



Conditions for CircuitSure and CitySure Services

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Conditions for CircuitSure and CitySure Service

1. INTRODUCTION

- 1.1 BT currently provides Private Circuits to PC Renters terminating at nominated sites on BT's Standard Conditions for Private Service.
- 1.2 This Contract allows the Customer to use a Standby Site which he equips, so that on giving a Proper Request to BT, EUPCs will be switched from the nominated Protected Site to the Standby Site.

2. DEFINITIONS

In this Contract unless the context otherwise requires:

"Bearer" means a 2Mbps bearer cable connected from the Standby Site or the Protected Site to the BT network;

"BT" means British Telecommunications plc;

"CitySure" means the provision of the service described in paragraph 3.1 as CitySure service;

"CircuitSure" means the provision of the service described in paragraph 3.2 as CircuitSure service;

"COF" means the Customer's order form(s) on which the Customer specifies the order(s) for Service;

"Contract" means a contract between BT and the Customer incorporating these terms and conditions, the COF, the BT Price List, where relevant, and any documentation arising under the provisions above;

"Customer" means the person or organisation indicated as such on BT's acceptance of the COF;

"End User" means a person or persons served by the BT Private Circuits at the Protected Site;

"EUPCs" means the End User's BT Private Circuits to be switched under this Contract;

"First Delivery Date" means the date on which the facility to divert the End User's circuits to the Standby Site is in place;

"Minimum Period of Service" means the minimum duration for Service stated in the BT Price List or as otherwise agreed and specified in the COF;

"Private Circuit" means a dedicated telecommunications link provided between

two or more specified points one of which is within BT's Licensed Area, other than by means of one of BT's public switched telecommunications systems;

"PC Renter" means a person or persons who currently rent BT Private Circuits which terminate at the Protected Site;

"Proper Request" means a request, using the agreed exchange of passwords, to switch EUPCs from the Protected Site to the Standby Site, which is confirmed in writing, the request confirmation to be sent by hand, fax or by post to the address in paragraph 15, provided that all the Request Conditions are fulfilled;

"Protected Site" means the premises where the EUPCs are terminated prior to any request for switching;

"Request Conditions" means all the following:-

- (a) the Customer has obtained and confirmed to BT the relevant Switching Authorities, *and*
- (b) the Customer provides suitable terminating apparatus and facilities at the Standby Site, *and*
- (c) the CitySure Customer has sufficient unused capacity over the relevant Bearer(s);

"Service" means CitySure and/or CircuitSure service, as appropriate;

"Standby Site" means the premises to which the EUPCs will be switched following a Proper Request;

"Subsequent Delivery Date" means any date after the First Delivery Date on which BT provides anything ordered under this Contract;

"Switch" means the diversion of one end of a Private Circuit from the Protected Site to the Standby Site.

"Switching Authority" means an authority in the form of the draft annexed to this Contract signed by the Customer for each End User and PC Renter affected by this Contract;

"Test Switching" means prearranged switching of EUPCs from the Protected Site to the Standby Site and back again at no charge to the Customer.

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3. SERVICE

3.1 CitySure Service

The CitySure Service comprises the following:-

- (i) the provision of one or more Bearers between the Standby Site and the BT network as specified in the COF;
- (ii) the provision of one or more Bearers between the Protected Site and the BT network as specified in the COF with the capability to connect the EUPCs from the Protected Site to the Standby Site subject to the capacity of the Bearer(s) of the Standby Site;
- (iii) on the Proper Request of the Customer and at the times agreed with BT Test Switching for each End User, only one End User's EUPCs to be switched at a time;
- (iv) on the Proper Request of the Customer the switching of EUPCs from that End User's Protected Site to the Standby Site and reverse switching at the Customer's expense within the times specified in the BT Price List.

3.2 CircuitSure Service

The CircuitSure Service comprises the following:

- (i) the provision of one or more Bearers between the Standby Site and the BT network as specified in the COF;
- (ii) the diversion of the EUPCs through appropriate switching points to allow switching of circuits from the Protected Site to the Standby Site;
- (iii) on the Proper Request of the Customer and at the times agreed with BT Test Switching for each End User, only one End User's EUPCs to be switched at a time;
- (iv) on the Proper Request of the Customer the switching of EUPCs from that End User's Protected Site to the Standby Site and reverse switching at the Customer's expense.

