

## MASTER SERVICES AGREEMENT TERMS & CONDITIONS MSATC 01/09

### 1. Definitions

Capitalised terms used in these terms and conditions shall have the following meanings:

"Acts" means the Wireless Telegraphy Act 2006, the Communications Act 2003 and any amendments or re-enactments to the same that may be made from time to time;  
"Additional Order" means an additional order for Services under a Product Agreement;  
"AN" means Alternative Networks plc;  
"Credit Limit" means any financial limit applied for unpaid charges under the MSA and/or a Product Agreement as notified by AN to the Customer from time to time;  
"Customer" means the company, partnership, organisation or individual stated on the order form;  
"Equipment" means any equipment which is supplied by or on behalf of AN to the Customer or placed at the Customer's premises for the purpose of providing any of the Services;  
"Indemnify AN against" means indemnify and keep AN indemnified against all liabilities, claims, actions, proceedings, losses, damages and/or expenses which are brought against and/or incurred by AN as a result (whether directly or indirectly) of;  
"MSA" means the agreement between AN and the Customer on these terms and conditions, including the order form;  
"Product Agreement" means an agreement between AN and the Customer for specific products or services that incorporates these terms and conditions in whole or in part. In the event of a conflict, the following (decreasing) order of precedence shall apply in a Product Agreement: pricing schedule, order form, continuation sheets, Additional Order, terms and conditions (including the terms and conditions of the MSA); and  
"Services" means the provision of telecommunications services and/or products as detailed in a Product Agreement.  
Terms in the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect interpretation.

### 2. The Services

2.1 Subject to these terms and conditions, AN will use its reasonable endeavours to provide, operate and maintain the Services, and will use its reasonable endeavours to restore the Services in the event of failure.

2.2 The Customer warrants that it has the right to enter into the MSA and each Product Agreement and that in doing so it does not breach any other agreement to which it is a party.

### 3. Duration

The MSA shall commence from the date of acceptance by AN and shall continue unless and until each Product Agreement is terminated in accordance with its terms, whereupon the MSA shall lapse, or the MSA is terminated by AN under clause 11.

### 4. Use of the Services

4.1 The Customer agrees and undertakes:

4.1.1 to use the Services in accordance with the relevant provisions of the Acts, all other relevant laws and regulations from time to time, the terms of any licence between AN and its suppliers, any direction of the Director General of Telecommunications or other competent authority and any licence granted thereunder which governs the running of a telecommunications system by AN, its suppliers or its sub-contractors;

4.1.2 to use the Services in accordance with these terms and conditions and the relevant Product Agreement, and such other conditions or instructions as may be notified to it in writing by AN from time to time;

4.1.3 not to cause any attachments other than those approved for connection under the Acts to be connected to the Services;

4.1.4 not to use the Services as a means of communication for a purpose other than that for which the Services are provided and as may be set out from time to time in AN's Service literature. AN will provide the Customer with as much notice as is reasonably practicable should there be any change to AN's Service literature and AN will not make any such change as would materially affect the parties obligations;

4.1.5 not to use the Services for receipt or transmission of any material or message which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which causes annoyance, inconvenience or needless anxiety;

4.1.6 not to use the Services in a manner which constitutes a violation or infringement of the rights of any third party, or which is a breach of any statutory obligation or duty in contract, tort or otherwise;

4.1.7 not to make or attempt to make fraudulent, illegal, unlawful, improper, or immoral use of the Services, nor to use or attempt to use the Services with the intent to avoid the payment, in whole or in part, of any charges;

4.1.8 to maintain its telecommunications apparatus at all times during the term of the MSA in good working order and in conformation with the relevant standards or approvals for the time being designated under the Acts;

4.1.9 to provide AN with all such information as it reasonably requests relating to the Customer's telecommunications apparatus;

4.1.10 to immediately notify AN of any fault with the Services upon becoming aware of it;

4.1.11 keep secure any Customer password provided by AN. The Customer acknowledges that any instruction given to AN by a person possessing this password shall be deemed to have been made by the Customer;

4.1.12 to implement adequate security measures to prevent unauthorised access to the Services, the Equipment and the Customer's equipment and premises; and

4.1.13 that it has no rights in any intellectual property rights in the Services, or arising in the Services as a result of their use, and to assign (and hereby does assign) any such rights to AN.

