

TERMS & CONDITIONS FOR THE PROVISION OF FIBRESPAN LEASED PRIVATE DARK FIBRE CIRCUITS

1. DEFINITIONS

In this Contract, the following terms have the definitions shown next to them:

“Charge Schedule” - a separate document containing a list of FS’s charges and terms.

“Connecting Point” - a block terminal, a socket for a removable plug, a distribution frame, or any other device, supplied, installed and maintained by FS in the Premises to facilitate the connection of Customer Equipment to the Service.

“Contact Telephone Number” - the telephone number and name of a person, nominated by the Customer, for FS to contact to report the progress and clearance of a fault.

“Contract” - these terms and conditions, the Charge Schedule and the Order Form. This Contract begins on the date that FS accepts the Customer’s request for the Service.

“Customer” - the legal entity with whom FS contracts to provide the Service as detailed on the Order Form.

“Customer Equipment” - equipment that is not part of FS’s network and which the Customer uses or plans to use with the Service.

“Dark Fibre Circuit” - a fibre optic communications link provided between two or more locations.

“failure of a Dark Fibre Circuit” - any failure of the Customer’s Dark Fibre Circuit, causing continuous total loss of the ability to use the Service. It does not include the loss of such ability, arising as a result of FS’s suspension of Service, under any provision of this Contract or any matter beyond the reasonable control of FS.

“FS” - FibreSpan Limited of Enterprise House, Ocean Village, Southampton, Hampshire, SO14 3XB, registered in England Co. reg no: 4251737.

“FS Equipment” - equipment (including duct, blown fibre duct, cable, termination units, splice enclosures and building entry transition units) placed by FS, or anyone acting on FS’s behalf, at the Premises to provide the Service.

“Licence” - any licence granted, or having effect as if granted, under the Telecommunications Act 1984 or any replacement or re-enactment of it, or any similar licence as amended by the Communications Act 2003.

“Maintenance Service” - the maintenance service to be provided to the Customer by FS as detailed herein.

“Minimum Period” - the period shown on the FS Order Form.

“Order Form” - a separate document containing specific details of the facilities to be provided to the Customer by FS.

“Premises” - the locations at which FS agrees to provide the Service as detailed on the Order Form.

“Ready For Service Date” - the date as set out in the Order Form, on which FS will make it’s best endeavours to provide the Dark Fibre Circuit, or such later date as may be agreed in writing by FS and the Customer.

“Rental Fee” - the charge to made by FS to the Customer for the rental and maintenance of the Dark Fibre Circuit as detailed on the Order Form.

“Service” - the facility for communications service, which FS provides either by means of a Dark Fibre Circuit or by other means and any related services listed in the Charge Schedule that FS agrees to provide to the Customer under this Contract.

“Working Days” - Monday to Friday excluding public holidays.

“Working Hours” - 8am to 5:30pm.

2. PROVISION OF SERVICE

2.1 FS will provide the Service to the Customer on the terms of this Contract, which set out the entire Contract between FS and the Customer.

2.2 For operational reasons, FS may vary the technical specification of the Service or interrupt the Service. FS will restore the interrupted Service as quickly as possible.

2.3 It is technically impracticable to provide a fault free Service and FS does not undertake to do so. FS does undertake certain obligations with regard to faults in the Service; see clause 7 below.

2.4 Requests made to FS, relating to providing the Service, are to be made or confirmed in writing.

2.5 FS agrees to make its reasonable endeavours to provide a Dark Fibre Circuit by the Ready For Service Date. If the Customer requests a change to the specification of a Dark Fibre Circuit before it is provided, the date by which FS agrees to provide the Dark Fibre Circuit to the new specification will become the Ready For Service Date.

2.6 Any other date proposed by FS for providing the Service or a facility is to be treated as an estimate only and FS accepts no liability for failure to meet it.

2.7 Where, at the request of the Customer, any work to provide the Service is done outside FS's normal Working Hours or Working Days, the Customer will pay a charge for such work, calculated at FS's applicable hourly rate as stated in the Charge Schedule.

3. SERVICE SUSPENSION

Occasionally, FS may temporarily suspend Service for the purpose of repair, maintenance or improvement of any of FS's telecommunication systems. FS will give the Customer as much notice as possible before any suspension and FS will restore Service as soon as possible.

