



Broadband Terms and Conditions

Where the context admits: "we", "us" and "our" includes Phoenix SSI Limited of Dawson House, 128-130 Carshalton Road, Sutton, Surrey SM1 4TW United Kingdom or any party acting on Phoenix's implicit instructions. "you" & "your" includes the person purchasing the services or any party acting on the customer's instructions. Phoenix SSI Limited is referred to as "Phoenix".

The Customer's use of the service (as defined below) and/or acceptance of these Terms and Conditions ("Conditions") constitute the customer's agreement to be bound by these Conditions. These Conditions must be read in conjunction with those of Phoenix which may be subject to change from time to time. It is the customer's responsibility to ensure that they comply with the latest edition of the Acceptable Usage Policy (AUP) in force at any given time.

These Conditions, together with those of Phoenix AUP, explain the responsibilities of Phoenix to the customer and the customer's responsibilities to Phoenix and to other users of the service ("users"). The AUP in particular outlines what Phoenix considers to be unacceptable use of the Internet by our customers so that Phoenix can take appropriate steps against abusers of the Internet. The AUP and the Application Form are an integral part of these Conditions and, unless otherwise expressly stated, all references to Conditions include reference to the AUP and to the Application Form. If you are a consumer, you must be 18 years or older to register for the service.

1. Definitions

Please note some terms used in these Conditions have a certain meaning:

"Access Line" means the telecommunications circuit that the customer uses to obtain telecommunications services over the public switched telephone network at the premises as notified by the customer to Phoenix;

"Act" means the Telecommunications Act 1984;

"Agreement" means these Conditions together with the applicable Application Form and AUP;

"Application Form" means the form that the customer signs to apply for the service;

"Carrier" means any supplier of telecommunications services to Phoenix for the service;

"Commencement Date" means the date when the customer first receives the live 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 Phoenix characterizes as confidential at the time of its disclosure either in writing or orally. Confidential Information does not include information which the customer can demonstrate:

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

"Customer" means the person who orders the service and person shall be taken to include bodies corporate or non-incorporate. Phoenix may accept instructions from another person who Phoenix reasonably believes is acting with the customer's authority or knowledge.



"Customer Apparatus" means apparatus belonging to the customer not forming part of the equipment but which may be connected to the equipment;

"Equipment" means any apparatus or equipment provided by Phoenix or any third party to the customer at the premises to enable provision of the service;

"Minimum Period of Service" means:

- (a) For customers ordering Phoenix - The minimum period of service is thirty (30) days.
- (b) For customers ordering Phoenix ADSL Standard services - The minimum period of service will be one (1) month from the commencement date.
- (c) Cooling Off Period - If you are a consumer (that is to say, you are not purchasing the service(s) wholly or in part for your business or you are not a business or using a business service provided by us), you have the right, in addition to your other rights, to cancel the contract and receive a refund, subject to any third party costs incurred during the provisioning of your order. You must inform us in writing (e-mail acceptable) via the cancellation procedure within the "Contact Us" section of the website within seven working days of entering into the contract if you wish to exercise this right." The cooling off period shall not apply in the event the service is activated within 7 working days of customer order and full termination charges shall be levied.

"Physical Characteristics" (a) For customers wishing Phoenix to manage the connection only - Means an existing standard British Telecommunications analogue telephone line which does not have any incompatible services enabled upon it, as detailed in the service description. (b) For customers wishing Phoenix to manage the connection, installation and equipment:

For Home customers - An existing standard British Telecommunications analogue telephone line which does not have any incompatible services enabled upon it, as detailed in the service description.

For business customers - means one (1) wall mounted power socket within two (2) metres of the master phone socket and an existing standard British Telecommunications analogue telephone line which does not have any incompatible services enabled upon it, as detailed in the Service description;

"Phoenix System" means the telecommunication system which Phoenix runs and, for the purpose of this Agreement, any apparatus leased by, or otherwise obtained by, Phoenix from a third party.

"Premises" means the customer's premises where the service is to be received.

"Service" means the installation, connection and supply of a telecommunications circuit capable of supporting ADSL services at the Premises and the provision of telecommunication services over such circuit as detailed in our website.

