

1. Definitions

For the purpose of our terms and conditions the following terms shall have these meanings allocated to them:

"Agreement" means these terms and conditions, the Price List, the Registration Details, Usage Allowances and the Technical Requirements;

" Authorised Distributors" means those commercial entities with which Skymarket contract from time to time to promote and sell Skymarket Broadband Services and Modems;

" BT" means British Telecommunications plc of 81 Newgate Street, London EC1A 7AJ;

" Charges" means the charges payable by you for the Service and the Modem details of which appear on the Price List;

" Minimum Period" means a period of twelve months commencing from the Start Date or from the date of Re-grade;

" Modem" means the high-speed modem and ancillary equipment that is supplied to you by Skymarket when you subscribe to the Service that enables you to connect your computer to the public telephone network and access the Internet;

" Premises" means the residential address in the United Kingdom at which Skymarket agrees to provide the Service to you;

" Price List" means the price list published by Skymarket setting out the Charges payable for the Service and the Modem, as may be amended by Skymarket from time to time;

" Re-grade" means your entitlement, as provided further in these terms and conditions, to switch the Transmission Speed of your Service;

" Registration Details" means the personal information you provide on registration for the Service and which may be subsequently changed or amended by you or on behalf;

" Service" means the Skymarket Broadband Service that you choose that provides you with high speed access to the Internet via your BT telephone line, whilst retaining the ability simultaneously to carry out voice telephone conversations together with various Internet based services available to Members of Skymarket, for example email facilities, personal web space, access to the World Wide Web and other services

" Start Date" means the date when the Service or any part of it is first made available to you or when you first start to use the Service, whichever is the earlier; or at any other time your Service is changed in response to a request by you and accepted by Skymarket;

" Technical Requirements" means the requirements to enable the Service to be provided to you;

" Transmission Speed" means the rate in terms of Mbps (millions of bits per second) or Kbps (thousands of bits per second) that data is transferred between two modems. The transmission rates for Skymarket broadband services are selected by you during registration for the Service;

" Skymarket", "we" or "us" means Skymarket Ltd.

" Skymarket Broadband" means those high speed broadband Services that are detailed on Skymarket's website and which may be varied from time to time;

"you/your" means the person with whom Skymarket is making the Agreement, as specified in the Registration Details.

2. The Service

2.1 Registering with the Service gives you the ability, subject to Clause 4, using a computer (of appropriate specification) and Modem or other independently purchased modem or router (of the appropriate specification), to access the Internet on an "always-on" basis at the Transmission Speed selected during your registration for the Service or during any subsequent upgrade to the Service that you may choose and is available from Skymarket.

2.2 The Service will be provided or procured by Skymarket with reasonable skill and care and in accordance with the provisions of this Agreement.

2.3 If you use the Service for business purposes you agree that you do so without any conditions, guarantees, warranties, whether express or implied including but not limited to any warranties or conditions as to satisfactory quality or fitness for a particular purpose, which are expressly excluded to the maximum extent permitted by law. You will not hold Skymarket responsible for any loss of profit, business, opportunity, goodwill, reputation, revenue or savings you expect to make, wasted expenditure or data being lost or corrupted. Nor will you hold Skymarket liable for damages that may or may not have been foreseeable at the time you entered the contract.

2.4 Before we can be sure that we can provide you with the Service the following activities must be performed:

2.4.1 a telephone line test and check that you are in a geographical area where you can receive the Service;

2.4.2 activation of the Service;

2.5 If we are unable to provide you with the Service because the conditions in 2.4 cannot be successfully satisfied, such satisfaction to be determined solely by us then:

2.5.1 we will notify you as soon as possible;

2.5.2 you will return the Modem to us;

2.5.3 subject to 2.5.2, we will refund any payments made for the Modem and the Service.

2.6 When the Service is enabled and to use your broadband connection you must ensure that the Modem or other modem/router (of appropriate specification) is connected to your computer and to your telephone line.

2.7 In the event that you move from the Premises, and you wish to continue to receive the Service, we shall terminate your Service and (provided that you can receive the Service from your new premises) you will be required to register again for the Service and commit to a new 12 month contract. In addition, we reserve the right to make a charge for administration and set-up costs for the Service for the Premises move.

2.8 In the event that your telephone account with BT is terminated or you change the services on the telephone line on which you currently use the Service, so that the Service is unable to operate normally, your Service will terminate and you will be liable for the Charges during the Contract Period.

2.9 BT requests that we inform you that activation of the Service may result in you experiencing a temporary

loss of your analogue BT line.

