

WiFi SPARK Limited –Terms and Conditions of Supply

In order to make our Terms as simple to use as possible we have divided them into separate Parts.

The General Terms apply to all supplies of whatever type. The other parts apply as follows:

Part A: supplies of Equipment and Software

Part B: Maintenance and Managed Service,

Part C: the provision of any connection to external services, such as the Internet

Part D: where WiFi SPARK is providing Equipment, Software or Services on a short term, 'Proof of Concept' basis

Part E: where WiFi SPARK is providing Service Desk services

Part A General Terms and Conditions

1. Interpretation

- 1.1. In these Terms and Conditions, the following words and phrases shall have the following meanings:

Acceptance Date: the date of Activation of the Connectivity Services.

Activation: this occurs when the relevant Connectivity Service is available for use by the Customer.

Connectivity Service: the provision of a connection to the Internet.

Contract: these Terms and Conditions (including Parts A-D and the Schedules), the Service Level Agreement and WiFi SPARK's Quotation.

Contract Start Date the date the Contract comes into existence under condition 3.2.

Communications Supplier: a supplier of communications services including fixed line, wireless, network and cable telecommunication companies and ISPs.

Customer: the person, entity, firm or company to whom a quotation is addressed or who requests Services, Equipment or Software from WiFi SPARK.

Data Protection Legislation: the General Data Protection Regulation ((EU) 2016/679) (GDPR) whilst still applicable in the UK and any UK national implementing laws, regulations and secondary legislation

Data Subject: has the meaning given in the Data Protection Legislation

Default Configuration: The standard parameters for service delivery prior to any Customer requested customisations and configurations, allowing the service to be provided at the Location.

Excess Construction Charges (ECC's): relates to the additional cost which may be incurred for the provision of a connectivity solution. These are not specified at the time of quotation.

End User: any person who connects to an internet connection, be it wired or wireless provided at a Location by WiFi SPARK.

Equipment: such servers, network components, access points, modems, firewalls and routers to be provided by WiFi SPARK.

End User Terms and Conditions of Use: the End User Terms and Conditions of Use set out at www.wifispark.com/support#terms

Fixed Term End Date: The date the Contract and Services will cease automatically.

Go Live Date: the date set out in section 10 in respect of all Services other than Connectivity.

Good Industry Practice: the standards that fall within the upper quartile of a skilled and experienced provider of services similar or identical to the Services.

Intellectual Property Rights: all patents, rights to inventions, copyright and related rights, trade marks, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights (including without limitation know-how and trade secrets), rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered.

Invoicing Start Date: The date on which invoicing of the Monthly Fees will automatically commence unless superseded by the Go Live Date or Acceptance Date.

Legacy Equipment: such servers, network components, access points, modems, firewalls and routers owned or in the possession of the Customer, excluding the Equipment.

Location: each of the premises where the Software or Equipment is to be installed or the Service supplied as specified in the Quotation, or, if none, the Customer's address on the Quotation.

Maintenance Services: the maintenance services to be provided by WiFi SPARK in accordance with condition B 1 and Schedule 2.

Maintenance Services End Date: The date on which the provision of hardware related Maintenance Services will cease automatically.

Managed Services: the provision of a wired or wireless internet access facility at the Location by means of the Software or Equipment and/or the Legacy Equipment, together with the provision of some or all of the following services: Captive Portal Page provision, subscriber provisioning and network access authentication, bandwidth control, network management, data collection, revenue and payment collection and dissemination, print and media services, and other services WiFi SPARK provides, or agrees to provide, to the Customer as stated in the Quotation.

Media Services: any services provided at a Location including; television, radio, telephony, broadcast, content delivery, surveys, film or internet streaming services, games and digital print services, and third party applications.

Minimum Term: the term of Service supply in months as specified in the Quotation starting from the Invoicing Start Date, Acceptance Date or Go Live Date, whichever occurs first as the case may be.

Monthly Fee: a charge levied for the provision of the Services as specified in the Quotation.

Network shall mean the network over which WiFi SPARK provides any Connectivity Service provided as leased line, FTTC, FTTP, ADSL or PSTN.

OSS Software: such software as defined by the Open Source Initiative (<http://opensource.org>) under the BSD-2, MIT, GPLv2 & GPL v3 Licences .

Personal Data: has the meaning given in the Data Protection Legislation.

Proof of Concept (POC): the short-term installation of Equipment or provision of Services, as set out on the Quotation, either paid or provided at no cost, for evaluation by the Customer.

Proof of Concept Term: Specified in the WiFi SPARK Quotation, this shall be a maximum duration of six months.

Quotation: any quotation or estimate provided by WiFi SPARK.

Revenue: the total of all payments made to WiFi SPARK by End Users for any services provided by WiFi SPARK net of all charges such as credit card and bank charges, as well as VAT.

Service Desk: a purchased product providing support to End Users

Services: each of the Maintenance Service, Connectivity Service and Managed Services as the context requires.

Software: the WiFi SPARK Software and the OSS Software provided by WiFi SPARK for the provision of the Services.

Support Hours: 24/7 seven days a week.

Terms and Conditions: these terms and conditions, each being a 'condition'.

WiFi SPARK: WiFi SPARK Limited.

WiFi SPARK Software: such software created or otherwise owned by WiFi SPARK that is not OSS Software as specified in the Quotation.

