

# General Terms and Conditions - Business Customers

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## 1. COMMENCEMENT

- 1.1. This Agreement shall come into effect on the date Relish communicates its acceptance of the completed and signed Relish Customer's Order Form.
- 1.2. Subject to clause 1.4 below, the Initial Service Term shall commence on the Service Start Date. On expiry of the Initial Service Term, the Agreement shall continue in full force and effect until terminated by either party providing thirty (30) days written notice.
- 1.3. Upon acceptance by Relish, each Order Form shall create a separate contract to purchase the relevant Services, and that contract shall be subject to these General Terms and Conditions, the Additional Terms applicable to the relevant Service and any terms set out in the relevant Order Form.
- 1.4. Where the Order Form is for a Site Survey only, the Order Form shall commence on the date the Order Form is signed by Relish and continues until either (i) the Customer signs, and UKB accepts, an Order Form for a Service relating to the Site Survey findings or (ii) following a Site Survey Relish are unable to provide the Service to the Customer as detailed in the relevant Order Form; or (iii) Relish receives reimbursement from the Customer for the cost of the Site Survey as further detailed in the relevant Order Form.

## 2. PROVISION AND ACCEPTANCE OF THE SERVICE

- 2.1 Relish shall use reasonable commercial endeavours to provide the Service in accordance with the relevant Additional Terms by the Requested Service Start Date, however it is acknowledged and agreed by the Customer that this date shall not be binding and Relish shall inform and keep the Customer informed as to the expected Service Start Date.
- 2.2 The Service shall be provided to the relevant Demarcation Point(s). The Customer shall ensure the Customer side of the Demarcation Point (including any equipment provided by the Customer) meets all technical specifications included in the Order Form or as otherwise specified by Relish.
- 2.3 Where the Service and/or Equipment is to be provided to a Customer Site, the Customer agrees to (i) prepare the Site according to all applicable health and safety requirements and any instructions Relish may give (ii) obtain all necessary permissions and consents for Relish to deliver, access and maintain the Service at the Site for the Term of the Agreement including all necessary wayleaves, consents, licenses or other necessary permissions (including all landlord permissions and consent); (iii) provide at its expense a suitable place and conditions for Equipment and, where required, a continuous mains electricity supply and connecting points and (iv) make good the Site after any work has been undertaken by Relish at the Site, including removal and return of any items and for redecoration.
- 2.4 Risk of damage or loss in all Equipment, whether purchased or included as part of the Service (and for the avoidance of doubt, whether the loss and damage has been caused by the Customer or a third party) shall pass to the Customer upon delivery and the Customer, shall at all times keep the Equipment properly identified, stored, protected and insured. On delivery the Customer undertakes to follow all applicable health and safety requirements; not to remove any safety information, instructions or warning notices attached to or affixed on the Equipment. Relish shall use its reasonable endeavours to advise the Customer of any variations as soon as it receives notice of the same from the manufacturer.
- 2.5 Where the Customer is purchasing the Equipment, Charges shall be set out on the Customer Order and the following additional clauses shall apply:
  - 2.5.1 unless stated otherwise on the Customer Order, the Charges for Equipment are ex-works and Customer shall be liable to pay the Charges for transport, packing and insurance and on delivery, the Equipment shall become Customer Equipment;
  - 2.5.2 prior to title in the Equipment passing to the Customer: the Customer shall (a) keep the Equipment identified as the Equipment of Relish and hold the Equipment as Relish's fiduciary agent and bailee; (b) shall not be entitled to sell, pledge or in any way charge by way of security for any indebtedness any of the Equipment, but if the Customer does so,

all monies owing by the Customer to Relish shall (without prejudice to any other right or remedy of Relish) forthwith become immediately due and payable to Relish; (c) the Customer's right to use any Equipment in which title has not passed shall immediately cease in an Event of Insolvency and the Customer will immediately hold the Equipment to the order of Relish; (d) Relish shall be entitled at any time to require the Customer to deliver up the Equipment to Relish, and if the Customer fails to do so forthwith, to enter upon any Site or premises of the Customer or any third party where the Equipment is stored and repossess the Equipment.

- 2.5.3 subject to clause 11 (Intellectual Property and Confidentiality), title in the Equipment shall pass to the Customer on receipt of unconditional payment, and on such transfer of title: (a) Relish warrants that it has good title to or licence to supply the Equipment to the Customer (b) Relish shall pass on to the Customer (so far as is possible) the benefit of any warranty given to Relish and will supply to the Customer details of the terms and conditions of such warranty (c) the Customer shall (and shall procure that any relevant User or third party using the Equipment or Services shall) be solely responsible to the entire exclusion of Relish for complying with any requirements of applicable warranty terms and conditions as well as any to any Equipment safety information, installation or other instructions or warning notices, specifications, technical data, policies and procedures supplied with the Equipment or as advised to Relish, or the Customer, from time to time; (d) comply with all statutory or other government regulations in relation to the export of Customer Equipment regardless of any disclosure made by the Customer to Relish. The Customer will not export or re-export directly any Equipment without first obtaining at its own expense all such written consents or authorisations as may be required by any applicable government regulations and, if requested, produce evidence of any such consents or authorisations to Relish. Failure to obtain such consents or authorisations does not entitle the Customer to withhold or delay any payments due under this Agreement.
- 2.5.4 If the Customer is entitled to reject any Equipment by reason of non-compliance with the warranty referred to in clause 2.5.3 Relish will only accept the return of such Equipment if it receives written notification of such non-compliance giving detailed reasons for rejection and the Customer complies with all returns procedures for that Equipment notified to it. Relish will not consider any claim for compensation, indemnity or refund until liability, if any, has been established or agreed with the supplier of the Equipment and where applicable the insurance company. Under no circumstances shall billed Equipment be deducted or set off by the Customer until Relish has provided the Customer with a corresponding credit note.
- 2.5.5 Relish will not be responsible for any loss or damage resulting to the Customer or any third party to which the Customer resells or distributes the Equipment, or any elements of the Equipment, or services delivered using any Equipment;
- 2.6 If Relish chooses to supply, or the Customer chooses to opt, for a Static IP address then this shall be stated on the Order Form and supplied in accordance with the Additional Terms, for the avoidance of doubt, the Customer does not own any Internet Protocol address or have any right to sell the Internet Protocol address related to the Service.
- 2.7 Unless otherwise set out and agreed on the Order Form, the Customer acknowledges that it is responsible for implementing any desired security mechanisms for the Service in accordance with clause 4.
- 2.8 The Customer acknowledges that the Services (or part thereof), or Site Survey may be provided by either Relish or a third party. In such case, unless otherwise notified by Relish, the Customer acknowledges that:
- 2.8.1 charges specified in the Order Form do not include any additional access and access-related Charges, including, without limitation, inside wiring Charges and any other associated Charges all of which shall be for the cost of the Customer;
- 2.8.2 any rights, remedies, credits or service the Customer may have, or be entitled to, regarding a third party service are limited to those rights, remedies, credits or service which Relish may be entitled to under its agreement with the third party operator;
- 2.8.3 whether or not a Site Survey has been previously completed at a Site, the estimated costs for the third party service are incorporated within the Charges and may be subject to a

