EGRESS SOFTWARE TECHNOLOGIES LIMITED

SWITCH SERVICES AGREEMENT

DATED: ("**Effective Date**")

PARTIES:

I.   **EGRESS SOFTWARE TECHNOLOGIES LIMITED** (6393598) whose registered office and principle place of business is at Unit 16, Quadrant Business Centre, 135 Salusbury Road, London, NW6 6RJ ("**Egress**"); and

II.   **[INSERT NAME]** (INSERT REGISTERED NUMBER) whose registered office is at [INSERT ADDRESS] ("**Customer**").

1.   DEFINITIONS

"Account Activation" means that Egress has activated the Customer's account to permit use of the Services in accordance with the Order Confirmation and the terms of this Agreement;

"Client Side Software" means one or more software components provided by Egress, in accordance with the Service Type, for installation on systems owned and/or operated by or on behalf of the Customer to access the Services;

"Confidential Information" means all data and information relating to the other's business provided to or acquired by it, its employees, agents or sub-contractors pursuant to this Agreement, including, in respect of Customer's Confidential Information, all Customer Data and Personal Data;

"Customer Data" means all Customer data and files which are provided to the Switch Service for encryption;

"Data Protection Legislation" means the Data Protection Act 1998 (as amended from time to time);

"Encrypted Data" means a package of encrypted data;

"Encryption Key" means a unique randomised string of letters, numbers and characters that may be used to decrypt and access the Encrypted Data, through the use of the Client Side Software;

"Fault" means that the Switch Service is not performing in according with Schedule 1;

"Fault Management" means the management and resolution of Faults in the Service in accordance with the relevant Support Type for which the Subscription Charges have been paid by the Customer;

"Initial Term" means the Initial Term of this Agreement as set out on the Order Confirmation, or in the absence of an Initial Term in the Order Confirmation, means one (1) year;

"Maintenance Services" means the maintenance activities set out in Schedule 1 which shall be provided by Egress in accordance with the Support Type;

"Order Confirmation" means either: (i) the quote for the Services issued by Egress or a Reseller and accepted without amendment by the Customer by (a) email; or (b) the issuing of a purchase order for such Services; or (c) completion of an online registration/application for the Services on the Egress website; or (ii) in the absence of a quote issued by Egress or a Reseller, means the completion by the Customer of the online registration form on the Egress website;

"Personal Data" shall have the same meaning as set out in the Data Protection Legislation;

"Recipient" means a person to whom Encrypted Data is sent;

"Reseller" means the authorised reseller identified in a quote for the Services acting as Egress' agent for the purpose of invoicing and receiving the Subscription Charges;

"Service Dependencies" means the technical and information requirements for the use of each Service Type as set out in Schedule 1;

"Services" means the provision of the Switch Service, and the Fault Management and Maintenance Services by Egress to the Customer in accordance with the Service Type and Support Type for which the Subscription Charges are paid by the Customer, as are more particularly set out in Schedule 1 of this Agreement;

"Service Credits" means the service credits which shall accrue to the Customer in respect of a failure by Egress to meet the Service Levels, as set out in Schedule 1;

"Service Levels" means the service levels set out in Schedule 1 of this Agreement;

"Service Type" means each of the Fully Hosted Cloud Service, the Hybrid Hosted Cloud Service and the Private Cloud Service as more particularly described in Schedule 1;

"Subscription Charges" means the Subscription Charges payable by the Customers, as set out in the Order Confirmation;

"Support Hours" means the hours during which Egress provides the applicable Support Type and as described in Annex C of this Schedule 1;

"Support Type" means the applicable level of support (being Standard, Premium, Premium Plus or 24/7 as more particularly described in Schedule 1) as selected in the Order Confirmation; in the absence of any such selection, the Support Type shall be Premium;

"Switch Client" means On-Premise Software installed on desktop or laptop workstations;

"Switch Module" means each of Switch Secure Email, Switch Secure File Transfer, Switch Secure Workspace and Switch Secure Web Form modules and any other future modules that may be offered by Egress for use by the Customer under this Agreement;

"Switch Platform" means Egress's proprietary software platform which facilitates the encryption of data for transmission to a Recipient and the decryption by a Recipient as required to receive the functionality of the Switch Modules, as more particularly described in this Schedule 1;

"Switch Server" means On-Premise Software installed on Server workstations to manage Encryption Keys;

"Switch Service" means provision of the Switch Platform with the Switch Modules which Customer has elected to receive, as set out in an Order Confirmation;

"Switch Service Infrastructure" means the hardware and software infrastructure to which access is provided to the Customer by Egress in the provision of the Switch Services, and the requirement for such access is dependent on the Service Type; and

"Switch Web Access Server" means On-Premise Software installed on Server workstations to enable recipients the ability to encrypt and decrypt data using a web browser;

"Term" means the Initial Term and thereafter the period for which Egress receives Subscription Charges from the Customer.

2.   REGISTRATION

2.1   Customer consents to Egress and/or the Reseller conducting verification and security procedures in respect of the information provided in the Order Confirmation. Egress reserves the right at its sole discretion to accept or reject the Customer's application.

