

SCC TELECOMMUNICATIONS SERVICES

MASTER SERVICES AGREEMENT [AV2]

INTRODUCTION

SCC operates a number of connectivity and related services. SCC wishes to supply the Services (as defined below) and the Customer wishes to obtain the Services on the terms of this Agreement.

The Customer may procure the Services (as defined below) for its own use or to enable it or its Intermediaries to supply services to its own customers. Where the Customer resells the Services, the additional provisions of Clause 10 shall apply.

1 ORDERS

- 1.1 This Agreement shall govern all Orders for Services placed by the Customer and accepted by SCC. SCC will provide the Services to Customer in accordance with the terms of this Agreement.
- 1.2 From time to time where the Customer requires the delivery of any Services then it shall request a Quotation for such from SCC. Following acceptance of the Quotation by the Customer it will provide SCC with an Order for such. Customer shall procure that each Order is signed by a person authorised to sign an Order on behalf of the Customer.
- 1.3 Not used.
- 1.4 Once an Order is accepted by SCC, each Order shall form a separate Contract between Customer and SCC incorporating the terms of this Agreement, the Quotation, the Order and the Service Description. In the event of any conflict between the terms of this Agreement, the Quotation, the terms of an accepted Order and/or the terms of the Service Description, the following order of precedence shall apply: (1) Quotation (2) Service Description (3) Agreement (4) the Order.
- 1.5 All terms and conditions contained in a Customer Order, purchase order, letter or other document produced or provided by the Customer are excluded and shall be of no effect to the extent they conflict with any of the terms and conditions specified in this Agreement.

2 ACTIVATING THE SERVICE

- 2.1 Before Activating a Service, SCC may:
- (a) verify that each Service Location is in an area in which the Service is available;
 - (b) carry out a line test and/or site survey;
 - (c) where appropriate, provide and/or install Service Equipment;
 - (d) Not used
- 2.2 Where checks and/or surveys and/or installation carried out by SCC (or its representatives)

require attendance at a Service Location, Customer shall liaise with SCC and/or its representatives to permit access to such Service Location. SCC and/or its representative shall endeavour to agree a date and time for such attendance but it is acknowledged and agreed that SCC shall have no responsibility for the failure by the Carrier to attend on the date or at the time agreed. Installation of certain Services may be subject to surveys carried out by SCC or a Carrier (a 'Site Survey') and SCC shall not be obliged to provide the Services if a Site Survey is incomplete or unsatisfactory or otherwise identifies a problem with providing the Services.

- 2.3 If SCC determines at any time before Activation that the Service cannot be Activated SCC shall notify Customer and any relevant Order and relevant Contract will be automatically terminated.
- 2.4 SCC shall endeavour to notify Customer if Activation is not possible as soon as commercially practicable. In such event, for the avoidance of doubt, Clause 2.9 shall not apply.
- 2.5 To allow the installation to proceed Customer shall as and when required by SCC and at Customer's sole cost and expense:
- (a) obtain all necessary consents, including consents for any necessary alterations to buildings;
 - (b) take up or remove any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers advised by SCC, or the engineer contracted for the installation or Activation of the Service; and
 - (c) provide any electricity and connection points required by SCC or its agents.
- 2.6 Customer acknowledges that during, and as a result of, the installation and activation of the Services at Service Locations, temporary loss, interference or disruption to other telecommunications services may occur. SCC will use its reasonable endeavours to minimise such interruption or interference and it shall undertake checks for such interference in connection with any such installation. To the maximum extent permitted by law, SCC will not be liable for any loss, interruption or interference to such other services during installation.
- 2.7 If Customer cancels or terminates:
- (a) An Order at any time before the Order Committed Date, it shall be liable for payment of a £150 admin fee and any Carrier or other specific charges or costs incurred in relation to such Order (it being acknowledged and agreed by the parties that

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- significant costs or charges may be incurred by SCC in the event of cancellation of an Order or Contract); and
- (b) A Contract at any time after the Order Committed Date and prior to Activation, it shall upon such termination be liable to pay SCC an amount equal to the Early Termination Charges.
- (c) A Contract at any time after Activation, it shall upon such termination be liable to pay SCC an amount equal to the Charges that would have been payable during the entire Initial Term less any already paid.
- 2.8 Where the Customer resells the Service to an End User and the Service Location is owned or controlled by an End User, the Customer shall procure that the End User complies with this Clause 2 (as if the End User were the Customer) to the extent necessary to enable SCC to install and Activate the Service at the Service Location and comply with this Agreement.
- 2.9 If SCC is unable to Activate a Service due to the act or omission of Customer (including the provision of incorrect information) or End User, SCC may treat the Contract as terminated by giving written notice to Customer and following such notice may levy the charges provided in Clause 2.7 (and the Customer shall be deemed to have terminated the Order and/or Contract at the time of such notice for the purposes determining the payment under Clause 2.7). Where the Customer delays the installation or completion of a Service for more than 60 calendar days, SCC may terminate the Order and Contract related to that Order by written notice to Customer in which event the Customer shall be liable to pay SCC the Early Termination Charges.
- 3 PROVISION OF THE SERVICE**
- 3.1 SCC shall provide the Services from the Activation Date for the term of the relevant Contract as described in the relevant Product Annex on the terms of this Agreement.
- 3.2 SCC shall provide the Services in a manner befitting a competent telecommunications service provider.
- 3.3 Further terms relating to the installation and provision of the Services (including any applicable Service Levels) are set out in the relevant Product Annex
- 3.4 Any dates and timelines specified in this Agreement or in any Quotation, or Order for performance of a SCC obligation are estimates only and time shall not be of the essence of this Agreement.
- 4 SERVICE EQUIPMENT AND SERVICE LOCATIONS**
- 4.1 SCC and its agents and subcontractors may during the term of each Contract: (i) install and keep installed the Service Equipment at each Service Location; and (ii) the right to enter and re-enter each Service Location as and when required in order to install, test, operate, maintain and remove the Service Equipment.
- 4.2 Customer shall prepare and provide (and, where applicable, procure that End Users provide) (i) reasonable access to the Service Location to enable SCC (and/or its sub-contractors) to provide the Services and (ii) a safe and suitable environment for housing the Service Equipment, including appropriate protection from weather, security, availability of power, cooling, heating and ventilation. Customer shall comply (and, where applicable, procure that End Users comply) with health and safety regulations and other applicable standards in relation to staff of SCC and its sub-contractors attending each Service Location.
- 4.3 The Customer shall be responsible for and shall procure that it's End Users are responsible for the maintenance of Customer Equipment and cables connected to the Network unless otherwise agreed by the Parties pursuant to an Order.
- 4.4 Customer shall not make any replacement, interference, modification, adjustment or connection to the Service Equipment save as agreed by SCC in writing.
- 4.5 The Customer shall and shall procure that End Users shall:
- (a) not stack any equipment or materials on top of Service Equipment;
 - (b) take all reasonable steps to secure against any unauthorised use of the Service Equipment;
 - (c) ensure the safe keeping of the Service Equipment at a Service Location and indemnify SCC for any loss or damage to the Service Equipment other than arising from the acts or omissions of SCC or its sub-contractors;
 - (d) ensure that all Service Equipment located in any Service Location or otherwise connected to the Network has the relevant electrical protection and failsafe measures, labelling and instructions for use as may be required by law and is connected to the Network and used in accordance with any applicable laws and instructions;
 - (e) ensure the compatibility of any applications, including Customer Equipment, the

