

TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

BROADBAND

Please read these terms and conditions carefully as they apply (to the exclusion of any other terms and conditions) to the sale and supply of Services by us to you. They include important sales and product information relating to our Services and form the basis of any agreement between us should you wish to proceed with an order.

1. INTERPRETATION

1.1 In these Conditions:-

“Acceptable Use Policy”	the Company’s acceptable use policy for the use of the Services as notified by the Company to the Customer from time to time and available on-line at [bnstele.com/];
“Charges”	means the charges for the provision by the Company of Services during the Contract Period (and any continuation thereof) as amended from time to time in accordance with clause 8;
“Company Equipment”	means such equipment owned or used by the Company as is necessary to provide the Services;
“Company Network”	means the high speed network access to the internet operated and maintained by the Company;
“Contract”	means the contract for the provision of the Services subject to these Conditions;
“Contract Period”	means a period of [12] [24] [36] months from the Service Commencement Date or such shorter period as stated on the Order Form;
“Conditions”	means the terms and conditions set out below;
“Company”	means BNS Telecom Limited (registered in England and Wales under number 3228233);
“Customer”	means the person set out in the Contract;
“Customer Equipment”	means any equipment (including without limitation cabling, wiring, personal computers, network interface cards and network interface adapters) not forming part of (but which may be connected to) the Company’s Equipment and used by the Customer in conjunction with any Company Equipment in order to obtain or use the Services;
“Equipment”	means one or more of the Company Equipment and the Customer Equipment as applicable;
“Force Majeure”	means any circumstances preventing either party from performing any or all its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the

	party so prevented;
“Installation Charge”	The installation charge set out in the Price Guide and payable by the Customer for the installation of Company Equipment unless otherwise agreed by the parties;
“Law”	means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which a party is from time to time subject;
“Order Form”	means the Company’s order form completed by (or on behalf of) the Customer and accepted by the Company to order the Services subject to the Contract;
“Price Guide”	means all and any information relating to Charges for the Services, installation and/or the use of Company Equipment, available on request from the Company;
“Service Commencement Date”	means the earlier of:- (i) the date the relevant Service is available for use by the Customer; or (ii) the date the Customer first uses the Services;
“Service Care Level “	means the service care level specified in the Customer’s order and being either Standard Care (where the Company’s response time for any Service faults is 40 clock hours) or Enhanced Care (where the Company’s response time for any Service faults is 20 clock hours);
“Services”	means the provision by the Company of such of the Company’s Equipment and services to enable the Customer to access the Company Network, internet services, helpdesk services and applications over and via the Company Network and shall include (where requested on the Order Form by the Customer), the provision by the Company of such services to enable the Customer to obtain e-mail accounts, webspace, and/or domain name registration(s) ;
“Site”	means the site (or sites) to which the Services shall be provided;
“Survey”	means any survey or other investigations carried out by or on behalf of the Company that the Company in its absolute discretion deems necessary prior to the provision of the Services; and

1.2 In these Conditions:-

- 1.2.1 any gender includes any other gender;
- 1.2.2 headings shall not affect interpretation;
- 1.2.3 a “person” includes any person, partnership, firm, company (as defined in Section 735 Companies Act 1985), body corporate or corporation (as defined in Section 740 Companies Act 1985) or organisation;

- 1.2.4 any reference to a statutory provision includes a reference to any modification or re-enactment of the provision from time to time in force; and
- 1.2.5 references to “the Contract”, “the Services” or any payment includes any part of any of them.

2. **BASIS OF SERVICES PROVISION**

- 2.1 The Company shall sell and the Customer shall purchase the Services set out on the Order Form subject to these Conditions, which supersede any other terms and which govern the Contract to the exclusion of any terms and conditions which the Customer purports to apply or which are implied by trade, custom or course of dealing.
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer’s order or other document will form part of the Contract simply as a result of such document being delivered to the Company or referred to in the Contract.
- 2.3 Any variation to these Conditions is of no effect unless agreed in writing by a director of the Company.
- 2.4 These Conditions constitute the entire agreement between the Customer and Company for the provision of the Services.
- 2.5 The Company’s employees or agents are not authorised to make any representation concerning the Services unless confirmed by the Company in writing, and the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such unconfirmed representation (unless such representation is made fraudulently).
- 2.6 Any advice or recommendation given by the Company or its employees or agents to the Customer as to the application or use of the Services which is not confirmed in writing by a director the Company is followed or acted upon entirely at the Customer’s own risk.
- 2.7 Any typographical, clerical or other error or omission in any document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.8 The Customer acknowledges that the Services are being purchased as part of a business to business transaction and that the Consumer Protection (Distance Selling) Regulations 2000 do not apply.

