

Primus Home Broadband Terms and Conditions

1. Definitions in this Agreement:

“Agreement” means the agreement between Primus and the Customer which includes the application for the Service from the Customer by phone, or on the Primus website, these terms and conditions and the Charges price list.

“Charges” means the charges for and related to this Service and Equipment, as specified on the Primus residential website at <http://www.primussaver.co.uk>

“Customer” means the person(s), aged 18 or over requesting the Service and Equipment (as defined below) or named as such in the application form requesting such Service (“Customer”). (Where the Customer is two or more persons each of those persons shall be jointly and severally liable for the performance of the obligations of the Customer under this Agreement.)

“Equipment” means a broadband modem, router, micro filter, software and other hardware and materials which Primus may supply to the Customer

“Primus” is a trade name of New Call Telecom Ltd whose registered office is at 2 High Street, Kingston, London, KT1 1EY.

“Service(s)” means the Primus broadband service which provides the Customer at a UK address with high-speed network access to the Internet, as may be further described at <http://www.primussaver.co.uk>

2. Service Provision

2.1. If Primus cannot provide the Customer with the Service, then Primus will notify the Customer as soon as possible. After acceptance by Primus of the proposed Customers application to receive the Service and confirmation that the Customer telephone lines supports ADSL (Asymmetric Digital Subscriber Line) then Primus will advise the Customer of the proposed Service commencement date, and deliver any required Equipment ordered by the Customer.

2.2. If Primus is able to provide the Service, then the Customer will be sent a welcome pack confirming registration details and which will have the applicable user names and password relevant to the various Service selections made by the Customer.

2.2. The Service commencement date is conditional upon the Customer:

2.2.1 meeting the following requirements: having a BT phone line, a broadband router and a PC which meets the requirements set out at <http://www.primussaver.co.uk> : and

2.2.2. correctly installing and continuing to correctly install those items in clause 2.2.1 above and any Equipment provided by Primus under this Agreement: and

2.2.3. availability of the Service.

2.3. Primus will use its reasonable efforts to activate the Service by the proposed Service commencement date, however all such date(s) are estimated and time is not of the essence for the purpose of achieving these date(s).

2.4. The Customer may cancel this Agreement within fourteen (14) working days after the date of the acceptance by Primus of the Customers application to receive this Service, by giving notice to Primus. This right of cancellation can not be exercised upon use of the Service by the Customer, even if use is within 14 working days of when the Customers application was accepted by Primus.

2.5. Should Primus have provided any Equipment to the Customer, then the Customer must immediately return such equipment to Primus, when requested by Primus.

2.6. When applying for this Service via the telephone, the Customer consents to this application being recorded by Primus for audit purposes. Whilst the Customer is on telephone, Primus may conduct a telephone line test and survey. The Customer may be able to choose from a selection of additional Service features including without limitation e-mail accounts, and Internet Protocol (“IP”) addresses, and Equipment. In addition Customers may be able to choose from different broadband bandwidths being up to 8Mb and up to 24Mb.

2.7. The application and registration details which the Customer provides to Primus shall be true, correct and complete, and the Customer agrees to inform Primus of any changes to these details including payment details immediately by e-mail addressed to savers@primustel.co.uk or by calling 0800 036 3839 (calls are free and may be monitored by Primus for training, security and quality assurance purposes.)

2.8. By registering for this Service, the Customer consents to Primus using and/or disclosing the Customer’s registration details as follows:

2.8.1. processing the Customer’s application or changes to the Customer’s registration details, which may involve credit checking by a credit reference agency, who may record that a credit check has been made and disclosing certain personal and account details to a bank for the purposes of setting up a continuous payment authority on the Customer’s credit or debit card: and

2.8.2. providing registration details to any telecommunications provider who operates the telephone access network that is used to provide the Service and providing or arranging for third parties to provide customer care facilities and bill the Customer for the Service: and

2.8.3. in accordance with clause 10-Privacy Policy of these terms and conditions.

2.9. The Customer undertakes promptly to provide Primus free of charge with all information and co-operation that Primus may reasonably require to enable it to proceed without interruption with the performance of its obligations under this Agreement.