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- Customer or End Users wish to use with the Services and ensure that any such applications do not harm the Network, Services, or any other customer's network or equipment; and
- 4.6 SCC agrees that its staff will observe the reasonable site regulations of Customer whilst at the Service Location. In the event of any conflict between such site regulations and the Contract, the latter shall prevail.
- 4.7 With the exception of Service Equipment the Customer shall be responsible for providing (or procuring that the relevant End User provide) computer hardware, software and telecommunications equipment and services to access and use the Services.
- 4.8 Ownership and title in the Service Equipment shall remain with SCC at all times during the term of the relevant Contract, unless agreed otherwise in writing between the parties. Customer shall not (and shall procure that End Users shall not) charge, mortgage or otherwise deal with the same and shall use all reasonable efforts to prevent third parties from asserting rights in relation to the Service Equipment.
- 4.9 Customer shall ensure (and shall procure that End Users shall procure) that all equipment connected to a Service is connected to and used with the Service in accordance with the published instructions and any safety and security procedures notified to Customer.
- 4.10 SCC makes no warranty that a Service will interoperate properly with any equipment not procured from SCC in connection with that Service.
- 4.11 The configuration of equipment and services provided by or on behalf of SCC (and know-how, design and information relating to such equipment and service configuration) and the Network is the intellectual property of SCC and/or its sub-contractors. Customer accepts that it does not have any right of ownership at any time during the Contract or after the Service has ceased and Customer shall not, at any time, and for any reason, attempt to gain access to the configuration of Service Equipment or the Network.
- 4.12 Any attempts to gain access to the Service Equipment or the Network by any means, including brute force hacking, reverse-engineering or resetting of the device shall be deemed a material breach of the relevant Contract and of this Agreement and SCC may terminate and/or suspend Service forthwith in accordance with Clause 5.1.
- 4.13 Where Customer needs to undertake penetration testing for security audit purposes Customer shall notify GlobalAccounts.IncidentManagement@scc.com five (5) Working Days in advance in writing, detailing the tests being undertaken. Customer will receive confirmation back by email when this has been accepted. Failure to notify SCC will be deemed a hacking attempt on the SCC network and material breach of this Agreement for the purposes of Clause 7.8.
- 4.14 Where remote management of the Service Equipment transfers to Customer on cessation of the Service, SCC will, at Customer's request (sent to GlobalAccounts.IncidentManagement@scc.com prior to the termination date), reset the Service Equipment to factory default settings so as to provide Customer with management access to the modem. A request to reset the Service Equipment after this date will require the return of the Service Equipment to SCC and collection, each at Customer's expense.
- 4.15 Customer shall ensure that Service Equipment is made available to SCC for collection in its original packaging or packaging provided by SCC and in good working order within 2 weeks of cessation of Service. If not returned, SCC may charge Customer the full cost of replacement at manufacturer's list price at that time.
- 4.16 SCC will have no liability to the Customer relating to the provision or performance of any Services affected by the any failure by Customer to comply with this Clause 4 or any Customer obligation set out in the Product Annex
- 4.17 The Customer shall notify SCC in writing promptly after becoming aware that it or an Intermediary or End User is in breach of Clause 4. Where the Customer does not comply with Clause 4 or any other obligations under a Contract or applicable Order and such non-compliance results in or is likely to result in a Service Failure or period where there is no Network Availability, SCC will use reasonable endeavours to notify the Customer of the matter promptly so that the Customer can remedy the non-compliance within a reasonable period, and in any event no later than thirty (30) days from receiving notice of the matter from. If the Customer does not remedy the non-compliance SCC shall have the right to immediately suspend the Services, at the Customer's expense, until non-compliance has been remedied to SCC's reasonable satisfaction. Where non-compliance is not remedied for three (3) or more months following notice of the matter by SCC, SCC shall have the right to terminate the applicable Order or the applicable Services under that Order, and the Customer shall pay the associated Early Termination Charges.

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- 4.18 Unless otherwise agreed in an Order, SCC, its sub-contractors and/or Carriers shall not be responsible for assessing the Customer's or End Users' space, facilities, computer and/or transmission capacity requirements, the Customer shall be solely responsible for assessing its and End Users' requirements, and for the avoidance of doubt, SCC shall have no liability under or in connection with this any Contract or an Order to the extent that the Customer's or its End Users' stated requirements are inadequate or are otherwise not fit for purpose.
- 4.19 Customer shall indemnify SCC, its representatives, agents and subcontractors in respect of all and any costs, losses, damages, expenses (including legal expenses), fines and penalties, proceedings, actions, liabilities, and claims incurred by or, brought or threatened against, SCC as a result of a breach of this Clause 4 and relevant Product Annex.
- 4.20 Customer shall not (and shall procure that each Intermediary and End User shall not) use any Service:
- (a) in breach of SCC's then current Acceptable Usage Policy from time to time detailed at: <http://www.scc.com/scc-acceptable-usage-policy/>
- (b) in breach of any reasonable instructions given by SCC or its subcontractors.
- 4.21 SCC shall have the right to examine, from time to time, Customer's use (and where applicable End User's use) of the Services and the nature of the data/information that Customer (or End User) is transmitting or receiving via the Services where such examination is necessary: (i) to protect and/or safeguard the integrity, operation and functionality of SCC's (and neighbouring) networks; and/or (ii) to comply with police, judicial, regulatory or governmental orders, notices, directives or requests. Customer shall procure that End User agrees to and allows such examination.
- 4.22 For the purposes of Clause 7.8, any breach by Customer of the provisions of this Clause 4 shall be deemed a material breach of this Agreement and of the relevant Contract.
- 4.23 Save where expressly permitted in this Agreement, the Customer shall not (and shall procure that each Intermediary and End User shall not) otherwise licence, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit or otherwise make use of the Services.
- 4.24 The Customer shall not (and shall procure that each Intermediary and End User shall not) modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property in the Services except and only to the extent that it is expressly permitted by this Agreement or applicable law.
- 4.25 The Customer shall (and shall procure that each Intermediary and End User shall) conduct its business without detriment to SCC and the good name, goodwill and reputation of SCC and shall avoid deceptive, misleading or unethical practices, advertising or publications that are, or might be, detrimental to SCC, SCC services or the public.
- 4.26 The Customer shall ensure that it (and each Intermediary and End User where relevant) has obtained all necessary licences or permits necessary for the use of the Services or (where applicable and subject to Clause 15) the delivery to or use by End Users of the Services and it shall pay all taxes and other amounts payable by it in connection with any delivery or use of the Services.
- 4.27 Customer shall indemnify SCC, its representatives, agents and subcontractors in respect of all and any proceedings, actions, liabilities, and claims brought or threatened in connection with Customer's breach of this Clause 4 ("Claims") and in respect of all and any costs, losses, damages, expenses (including legal expenses), fines and penalties incurred by SCC directly or indirectly in connection with such Claims.
- 4.28 Customer is not granted any right, licence or interest in any Intellectual Property Right unless expressly stated otherwise in this Agreement.
- 4.29 Customer warrants and represents that:
- (a) it has full power and authority to enter into and perform this Agreement, and that its entry into and performance of this Agreement will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party, and undertakes that it shall not, during the term of this Agreement, enter into any contract or accept any obligation inconsistent or incompatible with its obligations under this Agreement or any Contract;
- (b) it has obtained all necessary licences or permits necessary for the use of the Services or the delivery to or use by the End Users of the Services and it shall pay all taxes and other amounts payable by it in connection with any delivery or use of the Service
- (c) it shall not introduce any viruses, and shall not allow any viruses to be introduced, to the Network;

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- (d) it shall (and shall procure that its Intermediaries and End Users shall) comply with all applicable laws, rules and regulations of governmental entities, having jurisdiction over such performance, including any health and safety legislation and environmental legislation;
- (e) upon SCC's request, it shall (and shall procure that its Intermediaries and End Users shall) immediately give SCC all assistance, cooperation and information necessary in order for SCC to comply with its obligations under the Regulation of Investigatory Powers Act 2000 and all laws regarding data protection and data retention.

