Annex - Broadband Services

183 Mark Simcoe Thu, Oct 18, 2018 Terms & Conditions 3663

Annex - Broadband Services

1. **Definitions**
   The definitions and rules of interpretation in this clause apply in this Annex for the Service of Broadband.
   a. **"Access Router"** a device supplied at installation or shipped prior to installation, upgrade, transfer or re-contracting;
   b. **"Bandwidth"** the speed or capacity as measured in b/s or multiples thereof;
   c. "**Broadband**" are connections from the Customers chosen Delivery Location to the nearest exchange and may be by a multitude of technologies including but not limited to; xDSL over Copper incorporating ADSL, SDSL, SHDSL & FTTC (Fibre to the Cabinet), FTTP (Fibre to the premises), Radio or Microwave technologies.
   d. **"Copper"** means a metallic path / cable normally containing Copper but may include other electrically conductive materials.
   e. **"Delivery Dates"** the dates or date on which the Services and any associated NTE are to be delivered as set out in the Order;
   f. **"Delivery Location"** the location for delivery of the NTE and Services as notified by the Customer to IC or as determined by IC for a given Service where IP Transit is a part of another Service rather than provided individually and as set out in the Order where appropriate;
   g. **"IP"** means Internet Protocol;
   h. **"IP Transit"** a connection from an Internet Central - controlled network POP to the global Internet network;
   i. **"Minimum Period"** the minimum period during which the Service is provided as set out in the Order;
   j. **"Network"** the network over which the Service is provided;
   k. **"NOC"** the Network Operation Centre;
   l. **"NTE"** any Network Termination Equipment provided by IC or its Suppliers for the purpose of connecting into the Network in the case of a Copper delivered wires only service the NTE shall be deemed to be the wall socket where the main network is terminated;
   m. **"POP"** the point of presence from/through which the Services are delivered;
   n. **"Usage Charges"** means the charges made by IC to the Customer for use or the provision of the Services.
2. **Application of Annex - Broadband Services**
   This Annex shall:
   a. apply to and be incorporated into the Contract;

b. shall incorporate the Annex - IP Transit / Internet Access where the connection is for public Internet Access;
c. is supplemental to the Main Terms & Conditions; and
d. shall prevail over any inconsistent terms and conditions contained in, or referred to in, the Main Terms & Conditions or the Order.

3. **Provision of Broadband Services and Service expectations / constraints**
   a. IC shall use reasonable endeavours to provide the Broadband Service to the Customer at the Delivery Location.
   b. IC shall use reasonable endeavours to meet the Delivery Dates and service levels, but any such Delivery Dates and service levels shall be estimates only and time for performance shall not be of the essence of the Contract.
   c. IC shall provide the Service with reasonable skill and care and in accordance with good industry practice.
   d. The Customer acknowledges that IC cannot guarantee that the Service will be uninterrupted or error-free. In particular, the speed of the Customer's connection may be slower if the Network or a particular route is congested and IC shall not liable for any failure to provide the Service where such failure is due to a Force Majeure / MBORC event.
   e. Unless agreed otherwise in a Service agreement, IC provides Bandwidth on an as-available basis. (The network is monitored and sized to provide fast access at all times, but it cannot be guaranteed, e.g. under hypothetical conditions if 100% of the Company's customers were to connect and make 100% usage of every link bandwidth).
   f. Broadband services are delivered entirely as a 'Best Efforts' service and should not be considered business critical;.Broadband services offer high speed (or Broad Bandwidth) connections but are inherently designed on shared infrastructures whereby the capacity is contended to keep service delivery prices lower. They are not designed for continuous connectivity or continuous throughput applications.
   g. If in IC's sole opinion the Customer is not using the Service in the spirit of shared use or the Service level and type ordered then IC reserve the right to either apply rate limiting controls or request the Customer upgrade to a more suitable connection type or Service. Should the Customer refuse or not wish to upgrade then IC will serve 30 days notice on the Customer for cease of contracts and Service, in this instance no cancellation charges shall apply.
   h. IC or its employees, agents or subcontractors may at time to time without notice vary the Service for technical, operational or other reasons within its entire discretion.

