

# Service Order Terms and Conditions

Onwave UK Ltd

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## Service Order Terms and Conditions

### Direct Contract with Customer v11.0

#### 1. DEFINITIONS

In these terms and conditions the following expressions shall have the following meaning:

'Additional Services' means such consultancy and other services which are provided by Onwave at the Customer's request in addition to those detailed in the Service Order;

'Billing Period' means one calendar month unless otherwise stated in the Service Order.

'Charges' means the charges to be paid by the Customer for the provision of the Service(s) as detailed in the Service Order and these Terms.

'Customer' means the person, company, unincorporated association, partnership or other entity detailed on the Service Order.

'Delivered Service' means Service(s) in relation to which Onwave provides transit and routing from the Onwave nominated point of presence to the Customer's or Customer's site using Service Equipment and, includes any dedicated circuits procured for transit routing.

'Customer Equipment' means equipment, systems, cabling and facilities provided by the Customer (or Customer where applicable) and used in conjunction with the Service Equipment in order to obtain the Service(s), including the means by which electrical power is supplied to the Service Equipment.

'Evaluation Period' means a period of 2 days from the Ready for Service date.

'Exempted Failure' means any failure in the Service(s) resulting in Service Interruption which results directly or indirectly from any or all of the causes listed in Clauses 16.b)(i) to 16.b)(iv).

'Head Contract' means the first Service Contract entered into between Onwave and the Customer whereby Onwave agrees to provide Services and Service Equipment to that Customer at multiple sites or for multiple personnel of the Customer both under the Head Contract and under Related Service Contracts.

'InControl2' is Peplink's cloud-based endpoint management system where connected devices can be recorded. InControl2 aggregates data to generate useful reports on all aspects of your network. Onwave supplies access to InControl to its Customers.

'Initial Period' means the period starting upon acceptance of the Service Order by Onwave in accordance with Clauses 2.c) and 2.e), and ending on the last day of the Initial Term.

“Initial Term” means the period commencing on the Ready for Service Date and lasting for the number of months specified in the Service Order or where this Service Contract is a Head Contract lasting until all Services provided by Onwave under Related Service Contracts have terminated.

'IP' means Internet Protocol. 'Internet Standards' means the protocols and standards set out in the Internet Request for Comment documents: STD0001 and any future similar protocols and standards (including those issued by RIPE, InterNIC and Nominet). 'Internet Traffic Routing' means the transmission of IP data packets between the Service Equipment and the Network Boundary Point.

'Full Internet Traffic Routing Service' means Internet Traffic Routing associated with all Internet hosts which correctly advertise their routes (either directly or indirectly) to Onwave according to the relevant Internet Standards, to the extent that the agreement(s) between Onwave and the connected host(s) and the agreement(s) between Onwave and any intermediate network(s) permit.

'UK Internet Traffic Routing Service' means Internet Traffic Routing associated with all Internet hosts which correctly advertise their routes (either directly or indirectly) to Onwave according to the relevant Internet Standards, where the data path between the Service Equipment and the Internet host concerned lies entirely within the United Kingdom, to the extent that the agreement(s) between Onwave and the connected host(s) and the agreement(s) between Onwave and any intermediate network(s) permit.

'Name' means any name specifically requested by or allocated to the Customer for the provision of the Service(s) including any domain name or mailbox name.

'Network Boundary Point' means the point at which an IP data packet passes from equipment wholly managed by Onwave to or from equipment not managed by Onwave. The boundary between Customer Equipment and Service Equipment is a Network Boundary Point, as is the point of interconnect between networks provided and maintained by Onwave and other networks with which Onwave is interconnected.

'Notice' means notice in writing. 'Period of Notified Service Interruption' means the period of Service Interruption commencing on the Service Interruption Notification Point and ending on the date the Service Interruption is cured and the Service(s) re-commences but excluding any period where any delays in Onwave's ability to take diagnostic or remedial action are attributable to the Customer, or where the Customer is in breach of these Terms.

'Rate Card' means Onwave's list of rates and charges for products and services current from time to time as notified by Onwave.

'Ready for Service Date' means the date the Service(s) are installed, tested and handed over by Onwave to the Customer for testing in accordance with Clause 12.a) and billing commences.

'Related Service Contracts' means any and all Service Contracts which are entered into between Onwave and the Customer as a result of a Head Contract.

'RIPE' means the European Internet Registry.

'Scheduled Maintenance' means maintenance affecting the Service(s) of which the Customer has been informed in writing or by email to the Customer's nominated e-mail address by Onwave.

'Service(s)' mean the Internet-related services to be supplied by Onwave to the Customer under these Terms and detailed in the Service Order.

'Service Contract' means the contract formed between the Customer and Onwave in accordance with Clause 2.e) incorporating these Terms, the Service Order and the Service Level Agreement (if any).

'Service Equipment' means the equipment, cabling and systems provided by Onwave (or its subcontractors) which is required for the delivery of the Service(s) but excluding any Customer Equipment.

'Service Interruption' means any failure to meet the Service Level Agreement which occurs during any period after the Evaluation Period and which is due to a failure of Service Equipment provided by Onwave or Onwave personnel used to provide the Service(s), and which failure is not excused or permitted under these Terms but excludes any Exempted Failure or suspension of the Service(s) pursuant to Clause 18.

'Service Interruption Notification Point' has the meaning set out in Clause 17.d).

'Service Level Agreement' means the service level agreement found @ <https://onwave.com/standard-sla/>

Or attached to these Terms if any.

'Service Order' means the Service Order attached to these Terms describing the Service(s) being purchased by the Customer and any replacement service order which is accepted by Onwave in accordance with Clause 2.

"Software" means any Onwave supplied software used to configure or run Service Equipment or Service(s).

'Terms' means these terms and conditions.

'The Internet' means the publicly accessible non-proprietary global data network comprising interconnected networks using.

