CYMRU FIBRE Internet Connectivity Terms and Conditions

This Hosting Services Terms and Conditions ("**Agreement**") is hereby entered into and agreed upon by you, either an individual or an entity ("**You**" or "**Customer**") and CATalyst Systems **("CYMRU FIBRE")** for the Services (as Defined below). This Agreement is made and entered into as of the date that You accept it as Defined below (the "**Commencement Date**").

BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXCECUTING THIS AGREEMENT OR AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THIS AGREEMENT. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN YOU AND CYMRU FIBRE AND SETS FORTH THE TERMS THAT GOVERN THE SERVICES PROVIDED TO YOU HEREUNDER. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. ANY CHANGES, ADDITIONS OR DELETIONS BY YOU TO THIS AGREEMENT WILL NOT BE ACCEPTED AND WILL NOT BE A PART OF THIS AGREEMENT.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Interpretation

1.1. Definitions

In this Agreement, unless the context otherwise requires, the expressions and terms listed in Schedule 1 (**Definitions**) shall have the meaning stated in that Schedule.

1.2. Construction of certain references

1.2.1 In this Agreement where the context admits:

1.2.1.1 references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions of which they are re-enactments (whether with or without modification);

1.2.1.2 the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to Agreement includes the Schedules.

1.2.1.3 this Agreement shall be binding on, and inure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's successors and permitted assigns.

1.3. Precedence

Save for where the Order Form states otherwise, if there is an inconsistency between the Agreement, the Schedules or an Order Form, the following order of precedence shall apply to this Agreement and the documents referred to in it:

1.3.1 the Clauses in the main body of the Agreement;
1.3.2 the Schedules; and
1.3.3 the relevant Order Form.

Save where Clauses in the Agreement and its Schedules are specifically dis-applied or varied in any special conditions for a particular Order Form, in such a case, the special conditions in the relevant Order Form shall take precedence over the Clauses in the Agreement and the Schedules, if there is an inconsistency between the special conditions and the Clauses in the Agreement and the Schedules, solely in respect of the relevant Order Form.

2. Term of this Agreement

2.1 This Agreement shall commence on the Commencement Date and shall continue (subject to earlier

termination in accordance with the express terms of this Agreement) for the Initial Contract Period.

2.2 Subject to clauses 9 and 16.2 of this Agreement, this Agreement shall, in all circumstances, continue in full force and effect, for the whole of the Initial Contract Period, and shall continue after the Initial Contract Period unless terminated by either Party giving not less than ninety (30) days' prior written notice, such notice not to expire, in any event, sooner than the expiry of the Initial Contract Period ("Notice"). In the event that no such Notice is given by either Party, the Agreement shall automatically continue in full force and effect after the Initial Contract Period, on a rolling annual basis of twelve (12) months each (each a "Subsequent Renewal Period"), unless and until either Party provides not less than ninety (90) days' prior written notice, such notice not to expire sooner than the expiry of the relevant Subsequent Renewal Period.

2.3 CYMRU FIBRE shall use its reasonable endeavours to activate and make the Services available by the Start Date. However, the Start Date and any other dates given in this Contract are estimates provided for planning purposes only. CYMRU FIBRE shall have no liability for any failure to meet the Start Date or any other date as, save as expressly provided elsewhere in this Contract, time is not of the essence in relation to any matter.

2.4 No order shall be binding upon CYMRU FIBRE unless and until accepted by CYMRU FIBRE.

3. CYMRU FIBRE Obligations

3.1 CYMRU FIBRE shall provide the Services in accordance with the terms of this Contract. The Services shall commence on the Start Date notified by CYMRU FIBRE.

3.2 The Services are provided solely for use by the Customer in the course of the Customer's business.

3.3 CYMRU FIBRE may obtain telecommunications services from a Carrier in order to supply the Services.

3.4 CYMRU FIBRE shall use reasonable skill and care when providing the Services but does not guarantee that the Services shall be continuously available to the Customer or free from Service Failures.

3.5 The Customer must immediately report any fault to CYMRU FIBRE via the Service Desk, providing sufficient information to enable CYMRU FIBRE to investigate the problem. CYMRU FIBRE shall log the time of receipt of all such reports.

3.6 Where CYMRU FIBRE spends time investigating a fault reported by the Customer and conclude that there has been no Service Failure, CYMRU FIBRE reserves the right to charge the Customer for all reasonable costs and expenses incurred in investigating the report and the Customer agrees to pay such charges.

4. Customer Obligations

4.1 The Customer shall only use the Services in accordance with the terms of this Contract, the Acceptable Use Policy, any relevant manuals provided by CYMRU FIBRE from time to time and any other reasonable operating instructions given to the Customer by CYMRU FIBRE.

