

TERMS AND CONDITIONS FOR THE PROVISION OF BUSINESS CONNECTIVITY SERVICES

These terms are between the Customer and Giganet Limited, a company with registration number 03401975 and VAT number GB873856866, which has its registered office and principal place of business is at the 6th Floor 33 Holborn, London, England, EC1N 2HT (“Giganet”, “us” or “we”).

These terms (“Terms”) describe how Giganet will provide Business Internet Connectivity Services to you (“Customer” or “you”), how the parties may change or end our Agreement, what to do if there is a problem and other important information. Please read them carefully.

These are the latest terms which have previously been entitled Business Ethernet Service Terms.

If you have any questions about these Terms or the Services, please contact us at sales@giganet.uk

1 DEFINITIONS

The following definitions used in these Terms shall have the meanings given to them below:

“**Agreement**” has the meaning set out in clause 2.1.

“**A-end**” means the remote termination location of an Ethernet Circuit. For Ethernet Circuits, this is usually a data centre/carrier hotel in London, or local POP. For Point-to-Point Ethernet Circuits (non-Internet), this is one of the Customer’s Premises.

“**B-end**” means the Customer’s Premises location.

“**Bearer**” means the maximum CDR at which the Service can provide bandwidth over an Ethernet Circuit. In certain circumstances the bearer size can be upgraded. The Bearer is measured in Mbps.

“**Cabinet**” means a local communications Cabinet whereby traditional copper delivered services and FTTP route from. It is usually placed between the Customer’s Premises and the local Exchange. The Cabinet is where FTTP and FTTP services route via and each Premises that is not connected via an Exchange-Only line will route via.

“**Carrier**” means the supplier responsible for providing the Service connectivity between the A-end and B-end.

“**CDR**”, a committed data rate being the dedicated level of symmetrical bandwidth over an Ethernet Circuit provided on delivery of the Service which is measured in Mbps.

“**Charges**” means any charges which the Customer is liable to pay under this Agreement, for example installation costs, line rentals, circuit rentals, management fees, etc.

“**Circuit**” has the meaning set out in the definition of Services below.

“**Committed Delivery Date**” means the date by which we anticipate having the Service ready for use.

“**CPE**” means Customer premise equipment including for example, a managed router or modem that is located at the Customer’s Premises.

“**Customer**”, “**Subscriber**”, “**they**”, “**them**”, “**you**” means the person or body corporate contracting Giganet to supply the Service(s) under this Agreement

“**CRF**” or “**Customer Requirements Form**” means a document detailing contact details, building details and position of equipment which needs to be completed prior to Giganet placing the Ethernet Circuit order with its Carrier suppliers. This ensures that Giganet has the correct information from the outset of the Agreement.

“**DIA**” means any Ethernet Service that provides access to the Internet with no managed CPE router provided and usually no proactive support.

“**ECCs**” means shall have the meaning set out in clause 3.8

“**Ethernet Circuit**” means a high-speed ethernet bandwidth service delivered over Fibre Optic Cable which may or may not provide access to the Internet depending on whether it is a DIA, MIA or Point to Point.

“**Equipment**” means any Equipment or products supplied by Giganet to the Customer as part of the Service such as CPE, routers, modems and associated cables, fibre and filters.

“**Exchange**” means the BT Exchange for which communication services are routed back to from the Customer’s Premises.

“**Excess Construction Charges**” or “**ECCs**” are charges which apply when Giganet or its Third-Party Suppliers determine that the installation costs originally quoted (or which were included over the term if these costs are amortised) are



insufficient to cover the actual cost of the installation works. Such fees (where applicable) will be notified to the Customer following a site survey.

“Event of Force Majeure” means an event beyond the control of Giganet and its suppliers preventing a Party from complying with any of its obligations under this Agreement which include but are not limited to acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, interruption or failure of electricity or telephone service, wireless interference, failure of the wider Internet, or Internet’s systems such as domain name system, routing, peering or transit affecting a number of other providers.

“Fair and Acceptable Use Policy” means Giganet’s fair and acceptable use policy which can be located at www.giganet.uk/terms

“Fibre” means an optical fibre connection either from the Exchange to the Customer’s Premises, or from the local green cabinet to the Customer’s Premises.

“FTTP” means a technology called ‘fibre to the premise’ whereby Fibre is used to connection to the Premises via a Cabinet and the Cabinet is also connected by Fibre to the Exchange.

“Giganet Limited” (“Giganet”, “us”, “we”, “our”) is a provider of various Internet services, registered in England and Wales (Company no :03401975 and VAT no: 873856866) having its registered office and principal place of business is at 3 The Belfry, Solent Business Park, Fareham, Hampshire, PO15 7FJ. Our services are offered under our brand name, ‘Giganet’.

“IP address” means the unique Internet Protocol address assigned to your connection.

“LAN” means the Customer’s private local area network.

“MBORC” means **“Matter Beyond Our Reasonable Control”** including an Event of Force Majeure.

“Mb/s”, “Mbps”, “megabits per second” means a term used to describe how much data can be sent across a Circuit in a given time. 1 megabit = 106 bits = 1000000 bits = 1000 kilobits.

“MIA” means a managed internet ethernet service involving the provision of access to the Internet through a managed CPE router which is proactively monitored and supported.

“Minimum Notice” means the notice required to terminate the relevant Service.

“Minimum Period” means the minimum period/term for the supply of the relevant service.

“MRC” means any monthly recurring Charges for the Service.

“NTE” means network termination equipment which is typically installed, owned, operated and supported by the Carrier that typically terminates the Service at the A-end and/or B-end of the Service. Any CPE devices typically plug into this NTE as their gateway.

“Order” has the meaning set out in clause 2.1.

“Physical Faults” means a fault arising from the discovery of faulty hardware. Physical Faults are usually those where no data rates can be achieved.

“Premises” means the Customer’s property or premises at which any Equipment shall be installed (and programmed) if necessary and/or the Service provided.

“Privacy and Cookie Notice” means Giganet’s privacy policy and cookie notice which can be located at www.giganet.uk/privacy-policy

“Point to Point” means a service which involves the delivery of Ethernet layer two connectivity between Point A and Point B and provides no Internet access.

“POP” means point of presence, a node within the Giganet or its supplier’s network, sited within a data centre. It is the local point within the network to where Internet circuits are terminated at the A-end.

“RIPE NCC” means Réseaux IP Européens Network Coordination Centre, the body responsible for administering IP addresses within Europe, the Middle East and parts of central Asia.

“Service”, “Services” or “Circuit” means the supply, connection and provision of a dedicated Ethernet Circuit for the Customer’s business purposes.

“Service Credit” means a full or partial credit against Charges.

“Service Levels” means the service levels in clause 5 or such other service levels as may be agreed in writing between the parties from time to time.



“**Terms**” has the meaning set out in clause 2.1.

“**TRFS**” means target ready for Service, the initial date which is supplied by the Giganet provisioning team as an estimated activation date. This is not a binding date, nor is it a Committed Delivery Date and should be used as a guide only as to the likely activation date. The TRFS is based on standard lead times and may vary post survey.