3.3 Test Switching

3.3.1 BT will, at the Customer's request, carry out two Test Switches per year from the Protected Site to the Standby Site.

3.3.2 The Test Switches will be carried out at a time agreed between BT and the Customer. The Customer is responsible for notifying the PC Renter and the End User of the Test Switches.

3.3.3 Restoration of service to the Protected Site shall be as agreed between BT and the Customer, but in any event shall be no more than 48 hours from the time of the Test Switch.

3.3.4 Except where a Test Switch has failed (in which case an additional Test Switch will be provided free of charge) all Switches in addition to two Test Switches per annum will incur a switching charge.

4. AGREEMENT BY BT

4.1 BT agrees to provide Service from the First Delivery Date, on the terms and conditions of this Contract which set out the entire Contract between BT and the Customer.

4.2 After the First Delivery date the Customer can, at the charges specified in the BT Price List, extend Service and this Contract will apply to any additional service or facility ordered pursuant to this paragraph save that the additional service or facility will be provided from the Subsequent Delivery Date.

5. REQUIREMENTS RELATING TO END USERS

5.1 The Customer shall provide BT with written details of the EUPCs to be switched under this Contract.

5.2 In respect of any EUPCs which BT may be required to switch, the Customer will give or procure Switching Authority. This shall not be required where the End User, PC Renter and the Customer are the same person.

5.3 BT shall not be required to switch EUPCs unless it has received the Switching Authority for the EUPCs.

5.4 The Customer shall not give BT instructions to switch EUPCs after the End User or PC Renter has withdrawn the Customer's authority to instruct BT to do so.

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6. CHARGES

- 6.1 The Customer agrees to pay, within 14 days of the invoice date, the charges for the Services, facilities and services which appear, or are calculated according to the rates which appear, or are otherwise mentioned, in BT's Price List on the date of the invoice.
- 6.2 Unless this Contract provides otherwise, the Customer is responsible for all charges set out from time to time in BT's Price List for the Service ordered by the Customer; in particular, for connection charges and charges for all facilities provided at the Customer's request in relation to the Service.
- 6.3 Unless BT's Price List provides otherwise, all charges are exclusive of Value Added Tax for which, if it is applicable, an amount will be added to the Customer's bill.
- 6.4 BT may charge daily interest on late payments at a rate equal to 4% per annum above the base lending rate of HSBC Bank plc. for the period beginning on the date on which payment is due and ending on the date on which payment is made.
- 6.5 BT may, at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.
- 6.6 Where the Customer wishes to terminate this Contract, or the provision of a service or facility under it, before the expiration of the relevant Minimum Period of Service, the Customer must pay the full price outstanding for such part for the remainder of the Minimum Period of Service, except where the Minimum Period of Service is more than 12 months, when the termination charges will be as set out in BT's Price List at the time.
- 6.7 Where the Minimum Period of Service is more than 12 months and unless otherwise agreed on expiry, rental will be recalculated at prevailing annual rates.
- 6.8 If, during the Minimum Period of Service, other than where this is 12 months, the Customer requests that Service to a Protected Site be terminated and simultaneously provided to an alternative Protected Site, connection charges for the alternative Protected Site will be payable and charges for termination of the terminated service during the Minimum Period of Service, other than where this is 12 months, will not apply.

- 6.9 BT reserves the right to review the Private Circuit charges where EUPCs have been switched, and have remained switched, to a Standby Site for three calendar months or more. Where the PC Renter fails to make payment of the increased amount, the Customer shall be liable for the increased charges and shall pay the increased charge to BT in accordance with this clause.

7. SWITCHING

- 7.1 The Customer can, by a Proper Request, ask BT to switch EUPCs from the Protected Site to the Standby Site and will pay BT's charges for any switching, other than where this is a Test Switch.
- 7.2 Except for Test Switches, once circuits are switched to the Standby Site they will remain switched to it until this Contract expires, or is terminated, or until Proper Notice is received from the Customer requesting that the switching be reversed. There will be no charge for a request to reverse a switching to the original Protected Site, but the switch will only be reversed once BT has had a reasonable opportunity to test and/or repair the original circuit at the Protected Site.

