

## 1. Definitions

1.1 In these Terms, the following terms shall have the following meanings:  
"Act" means the Telecommunications Act 1984

### **Agreement**

Means these Terms, together with the applicable Order Form

**AUP** – means Acceptable Use Policy

### **Commencement Date**

Means the date when You first receive the Service.

### **Confidential Information**

Means any information of a confidential nature obtained under or in connection with this Agreement including, but not limited to, any information regarding the existence of errors or viruses found in the Service and all other information which W3Z-Zycomm deems as confidential at the time of its disclosure either in writing or orally. Confidential Information does not include information which You can demonstrate:

- (a) is previously rightfully known to You without restriction at the time of disclosure;
- (b) is or becomes, from no act or omission on Your part, generally known in the relevant industry or public domain;
- (c) is disclosed to You by a third party as a matter of right and without restriction at the time of disclosure; or
- (d) is independently developed by You without access to the Confidential Information.

**"Customer Apparatus"** - means apparatus belonging to You not forming part of the Equipment but which may be connected to the Equipment.

**W3Z-Zycomm** - Means Zycomm Electronics Ltd, whose registered office is at Nottingham Road, Ripley, Derbyshire, DE5 3AS.

**W3Z-Zycomm System** - Means the telecommunication system which W3Z-Zycomm runs and, for the purpose of this Agreement, any apparatus leased by, or otherwise obtained by, W3Z-Zycomm from a third party.

**Equipment** - Means any apparatus or equipment provided by W3Z-Zycomm or any third party to You at the Premises to enable provision of the Service under this Agreement.

**Contract** - Means the contract which You sign to order the Service.

**Contract Period** – Means the contract period signed up to in the Contract.

**Partner(s)** – Means any third party company with which W3Z – Zycomm enters into agreement with to provide complimentary services to its own.

**Premises** - Means your premises where the Service is to be received.

**W3Z recommendations** – Means recommendations made by W3Z regarding the protection and configuration of the customer apparatus

**Service** - Means the installation, connection and supply of equipment capable of supporting Wireless Broadband services at the Premises and the provision of data services over such circuit.

**Standard Tests** - Means the tests carried out by W3Z-Zycomm or any third party to determine whether the Service is ready.

**Term** - Is defined in clause 4.1.

**You** - Means the person who orders the Service and person shall be taken to include bodies corporate or unincorporate.

## 2. Services

2.1 Subject to this Agreement W3Z-Zycomm shall provide the Service to You according to the terms of this Agreement. You accept that it is technically impracticable to provide telecommunications services which are entirely free of faults and W3Z-Zycomm does not undertake to do so.

2.2 The Service comprises a wireless network service to access, inter-alia, other services provided by W3Z –Zycomm or its Partner companies.

2.3 You acknowledge that the Service will depend upon the characteristics of Your Wireless connection and that it may not be possible to supply the Service. In this event W3Z-Zycomm shall have the right to terminate this Agreement without liability to You save as set out in clause 4.2.

2.4 You acknowledge that during the installation of the Equipment for the provision of the Service your Computer Equipment to which the wireless service is to be connected may need to be reconfigured. This reconfiguration will be carried out with the minimum of inconvenience and without any liability to W3Z-Zycomm.

2.5 Occasionally W3Z-Zycomm may have to interrupt the Service or change the technical specification of the Service for operational reasons or because of an emergency. In these circumstances You shall have no claim against W3Z-Zycomm for any such interruption.

2.6 Except as otherwise expressly permitted in these Terms, and in addition to other restrictions herein, You may not:

2.6.1 redistribute, encumber, sell, rent, lease, sub-license, copy or use the Service or otherwise transfer rights to the use of the Service to any third party, whether in whole or in part;

2.6.2 disclose Service features, errors or viruses to any third party without W3Z-Zycomm's prior written consent;

2.6.3 use the Service except in conjunction with W3Z-Zycomm's recommended operating environment, notified by W3Z-Zycomm; or

2.6.4 modify the Service without W3Z-Zycomm's prior written consent.

### 3. Fees

3.1 W3Z-Zycomm shall provide You with the Service for a fee as set out on the Order Form. These fees are subject to change without notice. W3Z-Zycomm will charge You the fees from the Commencement Date.