2.10. Should the Customer move from the UK address given initially in order to receive this Service, then Primus will only use its reasonable endeavours to make available the Service at any new UK address, subject to confirmation that the Customers telephone line supports ADSL (Asymmetric Digital Subscriber Line) and payment of any Charge for transferring the Service. Whether or not Primus is able to make the Service available at any new UK address, the Customer shall continue to be liable to pay the Charges due under the current term of the Agreement. This clause shall apply each time the Customer changes its UK address.

3. Service

3.1. The Service is for residential use only and not for business use.

3.2. Primus does not guarantee that the Service would be available at all times and in particular the Service speeds will vary from time to time, due to congestion on the Internet network and Service availability cannot therefore be guaranteed.

3.3. The Customer must not use the Service:

3.3.1. in any way that would in Primus's reasonable opinion materially affect the use of or access to the Internet of any other person, including without limitation substantial data transfer during peak times: or

3.3.2. in contravention of the Primus acceptable use policy at: <http://www.primussaver.co.uk>: or

3.3.3. in any way that does not comply with any licences applicable to the Customer or is unlawful, fraudulent or results in a criminal offence being committed: or

3.3.4. to disseminate or otherwise distribute, knowingly receive, upload, use or re-use, any information or material which is inappropriate, profane, abusive, indecent, defamatory, obscene or menacing or in breach of any copyright, privacy or any other right: or

3.3.5. to transmit any unsolicited commercial or unsolicited bulk e-mail is expressly prohibited.

3.4. The Customer's failure to comply with clause 3.3. will entitle Primus at its option to immediately suspend the Service and/or terminate this Agreement.

3.5. The Customer agrees to compensate Primus for any claims, loss and/or damage which Primus suffers as a result of any breach by the Customer of any of the terms and conditions of this Agreement.

3.6. The Customer acknowledges that various elements of the Service are provided by third parties, consequently, Primus is unable to guarantee that such products and services or websites accessible via the Primus are virus free.

3.7. The Customer acknowledges that licensed telephone operators provide the telephone networks which are utilized by Primus and therefore Primus cannot guarantee that the Service will be uninterrupted or error free, or that the Customer will be able to access the Internet via the Service at all times.

3.8. When Primus provides the Service to the Customer, Primus promises to use the reasonable skill and care of a competent internet service provider.

3.9. Primus shall use all reasonable endeavours to correct as soon as is reasonably practicable any technical fault notified by the Customer with the Service, provided such fault is not attributable to the act or omission of the Customer or any third party, a force majeure event, or the failure or malfunction of any equipment provided by the Customer.

3.10. The Customer shall pay all reasonable costs incurred by Primus in investigating and remedying any fault which is attributable to: (i) the negligence, act, omission, breach, or fault of the Customer, or (ii) the failure or malfunction of any Customer equipment.

4. Payment

4.1. The Customer must pay all Charges for Equipment and/or Service, that the Customer purchases from Primus and which Charges are set out in the price list located at : <http://www.primussaver.co.uk> .

4.2. Primus may at its option offer the Equipment to use this Service free of charge as part of any promotion(s) it may run from time to time.

4.3. Payments for the Service will be made by means of a continuous payment authorisation (Direct Debit) in favour of Primus or by using the credit or debit card details provided by the Customer to Primus in the Customer's registration details.

4.4. Primus will invoice the Customer each calendar month for Services and Equipment received, and such invoice will be payable within fourteen (14) days of the invoice date.

4.5. If Primus is unable to collect the amounts due from a Customer as they fall due, Primus may immediately suspend or cancel the Customer's use of the Service and may forward the debt to an external agency for collection. The Customer will pay Primus's reasonable costs and expenses for collecting payment.

4.6. Primus shall not be responsible for any charges which the Customer incurs to BT or any third party telecoms network or systems operator in any connected with this Service.

5. Service Security

5.1 Primus will issue the Customer with a set of usernames and passwords. These are essential for the Customer's use of the Service, so the Customer must ensure that they are kept confidential, secure and the Service must be used by the

Customer in accordance with all relevant policies and instructions including those on: <http://www.primussaver.co.uk>

5.2 To ensure that the Service remains secure, the Customer may not change or attempt to change a username.

5.3 If Primus considers that there is likely to be or has been a breach of security or misuse of the Service, then Primus may immediately:

5.3.1. Change the Customer's password and notify the Customer that it has done this: and/or

5.3.2. Suspend the Customer's username and password which provide access to the Service.

5.4 If the Customer considers that any username or password has become known by someone not authorised to use it, or if any password is being or is likely to be used in an unauthorised way, the Customer must inform Primus immediately.