- 1.2. Any reference to a party's employees includes its agents and subcontractors.
- 1.3. The schedules form part of the Contract.
- 1.4. Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

2. Application of terms

- 2.1. These terms and conditions shall:
 - 2.1.1. apply to and be incorporated in the Contract;
 - 2.1.2. apply to all dealings between WiFi SPARK and the Customer; and
 - 2.1.3. prevail over any inconsistent terms or conditions implied by law, trade custom, practice or course of dealing or contained in or referred to in the Customer's purchase order, confirmation of order, or specification, even if WiFi SPARK accepts the Customer's purchase order or ordering document or does not otherwise reject the Customer's purchase order or other ordering document.
- 2.2. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on WiFi SPARK unless in writing and signed by a duly authorised representative of WiFi SPARK.
- 2.3. The Customer's warrants that its internal procedures and authorisations for entering into this Contract for its full value on these terms without addition or variation (including the production of a Purchase Order, if required) were completed prior to the terms of condition 3.2 taking effect.
- 2.4. Quotations are given by WiFi SPARK on the basis that a Contract shall come into existence only in accordance with condition 3.2. Connectivity Quotations are valid for 10 days and all others for 30 days, or as otherwise specified on the Quotation, provided that WiFi SPARK has not previously withdrawn it.

3. Basis of provision of Supply

- 3.1. Each quotation for Equipment, Services or Software by WiFi SPARK shall be deemed to be an offer to the Customer subject to these Terms and Conditions.
- 3.2. A binding Contract shall not come into existence between WiFi SPARK and the Customer unless and until: (i) WiFi SPARK receives a signed Quotation, which combined with these terms and conditions forms the Contract between both parties and (ii) receives a deposit or milestone payment as specified in the Contract; or (iii) if earlier, when WiFi SPARK begins to: (a) install the Software or Equipment at the Location; or (b) provide the Services.
- 3.3. Each installation of Software or Equipment at each Location and each Service shall be treated, for the purposes of termination, as a separate contract.

- 3.4. The Customer agrees that WiFi SPARK may subcontract, wholly or in part, this Contract or any part of this Contract to a subcontractor or subcontractors.
- 3.5. The Customer acknowledges that all use of any Services by End Users will be subject to WiFi SPARK's End User Terms and Conditions of Use.
- 3.6. The Customer accepts that by returning a signed Quotation they are entering into a binding Contract for the supply of Equipment and/or Services provided by WiFi SPARK and are ready to proceed with the Contract immediately, and will not impose or introduce any delay with either implementation or project delivery.
- 3.7. The Customer agrees that all Contracts (with the exception of leased line Connectivity Contracts) are to be fulfilled and project delivery completed within eight (8) weeks from date of signature; WiFi SPARK reserves the right to amend this timescale according to availability of resources during the project delivery stages.
- 4. Order details**
- 4.1. The Services, Software or Equipment shall be as set out in WiFi SPARK's Quotation.
- 4.2. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, Quotation, invoice or other document or information issued by WiFi SPARK shall be subject to correction without any liability on the part of WiFi SPARK.
- 4.3. WiFi SPARK's employees are not authorised to make any contractually binding representations concerning the Services or Software or Equipment. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of WiFi SPARK.
- 4.4. Any advice or recommendation given by WiFi SPARK or its employees to the Customer or its employees about the storage, application, or use of the Software or Equipment which is not confirmed in writing by an authorised officer of WiFi SPARK is followed or acted on entirely at the Customer's own risk.
- 4.5. All Quotations are based on information supplied to WiFi SPARK by the Customer. If additional or supplemental work is required, or significant changes to the agreed Equipment and Services are necessary, the Customer agrees to pay such additional costs, including additional professional services fees, subject to prior to approval and returning a signed Quotation.
- 5. Customer Obligations**
- 5.1. The Customer shall:
- 5.1.1. appoint a manager through whom all communication will be passed with authority to bind the Customer and to accept the Service on behalf of the Customer;
- 5.1.2. co-operate and assist in the installation and performance of the Service or the delivery of Equipment and Software;
- 5.1.3. notify WiFi SPARK promptly if a Service is not operating correctly;
- 5.1.4. co-operate with WiFi SPARK's personnel in diagnosis investigation and correction of any fault in a Service;
- 5.1.5. make available to WiFi SPARK free of charge all information facilities and services reasonably required by WiFi SPARK to enable WiFi SPARK to install and perform each Service;
- 5.1.6. not alter, adapt or modify a Service in any way;
- 5.1.7. not request or permit any other person other than WiFi SPARK to provide any maintenance services in respect of the Service without WiFi SPARK's consent;
- 5.1.8. obtain all necessary consents, including consents for any necessary alterations to buildings;
- 5.1.9. if required, take up, or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers; and
- 5.1.10. provide and maintain, at its cost, any mains electricity and connection points, to remain live at all times, required by WiFi SPARK or any contracted agents of WiFi SPARK.
- 5.1.11. not cause or introduce any delay into the provision of services, and shall respond to all requests for information, data, and specification sign off within the timescale stated on each document where applicable.
- 5.1.12. in the event that Equipment and Services are paid for, and delivery and installation is delayed by the Customer, the Customer shall pay storage fees for the Equipment at a rate equivalent to 10% of the value of the Equipment per quarter.
- 6. Use of Services**
- 6.1. The Customer shall not use the Services:
- 6.1.1. in connection with the carrying out of any fraudulent, criminal, or any other illegal activity;
- 6.1.2. to send, knowingly receive, upload, download or use any material which is offensive, abusive, indecent, defamatory, obscene or menacing or in breach of copyright, confidence, privacy or any other rights;
- 6.1.3. to cause annoyance or needless anxiety;
- 6.1.4. to send or provide or, knowingly receive responses to, any spam or unsolicited advertising or promotional material;
- 6.1.5. to knowingly or recklessly transmit any electronic material (including viruses) which shall cause or is likely to cause detriment or harm in any degree to computer systems owned by WiFi SPARK or other Internet users;
- 6.1.6. in a manner which restricts or inhibits any other user from using or enjoying WiFi SPARK's products or services; or
- 6.1.7. in breach of any reasonable instructions given by WiFi SPARK.
- 6.2. WiFi SPARK will examine, from time to time, the use to which the Customer puts the Services and the nature of the data/information that the Customer is transmitting or receiving via the Services where such examination is necessary: (i) to protect / safeguard the integrity, operation and functionality of WiFi SPARK's (and neighbouring) networks; or (ii) to comply with police, judicial, regulatory or governmental orders, notices, directives or requests.
- 6.3. The Customer agrees to indemnify WiFi SPARK and its subcontractors from any liability or claim arising out of, or any penalty or fine imposed in respect of, the Customer's breach of this condition 6.
- 7. Prices**
- 7.1. All charges shall be as stated in WiFi SPARK's Quotation and are exclusive of VAT, which shall be added at the appropriate rate.
- 7.2. WiFi SPARK reserves the right, by notice to the Customer, to increase the price to reflect any increase in the cost to WiFi SPARK due to any delay caused by the Customer or an increase in the charges of any Communication Supplier or WiFi SPARK's third party suppliers above those prevailing at the date of WiFi SPARK's Quotation.
- 7.3. WiFi SPARK reserves the right to vary the Equipment listed on the Quotation due to obsolescence or lack of availability and charge the Customer at an appropriate rate.
- 7.4. On expiry of the Minimum Term or Extended Term, WiFi SPARK reserves the right to uplift prices and rates on an annual basis, such increase to be applied at either the then current RPI rate plus 5%, or the then current WiFi SPARK rates, which ever is the higher amount.
- 8. Payment**
- 8.1. The payments due under the Contract are as follows:
- 8.1.1. 100% of the Equipment and Services charges shall be invoiced on 30 day payment terms on receipt of a signed Quotation from the Customer.
- 8.1.2. The Monthly Fees shall be paid annually in advance from: whichever of the following dates occurs first:
- 8.1.2.1. the Invoicing Start Date specified on the Quotation
- 8.1.2.2. the Services Go Live Date
- 8.1.2.3. the Connectivity Acceptance date
- 8.1.3. All other Invoices shall be paid, in full and in cleared funds, within 30 days of their date, or in accordance with the payment term specified on the invoice, to a bank account nominated by WiFi SPARK and time for payment of WiFi SPARK's invoices shall be of the essence of the Contract. Cheque payments are not accepted by WiFi SPARK.
- 8.1.4. Where a Contract specifies a milestone invoicing schedule, that schedule will take precedence over the above clauses 8.1.1 and 8.1.2
- 8.2. If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Services, Software or Equipment then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to WiFi SPARK, WiFi SPARK may:
- 8.2.1. suspend delivery of the installation project until the Equipment and Services charges are fully paid;
- 8.2.1.1. in the event of the clause 8.2.1 WiFi SPARK will not be held responsible for any resultant delivery delays due to suspended or cancelled supplier orders, and any extra costs incurred to reinstate such orders shall be payable by the Customer
- 8.2.2. appropriate any payment made by the Customer or share of Revenue due to the Customer under any contract to any outstanding sum;
- 8.2.3. charge interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- 8.2.4. apply a Late Payment Fee of £175 (ex VAT) per outstanding invoice or 10% of the value of each outstanding invoice whichever is the greater;
- 8.2.5. suspend all further provision of services (in each case whether ordered under these Terms and Conditions or not) until payment has been made in full; and
- 8.2.6. remove any Software or Equipment provided as detailed in the Quotation or remove access to any Service until payment has