4. **Supplementary Services (non chargeable)**
   With each connection IC optionally provide access to a number a servers and services to assist Customers in reducing the infrastructure required by them, these services are provided free of charge (they are free as the Customer could run their own servers or use

other providers services and are therefore not mandatory or required to be provided by IC) and as-is with no warranties of any kind. Use of these services is at the Customers own risk and these shall not form part of the SLA for the connection. These services may be changed, added to or removed at IC's sole discretion, any abuse or excessive use of these services will result in the removal of the services to the Customer and they must be used with the utmost care and respect for other users at all times. These Services include but are not limited to;

a. Usage data reporting;
b. DNS Servers;
c. Continuous Quality Monitoring (CQM).

5. **Fault reporting**
    a. IC will use reasonable endeavours to report to the relevant Network operator, maintainer or contractor any fault on the Network which is reported to it by the Customer. IC shall not be liable to the Customer for any losses incurred as a result of any interruption to the Service.
    b. If a fault is caused by the Customer Equipment, or breach of the Contract by the Customer, or by the Customer's negligence, or if a fault occurs on the Customer's premises or land, then IC may recover all reasonable costs that it incurs as a result.
    c. In the event that a visit is required to the Customer's premises for any reason an appointment will be advised. If this appointment is missed by the Customer then a missed appointment charge will be added to the Customer's monthly bill to cover expenses incurred at the current prevailing charge.
    d. Where a fault is reported by the Customer and engineers are despatched to the Customer's premises and the fault is determined to be within the Customers control and responsibility then the Customer accepts liability for the costs associated with the engineer call out at the current prevailing rate from either IC or its chosen service provider. This charge will be automatically added to the Customer's account and be collected during the next billing run.
    e. IC shall be entitled to suspend the Service in order to maintain or improve the Network or if obliged to do so by virtue of any direction or request from any Government department, emergency services, regulatory or administrative authority or for any other reason whatsoever. IC will use reasonable endeavours to give the Customer notice of such suspension as reasonably practicable normally via the support section of the IC website.
    f. Faults should be reported to IC's support centre via email / telephone or web portal as detailed on the IC Website during normal helpdesk opening hours.
    g. All repairs are subject to weather conditions and light and repairs requiring external work may be halted and extended should conditions be unsuitable or potentially hazardous in which case Force Majeure / MBORC will apply.
6. **Customer obligations**

The Customer undertakes to:

a. use the Service in accordance with the reasonable instructions of IC;
b. not to use the Service in any improper or unlawful manner or in any manner which may cause nuisance or offence;
c. to allow IC or its duly appointed agents access to the Customer's premises or 3rd party location for the purposes of installation, programming and maintenance, or other reason associated with the Service;
d. to ensure that the Customer Equipment is in good working order and is maintained by a competent maintainer or service provider;
e. to use only IC approved Customer Equipment, all Customer Equipment must comply with all relevant legislation relating to its use from time to time;
f. to be responsible for the usage of the Services, whether the use of the Service has been authorised by the Customer or not, and the Customer agrees that IC is not obliged to monitor the levels of usage and/or report on unusual usage patterns;
g. The Customers bandwidth and other resource consumption must be commensurate with the service type taken, e.g. shared or deliberately contended services which incorporates all Broadband Services are not used at maximum capacity for extended periods and shall be used in a considerate manner so to allow for sharing to occur;
h. not permit or suffer its employees to act or omit to act in any way which may injure or damage any persons' property or NTE, or in any way which may cause the quality of the Service or any aspect of them or NTE to be affected or impaired;
i. not use or allow its employees or guests to have access to the Service or NTE or use the Network or NTE for any fraudulent, illegal, improper, immoral or unlawful purpose;
j. comply with all statutory and regulatory requirements in relation to the use of the Network, NTE and the Service including, but not limited to those laid down by any regulatory authority (including but not limited to Ofcom);
k. not use the Network, NTE or any of the Services for any purpose other than that for which they were designed or intended, or for self provision of a data / telecommunications service;
l. not use the Network, NTE or the Services to send nuisance emails or to send unsolicited mass marketing emails or to send, knowingly receive, upload, download, use or reuse material which is offensive, indecent, defamatory, obscene, menacing, pornographic, discriminatory, abusive, racist, homophobic or sexist;
m. notify IC immediately (and confirm in writing), on becoming aware that any person is making improper or illegal use of the Network, NTE or any of the Services;
n. not damage or tamper with the Network or NTE so as to invalidate any warranty provided by IC, any service provider or any manufacturer and shall pay the