5.5. Primus reserves the right to terminate this Service if it remains unused for at least ninety (90) consecutive days.

5.6. Unless otherwise agreed with Primus, risk of loss and/or damage to any Equipment shall pass on delivery to the Customer and title to any such Equipment shall always remain with Primus. The Customer grants Primus with a license to enter any premises where such Equipment is located in order for Primus or its agents to recover this Equipment.

6. Customer use of the Internet

6.1. This Service will allow the Customer to access the Internet, and the Customer acknowledges and agrees that:

6.1.1 This Internet is separate from the Service and use of the Internet is at the Customer's own risk and expense and subject to any applicable laws: and

6.1.2. Primus has no responsibility for any goods, services, information, software, or other anything else that the Customer obtains when using the Internet (including email):and

6.1.3. The Customer is responsible for ensuring any PC used to receive the Service is adequately protected against computer viruses.

7. Equipment

7.1 To ensure that the Service remains safe and secure, any equipment connected to or used with the Service must bear the European Consumer Equipment Standards "CE" mark.

7.2. Primus will not be liable for any loss and/or damage caused by any equipment used with the Service that Primus has not provided.

7.3.If the Customer damages or loses any Equipment, then Primus may at its option require the Customer to reimburse Primus for the reasonable cost of any repair or replacement of such Equipment.

8. Software

8.1. Primus may make available to the Customer software that enables the Customer to use the Service ("Software"), and the Customer must not copy or modify this Software, unless otherwise allowed by law and/or re-sell, transfer, assign any rights or obligations in the Software or sub-license the Software.

8.2. The Customer must only access the Service through use of this Software or in an alternative way as permitted by Primus in advance and not circumvent any security measures for use of this Service.

9. Termination

9.1. After the Service commencement date this Agreement shall continue in full force and effect for the period of time as confirmed by Primus in the welcome pack sent to the Customer, which shall be an eighteen (18) month period ("Initial Term"), unless terminated earlier in accordance with these terms and conditions. After this Initial Term, this Agreement shall continue thereafter unless terminated by either party giving to the other not less than 30 days written notice to expire at any time.

9.2. Should the Customer and Primus agree that the Customer can change the chosen Service plan to another Service plan, then the Initial Term of that new Service plan shall be the minimum term of the new Service plan or the remaining term of the current Service plan, whichever is the longer.

9.3. Primus or the Customer shall have the right to terminate this Agreement immediately in any of the following events:

9.3.1. The other party is in default of any of its obligations under this Agreement and fails to remedy the breach within a period of fourteen (14) days after the date of the notice from the non-defaulting party to remedy the breach; or

9.3.2. An interim order is applied for or made or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against the other party, or if a receiver or trustee in bankruptcy is appointed of the other party's estate or an administration order is made, or a receiver or administrative receiver is appointed over any of the other party's assets or undertaking or a winding-up resolution or petition is passed or presented (other than for the purposes of reconstruction or amalgamation) or if any circumstances arise which entitle the court or any creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order.

9.4. Without prejudice to its other rights and remedies, Primus may suspend the Service, and/or terminate this Agreement by notice to the Customer in the event that:

9.4.1.The Customer fails to make any payment under this Agreement when it becomes due to Primus; or

9.4.2.Primus ceases to adhere to the general conditions which are required by applicable law to be adhered to when providing telecommunications services in the United Kingdom or;

9.4.3. The Customer does not use the Service for at least ninety (90) consecutive days or;

9.4.4.Primus is obliged to comply with an order, instruction or request of the government, an emergency service

organisation or other competent authority, including without limitation OFCOM or;

9.4.5. The Customer is suspected, in Primus's reasonable opinion, of involvement in connection with the Service of fraud or attempted fraud or acts which are defamatory, offensive, blasphemous, abusive, obscene or menacing character or;

9.4.6. Primus needs to carry out emergency works for the provision of the Service or its network.

9.5. Primus shall be entitled to recover from the Customer all costs, losses and expenses incurred by Primus, including but not limited to the cost of removing provision of the Service from the Customer's premises where this Agreement is terminated by Primus under clause 9.3. or 9.4.

