

# BMS Solutions SDSL Terms and Conditions

**BETWEEN** BMS Solutions ("**we**", "**us**" and "**our**") of BMS Solutions, Regus House, Victory Way, Admirals Park, Dartford, Kent, DA2 6QD and you, the customer specified in the SDSL Order ("**you**", "**your**" and "**yours**").

## 1. DEFINITIONS

In these terms and conditions, unless the context requires otherwise:

**"Acceptable Use Policy"** means our policy of what we consider to be acceptable use of, amongst other things, the Service, our network and the Internet and refers to the following: Computer Misuse Act (1990), Data Protection Act (1998), Copyright, Designs and Patents Act (1988), Human Rights Act (1998), Obscene Publications Act (1989), Protection of Children Act (1978), Trade Mark Act (1994). Further information can be obtained by contacting us on 0845 1234 051.

**"Access Line"** means the telecommunications circuit that you use to obtain telecommunications services over the British Telecommunication Plc public switched telephone network (PSTN);

**"Act"** means the Telecommunications Act 1984;

**"SDSL Order"** means a purchase order made by you in respect of the Service attached to these terms and conditions;

**"Agreement"** consists of this document entitled SDSL Terms and Conditions, the SDSL Order and the Acceptable Use Policy;

**"Carrier"** means any supplier of telecommunications services to us;

**"Commencement Date"** means the date when you first receive the Service;

**"Confidential Information"** means any trade secrets or confidential or proprietary information of either party, including this Agreement but excluding any information: (a) in the public domain; (b) which, when disclosed, was already known to the recipient; (c) that the other party develops independently of or to any information that is disclosed to it under the provisions of this Agreement; or (d) which is subsequently disclosed to the recipient by a third party at liberty to disclose it;

**"Customer Apparatus"** means any apparatus belonging to you which does not form part of the Equipment but which may be connected to the Equipment;

**"Equipment"** means any apparatus or equipment which we (or a third party authorised by us) provide to you at the Premises to enable use of the Service;

**"Fees"** means our fees for the provision of the Service as set out in the SDSL Order;

**"Support Desk"** means our Support Desk which can be contacted on 01322 305 405, Monday to Friday 9am to 5:30pm, or Claranet Support on 0845 355 2024 24/7;

**"Installation Date"** means the estimated date for the installation of the Equipment at the Premises notified to you by us when we accept your SDSL Order under clause 2.1;

**"Intellectual Property Rights"** means any rights in or to any patent, copyright, data base right, registered design, design right, utility model, trade mark, brand name, service mark, trade name, business name, chip topography right, know how or confidential information and any other rights in respect of any other industrial or intellectual property, whether capable of being registered or not and including all rights to apply for any of the foregoing rights;

**"Minimum Period"** means the period of twelve (12) months from the Commencement Date;

**"Miscellaneous Fees"** means the fees which you will be charged by us on a time and materials basis at £180 for the first hour and then £90 per hour thereafter/at the prevailing rate for any services which we provide to you and which are not included in the Fees. The miscellaneous fees include, but are not limited to internal relocation fees, abortive visit charges, and administrative charges;

**"Physical Characteristics"** means one (1) wall mounted power socket within two (2) metres of the existing British Telecommunications analogue telephone line;

**"Premises"** means your premises where the Service is to be supplied as specified in the SDSL Order;

**"Service"** means the installation, connection and supply of a telecommunications circuit capable of supporting SDSL services at the Premises and the provision of telecommunication services over such circuit as detailed on our Website;

**"Standard Tests"** means the test which we (or any third party authorised by us) carry out to determine whether the Service is ready;

**"Term"** is defined in clause 12.1;

**"Website"** means our website located at URL <http://www.bms.co.uk>

## **2. PROVISION OF THE SERVICE**

The SDSL Order made in accordance with clause 2.2 is not binding on us and the Agreement will only come into being when we countersign the SDSL Order to signify our acceptance of the SDSL Order and the following terms and conditions shall be deemed to be incorporated in the Agreement.

