

# TERMS AND CONDITIONS FOR THE PROVISION OF BATELCO LOCAL MPLS SERVICES

## 1 Interpretation

1.1 In this Agreement:

“**Agreement**” means the contract between Batelco (BAHRAIN TELECOMMUNICATIONS COMPANY B.S.C.)1095, Road 1425, Al-Hamala 1014, PO Box 14, the Kingdom of Bahrain) and the Customer for the provision of Batelco Local MPLS Services, comprising together the Order Form, these Terms and Conditions, the technical description, the Multiple Site Information Sheet (if any) and where applicable, the Batelco Terms and Conditions for inet Portal Sites (available on our website);

“**Amended Service**” means the local MPLS service(s) that a Customer requests Batelco provides as a variation to the Service.

“**Batelco Terms and Conditions for inet Portal Sites**” means the terms and conditions of the Batelco inet Service applicable to all Customers and available on the Batelco inet website.

“**Charges**” means the sums payable to Batelco by the Customer pursuant to this Agreement which are set out in the Order Form;

“**Customer**” means the Batelco customer identified in the Order Form and who forms the other party to this Agreement;

“**Equipment**” means the equipment, if any, (including any Software) placed on a Site by Batelco for the provision of the Service or otherwise pursuant to this Agreement and including, but not limited to, the equipment specified in the Order Form;

“**Fixed Service Period**” means, where the Customer has requested that the Service be provided for the fixed duration indicated on the Order Form, the period during which this Agreement remains in force;

“**Force Majeure Event**” means any event beyond the reasonable control of a party including (but not limited to) act of God, fire, act of government or state, war, terrorist acts, civil commotion, insurrection, embargo, prevention from obtaining raw materials and labour;

“**Intellectual Property Rights**” means copyrights (including rights in computer software), patents, trade and service marks, trade and business names (including internet domain names), design rights, database rights, semi-conductor topography rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)) and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration) which may now or in the future subsist anywhere in the universe;

“**Minimum Service Period**” means an applicable minimum period of 6 calendar months (unless otherwise specified in the Order Form) for which the Service (or any part of the Service) will be provided pursuant to this Agreement, such period commencing on the Service Commencement Date, and applying only where there is an Open Service Period;

“**Multiple Site Information Sheet**” means the form annexed hereto (if applicable), by means of which the Customer may request provision of the Service to an additional Site;

**“Order Form”** means the order form requesting the Service which has been signed by the Customer, a copy of which is annexed hereto;

**“Open Service Period”** means, where the Customer has requested that the Service be provided on a continuing basis (as indicated on the Order Form), the period during which this Agreement remains in force until terminated in accordance with Clause 11;

**“Preferred Service Date”** means the date specified in the Order Form on which the Customer desires, and Batelco estimates (but without making any commitment in respect thereof), that the Service will be operational;

**“Service”** means the local MPLS service(s) specified in the Order Form to be provided by Batelco to the Customer pursuant to this Agreement, further details of which can be found in promotional literature and in the technical description published by Batelco from time to time;

**“Service Commencement Date”** means the date when the Service, or any part of it, is installed and implemented by Batelco;

**“Service Period”** means either an Open Service Period or a Fixed Service Period (as indicated in the Order Form), such period commencing on the Service Commencement Date;

**“Site”** means the Customer’s location(s) at which Batelco agrees to provide the Service;

**“Software”** means any software whatsoever supplied by Batelco to the Customer for use in connection with the Service;

**“Technical Requirements”** means the technical requirements or conditions which must exist for Batelco to provide the Service to the Customer, as indicated to the Customer by Batelco employees.

**Upgrade** means an increase in the throughput of the Service.

**“Working Day”** means between 7 a.m. and 2.45 p.m. on any day (other than a Friday, Saturday or public holiday in the Kingdom of Bahrain);

- 1.2 In the event (and to the extent only) of any conflicts or inconsistencies between these Terms and Conditions and any of the constituent parts of this Agreement, then the following order of priority shall apply: these Terms and Conditions; the Order Form; the Multiple Site Information Sheet and the Batelco Terms and Conditions for inet Portal Sites:

## **2 Commencement and duration of Agreement**

- 2.1 This Agreement commences on the date that the Order Form is signed by duly authorised representatives of Batelco and the Customer.
- 2.2 The duration of this Agreement will be;
  - 2.2.1 until the valid termination of this Agreement by either party pursuant to Clause 11; or
  - 2.2.2 expiration of the Service Period. Upon expiry of the Service Period this Agreement shall be automatically renewed on a monthly basis unless terminated by either party (pursuant to Clause 11).