4.2 The Customer agrees not to use the Services in a way which would:

4.2.1 contravene or cause CYMRU FIBRE to contravene any laws or regulations including, but not limited to, the Act, and any licence under the Act which is applicable to CYMRU FIBRE;

4.2.2 contravene the Acceptable Use Policy;

4.2.3 cause a material degradation of the Services to any other customer of CYMRU FIBRE;

4.2.4 contravene any reasonable operating instructions or other instructions (including, without limitation, any manual) which CYMRU FIBRE may provide from time to time;

4.2.5 involve the sending of unsolicited marketing or advertising materials;

4.2.6 result in the transmission or storage of any material which is intended to be a hoax call to emergency services or the sending of any pornographic, obscene or abusive, defamatory, menacing or offensive nature or which would result in the breach of any third party's intellectual property rights, confidential information or privacy; or

4.2.7 breach or cause CYMRU FIBRE to breach any Applicable Data Protection Laws.

4.3 The Customer shall:

4.3.1 not install, use, copy, access or distribute any Software (including Third Party Software), nor allow any third party to do so, nor appoint any reseller to do so, except as expressly permitted in accordance with this Contract or as otherwise authorised by CYMRU FIBRE and (in respect of Third Party Software) the relevant Licensor;

4.3.2 not use the Services in respect of hazardous environments requiring fail-safe performance in which the failure of the Services or Software could lead to death, personal injury or severe physical, property or environmental damage. Examples of these environments include the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control or life support systems;

4.3.3 not separate the components of the Software by installing them on different servers, or by upgrading or downloading them at different times; and

4.3.4 not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Software.

4.4 Notwithstanding any provision to the contrary, the Software licence ("**Software Licence**") may be terminated by the manufacturer, supplier or licensor in accordance with its terms; and in addition (without prejudice to the generality of the foregoing) the Customer shall ensure that any Software is only used during the continuance of this Contract in accordance with a valid and subsisting Software Licence.

4.5 Except to the extent and in the circumstances expressly required to be permitted by law, the Customer shall ensure that neither it nor any third party shall copy, alter, modify, adapt, translate, decompile, disassemble or reverse engineer the Software.

4.6 The Customer agrees to indemnify, keep indemnified and hold harmless CYMRU FIBRE from and against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by CYMRU FIBRE arising from any breach by the Customer of its obligations under this Contract including this clause 4, and for all costs and expenses reasonably incurred by CYMRU FIBRE in investigating and defending any such claims, proceedings or threatened proceedings; such indemnity to continue notwithstanding the termination of this agreement by either party.

5. Charges and Payment

5.1 The Customer shall pay CYMRU FIBRE the Charges as specified in this Contract and as subsequently varied pursuant to this Contract. Charges shall be payable by the Customer with effect from the Start Date.

5.2 CYMRU FIBRE may vary all or any of the Charges at any time on giving not less than thirty (30) days' notice to the Customer. This notice may be included in an invoice to the Customer. Such increase shall not be more than the Retail Price Index (RPI) applicable at that time.

5.3 CYMRU FIBRE may at any time on notice to the Customer amend any terms as to payment so as to ensure that it is paid the Charges on or prior to the date on which CYMRU FIBRE is to pay any Third Party Service Provider in respect of the Services or goods to which such charges relate.

5.4 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. The Customer shall be responsible for paying VAT and other applicable taxes which shall be included in CYMRU FIBRE invoices at the applicable rate(s). Payment shall be by direct debit and a fee of £20.00 per incident for any cancelled, dishonoured or failed Direct Debits or cheques may be applied. If payment is not made by direct debit, an administrative charge of £5 per month shall be applied.

5.5 CYMRU FIBRE shall issue invoices for the Services in accordance with the billing dates specified in this Contract. Any delay by CYMRU FIBRE in invoicing any Charges shall not prohibit CYMRU FIBRE from raising an invoice at a later date in respect of the same nor shall it relieve the Customer of liability to pay for the same.

5.6 The Customer shall pay the Charges within fourteen (14) days of the date of the relevant CYMRU FIBRE invoice, unless otherwise agreed by CYMRU FIBRE. The Customer shall not be entitled to set-off, contra or withhold any payment due to CYMRU FIBRE against any sums of whatsoever nature that are due to the Customer from CYMRU FIBRE or that the Customer claims are due from CYMRU FIBRE, and time of payment of all sums under this Contract is of the essence.

5.7 Where Charges are not paid by the Customer in accordance with this clause 5, CYMRU FIBRE may require the Customer to pay all sums due under this Contract on demand, and reserve the right to charge Interest on all amounts overdue from the Customer on a daily basis (before as well as after any judgement) until the date of payment, at NatWest Bank base rate plus four percent (4%). Alternatively, if any sum owed by the Customer to CYMRU FIBRE under the Contract or any other contract with CYMRU FIBRE is not paid by the due date, CYMRU FIBRE may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with CYMRU FIBRE.

5.8 If you believe all or any part of an invoice is in error, you must notify CYMRU FIBRE Communications within 6-months (180) days of your receipt of the invoice. If you fail to do so, CYMRU FIBRE Communications will not be required to make any adjustment to the invoice, and you shall be deemed to have waived any right to contest the invoice.

6. Access to Premises and Information

6.1 The Customer shall provide to CYMRU FIBRE, a Carrier, or such third party nominated by CYMRU FIBRE, such information and documentation relating to the implementation, maintenance and support and/or administration of the Services as is necessary to enable CYMRU FIBRE and/or its contractors to implement, maintain and support and administer the provision of those Services.

