

Terms and Conditions

1. Service Provision

- 1.1 DWD reserves the right not to provide the Ethernet Service to any site and to withdraw its provisional acceptance of an order for reasons including, but not limited to:
- a) The distance between a site and the point of presence of DWD or its underlying service provider.
 - b) If a site survey finds that a site is not suitable for the provision of the Ethernet Service.
 - c) If the Company does not agree to pay the Excess Construction Charges or any other Charges reasonably levied by DWD in addition to the Charges initially generated by the pricing tool.

- 1.2 Subject to clause 1.1 above DWD will issue a final acceptance of the order to the Company. Such final acceptance will include the agreed date that installation of the Ethernet Service can be completed by DWD (the “Contractual Delivery Date”).

- 1.3 The Contractual Delivery Date may be later than the End User Required Date shown on the Order Form if:

- a) The End User Required Date falls before the minimum order lead times.
- b) DWD encounters delays (including, but not limited to, complications connected with the site survey) which could not reasonably have previously been foreseen.

- 1.4 On a date during the order fulfilment process which will be advised by DWD to the Company, DWD or its nominated sub-contractor will visit the End User site to install the network terminating equipment (“NTE”).

Within two working days of completion of the installation of the NTE the Service will be connected to the DWD network and, following the successful conclusion of a series of commissioning tests performed by DWD or its nominated sub-contractor, the Service will be deemed to be ready for use and DWD shall be entitled to invoice the Company for such Service from this date (“the Installation Date”).

The “Service Commencement Date” is subject to the installation by the Company of the required router (whether such is supplied by DWD or not) and the completion of successful testing of the final installation with DWD and may be subsequent to the date when the Service is deemed ready for use as set out above. Where the Ethernet Service is being used to provide connectivity to an IP telephony service the Service Commencement Date will be further contingent on the Company having successfully completed all necessary work on the provision of such IP telephony service.

- 1.5 DWD shall be responsible for the provision of the Ethernet Service up to the Service Demarcation Point, as defined in the DWD Handbook.

- 1.6 DWD will use reasonable efforts to install the Ethernet Service by the Contractual Delivery Date and perform the commissioning tests within two working days thereafter, all in accordance with the service levels set out in Appendix 1 to this Order Form. The Company acknowledges that all timeframes are estimates only and that service levels are target service levels only.

Except as set out in Appendix 1, DWD has no liability for any failure to meet the Contractual Delivery Date or for any failure to meet any service levels or to repair a fault within any given timeframe.

2. Service Cessation and Cancellation

- 2.1 The Company may terminate the Ethernet Service on 90 days' written notice to DWD provided that the minimum term (as set out in the Order Form) has expired.
- 2.2 DWD may terminate the Ethernet Service or part thereof on 3 months' written notice to the Company provided that such notice extends the termination date beyond the end of the minimum term as set out in the Order Form for that circuit.
- 2.3 DWD may terminate the Ethernet Service immediately by notice to the Company if required to do so by a direction of Ofcom.
- 2.4 If the Company terminates the Ethernet Service or part thereof before the end of the minimum term DWD shall be entitled to invoice the Company with DWD recurring Charges for that Service from the effective date of termination for the remainder of the minimum term.
- 2.5 The Company agrees that if the Ethernet Service or part thereof is terminated for any reason it will inform the End User of that fact and that the End User needs to make alternative arrangements. This clause shall survive the termination of such Service.
- 2.6 If the Company cancels an ordered Service or any part of it, notwithstanding that such order has only been provisionally accepted by DWD, the Company agrees to reimburse DWD for any costs it has incurred in preparing to deliver the Ethernet Service in addition to DWD standard cancellation charge. DWD will take all reasonable steps to mitigate any such costs. If the Order Form includes any Excess Construction Charges such charges will be payable in full by the Company on cancellation of an ordered Service.
- 2.7 If the Company requests a change to the End User Required Date and/or the Contractual Delivery Date (and this has been accepted by DWD) and subsequently cancels the order any cancellation charge will be calculated on the later of the revised End User Required Date or Contractual Delivery Date, as the case may be.
- 2.8 If the cancellation of the order is due to DWD failure to provide the Ethernet Service within a reasonable time after the agreed End User Required Date or Contractual Delivery Date, if later, no cancellation charge will be levied.

3. Changes

- 3.1 The Company may request a change to the bandwidth of an installed Ethernet Service (at a charge) as follows:
 - a) Once a month in respect of an upgrade in the overall bandwidth.
 - b) Once in any 12-month period in respect of a downgrade in the overall bandwidth.

- c) Once a month in respect of a change to the capacity allocated to either the IP telephony service or the internet service where a converged service is being provided.

4. Surveys and Installation

- 4.1 Provision of the Ethernet Service will be subject to the completion of a satisfactory site survey by DWD or its sub-contractor. The Company acknowledges that it will be necessary for DWD or its sub-contractor to visit an End User site or sites to conduct such survey and for the purposes of installation.
- 4.2 Where an appointment is made for DWD or its sub-contractor to visit an End User site, including for the purposes of a site survey or for installation, and the visit cannot be successfully completed due to:
 - a) The inability of DWD or its sub-contractor, through no fault of their own, to complete the work.
 - b) The inability of DWD or its sub-contractor to gain access to the site or sites or any part thereof which is necessary for the work.
 - c) The appointment is broken by the End User or the Company.
 - d) Any other reason where DWD or its sub-contractor is not at fault.

DWD will charge the Company with its standard aborted visit charge.

- 4.3 Unless otherwise agreed in writing between the parties the Company must agree an appointment for installation at a site within 14 days of notification by DWD of DWD preferred installation date. In the event that the Company does not agree such an appointment, the appointment will be deemed to have been fixed for DWD preferred installation date unless a revised End User Required Date is subsequently agreed.
- 4.4 It is the Company's responsibility to install a router at the End User's site or sites where this is required and neither DWD nor its designated sub-contractor shall bear any liability for any delays in the provision of the Service due to delay in the installation of such router.

5. Service Assurance and Problem Management

- 5.1 The Company's nominated contacts will be the only point of contact with DWD for the notification of faults with the Ethernet Service and their resolution. The Company acknowledges that DWD will not accept fault reports directly from an End User and agrees that it will advise its Customers and End Users to report all faults to the Company.
- 5.2 DWD and/or the supplier of such equipment will provide the maintenance of any equipment installed on a site as part of the Service on the DWD side of the Service Demarcation Point.
- 5.3 The Company will be responsible for initial fault diagnosis and will report a fault to DWD only where it reasonably believes the fault is not caused by any End User installed equipment or any malfunction on the End User side of the Service Demarcation Point. DWD shall be entitled to charge the Company with its standard abortive visit charge if a visit results in the fault being traced to any End User installed equipment or any such malfunction (or if DWD or its sub-contractor fails to gain entry to the End User site). DWD shall also be entitled to invoice the Company for configuring, testing and despatching replacement routers in the event that no fault is subsequently found in the original router or

its configuration (where provided by DWD) or where a fault has been incorrectly diagnosed by the Company.

5.4 The Company will report any faults sending an email to support@wearedwd.co.uk

6. Service Constraints

6.1 The Company acknowledges and accepts that there may be certain technical limitations to the Ethernet Service as set out in clauses 6.2 to 6.4 below.

6.2 There may be technical or geographical limitations which do not enable the Ethernet Service to be installed. Provision of the Service is conditional on a site survey when such limitations will normally become apparent. In the event that a site survey reveals that the required Ethernet Service cannot be installed DWD will cancel the order without charge to the Company.

6.3 If during the commissioning of the Ethernet Service it is found that, despite the reasonable endeavours of DWD and/or its sub-contractor, the agreed bandwidth performance cannot be achieved, DWD will cancel the order without charge to the Company.

6.4 Certain technical limitations may not become apparent until after the Ethernet Service has been installed and has been working for some time. In such cases where no alternative solution can be found, DWD shall be entitled to withdraw the Ethernet Service and will issue a credit or credits to the Company for any Charges which have already been invoiced to the Company in relation to the Ethernet Service (save for any charges for abortive visits).

6.5 In the circumstances referred to in clauses 6.2 to 6.4 above, and notwithstanding anything to the contrary in this Order Form or in the Supply Agreement, DWD shall have no liability to the Company for any failure to provide the Ethernet Service, the performance of the Ethernet Service, its effect on any other services or equipment or the withdrawal of the Ethernet Service, save as set out above.

7. Equipment

7.1 Equipment provided by DWD or by its sub-contractors for the delivery of the Ethernet Service ("the Equipment") remains the property of DWD or its sub-contractors, as the case may be, and neither the Company nor the End User shall acquire any property in it. DWD will provide the network terminating equipment and may provide the end user premises router where such has been ordered from DWD by the Company. In cases where the Company or the End User supplies such router DWD does not guarantee that any such router will be compatible with and/or suitable for use with the Ethernet Service provided by DWD. DWD shall be entitled to charge (at its then current standard rates) for any configuration or other work performed by itself or any of its sub-contractors which is required to bring any router supplied by the Company or its End User into a state where it is compatible with the Ethernet Service.

7.2 The Company shall (or shall procure that the End User) provides a suitable place, conditions, connection points and electricity supply for the Equipment according to DWD reasonable instructions and carry out any site preparation work reasonably required by DWD.

- 7.3 The Company shall (or shall procure that the End User) obtains all necessary third-party consents required in relation to building alterations or additions, access to land or other permission required to install the Equipment or, where this is carried out by DWD or its sub-contractor, shall render all reasonable assistance required by DWD.
- 7.4 The End User is responsible for the Equipment and shall be liable to DWD for any loss or damage to it save where such loss or damage is caused by fair wear and tear, is caused by DWD, its sub-contractor or anyone authorised to act on their behalf. The End User shall take all reasonable steps to prevent any damage to the Equipment and to prevent anyone (except anyone acting on DWD or DWD sub contractor's behalf) from adding to it, modifying it, or interfering with it in any way.
- 7.5 The Company shall include provisions equivalent to clauses 7.1 to 7.4 above in its contracts for the Ethernet Service with its Customers and End users.

8. Connection

- 8.1 Any equipment connected to the Ethernet Service must be technically compatible with the Ethernet Service and connected and used in compliance with any applicable instructions, standards, or laws. Any such equipment should not cause any damage to the DWD network, the Ethernet Service, the Equipment, any other customer's network, or the network of any underlying service provider.
- 8.2 The Company agrees to and agrees to procure that its Customers and End Users will, only connect equipment to the Ethernet Service by using the CPE provided by DWD.
- 8.3 If the Company, its customers, or its End Users become aware that any equipment connected to the Ethernet Service does not comply with the relevant instructions, standards, or laws they should immediately disconnect the equipment or ensure its immediate compliance. Failure to disconnect non-compliant equipment will result in DWD disconnecting it at the Company's expense.
- 8.4 DWD will not be liable for any failure to meet any service levels or any failure of the Ethernet Service or any other obligations, if such failure has been found to be caused by the connection of any equipment.

9. Access

- 9.1 DWD and/or its sub-contractor will conduct any required site visits during normal working hours, that is to say between 08:00 and 17:00 Mondays to Fridays (excluding UK public and bank holidays). In the event that the Company requests a site visit outside such hours this will be the subject of an additional Charge. Such charge will not apply to visits to repair faults.
- 9.2 The Company will procure that the End User will provide access to the site to DWD and/or its sub-contractor for the purposes of site surveys, installation or otherwise as required for the provision of the Ethernet Service. The Company shall provide and procure that the End User provides a suitable and safe working environment for DWD employees and authorised sub-contractors at the site. The Company shall indemnify DWD and its sub-contractors for death or personal injury claims or actions threatened or brought against them resulting from the Company's breach of this clause 9.2, save

where such claim or action results from DWD negligence or that of its employees, sub-contractors or agents acting in the course of their employment or agency.

- 9.3 DWD agrees to observe and ensure that its employees observe the Company's and/or the End User's reasonable security and safety requirements insofar as these are communicated to DWD or its employees.
- 9.4 It is the responsibility of the End user to make good or re-decorate any areas of the site affected by the installation of the Ethernet Service save where any damage is caused by DWD negligence in which case the limitation of liability provisions of the Supply Agreement shall apply.

10. Use of Service

- 10.1 If DWD notifies the Company (or the Company becomes aware) that the Ethernet Service is being used in breach of the Use of Services provisions contained in the Supply Agreement the Company shall immediately inform the End User that the Ethernet Service will be disconnected if the breach continues. If the End User continues to use the Ethernet Service in breach the Company will immediately disconnect the Ethernet Service.
- 10.2 If the Company uses the Ethernet Service in breach of the Use of Services provisions of the Supply Agreement or continues to supply the Ethernet Service to an End User who is in breach of such provisions DWD may suspend the Ethernet Service, insofar as is reasonable in the circumstances, without prejudice to DWD rights of termination under this Order Form.

11. General

- 11.1 The Company shall not use DWD or DWD sub contractors' name or any registered or unregistered trademarks or service marks of DWD or its sub-contractors without the prior written consent of DWD. The Company shall ensure that contracts made between the Company and its Customers and End Users relating to the Ethernet Service are not represented as being with DWD or its sub-contractors or branded with DWD or its sub contractors' marks or logos but rather are clearly stated to be contracts between the Company and the Customer or End User, as the case may be.
- 11.2 The parties undertake that in relation to their dealings with Customers and End Users and/or potential Customers and End Users they will not:
- Represent themselves as each other and the Company will not represent itself as DWD underlying service provider.
 - Misrepresent their relationship with each other or, in the case of the Company, with DWD underlying service provider.
 - Misrepresent the nature and effect of their agreements with Customers and/or End Users.
 - Assert that they have any authority to provide or promote any products or services on behalf of each other or, in the case of the Company, on behalf of DWD underlying service provider.

The Company also agrees not to represent that the Ethernet Service is a service provided by DWD underlying service provider or that the End User has access to a dedicated service provided by either DWD or its underlying service provider.

- 11.3 If the Company is entitled to one or more service credits under the provisions of Appendix 1 the Company acknowledges that DWD liability in relation to the subject of such service credits is limited to the amount of such credit.

Service Level Agreement

DWD will use reasonable endeavours to comply with the service levels set out in this Appendix, but these levels are target service levels only and DWD has no liability for any failure to meet them except as set out in this Appendix.

1. Service Demarcation

- 1.1 For all services, with the exception of wires-only internet access, the service demarcation point is the LAN-side port/ports of the DWD customer premises router. For wires-only, the service demarcation point is the customer port of the Network Terminating Equipment ("NTE").

1.2 Service Levels

- 1.2.1 **Availability** - The Ethernet Service can be used to deliver internet access or IP telephony services. Different network architectures are used to deliver each of these services.

- When used for internet access each Ethernet circuit will be available for 99.9% of any given calendar month.
- When used for IP telephony services each Ethernet circuit will be available for 99.94% of any given calendar month.
- The following shall not be included when calculating the above service level(s).
- Outages or delays which are deemed by DWD to be the result of matters outside its direct control.
- Planned or notified maintenance whether in response to an emergency or otherwise.

- 1.2.2 **Performance** - The performance measures below are for the end-to-end service, from the DWD core network (source) to the service demarcation point (destination):

- Latency (Source to Destination) - <15ms
- Packet Loss - <0.2%
- Jitter (Source to Destination) - <5ms

These performance measures are only applicable to VoIP traffic destined for either DWD Sip Trunking Platform or Horizon Platform and to any other traffic where overall traffic levels on a customer circuit do not exceed the purchased Committed Data Rate (CDR). Where traffic exceeds the CDR, or in the case of VoIP traffic, exceeds the bandwidth purchased to service the VoIP traffic, this traffic will be shaped which may result in increased latency, jitter or packet loss.

- 1.2.3 **Provisioning** - DWD will use reasonable endeavours to:

- a) Notify the Company within 2 working days after the receipt of a CRF and Order Form as to the acceptance or rejection of the CRF and Order Form.

- b) Notify the Company within 12 working days after the acceptance of a CRF and Order Form of the results of the site survey, whether or not service can be delivered and advise of any Excess Construction Charges.
- c) Notify the Company within 18 working days after the acceptance of a CRF and Order Form of the amount of Excess Construction Charges payable (if any), the Contractual Delivery Date and the preferred installation date for the circuit.
- d) To make services live:
 - (i) For copper Ethernet, within 30 working days after the acceptance of a CRF and Order Form.
 - (ii) For fibre Ethernet, within 60 working days after the acceptance of a CRF and Order Form.
- e) Terminate a service on the date requested by the Company provided that the Company has given DWD no less than 60 days written notice.

1.3 Service Level Guarantee

1.3.1 Provisioning - DWD will activate the service by midnight on the Contract Delivery Date.

For managed internet access and services supporting DWD IP telephony, the installation of a DWD router is required for the full connectivity to the DWD network. This installation occurs on or after the Installation Date.

1.3.2 Fault Handling - DWD will make available the fault handling service 24 hours a day and 7 days a week including Public and Bank Holidays.

All faults will be validated when reported and subsequently classified as below:

- 1) Priority 1 - Total loss of service (hard down or no transmission of signal in one or both directions).
- 2) Priority 2 – Service is available, but either reduced functionality or degradation is creating significant business impact for the End User.
- 3) Priority 3 - Service is available, but either reduced functionality or degradation is being experienced by the End User without any significant business impact for the End User.

For Priority 1 faults DWD will resolve the fault within 6 Clock Hours (as defined below) from a validated fault, or, for Copper Ethernet, 8 Clock Hours from a validated fault.

Clock Hours are defined as the time between the Start Time and Stop Time, excluding Parked Time, where:

- 1) Start Time means the time a fault has been validated and categorised as a Priority 1 fault.
- 2) Stop Time means the time a fault has been resolved.
- 3) Parked Time means the time during which the resolution of a fault is outside of DWD control.

For Priority 2 faults DWD will resolve the fault within 1 working day from a validated fault.

For Priority 3 faults DWD will resolve the fault within 3 working days from a validated fault.

For Priority 1 faults only, if DWD does not resolve a fault on a circuit within the relevant timeframe set out above, then DWD will credit the Company with a compensation entitlement in accordance with the following table:

Measurement	Compensation Entitlement - reduction in monthly circuit rental
Each hour or part hour beyond the target fault clearance time	10% of the monthly rental

Credits will be applied on a per fault basis and will be capped at 100% of the monthly circuit rental. Monthly rental charges for any other DWD product associated with the service are excluded from the calculation of the compensation entitlement.

1.4 Exclusions from Service Levels and the Service Level Guarantee

A service level, service level guarantee and any compensation entitlement will not apply if:

- The failure by DWD is due to the Company's, its customer's or its End User's own network or equipment or any other network (including but not limited to the internet) or equipment outside the DWD network.
- The Company is in breach of any part of these terms and conditions, or the Supply Agreement and such breach affects DWD ability to comply with the service level and/or service level guarantee or if DWD underlying service provider suspends the service or any part of it as a result of any such breach.
- Through no fault of its own or because of circumstances beyond its reasonable control, DWD is unable to carry out any necessary work at, or gain access to the Company's, its customer's or End User's site or the Company fails to agree an appointment date or planned work is aborted (save at DWD request).
- Reasonable assistance is required, or information is reasonably requested by DWD from the Company, its customer, or End User or a third party and such assistance or information is not provided or is not provided in a timely fashion.
- Through no fault of its own, DWD is unable to obtain any necessary permissions or consents required in connection with the performance of a particular service level or service level guarantee.
- The failure is due to Force Majeure or some other event outside DWD reasonable control.
- The failure is due to a planned or emergency service interruption.
- The failure is due to an inaccurate Order Form having been submitted.
- A fault is not reported in accordance with the fault reporting procedures via email support@wearedwd.co.uk
- The Company, its customer or End User has failed to implement any reasonable and explicit instructions issued by DWD in relation to the service.

1.5 Wires-Only Service

Services provided to the reseller without a DWD -supplied and managed customer premises router is known as 'wires-only' services. These services are not provided as managed services and therefore have a reduced Service Level Agreement, as set out below:

- a) For a wires-only service, the service demarcation point is the customer port of the Network Terminating Equipment ("NTE").
- b) The service levels set out in paragraphs 1.2.1 and 1.2.2 above apply to the DWD core network only.
- c) In the event of a fault, it is incumbent on the Company to demonstrate that the fault lies with the DWD Ethernet Service and not externally. If both parties agree this to be the case the fault is deemed to be validated and DWD will resolve the fault within the timescales set out in paragraph 1.3.2 above. The compensation entitlement set out in that paragraph will apply to any failure by DWD to resolve the fault within such timescales.