## **3 Rights and obligations**

- 3.1 The Customer agrees to pay the Charges and Batelco agrees to provide the Service in accordance with the terms of this Agreement. The Charges shall be paid to Batelco within 30 days of the date of Batelco’s invoices.

- 3.2 Batelco will use its reasonable endeavours to provide the Service by the Preferred Service Date (but the parties agree this date is an estimate only and Batelco has no liability in respect of any failure to meet any such date).
- 3.3 Batelco shall handover the Service to the Customer upon successful completion by Batelco of an end-end-test. Without prejudice to clause 16.2, Batelco shall send the Customer a handover form by hand, facsimile or e-mail to the Customer contact details set out in the Order Form. On and from 3 Working Days after handover by Batelco, the Customer shall confirm acceptance of the Service using the handover form by notifying Batelco by hand, facsimile or by e-mail to the Batelco contact details set out in the Order Form. If Batelco does not receive such completed handover form by close of business on the third Working Day of receipt, the Service shall be deemed accepted and invoicing for the Service shall commence the following day.
- 3.4 Batelco may from time to time, in its sole discretion:
- 3.4.1 change the technical specification of the Service, provided that any changes do not materially affect the substance or the performance of the Service; or
  - 3.4.2 give the Customer instructions (which the Customer hereby agrees to comply with) which it reasonably believes are necessary for reasons of health, safety or the quality of the Services or any other services provided by Batelco to the Customer or any other customer;
  - 3.4.3 vary the Charges; or
  - 3.4.4 suspend the Service for operational reasons (such as maintenance or Service upgrades) or because of an emergency.
- 3.5 Batelco shall endeavour, before exercising any of its rights under sub-clause 3.4, to give the Customer as much notice as is reasonably possible (approximately seven (7) days).
- 3.6 If the Customer does not pay an invoice by the due date, Batelco shall have the right at its discretion and without notice to the Customer to:
- (a) transfer the unpaid invoiced amount to the account of any other service(s) provided to the Customer by Batelco, and the Customer shall be liable to pay all charges on any invoice issued by Batelco for such service(s) by the due date; and
  - (b) deduct the unpaid invoiced amount from any payment or credit due to the Customer by Batelco under this Agreement or any other agreement for service(s) provided by Batelco to the Customer.
- The rights in this clause are in addition to any other rights that Batelco has under these terms and conditions, including the right to suspend or terminate the Service or any other service provided by Batelco.
- 3.7 The parties agree that it is technically impossible to provide the Service fault-free and Batelco does not undertake to do so. However, where a fault or defect occurs which is not due to an act or default of the Customer, Batelco will use all reasonable endeavours (but without creating any commitment thereto) to repair any such faults.
- 3.8 If the Service develops a fault or defect which, in Batelco's opinion, is due to an act of default of the Customer, Batelco shall be entitled (in its absolute discretion), to pass on to the Customer its costs incurred in investigating and remedying such fault or defect. The Customer agrees to promptly pay any such charges on receipt of an invoice from Batelco. Any breach by the Customer of this clause constitutes a material breach of this Agreement.
- 3.9 The Customer undertakes to provide all such information and assistance as Batelco may reasonably require in order for Batelco to perform its obligations under this Agreement.

- 3.10 The Customer agrees that the obligations of Batelco to provide the Service shall be conditional upon the Technical Requirements being satisfied by the Customer.

#### **4 Equipment**

- 4.1 The Customer agrees that any Equipment supplied to the Customer by Batelco (if any) will:
- 4.1.1 remain the property of Batelco (unless otherwise notified by Batelco in writing);
  - 4.1.2 be used by the Customer in accordance with any applicable instructions, safety and security procedures issued by Batelco, and the Customer will not add to, modify or in any way interfere with it nor allow any other persons to do so; and
  - 4.1.3 be the sole responsibility of the Customer.
- 4.2 The Customer will be liable to, and will indemnify Batelco in respect of any loss of or damage to the Equipment (fair and reasonable wear and tear excluded).
- 4.3 It shall be the Customer's responsibility to ensure that any equipment not supplied by Batelco and which is used (directly or indirectly) with the Service and/or the Equipment is technically compatible with the Service and/or the Equipment and approved for those purposes under any relevant legislation or industry standards.