survey (whether additional or not) of the Customer's Site and/or the Customer's Site (as applicable) by the relevant third party operator and may be subject to change, both upwards and downwards, any such change to be passed onto the Customer in its entirety. Furthermore, the Customer acknowledges and agrees that the cost of the third party service may increase during the Term of this Agreement and any such increase shall be passed on to the Customer in its entirety;

- 2.9 If after acceptance of an Order Form Relish determines that additional infrastructure is required to enable the Customer to receive the Service, Relish will inform the Customer by notice in writing of the excess construction Charges that will apply and any impact on the Requested Service Start Date. The Customer will have a period of twenty-eight (28) days from the date of the notice within which to accept the excess construction Charges. Failure to accept the Charges within this timescale will result in the Customer's Order Form for the Service being cancelled and neither party shall have any liability to the other. Where the Customer accepts the Charges, but subsequently cancels the Service (including any order for Equipment to be purchased under clause 2.5) prior to installation, the Customer shall be liable to Relish for any work started, completed or committed to, together with such reasonable cancellation Charge as may be notified by Relish to the Customer.
- 2.10 After, and notwithstanding, the acceptance of an Order Form, Relish shall be entitled to change the terms, specifications and/or conditions of a Service for bona fide operational reasons (including changes made in consequence of governmental, regulatory or third party action). Relish shall give at least twenty (20) Business Days' notice of any such change to the Customer except where such changes are being made as a consequence of governmental, regulatory or third party action (in which case Relish shall give as much notice as is practicable in the circumstances).
- 2.11 If Relish, in accordance with clause 2.10 other than as a consequence of governmental, regulatory or third party action, changes a Service in a manner that the Customer reasonably believes materially adversely affects the provision and/or functionality of the Service, the Customer may terminate that Service with immediate effect and without penalty upon notice to Relish given within ten (10) Business Days of receipt of the notice by Relish as to the relevant change. If the Customer does not so notify Relish within that ten (10) Business Day period or uses or continues to use the Service, the change shall be deemed accepted by the Customer.
- 2.12 Without prejudice to any additional rights under this Agreement, Relish reserves the right to raise an abortive visit Charge in the following circumstances: (i) When a Relish engineer attends an incorrect address provided by the Customer; (ii) when a Relish engineer arrives to carry out the installation at the address provided by the Customer, but either (a) the Customer no longer wants the installation completed; or (b) the Customer, having previously chosen to be present at the time of installation, does not attend; (iii) when entry is refused at a Site, or no access can be gained at the appointed time agreed between Relish and the Customer; (iv) if Relish is delayed in its installation activities because the Customer fails to comply with any of the conditions in clause 2.3 above, and / or fails to make Equipment that Relish has despatched to the Customer for installation purposes available to Relish on arrival at the Site (v) if the engineer attends the Site and finds that the location and/or environment provided by the Customer for the Relish Equipment and/or Customer Equipment is not suitable; and (vi) if the Customer provides Relish with less than 24 hours notice of an amendment to, or cancellation of a scheduled delivery of Equipment and/or a Service.
- 2.13 No Order Form that has been accepted by Relish may be cancelled by the Customer except with the written agreement of Relish and on terms that the Customer shall indemnify Relish in full against all loss (including loss of profit), costs (including costs of materials and any Charges paid or payable to third party providers of telecommunications services), damages and other expenses that may be, or may have been incurred by Relish as a result of such cancellation and/or in connection with any actions taken to provision the Service.
- 2.14 Order Forms placed for the Service are business to business transactions to which the Consumer Protection (Distance Selling) Regulations 2000 as amended by the Consumer Protection (Distance Selling) (Amendment) Regulations 2005 and the Consumer Contract Regulations 2013 do not apply.
- 2.15 Relish shall advise the Customer, verbally or otherwise, that the Service is available for use. The Customer shall notify Relish within one (1) Business Day of the installation and testing of the

Service if it reasonably considers the Service has a fault. Then as the sole and exclusive remedy, Relish shall promptly take such action as is necessary to correct any fault on the Service and shall notify the Customer of the action taken.

- 2.16 The Service shall be deemed accepted upon the: (i) expiry of the one (1) Business Day period referred to in Clause 2.15 where no notification as to any fault has been made; or (ii) on signature of the acceptance of Service letter; or (iii) where no acceptance of Service letter has been issued, upon the date the Service is first used. Billing shall commence on the Service Start Date.