2.2 The Agreement will be subject to these terms and conditions. All terms and conditions otherwise stipulated by you shall have no effect. Any variation of the Agreement must be confirmed in writing by us.

***3. You shall apply for the Service using the SDSL Order supplied by us to you. If you provide all the necessary information in the SDSL Order and we accept your SDSL Order in accordance with clause 2.1, we shall provide the Service to you with reasonable care and skill and in accordance with these terms and conditions. Except as otherwise stated in the Agreement. Time is not of the essence.***

3.1 You undertake to use the Service in accordance with the Acceptable Use Policy and such reasonable operating instructions as may be notified in writing or verbally (and confirmed in writing) to you by us from time to time.

3.2 Where you use the Service to reach networks and services not operated by us, you agree to abide by the acceptable use policies or terms and conditions imposed by the operators of those networks and services.

## **4. INTERRUPTION AND SUSPENSION OF THE SERVICE**

Occasionally we may have to interrupt the Service or change the technical specification of the Service for operational reasons or because of an emergency. We will give you as much notice as possible of any unplanned interruption to the Service.

4.2 We may suspend or limit the Service to you at any time if we reasonably suspect that you are in breach of any term of this Agreement, or where, in our reasonable opinion, suspension of the Service would prevent or usefully inhibit any illegal or unauthorised activity provided that: we act in a reasonable and proportionate manner; where practical, we give you advance notice of the suspension or limitation and the actions you must take for the restoration of the Service; where it is not practical to give advance notice, we give you notice of the suspension or limitation as soon as is reasonably practical and the actions you must take for the restoration of the Service; and we restore the Service to you as soon as reasonably practical after the reason for the suspension or limitation has ceased.

4.3 We will correct reported faults as soon as possible. Should you encounter a fault with the Service you should report the fault to the Support Desk. Technical support is available Monday to Friday 9am to 5:30pm.

4.4 You acknowledge that if we suspend the Service under clause 4.2 you shall not be entitled to any refund of the Fees and you shall pay any additional charge for all reasonable costs which we incur due to the suspension.

## **5. PREMISES AND EQUIPMENT INSTALLATION**

5.1 You shall:

5.1.1 suitably prepare (or procure the preparation of) the Premises for the delivery and installation of the Equipment in accordance with our reasonable instructions;

5.1.2 provide all reasonable assistance and facilities, including electrical and other installations and fittings, and shall continue to provide such resources at your own cost for the duration of this Agreement;

5.1.3 allow such persons as are authorised by us to access the Premises at all reasonable times as is reasonably necessary for us to install the Equipment and provide the Service and shall provide all such assistance as we may reasonably require; and

5.1.4 provide a safe and suitable environment for such access visits under clause 5.1.3.

5.2 We shall:

5.2.1 (or shall procure) the provision and installation of the Equipment at the Premises for the supply of the Service on or before the Installation Date; and

5.2.2 ensure that any persons who enter the Premises in accordance with clause

5.1.3 comply with your reasonable health and safety and security requirements of which notice has been given while any such persons are present at the Premises.

5.3 You acknowledge that during the installation of the Equipment:

5.3.1 we shall not be liable for any interruption to or failure of the Service caused by a failure of your power supply;

- 5.3.2 we shall not be liable for any interference to any other Customer Apparatus or services used in connection with the Access Line;
- 5.3.3 your Access Line may suffer a temporary loss of service which shall be reinstated following installation;
- 5.3.4 any wired extensions to the Access Line which you have installed incorrectly will be left disconnected from the Equipment; and
- 5.3.5 we shall consider your requests for the delivery, installation and relocation of the Equipment but you acknowledge that our (or any person duly authorised by us) reasonable decisions shall be final and any increased costs to us which arise as a result shall be met by you.
- 5.4 Risk in the Equipment actually delivered to you, or otherwise delivered to any other person or at any location at your request, will pass on delivery.
- 5.5 Following the installation of the Equipment we shall carry out Standard Tests to ensure that the Service is ready for use. If the Service is not ready for use, we shall either repair or replace the Equipment or any part thereof and repeat the Standard Tests. You shall be entitled to use the Service when we inform you of the successful completion of the Standard Tests.
- 5.6 For the avoidance of doubt, any Installation Date given is an estimate only and we shall not be liable for any failure to meet such Installation Date.