standard charges levied by IC from time to time applicable to repair work which is outside (in scope or time) of any warranty provided by IC, the service provider or the manufacturer;

o. use the Network and NTE solely in connection with the Service and at all times in accordance with any user guide, or other reasonable instructions of any manufacturer or supplier of the same or the reasonable instructions of the Supplier;
p. process any personal data captured during the use of any of the Services at all times in accordance with the Data Protection Act 2018;
q. to inform IC, giving at least 30 days written notice, of any changes in details of the Customer including change of address;
r. other than making or receiving calls for the companies own use, not to in any way whatsoever, cause calls to be routed over any networks, other than the Network without prior permission being granted by IC;
s. at the Customers own expense, to terminate any existing contracts with alternative suppliers following the transfer of the Services to IC which are similar or replaced by the IC Services;
t. to comply with current UK legislation in the use of telecommunications services;
u. to ensure the supplied transmission equipment remains in a suitable environment and is not disturbed and remains powered from a suitable clean power source;
v. due to the nature of the Internet, all email/data to be sent outside the internal infrastructure network is the responsibility of the Customer. IC shall accept no liability for protection or privacy of electronic mail and information transferred through the Internet;
w. the Customer is assumed to be competent in making and maintaining an Internet connection, including where applicable Internet / IP / DNS / Email / System / Firewall / AntiVirus / network administration. Where such administration is inadequate to prevent damaging traffic or effects on IC's network or external Internet, IC reserves the right to unilaterally apply packet filtering/blocking and other means to limit such damage or effect;
x. The Customer is liable for all expenses incurred by IC as a result of neglect, incompetence, wilful malice, or other inappropriate behaviour or Internet/DNS/system administration on the Customer's part, including but not limited to legal fees, technical fees and loss of income;
y. The Customer shall indemnify and keep indemnified IC against any costs, demands, expenses (including legal expenses) losses, damages, awards or other liabilities incurred by it as a result of any breach by the Customer of any of these clauses.

7. **Installation and / or supply of NTE**
    a. In order to supply Services, an NTE will be required at the customer's premises or within a 3rd party facility. This equipment remains the sole property of IC or its Supplier and the Customer is responsible for the safe keeping of this

equipment. Any NTE damaged / altered or removed either accidentally or on purpose will render the Customer liable for its replacement at RRP pricing as outlined by the IC from time to time.

b. The NTE is pre-programmed and locked down to IC or its supplier for the sole provision of the Services and IC strictly prohibits tampering or attempted access by the Customer to this equipment. Any such attempts will be logged and reported to IC's NOC and the Services may be removed without warning and the equipment isolated to prevent damage. The Customer will be liable for reinstatement or removal of the NTE and any costs incurred as a result of taking such actions.
c. The Services are delivered on a non-exclusive basis and is contended with other users of the Services. The data limits and packages are prevalent to enforce 'Sharing' and in the event of excessive constant usage IC reserves the right to deploy traffic management or preventative measures to limit potential disruption to other users of the Services. Any such measures taken may result in a management charge being added to cover reasonable expenses by IC in effecting such control.
d. Where a Service requires a site visit in order to install the Service, IC shall notify by email to the email specified at order time the next available appointment slot and indicate whether it is an AM or PM appointment. If this is not acceptable the Customer may request a date change providing this is no later than 24 hours prior to the date. If the engineer turns up and cannot gain entry then a missed appointment fee shall apply at the current prevailing rate.
e. Installation shall be deemed complete and charges for Service shall commence when IC receives notice of handover from its Supplier or Contractors (service ready for use).
f. Service will be assumed to be delivered and it's the Customers responsibility to connect to and test any connections as soon as possible following handover by IC and report any failures quickly. Service charges shall apply immediately on handover and normal SLAs for failures will apply thereafter.

