

## BSAS Telecoms General Terms and Conditions (12 Month Minimum Period)

This Contract sets out the terms on which BSAS Telecoms Limited, registered in England with number (4129178) ("we", "us", "our" or "BSAS") will provide the Services (as hereinafter defined) to you, the customer named in the Order Form ("you") with whom we make this Contract. By using the Services you agree to the following terms and conditions (as varied from time to time in accordance with clause 9).

### 1 Definitions

In this Contract:

**"Acceptable Use Policy"** means rules, limits or restrictions for the use of the Services set out on the BSAS Website as may be revised by us from time to time by posting any updated version on the BSAS Website.

**"Associates"** means in relation to a party to this Contract (at the relevant time), any company which is a Subsidiary or a Holding Company or which is a Subsidiary of any such Holding Company from time to time (where 'Subsidiary' and 'Holding Company' have the meanings given in section 736 of the Companies Act 1985).

**"Authorisation"** means any authorisation for us to provide the Services under the Law and

**"Authorised"** shall be construed accordingly.

**"Charges"** means the charges payable by you to us for the provision of the Services as set out in the Order Form or any revised changes notified to you in accordance with Clause 7.2, together with all applicable taxes and any interest due in accordance with Clause 7.7.

**"Co-location Space"** means the space provided by us to you at the Data Centre.

**"Connection Date"** means the date the Services are made available to you (whether or not you are using them).

**"Contract"** means the Order Form and these terms and conditions.

**"Credit Limit"** means a monthly or annual financial limit applied for Charges incurred under this Contract.

**"Customer Equipment"** means any equipment owned by you which we agree can be located in our Data Centre or is located in your own premises.

**"Data Centre"** means the site which you and BSAS have mutually agreed shall be used to co-locate your Customer Equipment.

**"Enhancement"** or **"Upgrade"** means the addition to the Customer Equipment memory, co-processors, optional cards, manufacturers modifications and/or any other changes to the technical specifications or configuration of the Customer Equipment.

**"Law"** means any applicable legislation, authorisations, permissions, rules, regulations, orders and guidelines from time to time.

**"Minimum Period"** means, in respect of each of the Services, the minimum period of 12 calendar months (or if longer the number of calendar months specified in the Order Form) for which a Contract for each of the Services will run commencing on the Connection Date.

**"BSAS Telecoms Ltd"** means BSAS Telecoms Limited, company number 4129178.

**"BSAS Equipment"** means equipment owned by BSAS that may have been loaned or leased to the customer and may be located on the Customer's premises

**"BSAS Network"** means the network operated by BSAS Telecoms Ltd and/or its Associates for the time being.

**"BSAS Helpdesk"** means the helpdesk support to be provided by BSAS as notified to you from time to time.

**"BSAS Software"** means software owned by BSAS and not distributed to the Customer, which is used to provide a service to the Customer

**"BSAS Website"** means the website located at [www.bsas.co.uk](http://www.bsas.co.uk) or such other website as may be notified by us from time to time.

**"Order Form"** means the Order Form (including any schedules) between ourselves and you for the provision of the Services.

**"Pricing Structure"** means the Pricing Structure relating to the Service set out in the Order Form.

**"Services"** means any one or more of the Services described in the Order Form.

**"Service Credits"** means a credit note to you, if any, as set out in the Contract.

**"Service Failures"** means any failure, error or defect in the provision of the Services by us but excludes failures, errors or defects arising from, caused by or contributed to by your acts or omissions or third parties acting on your behalf including other providers of telecommunications, computers or other equipment or Services including Internet services or any failure, error or defect arising as a result of causes beyond our reasonable control.

**"Service Level"** in relation to any of the Services means the performance standard, if any, set out in the Contract.

**"Service Specific Terms"** in relation to any of the Services means the terms and conditions applicable to that specific Service as advised by us to you from time to time.

**"Site"** means any site of yours for which the Services are to be provided.

**"Software"** means the software including all associated documentation provided by us or a Third Party to you for the purposes of enabling you to use the products and Services within this Contract.

**"Start Date"** means the date upon which you either sign this Contract or, if you have ordered the Services over the telephone or via the Internet, the date upon which you set up your Contract.

**"Subsequent Contract Period"** means a further period of twelve (12) months following the expiry of the Minimum Period.

**"Third Party Provider"** means the provider of any network, services or system that we may use to provide our Services.

**"Third Party Provider's Terms"** means in relation to any of the Services means the terms and conditions which you may be required to accept from any Third Party Provider from time to time.

**"Virus"** means a piece of code usually (but not necessarily) disguised as something else that causes some unexpected and, for the victim, usually undesirable event and which is designed so that it may automatically spread to other computer users; the term "virus" shall also be deemed to include reference to worms, trojan horses and other nuisance causing or otherwise harmful applets.

**"Working Day"** means a day which is not a Saturday, a Sunday or a bank or public holiday in England, Wales, Scotland or Ireland (depending on where notice is being served).

**"Working Hours"** means 09:00-17:30 in the United Kingdom local time Monday to Friday (excluding bank or public holidays in England) or such other hours as may be notified by BSAS to you from time to time. Headings are for convenience only and shall not affect the construction of the Contract.

## **2 When this Contract Begins and How Long it Lasts**

2.1 Your obligations under this Contract will commence on the Start Date and will continue to the end of the Minimum Period. The Contract will automatically continue for the Subsequent Contract Period unless terminated otherwise in accordance with clause 12.

2.2 Our obligations under this Contract will commence from the Connection Date.

2.3 Any dates given in this Contract regarding our provision of the Services to you are estimates and are provided for planning purposes only. We will have no liability for any failure to meet the Connection Date or any other date as time is not of the essence in relation to our provision of the Services to you.

## **3 What Level of Service We Will Provide to You**

3.1 We will provide the Services in accordance with the terms of this Contract.

3.2 We will use reasonable skill and care when providing the Services.

3.3 The Services are provided for use by you in the course of your business and on the condition that you do not resell, sub-licence or otherwise make the Services available to any other person.

3.4 We may use Third Party Providers for the purposes of providing the Services to you. We may select and at any time change any Third Party Provider. If required by any Third Party Provider, you will accept the Third Party Provider's Terms.