## **6. EQUIPMENT USE**

- 6.1 You acknowledge that:
- 6.1.1 the Equipment shall remain our property or the property of our third party suppliers (including Carriers); and
- 6.1.2 we may modify, substitute or add to the Equipment at any time at our sole discretion.
- 6.2 Except in an emergency, any modification, substitution or addition to the Equipment shall be carried out as a planned outage on reasonable written notice.
- 6.3 You shall ensure at all times for the duration of this Agreement that, whilst at the Premises, the Equipment is kept safe and that it is used properly. Subject to clause 6.5, you shall be liable for any loss or damage to or any claim in respect of the Equipment.
- 6.4 Without prejudice to the generality of clause 6.3, you undertake, in relation to any of the Equipment located at the Premises:
- 6.4.1 to comply with our reasonable instructions in relation to the safe keeping and proper use of such Equipment;
- 6.4.2 except in the case of an emergency, to keep the Equipment at the Premises and stationary at all times;
- 6.4.3 not to (or permit any other person to) add to, modify, or in any way interfere with the Equipment, or any part;
- 6.4.4 not to do, omit to do or permit anything which is likely to damage, disable or impair the operation of the Equipment;
- 6.4.5 not to remove, tamper with or obliterate any words or labels on the Equipment, or any part; and
- 6.4.6 procure and maintain for the duration of this Agreement suitable insurance in respect of all relevant risks relating to such Equipment and provide us at our written request such information as we may reasonably request relating to the existence and validity of any such insurance.
- 6.5 You shall be liable for any loss or damage howsoever caused (with the exception of damage caused by our negligence) to the Equipment except in so far as you have taken all reasonable precautions to prevent such loss or damage and you undertake to hold harmless and reimburse us against all such loss, claims or damage.
- 6.6 We may require you to return any Equipment to us on demand and, if you fail to do so, you hereby grant us permission to enter any premises where the Equipment is located to repossess the Equipment.

## **7. CUSTOMER APPARATUS**

- 7.1 You acknowledge that you alone shall be responsible for the competence, sufficiency, compliance with any applicable law, repair and maintenance of the Customer Apparatus.
- 7.2 We may disconnect the Customer Apparatus from the Equipment if the Customer Apparatus:
- 7.2.1 does not comply with any relevant law or any other material standards currently in force;
- 7.2.2 may cause the death of or personal injury to any person or material damage to property (including any Intellectual Property Rights); or

7.2.3 may materially impair the operation of the Equipment or the quality of the Service made available to you.

7.3 You shall indemnify us against all claims, costs, demands and expenses (including reasonable legal cost) arising directly or indirectly out of any claim against us or our personnel relating to the disconnection of the Customer Apparatus from the Equipment under the provisions of clause 7.2, unless and to the extent that any such claim arises out of the negligence or wilful default of us or our personnel in the course of disconnecting the Customer Apparatus.

## **8. OUR GENERAL OBLIGATIONS**

8.1 We shall:

8.1.1 obtain, and maintain for the duration of this Agreement, all the consents, licences and permissions (statutory, regulatory, contractual or otherwise) we may require and which are necessary to enable use to comply with our obligations under this Agreement, and to enable you to use the Service;

8.1.2 provide to you such co-operation, information, advice and assistance in connection with the use of the Service.

8.2 You shall:

8.2.1 co-operate with our reasonable requests for assistance in the performance of our obligations under this Agreement, including the provision of any information reasonably requested by us; and

8.2.2 obtain, and maintain for the duration of this Agreement, all the consents, licenses and permissions (statutory, regulatory, contractual or otherwise) you may require and which are necessary to enable you to comply with your obligations under this Agreement;

8.2.3 be solely responsible for maintaining the confidentiality and security of your Service account and usage including use of your unique password and username and shall inform us if your Service account details become public knowledge.