been made. The Customer acknowledges that it is responsible for reasonable decommissioning charges, and after payment has been received, reasonable charges for re-commissioning, charged at the then current rates.

8.2.7. Subject to Clause 17.2 terminate the Contract

- 8.3. Where a Revenue share is identified as applicable on the Quotation, WiFi SPARK shall collect all Revenue and then transfer to the Customer its share of Revenue after the end of each month following that in which it was earned. If no shares are specified, then all Revenue shall be retained by WiFi SPARK.
- 8.4. All amounts due under this Contract to be paid by the Customer to WiFi SPARK shall be paid in full (without deduction or withholding except as required by law) and the Customer shall not be entitled to assert any credit, set-off or counterclaim against WiFi SPARK in order to justify withholding payment of any such amount in whole or in part.
- 8.5. WiFi SPARK reserves the right to charge any costs it incurs in collection any unpaid and overdue amount from the Customer.

9. Use of the Internet Service

- 9.1. WiFi SPARK shall be responsible for setting up and maintaining a portal page for the internet access provided at each Location and shall be entitled to add and remove facilities and links and to populate that page with content as it thinks fit.
- 9.2. Where a paid for internet access provision is deployed, WiFi SPARK shall be solely responsible for setting and altering its tariffs to End Users in accordance with market conditions. WiFi SPARK may, at its discretion, permit or refuse the availability of 'roaming' of End Users between the Customer and other customers.
- 9.3. The Customer acknowledges that WiFi SPARK has no control over the content of the internet that may be requested and ultimately accessed by End Users, save for the content filtering provision supplied with the Service.
- 9.4. The Customer acknowledges that WiFi SPARK may promote the installation of the Equipment and or delivery of the Services at the Location, through the use of case studies, web promotions, email campaigns, social media and any other PR or marketing activity as WiFi SPARK deems appropriate to publicise its relationship and service provision with the Customer.

