

# ***DAM Telecommunications Terms and Conditions for Telephone Services for Business and Residential Customers***

## **1. DESCRIPTION OF THE SERVICE**

1.1 The Service is the facility to make or receive a Call and any related services that DAM Telecommunications may agree to provide to the Customer under the Contract.

## **2. COMMENCEMENT**

2.1 The Contract begins on the date on which the Customer orders the Service and continues until terminated by the Customer or DAM Telecommunications in accordance with the Contract.

2.2 Unless otherwise stated in the Contract, the Service commences on the Service Start Date.

### **DURATION**

#### **Minimum Period**

2.3 The Minimum Period is 24 months.

2.4 Upon expiry of the Minimum Term, or any anniversary thereafter, this Contract will renew automatically for a further Subsequent Term unless terminated by either Party in accordance with the terms of this Agreement.

## **3. PROVISION OF THE SERVICE**

### **Preparation of the Site for Access and Installation of Equipment**

3.1 The Customer agrees to prepare the Site in accordance with any requirements DAM Telecommunications may have prior to installation and to provide DAM Telecommunications or any representative nominated by DAM Telecommunications with all necessary access to the Site for the purposes complying with the terms of the Contract. The Customer agrees to provide, at its expense, a suitable location and conditions for DAM Telecommunications Equipment and, where required, continuous mains electricity supply and connecting points.

3.2 The Customer is responsible for obtaining all necessary consents and permissions for DAM Telecommunications to carry out any work necessary to provide the Service on the Site including the installation of DAM Telecommunications Equipment.

3.3 The Customer and DAM Telecommunications agree to comply with each other's reasonable safety and security requirements when on the Site. If DAM Telecommunications' or the Network Operator's engineers are required to enter the Premises they will show their identity cards. The Customer and DAM Telecommunications agree to look after each other's equipment on the Site. If the Customer or DAM Telecommunications damages the other's equipment it must pay for any repair or replacement needed. This clause does not apply where the damage results from normal use.

3.4 DAM Telecommunications will use its reasonable endeavours to provide the Service by the date agreed with the Customer, but all dates are estimates unless confirmed otherwise in the Notification Letter.

3.5 The Customer is responsible for making the Site good after any work undertaken by DAM Telecommunications at the Site, including replacing and re-siting items and for re-decorating.

### **Faults**

3.6 DAM Telecommunications will use the reasonable skill and care of a competent telecommunications service provider to provide the Service, however from time to time faults may occur as other third party companies provide the Network.

3.7 If the Customer reports a fault in the Service DAM Telecommunications will report the fault to the Network Operator as soon as is reasonably practicable so that the Network Operator can arrange for an engineer to be dispatched to repair the fault as soon as possible.

#### **Publishing of customers details**

3.8 DAM Telecommunications will, as quickly as is reasonably possible, publish the Customer's name address and the telephone number for the Service in the relevant phone book serving the Customers area and make the said telephone number available from a directory enquiries service unless the Customer requests DAM Telecommunications not to do so within 14 days of entering into this Contract.

3.9 If the Customer requests a Special Entry to be placed in the relevant phone book issued by the Network Operator it must inform DAM Telecommunications at the earliest available opportunity. Where DAM Telecommunications agrees to register a Special Entry the Customer may be required to pay an additional charge and sign a separate Contract in respect of that entry.

### **4. USE OF THE SERVICE**

4.1 Any Customer Equipment must be:

(a) technically compatible with the Service and complies with any relevant standards instructions or laws and does not harm the Network or another customer's equipment; and

(b) connected using the applicable Main Telephone Socket that DAM Telecommunications or the Network Operator have fitted unless the Parties agree otherwise.

4.2 If the Customer Equipment does not meet the Relevant Standards then the Customer must immediately disconnect it, or allow DAM Telecommunications to do so at the Customer's own expense.

4.3 If the Customer asks DAM Telecommunications to test the Equipment to ensure that the Relevant Standards are met, the Customer must pay DAM Telecommunications the applicable charges in respect of such testing.

4.4 The Service must not be used:

(a) in any way that is unlawful or in contravention of any instructions, licence, code of practice or guidelines issued by any regulatory authority, nor any third person's rights; nor

(b) to make offensive, menacing, indecent, nuisance or hoax calls or to cause annoyance or inconvenience to any other person; nor

(c) to deliberately send or knowingly receive, upload, download or use any material which is deemed offensive, abusive, indecent, defamatory, or obscene under international law; nor

(d) in any way deemed to be fraudulent, nor in connection with any criminal offence.

4.5 Occasionally, DAM Telecommunications may be required to:

(a) change the codes or telephone numbers given to the Customer, or the technical specification of the Service due to mandatory changes imposed on DAM Telecommunications by third parties provided that any change to the way DAM Telecommunications provides the Service does not significantly affect the performance or functionality of the Service; or

(b) interrupt or suspend the Service for operational or emergency reasons. DAM Telecommunications will restore the Service as quickly as possible.

