per the Purchase Order, and it includes any upgrades and replacements to any Equipment. It does not include any equipment not supplied by Fibrus Networks;                                                                                                                                                                   |
| <b>Dedicated Internet Access</b> | means a dedicated uncontended internet access service provided via ethernet or PON based technologies;                                                                                                                                                                                                                                                                             |
| <b>Leased Line</b>               | means a dedicated uncontended point to point service provided via ethernet or PON based technologies;                                                                                                                                                                                                                                                                              |
| <b>Minimum Term</b>              | means the minimum commitment period for which the Retail Service Provider agrees to keep the Data Services for set out in the Purchase Order. It starts on the Services Start Date;                                                                                                                                                                                                |
| <b>Network Equipment</b>         | means the infrastructure, apparatus or equipment which is used by Fibrus Networks to connect the Data Services, and which may be some or all of the following: underground or overhead fibre optic cable, in building structured cabling, telegraph poles, brackets, ducts and the fibre box (also known as the ONT or Optical Network Terminal, or CSP or Customer Splice Point); |
| <b>Process Manual</b>            | means the Fibrus Networks Data Services process manual from time to time notified to the Retail Service Provider;                                                                                                                                                                                                                                                                  |
| <b>Service Equipment</b>         | means the equipment Fibrus Networks supply as part of the Data Services as an essential part of providing the Data Services. It typically includes advanced routers for Dedicated Internet Access and specific network terminating units at each end of the Leased Line;                                                                                                           |
| <b>Service Level Agreement</b>   | means the Data Services Service Level Agreement from time to time, which contains details about support, maintenance and service levels for the Data Services;                                                                                                                                                                                                                     |
| <b>Services Start Date</b>       | means the date the Data Services are activated or start, as shown in the Purchase Order, unless Fibrus Networks notifies the Retail Service Provider of another date;                                                                                                                                                                                                              |
| <b>Termination Fee</b>           | means the one-off fee, which the Retail Service Provider will be required to pay if it ends a Contract and cancels the Data Services;                                                                                                                                                                                                                                              |
| <b>Warm handover</b>             | means an agreed handover to the Retail Service Provider facilitating testing in advance of order completion;                                                                                                                                                                                                                                                                       |

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| <b>Wholesale Terms &amp; Conditions</b> | means Fibrus Networks <u>wholesale terms &amp; conditions</u> . |
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## 2. START AND DURATION

- 2.1. The Contract for Data Services between Fibrus Networks and the Retail Service Provider starts when the Purchase Order takes effect under clause 3.8.
- 2.2. The Data Services will start on the Services Start Date.
- 2.3. The Data Services will continue for the Minimum Term and automatically extend for 12 months (**Extended Term**) at the end of the Minimum Term and at the end of each Extended Term. Either party may give written notice to the other party, not later than 3 months', before the end of the Minimum Term or the relevant Extended Term, to terminate Data Services at the end of the Minimum Term or the relevant Extended Term, as the case may be.
- 2.4. A new Minimum Term will be required if the Retail Service Provider decides to upgrade the Data Services during the Minimum Term.
- 2.5. During the Minimum Term, the Retail Service Provider will not be able to downgrade the Data Services or to shorten the Minimum Term, except by ending the Contract.