10. Acceptance and Go Live

- 10.1. The Internet Service and the Connectivity Service are deemed to be accepted by the Customer either when WiFi SPARK demonstrates usage of the Service (if relevant, at the Location) or if the Customer or an End User uses the Service in any form (other than for testing or training). For the Internet Service this shall be the Go Live Date and for the Connectivity Service, the Acceptance Date.
- 10.2. The Go Live Date for Maintenance and Managed Service shall be the date WiFi SPARK begins to provide the same, usually the Acceptance Date or the Go-Live Date of the relevant Service.
- 10.3. In the event that delivery, installation, acceptance or a Go Live Date is delayed by the Customer for a period in excess of 90 days then WiFi SPARK shall be entitled to treat the Contract and invoice the Customer for the full term and value of the Contracts as if Equipment and Software had been delivered and installed and the Acceptance Date and Go Live Dates had passed and the Managed Services and Connectivity (where applicable) had been live for the duration of the Minimum Term, and that the Customer had then given 90 days' notice under condition 16.1.

11. Warranties

- 11.1. WiFi SPARK warrants to the Customer that the Services will be carried out in accordance with Good Industry Practice.
- 11.2. Due to the existence of factors outside its control, WiFi SPARK does not warrant or undertake to provide a 100% fault-free Services.
- 11.3. The Customer warrants that it has reviewed any existing contractual relationships covering the same or similar services to those provided by WiFi SPARK pursuant to or contemplated by this Contract and has and sought independent legal advice in relation to the exclusivity rights of the Customer's counterparty under such contracts (if any). The Customer warrants that it has full authority, ability and rights to enter into this Contract and will not be in breach of those, or any other, existing contracts or arrangements.

12. Limitation of liability

- 12.1. **The following provisions set out the entire liability of WiFi SPARK (including any liability for the acts or omissions of its employees) to the Customer in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.**
- 12.2. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 12.3. The Customer acknowledges that the supply of Managed Services and Connectivity is partly dependent on Communication Suppliers over whom WiFi SPARK has no control. Accordingly, the Customer accepts that WiFi SPARK shall have no liability to the Customer exceeding any claim that WiFi SPARK may have against that Communication Supplier

in respect of any delay or failure to provide a Service caused by a Communications Supplier.

- 12.4. Nothing in these conditions excludes or limits the liability of either party for: (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; (iii) for any other liability that cannot be excluded or limited by law; or (iv) the indemnities contained in this Contract.
- 12.5. Subject to condition 12.4:
 - 12.5.1. WiFi SPARK shall not be liable for any loss of profits, loss of business, loss of data, loss of reputation, depletion of goodwill or similar losses or pure economic loss or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and
 - 12.5.2. unless expressly set out to the contrary on the Quotation, WiFi SPARK's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £5,000 or the annual value of the Contract whichever is the lower.

13. Intellectual Property Rights

- 13.1. If WiFi SPARK incorporates data or other information at the request of the Customer, the Customer shall indemnify and keep indemnified WiFi SPARK against all losses, damages, costs, claims and expenses incurred by WiFi SPARK in connection with any claim for infringement of any third party Intellectual Property Rights which results from that request.
- 13.2. The Customer acknowledges that all Intellectual Property Rights in the OSS Software are owned by the respective copyright holder as noted on the OSS Software. All OSS Software is subject to the relevant licence terms for the OSS Software set out in Schedule 3 and the Customer agrees to comply with the same. WiFi SPARK shall not be liable for any breach by the Customer.
- 13.3. Subject to condition 13.2, the Customer acknowledges that the WiFi SPARK Software and all other Intellectual Property Rights used in the provision of the Services (other than the OSS Software) are owned by WiFi SPARK and will not attempt to access or copy the same other than in accordance with the facilities provided by WiFi SPARK.

14. Assignment

Neither party may assign this Contract without the written consent of the other party, save after giving notice to WiFi SPARK in the event of a genuine corporate reorganization or consolidation of its group of companies.

15. Confidentiality

Each party shall keep in strict confidence all technical or commercial knowhow, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Contract and shall ensure that such employees are subject to corresponding obligations of confidentiality. This condition shall survive termination of the Contract, however caused.

16. Termination without Cause

- 16.1. Unless terminated earlier in accordance with condition 17 or this condition 16 and where no Fixed Term End Date is specified on the Quotation, this Contract shall continue for the Minimum Term and shall automatically extend for 12 months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. Either party may give 90 days' notice in writing to terminate this Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.
- 16.2. Where a Fixed Term End Date is stated on the Quotation, the Contract and Services will cease automatically on the Fixed Term End Date.
- 16.3. The Customer may terminate the Services supplied under this Contract by giving 90 days' notice in writing to WiFi SPARK at any time. Upon giving such notice the Customer shall be liable to pay, within 30 days of the giving of the notice: the Monthly Fee, added to the average monthly Revenue (if applicable) over the current Term, multiplied by the number of months remaining of the current Term after expiry of the notice. The charges during the period of the notice shall be in accordance with this Contract.
- 16.4. WiFi SPARK may terminate this Contract without notice but in writing should the provision of Services at the Location be deemed loss making or uneconomical

17. Termination for Cause

- 17.1. Either party may terminate this Contract forthwith on giving notice in writing to the other if that other ceases to carry on business or commits any serious breach of any term of this Contract and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of the request in writing from the other to do so, to remedy the breach.
- 17.2. WiFi SPARK may terminate this Contract if the Customer fails to pay any sum due under the terms of this Contract and such sum remains unpaid and outstanding for 60 days.

