

BIRMINGHAM FIBRE GENERAL TERMS AND CONDITIONS

1 INTERPRETATION

- 1.1 In this Agreement the following words and phrases shall (except where the context otherwise requires) have the following meanings:

"Acceptable Use Policy" BF's Acceptable Use Policy as available on BF's website www.birminghamfibre.co.uk/acceptableusepolicy, as amended from time to time;

"Actual Excess Construction Charge" means the Actual Excess Construction Charge as notified to Customer in advance, from time to time, pursuant to clause 3;

"Agreement" means these Conditions together with any document referred to, completed or to be completed in accordance with its provisions including, but not limited to any applicable Order Form;

"Applicable Law" any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directive or requirement or notice of any regulatory body, delegated or subordinate legislation;

"BF" Birmingham Fibre Limited a company incorporated in England and Wales (company number 08633429) whose registered office is at Faraday Wharf, Innovation Birmingham Campus, Holt Street, Birmingham, B7 4BB;

"Commencement Date" the date the installation of the Services is commenced;

"Conditions" means these Birmingham Fibre Terms and Conditions and Acceptable Use Policy;

"Confidential Information" means any and all confidential information in whatever form (whether written, oral, visual, electronic, magnetic or other media), however conveyed or presented, disclosed by a party or its employees, officers, representatives, agents, contractors or advisers ("**Related Persons**") to the other party and/or its Related Persons concerning the business, affairs, operations, customers, prospective customers, processes, budgets, pricing policies, products, strategies, opportunities, developments, trade secrets, know-how, designs, software, personnel and suppliers of the disclosing party or any member of the disclosing party's Group together with all information derived by the other party from any such information and any other information which ought reasonably be considered to be confidential or proprietary having regard to the nature of the information and the circumstances of the disclosure (whether or not it is marked "confidential");

"Customer Apparatus" means any apparatus, and any software embodied in such apparatus (including the cabling, wiring, personal computers, network interface cards and network interface adapters) not forming part of (but which may be connected to) the BF's equipment and used by the Customer in conjunction with any of BF's equipment in order to obtain or use the Services.

"Customer Personal Data" means any and all personal data which is provided by or on behalf of the Customer to either of BF or which comes into the possession of either of BF as a result of or in connection with the provision of the Services and for which the Customer is the data controller;

"Data Protection Law" means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all Applicable Law relating to the processing or protection of personal data and privacy, including GDPR and where applicable the guidance and codes of practice issued by the Information Commissioner;

"Equipment" means the equipment and hardware as set out in the Order Form, or any other additional devices we supply for your service that you have not been invoiced for;

"Estimated Excess Construction Charge" means the Estimated Excess Construction Charge set out in the Order Form (if any) or otherwise as notified to Customer in advance, from time to time;

"Estimated Go-Live Date" the estimated target date in relation to the Customer by which BF aims to have completed installation of the Service and commenced the Services, as set out in the Order Form;

"Force Majeure Event" any cause affecting the performance by a party of any of its obligations under this Agreement which is beyond its reasonable control which, by its nature, could not have been foreseen or, if foreseeable, was unavoidable (save any cause that merely increases the cost of performing such obligations) including, but not limited to any failure or default in service or downtime in any services provided by BF's subcontractors and/or suppliers and the refusal, inability to obtain, termination or retraction of an applicable wayleave or other physical access agreement by us or our suppliers, as required;

"Go-Live Date" means the actual date the Services go-live, as notified to the Customer pursuant to clause Error! Reference source not found.;

"Group" in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;

"holding company" and **"subsidiary"** a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006;

"Initial Term" the initial contract length set out in the Order Form;

"Insolvency Event" the other party ceases to do business, becomes unable (or is deemed unable) to pay its debts when they fall due, becomes insolvent, has a receiver, liquidator, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsorily or voluntarily or any event similar to any of those set out above in this definition occurs in relation to a party (including in any jurisdiction to which it is subject);

"Leased Line" A private circuit into our or our suppliers network provided and managed in such a way as to provide guarantees about data throughput;

"Losses" losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands, legal and other professional costs (calculated on a full indemnity basis);

"Order Form" the Birmingham Fibre Order Form which together with these Conditions forms the agreement;