4.2 The Customer shall indemnify AN against any fraud, negligence or default by the Customer, or any breach of the MSA and/or a Product Agreement, or any use of the Services.

### 5. Equipment and repairs

5.1 The Equipment shall at all times remain the property of AN. The Customer shall not let, sell, charge, assign, sub-license, or allow a third party to use the Equipment, and shall not prejudice AN's rights in the Equipment in any way. AN may substitute, renew or add to the Equipment from time to time at its absolute discretion.

5.2 In the event that the Customer returns Equipment to AN pursuant to the MSA or a Product Agreement, the Customer shall obtain valid evidence of receipt of the Equipment by AN. In the absence of such evidence, the Customer accepts that it shall remain liable for the Equipment.

5.3 Equipment must be surrendered in re-saleable condition, subject to reasonable wear and tear, together with all manuals and packaging, upon termination of the relevant Product Agreement. Where the Customer fails to surrender the Equipment, the Customer grants AN and its agents an irrevocable licence at any time to retrieve the Equipment directly from the Customer's premises. If AN fails to recover the Equipment it may, at its option, invoice the Customer for a sum equal to the original cost of the Equipment together with any costs reasonably incurred by AN under this clause 5.3.

5.4 Time shall not be of the essence of any delivery, repair, installation, maintenance or other work carried out by AN under a Product Agreement or the MSA, and any specified dates are estimates only. AN accepts no liability for any failure to meet the relevant date.

5.5 Subject to the other terms of this clause 5, AN (or its authorised representative) shall, during AN's working hours without charge, use its reasonable endeavours:

5.5.1 where necessary to install the Equipment at the Customer's premises; and

5.5.2 to carry out all repairs to the Equipment that are caused by reasonable wear and tear.

5.6 AN shall not be liable for any faults caused by, or repairs required as a result of, installation or programming carried out by any other person (including without limitation the Customer) and the Customer shall indemnify AN against the same.

5.7 The Customer shall be responsible for the Equipment whilst it is in the Customer's custody and shall notify AN immediately of any faults which occur, any repairs which become necessary, and of any loss or damage to the Equipment. The Customer shall insure the Equipment against loss or damage from all risks for an amount equal to the full replacement value of the Equipment, and shall indemnify AN against any loss or damage to the Equipment.

5.8 The Customer shall not (and will procure that no other person shall) repair, alter, modify or maintain, or make any additions or attachments to or otherwise alter, the Equipment without the prior written consent of AN. The Customer shall only use the Equipment in conjunction with the relevant Services and shall comply with any reasonable instructions of AN in relation to its use.

5.9 AN shall not be responsible for faults or necessary repairs arising from the Customer's breach of the MSA or a Product Agreement, or any circumstance referred to in clause 9.5.

5.10 If AN carries out repairs, maintenance or other work, or requires access to the Customer's premises and/or the Services connection points, under the MSA or a Product Agreement outside its normal working hours, AN shall be entitled to raise a reasonable charge.

5.11 The Customer shall be responsible for obtaining and, where appropriate, paying for all necessary licences, consents and approvals required by third parties for the installation and use of the Equipment.

5.12 The Customer warrants that any equipment supplied or used by the Customer in conjunction with the Equipment is in good working order and complies with all applicable legislation and standards.

### 6. Access to premises, information and assistance

6.1 The Customer shall permit or procure permission for AN (and its authorised representatives) to have reasonable and safe access to the Customer's premises and the Services connection points. Such access may (on reasonable notice except in the case of emergency) be outside the Customer's normal working hours.

6.2 The Customer shall provide AN, free of charge, with all information and assistance reasonably required by AN to perform its obligations under the MSA and each Product Agreement.