3.2 You will pay charges in accordance with the terms stated on the order form.

3.3 All charges exclude Value Added Tax (VAT) at the applicable rate, unless otherwise stated.

3.4 W3Z-Zycomm will be entitled to make additional charges, as detailed, on its own behalf in the following circumstances:

3.4.1 an Abortive Visit Charge of £125 (+ VAT) if the information that you have supplied is incorrect and it is not technically possible to provide the Service; and

3.4.2 an Administration Charge where You provide illegible, materially incomplete or incorrect order details, at £46.00 (+ VAT) minimum charge and £23.00 (+ VAT) per subsequent hourly charge or part thereof

### 4. Term and Termination

4.1 This Agreement will commence on the Commencement Date and shall continue for the Contract period after which time the Agreement will automatically renew for consecutive periods of 12 months, subject to the provisions of this Clause 4 ("the Term").

4.2 You may terminate this Agreement after the Term by giving W3Z-Zycomm not less than thirty (30) days' written notice.

4.2.1 You may terminate this Agreement upon three months notice if by way of moving premises or home you are no longer able to receive said Service and W3Z – Zycomm do not offer the same service at Your new premises or home.

4.3 W3Z-Zycomm may terminate this Agreement immediately upon written notice to You if:

4.3.1 it becomes unlawful for W3Z-Zycomm to continue to provide the Service or is required to cease the Service by a competent regulatory authority; or

4.3.2 You (or a third party acting on your behalf or instruction) fail to comply with any of the material terms or conditions of the Agreement including your obligation to pay and You do not remedy such failure within 15 days of a request to do so; or

4.3.4 You take (or cause or permit a third party to take) any action in breach of W3Z-Zycomm's rights to the Confidential Information.

4.3.5 W3Z is unable or unwilling to provide the service due to poor or insufficient coverage of its service from a local Access Point.

4.4 The provisions of this Agreement regarding Confidential Information and limitation of liability shall survive the termination of the Agreement.

4.5 Upon termination of this Agreement You shall immediately stop using the Service and Your right to use Service shall immediately terminate.

### 5. Proprietary Rights

5.1 All title, interests, and rights (including but not limited to ownership and intellectual property rights) in the Service remain in W3Z-Zycomm and/or its suppliers. You acknowledge such title, interest and rights and You shall not take any action to jeopardise, limit or interfere in any manner with W3Z-Zycomm's (or any third party suppliers') title, interests or rights with respect to the Service, including but not limited to, using W3Z-Zycomm's trademarks or trade name.

5.2 Title and related rights in any content accessed through the Service are the property of the applicable content owner and are protected by applicable laws. The right to use granted to You under clause 2.1 gives You no rights to such content. If You wish to use such content, You must ensure that You have the appropriate consent or license of the content owner.

5.3 You acknowledge that you shall have no rights to any intellectual property rights arising as a result of any use of the Service.

## 6. Your Obligations

6.1 You hereby irrevocably give permission to W3Z-Zycomm and its employees, agents or contractors to:

6.1.1 execute any works on the Premises for, or in connection with, the installation, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of apparatus;

6.1.2 keep and operate apparatus installed on, under or over the Premises;

6.1.3 enter the Premises to inspect any apparatus kept on, under or over the Premises or elsewhere for the purposes of the W3Z-Zycomm Systems.

The permission set out above shall continue in force notwithstanding cancellation or termination of this Agreement until such time as W3Z-Zycomm has removed all Equipment from the Premises.

6.2 You agree not to do or allow anything to be done to the Premises that may cause damage to, or interfere with, the Equipment or prevent easy access to it.

6.3 You shall procure at Your own expense all permissions, licenses, registrations and approvals necessary for, or considered desirable by, W3Z-Zycomm to deliver, install and maintain the Equipment for the provision of the Services.

6.4 W3Z-Zycomm shall supply You with the relevant information to enable You suitably to prepare the Premises for delivery and installation of the Equipment. You shall at your expense provide suitable accommodation, assistance, facilities and environmental conditions for the Equipment and all necessary electrical and other installations and fittings.