### **3. FAULTS AND REPAIR, SUPPORT AND MAINTENANCE**

- 3.1 Relish will make reasonable endeavours to provide an uninterrupted service, but the Customer understands and agrees that from time to time Service Faults and Service Failures (as defined in the Additional Terms) may occur.
- 3.2 If the Customer reports a Service Fault, Relish will repair the fault in accordance with the Additional Terms. If Relish agrees to work outside the hours specified in this Agreement or if the Customer reports a Service Fault and Relish finds there is none or that the Customer has caused the fault, Relish may apply a Charge.
- 3.3 Relish reserves the right to perform any routine or emergency, routine or scheduled planned maintenance that may limit or suspend the availability of the Service. Relish shall provide reasonable prior notice of any scheduled planned maintenance however the Customer and Customer acknowledge that Relish may not be able to provide prior notice in the event of emergency maintenance. Any suspension in the availability of the Service shall not be deemed to be a violation by Relish of any of its obligations under this Agreement.

### **4. SECURITY**

- 4.1. The Customer is responsible for the proper use of User Security Details, if any, and must take all necessary steps to ensure they are kept confidential, secure and not made available to unauthorised persons. If the Customer believes that any User Security Details are or are likely to be used in an unauthorised way, the Customer must inform Relish immediately. The Customer must not change or attempt to change a user-name related to the service without Relish's prior agreement.
- 4.2. Relish does not guarantee the security of the Service against unauthorised or unlawful access or use. If Relish believes there is or is likely to be a breach of security or misuse of the Service Relish may: (a) change and/or suspend the service or User Security Details (and notify the Customer that it has done this); or (b) require the Customer to change the User Security Details.
- 4.3. The Customer acknowledges that Relish exercises no control, does not monitor and shall have no responsibility or liability for the information, services and/or content of any communications accessible through or transmitted using the Services. The Customer assumes total responsibility for the Customer's use and its Customers' use of the Service, software and Equipment, whether or not provided by Relish, and the Internet. The Customer acknowledges and agrees that the internet contains materials that are sexually explicit or may be offensive and is accessible by persons who may attempt to breach the security of Relish's and/or the Customer's network. Relish has no control over, and expressly disclaims any liability or responsibility for such materials or actions. The Customer and Users access the Service at their own risk.

### **5. CUSTOMER UNDERTAKINGS**

- 5.1. In addition to the Customer obligations set out in this Agreement, the Customer further undertakes that it and its Users shall:
- 5.1.1. conduct its operations and use the Services in a manner that does not interrupt, impair or interfere with the operations of the Relish Network or any use thereof by Relish or a Relish customer;
- 5.1.2. comply at all times with the specified operating, safety and security requirements and procedures of Relish as may be notified to it from time to time;
- 5.1.3. inform Relish of any relevant changes in its organisation or methods of doing business that might affect the performance of its obligations under this Agreement;

- 5.1.4. adhere to any Relish acceptable use policy, which provides more detail about the rules for use of the Service in order to combat fraud, excessive use and where Additional Service are provided, Relish may introduce/require certain rules to ensure that they can be enjoyed by Customers. If Relish publish and/or amend such a policy we will let Customers know.
- 5.1.5. only be entitled to resell Services or any Equipment purchased from Relish under clause 2.5 in the ordinary course of the Customer's business (i) with the prior agreement of additional terms between Relish and the Customer and, (ii) when reselling Services over the Equipment, the Customer shall account to Relish for the proceeds of any such sale.
- 5.1.6. not: (i) engage in activities that are illegal, fraudulent or wrongful or which may be harmful to Relish or other customers of Relish in any way (ii) send any indecent, offensive, obscene or otherwise unlawful content or other material; (iii) undertake or threaten to undertake any conduct which Relish believes, acting reasonably, is capable of either defaming Relish or any third party, and/or bringing the same into disrepute; (iv) violate any applicable law, rule or regulation; (v) infringe, transmit or publish content that infringes, the rights of others, including without limitation, any Intellectual Property Rights of third parties; (vi) use the Services in a fraudulent manner (including using or attempting to use a Service with the intent of avoiding payment by any means or device); (vii) act in a manner which is likely to result in Relish having any liability to a third party; (viii) ensure that any Customer Equipment (a) is technically compatible with the Service and will not harm or otherwise interfere with the Relish Network or any other Relish customers, (b) is connected using the applicable Relish network termination point, and (c) adequately protected by the Customer against viruses and other breaches of security; and (ix) not permit or make any attempt to disassemble, deconstruct, break down, hack or otherwise interfere with any Relish Equipment.
- 5.1.7. with respect to any Relish Equipment: (i) ensure that the Site is properly prepared to enable the Customer to receive the Service; (ii) not modify or in anyway interfere, or allow others to modify or in anyway interfere, with the Relish Equipment; (iii) not cause the Equipment to be moved, repaired or serviced except with the permission of Relish; (iv) indemnify and keep indemnified Relish against any damage caused to Relish Equipment howsoever caused; (v) not remove, tamper with or obliterate any words or labels on the Relish Equipment; (vi) not to create or allow any liens or other encumbrances to be created over or in respect of the Relish Equipment; and (vii) use the Relish Equipment only for the purpose of receiving the Service in accordance with the instructions provided by Relish.
- 5.2. The Customer shall comply (and shall ensure that Users comply) at all times with the Waste Electrical and Electronic Equipment Regulations 2006.

## **6. RELISH UNDERTAKINGS**

- 6.1. In performing its obligations under this Agreement, Relish shall at all times exercise the reasonable skill and care of a competent operator or provider of wireless related services.
- 6.2. Relish shall use reasonable commercial endeavours to ensure that each Service shall conform to the service levels (if applicable) as set out in the applicable Additional Terms.
- 6.3. Except as expressly set out in this Agreement, all warranties, representations or agreements, with respect to the provision of a Service or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statute or otherwise, are excluded, to the extent permitted by law.