## 3. PURCHASE ORDERS AND ORDER PROCESS

- 3.1. In addition to the general Purchase Order provisions in the Wholesale Terms & Conditions, the following additional provisions shall apply to Purchase Orders for Data Services.
- 3.2. All Retail Service Provider Purchase Order requests must be submitted, and all Purchase Orders will be created, managed and fulfilled in accordance with the Process Manual.
- 3.3. Within 10 Business Days of receipt of a written request from the Retail Service Provider, Fibrus Networks shall:
  - (a) either notify the Retail Service Provider that it is not able to provide the requested Data Services;
  - (b) request additional and/or more complete information from the Retail Service Provider to enable it to further evaluate the Retail Service Provider's request; or
  - (c) proceed with the Purchase Order process, in which case the following provisions will apply.
- 3.4. A Purchase Order shall not enter into force, be legally binding or have any other effect unless it has been confirmed in accordance with the Process Manual.
- 3.5. For all submitted requests for Data Services, Fibrus Networks will carry out a desktop survey, and will provide the Retail Service Provider with a quotation for prices and lead times for the Data Services. This quotation will remain valid for 30 days after which it will automatically lapse.
- 3.6. On receipt of the quotation the Retail Service Provider can either decide not to proceed further with the request for Data Services or to instruct Fibrus Networks to complete the mandatory full-site survey (at the Retail Service Provider's cost), in accordance with the Process Manual.
- 3.7. On completion of the full-site survey (which may, if required, also comprise a structured cable survey), Fibrus Networks will provide a final price and lead times for the Data Services to the Retail Service Provider. The final quotation will remain valid for 60 days, although Fibrus Networks may at its discretion extend this period for a further 30 days after which it will automatically lapse.
- 3.8. If the Retail Service Provider accepts the final quotation period before it lapses, the Purchase Order process will be concluded and the Contract shall enter into force, be legally binding and take effect subject to it being signed by both parties.
- 3.9. The Charges in the Purchase Order are subject to change where Fibrus Networks encounters matters that could not reasonably be foreseen or anticipated from the site survey, including exceptional engineering difficulties or structural obstacles. Fibrus Networks shall notify the Retail Service Provider of any additional costs and the Retail Service Provider agrees that the work shall continue subject to the revised Charges.
- 3.10. The Retail Service Provider agrees to pay the full cost of the full-site survey within 30 days of receipt of a valid invoice from Fibrus Networks. This fee will be payable in full on the automatic lapse of the final quotation in clause 3.7 and also in the event a Contract is finalised in clause 3.8, but full completion and installation are not achieved for

whatever reason. Fibrus Networks will waive the fee if full completion and installation are achieved.

- 3.11. If the Retail Service Provider cancels a Contract before completion of the installation, other than as a result of Fibrus Networks' persistent breaches or material breach and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so, the Retail Service Provider will remain responsible for the full cost of any work already completed, or committed to, by Fibrus Networks and/or which cannot be avoided by Fibrus Networks at the point of cancellation plus an administration fee of £500.

3.12. If:

- (a) Fibrus Networks is impeded or prevented or delayed in carrying out the work, for example in not being able to gain full and convenient access to premises as a result of an act or omission of the Retail Service Provider or its end-customer; or
- (b) an installation appointment is cancelled or changed by the Retail Service Provider or its end-customer on less than 2 Business Days prior written notice, then

Fibrus Networks reserves the right to charge an abortive visit charge at its standard rate from time to time and/or to pass on any direct costs incurred by it as a result.

- 3.13. Where Fibrus Networks and the Retail Service Provider fail to agree: (i) an installation date within 30 Business Days of conclusion of a Contract; or (ii) a rescheduled installation appointment for a previously cancelled installation appointment date within 5 Business Days, or where Fibrus Networks is unable to provide the Data Services within a reasonable period from the installation date set out in the Purchase Order for any reason not attributable to any act, omission or default of Fibrus Networks, Fibrus Networks may cancel a Contract with immediate effect by giving written notice to the Retail Service Provider. Cancellation shall not affect any rights, remedies, obligations or liabilities of Fibrus Networks that have accrued up to the date of termination, including but not limited to recovery of the full-site survey costs under clause 3.10 and recovery of the full cost of any work already completed, or committed to, by Fibrus Networks under clause 3.11.

- 3.14. The parties will, prior to the Services Start Date, jointly conduct testing of the Data Services before handover to the Retail Service Provider.

#### **4. EQUIPMENT**

- 4.1. To complete the installation, Fibrus Networks will bring the Equipment with it, and ordinarily aim to complete the Installation and activate the Data Services.
- 4.2. Fibrus Networks is not responsible for connecting any equipment or apparatus that it has not supplied. It may offer the Retail Service Provider guidance, although the Retail Service Provider is solely responsible for connecting its own equipment and for assessing the suitability and compatibility of its equipment with any Equipment and accepts that it may affect the performance of the Data Services.
- 4.3. Any Equipment supplied or installed by Fibrus Networks or on its behalf in the provision of the Data Services is owned by Fibrus Networks or its service providers and must remain at the end-customer premises at all times.
- 4.4. The Retail Service Provider must not interfere or tamper with, remove, damage or destroy any Equipment. However, Fibrus Networks may occasionally provide guidance and ask the Retail Service Provider to help us troubleshoot and fix problems.
- 4.5. The Retail Service Provider (and its end-customer) will need to take good care of the Equipment and if it is lost or damaged caused by their actions or omissions whilst it was under their care (other than through fair wear and tear) Fibrus Networks reserves the right to charge the Retail Service Provider for the cost of repair or replacement or loss in value as a result.
- 4.6. When the Contract ends (for whatever reason):
- (a) the Network Equipment will remain at the end-customer premises, and it is not to be returned or removed (but Fibrus Networks may remove the Equipment at the Retail Service Provider's request and cost); and
  - (b) the Service Equipment will need to be returned by the Retail Service Provider to Fibrus Networks, unless otherwise agreed between Fibrus Networks and the Retail Service Provider that Fibrus Networks will collect the Service Equipment.