3. **QUOTATIONS, ORDERS AND SPECIFICATIONS**

- 3.1 A quotation by the Company is not an offer. Quotations are valid for 30 days only and subject to withdrawal or revision at any time before acceptance of the Customer’s order by the Company.
- 3.2 Each order for Services by the Customer is an offer by the Customer to purchase the Services subject to these Conditions. To order Services, the Customer must comply with and submit the Company’s standard Order Form.
- 3.3 No Order Form submitted by the Customer by whatever means is accepted by the Company until the Company confirms its written acceptance or (if earlier) the Company supplies the Services to the Customer.

- 3.4 The Customer must ensure that the terms of any order included on an Order Form (including any specification) are complete and accurate and that the Company is provided with any necessary information relating to the provision of Services within sufficient time to enable the Company duly to perform the Contract.
- 3.5 Notwithstanding clause 3.2, if at its discretion the Company accepts an order for Services placed other than on its standard Order Form (a "Customer Order Form") or if the Company installs a Service without having received from the Customer and/or accepted either the Company's standard Order Form or a Customer Order Form, the Services shall be provided in accordance with the terms of the Contract.
- 3.6 The Company reserves the right to make any changes in the specification of the Services which are required for such Services to conform with any applicable Law or, where the Company Equipment or Services are to be supplied to the Customer's specification, which do not materially affect their quality or performance.
- 3.7 Subject to satisfactory Survey, the Company shall use its reasonable endeavours to connect any Company Equipment so that the Services are available by any requested service date. An order may be cancelled by the Company without liability if the results of any Survey are, in the Company's reasonable opinion, unsatisfactory or if it is not technically feasible to implement and/or support the Services by the requested service date.

4. **CUSTOMER EQUIPMENT**

- 4.1 The Company shall have no liability for any loss or damage arising directly or indirectly from use of the Customer Equipment whether or not the Company shall have recommended the use and/or performance of such Customer Equipment.
- 4.2 Unless otherwise agreed in writing, the Customer is responsible for ensuring that the Customer Equipment is programmed, equipped, compatible and connected for use of the Services in accordance with the Company's reasonable instructions and any other instructions or safety and security procedures applicable to the use of Customer Equipment.
- 4.3 The Customer must ensure that all Customer Equipment is in good working order and complies with applicable standards, approval and any relevant Law. The Company may require the Customer to disconnect (in which case the Customer must do so promptly) or may itself disconnect any Customer Equipment if in the Company's reasonable opinion:-
 - 4.3.1 it does not conform to applicable standards, approvals or any relevant Law for the time being in force; or
 - 4.3.2 it may cause injury to any person or material damage to property; or
 - 4.3.3 it may materially impair the quality of any Services provided by the Company.
- 4.4 The Company has no liability whatsoever where any inability to use the Services is due to incompatibility between Customer Equipment and the Company Equipment or for any breakdown or failure in Customer Equipment.

5. **SERVICE REQUIREMENTS**

- 5.1 Before the Company can agree the Customer's request to subscribe to the Services, the Customer:-

