

Communications Solutions UK Limited Agreement for the supply of Giganet Services

1. Service specific Terms & Conditions

Giganet Ltd (Giganet) Services are supplied by Communications Solutions UK Limited (CSUK) under the CSUK Service Agreement for Giganet Services and Giganet supporting Polices including their fair use policy.

The fair use policy is documented on the Giganet website at [Terms & Conditions - Giganet](#)

As standard, all communication and billing for Giganet services is via CSUK. In some circumstances a customer may be contacted directly by Giganet.

2. Support

- a) All support issues should be reported to the CSUK Support Desk:
support@com-solutions.co.uk
- b) Should you need to report a fault direct to Giganet services, their service team can be contacted on Tel. 0330 3333006, or by email support@giganet.uk

In this instance, please copy in the CSUK Support team support@com-solutions.co.uk so that we can track the fault.

- c) The status of the Giganet network can be viewed here:-
[Giganet Status Page Status](#)

3. Data Protection

In order to provide the service, Giganet will hold certain information about you. Their data security policy is on their website at:- [Privacy Policy - Giganet](#)

Attachments

CSUK Service Agreement for the Provision of Giganet Services

CSUK SERVICE AGREEMENT
for the Provision of Giganet Services

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DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

Acceptable Use Policy	means Supplier's Fair & Acceptable Use Policy as set out at https://www.giganet.uk/terms/ and updated from time to time;
Affiliate	means in relation to a party, any other entity which directly or indirectly Controls, is directly or indirectly Controlled by or is under direct or indirect common Control with, that party from time to time;
Anti-Bribery Policy	means Supplier's Anti-Bribery Policy as set out at https://www.giganet.uk ;
Applicable Laws	means all applicable laws, enactments (as interpreted in accordance with Clause 2 (Interpretation)), regulations, regulatory policies, guidelines, industry codes, regulatory permits and licences which are in force from time to time during the Term;
Appointment	means an appointment for the Installation of a Product;
Business Day	means a day (other than a Saturday, Sunday or public holiday in England) on which banks are generally open in London for normal business;
Business Hours	means 09:00 to 17:00 on a Business Day;
Change of Control Notice	has the meaning set out in Clause 19.8;
Charges	means all charges payable by Customer under this Agreement including those payable for the provision of the Services as set out in the applicable Giganet Price Book.
Commencement Date	means the date of this Agreement;
Confidential Information	has the meaning given in Clause 12.1;
Customer Confirmed Date	has the meaning given in Schedule 2 under the heading ' <i>Ordering</i> ';

Connection	means an individual Product that has been installed to a Premises and activated in line with Schedule 2 (Business Connectivity Services Schedule);
Contract Year	means each period of 12 consecutive months commencing on the Commencement Date, save for the final Contract Year, which shall end on the date of termination of this Agreement;
Control	means, in relation to a person, the direct or indirect ownership of more than fifty per cent. (50%) of the voting capital or similar right of ownership of that person or the legal power to direct or cause the direction of the general management and policies of that person, whether through the ownership of voting capital, by contract or otherwise, and Controls, Controlled and Controlling shall be construed accordingly;
CPE	means customer premises equipment (such as routers, firewalls and extenders) used by the End User to interface with the Services;
Customer Intellectual Property Rights	means the Intellectual Property Rights in or to any software materials, tools, processes, methodologies, operating manuals, specifications, documents or other materials owned by Customer (whether that ownership first commences before or after the date of this Agreement), and provided to Supplier for use in providing any of the Services or performing any other obligation of Supplier under this Agreement, including any modification, improvement or enhancement to any of the foregoing;
Customer Services	means any services delivered by Customer or any of its Affiliates using or via Supplier's Network;
Data Controller	has the meaning given in the UK GDPR;
Data Processor	has the meaning given in the UK GDPR;
Data Protection Laws	means all applicable data protection and privacy laws and regulations and codes of practice which relate to the protection of personal data, including (without limitation): (a) the Data Protection Act 2018;

- (b) the UK GDPR;
- (c) Data Protection (Charges and Information) Regulations 2018;
- (d) the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (e) all other Applicable Law in respect of data protection and privacy guidance and codes of practice issued from time to time by a Supervisory Authority,

in each case as amended, updated or replaced from time to time;

Data Subject

means each identified or identifiable (whether directly or indirectly) natural person to whom any Personal Data relates;

Default

means, in respect of a Party:

- (a) any:
 - (i) breach of this Agreement; or
 - (ii) default in relation to any non-contractual obligations arising under or in connection with this Agreement (including negligence),

by that Party; and

- (b) any circumstance in which Loss arises that is subject to an indemnity given by that Party under this Agreement;

Defaulting Party

has the meaning given in Clause 19.3;

Disclosing Party

has the meaning given in Clause 12.1;

Dispute

Means any dispute between the Parties arising under or in connection with this Agreement as set out in Clause 25;

Due Date

has the meaning given in Clause 9.8;

End User

means the representative of a Premises provisioned (by way of their agreement with Customer) to receive Customer Services;

End User Premises	means the Premises of an actual or prospective End User;
EU References	has the meaning given to it in Clause 2.2.1 ;
Exit Day	has the meaning given in the European Union (Withdrawal) Act 2018;
Exit Period	has the meaning given in Clause 20.2;
Failed Visit Charge	means the fee that is payable by Customer to Supplier for a failed visit to a Premises, as specified in the relevant Supplier pricing handbook from time to time.
Fault	means a fault resulting in an unplanned service outage for a Product;
Force Majeure Event	means any: <ul style="list-style-type: none">(a) act of God;(b) governmental act (other than a Regulatory Change but including any local authority embargo);(c) withdrawal of Supplier's access to Openreach ducts and poles (other than as a result of an act or omission of Supplier or its subcontractors acting on its behalf) which has, or may reasonably be expected to have, a material impact on Supplier's business activities;(d) act of terrorism, military operations or war (whether declared or not);(e) earthquake, flood, fire, lightning, landslide or weather of exceptional severity;(f) local or national riot, strike (other than of that Party's personnel), protest or civil disorder; or(g) failures of Third Parties (other than failure of Supplier's subcontractors or suppliers);(h) explosion, nuclear, chemical or biological contamination or sonic boom; or(i) epidemic or pandemic
FTTP	means fibre to the premises;

Good Industry Practice	means, at any time during the Term, the exercise of the skill, care and diligence which would at that time be expected from a reasonably and suitably skilled, trained and experienced person, in the case of Supplier, providing services similar to the Services and, in the case of Customer, a customer receiving services similar to the Services;
ICO	means the Information Commissioner's Office and any successor body or bodies to such organisation;
IDTA	means the UK's International Data Transfer Agreement as approved by Parliament on 21 March 2022 (available at https://ico.org.uk/media/for-organisations/documents/4019538/international-data-transfer-agreement.pdf);
Intellectual Property Rights	means: <ul style="list-style-type: none"> (a) copyright, patents, database rights and rights in trademarks, designs, know-how and confidential information (whether registered or unregistered); (b) applications for registration, and the right to apply for registration, for any of these rights; and (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
Interest Rate	means the published Bank of England base rate plus 4%.
Loss	means any loss, damage, fine, penalty, cost, expense or other liability (including legal and other professional fees) and Losses shall be construed accordingly;
Maintenance and Support Services	means the services described as such in Schedule 2 (Business Connectivity Services Schedule);
Marks	means the trade marks, trade names, product or service names, logos, slogans, typefaces, brand or other proprietary words or symbols used either Party or its Affiliates from time to time or any derivative thereof or any combinations of trade

	names, trade marks and company names including the name of that Party;
Network Terminating Equipment or NTE	means network terminating equipment that terminates a circuit at the Premises;
Non-Defaulting Party	has the meaning given in Clause 19.3;
Ofcom	means the Office of Communications, as established by the Office of Communications Act 2002;
Onboarding Activities	means any onboarding activities to be carried out by the parties in connection with the Services, as notified by the Supplier to the Customer from time to time;
ONT	means an optical network terminal;
Permitted Changes	<p>means a change to this Agreement by Supplier on giving of written notice to Customer in order to:</p> <ul style="list-style-type: none"> (a) comply with any legal or regulatory obligation; (b) comply with any requirements imposed on Supplier by a third-party carrier involved in the provision of the Products and Services; (c) effect a change to the Product or Services Description, including the introduction or withdrawal of Product or Service features; (d) improve Service Levels; (e) improve processes; or (f) maintain the integrity or security of the Network <p>provided that the changes in Clauses (c)-(f) shall not materially adversely affect the Products or Services;</p>
Permitted Users	has the meaning given in Clause 12.2 ;
Personal Data	has the meaning given in the UK GDPR;
Personal Data Breach	means any actual or suspected breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or