6.3 The Customer permits AN to use information about the use of the Services by the Customer (including but not limited to origin, destination, duration, route and time of calls) to perform its obligations under the MSA and each Product Agreement, maintain or upgrade the Services and/or produce statistics to assist AN or AN's suppliers in their network and business planning. AN may also share such information with its suppliers for fraud prevention purposes.

### 7. Additional Orders placed by electronic mail

7.1 The Customer may place an Additional Order via electronic mail to the account specified by AN from time to time. AN shall notify the Customer, which may be via electronic mail, if it accepts the Additional Order.

7.2 Each accepted Additional Order shall be subject to, and shall form part of, the relevant Product Agreement.

7.3 AN shall have no obligation to confirm whether the electronic mail was validly sent by the Customer if it appears to originate from the Customer's Internet domain name.

### 8. Charges and payments

8.1 Subject to the rest of this clause 8, payment for the Services is due within fourteen (14) days of the date of the invoice. All charges must be paid in full without deduction, set-off or withholding.

8.2 The Customer shall be invoiced charges monthly in accordance with the relevant pricing schedule.

8.3 All sums referred to in the Product Agreement are exclusive of Value Added Tax and any taxes of a similar nature that may from time to time be introduced.

8.4 Usage charges payable shall be calculated by reference to data recorded or logged by AN and not by reference to any data recorded or logged by the Customer.

8.5 If AN continues to provide the Services, at its sole discretion, where a receiver or administrator is appointed over any of the Customer's assets in accordance with clause 11.1.3, or if the Customer breaches any term of the MSA or a Product Agreement, AN reserves the right to withdraw any discounts and charge the Customer at AN's standard tariff sheet rates (available upon request) and to invoice the Customer for any discount previously applied.

8.6 AN may ask for a deposit as reasonable security for payment in respect of the Services and/or additional services, which shall be paid to AN by the Customer within 7 days of AN's written request. The Customer may request the return of any deposit at the expiry of a twelve (12) month period, but the decision to return any money prior to termination of the MSA is at the discretion of AN.

8.7 AN reserves the right to set off the deposit against any amount due and owing by the Customer to AN under the MSA, a Product Agreement or any other agreement between the parties.

8.8 If the Customer fails to pay any charges (in whole or in part) within twenty-eight (28) days of the invoice date, AN reserves the right to charge interest at the rate of four per cent (4%) per annum above the Barclays Bank plc base lending rate from time to time calculated from the invoice date until the date payment is made, whether before or after judgement.

8.9 AN reserves the right to reclaim from the Customer all costs and expenses (including legal costs) reasonably incurred in the collection of overdue amounts from the Customer.

8.10 The Customer shall not cancel any direct debit arrangement with AN until all amounts payable under the MSA and/or a Product Agreement have been paid.

8.11 Without prejudice to any of AN's other rights and remedies, AN will be entitled to deduct from, or set-off against, any debts or other sums whatsoever owed by AN to the Customer, and/or any debts or other sums whatsoever owed by the Customer to AN. Without prejudice to the foregoing, such deduction or set-off shall be allowable across any agreements between AN and the Customer (or any parent, subsidiary or associated company of the Customer) and shall continue to operate despite any receivership or fixed or floating charge. Without prejudice to the foregoing, the Customer will not dispose in any way (whether by assignment, charge, declaration of trust or in any other manner without limitation) of all or any part of its interest in any debts or other sums whatsoever owed by AN without the prior written approval of AN, and any purported disposal without such consent shall be void.

8.12 AN may arrange for invoices to be issued by a third party on its behalf and such invoices shall be binding on the Customer. By paying such invoices in full, the Customer shall discharge its liability to pay such invoices.

### 9. Limitation of liability

9.1 Except as expressly provided in the MSA or a Product Agreement, all warranties, conditions or other terms (whether expressed or implied by statute or common law or otherwise) as to the quality of the Services or their fitness for any particular purpose are hereby excluded to the fullest extent permitted by law.

9.2 AN shall not be liable for any loss (whether direct or indirect) of profit, revenue, business opportunity or anticipated savings, nor for loss or destruction of data or files, nor for any indirect or

consequential costs, claims, damages or expenses arising out of any negligent or tortious act or omission or any breach of contract or statutory duty.