"Standard Tests" means the tests carried out by Phoenix or any third party to determine whether the service is ready.

"Term" is defined in clause 3.

2. Provision of The Service

2.1 The Service is described on the web site of Phoenix.



- 2.2 The provisions of the Application Form are binding on Phoenix, once Phoenix confirms to the customer in writing acceptance of the customer's order. The customer agrees to receive the service and pay the fees for the service as specified in this Agreement.
- 2.3 Phoenix will provide the service to the customer in accordance with the Conditions of this Agreement and with reasonable skill and care. It is technically impracticable to provide the service or the telecommunications services free of faults and Phoenix does not undertake to do so.
- 2.4 Phoenix will use its reasonable endeavours to provide a prompt and continuing service but will not be liable for any loss of data resulting from delays, non-deliveries, missed deliveries, or service interruptions caused by events beyond the control of Phoenix, or by errors or omissions of the customer.
- 2.5 Phoenix exclude all and any warranties and conditions of any kind, whether express or implied, in respect of the service and any content or data obtained or downloaded from it or the accuracy of information received through it.
- 2.6 To use the service, the customer needs to supply Phoenix with certain details on the customer's Application Form. Phoenix will respect the privacy of this information and will comply with applicable data protection legislation in respect of it.
- 2.7 The customer must have an Access Line with the Physical Characteristics in order to receive the Service. If the customer changes from the Physical Characteristics, Phoenix cannot be held responsible if the customer is no longer able to receive the service.
- 2.8 The customer acknowledges that the service will depend upon the characteristics of the customer's Access Line and that where the carrier so determines it may not be possible to supply the service. In this event Phoenix shall have the right to terminate this Agreement without liability to the Customer.
- 2.9 From time to time certain Points of Presence (PoPs), servers, or the whole or part of the Network may be closed down for routine repair or maintenance work. Phoenix or its authorised representative shall give as much notice as in the circumstances is reasonable and Phoenix shall endeavour to carry out such works during the scheduled maintenance periods as published from time to time.
- 2.10 Phoenix may occasionally have to interrupt the service or change the technical specification of the service for operational reasons or because of an emergency. Phoenix will give the customer as much notice as possible of any planned interruption of the customer's service. In these circumstances the customer shall have no claim against Phoenix for any such interruption.
- 2.11 Phoenix will correct reported faults as soon as possible. Should the customer encounter a fault with the service the customer should report the fault to the Phoenix ADSL Help Desk. Technical Support contact information including availability times is available on the web site of Phoenix.
- 2.12 Phoenix may include links from time to time from the service to other Internet sites. Phoenix have no control over the content of such sites and disclaims any liability in respect of the customer's use of such sites. The customer may wish to use one of the available filtering software products to help prevent access to certain web content.
- 2.13 The customer acknowledges that the service shall be provided by Phoenix at the premises and that under these Conditions the customer cannot require Phoenix to transfer the service or equipment to another location. In the event the customer requests the equipment to be moved to another location within the premises, Phoenix reserves the right to accept or reject such



request and the decision of Phoenix shall be final. Any expense incurred in such move of the equipment within the premises shall be incurred by the customer.

- 2.14 Except as otherwise expressly permitted in these Conditions, and in addition to other restrictions herein, the customer may not:
- 2.14.1 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;
 - 2.14.2 disclose service features, errors or viruses to any third party without the prior written consent of Phoenix;
 - 2.14.3 use the service except in conjunction with Phoenix recommended operating environment, notified by Phoenix; or
 - 2.14.4 modify the service without Phoenix's prior written consent.
- 2.15 Phoenix reserves the right to remove e-mail from Phoenix servers that is left for a period of more than four months.
- 2.16 Phoenix reserves the right to change the customer's password at any time at its sole discretion.

3. Term

- 3.1 This Agreement will commence on the Commencement Date and shall continue for a term equivalent to the subscription period paid by the customer until the expiry of that subscription period or the Agreement is terminated in accordance with the terms hereof ("the term") subject to the provisions of paragraph 13.1
- 3.2 The Minimum Period of Service does not prevent Phoenix from suspending or terminating the service under paragraphs 12 and 13 of this Agreement.