2.2   The Customer hereby warrants that the information provided to Egress is true, accurate and correct. The Customer further warrants that it shall promptly notify Egress in the event of any changes to such information.

2.3   Upon Account Activation, the Customer will select a login and password to facilitate its use of the Services. The Customer shall keep the login(s) and password(s) confidential and secure. Without prejudice to Egress' other rights and remedies, Egress reserves the right to promptly disable the Customer's login and suspend the Customer's access to the Services if Egress reasonably believes that the Customer has breached this clause 2.3.

3.   TERM AND TERMINATION

3.1   This Agreement shall commence on the date of Account Activation and, subject to the remainder of this clause 3, shall continue for the Initial Term. On expiry of the Initial Term, this Agreement shall continue for successive Subscription Periods unless and until (i) Customer gives thirty (30) days written notice to Egress that it wishes to terminate the Agreement, such termination to take effect on expiry of the then current Subscription Period; or (ii) the Customer fails to pay the relevant Subscription Charges. For the avoidance of doubt, Customer shall not be entitled to cease paying the Subscription Charges during the Initial Term.

3.2   Either party may terminate this Agreement with immediate effect by written notice to the other party in the event that the other party:

3.2.1   commits any material breach of its obligations under this Agreement and fails to remedy the same within five (5) working days of written notice to do so;

3.2.2   has a receiver or administrator appointed over the whole or any substantial part of its business or assets, or if any order is made or a resolution is passed for its winding up (other than for the purpose of a bona fide amalgamation or reconstruction of a solvent company).

3.3   Upon termination of this Agreement for any reason Egress shall cease provision of the Services to the Customer and the Customer shall immediately cease all use of the Services provided that if the Service Type being provided by Egress is the Fully Hosted Infrastructure (as described in Schedule 1) with local encryption, then in the event that this Agreement is terminated by Customer pursuant to clause 3.2, Egress shall provide the Customer with an exported file containing the Encryption Keys necessary to enable the Customer to decrypt the Encrypted Data.

3.4   Clauses 1, 3.3, 5 (to the extent of any unpaid Subscription Charges), 6, 9 and 10 shall survive the termination of this Agreement however arising.

4.   SWITCH SERVICES AND SUPPORT

4.1 In consideration for payment of the Subscription Charges to Egress or the Reseller, as applicable, Egress shall provide the Services to the Customer for the Term.

4.2 Depending on the Service Type, the Switch Services may be provided in whole or part via the Switch Service Infrastructure or by installation of Client Side Software on the Customer's own computer systems. Where the Customer fails to correctly install or use the Client Side Software provided by Egress to the Customer in accordance with the Service Type or a Recipient fails to access the Switch Service Infrastructure, the Services will not operate either in part or at all and a Recipient shall be unable to decrypt the Encrypted Data.

4.3 Egress hereby grants to the Customer a non-exclusive, non-transferable, non-sub-licensable licence to use the Client Side Software strictly for the purpose of receiving the benefit of the Services hereunder for the Term.

4.4 The Customer shall not, except as expressly permitted in this Agreement (i) modify, translate, create or attempt to create derivative copies of or copy the Services in whole or in part; (ii) reverse engineer, decompile, disassemble or otherwise reduce the object code of the Services to source code form; (iii) distribute, sub-licence, assign, share, timeshare, sell, rent, lease, transmit, grant a security interest in or otherwise transfer the Services or the Customer's right to use the Services.

4.5 Egress has the sole and exclusive ownership of or licence to all right, title, and interest in and to the Services including all copyright and any other intellectual property rights therein. All rights in and to the Services are reserved by Egress and the relevant third party licensors and the Customer shall not infringe any of the Intellectual Property Rights owned by and/or licensed to Egress.

4.6 Egress shall make any organisational, procedural, or target adjustments or changes to the Services which it deems necessary or advisable provided that such adjustments or changes shall not have any material detrimental effect on the provision of the same to the Customer.

5. SUBSCRIPTION CHARGES

5.1 In consideration for the provision of the Services the Customer shall pay to the Reseller identified in the Order Confirmation (or, if none, to Egress) the Subscription Charges which shall be invoiced on the date of Account Activation unless set out to the contrary in the Order Confirmation. All Subscription Charges are exclusive of VAT (or any equivalent sales tax), which will be applied to the Subscription Charges and payable by the Customer, if applicable, at the standard rate.

5.2 In the event that the Subscription Charges are not paid in accordance with the provisions herein, this Agreement shall terminate and Egress shall cease to provide the Services.

5.3 Egress or the Reseller may increase the Subscription Charges upon thirty (30) days prior notice to the Customer, provided always that such increase in the Subscription Charges shall only be applicable to the Customer upon the completion of the Subscription Period for which the then current Subscription Charge has been paid.

6. EGRESS WARRANTIES, EXCLUSIONS AND LIMITATIONS OF LIABILITY

6.1 Save as expressly set out herein and to the maximum extent permitted by law, Egress expressly excludes all representations, warranties, obligations and liabilities in connection with the Services, the Client Side Software, the Switch Service Infrastructure, including but not limited to the warranties of merchantability, non-infringement of intellectual property, accuracy, completeness, fitness for a particular purpose, and any warranties arising by statute or otherwise in law or from course of dealing, course of performance, or use of trade are hereby excluded and disclaimed.