5 SERVICE SUSPENSION/ALTERATION

5.1 Without prejudice to its other rights or remedies hereunder or generally at law, SCC may suspend provision of the Services or any part thereof without liability to Customer:

- (a) Forthwith on written notice to Customer (i) where SCC reasonably believes Customer is in breach of Clause 4; and/or (ii) where SCC has a right to terminate the Agreement or any Contract, irrespective of whether it has exercised such right; and/or (iii) where Customer fails to pay any Charges in accordance with the relevant Contract, subject to SCC giving Customer at least 14 days prior written notice of its failure to pay and threatening suspension and such notice having expired without due payment by the Customer) (iv) where SCC is required to comply with an order, instruction or request of a Government, court, agency or other competent administrative or regulatory authority, provided that SCC gives written notice to Customer where practicable.
- (b) As provided in Clauses 5.2 and 5.3; and /or
- (c) Temporarily with as much notice as is reasonably practicable in the circumstances where such suspension is required for operational or technical reasons as provided in Clause 5.3. SCC shall reinstate the Services suspended under this Clause 5.1 (c) as soon as reasonably practicable.
- (d) SCC shall reinstate Service suspended under Clause 5.1 (a) in its absolute discretion which shall in any event be subject to payment by Customer of a charge of £150 and any direct pass through costs incurred by SCC as a result of suspension and/or reinstatement. If SCC has not reinstated a Service suspended under Clause 5.1 (a) within a period of thirty (30) days from the date of suspension, the Contract relating to such Services shall terminate automatically

at the expiry of such 30 day period, in which event the provisions of Clause 7.10 shall apply.

- 5.2 SCC shall be entitled to terminate, suspend or modify a Service and related Contract, without any liability, if any consent, licence or authorisation which SCC requires in order to provide that Service is not obtained, withdrawn or otherwise cancelled or the provision of the Service would result in SCC being in breach of contract to a third party; in the event of a modification that is materially detrimental to the Service, Customer shall have the right to terminate the Contract in question by notice to SCC, such notice to have immediate effect. SCC shall use its reasonable endeavours to give the Customer reasonable notice prior to such termination or modification taking effect. Any Charges paid in advance for the terminated Services in respect of the period after termination shall be refunded to the Customer save to the extent that these are in respect of committed carrier charges that cannot be recovered by SCC from the carrier.
- 5.3 Temporary changes may be made to the Network or the technical specification of a Service from time to time for operational or technical reasons including to suspend, modify, change, add to or replace any part of the Network or Services. If these changes will be materially detrimental to the Service SCC will use reasonable endeavours to inform Customer in advance.
- 5.4 SCC may from time to time carry out maintenance to the Network and/or Service for purposes of providing new installations, updating facilities and general maintenance ('Scheduled Maintenance'), during which the Service will be unavailable. SCC will use reasonable endeavours to provide at least seven (7) calendar days' notice of any Scheduled Maintenance.
- 5.5 Where SCC needs to carry emergency maintenance or any maintenance that is not Scheduled Maintenance ('Emergency Maintenance') to any Service and/or the Network, SCC may carry out such Emergency Maintenance and will give as much notice as is reasonably practicable and will explain why the maintenance is necessary and why short notice has to be given. It may only be possible to give this notification after the Emergency Maintenance has taken place.

6 CHARGES AND CREDIT TERMS

- 6.1 Invoices shall be issued by email to the Customer "accounts" email address supplied to SCC on the relevant Order. It is Customer's

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- responsibility to ensure a valid email address is maintained and notified to SCC for this purpose. SCC shall not be liable for disruption of the Service as a result of the failure to maintain or to notify SCC of changes to this email address.
- 6.2 Not Used.
- 6.3 In the following cases SCC shall be entitled to impose a credit limit on Customer and/or require payment of a security deposit and on written notice to Customer may suspend or withhold any Services in excess of the credit limit or security deposit:
- (a) Where Customer suffers a material and negative change in its financial or trading condition or in its credit rating; and/or
- (b) Where Customer has failed to make payment of an undisputed due amount, SCC has notified Customer of the consequences non-payment and the Customer has failed to make payment in cleared funds within 30 Days of such notification.
- 6.4 SCC only accepts payment by cheque, standing order, Direct Debit or electronic payment i.e. BACS.
- 6.5 Prices stated or quoted by SCC do not include VAT. VAT will be added to invoices and is payable by Customer.
- 6.6 SCC may invoice Customer for the Activation Charges and the first instalment of the Recurring Charges at any time following processing and acceptance of the Order, save for Leased Lines which are invoiced following the Activation Date. Activation of the Services shall be subject to payment by Customer of this invoice. Thereafter, the Recurring Charges shall accrue daily with effect from the Activation Date and shall be invoiced in advance at the frequency agreed on the Order.
- 6.7 Customer shall make payment of all amounts duly invoiced under this Agreement within thirty (30) calendar days of the invoice date, such payment to be made in full, without deduction or withholding except as required by law, save where an Quotation specifies some other due date for payment of Charges. Save as specifically permitted by SCC by way of credits under this Agreement, Customer shall not be entitled to any credit, set-off or counterclaim against SCC.
- 6.8 Not Used
- 6.9 Not Used
- 6.10 Where Customer disputes any amount due under an invoice Customer shall notify SCC in writing within 1 calendar month of date of issue of the relevant invoice, such notification to
- provide a detailed account of why the invoice is disputed, including all calculations. All undisputed parts of an invoice shall be payable in accordance with Clause 6.7 and the parties shall act in good faith and use reasonable endeavours to resolve the disputed sum following the dispute resolution procedure in Clause 16.2 .
- 6.11 SCC may, at its sole discretion, charge interest on any overdue amounts payable from the due date until the date of payment in full, whether before or after judgement, at the rate of five (5) percent per annum above the base rate of NatWest plc.
- 6.12 SCC will also charge for debt collection should it be necessary, following failure to pay by Customer. This will be carried out by an agency registered with the Office of Fair Trading. In this event Customer agrees that additional charges will be levied to cover the costs of the debt collection agency.
- 6.13 Where Services are provided to overseas the price quoted will be subject to currency fluctuations and hence Services cost will be linked to the local currency at the Location. SCC reserves the right to amend the cost in line with these fluctuations by 1 (one) months' notice. This change can be made at any time, even during the Initial Term.
- 6.14 For 95th percentile billing SCC shall measure the Bandwidth throughout on a 5 minute average, taking the highest of the download or upload value. The top 5% of values in the billing calendar month shall be discarded, leaving the value of the 95% as the data usage rate, in Mb/s, for the month. Where the 95% value exceeds the committed data rate then the difference between the committed and 95% usage rates shall be charged at the overage rate. Where no overage rate is specified on the Quotation this shall be £50 per Mb/s.
- 6.15 The Customer acknowledges that for certain elements of the Services SCC is reliant on arrangements made between SCC and third party suppliers and contractors who may change their costs to SCC from time to time. Consequently SCC shall be entitled to increase or decrease the Charges at any time to reflect such changes in costs payable by SCC to those third parties including but not limited to where SCC's supplier of electricity, telecommunications or software that SCC uses as part of its Service delivery increases or decreases its charges to SCC. In such circumstances, and subject to SCC providing the Customer with reasonable evidence of such changes, SCC shall have the right to change its corresponding Charges to the Customer on 30

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days' notice. The Charges shall be increased or decreased proportionately in line with the change received from the 3rd party supplier or contractor.