#### **5 Access and Site regulations**

- 5.1 The Customer will allow Batelco employees and agents access to any Site in order to enable Batelco to perform its obligations under this Agreement. Batelco will normally only require access during Working Days but may, on reasonable notice, require the Customer to provide access at other times.
- 5.2 In order to allow the installation and use of the Equipment at the Customer's Site, the Customer will, at its own expense, and prior to any installation work:
- 5.2.1 obtain all necessary consents, including consents for any necessary alterations to buildings, and present to Batelco the Customer's Commercial Registration (C.R.) or Central Population Registration (C.P.R.) as applicable;
  - 5.2.2 provide any electricity and connection points required by Batelco (before installation, commissioning and during the Service Period); and
  - 5.2.3 provide an appropriate environment for the installation and which Batelco advises is necessary, and carry out afterwards any repairs or decorator's work required.
- 5.3 Batelco employees and agents will observe the Customer's reasonable site regulations provided that the Customer notifies Batelco in writing of any such regulations at least 48 hours in advance.
- 5.4 The Customer will provide a suitable and safe working environment for any Batelco employees and agents working at the Customer's Site and without limiting the generality of Clause 9.2, the Customer shall indemnify Batelco against all injury to or death of any Batelco employee or agent, and against all loss of or damage to Batelco's equipment when on the Customer's Site.

#### **6 Use of the Service**

- 6.1 The Customer will not use the Service:

- 6.1.1 in a way which does not comply with the terms of any legislation or any licence applicable to the Customer, or that is in any way unlawful or fraudulent or, to the knowledge of the Customer, has any unlawful or fraudulent purpose or effect, or which infringes or may potentially infringe the rights of any third party;
  - 6.1.2 in connection with (without prejudice to the generality of sub-clause 6.1.1 above) the carrying out of a fraud or criminal offence against Batelco or any other party; or
  - 6.1.3 to send, knowingly receive, upload, download, use or re-use material which is abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights or which is liable to incite racial disharmony or hatred, or which comprises virus or other code liable to cause loss or damage; or
  - 6.1.4 to send or procure the sending of any unsolicited advertising or promotional material; or
  - 6.1.5 in a way that does not comply with any instructions given under sub-clause 3.4.2; or
  - 6.1.6 in a way that in Batelco's reasonable opinion could have a materially detrimental effect on Batelco's business (including the Service).
- 6.2 6.1.7 or allow the Service to be used, modified or adapted to transmit voice or data on public telecommunications system of either Batelco or any other foreign telecommunication provider.
- 6.3 Batelco shall have the right to enforce the obligations set out in sub-clauses 6.1.1 to 6.1.7 inclusive by suspending or terminating the Service to the Customer forthwith without notice if the Customer is in breach of them.

## **7 Intellectual Property Rights**

- 7.1 The Customer acknowledges and agrees that all Intellectual Property Rights in the Service, the Software and the Equipment are, and shall remain at all times, the property of Batelco. The Customer shall execute all such documents and render all such assistance as Batelco may from time to time require to perfect and enforce Batelco's title to the Intellectual Property Rights.
- 7.2 Batelco grants the Customer, for the duration of this Agreement, a non-exclusive, non-transferrable licence to use the Intellectual Property Rights in the Equipment and the Software solely for the purposes of using the Service in accordance with this Agreement.
- 7.3 The Customer will not copy, de-compile or modify the Equipment and/or the Software, or copy any manuals or documentation provided to the Customer in connection with the Service.
- 7.4 Except as provided in this Clause 7, nothing in this Agreement entitles the Customer to use any Batelco name, logo, or trade mark or any Batelco intellectual property in connection with the Service without the prior written consent of Batelco. Any breach of this clause constitutes a material breach of this Agreement.

## **8 Confidentiality**

- 8.1 Each party hereby mutually undertakes to:
  - 8.1.1 keep confidential all information (whether written or oral) concerning the business, trade secrets, customers, suppliers and affairs of the other parties that it shall obtain or receive as a result of the discussions leading up to or the entering into or performance of this Agreement (the "**Confidential Information**");

8.1.2 not without the other party's written consent disclose the Confidential Information in whole or in part to any other person save those of its employees, agents, advisers and sub-contractors involved in its performance of this Agreement and who have a need to know the same; and

8.1.3 use the Confidential Information solely in connection with the performance of their respective obligations under this Agreement.