3.5 Whilst we provide the Services to you, you authorise us to act on your behalf in all dealings with any Third Party Provider in connection with any matter that enables us to provide or to continue to provide you with the Services (including the giving of all notices, nominations and other authorisations).

## **4 What Services We Provide**

4.1 We do not guarantee that the Services will be continuously available to you or free from Service Failures. We do not guarantee the delivery or receipt of any electronic mail message or news article or any other data item, though we will use reasonable efforts to ensure such delivery or receipt.

4.2 Where you believe that you are experiencing a Service Failure you must immediately report this to us via the BSAS Helpdesk, providing sufficient information to enable us to investigate the problem. We will log the time of receipt of all such reports.

4.3 Where we spend time investigating a fault(s) that is being continuously reported by you and conclude each time that there has been no Service Failure, we reserve the right to charge you for all reasonable costs and expenses incurred in investigating the alleged fault and you agree to pay such charges. Details of these charges are available on request.

4.4 Where we provide Service Credits, and where as a result of a Service Failure, an applicable Service Level is not achieved we will on your written request, subject to Clause 7.9, pay to you the appropriate Service Credit. The duration of any Service Failure, for the purposes of calculating Service Credits, will be measured from the time your fault report is logged by the BSAS Helpdesk to the time we can demonstrate that the Services have been restored.

4.5 Where we provide Service Credits, these will be the maximum extent of our liability and your exclusive remedy in respect of any failure to achieve Service Levels, and all other rights, remedies and liabilities are excluded to the maximum extent permitted at law.

4.6 In the case of failure of these added value services it is expected that you will have taken steps to implement contingency plans to protect your business from the effects of these value added services not functioning to specification or not being available.

4.7 Where we provide hosting services you agree that any Customer Equipment hosted by us shall be treated as security for the payment by you for equipment and Services provided to you under this agreement.

4.8 Where we manage the renewal of a domain with the appropriate domain licensing authority on your behalf, we will notify you of the requirement to renew and you will be obliged to tell us if you wish to

renew. Where you renew the domain directly with the appropriate domain licensing authority we will not be held responsible for Services associated with that domain including the continued availability of the domain. All domain names in the .uk namespace are also subject to Nominet's Terms and Conditions which can be found at <http://www.nominet.org.uk/go/terms>.

- 4.9 Where BSAS provides Hardware Maintenance, the terms and conditions set out in Schedule 1 will apply.
- 4.10 Where BSAS provides Circuit Provision the terms and conditions set out in Schedule 2 will apply.
- 4.11 Where BSAS provides MailController the terms and conditions set out in Schedule 3 will apply.
- 4.12 Where BSAS provides Data Centre Services, the terms and conditions set out in Schedule 4 will apply.
- 4.13 Where BSAS provides WebController, the terms and conditions set out in Schedule 5 will apply.

## **5 Your Use of the Services**

- 5.1 You agree that you will not use the Services in a way which would:-
  - 5.1.1 contravene or cause us to contravene any Law;
  - 5.1.2 contravene our Acceptable Use Policy;
  - 5.1.3 be for any improper, immoral or unlawful purpose;
  - 5.1.4 enable or permit unauthorised access by you or third parties to data stored on our network;
  - 5.1.5 cause a degradation of Service to any of our other customers;
  - 5.1.6 involve the sending of unsolicited marketing or advertising materials;
  - 5.1.7 result in the transmission or storage of any material of a pornographic, obscene, defamatory, menacing or offensive nature or material which is a nuisance, hoax, abusive, racist or indecent or which would result in the breach of any third party's rights (including intellectual property rights), confidential information or privacy;
  - 5.1.8 breach or cause us to breach any applicable data protection law including, but not limited to, the Data Protection Act 1998;
  - 5.1.9 cause an overload of our network;
  - 5.1.10 lose or cause the loss or breach or cause the breach of any Authorisation.
- 5.2 You will indemnify us against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by us arising from any breach of your obligations under this Contract, including this Clause 5, and for all costs and expenses reasonably incurred by us in investigating and defending ourselves in relation to any such claims, proceedings or threatened proceedings.
- 5.3 Where you are issued with a password to access the Services and you must take all reasonable steps to keep such password private and confidential and ensure that it does not become known to other persons. If the password becomes known to any other person, you must immediately inform us by contacting the BSAS Helpdesk. We may change your password from time to time at our discretion without prior notice and we will inform you of such change.
- 5.4 You undertake to provide us with sufficient information concerning your operations and activities which may be required by us for the performance of our obligations under the Contract. You are required to keep the contact details that are provided to us up to date at all times. We may send notices or other information to these contact details.

## **6 Passing of Property**

- 6.1 Notwithstanding delivery, all equipment, software, goods or services ("Customer Equipment") supplied by us will remain our absolute property until you have paid for them in full and for all other equipment or Services previously supplied by us. In addition, where Services are subject to a transfer fee or other fixed charges such as domain names then no transfer or action will occur until you have paid that fee or charge in full and for all other equipment or Services previously supplied by us.
- 6.2 You will store the equipment in such a way that they are readily identifiable as our property and not sell, transfer or otherwise part with possession thereof to a third party. We shall be entitled, immediately after giving notice of our intention to repossess, to enter upon any premises with such transport as may be necessary and repossess any equipment to which we have title upon this clause. You will take all due care of all equipment and insure such equipment and indemnify us for any loss whatsoever suffered or incurred by us arising out of any failure to take such due care or insure the equipment.
- 6.3 Any costs reasonably incurred by us in recovering the equipment will be paid in full by you.

## **7 How We Charge You and How You Pay**

- 7.1 You agree to pay us the Charges. Unless otherwise stated in the Contract, Charges will be payable annually in advance, and will be invoiced on the relevant Connection Date and thereafter annually.