## **9. DOMAIN NAMES**

9.1 If the Service includes the registration of an Internet domain name you acknowledge and agree that:

9.1.1 we cannot guarantee that any domain name that you request in the ADSL Order will be available or approved for use;

9.1.2 we have the right to require you to select a replacement domain name and may suspend the Service if, in our opinion, there are reasonable grounds for us to believe that the requested domain name is or is likely to be, in breach of the provisions of this Agreement and the law;

9.1.3 the registration of the domain name and its ongoing use by you is subject to the relevant naming authority's terms and conditions of use.

9.2 You hereby irrevocably waive any claims you may have against us in respect of any decision of a naming authority to refuse to register a domain name and, without limitation, you acknowledge and agree that any administration or other charge paid by you in respect of the registration of the domain name is non-refundable in any event.

9.3 You shall take no action in respect of your requested domain name(s) until you have been notified that your requested domain name has been duly registered.

9.4 We accept no responsibility in respect of the use of a domain name by you and any dispute between you and any other individual or organisation regarding a domain name must be resolved between you and such other party. We will take no part in any such dispute.

9.5 In the event of a dispute under clause 9.4 we reserve the right at our sole discretion and without giving any reason, to either suspend or cancel the relevant service associated with the domain name and/or to make such representations to the relevant naming authority as we deem appropriate.

9.6 Any IP address allocated by us to you as part of the Service shall at all times remain our sole property and we shall grant you an exclusive, non-transferable license to use such address for the duration of this Agreement.

## **10. PAYMENT**

10.1 In consideration of the Fees we shall provide you with the Service. The Fees are payable one month in advance and then by standing order every month for a period of no less than the Minimum Period.

10.2 If you incur any Miscellaneous Fees these will be included invoiced to you at the end of the month during which the relevant Miscellaneous Fee was incurred. With effect from each anniversary of the Commencement Date, we may increase the Fees as follows: 10.2.1 for the supply of the Service, by the RPI Increase;

10.2.2 by the amount of any increase in any third party costs paid by us where those third party costs relate to the supply of any service or products necessary for the supply of the Service. In the event of any such increase, we will endeavour to give you advance notice of any such increase as soon as reasonably practicable.

10.1.3 We may charge interest on all outstanding amounts on a daily basis at the rate of 3% per annum above the base lending rate of Bank of England in force at the time, from the date of the invoice until the date of actual payment or judgment has been enforced.

Additionally, we reserve the right to suspend or terminate the provision of Service to you immediately if you are in default of payment. Such termination is without prejudice to the rights of either party accrued prior to the date of termination.

## **11. SOFTWARE AGREEMENT**

11.1 We and our suppliers own the licensed programs and the documentation provided with this Agreement, both of which are protected by copyright laws. Your rights to use the licensed programs and documentation is limited to the terms and conditions attached to each licensed program.

## **12. TERM AND TERMINATION**

12.1 This Agreement will commence on the Commencement Date and shall continue until the expiry of the Minimum Period ("Term") unless it is terminated earlier under this clause 12. Thereafter, and subject to clause 12., the Agreement shall continue until it is terminated by us or by you upon you giving us one calendar month's written notice of your intention to terminate this Agreement.

12.2 You may end this Agreement after the Minimum Period by giving us not less than thirty (30) days written notice expiring no earlier than the end of the Minimum Period. If you wish to end this Agreement before the end of the Minimum Period, we shall be entitled to charge the Fees which would have been payable by the Customer for the balance of the Minimum Period.

12.3 We may end this Agreement for any one or more of the following reasons:

12.3.1 on immediate written notice if it becomes unlawful for us or the Carrier supporting the Service to continue to provide the Service;

12.3.2 we or the Carrier supporting the Service are required to cease the Service by a competent regulatory authority;

12.3.3 the Carrier supporting the Service ceases to do so for whatever reason or materially changes the terms of its provision of telecommunications services to us for the Service beyond our reasonable control;

12.3.4 on immediate written notice for a material breach by you of any part of these terms and conditions or the terms set out in the SDSL Order which is incapable of remedy or which, if capable of remedy, is not so rectified within thirty (30) days of receipt of such notice;