	access to, Personal Data transmitted, stored or otherwise processed;
Premises	means relevant business premises;
Process	has the meaning given in the UK GDPR (and Processed and Processing shall be construed accordingly);
Product	means a telecoms product defined in Schedule 2 (e.g., internet access);
Recipient	has the meaning given in Clause 12.1;
Regulator	means Ofcom, HMRC, the Information Commissioner's Office, the Valuation Office Agency, any government agency exercising its rights under the Regulation of Investigatory Powers Act 2000 (as amended or replaced from time to time) or such other government entity responsible for regulating the activities of either Party;
Regulatory Change	means any addition or amendment to, or revocation of, any Applicable Laws which has or may have an impact on the performance, scope or details of the Services;
Regulatory Requirement	means a requirement, instruction rule, policy or direction imposed by a regulator on a Party or its Affiliate;
Sales Tax	means any sales, purchase or turnover tax or other fiscal charge as may be applicable in any relevant jurisdiction, and any other tax from time to time replacing it or of a similar fiscal nature;
Service Levels or SLA	means the service levels set out in Schedule 2 (Business Connectivity Services Schedule);
Service Requests	means a request from Customer for: <ul style="list-style-type: none"> (a) orders for Installation and provisioning of a Product; (b) cancellation of orders in connection with a Product; or (c) cessation of the provision of a Product;

Service Request Procedure	means the procedure for making Service Requests as set out in Schedule 2 (Business Connectivity Services Schedule)
Services	<p>means each service provided by Supplier to an End User in a Premises, which may include:</p> <ul style="list-style-type: none"> (a) the Products; (b) the Maintenance and Support Services; and (c) any other services described in Schedule 2 (Business Connectivity Services Schedule);
Site Survey	means a Premises survey conducted by Supplier or its third-party representative after acceptance of an order for Service;
Supervisory Authority	means, as applicable, any regulator, authority or body responsible for administering Data Protection Laws, including the ICO and/or the European Data Protection Board (as applicable);
Supplier	Giganet Limited of 6th Floor, 33 Holborn, London, England, EC1N 2HT, registered number GB873856866 (" Supplier ")
Supplier Intellectual Property Rights	means those Intellectual Property Rights in or to any software materials, tools, processes, methodologies, operating manuals, specifications, documents, or other materials owned by Supplier (whether that ownership first commences before or after the date of this Agreement), and used to provide any of the Services or perform any other obligation of Supplier under this Agreement, including any modification, improvement or enhancement to any of the foregoing;
Supplier Network	means the network of fibre-optic cabling, cabinets, chambers, pole-top equipment, lines, toby boxes, ONTs, OLTs, connection boxes at premises, ducts, poles, and other passive infrastructure, and network interface equipment at POPs, core infrastructure, transit and peering of Supplier or its Affiliates and third-party suppliers, including those to be installed in order to provide the Services under this Agreement;

Third Party	means any person which is not a Party to this Agreement and Third Parties shall be construed accordingly;
Third Party Intellectual Property Rights	means those Intellectual Property Rights in or to any software materials, tools, processes, methodologies, operating manuals, specifications, documents or other materials, which are owned by a Third Party and which are used, or provided to Customer, by Supplier or any subcontractor in the provision of the Services or the performance of Supplier's other obligations arising under or in connection with this Agreement, but excluding any, Customer Intellectual Property Rights and Supplier Intellectual Property Rights;
UK EU SCCs Addendum	means the UK Addendum to the EU Commission Standard Contractual Clauses as approved by Parliament on 21 March 2022 (available here);
UK GDPR	means EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as incorporated into domestic United Kingdom law by the European Union (Withdrawal Agreement) Act 2020 and amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020.

2. INTERPRETATION

- 2.1 In this Agreement:
- 2.1.1 any reference, express or implied, to an enactment shall be construed as a reference to that provision as amended, extended or re-enacted on or after the date of this Agreement;
 - 2.1.2 any reference to a person includes a body corporate, unincorporated, association of persons (including a partnership), government, state, agency, organisation, and any other entity whether or not having a separate legal personality and an individual, his estate and personal representatives;
 - 2.1.3 subject to Clause 21 any reference to a Party includes a reference to the successors or assigns (immediate or otherwise) of that Party;
 - 2.1.4 the words including and include (and similar) shall mean including without limitation and include without limitation, respectively;
 - 2.1.5 any reference importing a gender includes the other genders;
 - 2.1.6 any reference to a time of day is to United Kingdom time;

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- 2.1.7 any reference to a document is to that document as amended, varied or novated from time to time otherwise than in breach of this Agreement or that document;
 - 2.1.8 each reference to a Clause is to a clause of this Agreement;
 - 2.1.9 each reference to a Schedule or Appendix is to a schedule or appendix to this Agreement;
 - 2.1.10 each reference to a paragraph is to a paragraph of a Schedule or Appendix;
 - 2.1.11 the Schedules and Appendices form part of this Agreement; and
 - 2.1.12 the headings do not affect the interpretation of this Agreement.
 - 2.1.13 In this Agreement any reference to indemnifying any person against any event, matter or circumstance shall be construed as a reference to indemnifying, keeping indemnified and holding harmless that person in full on an after Tax basis from and against all Losses, in each case arising out of any and all claims (whether or not successful, compromised or settled), actions, demands, proceedings or judgments which may be instituted, made, threatened, alleged, asserted or established in any jurisdiction against or otherwise involving that person and from all Losses including Losses suffered or incurred in establishing a right to be indemnified under this Agreement, and indemnified and indemnify and similar expressions shall be interpreted accordingly.
- 2.2 Any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
- 2.2.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (**EU References**) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - 2.2.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.
- 2.3 If there is any conflict or inconsistency between any of:
- 2.3.1 the Clauses of this Agreement;
 - 2.3.2 a term in the Schedules of this Agreement;
 - 2.3.3 a term in the Acceptable Use Policy or the Anti-Bribery Policy; and
 - 2.3.4 any term included in any other document incorporated by reference into this Agreement,

the term falling into the category first appearing in the list above shall, unless expressly stated otherwise, take precedence. Notwithstanding the foregoing, an order form (as referenced in Schedule 2 for the purpose of ordering Services) may take precedence over the Services

Schedule to which it relates if, on its face, it expressly cites, amends and revises a specific commercial element of such Services Schedule.

TERMS AND CONDITIONS

3. PROVISION OF THE PRODUCTS AND SERVICES

3.1 Supplier shall supply the Product(s) and Services to Customer on the network infrastructure owned or operated by Supplier and its Affiliates on the terms and conditions set out in this Agreement.

Onboarding

3.2 Promptly following the Commencement Date, the Supplier and Customer shall carry out the Onboarding Activities. Each party shall reasonably cooperate with the other as needed for such purposes.

3.3 Supplier shall perform its obligations under this Agreement in accordance with all Applicable Laws and Good Industry Practice.

4. SERVICE REQUESTS

4.1 Once Supplier has notified Customer that the Onboarding Activities have been successfully completed, Customer may place Service Requests in accordance with the Service Request Procedure.

4.2 Customer acknowledges that Supplier shall be under no obligation to accept Service Requests placed by Customer. To the extent that Supplier does accept Service Requests, it shall provide such Services to Customer in accordance with Schedule 2 (Business Connectivity Services Schedule) including the Service Levels.

4.3 Without prejudice to any further Supplier rights to revise Services set out in Schedule 2, Customer acknowledges that Supplier may withdraw some or all Services by giving Customer not less than three (3) months of such withdrawal. In the event of any such withdrawal the relevant Charges for such withdrawn services shall cease on the date(s) of such withdrawal(s) and (for the avoidance of doubt) no cancellation charges shall apply in relation to service cessation prior to the end of relevant minimum term(s).

5. PREMISES, EQUIPMENT AND PROPERTY

5.1 The Parties agree that the use of Supplier's Network and related infrastructure and equipment (which for this purpose includes the network, infrastructure and equipment of Supplier's Affiliates) shall not confer on Customer or any of its Affiliates a legal or equitable interest in the network, related infrastructure or equipment nor transfer any such interest to Customer or any of its Affiliates, and Customer expressly waives any such interest that may otherwise arise. Customer shall not and shall procure that its Affiliates and its personnel shall not, make any suggestion to Third Parties, including End Users, that Customer or any of its Affiliates has any such interest.