6.2   Subject to clause 6.7, the sole remedy with respect to any claims arising out of this Agreement shall be limited in the aggregate to the monies paid by the Customer in the twelve (12) months preceding the date of the claim.

6.3   Subject to clause 6.7, in no event shall Egress be liable for:

6.3.1   any special, indirect, incidental or consequential damages, loss of profits and goodwill, business or business benefit, or the cost of procurement of substitute products or services by the Customer even if advised of the possibility of such damages;

6.3.2   any delay or failure to provide the Services and that is due to third parties (other than third parties under Egress' direct control), including without limitation, internet service providers, data centres, server hosting companies and telecommunications companies;

6.3.3   any loss, damage or liability that arises as a result of the Customer making an Encryption Key available to a third party;

6.4   Egress shall not be liable to the Customer if the Services are unavailable due to conditions or circumstances that are beyond Egress' control, including without limitation third party service providers, geographic or atmospheric conditions, local physical obstructions, software and hardware features or functionalities of personal operating systems and the number of other users.

6.5   The public electronic communications network is not controlled by Egress and may from time to time be upgraded, modified, subject to maintenance work or otherwise amended by the owner or operator thereof. Such circumstances may result in the Services being made temporarily unavailable. Egress shall take reasonable action to minimise the disruption caused by such circumstances but some such interruptions may not be avoidable.

6.6   Egress shall indemnify Customer in respect of any claim by a third party that Customer's use of the Services infringes any third party intellectual property rights provided that:

6.6.1   Egress shall be granted control of the claim and Customer shall not settle or otherwise compromise the matter without Egress' prior written consent:

6.6.2   Customer shall, at Egress' cost, provide all assistance with respect to the claim reasonably required by Egress;

6.6.3   Customer shall mitigate all losses, damages and claims which are the subject matter of such indemnity.

6.7   For the avoidance of doubt, nothing in this Agreement shall be deemed to exclude, restrict or limit liability of (i) either party (or their respective agents or sub-contractors) for death or personal injury resulting from their negligence or any liability for fraudulent misrepresentation; (ii) Egress for liability arising pursuant to clauses 6.6, 8 and 9.

7.   CUSTOMER OBLIGATIONS AND WARRANTIES

7.1   The Customer hereby grant Egress a non-exclusive, worldwide, royalty-free licence to use, copy, cache, store and display and reproduce the Customer Data (including all intellectual property rights therein) for the purposes of fulfilling its obligations under this Agreement.

7.2   The Customer hereby represents, undertakes and warrants that:

7.2.1   the Customer owns all rights in the Customer Data necessary to grant Egress the right to carry out its obligations pursuant to this Agreement; and

7.2.2 the Customer Data does not and shall not contravene or breach any applicable law, regulation, code of practice or directive including, without limitation, investment or financial services legislation or consumer or trade regulation or data protection legislation or regulation and that the use of the Customer Data will not contravene any applicable law, regulation or industry standard; and

7.2.3 the Customer Data does not and shall not infringe any intellectual property rights or other rights of any person, nor are they obscene, defamatory, libellous or slanderous, nor will it cause injury to, invade the privacy of or otherwise violate other rights of any person; and

7.2.4 it shall (i) comply with all applicable local and foreign laws and regulations which may govern the use of the Services, and (ii) use the Services only for lawful purposes and in accordance with the terms of this Agreement;

7.3 The Customer shall comply with the Service Dependencies and all other obligations or dependencies set out in this Agreement, its Annexes, or otherwise notified by Egress to the Customer during the Term of this Agreement. Customer acknowledges that a failure to comply with this clause 7.3 shall mean that it and/or Recipients may be unable to use the Services or may only be able to use them in a limited or restricted manner.

7.4 If the Customer has a Private Cloud Service (as defined in Schedule 1), Customer shall:

7.4.1 provide Egress with a monthly report identifying the number of active users of the Switch Service; and

7.4.2 permit and provide the necessary technical access for Egress to remotely access the Customer's systems to interrogate the Client Side Software for the sole purpose of generating a report identifying the number of active users of the Switch Service.

7.5 In relation to the End Users, the Customer warrants and represents that:

7.5.1 the maximum number of End Users that it authorises to access and use the Switch Services shall not exceed the number of End User Accounts allocated to the Customer;

7.5.2 it will not allow any End User Account to be used by any individual End User other than the individual End User to which it was assigned. Subject to Egress's prior consent, where the End User Account has been reassigned in its entirety to another individual End User, the prior individual End User shall no longer have any right to access the End User Account or use the Switch Services; and

7.5.3 each End User shall keep a secure password for his use of the Switch Services and keep his password confidential.

8. DATA PROTECTION

8.1 With respect to any Personal Data which is processed by Egress during the course of providing the Services the Parties agree that the Customer is the Data Controller and that Egress is the Data Processor.