(c) give the Customer instructions that DAM Telecommunications believe are necessary for health or safety reasons, or to maintain the quality of the Service that DAM Telecommunications supplies to the Customer or other customers

4.6 The Customer does not own any number or have any right to sell or transfer the number

provided to it for use with the Service.

4.7 When ordering new telephone numbers, the Customer should not arrange for any form of advertising of the numbers until the number is live and tested.

4.8 DAM Telecommunications may occasionally monitor and record calls relating to customer services made to or by DAM Telecommunications. DAM Telecommunications does this for training purposes and to improve the quality of its customer services.

4.9 The Customer will fully and effectually indemnify DAM Telecommunications against any claims or legal proceedings which are brought or threatened against DAM Telecommunications by a third party because the Service is used in breach of clause 4.4. If requested, DAM Telecommunications will keep the Customer informed of the progress of such claims or proceedings.

4.10 Broadband services which may be described as unlimited are subject to a 'Fair Usage Policy' based on typical national usage profiles. These limits are tiered (5GB and 40GB being the most typical). For full details of usage limits for each service, please contact Customer Services.

## **5. PAYMENT FOR THE SERVICE**

### **General**

5.1 The Customer agrees to pay all of the Charges due in respect of the Service which are calculated using the details recorded by DAM Telecommunications. This includes all Call Charges incurred during the use of the Service by the Customer or any third party using the Service at the Site

5.2 DAM Telecommunications will calculate the Call Charges using the details recorded at the telephone exchange. Call charges will normally be invoiced monthly in arrears. Wherever possible Call Charges will appear on the Customer's next invoice.

5.3 DAM Telecommunications will send invoices in arrears to the Customer via email (DAM Telecommunications e-billing) to the e-mail address notified by the Customer to DAM Telecommunications. If the Customer does not give a valid email address, the invoice will be sent to the registered address of the Customer at additional cost to the Customer

5.4 The Customer will be liable for charges for the Service from the Service Start Date.

5.5 Unless otherwise provided in the Notification Letter, all charges are exclusive of VAT which is chargeable at the applicable rate from time to time in force.

5.6 The first invoice will be issued to the address provided by the Customer shortly after commencement of the Service.

5.7 Unless otherwise agreed between the Customer and DAM Telecommunications, payment is due on the date specified on the invoice and the Customer must pay all charges by direct debit.

5.8 By agreeing to the Terms and Conditions the Customer is committed to using DAM Telecommunications for both Line Rental and Calls. Should the Customer use an alternative carrier for Calls once this Contract has commenced, or prevent DAM Telecommunications from carrying Calls in any monthly period so that the Call Charges are significantly reduced in comparison to the Customer's previous average invoicing profile, the Customer agrees that DAM Telecommunications may charge the Customer £30 plus VAT on the Customer's next monthly invoice and for each subsequent month during the term.

5.9 If the Customer does not pay the invoice within 14 days of the invoice a reminder will be sent to the Customer's address for service. If payment is not received with seven days of the reminder DAM Telecommunications may charge the Customer daily interest on late payments at a rate equal to 7% per annum above the base lending rate of the Bank of England for the period beginning on the date on which payment is due and ending on the date on which payment is made.

5.10 If, after commencement of the Contract, the Customer exceeds the agreed Call Level, DAM Telecommunications may issue the Customer with an interim invoice. A deposit may also be sought by DAM Telecommunications as security for payment of future invoices.

5.11 Line rental is Payable from the Switchover Date. Line Rental is payable quarterly in advance, unless expressly agreed in writing by DAM Telecommunications. Line rental Charges vary depending upon the classification of the Customer's line.

5.12 If the Customer orders a temporary Service, DAM Telecommunications may charge the Customer for any supplementary charges incurred, plus the line rental in advance for the whole period of the temporary Service. Visit charges, Time Related Charges and Excess Construction still apply as appropriate.

5.13 The Customer must pay all Charges in accordance with their direct debit authority, or in accordance with the time for payment detailed in the invoice. The Customer must pay all deposits upon demand from DAM Telecommunications.

5.14 If DAM Telecommunications are unable, for whatever reason, to recover the sums due under the Customer's account within 4 days following the due date for payment, DAM Telecommunications reserves the right to suspend the Service in accordance with clause 7.

5.15 On the fifth day following the due date for payment, a letter will be sent to the Customer's address requiring the account to be discharged in full within 10 days of receipt of the letter.