- 6.16 Without prejudice to Clause 6.15, provided that SCC provides the Customer with no less than thirty (30) days' prior written notice of its intention to do so, SCC shall be entitled to increase the relevant Charges on any day after expiry of the Initial Term (the "Increase Date"). If the Customer elects not to accept such increase, the Customer may terminate the relevant Order at the end of the Initial Term in accordance with termination clauses within the applicable service Product Annex.
- 6.17 For the avoidance of doubt the Customer's termination right detailed in Clause 6.16 shall not apply to any increases to the Charges made in accordance with Clause 6.15.

7 TERM AND TERMINATION

- 7.1 Not Used
- 7.2 Each Contract commences upon the Order Committed Date and shall continue for the applicable Initial Term set out in the Product Annex and thereafter unless and until terminated in accordance with this Clause 7 or other terms of this Agreement or the relevant Product Annex.
- 7.3 SCC will not accept any notice to terminate this Agreement (and this Agreement cannot be terminated by the Customer by notice) where overdue undisputed invoices remain unpaid. Such invoices must be settled in full prior to any termination notice being effective. Current invoices shall not prevent termination provided they are within the thirty (30) day payment term.
- 7.4 Customer shall not be entitled to terminate a Contract for any Service suspended under Clause 5 and any notice purporting to terminate the same shall be of no effect. Charges will continue to accrue during the period of suspension unless and until the Contract is deemed terminated or otherwise terminated by SCC pursuant to this Agreement.
- 7.5 Notice of termination of a Contract by the Customer in accordance with this Agreement must be effected in writing by the Customer to telecoms.cease@scc.com, referencing the contracted company name and details of the Service being cancelled, the site address and SCC contract number. No other method of notice of termination will be accepted or effective.
- 7.6 SCC will notify Customer of any final charges or outstanding balance on Customer's account.

Disputed Invoices

- 7.7 If there is a valid dispute on any final invoice, such dispute must be notified in writing to scc.credit.control@scc.com in accordance with Clause 6.10. Any credit due will be applied to the final invoice before termination of Service. If a refund is due, this will be paid by SCC by BACS transfer to a nominated bank account supplied in writing by Customer.

Termination for Customer Fault

- 7.8 SCC may terminate a Contract and/or this Agreement by written notice, to take effect forthwith if:
- (a) Customer commits a material breach of any Contract or this Agreement and if capable of remedy such breach is not remedied within a period of seven (7) days following written request to remedy;
 - (b) Customer has provided inaccurate or misleading information concerning its registered details or financial standing, or SCC has reason to believe is likely create disruption or harm to the Network;
 - (c) Customer fails to pay any overdue amount within thirty (30) days of the date of a reminder notice and/or fails at any time to comply with Clause 6.9;
 - (d) Customer fails to pay its debts when they become due;
 - (e) To the extent permitted by applicable law and subject to any applicable and compulsory conditions or requirements of the Insolvency (Protection of Essential Supplies) Order 2015 (or other applicable insolvency related legislation), any meeting is convened for the purpose of considering a resolution, or any petition is presented or any other steps taken, for the purpose of making an administration order against Customer, or for Customer's voluntary winding-up or dissolution, or any similar action or steps are taken in relation to Customer (and such action or steps are not withdrawn within 7 calendar days or such other period as may be agreed with Customer);
 - (f) Any meeting is convened for the purpose of considering a resolution, or any petition is presented or any other steps taken, for the purpose of making an order for Customer's winding-up or dissolution, or any similar action or steps are taken in relation to Customer (and such action or steps are not withdrawn within 7 calendar days) or an administrative or other receiver or trustee or similar officer is appointed over any of Customer's assets;

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- (g) Any breach of the AUP is committed (other than technical breaches that are not knowingly made by the Customer and do not cause SCC any damage).
- 7.9 Notice of termination under this Clause 7 by SCC to Customer may be made by email to the primary accounts contact stated on the Order or registered with SCC if updated since time of Order.
- Effects of Termination**
- 7.10 On termination or expiry of a Contract or of this Agreement, howsoever occasioned:
- (a) All amounts invoiced to Customer under that Contract or this Agreement shall become immediately due and payable;
- (b) Customer shall permit SCC, its authorised representatives, agents and subcontractors access to each Service Location to remove the Service Equipment.
- 7.11 In the event of termination by SCC under Clause 7.8 which takes effect during the Initial Term, Customer shall immediately become liable for all Recurring Charges scheduled for payment (being all Recurring Charges that would have been payable) during the remainder of that Initial Term save that 20 per cent of any amounts that represent carrier charges that have not been incurred or committed by SCC will be deducted from such Recurring Charges (which amount Customer agrees represents a reasonable pre-estimate of SCC's losses);
- 7.12 Termination or expiry of this Agreement shall be without prejudice to the accrued rights and liabilities of either party.
- 8 LIABILITY**
- 8.1 Nothing in this Agreement shall exclude or limit either party's liability (i) for death or personal injury caused by or arising from negligence; or (ii) for fraud or fraudulent misrepresentation.
- 8.2 SCC's aggregate liability for failure to provide any part of the Service in accordance with the Service Levels and SLA shall be limited to the service credits set out in the Service Level Agreement
- 8.3 Subject to Clause 8.1, SCC's maximum aggregate liability to Customer in contract, tort (including negligence) or breach of statutory duty or otherwise arising under or in connection with each Contract:
- (a) for claims arising during the period of 12 months from Activation shall be limited to the aggregate of the Activation and Recurring Charges payable by Customer under that Contract in respect of that period, and for claims arising in each successive 12 month period shall be limited to the Recurring Charges payable by Customer under that Contract in respect of that period;
- (b) shall in any event be limited to the aggregate Charges paid by Customer to SCC under that Contract.
- 8.4 Except in respect of the Service Credits stated and paid in accordance with the Service Level Agreement, SCC is not liable, and will not be liable in any circumstances for any loss or damage, whether direct or indirect, which results or may result from:
- (a) Customer's, Intermediary's or End User's access to, or inability to access, the internet or use therefore for any purpose whatsoever; and/or
- (b) any reliance on or use of information, service or goods purchased on or through the Service or the internet.
- 8.5 Subject to Clause 8.1, but notwithstanding anything else in this Agreement, SCC shall not be liable in contract, tort (including negligence or breach of statutory duty) for:
- (a) losses or claims relating to the transmission or receipt of infringing or unlawful information or content of whatever nature transmitted via the Service;
- (b) loss of, damage to or corruption of data, or files, stored, transmitted or used on the Service or the SCC Network;
- (c) loss or damage suffered by Customer as a result of any virus or other hostile computer program, denial of service, spamming, or hacking being introduced via the Service.
- 8.6 The Customer shall notify SCC in writing of any actual or alleged failure, defect or issue with the Service that may give rise to a claim against SCC as soon as reasonably practicable and in any event within 7 days of becoming aware of the same. Without prejudice to the foregoing, SCC shall not, subject to Clause 8.1, be liable to the Customer in respect of any claim or claims where the relevant failure, defect or issue has not been notified to SCC by the Customer within 60 days of the Customer becoming aware of the failure, defect or issue.
- 8.7 The Customer shall notify SCC of its intention to bring a claim in connection with this Agreement (other than any claim for Service Credits which shall be governed by the Service Level Agreement) within 12 months of the failure or circumstances giving rise to the claim. SCC shall not, subject to Clause 8.1, be liable to the Customer in respect of any claim or claims that