4. Fees

- 4.1 Phoenix shall provide the customer with the service for the fees as set out on the Application Form. These fees are payable in advance from the start of the Minimum Period of Service. Payment will be due on the date specified on the invoice. Phoenix accept major credit and debit cards, or if preferred BACS (although initial setup costs need to be paid using a card).
- 4.2 Subject to our discretion we will invoice you with credit terms of 30 days net, on an Annual basis only. Phoenix may charge interest on all outstanding amounts on a daily basis at the rate of 3% per annum above the base lending rate of Barclays Bank plc in force from time to time, from the date of the invoice until the date of actual payment or judgment has been enforced. Additionally, Phoenix reserves the right to terminate the provision of service to the customer immediately if the customer is in default of payment. Such termination is without prejudice to the rights of either party accrued prior to the date of termination.
- 4.3 The installation fee as specified on the Application Form is payable in advance by credit card.
- 4.4 All fees are subject to change from time to time in the event that the carrier increases its fees to Phoenix. Phoenix will contact you in the event of any such increases.



- 4.5 In addition to the fee set out on the Application Form, Phoenix shall be entitled to charge the customer for the reasons given: (a) Internal Relocation - if a customer wants to relocate the main phone socket from one room/floor to another within the same building; (b) Abortive Visit Charge - abortive visits include attendance to incorrect address provided by the customer, site does not meet requirements specified by BT or End User is not available; (c) Administration Charges - where the customer provide illegible, materially incomplete or incorrect order details; (d) Reworking Charge - if the customer consents to a carrier engineer making good any existing non-carrier installed wiring to make it fit for installation of the service; (e) Order Cancellation - if the customer requests the cancellation of the Phoenix ADSL service five (5) or less days prior to the arranged installation date. For the latest pricing information on the above please contact the Phoenix's sales department.

5. Access

- 5.1 The Customer hereby irrevocably gives permission to Phoenix and its employees, agents or contractors to:
- 5.1.1 execute any works on the premises for, or in connection with, the installation, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of the equipment;
 - 5.1.2 keep and operate the equipment installed on, under or over the premises;
 - 5.1.3 enter the premises to inspect any telecommunication apparatus kept on, under or over the Premises or elsewhere for the purposes of the Phoenix System. The permission set out above shall continue in force after cancellation or termination of this Agreement until such time as Phoenix have removed all equipment from the premises.
- 5.2 The customer must allow Phoenix or any carrier 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. Installation

- 6.1 When Phoenix manages the connection only:
- 6.1.1 Phoenix will only arrange for the ADSL service to be provided on the customer's telephone line. It is the customer's responsibility to connect the necessary micro-filter and ADSL equipment
 - 6.1.2 When Phoenix manage the connection, installation and equipment
- 6.2 Phoenix shall attempt 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 Phoenix. Any installation date given is an estimate only and shall not be liable for any failure to meet such installation date.
- 6.3 Phoenix shall supply the customer with the relevant information to enable the customer to suitably prepare the premises for delivery and installation of the equipment. The customer shall at the customer's expense provide suitable accommodation, facilities and environmental conditions for the equipment and all necessary electrical and other installations and fitting



- 6.4 Phoenix shall use its reasonable endeavours to comply with the customer's reasonable requests in respect of installation but Phoenix or its contractors' 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.
- 6.5 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 Phoenix. Unless otherwise agreed, this power supply is to be provided by the customer. Phoenix shall not be responsible for interruption or failure of the services caused by a failure of such power supply.
- 6.6 The customer acknowledge that during the installation of the equipment for the provision of the service the Customer's Access Line may suffer a temporary loss of service which shall be reinstated following installation and/or interference to any other Customer Apparatus or services used in connection with the Access Line (e.g. Access Line security systems) without any liability to Phoenix.

7. Phoenix Equipment

This section applies to customers requiring Phoenix to manage the connection, installation and equipment. Customers wishing Phoenix to manage the connection only can ignore this section as they must procure, install and manage their own equipment.

