

Standard Terms and Conditions of Business

Broadband, Telecommunications and Cloud Services

1. Definitions and Interpretation

1.1 In these Conditions the following words shall have the following meanings:

Accepted Order: an Order which has been accepted by the Company, acceptance being indicated by notice from the Company that the Service is to be provided.

Agreement: any agreement made subject to these Conditions, comprising the Order Form, any Schedules and these Conditions, which together form the entire agreement between the parties.

BT: British Telecommunications PLC.

Change of Control: any change in the ownership, control or management of the Company, whether by transfer of shares, transfer of business or assets, merger, reconstruction or otherwise ("control" having the meaning in section 1124 of the Corporation Tax Act 2010).

Company: Barley Group Cloud Limited (registered in England number 10316966), and any person or entity to which the Company assigns or novates this Agreement under clause 9.

Customer: the person, firm or company named on the Order Form.

Domain Name: any name and appropriate classification and/or geographic locator registered with an appropriate domain registry and converted to an Internet Address by means of a Domain Name Server (DNS).

Equipment: any equipment owned by the Company and used in connection with the provision of the Service, or supplied by the Company for purchase by the Customer under an Accepted Order.

Initial Term: the initial term set out in clause 8.1.

Internet: the global data network comprising interconnected networks using TCP/IP to which the Company's provider is connected in order to supply access to its customers.

Internet Address: such sequence of alpha numeric or numeric only characters as are used from time to time by the Customer to identify itself and its computer(s) to other users of other computers to which the Customer is from time to time connecting or otherwise forwarding data to and from the Customer.

ISP: an Internet Service Provider.

Network Operator: the legal entity or entities responsible for the operation of a communications network.

Order Form / Service Agreement: the document setting out the Services, charges and any specific terms applying to the Customer, which prevails over these Conditions in the event of conflict.

Password: the alphanumeric characters chosen and used exclusively by the Customer at its own risk for the purpose of securing and maintaining the exclusivity of its access to the Company Service.

PDN: the Public Data Network operated by a PTO as defined by the Telecommunications Act 1984.

Previously Paid Termination Charges: any termination or settlement charges paid by the Company or its supplier on behalf of the Customer to the Customer's previous provider before or after the Service Commencement Date.

PSTN: the Public Switched Telephone Network operated by a PTO as defined by the Telecommunications Act 1984.

PTO: a Public Telecommunications Operator as defined by the Telecommunications Act 1984.

Renewal Term: each further term for which the Agreement renews under clause 8.2.

Service: the services described in the Order Form and the Company's current literature, together with any Value Added Services.

Service Commencement Date: the date identified as the delivery date on the Company's first invoice to the Customer.

TCP/IP: Transmission Control Protocol / Internet Protocol.

User Name: a sequence of alpha numeric characters used from time to time by the Customer to identify itself to other users of other computers to which the Customer is from time to time connecting or otherwise forwarding data to and from the Customer.

Value Added Service: non-core services, being any services beyond standard voice calls and fax transmissions.

1.2 A reference to a statute includes any subordinate legislation and is a reference to it as amended or re-enacted from time to time. Clause headings do not affect interpretation. Words following "including", "in particular" or "for example" are illustrative and do not limit the words before them.

- 1.3 In the event of conflict, the Order Form prevails over these Conditions, and these Conditions prevail over any Schedule.

2. Basis of Contract

- 2.1 An Order constitutes an offer by the Customer to purchase the Services subject to these Conditions. No Order is accepted until the Company issues notice of acceptance, at which point the Agreement comes into existence.
- 2.2 These Conditions apply to the Agreement to the exclusion of any other terms the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3 The Customer is deemed to have accepted the Service, and the Service is deemed fit for purpose, unless the Customer notifies the Company in writing of a material defect within five (5) working days of the Service Commencement Date.