5.16 If payment details are provided by the Customer to enable DAM Telecommunications to collect the sums due on their account, DAM Telecommunications will re-apply for payment. If the Customer's proposed payment method is still rejected, invalid or unavailable or if the Customer's account remains outstanding for any other reason 18 days after the original due date for payment, then:

(i) the Customer will be charged a further administration fee of £50.00 plus VAT together with an additional fee for the provision of a subsequent warning letter, and

(ii) DAM Telecommunications will contact the Customer in writing requiring discharge of the Customer's account in full within 7 days of receipt of the letter, failing which DAM Telecommunications reserve the right to refer the outstanding account to DAM Telecommunications' credit control department.

5.17 If the Customer's account remains unpaid for a period of 25 days after the original due date for payment a security deposit of three times the average monthly invoice or payment in full for the first year will be required before DAM Telecommunications will reinstate the Service.

5.18 If the Customer's account remains unpaid for a period of 32 days after the original due date for payment, the Services will then be terminated and the Customer's account will be referred to DAM Telecommunications' credit control department for it to take the appropriate action to collect the outstanding sums.

5.19 If DAM Telecommunications is required to instruct a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay DAM Telecommunications an additional sum. This sum will not exceed the reasonable costs DAM Telecommunications has to pay the agency, who will add the sum to the Customer's outstanding debt.

5.20 The Customer is required to ensure that the name of the account holder is the same as the name on the payment details provided.

5.21 If the Customer has agreed to an Annual Minimum Call Spend (as notified to the Customer by DAM Telecommunications on entering into this Contract), and at the end of any given year (beginning on the Switchover Date or any anniversary thereof), the Customer has not incurred the Annual Minimum Call Spend, or if the Customer terminates this Contract in any way other than pursuant to clause 7, prior to the end of any given year (beginning on the Switchover Date or any anniversary thereof), the Customer will be liable to pay 20% of the

difference between the Charges incurred during that year and the Annual Minimum Call Spend.

5.22 DAM Telecommunications reserves the right to apply a monthly minimum threshold of £7.50 excluding VAT in respect of outbound calls for each invoiced account to keep the account operating at a viable level. In the event that the actual outbound calls billed amount does not reach the threshold level the Customer agrees to pay the difference between the actual calls billed amount and the threshold.

5.23 If the Customer makes a valid claim regarding excess invoice charges for any part of the Service and that such an excess is due to an error on DAM Telecommunications part, the excess charge will be refunded by credit to the Customer's account. A maximum credit equivalent to three months excess applies to this clause.

5.24 If the Customer cancels an active Direct Debit instruction once the Contract has commenced an additional administration fee of £10.00 will be added to the monthly invoice until the Direct Debit is reinstated

5.25 If any sum owed by the Customer to DAM Telecommunications under the Contract or any contract with DAM Telecommunications is not paid by the due date, DAM Telecommunications may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with DAM Telecommunications.

### **Disputed Invoices**

5.25 If the Customer intends to dispute any charge on an invoice the Customer must do so in writing to DAM Telecommunications within 14 days of the date of the invoice and provide DAM Telecommunications with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to:

(a) less than 5% of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or

(b) more than 5% of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute.

Any disputes will be resolved promptly and the resolved amount if any is payable immediately.

## **6. CHANGES TO THE CONTRACT**

6.1. DAM Telecommunications can change the Contract (including the charges) at any time and will publish any change in line with clause 6.2.

6.2 DAM Telecommunications will publish any changes to the Contract (including the charges) in its major offices and online at <http://www.damtel.co.uk>, as follows:

(a) at least 14 days before the change is to take effect for changes that are to be made to the significant detriment of the Customer; and

(b) at least one day before the change is to take effect for all other changes.

6.3 If the Customer wishes to object to any proposed change in respect of clause 6.2 (a), the Customer must notify DAM Telecommunications within 14 days of publication on the Website or receipt of the notice of the proposed increase, otherwise the Customer will be deemed to have accepted the proposed change.

6.4 The Customer may request changes to the Contract. Such requests must be made in writing and submitted to DAM Telecommunications.

6.5 If DAM Telecommunications agree to the changes contained in the written request a letter will be sent to the Customer confirming the agreed changes. The Contract is to be considered to be amended on the date that the letter confirming agreement to the changes is received by the Customer, or, in the absence of proof of receipt, the deemed date of receipt. Any such letter shall

be deemed to have been received:

- (a) if hand delivered or sent by prepaid recorded or special delivery post or prepaid international recorded airmail, at the time of delivery;
- (b) if sent by post (other than by prepaid recorded or special delivery post) two days from the date of posting;
- (c) in the case of fax or e-mail at the time of transmission.

6.6 To avoid the risk of fraud, customers on capped price call tariffs must comply with the below restrictions:

- (a) DAM Telecommunications reserves the right to apply call price caps to the first four hours of calls per day only.
- (b) DAM Telecommunications reserves the right to remove the tariff from customers should call patterns deviate significantly from standard call profiles and over 60% of call durations fall within the price cap.

Seven days notice will be provided in the event of a tariff change.