5.2 Customer shall not be entitled to:

5.2.1 access any other part of the Supplier Network, including any part of the physical structure of the Supplier Network;

5.2.2 make any alterations to any Supplier Equipment;

- 5.2.3 by any act or omission, cause any damage to, or destruction of, the Supplier Network (or any part of such network) or any Supplier Equipment;
 - 5.2.4 by any act or omission, cause any damage to, or destruction of, or to make any alterations to, Supplier's POP (which shall include the location or site of a Supplier POP), any box or casing for the Supplier Network infrastructure at a Premises, Customer Interface, or any network interfaces; or
 - 5.2.5 connect any unauthorised equipment to any Supplier Equipment, the Supplier Network, a Supplier POP or any network interfaces.
- 5.3 Supplier may, on providing to Customer as much notice as is reasonably practicable, move the location of a Supplier POP (or where Customer receives Colocation Services from Supplier, require Customer to move its equipment within a Supplier POP), where required for reasonable operational reasons, including to comply with the rights of a Third Party. Supplier shall manage the migration of Services in connection with such relocation, keeping Customer informed in connection with such migration and give Customer ten Business Days' notice of and use reasonable endeavours to ensure that, other than in the case of emergencies, any outages that may occur as a direct result of moving the location of the Supplier POP or moving Customer Equipment within a Supplier POP in accordance with the preceding sentence are limited to being outside Supplier's normal business hours.

6. CUSTOMER RESPONSIBILITIES

- 6.1 Customer shall:
- 6.1.1 co-operate as reasonably required with Supplier in all matters relating to the Services;
 - 6.1.2 perform its responsibilities and use the Services in accordance with:
 - (a) Applicable Laws (including all laws and regulatory obligations and guidance relating to telecoms service provision including such provision to End Users)
 - (b) the Anti-Bribery Policy;
 - (c) the terms of this Agreement
 - 6.1.3 comply with its obligations under Schedule 2 including in respect of the Service Levels;
 - 6.1.4 provide all information within Customer's possession or control as Supplier may, acting reasonably, request from time to time in order for Supplier to perform the Services and to comply with its obligations under Applicable Laws;
 - 6.1.5 inform Supplier in writing from time to time of any exceptional rules and regulations in respect of access, security and health and safety that apply at any Premises owned, controlled, or occupied by Customer or any of its Affiliates to which access is made available to Supplier for the purposes of this Agreement;
 - 6.1.6 provide or procure all wayleaves, consents, and permissions necessary for Supplier to access and utilise Premises as required to provide Products from

time to time, and Customer shall pay all fees imposed in connection with the same including any associated fees imposed by the landlord, owner, occupier, or agent of any Premises; and

6.1.7 comply with all relevant rules and regulations in respect of access, security, health and safety that apply at any Premises owned, controlled, or occupied by Supplier or any of its Affiliates and which are appropriately informed to the Customer, to which access is made available to Customer for the purposes of this Agreement.

6.2 Customer shall use reasonable steps to procure that the Product(s) and Services are not used in breach of the Acceptable Use Policy. If Supplier notifies Customer or if Customer is aware that the Product(s) and Services are being used in breach of the Acceptable Use Policy, then Customer shall take reasonable steps to address the breach, including notifying the End User of such breach, requesting that the End User ceases such use and notifying the End User that if its use of the Products and Services continues to be in breach of the Acceptable Use Policy, the relevant Connection or Connections may be suspended and or terminated.

7. ACCESS TO PREMISES

7.1 If it is necessary for Supplier to access a Premises to perform its obligations under this Agreement, Customer shall procure that its End Users grant to Supplier or its subcontractor permission to access that Premises and provide written details of any security measures that such End User requires.

7.2 If Supplier is unable to perform its obligations under this Agreement as a result of a failure by Customer to procure access pursuant to Clause 7.1, Supplier shall not be in breach of the relevant obligations to the extent caused by that failure by Customer.

7.3 Customer shall use reasonable endeavours to procure a suitable and safe working environment for Supplier or its subcontractor in relation to work carried out in a Premises.

7.4 Supplier shall comply and shall use reasonable endeavours to procure that its subcontractors acting on its behalf shall comply, with any reasonable regulations, policies and security measures which apply in respect of access to Premises for the purpose of performing its obligations under this Agreement.

7.5 If Supplier has agreed with Customer to an Appointment to access a Premises and Supplier, or any Third Party acting on Supplier's behalf, is:

7.5.1 unable to gain access to the relevant Premises (as the case may be) at the relevant appointment time; or

7.5.2 access was granted but work cannot be completed because the Premises poses a health and safety risk, or Supplier believes, acting reasonably, that the operation or security of any of Supplier Equipment to be used at that Premises is compromised,

then Supplier may charge, and Customer shall pay, a Failed Visit Charge, provided that attendance of the relevant Supplier's personnel or subcontractor can be evidenced by information provided by its relevant subcontractor.

8. PERMITTED CHANGES

Supplier may make Permitted Changes on 28 days' notice to Customer, or other such period as required by a regulatory authority or in accordance with Applicable Laws.

9. CHARGES AND PAYMENT

9.1 Customer shall pay to CSUK the agreed Charges as documented in the Customer Service Agreement.

9.2 Not required

9.3 Not required

9.4 Not Required

9.5 Not Required

9.6 Not Required

9.7 Not Required

9.8 Customer shall pay to Supplier the Charges within 30 days after the date of receipt by Customer of the relevant invoice (the Due Date).

9.9

9.10 Not Required

9.11 Not required

10. ANNOUNCEMENTS, PROMOTION AND MARKETING

10.1 Subject to Clause 10.1.1, no Party shall make or authorise any public or private announcement or communication concerning the terms of this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed provided that:

10.1.1 Customer agrees that nothing in this Agreement shall prevent Supplier from making or authorising any public or private announcements concerning the business activities of Supplier generally without the prior written consent of Customer; and

10.1.2 neither Party shall require the prior written consent of the other Party to make or authorise public or private statements concerning information which has already been approved in accordance with this Clause 10.1.

10.2 Each Party may make or authorise any public or private announcement or communication concerning the existence of this Agreement or as otherwise required by Applicable Law, including the rules of any listing authority provided that the content and manner of making each announcement or communication regarding the relationship between Supplier and Customer (including any announcement or communication required in accordance with the rules of any listing authority) shall be agreed between the Parties in advance (each acting reasonably and in good faith).

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- 10.3 Neither Party shall use any marketing, advertising or promotional materials that bear the other Party's branding or Marks unless the other Party has given its prior written approval.
 - 10.4 Customer shall not: (a) use any Supplier Marks as trademarks; or (b) use or register (as trademarks or domain names) any devices, logos, trade names, trademarks or domain names that incorporate the Supplier Marks or that are confusingly similar to the Supplier Marks, in each case without Supplier's prior written approval.
 - 10.5 Supplier shall give Customer reasonable notice of any changes to the Supplier Marks. Customer shall implement any such changes to its use of the Supplier Marks within a reasonable time.
 - 10.6 Customer shall take reasonable steps to ensure that any use that it makes of the Supplier Marks in accordance with this Agreement does not cause any significant damage to the goodwill or reputation associated with the Supplier Marks and does not result in the Supplier Marks becoming invalid or unenforceable.
 - 10.7 Customer shall only use Supplier's branding in accordance with the brand guidelines (if any) that Supplier makes available to Customer in writing from time to time.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 Save as otherwise set out in this Agreement, all Intellectual Property Rights belonging to a Party prior to the date of this Agreement shall remain vested in that Party.
- 11.2 As between the Parties, Supplier shall be the sole and exclusive owner of Supplier Intellectual Property Rights.
- 11.3 Supplier grants to Customer a royalty-free, non-exclusive, non-transferable, irrevocable licence (including a right to sublicense) in the United Kingdom and for the Term and any Exit Period to use and reproduce the materials in which Supplier Intellectual Property Rights subsist solely for the purpose of receiving and using the Product(s) and Services.
- 11.4 As between the Parties, Customer shall be the sole and exclusive owner of Customer Intellectual Property Rights.
- 11.5 Customer grants to Supplier a royalty-free, non-exclusive, non-transferable, irrevocable licence (including a right to sublicense) in the United Kingdom and for the Term and any Exit Period to use and reproduce the materials in which Customer Intellectual Property Rights subsist solely for the purpose of performing its obligations under this Agreement.
- 11.6 Subject to Clause 11.7:
 - 11.6.1 Supplier grants, and shall ensure that each of its subcontractors grants, to Customer and its Affiliates a royalty-free, non-exclusive, non-transferable and irrevocable licence for the Term and any Exit Period under any Third Party Intellectual Property Rights to use and reproduce any software materials, tools, processes, methodologies, operating manuals, specifications, documents or other materials provided by or on behalf of Supplier under this Agreement, solely for the purpose of receiving and using each part of the Services provided by Supplier under or by reference to the relevant subcontract; and
 - 11.6.2 Customer grants or shall procure the grant, to Supplier and each relevant subcontractor of Supplier, in each case a royalty-free, non-exclusive, non-

transferable and irrevocable licence for the Term and any Exit Period under any Third Party Intellectual Property Rights to use and reproduce any software materials, tools, processes, methodologies, operating manuals, specifications, documents or other materials provided by or on behalf of Customer under this Agreement, solely for the purpose of Supplier and each subcontractor providing the Services.