2.10 For each of the Skymarket Broadband Services we allow you on a monthly basis to use the Internet and download and/or upload data.

2.11 You may at any time during the term of your Agreement Re-grade your Skymarket Broadband Service, subject to a maximum number of 3 Re-grades in each 12 month period. In the event that you Re-grade within the Contract Period, Skymarket reserves the right to make a Charge and to require you to commit to a further Contract Period.

3. Personal information

3.1 The Registration Details that you provide shall be true, accurate and complete. You agree to inform Skymarket of any changes to your Registration Details immediately by email addressed to sales@skymarket.co.uk. If you are not the same person as the person who pays the Charges, then you warrant that you have informed and have obtained from the bill payer the necessary consents and permissions for registering or changing account payment details and to allow Skymarket to process such details.

3.2 Skymarket will respect your personal information and undertakes to comply with all applicable UK Data Protection legislation. By signing up for the Services you consent to our using and/or disclosing your personal data as follows:

3.2.1 processing your application or changes to your registration details, which may involve credit checking by a credit reference agency who may record that a credit check has been made;

3.2.2 disclosing certain personal details including account details to a bank, credit card operator or other payment processor for the purposes of setting up a continuous payment authority;

3.2.3 providing registration details to any telecommunications provider who operates the telephone access network over which the Services are delivered;

3.2.4 providing or arranging for third parties to provide any part of the Services including but not limited to customer care facilities and billing, email and tools and services, which may involve disclosing information about you to third parties solely for this purpose;

3.2.5 providing you with communications about our Services, special announcements including but not limited to instructions, information, changes to the products, services and prices, organisational and administrative changes; and Service newsletters that shall include but not be limited to Member benefits (which are unconditional rewards rewarding Members for their time with us), competitions and any other relevant information relating to the provision of our Services;

3.3 Other than as required by law, or as permitted under this Agreement, Skymarket shall not disclose your Registration Details to any third party without your permission.

4. Skymarket's obligations

4.1 In consideration of the Charges, Skymarket shall provide the Service in accordance with the terms and conditions of this Agreement. You acknowledge that Skymarket's provision of the Service and its ability to provide the Service is dependent upon BT and its ability to provide certain parts of the Service to Skymarket. You acknowledge that there may be technical limitations that inhibit the activation or provision of the Service. Skymarket agrees to notify BT of any issues concerning the Service that you bring to Skymarket's attention, but we cannot guarantee rectification of these issues by BT.

4.2 Where you have been supplied a Modem as part of the Service and you continue to use and pay for the Service, in the event that the Modem is faulty, Skymarket will replace or repair it at its option. Skymarket reserve the right to replace the Modem with a refurbished modem.

4.3 You acknowledge that Skymarket cannot warrant that the Service will be interruption free or that the transmission of information through the Service will be secure. The Service may be suspended for operational reasons (such as maintenance or Service upgrades) or because of an emergency. Before suspending or interrupting the Service (as aforesaid) Skymarket shall use reasonable endeavours to give you as much notice as possible.

4.4 You acknowledge that it is technically impractical to provide the Service free from errors and/or faults and Skymarket does not undertake to do so.

4.5 The obligations of Skymarket to provide the Service shall be conditional upon the Technical Requirements being satisfied. You acknowledge that the Service shall not be available to you outside the Service Availability Area and that: (a) it will only be available to you if you have a valid contract for the use of a BT analogue direct exchange line which terminates on a master socket forming part of BT's telecommunications network; (b) you have a computer that satisfies the Technical Requirements; and (c) your Premises falls within the Service Availability Area.

4.6 Except as may be expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.

4.7 You acknowledge that due to contention on both the BT network and Skymarket's access link, the speed of the Service may be reduced or may not be available at times.

5. Your obligations

5.1 You agree that you will be responsible for any equipment (including the Modem) that may be provided to you for the purpose of receiving the Service and that you will be responsible for all charges necessary to access and use the Service and that you will use any equipment (including the Modem) connected or used with the Service in accordance with any instructions, safety and security procedures applicable to it.

5.2 You agree to notify Skymarket of any proposed move of Premises.

5.3 You agree that as part of your wish to take part in the Service, some minor modifications may need to be made to your computer to make it operate with the Service. It is your responsibility to ensure that such modifications do not invalidate the terms of any warranty you may have concerning your computer.

Skymarket shall incur no liability for any claim that your warranty has been invalidated (if applicable) as a result of work carried out by you, Skymarket or its agents (including BT) in order to make your computer operate with the Service.