## **7. TERMINATING THE CONTRACT**

7.1 The Customer may cancel the Contract or any part of the Service within seven working days from the date that the Customer agrees to proceed with the contract without additional charge, other than those charges actually incurred by under clause 7.6. Thereafter, if the Customer cancels the Contract or any part of the Service any time before DAM Telecommunications provides the Service the Customer will pay DAM Telecommunications the early termination charges calculated in accordance with clause 7.6.

7.2 The Contract may be ended by either party upon giving the other one calendar month's prior written notice to the other.

7.3 If the Customer or DAM Telecommunications ends the Contract during the Minimum Period the Customer will pay DAM Telecommunications the early termination charges set out in clause 7.6. This clause will not apply if:

(a) the Customer ends the Contract during the Minimum Period because DAM Telecommunications is in material breach of the Contract and fails to remedy such breach within 30 days of receiving a request from the Customer to remedy the breach; or

(b) the Customer gives notice to end the Contract within 14 days of DAM Telecommunications notifying the Customer of an increase to the charges or changes to the Conditions in either case to the Customer's significant detriment; or

(c) a Customer as a new Residential Customer or an existing Residential Customer who has entered into this Contract via the telephone may cancel this Contract up to 10 working days after the date the Notification Letter was sent to the Residential Customer. The Residential Customer will be refunded the price of all Charges (excluding Call Charges) incurred from the date the Notification Letter. The Customer must pay for all Call Charges including any international Call Charges which may take longer to be billed. This does not affect the Residential Customers statutory rights; or

(d) a Customer as a Business Customer wishes to cancel the Contract at any time prior to the Switchover Date by giving written notice to DAM Telecommunications or contacting DAM Telecommunications' customer services. DAM Telecommunications will inform the Customer of the Switchover Date by issuing a Notification Letter to the Customer. For the avoidance of doubt, any costs incurred by the Customer prior to the cancellation of the Contract shall be charged to the Customer and become payable in accordance with clause 5.

7.4 The Customer may end the Contract if:

(a) DAM Telecommunications materially breaches the Contract and fails to remedy the breach within a reasonable time of being asked by the Customer to do so (subject to the breach being capable of being remedied by DAM Telecommunications); or

(b) insolvency proceedings are brought against DAM Telecommunications or DAM Telecommunications makes an arrangement with its creditors or a receiver, an administrative receiver or an administrator is appointed over any of DAM Telecommunications' assets or DAM Telecommunications goes into liquidation

7.5 If the Customer terminates this Agreement prior to expiry of the Minimum Period, other than in respect of termination by the Customer pursuant to clauses 7.3 and 7.4, the Customer shall pay the early termination charges, calculated in accordance with clause 7.6.

7.6 The early termination charges shall be, for each line that a Customer cancels:

(a) the sum of the Line Rental charges payable by the Customer from the date of actual termination until the date of expiry of the Minimum Period; and

(b) any actual Call Charges accrued up to and including the date of termination; and

(c) an administration charge of **£125.00** (one hundred and twenty five pounds) plus VAT.

7.7 If the Customer terminates this Contract after the expiry of the Minimum Period the Customer shall pay the Charges up to the end of the notice period in accordance with clause 7.2.

7.8 If the Contract ends, DAM Telecommunications will refund any money owed to the Customer, after first deducting any money the Customer owes to DAM Telecommunications under this Contract or any other agreement DAM Telecommunications has with the Customer.

7.9 If Customer terminates any Service prior to expiry of the Minimum Period, other than in respect of termination by the Customer pursuant to clauses 7.3 and 7.4, DAM Telecommunications shall be entitled to charge the Customer an amount that would be reasonable in covering DAM Telecommunications' losses as a result of such a termination. This would include instances where DAM Telecommunications has provided free line installations to the Customer that have been subsequently cancelled prior to the expiry of the Minimum Period

7.10 The complete set of Free Installation Terms & Conditions are available on the DAM Telecommunications website at [www.damtel.co.uk](http://www.damtel.co.uk).

## **SUSPENSION OR TERMINATION OF SERVICE FOLLOWING BREACH**

7.11 DAM Telecommunications may suspend the Service or end the Contract, or both, at any time without notifying the Customer and without prejudice to DAM Telecommunications' other rights and remedies, if:

(a) The Customer breaches the Contract or any other Contract that the Customer has with DAM Telecommunications for telephone and, if the breach is capable of remedy, fails to put right the breach within 14 days of being requested by DAM Telecommunications so to do. This clause includes a breach for non-payment of any valid invoice by the due date; or

(b) DAM Telecommunications reasonably believes that the Service is being used in breach of clause 4.4, irrespective of the whether the Customer is aware of the breach or not; or

(c) Bankruptcy or insolvency proceedings are brought against the Customer or the Customer does not comply with a payment order of the Court or the Customer makes an arrangement with its creditors or a receiver, an administrative receiver or an administrator is appointed over any of the Customer's assets or the Customer goes into liquidation. The Customer will continue to pay the charges during any period of suspension; or

(d) DAM Telecommunications are required to suspend the Service or terminate the Contract under any an order, instruction or request of any authorised government body or authority or emergency service; or

(e) The direct debit information provided by the Customer are found to be invalid or are subsequently cancelled; or

(f) A contract that DAM Telecommunications has with a third party that assists in providing the Service is terminated.