9.3 Nothing in the MSA or a Product Agreement shall have the effect of excluding or restricting the liability of AN (and its employees, agents or sub-contractors) for death or personal injury resulting from its negligence or that of its employees, agents or sub-contractors, or for fraud.

9.4 AN shall not be liable for any cost arising from fraudulent use of the Services, and the Customer shall be liable for any costs relating to any use of the Services (including without limitation telephone calls) either from or within the Customer's premises or via external means.

9.5 AN shall not be liable for any loss, damage, cost, expense, downtime or service credit relating to anything that AN cannot reasonably control, including without limitation (i) acts of God (ii) weather, flood, drought, lightning or fire (iii) failure or shortage of power supplies (iv) civil disorder, war, military operation, or national or local emergency (v) acts or omissions of Government, highways authorities, other public telecommunication operators or other competent authorities (vi) AN's suppliers (vii) network, software, facilities or other equipment failures, errors or incompatibilities (viii) industrial disputes of any kind (ix) denial of service attacks, hacking, spamming, viruses or other hostile computer programs or (x) acts or omissions of any person or body for whom AN is not responsible (including without limitation the Customer and/or users of the Services), in all cases whether caused within or outside the United Kingdom.

9.6 Subject to clause 9.3, AN's (including its employees, agents or sub-contractors) total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of a Product Agreement and/or the MSA shall be limited to the higher of either twenty-five thousand pounds (£25,000), or a sum equal to the Customer's aggregate charges paid to AN in the preceding twelve month period, in respect of any one incident or series of connected incidents, and five hundred thousand pounds (£500,000) in the aggregate.

9.7 Subject to clause 9.3, any service credit specified in the Product Agreement is the Customer's sole remedy for and is in full and final settlement of the relevant failure to provide the Service.

#### 10. Suspension of Services

10.1 AN may, where reasonable, from time to time and without notice suspend the Services and suspend performance of its obligations under the MSA and/or a Product Agreement or any other agreement between AN and the Customer (including any parent, subsidiary or associated company of the Customer) in any of the following circumstances without liability:

10.1.1 if AN is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative authority;

10.1.2 during any technical failure, modification, repair, testing or maintenance of the telecommunications network or other equipment (including Equipment) by which the Services are provided, or in the case of emergency;

10.1.3 if the operation of the telecommunications network is suspended or if the provision of the Services to AN is suspended for any reason;

10.1.4 if AN reasonably believes that the Customer (or any parent, subsidiary or associated company of the Customer) will not, or is unable to, make any payment which is due or is to fall due to AN under the MSA, a Product Agreement or any other agreement between AN and the Customer (including any parent, subsidiary or associated company of the Customer); or

10.1.5 a Credit Limit is exceeded in respect of the relevant Services.

10.2 The Customer shall reimburse AN for all reasonable costs and expenses incurred by the implementation of any suspension of the Services under the MSA or a Product Agreement and/or the recommencement of the Services as appropriate, and shall remain liable for any applicable charges for the duration of any such suspension.

10.3 AN shall not be liable to the Customer for any charges incurred by the Customer for the use of other telecommunications services whether provided by AN or any other person during any period of suspension of the Services under the MSA or a Product Agreement.

#### 11. Suspension and/or termination

11.1 Without prejudice to any other claims or remedies which AN may have against the Customer, AN may suspend performance of its obligations under, and/or terminate, the MSA, a Product Agreement and/or any other agreement between AN and the Customer (including any parent, subsidiary or associated company of the Customer) by giving notice to the Customer with immediate effect in any of the following circumstances:

11.1.1 if the Customer fails to comply with the terms of the MSA, and/or a Product Agreement, or any reasonable instruction, after being given written notice of its failure (including but not limited to failure to pay any sums due);

11.1.2 if the Customer ceases to carry on business or is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

11.1.3 if the Customer makes or offers to make any arrangement or composition (including any voluntary arrangement) with any one or more of its creditors, or commits any act or acts of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against the Customer, or if any resolution or petition to wind up the Customer is issued or passed or presented (other than for reconstruction or amalgamation), or if a receiver is appointed over any of the Customer's assets;