8.2 Egress shall:

8.2.1 process Personal Data only in accordance with written instructions from the Customer or as necessary to provide the Services;

8.2.2 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;

8.2.3 notify the Customer within five (5) Working Days if it receives (i) a request from a Data Subject to have access to Personal Data relating to that person; or (ii) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;

8.2.4 provide the Customer with full cooperation and assistance in relation to any complaint or request made relating to Personal Data, including by:

(i) providing the Customer with full details of the complaint or request;

(ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;

(iii) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and

(iv) providing the Customer with any information requested by the Customer;

8.2.5 not cause or permit any Personal Data to be processed, stored, accessed or otherwise transferred outside the EEA without the prior written consent of the Customer and, where the Customer consents to such processing, storing, accessing or transfer outside the European Economic Area, to comply with:

(i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is so processed, stored, accessed or transferred; and

(ii) any reasonable instructions notified to it by the Customer.

8.3 Customer shall comply with its obligations as a Data Controller under the Data Protection Legislation, including, without limitation ensuring that is has all necessary rights and permissions to authorise the processing of the Personal Data by Egress as contemplated in this Agreement.

8.4 Each party ("Indemnifying Party") shall indemnify the other ("Indemnified Party") for any payments which the Indemnified Party is required to make to a third party which is a sole and direct result of a breach by the Indemnifying Party of this clause 8.

9. CONFIDENTIALITY AND DATA SECURITY

9.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

9.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

9.1.2 not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement;

9.1.3 not use the other parties Confidential Information other than for the purposes of this Agreement;

9.2 The provisions of Clause 9.1 shall not apply to the extent that:

9.2.1 such disclosure is required by law or a court of competent jurisdiction;

9.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

9.2.3 such information was obtained from a third party without obligation of confidentiality;

9.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

9.2.5 it is independently developed without access to the other Party's Confidential Information.

9.3 Egress will immediately notify the Customer of any breach of security in relation to Customer Confidential Information. Egress will co-operate with the Customer in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Customer Confidential Information.

9.4 Egress shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by Egress of its obligations under this Agreement or as otherwise expressly approved by the Customer.

9.5 To the extent that Customer Data is held and/or processed by Egress, Egress shall use all reasonable endeavours to preserve the integrity of Customer Data and preventing the corruption or loss of Customer Data and Egress shall ensure that any system on which Egress holds any Customer Data, including back-up data, is a secure system that complies with Egress's own security policy.

9.6 If at any time Egress suspects or has reason to believe that the Customer Data has or may become corrupted, lost or degraded in any way for any reason, then Egress shall notify the Customer immediately and inform the Customer of the remedial action Egress proposes to take.

10. GENERAL

10.1 The Customer may not assign this Agreement, in whole or in part, without the written consent of Egress.

10.2 The Customer consents to the use by Egress of such the Customer's name in Customer lists and other publicity, including interviews, case studies, and conference discussions, provided that such publicity accurately describes the nature of the services being provided by Egress to the Customer.

10.3 Notices to be served on Egress under this Agreement may be served at Egress Software Technologies, Unit 16, Quadrant Business Centre, 135 Salusbury Road, London, NW6 6RJ. Notices may be served on the Customer at the address given in the Order Confirmation.

10.4 This Agreement shall be governed by and interpreted in accordance with the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to this Agreement.

10.5 The Customer agrees that because of the unique nature of the Services and Egress's proprietary rights therein, a demonstrated breach of this Agreement by the Customer would irreparably harm Egress and monetary damages would be inadequate compensation. Therefore, the Customer agrees that Egress shall be entitled to preliminary and permanent injunctive relief, as determined by any court of competent jurisdiction to enforce the provisions of this Agreement.

10.6 If any provision of this Agreement is declared void, illegal, or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event, the parties agree to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.

10.7 Any failure by any party to this Agreement to enforce at any time any term or condition under this Agreement shall not be considered a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement.

10.8   Neither party shall be responsible for delays resulting from circumstances beyond the reasonable control of such party, provided that the nonperforming party uses reasonable efforts to avoid or remove such causes of non-performance and continues performance hereunder with reasonable dispatch whenever such causes are removed.

10.9   This Agreement (i) constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes (a) all prior agreements, oral and written, made with respect to the subject matter hereof; and (b) all "click thru" terms and conditions which the Customer may be required to click-accept in order to access or use the Services; and (ii) cannot be altered except by agreement in writing executed by an authorised representative of each party. No purchase order and/or standard terms of purchase provided by the Customer shall supersede this Agreement.

10.10   Nothing in this Agreement shall give, directly or indirectly, any third party any enforceable benefit or any right of action against Egress and such third parties shall not be entitled to enforce any term of this Agreement against Egress.

This Agreement is entered into on the Effective Date.