(g) DAM Telecommunications in its sole opinion suspects that the Service is being used, or is about to be used, for purposes that are fraudulent or for purposes deemed to be excessive for the type of account in operation and, if the Service is suspended, will keep the account suspended until such time as a bond, or other such payment as is agreed between the Parties, is received by DAM Telecommunications.

7.12 If the Customer exceeds the agreed Call Level prior to submission of the next monthly invoice, DAM Telecommunications will inform the Customer of the amount the Customer has spent and agree any necessary action. DAM Telecommunications reserves the right to suspend outgoing Calls on the Service pending payment of charges accrued on DAM Telecommunications' invoicing system if the Customer exceeds the agreed Call Level prior to payment of the first three 3 invoices submitted in respect of the Service.

7.13 If the Customer fails to pay an invoice in accordance with clauses 5.3 and 5.7, DAM Telecommunications reserves the right to:

(a) firstly, to suspend the Service with outgoing call bars (except for emergency number access); and

(b) thereafter implement incoming call bars

7.14 DAM Telecommunications will lift the suspension(s) following full payment of the outstanding amount being made by the Customer.

7.15 If the Service is suspended pursuant to clause 7 (except clause 7.12(d)), DAM Telecommunications will not recommence provision of the Service until the Customer rectifies the breach of this Contract or otherwise satisfies DAM Telecommunications that the Service will not be used in a way that is in breach of this Contract.

7.16 The Customer remains liable to pay the Charges applicable to any period of suspension of the Service (other than in respect of a suspension pursuant to clause 7.12(d))

7.17 If the Service is suspended under clause 7.12(c) above, DAM Telecommunications reserves the right to charge the Customer an administration fee of £50 payable within 14 days of the suspension of the Service. This sum is in addition to any outstanding payment for invoices that may have been submitted previously.

7.18 Upon reconnection of the Service, DAM Telecommunications reserves the right to charge a reconnection fee of **£25** plus VAT per affected line.

## **8. LIMITATION OF LIABILITY**

8.1 DAM Telecommunications accepts liability as set out in the Contract. DAM Telecommunications does not guarantee that the Service will be free from faults as other third party companies may provide the Network. Matters affecting the Network are beyond DAM Telecommunications' reasonable control and are therefore not liable for faults arising as a result of the actions of the aforementioned third parties.

8.2. DAM Telecommunications does not accept liability for the acts or omissions of other providers of telecommunications services (including but not limited to the Network Operator) unless those providers have been specifically engaged by DAM Telecommunications as subcontractors or assignees in respect of performing DAM Telecommunications obligations under the this Contract.

8.3 DAM Telecommunications does not accept liability for any charge incurred as a direct result of the Customer failing to utilise any new line within 30 days of the line being activated.

8.4 DAM Telecommunications does not exclude or restrict its liability for death or personal injury caused by its own negligence or the negligence of its employees or agents acting in the course of their employment or agency or for any fraudulent misrepresentation.

8.5 Unless otherwise expressly stated in the Contract DAM Telecommunications shall not be liable to the Customer in contract, tort (including negligence), breach of statutory duty or otherwise for any indirect or consequential loss of profit, revenue, time, opportunity, data, use, business, wasted expenditure, loss of or damage to physical property, business interruption or for any other indirect or consequential loss or punitive damages which may arise in relation to the Contract whether or not DAM Telecommunications was advised in advance of the possibility of such loss or damage.

8.6 DAM Telecommunications accepts liability, as follows, subject to the limitations in clauses 8.2, 8.3 and 8.5:

(a) in respect of its failure to report a Fault to the Network Operator as soon as is reasonably practicable, where DAM Telecommunications have previously been notified of such a Fault by the Customer; or

(b) for any actual loss or damage suffered by the Customer where the loss or damage suffered was reasonably foreseeable.

For the avoidance of doubt DAM Telecommunications shall not be liable for any delay in the repair of the Fault except to the extent that such a delay was a direct result of DAM Telecommunications failing to reporting the Fault to the relevant Network Operator as soon as was reasonably practicable.