5.4 You will be allocated both a username and a password in order to access the Service and you will be

responsible for keeping your password confidential and agree to take all necessary steps to ensure that it is kept secure and is not disclosed to any unauthorised person. You will inform us upon becoming aware of any suspected or actual unauthorised use of the Service and will take all steps necessary (or requested by us) to prevent such use.

5.5 You acknowledge that Skymarket and/or its agents (including BT) may give you instructions from time to time which they believe are necessary for health, safety or quality of other telecommunications services provided by BT to you.

6. Use of the Service

6.1 You shall not use the Service: (a) in a way that does not comply with the terms of any legislation or any licence applicable to you or that is in any way unlawful or fraudulent or has any unlawful or fraudulent or has any unlawful or fraudulent purpose or effect; (b) without prejudice to the generality of (a) above, in connection with the carrying out of a fraud or criminal offence against Skymarket and/or its agents (including BT), or any public telecommunications operator; (c) to send, knowingly receive, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing, or in breach of any copyright, confidence, privacy or any other rights; (d) to send or procure the sending of any unsolicited advertising or promotional material; (e) in a way that does not comply with any instructions Skymarket or its agents (including BT) has given under Clauses 5.1 and 5.5; (f) in a way that in BT's reasonable opinion could materially affect the quality of any telecommunications service, including the Service, provided by Skymarket;

6.2 Skymarket shall have the right to enforce such provisions set out in Clause 6.1 above by suspending or terminating the provision of the Service to you if Skymarket knows you are in breach of such obligations.

6.3 You will indemnify Skymarket and/or its agents against any claims or legal proceedings that are brought or threatened against Skymarket and/or its agents by a third party: (a) because the Service is used in breach of Clause 6.1 (a) to (f) inclusive; or (b) in circumstances where you are in breach of Clause 6.2.

6.4 You will notify Skymarket of any such claims or proceedings referred to in Clause 6.3 and keep Skymarket informed as to the progress of such claims and proceedings.

6.5 In order to prevent spam from entering and effecting the operation of our systems and Service, Skymarket may take any reasonable measure to block access to or delivery of any email which appears to be of an unsolicited nature and/or part of a bulk email transmission. We may also use within our systems virus screening technology which may result in the deletion or alteration of email and or email attachments, although we do not warrant that such technology will be effective against all virus attacks.

7. Modem

7.1 If you order a Skymarket Broadband Service online (for which a Modem is included), Skymarket, or its representative, shall deliver the Modem to the Premises notified to us by you. We reserve the right to charge you for any reasonable costs incurred by us in relation to carriage, postage and packing and any other applicable duties taxes and charges.

7.2 If you purchase a Modem and Skymarket Broadband Service from us, the Modem shall be provided to you at the time of purchase and the Service shall be provided to you in accordance with Clause 2. In the event that the Modem supplied is faulty we would like you to follow the returns process set out in Clause 8 Faulty Modem Replacement. Your statutory rights are not affected.

7.3 We shall use our reasonable endeavours to deliver the Modem to the notified location by the delivery date communicated to you. You should be aware that this delivery date is not guaranteed or of the essence of the Agreement.

7.4 You shall inspect the Modem immediately upon receipt and inform us by telephone within 5 (five) days of delivery of any damage or missing items from the delivery.

7.5 If you fail to take delivery of the Modem (or fail to give us appropriate delivery instructions) unless this was out of your reasonable control then without prejudice to any other rights or remedies available to us, we may store the Modem until actual delivery and charge you for the reasonable costs (including insurance) of this storage.

8. Faulty modem replacements

8.1 If you have a fault with your Modem please call Skymarket Support. In the event that Skymarket provides you with replacement Modem as a result of a fault which is notified to us by you and verified by us, you must return the faulty Modem to Skymarket within 14 days of receipt of the replacement Modem. If you fail to return the faulty Modem to Skymarket within 14 days, Skymarket reserves the right to charge you the full replacement cost for such Modem unless actual proof of postage can be provided to Skymarket.

9. Insurance

You will assume the risk of damage to or loss of the Modem from the moment the Modem is delivered to you. Despite you assuming this risk, until Skymarket has received in cash or cleared funds payment in full for the Modem, you will not be deemed to own the Modem.

10. Modem warranties and liability

10.1 The Modem is covered by a manufacturer's warranty. However, provided that you continue to pay the Charges and receive the Service, we shall at our option repair or replace the Modem. In the event that you wish to avail yourself of the manufacturer's warranty, you shall be responsible for contacting and returning any registration or warranty cards to the Modem manufacturer. Skymarket shall not be held responsible for any acts of the manufacturer or its agents including (without limitation) any failure by the manufacturer to replace or repair the Modem.

10.2 Before you install the software supplied with the Modem and before you connect the Modem to your computer, you should back up or save any data on your computer.

11. If you must return your modem

11.1 As a consumer, you have the right to cancel your agreement to purchase the Modem on the terms contained in this Agreement ("Modem Agreement") within 7 working days from the day after the date of delivery of the Modem provided that you call us. So that there is no misunderstanding, you should be aware

that, in accordance with Clause 16.2 you are not entitled to cancel the Service after the Start Date even if you have cancelled the Modem Agreement.

11.2 If you do exercise your right to cancel the Modem Agreement, as specified above, you must return the Modem to us and we shall, in accordance with the Distance Selling Regulations, reimburse any payment made by you under the Modem Agreement within 30 days from the day on which the Modem is returned.

11.3 You will not be entitled to cancel the Modem Agreement if you do not take reasonable care of the Modem either prior to cancellation of the Modem Agreement or, after cancellation while the Modem remains in your possession. To take reasonable care of the Modem you shall retain and keep the original box and packaging to the Modem in good condition and shall ensure that the Modem is stored in accordance with the manufacturer's recommendations.

11.4 If you do return the Modem, as specified above, you shall return it to Skymarket using only a carrier approved by Skymarket. If we are required to collect the Modem, we shall be entitled to charge you for the direct costs of so doing.

12. Intellectual property rights

12.1 You will agree to enter into any agreement reasonably required by the owner of the copyright in any software made available to you for the purpose of accessing the Service.

12.2 You acknowledge and agree that all intellectual property rights in the Service (including, without limitation, the Modem and any associated software) are vested and shall remain vested in Skymarket, its agents (including BT), the Modem manufacturer or their licensors, as appropriate.

13. Intellectual property rights indemnities

13.1 Skymarket will indemnify you against all claims and proceedings arising from the infringement of any intellectual property rights by reason of Skymarket's provision of the Service to you. As a condition of this indemnity you must: (a) notify Skymarket promptly in writing of any allegation of infringement; (b) make no admission relating to the infringement; (c) allow Skymarket or its agents (including BT) to conduct all negotiations and proceedings and give all their assistance in doing so (Skymarket will pay your reasonable expenses for such assistance); and (d) allow Skymarket or its agents (including BT) to modify the Service, or any item provided as part of the Service, so as to avoid the infringement provided that the modification does not materially affect the performance of the Service.

13.2 The indemnity in Clause 13.1 does not apply to infringements caused by the use of the Service in conjunction with other equipment or software not supplied by Skymarket or its agents (including BT), or to infringements caused by designs or specifications made by you, or on your behalf. You will indemnify Skymarket and its agents against all claims, proceedings and expenses arising from such infringements or alleged infringements.

14. Charges

14.1 The Charges shall apply from the Start Date. You shall pay the Charges in accordance with the payment terms set out on the contract;

14.2 All Charges for the Service are exclusive of VAT at the applicable rate.

14.3 In the event that the Charges are not paid to Skymarket as they fall due, Skymarket reserve the right to suspend and/or terminate the Service and take such necessary action to recover sums due to Skymarket plus any cost of collecting such sums and, if applicable, all the Charges up to and including the date of expiry of the Contract Period.

14.4 In the event that Skymarket suspends the Service to you pursuant to any breach by you of our payment terms or in accordance with any pertinent clauses pursuant to this Agreement, you be required to pay the Charges for the period that the Service is suspended including but not limited to any arrears of the Charges.

14.5 Skymarket reserves the right to vary the Charges at any time on giving you notice in writing. In the event that the Charges are increased you will receive 30 days' notice. In the event that the Charges are decreased, you will be given notice within 7 days of the decrease.

14.6 Skymarket Broadband services include an allowance of data usage per month. "Usage" means your total data consumption including uploads and downloads – that's any time you are transferring data from your computer to the internet (and vice versa) in a given month (eg. for receiving emails, browsing web pages and downloading / receiving files). This data is measured in Gigabytes (GB / gig). Although we set allowances, you are allowed to exceed them if you wish or upgrade to a higher allowance. You then either pay for the extra GB you use or pay for the increased allowance and stay within it. If you exceed your agreed allowance you will be charged for this extra data, known as "overages". The fees associated with these overages are shown on our main broadband information page.

15. Limitation of liability

15.1 Neither party shall be liable to the other, either in contract, tort (including negligence) or otherwise for direct or indirect loss of profits, business or anticipated savings, nor for any indirect or consequential loss or damage or for any destruction of or impairment of access to any data arising in relation to this Agreement including, without limitation, Skymarket's ability to provide the Service.

15.2 The liability of Skymarket in contract, tort (including negligence) or otherwise in relation to this Agreement is limited to the price paid by you for the Modem and the Charges in the year (commencing from the Start Date or any anniversary of the Start Date) in which the liability first arose.

15.3 Each provision of this Agreement, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

16. Term and termination

16.1 This Agreement may be terminated at anytime prior to the Start Date, however, if we have supplied you with a Modem you must either pay for the Modem or return such Modem to us (at our request) in the prepaid postage package we send you and (if applicable) we will refund you for any payment received from you for such Modem.

16.2 After the Start Date this Agreement may be terminated in accordance with the terms set out in this Agreement and the cancellation provisions of the Consumer Protection (Distance Selling) Regulations 2000

(the "Distance Selling Regulations") will not apply to the Service:

16.2.1 by either of us on 28 days' notice, unless we terminate pursuant to Clauses 2.7 and 2.8 without notice;

16.2.2 by you giving 7 days' notice if we inform you of a material change to the Service or we give notice of an amendment to this Agreement pursuant to Clause 18 where such changes are to your detriment;

If you give notice of termination of this Agreement, or we terminate pursuant to Clause 6.2, during the Minimum Period and the Service is available for you to use, you must pay all Charges payable during the Minimum Period.

16.3 Either party may terminate this Agreement immediately, on notice if the other: (a) commits a material breach of this Agreement, which is capable of remedy, and fails to remedy the breach within a reasonable time of a written notice to do so; or (b) commits a material breach of this Agreement which cannot be remedied; or (c) is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administrator is appointed over their assets.

16.4 Skymarket shall be entitled to terminate this Agreement in the event that: (a) the contract between Skymarket and BT enabling Skymarket to provide the Service is terminated; (b) the service provided to Skymarket by BT is not of the quality deemed by Skymarket to be appropriate to provide the Services; or (c) you no longer have a valid contract for the use of a BT analogue direct exchange line as referred to in Clause 4.5(a).

16.5 If any of the events detailed in Clause 16.3 occur as a result of your default, Skymarket may suspend the Service without prejudice to its right to terminate this Agreement. Where the Service is suspended under this Clause 16.5 you must pay all the Charges due in respect of the Service until this Agreement is terminated and all Charges to the end of the Minimum Period.

16.6 In the event that Skymarket agrees to you terminating this Agreement before the expiry of the Minimum Period, you must pay all the Charges due up to and including the date of expiry of the Minimum Period.

16.7 Termination in accordance with this Clause 16 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party and all provisions which are expressed to survive this Agreement or impliedly do so shall remain in full force and effect.

17. Force majeure

17.1 If either party is unable to perform any obligation under this Agreement because of a matter beyond that party's reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving that party's employees), or acts of local or central Government or other competent authorities or events beyond the reasonable control of that party's suppliers, the party will have no liability to the other for that failure to perform.

17.2 If any of the events detailed in Clause 17.1 continue for more than one month either party may serve notice on the other terminating this Agreement.

18. Variation

Skymarket reserves the right to vary the terms of this Agreement or the nature of the Service (where the technical specification of the Service is varied) at any time and Skymarket will inform you of any such changes through email, newsletter or such other medium, as Skymarket considers appropriate.

19. Miscellaneous

19.1 The Agreement shall be governed by and construed in accordance with English Law and the parties hereby agree to submit to the exclusive jurisdiction of the High Court of England in respect of any dispute or matter arising out of or in connection with the Agreement.

19.2 This Agreement constitutes the entire agreement between the parties and supersedes representations, communications and prior agreements (oral or written). This Clause shall not apply to any statement, representation, or warranty made fraudulently, or to any provision of this Agreement that was induced by fraud for which the remedies available shall be all those available under the law.

19.3 Any notice or other communication to be given under the Agreement must be in writing to the other party and may be delivered or sent by email, pre-paid first class letter post or fax transmission at the party to be served last known address. Any notice or document shall be deemed served if delivered, at the time of delivery; emailed, at the time of delivery to your email server; posted, 48 hours after posting; and if sent by facsimile transmission, at the time of transmission.

19.4 This Agreement shall not be assigned, sub-contracted, novated, sub-licensed or otherwise disposed of by you. Skymarket reserves the right to assign, sub-contract or otherwise transfer its obligations to provide the Service and/or supply the Modem to any third party.

19.5 The illegality, invalidity or unenforceability of any provision this Agreement shall not affect the continuation in force of the remainder of this Agreement.

19.6 A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these terms. This clause does not affect any right or remedy of any person that exists or is available or otherwise than pursuant to that Act.