9.6. Should the Customer terminate this Agreement within the Initial Term or any subsequent period, then the Customer must pay a termination payment to Primus, being an amount equal to the total of the recurring monthly Charges for each month remaining of the current term of the Agreement.

9.7. Should the Customer have taken this Service together with other telecommunications services from Primus including without limitation carrier pre-select ("Other Services") for the Initial Term, if the Customer then terminates one or more of these Other Services during the Initial Term or any subsequent period, then from such termination date the Customer must pay the full current Charges for the Service and not any discounted Charges offered.

10. Privacy Policy

10.1 In the case of any Customer who is an individual about whom Primus processes personal data (as defined in the Data Protection Act 1998), the following shall apply:

10.1.1. Primus may process such personal data for the purposes of administering the relationship with the Customer and, as part of its use of such data, may transfer that data to other Primus affiliates in jurisdictions outside the UK, which do provide the same level of protection for personal data as exists in the UK.

10.1.2. Primus may also, from time to time, use such personal data to provide the Customer, whether by telephone or facsimile or electronic mail or other means of communication, with details of promotions, products and services of Primus which Primus considers may be of interest to the Customer.

10.1.3 Primus may use credit scoring or carry out a credit check when considering the Customer's application and also when operating account(s) or making credit decisions or otherwise providing the Service, and may search the files of credit reference agencies, and may keep a record of the search and the Customer authorises Primus to do so.

10.1.4. Information about the Customer's debts owed to Primus may be disclosed to credit reference agencies where: the Customer has fallen behind with its payments; the amount owed is not in dispute; the Customer has not made proposals satisfactory to Primus for repayment of its debt following formal demand; and the Customer has been given at least twenty-eight (28) days' notice of its intention to disclose.

10.1.5. Primus may process customer information with the Service for the prevention or detection of fraud, and to deal with Customer enquiries.

10.1.6. If the Primus account is a joint account held by two or more persons, Primus may share information about the Customer and the conduct of the joint Primus account with the other person(s).

10.1.7. Primus may share information about the Customer and the conduct of the Primus account with any person to whom Primus transfers its rights or obligations under this Agreement.

10.1.8. Primus may share Customer's personal information with other companies, for example, Primus may use specialist third parties to conduct market research on its behalf to see how Primus can improve the Services it offers. However, these third parties can only process this information according to the instructions Primus gives them.

10.2. By entering into this Agreement, the Customer expressly agrees to the use of personal data for the purposes described in sub-clauses 10.1.1 to 10.1.8.

10.3. To help improve Primus's service and in the interests of security it may monitor and/or record the Customer's telephone calls with Primus.

11. Liability

11.1 Subject to clause 11.2 below, the total of Primus's liabilities arising under or in connection with this Agreement, whether arising in Tort, from its negligence, its breach of contract, or its breach of statutory duty, under any indemnity or howsoever caused shall not exceed: £20,000 for any one incident or £50,000 for any series of incidents arising from a common cause, in each consecutive twelve month period. (The first such period shall commence after acceptance by Primus of the proposed Customers application to receive the Service.)

11.2. Notwithstanding anything to the contrary in this Agreement (whether this Agreement continues in force or not) Primus shall not be liable to the Customer under or in connection with this Agreement for any corruption, destruction or loss of data, loss of goodwill, loss of anticipated savings, loss of contracts, loss of revenue, loss of use, loss of profits, loss of business, for any extra operating costs and expenses or for any indirect or consequential loss whatsoever or howsoever caused, whether arising in Tort, from its negligence, its breach of contract, or its breach of statutory duty, under any indemnity or howsoever caused.

11.3. Nothing in this Agreement shall have the effect of excluding or limiting the liability of Primus for death or personal injury resulting from its negligence or any other liability that may not be excluded or limited as a matter of English law.

11.4 The provisions of this Condition 15 shall continue to apply notwithstanding termination or expiry of this Agreement.