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- have not been notified to SCC in accordance with this Clause 8.7.
- 8.8 Subject to Clause 8.1, but notwithstanding anything else in this Agreement, SCC shall not be liable to Customer in contract, tort (including negligence or breach of statutory duty) for:
- (a) any loss of actual or anticipated profits, loss of contracts, downtime costs, loss of opportunity, loss of reputation, loss of business, loss of goodwill, loss of anticipated savings or wasted expenditure; and/or
 - (b) any indirect, incidental, special or consequential loss or damage.
- 8.9 Customer is advised to obtain insurance in respect of any liability excluded by SCC hereunder including but not limited to the loss or corruption of data.
- 8.10 Risk of Loss Insurance – Customer shall take out third-party insurance with a reputable insurer approved by SCC in respect of (and shall accept responsibility for any loss or damage to) the Service Equipment or CPE, during the Initial Term and thereafter until the Contract has been terminated in accordance with Clause 7. Customer will provide SCC with a copy of such insurance upon request.
- 8.11 Not used
- 9 WHOLESALE SERVICES**
- 9.1 Where SCC provides Layer 2 Wholesale Services to the Customer:
- (a) the parties shall commence the relevant setup process pursuant to the Product Annex and shall fulfil all their respective obligations in relation to the relevant Set Up Process as set out in the Product Annex.
 - (b) Customer shall, upon reasonable written request from SCC, provide SCC with all necessary facilities including rights of access to the Connection (if any), in order that SCC may ensure that the Customer complying with its obligations under this Agreement.
- 9.2 It is acknowledged by Customer that any protocols offered by SCC may not comply to any particular standards such as, but not limited to, IETF RFC standards and SCC does not make any warranty in relation to any expected feature set of the Connection or the Services].
- 10 RESALE**
- 10.1 SCC agrees that Customer may resell the Services or use the Services as a basis for the provision of services in each case to End Users or to Intermediaries who resell to End Users. In all such cases the provisions of this Clause 10 shall apply in addition to the other provisions of this Agreement.
- 10.2 Unless requested otherwise by SCC and save as otherwise provided in this Agreement, Customer shall not pass SCC contact and support details to End Users or Intermediaries and all communications relating to the installation, operation and maintenance of the Services or otherwise in connection with this Agreement shall be solely between SCC and Customer.
- 10.3 Customer shall (and where relevant shall procure that each Intermediary shall) enter into a contract directly with End Users (“End User Contract”). Customer shall ensure (and where relevant shall ensure that Intermediaries procure that) End Users use the Services and the Network only in accordance with the Acceptable Usage Policy and the terms of the End User Contract, except as otherwise agreed with SCC in writing. Customer shall procure (and where relevant shall ensure that Intermediaries procure) compliance by End Users with the terms of the End User Contract and shall be liable for any acts or omissions of Intermediaries and End Users relating to the End User Contract. Customer shall ensure that the End User Contract contains prudent legal terms that would be expected of a professional and competent telecommunications service provider and that such End User Contract does not contain terms that are prejudicial to SCC or its subcontractors or any Contract or in direct conflict with the terms of this Agreement or any Contract.
- 10.4 The Customer shall not (and shall procure that each Intermediary shall not) make any promises or representations or give any warranties or guarantees in respect of the Services (and shall, without limitation and to the extent permitted by applicable law, exclude all implied warranties, conditions and other terms) except such as is expressly set out in this Agreement or as expressly authorised by SCC in writing.
- 10.5 The Customer shall (and shall procure that each Intermediary shall) observe all reasonable directions and instructions given to it by SCC or its subcontractors in relation to the promotion and advertisement of the Services and shall not use any SCC or subcontractor trade mark or name except with the written consent and approval of SCC.
- 10.6 Customer acknowledges that all and any claims in respect of the Services lie solely between SCC and Customer and Customer shall indemnify SCC in full in respect of: (i) all claims, actions and/or proceedings in contract, tort (including negligence) or otherwise brought or

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- threatened against SCC or its subcontractors by Intermediaries and/or End Users arising under or in connection with any Contract, End User Contract and/or the resold Services ('Claims'); and (ii) in respect of all liabilities, damages, costs (including legal costs), losses and expenses incurred by SCC or its subcontractors directly or indirectly in connection with such Claims.
- 10.7 Customer warrants that it has all licences and authorisations to resell the Services supplied by SCC.
- 10.8 Customer shall procure that it is the End Users' responsibility to connect the Service Equipment to the Network. The Customer (directly or by procuring that the relevant Intermediary) is responsible for the installation of the Service Equipment by the End Users and for the operating system compatibility and usability, and SCC shall have no liability in this respect. SCC is not responsible for assessing the Customer's, Intermediary's or an End User's space, facilities or computer and transmission capacity requirements and Customer or each Intermediary shall be solely responsible for assessing its own and the End Users' requirements. Customer or each Intermediary is solely responsible for the relationship with an End User.
- 10.9 Customer shall not (and shall procure that the End User shall not) make any replacement, interference, modification, adjustment or connection to the Service Equipment save as agreed by SCC in writing.
- 10.10 Not used
- 10.11 Not used
- 11 PERSONNEL**
- 11.1 SCC shall make available an Account Manager and use reasonable endeavours to ensure that the same person acts as its Account Manager throughout this Agreement. SCC shall use personnel who are reasonably skilled and competent to carry out the Services but may otherwise select and change personnel from time to time in its discretion.
- 11.2 Customer shall appoint and notify SCC of a point of contact to act as a point of contact for the administration and conduct of matters concerning the Contract and Services, who shall be the person stated on the Order unless otherwise notified to SCC in writing.
- 11.3 The parties do not intend that the entry into, performance and/or termination and/or expiry of this Agreement or any Contract will constitute a "relevant transfer" (as defined by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("Transfer Regulations)). Notwithstanding this, in the event that there is a "relevant transfer" (as defined by the Transfer Regulations) either on entry, during or on the expiry or termination of this Agreement or any Contract, the parties agree that the provisions of clauses 11.4 to 11.5 inclusive will apply.
- 11.4 Subject to the provisions of clause 11.5, in the event that the contract of employment of any employee or former employee of Customer, Intermediaries, End Users or a supplier to the Customer, Intermediary or End User or any collective agreement between Customer and any trades union, has effect either during or on or after the expiry or termination of this Agreement as if originally made between SCC or any subcontractor and that employee, former employee or the relevant trade union (as the case may be) in accordance with the provisions of the Transfer Regulations, SCC or its subcontractor may terminate that contract of employment or collective agreement forthwith and Customer hereby agrees to indemnify SCC and its subcontractors and to keep SCC and its subcontractors indemnified against and to keep SCC and its subcontractors harmless at all times from any claims, actions or proceedings and all loss, damage, costs, charges and expenses (including, but without limitation, legal and other professional costs on an indemnity basis) suffered or incurred by SCC and its subcontractors which arise from:
- (a) the employment of any such employee or former employee by SCC or its subcontractors;
 - (b) any claim or claims by any such employee, former employee or by any employee representative in relation to any act or omission of Customer which is deemed to be (or alleged to be deemed to be, whether correctly or not) an act or omission of SCC or its subcontractors by virtue of the Transfer Regulations;
 - (c) any claim or claims by any such employee, former employee or by any employee representative in relation to any failure to inform or consult with appropriate representatives of Customer or any Replacement Supplier or otherwise comply in all respects with Regulations 10 and 10A of the Transfer Regulations; and/or
 - (d) any claim or claims by any such employee, former employee or by any employee representative in relation to the termination of any such contract of employment or collective agreement (including, but without limitation, any claim for breach of contract or unfair dismissal).