## 2. SERVICE ORDER AND FORMATION OF CONTRACT

- a) Following a request for service(s) by the Customer to Onwave or Onwave's agent, Onwave shall issue the Customer with a draft service order detailing the Customer's requirements and the estimated charges for the service(s) requested. The charges quoted shall remain valid for a period of 30 days from the date of the draft service order sent to the Customer by Onwave or its agent. Quotations are subject to withdrawal and alteration at any time before acceptance by Onwave under Clause 2b) and are automatically withdrawn unless the service order is accepted and returned to Onwave pursuant to Clause 2b) within 30 days from the date of the quotation.
- b) The Customer shall review the draft service order provided by Onwave and if in agreement shall return this to Onwave or Onwave's agent duly signed or provide a purchase order for the supply of services detailed in the service order.
- c) Once the Customer has confirmed its acceptance of a service order by; returning a signed copy of the service order to Onwave, or by issuing a purchase order or purchase order number, provided these do not seek to amend the service order or these terms and conditions, a contract shall be formed between the Customer and Onwave for the supply of the service(s) detailed in the draft service order.
- d) Onwave reserves the right to accept or reject any service order returned by the Customer in its absolute discretion.
- e) These Terms apply to the Service Contract to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 3. REPLACEMENT SERVICES AND ADDITIONAL SERVICES

- a) Any new service or change to the Service(s) required by the Customer must be requested via a new service order in accordance with Clause 2 unless otherwise agreed by Onwave. Where a change is requested by the Customer which is accepted by Onwave but results in an overall reduction of the Charges receivable by Onwave under this Service Contract, Onwave reserves the right to charge the

Customer a sum equal to the difference in the revised Charges and the total Charges that would have been received by Onwave for the remainder of the Initial Period had the change not been requested

- b) A service order that states that it supersedes a previous service order automatically terminates the service(s) supplied under that previous service order from the Ready for Service Date of the replacement service(s). Onwave reserves the right to charge the remainder of the Charges that were payable under the superseded service order for the remainder of the initial term of that service order where any replacement service order results in an overall reduction of Charges receivable by Onwave.
- c) Any existing service orders which are either: referred to as 'Executed in parallel with new Service Order(s)' in the new service order, or not referred to at all in the new service order, continue un-amended.

#### 4. CHANGES AND ALTERATIONS TO THE SERVICES

- a) Onwave may occasionally change or alter the configuration of the Service(s) and the technical functionality of the Service(s). Onwave will, where practicable, use reasonable efforts to give at least 10 days (ten days) prior notice to the Customer of any such change or alteration. Onwave undertakes that any such configuration or functionality change shall not result in diminished Service(s) being provided or result in any increased cost to the Customer.
- b) Onwave may from time to time and without notice change or alter the networks to which Onwave connects provided that no such changes or alterations shall result in any increase in Charges or cause any material change in the performance of the Service(s) to the Customer, unless such change is mutually agreed with the Customer including a mutually agreed notice period, and where such change will be executed through a replacement Service Order.

#### 5. SOFTWARE AND CONFIGURATION

- a) Onwave will supply Software to configure the Service Equipment. Onwave is responsible for ensuring that the Software operates in accordance with its generally accepted specification but accepts no responsibility for any failure of the Software resulting from any unauthorised use, alteration or modification by the Customer.

#### 6. SERVICE(S) CONNECTIVITY

- a) The Service(s) provides IP connectivity using Onwave's hardware and delivered over Onwave's networks with a combination of individual ADSL, SDSL, Satellite, Ethernet First Mile and Fibre based service provided to the Customer.
- b) Where the customer provides lines in support of DSL services provided by Onwave, Customers must maintain this contract (whether with Onwave, BT, TalkTalk Business or another third party) for the use of these provided analogue direct exchange lines. Where the Customer does not have or does not maintain such a contract for the use of an analogue direct exchange line Onwave reserves the right to:
  - i) reject an order; and/or
  - ii) charge the Customer for all work undertaken as a result as calculated in accordance with its Rate Card; and/or
  - iii) cease providing the Service(s) to the Customer in which case Onwave reserves the right to charge the Customer appropriate termination charges calculated in accordance with its Rate Card.
- c) Where the Customer provides lines, the Customer will indemnify Onwave against all claims, legal proceedings, liabilities, losses, costs (including legal costs) and expenses suffered or incurred by Onwave as a result of the Customer not having a contract for the use of a BT provided analogue direct

exchange line as referred to in Clause 6b), or where the Customer has not given or obtained permission for Onwave to carry out any work in connection with this Service Contract.

- d) Where Onwave provides a Hybrid service this must only be used to provide connectivity via the managed equipment/routers provided by Onwave. The Customer is not entitled to interfere with any equipment or software provided by Onwave. If Onwave determines in its reasonable opinion that the Customer has used the line for any other purpose, then Onwave may recover from the Customer all sums reasonable costs incurred by Onwave or on its behalf in connection with the misuse of the service by the Customer.

## 7. IP ADDRESSING

- a) The IP address to be used by the Customer will be provided by Onwave.
- b) The Customer warrants that the Name it requires does not in any way infringe the intellectual property rights of any third party and hereby indemnifies Onwave against all claims, liabilities, damages, losses, costs and expenses which may be suffered or incurred by Onwave as a result of a breach of this warranty by the Customer.
- c) The Customer acknowledges that Onwave cannot guarantee that any Name requested by the Customer will be available or approved for such use. Onwave shall be entitled to require the Customer to select a replacement Name and may suspend the Service(s) if, in the reasonable opinion of Onwave, it believes that the Customer's choice of Name may be in breach of the warranty in Clause 7b).
- d) The Customer shall comply with the terms of use as set out in Clause 29.

## 8. INTERFACES

- a) Demarcation point – Onwave. This is defined as the LAN port on Onwave's equipment i.e. hand off to LAN.
- b) Demarcation point –Customer. The Customer is responsible for all equipment handed off from the Onwave LAN port into the Customer LAN. Any proposed change to the location of the Customer's network termination equipment requires Onwave's prior consent and is subject to a site survey both of which are chargeable at Onwave's then applicable rates as notified in advance to the Customer.