8.7 Subject to clauses 8.2, 8.3 and 8.5 above, DAM Telecommunications accept liability to the Customer in contract, tort (including negligence) breach of statutory duty or otherwise for direct loss limited to:

(a) £1,000.00 for each line affected;

(b) £5,000.00 per event or series of events;

(c) a maximum of £10,000 for loss of or damage to physical property in any period of 12 consecutive months

8.8 DAM Telecommunications does not accept liability for the acts of its customers resulting in the breach of regulatory codes of practice that control the use of premium rate numbers, which include 0871, 0872, 0873 and 09 number ranges. Full code of practice details are available from PhonepayPlus, (formerly ICSTIS), the regulatory body for phone-paid services in the UK. [www.phonepayplus.org.uk](http://www.phonepayplus.org.uk).

8.9 Except as set out expressly in this Contract, all conditions warranties, undertakings and obligations implied by statute, common law, custom, trade or otherwise are excluded to the fullest extent permissible in English Law.

## **9. CONFIDENTIALITY AND USE OF CUSTOMER'S INFORMATION**

9.1 DAM Telecommunications and the Customer will keep in confidence any information, whether written or oral, of a confidential nature obtained under or in connection with the Contract except to the extent any disclosure is required by law. The Customer and DAM Telecommunications will not, without the consent of the other, disclose such information to any person other than:

(a) their employees or professional advisers who shall require the information in order for the Customer or DAM Telecommunications to fulfil its obligations under the Contract; or

(b) in the case of the Customer, its Users to the extent that they are required to use or access the Service.

9.2 Information shall not be treated as confidential if it is:

(a) lawfully in the public domain; or

(b) lawfully in the possession of the Customer or DAM Telecommunications before disclosure has taken place; or

(c) obtained from a third person who is entitled to disclose it; or

(d) replicated independently by someone without access or knowledge of the information.

9.3 If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by DAM Telecommunications in connection with the Contract the Customer will notify DAM Telecommunications immediately of the request and give DAM Telecommunications at least 10 working days to make representations before releasing the requested information.

9.4 DAM Telecommunications will only use Personal Data (as defined within the Data Protection Act 1998) obtained from the Customer following provision of the Service for the following purposes:-

(a) administering the Customer's account;

(b) notifying the Customer of changes to the Service;

(c) enabling DAM Telecommunications to supply the Service to the Customer; and,

(d) for invoicing purposes.

9.5 DAM Telecommunications will not pass Personal Data obtained from the Customer to any third parties for marketing purposes but may send the Customer information about DAM Telecommunications own products and services which it considers may be of interest to the Customer, unless the Customer specifically requests in writing that DAM Telecommunications does to do so.

9.6 Any request under clause 9.5, either by the Customer, the Customer's User or by the Customer on behalf of the User should be submitted in writing to DAM Telecommunications Data Controller at DAMtel House, 18 Soho Square, London, W1D 3QL.

9.7 In assessing applications for and making decisions about credit, credit related services and insurance (including motor, household credit, life and other insurances and claims) in respect of the Customer, DAM Telecommunications may make the following searches for information pertaining to the Customer:

(a) the files of credit reference agencies. The credit reference agency will keep a record of any search undertaken.

(b) identity and anti-fraud checks with fraud prevention agencies. If the Customer gives false or inaccurate information fraud is suspected, DAM Telecommunications shall make a written note.

Details of how the Customer conducts their account may also be disclosed to those agencies.

9.8 Information obtained from the agencies referred to in clause 9.7 may be used by DAM Telecommunications and other parties for

(a) checking the Customer's identity,

(b) obtaining statistical analysis about credit, insurance or, fraud, and

(c) to manage the Customer's account and insurance policies.

9.9 DAM Telecommunications may also perform subsequent searches for the purpose of risk assessment, debt collection and fraud prevention with one or more credit reference agencies and/or fraud prevention agencies whilst the Customer retains a financial obligation to DAM Telecommunications.

9.10 Information held about the Customer by credit reference agencies may be linked to records relating to the Customer's financial associate(s). The Customer declares that the Customer and

the Customer's financial associate(s) are financially independent and the Customer requests that their application for the Service be assessed without reference to any "associated" records, although the Customer recognises that this may adversely affect the outcome of the application. The Customer confirms to the best of their knowledge that there is no information relating to their financial associates that is likely to affect DAM Telecommunications' willingness to offer the Services to them.

9.11 By agreeing to the enclosed Terms and Conditions, the Customer authorises DAM Telecommunications to check the validity of this declaration with credit reference agencies and if DAM Telecommunications discover any associated records, which would affect the accuracy of this declaration DAM Telecommunications may suspend the Service or terminate this Contract with immediate effect. For the purpose of clauses 9.10 and 9.11 a "financial associate" is someone with whom the Customer has a financial link, for example, a spouse, partner or family member.

9.12 The Customer authorises DAM Telecommunications to disclose, in the UK and globally, all pertinent information about them, their use of the Service and how they conduct their account for the purposes of providing the Customer with the Service or as required for reasons of national security or under any legal duty pass such information to associated companies, partners or agents, any telecommunications company, debt collection agency, credit reference agency, fraud prevention agency or governmental agency and other users of these agencies who may use this information for the same purpose as DAM Telecommunications. The Customer agrees to this information being obtained by DAM Telecommunications for credit control purpose and fraud and crime detection and prevention.