- 7.2 If in our reasonable opinion the Maintenance Service is required as the result of any misuse or neglect of, or accident to the equipment, or due to you not adhering to Clause 21.1 to 21.4 inclusive, or other third party hardware related problems, we reserve the right to make an additional charge.
- 7.3 We reserve the right to make an additional charge for a maintenance call to a system that has been moved to a new location and not installed by us if we shall reasonably determine that the problem was caused by the transportation or re-installation of the system. This charge will be at our current rates in force at that time.
- 7.4 We may vary our Charges or remove any restrictions at any time by posting the relevant changes on the BSAS Website. The revised Charges will apply to all Services provided after the effective date of the notice of change.
- 7.5 All Charges are in sterling and are stated exclusive of value added tax (VAT) or other applicable taxes. You will be responsible for paying VAT and other applicable taxes which will be included in our invoices at the applicable rate(s).
- 7.6 You will, subject to clause 7.8 and unless otherwise agreed pay invoices within 30 days of the date of the invoice. If we suspend the Services due to non-payment, this does not relieve you of your obligation to pay the amount due.
- 7.7 Payments can be made by cheque or BACS. If a payment is dishonoured or cancelled we shall be entitled to pass on to you any administration fee which may include third party charges. We shall also be entitled to charge you a monthly administration fee for each month in which your payment is dishonoured or not reinstated following cancellation. We may charge interest on all overdue amounts from time to time on a daily basis at a rate of 3% above the base lending rate of the NatWest Bank plc, to run from the due date of payment until receipt by us of the full amount (including any accrued interest) whether before or after judgement in respect of the overdue amount.
- 7.8 Any invoices which are disputed must be done so within forty five (45) days of the date of issue otherwise the invoices will be deemed to be correct.
- 7.8.1 If you wish to dispute an invoice you must write to us and provide us with (i) nature and reason for dispute, (ii) amount in dispute, (iii) any evidence to support the disputed amount.
- 7.8.2 If an invoice is disputed and we can demonstrate that the invoice is in fact correct, we shall be entitled to charge interest in accordance with clause 7.7 from the date of when the invoice should originally have been paid to the date upon which we receive the full amount.
- 7.8.3 If we agree that the disputed invoice is incorrect, we shall apply a relevant credit to your account with us.
- 7.9 Where under this Contract a Service Credit or other sum of money becomes payable by us to you, we shall be entitled to deduct that sum from Charges due from you to us from time to time. We will show any such deductions as a credit in the invoice issued by us following the due date for payment of the sum owed by us to you.

## **8 Credit Limit/Security Payment**

- 8.1 We may at our sole discretion and at any time during the lifetime of the Contract require a security deposit or prepayment by you or the giving of a directors guarantee on your behalf where Services are to be provided to you which have not been paid for in full in advance.
- 8.2 We may at our sole discretion and at any time during the lifetime of the Contract impose a Credit Limit on your account.
- 8.3 Any Credit Limit imposed can be amended without prior notice. If you exceed such Credit Limit (i) we may demand immediate payment of the Charges and/or suspend the Services; and (ii) you will still be responsible for all Charges incurred including those exceeding the Credit Limit.
- 8.4 If at any time we require you to pay a security deposit, pre-payment or directors guarantee under clause 8.1 above we may (i) suspend provision of the Services until we receive such payment or guarantee and (ii) at any time apply the security deposit or pre-payment (once paid) or enforce the directors guarantee to meet any cost, loss or liability incurred as a result of any failure by you to comply with these terms or to pay any amount you owe to us.

## **9 When We Can Make Changes to the Services and to the Contract**

- 9.1 This clause 9 applies to all changes to this Contract, except changes to Charges which are dealt with in clause 7.4 above.
- 9.2 Subject to clause 9.1 above, we may vary these terms and conditions at any time by posting the changes on the BSAS Website and, where reasonably practicable, giving you prior notice. We will only do this if we have a valid reason, for example to reflect changing arrangements with any Third Party Provider or changing legal, regulatory or business requirements. If any variation of these terms and conditions is likely to cause material detriment to you: (i) we will also notify you of the variation in writing or by your chosen method of contact; and (ii) you shall have the right to terminate this Contract in accordance with clause 12.5. You agree that, if you decide to use the Services after any variation(s) to these terms and conditions have been posted on the BSAS Website or, in the case of a variation which is likely to cause material detriment, notified to you, you will be bound by the terms and conditions as varied.

## **10 Security and Backup Services**

- 10.1 You are responsible for the security of your use of the Services including, but not limited to, protecting all passwords, making back-up copies of all data, employing appropriate security devices, including virus checking software, and having disaster recovery processes in place.
- 10.2 Where you are or become aware of any matters which you know or ought reasonably be expected to know constitute a threat to the security of the Services you will immediately advise us of such matters by contacting the BSAS Helpdesk.

## **11 Improper Use**

- 11.1 The BSAS Network and any other interconnected network may only be used for lawful purposes. Transmission of any material through the BSAS Network, or use of any part of it in violation of any UK law or regulation is prohibited. Such prohibited transmission includes, but is not limited to, copyright material, material legally judged to be threatening or obscene and material protected by trade secret whether or not you were aware of the content of the material or the relevant law.
- 11.2 You shall not use the Services: for transmission of computer viruses; for transmission of any material which is defamatory, offending, or abusive, or of an obscene or menacing character, or which may cause annoyance or needless anxiety, or for the posting of such material to bulletin boards or newsgroups; in a manner which constitutes violation or infringement of the rights of any person, firm or company (including but not limited to intellectual property rights).
- 11.3 You acknowledge that we are unable to exercise control over the content of any information passing over the BSAS Network and that we do not monitor or exercise any editorial control over information passing over the BSAS Network. You further acknowledge that we hereby exclude all liability in respect of any transmission or reception of information of whatever kind, or the accuracy of the contents thereof, or the scrambling of any information or data.
- 11.4 The BSAS Network may be used by you to access other networks world-wide and you agree to conform to the Acceptable Use Policy and any such other networks. In addition, you undertake to conform to any published Internet protocols and standards. In the event that communications by you do not conform to these standards, or if you make profligate use of the BSAS Network to the detriment of us or our customers, we reserve the right to restrict passage to your communications until you comply with such standards or protocols or provides undertakings acceptable to us in respect of your future use.
- 11.5 Unless otherwise stated by the Contract and without prejudice to this clause, you agree that the use of IP Multicast, other than by means provided and co-ordinated by us is prohibited.
- 11.6 You may not distribute copies of the Software or any part thereof.
- 11.7 Improper use and or failure to comply with the Acceptable Use Policy will result in immediate termination of the Services as per clause 12.2.