- 11.7 For each licence of Third Party Intellectual Property Rights granted under Clause 11.6, the recipient of the licence shall comply with any licence terms that are required, and benefit from any additional rights granted, by the Third Party licensor of the Third Party Intellectual Property Rights, in each case, as are notified to it from time to time by Supplier or Customer (as the case may be), in each case within a reasonable time after being notified of those additional licence terms or additional rights (as the case may be).

12. CONFIDENTIALITY

- 12.1 Each Party (a **Recipient**) undertakes to each other Party (each, a **Disclosing Party**) to treat as confidential and safeguard all information in any medium or format (whether marked "confidential" or not) which the Recipient receives from the Disclosing Party, either directly or from any other person, which concerns the business, operations or customers or other proprietary information of the Disclosing Party (**Confidential Information**) and shall not disclose Confidential Information of the Disclosing Party other than as set out in this Agreement.
- 12.2 The Recipient may use the Confidential Information only for the purposes of and in accordance with this Agreement. The Recipient may provide its employees, directors, shareholders, subcontractors and professional advisers, and the Recipient's and its Affiliates' lenders (and proposed lenders) and investors and their professional advisers (**Permitted Users**) with access to the Confidential Information on a strict "need-to-know" basis only. The Recipient shall ensure that each of its Permitted Users is bound to hold all Confidential Information in confidence to the standard required under this Agreement, including the restriction as to permitted use set out in this Agreement. Where a Permitted User is not an employee or director of the Recipient (and is not under a professional duty to protect confidentiality), the Recipient shall ensure that the Permitted User shall enter into a written confidentiality undertaking with the Recipient on terms no less onerous than this Agreement.
- 12.3 This Clause 12 shall not apply to any information which:
- 12.3.1 is in or subsequently enters the public domain other than as a result of a breach of this Clause 12;
 - 12.3.2 has been or is subsequently received by the Recipient from a Third Party which is under no confidentiality obligation in respect of that information;
 - 12.3.3 has been or is subsequently independently developed by the Recipient without use of the Disclosing Party's Confidential Information; or
 - 12.3.4 was previously known to the Recipient free of any obligation to keep it confidential and, in the case of Customer, was received by Customer in its capacity as a customer of Supplier.
- 12.4 Each Permitted User may disclose Confidential Information where that Permitted User (or, where the Permitted User is an individual, his or her employer) is required to do so by law or by any competent regulatory authority. In these circumstances the Recipient shall give the Disclosing Party prompt advance written notice of the disclosure (where

lawful and practical to do so) so that the Disclosing Party has sufficient opportunity (where practicable) to prevent or control the manner of disclosure by appropriate legal means and the Recipient shall, where permissible, consult with the Disclosing Party as to the terms, content or timing of the disclosure (and shall use reasonable endeavours to limit the scope of the required disclosure and to maintain the confidentiality of the disclosed Confidential Information).

12.5 This Clause 12 shall remain in full force and effect notwithstanding any termination of this Agreement.

13. DATA PROTECTION

13.1 Each Party shall comply with applicable Data Protection Laws in respect of its Processing of Personal Data under or in connection with this Agreement.

13.2 To the extent that Supplier processes Personal Data in the course of providing the Services in respect of which Customer is the Data Controller and which is provided to Supplier by or on behalf of Customer under or in connection with this Agreement (**Customer Personal Data**), Supplier shall act as Data Processor on behalf of Customer and the provisions of Clauses 13.3 to 13.14 (inclusive) shall apply.

13.3 Schedule 1 (Data Processing) sets out the subject matter, the nature and purpose of the Processing, the type of Customer Personal Data and categories of Data Subject as required by applicable Data Protection Law. As between the Parties, nothing in Schedule 1 (Data Processing) confers any right or imposes any obligation on either Party.

13.4 Supplier shall:

13.4.1 only Process Customer Personal Data in accordance with the documented instructions of Customer (including to the extent necessary to provide the Services and to comply with its obligations under this Agreement);

13.4.2 inform Customer if, in Supplier's opinion, any of Customer's instructions would breach Data Protection Laws; and

13.4.3 taking into account the nature of Processing and the information available to it, provide reasonable assistance to the Customer with undertaking an assessment of the impact of Processing Customer Personal Data, and with any consultations with a Supervisory Authority, if and to the extent an assessment or consultation is required to be carried out under Data Protection Laws.

13.5 Supplier shall taking into account the nature of the Processing, assist the Customer by implementing appropriate technical and organisational measures, insofar as is reasonably possible, for the fulfilment of Customer's obligation to respond to requests by Data Subjects to exercise their rights under Data Protection Law.

13.6 Supplier and Customer shall taking into account the state of the art, the costs of implementation and the nature, scope, context and purpose of Processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including the risk of unauthorised or unlawful processing of Customer Personal Data, and of accidental or unlawful loss, alteration, unauthorised disclosure or destruction of, or damage to, Customer Personal Data (including all measures required by Article 32 UK GDPR).

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- 13.7 Supplier shall notify Customer without undue delay after becoming aware of a Personal Data Breach in respect of Customer Personal Data.
- 13.8 Supplier reserves its rights to appoint external processor to process Customer Personal Data without general written authorisation of Customer however before disclosing any Customer Personal Data to any sub-processor, it will enter into a contract with that sub-processor under which the sub-processor agrees to comply with obligations no less onerous than those set out in Clauses 13.3 to 13.14 (inclusive).
- 13.9 Supplier shall, before disclosing Customer Personal Data to any of its employees and representatives, and the employees and representatives of each of its processors, in each case who have access to the Customer Personal Data, take reasonable steps to ensure that those persons are bound to hold the information in confidence to at least the same standard as required under this Agreement (whether under a written agreement or otherwise).
- 13.10 Supplier shall not transfer Customer Personal Data to, or process Customer Personal Data outside of the United Kingdom without the prior written consent of Customer (such consent not to be unreasonably withheld or delayed).
- 13.11 Where Customer provides its consent for Supplier to transfer any Customer Personal Data outside of the United Kingdom in accordance with clause 13.10 above, the Parties acknowledge that this shall be conditional on:
- (a) there having been a finding of adequacy by the ICO pursuant to Article 45 of the UK GDPR in respect of that country or territory; or
 - (b) the Parties putting in place the UK EU SCCs Addendum or the IDTA; and
 - (c) Supplier having undertaken a data transfer impact assessment in accordance with relevant guidance issued by the ICO and/or European Data Protection Board (as applicable) and taken such other steps as are reasonably necessary to ensure the transfer of Customer Personal Data meets the requirements of Data Protection Laws.
- 13.12 Where any mechanism for cross-border transfers of Customer Personal Data, as set out in clause 13.11 above, is found by a Supervisory Authority, court of competent jurisdiction or other governmental authority to be an invalid means of complying with the restrictions on transferring Customer Personal Data to a third country or territory as set out in Data Protection Laws, the Parties shall act in good faith to agree the implementation of an alternative solution to enable Customer to comply with the provisions of Data Protection Laws in respect of any such transfer.
- 13.13 Supplier shall:
- 13.13.1 promptly notify Customer if it receives any complaint, notice or communication which relates directly or indirectly to the processing of Customer Personal Data, or to either Party's compliance with Data Protection Laws, and shall provide reasonable co-operation and assistance to Customer in relation to any such complaint, notice, communication, or non-compliance; and

- 13.13.2 upon Customer's reasonable written request, provide all information reasonably necessary to demonstrate compliance with Clauses 13.3 to 13.14 (inclusive); and
 - 13.13.3 if Customer cannot, acting reasonably and in good faith, verify Supplier's compliance with Clauses 13.3 to 13.14 (inclusive) through the information provided by Supplier pursuant to Clause 13.13.2, allow Customer and or a third party auditor appointed by Customer, at Customer's cost, to carry out an audit on no less than 30 days' notice, within Business Hours solely for the purpose of verifying Supplier's compliance with its obligations in Clauses 13.3 to 13.14 (inclusive) and Customer shall ensure that persons conducting such audit shall comply with Supplier's health and safety and security requirements, data protection requirements and confidentiality obligations at least to the standard of those referred to in Clause 12. Where Customer appoints a third-party auditor to conduct such audit, the Customer acknowledges and agrees that it shall not be a competitor of the Supplier.
- 13.14 Upon expiry or termination of this Agreement (howsoever arising) unless expressly stated otherwise in this Agreement Supplier shall immediately cease to use the Customer Personal Data and shall, at Customer's option, return the Customer Personal Data to Customer or delete the Customer Personal Data and all copies and extracts of the Customer Personal Data unless required to retain a copy in accordance with Data Protection Law.