“**Third Party Supplier**” means the provider of any third-party services.

“**User**” or “**Users**” means any natural person that uses the Service, or in the case of automated, or programmed actions, an automated computer program or software accessing the Service.

“**Variation Agreement**” means a variation agreement amending these Terms.

“**Wires Only**” means an Ethernet Circuit provided with no managed CPE. Usually, the Customer is responsible for sourcing their own CPE equipment where required.

2 INTRODUCTION

- 2.1 These terms and conditions (**‘Terms’**) together with a signed Customer order form (**‘Order’**), a completed CRF, our Privacy and Cookie Notice and our Acceptable Use Policy set out the legal terms between you and Giganet and the basis on which Giganet will provide Equipment and Services to you (collectively, the **‘Agreement’**) which forms our contract under England and Wales Contract Legislation.
- 2.2 You agree to be bound by these Terms either by signing an Order, or by your use of the Services or by allowing others to use the Services. In the event of a conflict between these Terms and the Order, the Order Form will prevail.
- 2.3 Giganet will supply you with the Services in accordance with our Agreement.
- 2.4 Giganet reserves the right to make any changes to the Agreement, including changes to the Service Levels as is required from time to time to reflect:
 - 2.4.1 Technical and operational changes to the core Giganet network or that of one of our Third-Party Suppliers provided such changes do not materially affect the applicable service provided to the Customer; or
 - 2.4.2 Changes enforced by law, regulation or codes of conduct which may be altered or issued from time to time.

3 ORDERING PROCESS

- 3.1 Giganet's Services can be ordered by telephone, email, or in person. A contract comprising a link to these Terms will be emailed to you for your acceptance and signature. Giganet processes paperwork and contracts electronically using DocuSign. Your eSignature indicates that you would like to place an Order for the Services specified in the Order subject to the Terms and our Agreement.
- 3.2 Giganet will endeavour to notify acceptance or rejection of your Order form by email within a target of 5 working days. You are obliged to provide:
 - 3.2.1 A fully completed and signed copy of your Order form; and
 - 3.2.2 A fully completed CRF detailing contact names, site addresses, and termination details as requested on the current published CRF.
- 3.3 Our Agreement comes into effect on the date that you sign the Order
- 3.4 Giganet will endeavour to issue a TRFS at the same time at which it acknowledges receipt of your signed agreement and provides confirmation of your Order. The TRFS is the day on which we expect (based on standard lead times) Service activation to commence, and therefore the date which the Service may start.
- 3.5 Throughout the provisioning process, Giganet will need to communicate with named member(s) of your staff (or their nominated representatives) to arrange access to you or your end user's premises for Giganet or its Third-Party Suppliers. Any delays to these requests either by you, your representatives, an end user, or a landlord of the termination premises will delay Giganet from meeting the TRFS and from issuing a Committed Delivery Date.
- 3.6 Giganet requires contact details, specifically a valid e-mail address for you or your representative (and their backup) for users in the roles responsible for the internal management and support of the Service and financial aspects. The users of the e-mail accounts are responsible for maintaining and regularly checking email communication. You must notify Giganet as soon as any of these details change. Giganet will use these E-mail addresses as the primary means to contact you for all purposes in connection with the Service. E-mails sent to you include, but are not limited to, your monthly invoice, warnings or alerts, marketing information, network maintenance advice and other information as we see relevant to delivering your Services. You must periodically check any anti-spam systems in case e-mails sent from us are mistakenly marked as spam. We recommend



you add our domain names to your whitelist or safe senders list. We may send from the following domains: @giganet.uk and @giga.net.uk.

- 3.7 Within 25 working days of acceptance of your Order, Giganet or its third-party representative will typically perform a Premises survey at the termination location(s), also known as a 'Site Survey' following which Giganet will endeavour to issue a Committed Delivery Date.
- 3.8 Excess Construction Charges: When Giganet or its supplier considers that the installation costs originally quoted (or which were included over the term if these costs are amortised) are insufficient to cover the actual cost of the installation works excess construction fees or charges ('ECCs') will be payable by you. ECCs (where applicable) will be notified to you post Site Survey. At this point, your Order will be placed on automatic 'hold' until you agree (or not) to pay the ECCs. You have 20 working days to decide and to notify Giganet in writing of your decision. Please note that each elapsed day during this 20-day period will be automatically added to the Committed Delivery Date. If you agree to pay ECCs, the provisioning service will resume, and a Committed Delivery Date issued in due course. Should you decline, you have the right to cancel your Order with no further charges subject to clause 3.8. Should you fail to notify Giganet of your decision within 20 working days we may consider your Order cancelled and standard cancellation fees will apply.
- 3.9 ECCs of the equivalent of one month's payment or under will be considered to be automatically accepted by you and will also not be automatically rejected. Any ECCs above will follow the standard process explained above.
- 3.10 Dual Circuits:
 - 3.10.1 In the event that you take a dual Circuit solution from Giganet, where the tail Circuits are provided by alternate Carriers (or the same Carrier but via geographically diverse PoPs) and one is configured as primary, with the other as a backup, then Giganet will provide a TRFS and a Committed Delivery Date for each Circuit. The delivery processes outlined in these Terms will apply to each. Where the solution is quoted and sold at a fixed monthly, quarterly or annual price, Giganet reserve the right to charge for separate services as they are delivered. e.g. Customer takes 100Mbps leased line with a 10Mbps leased line backup. In this event, Giganet will charge for the first circuit and accompanying hardware (such as, but not limited to, routers, firewalls or cable trays) delivered on a pro rata basis, as this is a useable Internet connection. The final charges will be applied on delivery of the second circuit and its confirmed live backup status presented in a working condition. At this stage, the contract term of our Agreement for the solution (e.g. you taking a 36 month term contract, with a 1000Mbps primary and a 100Mbps backup circuit) will start. The 1000Mbps circuit is delivered (as working) 2 months before the backup circuit. The 36-month term of the Agreement will not start until the delivery of the backup Circuit. This means that the Customer will be liable to pay the installation, monthly rental and reasonable set up costs as described above for the primary Circuit for an additional 2 months in this example. In all cases, unless otherwise agreed, Giganet and its Third-Party Suppliers will endeavour to provide both or any Circuits as part of any given solution at the same time. When this is not practicable or if any third party service provider will not accommodate such requests, then you will be liable for all Charges as they arise on the activation date of said Services.
 - 3.10.2 In the event that you take an ADSL backup service for your Circuit, Giganet will use reasonable endeavours deliver the ADSL service and the Ethernet Circuit as close to the Ethernet Circuit Committed Delivery Date as possible. The exception to this will be when you ask us for the ADSL service to be supplied in lieu of the Ethernet Circuit being fulfilled. In this instance, we will charge pro rata for the delivery and rental of the ADSL service and accompanying hardware (such as, but not limited to, routers, firewalls or cable trays). The final charges will be applied on the activation date of the primary Ethernet Circuit.
 - 3.10.2.1 At no time will the provision of an ADSL back-up service be subject to Service Delivery Credits. The ADSL circuit terms and conditions specific to the installation and use of that line are separate from these Terms and are available on request from Giganet.
 - 3.10.2.2 Where ADSL backup services are purchased, it is your responsibility to ensure that there is an adequate, uncompromised BT analogue PSTN circuit. Should you not provide a valid telephone number for this PSTN circuit, then Giganet will not be able to provide the ADSL service. Similarly, if the PSTN termination is not in the correct location (it should be within 3 metres of the planned Ethernet Circuit termination point) then Giganet will not be able to provide the ADSL service as a backup.
 - 3.10.3 When an installation fee is levied (as per your Order form), we will invoice this fee which must be paid before we hand over the Service to you or an end user.
 - 3.10.4 Subject to 3.10.1 and 3.10.2, the term of our Agreement as indicated on your Order form will not start until the final Circuit or complete solution is delivered. i.e. the service charges and start dates of individual Circuits may be staggered, but the service solution term will start and end at the same time. This means that the first Circuit to be provisioned will be invoiced prior to the term of the Agreement starting, and the invoice period in lieu of the backup or secondary circuit(s) will vary depending on the independent tail circuit Committed Delivery Dates. Wherever possible however, we will try to ensure that the Committed Delivery Date for each Circuit in a multi-circuit solution are as close together as possible.
- 3.11 Customer's Responsibilities: It is the responsibility of the Customer at all times to ensure the following:



- 3.11.1 A 3-pin standard UK plug socket is available for each piece of required electronic equipment supporting the Service provided. Typically, this will be one socket for each carrier NTE, and one for each router (or CPE) supplied by Giganet to support the Service. In addition, additional power sockets may be required as directed following initial Site Survey depending upon the solution(s) purchased.
- 3.11.2 For all ADSL services, as a backup, you must ensure that a non-service bearing standard BT analogue PSTN line is available for Giganet to enable the ADSL service. This PSTN line must terminate within 3 metres of the location of the Giganet CPE.
- 3.11.3 That enough rack space, where the Customer expects the carrier NTE and Giganet CPE to be positioned within a data rack (standard UK 19inch width) with adequate power and power back-up, and that there is at least 3U of available space per single Ethernet Circuit. As much as 10U may be required in certain circumstances but this is the exception rather than the rule and should be identified at survey.

4 ACCESS TO PREMISES

- 4.1 We or our Third-Party Supplier’s engineers may need to visit your Premises from time to (i) install the Services or Equipment (ii) carry out routine repairs or upgrades; or (iii) respond to calls from you regarding a potential fault with the Services or Equipment.
- 4.2 You confirm that you are the current occupier of the Premises and are either the freeholder or a tenant under a lease with legally binding permission from the freeholder for us to install Equipment and provide the Service there. Unless you tell us in writing that you do not have such authority, you agree to give us access to your Premises together with all necessary permissions to carry out work at your Premises and connect, maintain, change, replace, inspect or remove Equipment and supply the Services.
- 4.3 We are unable to install our Equipment and provide our Services until we have all necessary consents and permissions to do so. If we have to cross your land or install, maintain and operate our Equipment at your property, you hereby provide us with your consent to do so (and you agree to do your best obtain any such consent from another person if it is required). Before we install our Equipment and provide our service, you will provide us with any additional consents in the form of a wayleave agreement (an agreement which gives us a right to install, maintain and operate our Equipment over someone’s land) suitable to us if such additional agreement is required. If you can’t provide us with the consents and permissions we require under this clause or clause 4.2 above, we may end this Agreement.
- 4.4 You agree to cooperate with us as reasonably required to connect you to our Services. We will cause as little disturbance as reasonably possible when carrying out any work at your property. We agree to repair any damage that we cause at your Premises.
- 4.5 For the avoidance of doubt, you do not have the right terminate this Agreement in the event of delay in securing necessary consents. You may only terminate this Agreement in accordance with clause 15.1 in such circumstances in which case clause 15.2 shall apply.

5 SERVICE LEVEL AGREEMENT (SLA)

- 5.1 Giganet offers a 99.9% uptime service level for all Ethernet Circuit Services, extending to 99.99% where a backup service is taken. Please note that failure to provide Giganet with an onsite contact throughout the duration of a fault can result in the time it takes to resolve a fault to be extended. Any such failure will be your responsibility and therefore no Service Credits or compensation will be provided by Giganet.
- 5.2 Giganet provides optional ‘active alerts’ on all MIA circuits or any circuits which are provided with managed CPE which is owned by Giganet and provided as part of a managed service. This means that in the event of any problems detected on your circuit, Giganet will, with best endeavours, be able to notify a named member (or members) of your staff of such issues via SMS or E-mail. The following rules in the table below are set as a target only.

Fault or problem detected	Time of day	Target response	Method of response
Giganet IP monitor flags alert that would appear to mean Customer circuit has failed. Immediate investigation to confirm if this is real or a glitch, and where the fault lies	Mon-Fri 0900-1700	15 minutes	SMS alert or email (automated generation) of a potential issue with the service
	Mon-Fri 1700-0900	30 minutes	
	Sat-Sun		