- 7.1 The customer agrees 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.
- 7.2 The customer shall procure at the customer's own expense all permissions, licences, registrations and approvals necessary for Phoenix to deliver, install and maintain the equipment for the provision of the services.
- 7.3 Following the installation of the equipment, Standard Tests shall be carried out by Phoenix to ensure that the service is ready for use. If the service is not ready for use, Phoenix shall either repair or replace, at its sole option, the equipment or any part thereof and repeat the Standard Tests. The customer shall be entitled to use the services following Phoenix informing the customer of successful completion of the Standard Tests.
- 7.4 The equipment shall remain the property of Phoenix or the supplier of such equipment (including any carrier) and the customer shall at all times make clear to third parties that the same is the property of Phoenix or a third party supplier of such equipment. Phoenix may modify, substitute, renew or add to the equipment from time to time at its absolute discretion.
- 7.5 The customer shall be responsible for ensuring at all times the safekeeping and proper use of the equipment after delivery and installation at the premises. The customer shall be liable to Phoenix for any loss or damage to the equipment (except where it can be shown that such loss or damage was caused by our negligence or due to fair wear and tear). The customer will notify Phoenix immediately of any such loss or damage in particular (without prejudice to the generality of the foregoing) the customer undertakes:
- 7.5.1 to keep the equipment at the premises and not to move it;
- 7.5.2 to comply with all instructions as Phoenix may notify to the customer 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 licence granted there under;

- 7.5.3 not to cause the equipment to be repaired or otherwise maintained except by an authorised representative of Phoenix;
 - 7.5.4 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 Phoenix to the customer from time to time;
 - 7.5.5 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;
 - 7.5.6 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 Phoenix or the owner of such equipment's rights in the equipment;
 - 7.5.7 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 Phoenix or other third party supplier of such equipment.
 - 7.5.8 to permit Phoenix and its employees, agents or contractors to inspect or test the equipment at all reasonable times;
- 7.6 The customer 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 its 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 Phoenix). The customer will notify Phoenix immediately of any such loss or damage.
- 7.6.1 The customer undertake to indemnify Phoenix against any and all such loss or damage referred to in this clause 7.6.
 - 7.6.2 Wilful destruction or abuse of the equipment may result in additional charges being payable by the customer to Phoenix.

8. Customer Apparatus

- 8.1 The customer shall be responsible for the repair and maintenance of any customer apparatus used in order to obtain or use the service.
- 8.2 The customer shall ensure that such customer apparatus complies with any applicable law. The customer 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. Phoenix reserves the right to disconnect any apparatus used by the customer if the customer does not fulfil their obligations under this clause or if, in the opinion of Phoenix, such apparatus may cause the death of or personal injury to any person, or damage to property, or materially impair the quality of any telecommunication service provided by means of Phoenix , and the customer agrees to disconnect such apparatus at the request of Phoenix.



9. The Customer's Use of The Service

9.1 The Customer must NOT use the Service:

- 9.1.1 in a way that does not comply with the Conditions or any legislation or that is in any way unlawful or fraudulent; or
- 9.1.2 in connection with the carrying out of a fraud or criminal offence against any telecommunications operator; or
- 9.1.3 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 which may contain viruses or other similar programs, or which cause overloads to the Phoenix system; or
- 9.1.4 to send or procure the sending of unsolicited advertising or promotional material; or
- 9.1.5 in a way that does not comply with any instructions given by Phoenix for reasons of health, safety or the quality of the carrier's telecommunications services or the Phoenix system; or
- 9.1.6 attempt to use the service in a way that modifies, decompiles, translates, reverse engineers, reconfigures, disassembles or otherwise alter or attempt to modify or reconfigure the service or any equipment or software or copy any manual or documentation relating to the service except to the extent applicable law specifically prohibits such restrictions;
- 9.1.7 distribute copies of the licensed programs or their documentation to others;
- 9.1.8 rent, lease or grant its rights to the licensed programs;
- 9.1.9 ship or transmit (directly or indirectly) any copies of the licensed programs or any technical data in the licensed programs or its media or any direct product thereof to any entity or country destination;

9.2 The Customer will co-operate with Phoenix reasonable requests for information regarding the customer's use of the service and supply such information without delay.