9.13 Any Customer who wishes to have details of the credit reference or the fraud prevention agencies DAM Telecommunications uses to obtain information about the Customer or receive a copy of the information DAM Telecommunications holds about them may do so by submitting a request in writing for a copy of the information to the Data Controller at DAM Telecommunications at the address detailed in clause 9.6, stating the Customer's full name, address, account number and phone number. (DAM Telecommunications may charge a reasonable administration fee for providing such information)

## 10. MOVING SITES

10.1 If the Customer is moving the Site, DAM Telecommunications must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Customer's line. Unless otherwise requested, DAM Telecommunications, in addition to moving the line, will also endeavour to retain the Customer's existing telephone number. If DAM Telecommunications can transfer the Customer's existing number to the new Site the existing Contract will continue under the same terms and conditions. If DAM Telecommunications cannot transfer the Customer's existing number to the new Site, installation of a new line will be required at the new Site, or if the Customer requires any additional new lines, this will attract new line connection charges and a new Agreement for a minimum term of 12 or 24 months.

10.2 If the new installation or moving Site involves the visit of an engineer to facilitate the new installation the Customer will be responsible for the costs incurred by DAM Telecommunications for the missed appointment due to the Customer's failure to attend (currently £106.37) together with an administration fee of **£35.00** in respect of any additional works required to be undertaken by DAM Telecommunications to complete the transfer of the line.

10.3 If the Customer moves Sites and leaves the installation for the new owner/tenant the Customer is required to inform them that the Service will be discontinued if DAM Telecommunications are not contacted by the new owner/tenant within 72 hours for the purpose of entering into a new Contract.

10.4 If the Customer currently receives services from an alternative supplier the Customer is responsible for any contractual agreement the Customer has with them and any liabilities the Customer may incur for terminating the Customer's current agreement.

## 11. GENERAL TERMS

### Matters Beyond Reasonable Control

11.1 (a) If DAM Telecommunications is unable to perform, or is delayed in performing, any obligation under the Contract because of something beyond its reasonable control including act of God, lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes or acts or omissions of local or central government, OFCOM or any other Network Provider or other competent authorities, or beyond the reasonable control of its suppliers, it will have no liability to the Customer for that failure or delay in performing.

(b) DAM Telecommunications will not be liable for failure to or delay in supplying the Service if legal or regulatory restrictions are imposed that prevent DAM Telecommunications from supplying the Service.

### **Dispute Resolution**

11.2 (a) DAM Telecommunications will attempt to resolve any dispute that the Customer may have with DAM Telecommunications. If the dispute cannot be resolved within 12 weeks of the Customer raising the dispute with DAM Telecommunications, then the Customer may refer the matter to:

OFCOM, the communications regulator via the website [www.ofcom.org.uk](http://www.ofcom.org.uk) or by telephone on 020 7981 3040 or 0300 123 3333.

(b) Any dispute must be submitted in writing to DAM Telecommunications' Customer Services Centre.

(c) Nothing in this clause 11.2 shall prevent the Customer or DAM Telecommunications from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Contract.

### **Assignment**

11.3 The Customer and DAM Telecommunications may not assign any of their rights or obligations under the Contract without the prior written consent of the other, except that DAM Telecommunications may assign or otherwise delegate all or any of its rights or obligations or both to an Associated Company without consent provided that it notifies the Customer that it intends to do so.

### **Severability**

11.4 If any portion of the Contract is found to be unenforceable, the remaining sections of the Terms and Conditions will remain in effect as if the Contract had been made without the invalid, illegal or unenforceable terms.

### **Entire Agreement Clause**

11.5 (a) The Contract constitutes the entire agreement between the Customer and DAM Telecommunications and replaces all previous negotiations, representations, proposals, understanding and agreements whether written or oral relating to the Service.

(b) The Customer and DAM Telecommunications agree that, by entering into this Contract:

(i) they have not relied upon any statement, representation, warranty or other assurance not expressly incorporated; and

(ii) in connection with the Contract the only rights and remedies available to the Customer and DAM Telecommunications in relation to any statement, representation, warranty or other assurance are for breach of the Contract and that all other rights and remedies are excluded.

(c) The terms of clauses 11.5(a) and 11.5(b) do not affect the rights or remedies available to the Customer or DAM Telecommunications to pursue a claim for fraudulent misrepresentation.

### **Waiver**

11.6 (a) A failure or delay by the Customer or DAM Telecommunications to enforce any right or act upon a breach under the Contract shall not be deemed to be a waiver of that right or breach.

(b) If the Customer or DAM Telecommunications waives a right or breach of the Contract, that waiver is limited to the particular right or breach.