6.2 The Customer shall ensure that CYMRU FIBRE, a Carrier, its contractors and/or any third party providing the Services are provided with such access to the computer equipment, software and network links owned by, licensed to and/or used by the Customer as may be reasonably necessary for the implementation, maintenance and support, administration and/or other performance of the Services.

6.3 The Customer shall ensure, prior to the date on which CYMRU FIBRE, a Carrier, its contractors and/or any third party providing the Services commence the provision of any services in connection with the implementation, maintenance and support and/or administration of any Services at the Premises of the Customer that:

6.3.1 such Premises provide adequate working space and facilities as CYMRU FIBRE, its contractors and/or any third party providing the Services may reasonably require to carry out such services;

6.3.2 it has obtained all necessary consents to enable CYMRU FIBRE, its contractors and/or any third party providing the Services to enter onto and remain upon the Premises to carry out such services; and

6.3.3 the Customer shall effect and maintain throughout the provision of such services insurance cover for the benefit of CYMRU FIBRE, its contractors and/or any third party providing the Services and their respective employees, agents and contractors against any and all reasonably foreseeable risks in providing the Services at such Premises on terms reasonably acceptable to CYMRU FIBRE and/or its contractors.

7. Equipment & Installation

7.1 Where the Services are being installed by CYMRU FIBRE, the following shall apply:

7.1.1 CYMRU FIBRE shall attempt to provide and install or procure the provision and installation of the Equipment at the Premises so that the Services can be provided on or before any Start Date specified or agreed to by CYMRU FIBRE;

7.1.2 Any installation date given is an estimate only and CYMRU FIBRE shall not be liable for any failure to meet such installation date;

7.1.3 CYMRU FIBRE shall supply the Customer with the relevant information to enable the Customer to prepare the Premises for delivery and installation of the Equipment;

7.1.4 CYMRU FIBRE shall attempt to comply with the Customer's reasonable requests in respect of installation but CYMRU FIBRE's decision on the routing of cables and wires and the positioning of outlets and the Equipment shall be final;

7.1.5 A secure electricity supply is required at the Premises for the installation, operation and maintenance of the Equipment at such points and with such connections as specified by CYMRU FIBRE. Unless otherwise agreed, this power supply is to be provided by the Customer. CYMRU FIBRE shall not be responsible for interruption or failure of the Services caused by a failure of such power supply; and

7.1.6 Customer acknowledges that during the installation of the Equipment for the provision of the Services, the Access Line may suffer a temporary loss of service which shall be reinstated following installation and/or interference to any other Customer Apparatus or services used in connection with the Access Line (e.g. Access Line security systems) without any liability to CYMRU FIBRE.

7.1.7 Customer agrees not to do or allow anything to be done to the Premises that may cause damage to, or interfere with, the Equipment or prevent easy access to it;

7.1.8 Customer shall procure at its own expense all permissions, licences, registrations and approvals necessary for CYMRU FIBRE to deliver, install and maintain the Equipment for the provision of the Services;

7.1.9 Following installation of the Equipment, Standard Tests shall be carried out by CYMRU FIBRE to ensure that the Services are ready for use. If the Services are not ready for use, CYMRU FIBRE shall either repair or replace, at its sole discretion, the Equipment or any part thereof and repeat the Standard Tests. Customer shall be entitled to use the Services following CYMRU FIBRE informing it of successful completion of the Standard Tests;

7.1.10 The Equipment shall remain the property of CYMRU FIBRE or the supplier of such Equipment and the Customer shall at all times make clear to third parties that such Equipment is the property of CYMRU FIBRE or a third party supplier of such Equipment;

7.1.11 The Customer shall be responsible for ensuring at all times the safekeeping and proper use of the Equipment after delivery and installation at the Premises. The Customer shall be liable to CYMRU FIBRE for any loss or damage to the Equipment (except where it can be shown that such loss or damage was caused by the negligence of CYMRU FIBRE or due to fair wear and tear). The Customer will notify CYMRU FIBRE immediately of any such loss or damage in particular (without prejudice to the generality of the foregoing), the Customer undertakes to keep the Equipment at the Premises and not to move it, to comply with all instructions of CYMRU FIBRE, not to cause the Equipment to be repaired or otherwise maintained except by an authorised representative of CYMRU FIBRE and not to attempt to sell, transfer, dispose of, let, mortgage or change the Equipment or suffer any distress, seizure or execution to be levied against the Equipment.

7.2 Where the Services are being self- installed by the Customer, the following shall apply:

7.2.1 Customer is fully responsible for connecting a suitable microfilter to the Carrier's master socket (and any extension sockets) at the Premises and connecting a suitable router/modem to the relevant port on the microfilter;

7.2.2 CYMRU FIBRE accepts no liability whatsoever for any loss Customer or any third party may suffer as a result of the Customer’s installation of the Services, including but not limited to loss caused by installation of any Customer Apparatus or CPE or any faulty Customer Apparatus, notwithstanding any list of suitable Customer Apparatus which CYMRU FIBRE may publish;

7.2.3 CYMRU FIBRE does not warrant that any particular Customer Apparatus or CPE shall be compatible with the Services and CYMRU FIBRE shall not be responsible for supporting any Customer Apparatus;

7.2.4 If CYMRU FIBRE supplies the CPE, Customer must agree to the terms of the relevant end-user software licence agreement to govern the use of the CPE. Other than where required by law, any such CPE is supplied "as is" with no warranty as to its fitness for purpose or otherwise. CYMRU FIBRE shall use reasonable endeavours to assist with reasonable queries Customer may have in respect of initial installation of the Services. However, to the extent that such queries relate to any problems which, following an initial diagnosis, may be outside of CYMRU FIBRE’s control or ability to remedy (including but not limited to Customer Apparatus or CPE), CYMRU FIBRE does not guarantee that it shall be able to help resolve any such difficulties.