## 9. CUSTOMER SERVICE(S) PROVISION AND MIGRATION

- a) Customer access requests may be subject to a survey being carried out by Onwave and may be rejected by Onwave if the survey indicates the supply of Service(s) is not technically feasible, or if other circumstances beyond Onwave's reasonable control prevent the survey from being carried out in which case Onwave will notify the Customer of the reasons for the rejection.
- b) Where a site visit is required, Onwave and the Customer will agree appointment slots for the installation of the Customer NTEs.
- c) The Customer acknowledges that the provision of the Service(s) to the Customer's site may result in the Customer experiencing a temporary loss of analogue direct exchange line service whilst installation is being carried out and that any incorrectly wired extensions to the Customer's existing master socket forming part of the BT Network will be left disconnected.
- d) All appointments, changes to appointments and access arrangements with the Customer will be handled via the Customer's nominated contact. However, the Customer agrees that once Onwave has accepted a request for Customer access, Onwave or BT Openreach may contact the Customer directly in relation to the arrangements of such provision.
- e) If any Excess Construction Charges (ECC) are identified such charges must be accepted by the Customer before work on the Service Order can continue. Where such ECC are identified, if no

acceptance of such ECC is provided by the Customer within 8 working days of notification by Onwave of such ECC, the charges will be considered rejected and the Service Order deemed cancelled.

- f) Onwave reserves the right, where the Onwave is not at fault, to cancel any access order where the Customer has failed to agree with Onwave an activation date or (where required) an installation appointment date within 30 days from the previously agreed activation or installation appointment date, whichever is the later. If Onwave cancels the order in accordance with this Clause, the Customer must pay the cancellation charges in accordance with the Rate Card.
- g) Where a Customer requests cancellation of the Service Order after it has been accepted by Onwave in accordance with Clause 2 any such cancellation shall be in Onwave's sole discretion and subject to the Customer paying a termination fee calculated in accordance with the Rate Card and including all costs and expenses incurred by Onwave in connection with the Service Order.
- h) The Customer is responsible for safe storage of the Service Equipment following delivery to the Customer's premises.

## 10. SERVICE ASSURANCE AND PROBLEM MANAGEMENT

- a) Onwave will provide a support and service management facility to the Customer to perform the following functions: (i) receiving, logging and dealing with enquiries relating to faults identified as being the Onwave's responsibility; and (ii) investigation, diagnosis and repair of faults; and (iii) co-ordination of fault repair.
- b) The Customer's nominated contact(s) will be the only point(s) of contact with Onwave for the notification of all faults with the Service(s) and fault resolution.

## 11. SERVICE CONSTRAINTS

- a) The Customer acknowledges and accepts the following technical limits relating to the Service(s):
  - i) transmission performance of some metallic local loops will mean it may be technically impossible to provide the Service(s) to all potential customers within the service availability area specified by Onwave;
  - ii) that elements of the Service(s) cannot be used over a customer access which is used for certain other BT services.
  - iii) that the Service(s) may also affect the performance of some PSTN customer premises equipment;
  - iv) that some technical limitations within the BT and Onwave networks may not become apparent until after the Service(s) has been installed and working for some time;
  - v) downstream and upstream burst rates may be reduced by contention;
  - vi) where BT re-locates any network equipment it is possible that Customer access will cease to be operational. In these circumstances the Service(s) may need to be withdrawn. In these circumstances Onwave will rebate any Charges which have been paid in advance on a pro rata basis and will provide as much prior notice as practicable of any such relocation.
- b) Where Onwave accept the use of the Customer's BT provided analogue direct exchange line for provision of DSL services, the Customer must have a contract for the use of a BT provided analogue direct exchange line which terminates on a BT public switched telephone network master socket forming part of the BT Network, this must be maintained for the duration of this Service Contract.
- c) In the circumstances referred to in Clause 11a) (except in respect of any service credits which may be due in accordance with these Terms), Onwave will have no liability to the Customer relating to the provision of the Service(s) or Onwave's inability to provide the Service(s), the performance of the Service(s), its effect on other services or equipment or the withdrawal of the Service(s).

## 12. INSTALLATION AND EVALUATION

- a) Onwave shall notify the Customer when the Service(s) have been installed, (or re-installed if Clause 12c) applies).
- b) Following notification by Onwave under Clause 12a), the Customer shall test and evaluate the Service(s) during the Evaluation Period. The provisions of this Clause 12a) apply to new Service(s) and upgrades of Service(s). Failure to notify Onwave of any failures/interruptions within the Evaluation Period will be considered acceptance of the Service.
- c) The Customer shall notify Onwave of any failures or interruptions in the Service(s) during the Evaluation Period. Onwave will use all reasonable endeavors to remedy each such failure notified to it. Once the failure has been remedied, Onwave will notify the Customer of the re-installation of the Service(s), upon which the Ready for Service Date shall be adjusted and a further Evaluation Period shall commence.
- d) Upon completion of the Evaluation Period (where there is no outstanding notification of any failures/interruption in the Service(s) the Customer shall be deemed to have accepted the Service(s) with effect from the Ready for Service Date.