14. REPRESENTATIONS AND WARRANTIES

- 14.1 Each Party represents and warrants to each other Party that:
- 14.1.1 it has the power to execute and deliver this Agreement and to perform its obligations under it and has taken all action necessary to complete its corporate actions to authorise execution and delivery and the performance of its obligations;
 - 14.1.2 this Agreement constitutes legal, valid, and binding obligations of that Party in accordance with its terms; and
 - 14.1.3 authorisations, licences, or consents from, and notices or filings with, any relevant regulatory or supervisory authority or other governmental or other authority that are necessary to enable it to execute, deliver and perform its obligations under this Agreement have been obtained or made (as the case may be) and are in full force and effect and all conditions of each authorisation, licence, consent, notice or filing have been complied with.
- 14.2 Except as expressly stated in this Agreement, all warranties, and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Applicable Law.
- 14.3 Nothing in Clause 14.2 limits or excludes any liability for fraud or fraudulent misrepresentation.

15. ADDING FUTURE SERVICE SCHEDULES

- 15.1 Not required

16. LIABILITY

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- 16.1 Nothing in this Agreement excludes or limits:
- 16.1.1 either Party's liability:
- (a) for fraud or fraudulent misrepresentation;
 - (b) for death or personal injury caused by negligence; and
 - (c) to the extent that any Applicable Laws preclude or prohibit any exclusion or limitation of liability.
- 16.1.2 Customer's obligation to pay any Charges or other amounts that are due and payable under this Agreement in respect of Products or Services that have been supplied in accordance with this Agreement.
- 16.2 Subject to Clause 16.1, the total aggregate liability of Supplier to Customer arising from breach of contract, tort (including negligence), under any indemnity, breach of statutory duty or otherwise (each a **General Liability**) shall, in respect of all Defaults of Supplier or for which Supplier is responsible and which occur (or a series of related Defaults which occur or begin) in each Contract Year, be limited to:
- 16.2.1 One hundred per cent (100%) of the Charges payable by Customer in that Contract Year up to a maximum aggregate amount of one million pounds sterling (£1,000,000),
- and the cap in this Clause 16.2 shall not apply in respect of any Property Liability (which is subject to the cap in Clause 16.3).
- 16.3 Subject to Clause 16.1, the total aggregate liability of Supplier to Customer in respect of damage to, loss or destruction of real or tangible property (each a Property Liability) shall, in respect of all Defaults of Supplier or for which Supplier is responsible, be limited to one million pounds sterling (£1,000,000). The cap in this Clause 16.3 shall not apply in respect of any General Liability (which is subject to the cap in Clause 16.2).
- 16.4 Subject to Clause 16.1, Supplier shall be liable to the Customer for any indirect or consequential loss or damage, howsoever caused, and in each case, whether arising in breach of contract, tort (including negligence), under an indemnity, under statute or otherwise, whether or not such loss was foreseeable.
- 16.5 Subject to Clause 16.1, Supplier shall not be liable to the Customer for
- 16.5.1 loss of business;
 - 16.5.2 loss of actual or anticipated profits (including loss of profits on contracts) or of revenue;
 - 16.5.3 loss of anticipated savings;
 - 16.5.4 loss of opportunity;
 - 16.5.5 loss of goodwill;
 - 16.5.6 loss of reputation;
- and, in each case, whether direct or indirect, whether arising in breach of contract, tort (including negligence), under an indemnity, under statute or otherwise, whether or not such loss was foreseeable.

17. **EQUIPMENT INDEMNITY**

Customer shall indemnify Supplier in respect of any damage to, or destruction of, Supplier's Equipment that is located on Premises owned, controlled or occupied by Customer, any of its Affiliates or an End User up to the replacement value of such Supplier Equipment on a like-for-like basis, in each case arising from any act or omission of Customer or its Affiliates or authorised personnel and except where such damage to or destruction of, the Supplier Equipment is due to fair wear and tear.

18. **FORCE MAJEURE EVENTS**

18.1 Neither Party shall be in breach of, nor otherwise liable to the other Party for any delay or non-performance of its obligations under or in connection with this Agreement, and Supplier shall not be considered to have failed to achieve any Service Level arising as a result of a matter beyond that Party's reasonable control, including any Force Majeure Event.

18.2 The Party affected by a Force Majeure Event shall:

18.2.1 promptly notify the other Party in writing of the cause of the delay or non-performance and the likely duration and anticipated effect on its ability to perform and of the delay or non-performance; and

18.2.2 use all reasonable endeavours to mitigate the effect on its own performance and to limit the effect of that delay or non-performance on the other Party.

18.3 As soon as reasonably possible following the end of the Force Majeure Event, the affected Party shall notify the other and shall resume performance of the affected obligation on the terms existing immediately before the occurrence of the Force Majeure Event, unless agreed otherwise by the Parties.

19. **TERM AND TERMINATION**

19.1 Not required

19.2 Not required

19.3 Each Party (the **Non-Defaulting Party**) may, without limiting its other rights or remedies, terminate this Agreement immediately by written notice to the other Party (the **Defaulting Party**) if any of the following events occurs in respect of the Defaulting Party:

19.3.1 if:

- (a) it is unable to pay its debts or becomes insolvent or an order or an application is made or a resolution passed for the administration, winding-up or dissolution of that Party (otherwise than for the purposes of a solvent amalgamation, reorganisation or reconstruction);

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- (b) an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any of the assets of that Party;
 - (c) it enters into or proposes any composition or arrangement with its creditors generally or a moratorium is declared in respect of any of its indebtedness or any creditor action; or
 - (d) anything analogous to the foregoing occurs in any applicable jurisdiction; or
 - 19.3.2 the Defaulting Party is in material breach (whether a single event or a series of events which taken together amount to a material breach) of this Agreement and:
 - (a) that breach is not capable of remedy; or
 - (b) that breach is capable of remedy, and the Defaulting Party has failed to remedy that breach within 30 days after receiving written notice from the Non-Defaulting Party requiring it to do so.
 - 19.4 Not required
 - 19.5 If Customer fails to pay any undisputed amounts under this Agreement, Supplier may suspend some or all of the Services at some or all locations, if:
 - 19.5.1 Supplier has given Customer an initial notice in writing that itemises the undisputed invoiced amounts to which it relates and Supplier's intention to suspend some or all of the Services, unless payment is received by it within 20 Business Days of the initial notice (or such longer period stated by Supplier) (Initial Notice); and
 - 19.5.2 following expiry of such period of 20 Business Days from the Initial Notice, Supplier has served a final notice upon Customer (addressed to the Chief Financial Officer) that refers to the Initial Notice and Supplier's intention to suspend some or all of the Services, unless payment is received by it within a period of not less than 10 Business Days of the final notice (or such longer period stated by Supplier) (Final Notice); and
 - 19.5.3 Customer has failed to pay the overdue and undisputed amounts within such period of 10 Business Days after the Final Notice in accordance with Clause 19.5.2 (or a longer period if stated in that notice).
 - 19.6 Supplier's right to suspend the provision of the Services shall immediately lapse and Supplier shall recommence performance of Services as soon as reasonably practicable in accordance with this Agreement as soon as Supplier becomes aware that Customer has paid in full all amounts overdue from Customer to Supplier as referred to in the Final Notice.
 - 19.7 Supplier may, without limiting its other rights or remedies, give immediate notice to terminate this Agreement after Customer has failed to pay overdue and undisputed amounts within 20 Business Days after Supplier's right to suspend or throttle some or all of the Services under Clause 19.5 arises.
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- 19.8 Customer shall notify Supplier immediately if Customer is affected by a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010) (**Change of Control Notice**). Supplier may, within 60 days of receipt of the Change of Control Notice, terminate this Agreement on 90 days' written notice.
- 19.9 Supplier shall have the right to limit, suspend or terminate a Connection or Connections if:
- 19.9.1 a regulatory authority issues a clear, unambiguous notice that requires it to limit or suspend that Connection or Connections in order to comply with such notice, provided that, Supplier shall:
- (a) to the extent it is practically able to do so, notify Customer immediately of any requirement to carry out a suspension;
 - (b) use all reasonable endeavours to avoid and mitigate any requirement to do so; and
 - (c) consult with Customer in respect of such suspension.
- 19.9.2 an End User continues to use the Products and Services in breach of the AUP following Supplier's request that such End User ceases such use in accordance with Clause 6.2; or
- 19.9.3 Supplier, acting in good faith has reason to believe that the Customer or its officers or employees has acted fraudulently or in bad faith in relation to such Connection or Connections.
- 19.10 The termination rights set out in this Clause 19 are, unless expressly stated otherwise, without prejudice to any other right for Customer or Supplier (as applicable) to terminate set out elsewhere in the Agreement.

