

## IMPORTANT INFORMATION

These terms and conditions govern your use of our consumer services and incorporate and consist of the following terms (including any other document to which we refer in those terms):

- these Claranet Soho terms and conditions ("Standard Terms");
- the relevant service and price terms and conditions (which can be accessed by the links below) ("Specific Terms"); and
- any relevant special-offer and price terms set out on the Online Signup Page or Service Order Form that you completed when requesting our services ("Special Terms").

These Terms and Conditions came into effect from 27th April 2007. Any conflict or inconsistency between any provisions of the above shall be resolved in accordance with the following order of precedence: Special Terms, Specific Terms, and Standard Terms.

The presence of Specific Terms does not guarantee that the product is available for new sales.

## YOUR AGREEMENT WITH US

By opening an account with us, or accessing our services, you indicate your acceptance of these Terms and Conditions and agree to be bound by them. If you do not agree with these Terms and Conditions, you should cancel any account set up.

In these Terms and Conditions, "your Service" means all the services to be provided by us ('we' or 'Claranet Limited') to you ('the customer' or 'the consumer') as set out on the Order Confirmation Email.

## STANDARD TERMS

### 1. Supply of your Service

1.1 These Standard Terms apply to our provision and your use of your Service and to any equipment provided to you for your Service.

1.2 We reserve the right to alter or withdraw your Service at any time, and will give you reasonable notice where possible.

1.3 We will provide your Service and deliver any equipment to the UK address provided by you unless the Specific Terms indicate otherwise.

1.4 Availability information for our services can be accessed on our site:

[www.claranetsoho.co.uk](http://www.claranetsoho.co.uk) ("our site"). However, this is for guidance purposes only.

## 2. Paying for your Service

2.1 The charges for your Service or Services will be the charges applicable at the time of ordering the Service .

2.2 You must pay all charges for your Service and any equipment provided to you, including any charges for late payment. Your method of payment will be either as set out in these Terms and Conditions or as otherwise notified to you. All sums due under these Terms and Conditions may be payable on demand in the event of payment terms being breached.

2.3 Accounts in default may be charged interest on the outstanding balance at 4% per annum above HSBC's base lending rate from time to time. All payments due under these Terms and Conditions shall be made by you in full without any right of off –set by you.

2.4 All sums due under these Terms and Conditions are quoted exclusively of Value Added Tax, (unless as stated otherwise) or other applicable taxes which may from time to time be charged in accordance with the relevant regulations in force at the time and shall be paid by you.

2.5 We reserve the right to suspend or end your Service immediately in the event of any default in payment by you.

2.6 All subscription charges are due in advance.

2.7 Your bills will be available to download from an online portal, the address of which will be sent to you in your acknowledgement email. You agree to pay the charges as soon as you receive your bill. You may also need to pay a deposit or a payment upfront before you can receive the service or goods.

2.8 Payment for services must be made by either direct debit, Visa, Mastercard or American Express unless an alternative method is agreed by both parties. Where agreement is made by both parties for the Customer to pay by cheque or BACS the Customer agrees to pay an additional £10 (including VAT) administration fee per invoice paid using this payment method.

## 3. Using your Service

3.1 You must use your Service in accordance with our [acceptable use policy](#) and any reasonable instructions that we may give you from time to time. A breach of our Acceptable Use Policy will constitute a material breach of these Terms and Conditions and shall entitle us to end our agreement with you under clause 7.2.