#### **5. END-CUSTOMER RELATIONSHIP**

- 5.1. The Contract is between Fibrus Networks and the Retail Service Provider only. The Retail Service Provider is solely responsible for its commercial and contractual arrangements, and all dealings, with its end-customers and for managing those relationships, specifically as regards agreeing and capturing any end-customer requirements and preferences, any lead times, build and installation planning and co-ordination.
- 5.2. Fibrus Networks is relying on the Retail Service Provider to manage all relevant communications with its end-customers and for facilitating all necessary convenient and full access by Fibrus Networks to the end-customers' (and third-party) premises, for obtaining all necessary permissions to enable Fibrus Networks to complete all work concerning Fibrus Networks' fulfilment of each Contract and for procuring its end-customers' co-operation with Fibrus Networks generally.
- 5.3. As all end-customer contracts are with the Retail Service Provider, any end-customer communications will ordinarily be conducted through the Retail Service Provider as the main point of contact. However, Fibrus Networks may communicate directly with end-customers:
- (a) to book and amend installation appointments and for arranging necessary premises access for installation, system maintenance, repairs, upgrades and replacement and returns;
  - (b) to deal with Planned Maintenance, Outages, or unscheduled or unplanned events;
  - (c) for quality assurance and service experience feedback purposes; and
  - (d) at the reasonable request of the Retail Service Provider to help the end-customer with troubleshooting faults, defects and diagnostics relating to Fibrus Network's equipment or its network and with the end-customer's consent where relevant, for operational, quality assurance and training purposes.

#### **6. GETTING IN CONTACT AND REPORTING FAULTS**

- 6.1. The Retail Service Provider can contact Fibrus Networks by using the Wholesale Portal to raise a fault, details of which are found in the [Process Manual](#).
- 6.2. Sometimes the Data Services can be affected by faults or defects on the Network or with Equipment.
- 6.3. The Retail Service Provider must report any fault or defect following the process found in the [Process Manual](#) and Fibrus Networks will use reasonable endeavours to meet any performance target response times as specified in the [Service Level Agreement](#).
- 6.4. Where a fault or defect necessitates a Fibrus Networks call out to the end-customer:
- (a) if Fibrus Networks is responsible for the fault or defect, the Retail Service Provider will not be charged for the call out or any repaired or replaced apparatus;
  - (b) if Fibrus Networks determines that the Retail Service Provider or the end-customer is responsible for the fault or defect, then the Retail Service Provider will have to pay for any call out charge and may also have to pay Fibrus Networks for the cost of any repair or replacement to, or loss in value of, any Equipment; and
  - (c) when the fault or defect is reported, Fibrus Networks will provide the Retail Service Provider with details of any costs the Retail Service Provider is likely to incur.
- 6.5. Without Fibrus Networks' prior written consent, the Retail Service Provider must not publish or give end-customers contact details for Fibrus Networks or its personnel.

#### **7. TERMINATION AND CONSEQUENCES OF TERMINATION**

- 7.1. If the Retail Service Provider terminates the Contract during the Minimum Term or Extended Term for any reason other than as expressly provided in the [Wholesale Terms & Conditions](#), it will also be required to pay a Termination Fee. The Termination Fee is the compensation payable to Fibrus Networks by the Retail Service Provider for not keeping the Data Services for the Minimum Term (or the Extended Term) it agreed to when it took the Data Services, calculated as follows:
- (a) Fibrus Networks will calculate the remaining VAT inclusive amount the Retail Service Provider was due to pay up to the end of its Minimum Term;
  - (b) Fibrus Networks will deduct VAT;

- (c) Fibrus Networks will then deduct the costs it saves (e.g. in payments to suppliers) as a result of the Retail Service Provider terminating the Contract early, and apply a discount for early receipt of payment; and
- (d) Fibrus Networks will add VAT to the final Termination Fee.