- 5.3 Where Customer's take an Internet facing Ethernet Circuit:
 - 5.3.1 Giganet's target to repair all logical (hard down) is 6 clock hours. Logical faults are those relating to configuration or routing errors in any equipment used to deliver the Service, either the CPE provided by Giganet as part of the managed service, or NTE within the Giganet network and its supplier's network.
 - 5.3.2 Giganet's target to repair all Physical Faults (hard down) faults is 24 clock hours. Physical Faults are those relating to the permanent failure of any transmission media or equipment, used to supply the service, in particular relating to broken fibre optic cables.
 - 5.3.3 Giganet's target to repair all degraded performance or intermittent faults is 48 clock hours.
 - 5.3.4 Where there is a physical fault relating to fibre or copper wire, the target time to resolve is within 24-48 clock hours.
- 5.4 Giganet will provide the Services in accordance with the Service Levels set out in its third-party service provider's service level agreements. Giganet shall be permitted to vary the Service Levels in these terms to align them with its providers' service level agreement upon sixty (60) days prior written notice subject to the varied Service Levels continuing to meet generally accepted industry standards.
- 5.5 In addition, Giganet will offer the following Service Levels on its core network (comprising any network infrastructure owned and operated by Giganet), outside of any maintenance events:
 - 5.5.1 Less than 20m/s latency;
 - 5.5.2 Less than 1% packet loss; and/or
 - 5.5.3 Less than 10m/s jitter for 99.9% of the time.
- 5.6 Giganet retains the right to not pass on the benefit of service levels it has in place with its provider to the Customer, where the cost of administering the Service Credits, in Giganet's reasonable opinion, are disproportionate to the Service Credit likely to be received.
- 5.7 Specific uptime guarantees against your Service are provided at the point of quotation. Any Service availability or uptime guarantees exclude maintenance events (as defined in clause 8) from their calculation, with the expectation of emergency maintenance events defined in clause 8.3.
- 5.8 'Service availability' is a measure of the relative amount of time a circuit is available for Customer use during a given calendar month. 'Service unavailability' is defined as any period for which the service is unavailable, measured from the time that (i) you or Giganet reports service unavailability to each other and opens a support ticket (Customer must obtain a reference number for their call - this is automatically given with email logged calls), until (ii) Giganet advises you that the Service is restored and operating in accordance with agreed specifications and closes the support ticket. Any periods of time during which a support ticket is kept open at your request following notification by Giganet that service has been restored, are not included in measuring the duration of a period of service unavailability.
- 5.9 When backup Circuits including ADSL backup services are taken, Giganet will provide a Service Levels of 99.99% for the solution as a whole. Giganet agrees to provide a solution whereby should one Circuit fail, then the backup line (Ethernet Circuit or ADSL) will be activated automatically within 5 minutes of the primary Circuit failing. Should the secondary (backup) Circuit fail to engage within 1 hour, then additional service unavailability Service Credits will apply in the following way:
 - 5.9.1 Where ADSL backup is provided, and both the primary and the ADSL fail, then Giganet will pay Service Credits to the value of 1.25 times that which is stipulated within the table in clause 5.11.1. Exceptions are for when the backup service fails due to reasons beyond Giganet's control. Such reasons may include, but are not limited to third party activity, network failure outside of Giganet and its supplier's networks, power cuts, atmospheric and weather induced problems, natural disasters, or terrorist incidents.
 - 5.9.2 Where a second Ethernet Circuit is installed in a failover or backup capacity, and both circuits fail, Giganet will pay Service Credits as per table in clause 5.11.1, but these will apply to the rental values of both circuits. Exceptions are for when the backup service fails due to reasons beyond Giganet's control. Such reasons may include, but are not limited to third party activity, network failure outside of Giganet and its supplier's networks, power cuts, atmospheric and weather induced problems, natural disasters, or terrorist incidents.
- 5.10 For Customers purchasing back-up services, should the primary circuit fail, and the backup service engage within the 5-minute period (as described in clause 5.9) then Giganet will only be liable for Service Credits :
 - 5.10.1 on the primary line, as described in the table below but, subject to clauses 5.9. Giganet will provide this pro rata to the value of the rental
 - 5.10.2 on the primary circuit for Customers on fixed single payment contracts.



5.11 Service Credits:

5.11.1 In the event of Service unavailability, Giganet will credit the Customer in accordance with the following table.

Total Service unavailability per month	Service Credit
Less than 1 clock hour	0% of MRC
1 - 6 clock hours	5% of MRC
7 - 24 clock hours	10% of MRC
25 clock hours and above	20% of MRC

- 5.12 In no event will Service Credits in any calendar month exceed 100% of the total MRCs payable by you for the Service in that month.
- 5.13 As a condition of entitlement to Service Credits, you shall cooperate with Giganet in addressing any reported service problems.
- 5.14 Service Credits are applied only upon your written request, which must be submitted within 15 working days of a valid support call reporting the incident and backed up by a reference number to support that claim. This can be submitted to the relevant Giganet staff by 1st class recorded mail, or by email.
- 5.15 All approved Service Credits claimed by a Customer for a given month will be totalled and applied to your next invoice for the Services, or promptly thereafter in the event of a dispute.
- 5.16 No Service Credits apply to newly installed Services or to Service reconfigurations requested by you, until five business days after:
- 5.16.1 The Service activation date; or
- 5.16.2 Completion of the Service reconfiguration, as applicable.
- 5.17 The Service Levels above apply only in respect of Services that are provisioned on Giganet and its supplier's network and, where applicable, to local access circuits provided by Giganet (via Third Party Suppliers). Service Credits will not be approved for network faults or fibre issues beyond Giganet's control.
- 5.18 Exclusions: No Service Credits shall apply to the failure of the Services to comply with a Service Level, or to any period of service unavailability, caused, in whole or part, by any of the following:
- 5.18.1 A failure of your own equipment or the equipment of your vendor;
- 5.18.2 A failure in local access facilities connecting you to Giganet or its supplier's network which are not provided by Giganet or its supplier;
- 5.18.3 Events of Force Majeure ;
- 5.18.4 Any act or omission of the Customer or any third party (including but not limited to, Customer's agents, contractors or vendors), including, but not limited to:
- 5.18.4.1 Failing to provide Giganet with an onsite contact and/or adequate access to facilities for testing;
- 5.18.4.2 Failing to provide access to Customer premises as reasonably required by Giganet (or its agents) to enable Giganet to comply with its obligations regarding the service;
- 5.18.4.3 Failing to take any remedial action in relation to a service as recommended by Giganet, or otherwise preventing Giganet from doing so;
- 5.18.4.4 Any act or omission which causes Giganet to be unable to meet any of the Service Levels;
- 5.18.4.5 Customer's negligence or wilful misconduct, which may include the Customer's failure to follow agreed upon procedures;
- 5.18.4.6 Any scheduled maintenance periods when Customer has been informed of such maintenance;
- 5.18.4.7 Disconnection or suspension of the service by Giganet pursuant to a right to do so under these Terms; and/or
- 5.18.4.8 Outages attributable to 'off-net circuits', that is:
- Long haul domestic local access circuits in the USA, between an Giganet or supplier PoP and a Customer premises which is in a different local access transport area (LATA); and/or
 - Long haul international local access circuits provided in countries in which Giganet or its supplier do not operate its own network and provides the service using the services of Third Party Suppliers.

