

CAP INSTALLATION TERMS AND CONDITIONS ('Conditions')

1 Definitions and Interpretation

1.1 Definitions

In this Agreement:

Agreement	means these Conditions and the Term Sheet;
Broadband Service	means as defined in the Term Sheet.
Business Day	means a day other than a Saturday, Sunday or bank or public holiday in England;
CAP	means a Community Access Point, which involves the installation by CBL of transmitter antennae as well as receiver antennae and equipment box, so that they can relay the Broadband Service.
Commencement Date	means the date on which the installation of the CAP at the Host Site is successfully completed, as set out in the Term Sheet;
End User	means any person who can access the Broadband Service;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations under this Agreement, including war, revolution, terrorism, riot or civil commotion, or precautions against any such; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions;
Host Site	means the Host's site as stated in the Term Sheet;
Owner	means, if the Host is not the owner of the Host Site, the owner of the Host Site;
Term Sheet	means the term sheet to which these Terms are appended.

1.2 In this Agreement:

- 1.2.1 a reference to a **party** includes that party's personal representatives, successors and permitted assigns;
- 1.2.2 a reference to a **person** includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.3 words in the singular include the plural and vice versa;
- 1.2.4 any words that follow **include, includes, including, in particular** or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words; and

- 1.2.5 any clause or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement.

2 Provision of the CAP

- 2.1 CBL shall install the CAP in accordance with clause 3.
- 2.2 In consideration of the Host allowing CBL to install the CAP at the Host Site, CBL shall provide the Broadband Service.
- 2.3 CBL shall indemnify the Host against any damage to the CAP and against any claim by an End User relating to loss of access to the Wi-Fi Network via the CAP, subject to:
 - 2.3.1 the cap on CBL's liability in clause 7.1; and
 - 2.3.2 such damage or claim not being as a result of the Host's act, omission or breach of its obligations under this Agreement.

3 Installation of CAP

- 3.1 CBL shall install the CAP at the Host Site on the Installation Date in a timely, professional and efficient manner and in accordance with the Host's reasonable directions.
- 3.2 The Host shall allow and procure for CBL (and any authorised representatives of CBL) access to the Host Site to the extent necessary for CBL to comply with its obligations under this clause 3.
- 3.3 CBL shall retain ownership of and risk in the CAP at all times.
- 3.4 In the event that CBL requires access to the CAP during the Term for general maintenance purposes, CBL shall provide the Host with at least 7 days' notice of this requirement. For the avoidance of doubt, this clause 3.4 shall not apply in the event of an emergency.

4 Host Obligations

- 4.1 The Host shall:
 - 4.1.1 provide CBL with access to the CAP at all times for the purpose of general maintenance and, if applicable, emergencies; and
 - 4.1.2 ensure that there is a permanent supply of electricity to the CAP.
- 4.2 The Host shall not:
 - 4.2.1 use the CAP in a manner which may create any liability on the part of CBL; or
 - 4.2.2 allow any unauthorised person to access the CAP for any purpose.

5 Warranties

- 5.1 The Host warrants and represents to CBL that it has and shall at all times have the full right, power and authority to enter into this Agreement and to fulfil all of its obligations in connection with this Agreement.

5.2 If the Host is not the owner of the Host Site, the Host also warrants and represents that it has obtained the Owner's written permission for CBL to install the CAP at the Host Site.

5.3 CBL warrants and represents to the Host that:

5.3.1 it has and shall at all times have the full right, power and authority to enter into this Agreement and to fulfil all of its obligations in connection with this Agreement; and

5.3.2 it shall discharge its obligations under this Agreement using personnel of required skill, experience and qualifications and with all due skill, care and diligence.

6 VAT

6.1 In the event that the Host has opted to tax the Host Site, the Host shall provide CBL with a VAT invoice in the amount of the value of the Broadband Service plus VAT.

7 Limitation of Liability

7.1 Subject to the following clauses, in no event shall the aggregate liability of CBL towards the Host (including under the indemnity in clause 2.3) exceed £500,000.

7.2 Subject to clause 7.4, CBL shall not be liable for consequential, indirect or special losses.

7.3 Subject to clause 7.4, CBL shall not be liable for any of the following (whether direct or indirect):

7.3.1 loss of profit;

7.3.2 loss or damage to equipment;

7.3.3 loss of use;

7.3.4 loss of production;

7.3.5 loss of contract;

7.3.6 loss of opportunity;

7.3.7 loss of savings; and/or

7.3.8 harm to reputation or loss of goodwill.

7.4 Notwithstanding any other provision of this Agreement, CBL's liability shall not be limited in any way in respect of the following:

7.4.1 death or personal injury caused by negligence;

7.4.2 fraud or fraudulent misrepresentation; or

7.4.3 any other losses which cannot be excluded or limited by applicable law.

8 Term and Termination

8.1 The CAP shall be at the Host Site for the Initial Term, thereafter the term of this Agreement shall automatically extend at the end of the Initial Term for further successive 5 year periods (**Additional Term**), unless either party gives written notice to the other, not later than 3

months before the end of the Initial Term or the applicable Additional Term, to terminate this Agreement.

- 8.2 Either party may terminate this Agreement at any time by giving three months' notice in writing to the other party if the other party commits a material breach of this Agreement which is not remedied within 14 days of receiving written notice of such breach.
- 8.3 CBL may terminate this Agreement at any time by giving the Host not less than one month's prior written notice in the event that, in CBL's reasonable opinion, the Host Site is no longer suitable for the operation of the CAP.
- 8.4 Termination or expiry of this Agreement will not affect any accrued rights and liabilities of either party at any time up to the date of termination.
- 8.5 In the event of termination of this Agreement for any reason, CBL will promptly remove the CAP from the Host Site.

9 Entire Agreement

- 9.1 The parties agree that this Agreement constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 9.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

10 Notices

- 10.1 Notices under this Agreement shall be in writing and sent to a party's registered office address as set out on the first page of this Agreement or by email. Notices may be given, and shall be deemed received:
 - 10.1.1 by first-class post: two Business Days after posting;
 - 10.1.2 by email in the case of CBL to: capagreements@countybroadband.co.uk, and in the case of the Host as stated in the Term Sheet: on receipt of a delivery return email.
- 10.2 This clause does not apply to notices given in legal proceedings or arbitration.

11 Force Majeure

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from a Force Majeure event. The party affected by such an event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If such an event continues for a continuous period of more than three months, either party may terminate this Agreement by written notice to the other party.

12 Variation

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

13 Assignment

- 13.1 Subject to clause 14.2, no party may assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the other's prior written consent (such consent not to be unreasonably withheld or delayed).
- 13.2 In the event that the Host Site is sold, the new Host (or Owner, if the Host does not own the Host Site), may assign its rights and obligations under this Agreement without CBL's consent.
- 13.3 In the event that the Host Site is sold, the Host will provide CBL with the new Owner's details on a timely basis to enable CBL to negotiate an agreement with the new Owner to ensure continuity of service.

14 Severance

If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

15 Waiver

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

16 Third party rights

No one other than a party to this Agreement shall have any right to enforce any of its provisions.

17 Governing law

This Agreement and any dispute or claim arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

18 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

Version: September 2018