## 13. BILLING AND PAYMENT

- a) Any Additional Services and data allowance overage charges shall be charged for in accordance with the rates specified by Onwave.
- b) Charges shall be due monthly in advance unless otherwise stated in the Service Order. Charges for the Service(s) will fall due from Ready for Service whether or not use is made of the Service(s).
- c) Charges will be apportioned at a daily rate for any periods where the Service(s) are not provided for a complete Billing Period. Apportionment of the Charges will be based on the number of days the Service(s) was available to the Customer, divided by the number of days in that Billing Period.
- d) The Customer shall pay the Charges within 10 days of Onwave's invoice by direct debit or EFT to the bank account designated by Onwave for this purpose unless otherwise agreed. Time for payment shall be of the essence of the contract. Where payment terms or credit facilities have been agreed, including any requirement to make payment with order or in advance of delivery, then notwithstanding anything to the contrary in these Terms, the Customer must pay Onwave in accordance with the payment terms and credit facilities agreed. Notwithstanding any such agreement, Onwave reserves the right to vary such payment terms or credit facilities with immediate effect on written notice to the Customer where the Customer is in breach of these Terms or any Contract, including requiring the Customer to make payment with order. The permitted methods of payment are by way of: (i) bank transfer to the bank account number provided by Onwave for this purpose (ii) credit or debit card payment over the phone (iii) direct debit (iv) alternative payment method as agreed with Onwave in advance of the Ready for Service Date. All banking transaction costs associated with such transfer shall be paid for by the Customer.
- e) Where the Service Order replaces a previous service order, charges under the replaced service order shall stop accruing at this time. If installation or re-installation is unreasonably delayed by the Customer, Onwave reserves the right to treat an earlier date as the Ready for Service Date for the purposes of this Clause and these Terms.
- f) Onwave reserves the right to carry out a credit check against the Customer prior to the acceptance by Onwave of the Service Order.
- g) If the Customer disputes the amount of any invoice made it must inform Onwave in writing within 10 days (ten days) of receipt of the relevant invoice. If it fails to do so an invoice will be deemed to be accepted.
- h) Interest shall be chargeable on any amounts overdue at the rate of 4% a year above the Bank of England's base lending rate from time to time to run from the due date for payment until receipt by Onwave of the full amount whether or not after judgment and without prejudice to any other right or remedy of Onwave. Interest under this Clause shall accrue on a day-to-day basis calculated by

Onwave upon such terms as Onwave may from time to time determine and shall be compounded on the last working day of each month.

- i) The Customer shall also pay all legal fees and other costs incurred by Onwave in connection with collecting or recovering amounts owed by the Customer under this Service Contract. Until payment in full is received by Onwave of any amounts owed under this Service Contract, (except for amounts which are disputed by the Customer and in respect of which the Customer has given written notice to Onwave) Onwave shall be entitled (and reserves the right) to withhold any or all parts of any Service(s) supplied under this Service Contract until such time as payment in full is received and charges for Service(s) shall continue to accrue.
- j) All Charges are exclusive of VAT and all other applicable taxes which if applicable must be paid in addition to the Charges.
- k) Unless agreed otherwise by Onwave, all sums due to Onwave under this Service Contract shall be paid by the Customer in full (without any set-off, deductions or withholdings whatsoever) by electronic transfer or such other method as may reasonably be agreed by Onwave from time to time. If it is not clear to Onwave from the remittance information provided by the Customer which invoice is being paid, Onwave reserves the right to apply the payment to the oldest balance due under this Service Contract.
- l) All amounts due to Onwave under the Service Contract shall be paid in UK £ (sterling) unless otherwise stated in the Service Order.
- m) All Charges payable to Onwave under the Service Contract shall become immediately due on termination of the Service Contract (other than as a result of Onwave's breach).
- n) The InControl2 platform is provided for guidance and information purposes only, it cannot be relied on by the Customer for any invoicing or otherwise. For this reason, we make no representations or warranties as to the availability or accuracy of this information. Fundamentally data usage within InControl2 is not measured in the same way or at the same point as it is measured by the mobile networks, it does however offer a reasonably good indication of usage. We have generally found the information to be accurate to within a tolerance of +/-5%, again no guarantees. Because of this the data usage charges that are billed by Onwave are taken from CDR reports issued directly by the Mobile Network Providers, these are aggregated and billed to the site to the nearest whole GB.
- o) If the Customer has a specific query relating to the data usage of a SIM Card provided and Onwave deems such query to be reasonable, the Customer is entitled to request from Onwave: a detailed report showing the itemised data usage that SIM Card; Onwave reserves the right to charge a fee of £35.00 (plus VAT) for the provision of any such report. In the event of any dispute regarding data usage of a SIM Card Onwave and (if applicable) the relevant Network Provider's usage data shall be binding on the Customer and Onwave.

## 14. PRICE CHANGES

- a) Unless otherwise stated in the Service Order, after the Initial Period Onwave may change the Charges by giving 30 days (thirty days) prior notice to the Customer. Any change in the Charges shall take effect in the Billing Period which follows the Billing Period when Onwave's notice was given.
- b) In the event of an increase in Charges, the Customer may, within one month of receipt of such notice, by giving written notice to Onwave, terminate the Service Order.
- c) Where the contract is anything other than a Monthly Rolling Contract at the end of the Initial Period and subject to any increase in the Charges under 14a, ongoing Monthly Charges will be calculated on the basis of the Total amount repayable over the Initial Term divided by the length of the contract; First Payment + (Monthly Payments x Contract Term) Contract Term.



## 15. EQUIPMENT

- a) The Customer acknowledges that Onwave and its subcontractors may substitute, change, rearrange, or reconfigure the Service Equipment at any time, provided that such change does not alter the technical functionality of the Service(s) except where such alteration is specified in a service order or otherwise agreed.
- b) Where practicable, Onwave shall give the Customer 30 days (thirty days) prior notification of any substitution, change, rearrangement or reconfiguration of the Service Equipment.
- c) Ownership of the Service Equipment including all equipment denoted with a serial number provided by Onwave, shall at all times remain with Onwave (or its supplier, lessor or subcontractors) and the Customer shall not create or allow any charges, liens, or other encumbrances whatsoever to arise over any of the Service Equipment.
- d) If the Customer wishes to change the site at which the Service(s) are delivered, such request must be made by way of a service order. Onwave may require payment of any reasonable charges for installation at the new location and any reasonable Service(s) support costs resulting from such change.
- e) On delivery to the Customer's site risk in the Service Equipment transfers to the Customer and the Customer must have adequate insurance in place to cover this risk.