6 SERVICE DESCRIPTION

6.1 DIA (wires-only) Ethernet Internet circuits and Point to Point circuits:



- 6.1.1 'Wires Only' is a term used to identify services which are not supplied by Giganet as 'Managed'. 'Managed Services' are those where Giganet retains ownership, access to, and control of the Customer Premises Equipment (CPE) which enable Giganet to actively support the service supplied and more importantly maintain the Service Levels. The type of Wires Only services available are detailed below in clauses 6.1.2 and 6.1.3 below.
- 6.1.2 IMPORTANT: Where Wires Only services are offered, Giganet is not responsible for the CPE chosen by the Customer, nor can it advise on whether the chosen (un-tested) CPE should work with our Services. Giganet has extensively tested the CPE for all Giganet Managed Services, and whilst it is largely accepted that many third party supplied CPE should work, it is not responsible for instances where it does not. The following general criteria should be read and fully understood before taking any Wires Only service:
- 6.1.2.1 It is our recommendation that the Customer should have a good technical understanding of IP Networks, and the ability to support the CPE they supply;
- 6.1.2.2 For Internet circuits, CPE supplied should be a Layer 3 device capable of supporting BGP (Border Gateway Protocol);
- 6.1.2.3 For point-to-point circuits, are Layer 2, and BGP is not required;
- 6.1.2.4 Many entry level enterprise class firewalls will not support BGP;
- 6.1.2.5 Giganet will provide BGP configuration information and IP addressing;
- 6.1.2.6 BGP security passwords are not used by default;
- 6.1.2.7 Private AS is supplied to the Customer as standard;
- 6.1.2.8 Use of registered AS numbers can be authorized by Giganet network engineering on a case by case basis (NSSP);
- 6.1.2.9 Normally link level and routed subnets are provided by Giganet;
- 6.1.2.10 PI and private addressing may be considered as an alternative on a case by case basis (NSSP);
- 6.1.2.11 Giganet can provide technical assistance to Customers wanting a Wires Only product - e.g. with testing equipment, or researching whether we could support certain CPE, which will be charged at £150 per hour (or £1000 a day); and
- 6.1.2.12 Faults; where the Customer logs a fault and Giganet are left liable for charges incurred by false errors, abortive site visits, or site visits proving the circuit is not at fault, then any resulting charges will be passed on to the Customer.
- 6.1.3 Types of Wires Only Services Available
- 6.1.3.1 DIA circuits are those where the Circuit and network infrastructure are provided in the same way as a fully managed service, but Giganet is not responsible for any termination CPE (i.e. Routers or Firewalls). These devices are supplied and managed by the Customer or its end user. Due to the nature of these services, where Giganet is not in control of the CPE, then the Service Level is reduced (clauses 6.1.4) below that of our Managed Service.
- 6.1.3.2 Point to point circuits are those which are completely off-net from the Giganet or its supplier's network. Simply, in this instance, Giganet are reselling a carrier local network services to the Customer. Because point to point circuits don't route our network or our supplier's, no monitoring equipment is available, therefore we cannot provide as a fully managed service, and the SLA is reduced (clauses 6.1.4) . Any specific technical detail which a Customer may require to connect such circuits (end-to-end) will be provided from standard documentation on a case-by-case basis by the off-net provider.
- 6.1.4 SLA amendments to those in clause 5 specifically for 'unmanaged' circuits. Such circuits referred to generally, but not exclusively, as Wires Only services, Wires Only DIA circuits, and point to point (or point to multi point) circuits:
- 6.1.4.1 In the event of a fault, Giganet will offer best efforts to the Customer to resolve the issue. In the event that a fault is logged, the first checks made by Giganet will be internally and with the Carrier providing the tail circuit(s). If they are deemed to be working within normal parameters, then the Customer managing the CPE device should be on site (or have remote access to) the CPE to manage queries between the device and the Giganet/supplier edge network. In these instances, it is the Customer's responsibility to provide Giganet support staff with correct passwords and administrator rights as required, to help troubleshoot the issue.
- 6.1.4.2 Giganet will use reasonable efforts to maintain the SLA stated in clause 5 for the logical fix. However, as we are wholly reliant on the Customer so we cannot agree to be bound by these times, and in addition, no compensation will be payable in the event that any published SLA timescales are missed.
- 6.1.4.3 Similarly, we will endeavour to resolve all physical line faults within the SLA stated in clause 5.4, but again there is no compensation available should timescales slip on an unmanaged service
- The demarcation point for Giganet's unmanaged, Wires Only services is the tail circuit carrier's NTE
 - The Customer may be required to provide detailed diagnostics from the CPE



- 6.1.5 Wires only DIA services are only available for single Ethernet Circuits - no ADSL backup or leased line failover services are available as 'wires only'.
- 6.1.6 It is the responsibility of the Customer to raise a potential fault with the Giganet helpdesk, as Wires Only services are not monitored proactively by Giganet. Therefore, for these services, clause 5.2 of these Terms are void for Wires Only services.

7 EQUIPMENT

- 7.1 Giganet retains full ownership of any Equipment provided (excluding carrier NTEs) to deliver the Service throughout the life of the Service, and upon any termination or expiry, Customers are expected to return the Equipment (excluding carrier NTE(s) to Giganet at their cost using a fully insured postal service.
- 7.2 Any NTEs, where provided, remain the property of the Carrier.
- 7.3 Where Equipment is provided, it must not be tampered with, unplugged, changed, damaged or otherwise interfered with and you shall not let any other person do so.
- 7.4 From time to time, the Equipment may be discontinued by the manufacturer, meaning that it can no longer be ordered, but devices that are in use will continued to be supported by Giganet.
- 7.5 You are responsible for any damage or loss of the Equipment, unless it is caused by our negligence or our contractors whilst installing, upgrading, or maintaining the Equipment or if the fault is caused by the Equipment during its normal operation.
- 7.6 You are responsible for ensuring that the Equipment is secure and protected from unauthorised interference.
- 7.7 Subject to clause 7.8, all Equipment provided to deliver the Service is covered under warranty during the life of this Agreement and any eligible faults, arising with the Equipment during this period will be covered by the warranty at no extra cost.
- 7.8 If we need to replace Equipment because of factors out of our reasonable control, including but not limited to, electrical surges and damage, lightning damage, storm damage, flood damage, acts of war or riots damage, then there may be a service fee to replace or repair the damaged Equipment. Giganet recommends that Customers protect the Equipment with an electrical mains surge protector and an uninterruptible power supply (UPS). Such UPS devices do not offer 100% protection, however they can prevent some electrical mains problems. Giganet recommends that Customers keep the Equipment in a well-ventilated and air-conditioned environment whereby the Equipment is running in conditions acceptable to the ones listed in the Equipment's data sheet. The Equipment's data sheets are available upon request to Giganet in writing.
- 7.9 If you connect the Service to your LAN, you are responsible for ensuring that the LAN does not adversely affect our Equipment or our network. You are responsible for your LAN including all aspects of its configuration including but not limited to, routers, wireless access points, firewalls, computers, tablets and phones. You are also responsible for your devices and other devices that may connect to your LAN with or without your knowledge.
- 7.10 For DIA and point to point Services, our demarcation point with your LAN shall be the RJ45 or optical fibre transceiver on the carrier NTE. You are responsible for everything beyond this point.
- 7.11 For MIA Services, our demarcation point with your LAN shall be the RJ45 or optical transceiver on the managed CPE router. You are responsible for everything beyond this point.
- 7.12 Equipment maintenance and recovery:
 - 7.12.1 From time-to-time Giganet may need to repair, replace, maintain or upgrade any Equipment installed on your premises or to recover our Equipment following any termination of this Agreement.
 - 7.12.2 If Giganet requires access, we will contact you to arrange an appointment to attend your Premises for this purpose. You must agree to cooperate with us in arranging a suitable time for us to arrange any visits and permit access to all the Equipment.
 - 7.12.3 If Giganet is unable to gain access in a timely manner and is unable to carry out the maintenance, then we cannot be held for any subsequent outages, faults, or downtime associated with your Service if the maintenance, repair, replacement or upgrade would have prevented this. You will also be unable to apply for any Service Credits in such circumstances. We will also charge for our Equipment which cannot be recovered which you will be liable to pay for.

8 NETWORK MAINTENANCE

- 8.1 From time-to-time Giganet or its suppliers may need to repair, replace, maintain or upgrade any core network infrastructure beyond the Customer Premises to improve the network performance, reliability or features, or to introduce new components into the network.