- 17.3. Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.
- 18. Effects of Termination**
- 18.1. On termination of this Contract for any reason:
- 18.1.1. WiFi SPARK shall cease providing the Services to the Customer;
- 18.1.2. the Customer shall immediately cease using the Software or Equipment;
- 18.1.3. the Customer shall immediately pay to WiFi SPARK any sums due to WiFi SPARK under the Contract (including as set out under condition 16.1); and
- 18.1.4. if the Equipment has been provided to the Customer without charge (as set out in the Quotation) then the Customer shall promptly return the Equipment to WiFi SPARK at a location reasonably designated by WiFi SPARK at the Customer's expense or allow WiFi SPARK engineers access to remove the Equipment as soon as reasonably possible. If it is not possible for WiFi SPARK to recover such Equipment within 15 days of the termination of the Contract, the Customer will be invoiced for the Equipment on immediate payments terms.
- 19. Exit Assistance**
- WiFi SPARK shall provide the Customer with such reasonable assistance and information in transitioning the Services to a replacement supplier as the Customer may request, chargeable to the Customer on a time and materials basis at the Supplier's then-current rates.
- 20. Dispute Resolution Procedure**
- 20.1. If any dispute arises in connection with this Contract, directors or other senior representatives of the parties with authority to settle the dispute will, within 30 days of a written request from one party to the other, meet promptly in good faith to resolve the dispute.
- 20.2. If the dispute is not resolved in accordance with condition 20.1, the dispute shall be referred to mediation in accordance with the CEDR Model Mediation Procedure. To initiate the mediation, a party must serve notice in writing (an "ADR Notice") to the other party, requesting a mediation. A copy of the ADR Notice should also be promptly sent to CEDR Solve. Unless otherwise agreed in writing by the parties, the mediator shall be appointed by CEDR Solve. If mediation has not started within 28 days of the serving of the ADR Notice then the matter shall be finally resolved by the courts of England and Wales.
- 20.3. Nothing in this condition 19 shall prevent either party from seeking interim injunctive relief to prevent irreparable loss or damage.
- 21. General Data Protection Regulation**
- Both Parties will comply with the applicable requirements of the Data Protection Legislation and the terms of Schedule 1.
- 22. Force Majeure**
- WiFi SPARK reserves the right to defer the date of installation of Software or Equipment or the Service delivery, or to cancel the Contract or reduce or suspend the Service, if it is prevented from or delayed in carrying on its business by any act, event, omission, legal obligation, pandemic, incident or accident beyond its reasonable control (which shall include, without limitation, failure of a utility service or Communications Supplier) (each, a "**Force Majeure Event**"). WiFi SPARK shall have no liability to the Customer under the Contract if it is prevented from, or is delayed in, performing its obligations under the Contract or from carrying on its business by a Force Majeure Event.
- 23. Waiver**
- A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 24. Entire Agreement**
- 24.1. This Contract constitutes the whole agreement between the parties and supersedes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter.
- 24.2. Each party acknowledges that, in entering into this Contract, it has not relied on, and shall have no right or remedy (other than for breach of Contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Contract.
- 24.3. Nothing in this condition shall limit or exclude any liability for fraud.
- 25. Third party rights**
- No one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 26. Notices**
- 26.1. Any notice required to be given pursuant to this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or in the case of WiFi SPARK, by email to info@wifispark.com or such other address as may be notified by one party to the other.
- 26.2. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by prepaid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no "non-deliverable" notice is received by the sender.
- 26.3. The Customer must not assume that WiFi SPARK has received notice of Termination unless WiFi SPARK has confirmed this via e-mail.
- 26.4. Email may not be used for service of legal proceedings.
- 27. Governing law and jurisdiction**
- The Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction in respect of the same.
- Part A The Equipment and Software**
- This part applies to the supply of any Equipment and/or Software by WiFi SPARK.
- A 1. Delivery and Installation of Software and/or Equipment**
- A 1.1. If the Software or Equipment is to be installed by WiFi SPARK, then delivery and installation shall be made during normal business hours (8:45am to 5:30pm). WiFi SPARK may levy additional charges for any deliveries made outside such hours at the Customer's request.
- A 1.2. Alternatively, if the Customer elects to collect the Equipment/Software themselves, they shall make the collection from the location specified by WiFi SPARK within 3 business days of WiFi SPARK notifying the Customer that the Equipment/Software is ready for collection.
- A 1.3. If the Location is outside the United Kingdom, WiFi SPARK shall send the Equipment to the Customer via an international courier. Unless expressly stated otherwise in the Quotation, installation will not be included if a delivery is made to a Location outside the United Kingdom.
- A 1.4. WiFi SPARK reserves the right to deliver any Software to the Customer electronically.
- A 1.5. The Customer is responsible for providing at its cost suitable mains power supplies to remain connected and live at all times.
- A 1.6. The Customer shall be responsible (at the Customer's cost) for preparing the Location for the delivery and installation of the Software or Equipment and for allowing access to the Location for WiFi SPARK, its employees and sub-contractors and third party contractors (such as BT and other service providers) where appropriate. Should WiFi SPARK or the contractors not be able to gain access on the specified date communicated to the Customer, the Customer will be fully liable for the Installation Costs and will be liable to pay re-booking fees at the then current rates.
- A 1.7. The Customer shall ensure that all Software or Equipment, systems, cabling or facilities provided by the Customer for use in connection with the Services are in good working order and are suitable for the purpose for which it is used and conforms to all relevant United Kingdom standards or requirements.
- A 2. Acceptance**
- A 2.1. Where WiFi SPARK is providing but not installing Software or Equipment, WiFi SPARK shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies WiFi SPARK within 3 working days of delivery and gives WiFi SPARK a chance to inspect the Equipment. The Customer shall be deemed to have accepted the Software or Equipment when the Customer has had 7 working days to inspect it after delivery or, if earlier, when the Customer or an End User uses the Software or Equipment other than for test purposes.
- A 2.2. If WiFi SPARK is installing Software or Equipment, then WiFi SPARK shall demonstrate the Software or Equipment to the Customer. The Software or Equipment shall be deemed accepted by the Customer at the earlier of demonstration or at any time the Customer or any End User makes use of the Software or Equipment other than for training or test purposes.
- 27.1. In the event that the Software, Equipment cannot be demonstrated as a result of a breach by the Customer of this Contract, the Service will be deemed to have been accepted.
- A 3. Risk and property**
- A 3.1. Ownership of the WiFi SPARK Software or Equipment shall remain at all times with WiFi SPARK until it is paid for in full.
- A 3.2. If any Equipment is provided to the Customer without charge (as set out in the Quotation), WiFi SPARK shall retain ownership of that Equipment at all times.
- A 3.3. The Customer acknowledges that any Open-Source Software provided by the Supplier is provided "as is" and expressly subject to the disclaimer in condition 13.2.