7.3 The Customer shall ensure that the Customer Apparatus;

7.3.1 shall be maintained and repaired in order to obtain or use the Service;

7.3.2 complies with any applicable law and shall immediately disconnect any Customer Apparatus if such apparatus does not, or ceases to, conform to applicable standards (if any) for the time being in force. CYMRU FIBRE reserves the right to disconnect any Customer Apparatus if Customer does not fulfil its obligations under this clause or if, in the opinion of CYMRU FIBRE, such Customer Apparatus may cause the death or any personal injury to any person or damage to property or materially impairs the quality of any telecommunication service provided by means of the CYMRU FIBRE System and the Customer agrees to disconnect such Customer Apparatus at the request of CYMRU FIBRE;

7.3.3 must be technically compatible with the Services and approved for that purpose under any relevant legislation or telecommunications industry standards; and

7.3.4 CYMRU FIBRE accepts no liability whatsoever for any loss Customer may suffer as a result of its use or misuse of the Customer Apparatus or as a result of any faults in the Customer Apparatus. In particular, CYMRU FIBRE is not liable whatsoever if Customer damages or incorrectly reconfigures any Customer Apparatus.

8. Security of the Services

8.1 CYMRU FIBRE provides no guarantee or warranty as to the security of the Services and the Customer shall indemnify, keep indemnified and hold harmless CYMRU FIBRE from and against any claim or demand of whatsoever nature and howsoever arising as a result of the said security or any failure thereof.

8.2 Where the Customer is aware or becomes aware of any matter which the Customer knows or ought reasonably to be expected to know constitutes a threat to the security of the Services, then the Customer has a duty pursuant to this Contract immediately to advise CYMRU FIBRE of such matter.

8.3 The Customer is responsible for all use and misuse of any passwords giving access to the Services.

8.4 CYMRU FIBRE and/or other sub-contractors shall be entitled to inspect and monitor from time to time all usage being made of the Services including communications being made and received to verify compliance with this Contract.

9. Termination

9.1 If at any time during the Term of the Agreement:

9.1.1 the Customer commits a material breach of this Agreement and in case of a breach which is capable of remedy, fails to remedy the breach within thirty (30) days of written notice (for the avoidance of doubt, this clause 9.1 shall not apply to any material breach of this Agreement committed by CYMRU FIBRE), or

9.1.2 a Party becomes insolvent,

then the other Party shall have the right to terminate this Agreement forthwith.

9.2 CYMRU FIBRE shall also have the right to terminate this Agreement immediately upon written notice if:

9.2.1 Customer fails to timely pay any and all undisputed amounts due and Customer fails to cure such

non-payment within ten (10) days after receiving written notice of such non-payment from CYMRU FIBRE,

9.2.2 Customer fails to comply with the Acceptable Use Policy;

9.2.3 there is a change of control of the Customer;

9.2.4 there is a governmental prohibition or required alteration of the Services provided that necessitates such termination,

9.2.5 CYMRU FIBRE is informed by any Third party Service Provider that such Third Party Service Provider is required to cease any Third Party Services (in whole or in part) by a competent regulatory authority (e.g., pursuant to a withdrawal, revocation or non-renewal of authorisations);

9.2.6 any Third Party Service Provider supporting the Services ceases to do so for whatever reason;

9.2.7 any Third Party Services or any Third Party Software cease to be provided (in whole or in part) by any Third Party Service Provider to CYMRU FIBRE or for use or resale by CYMRU FIBRE for whatever reason;

9.2.8 any Third Party Service Provider changes the terms of its provision of telecommunications services to CYMRU FIBRE for the Services beyond the reasonable control of CYMRU FIBRE;

9.2.9 any Third Party Services which are essential to the provision of the Services ceases to be available at all or at an appropriate capacity and there shall not be available any suitable replacement; or

9.2.10 any authorisation licence or other permission for CYMRU FIBRE or any Third Party Service Provider under the Act is revoked, withdrawn or not renewed for whatever reason.

9.3 In the event of termination of this Contract by CYMRU FIBRE pursuant to Clauses 9.1 or Clauses 9.2.1 or 9.2.2 during the Initial Contract Period the Customer shall be deemed to have repudiated this Contract and shall pay to CYMRU FIBRE, in addition to any unpaid Charges due at the date of termination, an amount equal to the remaining Charges for Services that the Customer would have incurred up to the end of the Initial Contract Period had the termination not taken place, less an accelerated payment discount at the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt. The provisions of this clause 9.3 are without prejudice to all and any other rights and remedies available to CYMRU FIBRE.