- 8.2 Giganet will make every reasonable effort to provide prior written notice of planned maintenance work by e-mail. It is your responsibility to make sure that these e-mails can be received from us and that you are aware of when this maintenance occurs. Maintenance windows are usually between 00:01 and 06:00 UK local time where the actual work will be carried out and thus interruption of Service may only last for a small proportion of this time. Although a large window is advertised for contingency, the work is often completed much sooner than this.
- 8.3 Sometimes Giganet or its suppliers may need to make emergency maintenance. This emergency maintenance may not be pre-planned and may need to be carried out immediately at any time of the day without any prior notice. We will always make best efforts to pre-warn of any interruption of Service if we are the cause of it, however for emergency works, this may not be possible.
- 8.4 Any Service Levels defined in clause 5 during any pre-planned maintenance of any kind are not applicable and no Service Credits shall apply in relation to any such Service Level failures.

9 UPGRADES/DOWNGRADES AND CHANGES OF SERVICE REQUESTED BY THE CUSTOMER

- 9.1 Upgrades and downgrades to the Service shall be made using the Giganet Ethernet Circuit variation agreement order form, a copy of which shall be made available to you upon request.
- 9.2 If not stated in these Terms, a new Minimum Period equal to the initial Minimum Period is applicable to the upgraded/downgraded Service after the changes have taken effect.
- 9.3 For the avoidance of doubt, if there are twelve (12) or less months remaining on the Minimum Period of the Service, and the Giganet Ethernet Circuit Variation Agreement states that there is no change to the Minimum Period, then the new Minimum Period for the Service subsequent to the changes taking effect shall be at least twelve (12) months.
- 9.4 During the Minimum Period upgrades requirements may be agreed at Giganet's prevailing rates for the applicable services. CDR Downgrades are not permitted.

10 FAIR AND ACCEPTABLE USAGE POLICY

- 10.1 Your use of our Service is governed by our Fair and Acceptable Use Policy which incorporated into these Terms by reference. You must abide by and agree to the terms set out in this policy.

11 ETHERNET INTERNET CIRCUIT TECHNICAL DETAILS

- 11.1 Public IPv4 addresses:
 - 11.1.1 Each suitable Circuit will receive up to 8 routed public IPv4 addresses in the form of a routed /28 subnet. This range is allocated using BGP through a /30 or /31 point to point IP link.
 - 11.1.2 Additional quantities of public IPv4 addresses are available upon application at Giganet's prevailing rates.
 - 11.1.3 Please note that if you regrade the quantity of public IPv4 addresses, we may need to reallocate your original IPv4 range(s) as it may not be possible to incorporate your existing IPv4 address.
 - 11.1.4 If your connection is disconnected or terminated, your IPv4 address may be reallocated.
 - 11.1.5 We shall grant you non-exclusive use of each public IPv4 address we assign to your service subject to RIPE NCC.
 - 11.1.6 Due to RIPE NCC's requirements, you will not own your assigned public IPv4 addresses.
 - 11.1.7 Sometimes we may need to change a Customer's assigned public IPv4 address(es) due to network configuration changes or where we are required to by RIPE NCC guidelines. We shall provide prior written notice where we are required to change your IPv4 address so you can make sufficient provisions to change any DNS records or update any services that require knowledge of your public IP address.
 - 11.1.8 Due to the worldwide shortage of public IPv4 address, Customers requiring more than 8 public addresses will be required to make a sufficient justification for their needs of multiple IPs. Customers will be encouraged to use Network Address Translation (NAT) and share services with Port Address Translation (PAT) on single IP addresses.
- 11.2 Public IPv6 addresses will also be provided as required by the Customer.
- 11.3 Reverse DNS: Some Customers may require a reverse delegated record, herein called rDNS or reverse DNS, for the IPv4 address assigned to their Service. Giganet will allow Customers to request an rDNS record be applied only if the domain name DNS A-record is pointing to the IP address whose rDNS record needs applying.



12 PAYMENT TERMS

- 12.1 You have a responsibility to pay the Charges for the Services you are receiving from Giganet. Some Charges are payable in advance of the Service going live while others are payable from the day that the Service goes live. Recurring Charges (MRC) will be collected in advance, while one-off fees will be collected in arrears.
- 12.2 Our Charges include the following fees:
 - 12.2.1 Monthly Recurring Charge (MRC): A recurring Charge, paid monthly in advance for the provision of your monthly Service. The first payment will be pro-rated from the time of connection to the end of the month.
 - 12.2.2 Connection/Installation fee: A one-off charge, paid at the time of activating your account unless your installation charge has been amortised into the monthly service fee or where a specific promotion has provided a “free installation”.
 - 12.2.3 Excess Construction Charges (ECCs): Where Excess Construction Charges have been identified to deliver the Service, a one-off, in advance charge for the ECCs is applicable. This is due immediately after the Customer has accepted the ECCs and prior to the service going live.
 - 12.2.4 CPE Service Fee: These are payable if Giganet needs to replace or repair your CPE device(s) due to faults caused by MBORC or where the fault was caused by the actions of the Customer.
 - 12.2.5 NTE Service Fee: These are payable if the Carrier needs to replace or repair your NTE device(s) due to faults caused by MBORC or where the fault was caused by the actions of the Customer.
 - 12.2.6 Cancellation fee: These are payable in the event of any cancellation of this Agreement by you after we have received your signed Order and prior to the end of the Minimum Term or any subsequent new Minimum Term as applicable.
 - 12.2.7 Reactivation fee: These are payable if your account has been suspended because of failure to pay Giganet for the charges.
- 12.3 Giganet accepts payment for the Service only by direct debit. If direct debit is not available, we reserve the right to charge an additional administrator fee equal to 2.5% of the monthly recurring Service charge. We require payments for the last quarter to be paid in advance as a security deposit throughout the Minimum Term. If your account details change, you must notify Giganet immediately to ensure continuity of your Service.
- 12.4 Our billing date for invoices is the 1st of the month and collection via direct debit is usually made on the 16th of the month, or the next working day after the 16th of the month.
- 12.5 Giganet will email you a new invoice in the first week of each month and you are responsible for viewing and storing local copies of these invoices.
- 12.6 You must pay Giganet all sums due to Giganet in full and you cannot deduct or withhold any part of the sums you owe us, except as permitted by law.
- 12.7 Interest may be charged by Giganet if you do not pay us in full by the due date. Giganet may charge you interest on any overdue payments from the date you should have paid until Giganet receives full payment of the amount you owe us including full interest (whether before or after judgement) at the rate of 5% per month above the HSBC base rate.
- 12.8 Please be advised that in the event of Giganet not receiving full payment for services provided, Giganet have the right to suspend or terminate your Services and take any steps necessary to recover the amount due and any cancellation fee (including any costs incurred collecting the funds owed).
- 12.9 All service prices shown are exclusive of VAT at the prevailing rate, and our invoices show VAT payable as a separate item on each invoice.