9.3 Where the customer uses the service to reach networks and services not operated by Phoenix, the customer will abide by the acceptable use policies or terms and conditions imposed by the operators of those networks and service

9.4 The customer warrants that:

- 9.4.1 as the registered user of the account, you will keep the username and password secure and not let them become public knowledge and that the password will not be stored anywhere on a computer in plain text;
- 9.4.2 if the password becomes known to any other unauthorised user it will inform Phoenix or its authorised representative immediately;
- 9.4.3 any breach of these obligations shall entitle Phoenix to immediately terminate the Service to the Customer without notice;



- 9.5 **Use by others:** the customer acknowledges that Phoenix is unable to exercise control over the content of information passing over the Phoenix network or via the service, and Phoenix hereby excludes all liability of any kind for the transmission or reception of infringing information of whatever nature.

10. Domain Names & Internet Protocol Addresses

- 10.1 The customer confirms and warrants that it is the owner of, or that the customer has been and is duly authorised by the owner to use, any trade mark or name requested or allocated as its domain name.
- 10.2 The customer acknowledges that Phoenix cannot guarantee that any domain name the the customer requests will be available or approved for use.
- 10.3 Phoenix has the right to require the customer to select a replacement domain name and may suspend the relevant service associated with the domain name if, in the opinion of Phoenix, there are reasonable grounds for Phoenix to believe customer's current choice of domain name is, or is likely to be, in breach of the provisions of this Agreement and law.
- 10.4 If the service includes the registration of an Internet domain name the customer acknowledges and agrees that:
- 10.4.1 Phoenix does not represent, warrant or guarantee that any domain name applied for by the customer or on its behalf will be registered in its requested name or is capable of being registered by it or that the use of such domain name by it will not infringe any third party rights. Accordingly, the customer should take no action in respect of its requested domain name(s) until it has been notified that its requested domain name has been duly registered and Phoenix will not be liable for any such action taken by the customer.
- 10.4.2 The registration of the domain name and its ongoing use by the customer is subject to the relevant naming authority's terms and conditions of use and the Customer undertakes to Phoenix that it will comply with such terms and conditions. The customer hereby irrevocably waives any claims it may have against Phoenix in respect of any decision of a naming authority to refuse to register a domain name and, without limitation, the customer acknowledges and agrees that any administration or other charge paid by the customer in respect of the registration of the domain name is non-refundable in any event.
- 10.4.3 Phoenix accepts no responsibility in respect of the use of a domain name by the customer and any dispute between the customer and any other individual or organisation regarding a domain name must be resolved between the parties concerned and Phoenix will take no part in any such dispute. Phoenix reserves the right on becoming aware of such a dispute concerning a domain name at its sole discretion and without giving any reason, to either suspend or cancel the relevant service associated with the domain name and/or to make such representations to the relevant naming authority as it deems appropriate.
- 10.5 Any Internet Protocol address allocated by Phoenix to the customer shall at all times remain the sole property of Phoenix and the customer will have a non-transferable licence to use such address for the duration of this Agreement. If this Agreement is terminated for whatever reason, the Customer's licence to use the Internet Protocol address shall automatically terminate and thereafter it will not use such address.



11. Software Agreement

- 11.1 Phoenix and its suppliers own the licensed programs and the documentation provided with this Agreement, both of which are protected by copyright laws. The customer's right to use the licensed programs and documentation is limited to the terms and conditions described below:
- 11.2 The customer may:
- 11.2.1 use the enclosed licensed programs on the number of users specified in the service to which the customer subscribes
 - 11.2.2 physically transfer the licensed programs from one computer to another provided that the licensed programs are used on no more than the number of users specified and that the customer removes any copies of the licensed programs from the computer from which the licensed programs are being transferred;
 - 11.2.3 make copies of the licensed programs solely for the purposes of backup. The copyright notice must be reproduced and included on a label on any backup copy.