## 16. FAULT RESOLUTION

- a) Where a defect, fault or impairment in the Service(s) causes a Service Interruption and the Customer notifies Onwave of such default, fault or impairment, then Onwave shall use all reasonable endeavors to resolve that defect, fault or impairment as quickly as is reasonably possible.
- b) If Onwave determines in its reasonable opinion that such a defect, fault or impairment results directly or indirectly from:
  - i) the negligence, act, omission, or default of the Customer,
  - ii) the Customer's material breach of this Agreement, or
  - iii) the operation, failure or malfunction of any network, equipment or software owned or controlled by the Customer (including, Customer Equipment) other than Service Equipment provided by Onwave, or
  - iv) any third party action in response to an act or omission of the Customer, or any person given access to the Service by the Customer; then Onwave may recover in advance from the Customer all costs to be incurred by it or on its behalf in connection with the remedy of such defect, fault or impairment.
- c) The functionality and maintenance of all equipment (including dedicated circuits) which are provided by the Customer shall remain the full responsibility of the Customer as the case may be.

## 17. SERVICE INTERRUPTION

- a) In respect of Service Interruptions, the Customer can apply for service credits in accordance with any agreed Service Level Agreement.
- b) A service credit under Clause 17a) will only be granted if the Customer continues to comply with all of its obligations under this Service Contract and where Onwave agrees that a Service Interruption has occurred and a service credit is due to the Customer. Where a service credit is granted Onwave shall have no further liability for the Service Interruption.
- c) Where a service credit is granted it shall be applied against future Charges under this Service Contract, and is not available as a refund, or as credit against charges made by Onwave under any

other service orders. Where the Customer has given notice to terminate this Service Contract credit allowances will be deducted in the final Billing Period.

- d) If the Customer becomes aware of a Service Interruption it must notify Onwave, and obtain a fault log number from Onwave. For the purposes of determining the Customer's entitlement to any credit allowances the "Service Interruption Notification Point" is the point at which the Customer obtains a fault log number from Onwave.
- e) Where Onwave is unable to contact the Customer in order to confirm or seek resolution to a Service Interruption, such period shall not constitute a Service Interruption and no credit allowance will be payable by Onwave for such periods. Calls to the Customer advising of Scheduled Maintenance and other general Customer service calls shall not constitute Service Interruption Notification Points.
- f) Where a Service Interruption requires Onwave to arrange an on-site visit, Onwave reserves the right to levy a "fault not found" fee to the Customer should such site survey identify that the cause of the Service Interruption is the responsibility of the Customer or sub- contractors of the Customer. This may include (but is not limited to) power surges, outages, faulty equipment (not Service Equipment) and damage or interference to equipment installed by Onwave or its suppliers. "Fault not found" and other additional work such as, but not limited to, consultancy engineering will be charged for in accordance with the Rate Card.

## 18. SERVICE SUSPENSION

- a) Onwave shall be entitled in its sole discretion and without prejudice to its other remedies to suspend the Service(s) forthwith until further notice where:
  - i) Onwave is entitled to terminate this Service Contract, or
  - ii) Onwave needs to carry out Scheduled Maintenance or unscheduled maintenance to the Service Equipment or any other equipment or configurations of equipment which are used to provide the Service(s); or
  - iii) Onwave is obliged to comply with an order, instruction or request of Government, an emergency service organisation or other competent administrative authority; or
  - iv) the Customer fails to pay any Charges or other amounts due to Onwave under this Service Contract or any other service order within 14 days (fourteen days) of Onwave notifying the Customer of any payment arrears.
- b) While Onwave makes every attempt to perform maintenance within the Scheduled Maintenance window there are events that dictate that very urgent maintenance activities are required within the 5 day alert period. In the event that such emergency maintenance is required Onwave will use its reasonable endeavours to give prior warning of service degradation or risk of it and will endeavour to keep such maintenance to the period between 18.00 – 08.00 Greenwich Mean Time (GMT).
- c) Where Onwave exercises its right to suspend the Service(s) pursuant to Clauses 18a), it shall where reasonably practicable give prior notice to the Customer of such suspension. For the avoidance of doubt a suspension of the Service(s) shall not be construed as or deemed to be a Service Interruption unless it is as a consequence of unscheduled maintenance.
- d) Where the suspension is implemented other than as a consequence of an Exempted Failure or other breach, fault or omission of the Customer, Onwave shall make no charge to the Customer in respect of the suspension and/or recommencement of the provision of the Service(s).
- e) Where suspension is due to an Exempted Failure or other breach, fault or omission of the Customer, Onwave may require the Customer to pay all reasonable costs and expenses incurred by Onwave in connection with any such suspension and recommencement of the Service(s).

## 19. SERVICE LEVELS

- a) Onwave will use reasonable endeavours to comply with the quality of service levels defined in the Service Level Agreement but such levels are targets, Onwave has no liability for any failure to meet such targets.

## 20. WARRANTIES

- a) Onwave warrants that the Service(s) will be performed by appropriately qualified and trained personnel, with reasonable care and diligence
- b) Where the Customer's acts or omissions result in Onwave breaching the warranty in Clause 20a), Onwave shall not be liable as a result.
- c) All other representations, conditions, warranties and terms relating to the Service Equipment and or Service(s) supplied by Onwave under or in connection with this Service Contract (whether statutory or otherwise, and including any as to the fitness for a particular purpose, satisfactory quality or merchantability) are hereby excluded to the fullest extent permitted by law.
- d) Onwave shall be under no liability under the warranty in Clause 20a) (or any other warranty, condition or guarantee) while any sum is overdue from the Customer to Onwave.