3. Usage and Acceptable Use

- 3.1 The Customer shall accept and abide by the Company's Acceptable Use Policy as published at www.barleygroupcloud.com and as amended from time to time. "Unmetered" and "unlimited" do mean unlimited Services, subject to that Policy.
- 3.2 The Customer shall not: transfer any illegal material; use the Service to send or store material that is offensive, abusive, indecent, defamatory, obscene, menacing or in breach of copyright, privacy or other rights, or that infringes the rights of the Company or any third party; send spam or unsolicited commercial email; or divulge its Password to any third party, which it shall keep confidential at its own risk.
- 3.3 The Customer shall keep the Company informed of any change to its address or other information affecting the payment of charges.
- 3.4 The Customer shall not announce any Internet Address allocated to it as part of an autonomous system unless the addresses originate from within the Company's network and the Company has consented in writing, nor use the Service unlawfully, nor resell a bandwidth greater than that contracted.
- 3.5 The Company reserves the right to restrict or block internet traffic to or from a Customer server on any failure to abide by the Acceptable Use Policy, including the transmission of unsolicited email.

4. Equipment

- 4.1 Customer Equipment shall at all times be at the Customer's risk, insured by the Customer against all risks, and subject to the terms of the landlord or owner of the building in which it is located.
- 4.2 Equipment supplied by the Company under a purchase order remains the property of the Company until full payment in cleared funds, at which time title passes to the Customer. Risk passes on delivery.
- 4.3 Company-supplied Equipment is provided without any warranty, representation or condition, express or implied, save that any manufacturers' or suppliers' warranties capable of assignment shall be assigned to the Customer.

5. Charges, Payment and Interest

- 5.1 The Customer shall pay all charges for the Services, which are exclusive of VAT and any other applicable taxes. The Company shall invoice monthly in arrears, on or around the 1st of each month, with Direct Debit mandates taken around the 20th. Invoices may be issued by email.
- 5.2 Time for payment is of the essence. All sums are payable in full and cleared funds without set-off, deduction, counterclaim or withholding of any kind.
- 5.3 If any sum is not paid when due, the Company may charge interest on the overdue amount at 8% per annum above the Bank of England base rate from time to time, accruing daily from the due date until payment, together with the Company's reasonable costs of recovery, without prejudice to the Company's rights under clauses 6 and 9.
- 5.4 The Company may charge an administration fee of £15 plus VAT per invoice where the Customer has cancelled its Direct Debit instruction, opts not to pay by Direct Debit, or has insufficient funds on the Direct Debit due date without informing the Company in advance.

- 5.5 The Company shall pay all costs and expenses (on an indemnity basis) incurred by the Company in enforcing these Conditions or tracing the Customer, and such sums are recoverable as a debt.
- 5.6 The Company may, at any time, review the Customer's credit limit, require a deposit or advance payment, or vary payment terms, and may withhold or suspend Services until satisfied as to the Customer's ability to pay.
- 5.7 The Company may vary these Conditions (including the charges) at any time by publishing details on the Company Website at least two weeks before the change takes effect. In addition, the Company may increase the recurring charges once in each 12-month period by written notice, such increase not to exceed the greater of 5% or the percentage increase in the Consumer Prices Index over the preceding 12 months.

6. Suspension

- 6.1 The Company may suspend the Service, in whole or in part, without notice and without liability, and without prejudice to its rights under clause 9, where: the Customer fails to make any payment when due; the Customer does anything that jeopardises the Service or any network; the Customer's credit limit is exceeded; or the Customer is otherwise in breach of these Conditions.
- 6.2 No suspension affects the Customer's liability to pay charges. During suspension the subscription charge continues to accrue, and the Company may refuse to release the Customer's Internet Address.
- 6.3 The Company may charge a reasonable reconnection fee before restoring a suspended Service.

7. Term and Renewal

- 7.1 This Agreement commences on the Service Commencement Date and continues for an initial term of thirty-six (36) months (the "Initial Term"), and shall remain in force for a minimum period of thirty-six (36) months for all products.
- 7.2 On expiry of the Initial Term, and on expiry of each Renewal Term, this Agreement shall automatically renew for a further period of thirty-six (36) months on the same terms (each a "Renewal Term"), unless either party gives the other written notice of termination not less than three (3) months before the end of the Initial Term or the then-current Renewal Term.
- 7.3 For the avoidance of doubt, if written notice complying with clause 8.1 is not received by the Company at least three (3) months before the end of the Initial Term or the then-current Renewal Term, this Agreement automatically renews for a further thirty-six (36) month Renewal Term and the Customer remains bound, and liable for the charges, for the full duration of that Renewal Term.