"Payment Terms" monthly in advance by direct debit;

"Service Charges" the service charges as set out in the Order Form;

"Services" the services to be provided by BF under this Agreement as set out in the Order

Form, together with any other services which the Customer agrees to take from BF;

"Service Level Agreement" BF's Service Level Agreement as available on BF's website, as amended from time to time;

"Set-Up Fee" those set up costs set out on the Order Form, as notified from time to time;

"Usage Cap" the usage cap per calendar month for BF's selected Services and/or products, set out in the Order Form, as measured by BF, such measurement being the final and conclusive measurement of any such usage;

"VAT" value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

"Working Day" means a day (other than a Saturday, a Sunday or a public holiday in England) on which banks in London are open for business.

- 1.2 In this Agreement (except where the context otherwise requires):

1.2.1 words in the singular include the plural and vice versa and reference to any gender includes the others;

1.2.2 reference to "a person" includes a natural person, company or unincorporated body (whether or not having separate legal personality);

1.2.3 a reference to "company" includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.4 a reference to a clause is to a clause of this Agreement;

1.2.5 references to legislation are to that legislation as amended, extended or re-enacted from time to time;

1.2.6 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;

1.2.7 any words following the terms "including", "include", "in particular" or any similar terms shall be construed as illustrative only and shall not limit the sense of the words preceding those terms;

1.2.8 any obligation on a party not to do something includes an obligation not to allow that thing to be done.

- 1.3 Headings are for convenience only and shall not affect the interpretation of this Agreement.

- 1.4 This Agreement shall be binding upon, and enure to the benefit of, the parties and their respective personal representatives, successors and permitted assignees, and references to any party shall include that party's personal representatives, successors and permitted assignees.

- 1.5 If there is a contradiction or inconsistency between any documents or provisions contained in this Agreement, it shall be resolved by giving precedence to those documents or provisions in the following order;

1.5.1 first, the clauses; and

1.5.2 secondly, any specific terms for products or services we supply as published on our website.

2 COMMENCEMENT AND DURATION

- 2.1 The Customer's completed and issued Order Form constitutes an offer by the Customer to purchase Services in accordance with these conditions.

- 2.2 The Order Form shall be deemed to be accepted when BF executes the Order Form at which point and on which date the Agreement shall come into existence ("Effective Date").

- 2.3 This Agreement shall commence on the Effective Date and shall continue (unless terminated earlier in accordance with this Agreement):

2.3.1 for the Initial Term; and

2.3.2 thereafter this Agreement shall continue, unless:

a) the Customer notifies BF of termination, in writing, at least 30 days before the intended termination, or

b) BF terminates the Agreement giving 30 days' notice to the Customer at any time; (the "**Term**").

- 2.4 Provided that the contract was entered into via phone or website, services can be cancelled within 14 days from the day after the service commenced.

2.4.1 If you cancel during this time you will have to pay for the services you have used, any applicable installation, connection or activation charges (including any charges that were discounted or advertised as free at the time we accepted your order for the services) and return any equipment provided.

2.4.2 You can cancel your order for the equipment we have sent you up to 14 days after you receive it from us. If you cancel within 14 days, you must return the equipment to us.

3 SET-UP FEE AND ESTIMATED EXCESS CONSTRUCTION CHARGE

- 3.1 No later than due date indicated on BF invoice, Customer shall pay to BF, if applicable and subject to clause 3.2, the Set-Up Fee and the Estimated Excess Construction Charge.

- 3.2 The Set-Up Fee and the Estimated Excess Construction Charge shall be payable by the Customer.

- 3.3 The Estimate Excess Construction Charge is an estimate only and BF reserves the right to recover the Actual Excess Construction Charges from the Customer.

- 3.4 If the Actual Excess Construction Charge exceeds the Estimated Excess Construction Charge BF shall inform the Customer no later than the Go-Live Date, and no later than due date indicated on BF invoice, Customer shall also pay to BF the difference between the Actual Excess Construction Charge and the Estimated Excess Construction Charge.

4 SERVICES

- 4.1 BF shall provide to the Customer the:

4.1.1 Services from the Go-Live Date; and

4.1.2 Equipment prior to, or on to the Go-Live Date,

on and subject to the terms of this Agreement, and in accordance with the Order Form.

