

Definitions

- 1.1** "Customer" means the person, sole trader, partnership, legal entity, professional, company, or association, who has agreed to enter into this Agreement with kinex.
- 1.2** "Customer Equipment" means any equipment, the property of the Customer or rented by the Customer from a third party, used by the Customer in order to use the Service.
- 1.3** "Initial Fixed Supply Period" means the minimum period during which Service is provided as agreed between the Customer and kinex, which shall commence on the day that Service is first provided.
- 1.4** "kinex" means Verstar Ltd.
- 1.5** "Number" means the telephone line(s) in respect of the telephone number(s) set out overleaf.
- 1.6** "Rate Schedule" means the schedule of charges applicable from time to time in respect of the Usage Charges.
- 1.7** "Service" means the installation (where applicable), connection and supply of broadband network access to the internet and/or any other services provided by kinex to the Customer.
- 1.8** "Service Equipment" means any equipment, which is the property of kinex, including any modem or router supplied to the Customer.
- 1.9** "Standard Variable Rate" means kinex's published Standard Variable Rate tariff, which is available at www.kinex.co.uk/SVR.pdf.
- 1.10** "Subsequent Supply Period" means any period during which Service is provided, subsequent to the Initial Fixed Supply Period, as agreed between the Customer and kinex.
- 1.11** "Supply Period" means the period during which Service is provided pursuant to this agreement, which shall commence on the day that Service is first provided.
- 1.12** "Usage Charges" means the charges made by kinex to the Customer for the use of the Service, including any reconnection charges following suspension of the Service, as provided for at clauses 6.3 and 8.2.

Service

- 2.1** kinex will procure Service to the Customer subject to the terms of this Agreement. kinex, or its principals, may at any time without notice vary the Service for technical, operational or other reasons within its entire discretion. kinex will use reasonable endeavours to procure a continuous high quality Service in accordance with the terms and conditions set out herein. kinex reserves the right not to provide Service where Service cannot be reasonably provided due to any geographic, practical or technical issues arising.
- 2.2** kinex will endeavour to provide the Customer the Service at the speed stated overleaf. However this speed is a theoretical speed and is unlikely to be achieved. kinex will provide Service at the fastest available stable speed. Download times may be slower if the network or the Internet is congested.
- 2.3** Title to the Service Equipment shall remain with kinex whilst such equipment is on the Customer's premises, and at all other times, save as provided by clause 8.4.

Charges & Payment

- 3.1** kinex will make Usage Charges for the use of the Service in accordance with its Rate Schedule, appertaining to the relevant discount tariff referred to overleaf, prevailing from time to time which may be varied upon giving ten days notice, but subject to the Customer's right to terminate referred to at clause 8.1(d).
- 3.2** The Rate Schedule includes an annual price increase, which will be the annual percentage increase in the Retail Price Index (RPI) published by the Office for National Statistics, such price increase to take effect in January of each year of the Initial Fixed Supply Period and each Subsequent Supply Period.
- 3.3** Invoices are due for payment by Direct Debit in accordance with the advance notice given on the customer's invoice. If an invoice is not paid by Direct Debit, then the Usage charges for Service to which that invoice relates, together with all other Usage charges for Service to be invoiced for during the remainder of the Supply Period shall be charged at a deemed rate, equal to the applicable Usage Charges plus 25%.
- 3.4** Interest will be charged on unpaid invoices from the due date until payment at a rate of 1.5% per month or part thereof.
- 3.5** Usage Charges for Service provided by kinex at any time other than the Initial Fixed Supply Period or any Subsequent Supply Period shall be charged at a deemed rate, equal to the applicable Usage Charge plus 25%.
- 3.6** Value Added Tax, or any other levy or tax, at the rate prevailing will be added on to all sums due to kinex, which are quoted as exclusive of Value Added Tax.
- 3.7** The Customer shall not be entitled to delay or withhold payment or claim any set off against any payment due hereunder in respect of any claim or complaint, which the Customer may have for any reason whatsoever. Any payments made by the Customer to kinex may be applied by kinex as it deems fit.
- 3.8** kinex reserves the right to use information provided by the Customer to make necessary credit status enquiries. Subject to credit status kinex may require a non-interest bearing deposit or pre-payment.
- 3.9** In the event of any action taken by kinex in relation to any charges due from the Customer to kinex whatsoever, the Customer shall reimburse and indemnify kinex, with and in respect of all expenses relative thereto, including all legal charges and professional fees on a full indemnity basis.
- 3.10** The actual Usage Charges applicable to each Customer shall be determined by the option agreed at the time this Agreement is entered into, subject to clause 3.1 and 3.2.
- 3.11** Usage Charges shall be invoiced monthly in advance or Usage Charges shall be pre-paid by way of deposit. Usage Charges may relate back to months prior to the previous month.

Obligations

- 4.1** kinex will provide the Service Equipment or make other arrangements necessary to enable Service to be provided.
- 4.2** The Customer undertakes: -
- (a) To use the Service and/or the Service Equipment in accordance with the reasonable instructions of kinex or its principals;
 - (b) Not to, in any way whatsoever, modify or disconnect the Service Equipment;
 - (c) Not to use the Service Equipment for any broadband network access not provided by kinex;
 - (d) To protect the Service Equipment from any interference and to keep it safe;
 - (e) Not to use, nor to permit anybody else to use, the Service in any improper, illegal or unlawful manner or in any manner which may cause offence;
 - (f) Not to use, nor to permit anybody else to use, the Service to do any of the following:
 - publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
 - threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;

- knowingly make available or upload files that contain software or other material, data or information not owned by or licensed to the Customer;
- knowingly make available or upload files that contain a virus or corrupt data;
- falsify the true ownership of software or other material or information contained in a file that the Customer makes available;
- "spam" or otherwise deliberately abuse the Service;
- (g) To notify kinex of any existing technical or other facilities including but not limited to, water and gas which could be damaged during installation of the Service Equipment;
- (h) To allow kinex or its duly appointed agents access to the Customer's premises for the purposes of installation, programming and maintenance, or for any other reason whatsoever;
- (i) Upon termination to remove the Service Equipment, and to return it in good condition to kinex;
- (j) To ensure that the Customer Equipment is in good working order and is maintained by a competent maintainer or service provider approved by kinex;
- (k) To use only BAPT approved telephone equipment. All equipment must comply with all relevant legislation relating to its use from time to time;
- (l) To pay for all Service provided by kinex within the time limits and in the manner set out herein and to be responsible for the usage of the Service, whether the use of the Service has been authorised by the Customer or not;
- (m) That in the event that the Service Equipment becomes damaged by the Customer, or by any person on the Customer's premises (save for employees and agents of kinex), or becomes damaged due to the use of unapproved equipment, to pay kinex for any remedial work undertaken at such rate as is reasonable in all the circumstances;
- (n) To inform kinex immediately in writing of any changes in personal details of the Customer including change of address, in accordance with clause 10.10;
- (o) To provide appropriate space and any necessary electricity supply for the power of the Service Equipment. The Customer will not charge kinex for the space or the electricity consumed by the Service Equipment;
- (p) Not to in any way whatsoever modify the programming of the Customer Equipment;
- (q) In the case of payment not being made by Direct Debit, to pay the increased charges in accordance with clause 3.3 above;
- (r) To report with sufficient detail any fault which affects the Service to kinex as soon as reasonably practical after detecting the same;
- (s) To use the Service only in accordance with the Fair Usage Policy, as detailed below.

Faults

- 5.1** kinex will use reasonable endeavours to repair and maintain the Service Equipment.
- 5.2** If a fault is caused by the Customer's own equipment, by breach of this Agreement by the Customer, or by the Customer's negligence, kinex may recover all reasonable costs incurred from the Customer.

Suspension of Service

- 6.1** kinex shall be entitled to suspend Service in order to maintain or improve its network or if obliged to do so by virtue of any direction or request from any government department, emergency service, regulatory or administrative authority, or by its principals, or for any other reason whatsoever.
- 6.2** kinex will use reasonable endeavours to give the Customer notice of such suspension as reasonably practicable.
- 6.3** kinex shall be entitled to suspend any part of or all of the Service without notice in the event that any payments are not made, or are not made by Direct Debit. Such suspension will not affect the Customer's obligation to pay for the Service during the period of suspension or thereafter, and will not affect kinex's right to charge a termination fee.

Liability

- 7.1** Neither the Customer nor kinex excludes or limits its liability for death or personal injury caused by its negligence.
- 7.2** kinex shall not be liable for any loss or damage caused to the Customer except where caused by kinex's negligent acts or negligent omissions or kinex's breach of contract and in such event kinex's total liability to the Customer under this Agreement for any loss or damage shall be limited to £5000.
- 7.3** Subject to clause 7.1 kinex shall not be liable to the Customer for: any indirect, consequential and/or special loss or damage; loss of profit; loss of revenue, loss of production or loss of business; loss of contracts; loss of goodwill, loss of reputation or loss of opportunity; loss of anticipated savings or loss of margin; loss or destruction of data; wasted management, operational or other time; liability of the Customer to third parties; or the acts or omissions of network operators or other telecommunication service providers on whom kinex has to rely to provide the Service.
- 7.4** The Customer is advised to obtain its own business continuity insurance.

Termination

- 8.1** This Agreement will remain in force -
- (a) for the Initial Fixed Supply Period or any Subsequent Supply Period and will continue thereafter until terminated by the Customer arranging for Service to be transferred to another supplier of broadband services or the Customer requesting Service to be ceased, or,
 - (b) until the Customer has committed a material breach of this Agreement (including but not limited to non-payment of any invoices by Direct Debit, and non-compliance with this agreement due to ceasing to be responsible for the Number, e.g. when closing, or moving the premises of, the business) or,
 - (c) until the Customer has a receiver, administrative receiver, liquidator or supervisor of a voluntary arrangement appointed over it, or over any part of its undertaking or assets or a resolution is passed for its winding up, or if an administration order is made, or if it enters into a voluntary arrangement with its creditors, or cease to trade in all capacities, proof of which must be provided by a letter from a firm of solicitors regulated by the Solicitors Regulation Authority or a licensed insolvency practice or an accountancy firm currently registered with and regulated by the respective regulatory authority, or,
 - (d) unless and until kinex change the Usage Charges to the significant detriment of the Customer, for example by changing any recurring charges, in which case the Customer may give kinex written notice to end the Agreement within 30 days of the date on which kinex informs the Customer in writing of the change(s), or,
 - (e) until the Customer, trading as a sole trader, has ceased to trade in all capacities, proof of which must be provided by a letter from a firm of solicitors regulated by the Solicitors Regulation Authority.
- 8.2** kinex may suspend Service in circumstances where it could terminate this Agreement or when the Customer has failed to pay any amount due or it reasonably believes that the Customer will fail to pay

any amount due or to become due and any such suspension will be without prejudice to the right to terminate.

- 8.3** In the event of the Agreement being terminated pursuant to clause 8.1 (b) or 8.1 (c) or 8.1 (e) where the Customer fails to provide proof as stipulated in 8.1 (e) above then the Customer shall pay to kinex a sum equal to an administration fee of £50 plus 50 per cent of the total amount that would have been payable in respect of the Service for the remaining period of the Supply Period, had the Supply Period not been terminated early because of a Customer's breach or insolvency. The Customer agrees that the aforementioned represents a fair and reasonable estimate of the losses, costs, and expenses, which kinex would suffer in the event of the Agreement being terminated pursuant to clause 8.1 (b) or 8.1 (c) or 8.1 (e).
- 8.4** If the Agreement is terminated for any reason before the end of the Initial Supply Period, the Customer must, within 14 days of the date of termination, return any Service Equipment to kinex in good condition and suitable packaging. Should the Customer fail to do so, the Customer shall pay kinex £50 for each piece of Service Equipment kinex have provided.

Fair Usage Policy

- 9.1** kinex operates a fair usage policy. For the 'Unlimited' broadband service, the Customer will incur no additional charge or suspension of service as a consequence of exceeding any usage threshold. If kinex believes that the Customer's use of the Service is adversely affecting the network (or any part of it) or other Customers, then kinex may moderately regulate the Customer's usage.

General

- 10.1** The Customer may not assign or transfer this Agreement or any rights hereunder to any third party, without the prior written consent of kinex. kinex may assign or transfer this Agreement or any rights hereunder.
- 10.2** Neither party shall be liable for breach of its obligations under this Agreement to the extent that such breach is caused by flood, fire, accident, explosion, strike, war, embargo, government restriction, act of god, inability to secure materials, industrial dispute or any other cause beyond the parties' reasonable control including in particular acts or omissions of other providers of telecommunication services.
- 10.3** The remaining parts of this Agreement shall remain in full force in the event that any part of this Agreement shall be invalid, illegal or unenforceable, as if the unenforceable part had been omitted from the original Agreement.
- 10.4** All the terms of this Agreement are set out herein. Neither party has relied upon any representations, assurances or other agreements unless set out herein.
- 10.5** kinex may change the terms and conditions of this Agreement and will, save as stated otherwise in this Agreement, provide the Customer with 14 days notice of any such change by publishing such changes on www.kinex.co.uk.
- 10.6** If in the unlikely event the customer has a complaint about the service received, please refer to the kinex website www.kinex.co.uk/complaintscodeofpractice.pdf for details about the kinex complaints procedure.
- 10.7** kinex may advise the Customer that all future changes made under clause 3.1 and/or clause 10.5 will be advised on a website upon giving 14 days notice, such notice to include the address of that website.
- 10.8** No waiver by either party shall constitute any variation to this Agreement.
- 10.9** Singular words shall be construed as including words of the plural and vice versa.
- 10.10** Any notices given by the Customer under this Agreement shall be made in writing and sent by registered post. Any notices given by kinex under this Agreement shall be made in writing, and sent by post or email. In either event, the address for service shall be the address given overleaf for each party, unless changed; in which case, notice of change shall be given in accordance with the terms of this clause.
- 10.11** This Agreement shall be governed by and interpreted in accordance with the Laws of England and shall be subject to the exclusive jurisdiction of the courts of England.