## 21. LIABILITY AND SERVICE CONTINUITY

- a) Nothing in this Agreement shall limit Onwave's liability for death or personal injury resulting from negligence or for fraud or fraudulent misrepresentation.
- b) Onwave maintains public liability cover in respect of all generally accepted risks, including the acts and omissions of its staff whilst on Customer's premises. Subject to Clause 21a) Onwave accepts liability in the event that the Customer suffers actual physical loss or damage to premises or property, which is proven to be the direct consequence of the negligence of Onwave or its staff to a limit of £5000 per claim or series of claims arising out of the same events or circumstances and to £1,000,000 (one million pounds) in total in respect of all claims.
- c) The Customer acknowledges that its sole and exclusive remedy in respect of Service Interruptions shall be the provision of service credits as provided in Clause 17.
- d) Subject to Clause 21a) in no event will Onwave be liable to the Customer or any third party for or in respect of direct or indirect loss of or damage to: (i) anticipated profit; (ii) revenue; (iii) business; (iv) opportunities; (v) anticipated savings; Service Order Terms and Conditions Onwave (vi) data; (vii) goodwill; (viii) reputation; (ix) use; (x) all other indirect or consequential loss or damage.
- e) Each of the sub-clauses in Clause 21d) constitute separate terms. If there is any claim or finding that any of such sub-clauses is unenforceable for any reason, it shall not affect any other provision within Clause 21d).
- f) Subject to Clause 21a) and without prejudice to Clause 21b), Onwave's aggregate liability arising under or in connection with these Terms (whether such liability arises from negligence, breach of contract or howsoever) in respect of each event or series of connected events shall be as follows: (i) for any Service Interruption which is not attributable to the Customer or any Customer shall be limited to the service credits referred to in Clause 17.b) which shall, unless otherwise agreed, not exceed 100% of the Charges payable by the Customer in a Billing Period. For the avoidance of doubt, the service credits shall be the Customer's sole and exclusive remedy in damages in respect of any such Service Interruption; (ii) for all other claims and all connected claims arising from the same event or series of events under the Service Contract the greater of £5,000 (five thousand pounds) or the total Charges payable by under this Service Contract for the Billing Period when the claim (or the first claim in any series of connected claims) occurs.

### 21.1 Matters outside the control of Onwave

- a) The Service(s) may be used by the Customer to link to the Internet and beyond Network Boundary Points. The Customer acknowledges and agrees that Onwave has no effective control over the materials accessible on nor the quality of the service obtainable through such networks and services, and that Onwave is not responsible in any way for any other part of such networks, services and materials beyond Network Boundary Points.

### 21.2 No liability for third party costs or charges

- a) Onwave is not responsible for any use the Customer may make of the Service(s), nor for any charges that the Customer may incur with any third party, nor for any software running in conjunction with the Service(s) (except as provided for in this Service Contract or the Customer Agreement). The Customer hereby indemnifies Onwave against the effects of any misuse of the Service(s) or any claims resulting from that misuse or from any Customer or third party.
- b) The Customer shall indemnify Onwave against all third party claims resulting from defacing of or damage caused to the premises occupied by any Customer by reason of necessary works carried out to affect the installation of the Service Equipment provided there has been no breach of the warranty contained in Clauses 20.a).

## 22. TERM AND TERMINATION

### Automatic renewals and extensions

- a) In the absence of either party exercising any termination rights under these Terms, this Service Contract shall continue for the "Initial Period" and shall automatically be renewed thereafter on a 1 month by 1 month with the exception of fibre circuits which shall automatically be renewed thereafter on a 3 month rolling basis until terminated in accordance with these Terms. Where this Service Contract is a Head Contract then it shall terminate on the earlier of the following (i) the date upon which the Services provided by Onwave under any and all Related Service Contracts terminate or (ii) earlier termination by Onwave under Clause 22c)
- b) The Service Contract may be terminated by either party after the "Initial Period" provided that notice is given to the other party of not less than 30 days prior to the expiry of a renewal period, such notice not to expire prior to the end of the Initial Period.
- c) Onwave may terminate this Service Contract immediately by notice to the Customer where: (i) the Customer fails to pay any sums when due to Onwave under these Terms and fails to make such payment within 14 (fourteen) days of Onwave notifying the Customer of any payment arrears; (ii) the Customer breaches any provision of this Service Contract and either the breach is not capable of cure or if capable of cure is not cured by the Customer within 30 days (thirty days) after receipt of notice from Onwave; or (iii) the Customer becomes insolvent, has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets or if

any event analogous to any of the foregoing shall occur in any jurisdiction in which the Customer is incorporated, resident or carries on business.

- d) Where this Service Contract is terminated during the "Initial Period", (unless this is due to Onwave's material breach), then Onwave reserves the right to charge all the remaining amounts payable for the remainder of the Initial Period which the Customer shall pay.
- e) Upon termination of this Service Contract for any reason the Customer shall return, or procure the return at its own cost, of the Service Equipment within 30 days of the date of termination. Where the Customer fails to return the Service Equipment as required or repossession of the Service Equipment is rendered impossible by reason of total loss, or refusal of access or for any other reason whatsoever the Customer shall indemnify Onwave for the full replacement cost (on an "as new" basis) of the Service Equipment together with all costs and expenses incurred by Onwave or its authorized representatives in locating, repossessing or recovering the Service Equipment.
- f) Whenever Onwave has the right to terminate this Service Contract it may suspend the provision of the Service(s) before exercising this right.
- g) The Customer may terminate this Service Contract forthwith by written notice to Onwave if Onwave is in material breach of any material provision of these Terms and either the breach is not capable of cure or if capable of cure is not cured by Onwave within 30 days (thirty days) after receipt of notice from the Customer.

## 23. OBLIGATIONS OF PARTIES

### Customer Site Access and compliance with standards

- a) The Customer shall allow and facilitate for Onwave and its subcontractors' access to the Customer's premises as is appropriate and necessary for the installation, provision and maintenance of the Service(s), the Service Equipment and the performance of Onwave's rights and obligations under these Terms. The Customer shall ensure that Onwave and its subcontractors, is provided at no charge, with such space and electrical power as is required by them to enable it to maintain the Service(s) and Service Equipment. The Customer shall ensure it maintains a telephone line and shall notify Onwave of the number of such line.
- b) The Customer shall advise Onwave of all health and safety at work rules and regulations and any other reasonable security requirements operated at the Customer's premises, and Onwave agrees to observe such regulations whilst at the Customer's premises, provided that Onwave shall not be liable under this Agreement, if as a result of conforming with such regulations, Onwave is in breach of its obligations under these Terms. Onwave reserves the right to charge for all time spent in undertaking any site assessments and other analysis of the health and safety risks associated with the delivery of the Services calculated in accordance with the Rate Card.
- c) It is the sole responsibility of the Customer to provide and maintain user access security and network access security in respect of the Service(s) and the Service Equipment.
- d) The Customer is responsible for identifying, monitoring, removing and disposing of any hazardous materials which are required to be removed by law prior to any installation work being performed by Onwave or its subcontractors, and the Customer shall indemnify, keep indemnified, defend and hold Onwave harmless from any liability it incurs relating to or arising out of the presence of hazardous materials on the Customer's premises.
- e) The Customer shall ensure at all times that the Customer Equipment and any other equipment, systems, cabling and equipment used by the Customer in connection with the Service(s) conforms to and complies with all relevant standards or requirements for approval at all times during the term of this Service Contract. Onwave reserves the right to disconnect any non-compliant Customer Equipment or other equipment of the Customer which causes degradation or prevents proper receipt of the Service(s). Licenses, consents and internet address protocols.
- f) The Customer shall obtain all necessary licenses, waivers, consents or registrations necessary to deliver, install, and keep installed the Service Equipment at the Customer's premises. Onwave will