4. CUSTOMER EQUIPMENT

Customer Equipment must only be connected to FS's Dark Fibre Circuits using Connecting Points, unless FS agrees otherwise.

5. PREPARING THE PREMISES & FS ACCESS

5.1 The Customer agrees to prepare the Premises before Service is provided, according to any instructions FS may give, and provide FS with reasonable access to the Premises.

5.2 When FS's work is completed, the Customer will also be responsible for putting items back and for any redecorating which may be needed.

5.3 If FS needs to cross another party's land, or put FS Equipment on their property (for example a neighbour or landlord), the Customer agrees to obtain their formal written permission or wayleave and to pay any related charges or fees.

5.4 FS will meet the Customer's reasonable safety and security requirements when on the Premises, and the Customer agrees to do the same for FS.

5.5 The Customer agrees to provide a suitable place and conditions for FS Equipment.

5.6 The Customer agrees to look after any FS Equipment and to pay for any repair or replacement needed if it is damaged, unless it is due to fair wear and tear, or is caused by FS or anyone acting on FS's behalf. FS will look after the Customer's physical property as set out in clause 11.2.

5.7 If FS attends the Premises to install the Dark Fibre Circuit and either access to the Premises is denied or impeded by the Customer or any other party or the Customer has failed to obtain any necessary permission in accordance with the contract, the Customer must pay a charge calculated at FS's applicable hourly rate as set out in the Charge Schedule.

6. CHARGES & PAYMENT

6.1 The Customer agrees to pay all charges for the Service as shown on the Order Form (or as otherwise agreed). The Customer agrees that FS may submit invoices for some of the charges in advance as specified on the Order Form.

6.2 FS will send invoices to the address requested by the Customer.

6.3 The Customer agrees to pay all charges for the Service, whether the Customer or someone else, upon receipt of FS's invoices, uses the Service.

6.4 Unless otherwise stated in the Order Form all charges are expressed exclusive of VAT or any other central or local government taxes, which are chargeable at the applicable rate.

6.5 The Rental Fee for the Service will commence on the Ready For Service Date, unless:-

6.5.1 FS notifies the Customer of a later date for the commencement of the Service, when the Rental Fee will be payable from the date notified; or

6.5.2 the Customer uses the Service before the Ready For Service Date, when the Rental Fee will be payable from the date the Customer first uses the Service.

6.6 FS will have the right to charge daily interest on late payments at a rate equal to 4% per annum above the base lending rate of HSBC Bank plc for the period beginning on the date on which payment is due and ending on the date on which payment is made.

7. MAINTENANCE

7.1 Unless otherwise stated in the Order Form FS shall manage the Service and shall provide such maintenance services for the proper functioning of the Service as are reasonably required in accordance with this Contract.

7.2 If the Customer detects any defect or impairment in the operation or performance of the Service it shall report this by telephoning the number specified on the FS Order Form or such other number as FS may from time to time provide to the Customer (the "Maintenance Notification Telephone Number"). When the Customer reports the fault to FS the Customer will provide FS with a Contact Telephone Number to enable FS to advise on the progress being made to clear the fault.

7.3 The Customer shall permit FS or its agents to enter the Premises for the purpose of managing, monitoring and maintaining the Dark Fibre Circuit.

7.4 If, in order to correct a fault, FS has to cross another party's land or enter another party's premises and the Customer has failed to obtain their permission, or access to the Customer's premises is denied or impeded by the Customer or another party for whatever reason, FS may charge the Customer for any aborted work as set out in the Charge Schedule.

7.5 For the avoidance of doubt all charges for maintenance are detailed on the FS Order Form.

7.6 Notwithstanding Clause 7.5 above, FS will be entitled to charge the Customer and the Customer will pay a repair fee at FS's then current fee rates (current fee rates are detailed in the FS Charge Schedule) to the extent that the need for any maintenance results from any one or more of the following:-

7.6.1 misuse or neglect of or accidental or wilful damage to the FS Equipment due to the direct or indirect actions of the Customer; or

7.6.2 if the Customer reports a fault and FS finds there is none or that the Customer caused the fault; or

7.6.3 failure by the Customer to comply with any of the provisions of this Contract; or

7.6.4 fault in, or other problem associated with the Customer Equipment.