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11.5 In the event of a "relevant transfer" (as defined by the Transfer Regulations), Customer agrees to inform and consult with appropriate representatives of any affected employees and otherwise comply in all respects with the Regulations 10 and 10A of the Transfer Regulations. Customer hereby agrees to indemnify SCC and its subcontractors fully and to keep SCC and its subcontractors indemnified against and to hold SCC and its subcontractors harmless at all times from any claims, actions or proceedings and all loss, damage, costs, charges and expenses (including, but without limitation, legal and professional costs on an indemnity basis) suffered or incurred by SCC or its subcontractors which arise from Customer failing to accord with its obligations under this Clause 11.5.

12 GENERAL TERMS

- 12.1 This Agreement and each Contract contains the entire agreement between the parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations or understandings.
- 12.2 Save as expressly set out in this Agreement or any Contract and subject to Clause 8.1, all representations, warranties, conditions or other terms (whether written or oral, express or implied by statute, common law or otherwise) including, without limitation, implied terms as to fitness for purpose, quality or merchantability are hereby excluded.
- 12.3 If any provision of this Agreement is held by a court or any governmental agency or authority to be invalid, void, or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid, and enforceable.
- 12.4 SCC shall not be liable for any delay or failure in performance of its obligations to the extent that such delay or failure is attributable: (i) to Force Majeure; or (ii) to the delay, act, omission or default of the Customer.
- 12.5 SCC's failure to exercise or enforce, or any delay in exercising or enforcing, any right or benefit conferred by this Agreement shall not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.
- 12.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not party to it any right to enforce any of its provisions.

13 CONFIDENTIALITY

- 13.1 Each party shall: (i) keep all Confidential Information relating to the other party confidential; (ii) shall disclose such Confidential Information only to its personnel having a need to know for the purposes of this Agreement; and (iii) shall use such Confidential Information only for the purpose of exercising its rights or performing its obligations hereunder.
- 13.2 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 13.2, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.3 Customer shall keep confidential all passwords, logon codes and other access methods. SCC shall not be liable for any disclosure by Customer of the same, whether intentional or otherwise.
- 13.4 Customer shall keep confidential the contents of this Agreement and document. No part of this Agreement or document contents may be used, copied, disclosed or conveyed to any person in any manner whatsoever without prior written permission from SCC, save to Customer's advisors or for reasons set out in clause 13.1 (ii) and (iii).
- 13.5 With regards to the Freedom of Information Act and where applicable the Freedom Of Information Scotland Act (the "Acts"), if any requests for information are received in respect of any dealings SCC has with the Customer including in respect of any contract that SCC has agreed or may agree with the Customer, then SCC would expect that any non-public financial information, the price payable for goods and services supplied or to be supplied together with terms and conditions of trade are treated as "trade secrets" the disclosure of which would have a material adverse effect on our commercial interests because of a reduction in our "competitive edge" and therefore such information should be considered exempt from disclosure in accordance with the exemptions contained in the Acts including in Part 2, Section 43 in the case of the Freedom of Information Act and Section 33 in the case of the Freedom of Information Scotland Act. Customer shall consult with SCC regarding any requests for information received by the Customer which relate to any dealings SCC has with the

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- Customer and which may encompass such trade secrets save as required by law.
- 13.6 This Agreement may be amended, modified or varied only by an agreement in writing signed by a duly authorised representative of the parties.
- 13.7 Neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor or have any authority to bind the other party.
- 13.8 For the term of this Agreement and for a period of one year thereafter the Customer and their Affiliates shall not entice or endeavour to entice away from SCC or SCC's suppliers or employ, or make any offers of employment to, any person employed by SCC at any time up to six months after the termination of their employment, except as may be agreed between the parties. "Employ" means the engagement of such a person as an employee, director, subcontractor or independent contractor to carry out duties which are identical or substantially similar to the duties for which such person has been employed by SCC or SCC's suppliers.
- 13.9 The estimate of the impact that breach of Clause 13.8 would have is herein specified as liquidated damages in the amount of one year's salary of any such employee at the date of leaving employment to join the other party. The parties accept that this is a reasonable estimate of loss, and each party agrees to pay the same in the event of each and every breach by it of this clause. This provision is without prejudice to the right of each party to seek injunctive relief.
- 14 INSURANCE**
- 14.1 SCC confirms that, as a reputable service provider, it has in place the following insurance policies in relation to potential liabilities under this Agreement:
- (a) Public liability insurance with cover of £10 million;
 - (b) Product liability insurance with cover of £10 million;
 - (c) Employers' liability insurance with cover of £10 million;
 - (d) Professional indemnity insurance with cover of £10 million;
 - (e) Director's liability insurance with cover of £5 million.
- 15 DATA PROTECTION**
- 15.1 The Parties will keep confidential any and all Confidential Information that they may acquire pursuant to this Agreement.
- 15.2 Each Party will not use the Confidential Information for any purpose other than to perform its obligations under this Agreement. Each Party will ensure that its officers and employees comply with the provisions of this Clause 15.
- 15.3 In this clause 15, the terms Controller, Processor, Processing and Data Subject have the meanings given to them in the Data Protection Legislation.
- 15.4 The parties acknowledge that the Customer is a Controller and SCC is a Processor in relation to Personal Data processed by SCC pursuant to this Agreement.
- 15.5 The Personal Data which could be Processed by SCC in performing the Services (including where the processing is broadly the storage and transfer of data used by the Customer in the course of carrying on its business within its systems which SCC hosts or provides compute infrastructure for) could relate to any individual anywhere in the world with whom the Customer and its users are doing business, providing a service, employing (either potentially or historically) and anyone related to such individuals. The Personal Data could be any type of personal data or special category of sensitive Personal Data that is included within emails, information or documents sent to or from the Customer's users or created by them, all as determined by Customer's users. The Personal Data will be processed for the duration of this Agreement and will be deleted by the Customer and SCC in accordance with their respective retention policies or its users' actions, during (in the case of the Customer) and following termination of the Agreement.
- 15.6 The Customer shall:
- 15.6.1 ensure it has all necessary rights and consents to Process Personal Data and to disclose Personal Data to SCC in accordance with the applicable Data Protection Legislation;
 - 15.6.2 provide the Processor with documented instructions regarding the Processing to be carried out which may consist merely of the obligation to perform the Services in accordance with this Agreement; and
 - 15.6.3 be responsible for ensuring that appropriate technical and organisational measures are in place for all Personal Data Processed within the Customer's IT Environment by the Customer and SCC. The parties agree that it is not appropriate for SCC to be responsible for determining