(c) The single or partial exercise of any right or obligation by the Customer or DAM Telecommunications does not operate as a bar to the exercise or enforcement of any right, power or remedy on any later occasion.

### **Rights of Third Parties**

11.7 A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. However, this does not affect any right or remedy of a third party that exists or is available apart from that Act.

### **Notices**

11.8 Unless otherwise stated in the Contract, notices given under the Contract must be in writing and delivered by hand, sent by e-mail or sent by prepaid post to:

(a) DAM Telecommunications at DAMtel House, 18 Soho Square, London W1D 3QL or such other address as may be communicated to Customer; or

(b) the Customer at the address to which the Customer asks DAM Telecommunications to send correspondence or bills (except for notices given under clause 2.1 and 6.1)

11.9 The Customer must inform DAM Telecommunications immediately if there is any change to any of the contact information previously.

### **Law and Jurisdiction**

11.10 (a) These terms shall be governed by and interpreted in accordance with English law.

(b) The Customer and DAM Telecommunications irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute, which may arise out of, under, or in connection with this Contract.

### **Customer's Instructions**

11.11 DAM Telecommunications may take instructions from any person whom it reasonably believes is acting with the Customer's authorisation.

## **12. SERVICE GUARANTEE**

12 DAM Telecommunications guarantees:

(a) to provide the Service by the date agreed with the Customer.

(b) to report a Fault in the line with the Network Operator as soon as is reasonably practicable.

(c) not to disconnect the Service by mistake; and

(d) to keep any appointment DAM Telecommunications make with the Customer under the Contract.

## **13 DEFINITIONS**

In the Contract the following terms have the meanings shown next to them:

### **Annual Minimum Call Spend**

The minimum annual sum of money that will be spent by the Customer on Call Charges commencing on the Switchover Date or any anniversary thereafter during the term of the Contract

**Business Customer**

Any Customer with whom DAM Telecommunications enters a Contract to provide the Service to Business premises for business purposes

**Call**

A signal, message or communication that is silent, spoken or visual on each line that DAM Telecommunications agrees to provide to the Customer under this Contract

**Call Charges**

The sum of money, plus VAT, which to payable by the Customer per Call to DAM Telecommunications

**Call Level**

The sum of money the Customer anticipates to spend on Call Charges during the period covered by the Customer's invoices and is agreed by DAM Telecommunications subject to acceptable credit checks

**Charges**

All sums (plus VAT) payable by the Customer to DAM Telecommunications in respect of the Service including but not limited to the Call Charge and Line Rental Charge

**DAM Telecommunications**

Of DAMtel House, 18 Soho Square, London, W1D 3QL registered in England No. 06928449

**DAM Telecommunications Equipment**

Any equipment, including any Software, owned or controlled by DAM Telecommunications and placed on the Site to provide the Service

**Conditions**

The Conditions for DAM Telecommunications Telephone Services

**Contract**

The agreement for the provision of the Service between DAM Telecommunications and the Customer

**Customer**

The person with whom DAM Telecommunications contracts to provide the Service.

**Customer Equipment**

Any equipment, including any software, for use with the Service that is not part of DAM Telecommunications' network and which is owned or controlled by the Customer

**Line**

A connection to the Network

**Main Telephone Socket**

The point where the Equipment is connected to the Network

**Minimum Period**

The period stated in the Notification Letter, measured from the Service Start Date

**Network**

The fixed line telecommunications network operated by the Network Operator

**Network Operator**

The operator who operates a network to which the Line is connected

**Notification Letter**

The statutory transfer letter sent by DAM Telecommunications to the Customer regarding the Customer's transfer to DAM Telecommunications such letter to include details of the Switchover Date

**Relevant Standards**

The standards designated under s.22 of the Telecommunications Act 1984 as amended by any subsequent Act or Regulation

**Residential Customer**

Any Customer DAM Telecommunications makes this Agreement with where the Service is to be provided to a place of residence for non-business purposes. It includes a person who DAM Telecommunications reasonably believes is acting with the Customer's authority or knowledge

**Service**

All or part of the Service as defined in clause 1.1 and "Services" shall be construed accordingly

**Service Start Date**

The date on which the Service is first made available to the Customer such date being the date informed to the Customer in the Notification Letter

**Service Level**

The standard of Service set out in the Service Schedule

**Site**

The place(s) at which DAM Telecommunications provides the Service

**Software**

Any software and associated written and electronic documentation and data provided by DAM Telecommunications under the Contract

**Special Entry**

Any additional entry to the appropriate phone book requested by the Customer in addition to the regular information published about the Customer in any phone book issued by BT

**Subsequent Term**

A further period of the same duration as the Minimum Term

**Switchover Date**

The date of transfer of the Service to DAM Telecommunications as notified to the Customer in the Notification Letter

**User**

Anyone who is permitted by the Customer to use or access the Service