8. **Supply of Access Router**
    a. In order to supply certain Services or as part of a package an Access Router may be required to be supplied by IC, in these instances the following shall apply;
        i. This equipment is provided free of charge and title shall pass to the Customer at the end of any Minimum Period;
        ii. Devices are supplied as an aid for the Customer and do not form part of the Broadband Service and are supplied with the manufacturers warranty only;
        iii. Access Routers shall be treated as per Free Goods specified within the Main Terms & Conditions;
        iv. In some cases these devices will be pre-programmed by IC to help make the installation easier but no warranty shall exist for this and it is the

Customers responsibility to program, operate, update and maintain the device(s);

v. Any devices provided do not include installation and the Customer will be responsible for installation, configuration, on-going maintenance and updates of the Access Router;
vi. Wherever possible the Access Router will be shipped prior to the installation date to allow the connection to be used immediately upon activation, this is subject to availability and shipping and no liability shall be accepted for arrival after the installation date. Service fees will commence once installation has been completed and the service is ready for use in any case;
vii. The Service is deemed to be supplied when a data signal is presented to the NTE and not when the Customer connects any devices or starts using the Service.
viii. The Access Router may have WiFi capability and use of this is entirely at the Customers choice but no warranties shall exist as to performance, reach or reliability, the Customer may at their own choice deploy alternative WiFi equipment to provide coverage and throughput desired.

9. **Speeds and performance**
    a. At the time of order or via the IC Website the Customer will / can be advised of the indicative speeds that they are likely to obtain on their connection based on the data held on the transmission medium supplying the Service. This range will normally have a lower and upper expected speed. Nominally two estimates may be provided for clean lines and impacted lines, clean is assuming that all transmission mediums are in good condition and free from interference, impacted is where either or both of those conditions is false.
    b. At the time of installation any Copper delivered service will require a period of training, this period is normally the first 10 days from activation or from the first time the Customer successfully connects into the Service (whichever is the latter). During this training period the maximum stable speed will be assessed for the actual Copper cable condition, this will mean that the Service will be variable and IC advise that the Customer be aware of this especially if conveying any real time services such as voice. The Service will have a number of pauses during this first training period while speeds are adjusted.
    c. During any training period no faults will be accepted related to speeds or performance.
    d. All speed figures quoted shall be within the IC Network, once data leaves the IC Network we have no control over it or its performance, this is on the Internet and we give no warranties as to the speed across the Internet.
    e. Testing of speeds will be from the Customers NTE to the IC Network only and via a cabled connection to the NTE, IC specifically exclude speed tests from PCs and devices connected over WiFi or via other intermediary devices.

f. Broadband is a shared and contended Service and full speed will not be attained for 100% of the time however should the speed being obtained drop below the minimum quoted speed of the speed range for greater than 50% within a 24 hour period then this will be considered a valid fault and should be raised as such.
g. Broadband carries no performance guarantees and none are implied, it is entirely a 'best efforts' Service and IC will use its 'Best Efforts to ensure that speeds and performance are maintained for the entire of it's Customers across the platform for the majority of the time. If performance and speed guarantees are required then more appropriate Service (e.g. Ethernet Services) should be used.