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- appropriate technical and organisational measures related to the Customer's IT Environment. promptly upon termination or expiry of this Agreement;
- 15.7 The parties agree that the Customer is also responsible for determining, when the Regulation comes into force, whether further security measures in addition to the security obligations set out in this Agreement are required for the Customer to comply with its obligations under Article 32 of the Regulation, as taking into account the nature, scope, context and purposes of the Processing it carries out under this Agreement, as SCC does not have knowledge of the Personal Data sufficient to enable it to analyse the appropriate technical and organisational measures for the Personal Data.
- 15.8 SCC shall:
- 15.8.1 Process the Personal Data only on the documented instructions of the Customer as set out in this Agreement to perform its obligations under this Agreement and ensure it takes steps to ensure that its personnel only Process Personal Data on documented instructions from the Customer, unless required to do otherwise by applicable law; and;
- 15.8.2 comply with the data security obligations, if any, as set out in this Agreement only, which are appropriate to the nature of the processing undertaken by SCC.
- 15.9 Upon the Regulation coming into force SCC shall:
- 15.9.1 ensure that its personnel who are authorised to Process Data are under obligations of confidentiality that are enforceable by SCC;
- 15.9.2 taking into account the nature of processing and the information available to SCC, assist the Customer, at the Customer's request and cost (at SCC's then current charge out rates): (i) in ensuring compliance with the Customer's obligations in Articles 32-36 of the Regulation; and (ii) with its obligations to comply with Data Subjects' requests and Data Subjects' rights under Chapter III of the Regulation through the use of appropriate technical and organisational measures;
- 15.9.3 at the written election of the Customer, either destroy or return the Personal Data (including all copies of it) at any time upon request by the Customer or
- 15.10 SCC shall not Process or transfer Personal Data outside of the European Economic Area without the prior written consent of the Customer (and where consent is given with respect to the transfers, such consent will be set out at Schedule 6) and without putting in place adequate protection for the Personal Data to enable compliance by the Customer and SCC with their obligations under applicable Data Protection Legislation. Prior to any such transfer or Processing of Personal Data outside of the European Economic Area or to a country without a finding of adequacy), the Customer and SCC shall enter into a data transfer agreement on the terms of standard contractual clauses approved by the European Commission.
- 15.11 The Customer consents to the appointment by SCC of sub-processors as necessary for SCC to provide the Services.
- 15.12 The Customer acknowledges that SCC does not have any knowledge of the quantity or value of the data or software used by the Customer in utilising the Services. The Customer shall take all reasonable steps to mitigate the risks of data and software loss inherent in its use of the Services. The Services that SCC has agreed to provide to assist the Customer to mitigate such loss including any back-up of data and software (if applicable) are set out in Schedule 1 (Services). The Customer agrees that SCC shall not be liable for loss of Customer data or software to the extent that the Customer data or software has changed since the time that SCC was last required to perform a backup pursuant to this Agreement.
- 16 GOVERNING LAW AND DISPUTES**
- 16.1 This Agreement shall be governed and construed in accordance with English law, and the Parties irrevocably agree to the exclusive jurisdiction of the English courts.
- 16.2 If any dispute arises in connection with the Contract, the parties shall attempt to settle it by negotiation:
- (a) in the first instance, the parties should attend a conference call between a member of SCC's finance team and the Customer's account manager within 7 Working Days of the dispute arising,
- (b) failing resolution of the dispute at such conference call the parties shall hold a meeting between the respective account manager's appointed under Clause 11 within 7 Working Days of the above conference

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- call, or where an invoice is disputed, the date of notification of such dispute by the Customer;
- (c) failing resolution of the dispute at such meeting, the matter shall be escalated to a meeting between senior director of each party which shall be held within 7 Working Days of the first meeting.
- 16.3 Each party shall use their respective reasonable endeavours to consult or negotiate with each other in good faith, and recognising their mutual interests, attempt to reach a just and equitable settlement satisfactory to both parties.
- 16.4 If the parties are unable to settle any dispute by negotiation within the earlier of 21 Working Days of the dispute arising or within 3 Working Days of the second meeting, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) (use Ombudsman Services Services) procedure to be completed within a further 45 days, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators.
- 16.5 If the parties are unable to settle any dispute by negotiation through ADR or either party refuses or declines to follow ADR procedure as required under clause 16.4, either party may exercise its rights and remedies under this Agreement and to take such proceedings as it deems necessary pursuant to Clause 16.1.
- 16.6 Nothing in this Clause 16 shall prevent either party from seeking injunctive or similar relief at any time if such action is necessary to preserve or protect its commercial or business interests under the Contract or this Agreement.
- 16.7 Nothing in this Agreement shall be construed as creating any form of partnership or relationship of agency or joint venture between the Parties.
- 17 NOTICES**
- 17.1 Unless provided otherwise in this Agreement, any notice or other communication to be given under this Agreement ("Notice") shall be in writing (which for this purpose excludes email), signed by or on behalf of the Party giving it (which may include an electronic signature) and may be served by sending it by delivering it by hand or sending it by a recorded postal delivery service to the address and for the attention of the relevant Party whose details are set out in the Order as otherwise notified from time to time under this Agreement)
- 17.2 Any Notice shall be deemed to have been served:
- (a) if delivered by hand, at the time and date of delivery;
- (b) if sent by post, at the expiration of 2 Business Days after the envelope containing the same was delivered into the custody of the postal authorities,
- (c) if sent by email, immediately upon transmission provided that no error message is received or generated within 48 hours of being sent,
- provided that where, in the case of delivery by hand, such delivery or transmission occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day.
- 18 INTELLECTUAL PROPERTY**
- 18.1 The Intellectual Property Rights in the Services together with Intellectual Property Rights in all training and other documentation provided to Customer or any Intermediaries are and shall remain the property of SCC, the SCC Group or its licensors.
- 18.2 Customer shall notify SCC immediately if Customer or any Intermediary becomes aware of any unauthorised use of the Services or any of the Intellectual Property Rights relating to the Services and will assist SCC at SCC's cost in defending SCC's rights. Customer and its Intermediaries shall not have any rights to use the mark or logo of SCC or any member of the SCC Group, unless otherwise agreed in writing.
- 19 SUB-CONTRACTORS**
- 19.1 SCC shall use commercial endeavours to manage its sub-contractors who it uses to carry out the Services in a manner consistent with a competent telecommunications service provider. However, it is acknowledged and agreed by the parties that the acts or omissions of sub-contractors who install the Service or any part of the Service are beyond the control of SCC. SCC shall not, to the extent permitted by law, be liable to Customer contract, tort (including negligence) or breach of statutory duty for any acts or omissions of any sub-contractors during installation of any part of the Service for the Customer at the Customer Location. In the event of any failure of such sub-contractor during such installation that affects the Customer, SCC shall use reasonable endeavours to procure that the benefit of any warranty or guarantee provided to SCC by such sub-contractor (in respect of any Service or part of Service provided to Customer and to the extent that it is permitted to do so by the relevant sub-contract) is transferred to the Customer.

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- 19.2 SCC may assign the benefit and/or burden of this Agreement and any Contract upon written notice to Customer, and may subcontract the provision of all or any part of the Service or Services to third parties.
- 19.3 Customer shall not (without SCC's prior written consent), and shall procure that its Intermediaries shall not, assign, transfer or otherwise dispose of its rights and/or obligations under (i) this Agreement; or (ii) any contracts between Customer and an Intermediary; or End User Contract
- 19.4 The Customer agrees that SCC may without notice assign to the benefit of a third party assignee, its rights, title and interest, in whole and in part, to receive the Charges and any other payments made by the Customer pursuant to the Order.
- 19.5 Where SCC assigns any of its rights, title and interest in the Charges to an assignee pursuant to Clause 19.4:
- (a) the assignee shall not be liable for or be required to perform any of SCC's obligations to Customer under the Agreement, Product Annex and/or Order, such obligations being retained by SCC.
 - (b) for the avoidance of doubt, Service Credits, rebates or price reductions, if applicable, shall be independent of the Customer's obligation to pay the Charges and shall not have the effect of reducing the Charges payable.
 - (c) Customer's obligation to pay the Charges and liability therefore shall continue notwithstanding, and shall not be affected by, released and/or reduced as a result of any of the following: (i) any breach under or in connection with the Agreement, Product Annex and/or Order and/or any wrongful or negligent act or omission by or on behalf of SCC; (ii) any dispute between SCC and the Customer; (iii) any change or revision to the Agreement, Product Annex and/or Order; (iv) any termination or suspension of the Agreement, Product Annex and/or Order (or any function thereof), in each case in whole or in part for any reason whatsoever; (v) any accident or damage to and/or loss of any Service Equipment or CPE for any reason whatsoever.
 - (d) this shall not affect any right the Customer may have to bring a claim in damages against SCC directly.