- 5.1.1 must ensure it has an existing BT telephone landline at the location to which the Customer has requested that the Company provide the Services. The Company will verify this by carrying out a successful test on the telephone number which the Customer has given to the Company on the Order Form or otherwise in accordance with clause 3.5;
 - 5.1.2 shall cancel any other broadband access service supplied by another company through the BT telephone landline that the Customer wishes to use to receive the Services;
 - 5.1.3 must ensure it has a suitable computer and compatible cables from the Customer's telephone socket to the Customer's modem and computer. The minimum specifications are set out at [www.bnstele.com/]; and
 - 5.1.4 may be subject to a credit reference check carried out by the Company if the Company, in its sole discretion, considers this necessary.
- 5.2 In certain limited circumstances, the Company may not be able to provide the Customer with the Services for technical reasons. If this happens the Company shall use its reasonable endeavours to promptly inform the Customer of this.
- 5.3 Once the Company confirms its agreement to the Customer's request to subscribe to Services, the Company will arrange for the Customer to start to receive the Services within approximately 10 days. Although the Company will use reasonable efforts to meet this date, it is not able to guarantee this date. The Company shall use its reasonable endeavours to inform the Customer of any delay.
- 5.4 If the Customer moves location or changes the telephone number of the BT telephone landline to which the Customer connects to the Services, the Customer must inform the Company immediately. The Customer may still be able to continue to receive the Services, however the Company may charge the Customer an additional fee for doing this. The Company will inform the Customer of the amount of this fee is prior to charging the Customer. In the event that the Customer moves location or changes the Customer's telephone number, the Customer's contract with the Company for the Services will continue until it is ended in accordance with clause 14, below.
- 5.5 Where the Customer is provided with software on a CD or where the Customer downloads software from the Internet to enable use of the Services, the Company agrees to the Customer's use of such software on the basis that the Customer uses it solely for the purpose of receiving the Services and, in particular, the Customer must not make additional copies or modify the Company's software in any way without the Company's permission. The Company may from time to time offer the Customer updates to such software.
- 5.6 The Company will use its reasonable endeavours to provide the Services to the Customer up to the data transmission speed requested by the Customer, however the Company cannot guarantee this. In particular, the speed of the Customer's connection and download times may be slower if the Company Network or the Internet is congested.

6. **COMPANY EQUIPMENT**

- 6.1 Title in any Company Equipment remains with the Company at all times.

- 6.2 The Company Equipment is at the risk of the Customer from the time of delivery. If the Customer damages or loses the Company Equipment or any part thereof, the Company may require the Customer to reimburse its reasonable charges for the repair or replacement of such Company Equipment, or part thereof.
- 6.3 The Customer must:-
- 6.3.1 maintain the Company Equipment in a satisfactory condition insured on the Company's behalf for their full price against all risks;
 - 6.3.2 hold the proceeds of insurance referred to in clause 6.3.1 on trust for the Company and not mixing with any other money not pay the proceeds into an overdrawn account.
- 6.4 In order to verify the Customer's compliance with its obligations under clause 6.3 and to exercise its rights in clause 6.5, the Company shall be entitled by its employees or agents without notice to enter the Customer's Site or such other premises where the Company Equipment is located.
- 6.5 The Customer's right to possession of the Company Equipment terminates immediately if any of the events set out in clause 14 occurs and in such circumstances the Customer must return such equipment to the Company (at the Company's expense) on request. In the event that the Customer fails to return any Company Equipment when requested, the Company shall be entitled to recover the Company Equipment in accordance with clause 6.4.
- 6.6 The Customer shall provide a suitable place and conditions for the Company Equipment (including a continuous mains electricity supply and connection points at the Customer's own expense whether the Company Equipment require such services) at the Customer's Site or in such other locations as may be nominated by the Customer so as to enable the Company to supply and continue to supply the Services (without cost to the Company) and shall prepare such site or location at its own expense in accordance with the Company's reasonable instructions.
- 6.7 Where the Company provides the Customer with software to enable the Customer to access and use the Company Network and the Services, the Customer shall not copy or modify this software without the Company's prior written consent. Any software provided by the Company is for the Customer's use only. The Customer shall not sell, transfer, assign or sub licence the software or any part of it to any third party.

7. **CANCELLATION AND DELAY**

- 7.1 No order may be cancelled by the Customer once accepted by the Company except with the Company's written agreement and on terms that the Customer shall indemnify the Company against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- 7.2 If the Customer extends or delays the Contract or fails to take delivery of any Company Equipment at the agreed time then the Customer shall indemnify the Company against all loss (including loss of profit), costs (including the cost of storage and all labour and materials used), damages, charges and expenses incurred by the Company as a result of such extension, delay or failure.

- 7.3 The Company reserves the right to defer the date of performance or to cancel the Contract without liability to the Customer if it is prevented from or delayed in carrying on its business by reason of Force Majeure. In such circumstances, the Customer may also give written notice to cancel the Contract if the cause in question continues for a continuous period in excess of 180 days but in any event shall remain liable to pay for Services delivered or supplied prior to such cancellation by the Company or the Customer.