Signed for and on behalf of   **Signed for and on behalf of**
Egress Software Technologies Limited   **[insert customer name]**

Name: **Name:**

Title: **Title:**

Date: **Date:**

SCHEDULE 1

SERVICES AND SERVICE LEVELS

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Annex B: Maintenance Services & Fault Management

Annex C: Service Levels and Service Credits

ANNEX A OF SCHEDULE 1

Switch Services, Service Types, Service Dependencies

1.   Switch Services

1.1   The Switch Service is an email and file encryption overlay service designed to provide enhanced levels of protection and real-time access control integrated into existing mail infrastructure. Certified by UK Government for transferring OFFICIAL and OFFICIAL-SENSITIVE data, Switch Secure Email and File Transfer enables organisations to control access to information, between open and closed communities, when sharing sensitive data electronically.

1.2   Core software components in the Switch Platform include:

    1.2.1   Switch Server Infrastructure

    1.2.2   Switch Client

1.3   Depending on the Service Type, some or all of the above components may be Client Side Software.

2.   Service Types

2.1   There are four Service Types. The Customer's applicable Service Type shall be as stated in the Order Confirmation.

    a.   Public Cloud (Hosted) Service: Combining Client Side Software with fully hosted (multi-tenant) Switch Service Infrastructure. Hosted server components typically include; key management, policy management, user management, encryption/decryption, and storage of encrypted packages.

    b.   Private Cloud (Hosted) Service: Combining Client Side Software with fully hosted (dedicated) Switch Service Infrastructure. Hosted server components typically include; key management, policy management, user management, encryption/decryption, and storage of encrypted packages.

    c.   Hybrid Cloud (On-Premise) Service: Combining Client Side Software with hosted elements of the Switch Service Infrastructure. Hosted server components typically include; key management, policy management, and user management while encryption/decryption and/or storage of encrypted packages often reside on premise.

d.   Private Cloud (On-Premise) Service: Utilises Client Side Software for complete delivery of the Switch Service.

3.   Service Dependencies

3.1   The following Service Dependencies are specific to the Hybrid Cloud (On-Premise) Service and the Private Cloud (On-Premise) Service:

Microsoft Windows Server 2008R2 / Windows Server 2012R2
Microsoft .NET 4.5 or later
Microsoft Internet Information Server 7.5 or later
ASP.net 4.5

SMTP Server
Active Directory Lightweight Directory Services
Windows Identity Foundation 3.5

3.2   The following Service Dependencies are specific to the Windows desktop client:

Microsoft Windows Vista/7/8/8.1/10
Microsoft Office 2010/2013/2016
Microsoft .NET 4.5 or later
Microsoft Visual Studio 2010 Tools for Office Runtime (VSTO)

3.3   In addition, Customer shall comply with the following obligations:

3.3.1   providing the necessary hardware/virtual infrastructure, environmental conditions, and security measures at the Customer sites in accordance with the Services system requirements;

3.3.2   giving Egress (and any third party engaged by Egress in connection with the Services) reasonable access to equipment that is covered by, or required for, the Services at reasonable times during Working Hours and in accordance with Customer's normal security procedures;

3.3.3   ensuring that all permissions of any kind needed for the installation and operation of Client Side Software are in place at all times and can be verified by Egress upon request).

ANNEX B OF SCHEDULE 1

Maintenance Services & Fault Management

The following definitions shall apply to Annex B and Annex C.

"Service Provider"	means Egress
"Customer Service Centre"	is the Egress dedicated service for managing Faults. The contact details for the Customer Service Centre vary from Service to Service and from Customer to Customer, Egress will provide each Customer with the Customer Service Centre contact details that are relevant to its Services.
"Emergency Changes"	is any remote configuration change to an existing Egress Switch Service that must be actioned in a reduced time-scale or in a manner that prevents thorough assessment and/or adequate planning.
"Excluded Events"	are any of the following: (a) Permitted Maintenance; (b) Planned Downtime; (c) a Fault in, or any other problem associated with, non-Egress supplied software, hardware or other telecommunications systems not operated or provided by us; (d) the fault, negligence, act or omission of the Customer or that of any third-party not within Egress's direct control; (e) the Customer not performing or a delay in performing any of the customer responsibilities; (f) a force majeure event in accordance with the terms of this Agreement; (g) a Fault resulting from the actions or omissions of the Customer or a third party on the Customer's behalf; or
"Planned Downtime"	is an interruption in service which is necessary to carry out Permitted Maintenance.
"Permitted Maintenance"	is planned maintenance agreed with the Customer and documented in the Maintenance Schedule.
"Trouble Ticket"	is a record of a Fault with a unique reference allocated to it which shall be used for all subsequent updates and communications.
"Incident"	means any event that may or may not be part of the standard operation of a Service and that causes, or may cause, or is likely to cause, an interruption to, or a reduction in, the quality of such Service.
"Root Cause Analysis (RCA)"	is a fault analysis report which is carried out by supplier for any major faults or incidents which has caused a complete or partial loss of service (limited to high severity faults/incidents P1 and P2), which will be documented and reported to Customer

"Post Incident Report"	is a fault analysis report which is carried out by supplier for any faults or incidents which had an impact on the service utilisation for the customer (limited to high severity faults/incidents P1 and P2), which will be documented and reported to Customer.
"Service Period"	means the hours during which the system will be available for use. These standard hours may or may not be "Support Period".
"Support Period"	means the hours during which the service/system will be supported. Any incidents occurring outside of the Support Periods will be addressed on a reasonable endeavours basis only, and excluded from availability measurements.
"Availability Target %"	is the target availability during each monthly reporting period.
"Response Time "	The time between Service Provider being made aware of the issue and Service Provider acknowledges the problem is being worked. Measure time elapsed will exclude time spent outside of Service Provider's control (Before or during incident).
"Resolution Time"	The time between Service Provider acknowledging the problem and providing a resolution to resolve the issue/fault/incident. Measure time elapsed will exclude time spent outside of Service Provider's control (Before or during incident).