8. Termination

- 8.1 By the Customer. The Customer may terminate this Agreement by giving not less than three (3) months' written notice, such notice to expire no earlier than the end of the Initial Term or the then-current Renewal Term. Notice must be in writing, marked for the attention of the Managing Director, and sent by recorded delivery to the Company's place of business.
- 8.2 By the Company on notice. The Company may terminate this Agreement at any time by giving the Customer not less than one (1) month's written notice.
- 8.3 By the Company immediately. The Company may terminate this Agreement, or suspend or cease the Service, immediately and without notice or liability if the Customer:
 - 8.3.1 commits any breach of this Agreement, including non-payment of any charges within thirty (30) days of the due date;
 - 8.3.2 makes any voluntary arrangement with its creditors, becomes subject to an administration order, becomes bankrupt, goes into liquidation, has an encumbrancer take possession or a receiver appointed, ceases or threatens to cease to carry on business, or where the Company reasonably apprehends that any such event is about to occur; or
 - 8.3.3 conducts itself in any manner prejudicial to the Company.
- 8.4 On termination for any reason, all invoices, including the termination invoice, become due for immediate payment.

9. Early Termination Charges

- 9.1 Where this Agreement is terminated before the end of the Initial Term or a Renewal Term, whether by the Customer or by the Company under clause 8.3, the Customer shall pay to the Company on demand, as a debt due:
- 9.1.1 all charges and fees outstanding at the date of termination; plus
 - 9.1.2 the total of all recurring charges that would have become payable for the remainder of the Initial Term or then-current Renewal Term, as if this Agreement had run to its full duration; plus
 - 9.1.3 any Previously Paid Termination Charges; plus
 - 9.1.4 where the Service is terminated within twelve (12) months of the Service Commencement Date, the full cost of broadband activation and/or migration.
- 9.2 No refund of subscription or other charges shall be made to the Customer on termination of the Agreement by either party.
- 9.3 The Customer acknowledges that the sums in clause 9.1 represent a reasonable pre-estimate of the Company's loss and protect the Company's legitimate interest in the revenue of the full term.

10. Consequences of Termination

- 10.1 On termination the Customer shall, at its own cost, return to the Company all Equipment, cables and literature belonging to the Company, in good working order, within five (5) days, failing which the Company may recover it and charge the Customer for doing so.
- 10.2 The Company may invalidate the Customer's User Name and Internet Address and cease all Services with immediate effect.
- 10.3 Domain names remain the property of the Company until all outstanding amounts have been paid, and domain transfers will not be made until then. Domain hosting and transfer requests require the authorised signature of the domain owner; a charge may be made for administration.
- 10.4 Termination does not affect any rights, remedies, obligations or liabilities accrued at the date of termination, including the right to claim damages, nor any provision intended to survive termination.

11. Assignment, Novation and Change of Control

- 11.1 The Customer shall not assign, novate, transfer, charge, sub-contract or deal in any manner with any of its rights or obligations under this Agreement without the prior written consent of the Company.
- 11.2 The Company may at any time, without the consent of the Customer, assign, novate, transfer, mortgage, charge, sub-contract, delegate or otherwise deal with any or all of its rights and obligations under this Agreement to any third party, including any purchaser of all or part of the Company's business, assets or customer contracts, or any member of the Company's group. The Customer irrevocably consents to any such dealing and shall, if requested, promptly enter into a novation agreement or acknowledge the transfer in writing.
- 11.3 Where the Company transfers its business, or the relevant customer contracts, to a third party (a "Transferee"), this Agreement is automatically novated to the Transferee on the same terms with effect from the date of transfer. From that date the Transferee assumes the Company's rights and obligations, the Company is released from them, and the Customer is deemed to have consented to the novation.
- 11.4 A Change of Control of the Company shall not affect this Agreement, which continues in full force and effect. No Change of Control entitles the Customer to terminate, suspend, vary or renegotiate this Agreement or any charges.
- 11.5 The Customer shall, at the Company's cost, provide such reasonable co-operation and information as the Company requires to give effect to any assignment, novation or transfer under this clause 11.

12. Liability

- 12.1 Subject to clause 12.4, the Company shall not be liable, to the fullest extent permitted by law, for: indirect or consequential loss; loss of profits, business, revenue, goodwill or anticipated savings; any economic loss; any third-party claim against the Customer; or any loss or damage caused by any act or omission of the Customer, any PTO, any Value Added Service supplier, other customers, or any event of force majeure.
- 12.2 Subject to clause 12.4, the Company's total aggregate liability arising under or in connection with this Agreement shall not exceed the aggregate of the charges paid by the Customer for the Service in the twelve

(12) month period beginning on the Service Commencement Date, or its anniversary, in which the event giving rise to the claim occurs.