## **7. CHARGES AND PAYMENTS**

- 7.1. In consideration of the provision of the Services and/or Site Survey, the Customer agrees to pay Relish the Charges in accordance with this Agreement.
- 7.2. Unless otherwise stated in the Order Form, all Charges shall be billed and paid in pounds sterling from the Service Start Date. All Charges are exclusive of VAT and any similar tax or duty (including withholding tax), each of which shall be for the account of the Customer.
- 7.3. Whether the Service is in use, used by the Customer or someone else, or not in use the Customer must pay all Charges by bank transfer, direct debit or credit card, unless otherwise

advised by Relish. The Customer is responsible for advising Relish promptly of any changes to its bank or credit card details that may affect payment of the Charges.

- 7.4. Unless otherwise stated in the Order Form the Customer agrees to pay by the date specified on the bill (a) in advance for subscription, rental, and other recurring Charges (including any applicable Site Survey or inclusive usage Charges); and (b) in arrears for usage (excluding inclusive usage Charges), connection and any other nonrecurring Charges. Where possible the Charges will appear on the Customer's next bill; (c) any Charges for equipment, set up, and, where the order is placed part way through a month pro-rated Charges for that calendar month together with the Charges for the first full calendar month.
- 7.5. If the Customer disputes any Charge on a bill the Customer must notify Relish in writing within thirty (30) days of the date of the bill with all relevant information. The Customer will pay the full amount of the bill. Any disputes will be resolved promptly and the resolved amount, if any, is payable immediately.
- 7.6. If Relish does not receive payment by the due date, Relish shall be entitled in addition to any remedy which it might have under this Agreement or otherwise at law to (i) Charge the Customer (a) any late payment Charge as referred to in the Order Form; and/or (b) daily interest on late payments at a per annum rate equal to 8% above the base lending rate of the European Central Bank, compounded daily, for the period beginning on the date on which payment is first due and ending on the date on which payment is made; (ii) deduct any sum owed by the Customer to Relish under this Agreement or any other contract with Relish or from any other payment or credit due to the Customer; (iii) immediately terminate the relevant Service; and/or (iv) instruct a debt collection agency to collect payment (including any interest and/or late payment Charges) on its behalf; and where Relish instructs an agency, the Customer must pay Relish an additional sum to cover the reasonable costs that Relish pays to the agency, and such sum will be added to the Customer's outstanding debt on Relish's behalf.
- 7.7. Relish may at any time: (a) require the Customer to pay a deposit or provide a guarantee as security for payment of future bills by the means requested by Relish; and/or (b) carry out a check of credit worthiness of the Customer. The Customer agrees to provide Relish with any information Relish may reasonably require for this.
- 7.8. The Customer acknowledges that any failure by it to comply with any request made by Relish under this clause 7 shall constitute a material breach of this Agreement, which is not capable of remedy.

## **8. ENDING AND SUSPENSION OF THIS AGREEMENT**

- 8.1. The Customer may end this Agreement if Relish materially breaches this Agreement and, if the breach is capable of remedy, fails to put right the breach within a reasonable time of being asked by the Customer to do so.
- 8.2. Relish may suspend or terminate the Service or end this Agreement, or both, at any time without notice and without liability if: (a) the Customer commits a breach of this Agreement (or where applicable, of a contract for a Service made under this Agreement), other than a non-payment breach, and does not cure such breach within then (10) Business Days of written notice from Relish specifying the breach and requiring its remedy; (b) the Customer fails to act in accordance with clause 2.3, and Relish, acting reasonably and in its sole and absolute discretion believe they are unable to deliver the Service (c) the Customer makes any fraudulent misrepresentation in any submission to Relish; (d) has reasonable grounds to consider it is entitled to terminate the Service and/or this Agreement; or (e) Relish reasonably believes that the Service is or is allegedly being used in a way forbidden by clauses 2, 4 or 5. This applies even if the Customer is unaware that the Service is being used in such a way; or (f) Customer either (i) fails to pay Charges when due and does not cure the failure within five (5) Business Days of notice; or (ii) exceeds its credit limit; or (iii) Relish has reasonable grounds to consider that the Customer shall not or is unable to make any payment which is due or is to fall due to Relish; (g) the Customer suffers or undergoes an Event of Insolvency and/or restructure, and/or a change of ownership, (whether or not that change is as a result of an Event of Insolvency) and/or a rejection of transfer of rights and obligations under clause 13.2; (h) is obliged to comply with an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority; including, the provision of the Service being determined by any governmental or legal authority to be contrary to any law, rule,

policy or regulation; or (i) needs to carry out emergency maintenance to the Relish Network or Equipment;

- 8.3. Relish's rights to suspend the Service are exercisable without prejudice to Relish's rights to terminate this Agreement or to terminate the Selected Services under this clause 8.
- 8.4. If Relish exercises its right to suspend the Service it shall, whenever reasonably practicable, give prior notice of such suspension to the Customer. If a Service is suspended as a consequence of the breach, fault, act or omission of the Customer, the Customer shall pay to Relish all reasonable costs and expenses incurred by Relish in the implementation of such suspension and/or recommencement of the provision of the Service.
- 8.5. Relish shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension made pursuant to this clause 8, except to the extent that such suspension is made pursuant to clause 8.2(i) and where the reasons are solely and directly attributable to the negligence of Relish, and, such liability shall not exceed the value of the direct loss and shall at all times be subject to the limitation of liability set out in clause 10.
- 8.6. The Customer will continue to pay the Charges during any period of suspension.

## **9. CONSEQUENCES OF ENDING THIS AGREEMENT**

- 9.1. If the Customer or Relish ends this Agreement or the Service during the Initial Term the Customer will pay Relish any remaining Charges until the end of the Initial Term. This clause will not apply if: (i) the Customer ends this Agreement or Service during the Initial Term because Relish is in material breach of this Contract; or (ii) the Customer gives notice to end this Agreement in accordance with clause 2.10 or 2.11; or (iii) Relish ends this Agreement or the Service during the Initial Service Term for convenience; or (iv) this Agreement ends because clause 12.3 applies.
- 9.2. Where the Service is terminated the Customer shall: (a) pay any and all cancellation Charges that may be due in respect of any affected third party services; (b) have no claim against Relish for any compensation for loss of the appointment or of goodwill or otherwise arising out of such termination whatsoever; and (c) forthwith pay any sums due to Relish pursuant to clauses 1.4, 2.5, 2.8, 2.9, 2.12, 2.13, 7.6, 8.6, 9.1 and this clause 9.2.

