

## DATA COMMUNICATION SUPPLEMENTAL TERMS AND CONDITIONS

### 1. **Scope**

- 1.1 These Data Communications Supplemental Terms and Conditions supplement and (unless expressly stated otherwise) incorporate the terms and conditions set out in the General Terms and Conditions in respect of the Data Communications Services to be provided by ITPS to the Customer under a Contract. These Data Communications Supplemental Terms and Conditions apply only to the supply by ITPS of the Data Communications Services and the Customer's use of those Services. Any other Products supplied by ITPS to the Customer remain subject to Contract Terms applicable to those Products.
- 1.2 The additional definitions set out in clause 6 shall apply in these Data Communications Supplemental Terms and Conditions. Any defined terms in the General Terms and Conditions or the Proposal will have the same meaning in these Data Communications Supplemental Terms and Conditions unless stated otherwise.

### 2. **Data Communications Services**

- 2.1 In consideration of the Customer's obligations to ITPS and subject to the Contract Terms, ITPS agrees to provide the Data Communications Services from the Commencement Date at the Location. For the avoidance of doubt, ITPS shall not be obliged to provide the Data Communication Services at any place other than the Location.
- 2.2 Subject to the fulfilment by the Customer of its obligations under the Contract (including the payment of the Charges), ITPS shall use its reasonable endeavours to complete the Installation Services as soon as reasonably practicable. Any performance dates specified shall be estimates only and time shall not be of the essence for the provision of the Data Communications Services.
- 2.3 ITPS shall provide the Data Communications Services within the Service Level Agreement. ITPS shall not be responsible for providing, or liable in respect of, any Out-of-Scope Activities.
- 2.4 The undertaking at clause 2.3 shall not apply to the extent of any non-conformance that ITPS (acting reasonably) determines is caused directly or indirectly by:
  - 2.4.1 use of the Data Communications Services contrary to ITPS' instructions;
  - 2.4.2 a Relief Event.
- 2.5 Subject to clause 2.4, if the Data Communications Services do not conform with the undertaking in clause 2.3, ITPS shall, at its expense, use its reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking in clause 2.3.
- 2.6 Notwithstanding the foregoing, ITPS does not warrant that:
  - 2.6.1 the Customer's use of the Data Communications Services will be uninterrupted or error-free;
  - 2.6.2 the Data shall be transmitted by the Data Communications Service, or stored by it, in a manner that is entirely free from corruption, loss or damage, or that it will in its entirety be accessible or capable of retrieval by, or transferrable to, the Customer, or that it will be accessible by third parties.
- 2.7 ITPS is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet and the Customer acknowledges that the Data Communications Services may be subject to limitations, delays and other problems inherent in the use of such communication facilities.
- 2.8 ITPS is not obliged to perform any Out-of-Scope Activities. Where ITPS performs any Out-of-Scope Activities, ITPS shall charge, and the Customer shall pay, the relevant fees payable in respect of that work at the rates set out in the Proposal or otherwise notified to the Customer in writing, as those rates are amended from time to time in accordance with the Contract Terms.

2.9 ITPS may at any time and without liability suspend the operation or provision of the Data Communications Services for the purposes of modifying, expanding, improving, maintaining, varying or repairing the Data Communications Services or any other services provided to customers (including but not limited to the Customer) or to preserve the safety, integrity or security of any services. ITPS shall endeavour to minimise disruption to the Data Communications Services and shall provide as much notice of any anticipated disruption to the Customer as is reasonably practicable provided that in the event of unscheduled or emergency activity, it may not be practicable for ITPS to give the Customer advance notice.

2.10 ITPS does not warrant that any specific broadband speed or bandwidth can be achieved from use of the Data Communications Service.

### 3. **Customer's obligations**

3.1 The Customer acknowledges and agrees with ITPS that:

3.1.1 it shall fully comply with any instructions which ITPS may make available to it from time to time in respect of its use of the Data Communications Services;

3.1.2 it shall provide such co-operation as ITPS may reasonably require in connection with the provision of the Data Communications Services, all necessary access to the Customer Equipment and the ITPS Equipment, information, facilities and authorisations as ITPS reasonably requires in order to fulfil its obligations under the Contract;

3.1.3 without prejudice to either party's obligations under clause 15 of the General Terms and Conditions, it shall comply with all such laws and regulations as are applicable to its transmission of Data using the Data Communications Service (including the Data Protection Law) and shall not transit any personal or other data of another party without first obtaining any consent of that party as required by law to be obtained for that purpose;

3.1.4 subject to the terms of the Contract and the relevant Documentation, ITPS and its Personnel shall be entitled to install the ITPS Equipment at the Location (which shall be situated at the discretion of ITPS (acting reasonably and taking into account any reasonable instructions of the Customer));