- 4.2 In providing the Services BF shall meet or exceed the requirements of Service Level Agreement at all times from the Go-Live Date.

- 4.3 BF shall use its reasonable endeavours to commence the Services on the Estimated Go-Live Date and to meet any performance dates specified in the Order Form but any such dates shall be estimates only and time shall not be of the essence for performance of the Services or any

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- part of them.
- 4.4 Subject to clause 6.2, the Customer acknowledges and agrees that it is the Customer's responsibility to ensure it retains a continuous supply of internet and/or telecommunication services, as applicable, and that if the Services, for any reason whatsoever, do not commence on the Estimated Go-Live Date, BF shall not be liable or responsible for any liabilities, claims, losses or damages caused as a result of or in connection with the same.
- 4.5 BF shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and BF shall notify the Customer in any such event.
- 4.6 BF warrants to the Customer that the Services will be provided using reasonable care and skill.
- 5 BF RESPONSIBILITIES**
- 5.1 BF shall:
- 5.1.1 obtain and maintain in full force all necessary consents, approvals, authorisations, licences and permissions which BF or our suppliers require to be able to perform its obligations under this Agreement;
- 5.1.2 prior to the planned installation date, unless agreed otherwise, supply the Customer with all relevant information to enable the Customer to and the Customer shall, at its cost and expense, prepare the location from where the Services are to be received in accordance with such information for the delivery and installation of the Equipment and/or the Services; and
- 5.1.3 perform its obligations under this Agreement in compliance with all Applicable Laws as may be in force or apply from time to time.
- 5.2 If BF fails to provide the Services in compliance with its responsibilities under this Agreement, in particular those responsibilities under clause 5.1, BF may, at its sole discretion, (without prejudice to any other rights it may have):
- 5.2.1 re-perform the non-compliant Services; or
- 5.2.2 refund to the Customer the Service Charges, solely and exclusively attributable to the non-complaint Services, paid by the Customer under this Agreement.
- 6 CUSTOMER'S OBLIGATIONS**
- 6.1 The Customer shall:
- 6.1.1 co-operate and liaise with BF and its suppliers as reasonably necessary for the performance of the Services;
- 6.1.2 appoint (and, as it thinks appropriate, replace) a representative, who shall (except as otherwise expressly notified in writing) have the authority contractually to bind the Customer on all matters relating to the Services and to this Agreement;
- 6.1.3 in the event it exceeds the Usage Cap for any month, pay the applicable Excess Usage Charge, in conjunction with and at the same time as the Customer makes its next payment in respect of the Service Charge in accordance with the Payment Terms;
- 6.1.4 provide BF, its employees, agents, consultants and subcontractors and suppliers, with access to the Customer's premises, office accommodation and other facilities as reasonably required by BF;
- 6.1.5 prepare the Customer's premises for the supply of the Services;
- 6.1.6 obtain and maintain all necessary licences, permissions and consents which may be required before the Commencement Date, including but not limited to any applicable licences required by the Customer in order to receive the benefit of the Services;
- 6.1.7 maintain sufficient power supplies, connections and Customer Apparatus to enable and facilitate BF to supply the Services;
- 6.1.8 on BF's request, provide any specifications or other information relating to the Customer Apparatus that is reasonably required by BF. The Customer agrees to make such modifications in relation to the Customer Apparatus as may be reasonably required by BF to enable BF to supply the Services, at the Customer's cost and expense;
- 6.1.9 at all times comply with the Acceptable Use Policy; and
- 6.1.10 facilitate the grant of an applicable wayleave to us or our suppliers, if required, from the Customer's landlord.
- 6.2 If BF's performance of any of its obligations under this Agreement, including the commencement of the Services, is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 6.2.1 BF shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays BF's performance of any of its obligations;
- 6.2.2 BF shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from BF's failure or delay to perform any of its obligations as set out in this clause 6.2;
- 6.2.3 the Customer shall reimburse BF on written demand for any costs or losses sustained or incurred by BF arising directly or indirectly from the Customer Default;
- 6.2.4 BF shall use its reasonable endeavours (where reasonably practicable and/or possible) to eliminate or mitigate the effects of the delay and perform the Services notwithstanding the Customer's Default provided that in doing so BF shall not incur any additional costs; and
- 6.2.5 BF shall be allowed an extension of time equal to the delay caused by the Customer's Default.