## **10. INDEMNITY AND LIMITATION OF LIABILITY**

- 10.1. Any credits applicable to Relish's specific non-performance, as described in, and calculated pursuant to, the applicable Additional Terms, are the Customer's exclusive remedy in respect of any such failure or lack of performance in the provision of the Services. The Customer shall not be entitled to credits during any period in which any amounts owed to Relish are overdue.
- 10.2. Subject to the exclusion and limitations set out in this clause 10, each party (the "Indemnifying Party") shall indemnify and hold harmless the other party from and against any claims, demands, actions, costs, liabilities or losses (including reasonable legal fees) arising out of the negligence or intentional misconduct of the Indemnifying Party, its employees or agents, in its performance of this Agreement.
- 10.3. Subject to clause 10.7, neither party shall be liable, whether in contract, tort (including negligence) or otherwise howsoever, through indemnification or otherwise, to the other party or any third party for any loss of revenue, profit, goodwill, anticipated savings, data or other pure economic loss or any indirect, incidental or consequential damages, arising from, or relating to, this Agreement or the performance or non-performance of its obligations thereunder.
- 10.4. Subject to clauses 10.3 and 10.5, the Customer and Relish's liability to the other under or in connection with this Agreement for all and any direct loss or damage arising from any one incident or series of connected incidents in any period of twelve (12) months is limited to the amounts specified in the Order Form.
- 10.5. The Customer agrees to defend, indemnify and hold harmless Relish and agents from any claims, liabilities, losses, damages and expenses, including reasonable legal fees, arising out of or relating to:
  - 10.5.1. The use of the Services by the Customer, or its or their Users;
  - 10.5.2. claims of third parties seeking damages for any loss or misuse of data by the Customer, its Customers or their end-users including its express or implied obligations in connection with clause 5.2;

- 10.5.3. any breach by the Customer; and
- 10.5.4. any breach by a Customer of its obligations in accordance with clause 5.1.
- 10.6. Subject to clause 2.5 of this Agreement, Relish expressly disclaims any representation or warranty that the Service or the software or equipment provided by Relish will be error free, secure or uninterrupted. No advice or information given by Relish shall create a warranty other than as expressly recorded in the Agreement.
- 10.7. Neither party excludes or restricts in any way its liability under or in connection with this Agreement for fraud, death or personal injury arising from their negligence or to any extent not permitted by law.
- 10.8. Nothing in this clause 10 or in this Agreement excludes or limits the Customer's liability to pay (without set off) the Charges. The Customer limitations of liability referred to in clauses 10.3 and 10.4 above will not apply in respect of claims brought under clauses 10.5 and 11 (Intellectual Property and Confidentiality). Relish will notify the Customer of any such claims or proceedings and keep the Customer informed as to the progress of such claims or proceedings.
- 10.9. Each part of this clause 10 operates separately. If any part of the clause is held by a Court to be unreasonable or inapplicable the rest of the clause will continue to apply.
- 10.10. The Customer is advised to obtain its own business continuity insurance.

## **11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 11.1. All Intellectual Property Rights whether pre-existing or created by the Customer or Relish during or arising from the performance of this Agreement will remain the absolute property of that party or its licensors.
- 11.2. If Software is provided to enable the Customer to receive and use the Service, it is provided on an "as-is" basis Relish will grant the Customer a, non-transferable and non-exclusive licence to use the Software in object code form solely as necessary for receipt of the Service and solely in accordance with this Agreement and the applicable documentation. The term of any licence granted by Relish under this clause is coterminous with the term of the Service with which the Software is associated.
- 11.3. If the Service provides the Customer with Software licensed by third parties who require the Customer to accept their terms of use, the Customer must keep to those terms.
- 11.4. Except as permitted by applicable law or as expressly permitted under this Agreement the Customer agrees not to copy, decompile or modify any Software, or knowingly permit anyone else to do so.
- 11.5. If the Service becomes, or Relish believes it is likely to become, the subject of a claim of infringement of any Intellectual Property Rights Relish, at its option and expense, may:(a) secure for the Customer a right of continued use; or (b) modify or replace the Service so that it is no longer infringing, provided that modification or replacement must not materially affect the performance of the Service.
- 11.6. If none of the remedies in this clause is available to Relish on reasonable terms, Relish may notify the Customer and terminate the Service without liability to the Customer.
- 11.7. During the term of this Agreement and thereafter, each party agrees to keep all Confidential Information strictly confidential and to use it only for the purposes of this Agreement.
- 11.8. The provisions of this clause and shall not apply to:
  - 11.8.1. information that has come into the public domain other than by breach of this clause or any other duty of confidence;
  - 11.8.2. information already in the possession of the receiving party before it was made known by the other party;
  - 11.8.3. information the receiving party obtained from a third party without breach of this clause or any other duty of confidence;
  - 11.8.4. information required to be disclosed by law or some regulation of equivalent effect; or
  - 11.8.5. information that is trivial or obvious.
- 11.9. Each party shall make its personnel aware of the confidential nature of the Confidential Information and shall ensure that they are prohibited from using, copying or revealing the same other than as authorised by this Agreement.

- 11.10. The Customer and Relish acknowledge that breach of this clauses 11 may cause irreparable harm for which damages may not be an adequate remedy and that injunctive relief may be available for such breach
- 11.11. Information Relish holds about the Customer may be used for fraud prevention and credit vetting purposes and this may include Relish sharing such information with third party companies including other communication companies
- 11.12. Where the Freedom of Information Act 2000 applies to the Customer and the Customer receives a request under the Act that includes any information held by the Customer that was provided by Relish in connection with this Agreement the Customer will: (a) notify Relish immediately of the request; and (b) give Relish at least five Business Days to make representations.