9.4 Where the Customer purports to terminate this Contract during the Initial Contract Period other than in accordance with clause 9.1, CYMRU FIBRE shall be entitled (without prejudice to all and any of its other rights and remedies) to treat such purported termination as a repudiatory breach and accept such repudiation by terminating this Contract in which case the Customer shall pay to CYMRU FIBRE, in addition to any unpaid Charges due at the date of termination, an amount equal to the remaining Charges for Services that the Customer would have incurred up to the end of the Initial Contract Period had the termination not taken place, less an accelerated payment discount at the rate of the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt.

9.5 The Customer shall indemnify, keep indemnified and hold harmless CYMRU FIBRE from and against any claim or demand of whatsoever nature and howsoever arising against CYMRU FIBRE as a result of termination pursuant to this clause 9.

9.6 Upon termination of this Contract each party shall return to the other party any Confidential Information of the other which it has in its possession.

9.7 Clause 4 (Customer Obligations), Clause 5 (Charges and Payment), Clause 12 (Intellectual Property), Clause 13 (Information and Confidentiality), Clause 14 (Data Protection), Clause 15 (Limitation of Liability) and Clause 16 (Force Majeure) and other terms and conditions forming part of the Contract which are agreed by the Parties to survive termination or which by their nature are clearly intended by the Parties to survive termination, shall survive and continue in full force and effect.

10. Suspension of Services

10.1 CYMRU FIBRE reserves the right to interrupt the service or change the technical specification of the Services for operational reasons (such as maintenance or service upgrades), because of an emergency or as required to conform with any applicable safety or other statutory requirements. In these circumstances where possible CYMRU FIBRE will give notice to the Customer of such interruption however, the Customer shall have no claim against CYMRU FIBRE for any such interruption.

10.2 CYMRU FIBRE may suspend the provision of the Services or any part thereof in its absolute discretion and without notice if:

10.2.1 the Customer fails, or CYMRU FIBRE believes the Customer will fail, to meet any of its obligations under this Contract including, but not limited to failure to make payment pursuant to clause 5, or failure to comply with the Acceptable Use Policy;

10.2.2 technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;

10.2.3 in the opinion of CYMRU FIBRE the Customer's conduct may result in the breach of any law or is otherwise prejudicial to the interests of CYMRU FIBRE;

10.2.4 in the opinion of CYMRU FIBRE it is necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance;

10.2.5 CYMRU FIBRE is obliged to comply with any order, instruction or request of a competent governmental, emergency services organisation or regulatory or other authority;

10.2.6 CYMRU FIBRE is entitled to terminate this Contract under clauses 9 or 16; or

10.2.7 any Third Party Service Provider temporarily suspends or takes out of use the Services for operational purposes.

10.3 CYMRU FIBRE shall, where practical, give the Customer notice of intention to suspend the Services and, in relation to suspension for the reasons stated in Clauses 10.2.2, 10.2.4. or 10.2.5 above, shall restore the Services as soon as CYMRU FIBRE is reasonably able to do so.

10.4 If CYMRU FIBRE exercises its right to suspend the Services this shall not restrict their right to terminate this Contract.

10.5 The Customer shall indemnify, keep indemnified and hold harmless CYMRU FIBRE from and against any claim or demand of whatsoever nature and howsoever arising against CYMRU FIBRE as a result of suspension pursuant to this clause.

11. Variation of Services

11.1 CYMRU FIBRE shall be entitled, upon giving not less than thirty (30) days' notice to the Customer where practical, to make variations and additions to the Services and these Terms and Conditions from time to time (acting reasonably) including:-

11.1.1 to improve or add to the Services;

11.1.2 to pass through any change made by any Third Party Service Provider to any Third Party Services;

11.1.3 in order to comply with any law or legal obligation (whether under common law, statute, tort or otherwise), or any change to any law or legal obligation;

11.1.4 in order to comply with any final order, provisional order, direction, notice, specification, designation or consent made by the Office of Communications; and/or

11.1.5 in order to maintain the integrity or security of the Services and/or any part of the systems use or to provide the Services.

For the avoidance of doubt, CYMRU FIBRE shall not be obliged to give any greater notice of any changes by a Third Party Service Provider than the Third Party Service Provider gives to CYMRU FIBRE.

11.2 CYMRU FIBRE may at any time change the Services if it needs to do so to comply with any applicable safety or other statutory requirements or where the change does not materially detract from the quality or performance of the Services.