8. **CHARGES**

- 8.1 The Charges for the provision of Services are the Company's quoted Charges or, where no Charges have been quoted (or a quoted Charge is no longer valid), the Charges listed in the Company's Price Guide at the date of provision of Services.
- 8.2 The Company reserves the right at any time before delivery or performance to amend the Charges for the Services to take into account any variation in cost to the Company.
- 8.3 The Charges are exclusive of any applicable VAT.
- 8.4 The Charges exclude the Installation Charge which is payable on the installation of any Company Equipment unless otherwise agreed by the parties.
- 8.5 Charges for the Services are as referred to in the Price Guide or as otherwise agreed in writing (including the Order Form). Notwithstanding the aforesaid, Charges are subject to confirmation by the Company. If following any Survey (or other investigation) the Company concludes that it will incur unusual additional costs in providing the Services, the Company shall be entitled, on notification to the Customer, to increase the Charges by the amount of such costs. Where the Customer does not accept such increased Charges, the Contract will come to an end.
- 8.6 Other than as set out in clause 8.5 the Company may increase or implement new Charges by giving the Customer 30 days' written notice. Without limitation such notice may be contained in billing information provided to the Customer by the Company. The Company may decrease charges at any time without notice.
- 8.7 The Customer acknowledges that the Charges for the Services are comprised of a number of components, including (but not limited to), minimum charges, connection costs, configuration costs and minimum access times, as detailed in the Price Guide. The Customer further acknowledges that the Charges levied for the Service components are subject to change and any increase or decrease in such component Charges payable or recovered by the Company as a result of changes implemented by the Company or third party suppliers shall be applied to the account of the Customer following notification of such changes by the Company.
- 8.8 Failure by the Customer to access the Company Network and Services at any time shall not relieve the Customer of its obligation to pay the Charges so long as this Contract remains in force.

9. **PAYMENT OF THE CHARGES**

- 9.1 Payment of the Charges for the Services (unless otherwise agreed in writing by a director of the Company) shall be paid by direct debit or such other means of electronic funds transfer as the Company shall decide and shall be due 14 days after the date of the Company's invoice.

- 9.2 Unless otherwise agreed by the parties, payment of any Installation Charge is due immediately upon installation of any Company Equipment.
- 9.3 The Customer authorises the Company to alter the Customer's direct debit instructions according to the relevant Charges from time to time applicable to the Services. On proper termination of the Contract the Customer shall be responsible for the cancellation of any direct debit instructions or other authorisations for periodic payment to the Company. Except on proper termination of the Contract the Customer acknowledges that it must inform the Company immediately if it proposes to cancel any direct debit instructions. Cancellation of any direct debit instruction shall entitle the Company to suspend and/or terminate the Contract without notice.
- 9.4 Time of payment is of the essence.
- 9.5 For the purposes of this Contract, payment is received when the Company receives it in cleared funds.
- 9.6 Payment by the Customer or on its behalf shall be made without any deduction or set off.
- 9.7 The Company reserves the right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002.
- 9.8 Despite any provision allowing credit, payment is due and payable to the Company immediately upon cancellation or termination of the Contract.
- 9.9 If the Customer fails to make any payment on the due date then Charges for all Equipment or Services provided or agreed to be provided to the Customer shall be immediately due and payable without demand and the Company may:-
- 9.9.1 cancel the Contract or suspend performance to the Customer in accordance with clause 10; and/or
 - 9.9.2 appropriate any payment made by the Customer to such of the Services (or the goods or services supplied under any other contract between the Customer and the Company) as the Company thinks fit.
- 9.10 The Company is entitled to set off sums owed by the Company to the Customer against sums owed by the Customer to the Company.
- 9.11 If payments received from the Customer are not stated to refer to a particular invoice the Company may appropriate such payments to any outstanding invoice.

10. **SERVICE PROVISION AND USE OF THE SERVICES**

- 10.1 The Company shall provide the Services in accordance with the Contract.
- 10.2 The Customer must promptly supply the Company with all information and materials reasonably required by the Company to supply the Services.
- 10.3 The Company shall use the reasonable skill and care of a competent internet service provider in providing the Services. However the Customer accepts that it is technically impracticable to provide the Services entirely free of faults and the Company does not undertake to do so.