8.2 The provisions of sub-clause 8.1 above shall not apply to any Confidential Information to the extent that it is obvious, already in the other party's possession on the date of its disclosure, or in the public domain other than as a result of a breach of this clause or is required to be disclosed by an order of a competent court or regulatory authority.

8.3 Each party hereby undertakes to the other to make all relevant employees, agents, advisers and sub-contractors aware of the confidentiality of the Confidential Information under the provisions of this clause and without limitation of the foregoing to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents, advisers and sub-contractors under the provisions of this clause.

## **9 Liability and indemnity**

9.1 Batelco shall not be liable to the Customer in respect of any loss or damage whatsoever and howsoever arising in connection with this Agreement or the Customer's use of the Service, including, but not limited to, liability in contract (including under any indemnity or warranty), under any applicable legislation or otherwise for any: (a) loss of profit; (b) loss of revenue; (c) loss of anticipated savings; (d) loss or corruption of data; (e) loss of contract or opportunity; (f) loss of goodwill; or (g) indirect or consequential loss of whatever nature, including (without limitation) any loss of a type described in (a) to (f) above which could be regarded as indirect or consequential and whether or not reasonably foreseeable, reasonably contemplatable, or actually contemplated by the parties at the time of execution of this Agreement, to the extent permitted by law.

9.2 The Customer will indemnify Batelco against all claims and proceedings whatsoever and howsoever arising (whether actual or threatened) arising out of Batelco's performance of its obligations under this Agreement and the Customer's use of the Service.

9.3 If Batelco shall be held liable to the Customer, its liability shall be limited to an amount equal to the Charges payable for the Service for the 12 month period from 1 January to 31 December of the year in which the cause of action giving rise to the liability arose.

9.4 Nothing in this Agreement shall exclude or limit the liability of either party:

9.4.1 for death or personal injury resulting from the negligence of that party or its directors, officers, employees, contractors or agents; or

9.4.2 in respect of fraud or of any statements made fraudulently by that party or its directors, officers, employees, contractors or agents;

## **10 Force Majeure**

10.1 Neither party shall be in breach of its obligations under this Agreement if there is any total or partial failure of performance by it of its obligations resulting from a Force Majeure Event. If the Force Majeure Event continues for more than 30 Business Days and substantially affects the abilities of the parties to perform this Agreement, the non-defaulting party shall have the right to terminate this Agreement forthwith upon giving written notice to the other party. No party shall have any liability to the other in respect of the termination of this Agreement as a result of a Force Majeure Event.

## 11 Termination

- 11.1 Batelco may terminate this Agreement and provision of the Service at any time on 1 month's written notice to the Customer.
- 11.2 Where Batelco terminates this Agreement pursuant to this Clause 11 and intends to withdraw the Service in its entirety and not offer a replacement, Batelco will refund any apportioned Charges paid in advance in respect of any period which ends after the date of withdrawal less any applicable deductions.
- 11.3 **Special terms applying only where there is a Fixed Service Period**
- 11.3.1 Subject to 11.2, and 11.3.2 the Customer may terminate this Agreement within the Fixed Service Period on 1 month's written notice to Batelco.
- 11.3.2 Customers purporting to terminate this Agreement pursuant to 11.3.1 above acknowledge that such early termination is detrimental to Batelco's commercial interests. Therefore the Customer shall only be entitled to terminate this Agreement and such termination will only be valid provided that the Customer pays to Batelco liquidated damages calculated as the cumulative total of the full rental Charges that would otherwise have been payable from the date of early termination up until the end of the Fixed Service Date. Where a Customer has a contract for a Fixed Service Period longer than two years, such Customer shall not be required to pay liquidated damages to Batelco where the second anniversary of the Service Commencement Date has passed and provided the Customer has given three months' written notice to Batelco after the second anniversary of the Service Commencement Date has passed..
- 11.3.3 Batelco shall have the right, in its absolute discretion, to waive the Customer's liability to pay any liquidated damages.
- 11.4 **Special terms applying only where there is an Open Service Period**
- 11.4.1 Provided that the Minimum Service Period has expired, the Customer shall be entitled to terminate this Agreement on 3 months' written notice to Batelco.