11.1.4 if sums are overdue to AN under the MSA, a Product Agreement, or any other agreement between AN and the Customer (including any parent, subsidiary or associated company of the Customer);

11.1.5 if there is a change of control or ownership of the Customer;

11.1.6 if the performance of the MSA or a Product Agreement is prevented in circumstances beyond AN's reasonable control as detailed in clause 9.5;

11.1.7 if the Customer does or allows to be done anything which in AN's opinion will or may have the effect of jeopardising the operation of the Services or the telecommunications network;

11.1.8 if in the reasonable opinion of AN, it suspects the Services are being used for any illegal, improper, immoral, fraudulent or unlawful purpose, or in a manner prejudicial to the interest of the Customer and/or AN, or the Customer acts in a threatening or abusive manner;

11.1.9 if any licence or permission to operate or use the telecommunications network or any part of it is revoked or terminated for any reason;

11.1.10 if the operation of the telecommunications network is terminated or if the provision of the Services to AN is discontinued for any reason;

11.1.11 if any information supplied to AN by the Customer is false or misleading; or

11.1.12 if the Customer's billing falls below ten pounds sterling (£10) per month per line to be connected pursuant to the MSA and/or a Product Agreement, or if no traffic is carried for a period of ten (10) consecutive days.

11.2 AN may require an acceptable assurance from the Customer that there will be no further contravention prior to the termination (at AN's absolute discretion) of any suspension.

11.3 Notwithstanding termination of the MSA and/or a Product Agreement, the Customer will be liable for any call charges, line rental and other charges incurred in the event of the Customer's continued use of the Services after the date of termination.

11.4 Termination of a Product Agreement or the MSA for any reason shall be without prejudice to the rights of either party accrued as at the date of termination.

11.5 Upon termination of a Product Agreement in whole or in part the Customer shall pay AN on demand all sums due to AN pursuant to the Product Agreement.

#### 12. Assignment

12.1 AN may at any time assign its rights and obligations under the MSA and/or a Product Agreement to any third party.

12.2 The Customer shall not (without the prior written consent of AN) assign, transfer or delegate otherwise deal with all or any of its rights and obligations under the MSA and/or a Product Agreement.

#### 13. Variation

13.1 AN may vary all or any of its charges by giving the Customer written notice.

13.2 AN may vary the conditions of the MSA and/or a Product Agreement to take account of new legislation, statutory instruments, Government regulations or licence or similar matters provided that the Customer is notified of any such variation.

13.3 If AN provides the Customer with a revised version of AN's terms and conditions of the MSA and/or a Product Agreement, together with a notice stating when such revised terms and conditions will come into force, and the Customer continues to make use of the Services after such date, the Customer will be deemed to have accepted such revised terms with effect from such date and such revised terms and conditions will be deemed to constitute part of the MSA and/or the Product Agreement (as appropriate) in place of the previous terms and conditions.

13.4 Any other variation to the MSA and/or a Product Agreement shall be in writing and signed by a duly authorised representative of each party.

#### 14. Data protection

14.1 The Customer acknowledges and agrees that:

14.1.1 details of the Customer's name, address and payment record may be submitted to a credit reference agency and that the credit reference agency may process this data; and

14.1.2 personal data relating to the Customer, its employees, customers, and users of the Services ("Data") will be processed by and on behalf of AN and its suppliers worldwide for the purposes of the MSA and the Product Agreement. Details of AN's privacy policy may be found on AN's website.

14.2 The Customer represents and warrants that it has obtained informed and express consent (in accordance with the Data Protection Act 1998 and subordinate legislation) to the processing of Data by AN and its suppliers in accordance with this clause 14 from the Customer's employees, customers and any users of the Services and that the Customer's details and Data are and will be at all times up-to-date, accurate and complete.

#### 15 Internet access and software

15.1 The Services may be used by the Customer to link into web sites, resources and/or networks worldwide. AN neither accepts responsibility for the content, services or otherwise in respect of these nor endorses their content. The Customer agrees to comply with the terms and conditions and acceptable use policies of such web sites, resources and/or networks.