- A 3.4. Risk in the Software or Equipment shall pass to the Customer when it has been delivered to the Location (which shall include an electronic transfer of the Software to the Location) or, if the Customer elects to pick up the Software or Equipment, at the point that the Customer commences loading or handling the Software or Equipment.
- A 3.5. Whilst the Software or Equipment is at the Location but remains WiFi SPARK's property, the Customer shall, not destroy, deface or obscure any identifying mark or packaging on or relating to the Software or Equipment; and shall keep the Software or Equipment insured on WiFi SPARK's behalf for its full price against all risks to the reasonable satisfaction of WiFi SPARK, and hold the proceeds of such insurance on trust for WiFi SPARK and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

Part B Maintenance and Managed Service

This part applies to the supply of Maintenance or Managed Service

- B 1. WiFi SPARK undertakes that Maintenance Services (if included in the Quotation) shall be carried out in accordance with Schedule 2 (subject to the remainder of this condition B 1), and WiFi SPARK shall, at its option, repair or replace Software or Equipment which is found to be defective at the Location unless:
- B 1.1. the defect arises because the Customer failed to follow WiFi SPARK's or manufacturer's instructions for the Software or Equipment or Legacy Equipment;
- B 1.2. the defect arises as a result of misuse of the Software or Equipment or Legacy Equipment by either the Customer or its employees or agents or End Users or a failure to provide suitable mains supply;
- B 1.3. the Customer its employees or agents or End Users, alters or repairs the relevant Software or Equipment or Legacy Equipment without the written consent of WiFi SPARK;
- B 1.4. the Customer disconnects, cancels or otherwise terminates an associated ISP service or phone line service for whatever reason, and in each case WiFi SPARK reserves the right to charge for rectifying the defect or carrying out the repair or reinstating any internet connection. This will be chargeable at the then current daily engineering rate together with the cost of any parts required and travelling required.
- B 2. As part of any Maintenance Services, WiFi SPARK shall from time to time make maintenance releases for any Software to the Customer without charge.
- B 3. Where a Quotation specifies a Maintenance Services End Date, the associated hardware maintenance charges and the provision of the hardware maintenance service will no longer apply from the stated date and the following will apply:
- B 3.1. provision of maintenance will be quoted and charged at the then current day rates for the appropriate professional services required to diagnose and resolve issues where possible;
- B 3.2. Services will only be provided on receipt of a signed Quotation;
- B 3.3. WiFi SPARK reserves the right to decline to Quote for maintenance requests for equipment that is obsolete or no longer supported by the original equipment manufacturer, and also to refer the Customer to a WiFi SPARK partner to provide pricing for replacement equipment; all other contracted Services will remain fully payable.

Part C Connectivity

This part applies to the supply of any connection to external services such as the Internet.

C 1. Service Activation

- C 1.1. Before being able to activate the Connectivity Service, WiFi SPARK will use reasonable endeavours to:
- C 1.1.1. verify that the Customer's premises listed in the Quotation are in an area in which the Service is available; and
- C 1.1.2. carry out a line test or service availability check to determine Service availability. Factors which affect this include but are not limited to geographic availability, line characteristics and local exchange conditions and systems. When a line is of a very poor quality or has a very long length, it may not be possible to provide the Service.
- C 1.2. Occasionally it will not be possible to establish whether the Service can be activated until after activation of the Service is attempted at the Customer's premises.
- C 1.3. The Customer acknowledges and agrees that a Quotation is not a guarantee that the Service can be successfully activated.
- C 1.4. Installation of the Service may be subject to a survey carried out by WiFi SPARK, or an agent contracted by WiFi SPARK to undertake the survey. The Service may not be provided where the survey carried out is incomplete or unsatisfactory. WiFi SPARK reserves the right to charge for such surveys although WiFi SPARK will advise the Customer of any charges before work is undertaken and WiFi SPARK will not carry out any chargeable work without agreement in writing from the Customer.
- C 1.5. If the Service cannot be activated WiFi SPARK will notify the Customer as soon as possible and the order will be cancelled. WiFi SPARK may propose an alternative Service (where available).
- C 1.6. WiFi SPARK will send an email to the Customer once a date has been set for the Activation of the Service or installation of any equipment

necessary for the Activation of the Service. In the case of FTTC or ADSL service, this email will normally be sent within 48 hours of the Order being received by WiFi SPARK although may be delayed by provisioning issues outside of WiFi SPARK's control and for which WiFi SPARK cannot be held liable. In the case of a leased line order WiFi SPARK will notify the Customer once they in turn have been notified by the downstream provider as to the Service Activation Date.