12. Breach of Condition

- 12.1 Phoenix shall investigate any suspected or alleged breach of these Conditions or any suspected compromise to its network systems or security and in doing so Phoenix will act reasonably and fairly at all times.
- 12.2 Phoenix reserves the right to take any action Phoenix deems appropriate and proportionate to the breach of the Conditions.
- 12.3 If Phoenix decide that the customer has breached the Conditions, Phoenix will use reasonable endeavours to ensure that the customer is made aware of the breach without suspension or termination of the service. However it may be necessary, due to the severity of the breach, to suspend or end the service whilst details of the breach are investigated further. Phoenix reserves the right to suspend or end the customer's account at its sole discretion without refund, and make an additional charge for all reasonable costs incurred due to investigating and dealing with the misuse and/or blocking access to any component(s) of the Service.
- 12.4 The customer must notify Phoenix immediately in writing of any allegation of infringement of any intellectual property rights prompted by its use of the service. The customer may not make an admission relating to an alleged infringement. The customer must allow Phoenix, or at Phoenix's election, the carrier to conduct all negotiations and proceedings and give Phoenix or the carrier all reasonable assistance in doing so. The customer must allow any part of the service to be modified so as to avoid continuation of the alleged infringement.

13. Term and Termination

- 13.1 The customer may end this Agreement after the Minimum Period of Service by giving Phoenix not less than thirty (30) days written notice expiring no earlier than the end of the Minimum Period of Service. If a customer wishes to end this Agreement before the end of the Minimum Period of Service, Phoenix shall be entitled to charge the Customer fees which would have been payable by the customer for the balance of the Minimum Period of Service.



- 13.2 In addition, if a customer using Phoenix ADSL wishes to end this Agreement before one (1) month has elapsed since the Commencement Date, Phoenix shall be entitled to charge a termination fee.
- 13.3 The customer may do so by writing to Phoenix indicating the Customer's intention to cancel and either(a) send it to Phoenix.
- 13.4 Phoenix may end this Agreement immediately upon written notice to the customer if:
- 13.4.1 it becomes unlawful for (i) Phoenix or the carrier supporting the service to continue to provide the service; or (ii) Phoenix or the carrier supporting the service is required to cease the service by a competent regulatory authority;
 - 13.4.2 the carrier supporting the service ceases to do so for whatever reason or materially changes the terms of its provision of telecommunications services to Phoenix for the service beyond the reasonable control of Phoenix;
 - 13.4.3 the customer (or a third party acting on the customer's behalf or instruction) fail to comply with any of the material Conditions of this Agreement including the customer's obligation to pay and the customer does not remedy such failure within fifteen (15) days of a request to do so;
 - 13.4.4 the customer take (or cause or permit a third party to take) any action in breach of Phoenix rights to the Confidential Information
- 13.5 The provisions of this Agreement regarding Confidential Information and limitation of liability shall survive the termination of the Agreement
- 13.6 Upon termination of this Agreement the customer shall immediately stop using the service and the customer's right to use the service shall immediately terminate.

14. Disclaimer of Warranties

- 14.1 THE SERVICE WILL BE PROVIDED TO THE CUSTOMER "AS IS", WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS OR IMPLIED. PHOENIX 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-INFRINGEMENT OF THIRD PARTY RIGHTS. FURTHER, PHOENIX DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES THAT MIGHT ARISE FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. THE CUSTOMER ACCEPTS ALL RISKS AND LIABILITIES ASSOCIATED WITH THE CUSTOMER'S USE OF THE SERVICE.

15. Limitation on Liability

- 15.1 Nothing in this Agreement shall exclude or limit liability for (a) death or personal injury resulting from the negligence of either party or their servants, agents or employees or (b) fraud.



- 15.2 Phoenix shall not 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:
- 15.2.1 any economic losses (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings);
 - 15.2.2 any loss of goodwill or reputation;
 - 15.2.3 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.
- 15.3 Subject to paragraphs 15.1 and 15.2 Phoenix liability to the customer in contract, tort, negligence, pre-contract 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 £250.
- 15.4 Each provision of this paragraph 15 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.
- 15.5 The customer is solely responsible for any liability arising out of any content provided by the Customer and/or any material to which other users can link to through such content. Any data included in the equipment upon installation by Phoenix is for testing use only and Phoenix hereby disclaim any and all liability arising there from.