- 3.2 You must not (or authorise or permit any other party to) use your Service for the transmission of any material which is in violation of any law or regulation or which is defamatory, menacing, obscene, in breach of third party intellectual property rights (including copyright) or in breach of trade secrets. Any breach of this clause will be deemed to be a material breach of these Terms and Conditions and shall entitle us to end our agreement with you under clause 7.2. Whether you are aware of the content or illegality of any material so transmitted or not shall be irrelevant to this clause.
- 3.3 In addition to our other rights, we may suspend your Service without notice and with immediate effect whilst we investigate any allegation that you are in breach of our Acceptable Use Policy or clause 3.2
- 3.4 You acknowledge that we are unable to exercise control over the content of the information passing over our network and/or our services, and we hereby exclude all liability of any kind for the transmission or reception of infringing information of whatever nature.
- 3.5 You agree that any content, software or other copyright material we supply to you is for your own private use and you must not copy, change or publish the material or supply it to any person or use it for any business purpose.
- 3.6 If you have an internet access service from us, you accept that you are using the internet at your own risk. You are responsible for making sure any equipment you use to access your Service is protected against viruses.
- 3.7 If your Service gives you content or software licensed by others who ask you to accept their terms of use, you must observe these terms.
- 3.8 We reserve the right to delete all email from a mailbox if it remains unaccessed for a period exceeding 120 days and to bounce any new mail destined for that mailbox until such time as the account is logged into.

#### 4. Security and Data Protection

- 4.1 You are responsible for maintaining the confidentiality of your username and password and should not release them to any third party. You are fully responsible for all activities which occur under your username and password. Other users of your username and password shall be bound by these Terms and Conditions as if they were you. You agree to immediately notify us of any unauthorised use of your username or password or any other breach of security of which you become aware.
- 4.2 Please see our [Privacy Policy](#) for information on how we collect, store and deal with your personal data.

4.3 You must comply with the Data Processing Addendum attached at Annex 1 to this Agreement. We will comply with our obligations under relevant data protection legislation and the terms of Annex 1.

## 5. Suspending your Service

5.1 We may, with or without ending our agreement, suspend provision of your Service in whole or in part until further notice with immediate effect if we:

5.1.1 have reason to end this agreement in accordance with Clause 3.3 and Clause 7;

5.1.2 are obliged to comply with an order, instruction or request of Government, an emergency services organisation, or other administrative authority; or

5.1.3 need to carry out work relating to upgrading or maintenance of our network but providing that we have given you a reasonable period of notice practicable in the circumstances.

## 6. Our responsibility

6.1 We cannot guarantee that your Service or the equipment we provide to you will be error or fault-free.

6.2 Unless the Specific Terms or Special Terms provide otherwise, we will not pay compensation to you for any loss that could not have been reasonably foreseen, including for financial loss or loss of data.

6.3 Except as set out in clause 6.4 and 6.5, we will not, in any 12-month period, pay you more in compensation than the amounts received from you in payment for your Service in the 6 months preceding a claim unless the Specific Terms or Special Terms say otherwise.

6.4 We will be liable for loss or damage you suffer to your physical property arising from our negligence up to a maximum amount of £500,000 in any 12 month period.

6.5 We do not limit or exclude our liability for death or personal injury caused by our negligence, for fraud or for any other matter for which liability cannot be excluded or limited by law.

6.6 Nothing in this Clause 6 affects your legal rights relating to faulty or incorrectly described equipment.

6.7 At any time during or at the end of the Service Term, Claranet has the right to upgrade and/or migrate Customers to a different level or type of service if, in the opinion of Claranet, the existing Services being provided to the Customer are or become inappropriate or insufficient to meet the Customer's requirements and as a result Claranet considers the Customer requires different Services which are more appropriate to the Customer's needs. Claranet may consult with the Customer if Claranet wishes to exercise its rights under this Clause.

6.7.1 If the Customer agrees to change the Services in accordance with Claranet's recommendation, the Customer may be liable for the higher fees and costs associated with the upgraded and/or migrated Services and any termination or cancellation fees associated with the terminated Services.

6.7.2 If the Customer does not agree to the upgraded and/or migrated Services, Claranet shall be entitled to terminate the provision of the existing Services on providing 30 days notice in writing. In the event that the Customer chooses not to upgrade and Claranet allows the Customer to continue using the existing Services, any applicable SLA ceases to apply.