## 12. MATTERS BEYOND REASONABLE CONTROL

- 12.1. Relish will not be liable for failure to or delay in supplying the Service if: (i) another supplier delays or refuses the supply of an electronic communications service to Relish and no alternative service is available at reasonable cost; or (ii) legal or regulatory restrictions are imposed that prevent Relish from supplying the Service.
- 12.2. Except with respect to payment obligations, neither party shall be liable for any failure or delay in performing any obligations under this Agreement or under any contract made hereunder for a Service (and the time for performance shall be extended accordingly) if and to the extent that the failure or delay is due to circumstances beyond that party's reasonable control ("Force Majeure") including, without limitation, acts of God, natural disaster, lightning, flood, subsidence, earthquake, weather conditions, epidemic, pandemic, fire, explosion, war, civil disorder, war or act of terrorism, riot or civil commotion or industrial dispute not involving the employees of such party, laws or restrictions imposed by any governmental or judicial authority, acts or omissions of third parties, power outages or interruptions of other utility services, shortages of parts or materials, magnetic interference, or unavailability of telecommunications service or facilities to Relish ("force majeure event").
- 12.3. If any of the events detailed in clauses 12.2 materially affects the performance of the Contract and continues for more than three months then the party not subject to the Force Majeure event may terminate this Agreement (or the contract for the Service (as the case may be)) on five (5) Business Days' notice in writing to the other.

## 13. GENERAL TERMS

- 13.1. **Escalation and Dispute Resolution:** Relish will try to resolve any complaint that the Customer may have with the Service. If the Customer has a complaint the Customer should, in the first instance, write to Relish at: Relish Customer Care, International House, 7 High Street, Ealing, London, W5 5DB. If the Customer is a business with fewer than ten employees and has a complaint that Relish has been unable to resolve within eight (8) weeks, the Customer has the right to ask CISAS (an alternative dispute resolution ("ADR") scheme) to investigate the complaint at no cost. If the Customer is a business with ten (10) or more employees, and Relish have not been able to resolve the dispute, the parties agree to mediation in accordance with IDRS (an ADR scheme) cost-controlled mediation procedure. Any ADR will be conducted in London and in the English language. For details of the Relish complaints process and how to engage CISAS or IDRS please contact Relish customer care or call CISAS directly on [020 7520 3814] or IDRS on [020 7520 3800]. Nothing in this clause 13.1 will prevent the Customer or Relish from exercising any rights and remedies that may be available in respect of any breach of the provisions of this Agreement.
- 13.2. **Transfer of Rights and Obligations** The Customer and Relish may not transfer any of their rights or obligations under this Agreement without the written consent of the other, except that:
- (a) the Customer may transfer its rights or obligations or both to a Group Company with the written consent of Relish, such consent not to be unreasonably withheld or delayed; and
  - (b) Relish may assign or transfer its rights and novate its obligations under this Agreement to any subsidiary or affiliate or both or to a Group Company without consent provided that it notifies the Customer that it has done so.

- 13.3. **Amending the Agreement:** Relish can change this Agreement (including the Charges and the Additional Terms) at any time and will publish any changes with reasonable notice on <http://www.relish.net/legalstuff#dbi>.
- 13.4. **Severability:** If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, that, shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement
- 13.5. **Survival:** Clauses 7, 10 and 11 will survive the termination or expiry of this Contract for two years.
- 13.6. **Entire Agreement:** This Agreement, together with any document expressly referred to in any of its terms, contains the entire agreement between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters. No oral explanation or oral information given by either party at any time shall alter or affect the interpretation of this Agreement. The parties confirm that, in agreeing to enter into this Agreement, they have not relied on any representation other than those, which have in this Agreement been made a representation, and the parties agree that they shall not have a remedy in respect of any misrepresentation, which has not become a term of this Agreement. Nothing in this clause 13 shall operate to exclude any liability for fraud.
- 13.7. **Waiver** The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy. The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 13.8. **Rights of Third Parties** Except as expressly provided in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 13.9. **Partnerships** nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever, and no party shall have the authority, or power, to bind the other party, or to the contract in the name of, or create a liability against, the other party in any way or for any purpose.
- 13.10. **Notices** given under this Agreement must be in writing and delivered by hand, email or first class post to the following addresses unless otherwise stated in this Agreement: (a) to Relish at the address shown on the bill or any address which Relish provides to the Customer for this purpose; or (b) to the Customer at any one or more of the following: the address to which the Customer asks Relish to send bills or the address of the Site or the Customer's primary email address or if the Customer is a limited company, its registered office. Any notice pursuant to this clause shall be deemed to have been served: (i) if hand delivered at the time of delivery by posting through the letter box; (ii) if sent by facsimile within one hour of transmission during business hours at its destination or within twenty-four (24) hours if not within business hours (but in the case of facsimile, subject to receipt by the sender of a successful transmission report; and (iii) if sent by post within forty-eight (48) hours of posting (exclusive of the hours of Sunday or a Bank Holiday) if posted to an address within the country of posting and seven (7) days of posting if posted to an address outside the country of posting. The Customer must inform Relish immediately if there is any change to any of the contact information the Customer provided to Relish.
- 13.11. **Law and Jurisdiction** This Agreement is governed by the law of England and Wales and is subject to the non-exclusive jurisdiction of the English courts. This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably agree to submit to the exclusive jurisdiction of the English courts in respect of any dispute or matter arising out of or in connection with the subject matter of this Agreement.
- 13.12. **Data Protection** The Customer and Relish will comply with their respective obligations under the Data Protection Act 1998 and any data protection, privacy or similar laws that apply to any personal data processed in connection with this Agreement. The Customer and Relish will

provide such help and co-operation as is reasonably necessary or requested by the other to enable compliance with this clause.