- 10.4 The Company shall issue the Customer with a user name and password for each user account registered to receive the Services. The Customer agrees to keep such user names and passwords secure and confidential and to use them only in accordance with the Company's instructions.
- 10.5 The Customer undertakes to comply with the Acceptable Use Policy when accessing the Company Network and using the Services.
- 10.6 The Customer undertakes to use the Equipment and Services in accordance with such conditions and/or instructions as may be notified in writing to the Customer by the Company from time to time and in accordance with Law and the Contract. The Company may from time to time vary the technical and/or operational procedures for use of the Services.
- 10.7 If the Company, acting reasonably, suspects a breach of security or misuse of a user account, it may:-
 - 10.7.1 change any password allocated to the Customer provided that the Company will always notify the Customer of such a change and/or;
 - 10.7.2 suspend username and password access to the Services.
- 10.8 The Customer shall notify the Company as soon as is reasonably possible upon becoming aware that any username or password allocated to it has become known by someone not authorised to use it, or if any password has been or is likely to be used in an unauthorised way.
- 10.9 The Customer must not use or allow anyone else to use the Services:-
 - 10.9.1 to send or receive a communication which is offensive, abusive, indecent, obscene or menacing;
 - 10.9.2 to cause annoyance, inconvenience or needless anxiety to anyone;
 - 10.9.3 to spam or send or provide unsolicited advertising or promotional material, or knowingly to receive responses to any spam, unsolicited advertising or promotional material sent or provided by any third party;
 - 10.9.4 to violate or infringe the rights of any person;
 - 10.9.5 in a way that does not comply with the Acceptable Use Policy and/or the Company's instructions;
 - 10.9.6 in breach of the Contract; or
 - 10.9.7 in breach of Law.
- 10.10 The Customer shall not sell, transfer, assign or sub-licence any aspect of the Services or any associated software to any third party.
- 10.11 The Company may at its discretion suspend the Services and/or terminate the Contract if the Customer is in breach of the Contract. The Customer must indemnify and hold harmless the Company against all liabilities, claims, damages, losses and proceedings arising out of or in any way connected with any use of the Services in contravention of clause 10.9.

- 10.12 Where, in accordance with the Contract the Company suspends performance of or access to the Services in accordance with clause 10.11 or any username or password in accordance with clause 10.7:-
- 10.12.1 site-barring may be implemented, restricting access to and/or from the Company Network;
 - 10.12.2 user accounts and Services may be designated “temporarily out of service”; and
 - 10.12.3 disconnection of the Services and the Customer’s ability to access the Company Network.
- 10.13 Following a suspension of Services or any username/password and a rectification by the Customer of any breach of contract or any security breach (as applicable), the Company shall use its reasonable endeavours to resume access to the Services for the Customer within a reasonable time. The Customer acknowledges that the period of time to enable Services to be resumed is dependent upon the manner of suspension employed by the Company and, as a minimum, periods for resumption of Services would be as follows:-
- 10.13.1 site-barring or reactivation of username/password – 8 hours;
 - 10.13.2 user accounts temporarily out of service – 48 hours; and
 - 10.13.3 disconnected user accounts – 14 days.
- 10.14 The Customer acknowledges that following a suspension of Services resulting in disconnection under clause 10.12, a re-connection charge may (at the discretion of the Company) be levied by the Company in accordance with its price list in force from time to time.
- 10.15 In order to maintain the quality and safety of the Services, the Company may from time to time suspend, close down or restrict the whole or any part of the Services in order to carry out emergency or other repairs, maintenance and/or improvements or to prevent overload of the Company Network or to preserve the safety, security or integrity of the Services and any internet traffic conveyed. The Company will give the Customer as much notice as is reasonably possible before doing so and will endeavour to carry out such works within its scheduled maintenance periods as published by the Company from time to time.
- 10.16 The Company shall provide (or procure the provision of) Service Care Level in relation to the Services or Company Equipment as the Customer has requested on the Order Form.
- 10.17 If a fault in the Services or Company Equipment is reported by the Customer, in accordance with the applicable Service Care Level, and:-
- 10.17.1 the Company make arrangements to visit the Site and are unable to obtain the necessary access to the Site; or
 - 10.17.2 the Company undertake work to correct the fault but find no fault present, or find that a fault has been caused by the act or omission of the Customer; or
 - 10.17.3 the Company agrees to attend a Site outside the normal working hours appropriate to the applicable Service Care Level,

the Company may charge the Customer in respect of such actions in accordance with the Price Guide.