## 7. Term and Termination of your Service

7.1 This agreement will be formed when we send email confirmation to you of our acceptance of your order. The term (including any minimum or subscription period) shall begin when we inform you that your Service is installed and ready for use. This agreement will continue and payments will be taken according to these Terms and Conditions until you request cancellation or if we decide to end our agreement according to these Terms and Conditions.

### *Our rights*

7.2 We (without prejudice to our other rights) may end our agreement with you and cancel your Service immediately if:

7.2.1 you breach any clause under these Terms and Conditions;

7.2.2 we are obliged to comply with an order, instruction or request of Government, an emergency services organisation, or other administrative authority, to cease to provide your Service;

7.2.3 you breach our Acceptable Use Policy; or

7.2.4 the provision of your Service would give rise to or cause disruption to the services offered by us to our other customers.

7.3 We can also end this agreement for any reason on giving you a minimum of 30 days' notice at any time.

#### *Your rights*

7.4 You may end your agreement with us and cancel your Service:

7.4.1 by law, within 7 working days from the day following the day on which we send you an email confirming acceptance of your order by sending to us an e-mail or fax to the email address, address or fax number specified in clause 8.8. You should note that where you have requested us to provide your Service within the 7 working day period referred to above, your right to cancel shall automatically end when we start to perform your Service. As soon as we receive notice of your cancellation of your order on the basis set out in this clause, we will refund the relevant part of the purchase price in respect of the cancelled order.

7.4.2 after the expiry of the initial minimum period for your Service (which is twelve (12) months unless the Special Terms for that Service state otherwise), you may give written notice by email or fax to the email address or fax number specified in clause 8.8. You must give a minimum of 30 days notice unless the Specific Terms for that Service state otherwise.

7.5 If we have provided any equipment to allow you to use your Service, you agree to return it, following our instructions and at your cost. We will not refund any payment you have made for the equipment, except as set out in clause 7.6. If we have to collect the equipment, we may charge you our reasonable costs for so doing.

7.6 If you cancel your order under clause 7.4.1, you agree to return any equipment we have sent to you, following our instructions and at your cost. We will refund any payment you have made for the equipment. If we have to collect the equipment, we may charge you our reasonable costs for doing so.

7.7 Where you return any equipment to us because it is faulty, we may test the equipment. If we find the equipment is faulty and is still covered under the manufacturer's warranty, then we will replace it at our cost. If we find the equipment is not faulty, we will send it back to you and we may charge you our costs for the testing and postage. This does not affect your legal rights relating to equipment which is faulty or wrongly described.

### *On ending the agreement*

7.8 In the event of termination, whether initiated by you or us;

7.8.1 no refunds will be given on subscription charges, whether monthly, quarterly or annual, unless the agreement is terminated under Clause 7.4.1 or where we have terminated your agreement under Clause 7.3 during the minimum term or subscription period, in which case we will refund any unused portion of such subscription charges after we have deducted any money you owe to us;

7.8.2 cancellation charges may be payable by you as set out in the Specific Terms;

7.8.3 you shall immediately cease to make use of your Service and return our equipment to us at your cost, unless we specify otherwise in these Terms and Conditions; and

7.8.4 we will cease to provide your Service and certain consequences will flow from such termination including without limitation deletion of emails within your mailboxes.

### 8. General

8.1 Neither party to this Agreement shall be liable to the other for any delay or nonperformance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event. The Customer may not rely on a Force Majeure Event for any delay or non-performance of any obligation to pay Claranet under this Agreement.

8.2 We shall have the right to modify these Terms and Conditions at any time. It is your responsibility to check these Terms and Conditions for changes and to check for changes published on our site and we will not be responsible for any failure by you to do so. We will endeavour to inform you about a price increase, or a significant change to these Terms and Conditions.

8.3 These Terms and Conditions are governed by and shall be construed in accordance with the laws of England and Wales and you hereby submit to the exclusive jurisdiction of the English Courts.