20. CONSEQUENCES OF TERMINATION

- 20.1 Following the effective date of termination of this Agreement, Supplier shall continue to provide the Services ordered and confirmed under Schedule 2 of this Agreement prior to such effective date (each such Service, hereafter, a "**Confirmed Service**") in accordance with the following principles:
- 20.1.1 each Confirmed Service for which the relevant Minimum Period under Schedule 2 had elapsed by the effective date of termination shall be provided by the Supplier for one (1) calendar month following such effective date and shall thereafter cease;
- 20.1.2 all other Confirmed Services, being subject to relevant Minimum Periods, shall be provided by Supplier after the effective date of termination in each case until the expiry of the relevant Minimum Period.
- 20.2 The "**Exit Period**" shall be the period starting on the effective date of termination and ending on the expiry of the last Minimum Period referred to in Clause 20.1.2 above.
- 20.3 On termination of this Agreement each Party shall pay to the other Party all sums payable and which have not already been paid within 30 days after the receipt of a written demand or invoice for the relevant amount from the other Party.
- 20.4 Not required

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- 20.5 If Customer notifies Supplier in writing that it wishes to transfer any or all of the terminated Services to Customer or to a replacement service provider:
- 20.5.1 Supplier shall provide all reasonable assistance to Customer to effect the orderly transition of those Services from Supplier to a replacement service provider, as the case may be;
 - 20.5.2 Customer shall be responsible for all of its own costs and expenses in connection with the transition of those Services from Supplier to the replacement service provider, as the case may be;
 - 20.5.3 Supplier may charge Customer for its own costs and expenses associated with the transition of those Services to the replacement service provider, and Customer shall pay:
 - (a) any costs and expenses reasonably and properly incurred by Supplier which Supplier would not otherwise have incurred in the provision of the Services; and
 - (b) any costs or charges which are expressly permitted to be charged by Supplier to the Customer under any regulatory determination or code of practice;
 - 20.5.4 without prejudice to Clause 20.1 or Clause 20.5.6, Customer shall pay any Charges in respect of all Services up to and including the date of transition or termination of the relevant Services in accordance with this Clause 20.5;
 - 20.5.5 the Parties shall work together to ensure, so far as reasonably possible, that any transition of Services to a replacement service provider in accordance with this Clause 20.5 takes place within mutually agreeable timescales; and
 - 20.5.6 Customer shall (unless otherwise agreed in writing by Supplier) pay in full (i) all early termination charges specified in Schedule 2 in relation to any Services that (pursuant to the above transfers) are cancelled before the end of their applicable Minimum Period (see paragraph 9 of Schedule 2 by way of example in relation to the Business Connectivity Services set out therein) and (ii) all other relevant cessation charges detailed in Schedule 2.
- 20.6 Each Party shall, on request of the other Party and where practicable, destroy or return to the other Party all Confidential Information of the other Party and shall confirm in writing that it has not retained or has destroyed (as applicable) the other Party's Confidential Information, save to the extent that such Confidential Information is required by the Party in question for the purposes of:
- 20.6.1 providing or receiving any Services;
 - 20.6.2 compliance with its reporting, audit and Regulatory Requirements; or
 - 20.6.3 in the case of Supplier, compliance with a requirement or request to maintain a copy of that Confidential Information under Applicable Laws or as required or requested to do so by any person having regulatory or supervisory authority over all or any part of (i) the Services; or (ii) the business of Supplier.
- 20.7 Any termination or expiry of this Agreement shall not affect any accrued rights or liabilities of each Party, nor shall it affect the coming into force or continuation in force
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of any other Clauses and provisions of this Agreement which are expressly or by implication intended to come into force or continue in force on or after termination or expiry of this Agreement.

21. ASSIGNMENT AND SUBCONTRACTING

- 21.1 Customer may not assign, transfer or otherwise dispose of any of its rights or transfer or otherwise dispose of any of its obligations under this Agreement without the prior written consent of Supplier, which shall not be unreasonably withheld or delayed.
- 21.2 Supplier shall remain responsible for all acts and omissions of its subcontractors as fully as if they were the acts and omissions of Supplier or its employees or agents. Supplier shall be Customer's sole point of contact for the performance of Supplier's obligations under this Agreement, including the performance of the Services.
- 21.3 Supplier may grant security (including by way of financial pledge assignment) over its rights under this Agreement in favour of any of its lenders.

22. NOTICES

- 22.1 Any notice or other communication to be given under Clauses 19, or 21, shall be in writing and may be delivered or sent by post to the Party.
- 22.2 Any other notice or other communication to be given under this Agreement shall be in writing and may be delivered or sent by email to the Party at the electronic mail address or at any other address or electronic mail address or to any other addressee as it may have notified to the other Party.
- 22.3 Any notice or other document sent by post shall be sent by prepaid first class recorded delivery post (if within the United Kingdom).
- 22.4 Notices that are served using one of the methods permitted by this Clause 22 shall be deemed to have been received:
 - 22.4.1 if served by hand, on the day of receipt if served on a Business Day between 9:00 and 17:00 or shall be deemed to have been received on the next following Business Day should the notice have been served on a day other than a Business Day or have been served after 17:00 on a Business Day; or
 - 22.4.2 if served by prepaid first-class recorded delivery post, two Business Days after the date of posting.
- 22.5 In proving service of a notice or document it shall be sufficient to prove that delivery was made and recorded.

23. WHOLE AGREEMENT

- 23.1 This Agreement contains the whole agreement between the Parties relating to the transactions contemplated by this Agreement and supersedes all previous agreements between the Parties relating to these transactions.
- 23.2 Each Party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those set out in this Agreement and the documents referred to in it) made by or on behalf of each other Party at any time before the date of this Agreement. Each Party waives all rights and remedies which, but for this Clause 23.2, might

otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

23.3 Nothing in Clause 23.1 limits or excludes any liability for fraud or fraudulent misrepresentation.

24. GENERAL

24.1 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties, joint venture, nor constitute a Party as the agent of any other Party for any purpose. Except where expressly stated in the Agreement neither Party has authority or power to make representations on behalf of, or bind, the other Party in any way.

24.2 The rights and remedies of each Party under this Agreement:

24.2.1 may be exercised as often as necessary;

24.2.2 are cumulative and not exclusive of rights or remedies provided by law; and

24.2.3 may be waived only in writing and specifically.

24.3 Delay in the exercise or non-exercise of any right or remedy, single or partial exercise of a right or remedy, or any earlier waiver of it (whether in whole or in part) is not a waiver of that right or remedy.

24.4 Subject to Clause 8 any amendment of this Agreement shall not be binding on the Parties unless set out in writing, expressed to amend this Agreement and signed by authorised representatives of each of the Parties.

24.5 If any term of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

24.5.1 the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or

24.5.2 the legality, validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

24.6 Each Party undertakes, at the request and cost and expense of the other Party, to sign all documents and to do all other acts, which may be necessary to give full effect to this Agreement.

24.7 A person who is not a Party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

24.8 The consent of any person not a party to this Agreement is not necessary for any variation (including any release or compromise, in whole or in part, of any liability) or termination of this Agreement.

25. DISPUTES, GOVERNING LAW AND JURISDICTION

25.1 If, within thirty (30) days from the date of any notice of a Dispute, the Parties are unable to resolve the issue, which may include appropriate escalation to designated executive representatives, then either Party may pursue its rights and remedies under the law or agree to mediation in accordance with Clause 25.3 below.

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- 25.2 While the procedure in Clause 25.1 is being followed, both the Parties shall continue to perform their respective obligations under this Agreement.
- 25.3 If both Parties agree in writing, the Parties may refer any Dispute to mediation in order to attempt to settle any such Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Each Party shall, following such written agreement, engage and participate in mediation in accordance with the CEDR Model Mediation Procedure.
- 25.4 Nothing in this Clause 25 shall prevent a Party from making any application to a court to obtain an interim remedy (including an injunction) at law or in equity in relation to the Dispute, but while the procedure in Clause 25.1 and 25.3 (if appropriate) applies, neither Party shall be entitled to issue any other proceedings against the other in relation to the Dispute.
- 25.5 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by English law. The courts of England shall have exclusive jurisdiction to settle any dispute, claim or controversy arising out of or in connection with this Agreement (including a dispute, claim or controversy relating to any non-contractual obligations arising out of or in connection with this Agreement) and the Parties accordingly submit to the exclusive jurisdiction of the English courts.