10.18 The Company shall be entitled by its employees or agents without notice to enter the Customer's Site premises where the Services are being provided from time to time in connection with installation of the Services, repairs, maintenance or upgrades or to inspect or recover Company Equipment in accordance with clause 6.4. Each party shall use its reasonable endeavours to minimise the disruption caused to the other party and its business when arranging and conducting any such access.

11. **DOMAIN NAME SERVICES**

11.1 Where the Company agrees to provide the Customer with domain name services as part of the Services, the following provisions will apply:-

11.1.1 the Customer warrants that it is the owner of, and/or it has the full rights to use any trade or other name or mark requested by or allocated to it;

11.1.2 the Company cannot guarantee that any domain name requested by the Customer will be available for use by the Customer;

11.1.3 in the event that the Company has reasonable grounds to believe that the use by the Customer of any domain name allocated to it is or is likely to breach clause 11.1, above, the Company in its sole discretion may cease to provide such domain name and ask the Customer to choose a replacement;

11.1.4 the Customer acknowledges that internet domain names are registered and/or provided in accordance with all the terms and conditions issued by the regulatory body responsible for the registration and maintenance of such domain names and the Customer agrees to comply with all terms and conditions issued by such regulatory bodies;

11.1.5 the Company accepts no responsibility in respect of the use of any domain name by the Customer and any dispute between the Customer and any other individual or organisation regarding a domain name must be resolved between the parties concerned and the Company will take no part in any such dispute; and

11.1.6 the Customer acknowledges that all static IP addresses allocated to it by the Company are offered on a rental basis only and remain the property of the Company at all times.

12. **LIMITATION OF LIABILITY**

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

12.1 The following sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Customer in respect of any breach of these Conditions, any representation, statement or act or omission (including negligence) arising under or in connection with the Contract and in respect of any contemplated performance or lack of performance.

12.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.

12.3 Nothing in these Conditions excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.

12.4 Subject to clauses 12.2 and 12.3:-

12.4.1 the Company shall not be liable to the Customer for any loss of profit, loss of production, financial loss, depletion of goodwill or for any loss or corruption of data or any indirect loss, damage, costs or expenses whatsoever which arise out of or in connection with the Contract, its contemplated performance or lack of performance or any suspension of Services in accordance with clause 10; and

12.4.2 subject to clause 12.4.1, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of this Contract shall be limited to the Charges incurred by the Customer in any 12 month period.

12.5 The Customer acknowledges that access to and use of the internet is at its own risk and accordingly the Company accepts no liability in respect of any goods, services, information, software or other materials obtained by the Customer when using the internet, nor in relation to the publication, transmission or reception of any material or information of any kind other than that provided by the Company.

13. **INDEMNITY**

The Customer agrees to indemnify the Company against any damages, losses, costs, claims or expenses incurred by the Company towards a third party arising out of or in connection with the Services provided by the Company or their operation or use and whether arising by reason of the negligence of the Company or otherwise and any allegation by a third party that the use of the Services and/or Equipment by the Customer or pursuant to this Contract, has infringed any intellectual property rights or other rights of that third party.

14. **DURATION AND TERMINATION**

14.1 In relation to the Services, the Contract shall come into effect on the earliest of the dates the Customer signs the Order Form or the Service Commencement Date.

14.2 The Contract shall continue in force unless either party terminates the Contract by giving the other party 90 days' written notice, or such shorter period as the Company may agree. Such notice period shall not be valid unless it expires on or after the end of the Contract Period.

14.3 Notwithstanding clause 14.2 the Company may terminate the Contract immediately on written notice if:-

14.3.1 any Survey is not, in the Company's discretion, satisfactorily completed;

14.3.2 the Customer is the subject of bankruptcy or insolvency proceedings in the United Kingdom or elsewhere, a liquidator, trustee in bankruptcy, receiver or administrator (or equivalent) is appointed over any of the Customer's assets or the Customer enters into any formal or informal composition or arrangement (or equivalent) with the creditors of the Customer or the Company reasonably believes that such events are reasonably likely to occur. For the purposes of this clause 14.3.2 the Customer

shall include the Customer's direct and/or indirect parent company and "Customer" shall be interpreted accordingly;