- 7 SERVICE CHARGES**
- 7.1 In consideration of BF performing its obligations under this Agreement the Customer shall pay the Service Charges to BF, in accordance with the Payment Terms. The Customer shall pay the Service Charges via Direct Debit. BF reserves the right to charge an admin fee of £5+vat for payments received via any other payment method. Cancellation of Direct Debit instruction prior to Termination of agreement or Direct Debit resubmission shall incur an admin fee of £10+vat.
- 7.2 Payment received from the customers will be applied to the oldest invoice(s) first.
- 7.3 The Service Charges:
- 7.3.1 exclude any applicable Set-Up Fee and Excess Construction Charge;
- 7.3.2 exclude any applicable expenses incurred by BF in the exercise of their obligations under this Agreement, which shall be payable by the Customer on demand, in advance, in addition to the Service Charges; and
- 7.3.3 are stated exclusive of VAT for business users and inclusive of VAT for residential customers, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.
- 7.4 All payments due under this Agreement shall be made in pounds sterling.
- 7.5 Without prejudice to any other right or remedy that we may have, if the Customer fails to pay by the due date, BF may:
- 7.5.1 claim interest, accruing on a daily basis from the due date until payment is made in full, both before and after any judgment, under the Late Payment of Commercial Debts (Interest) Act 1998 and Customer shall pay the interest immediately on demand; and
- 7.5.2 suspend performance of the Services (or any part thereof) until such overdue payment is made in full and cleared funds, without liability.
- 7.6 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). BF may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by BF to the Customer.
- 8 WARRANTIES**
- 8.1 Each party warrants, represents and undertakes to the other that:
- 8.1.1 it has full capacity and authority to enter into and to perform this Agreement;
- 8.1.2 this Agreement is executed by a duly authorised representative of that party;
- 8.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and
- 8.1.4 once duly executed, this Agreement will constitute its legal, valid and binding obligations.
- 9 CONFIDENTIALITY**
- 9.1 Each party undertakes that it shall not at any time during this Agreement and thereafter, disclose to any person any Confidential Information except as permitted by clause 9.2.
- 9.2 Each party may disclose the other party's Confidential Information:
- 9.2.1 to its Related Persons who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall procure that its Related Persons to whom it discloses the other party's Confidential Information comply with this clause 9; and
- 9.2.2 as may be required by Applicable Law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
- 10 DATA PROTECTION**
- 10.1 BF shall, and shall procure that its employees and agents shall:
- 10.1.1 only process any Customer Personal Data for the purposes of fulfilling its obligations under this Agreement (and for no other purpose whatsoever); and
- 10.1.2 comply with its obligations under any applicable Data Protection Law.
- 11 BRIBERY AND OTHER CORRUPTION**
- 11.1 Both parties agree that it shall, and that it shall procure that persons associated with it (as determined in accordance with section 8 of the Bribery Act 2010) shall:
- 11.1.1 comply with all Applicable Law relating to bribery and other corruption ("Anti-Corruption Requirements") including the Bribery Act 2010;
- 11.1.2 not take or knowingly permit any action to be taken that would or might cause or lead the other party to be in violation of any Anti-Corruption Requirements including under section 7 of the Bribery Act 2010; and
- 11.1.3 not bribe or attempt to bribe (which shall include any offer or form of payment, gift or other inducement, reward or advantage (whether of money or anything of value)) the other party or any of the other party's employees, officers, agents, representatives, affiliates or persons acting on that other party's behalf.
- 12 LIABILITY**
- 12.1 Neither party limits its liability for:
- 12.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 12.1.2 fraud or fraudulent misrepresentation by it or its employees; or
- 12.1.3 any other act or omission, liability for which may not be limited under Applicable Law.
- 12.2 Subject to clauses 12.1 and 12.3:
- 12.2.1 BF shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this Agreement; and
- 12.2.2 BF's total aggregate liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement shall be limited to the lesser of the Service Charges paid or payable under this Agreement in the twelve (12) months preceding any such claim or £1,000 (one thousand UK Pounds).
- 12.3 Subject to clause 12.1, and except as expressly provided to the contrary in this Agreement, neither party will be liable to the other party for:
- 12.3.1 any indirect, special or consequential loss or damage; or
- 12.3.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 13 SUSPENSION OF SERVICES**
- 13.1 Without prejudice to any other express suspension rights BF may have under this Agreement, BF may suspend the Services or any part of them:

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- 13.1.1 if BF is entitled to immediately terminate this Agreement; or
- 13.1.2 if BF is obliged to comply with any Applicable Law or request of any governmental department, emergency services organisations or other competent administrative authority,
- 14 TERMINATION**
- 14.1 Either party may terminate this Agreement with immediate effect on giving notice to the other party if:
- 14.1.1 the other party suffers an Insolvency Event;
- 14.1.2 if the other party commits a material breach of this Agreement (or any of the Customer's arrangements or agreements with BF and/or any member of BF's Group) which is incapable of remedy; or
- 14.1.3 if the other party commits a material breach of this Agreement (or any of the Customer's arrangements or agreements with BF and/or any member of BF's Group) which is capable of remedy and fails to remedy that breach within thirty (30) days of being notified in writing to do so.
- 14.2 For the avoidance of doubt, any breach of the Acceptable Use Policy shall be a material breach of this Agreement.
- 14.3 If payment of any of the Service Charges is outstanding from the Customer as at the Commencement Date or the date of performance of the Services to which such applicable outstanding Service Charge relates BF shall be entitled to terminate this Agreement immediately upon written notice to the Customer, without liability.
- 15 CONSEQUENCES OF EXPIRY OR TERMINATION OF THIS AGREEMENT**
- 15.1 Expiry or termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at expiry or termination.
- 15.2 The provisions of clauses 1, 7, 9, 12, and 15 to 30 (inclusive) and any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after the expiry or termination of this Agreement, shall remain in full force and effect.
- 15.3 Upon the expiry of termination of this Agreement:
- 15.3.1 if such termination is requested by the Customer prior to the expiry of the Initial Term, the Customer shall, on demand, pay to BF an amount equal to the Services Charges due for the remaining Initial Term and value of Equipment as at the date of this Agreement, unless returned in good condition at the expense of the Customer and
- 15.3.2 the Supplier may enter the Customer's premises for the purposes of decommissioning the Services. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.4 Upon termination of this Agreement by reason of BF's default any Charges paid in advance to BF by the Customer will be refunded to the Customer on a pro-rated basis.
- 15.5 The Customer agrees that upon any termination or expiry of this Agreement the Customer shall pay to BF all Charges properly due and payable at the date of such termination or expiry.
- 15.6 Other than as referred to in clause 15.2, neither party shall have any further obligation to the other under this Agreement after its expiry or termination.
- 16 FORCE MAJEURE**
- 16.1 A party shall not be liable to the other party or be in breach for the delay or prevention in performing any of its obligations under this Agreement arising from or attributable to a Force Majeure Event.
- 16.2 If the performance of all or a material part of a party's obligations under this Agreement (except for the payment of the Service Charges by the Customer) are delayed or prevented by a Force Majeure Event for a continuous period of 3 months, the party whose performance is not affected may terminate this Agreement by giving 30 days' written notice to the other party.
- 17 SUB-CONTRACTING AND ASSIGNMENT**
- 17.1 This Agreement is personal to the Customer and the Customer shall not sub-contract, assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and/or obligations under this Agreement.
- 17.2 The Customer agrees that BF may sub-contract the Services or any part of them to third party sub-contractors.
- 17.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 18 VARIATIONS**
- 18.1 No variation of this Agreement shall be valid unless it is agreed by us in writing.
- 18.2 We will publish the latest version of this Agreement on our website at <https://www.birminghamfibre.co.uk/terms>
- 18.3 Notwithstanding the foregoing BF may at any time improve, modify or otherwise alter the Services or this agreement in the event that:
- 18.3.1 its suppliers' services are altered so as to affect the provision by BF of the Service;
- 18.3.2 in BF's reasonable opinion the Services should be altered for reasons of quality of service or otherwise for the benefit of its customers as a whole or;
- 18.3.3 technical reasons or Applicable Laws so require,
- provided that BF ensures that any such improvement, modification or alteration does not adversely affect the Service or the Charges.
- If we do make changes under this clause you may cancel this agreement without penalty as long as you give us notice to cancel this agreement within 30 days of the date of the notice we sent you, otherwise you agree to be bound by the new terms and charges.