13 MOVING SERVICES BETWEEN ADDRESSES

- 13.1 If you are moving address and your new address is in an area that's covered by Giganet's, its supplier and its carrier, then the Services will simply be moved to your new address. Such moves are called “**B-end shifts**”.
- 13.2 A new connection fee will need to be paid. This fee can be quoted prior to the move Order. Please contact your Giganet representative for more information.
- 13.3 Sometimes, especially if the area is more poorly connected than the previous location, the MRC may increase. Again, this fee can be quoted prior to the move Order.
- 13.4 B-end shifts cannot occur during the initial twelve (12) months of a Service being live. Services can only be moved after the first twelve (12) months have elapsed.
- 13.5 If Giganet is unable to move the Service to the new address location due to its own, or its supplier's or Carrier's lack of service availability, then our standard cancellation terms will apply if the Service is not required to stay.
- 13.6 Ethernet move orders are subject to Giganet's Ethernet Circuit Variation Agreement.



- 13.6.1 If not stated on this Agreement, a new minimum term equal to the initial minimum term is applicable to the moved Service after the Service goes live in the new location.
- 13.6.2 For the avoidance of doubt, if there are twelve (12) or less months remaining on the Minimum Period of the Service, and the Giganet Ethernet Circuit Variation Agreement states that there is no change to the Minimum Period, then the new Minimum Period for the Service subsequent to the move shall be at least twelve (12) months.

14 MINIMUM PERIOD

- 14.1 Giganet standard Minimum Period for the Service is thirty-six (36) months from the Minimum Period date described in the Order or when the Services are connected whichever is the earlier.
- 14.2 At no point shall the initial Minimum Period be less than twelve (12) months
- 14.3 For the avoidance of doubt, if the Minimum Period is not listed on the Order form, then our standard Minimum Period of thirty-six (36) months shall apply from date of connection.
- 14.4 Please see clauses 9.2, 9.3 and 13.6 relating to any changes (if applicable) of the Minimum Period when changes of the Service during the Minimum Period occur.

15 CANCELLATION/TERMINATION

- 15.1 Notice period: You are required to provide Giganet at least sixty (60) days' notice but no more than one hundred and twenty (120) days written notice of your intention to terminate these Terms before the end of the Minimum Period. If no written notice has been provided, then our Agreement will roll over automatically into a new annual period.
- 15.2 Early Cancellation Fee: Should you decide to cancel your Service before the end of the Minimum Period, you will have to pay for all of the remaining Charges until the end of the current Minimum Period, or the new annual period if the Agreement has rolled over. For the avoidance of doubt, if you cancel your Service after signature of our Agreement for any reason you will be liable in full for all the Service Charges as if the Service was installed and provisioned. We may offer a goodwill discount for early settlement of our subsequent invoice where settlement of such sums is received within thirty (30) days of the applicable cancellation. The only exception is associated to ECC's referenced in 3.8.
- 15.3 We may terminate this Agreement or suspend all or part of your Service if:
 - 15.3.1 You or others misuse our Service (see our 'Fair and Acceptable Usage Polity').
 - 15.3.2 You otherwise breach our terms.
 - 15.3.3 You are persistently abusive or make threats, repeatedly cause a nuisance or annoyance or otherwise act illegally or inappropriate towards our staff or contractors.
 - 15.3.4 You do not pay us, by the due date, any money you owe us.
- 15.4 Either party may terminate this Agreement by giving thirty (30) days written notice to the other:
 - 15.4.1 If there has been a material breach of these terms by the other party and this isn't rectified within thirty (30) days of a written notice notifying of the breach;
 - 15.4.2 If an event, outside our reasonable control, prevents us providing the Services for more than thirty (30) days;
 - 15.4.3 If the other is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), becomes insolvent or bankrupt; or is subject to an Order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), makes an application to a court of competent jurisdiction for protection from its creditors generally, has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction; or
 - 15.4.4 by Giganet without cause at any time after any initial Minimum Period on sixty (60) days written notice.
- 15.5 If Giganet is entitled to suspend your Service then all Charges for your Service will remain payable by you notwithstanding such suspension. If Giganet is entitled to terminate your Service (other than in accordance with clauses 15.4.2 and 15.4.4), then Giganet will be entitled to charge you for the Charges which would have been payable to Giganet.

16 YOUR OBLIGATIONS

- 16.1 You agree that you will comply fully with your obligations under these Terms, and at all times:



- 16.1.1 Comply with the terms set out in Giganet's **"Fair and Acceptable Usage Policy"**;
- 16.1.2 Keep your security information safe and tell Giganet immediately if you become aware of any improper disclosure of your security information or unauthorised use of the Services through your account;
- 16.1.3 Provide accurate information to Giganet (especially during the Ordering process) and ensure that this information is always kept up to date and accurate;
- 16.1.4 Ensure that your equipment and software complies with all applicable laws and standards and that you have any necessary licenses before you use it to connect to the Giganet network and ensure that your equipment and software is compatible with our Equipment;
- 16.1.5 Only you control the content you upload or download using the Giganet network. We have no responsibility for any such content;
- 16.1.6 Comply with these Terms and any reasonable instructions Giganet gives you;
- 16.1.7 Indemnify Giganet against all losses, liabilities, reasonable costs (including legal costs) and reasonable expenses which Giganet may incur as a result of any third-party claims against Giganet arising from, or in connection with your misuse of the Services or breach of these Terms or our Agreement;
- 16.1.8 From time to time, Giganet may (without notice to you) review, record or check your use of Giganet's Services where Giganet is required to do so to ensure compliance with any laws or regulations or where ordered to do so by any court or other body or authority with the power to require such monitoring and for our own internal purposes to ensure compliance with these Terms and the 'Fair and Acceptable Usage Policy'.

17 LIABILITY

- 17.1 We do not restrict or exclude any liability to you for death or personal injury resulting from our negligence, fraud or any of our liabilities which we cannot legally exclude.
- 17.2 Apart from as set out in clause 17.1 we will not be liable to you under the Agreement for:
 - 17.2.1 any fault in any Equipment caused by tampering or negligence (unless caused by us), your failure to follow our reasonable instructions or to comply with any of the terms of our Agreement;
 - 17.2.2 any loss or damage caused by viruses or unauthorised use of, or attempts to access the Services or Equipment;
 - 17.2.3 any loss of business, contracts, profits, anticipated savings, reputation, or revenue;
 - 17.2.4 any other matter which is not due to our fault or neglect;
 - 17.2.5 your use of equipment or software that we have not supplied to you in order for you to access our Services;
 - 17.2.6 any loss or corruption of data; or
 - 17.2.7 any special, indirect or consequential or losses, whether arising in tort (including negligence) breach of statutory duty or otherwise and whether or not foreseeable.
- 17.3 You acknowledge that the internet is separate from the Services and that use of the internet is at your own risk and subject to applicable laws. We have no responsibility for any goods, Services, information, software, or other materials which you may obtain from a third party when using the internet and we will not be liable for any loss, costs or damages incurred by you in any dealings you may have with other individuals or organisations while using the Services.
- 17.4 Whilst we try to ensure that the Services are of a high quality, we do not give any guarantee that the Services will be uninterrupted or free from error. The performance of the Service will depend on a range of factors, including but not limited to Internet congestion, remote server demand and available bandwidth. We may suspend or terminate their connection to the Services where necessary for commercial, technical or other reasons due to a third-party network or service provider. You agree that suspension or termination will not constitute a breach by us of the Agreement and that the Services are provided on an "as is" basis without guarantee of any kind.
- 17.5 Subject to clauses 17.1 - 17.5, our maximum aggregate liability to you under our Agreement for physical damage to property whether caused by tort (including negligence), breach of contract, misrepresentation or breach of statutory duty shall not exceed £50,000 in respect of any one incident or series of connected incidents.
- 17.6 Apart from clauses 17.1 - 17.5, our maximum aggregate liability under our Agreement whether arising due to tort (including negligence), breach of contract, misrepresentation or any other legal liability in connection with or related to the subject matter of this Agreement shall in no circumstances exceed to the higher of 125% of the Charges paid by you to Giganet in accordance with this Agreement, or £1,000.