advise the Customer of such requirements in so far as they relate to the Service Equipment and the date by which they are required to be fulfilled. Onwave advises on matters relating to the Service Equipment only, it does not, and cannot, advise on any other aspects that might affect an installation. The Customer is advised generally that an installation may involve matters of building control, planning permission or consent or health and safety at work.

- g) Onwave shall, if required by any applicable license granted under (or having force pursuant to) English law, or if requested by the Customer, notify or obtain any necessary permission or co-operation of a telecommunications network provider or other relevant person for the connection or maintenance of Service Equipment. The Customer shall have no liability whatsoever in any case where such notification is not given or such permission or co-operation is not obtained.
- h) Onwave hereby grants to the Customer all such licenses, waivers, consents and registrations as may reasonably be required by the Customer in connection with the operation of the Service Equipment but excluding any licenses of consents relating to planning or building control or health and safety.
- i) The Customer shall comply with the IP address allocation rules set out by RIPE. Any IP addresses assigned by Onwave to the Customer, its agent(s), or third parties are "Provider Aggregate" within the terminology of RIPE and shall remain at all times part of the aggregate announcement of Onwave ("Aggregate Address Space"). The Customer undertakes not to generate routing advertisements, or cause to be generated routing advertisements that contain any parts of Onwave's Aggregate Address Space without the express written permission of Onwave. The Customer undertakes not to use IP addresses within Onwave' Aggregate Address Space after the termination of the agreement under which they are granted. The Customer undertakes not to cause Onwave to make routing advertisements of any part of any third party's IP address space or any part of the Customer's IP address space which has been assigned to the Customer "Provider Aggregate" by another provider without the express written permission of the relevant third party or provider being supplied to both the Customer and Onwave. Care of Service Equipment and provision of power and other equipment
- j) As is appropriate and necessary the Customer agrees to house and maintain the Service Equipment in accordance with Onwave's instructions as may be notified to the Customer from time to time.
- k) The Customer agrees to ensure that there is made available a power supply within 1m of the Service Equipment. Failure to do so may result in Onwave not being able to properly monitor and cover the Service(s) as defined within the SLA. Failure of the power supply affecting the Onwave Service shall not constitute a Service Interruption for the purposes of these Terms.
- l) As is appropriate and necessary the Customer shall ensure that any instructions or manuals supplied by Onwave or the manufacturer of the Service Equipment are or will, prior to the Service Equipment being brought into use, be fully understood and observed by the Customer as applicable.
- m) As is appropriate and necessary the Customer shall take such further steps as recommended by Onwave or the manufacturer of the Service Equipment or as may be necessary to ensure that the Service Equipment will be safe and without risk to health and safety when properly used by the Customer.
- n) The Customer shall only operate the Service Equipment and permit the Service Equipment to be operated in a proper manner by persons who are competent to operate such Service Equipment.
- o) The Customer shall not make or cause or permit to be made any alteration, amendment, modification or addition to the Service Equipment, whether physically, electronically or otherwise without Onwave's prior consent in writing.
- p) As is appropriate and necessary the Customer shall at all times insure the Service Equipment covering the full replacement value of the Service Equipment against all risks. The interest of Onwave in the Service Equipment shall be noted on the policy and, in the event of loss or damage to the Service Equipment shall be payable direct to Onwave.
- q) The Customer shall have available all necessary equipment for which it is responsible to allow effective installation and use of the Service from the date agreed as "Ready For Service".
- r) The Customer shall be responsible for any and all damage to Service Equipment which is caused by an Exempted Failure, or any malfunction or failure of Customer Equipment or any other equipment or

facility provided by the Customer or its agents, employees, or suppliers. Compliance with Acceptable Use Policies.

- s) The Customer shall use and ensure the Service(s) are only used in accordance with the Acceptable Use Policy referred to in Clause 29 below as updated or amended from time to time.
- t) The Customer shall use its best endeavours to remove or prevent access to any material which causes or is likely to cause the Customer to be in breach of the Acceptable Use Policies, as soon as reasonably possible (and in any event, within 24 hours) following notification of such an occurrence by Onwave or by any appropriate government, judicial or regulatory body.
- u) The Customer shall allow Onwave to, and assist Onwave in the removal or prevention of, access to any statements and material which cause or are likely to cause the Customer to be in breach of the Acceptable Use Policies, irrespective of whether or not such removal or prevention of access involves impairment to the Service(s).
- v) The Customer shall indemnify and keep Onwave indemnified from and against all claims, proceedings, demands, liabilities, costs and expenses whatsoever arising out of, brought or threatened against Onwave by the Customer in connection with breach of the Acceptable Use Policies. Access to Service(s) Back-ups and data storage.
- w) The Customer undertakes that it will ensure that no third party may use or access the Service(s) except in accordance with this Service Contract.

## 24. INTELLECTUAL PROPERTY

- a) Intellectual property rights in all Software shall remain the property of Onwave or its relevant licensor. The Customer shall comply with (and if so required execute) any agreement proposed by the owner or licensor of such intellectual property rights providing (inter alia) for the protection of rights in such Software.