- 14.3.3 the Customer makes a material mis-statement in the details the Customer has supplied to the Company to enable the Company to provide the Services;
 - 14.3.4 the Customer materially breaches (including without limitation failure to pay any Charges promptly) the Contract or any other agreement the Customer may have with the Company or a member of the Company's group;
 - 14.3.5 the Company suspects on reasonable grounds that the Customer may have committed or may be committing:-
 - (a) a breach of Law; and/or
 - (b) any fraud against the Company or any third party.
 - 14.3.6 the Customer fails to meet a reasonable standard of creditworthiness; or
 - 14.3.7 any contract between the Company and a third party provider of telecommunications services is terminated where such termination affects the provision of the Services.
- 14.4 If the Company requests the Customer to do so but the Customer fails to return to the Company (or as otherwise notified to the Customer by the Company) the Order Form duly signed by the Customer within 14 days of the Service Commencement Date (or any other date notified to the Customer by the Company) the Company shall be entitled (but not obliged) without notice to terminate the Contract or, without prejudice to its right so to terminate, to downgrade or suspend the Services as it thinks fit.
- 14.5 Although the Company carries out a line test on the Customer's BT telephone landline prior to accepting the Customer's request to receive the Services, in certain limited circumstances that are beyond the Company's control this line test may prove false. As a result the Company will not be able to provide the Services to the Customer. The Company shall use its reasonable endeavours to notify the Customer as soon as possible of such an event and the Contract will end. In such circumstances, the Company will provide the Customer with a full refund for any charges the Customer has already paid to the Company.

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 14.6 **On termination of the Contract by reason of the Customer's breach of the Contract or other default, the Customer shall be liable to pay to the Company 25% of the Charges that would otherwise have been payable by the Customer during the Contract Period. Such sum to be calculated by taking the average monthly Charges incurred during the period from the Service Commencement Date to the date of termination multiplied by the number of months remaining in the Contract Period. Such sums shall be paid by way of liquidated and ascertained damages by the Customer to the Company and such sums are accepted by the parties as being a genuine pre-estimate of the net losses likely to be suffered by the Company in such an event.**
- 14.7 Save where the Contract is terminated by the Company in accordance with clause 14.5 on termination or expiry of the Contract the Customer shall remain liable for all Charges incurred by the Customer through the use of the Company Network pending transfer of the

Services to an alternative provider and for the Installation Charge for any Company Equipment installed at its premises unless this has already been paid or the requirement to pay such charge has been waived by the Company.

- 14.8 The right to terminate the Contract shall not prejudice any other right or remedy of the Parties in respect of any rights, obligations or liabilities accrued prior to termination (including, without limitation, termination under clause 7.3.

15. **HEALTH AND SAFETY**

The Customer agrees to:-

- 15.1 pay due regard to all information supplied by the Company relating to the use of the Equipment necessary to ensure the Equipment will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person;
- 15.2 indemnify the Company in respect of any and all claims arising from the Equipment being unsafe as a result of the Customer's activities.

16. **GENERAL**

- 16.1 The Company is a member of a group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights by itself or through any other member of its group.
- 16.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company, whether or not under the Contract.
- 16.3 If any provision of the Contract is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall (subject to termination at the discretion of the Company), continue in full force and effect.
- 16.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.
- 16.5 Any disputes between the parties arising out of or in connection with the Contract shall be determined in accordance with the Company's service charter in force from time to time, which is available from the Company on request or on-line [bnstele.com/].
- 16.6 Any waiver by the Company of any breach by the Customer is not a waiver of any subsequent breach.
- 16.7 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.
- 16.8 Notices addressed to the Company shall be marked for the attention of the Company Secretary.
- 16.9 Notices shall be delivered personally or sent by first class post or sent by facsimile transmission.
- 16.10 A notice is deemed to have been received:-

- 16.10.1 if delivered personally, at the time of delivery;
 - 16.10.2 if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting);
 - 16.10.3 if sent by facsimile transmission, on a working day prior to 4.00pm at the time of completed transmission and otherwise on the next working day.
- 16.11 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

17. **ASSIGNMENT**

- 17.1 The Company may assign, subcontract or otherwise transfer the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.
- 17.2 The Customer may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it.

18. **ENGLISH LAW**

- 18.1 Subject to clause 16.5, the Contract shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts.
- 18.2 Clause 18.1 is for the benefit of the Company only and as a result the Company shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.