- C 1.7. If the Customer chooses to cancel the Contract before activation the Customer agrees to pay the full activation charges as well as the Monthly Fees for Minimum Term plus the relevant cancellation fee. This is irrespective of whether the Customer uses the Service.
- C 1.8. In the case of FTTC or ADSL Services, WiFi SPARK will use reasonable endeavours to provide the Service within 20 business days of the Customer's acceptance of the Quotation. Leased line provision takes approximately 90 working days, the lead time is subject to variation and WiFi SPARK is not responsible for variation in the lead time, all leased line provisioning is subject to survey and may incur ECC's.
- C 1.9. Where ECC's are applicable, WiFi SPARK agrees to pass these on at cost plus 10%.
- C 1.10. If WiFi SPARK is unable to activate the Service due to the Customer's act or omission, or due to incorrect information being provided by the Customer, WiFi SPARK reserves the right to charge the Customer the agreed connection fee and Monthly Fee for the Minimum Term plus a cancellation fee if appropriate.
- C 1.11. Occasionally visits to the Customer's premises will be required to resolve provisioning issues or Service faults. These visits are sometimes carried out by the downstream service provider. WiFi SPARK will liaise with the Customer to arrange the timing of these appointments. It is also possible that the downstream service provider may contact the Customer directly in relation to the appointment. The Customer agrees to pay any charges made by the downstream service provider in the event the Customer or their equipment is responsible for any faults found.
- C 1.12. During Activation of the Service the Customer may temporarily lose the use of the Customer's other telecommunications services on the telephone line used for the Service.
- C 1.13. The Customer will receive either a dynamic or a static IP address based on the standard configuration for the Service unless otherwise specified.
- C 1.14. If the Customer wishes the Service to be activated on a specific date this must be notified to WiFi SPARK in writing at the time of order. It is not always possible to arrange or delay activation to a specific date. WiFi SPARK will use reasonable efforts but cannot guarantee to arrange activation for a specific date and cannot be held liable if this is not possible.
- C 1.15. If the Customer is migrating an existing service from another provider, WiFi SPARK cannot be held responsible if the previous service provider ceases service before WiFi SPARK has activated its Service.

C 2. Service Provision

- C 2.1. WiFi SPARK may subcontract the provision of all or any part of the Services to third parties.
- C 2.2. Changes may be made to the Network or the technical specification of a Service from time to time; if these changes will detrimentally affect the Service, WiFi SPARK will inform the Customer in advance unless such changes are due to Customer misuse of the service.
- C 2.3. WiFi SPARK's Business and Enterprise FTTC and ADSL services are capable of synchronising to the exchange equipment at speeds dependent on the length of the telephone line, the quality of the copper and the bandwidth available. These are factors which are outside of WiFi SPARK's control and accordingly WiFi SPARK does not guarantee the speed of an available service in this case. Where insufficient bandwidth is available it may not be possible for WiFi SPARK to provide services.

C 3. Acceptance

The Activation Date shall be the date when the Connectivity service is first provided at the Location and internet access proven.

C 4. Service Suspension and Alteration

- C 4.1. WiFi SPARK may suspend the provision of the Services or any part thereof, and/or disconnect the Customer's facilities from the Network with no liability to the Customer for any loss or damages the Customer suffers as a consequence of such suspension if and to the extent that:
- C 4.1.1. WiFi SPARK has reasonable grounds to believe that the Services are being used in breach of clause 6; or
- C 4.1.2. the Customer's use of the Network may damage or disrupt the proper functioning of the Network; or
- C 4.1.3. temporarily, for operational or technical reasons.
- C 4.2. WiFi SPARK shall give the Customer as much notice of a suspension under condition C 4. 1 as is reasonably practicable in the circumstances.
- C 4.3. WiFi SPARK shall be entitled to terminate or modify the Service, without any liability whatsoever, if any license or authorisation which WiFi SPARK requires in order to provide the Service is not obtained, withdrawn or otherwise cancelled; in the event of a modification that is detrimental to the Service the Customer shall have the right to terminate this Contract by giving Notice in writing in accordance with condition 17.1
- C 4.4. WiFi SPARK will provide the Service at the Location specified in the Customer's Order and/or Project Charter. If the Customer wishes to move the Service to a new Location, this will be treated as a cease of Service

at the old Location with applicable notice and a new provide at the new Location with applicable activation fees and a new Contract.

C 5. Cease Charges

- C5.1. WiFi SPARK may terminate the Connectivity Service at any time giving 30 days written notice to the customer.
- C5.2. WiFi SPARK reserves the right to pass on to the Customer any cease charges that WiFi SPARK's supplier may apply on cancelling a Connectivity Contract

C 6. Service Technology

- C6.1. The Customer shall use only equipment deemed by WiFi SPARK to be compatible with the Service. A list of compatible routers and modems will be made available to the Customer upon request.
- C6.2. The Service provided may include one or more of the following;
 - C 6.2.1. ADSL, FTTC or FTTP over Existing Customer PSTN Line
 - C 6.2.2. ADSL, FTTC or FTTP over WiFi SPARK provided PSTN Line
 - C 6.2.3. Leased Line fibre optic managed or unmanaged Wires Only

C 7. Service Level and Support

WiFi SPARK will provide a telephone support system in accordance with Schedule 2.

Part D Proof of Concept

This part applies to any supply that is described in the Quotation or otherwise as 'Proof of Concept'.