10. **Cancellation**

In all cases notice of cancellation must be sent in writing to IC and with sufficient time for processing by IC, in cases where time is important requests should be followed up by a call to IC. In all cases cancellation will have only been deemed to be served once accepted and acknowledged by IC in the form of an email response to the Customer confirming the acceptance of the cancellation together with a notice of any likely termination fees.

a. Cancellation prior to delivery / installation
    i. Where IC are prevented from providing the service because the customer fails within a reasonable timescale, to provide essential information to the order or delivery of the service or unreasonably refuses entry to the customers premises or acts in a manner that prevents the order or installation being completed such acts will be deemed as cancellation of the order prior to installation and will be subject to a cancellation fee.
    ii. If the Customer is classed as a consumer then the Consumer Contracts (information, cancellation and additional charges) Regulations 2013 apply. These permit cancellation within 14 days of order. By ordering a service for installation as soon as possible or within the 14 days then you agree that your right to cancel will cease once Service has been provided even if it has not been used. As works are undertaken to provide the Service there may be charges still levied to cover reasonable costs incurred to the date of cancellation.
    iii. Cancellation of Service prior to delivery for any reason providing it is not less than 24 hours prior to the delivery date shall incur the cost of a normal full installation fee as a termination fee. Once within 24 hours of delivery it shall be treated as a missed appointment and this charge shall be in addition to the termination fee.
b. Cancellation at the end of or any time following the minimum term
    i. To cancel any service following the minimum term of a contract for a service please submit in writing such notice, the minimum notice period

is 30 days which shall commence upon acceptance of the cancellation notice by IC.

ii. If the Service is provided by BT Wholesale and is migrated to another provider also using BT Wholesale then no charge shall apply for termination and the final bill shall be for Service until the date of transfer.

iii. Where moving to any other operator / carrier the Service will require an engineer to physically disconnect the Service and a cease fee shall apply at the current prevailing rate. The cease will be initiated by the gaining provider and service charges will apply until the date the Service is removed from the IC network.

iv. For a complete cease of service then the order shall be initiated by IC with the relevant supplier for as soon as possible and an engineer booked to remove the service. A Service cease fee shall apply at the current prevailing rate and service charges will apply until the date the Service is removed from the IC network.

c. Cancellation prior to completion of the minimum term

a. As per end of term a notice of 30 days in writing is required, upon receipt of such notice a final settlement calculation will be performed and a quote provided. Once the quote is accepted by the Customer, IC shall then commence the cancellation notice period, cancellation will be deemed complete when IC is in receipt of cleared funds settling the final account for the items / services being cancelled.

b. The following provides an indicative calculation for early termination fees based on a 24 month term;

i. Cancellation within the first 12 months of the agreement
Billed to end of 24 month term minus 7%

ii. Cancellation within months 12-24
Billed to end of 24 month term minus 12%

c. Where Hardware, Licences or Phone Lines are included within the contracts the actual percentage discounts may vary from those above or a early Buy Out and settlement may be offered instead.

d. In all cases of cancellation it should be noted that the Customer may experience delays between the Service ceasing and any new Service or order being placed by the gaining provider while our Suppliers systems update and clear the cease orders.

11. **Class of service / enhanced care / advanced IP services**

a. It is possible to purchase different levels of Service which can include;

i. Elevated Service
This provides a better allocation of data slots within the network whereby for every 2 packets of data transmitted of standard service 3 packets shall be transmitted for elevated service thus providing a better

chance of getting data through the network when required. All data on the network is still best efforts but this elevates the Customers by 50%.

ii. Enhanced Care and Enhanced Care Plus (care level 4 or 14)
These options provide for preferential repair times and better SLAs to cover connections in fault (please see Service Levels and Repair Targets)

iii. Advanced IP Services / Office Packs
The ability to request additional IP addresses, reverse DNS entries and direct SMTP feeds are enhanced functions provided as part of these packages.

b. All ancillary Services are purchased as an enhancement to the base Service and whilst attached to the primary Service they are not integral to it and therefore in any credit for primary Service failure are excluded from the price for the purpose of SLA / Compensation.

12. **Service Levels and Repair Targets**
    a. Please refer to Annex - SLA & Service Credits

Document Revision 2.0 04/12/2017

Online URL: https://kb2.ic.uk/article.php?id=183