11.3 In relation to any Third Party Services, including any elements which are sub-contracted to or supplied by third parties, and any third party premises that may host any systems used to provide the Services, the following terms will apply:

11.3.1 CYMRU FIBRE shall use all reasonable endeavours to monitor and supervise the supply of such Third Party Services, but CYMRU FIBRE shall not otherwise be responsible for or liable for any malfunction, failure, non-operation, default, or non-availability of such Third Party Services, unless due to CYMRU FIBRE's negligence or default;

11.3.2 if the third party changes its specifications for the Third Party Services after the date of this Contract, or that third party replaces the same with a new version, or ceases to supply the same, or CYMRU FIBRE decides to replace the same, CYMRU FIBRE shall be entitled (without prejudice to any of its other rights and remedies) to substitute for the Third Party Services an alternative which shall as far as is reasonably possible provide substantially the same functionality, and to make a reasonable resulting variation to the Charges and other terms of this Contract. CYMRU FIBRE would as far as practicable pre-plan this with the Customer;

11.3.3 if the third party increases its charges for the Third Party Services, CYMRU FIBRE shall be entitled to make a resulting increase to the Charges to pass on the cost increase in accordance with clause 5.4; and

11.3.4 CYMRU FIBRE may change the Third Party Service Provider at any time. In such case, this may involve a temporary suspension in the Service and re set-up.

11.4 If the Customer's broadband connection fails, there is a power cut of power failure or there is a failure

outside of CYMRU FIBRE's control, the Service may also fail. CYMRU FIBRE shall not be liable to the Customer for any such failure to use the Service.

12. Intellectual Property

12.1 The Customer shall not use any trade names, trademarks or service marks of CYMRU FIBRE or the Licensors without the express written consent of CYMRU FIBRE (in respect of any trade names, trademarks or service marks owned by CYMRU FIBRE) or the relevant Licensor (in respect of any trade names, trademarks or service marks owned by any Licensor).

12.2 Copyright in all software, documents, drawings and information supplied to the Customer in connection with this Contract remain vested in CYMRU FIBRE or the copyright owner. Such software, documents, drawings and information are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without CYMRU FIBRE's prior written consent and in respect of Third Party Software, the prior written consent of the relevant Licensor.

13. Information and Confidentiality

13.1 The Customer will provide CYMRU FIBRE with any information which CYMRU FIBRE may reasonably require to enable to proceed with the performance of its obligations under this Contract.

13.2 The Customer acknowledges that CYMRU FIBRE reserves the right to review or edit any of the Customer's information (including but not limited to information about the communications such as origin, destination, duration, route and time) or third party information which the Customer uses in connection with the Services for the purposes of any of the following:

13.2.1 performing its obligations under this Contract;

13.2.2 correcting, maintaining and improving the Services;

13.2.3 ensuring that the Customer is complying with the Acceptable Use Policy;

13.2.4 monitoring the performance of the Services including the Customer's usage;

13.2.5 collating information to provide non-specific statistics to assist in CYMRU FIBRE's business planning;

13.2.6 complying with applicable laws, regulations and statutory instruments; or

13.2.7 complying with any request for information or disclosure from a Court or other appropriately authorised body.

13.3 Neither party shall disclose to any third party without the prior written consent of the other party any Confidential Information which is received from the other party as a result of this Contract. Each party agrees that any Confidential Information received by it from the other party shall only be used for the purposes of the performance of its obligations and/or the exercise of its rights.

13.4 These restrictions shall not apply to any information which is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 13, is acquired from a third party who owes no obligation of confidence in respect of the information, has been independently developed by the recipient, or is required by any Court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose such Confidential Information.

14. Data Protection

14.1 CYMRU FIBRE and the Customer each agree to comply with their respective obligations under the Applicable Data Protection Laws and maintain all relevant registrations, including (in relation to the Customer) such registrations and consents as the Customer should obtain and maintain to enable CYMRU FIBRE to Process Personal Data in connection with the performance by CYMRU FIBRE of its obligations under this Contract.

14.2 Except in respect of Customer Details, the use of which is governed by clause 14.3, if and to the extent that CYMRU FIBRE Processes Personal Data in the capacity of the Data Processor of the Customer in the course of performing its obligations under this Contract, CYMRU FIBRE shall act in accordance with the Customer's instructions in respect of the Processing of such Personal Data from time to time, and use appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction or damage.

14.3 Any and all Customer Details supplied by the Customer is held and may be used and disclosed in accordance with CYMRU FIBRE's current privacy policy available on the CYMRU FIBRE Website.

14.4 Notwithstanding anything to the contrary, CYMRU FIBRE shall be entitled to put any data obtained under or in connection with this Contract into a computerized directory in anonymised form and may use and disclose such data in order to enable CYMRU FIBRE to provide the Services and market other products and services to the Customer.

14.5 Notwithstanding anything to the contrary, the Customer agrees that CYMRU FIBRE shall be entitled, when required by law, to disclose to government agencies passwords, decryption codes, and details of the Customer's information processed using the Services, upon written notice to the Customer.

14.6 The Customer agrees that CYMRU FIBRE may monitor and record calls made to or by CYMRU FIBRE or to the Customer (and/or any of their employees or personnel), for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Customer undertakes to make its employees and personnel aware of the rights reserved by CYMRU FIBRE under this condition.

14.7 The provisions of this clause 14 shall survive the termination of this Contract.

15. Limitation of Liability

15.1 CYMRU FIBRE shall not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise for loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (whether direct or indirect), loss of, corruption of, or damage to data or software (whether direct or indirect), any special indirect or consequential loss or damage or any loss suffered by any third party or any liability to any third party.

