

DATED 01/01/2020

(1) CMNET CIC

(2) First_Name Last_Name

STANDARD SERVICE AGREEMENT

THIS AGREEMENT is made the 1st day of January 2020

BETWEEN:

- (1) CMNET CIC a community interest company registered in the United Kingdom under Number 456738 whose registered office is at Fernaig House, Achmore, Strome Ferry, IV53 8UW (“the Service Provider”) and
- (2) First_Name Last_Name of A House, District, Post Town AB12 3BC (“the Client”)

WHEREAS:

- (1) The Service Provider provides Broadband services to consumer clients. The Service Provider has reasonable skill, knowledge and experience in that field.
- (2) The Client wishes to engage the Service Provider to provide the services set out in this Agreement, subject to the terms and conditions of this Agreement.
- (3) The Service Provider agrees to provide the services set out in this Agreement to the Client, subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Commencement Date”	means the date on which provision of the Services shall commence, as set out in sub-Clause 8.1;
“Fees”	means any and all sums due under this Agreement from the Client to the Service Provider, as specified in Schedule 1;
“Schedule 1”	means the schedule annexed and signed as relative hereto which schedule may be revised and replaced from time to time by CMNet as provided for in Clause 13 of the said schedule;
“Services”	means the services to be provided by the Service Provider to the Client in accordance with Clause 2, as fully defined in Schedule 1, and is subject to the terms and conditions of this Agreement; and
“Subscriber”	means the Client;

“Term” means the term of this Agreement as set out in Clause 8.

1.2 Unless the context otherwise requires, each reference in this Agreement to “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means.

2. Provision of the Services

2.1 With effect from the Commencement Date, the Service Provider shall, throughout the Term of this Agreement, provide the Services to the Client.

2.2 The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the Broadband supply sector in the United Kingdom.

2.3 The Service Provider shall act in accordance with all reasonable requests given to it by the Client provided such requests are compatible with the specification of Services provided in Schedule 1.

2.4 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

2.5 The Service Provider may, in relation to certain specified matters related to the Services, act on the Client’s behalf. Such matters shall not be set out in this Agreement but shall be agreed between the Parties as they arise from time to time.

2.6 The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client’s acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.

3. Client’s Obligations

3.1 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider’s provision of the Services.

3.2 The Client may, from time to time, issue reasonable requests to the Service Provider in relation to the Service Provider’s provision of the Services. Any such requests should be compatible with the specification of the Services provided in Schedule 1.

3.3 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.

3.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Client’s responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).

- 3.5 If the nature of the Services requires that the Service Provider has access to the Client's home or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Client as required.
- 3.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of this Clause 3 shall not be the responsibility or fault of the Service Provider.

4. Fees and Payment

- 4.1 The Client shall pay the Fees to the Service Provider in accordance with the provisions of Schedule 1 and this Clause 4.
- 4.2 The Service Provider shall invoice the Client for Fees due in accordance with the provisions of our Terms & Conditions clause 3.
- 4.3 All payments required to be paid pursuant to this Agreement by either Party shall be paid within 30 days of receipt by that Party of the relevant invoice.
- 4.4 Where any payment pursuant to this Agreement is required to be paid on a day that is not a Business Day, it may be paid on the next following Business Day.
- 4.5 Without prejudice to sub-Clause 8.4.1, any sums which remain unpaid following the expiry of the period set out in sub-Clause 4.3 shall incur interest on a daily basis at a per annum rate equivalent to 5% above the base rate of Royal Bank of Scotland from time to time until payment is made in full of any such outstanding sums.

5. Liability, Indemnity and Insurance

- 5.1 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 5.2 In the event that the Service Provider fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client, which remedial action will be at the sole discretion of the Service Provider.
- 5.3 The Service Provider's total liability, including compensatory liability, for any loss or damage caused as a result of its negligence or breach of this Agreement shall be limited to £1.
- 5.4 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.
- 5.5 Nothing in this Agreement shall exclude the Service Provider's liability for death or personal injury. Liability for death or personal injury shall be limited to the total sum insured in this regard.
- 5.6 Subject to sub-Clause 5.3 the Service Provider shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of the Service Provider's provision of the Services or any breach of this Agreement.

6. **Data Protection**

- 6.1 The Service Provider will not share the Client's personal data with any third parties for any reasons without the prior consent of the Client. Such data will only be collected, processed and held in accordance with the Service Provider's rights and obligations arising under the provisions and principles of the General Data Protection Regulation which came into force in May 2018. The data protection policy is available on The Service Provider's website.
- 6.2 By signing this contract the Client confirms they have read the Service Provider's data protection policy and is giving consent for the Service Provider to hold the Client's personal data.