15.2 Where Internet access forms part of the Services, the Customer further agrees that:

15.2.1 all the visual, textual or other information, whether publicly posted or privately transmitted ("Information") is the sole responsibility of the person from whom such Information originated;

15.2.2 the Customer is entirely responsible for all Information that is uploaded, downloaded, emailed or otherwise transmitted via Internet access;

15.2.3 all dealings with, and interests in, promotions, services or merchants found by the Customer using the Services, unless otherwise stated, are solely between the Customer and the person with whom the Customer is dealing; and

15.2.4 access to secure financial transactions will be dependent on the type of hardware and the third party supplier of content.

15.3 AN shall not be liable for advice, instructions and/or directions which it gives to the Customer where the Services are used to link into web sites, resources and/or networks worldwide. Such advice, instructions and/or directions may relate, without limitation, to configuration of the Services on hardware of the Customer.

15.4 Any software provided as part of the Service is the property of the licensor and (if no licence is provided in conjunction with the software) the Customer is granted a non-exclusive, non-transferable licence to use the software solely in conjunction with the relevant product. The Customer shall neither copy the software, make modifications to nor attempt to reverse engineer or decompile the software, except to the extent permitted by law, and shall comply with the relevant licence.

#### 16. Miscellaneous

16.1 Subject to clause 13.3, the Customer agrees that these terms and conditions, and the terms and conditions of a Product Agreement, shall govern the MSA and the Product Agreement between AN and the Customer and shall supersede and replace any prior terms and conditions, oral or written, and all representations or communications between the parties relating to the subject matter of the MSA and the Product Agreement (save that nothing herein shall limit or exclude either party's liability in fraudulent misrepresentation). The Customer acknowledges that no representation has been made by AN or on behalf of AN in relation to the Services which has induced the Customer to enter into the MSA and/or a Product Agreement.

16.2 In the event of any conflict between these terms and conditions and the terms and conditions of the Product Agreement prior to incorporation of these terms and conditions, the latter shall prevail.

16.3 Any notice given under the MSA and/or a Product Agreement shall be in writing and shall be served by delivering it personally or sending it: (a) by first class post or fax to AN at Customer Services at AN's registered office or fax 0800 316 8867; or (b) by first class post, fax or e-mail to the Customer at any address of the Customer, unless otherwise notified by the relevant party. Any such notice shall be deemed to have been received: (a) if delivered personally, at the time of delivery; (b) in the case of first class post, 48 hours from the date of posting; (c) in the case of fax, at the time of transmission and subject to receipt of the appropriate "clear" transmission report; (d) in the case of e-mail, at the time of transmission. The Customer shall immediately notify AN of any changes relevant to the provision of the Services e.g. change of address.

16.4 Any concession or waiver allowed by AN to the Customer shall neither prevent AN from exercising any of its rights nor prejudice AN's rights to take any subsequent action.

16.5 If the Customer is entitled to give notice of termination under a Product Agreement, it may do so by sending AN's online cancellation form via e-mail to cancellations@alternativenetworks.com, which shall be deemed received upon the Customer receiving AN's e-mail confirmation of receipt.

16.6 If any provision (or part thereof) of the MSA and/or a Product Agreement is deemed to be invalid for any reason then the remainder shall be read as if the invalid provision (or part thereof) had to that extent been deleted and the validity of the remaining provisions shall not be affected.

16.7 Nothing in the MSA or a Product Agreement shall create a partnership or joint venture between the parties nor shall the Customer have any authority to bind or commit AN or to act as AN's agent.

16.8 Except for AN's employees, agents, sub-contractors or suppliers, nothing in the MSA or a Product Agreement shall confer any rights or benefits on any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

16.9 Any dispute under or arising out of the MSA and/or a Product Agreement may be referred to the Ombudsman for Telecommunications.

16.10 The MSA and each Product Agreement are governed by English law and both parties agree to submit to the exclusive jurisdiction of the courts of England.