15.2 The total liability of CYMRU FIBRE (other than liability governed by clause 15.3) arising out of or in connection with this Contract (whether arising in contract, in tort, including negligence, as a result of breach of statutory duty or otherwise howsoever) is limited to a sum equivalent to the total of Charges paid to CYMRU FIBRE in the previous twelve (12) months, for any one cause of action or series of causes of action arising out of the same event, act or omission (the ''**Per Claim Cap**'') and, in the aggregate, to a sum equivalent to 200% of the Per Claim Cap for any and all causes of action arising in any twelve (12) month period.

15.3 CYMRU FIBRE's liability (whether arising in contract, in tort (including negligence), or as a result of breach of statutory duty or otherwise howsoever) for damage to tangible property shall be limited to £5000.00 in respect of each incident or series of connected incidents. For the purposes of this clause, neither data nor software constitutes "tangible property".

15.4 Nothing in this Contract shall exclude or restrict the liability of either party for death or personal injury arising as a result of its negligence, for its fraud; or for any other liability which cannot be excluded or limited by law.

15.5 The express terms of this Contract are in lieu of all warranties, conditions, terms, undertakings and obligations whether oral or in writing and whether express or implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

15.6 CYMRU FIBRE are not liable to the Customer for the acts or omissions of any other party, including other providers of telecommunications, computers or other equipment or services including internet services.

15.7 No delay in enforcing any of the provisions of this Contract shall affect or restrict the rights of CYMRU FIBRE arising under this Contract.

15.8 CYMRU FIBRE shall not be in breach of this Contract or under any liability for any failure to perform or for delay in performing any obligation under this Contract (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of this Contract by the Customer or any voluntary act or omission of the Customer.

16. Force Majeure

16.1 Neither party shall be obliged to carry out any obligation under this Contract (other than the Customer's obligation to pay the Charges and to indemnify CYMRU FIBRE where performance of such obligation is prevented due to any cause beyond a party's reasonable control including but not limited to, any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission from the Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of the Services resulting from the same or a similar type of force majeure event and breakdown of any Equipment.

16.2 If any event described in clause 16.1 lasts more than fourteen (14) days from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may terminate this Contract by giving thirty (30) days written notice to the other party.

16.3 A party relying on this clause 16 shall use reasonable endeavours to mitigate the effects of a force majeure event.

17. Audit

17.1 During the term of this Contract and for a period of two (2) years after the termination of this Contract the Customer shall keep separate accounts and records giving correct and adequate details of all payments made in respect of this Contract and the Customer's use of the Services and Software (including Third Party Software) and shall upon request report to CYMRU FIBRE in respect of the above and/or permit CYMRU FIBRE and its duly appointed representatives at all reasonable times to inspect all such accounts and records and to take copies thereof.

17.2 In the event that an audit conducted in accordance with clause 17.1 uncovers a payment shortage in respect of the Charges, the Customer shall pay CYMRU FIBRE any unpaid amount which is due and payable in accordance with the terms of this Contract.

17.3 In the event that an audit conducted in accordance with clause 17.1 uncovers a payment shortage of Charges of 5% or more, the Customer shall reimburse CYMRU FIBRE for the expenses incurred in conducting such audit.

18. **General**

18.1 The Contract shall not create or constitute a partnership, joint venture or agency relationship between the Parties.

18.2 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.3 No failure to exercise, or delay in exercising a right, power or remedy provided by the Contract or by law shall constitute a waiver of that right, power or remedy, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

18.4 This Contract does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

18.5 Customer shall not assign, charge or otherwise deal with all or any of its rights and obligations in the Contract in whole or in part without the prior written consent of CYMRU FIBRE.

18.6 All notices, requests and other communications called for by this Contract will be deemed to have been given immediately if made by electronic mail (confirmed by concurrent written notice sent first class post, postage prepaid) to the addresses set out herein.

18.7 The Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales without regard to any conflict of law provisions, except that the United Nations Convention on the International Sale of Goods shall not apply and both Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

18.8 Notwithstanding any other provision of this Contract, CYMRU FIBRE may vary this Contract at any time by notice in writing to the Customer if it needs to do so to comply with terms contained in CYMRU FIBRE' contracts with any Third Party Supplier or any law or statutory obligation.

SCHEDULE 1: Definitions

In these terms and conditions (unless the context otherwise requires):

Acceptable Use Policy means CYMRU FIBRE's policy for the Customer's use of the Services, as set out on CYMRU FIBRE's Website or as otherwise provided to the Customer by CYMRU FIBRE, and as may be revised by CYMRU FIBRE from time to time;

Access Line means the telecommunications circuit that the Customer uses to obtain telecommunications services over the public switched telephone network at the Premises as notified by you to CYMRU FIBRE;

Act means the Communications Act 2003, as amended, and the Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419;

Affiliate means in respect of any party hereto any firm or body corporate in which such party directly or indirectly, owns more than half the capital or business assets, has the power to exercise more than half the voting rights, has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing such firm or body corporate, or has the right to manage the business of such firm or body corporate;

Business Customer means a Customer who uses the Services in connection with its trade, business or profession, or a company, partnership or other organisation other than a Consumer;

Carrier means any supplier of telecommunications services to CYMRU FIBRE for the Services;