8.4 You must not assign or purport to assign or otherwise deal with any of your rights and obligations hereunder, except if expressly agreed in writing by us.

8.5 Claranet may assign, transfer or otherwise dispose of its interest to any Party whatsoever in contracts involving Claranet SOHO customers including and without exception customers whose original contracts were novated, assigned or otherwise acquired by Claranet Limited. Claranet shall provide notice thereof by posting changes to

the website as per Clause 8.2 of the Claranet SOHO Terms and Conditions and the Customer agrees that this is satisfactory notice for the purposes of novation, assignment or other disposal of Claranet's interest. Claranet shall be entitled to assign, transfer or otherwise dispose of the benefit and burden of this Agreement and Claranet will not be liable to the Customer for the observance and performance of its obligations under this Agreement.

8.6 Any notice given by us to you under these Terms and Conditions will be given either by email or by a message on our site.

8.7 We will try to resolve any disputes that you may have with us. However, if we cannot resolve any dispute between us, we are registered with the Communications and Internet Services Adjudication Scheme (CISAS) and you may apply to CISAS for the matter to be resolved under the rules of the scheme. Full details of how to apply are available at [www.cisas.org.uk](http://www.cisas.org.uk).

8.8 All written notices referred to in clauses 7.4.1 and 7.4.2 should be sent by email to [mspcancellations@claranet.co.uk](mailto:mspcancellations@claranet.co.uk).

8.9 Claranet is required by Ofcom to publish a code of practice containing information on how we deal with complaints and disputes and the options available to you if we are unable to resolve your complaint within 8 weeks of your first contact with us about it. This code applies to you if you are a residential or small business customer and it is available on our website at <http://www.claranetsoho.co.uk/customer-complaints-code>

## SPECIFIC TERMS

### Broadband

This relates to all copper broadband (ADSL) and fibre broadband (FTTC) services sold by Claranet SOHO.

All broadband services provided by Claranet SOHO are on a best endeavours basis unless stated otherwise on the Service Order Form. In the event of a fault occurring Claranet SOHO will try to resolve the fault in as timely a manner as is reasonably possible. When a fault is raised it is the Customer's responsibility to perform any reasonable changes or tasks that Claranet SOHO requests in the process of attempting to fix the fault.

### Capped services

If the service taken from Claranet SOHO has an advertised cap on the amount of data a Customer can download each month then the Customer will not be able to use the internet connection any further until an additional data allowance is purchased or until the monthly allowance is reset.

## Termination

In addition to the stated forms of termination in clause 7.4.2 of the Standard Terms the Customer may also cancel their Broadband service with Claranet SOHO by following the Gaining Provider Led migration process to migrate their service away to another provider. More details of this process can be found at [www.ofcom.org.uk](http://www.ofcom.org.uk). Using this process does not affect the length of the notice period set out in Clause 7.4.2 of the Standard Terms.

## Enhanced Care

Customers who sign up to have Enhanced Care on their ADSL, FTTC or FTTP will receive a credit note to the value of two months' service on their ADSL, FTTC or FTTP product if a qualifying Service Outage develops that is not fixed within a window of 20 hours from the time the Customer notifies Claranet of the Service Outage. The credit note will only be applicable for the affected service and will not apply to any other services the customer may hold with Claranet or elsewhere. A Service Outage will not qualify for the credit note in any of the following circumstances:

- i) If the cause of or a contributing factor to the Service Outage is found to be the Customer's own equipment is either unsuitable to use with the ADSL, FTTC or FTTP service provided; is faulty; or is being used incorrectly. In this case Claranet's findings will be explained to the Customer and Claranet's decision will be final.
- ii) If the Customer does not comply with any instructions that Claranet may give when attempting to resolve the Service Outage.
- iii) If the Service Outage has been caused by a PSTN (Public Switched Telephone Network) cease instigated by the Customer's telephone provider.
- iv) If Claranet suspends or ceases the service in accordance with any of Clauses 2.5, 3.3, 5 or 7 of the Standard Terms.
- v) If the customer's service has been cancelled in accordance with Clause 7.
- vi) In the event of a Force Majeure. This means an event beyond the reasonable control of either the Customer or Claranet. This includes but is not limited to fire, storm, flood and extreme weather conditions, the outbreak of hostilities, riot, civil disorder or commotion, acts of terrorism, industrial disputes or act of any local or central government or other competent authority.