12.3.5 on immediate written notice if you cease to be controlled (within the meaning of section 416 of the Income and Corporation Taxes Act 1988) by the person controlling it at the date of the Contract and he reasonably objects to any such change of control;

12.3.6 on immediate written notice if you cease or threaten to cease to carry on the whole or a substantial part of your business; on immediate written notice if a receiver, administrative receiver, administrator or similar officer is appointed over all or any part of your assets or undertaking and is not discharged within fifteen days of such appointment;

12.3.7 on immediate written notice if you make an arrangement for the benefit of, or a composition with, your creditors or another arrangement of similar import; or on immediate written notice if you go into liquidation or otherwise than for the purposes of a bona fide amalgamation or reconstruction.

12.4 Upon termination of this Agreement you shall immediately stop using the Service and your right to use the Service shall immediately terminate.

## **13. WARRANTIES**

13.1 We warrant and represent that:

13.1.1 we are entitled to enter into and provide the Service on the terms set out in

13.1.2 the use of the Service will not infringe the Intellectual Property Rights of any third party.

13.2 Any implied warranty relating to the Service, including any implied warranties of satisfactory quality and fitness for a particular purpose are limited in duration to 30 days.

13.3 The warranties set out in clauses 13.1 and 13.2 are in lieu of all other warranties, express or implied, including any other implied warranties of satisfactory quality and fitness for a particular purpose. We do not warrant that the Service will meet your requirements. We do not warrant or make any representation regarding the use of the Service nor any content and data obtained or downloaded from the use of the Service or the accuracy of any information received through the Service nor that the use of the Service will be uninterrupted or error free. No oral or written communications by or on behalf of us shall create a warranty or in any way increase the scope of the warranties given by us.

13.4 You warrant and represent that:

13.4.1 you are entitled to enter into and perform your obligations under this Agreement;

13.4.2 you are the owner or have the right to use any domain name requested under clause 9 and that such domain name will not infringe the Intellectual Property Rights of any third party; and

13.4.3 the Customer Apparatus will not infringe the Intellectual Property Rights of any third party.

## **14. INTELLECTUAL PROPERTY RIGHTS**

14.1 The parties acknowledge that:

14.1.1 our Intellectual Property Rights shall remain at all times our property;

14.1.2 your Intellectual Property Rights shall remain at all time your property; and

14.1.3 the Intellectual Property Rights of any third party shall remain at all times the property of any such third party.

14.2 You shall not obtain under this Agreement any rights in our Intellectual Property Rights or the Intellectual Property Rights of any third party and we shall not obtain under this Agreement any rights in your Intellectual Property Rights and, except as provided for in this Agreement, neither party shall have any right to use any of them.

14.3 Each party ("Indemnifying Party") shall indemnify the other party ("Indemnified Party") against all costs, claims, demands and expenses (including reasonable legal fees) actually awarded and arising directly or indirectly out of any claim against the Indemnified Party by any third party alleging that the Indemnified Party's use of the Indemnifying Party's Intellectual Property Rights has caused a breach of any Intellectual Property Rights held by any third party, subject to the following conditions:

14.3.1 the Indemnified Party shall promptly notify the Indemnifying Party in writing of any such claim or alleged claim of which it has notice and shall not make any admissions without the prior written consent of the Indemnifying Party;

14.3.2 the Indemnified Party, at the request and expense of the Indemnifying Party, shall allow the Indemnifying Party to conduct and settle all negotiations and litigation resulting from any such claim;

14.3.3 at all times in relation to the claim, the Indemnified Party shall act in accordance with the reasonable instructions of the Indemnifying Party and, at the request of the Indemnifying Party, afford all reasonable assistance with all negotiations or litigation and shall be reimbursed by the Indemnifying Party for any reasonable expenses incurred in so doing; and

14.3.4 any legal costs awarded to the Indemnified Party as a result of any litigation in relation to the claim are to be for the account of the Indemnifying Party and, if paid to the Indemnified Party, shall, to the extent incurred by the Indemnifying Party, be paid by the Indemnified Party to the Indemnifying Party promptly after receipt by the Indemnified Party.