SCHEDULE 1

Data Processing

This Schedule 1 includes certain details of the Processing by Supplier of Customer Personal Data as required by Article 28(3) UK GDPR or equivalent provisions of any Data Protection Law.

Subject matter and duration of the processing of Customer Personal Data

The subject matter and duration of the processing of the Customer Personal Data are set out in this Agreement.

The nature and purpose of the processing of Customer Personal Data

The nature and purpose of the Processing of Customer Personal Data are set out in this Agreement (including but not limited to Processing to the extent necessary to provide the Services and to comply with Supplier's obligations under this Agreement).

The types of the Customer Personal Data to be processed

The following categories of Personal Data relating to End Users: name, preferred salutation, premises address, business contact details and IP address.

The categories of Data Subject to whom Customer Personal Data relates

End Users.

The obligations and rights of Customer

The obligations and rights of Customer in respect of Supplier's Processing of Customer Personal Data are set out in this Agreement.

SCHEDULE 2

Business Connectivity Services Schedule

1. DESCRIPTION OF SERVICE

- 1.1 Business Connectivity Services provide access to the internet from an End User Premises using Ethernet Leased Line and/or FTTP Access products.
- 1.2 End User Connections are provided as either “Wires-only” or Wires with Supplier CPE, each as further defined at paragraph 4.3.
- 1.3 A detailed Service Description for Business Connectivity Services is outlined in the Business Connectivity Service Product Handbook that Supplier will provide to the Customer from time to time (and which is incorporated into this Agreement). The Business Connectivity Service Product Handbook will be regularly updated by Supplier as the service and technical features and options evolve. The services within and service description of the Business Connectivity Services under this Schedule will be amended with immediate effect each time Supplier provides an updated Business Connectivity Service Product Handbook to the Customer.

2. SERVICE RESTRICTIONS

- 2.1 The Business Connectivity Service is not available to Customers providing hosted services to End Users unless expressly agreed by Supplier in writing on the Order Form.
- 2.2 The Business Connectivity Service shall not be provided to, or connected with, a data centre or hosting facility unless agreed by Supplier in writing on the Order Form.
- 2.3 The Business Connectivity Service shall not be provided in respect of serviced offices or multi-tenanted sites unless otherwise agreed by Supplier in writing on the Order Form.

3. ORDERING

- 3.1 Order placement
 - 3.1.1 The Customer is bound by the terms contained within the CSUK Customer Services Agreement and by this Agreement including relevant Service Schedules and documents referred to therein.
- 3.2 Service Provisioning
 - 3.2.1 The Supplier will communicate the expected date on which the circuit will become live (the “**Customer Confirmed Date**” - CCD) and pertinent status updates to the Customer.
 - 3.2.2 If a Site Survey is required, the Supplier will confirm the “Customer Confirmed Date” when the survey has completed, and the survey results are available.
 - 3.2.3 The Supplier will inform the Customer of any material delays or additional charges that may be payable following completion of a Site Survey.

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- 3.3 Excess Construction Charges
 - 3.3.1 If Supplier considers that the installation costs quoted are insufficient to cover the actual cost of the installation works excess construction fees or charges ('ECCs') will be payable.
 - 3.3.2 ECCs (where applicable) will be notified to the Customer.
 - 3.3.3 Orders will be placed on automatic 'hold' until the Customer agrees (or not) to pay the ECCs.
 - 3.3.4 ECC delay puts the CCD at risk and the Supplier can change the CCD accordingly and without penalty.
 - 3.3.5 Should ECC payment be declined, the Customer has the right to cancel the Order with no further charges.
 - 3.3.6 Should the Customer fail to notify Supplier of their decision within 25 calendar days the Supplier shall consider the Order cancelled.

4. END USER EQUIPMENT

- 4.1 The Customer must ensure that each End User, at its expense, on an ongoing basis throughout the Term, provides suitable secure accommodation, facilities, assistance and environmental conditions for any Network Terminating Equipment and CPE.
- 4.2 The Customer shall ensure that all necessary power supply, electrical and other fittings are in place and in working order. Failure to carry out and ensure the above shall mean Supplier will not be held responsible for any interruption or failure of the services caused by any failure by the Customer or End User to carry out their obligations.
- 4.3 Supplier offers two 'Equipment' service options to the Customer depending on the requirements of its End User(s)
 - 4.3.1 "Wires-Only", where:
 - (a) The network-related Customer Premises Equipment ("CPE") and Routers are not supplied by Supplier.
 - (b) It is the sole responsibility of the Customer to source, provide and maintain suitable CPE and to ensure that the End User receives the required Service. The CPE device must be capable of routing the IP subnet required by the End User. The device should also provide for any bandwidth shaping, QoS, DHCP, NAT or other functions reasonably considered to be performed by a CPE routing device. For Wires Only the demarcation point is the NTE.
 - 4.3.2 "Wires" and Supplier CPE, where:
 - (a) The network-related CPE are supplied by Supplier, such equipment remaining the property of Supplier unless otherwise stated on the Order Form.
 - (b) For End User premises with Supplier CPE the demarcation point is the LAN interface on the Supplier CPE.

5. RESPONSIBILITIES OF THE PARTIES

- 5.1 Supplier shall be responsible for the following aspects of the Business Connectivity Services described below.
 - 5.1.1 Capacity planning and network infrastructure used to deliver the Services.
 - 5.1.2 Providing reasonable engineering support (if required) to the Customer via telephone at the time of the installation.
 - 5.1.3 Configuring and providing publicly routable network and IP address ranges in accordance with RIPE NCC and RFC1918 (if applicable).
 - 5.1.4 Advising the Customer of updates to Orders and Incidents.
 - 5.1.5 Provision of a Helpdesk to Customer (but not to End Users) for 2nd and 3rd line Incident resolution and escalation.
- 5.2 The Customer shall be responsible for all other aspects of the Business Connectivity Services including but not limited to:
 - 5.2.1 Not required
 - 5.2.2 Justification and management of IP Addressing for End Users.
 - 5.2.3 Provision, configuration and management of any CPE unless provided by Supplier.
 - 5.2.4 Provision of any onward services to the End Users.
 - 5.2.5 Customer understands and agrees that Supplier does not supply nor support domain names and mail services.
 - 5.2.6 Notifying Supplier of detailed network requirements covering firewall policy, additional subnets or routing information.
 - 5.2.7 Incident and fault reporting and first line Incident and fault management and diagnosis.
 - 5.2.8 Not required
 - 5.2.9 Not required.
 - 5.2.10 Provision of all customer service functions including all helpdesk and direct support to End Users. Provision of End User organisational details and abuse contact for entering into the RIPE database.
- 5.3 In addition to the above obligations, the Customer acknowledges that certain legal and regulatory requirements must be adhered to when providing Business Connectivity Services to End Users. It is the sole responsibility of the Customer to keep abreast of these legal and regulatory requirements and to ensure that they are complied with.
- 5.4 Supplier shall have no responsibility for advising or updating the Customer in respect to any legal or regulatory requirements relating to the Business Connectivity Services.

6. CHANGES TO BUSINESS CONNECTIVITY SERVICES

- 6.1 If the Customer wishes to request changes to the ordered but not yet installed service(s), such request shall be put in writing to Supplier.
- 6.2 Customer shall make requests for upgrades and downgrades to each ordered Service using the relevant Supplier order process. A copy of which shall be made available to Customer upon request.
- 6.3 Unless otherwise agreed by the Supplier in writing, a new Minimum Period equal to the initial Minimum Period set out in paragraph 8 below will be applicable to the upgraded/downgraded Service after the changes have taken effect.
- 6.4 Change requests submitted under paragraphs 6.1 to 6.3 shall be at the discretion of Supplier and may be subject to additional charges.

7. CHARGES AND PAYMENT

- 7.1 The Customer shall pay charges in relation to Business Connectivity Services as set out in the CSUK Customer Services Agreement. The Customer acknowledges that the pricing is subject to change from time to time.
- 7.2 Not Required.
- 7.3 Supplier shall take no responsibility for or guarantee that the Customer will be able to continue using any of the associated IP addresses or any features following termination of the Business Connectivity Services and/or any corresponding Orders.

8. MINIMUM PERIODS

- 8.1 Unless otherwise specified and agreed on an order form, the standard minimum period for each Business Connectivity Services order is:
 - 8.1.1 Thirty-six (36) months for an Ethernet Leased Line circuit connecting End User Premises.
 - 8.1.2 Twelve (12) months for an FTTP circuit connecting End User Premises.