## **12 Ending the Contract**

- 12.1 You may end this Contract or any one of the Services:
  - 12.1.1 by giving us 90 days' prior written notice, such notice not to expire before the end of the Minimum Period or any Subsequent Contract Period; or
  - 12.1.2 by notice in writing if we are in material breach of this Contract.
- 12.2 Notwithstanding clause 2.1, we may terminate this Contract or any one of the Services with immediate effect by notice in writing if:
  - 12.2.1 you fail to pay any sums due to us within 14 days of receiving written notice from us indicating the sums due and demanding payment;
  - 12.2.2 you are in material breach of this Contract which breach is capable of remedy and fail to remedy that breach within 30 days of receiving the notice specifying breach;
  - 12.2.3 you are in material breach of this Contract and that breach cannot be remedied;
  - 12.2.4 you commit persistent breaches of the Contract;
  - 12.2.5 you have any authorisation under which you have the right to run your system and connect it to our system is removed, revoked or amended;
  - 12.2.6 you make any voluntary arrangements with your creditors or become subject to an administrative order or go into liquidation, whether voluntary or compulsory (other than for the purposes of reconstruction or amalgamation), or an encumbrancer takes possession of or a receiver is appointed in respect of any of your assets; you resell or sub-licence the Services or otherwise make the Services available to any other person or assign, sub-licence or otherwise transfer this Contract or any of your rights or obligations arising under it or attempt to do so;
  - 12.2.7 any Authorisation is revoked or modified in any way which has a material impact on our ability to provide the Services or any of them;
  - 12.2.8 we are prohibited from providing or restricted in our entitlement to provide the whole or any part of the Services; or
  - 12.2.9 our contract with any Third Party Provider for the provision of any of the Services is terminated (for any reason whatsoever).

- 12.3 For the purposes of clause 12.2 "material breach" shall include any failure by you to comply with your obligations under this clause 12.
- 12.4 We may end this Contract or any one of the Services at any time by giving you 90 days' prior written notice.
- 12.5 In the event of termination in accordance with this Clause 12 during the Minimum Period you will be liable to pay any Charges which would apply to the unexpired portion of the Minimum Period. In the event of termination by us in accordance with clause 12.2, you will forfeit any Charges paid in advance for the unexpired part of the year.
- 12.6 Where you cancel any of the Services or the Contract as a result of changes made to this Contract or to the Services by us in accordance with Clauses 7.2 and 9, and where the changes have a material adverse effect on the your enjoyment of the relevant Services, you will not be liable for any charges arising as a direct result of such cancellation, but you will remain liable to pay any charges due and payable.
- 12.7 On termination of the Contract each party will return to the other party any Confidential Information (as defined in clause 15) which it has in its possession.

### **13 Suspension of the Service or Suspension of the Contract**

- 13.1 We may suspend the provision of any Services if:
- 13.1.1 you fail to meet any of your obligations under this Contract;
  - 13.1.2 we have reasonable cause to believe that you or any third party is acting in breach of the Fair Use Policy or the Acceptable Use Policy;
  - 13.1.3 technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;
  - 13.1.4 it is necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance;
  - 13.1.5 we are obliged to comply with any contract, order, instruction or request of a competent governmental regulatory or other authority;
  - 13.1.6 in our reasonable opinion your conduct is likely to result in the breach of any law or is otherwise prejudicial to our interests;
  - 13.1.7 you allow to be done anything which in our reasonable opinion may have the effect of impairing the operation of the Services; or
  - 13.1.8 you fail to pay any sums due to us when due.
- 13.2 You may be liable for an administration fee if suspension is due to your default and we, in our sole discretion, reinstate the Services following suspension.
- 13.3 We will, where practical, give you notice of our intention to suspend the Services and, in relation to suspension for the reasons stated in Clauses 13.1.3–13.1.5 above, will restore the Services as soon as we are reasonably able to do so. If we exercise our right to suspend the Services this will not restrict our rights to terminate the Contract and is without prejudice to any other right or remedy available to us.

### **14 Events Outside Our Reasonable Control**

- 14.1 Neither party will be liable to the other for any delay in performing or failure to perform any of its obligations under this Contract (other than the obligation to pay the Charges) which occurs as a result of circumstances beyond a party's reasonable control. For the avoidance of doubt, circumstances beyond our reasonable control include but are not be limited to act of God, war or riot, civil disobedience, national emergency, strikes and other labour disputes, fire, flood, act or terrorism, power failures, non-availability of any third party telecommunication Services, breakdown of any equipment not supplied by us, acts of government or other competent authority (together "Force Majeure Events").
- 14.2 If the Force Majeure Event(s) continues for a period of more than ninety (90) days, either party may terminate this Contract.

### **15 Confidentiality**

- 15.1 Neither party will disclose to any third party without the prior written consent of the other party any confidential information which is received from the other party as a result of this Contract ("Confidential Information"). Both parties agree that any Confidential Information will only be used for the purposes of providing or receiving Services. Confidential Information shall not include any information which:
- 15.1.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this Clause 15; or
  - 15.1.2 is acquired from a third party who owes no obligation of confidence in respect of the information; or
  - 15.1.3 is or has been independently developed by the recipient.
- 15.2 Notwithstanding Clause 15.1 we will be entitled to disclose your Confidential Information to a third party to the extent that this is required by any court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose such Confidential Information.