18 PERSONAL DATA

- 18.1 This clause will apply to the extent that we process personal data on the Customer's behalf in the course of providing the Services under this Contract. For the purpose of this clause the terms **"controller"**, **"data processor"**, **"personal data"** and **"processing"** have the meaning set out in data protection legislation. **"Data protection"**



legislation” means any applicable law relating to the processing, privacy and use of personal data, as applicable to the data controller, the data processor or the service, including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any laws or regulations implementing UK GDPR or the ePrivacy directive and the GDPR. “**e-Privacy directive**” means the Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 as implemented into United Kingdom law, “**model contract clauses**” means the standard clauses approved by the European Union or the UKs ICO for use when personal data is transferred outside of the European Economic Area and “**UK GDPR**” means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 as transposed into United Kingdom law.

- 18.2 You will be the data controller of the personal data that is provided to us for processing under this Agreement and we will act as a data processor on your behalf.
- 18.3 Under this Agreement, you will be responsible for:
 - 18.3.1 complying with all data protection legislation in respect of your use of our Services, your processing of the personal data and any processing instructions you give us.
 - 18.3.2 ensuring you have the right to collect, provide access to or transfer the personal data to us for processing under this Agreement.
 - 18.3.3 ensuring that you will not disclose (or permit any data subject to disclose) any special categories of data to us for processing.
- 18.4 We will process the personal data to the extent necessary to provide the Services and in accordance with your reasonable instructions (including the reasonable instructions of any users accessing the service on your behalf) as set out in this Agreement or otherwise in writing, and in doing so we will comply with the data protection legislation.
- 18.5 We will ensure that any of our personnel authorised to process the personal data will be subject to a duty of confidentiality.
- 18.6 We will take the following security measures:
 - 18.6.1 implement appropriate technical and organisational measures to protect the personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (a data breach).
 - 18.6.2 Upon becoming aware of a data breach, notify you without undue delay.
 - 18.6.3 We will make reasonable efforts to identify the cause of the data breach and to take such steps as Giganet deems necessary and reasonable to mitigate the effects of such data breach, to the extent that such steps are within Giganet’s reasonable control.
- 18.7 We will make reasonable efforts to provide such information as you may reasonably require to enable you to fulfil any data breach reporting obligations under UK GDPR.
- 18.8 You agree that Giganet may engage our group companies and third-party sub-processors (collectively sub-processors) to process personal data on Giganet’s behalf, provided that:
 - 18.8.1 we maintain an up-to-date list of sub-processors which will be available on request.
 - 18.8.2 we impose on such sub-processors data protection terms that require them to protect the personal data to the standard required by data protection legislation.
 - 18.8.3 we remain liable for any breach of the data protection legislation caused by our sub-processor when processing personal data under this Agreement.
- 18.9 We will not process or otherwise transfer any personal data outside the United Kingdom or the European Economic Area or to any international organisations unless it has appropriate assurances from that third party that the personal data will only be processed in compliance with data protection legislation (which will be satisfied and evidenced by us entering into a contract with that third party which contains the model contract clauses).
- 18.10 Taking into account the nature of the processing and information available to us, we will provide reasonable assistance to you to allow you to comply with your obligations in relation to: (i) security measures; (ii) notifying data breaches; and data privacy assessments.
- 18.11 We will be entitled to recover our reasonable costs of providing such assistance to you.
- 18.12 We will make available to you all information reasonably requested by you in writing to demonstrate our compliance with the obligations set out in this clause, and Giganet will contribute to audits, including inspections, to verify compliance with such obligations conducted by you or an independent third-party auditor acting under your direction. Such audits or inspections may take place no more than once per calendar year and will be at your cost. You will give us not less than 30 days’ prior written notice of any such audit or inspection, and such audit or inspection which will be carried out during our normal working hours with minimal disruption to our business.
- 18.13 Upon expiry or termination of this Agreement, we will, at your request, delete or return to you the personal data processed under this Agreement, unless storage is required by law.



- 18.14 You acknowledge that Giganet may be required under applicable laws and regulations to co-operate with and disclose personal and other data regarding you or its employees and agents to governmental bodies and/or authorities.
- 18.15 You acknowledge that Giganet may record calls to and from its customer service centre (including marketing calls) to help with training and to prevent identity fraud.

19 CHANGES

- 19.1 Giganet may need to change the terms of our Agreement, including the Charges at any time. We will notify you of any material changes by providing you with thirty (30) days' notice in writing. Our current terms of business are available for download at www.giganet.uk/terms
- 19.2 If we increase the Charges for elements of the Service you are using, Giganet guarantees not to charge more than 10% above the monthly charge in any calendar year and may only pass on reasonable increases in costs from its suppliers or charge to cover any increased administrative or support costs.
- 19.3 For any changes to our Terms that are required for legal or regulatory purposes, we may not be able to provide thirty (30) days' notice, but we will endeavour to provide as much notice as possible.
- 19.4 Such Changes to this Agreement will be posted on our website and notifications sent to you by e-mail.

20 GENERAL

- 20.1 **Assignment:** You cannot sell, transfer, or assign its rights or obligations under this Agreement without the written consent of Giganet. No such assignment, even if consented to, shall relieve the other party of its obligations under this Agreement prior to the date of such assignment. Giganet may assign this Agreement without reference to the Customer.
- 20.2 **Force majeure:** We will not be liable for failing to perform our obligations under these Terms if we are prevented from doing so due to an Event of Force Majeure.
- 20.3 **Waiver:** The waiver or failure of either party to exercise any right provided for in this Agreement shall not be deemed a waiver of that or any other right in this Agreement
- 20.4 **Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.
- 20.5 **Whole agreement:** This Agreement, together with any document expressly referred to in any of its terms, contains the entire agreement between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral.
- 20.6 **Notices:** Notices sent pursuant to this Agreement shall be in writing and may be delivered by hand or sent by post by e-mail with hard copy confirmation by post in the case of notice of termination. Notices will be sent to the recipient at its registered office, or such other address as may be notified in accordance with this clause. Notices hand delivered or emailed shall be deemed received on delivery and those posted on the second working day after they are posted.
- 20.7 **Headings:** The headings shall be disregarded in construing this Agreement.
- 20.8 **Law:** English Law shall govern this Agreement. The parties submit to the non-exclusive jurisdiction of the English courts.

Last updated 17/01/2022