## 25. RIGHTS OF THIRD PARTIES

- a) No provision of this Service Contract shall be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## 26. FORCE MAJEURE

- a) Onwave shall not be liable in any way for loss, damage or expense arising directly or indirectly from any hindrance, failure or delay in performing any obligation under the Service Contract caused by the actions or omissions of the Customer, its employees, agents, contractors, or other third parties providing goods or services to or acquiring them from the Customer or by any circumstance beyond Onwave's reasonable control, which shall include war (or other action of military forces), terrorism, riot, civil commotion, sabotage, vandalism, accident, breakdown or damage to machinery or equipment, acts of God, fire, flood, severe weather conditions, extreme traffic congestion, strike, lock-out or other industrial disputes (whether or not involving employees of Onwave), legislative or administrative interference or national crisis (each an "Event of Force Majeure"). If an Event of Force Majeure continues for more than a period of 30 days Onwave shall be entitled at its discretion to perform, suspend performance of, and/or terminate the Service Contract.

## 27. ASSIGNMENT

- a) The Customer may not assign or transfer any of its rights or obligations under this Service Contract without the prior written consent of Onwave.
- b) Onwave may at any time assign, transfer, charge or deal in any other manner with any of its rights hereunder, and may sub-contract any or all of its obligations under the Service Contract.

## 28. MISCELLANEOUS

- a) If any provision of these Terms is held by a court or any governmental agency or authority to be invalid, illegal, or unenforceable, such provision shall (to the extent possible) be severed from this Service Contract and the remainder of it shall nevertheless remain legal, valid, and enforceable.
- b) No modification of this Service Contract shall be valid and effective unless in writing and signed by duly authorised representatives of Onwave and the Customer.
- c) Failure by either party to exercise or enforce any right conferred under this Service Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or to any other right on a later occasion.
- d) Termination of this Service Contract shall not affect those provisions that are intended to survive such termination including (without limitation) Clauses 21, 22, 24 and the indemnities contained in these Terms.
- e) Any notice to be given shall be in writing, and may either be delivered personally or sent by first class prepaid post to the address of the recipient set out in the Service Contract or such other address as the recipient may designate by notice given pursuant to this Clause. Each such notice shall be deemed to have been served, if by personal delivery, when delivered, if by post, 48 hours after posting.
- f) These Terms and the Service Contract are governed by and shall be construed in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

## 29. ACCEPTABLE USE POLICY

- a) The Customer agrees to maintain and ensure that the Customer maintains any servers and or services that they have access to as part of the Service(s) free of worms and viruses and other such malicious code or software and agree not to knowingly forward or distribute in any manner such worms, viruses or malicious code.
- b) Onwave has the right to inspect traffic to and from a Customer server and the right to scan and probe Customer servers to validate and ensure that such servers are free from worms and viruses. If Onwave in its absolute discretion finds a worm or viruses on such servers, it shall give the Customer reasonable notice to make the necessary corrections. In any event Onwave reserves the right to suspend Service(s) until such Customer server is free from a worm or virus.
- c) The Customer acknowledges that each component of the Service(s) which Onwave offers will be subject to a fair usage policy. Onwave will apply best endeavours to balance the Customer's traffic over all service lines but the Customer understands that Service(s) can be degraded by application of the fair usage policy. The Onwave Satellite products are subject to the congestion policy detailed in the Satellite SLA (if applicable)
- d) The Customer acknowledges that according to the provisions of art. 15 of D.Lgs 9 April 2003 n. 70, enacting EU Directive 2000/31/EC (Directive on Electronic Commerce) the Service(s) fall within the concept of "mere conduit" as Onwave does not modify the information that it carries, applies no technical manipulations suitable to alter the integrity of the information and is therefore in no way involved with the Information transmitted; the Customer therefore represents, warrants and



undertakes that all information originated, carried and/or routed by and/on behalf of the Customer over the Onwave network is the total responsibility of the Customer.

- e) The Customer shall not use the Service(s) (and shall ensure that the Service(s) are not used): (i) to send, receive, make available, copy, retransmit, broadcast or publish (whether directly or indirectly, and whether in cached, mirrored or proxy form or otherwise) any statements or material which:(i) infringe any copyright, moral right, patent or other proprietary (including, without limitation, intellectual property) right of any person or entity, or(ii)which infringe any applicable law, regulation or right of any person or entity including, without limitation, rights under contracts and of confidence, laws relating to defamation, contempt, blasphemy, infringement of privacy or personal data rights, malicious falsehood, seditious libel and any equivalent or related laws in any territory in which they are (or may be) accessed or made available; (ii) to send, receive, make available, copy, retransmit, broadcast or publish (whether directly or indirectly, whether in cached, mirrored or proxy form or otherwise) any statements or material which are (or may, in places where they are accessible or made available) offensive, abusive, indecent, obscene, or menacing; or which are likely to encourage or are capable of encouraging anything which is in any way unlawful, or to incite violence, sadism, cruelty, or racial hatred, or which promotes or facilitates prostitution, or which are likely to mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise; (iii) to cause annoyance, inconvenience, or needless anxiety; (iv) in a manner which occupies communications capacity or bandwidth frivolously, vexatiously or which is intended to or may inhibit any other person's use thereof (including, without limitation, by use of facilities intended to substantially fill the communications capacity of lines, short packets and for hardware components of Onwave's network such as SPAM, UCE, TCP Sprayers and Flood Ping); (v) in a manner which permits IP data packets to be sent with source addresses outside the IP address range granted to the Customer; (vi) Unsolicited Bulk Email. The Customer must have explicit permission from all destination addresses before the Customer sends an email in any quantity. The Customer may not assume that it has been granted permission by passive actions such as the posting of an article to Usenet or a visit made to the Customer's web site. Where the Customer has acquired explicit permission, either on a web site or through some other relationship the Customer should keep a record of this permission and must cease sending email when requested to stop.
- f) Onwave retains the absolute right to manage the traffic of the Customer across all access ports. Where the total usage of the Customer is in excess of that defined within the Service Order, Onwave reserves the right to suspend Service(s) or to charge the Customer the excess usage in accordance with the terms of the Service Order.