## **16 Our Liability to You**

- 16.1 We accept liability without limit for death or personal injury arising from our own negligence.
- 16.2 Our liability to pay Service Credits in accordance with Clause 4 will be the maximum extent of our liability and your sole remedy for any Service Failures.
- 16.3 Subject to Clauses 16.1 and 16.2, we are not liable to you whether under this Contract, tort (including negligence) or otherwise for direct or indirect loss of profits, anticipated profits, business, goodwill or anticipated savings, or for any special, indirect or consequential loss or damage including, but not limited to, claims against you from third parties and loss of or damage to your data software or e-mails even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the loss.
- 16.4 Subject to Clause 16.1, our liability to you in contract, tort (including negligence) or otherwise in relation to or arising out of this Contract is limited to any Charges paid by you in advance for the year less a deduction in respect of Services actually provided to the date the liability was incurred, pro rated over the year. Service Credits paid or credited by us to you will be taken into account for the purposes of calculating the limitation amounts set out in this Clause 16.
- 16.5 Except as expressly set out in this Contract and to the extent permissible by law all warranties, terms and conditions guarantees as to quality or fitness for a particular purpose of the Services or any other conditions or guarantees whether express or implied by law, custom or otherwise are excluded. We specifically exclude any warranty as to the quality or accuracy of the information received through the Services.
- 16.6 We are not liable to you in Contract or tort (including negligence) for any acts or omissions of you or any third party acting on your behalf, including other providers to you of telecommunications, computers or other equipment or Services including Internet services.
- 16.7 Each provision of this Contract excluding or limiting our liability operates separately. If any provision of this Contract is held to be invalid in whole or part such provision will be deemed not to form a part of the Contract. In any event the enforceability of the remainder of the Contract will not be affected.
- 16.8 Without prejudice to any other right or remedy available to us, you hereby indemnify us against all claims, actions, damages, proceedings and related costs and expenses incurred by us regarding any claim in relation to your use of the Services. In the event of such claim, action or proceedings, we reserve the right to suspend the Services or any of them at your expense pending resolution of such dispute in your favour.

## **17 Equipment**

- 17.1 You shall at your own expense give us full access to the equipment to enable us to provide the Maintenance Service.
- 17.2 You will take care of the equipment and will operate it in a suitable environment as recommended by the manufacturers of the equipment.
- 17.3 You will operate the equipment with a suitable stable power supply free from surges and fluctuations as recommended by the manufacturers of the equipment.
- 17.4 No alterations shall be made to or parts fitted or adjustments made or repairs carried out to any parts of the BSAS Equipment except with our consent.
- 17.5 In no circumstances may equipment supplied against a firm order be returned without our prior written consent and the receipt of your advice note stating the reason for the return, the date, and the number of our invoice.
- 17.6 All equipment returned must be securely packed in their original boxes and, unless we arrange collection, consigned carriage paid, and at your risk. If we collect the equipment then we reserve the right to make a handling charge, and the issue of our collection note will not bind us to issue any credit in respect of the equipment. Equipment returned for credit will be subject to a restocking charge determined in our reasonable discretion.
- 17.7 Any costs reasonably incurred by us in recovering the equipment will be paid in full by you.

## **18 Use and Disclosure of Your Personal Information**

- 18.1 We reserve the right to put the names and other information from your Order Form into a computerised directory.
- 18.2 Except in relation to clause 18.7 below, this clause 18 applies to personal information held about individuals, sole traders and partnerships. It does not apply to information we hold about corporate bodies, and other organisations.
- 18.3 Information you provide or we hold about you (whether or not under our Contract(s) with you) may be used by us or our agents to:
  - 18.3.1 identify you when you contact us;

- 18.3.2 help identify accounts, services and products which you could have from us from time to time (we may do this using an automatic scoring system, which uses the information provided by you, any information we hold about you and information from other agencies, including credit-reference agencies);
  - 18.3.3 help run, any accounts, services and products we provided before now or in the future;
  - 18.3.4 carry out marketing analysis and customer profiling and create statistical and testing information;
  - 18.3.5 help to prevent and detect fraud or loss; and
  - 18.3.6 contact you in any way (including mail, e-mail, phone, visit, text or multimedia messages) about products and services offered by us. We will only contact you in this way if you have previously shown your consent.
- 18.4 We may disclose to and allow other people and organisations to use information we hold about you:
- to provide Services you have asked for;
  - as part of the process of selling one or more of our businesses;
  - to provide information for legal or regulatory purposes;
  - as part of current or future legal proceedings; or
  - to enable us to manage your account.
- From time to time, these other people and organisations may be outside the European Economic Area in countries that do not have the same standards of protection for personal data as the UK.
- 18.5 We may also allow your information to be used by any of our Associates for them to carry out any of the above purposes.
- 18.6 We may monitor and record communications with you (including phone conversations and e-mails) for quality assurance and compliance.
- 18.7 This clause 18.7 applies to personal information held about individuals (including, if you are a corporate body, any key individuals involved in that body), sole traders and partnerships. We may check your details with one or more licensed credit-reference and fraud-prevention agencies. We and they may keep a record of this search and the payment details from your account, and share it with other organisations. If a person provides false or inaccurate information and we suspect fraud, this is also recorded. This information may be used by us, and other organisations may search these records to:
- 18.7.1 help make decisions about credit and credit-related services for you and members of your household;
  - 18.7.2 help make decisions on motor, household, credit, life and other insurance proposals and insurance claims for you and members of your household;
  - 18.7.3 trace debtors, recover debt, prevent fraud, and manage your accounts or insurance policies;
  - 18.7.4 check your identity to prevent money laundering, unless you give us other satisfactory proof of your identity; and
  - 18.7.5 carry out statistical analysis about credit, insurance and fraud.
- We, and other credit and insurance organisations, may also use technology to detect and prevent fraud. If you need details of those credit agencies and fraud-prevention agencies from which we get, and with which we record, information about you, please write to us at BSAS Telecoms Ltd, Systems House, Chippenham Hill, Moulton, Newmarket, Suffolk, CB8 7PL.
- 18.8 If you give us information on behalf of someone else, you confirm that you have given them the information set out in this clause, and that they have not objected to their personal information being used in the way described in this clause. If you give us sensitive information about yourself or others (such as special needs details for bills), you agree (and confirm that the relevant subject of the information has agreed) to us processing this information in the way set out in this clause.
- 18.9 If you are making a joint application or you have told us about some other financial association with someone else, a 'financial association' between you and that other person (or people) will be made at credit-reference agencies. This will link your financial records with that other person (or people) so that both (or all) of your records will be taken into account in all future applications by either or both (or all) of you. This will continue until one of you successfully files a notice with the credit-reference agencies asking for the financial association with that person to be removed.
- 18.10 If you are an individual (including, if you are a corporate body or partnership any key individuals involved in that organisation) and you would like us to tell you what information we hold about you or correct or update any inaccurate or incomplete information or if you would like to advise us of any preferences you may have concerning how you can be contacted for marketing purposes or to indicate your preferences for directory enquiries, please write to us c/o The Data Controller, Legal Department, BSAS Telecoms Ltd, Systems House, Chippenham Hill, Moulton, Newmarket, Suffolk, CB8 7PL. We may charge a £10.00 administration fee; please quote your full name, address, phone number and account number on all requests.