- 12.3 The Company gives no warranty that the Services will be uninterrupted or error-free, or as to speed, quality or availability. Where a service level applies, the remedies stated in it are the Customer's sole and exclusive remedy for the relevant failure. It is the Customer's responsibility to ensure the Services meet its requirements.
- 12.4 Nothing in this Agreement excludes or limits either party's liability for death or personal injury caused by negligence, for fraud or fraudulent misrepresentation, or for any liability that cannot lawfully be excluded.

13. Customer Indemnity

- 13.1 The Customer shall indemnify and keep indemnified the Company against all liabilities, costs, expenses, damages and losses (including legal costs on an indemnity basis) suffered or incurred by the Company arising out of or in connection with the Customer's use or misuse of the Services, the Customer's breach of this Agreement, or any claim by a third party arising from the Customer's acts or omissions.

14. Changes to the Service

- 14.1 If any Network Operator discontinues or alters the provision of telecommunications Services, or disconnects the Customer's apparatus from the PSTN, PDN or Internet, the Company may discontinue, alter, modify, expand, improve, maintain, repair, suspend or disconnect the Services as necessary, without liability.

15. Providing the Service

- 15.1 During the term the Company shall use reasonable endeavours to provide the Services. Any performance dates are estimates only and time is not of the essence for the Company's provision of the Services.
- 15.2 The Company may require a survey of the Customer's site before commencement, and may, without liability, change or withdraw part of the Services or change how they are delivered.
- 15.3 The Customer shall report any fault to the Company, where it will be investigated within four (4) working hours. Fault-reporting hours are 8:30am to 5pm Monday to Thursday and 8:30am to 4:30pm Friday, excluding weekends and public holidays, or such other hours as the Company and Customer agree in writing (which may attract additional charges).
- 15.4 If the Customer reports a fault and the Company finds none, or finds the Customer caused it, the Company has no obligation to repair and may charge the Customer for the investigation and any work undertaken.

16. Data Protection

- 16.1 Each party shall comply with its obligations under the UK GDPR and the Data Protection Act 2018 in respect of personal data processed under this Agreement.
- 16.2 Where the Company processes personal data on behalf of the Customer, it shall do so only on the Customer's documented instructions, apply appropriate technical and organisational measures, and assist the Customer in meeting its obligations, on the terms of the Company's data processing schedule.

17. Intellectual Property

- 17.1 All intellectual property rights in or arising out of the Services, the Company's network, systems, software and materials remain the exclusive property of the Company or its licensors. The Customer is granted no rights except as expressly set out in this Agreement.

18. Force Majeure

- 18.1 The Company shall not be liable for any failure or delay in performing its obligations to the extent caused by any event beyond its reasonable control, including act of God, war, terrorism, industrial dispute, failure of a Network Operator or utility, cyber attack, or failure of the public internet.

19. Notices

- 19.1 Suspension notices for non-payment may be delivered by email. Notices of termination must comply with clause 8.1. All other notices shall be in writing and sent to the party's registered office or last notified address.

20. General

- 20.1 Entire agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, representations and understandings. The Customer acknowledges that it has not relied on, and shall have no remedy in respect of, any statement or representation not set out in this Agreement, save for fraud.
- 20.2 No waiver. No failure or delay by the Company to exercise any right or remedy is a waiver of that or any other right or remedy.
- 20.3 Severance. If any provision is or becomes invalid or unenforceable, it shall be modified to the minimum extent necessary, and the remaining provisions continue in full force.
- 20.4 No partnership or agency. Nothing in this Agreement creates a partnership or agency between the parties.
- 20.5 Third party rights. A person who is not a party has no rights under the Contracts (Rights of Third Parties) Act 1999, save that a Transferee under clause 11 may enforce its terms.

21. Governing Law and Jurisdiction

- 21.1 This Agreement, and any dispute or claim arising out of or in connection with it, is governed by the law of England and Wales, and the parties submit to the exclusive jurisdiction of the courts of England and Wales.