14.4 The Indemnifying Party shall have no liability to the Indemnified Party in respect of any costs, claims, demands, damages and expenses (including legal costs) in respect of any breach of a third party's Intellectual Property Rights arising out of any breach by the Indemnified Party of this Agreement.

## **15. LIABILITY and LIMITATION**

15.1 Nothing in the Agreement shall exclude or limit either party's liability for:

15.1.1 fraud or fraudulent misrepresentation on the part of such party or its personnel; or

15.1.2 personal injury or death caused by the negligence of such party or its personnel.

15.2 We shall not be liable for:

15.2.1 any loss of date resulting from delays, non-deliveries, missed deliveries, or Service interruptions caused by events beyond our reasonable control or by your errors or omissions;

15.2.2 any loss which you suffer as a result of having Premises which are deemed unsuitable for receipt of or are unable to receive the Services or for having an Access Line with incorrect Physical Characteristics or as a result of any change which you make to the Physical Characteristics without our prior written approval;

15.2.3 any loss which you suffer as a result of an interruption to the Service under clause 4;

15.2.4 any indirect or consequential loss or damage at all arising out of or in connection with the Agreement or its subject matter; or

15.2.5 any loss of business, capital, profit, anticipated savings, reputation or goodwill arising out of or in connection with the Agreement and its subject matter.

15.3 Our entire liability in respect of the supply of the Service, or any part, (whether for breach of contract, in negligence or any other tort, under statute or otherwise at all) shall be limited at our option to:

15.3.1 re-supplying the Service;

15.3.2 paying the cost of having the Service re-supplied; or

15.3.3 repaying any Fees in respect of the Service or any part.

15.4 You may not make a claim that, as a result of such claim, our maximum liability in respect of any single cause of action or related cause of action or the aggregate of all claims arising out of or in connection with the Agreement or its subject matter (whether for breach of contract, in negligence or any other tort), under statute or otherwise at all shall be 150% of the Fees paid during the twelve (12) months preceding the claim.

15.5 We shall not be liable for any claim arising under this Agreement unless we have received written notice of the claim within six (6) months of you becoming aware of the circumstances giving rise to the claim or, if earlier, six (6) months from the time you ought reasonably to have become aware of such circumstances.

15.6 You shall indemnify us against all claims, demands, actions, expenses, damage, penalties or proceedings arising out of a breach of your warranties contained in clause 13.

## **16. DATA PROTECTION**

16.1 Each party shall ensure that in the performance of its obligations under this Agreement it complies at all times with the Data Protection Act 1998.

## **17. CONFIDENTIALITY**

17.1 Except as expressly provided in this Agreement, neither party may use the other party's Confidential Information.

17.2 Except as expressly provided in this Agreement and subject to clause 17.3, neither party may disclose the other party's Confidential Information.

17.3 Either party ("Recipient") may disclose the Confidential Information of the other ("Disclosing Party"):

17.3.1 when required to do so by law or any regulatory authority, provided that where practicable and lawful, the Recipient:

17.3.1.1 promptly notifies the Disclosing Party of such a requirement;

17.3.1.2 co-operates with the Disclosing Party regarding the manner, scope or timing of such disclosure or any action that the Disclosing Party may take to challenge the validity of such requirement; and

17.3.2 to its directors and employees or any other person whose duties reasonably require such disclosure, on condition that the Recipient ensures that each such person to whom such disclosure is made:

17.3.2.1 is informed of the obligations of confidentiality under this Agreement; and

17.3.2.2 complies with those obligations as if they were bound by them.

17.4 We may use your name for marketing purposes, including use in client lists, newsletters, product and company brochures and press announcements.

## **18. GENERAL**

18.1 **Force majeure:** Neither party shall be liable to the other for any delay in, or failure of, the performance of its obligations under this Agreement arising from any cause beyond its reasonable control including any of the following: act of God, governmental act (including any act of any foreign government, the European Community or other international body), war, fire, flood, explosion or civil commotion, failure of a third party (including failure to supply data) and industrial action. The party so affected shall:

18.1.1 as soon as practicable, send to the other a written notice setting out the circumstances of the event and its anticipated effect; and

18.1.2 use all reasonable endeavours to minimise the effect of any such circumstances.