1. Fault Management

1.1   Egress shall carry out Fault management during the Support Period to endeavour to restore operation of the Services to within agreed Service Levels and minimise the adverse impact of the Fault on Customer's business operations.

1.2   Customers shall log all Faults with Egress using the reporting methods applicable to the Support Type paid for by the Customer.

1.3   Egress shall:

1.3.1   provide for separate identification of Faults (by raising a Trouble Ticket, at which point the Fault will be deemed to have commenced) and the tracking of Faults by the Customer Service Centre through to closure of the Trouble Ticket;

1.3.2   categorise Faults in accordance with the Severity Levels set out in Annex C;

1.3.3   maintain and update records of Faults; and

1.3.4   investigate, carry out diagnostic activities, and resolve any Faults where such activities are included as part of the Services and subject always to any exclusions or restrictions set out herein.

1.4   Customer shall:

1.4.1   appoint primary and secondary central points of contact within the Customer organisation who will be responsible for reporting Faults to and progressing Faults;

1.4.2   provide adequate information when the Fault is first reported to enable Egress to diagnose and resolve suspected Faults. This information will include:

1.4.2.1   Customer name;

1.4.2.2   the name, telephone number and email address of the person reporting the Fault;

1.4.2.3   Customer contact name, telephone number and email address if different from above;

1.4.2.4   the physical location of the Fault;

1.4.2.5   the number of sites affected by the Fault (if relevant);

1.4.2.6   identification of the service or component the Fault is being reported against, such as Switch Client, Switch Server Infrastructure, or similar identifiers; and

1.4.2.7   any other details that may be relevant to diagnosis of the Fault (including symptoms, events or actions leading up to the Fault, any tests carried out in attempting to isolate the problem, any environmental conditions that may be causing the Fault);

1.4.3   use all reasonable endeavours to ensure that the Fault has not arisen as a result of any matter that is not Egress's responsibility under this Agreement before reporting a suspected Fault with the Services;

1.4.4   complete all initial troubleshooting activity previously specified by Egress before reporting a Fault; and

1.4.5   procure such co-operation from the Permitted User and from any third party providers as is reasonably requested by Egress to assist in the management of Faults.

1.5   If a Fault is reported to Egress which is not Egress's responsibility, then Egress shall have the right to charge the Customer for reasonable costs that it incurs in investigating the Fault.

1.6   If, after due investigations, Customer has reason to suspect that there is a Fault with the Egress Switch Service, it shall report the suspected Fault to Egress via the fault reporting process applicable to the Customer's Support Type and provide the following information:

1.6.1   Copy of Egress Switch Client Side Software de-bug logs;

1.6.2   Version of Egress Switch Client Side Software;

1.6.3   Version of affected Operating System or mobile platform; and

1.6.4   Version of Anti-Virus software installed (if applicable);

1.6.5   In the event that the Client Side Software referred to below has been installed:

       1.6.5.1   Confirmation that restarting the Switch Server Infrastructure Service has been attempted;

       1.6.5.2   Version of Egress Switch Server Infrastructure software;

       1.6.5.3   Copy of Egress Switch Server Infrastructure de-bug logs

       1.6.5.4   Version of effected Operating System; and

       1.6.5.5   Version of Anti-Virus software installed (if applicable);

1.7   Suspected Faults will be logged by Egress with a Trouble Ticket.

1.8   Egress will initially work to resolve all Faults remotely in accordance with the Support Type. Where an engineer is required to visit the Customer Site, the target resolution time will depend on the availability of access to the Customer Site and Egress will provide Customer with regular updates regarding resolution timescales.

1.9   If, after investigation, Egress considers that the Fault has not been resolved or a that a solution does not seem imminent, Egress may arrange for an engineer to visit the impacted Customer Site or upgrade the software used in the Services, save in the event that the Fault is a result of a direct result of a failure at a Customer Site or from any hardware in respect of which Egress has no management or maintenance responsibility.

1.10   Customer agrees to reimburse Egress for its reasonable expenses if Customer reports a suspected Fault which leads to a Customer Site visit and the fault is determined by Egress as unrelated to the Egress Switch Service.

1.11   The Fault will be deemed to be resolved when Egress notifies the Customer of such resolution or attempt, unsuccessfully, to contact Customer for that purpose.

1.12   Whenever possible, Customer should give Egress a minimum of fourteen (14) calendar days' notice of any event of which it is aware which may disrupt the Egress Switch Service.