9. TERM AND TERMINATION

- 9.1 This Service Schedule will become effective on the Commencement Date and shall continue in full force and effect until terminated in accordance with the terms set out in this Service Schedule and/or the other terms of this Agreement.
- 9.2 Both Parties' obligations under this Service Schedule will continue until this Service Schedule is terminated in accordance with terms of this Agreement.
- 9.3 In the event of termination by the Customer of either the Agreement or an Order corresponding to this Service Schedule the Customer will be liable to pay the cessation charges arising. Cessation charges may arise from:
 - 9.3.1 Cancellation of an order or End User connection before the end of the Minimum Period. Early termination charges will be calculated based on the remainder of the minimum period outstanding following cancellation.
 - 9.3.2 Non-return or damage to Supplier equipment provided as part of the Business Connectivity Service.

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- 9.4 Notice. Customer is required to provide Supplier at least thirty (30) days' notice of intent to terminate an order or End User connection.
 - 9.5 End of Minimum period. If no written notice has been provided, then the End User Connection term will roll over automatically into a new monthly period.
 - 9.6 Supplier may terminate this Agreement or suspend all or part of an End User service/order if:
 - 9.6.1 The Customer, End User or others misuse the Service.
 - 9.6.2 The Customer or End User otherwise breaches the terms of this Agreement.
 - 9.6.3 The Customer or their End Users are persistently abusive or make threats, repeatedly cause a nuisance or annoyance or otherwise act illegally or inappropriate towards Supplier or its sub-contractors engaged in the delivery of Supplier services.
 - 9.6.4 Customer fails to pay charges owing for Services ordered under this schedule in accordance with this Schedule and the Agreement.

10. SERVICE LEVELS

- 10.1 Access Provisioning
 - 10.1.1 Supplier will provide a Customer Confirmed Date for each Access solution provided for the Customer to its End User.
 - 10.1.2 Supplier shall use reasonable endeavours to meet the Customer Confirmed Date, but they are estimates only, and Supplier shall have no liability for failure to meet them.
- 10.2 Escalations. Supplier shall provide the Customer with support in the delivery of the Business Connectivity Services through the provision of a Customer Service function and escalation management with respect to Orders, Incidents and Service maintenance in accordance with this Schedule and the Agreement.
- 10.3 Supplier Core Network Service Levels
 - 10.3.1 Supplier will aim to provide a monthly average overall core network and Services availability of not less than 100% under normal circumstances, for the core network elements. Such target availability of 100% is for Customer's information only and shall not in any manner represent a commitment by Supplier to meet such availability target, and the Supplier shall have no liability for failure to do so.
 - 10.3.2 Supplier shall use reasonable endeavours to ensure that for the Business Connectivity Services:
 - (a) Emergency Maintenance does not exceed 3 hours in total in any calendar month;
 - (b) that Planned Maintenance does not exceed 3 hours in total in any calendar month; and

(c) Customer receives not less than 48 hours' notice of any Planned Maintenance.

10.3.3 If the Business Connectivity Service is unavailable to the End User due to a failing within the Supplier core network, this shall be treated as downtime for the Access Circuit over which the service is provided.

10.3.4 For the avoidance of doubt, Supplier provides no packet success or other performance guarantees for traffic outside of the Supplier core network.

10.4 Ethernet Leased Line Access Service Levels

10.4.1 Service Availability and Uptime - Ethernet Leased Line circuit target availability is 99.9% in a calendar month. This rises to 99.99% where a backup service is taken.

10.4.2 Service Availability is measured as circuit is available for Customer use during a given calendar month. 'Service unavailability' is defined as any period for which the service including any backup service is unavailable, measured from the time that (i) you or Supplier reports service unavailability to each other and opens a support ticket (Customer must obtain a reference number for their call – this is automatically given with email logged calls), until (ii) Supplier advises you that the Service is restored and operating in accordance with agreed specifications and resolves the support ticket. Any periods of time during which a support ticket is kept open at your request following notification by Supplier that service has been restored, are not included in measuring the duration of a period of service unavailability.

10.4.3 Fault and Incident Resolution Targets

Fault Type	Description	Target
Total Loss of service	Faults relating to the failure of the access circuit(s) or associated NTE	6 clock hours
Service degradation, performance or intermittent faults	Faults resulting in abnormal network performance (latency, jitter) or intermittent loss of service impacting End User experience.	48 clock hours.

10.4.4 Service Hours

(a) Customer support - standard Business Service Hours for Customer support is Business Hours on each Business Day.

(b) Fault Support – Customer can raise faults 24 hours a day, 365 days a year.

10.5 Business FTTP Service Levels

10.5.1 Fault and Incident Resolution Target

Fault Type	Description	Target
Total Loss of service	Faults relating to the failure of the access circuit(s) or associated NTE	8 Business Hours

10.5.2 Service Hours

- (a) Customer support - standard Business Service Hours for Customer support is Business Hours on each Business Day.
- (b) Fault Support – Customer can raise faults 24 hours a day, 365 days a year. However, an incident raised outside of Business Service hours will be progressed at the start of the next Business Day.

10.6 All targets for fault resolution, service availability and uptime exclude planned maintenance.

11. INCIDENT REPORTING

11.1 Subsequent to the Customer undertaking First Line Checks, the Customer shall report Incidents to CSUK using email or telephone providing the information and details requested, including without limitation a complete description of the Incident (“Incident Report”). CSUK will log the incident with the Supplier.

11.2 Where Supplier did not provide the CPE, Customer must, at the time of reporting the Incident, provide:

11.2.1 Source and destination IP addresses involved in the affected traffic path

11.2.2 Such logs, traceroute or related output as are required by Supplier to demonstrate the Incident as experienced.

11.3 The Supplier’s automated monitoring system will not detect every type of Incident. The Customer shall be responsible for reporting any issues to Supplier as soon as possible. Where Supplier detects an Incident, we may investigate and where appropriate record this in the Supplier’s incident management system on the Customer’s behalf.

11.4 Incident Qualifying Time

11.4.1 All Incidents will be acknowledged within 30 minutes provided that the Incident is reported during the applicable Service Hours.

11.5 “Incident Qualifying Time” is calculated as follows:

11.5.1 “Start Time” is the time that an Incident is initiated on Supplier’s incident management system and is the beginning of the Incident Qualifying Time. For the avoidance of doubt, where the Service is Wires-Only, the Customer is responsible for reporting all Incidents and the “Start Time” for such Incidents begins when reported by the Customer to Supplier and not upon the Customer detecting the Incident.

11.5.2 “Stop Time” is the time at which the status of the Incident becomes resolved and is the end of the Incident Qualifying Time. The case may be kept open for monitoring purposes after such time.

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- 11.5.3 Incident Qualifying Time will run during the Hours of Service for the relevant Service or Incident and shall be suspended outside of those Hours of Service.
- 11.5.4 “Parked Time” is time during which Supplier is unable to progress the resolution of the Incident and for the avoidance of doubt is deducted from the Incident Qualifying Time for reasons including, without limitation where:
- (a) Supplier has requested information missing from the Customer Incident Report or where the information provided is inaccurate or incomplete.
 - (b) Supplier is awaiting power up/down of the End User’s equipment.
 - (c) Supplier is awaiting the Customer to provide the End User’s availability for a visit appointment.
 - (d) The Customer is unavailable to respond to Supplier.
 - (e) Where FTTP access services apply, and an End User Site does not have 24 x 7 access and the Customer requests an engineer visit to the End User Site when the End User is available for a visit. Parked Time commences when a visit appointment is agreed with the End User and ends when the visit appointment date/time slot commences.
 - (f) Access is unavailable at the End User Site at an agreed time for a visit. Parked Time commences when the End User Site visit starts until a re-scheduled appointment becomes live.
- 11.5.5 Supplier reserves the right to extend the above timescales where, acting reasonably, it determines that this is appropriate due to the complexity of the Incident, where Supplier is dependent on a third party for resolution of the Incident or for other reasons beyond Supplier’s reasonable control. Where it does so Supplier shall use reasonable endeavours to eliminate or reduce the impact of the Incident by provision of a workaround, with a permanent correction to follow.
- 11.6 Incident – Progress Updates
- 11.6.1 Supplier shall use reasonable endeavours to provide the Customer with regular progress updates for all Incidents reported by the Customer.
- 11.7 Incident/Faults – Resolution
- 11.7.1 An Incident is resolved when the Service is no longer affected (as determined by Supplier, acting reasonably) and this may be by means of a temporary work-around until a permanent network solution is available.
- 11.8 Escalation Process
- 11.8.1 In the event of an Incident Report remaining unresolved for a period in excess of the Target Resolution Time in this Service Schedule, the Customer shall be entitled to escalate the matter in accordance with the agreed Customer Service Plan.