12. Changes to the Agreement

12.1. Primus reserves the right to make changes to these terms and conditions and/or Charges either by giving

Customers twenty-eight (28) days notice on its website: <http://www.primussaver.co.uk>, unless such changes are due to legal and/or regulatory reasons in which event the change will be made immediately on the website without prior notice.

12.2. Should an increase in the Charges and/or change in the terms and conditions put the Customer at a significant disadvantage, then Primus will notify the Customer in writing and the Customer has a right to immediately terminate the Agreement, failing which the Customer shall be bound by the amended terms and conditions and/or Charges. In the event of such termination under this clause 12.2, the Customer will not be liable to pay the termination payment under clause 9.6. These changes to the terms and conditions and/or Charges shall be displayed on the Primus website at <http://www.primussaver.co.uk> and can be requested by writing to or phoning Primus customer service department.

13. Assignment

13.1. The rights and obligations of the Customer under this Agreement may not be assigned in whole or in part by the Customer, without the prior written consent of Primus. However Primus may at any time transfer this Agreement to any third party, assign any of its benefits and/or obligations under this Agreement and/or sub-contract the performance of any of its obligations under this Agreement.

14. Third parties

14.1. The rights and obligations set out in this Agreement shall be solely for the benefit of, and shall be enforceable only, by the Customer and Primus and their respective successors and permitted assigns. A person who is not a party to this Agreement has no right under the Contract Rights of Third Parties Act 1999 ("Act") to enforce any terms or conditions of this Agreement, but this does not affect any right of a third party which exists or is available apart from this Act.

15. Rights

15.1. All intellectual property rights, including without limitation patents, trademarks, and copyright relating to the Service(s), and to any trade marks or trade names used by Primus in the provision of the Service, shall remain the sole property of Primus or its licensors.

15.2. The Customer shall not be entitled to use the name, trademarks, trade names or any other proprietary identifying mark or symbols of Primus, without the prior written consent of Primus.

16. Force Majeure

16.1. Neither the Customer or Primus shall be liable to the other party for any failure to perform any of its obligations under this Agreement (other than payment by the Customer of Charges due) and/or for any loss or damage which may be suffered by the other party, which is due to any cause beyond its reasonable control, including without limitation including, acts of God, fire or other natural catastrophe, explosion, vandalism, strikes, labour disputes, cable cuts, outages, acts of any governmental body; national emergencies; insurrections; riots; wars; terrorism or any act or omission of any third party.

17. General

17.1. The failure or delay by either party to exercise or enforce any right conferred by this Agreement on that party, shall not be deemed to be a waiver of any such right, nor operate so as to bar the exercise or enforcement thereof, or of that right at any time in the future.

17.2. Any notice which may be given by either party to the other party under this Agreement, shall be deemed to have been given if sent by first class post or recorded delivery or email to any relevant address given by the Customer, whilst Primus's address for service of any notice shall be such address as appears on the last invoice rendered to the Customer or such other address as may be have been given by Primus for such purpose.

17.3. This Agreement, and the other documents and website(s) referred to in these terms and conditions contains the entire agreement and understanding of the parties in respect of the subject matter contained herein, and supersede all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any party, except in relation to any claim for fraudulent misrepresentation.

17.4. The headings in this Agreement are inserted for convenience of reference only and shall not constitute a part of or control or affect in any way the meaning or interpretation of any provision hereof.

17.5. If any provision of this Agreement is held by a court or governmental agency or authority to be invalid, void or unenforceable, then such provision shall not affect the other provisions or clauses of this Agreement, which shall continue in full force and effect.

17.6. All Clauses in this Agreement which are either expressed to survive or which are by implication intended to survive termination or expiry of this Agreement will continue to survive notwithstanding termination or expiry of this Agreement.

18. Disputes

18.1. Should the Customer have any dispute with Primus in connection with this Agreement, then Primus shall use its reasonable endeavours to resolve any such dispute. The Customer may refer this dispute to any appropriate dispute resolution service. The Customer can find details of the parties who can deal with these disputes and how to refer such disputes in the Primus Code of Practice which is at: <http://www.primussaver.co.uk>.

19. Governing Law

This Agreement shall be governed by and construed in accordance with English law and the parties hereby submit to the jurisdiction of the English Courts.