6.5 W3Z-Zycomm shall use its reasonable endeavours to comply with Your reasonable requests in respect of installation but W3Z-Zycomm or its contractor or agents' decision on the routing of cables and wires and the positioning of outlets and other apparatus constituting the Equipment or part thereof shall be final and binding. W3Z-Zycomm shall use all reasonable endeavours to provide and install or procure the provision and installation of the Equipment at the Premises so that the Service can be provided on or before any installation date specified or agreed to by W3Z-Zycomm. Any installation date is an estimate only and W3Z-Zycomm shall not be liable for any failure to meet such installation date.

6.6 Following the installation of the Equipment the Standard Tests shall be carried out by W3Z-Zycomm or any other third party to ensure that the Service is ready for use. If the Service is not ready for use, W3Z-Zycomm shall either repair or replace, at its sole option, the Equipment or any part thereof and repeat the Standard Tests. You shall be entitled to use the Services following successful completion of the Standard Tests.

6.7 Any equipment not paid for in full at the time of installation shall remain the property of W3Z-Zycomm or the supplier of such equipment and You shall at all times make clear to third parties that the same is the property of W3Z-Zycomm or a third party supplier of such equipment. W3Z-Zycomm may modify, substitute, renew or add to the Equipment from time to time at its absolute discretion.

6.8 You shall be responsible for ensuring at all times the safekeeping and proper use of any equipment not paid for in full after delivery and or installation at the Premises. You shall be liable to W3Z-Zycomm for any loss or damage to the Equipment (except in so far as it can be shown that such loss or damage is attributable to the negligent act or omission of W3Z-Zycomm). In particular (without prejudice to the generality of the foregoing) You undertake:

6.8.1 to keep the Equipment at the Premises and not to move it;

6.8.2 to permit W3Z-Zycomm and its employees, agents or contractors to inspect or test the Equipment at all reasonable times;

6.8.3 to comply with all instructions as W3Z-Zycomm may notify to You and/or with the manufacturer's instructions and not to use the Equipment except in accordance with such written instructions and in accordance with the law and any applicable license granted thereunder;

6.8.4 not to cause the Equipment to be repaired or otherwise maintained except by an authorised representative of W3Z-Zycomm;

6.8.5 not to cause any attachments other than those approved for connection under the Act to be fitted to the Equipment except in accordance with such written authorisation as may be notified by W3Z-Zycomm to You from time to time;

6.8.6 not to do anything nor to allow to subsist any circumstances likely to damage the Equipment or detract from or impair its performance or operation and not to add modify or in any way interfere with or impair the performance of the Equipment;

6.8.7 not to attempt to sell, transfer, dispose of, let, mortgage, charge, modify, extend, repair, service, tamper with, remove or interfere with the Equipment or suffer any distress, seizure or execution to be levied against or of the Equipment or otherwise do anything prejudicial to W3Z-Zycomm or the owner of such Equipment's rights in the Equipment; and

6.8.8 not to remove, tamper with or obliterate any identification mark(s) affixed to the Equipment or to any part thereof showing that it is the property of W3Z-Zycomm or other third party supplier of such equipment.

6.9 A secure electricity supply is required at the Premises for the installation, operation and maintenance of the Equipment at

such points and with such connections as specified by W3Z-Zycomm. Unless otherwise agreed, this power supply is to be provided by You. W3Z-Zycomm shall not be responsible for interruption or failure of the Services caused by a failure of such power supply.

6.10 You shall be liable for any loss or damage howsoever caused (including but not limited to lightning or electrical damage) to any part of the Equipment or any of your own property within the Premises (except in so far as it can be shown that such loss or damage is attributable to the negligent act or omission of W3Z-Zycomm). You will notify W3Z-Zycomm immediately of any such loss or damage.

6.10.1 You undertake to indemnify W3Z-Zycomm against any and all such loss or damage referred to in this clause 6.10.

6.10.2 Willful destruction or abuse of the Equipment may result in additional charges being payable by You to W3Z-Zycomm.

6.11 You shall be responsible for the repair and maintenance of any Customer Apparatus used in order to obtain or use the Service.