## **19 Access to Your Site**

- 19.1 To enable us to carry out our obligations under this Contract including without limitation, in respect of the Maintenance Service you must permit or procure permission etc for us or anyone acting on our behalf who produces a valid identity card, with access to your Site and any other premises at all reasonable times.



- 19.2 Our employees or anyone acting on our behalf will observe your reasonable regulations affecting your Site as previously advised in writing to us. In the event of any conflict in the site regulations and these conditions, these conditions will prevail.
- 19.3 You will provide a suitable and safe working environment for our employees and anyone acting on our behalf in relation to work carried out at your Site.
- 19.4 In normal circumstances, access to your Site will only be required during Working Hours. If we require access at other hours, you will permit or procure permission for us or our agents to have access to your premises and will provide such reasonable assistance and information as we request from time to time. We will routinely work during normal Working Hours. Any request by us to carry out work at other times may be refused by you. Any request by you that we carry out work at other times may be refused by us, but if accepted such work will be charged to you at our then current standard rates.

## **20 Intellectual Property**

- 20.1 Except as expressly set out in this Contract, no intellectual property rights shall transfer from us to you or vice versa. The intellectual property rights in the software we use in connection with the Service is and will at all times remain our property or that of our licensors.
- 20.2 Where software is provided to enable you to make use of the Services, we grant to you a non-exclusive non-transferable licence to use the software solely for the purpose of receiving the Services. Where any additional terms and conditions apply to your use of software we will make these known to you and you will, if requested, sign any Contract reasonably required to protect the owner's rights in the software.
- 20.3 You will not copy, decompile or modify the software without our prior written consent (except as permitted by law) and will not distribute or disclose the software to any third party.
- 20.4 You acknowledge that we have no obligation to review or edit any of your information or third party information which you store on or transmit through or use in connection with the Services. However, we reserve the right to access, retain and disclose copies of such information for the purposes of:
- 20.4.1 correcting, maintaining and improving the Services;
  - 20.4.2 complying with any Law, conditions of any Authorisation or the terms of our contracts;
  - 20.4.3 observing the performance of the Services including for Service Level monitoring;
  - 20.4.4 retaining a record of activity on our systems;
  - 20.4.5 complying with any request for information or disclosure from a court or other appropriately authorised body;
  - 20.4.6 ensuring that you are complying with our Acceptable Use Policy.

## **21 Assigning the Contract**

- 21.1 We may assign, sub-contract or otherwise transfer this Contract or any part of it to any third party in our absolute discretion.
- 21.2 You may not assign, sub-licence or otherwise transfer this Contract or any of your rights or obligations arising under it without our written consent.

## **22 Entire Agreement**

This Contract sets out the whole Contract between you and us for the provision of the Services and supersedes all prior Contracts, understandings and Contracts between us.

## **23 Waiver**

The failure or delay by us in exercising any of our rights, powers or remedies under this Contract shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by us of any right, power or remedy under this Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy. Any waiver of a breach of, or default under, any of the terms of this Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Contract.

## **24 Third Party Rights**

A third party which is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

## **25 Law and Disputes**

- 25.1 This Contract will be construed in accordance with and governed by the laws of England.
- 25.2 In the event of any dispute relating to or arising from this Contract the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

## **26 Notices**

- 26.1 Except where otherwise stated in the Contract, notices must be in writing and shall be served by hand delivering it or sending it by pre-paid first class post, or registered post, or prepaid recorded delivery or prepaid international recorded airmail addressed to you at the address shown on the Application Form or to us at BSAS Telecoms Ltd, Systems House, Chippenham Hill, Moulton, Newmarket, Suffolk, CB8 7PL or any other address as notified in accordance with this Clause or fax to the number notified by each party to the other or e-mail to the address notified by each party to the other.
- 26.2 Any such notice shall be deemed to have been received:
- 26.2.1 if hand delivered or sent by prepaid recorded or registered post or international recorded airmail at the time of delivery;
  - 26.2.2 if sent by post (other than by recorded or registered post) two days from the date of posting;
  - 26.2.3 if sent by airmail (other than prepaid recorded airmail) five days from the date of posting;
  - 26.2.4 in the case of fax, at the time of receiving a successful transmission report; and
  - 26.2.5 in the case of e-mail, a copy of the e-mail must also be sent by first class post.

## **SCHEDULE 1 Hardware Maintenance**

In this schedule, this term shall have the following meaning:

**"Maintenance Service"** means the optional Maintenance Service specified at the top of each equipment schedule page in the main body of the Contract. (This definition only applies to the maintenance service defined for particular products, therefore it probably should be linked to the 'product specific terms' later in the document (subject to clause 7.2).

### **1 The Service**

- 1.1 All work carried out is to be acknowledged by the signature of a duly authorised representative of yours.
- 1.2 In the event of this Contract being entered into at any time subsequent to the sale or delivery of the Equipment to you by us or where you have installed equipment yourselves then we reserve the right to undertake an inspection and satisfactory report by an engineer on our behalf on the condition of the Customer Equipment:
  - 1.2.1 Should we not require an inspection or if the inspection reveals the Customer Equipment to be in working order then this Contract shall immediately come into force. Where you have installed the Customer Equipment any subsequent fault calls that are the result of incorrect set-up and configuration of the Customer Equipment will not be covered by this Contract and any remedial work will be subject to the rates in force at that time;
  - 1.2.2 If the inspection reveals, in the sole opinion of our engineer, that the Customer Equipment is in need of repair then we shall notify you and, if you require, we shall carry out such repair work. Such inspection and repair work to be charged to you at the rate in force by us and any parts supplied shall be charged based on the then current manufacturing prices and the provisions under this Clause 1 shall come into force upon the signature of a duly authorised representative of yours.
  - 1.2.3 The Maintenance Service to be provided under this Contract consists of corrective maintenance in respect of faulty materials and includes all repairs, which may be reasonably necessary and the supply and fitting of replacement parts. Those replacement parts may be refurbished or reconditioned parts. An engineer will attend the Site within any of the times specified by us, within the response period as stated on the attached schedule, after a request made to us has been received in respect of a Customer Equipment fault. When replacement parts are fitted the parts removed are our property. We also have the right to use equipment of a similar or higher specification no matter what manufacturer if exact spares are unavailable for any reason at the time of a maintenance call. Such equipment will be considered to be loan equipment pending the repair or exact replacement of the original equipment and we retain all ownership rights until assigned to you.
  - 1.2.4 We will not be responsible for the repair or replacement of any consumable items.