2. Changes

2.1   Egress reserves the right to make any organisational, procedural, or target adjustments to the Fault reporting, management processes, and the Switch Service Infrastructure provided that such adjustments do not have a materially detrimental effect on the provision of the Switch Service to the Customer.

2.2   In the event that an Emergency Change is required to address any security risks, such change shall take priority and Egress will use reasonable endeavours to process this within two hours of receiving notification and sufficient information from the Customer of the Emergency Change provided that the Customer acknowledges that the reduced timescales for Emergency Changes may prevent thorough assessment and/or adequate planning and Egress cannot therefore be liable for any losses or expenses incurred by the Customer or any impact on the Egress Switch Service as a result of our provision of the Emergency Change.

3. Maintenance Schedule

3.1   Egress will create and maintain a rolling maintenance schedule with regard to the Egress Switch Service to be agreed with the Customer. The maintenance schedule shall be discussed in advance and updated accordingly.

3.2   When Egress wishes to carry out any maintenance to the Egress Switch Service (other than Emergency Changes), it shall ensure that;

   3.2.1   the timing of the planned maintenance is in accordance with the requirements of the Maintenance Schedule or is as otherwise agreed in writing with the Customer at least 10 working days in advance;

   3.2.2   once agreed with the Customer the planned maintenance (which shall be known as 'Permitted Maintenance') is entered into the maintenance schedule;

3.3   Egress shall book a maximum of 4 hours Planned Downtime for Permitted Maintenance in any one calendar month which shall take place between the hours and on the day specified in the maintenance schedule unless otherwise agreed in writing with the Customer.

3.4   Planned Downtime arising due to Permitted Maintenance that is carried out by Egress in accordance with 3.3 will be subtracted from the total number of hours in the relevant service period when calculating Service Availability.

4.   Planned Downtime

4.1   Planned Downtime to the Egress Switch Services and/or equipment may be necessary from time to time. Egress will:

   4.1.1   use reasonable endeavours to give Customer as much notice as reasonably possible of any Planned Downtime, which will affect the availability of the Egress Switch Service;

   4.1.2   use reasonable endeavours to minimise Planned Downtime and any subsequent disruption to Customer; and

   4.1.3   not be liable for any charges or costs incurred as a result of a Planned Downtime caused by the Customer or Permitted Users.

4.2   The Customer shall notify its Permitted Users, Recipients, customers or third party providers of any Planned Downtime.

ANNEX C OF SCHEDULE 1

Service Levels and Service Credits

1. General Provisions

1.1. Egress shall provide a service that ensures that all Service Levels and Key Performance Indicators in the Agreement are achieved to the highest standard throughout the Contract Period.

1.2. Egress shall ensure delivery of an effective service through the provision measurements of the following areas:

1.2.1. Availability; and

1.2.2. Incident Resolution

1.3. Egress accepts and acknowledges that failure to meet the Service Level Performance Measures will result in Service Credits being issued to the Customer.

2. Principal Points

2.1. The objective of the Service Levels and Service Credits are to:

2.1.1. Ensure that the Services are of a consistently high quality and meet the requirements of the Customer;

2.1.2. Provide a mechanism whereby the Customer can attain meaningful recognition of Egress's failure to deliver the level of service for which it has contracted to deliver; and

2.1.3. Incentivise Egress to comply with and to expediously remedy any failure to comply with the Service Levels

3. Service Levels

3.1. Availability:

3.1.1. Egress shall be responsible for measuring the Availability of the Service

3.1.2. The Availability of the Service shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

Where:

(a) MP = Total time excluding Planned Downtime, within the relevant Service Period; and

(b)   SD = Total Service Downtime within the relevant Service Period during which a Service is not Available, excluding Planned Downtime.

(c)   If a Service is Unavailable and such Unavailability causes a Dependent Service to become Unavailable then the Downtime experienced by the Dependent Service shall not count towards the Service Downtime of the Switch Service.

(d)   The Service Level Performance Measures and Service Credits for Availability are set out below.

3.2.   Incident Resolution:

3.2.1.   Incident Resolution Times shall be calculated from the first report to the Customer Service Centre until the action has been completed by or on behalf of Egress to repair the root cause of the Incident or a workaround has been implemented by Egress.

3.2.2.   Where an Incident is reported outside the Service Period, the Incident will be treated as if it has been reported at the beginning of the next Service Period.

3.2.3.   The Incident is 'closed' once service restoration has been achieved. However, Egress shall not close any Incident until the Customer has confirmed that service restoration has in fact been achieved. Notwithstanding the foregoing, if Egress has in fact achieved service restoration and has made three attempts in good faith to confirm this with the Customer, but has been unable to contact the Customer to obtain this confirmation, the Incident will be closed.

3.2.4.   Incident Severity Levels in relation to Incident Resolution are set out in the following table: Incident Severity Classification

Incident Severity Classification	
The following classifications link to the Incident Response and Incident Resolution time for each Incident, and drive the Incident management process.	
Incident Severity Level	**Definition**
Incident Severity Level 1 (P1)	A Service Failure where: a) The number of Permitted Users not able to utilise the Switch Service is greater than 10% of the total number of Permitted Users.
Incident Severity Level 2 (P2)	A Service Failure where: a) The number of Permitted Users not able to utilise the Switch Service is greater than 5% but not more than 10% of the total number of Permitted Users.