- 13.13. **Monitor and Record:** Relish may monitor and record its communications with the Customer, including emails and phone conversations. Information collected by Relish may be used for training purposes, quality assurance, to record details about the Services ordered by the Customer, and in order to meet Relish's legal and regulatory obligations generally.
- 13.14. **Marketing:** Unless the Customer advises Relish otherwise, the Customer consents to receive marketing messages from Relish via electronic means, telephone and direct mail. Details on how to tell Relish to stop sending such messages can be found in the Privacy Policy at <http://www.relish.net/legalstuff#privacy-policy>.
- 13.15. **Customer Permission:** Relish may take instructions from a party whom it thinks, with good reason, is acting with the Customer's permission.

## 14. DEFINITIONS

In this Agreement the following terms have the meanings as described below:

**Additional Terms** means the Service specific terms and conditions applicable to the Service ordered by the Customer as may be varied by Relish from time to time in accordance with this Agreement.

**Agreement** means this agreement between Relish and the Customer comprising the following documents and, In the event of any conflict, whether in relation to this Agreement (or any separate contract formed by an Order Form) between the General Terms and Conditions, the Additional Terms and the Order Form, the order of precedence shall be: (i) any terms and conditions on the Order Form; then (ii) the Additional Terms then (iii) the General Terms and Conditions.

**Business Day** means any day which is not a Saturday, Sunday or public holiday.

**Charges** means the amount payable by the Customer to Relish for the Service as further detailed in the Relish Charges Schedule, and as set out in the Order Form, or calculated in accordance with the Agreement, together with any other monies owing to Relish from the Customer.

**Charges Schedule** the Relish Charges schedule provided to the Customer setting out the indicative Charges applicable for the Services.

**Confidential Information** means all information about the business, finances, technology and affairs of the other party, regardless of its nature, and the contents of this Agreement.

**Customer** means the party with whom Relish contracts to provide the Service.

**Customer Equipment** means any equipment, including any software, systems, cabling, facilities (including that purchased under the terms of clause 2 from Relish), owned or controlled by the Customer and used in connection with the Service.

**Demarcation Point** means the termination point up to and including the Relish Equipment provided and signifying the physical or logical boundary between: (i) the Relish Equipment; and (ii) the Customer Equipment or network to which the Service is to be connected.

**Equipment** means any equipment, device, router, or other tangible material supplied by Relish to Customer as part of a Service.

**Event of Insolvency** means the other party ceasing, or threatening to cease, to carry on business or having a receiver or an administrative receiver appointed over its business (or any substantial part of it) or passing a resolution for winding up or a court of competent jurisdiction making an order to that effect or if it otherwise becomes subject to an administration order or enters into any voluntary arrangement with its creditors generally or undergoes any analogous proceedings in any jurisdiction outside England and Wales.

**General Terms and Conditions** mean these Conditions for the provision of a managed service to a business customer.

**Group Company** means a subsidiary or holding company including a holding company, or a subsidiary of any such holding company, all as defined by Part 38 of the Companies Act 2006.

**Initial Service Term** means the initial term for the Service, as set out in an Order Form.

**Intellectual Property Rights** means all copyright and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, trade marks, service marks, trade names, registered designs, database rights, domain names and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world.

**Order Form** means the Relish sales order form or such other form of order as Relish in its sole discretion elects to accept.

**Requested Service Start Date** means the date on which the Customer wishes the Service to be activated as set out in the Order Form.

**Service** means any service identified on an Order Form signed by the Customer.

**Service Start Date** means the date on which the Service is accepted or deemed accepted in accordance with this Agreement. Any reference to Operational Start Date shall be deemed to be the Service Start Date;

**Site** means a site or sites specified in an Order Form at which a Service is to be provided.

**Software** means any software and associated written and electronic documentation and data provided by Relish under this Agreement.

**Term** means from the date an Order Form is accepted in accordance with clause 1.1 until the date on which this Agreement is terminated.

**Trade Marks** means those of Relish's trade names, trade marks or service marks as are applicable to Service(s) and are notified by Relish to the Customer from time to time.

**Relish** is the trading name of UK Broadband Limited.

**Relish Equipment** means any equipment, including any Software, device, or other tangible material supplied as part of the Service by Relish to the Customer as part of a Service, which remains the property of Relish.

**Relish Broadband** is the name under which broadband services are provided directly to customers by Relish

**Relish Network** means Relish's network for telecommunications services wholly owned and operated by UK Broadband Limited and excludes any Customer Equipment.

**Site Survey** means any survey conducted by Relish, or its third party at a Site to determine whether or not a Relish Service can be provided at that Site.

**User** means anyone who is permitted by the Customer to use or access the Service.

**User Security Details** means any IDs, user names, personal identification numbers and passwords.

## Additional Terms and Conditions for Dedicated Business Internet Services (“Additional terms”)



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The following terms are additional to those in the applicable General Terms and Conditions (“GTC”) and shall apply where, pursuant to an Order Form, the Customer orders Dedicated Business Internet Access (“DBI”) Services (the “Service(s)”), as may be delivered in accordance with these Additional Terms and relevant Order Form. Capitalised terms shall, unless separately defined below, have the meaning given to them in the GTC.

### 1. DEFINITIONS

**Microwave Ethernet** means a radio data link providing a defined level of bandwidth (as specified on the Order Form) and presented to the Customer as an Ethernet connection.

**Service Credit** means a credit to which the Customer shall be entitled in accordance with section 4 of these Additional Terms.

**Service Level(s)** means the expected levels of service as defined in section 3 of these Additional Terms.

**Service Failure** means a failure of the Service resulting in a total loss of the Service (i.e. no transmission of signals in one or both directions between the product demarcation points whatsoever) and such failure is caused directly and solely by the Relish Network and/or act or omission of Relish during which time it is not possible to transmit data. A Service Failure begins upon the earlier of: (i) the Customer contacting Relish to report a total loss of Service and this total loss of Service is confirmed by Relish; or (ii) Relish detecting a total loss of Service. The Service Failure ends when either (i) there is traffic (data packets) on the Relish Network; and/or (ii) Relish confirms to the Customer that the Service is restored, either fully or temporarily, in accordance with section 6 below.