7. **Force Majeure**

- 7.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 7.2 In the event that a Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 7 days, the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.

8. **Term and Termination**

- 8.1 This Agreement shall come into force on 31st January 2020 and shall continue for one year from that date, subject to the provisions of this Clause 8.
- 8.2 By default at the end of the initial one year period the Agreement will automatically extend for a further period of one year and from year to year thereafter ("the Term"). All terms and conditions will remain the same.
- 8.3 Either Party may terminate this Agreement by giving to the other not less than 30 days written notice, to terminate on the expiry date of the Term. If the Client wishes to terminate the contract within the Term the remainder of the Term's Fees due to the Service Provider will be paid within 30 days of the date of termination.
- 8.4 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:
 - 8.4.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 30 days of the due date for payment;
 - 8.4.2 the other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 14 Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

- 8.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 8.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 8.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
 - 8.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 8.4.7 the other Party ceases, or threatens to cease, to carry on business; or
 - 8.4.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 8, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 8.5 For the purposes of sub-Clause 8.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 8.6 The rights to terminate this Agreement given by this Clause 8 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

9. **Effects of Termination**

Upon the termination of this Agreement for any reason:

- 9.1 any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;
- 9.2 all equipment supplied by the Service Provider is to be disassembled and returned in good working order to the Service Provider by the Client;
- 9.3 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect;
- 9.4 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination; and
- 9.5 subject as provided in this Clause 9 and except in respect of any accrued rights neither Party shall be under any further obligation to the other.

10. **No Waiver**

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach

of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

11. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

12. Costs

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

13. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

14. Assignment and Sub-Contracting

14.1 Subject to sub-Clause 14.2 this Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-license or otherwise delegate any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

14.2 The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Service Provider.

15. Time

15.1 The Parties agree that all times and dates referred to in this Agreement shall be of the essence of this Agreement.

16. Relationship of the Parties

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

17. Third Party Rights

17.1 No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

17.2 Subject to this Clause 17 this Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

18. Notices

18.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

18.2 Notices shall be deemed to have been duly given:

18.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

18.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

19. Entire Agreement

19.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

19.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

20. Counterparts

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

21. Severance

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

22. Dispute Resolution

22.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

22.2 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 23 shall be final and binding on both Parties.

23. Law and Jurisdiction

23.1 This Agreement (including any non-contractual matters and obligations arising

therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of Scotland.

23.2 Subject to the provisions of Clause 23, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of Scotland

IN WITNESS WHEREOF this Agreement has been duly executed the day and year first before written

SIGNED by

Name and Title of person signing for Service Provider

for and on behalf of CMNet CIC

In the presence of

Neil MacRae,
CMNet CIC,
8 Forestry Houses,
Achmore,
Strome Ferry,
Wester Ross,
IV53 8UN

SIGNED by

Name and Title of person signing for Client

for and on behalf of First_Name Last_Name

In the presence of

Name & Address of Witness

This is Schedule 1 referred to in the foregoing Customer Agreement dated of even date herewith.

SCHEDULE 1

CMNet CIC Community Broadband Project Terms & Conditions for Broadband Internet Service

- 1) **The Service:** CMNet CIC provides a broadband wireless local area network covering most of the area surrounding Loch Carron. Currently the theoretical maximum speed for CMNet CIC subscribers is 29 Mbps. However the network is shared by all the subscribers and the speed obtained depends on the number of them using it at any one time. The service links through another third party broadband network (namely BT) and the speed of this network also depends on the number of subscribers using it at any one time.
- 2) **Connection Costs:**
 - a) There will be no connection charge if the subscriber:-
 - i) Installs a suitable antenna mount (supplied by CMNet CIC)
 - ii) Provides an access route through the outer skin of their premises
 - iii) Ensures a clear line of sight to their designated access point
 - b) If CMNet CIC install the antennae mount there will be a standard connection charge of £20. Connections requiring significantly more than the usual amount of labour or equipment will be subject to quotation.
 - c) There will be an additional charge if the subscriber requires equipment in addition to the standard installation package. This will be calculated on a case by case basis.

All installation work carried out on behalf of CMNet CIC will be the responsibility of the subscriber. CMNet CIC will accept no liability for any damage caused whilst making the connection. Installation and testing of equipment will take place at least five weeks before the subscriber's first payment is due to allow 30 days notice to be served on their current ISP. This date will be agreed in advance and is the Commencement date.