Incident Severity Level 3 (P3)	A Service Failure where: a) Permitted Users are reporting issues with the Switch Service, however the number of Permitted Users affected by the Incident does not exceed 5% of the total number of Permitted Users
Incident Severity Level 4 (P4)	A Service Failure where: a) A single Permitted User reports any issue with the Switch Service.

3.3. Root Cause Analysis: target for post fault or incident reports and Root Cause Analysis reports are set out in the following table: Root Cause Analysis (RCA) Targets

Root Cause Analysis (RCA) Targets		
Fault or Incident classification	**Post Incident Report**	**RCA**
P1	<48 hours	<10 business days
P2	<72 hours	<10 business days
P3	upon request	upon request

3.4. Service Period and Support Period are set out below:

Service Period is the period during which the system is available for use. Service Period is 24 hours per day including weekdays, weekends and public holidays.

Support Period is the period during which Egress will operate the Customer Service Centre and respond to incidents per 4.2. Any incidents occurring outside the Support Period will not be addressed until the next Supported Period or limited to reasonable endeavours only.

[Support Period varies according to Support Service level purchased e.g. office hours or 24x7]

Region of Support			
Period	**Time (GMT/BST)**		**Support Period**
	From	**To**	
Monday to Friday			
Saturday and Sunday			
UK Public Holiday			

4. Service Level Performance and Service Credits

4.1. Service Availability

Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Credit
Availability of the Service	Availability %	99.90%	99.8% – 99.9% (2% Service Credit gained) 99.7% - 99.8% (3% Service Credit gained) 99.6% - 99.7% (4% Service Credit gained) 99.5% - 99.6% (5% Service Credit gained) <99.5% total Service Credit of 14% in any Service Period

*Service Credits accumulate up to a maximum of 14% in any Service Period.

4.2. Incident Response and Resolution

Service Levels				Service Credits
Incident Severity Level	Key Indicator	Incident Response Time	Incident Resolution Time	
Incident Severity Level 1 (P1)	Incident Response Time and Incident Resolution Time	Within 15 minutes	Within 4 hours	1.5% Service Credit gained for each incident not resolved under the specified Service Level Performance Measure
Incident Severity Level 2 (P2)	Incident Response Time and Incident Resolution Time	Within 30 minutes	Within 8 hours	0.75% Service Credit gained for each incident not resolved under the specified Service Level Performance Measure
Incident Severity Level 3 (P3)	Incident Response Time and Incident	Within 3 hours	Within 72 hours	n/a

Service Levels				Service Credits
Incident Severity Level	Key Indicator	Incident Response Time	Incident Resolution Time	
	Resolution Time			
Incident Severity Level 4 (P4)	Incident Response Time and Incident Resolution Time	Within 6 hours	Within 72 hours but not exceeding 5 business days	n/a

4.3. Root Cause Analysis

Service	Service Measure Description	Service Level Performance Measure	Measurement Period	Scope
Root Cause Analysis	Percentage of the RCAs for P1/P2 incidents completed on time	97% within ten business days based on the Customer request	Quarterly	P1, P2

*Service Credits do not apply in respect to Root Cause Analysis performance.

4.4. Service Credits

4.4.1. Service Credits are required to be paid in the event that the Service Level Performance Measure falls below the Availability Target % in a Service Period.

4.4.2. Service Credit for Service Availability is calculated by using the following formula:

$$\text{Service Credit } £ = ((a-x)*c)*d)$$

where

- a is the Service Level Performance Measure (%) below which Service Credits become payable;

- x is the Achieved Service Level (%) for a Service Period;

- c is the Service Credit (%) payable if the Achieved Service Level falls below the Service Level Target; and

- d is the amount payable in respect of the Services during the Service Period, not including VAT

4.4.3. Service Credits for Incident Response are calculated using the following formula:

$$\text{Service Credit } £ = ((a*c)*d)$$

where

- a is the number of Incidents not resolved within the Service Level Performance Measure during a Service Period;

- c is the Service Credit (%) payable in each instance where the Achieved Service Level falls below the Service Level Performance Measure; and

- d is the amount payable in respect of the Services during the Service Period, not including VAT

4.5. Service Level Reporting

4.5.1. Egress shall provide the Customer with a set of hard and soft copy monthly reports within five (5) days of the commencement of the following month to verify Egress's performance and compliance with the Service Levels. Egress shall provide agreed supporting information for each such report to the Customer in machine-readable form suitable for use on a personal computer

4.5.2. Egress shall notify the Customer in the monthly performance report if the Customer becomes entitled to Service Credits. The monthly performance report shall also describe any Service Level Defaults for the relevant preceding month.

4.5.3. In addition, Egress shall deliver a separate monthly Service Credit report to the Customer which within five (5) days of the commencement of the following month shall summarise the financial value of the Service Credits for the preceding month together with the cumulative value of Service Credits for the current year of the Agreement to date.