### **2 Upgrades and Enhancements**

- 2.1 Where Upgrades or Enhancements are made to the Customer Equipment by us they shall be deemed to be included in the definition of "Customer Equipment" and shall become subject to the terms of this Contract for the unexpired term of the Contract from the date of the Upgrade or Enhancement.
- 2.2 The Charges may be increased to such sums, as we shall require taking into account the Upgrade or Enhancement referred to in Clause 2.1 above.
- 2.3 You will notify us in writing forthwith of any Enhancement or Upgrade made to the Customer Equipment that is installed by any third party.
- 2.4 Upgrades and Enhancements made to the Customer Equipment pursuant to Clause 2.3 shall be included within the definition of "Customer Equipment" and shall become subject to the terms of this Contract upon a satisfactory report by an engineer of yours on the effect of the Upgrade or Enhancement on the Customer Equipment.
- 2.5 The inspection and report referred to in Clause 2.4 shall be charged to you by us at the rate from time to time in force and shall be in addition to the sum referred to in Clause 2.2.

### **3 Retention of Title**

- 3.1 Where any Charges remain outstanding and BSAS has the right to terminate the Contract pursuant to Clause 12.2.1, BSAS shall have an additional right to retain any customer Equipment until such time as the charges have been paid in full.

**SCHEDULE 2**  
**Circuit Provision**

- 1 The volume of traffic routed to and from you will be sampled by us every 5 minutes, 24 Hours per day, Monday to Friday.
- 2 For the purposes of this Contract the "Upgrade Level" relating to 'burstable' bandwidth services is deemed to have been reached if over a period of five consecutive sample days the user exceeds the existing speed capacity (as referred to in the circuit provision section of the Order Form) in more than 50% of the samples in either direction.
- 3 If upon receipt of written notification from us that the "Upgrade Level" has been reached, and that the user continues to use the Service at the "Upgrade Level" for another five consecutive sample days taken over a two month period, then the user shall be obliged to purchase the next higher level of capacity offered by the supplier for such Services. (see 2 above)

**SCHEDULE 3**  
**MailController Service**

1. No anti-virus or anti-spam software can guarantee a 100% detection rate and, therefore, we cannot accept any responsibility whatsoever for any viruses or spam sent or received by you. Please refer to Clause 16 of the Contract below and our exclusion/limitation of liability in this regard.
2. We will use reasonable endeavours to maintain and update the BSAS Software as soon as its licensors make any appropriate upgrades or enhancements to the BSAS Software.
3. You are responsible for the content of all e-mails including attachments we scan on your behalf and you will indemnify us against all actions, claims, expenses and liabilities of every description arising either directly or indirectly from the provision of the Service to you including, without limitation, all such losses, costs, charges and expenses suffered or incurred by us in disputing any claim, action, liability, demand or proceedings which may arise directly or indirectly in relation to the Service.
4. We recognise and confirm that the content of all e-mails scanned on your behalf by the software is confidential and we will use reasonable endeavours to keep confidential information received by it from you or for you in connection with the Service. However, we reserve the right to disclose such information (to the extent we consider reasonably necessary) for the purposes of:
  - 4.1 maintaining and improving the performance and the integrity of the software and our systems;
  - 4.2 observing, studying and/or testing the functioning of the Service;
  - 4.3 complying with all regulatory, legislative or contractual requirements; and
  - 4.4 making available to our licensors of the software any information passing through our systems which may be of interest to our licensors solely for the purpose of further developing and enhancing the software. and we reserve the right to retain copies of information entering our systems as may be necessary from time to time for each purpose.
5. Virus-infected and spam e-mails, which are stored on our quarantine servers, will be deleted after a period of 30 days all other email may be selectively stored in part or in full for the purposes of statistical comparison and held up to a maximum of 30 days.. Should you deliver or forward a virus infected or spam e-mail to you from the quarantine, this will be done at your risk and we will take no responsibility whatsoever for any loss, corruption or failure of any data or systems. We will under no circumstances transmit virus infected or spam e-mails from quarantine to third parties on your behalf.
6. It is the inherent nature of viruses and spam that they are developed faster than the software developed to curb them. Therefore, we do not warrant, represent or guarantee in any way whatsoever that the software will ensure that no viruses or spam are contained in e-mails sent by or to you or that the Service will be uninterrupted or error-free.