16. Indemnity

- 16.1 The customer agrees to indemnify and hold Phoenix harmless for all liabilities, loss, claims and expenses that may arise from (a) any breach of these Conditions by the customer; and (b) any transmission or receipt of any content or message which the customer has requested or made using the service.

17. Data Protection/Personal Details

- 17.1 Phoenix may retain the customer's personal data, and the customer authorises Phoenix to use their personal data, for the following purposes:
- 17.1.1 provision of the service to the customer
 - 17.1.2 keeping of a record for a reasonable period after termination of the customer's service;
 - 17.1.3 operation and enforcement of these Conditions;
 - 17.1.4 technical maintenance;
 - 17.1.5 providing the customer with information about other services Phoenix offer, subject to the customer's right to opt out of receiving such information on the Application Form;
 - 17.1.6 transferring it to another company in the event of a sale of Phoenix;



17.1.7 legal compliance including disclosing it to any third party who Phoenix reasonably consider has a legitimate interest in any such investigation or its outcome.

17.2 It is the customer's responsibility to keep the personal data that the customer provide to Phoenix up to date. Phoenix may send notices or other information to the customer at the address the customer gives Phoenix. The customer should notify Phoenix immediately of any change to the customer's personal data.

18. Confidentiality

18.1 The customer 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 the customer uses with their own Confidential Information, but in any event no less than reasonable care. The customer may not use or disclose any Confidential Information other than for purposes and activities specifically permitted by the Agreement. The customer 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 the customer is legally compelled to disclose any Confidential Information, then, prior to such disclosure, the customer must:

18.1.1 immediately notify Phoenix to allow Phoenix an opportunity to contest the disclosure;

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

18.1.3 co-operate fully with Phoenix 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 the customer may disclose the Confidential Information only to the extent necessary to comply with applicable legal requirements.

19. Notices

19.1 Any notice required or permitted under the Agreement must be in English and in writing. The customer must send any such notice to Phoenix.

19.2 Any notice to be sent to the customer will be sent to the address which the customer provided on the Application Form or such other address as the customer shall have given written notice of as the billing address.

20. Assignment

20.1 Phoenix reserves the right to assign or sub-contract any or all of its rights and obligations under this Agreement without the customer's further consent to such assignment or sub-contract

20.2 The customer may not sell, lease, sub-licence, 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 Phoenix.



21. Matters Beyond The Parties' Reasonable Control

21.1 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.

22. Proprietary Rights

22.1 All title, interests, and rights (including intellectual property rights) in the service remain in Phoenix and/or its suppliers. The customer acknowledges such title, interest and rights and the customer shall not take any action to jeopardise, limit or interfere in any manner with Phoenix (or any third party supplier's) title, interests or rights with respect to the service including, but not limited to, using its trademarks or trade name.

22.2 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 the customer under this Agreement gives the customer no rights to such content. If the customer wishes to use such content, the customer must ensure that he has the appropriate consent or licence of the content owner.

23. Amendment of These Conditions

23.1 Phoenix reserves the right to add to and/or amend the Conditions at any time. Such changes shall be notified to the customer by posting on the Legal Section of the Phoenix's web site. Changes in this manner shall be deemed to have been accepted if the customer continues to use the service after a period of two weeks from the date of posting on the web site.

24. Miscellaneous

24.1 The Agreement will constitute the entire agreement between the parties concerning the subject matter of these 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 Conditions, and all past courses of dealing or industry custom. The Agreement will prevail over any other conflicting written instrument or other notice the customer may submit to Phoenix.

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

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

24.4 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.

24.5 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.



- 24.6 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.
- 24.7 The licence granted under the Agreement will not create a partnership, joint venture, agency relationship or franchise relationship.
- 24.8 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 the customer or Phoenix.
- 24.9 The headings to the sections of these Conditions are for convenience only and have no substantive meaning.