**Service Fault** means a Customer reported loss or degradation of Service during which time there is an inability to transmit data and such a fault is caused directly and solely by the Relish Network and/or act or omission of Relish and, on investigation by Relish, may or may not in its sole discretion, be reclassified as a Service Failure.

**Local Area Network** means computer or other network that links devices within a building or group of adjacent buildings.

### 2. SERVICE OVERVIEW

2.1 The DBI Service provides the Customer with an Internet connection facilitated by using a Microwave Ethernet or other telecommunications link from a Customer Site to the public Internet.

2.2 The Service shall be ordered by completing and signing an Order Form, in accordance with the GTC.

2.3 If Relish chooses to supply, or the Customer chooses to opt, for a Static IP address or a range of Static IP addresses provided by Relish at Customers cost then:

- (a) Relish is not responsible in connection with the provision of the Service for providing any technical or other support on or for the Customer’s Local Area Network;
- (b) the IP addresses that are allocated to the Customer are for use in connection only with the Service and the Customer will not gain any ownership rights in those IP addresses. The Customer must not sell them or agree to transfer them to anyone else or try to do so.
- (c) to the extent that any of the Services ordered hereunder are terminated for any reason, the associated IP addresses will revert to Relish.
- (d) If Relish determines that Customer is not using its assigned IP addresses Relish may give the Customer one (1) months notice that Relish will reclaim the assigned IP addresses for use by Relish.

### 3. SERVICE LEVELS AND CREDITS

3.1 Relish shall use reasonable endeavours to maintain an annual DBI Service availability of 99.99%.

3.2 Subject to these Additional Terms, the Customer shall be eligible to claim a Service Credit for Service Failures that extend beyond one (1) hour (the "SLA"). The Service Credit will be provided to the Customer for eligible claims as follows:

- a. For every additional hour of Service Failure over the SLA, one (1) day's rental charge will be credited to the Customer. Provided always that Service Credits will be capped at ten (10) hours per quarter being, ten (10) days of rental charge Service Credits.
- b. When calculating Service Credits Relish shall round up, or down, the Service Failure SLA to the nearest hour as appropriate.

Worked example A: If in quarter ("Q")<sup>1</sup> there is a Service Failure of five (5) hours that is eligible for a claim, then the Customer can claim four (4) hours Service Credit being four (4) days of Rental Charges). If in Q2 there is another eligible Service Failure of fifteen (15) hours, then the Customer can claim for the full number of hours in the Service Failure, however the Service Credit shall be capped at a total of ten (10) hours in any one (1) quarter.

3.3 Such Service Credit being the Customer's sole and exclusive remedy, and Relish will not be held liable for any consequential losses or any other damages.

### 4. ELIGIBLE CLAIMS

For a Service Failure to be eligible for Service Credits, all of the following shall apply:

- a. a Service Failure occurs for more than one (1) hour and the Service Failure is verified by Relish, as defined within these Additional Terms;
- b. claims must be made by the Customer using a UK Broadband claims form (available on request) within ten (10) days of the Service Failure being closed);
- c. the Customer is not in breach of any part of the Agreement;
- d. the Customer grants such rights of access and other assistance as Relish and/or its agents may require to enable it to repair any Service Failure; and
- e. all claims for Service Credits will be verified by Relish, in its sole and absolute discretion;

### 5. EXCLUSIONS

In addition to the eligible status of a Service Credit, and the terms of the GTC, Relish shall not be liable for any failure to meet the Service Levels or award a Service Credit as set out above to the extent that such failure:

- a. falls outside any one of the eligibility criteria set out in section 4 above;
- b. is caused directly or indirectly by any act, omission or default of the Customer or of any third party, including tampering with the Relish Equipment, or which occurs during any period of suspension of a Service which has been agreed in advance with the Customer;
- c. is due to a Service Fault and/or emergency, or scheduled planned maintenance and repair carried out in accordance with the Agreement;
- d. is due to any fault on the Customer's side of the Demarcation Point or failure of power, or any other network, service or equipment outside the Relish Network provided by the Customer or any third party;
- e. occurs during any period in which Relish is not given access to the relevant Customer Site or the Customer declines to allow Relish to access and/or test the Service;
- f. results from Relish implementing an instruction and/or variation request from the Customer for a change of whatever nature in the Service;
- g. occurs as a result of circumstances or an event which is beyond the reasonable control of Relish including:
  - i. a Force Majeure Event as defined in the GTC;
  - ii. being unable to carry out any necessary work at the Site;
  - iii. unable to gain access to the Site; and
  - iv. the Customer failing to agree an appointment date or work is aborted.

- h. is delayed as Relish requires reasonable assistance and/or information is reasonably requested within a reasonable timescale from the Customer and such information or assistance is not forthcoming;
- i. results from Relish, through no fault of its own, being unable to obtain any necessary permissions or consents required in connection with the performance of a particular Service or SLA;
- j. Relish have restored the Service, temporarily or otherwise, to the extent that there is traffic (data packets) on the Relish Network; or
- k. is due to an inaccurate fault being submitted by the Customer;

## 6. PROCEDURE

Where there is a loss of Service the following procedure shall apply:

- a. Customer shall immediately notify Relish and log a suspected Service Fault via the 24/7 help desk and receive a Service Fault ID
- b. The fault will be passed to our technical support team to investigate ("NOC");
- c. If the NOC confirms the loss of Service as either a Service Failure, or a Service Fault then Relish shall use reasonable commercial endeavours to rectify the Service and the Customer shall be notified by customer support that the Service Fault, or the Service Failure is closed;
- d. Relish may provide a temporary fix to the Service and where Relish Equipment needs to be replaced shall schedule a time at a later date to replace the Relish Equipment under scheduled planned maintenance.
- e. Where a Service Failure is eligible for a Service Credit, the Customer should in the first instance contact Relish Customer Care at 0330 686 8800.
- f. A successful claim for a Service Credit will be credited on the following months bill.

END