Charges mean the charges payable by the Customer to CYMRU FIBRE for and/or in connection with the provision, implementation, maintenance and support and/or administration of the Services as set out in CYMRU FIBRE Price List and any other charges payable pursuant to this Contract or otherwise agreed in writing between CYMRU FIBRE and the Customer;

Commencement Date means the date upon which this Contract is executed by both parties;

Confidential Information means all information whether verbal, written, stored or otherwise obtained including, but not limited to, data, facts and statistics about the business affairs, products, product development, trade secrets, know-how, personnel, customers or suppliers of the disclosing party whether or not they are or were designated or marked as confidential together with all information derived by the receiving party from the foregoing which is by its nature confidential or proprietary;

Consumer means Customer's use of the Services for personal use only and not as a Business Customer. In circumstances where a Consumer changes use to Business Customer during the Term, the Business Customer provisions of the Agreement will apply;

Contract means the contract between CYMRU FIBRE and the Customer comprising these Terms and Conditions, together with the Order Form and/or any other documents specifically incorporated into such contract, and/or any Schedules hereto;

Control shall have the meaning set out in section 840 of the Income and Corporation Taxes Act 1988;

Customer means the individual or business who signs or on whose behalf the Order Form is signed or the person or business who submits an Order by telephone, being either a Consumer or Business Customer;

Customer Apparatus means apparatus owned by Customer not forming part of the Equipment but which may be connected to the Equipment, directly or indirectly, including but not limited to any microfilter and/or router and/or modem Customer may purchase for a self-installation version of the Services but not including CPE;

CPE (Customer Premises Equipment) means any Equipment which is supplied to the Customer by CYMRU FIBRE following indication on the Order that Customer wishes CYMRU FIBRE to supply the Customer with such equipment;

Customer Details means the data which identifies the Customer or any employee, director, officer, partner, shareholder, or other relevant individual of the Customer;

Customer Services means the helpdesk support and any other support and maintenance services to be provided by CYMRU FIBRE and/or any Third Party Service Provider as set out on the Order Form or as may otherwise be notified to the Customer from time to time;

Data Protection Laws means to the extent applicable: (i) the General Data Protection Regulation, Regulation 2016/679 of the European Parliament ("GDPR") and any applicable national associated laws or implementations thereof; (ii) GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 ("**UK GDPR**"), together with the Data Protection Act 2018 ("UK Data Protection Law"); in each case, as may be amended, supplemented or replaced from time to time;

Equipment means any apparatus or equipment provided by CYMRU FIBRE or any third party to the Customer at the Premises as part of the Services including, but not limited to, any microfilter and/or router and/or modem so provided;

Initial Contract Period means the period commencing on the Commencement Date and running for thirty-six (36) months or as otherwise specified in the Order Form;

Intellectual Property Rights means any intellectual property rights of whatever nature subsisting at any time in any part of the world including, without limitation, copyrights, design rights, patents, registered designs, trademarks, service marks, rights in trade secrets, know how and other confidential information, rights in respect of databases, the rights to apply for any of the foregoing and applications for any of the foregoing;

CYMRU FIBRE Price List means the list of charges [set out in the Order Form] OR [in force from time to time and available on the CYMRU FIBRE Website, together with the method of calculation of the charges];

CYMRU FIBRE Website means the website located at www.Cymru Fibrecommunications.com or such other website as may be notified by CYMRU FIBRE from time to time;

Licensor means the licensors of Software (including Third Party Software) to CYMRU FIBRE for the provision of the Services under this Contract;

Order means an order placed by the Customer with CYMRU FIBRE for the provision of Services;

Order Form means the application form containing the details of an order for Services placed by the Customer;

Personal Data shall have the meaning given to that term in the UK GDPR;

Premises means the Customer's premises where the Services are to be received;

Processing shall have the meaning given to that term in the UK GDPR and the term "**Process**" shall be construed accordingly;

Service Failures means any failure, error or defect in the provision of the Services arising from, caused by or contributed to by the acts or omissions of the Customer or third parties including other providers of telecommunications, computers or other equipment or services including internet services; or any failure, error or defect arising as a result of causes beyond the reasonable control of CYMRU FIBRE;

Services means the installation (where applicable), connection and supply of a telecommunications circuit capable of supporting Internet services at the Premises and the provision of telecommunication services over such circuit;

Software means machine-readable instructions and data (and copies thereof) including middleware and firmware and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures used or required to be used in the provision of or for the Customer to access the Services;

Standard Tests means the tests carried out by CYMRU FIBRE or any third party to determine whether the Services are ready;

Start Date means the target date for the commencement of the provision of the Services to the Customer as specified or agreed to by CYMRU FIBRE*;*

Term means the Initial Contract Period and any Subsequent Renewal Period(s), as applicable;
Third Party Service Provider means any provider of any Third Party Services, including the Licensors;

Third Party Services means any part of the Services which CYMRU FIBRE procures from a third party, including any third party services, equipment and/or Third Party Software which CYMRU FIBRE uses in order to provide the Services.

Third Party Software means any Software the Intellectual Property Rights in which are owned by a party other than CYMRU FIBRE or its Affiliates.