For the purpose of these Terms and Conditions a Service Outage is defined as a period of time where the customer is unable to connect to the internet through their ADSL, FTTC or FTTP service despite attempts to make this connection. Once the customer has

reconnected to the internet the Service Outage will be classed as resolved and any future Service Outage that may occur will be treated independently.

#### Pay as you go, Trial Account and Retention accounts

All of these services are unlimited usage dial-up connections that provide access to an 0845 number for dialing in. Local call rates are required to be paid to the customer's telephone provider for usage. The accounts also come with an associated @clara.co.uk address and 10MB of webspace. If the dial-up aspect of any of these packages is not used for 120 consecutive days then Claranet reserves the right to close all aspects of the package with immediate effect. If the customer wishes to keep the webspace or e-mail account without dialing in they will need to upgrade to a paid subscription service to keep these services.

**“Customer Personal Data”** shall mean personal data supplied to us by or on behalf of you and which is processed by us in connection with Services;

**“Data Privacy Laws”** shall mean the following as amended, extended or re-enacted from time to time.

(i) EC Directive 1995/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data; (ii) EC Directive 2002/58/EC on Privacy and Electronic Communications;

(iii) EC Regulation 2016/679 (the **“GDPR”**) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (when in force);

(iv) all local laws or regulations implementing or supplementing the EU legislation mentioned in (i)-(iii) above;

(v) all codes of practice and guidance issued by national regulators relating to the laws, regulations and EU legislation mentioned in (i)-(iv) above.

**“Data Controller”** shall have the same meaning as defined in Data Privacy Laws;

**“Data Processor”** shall have the same meaning as defined in Data Privacy Laws;

**“Data Subject”** shall have the same meaning as defined in Data Privacy Laws;

**“Losses”** means losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses);

**“Processing”** shall have the same meaning as defined in Data Privacy Laws;

**“Personal Data”** shall have the same meaning as defined in Data Privacy Laws;

**“Processing Records”** shall have the meaning set out in clause 1.4(h)(i);

## **1. Data Protection**

### **1.1 Control of conflicts**

In the event that this clause 1 conflicts with any other provision of the Services Agreement which this document updates, the provisions of this clause 1 shall prevail to the extent of such conflict.

### **1.2 Appointment of us as your Data Processor**

(a) The parties confirm that where Services comprise of our processing of your Personal Data, we shall be the Data Processor and you shall be the Data Controller with respect to such processing.

(b) If, as a consequence of our provision of Services, a party considers that the relationship between them no longer corresponds to the intention of the parties stated in clause 1.2(a) above then it shall notify the other party and the parties shall discuss and agree in good faith such steps that may be required to confirm the parties' intention.

### **1.3 General obligations of the parties**

- (a) Without prejudice to the remaining provisions of this clause 1, each party shall comply with the obligations imposed on it by applicable Data Privacy Laws with regard to your Personal Data processed by it in connection with Services, including, where applicable, appointing a data protection officer.
- (b) Each party shall ensure that where Services require the processing of your Personal Data, the description of Services includes the following information:
  - (i) The subject matter and duration of such Services;
  - (ii) The nature and purpose of the processing of your Personal Data required by such Services;
  - (iii) A description of the type(s) of your Personal Data processed in connection with such Services; and
  - (iv) A description of the categories of the data subjects comprised within your Personal Data referred to in this clause.