D 1. Proof of Concept Services

- D 1.1. Proof of Concept Services are provided for the Proof of Concept Term as stated on the Quotation; the maximum total duration for a Proof of Concept term is 6 months.
- D 1.2. On expiry of the term all Equipment will be removed unless purchased, and Services will cease unless the Customer has signed and returned a Quotation to continue the Services on the basis of a full-term Contract.
- D 1.3. The Customer agrees to use best endeavours to promote the Services and Products provided by WiFi SPARK at the Location, and to allow WiFi SPARK to promote the Services and Products at the Location.
- D 1.4. WiFi SPARK may, on giving reasonable notice to the Customer end the Proof of Concept Services, remove the Equipment and terminate the POC Services at any time.

Part E Service Desk services

Where WiFi SPARK is supplying Service Desk as a purchased product, please refer to the Service Desk Service Level Agreement document contained within your contract documentation pack: this contains full details of the contracted service provision.

Schedule 1 – Data Protection Provisions

1. The parties acknowledge that the Customer is the Controller and that WiFi SPARK is the Processor (as defined by the Data Protection Legislation). The Parties shall ensure that they complete a - Data Processing Register - detailing the scope, nature, duration and purpose of the processing and the categories of data subject prior to the transfer of any Personal Data.
2. The Customer warrants that it has all necessary consents or has complied with another processing condition and has the appropriate notices and privacy policies in place to enable the lawful transfer of Personal Data to WiFi SPARK for the duration and for the purposes of this Contract.
3. WiFi SPARK shall:
 - 3.1. act only on written instructions from the Customer;
 - 3.2. have in place appropriate technical and organisational security measures (which may be subject to approval by the Customer) against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data. Such measures shall be appropriate to the harm that might result from the unauthorised or unlawful processing;
 - 3.3. ensure all staff who have access to the Personal Data are obliged to keep it confidential;
 - 3.4. assist the Customer to respond to an individual's request to enforce their rights of subject access, rectification, erasure and any other rights conferred by the Data Protection Legislation;
 - 3.5. assist the Customer if requested with respect to security, breach notifications, impact assessments and any investigations by a supervisory authority;
 - 3.6. notify the Customer without undue delay in the event of a data security breach and assist the Customer with any investigations;
 - 3.7. maintain and keep up to date the data processing register referred to above;
 - 3.8. delete or return all personal data to the Customer as requested at the end of the Contract; and
 - 3.9. submit to audits and inspections and provide the Customer with whatever information it needs to ensure that they are both complying with their obligations under the Data Protection Legislation and inform the Customer immediately if they are asked if do something infringing the Data Protection Legislation or other law of the EU or a member state
4. WiFi SPARK shall not appoint a third-party processor without the prior written consent of the Customer. WiFi SPARK shall ensure that any third party processor will enter into an agreement with the same or substantially similar terms in relation to the Data Protection Legislation.
5. If this Contract will involve or require a transfer of any Personal Data from one country to a country outside the country of origin, if required by applicable law, WiFi SPARK and the Customer will enter into a data transfer agreement that is consistent with the requirements of applicable law. WiFi SPARK shall also ensure that:
 - 5.1. the individuals have enforceable rights and effective legal remedies in relation to any transferred Personal Data; and
 - 5.2. WiFi SPARK has ensured adequate levels of protection in relation to any Personal Data that is transferred.
6. In the event that a Data Subject requests WiFi SPARK to erase, rectify or otherwise amend their Personal Data;
 - 6.1. WiFi SPARK will immediately make the changes to the medium for which this information is presented to Customer and advise Customer without undue delay of the change; and
 - 6.2. it remains Customer's responsibility as Data Controller to amend their held Personal Data on the Data Subject and advise the Data Subject upon completion of the requested change to their (Customer's) records.
7. In the event that a Data Subject requests Customer to erase, rectify or otherwise amend their Personal Data:
 - 7.1. the Customer will advise WiFi SPARK without undue delay of the change;
 - 7.2. WiFi SPARK will confirm to Customer when changes to their records have been made; and
 - 7.3. it remains Customer's responsibility as Data Controller to amend their Personal Data on the Data Subject and advise the Data Subject upon completion of the requested change to their (Customer's) records.

8. The Customer shall indemnify WiFi SPARK against all costs, claims, damages or expenses incurred by WiFi SPARK or for which WiFi SPARK may become liable due to any failure by the Customer to comply with its obligations under this condition.
9. The obligations in relation to data protection set out in this condition shall not be affected by the expiry or termination of this Contract.

Schedule 2 – Service Level Agreement

Please refer to the Service Level Agreement document that forms part of your Contract in conjunction with these terms and conditions.

- 1) WiFi SPARK's services
 - a) WiFi SPARK's services shall comply with statutory regulations.
 - b) WiFi SPARK may subcontract the Services.
 - c) The Customer acknowledges and accepts that WiFi SPARK's services are dependent on third parties for the provision of power and internet connectivity and that failure of these third party provided services are outside the scope of this service level agreement.
- 2) Fault reporting
Customer is obliged to report all faults through one of the following channels:
 - -Telephone: 0344 848 9555 (24/7/365 service)
 - -E-mail: support@wifispark.com (Mon-Fri, 9am-5pm)
 - -Portal: support.wifispark.com (Mon-Fri, 9am-5pm)
- 3) WiFi SPARK shall determine the category of fault for any fault reported by the Customer.
- 4) Period of service and obsolesce
Service is provided to Customer for the period of the Contract for Maintenance Services or Connectivity Services.
- 5) Responsibility
Customer agrees that WiFi SPARK shall be the only company responsible for providing support and maintenance of all or any part of the Equipment and documentation as provided to Customer.