18.2 If any delay or stoppage arising out of an event of force majeure continues for a continuous period of six (6) months, either party may terminate this Agreement with immediate effect on giving written notice to the other and neither party shall be liable to the other for such termination. The provisions of clause 12. shall apply to the termination of this Agreement under this clause 18.2.

**18.3 Exclusion of other terms:** This Agreement sets out the entire agreement and understanding between the parties. In particular, but without limitation to the generality of the foregoing, you warrant and represent that in accepting this Agreement you have not relied upon any statement of fact or opinion made by us or our personnel which has not been included expressly in this Agreement. Further, you irrevocably and unconditionally waive any right you may have: (a) to rescind any agreement resulting from your acceptance of this Agreement by virtue of any misrepresentation; (b) to claim damages for any misrepresentation whether or not contained in this Agreement; or (c) to claim damages for breach of any warranty or condition not contained in this Agreement. Nothing in this clause 18.3 shall affect the liability of either party in respect of any misrepresentation, warranty or condition that it makes fraudulently.

**18.4 Waiver:** Failure by either party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under this Agreement or otherwise.

**18.5 Amendment:** This Agreement may not be amended, modified, varied or supplemented except in writing signed by or on behalf of both parties.

**18.6 Notices:** Notices under this Agreement shall be in writing. Notices may be delivered class mail or facsimile transmission at the address or facsimile number notified for such purposes. Correctly addressed notices shall be deemed to be delivered:

18.6.1 if delivered by hand, on the day of delivery if delivered before 16:00 hours of any working day and otherwise the next working day;

18.6.2 if sent by first class mail, two working days after posting; and

18.6.3 if sent by facsimile transmission, on the day of transmission if sent before 16:00 hours of any working day and otherwise the next working day.

**18.7 Severance:** If any provision of this Agreement is or becomes invalid or unenforceable it will be severed from the rest of this Agreement so that it is ineffective to the extent that it is invalid or unenforceable and no other provision of this Agreement shall be rendered invalid, enforceable or be otherwise effected.

**18.8 Survival:** The parties obligations under clauses 7. 3, 10, 13, 14, 15, 16, 17, 18. 8, 18.13 and 18.14 shall survive the ending of this Agreement for any reason.

**18.9 Relationship:** Nothing in this Agreement shall make either party, the agent or partner of the other, or give either party the power to bind the other.

**18.10 Assignment:** We may nominate, assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under, this Agreement at any time. You shall execute at our request and without delay any document necessary to effect any such transfer. You acknowledge that this Agreement is personal to you. Accordingly, you may not assign or in any other way make over to any third party, whether in whole or in part, the benefit of, and/or your obligations under, this Agreement without our prior written authority and on such terms as we may reasonably require.

**18.11 Disputes:** In the event of a dispute between the parties, the parties will attempt in good faith to resolve the dispute or claim arising out of or relating to the Agreement promptly through negotiations between the respective representatives of the parties who have authority to settle the same.

**18.12 VAT:** Unless otherwise stated in this Agreement all Fees are exclusive of VAT or other applicable sales tax.

**18.13 Third Party Rights:** Nothing in this Agreement shall confer on any third party any right or benefit under the provisions of the Contracts (Rights of Third Parties ) Act 1999.

**18.14 Jurisdiction:** This Agreement shall be governed by English law. The parties hereby submit to the non-exclusive jurisdiction of the English Courts .

A copy of both the 'SDSL Service Level Agreement' and 'SDSL Service Description' are available on request.

## BMS Solutions SDSL Order Form

Contact Name:		Tel No:	
Company Name:		Fax No:	
Installation Address:		Invoice Name & Address:	

Domain name to be transferred or to be registered;	
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**Disclaimer**

In signing a BMS sales order you are accepting the terms and conditions of service for ADSL.