## SCHEDULE 4 Data Centre Service

1. You or your agents or sub-contractors may access your equipment (see definitions) in the Data Centre at any time, by prior appointment, during Working Hours. We must be notified of third party visitors in advance in writing no less than 24 hours in advance. By prior written agreement access can also be authorised via phone calls using a verbal password.
2. You (and your personnel, representatives, agents or suppliers) shall comply with our reasonable security, safety and site requirements as may be notified by us to you from time to time and shall not cause any damage to the Data Centre or any other equipment at the Data Centre and you shall immediately make good any damage caused.
3. You or your agents or sub-contractors must escort third parties at all times and ensure that they abide by all Data Centre rules issued from time to time including signing the visitors' book on arrival and departure. Failure to comply with this Clause may result in us refusing entry to the Data Centre and we will not be liable for any consequences of such refusal of entry.
4. If there is an overdue invoice on your account, we reserve the right to not grant you or your sub-contractors or agents access to the Data Centre.
5. The Data Centre machine room area must be kept clear of all food, drink, liquids or packaging of any sort.
6. Equipment may only be unpacked in the Data Centre area designated for such purpose as directed by our staff and you must remove all waste packaging materials from the building and surroundings. At our discretion we reserve the right to make a disposal Charge for any waste material not removed.
7. You must confine your movement in the Data Centre to your designated rack area and any other areas designated by our staff for you to work. You must not touch or tamper with any equipment other than your own or engage in any activity liable to disrupt Service to our other clients. You must not obstruct the access areas between cabinets.
8. You may make cabling changes in the Co-location Space within your own rack if you are the sole occupier of that rack. Except as stated above you are not permitted to lay cables in the Data Centre nor to raise any floor tiles. Any cabling changes will be carried out by us or our sub-contractors to your requirements and at your expense.
9. You must not move your equipment outside its allocated rack space in the Co-location Space or connect it to any other equipment without our prior written permission.
10. You must notify us of any Data Centre installation or delivery of any type at least 24 hours in advance giving details of quantity and type of all items to be delivered. Deliveries not notified in this way may be rejected and we will not be liable for any consequences of such rejection.
11. All packages delivered to the Data Centre must be clearly marked with your identity and details of contents and will be stored in a secure area for a maximum of fourteen days, after which you must move them to your Co-location Space. We reserve the right to charge reasonable storage fees for any such packages and to open and inspect them for security purposes.
12. All Customer Equipment in the Data Centre must be clearly marked with your identity and you must always leave the work area clean and tidy.
13. You will remain fully responsible for the risk to your equipment (and any software or data stored on your equipment) at the Data Centre. You undertake to obtain and maintain the following insurance in respect of your equipment (and any software or data stored on your equipment):
  - 13.1 cover in an amount equal to the full replacement value of your equipment (and its software or data) against fire, theft, accidental damage and all other risks; and
  - 13.2 public liability insurance with cover in an amount not less than £5,000,000 per annum.
14. On request you will provide us with certificates of cover in respect of the required insurance and evidence of payment of premiums.
15. You are responsible for:
  - 15.1 ensuring that your Customer Equipment meets the minimum technical specifications as notified by us required to be compatible with the Services;
  - 15.2 ensuring that your Customer Equipment is supplied and maintained in a safe condition, in good working order and that it complies with all applicable legislation or regulations;
  - 15.3 obtaining all required licenses or other consents to enable us to have access to and use of your Customer Equipment for the purpose of providing the Services including but not limited to any license rights in respect of software which forms a part of your Customer Equipment. You are solely responsible for any costs associated with obtaining such licenses and consents.
16. You agree to indemnify us against damage to ours or third party property, personal injury, business interruption, claims from third parties and all other risks which may arise from your act or failure to act.
17. We cannot be held responsible for any loss or damage, either direct or consequential, to your equipment whilst collocated in the Data Centre.
18. You or your agents, employees or sub-contractors must not breach any lease, Licence, agreement, legislation, regulation or order affecting the use of the Data Centre.
19. On Termination of this Contract for any reason you must, at your own expense, remove all your Customer Equipment from the Data Centre and leave the Data Centre in an orderly and clean condition. If you fail to comply with this Clause within 3 days of Termination we reserve the right to disconnect the power to and/or remove your Customer Equipment to a storage location and charge you for storage at a rate that we specify at the time. We will not be liable for any consequences of such disconnection or removal.

**SCHEDULE 5**  
**WebController Service**

1. BSAS emphasises that the configuration of the Service is entirely in your control. BSAS recommends that you have an acceptable Internet usage policy in place, referring in particular to the possibility of employees' personal data being transferred outside the EEA. In certain countries it may be necessary to obtain the consent of individual employees before filtering Web Content.
2. We will use reasonable endeavours to maintain and update the BSAS Software as soon as its licensors make any appropriate upgrades or enhancements to the BSAS Software.
3. If at any time provision of the Service to you would compromise the security of the Service due, without limitation, to hacking, denial of service attacks, flooding or other malicious activities originating from or directed at your network, BSAS reserves the right to suspend all or part of the Service immediately and until the problem has been resolved. In such an event, BSAS will promptly inform you and work with you to resolve such issues in order to reinstate the Service at the earliest possible opportunity.
4. You recognise that Web Content sent to and from you from and to third parties will pass through the Service and accordingly you agree to:
  - 4.1 comply with all relevant legislation applicable to the use of the Internet;
  - 4.2 comply with BSAS Acceptable use policy
  - 4.3 use the Service for legitimate business purposes only, which include the sending and receiving of business and personal Web Content by your employees;
  - 4.4 indemnify BSAS against any liability to third parties resulting from information passing through the Service from you.
  - 4.5 you agree not to use the Service for any unlawful purpose and to indemnify BSAS against all and any losses, costs and expenses which BSAS may incur by such unlawful activities, including but not limited to:
    - 4.5.1 civil or criminal offences of intellectual property rights infringement, including but not limited to copyright, trade mark and patent infringement; or
    - 4.5.2 transmission or posting of obscene, indecent or pornographic materials; or
    - 4.5.3 carrying out any criminal offence under the Computer Misuse Act 1990 or any similar legislation; or
    - 4.5.4 transmission or posting of any material which is defamatory, offensive, abusive, or menacing or which causes annoyance or needless anxiety to any other person, or which is subject to the Official Secrets Acts; or
    - 4.5.5 transmission or posting of any material in breach of the Data Protection Act 1998 or any similar applicable legislation; or
    - 4.5.6 use of the Service in any manner which violates or infringes the rights of any individual, organisation or company within the United Kingdom and elsewhere; provided that under no circumstance shall you have any liability for any consequential or indirect losses.
- 4.6 You agree to comply with the reasonable standards and protocols published on the Internet from time to time and adopted by the majority of Internet users.
- 4.7 You must have the necessary authority, rights or permissions (whether by domain registration or otherwise) to use all domains registered to the Service.
- 4.8 In the event you fail to comply with any obligations set out in this Clause 4, BSAS may at any time suspend the Service until you pay the Service Fees or, as appropriate, provide reasonable security on terms that are reasonably acceptable to BSAS.