7.7 In the event that the Customer prevents or delays the performance of maintenance services as described in this Contract including any schedules, FS shall have the right to charge to the Customer all reasonable costs incurred by such delay or prevention.

7.8 The Maintenance Service shall be available to the Customer during the Working Hours on the Working Days.

7.9 FS will respond to any Fault Notification within 8 Working Hours (the "Fault Notification Response").

7.10 FS will use all reasonable endeavours to rectify any fault within 8 Working Hours of the Fault Notification Response.

7.11 If FS agrees to attend a reported fault in Service outside the Working Hours or Working Days the Customer must pay a charge calculated at FS's applicable hourly rate as set out in the Charge Schedule.

8. CONTRACT TERMINATION

8.1 This Contract will remain in force for the Minimum Period shown on the Order Form.

8.2 At the end of the Minimum Period the Contract will continue on an annual basis unless terminated by either party serving six months notice of termination on the other.

8.3 In the event the Customer cancels this Contract or any part of the Service at any time before FS first provides the Service the Customer must pay FS in full for all charges that would have been made during the first twelve months of service.

8.4 If the Customer serves notice within the Minimum Period the Customer must pay rental or other charges for the remainder of the Minimum Period at the rate shown on the Order Form.

9. CONTRACT BREACHES

9.1 FS can suspend the Service or end this Contract (or both) at any time without notice if one of the following applies:-

(a) the Customer breaches this Contract or any other agreement the Customer has with FS and fails to put right the breach within a reasonable time of being asked to do so;

(b) bankruptcy or insolvency proceedings are brought against the Customer, or if the Customer does not make any payment under a judgement of a Court on time, or the Customer makes an arrangement with its creditors, or a receiver, administrative receiver or an administrator is appointed over any of its assets, or the Customer goes into liquidation; or a corresponding event under Scottish law.

9.2 If the Service is suspended, FS will tell the Customer what needs to be done before it can be reinstated. However the Customer must continue to pay the Rental Fee whilst the Contract continues.

9.3 On termination under clause 9.1 in addition to any other sums payable up to the end of the Contract, the Customer must pay FS the Rental Fee and any other charges which would have been payable for the remainder of the appropriate Minimum Period, at the rate shown on the Order Form.

9.4 If either party delays in acting upon a breach of this Contract, that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Contract, that waiver is limited to that particular breach.

10. RESOLVING DISPUTES

The Customer and FS will try to resolve any disputes swiftly between them. However, if the parties cannot agree, either party may refer the dispute to any recognised dispute resolution service.

11. LIMITS OF LIABILITY

11.1 FS accepts unlimited liability for death or personal injury resulting from its negligence.

11.2 FS accepts liability for loss or damage to the Customer's physical property arising from its negligence, up to £2 million in any 12-month period.

11.3 FS cannot guarantee that the Service will never be faulty.

11.4 FS is not liable to the Customer for any loss of business, profit or expected savings, wasted expense, financial loss or data being lost or corrupted or for any loss.

11.5 Unless clauses 11.1 and 11.2 apply, FS's liability to the Customer in contract, tort (including negligence) or otherwise in relation to this Contract is limited to £1 million in any 12 month period.

11.6 Each provision of this Contract, that excludes or limits FS's liability, operates separately. If any part is disallowed or is not effective, the other parts will still apply.

12. TRANSFERRING THIS CONTRACT

FS can transfer this Contract at any time as long as the level of service to the Customer is not reduced.

13. NOTICES

If the parties need to write to each other, they must do so as follows:-

(a) to FS, at any address which FS provides to the Customer or the address shown on the invoice;

(b) to the Customer, at the address to which the Customer asks FS to send invoices, the address of the Premises or, if the Customer is a limited company, its registered office.

14. MATTERS BEYOND FS'S REASONABLE CONTROL

Neither party will be liable for any breach of this Contract which is caused by a matter beyond its reasonable control including Acts of God, fire, lightning, explosion, war, disorder, riot, terrorism, flood, industrial disputes (whether or not involving their employees), extremely severe weather or acts of local or central government or other competent authorities.

15. THIRD PARTY RIGHTS

The parties agree that the terms of this Contract are not enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999.