## 12 Breach

- 12.1 **Batelco may terminate this Agreement immediately on written notice, if the Customer:**
- 12.1.1 commits a material breach of this Agreement, which is capable of remedy, and where the Customer fails to remedy such breach within 14 days of receipt of a written notice from Batelco to do so; or
- 12.1.2 commits a material breach of this Agreement which cannot be remedied; or
- 12.1.3 is repeatedly in breach of this Agreement; or
- 12.1.4 is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation or a receiver or administrator is appointed over its assets.
- 12.2 If any of the events detailed in sub-clause 12.1 above occur as a result of Customer default, Batelco may by notice to the Customer (setting out the reasons) suspend the Service or any part of it without prejudice to its right to terminate this Agreement. Where the Service or any part of it is suspended the Customer must pay the Charges until this Agreement is terminated. If the Service is suspended (but not if Batelco suspends part of the Service) for a continuous period of 28 days then the Customer may give notice to Batelco to terminate this Agreement.

### **13 Changes**

- 13.1 Batelco may in its sole discretion, alter or amend the terms of this Agreement at any time, but will use all reasonable endeavours to provide the Customer with 14 days advance notice of such changes. The Customer cannot alter or amend any terms of this Agreement.
- 13.2 The Customer may request an Amended Service by providing notice to Batelco and by completing a new Order Form. Where the Customer requests an Amended Service and Batelco agrees to provide an Amended Service the Service Period shall recommence and the Service Commencement Date shall be the date when the Amended Service is installed and implemented by Batelco. However, where the Customer requests an Upgrade which does not require any new network resources a new Service Period shall not commence and Batelco shall provide the Amended Service for the remainder of the current Service Period.

### **14 Assignment and Sub-Contracting**

- 14.1 Batelco may assign novate or sub-contract any of its rights or obligations under this Agreement. The Customer shall not be entitled to assign, novate, sub-contract or otherwise dispose of any of its rights or obligations under this Agreement.

### **15 Entire agreement and exclusion of warranties**

- 15.1 Save as expressly provided under this Agreement all other warranties whether express or implied are hereby excluded to the fullest extent permissible by law and this Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements.
- 15.2 For the purposes of this clause a **"Pre-Contractual Statement"** means a draft agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever whether or not in writing and whether implied or otherwise relating to this Agreement made or given by any party or any other person at any time prior to the execution of this Agreement.
- 15.3 The Customer hereby acknowledges that it has not entered into this Agreement in reliance upon any Pre-Contractual Statement which is not expressly set out herein and that the Agreement supersedes and extinguishes any prior Pre-Contractual Statements relating thereto.
- 15.4 The Customer shall not have any right of action against Batelco arising out of or in connection with any Pre-Contractual Statement except in the case of fraud or dishonesty or wilful concealment.

### **16 Notices**

- 16.1 Any notice to be given by the Customer to Batelco shall only be effective if in writing and delivered to:

BAHRAIN TELECOMMUNICATIONS COMPANY  
1095, Road 1425  
Al-Hamala 1014  
Bahrain PO Box 14  
Manama  
Bahrain

- 16.2 Any notice to be given by Batelco to the Customer shall be effective if in writing and delivered to the address or sent to any relevant facsimile number for that party set out in the Order Form.
- 16.3 Any such notice shall be considered to have been received by the addressee 2 Working Days following the date of despatch if by registered post or air mail or simultaneously if by facsimile.



**17 Miscellaneous**

- 17.1 The Customer hereby represents and warrants to Batelco that it has the full power to enter into this Agreement and that all information supplied by the Customer to Batelco and/or entered onto the Order Form is true, accurate and complete in all respects.
- 17.2 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy. If either party elects to waive a breach of this Agreement that waiver is limited to that particular breach.
- 17.3 If a provision of this Agreement is, or becomes, to any extent illegal, invalid or unenforceable, then it is the intention of the parties that it shall to that extent be deemed not to form part of this Agreement and will not affect the legality, validity or enforceability of any other provision of this Agreement, which shall continue in force and effect.

**18 Governing law and jurisdiction**

- 18.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Kingdom of Bahrain and the parties submit to the exclusive jurisdiction of the courts of the Kingdom of Bahrain in relation to all disputes.