6.12 You shall ensure that such Customer Apparatus complies with any applicable law. You shall immediately disconnect any such apparatus if such apparatus does not, or ceases to, conform to applicable standards (if any) for the time being in force. W3Z-Zycomm reserves the right to disconnect any apparatus used by You if You do not fulfill your obligations under this Clause or if, in the opinion of W3Z-Zycomm, such apparatus may cause the death of any person or injury to any person or damage to property or materially impair the quality of any telecommunication service provided by means of the W3Z-Zycomm Systems and You agree to disconnect such apparatus at the request of W3Z-Zycomm.

6.13 You must allow W3Z-Zycomm to have access to the Premises at all reasonable hours for the purpose of testing or maintaining any of the Equipment and/or the Service and provide a safe and suitable environment for such access visits.

6.14 You must not use the Service:

6.14.1 in a way that does not comply with the terms of any legislation or that is in any way unlawful or fraudulent; or

6.14.2 in connection with the carrying out of a fraud or criminal offence against any telecommunications operator; or

6.14.4 to send, encourage the receipt of, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights or may contain viruses or other similar programs, or which cause overloads to the W3Z-Zycomm System;

6.14.5 to send or procure the sending of unsolicited advertising or promotional material; or

6.14.6 in a way that does not comply with any instructions given by W3Z-Zycomm for reasons of health, safety or the quality of the W3Z-Zycomm System.

6.14.7 or attempt to use the Service in a way that modifies, decompiles or reconfigures or attempts to modify or reconfigure the Service or any Equipment or copy any manual or documentation relating to the Service, without W3Z-Zycomm's prior written consent.

6.14.8 so excessively that it deprives other users of the service from receiving the same. For the avoidance of doubt excessive use means continuous or almost continuous use of the service to download high bandwidth applications such as but not limited to music, video, games and other data files.

6.15 W3Z-Zycomm will be entitled to suspend the Service or terminate the Agreement if W3Z-Zycomm knows or has reason to believe that You are in breach of the obligations in clause 6.3 or clause 6.14.

6.16 You shall not without W3Z-Zycomm's prior written consent copy or (except as permitted by law) decompile or modify any software supplied with the Service, nor copy any manuals or other documentation.

6.17 You must notify W3Z-Zycomm immediately in writing of any allegation of infringement of any intellectual property rights prompted by Your use of the Service. You may not make an admission relating to an alleged infringement. You must allow W3Z-Zycomm, to conduct all negotiations and proceedings and give W3Z-Zycomm all reasonable assistance in doing so. You must allow any part of the Service to be modified so as to avoid continuation of the alleged infringement.

6.18 You will co-operate with W3Z-Zycomm's reasonable requests for information regarding Your use of the Service and supply such information without delay.

6.19 You must keep secret Your allocated username and password.

### 7. Faults in the Service

7.1 Should You encounter a fault with the Service You must report this to W3Z-Zycomm at telephone number 01773-570234.

## 8. Disclaimer of Warranties

8.1 The service will be provided to you "as is", without warranty or representation of any kind, whether express or implied. W3Z-Zycomm disclaims and excludes all such warranties and representations including without limitation any warranty or representation that the service is free of defects and viruses, of satisfactory quality, fit for a particular purpose or non-infringing of third party rights. Further, W3Z-Zycomm disclaims any express or implied warranties that might arise from a course of dealing, usage or trade practice. You accept all risks and liabilities associated with your use of the service.

## 9. Limitation on Liability and Force Majeure

9.1 Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.

9.2 Neither party shall be liable in contract, tort, pre-contract or other representations (other than fraudulent or negligent misrepresentations) or otherwise arising out of or in connection with this Agreement for:

9.2.1 any economic losses (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings); or

9.2.2 any loss of goodwill or reputation; or

9.2.3 any special, indirect or consequential losses or any destruction of data, in any case, whether or not such losses were within the contemplation of the parties at the date of this Agreement, suffered or incurred by that party arising out of or in connection with the provisions of, or any matter under this Agreement.

9.3 Subject to clauses 9.1 and 9.2 W3Z-Zycomm's liability to You in contract, tort, negligence, precontract or other representations arising out of or in connection with this Agreement or the performance or observation of its obligations under this Agreement shall be limited in aggregate to £100.

9.4 Each provision of this Clause 9 excluding or limiting liability shall be construed separately, applying and surviving even if for any reason any other provision does not remain in force, notwithstanding the expiry or termination of this Agreement.