8. CUSTOMER'S OBLIGATIONS

The Customer agrees:-

- 8.1 To obtain or allow anyone accredited by BT, on production of a BT Identity Card, reasonable access to the Standby Site and to procure reasonable access to the Protected Site at all reasonable times for the purposes of this Contract, and the Customer must obtain any other permissions which are needed. BT will comply with the Customer's reasonable requirements as to safety of people on the Customer's premises.
- 8.2 To indemnify BT against any claims, legal proceedings, or liability arising directly or indirectly from this Contract, which are brought or threatened against BT by a third party (which expression includes the End Users or any of them) except where this is due to BT's negligence.

9. ADDITIONAL SWITCHING CAPABILITY

- 9.1 If BT agrees, the Customer can, by written notice and appropriate End User and PC Renter Switching Authority, extend this Contract at any time to add EUPCs, additional End Users and their private circuits, or to increase the capacity of the relevant Bearer(s).

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- 10. MINIMUM PERIOD OF SERVICE**
- 10.1 The first Minimum Period of Service, beginning on the day when Service is first made available, is 12 months, or the applicable period set out in the COF and in BT's Price List, but it does not prevent BT from exercising its rights to suspend Service, or either party from terminating this Contract, or the provision of a service or facility under it, subject to sub-paragraph 11.4. Further Minimum Period(s) of Service will apply in respect of each new service or facility provided by BT to the Customer.
- 11. CANCELLATION, TERMINATION AND DEFAULT**
- 11.1 Before Service, or a particular facility is provided, this Contract, or the provision of the facility, may be cancelled by notice by:
- (a) the Customer, and the Customer shall pay a charge for abortive work done and/or money spent to meet the Customer's requirements, as BT may specify in the Price List; *or*
 - (b) BT, if paragraph 13 of this Contract applies, or the Customer or the PC Renter or End User has not fulfilled an obligation to BT in respect of any contract for the provision of Telephone or Private Service, Telex Service CircuitSure or CitySure Service.
- 11.2 If the Customer:
- (a) does not pay any charge within 14 days of it falling due, or breaks this Contract in any other way; *or*
 - (b) does not pay any charge for any Telephone Service, Telex Service CircuitSure or CitySure Service within 14 days of it falling due to BT under another contract with BT; *or*
 - (c) is subject to bankruptcy or insolvency proceedings;
- BT can (without losing or reducing any other right or remedy) suspend Service (including partially) temporarily without notice, though the Customer remains liable to pay all charges, including rental, during the suspension, or terminate this Contract by immediate notice. If BT suspends Service because the Customer does not pay any charge, then any further suspension within a period of 12 months following restoration of Service may take place 7 days after a failure to pay instead of after 14 days.
- 11.3 "Bankruptcy or insolvency proceedings" means bankruptcy proceedings, or in Scotland sequestration proceedings; becoming insolvent; making any composition or arrangement with creditors, or an assignment for their benefit; any execution, distress, diligence or seizure; and, if the Customer is a company, being the subject of proceedings for the appointment of an administrator, going into liquidation, whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed.
- 11.4 On termination under this paragraph, as well as other sums payable up to the end of the Contract, the Customer must pay BT the rental which would have been payable for the remainder of the relevant Minimum Period of Service at the rate in force at termination, but BT will make due allowance for any rental the Customer has paid in advance for a period ending after the termination date, or the end of the relevant Minimum Period of Service, whichever is later, and make a repayment where appropriate.
- 11.5 The Customer continues to be liable to pay all charges which are due for Service during any period in which the Customer does not comply with this Contract.
- 11.6 If BT waives a breach of Contract by the Customer, that waiver is limited to the particular breach. BT's delay in acting upon a breach is not to be regarded in itself as a waiver.
- 11.7 At any time after Service has been provided, this Contract, or the provision of any service or facility under it can be ended:
- (a) by one month's notice by BT; *or*
 - (b) by one month's notice by the Customer, unless this Contract provides otherwise.
- 11.8 If BT gives notice, the Customer must pay rental up to the expiry of the notice.
- 11.9 If the Customer gives notice after the Minimum Period of Service, the Customer must pay charges until one month after the date BT receives the notice, or until expiry of the notice, whichever is later.
- 11.10 If the Customer gives notice within the Minimum Period of Service the Customer must pay rental or other charges for the remainder of the Minimum Period of Service at the rate in force at termination or as otherwise provided in the Price List. This