- 3) **Subscription:** Subscription to the service is defined in the following tariff:-

£13.50 per calendar month for usage up to 50GB per calendar month

Usage for 100 GB and over is calculated as follows:-

£5 per calendar month "standing charge" per installation plus an additional £1 per calendar month for each 50GB quota per calendar month (minimum of 100 GB per month)

plus an additional £96 premium for new subscribers charged at £8 per month for the first twelve months.

E.g. a new subscriber will pay £15 per month for a monthly 100GB quota.

At the current tariff this will reduce to £7 per month after one year. A new joiner with a monthly quota of 50 GB will have paid the premium after 13 months and then their subscription will reduce to £6.

The new subscriber's premium is subject to change dependant on the current and previous tariffs.

Subscriptions are payable monthly in advance. All subscribers are required to set up a standing order with their bank to pay this amount on the 1st day of every month, starting on the 1st day of the first month after the **Commencement date**. The standing order form shall be completed and signed on the date of connection. The period from the Commencement date to the first standing order payment will be added pro-rata to the connection fee.

- 4) **Alteration to Subscription:** CMNet CIC may alter the monthly subscription at any time, and will give a minimum of one month's notice of such a change to all subscribers
- 5) **Termination by Subscriber:** Subscribers are required to give one month's notice to terminate their service. There is a minimum initial contract period of one year; any termination of the service by the subscriber within the Term will be subject to a charge equivalent to the outstanding period of the contract. Subscribers must disassemble and return all items that are the property of CMNet CIC (antennae, AirRouter, all brackets and any additional equipment) and return them in good working order.
- 6) **Suspension or Termination by CMNet CIC:** CMNet CIC may suspend or terminate the service to an individual subscriber immediately and without notice if the service is misused in any of the following ways:
 - a) Use without payment
 - b) Fraudulent use, or use in connection with a criminal offence
 - c) Transfer of any material that is obscene, indecent, offensive, menacing, abusive, or defamatory
 - d) Transfer of any material in breach of copyright, privacy or other rights
 - e) Sending unsolicited advertising or promotional material (known as 'spam')
 - f) Sending any material that may damage data, software or hardware (known as 'viruses')
- 7) **Fair Use Policy:** This contract is for a monthly usage limit of **50 GB at a monthly cost of £13.50**. Monthly downloads will be monitored, and any subscriber who downloads more than their limit will have their quota increased retrospectively to cover the excess. This will be calculated on a daily average and if necessary adjusted to take into account 31 day months.

If subscribers continue to exceed their quota their service **may** be suspended.
- 8) **Reconnection:** In the event that the service is disconnected for reasons of misuse or non payment as described above, there will be a reconnection charge of £100
- 9) **Faults and Maintenance:**
 - a) The service cannot be guaranteed, but CMNet CIC will make reasonable endeavours to ensure that faults on its own network or on its supplier's networks are rectified as soon as possible. As far as possible, notice will be given if any maintenance work will result in temporary loss of service.
 - b) Subscribers are responsible for their household antenna, the Ethernet cable and the AirRouter supplied by CMNet CIC; these remain the property of CMNet CIC. If any of these components is damaged in any way or lost, the subscriber may be required to pay the cost of repair or replacement.
- 10) **Compensation Policy:** In the event that the service to a subscriber is down for a continuous period of 72 hours or more, consideration will be given to making a pro-rata repayment of subscription for that period in excess of 72 hours.

11) **Liability:**

- a) The Internet is separate from the service and CMNet CIC will accept no responsibility for goods, services, information, software, or other materials obtained when using the Internet.
- b) CMNet CIC has no liability of any sort for the acts or omissions of other providers of telecommunication services or for faults or failures of their networks and equipment.
- c) CMNet CIC has no liability for any loss of revenue due to faults or loss of service.
- d) CMNet CIC has no liability for any of the following losses or damage (whether or not such losses or damage were foreseen, direct, foreseeable, known or otherwise):
 - i) Opportunity
 - ii) Goodwill
 - iii) Reputation
 - iv) Business
 - v) Revenue
 - vi) Profit
 - vii) Savings
 - viii) Loss, damage or corruption of data

12) **Force Majeure:** If either party is unable to perform any obligation under this Agreement due to circumstances beyond their reasonable control (including but not in any way limited to lightning, flood, severe weather, fire, explosion, war, civil disorder, industrial disputes) they will have no liability to the other for that failure to perform.

13) The terms of this Schedule may be changed from time to time by CMNet CIC. Any changes made by CMNet will be issued to the Client in a revised Schedule which will be deemed to replace this Schedule and deemed to form part of the foregoing Agreement.

14) This Agreement is made under Scottish Law.