9.5 You are solely responsible for any liability arising out of any content provided by You and/or any material to which other users can link to through such content. Any data included in the Equipment upon installation of W3Z-Zycomm is for testing use only and W3Z-Zycomm hereby disclaims any and all liability arising therefrom.

9.6 You indemnify W3Z-Zycomm and its suppliers against any claims or damages arising from Your use of the Service.

9.7 If either party is unable to perform any of its obligations under this Agreement because of a matter beyond that party's reasonable control including, but not limited to, lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes, or acts of local or central Government or other competent authorities or acts or omissions of third party telecommunications service providers, that party shall have no liability to the other for such failure to perform its obligations.

## 10. Confidentiality

10.1 You must at all times, both during the term of the Agreement and for a period of two (2) years after its termination, keep in confidence all Confidential Information using at least the same standard of care You use with your own confidential information, but in any event no less than reasonable care. You may not use or disclose any Confidential Information other than for purposes and activities specifically permitted by the Agreement. You may only disclose Confidential Information to an employee or contractor under binding obligations of confidentiality substantially similar to those set forth in this Agreement on a "need to know" basis. If You are legally compelled to disclose any Confidential Information, then, prior to such disclosure, You must:

10.1.1 immediately notify W3Z-Zycomm to allow W3Z-Zycomm an opportunity to contest the disclosure;

10.1.2 assert the privileged and confidential nature of the Confidential Information; and

10.1.3 co-operate fully with W3Z-Zycomm in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection is not obtained, You may disclose the Confidential Information only to the extent necessary to comply with applicable legal requirements.

## 11. Security

11.1 You must implement internal security mechanisms to protect the integrity of the Service. You indemnify W3Z-Zycomm against any loss or damage whatsoever to W3Z-Zycomm caused by a breach of such internal security mechanisms.

## 12. Notices

12.1 Any notice required or permitted under the Agreement must be in English and in writing. You must send any such notice to W3Z-Zycomm at the following address: Zycomm Electronics Limited, Nottingham Road, Ripley, Derbyshire, DE5 3AS.

12.2 Any notice to be sent to You will be sent to the address which You provide on the Order Form.

### 13. Consumers

13.1 Where You are a consumer clauses 6.10.1 and 9.6 of the Agreement shall not apply. For the purposes of this clause a 'consumer' is a natural person who enters into this Agreement for purposes outside his or her business.

### 14. Miscellaneous

14.1 The Agreement will constitute the entire agreement between the parties concerning the subject matter of these Terms and Conditions. It will supersede all prior and contemporaneous agreements, communications and representations (except for fraudulent or negligent misrepresentations) whether oral or written, between the parties relating to the subject matter of these Terms, and all past courses of dealing or industry custom. The Agreement will prevail over any other conflicting written instrument or other notice you may submit to W3Z-Zycomm.

14.2 Any amendment to the Agreement must be in writing and signed by an authorised representative of each party.

14.3 The Agreement shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

14.4 In the event of a dispute between the parties, the parties will attempt in good faith to resolve the dispute or claim arising out of or relating to the Agreement promptly through negotiations between the respective representatives of the parties who have authority to settle the same.

14.5 If any provision of the Agreement (whether in part or in whole) is held by a court of competent jurisdiction to be illegal, invalid or unenforceable the remaining provisions of the Agreement shall remain in full force and effect.

14.6 Any waiver of any breach of any provision of the Agreement will not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Agreement. A waiver of a provision or breach of a provision of the Agreement will only be effective if made in writing and signed by an authorised representative of the waiving party.

14.7 The license granted under the Agreement will not create a partnership, joint venture, agency relationship or franchise relationship.

14.8 You may not sell, lease, sub-license, assign or otherwise transfer, whether in whole or in part, by operation of law or otherwise, the Agreement or any rights or obligations therein without the prior express written consent of W3Z-Zycomm.

14.9 Neither party will be in default or be liable for any delay, failure in performance (excepting the obligation to pay) or interruption of Service resulting directly or indirectly from any cause beyond its reasonable control.

14.10 Notwithstanding any other provision in this Agreement, nothing in this Agreement will create or confer any rights or other benefits whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise in favour of any person other than You or W3Z-Zycomm.

14.11 The headings to the sections of these Terms are for convenience only and have no substantive meaning.