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- paragraph 11.10 will not apply if the Customer ends this Contract because BT has changed the Contract to the Customer's material detriment under paragraph 16.2(a).
- 11.11 The Customer's notice does not avoid any other liability for Service already provided. Whoever gives the notice, BT will repay or credit the appropriate proportion of any charges paid in advance for a period ending after the Customer's liability for charges ceases (unless it is for part of any Minimum Period of Service).
- 12. ASSIGNMENT**
The Customer shall not assign this Contract without the written consent of BT, such consent not to be unreasonably withheld.
- 13. MATTERS BEYOND BT'S REASONABLE CONTROL**
BT shall not be liable for failure to provide Service due to any cause beyond its reasonable control including; Act of God, weather of exceptional severity, flood, lightning or fire; terrorist activity; industrial action or lockouts; the act or omission of Government, highways authorities or other competent authority; war, military operations, or riot; the act or omission of any party for whom the Customer or BT (as appropriate) is not responsible.
- 14. LIMITATION OF LIABILITY**
- 14.1 In performing any obligation under this Contract, BT's duty is only to exercise the reasonable care and skill of a competent telecommunications service provider.
- 14.2 BT accepts liability for faults in the Service and for BT's own negligence, but only to the extent stated in this paragraph 14.
- 14.3 BT does not exclude or restrict its liability for death or personal injury resulting from BT's negligence, nor any liability arising under Part 1 of the Consumer Protection Act 1987.
- 14.4 BT's liability to the Customer in contract law, or in tort, or delict, or otherwise however arising in relation to this Contract, is limited to £1,000,000 for any one incident or series of related incidents and £2,000,000 for any series of incidents, related or unrelated, in any period of 12 months.
- 14.5 In any event BT is not liable to the Customer, either in contract, tort, or delict, or otherwise, for loss of profits, revenue, business, goodwill (including pecuniary losses arising from loss of goodwill) or anticipated savings, whether incurred directly or indirectly, or for any indirect or consequential loss or damage whatever.
- 14.6 The limitation of liability applies not only to the Customer when using Service, but also to any person using Service provided by BT to the Customer, on whose behalf the Customer agrees that this limitation of liability applies.
- 14.7 BT does not have any implied obligation, duty or liability in contract law, tort, or delict, other than those expressly stated in this Contract.
- 14.8 Each provision of this paragraph limiting or excluding liability operates separately in itself and survives independently of the others.
- 15. SERVICE OF NOTICE**
A notice given under this Contract must be in writing and may be delivered by hand or sent by post to the addressee at the following address:-
- 15.1 **To BT:** the address of BT's District Office shown on BT's order form which led to the making of this Contract, or on the Customer's last bill, or any alternative address which BT may specify at any time.
- 15.2 **To the Customer:** the address to which from time to time the Customer asks BT to send bills, the address of the Standby Site or in the case of a limited company its registered office.
- 16. VARIATION OF CONTRACT**
- 16.1 BT may change this Contract (including the charges) at any time.
- 16.2 BT will notify the Customer of any changes to the Contract by giving prior notice to the Customer which will be published online at www.bt.com (or any other online address that BT may advise the Customer) as follows:
- (a) For changes that are to the Customer's material detriment, at least 30 days before the change is due to take effect; and
- (b) for all other changes, at least 14 days before the change is to take effect.
- 17. THIRD PARTY RIGHTS**
A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

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ANNEX

CIRCUITSURE AND CITYSURE SERVICE

SWITCHING AUTHORITY

PC Renter

End User

Customer

Date

I confirm that the PC Renter and the End User have been notified of this Contract, and have agreed to BT switching Private Circuits rented or used by them to Standby Sites for testing purposes as well as for disaster recovery purposes. I have drawn to the attention of the PC Renter the implications for the Private Circuit rental charges should a switch remain in place for three months or more and have obtained their acceptance of this condition.

Signed by Customer

in the presence of (for contracts subject to Scottish law)

Signed by

Name

Position

Date

and

PC Renter

End User

Customer

Date