20 DEFINITIONS

- 20.1 Save as otherwise provided, capitalised terms used in this Agreement shall have the meanings ascribed thereto below:

Abortive Visit Charge means the amount charged by Carrier if it is unable to gain access to a Service Location

Acceptable Usage Policy has the meaning means the policy referred to in Clause 4.20;

Account Manager means the nominated SCC sales representative who provided the quotation for the Services and is Customer's general point of contact at SCC;

Activation occurs on the date notified to Customer by SCC as the date the relevant the Service is available for use and 'Activated' shall be construed accordingly;

Activation Charges mean those amounts payable by Customer to SCC for the connection and Activation of a Service as set out in the relevant Order or otherwise communicated to Customer by prior to installation of the Service;

Activation Date in relation to a Service provided under any Order means the date that Service is Activated;

Advance Management means the provision by SCC of remote assistance and configuration changes to hardware requiring more than 1 hour of work per request;

Agreement means these terms and conditions which shall apply to all Contracts for Services agreed by the Customer with SCC in accordance with these Terms and Conditions;

Agreed Uptime Guarantee means, in relation to each Service, the target period of Uptime during each Month (expressed as a percentage of the time in the relevant Month) specified in the SLA;

Bandwidth means the rate, in bits per second, which data packets can be transferred over the Service. This is always quoted in bits per second (bps), never Bytes per second (Bps) and does not factor in packet overheads;

Basic Management means the provision by SCC of remote assistance and configuration changes to hardware requiring less than 1 hour of work per request;

BT means BT Group PLC and includes BT Retail, BT Wholesale and BT Openreach and any other sub-divisions of BT Group PLC as necessary;

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Cancellation Charge means the cancellation charges that are charged by a Carrier to SCC for cancelling an Order or Contract prior to a date notified to Customer as a "service commencement date" or proposed Activation Date;

Carrier means any supplier of telecommunications services to SCC where such services are used by SCC to provide the Services;

Charges means the Activation Charges and the Recurring Charges and any other charges set out in the Order or otherwise payable hereunder;

Confidential Information means all information, whether provided in writing, digitally or orally, concerning each party's business, methods, processes, know-how, and pricing which is not publically known;

Connection means the connection (or connections, if there is more than one) between the Network and Customer's network as specified in the Product Annex which is required in order to receive the Service. If there is more than one connection, "Connection" shall be construed accordingly;

Contract means a contract entered into between SCC and the Customer following acceptance by SCC of an Order and incorporating the terms of the Quotation, these terms and conditions, any schedule to these terms and conditions, the Product Annex and the Order to the extent that the terms of the Order do not conflict with the terms of this Agreement;

Customer Equipment means any hardware provided by Customer or its End User to access the Service or connects to SCC owned and managed hardware;

Direct Service means the supply of Services using Layer 3 technology and ultimately SCC IP addresses to access the Public Internet;

Early Termination Charges means the early termination charges that are charged by a SCC to Customer for terminating an Order or Contract prior to the expiry of the applicable Initial Term (reflecting and to include the charges charged to SCC by the Carrier) as otherwise specified in this Agreement and any applicable Contract;

End Users means an end user who purchases services from Customer or an Intermediary which are provided, in whole or in part, by use of the Network and the Services;

Emergency Maintenance as defined in Clause 5.5;

Excess Construction Charges means a charge that a Carrier may charge SCC for additional resources required to provide a Service to a Service Location that exceed typical level of resources to provide a Service to a Service Location;

Force Majeure means acts of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act, omission, instruction or requirement of any governmental or regulatory authority (including refusal or revocation of any licence, authorisation or consent), fire, explosion, flood or bad weather, power failures, the delayed provision, withdrawal or failure of supplier or subcontractor services not attributable to SCC's default, network failures outside of the SCC Core Network, theft, malicious damage, strike, lockout or industrial action of any kind and any cause or circumstance whatsoever beyond the reasonable control of SCC;

Initial Term has the meaning set out in the Quotation;

Intellectual Property means patents, inventions, designs, database rights, trade and service marks and trade names (whether registered or unregistered), domain names, copyright and related rights, moral rights, database rights, trade secrets, know-how, confidential information and any other registered and unregistered intellectual property rights subsisting now or in the future in any part of the world;

Intermediary means a reseller or wholesaler of Customer who directly or indirectly purchases and/or obtains the Services from Customer in order to resell the Services to its customers/s;

Layer 2 means a Service provided by SCC without an IP address delivered over a private interconnect;

Layer 3 means a Service provided by SCC which is terminated onto SCC Core Network and provided with either a Private or Public IP address from the available addresses allocated to SCC;

Month means each consecutive calendar month following the start of the Initial Term;

Network means the SCC Core Network and any other network operated by or on behalf of SCC to provide the Services including any third party networks;

Network Availability means the CPE, when correctly connected and configured, is able ping one of SCC's DNS servers. These are currently

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89.105.96.51 and 89.105.96.52, but may be subject to change;

NTE means Network Terminating Equipment but can also be a router or switch;

Order shall mean a completed Customer purchase order for the Services referencing the applicable SCC Quotation, signed by an authorised representative of Customer;

Order Committed Date means the date defined in section 11 of the Product Annex;

Quotation(s) means an SCC quotation for the combination of Services required by the Customer.

Product Annex means the document titled "product annex" describing the Services, Service Levels and other related matters, which will form part of each Contract;

Recurring Charges means those amounts payable by Customer to SCC on a recurring basis for provision of the Service as set out in the relevant Order and excludes installation, set-up or other one-off charges;

Replacement Supplier means any supplier who replaces SCC as a provider of the same or similar services to the Services to Customer at any time after expiry or termination of this Agreement or any Contract;

SCC Core Network or **Core Network** means the telecommunications network owned and/or controlled by SCC in the provision of the Service;

Scheduled Maintenance as defined in Clause 5.4;

Service(s)' means the service(s) specified on the relevant Quotation, Order and/or Product Annex;

Service Equipment or **CPE** means all and any equipment provided and/or installed at the Service Location by or on behalf of SCC in connection with the Services;

Service Failure The Service will be considered to have failed if Customer has raised a support call and the modem, when correctly connected and configured, does not respond to Pings or SNMP polling from SCC or a BT line test indicates a fault;

Service Levels means the performance service levels set out in Section 10 of the Product Annex;

Service Location means any premises controlled by the Customer at which the Services are to be provided;

SLA or **Service Level Agreement** means the service level agreement setting out Service Levels and applicable service credits contained in Section 10 of the Product Annex;

Warranty in relation to any equipment means any warranty offered in respect of that equipment by the relevant manufacturer or supplier;

Wholesale Service means multiple Services purchased by Customer from SCC in order for Customer to supply multiple End Users either via Layer 3 or Layer 2 technologies;

Working Day means any day not being a Saturday or Sunday on which commercial banks are open for business in the City of London; and

Working Hours means the hours between 0900 and 1700 on any Working Day.