- 19 ENTIRE AGREEMENT**
- 19.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes and extinguishes all previous drafts, agreements and understandings between them, whether oral or in writing, relating to its subject matter.
- 19.2 Each party acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, warranty or understanding made by or on behalf of a party (whether made innocently or negligently) which is not expressly set out in this Agreement.
- 19.3 Neither party shall have any claim for innocent or negligent misrepresentation based upon any statement, representation, assurance or warranty in this Agreement.
- 19.4 Nothing in this Agreement shall limit or exclude any liability for fraud.
- 20 NOTICES**
- 20.1 Any notice or similar communication under this Agreement shall be in writing, in English, and shall be delivered personally, sent by pre-paid registered post or recorded delivery (or pre-paid registered air mail if overseas) to the recipient party at its postal address as set out on the Order Form or the email address used for invoicing purposes.
- 20.2 Notices and similar communications shall be deemed to have been received:
- 20.2.1 if delivered personally, at the time of delivery to the address;
- 20.2.2 if sent by pre-paid registered post or recorded delivery, 48 hours after posting; and
- 20.2.3 if sent by pre-paid registered air mail, at 9.00am on the fifth Working Day after posting.
- 20.2.4 Email and other electronic communications by the end of the next working day.
- 21 RIGHTS OF THIRD PARTIES**
- No term of this Agreement shall be enforceable under the Contracts (Rights of Third parties) Act 1999 by any person who is not a party to this Agreement.
- 22 FURTHER ASSURANCE**
- Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
- 23 RELATIONSHIP**
- 23.1 This Agreement does not constitute, establish or imply any partnership, joint venture, agency, employment or fiduciary relationship between the parties.
- 23.2 Neither party shall have, nor represent that it has, any authority to make or enter into any commitments on the other's behalf or otherwise bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability or the exercise of any right or power).
- 24 ANNOUNCEMENTS**
- The Customer shall not make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of BF (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant stock, securities or investment exchange), any court or other authority of competent jurisdiction.
- 25 COSTS**
- Each party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of this Agreement.
- 26 COUNTERPARTS**
- 26.1 This Agreement may be executed in counterparts or duplicates, each of which, when executed, shall constitute an original of this Agreement and such counterparts or duplicates together shall constitute one and the same instrument.
- 26.2 No counterpart or duplicate shall be effective until each party has executed at least one counterpart or duplicate.
- 27 REMEDIES**
- 27.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 27.2 Any right or remedy expressly included in any provision of this Agreement (or the exercise thereof) shall not be considered as limiting a party's rights or remedies under any other provision of this Agreement (or the exercise thereof).
- 28 SEVERANCE**
- If any provision, or part of a provision, of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable (a "Void Provision"):
- 28.1.1 such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect;
- 28.1.2 if a Void Provision would be valid, legal and enforceable if some part of it were deleted, that Void Provision shall apply with such modification as may be necessary to make it valid, legal and enforceable;
- 28.1.3 if a Void Provision can not be made valid, legal and enforceable under clause 28.1.2, the parties shall negotiate in good faith to amend the Void Provision to be valid, legal and enforceable whilst achieving, to the greatest extent possible, the parties' original commercial intention; and
- 28.1.4 if a Void Provision can not be made valid, legal and enforceable under clause 28.1.2 or 28.1.3, the Void Provision shall be deemed to be deleted.
- 29 WAIVER**
- 29.1 A failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law:
- 29.1.1 does not constitute a waiver of that, or any other, right, power or remedy; and
- 29.1.2 shall not, and nor shall any single or partial exercise of any such right, power or remedy, preclude the further exercise of that, or any other, right power or remedy.
- 29.2 Any waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 30 COMPLAINTS PROCEDURE**
- 30.1 Our complaints procedure and processes are available on our website at <https://www.birminghamfibre.co.uk/terms>
- 31 GOVERNING LAW AND JURISDICTION**
- 31.1 This Agreement and any Dispute shall be governed by and construed in accordance with the law of England.
- 31.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute.