

This is an archived document and should be used for reference only. The most up to date terms and conditions for home and business services can be found by visiting www.ogi.wales.

General Terms and Conditions: Ogi Home Services, August 2021

1 Definitions

"Acceptable Use Policy" or **"AUP"** means the Ogi Acceptable Use Policy relating to the use of Services as modified from time to time.

"Access Line Speed" means the maximum speed at which the Customer's router can connect to the Internet. For xDSL Services, this is also known as the Sync Rate.

"Affiliate" means a subsidiary or holding company of either Ogi or the Customer and any subsidiary of such holding company (where "holding company" and "subsidiary" have the meanings set out in section 1159 of the Companies Act 2006).

"Agreement" means these Terms and Conditions, the Order Form, the Service Description, the Ogi Acceptable Use Policy, Privacy Policy and the Ogi Fair Usage Policy when taken together, which in the case of conflict rank in the order of precedence listed above.

"Bill" means your initial or monthly bill received from Us indicating payment required.

"Business Day" means 08:00-18:00 Monday Through Friday excluding public holidays in the United Kingdom.

"Confidential Information" means all information disclosed by Ogi or the Customer to the other party, whether before or after the effective date of this Agreement, that the recipient should reasonably understand to be confidential, including: (i) for the Customer, all information transmitted to or from the Services, (ii) for Ogi, unpublished prices and other terms of service, audit and security reports, product development plans, solution diagrams, data centre designs, and other proprietary information or technology, and (iii) for both parties, information that is marked or otherwise conspicuously designated as confidential.

Information that is independently developed by either party, without reference to the other's Confidential Information, or that becomes available to either party other than

through breach of the Contract or applicable law, shall not be "Confidential Information" of the other party.

"Customer" means the person, group of persons or other entity whose name and address are set out in the Order Form.

"Customer Information" means data, information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) published or otherwise made available (directly or indirectly) by or on behalf of the Customer by using the Services.

"Equipment" means equipment detailed on the Order Form or placed on a Customer Site by Ogi for the provision of the Services.

"Minimum Service Period" means the minimum period set out in the Order Form beginning on the Operational Service Date.

"Ogi" means any or all of the following entities:

Spectrum Fibre Limited T/A Ogi, incorporated and registered in England & Wales with company number 12883320 whose registered office is Charnwood House, Collivaud Place, Ocean Way, Cardiff CF24 5HF, VAT Reg 377 9433 45

Spectrum Internet Limited T/A Ogi, incorporated and registered in England & Wales with company number 07849485, whose registered office is Riverside Court, Beaufort Park Way, Chepstow, Monmouthshire, NP16 5UH, VAT Reg 126873689

Ogi Networks Limited T/A Ogi, incorporated and registered in England & Wales with company number 03625793, whose registered office is at Riverside Court, Beaufort Park Way, Chepstow, Monmouthshire, NP16 5UH, VAT Reg 713629048

"Operational Service Date" means the date when a Service is first made available for use by the customer.

"Order Form" means the form for the supply by Ogi of the Services completed by, or in accordance with an order from, the Customer.

"Price Guide" means the prices relating to the Services set out on our Website, as amended from time to time.

"Service Description" means the written description of the Services specified in the Order Form.

“Services” means the Services as Defined in the Order Form.

“Software” means any software provided by Ogi to enable the Customer to access or use the Services.

“Spectrum Fibre Group Company” means a Spectrum Fibre Ltd subsidiary or holding company, or a subsidiary of that holding company, all as defined by section 1159 of the Companies Act 2006.

“Us” or **“We”** means Ogi and references to ‘our’ should be construed accordingly.

“You” means the Customer and references to ‘your’ should be construed accordingly.

2 Commencement

- 2.1 This Agreement sets out the general terms and conditions of supply upon which Ogi supplies Services to The Customer.
- 2.2 This Agreement shall take effect from the date the Order Form is accepted by Ogi via Telesales, Online Order Form or otherwise in writing and shall continue in force unless and until terminated in accordance with the Agreement.

3 The Service Period

- 3.1 Except where specified otherwise in the Order Form, the Services will be provided for a Minimum Service Period of 12 months from the Operational Service Date.
- 3.2 On expiry of the Minimum Service Period the Services will continue to be provided under terms of this agreement unless otherwise terminated pursuant to this agreement.

4 Our Obligations

- 4.1 Ogi will provide the Services in accordance with the relevant Service Descriptions and any other specifications in this Agreement.
- 4.2 Ogi will use reasonable endeavours to provide the Services in the time frame given to the Customer. As all dates are estimates and Ogi will use reasonable endeavours to

update Customer with any changes to expected commencement date. We have no liability for any failure to meet any date, unless the Order Form says otherwise.

- 4.3 Ogi aim to provide uninterrupted service but from time to time faults may occur which We will use reasonable efforts to repair in accordance with the Service Description.
- 4.4 Ogi will provide all Services in accordance with applicable law.

5 Your Obligations

- 5.1 The Customer must use reasonable security precautions in connection with their use of the Services.
- 5.2 The Customer shall not at any time attempt to circumvent any system security or attempt unauthorised access to any element of the Services.
- 5.3 The Customer warrants that the Customer information is, and will remain, accurate and will not include any information or material, any part of which, or the accessing or use of which would be a criminal offence or otherwise unlawful. In particular, the Customer warrants that all necessary licenses and consents (including but not limited to those from owners of copyrights or performing rights) have been obtained. In addition, the Customer confirms that it has the permission from the homeowner or landlord of the property in which the Services are to be provided for Ogi and its installation partners to install, operate and maintain the Equipment.
- 5.4 The Services must not be used in a way that does not comply with the terms of any legislation or any license applicable to the Customer or that is in any way unlawful.
- 5.5 The Customer shall comply with any reasonable instructions received from Ogi which We have issued for reasons of health and safety or to protect the quality of the Services provided to You or any other customer.

6 Changes to this Agreement

- 6.1 Ogi may increase the amount payable by you for any Services by giving you one month's calendar notice in writing after the expiry of the Minimum Service Period.
- 6.2 Ogi reserves the right to modify the terms and conditions of this Agreement. Where this happens we will notify you in advance before the changes to the terms and

conditions take effect. The reasons we may make changes include, but are not limited to;

- (a) complying with any legal or regulatory obligation, decision or request;
- (b) changing the conditions relating to a Service in order to reflect contractual changes imposed upon us by our Suppliers;
- (c) introducing new products, improved Service features, variations that are necessary by virtue of any new law or regulation or as required by any regulator or other competent authority;
- (d) introducing process changes (including changes to the Acceptable Use Policy), provided that they are not to your detriment;
- (e) maintaining the integrity or security of the Service or any network;
- (f) improving clarity, or making corrections to typographical errors;
- (g) changing the processes and procedures detailed in any Service Description

- 6.3 Ogi will endeavour to notify You of any change at least 30 calendar days before it happens, save where our compliance with any legal or regulatory obligation requires a shorter period of notice or no notice.
- 6.4 In respect of changes to this Agreement made under clause 6.2 such changes shall not require a new Agreement to be signed by the Parties and shall take effect at the expiration of such notice as is provided by clause 6.3.
- 6.5 Ogi may from time to time make test or trial services and/or promotional offers ("Offers") available. Such Offers may be subject to specific terms and conditions ("Promotional Terms and Conditions"). Promotional Terms and Conditions may require a variation to this Agreement in which case You will be deemed to have accepted such variation on their acceptance of the Offer. Unless otherwise stated in the Promotional Terms and Conditions, an Offer may be amended or withdrawn by Us at any time and without notice. For the avoidance of doubt We are not obliged to include You in any Offer made to other customers. Unless expressly permitted under the terms of a specific promotional offer, current and former customers, under the same or any other identity, are ineligible for any promotional offer reserved for new customers.

7 Charges

- 7.1 Except where otherwise set out in this Agreement, all charges and other sums due from the Customer in respect of the Services shall be set out in the Order Form.
- 7.2 Customers taking consumption service with a variable charges such as VoIP will received these charges on their monthly invoice.
- 7.3 Charging will begin on the Operational Service Date or as otherwise set out in the Order Form or Service Description.
- 7.4 The Customer will pay the charges (without any set off or deduction of any kind) as per the Bill on a monthly basis as stated in the Order Form and / or the Price Guide and / or the invoice referred to in Clause 7.1 above. Where payment is not made in accordance with these terms, Ogi may charge late payment fees as listed on our Price Guide.

8 Distance Selling and Your Rights to Cancel

- 8.1 Once the Agreement has commenced the Customer has the right to cancel the Agreement within 14 days without giving any reason, in accordance with The Consumer Contracts Regulations 2013.
- 8.2 To exercise the right to cancel, You must inform Us of your decision in a clear statement, either by post or email as contained on our website.
- 8.3 In line with The Consumer Contracts Regulations 2013, commencement of delivery of service will not begin until after the 14-day cancellation period has expired. Estimated lead times are calculated from the end of this 14-day period.
- 8.4 You may request early supply of service during the order process.
- 8.5 If after the early supply of service You exercises your right to cancel the Agreement, You shall incur a charge which is in proportion to what has been performed until You have communicated us your cancellation from this Agreement.

9 Suspension

9.1 Ogi may suspend the Services without liability if:

- (a) We reasonably believe that the Services are being used in breach of this Agreement;
- (b) You do not cooperate with our reasonable investigation of any suspected violation of this Agreement;
- (c) there is an attack on the Services, or the Services are accessed or manipulated by a third party without Your consent;
- (d) payment is not received in accordance with the Agreement;
- (e) we are required by law or a regulatory or government body to suspend the Services; or
- (f) there is another event for which we reasonably believe that the suspension of the Services is necessary to protect the Ogi network or our other customers.

9.2 Ogi will give advance notice of any suspension under this clause of at least two (2) Business Days unless we determine in our reasonable commercial judgement that a suspension on shorter or contemporaneous notice is necessary to protect Our systems or Our other customers from imminent and significant operational, legal or security risk.

9.3 If the Services are suspended due to the Services becoming compromised as a result of Customer owned or controlled systems or through the Customer's use of the Services, You must address the vulnerability prior to Ogi lifting any such suspension. At the Customer's request We may be able to perform this work for You at our standard hourly rates.

9.4 During any period of suspension, the Customer agrees to continue to pay and to remain liable for all charges pursuant to the Agreement. Only by giving the standard notice to terminate and payment of any termination fees, can such charges be avoided during suspension.

9.5 If Services are suspended due to a Customer breach of the AUP, non-receipt of payment or due to the Services becoming compromised due to Your use of the Service, Ogi reserve the right to charge a reconnection fee as per our Price Guide which must be paid in full prior to the Services being restored. The amount of such

charges vary with the Service and where possible will be provided to the Customer in advance of any applicable suspension.

10 Termination

10.1 Once commenced, the Agreement shall continue until terminated by either party.

10.2 If after the service has been installed the Access Line Speed subsequently drops below

10Mbps and We are not able to remedy the situation the Customer may terminate this Agreement. Should the Customer wish to continue with the Service We agree to discount the Service, as per Our standard Price Guide.

10.3 Notwithstanding the above Clause 10.2, if the Access Line Speed drops by more than 25% of the original Access Line Speed continuously for a 14-day period, the Customer may terminate the Agreement without penalty.

10.4 Ogi may terminate the Agreement for breach if;

- (a) the information provided by the Customer for the purposes of establishing the Services is materially inaccurate or incomplete;
- (b) the individual signing the Agreement or Order Form did not have the legal authority to enter into the Agreement on behalf of the Customer;
- (c) the payment of any invoiced amount relating to the Services is overdue in line with the published late payment process on our website.
- (d) the Customer fails to comply with any other obligation stated in the Agreement and does not remedy the failure within thirty (30) Business Days of Ogi.'s written notice to You describing the failure;
- (e) the Customer breaches any provision of the Acceptable Use Policy more than once even if each breach is remediated; or
- (f) any other agreement the Customer has with Ogi for other Services is terminated for breach of the acceptable use policy applicable to that service.

- 10.5 Either party may terminate the Agreement by giving one (1) calendar months' notice in writing to the other.
- 10.6 If the Customer terminates the Agreement during the Minimum Service Period, the Customer must pay Ogi the termination charges equating to 100% of the charges for the remainder of the Minimum Service Period.

11 Limitation of Liability

- 11.1 Ogi is not liable in contract, tort (including negligence) or otherwise for loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data, loss of reputation or for any indirect or consequential loss resulting from the Customer's use of or inability to use the Services.
- 11.2 Nothing in these Terms and Conditions shall exclude either party's liability for: (a) personal injury or death caused by its negligence;
(b) any fraud or fraudulent misrepresentation.
- 11.3 The Customer acknowledges that any Services supplied, are intended for personal non-commercial use only. The service is therefore, not suitable for use in any system where failure of such system, could result in a situation that threatens the safety of human life. Any such use and subsequent liabilities that may arise from such use are totally the responsibility of the Customer, and all liability, whether in contract, tort or otherwise in relation to the same is excluded subject to Clause 11.2
- 11.4 Ogi personnel may from time to time recommend third party software or other products and services for the Customer's consideration. Ogi makes no representation or warranty whatsoever regarding such products and services. The Customer's use of any products and services not provided by Ogi is governed by the terms of any agreement with the provider of those products and services, and is at Your sole risk. Ogi is not responsible in any way for the third party product's performance, features or failures.

12 Indemnification

- 12.1 Ogi will indemnify the Customer, against claims or legal proceedings brought against You by a third party, arising out of Ogi's actual or alleged negligence or breach of law. You will notify Us of any such claims and will keep Us informed as to the progress of such claims or proceedings.
- 12.2 The Customer will indemnify Ogi including their employees, agents and contractors against any claims or legal proceedings brought against Us by a third party, arising out of Your actual or alleged negligence, breach of law or a breach of the Acceptable Use Policy. Ogi will notify the Customer of any such claims and will keep You informed as to the progress of such claims or proceedings.

13 Intellectual Property

- 13.1 The Customer agrees that, all copying, redistribution or publication of any material or information subject to any rights (including intellectual property rights) of a third party will be carried out by the Customer (or on their behalf) in accordance with all relevant Laws.
- 13.2 If Ogi or any of its customers is faced with a credible claim that the Services infringe the intellectual property of a third party, and We not reasonably able to obtain the right to use of the infringing element or modify the Services such that they do not infringe, then We may terminate the Services on reasonable notice of at least ninety (90) days and it will not have any liability on account of such termination except to refund amounts paid for Services not used at the time of termination.
- 13.3 Where supplied, Ogi grants the Customer a non-exclusive, non-transferable license to use the Software to access the Services.
- 13.4 Where supplied, the Customer will not, without Ogi's prior written consent, copy or (except as permitted by law) decompile or modify the Software, nor copy any manuals or documentation.
- 13.5 Where supplied, You will sign any agreement reasonably required by the owner of the copyright in the Software to protect the owner's interest in that Software.
- 13.6 Each party retains all rights, title and interest in and to their respective trade secrets, inventions, copyrights and other intellectual property. Any intellectual property developed by Ogi during the performance of the Services shall belong to Ogi, unless

we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

14 Confidential Information

- 14.1 The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under this Agreement and will not disclose that information to any person (in the case of Ogi the employees of a Spectrum Fibre Group Company who need to know the information) without the written consent of the other party.
- 14.2 This section 14 will not apply to:
- (a) Any information which has been published other than through a breach of this agreement;
 - (b) Information lawfully in the possession of the recipient before the disclosure under this Agreement took place;
 - (c) Information obtained from a third party who is free to disclose it;
 - (d) Information which a party is requested to disclose and if it did not could be required by law to do so. The disclosing party shall notify the other in writing of such disclosure.
 - (e) Information in response to a court order or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven days prior to disclosing confidential information under this clause (or prompt notice in advance of disclosure if seven days' notice is not reasonably feasible), unless the law forbids such notice. Where information has been disclosed without prior notice the disclosing party must notify the other party as soon as possible thereafter (to the extent permitted by law).

15 MBORC (Matters Beyond our Reasonable Control)

- 15.1 Neither party will be in breach of the Agreement if the failure to perform the obligation is due to an event beyond their control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection,

epidemic, strikes or other organised labour action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

16 Notices

16.1 Notices given under this contract must be in writing and delivered by hand, or sent by prepaid post or electronic mail as follows:

- (a) To Ogi at the address of Our office shown on the Order Form or on the Customer's last invoice or any alternative address that Ogi notifies the Customer of;
- (b) To the Customer at the address to which they have asked Us to send invoices, or the address of the Customer's premises.

17 Assignment

- 17.1 Neither party may assign or transfer any of their rights or obligations under this Agreement without the written consent of the other, except that Ogi may assign its rights or obligations (or both) to a Spectrum Fibre Group Company without consent.
- 17.2 Ogi may use third party service providers to perform any or all parts of the Services, but Ogi remains responsible to You under this Agreement for services performed by its third party providers to the same extent as if Ogi performed those services itself.

18 General

- 18.1 Neither failure nor delay by either party in exercising any rights under the Agreement shall amount to a waiver of any such right, or operate so as to bar the exercise or enforcement of such right at any time in the future.
- 18.2 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of

the provisions will continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision omitted.

18.3 This Agreement supersedes all previous written or oral agreements relating to its subject matter other than any fraudulent misrepresentation.

19 Disputes, Jurisdiction and Governing Law

19.1 Ogi will endeavour to resolve any disputes with the Customer. All disputes and complaints will be dealt with in accordance with our Customer Complaints Code, which can be found on our Website.

19.2 If the matter is not resolved through the escalation process set out in the Customer Complaints Code, the Customer may seek resolution through an Alternative Dispute Resolution procedure. Details of which can be found within the Customer Complaints Code.

19.3 This Agreement is governed by the law of England and Wales and both parties submit to the exclusive jurisdiction of the Courts of England and Wales. Both parties agree that they will not bring a claim under the Agreement more than two (2) years after the event giving rise to the claim occurred.

Version 1.1 / MS / August 2021