3.1.5 it shall take reasonable care of the ITPS Equipment and shall not move, damage or otherwise tamper with the ITPS Equipment (or any part of it);

3.1.6 it shall keep ITPS fully informed of all material matters relating to the Equipment and shall inform ITPS immediately if any of the Equipment is subject to interference or damage;

3.1.7 it shall not part with control of, sell or offer for sale, underlet or lend the ITPS Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

3.1.8 at the termination or expiry of the Contract (or the relevant part of it) it shall allow ITPS access to the Location in order to remove the ITPS Equipment;

3.1.9 it is responsible at its expense for providing the Customer Equipment and for ensuring that any such equipment is in good working order and is fit for the purpose for which it is intended;

3.1.10 it is responsible for making sure that the Customer Equipment is made available to ITPS and its Personnel at 9am on the Installation Date at the Location;

3.1.11 unless otherwise agreed in writing, it is responsible at its expense for providing a suitable, stable and secure electricity supply at the Location to permit the provision of the Data Communications Service together with such back-up electricity supply as required to meet its requirements; and

3.1.12 it shall be responsible for insuring itself against all loss of or damage/corruption to Data.

3.2 In relation to the ITPS Equipment, the Customer acknowledges and agrees that:

3.2.1 the ITPS Equipment shall at all times remain the property of ITPS or the relevant third party and it shall have no right, title or interest in or to the ITPS Equipment (save the right to use the ITPS Equipment in the ordinary course of trading subject to the Contract Terms);

- 3.2.2 the risk of loss, theft, damage or destruction of the ITPS Equipment shall pass to the Customer on delivery and the ITPS Equipment shall remain at the sole risk of the Customer during the period in which the ITPS Equipment is in the possession, custody or control of the Customer (“**Risk Period**”) until such time as the ITPS Equipment is redelivered to ITPS;
- 3.2.3 during the Risk Period, it shall at its own expense, obtain and maintain the following insurances:
  - (a) insurance of the ITPS Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as ITPS may from time to time nominate in writing;
  - (b) insurance for such amounts as a prudent owner or operator of such ITPS Equipment would insure for, or such amount as ITPS may reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the ITPS Equipment; and
  - (c) insurance against such other or further risks relating to the ITPS Equipment as may be required by law, together with such other insurance as ITPS may from time to time consider reasonably necessary and advise to the Customer;
- 3.2.4 it shall give immediate written notice to ITPS in the event of any loss, accident or damage to the ITPS Equipment arising out of or in connection with the Customer’s possession or use of the ITPS Equipment;
- 3.2.5 if it fails to effect or maintain any of the insurances required under the Contract, ITPS shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due on demand from the Customer; and
- 3.2.6 it shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to ITPS and proof of premium payment to ITPS to confirm the insurance arrangements.
- 3.3 The Customer assumes sole responsibility for:
  - 3.3.1 selecting the Data Communication Services and deciding whether it meets its business needs;
  - 3.3.2 designing and implementing its own internal policies and procedures for avoiding the opening of potentially dangerous attachments (and shall install antivirus software on all access points or computers);
  - 3.3.3 the consequences to it and to ITPS of the Customer transmitting Data containing any virus or malicious code;
  - 3.3.4 loss or corruption of or damage to Data unless and to the extent that such loss, corruption or damage to Data arises as a direct result of any breach of any of ITPS’ express obligations under the Contract;
  - 3.3.5 the integrity and the suitability of the Data that is to be transmitted using the Data Communication Services;
  - 3.3.6 all security arrangements necessary and appropriate to its use of the Data Communication Services including, without limitation, passwords, pass codes, audit controls, operating methods and procedures;
  - 3.3.7 any ISDN and/or telecommunications and/or other utility company charges; and
  - 3.3.8 its use of the Data Communication Services.
- 3.4 The Customer shall not use the Data Communications Services:
  - 3.4.1 to store, distribute or transmit through the relevant services any Virus or any material or Data that:

- (a) that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
  - (b) that facilitates or depicts illegal activity;
  - (c) that depicts sexually explicit images; or
  - (d) that promotes unlawful violence;
  - (e) is discriminatory based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment; or
- 3.4.2 in a manner or for a purpose that constitutes a violation or infringement of the rights, or is harmful or detrimental to the reputation of ITPS or any other party or in a manner which is otherwise illegal or causes damage or injury to any person or property;
- 3.4.3 unless otherwise agreed in writing, to provide the Data Communications Services directly or indirectly to third parties.
- 3.5 The Customer shall take such steps as may be necessary to ensure, so far as is reasonably practicable, that any premises accessed by ITPS pursuant to the Contract, are at all times safe and without risk to health. Where the Contract requires the provision of Data Communications Services at the Customer's premises, the Customer hereby grants a licence to ITPS and its Personnel to enter upon the Customer's premises for the purpose of providing the Data Communications Services. The Customer shall ensure that its premises and all plant and equipment which is used by ITPS' Personnel or with which they may come into contact or to which they may be exposed complies with the Health and Safety at Work etc Act 1974, all relevant statutory provisions (as defined in that Act) and all other obligations imposed by statute and common law relating to health and safety and will indemnify ITPS against any loss, damage or expense in respect of any failure by the Customer to comply with its obligations under this clause 3.5.
- 3.6 Without prejudice to ITPS' rights in relation to the Charges and notwithstanding clause 4 & clause 5 of the General Terms and Conditions, the Customer acknowledges and agrees that:
- 3.6.1 the Customer's use of the Data Communications Services shall be subject to resource limitations relating to data usage; and
  - 3.6.2 consequently, in circumstances where the Customer's use of the Data Communications Services breaches the applicable resource limitations, the Customer shall be liable to pay such additional fees reflecting that usage as ITPS may reasonably require.
4. **Third Party Provider**
- 4.1 The Customer acknowledges and agrees that:
- 4.1.1 ITPS depends upon the Third Party Provider in order to provide the Data Communications Services;
  - 4.1.2 ITPS makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the acts of any Third Party Provider; and
  - 4.1.3 if ITPS' performance of its obligations is prevented or delayed by any act or omission of a Third Party Provider or the Personnel of any Third Party Provider, ITPS shall not be liable for any costs, charges or losses that arise directly or indirectly from such delay.
5. **Additional Warranties and Indemnity**
- Without prejudice to clauses 9 and 15 of the General Terms and Conditions, the Customer further warrants that in relation to its use of the Data Communication Services, all Data used by or disclosed or transmitted by it using the Data Communication Services will be properly in the possession of, and properly disclosed and transmitted by the Customer and the Customer shall indemnify ITPS against any loss or damage which it may suffer as a result of the Customer's breach of this clause 0 (unless, and to the extent that, the same arises as a direct result of ITPS' negligence or as a direct result of any breach by ITPS of its obligations under the Contract).

## 6. Definitions and interpretation

6.1 In these Data Communications Supplemental Terms and Conditions, the following additional definitions apply:

**Circuits:** means the data, local area, wide area and any other networks described in the Documentation.

**Connectivity Services:** means the provision by ITPS of internet connectivity to the Customer. Unless otherwise agreed in writing, the Connectivity Services shall include multiple connections on the Circuit, a network operations centre that monitors servers, network performance and internet access, firewall for security and load balancer for traffic management and speed optimisation.

**Customer Equipment:** means the equipment (except for the ITPS Equipment) to be supplied by the Customer being all equipment necessary for the Customer to use and take the full benefit of the Data Communication Services (including the devices to be connected to the Circuit).

**Data:** means any data to be transmitted using the Data Communications Service.

**Data Communications Services:** means the provision by ITPS to the Customer of the Circuits and the Connectivity Services together with the Equipment and any related services.

**Documentation:** means the documentation made available to the Customer by ITPS from time to time which sets out a description of the Data Communications Services and the user instructions relating to the Data Communication Service.

**General Terms and Conditions** means the General Terms and Conditions of ITPS from time to time, as available at [General-Terms-Conditions.pdf \(itps.co.uk\)](https://www.itps.co.uk/General-Terms-Conditions.pdf)

**Installation Date:** means the date on which the installation services are carried out at the Location.

**Installation Services:** means the installation by ITPS of the NTE at the Location.

**ITPS Equipment:** means any equipment owned by ITPS or a third party provider (including the CPE equipment) and which ITPS agrees to use in the provision of the Data Communication Service.

**Location:** means the part or parts of the Customer's premises where the Circuits are situated.

**NTE:** means network termination equipment, which are a device or devices to connect data equipment to an internet service provider/carrier's line.

**Out-of-Scope Activities:** means any activities specified by ITPS in writing (including in the Proposal and/or the Documentation) as being "out of scope".

**Relief Event:** means the specific events or circumstances upon which ITPS will be granted relief from any failure of it to carry out the Data Communications Services in accordance with its obligations under the Contract being:

- (a) any failure by the Customer to perform or procure the performance of any of its obligations under the Contract or any other breach by Customer of its obligations under the Contract, in each case whether by act or omission; and
- (b) any impediment, failure or default, whether by act or omission, by any third party for whom ITPS has no responsibility.

**Third Party Provider:** means the provider of a system to ITPS in connection with the delivery of the Data Communication Services to the Customer.

**Virus:** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things and devices.