### **1.4 Our obligations**

- (a) We shall process your Personal Data strictly in accordance with the documented your instructions including transfers of your Personal Data outside the EEA;
- (b) We shall ensure that any persons authorised by it to process your Personal Data are subject to an obligation of confidentiality;
- (c) We shall implement appropriate technical and organisational measures to ensure that your Personal Data is subject to a level of security appropriate to the risks arising from its processing by us, taking into account the factors stated in Article 32 of the GDPR;
- (d) We shall notify you without undue delay of a personal data breach after becoming aware of it;
- (e) Taking into account the nature of the processing, we shall assist you by using appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligation to respond to requests for exercising a data subject's rights under the GDPR;
- (f) Taking into account the nature of the processing and the information available to us, we shall assist you with regard to your compliance with its obligations under the following Articles of the GDPR:
  - (i) Article 32 (Security of processing);
  - (ii) Articles 33 and 34 (Notification and communication of a personal data breach);
  - (iii) Article 35 (Data protection impact assessment); and

- (iv) Article 36 (Prior consultation by you with the supervisory authority)
- (g) Upon termination of Services that required the processing of your Personal Data (in whole or in part) we shall, at your election, deliver up or destroy such of your Personal Data which is in our possession, or under our control;
- (h) We shall, at your request, provide you with all information necessary to demonstrate your compliance with its obligations under this clause 1.4, including allowing for and contributing to audits and inspections conducted by or on your behalf;
- (i) We shall maintain written records of its processing of the your Personal Data (the "**Processing Records**") as follows:
  - (i) the name and contact details of:
    - (1) us and our sub-processors;
    - (2) you;
    - (3) where applicable, the representatives of you, us and its subprocessors, and our data protection officer;
  - (ii) the categories of processing of the your Personal Data carried out on your behalf;
  - (iii) transfers of your Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where applicable, details of the suitable safeguards in place; and
  - (iv) where possible, a general description of the technical and organisational security measures taken by us, our sub-processors and you.
- (j) We and our sub processors and, where applicable, their representatives, shall make the Processing Records available to a supervisory authority on request.

## **1.5 Costs of assistance**

Where, by operation of clause 1.4 we are obliged to provide assistance to you, or to third parties at your request (including submission to an audit or inspection and/or the provision of information), such assistance shall be provided at your sole cost and expense, save where such assistance directly arises from our breach of its obligations under this Agreement, in which event the costs of such assistance shall be borne by us.

## **1.6 Our appointment of sub-processors**

- (a) Notwithstanding any other provision of this Agreement, we shall be entitled to sub-contract any part of Services requiring the processing of your Personal Data, subject to the following conditions:

- (i) We shall notify you in writing of its intention to engage such subcontractor. Such notice shall give details of the identity of such sub-contractor and the services to be supplied by it;
- (ii) We shall be deemed to have approved the engagement of the subcontractor if it has not served a notice in writing upon us objecting to such appointment within 7 days of the date that the notice is deemed to be received by you in accordance with clause 14.

## **1.7 Liability**

- (a) Subject to clause 1.7(c) and the provisions Article 82(3) of the GDPR, if a party is liable for Losses paid to a third party which directly arise from the other party's breach of its obligations under the GDPR (the "defaulting party"), the defaulting party is liable to the other party for those Losses.
- (b) Subject to clause 1.7(c) and the provisions Article 82(3) of the GDPR, we are liable to you where Losses have been incurred and paid by the you to a third party which directly arise as a consequence of us acting outside or contrary to your lawful instructions with regard to that part of the Services comprising of the processing of your Personal Data.
- (c) Where, in accordance with the provisions Article 82(3) of the GDPR, both parties are responsible for the act, or omission to act, giving rise to the payment of Losses under clauses 1.7(a) or 1.7(b), then a party shall only be liable to the other party for that part of such Losses which are in proportion to their respective responsibility.