### 1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following expressions will have the following meanings unless inconsistent with the context:

<p>| “BCP” | means Business Continuity Plan; |
| “Business Day” | means any day other than a Saturday or Sunday or a public or bank holiday in England; |
| “Business Hours” | means the hours between 9:00am and 5:30 pm Monday to Friday on any Business Day or such other times as are agreed in writing by SCC; |
| “Change Control Procedure” | the procedure set out in Annex 1 to these Terms and Conditions; |
| “Charges” | means the charges in respect of the Services to be paid by the Customer to SCC as set out in the G-Cloud Order Form; |
| “Code of Connection” | means the applicable code of connection detailed in the G-Cloud Order Form a copy of which the Customer acknowledges that it has received and agrees to comply with; |
| “Contracting Body” | means the Authority and any other person as listed in the OJEU Notice or Regulation 3 of the Public Contracts Regulations 2006, as amended from time to time; |
| “Customer” | means the Contracting Body identified in the applicable G-Cloud 9 Order Form; |
| “Equipment” | means any Customer equipment, whether owned, leased, rented or otherwise, which is located on SCC’s premises or on the premises of SCC’s sub-contractors or affiliates; |
| “G-Cloud 9 Call-Off Agreement” | means an agreement between SCC and a Customer formed upon agreement of a G-Cloud 9 Order Form in accordance with the G-Cloud 9 Framework Agreement; |
| “G-Cloud 9 Order Form” | means the prescribed form issued by GPS in connection with the G-Cloud 9 Framework Agreement for ordering G-Cloud Services; |
| “G-Cloud 9 Service Definitions” | means the applicable G-Cloud 9 Service Definitions issued by SCC in accordance with the G-Cloud 9 Services Framework Agreement and agreed by SCC and a Customer in a G-Cloud 9 Call-Off Agreement; |
| “DR” | means disaster recovery; |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Good Industry Standards”</td>
<td>means levels of performance which would reasonably be expected from a skilled and experienced provider of services of the same nature of the Services;</td>
</tr>
<tr>
<td>“Intellectual Property Rights”</td>
<td>means copyrights, moral rights, patents, supplementary protection certificates, trade marks, trade names, service marks, design rights, database rights, rights in goodwill, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar or related intellectual property rights (whether registered or not) and applications for such rights anywhere in the world;</td>
</tr>
<tr>
<td>“Internet”</td>
<td>means the global data network comprising interconnected networks using the transmission control protocol or Internet protocol;</td>
</tr>
<tr>
<td>“LIBOR”</td>
<td>“LIBOR” means the British Bankers’ Association London Interbank Offered Rate fixed for pounds sterling (GBP);</td>
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<tr>
<td>“Location(s)” or “Sites”</td>
<td>means the premises or other locations from and to which the Services are to be provided to the Customer or a user as specified in G-Cloud 9 Order Form;</td>
</tr>
<tr>
<td>“Name”</td>
<td>means any name specifically requested by or allocated to the Customer for use with the Services and shall include, without limitation, any domain name or mailbox name;</td>
</tr>
<tr>
<td>“Party”</td>
<td>means SCC or the applicable Customer (as appropriate) and “Parties” shall be construed accordingly;</td>
</tr>
<tr>
<td>“Service Commencement Date”</td>
<td>means the date(s) set out in the G-Cloud 6 Order Form;</td>
</tr>
<tr>
<td>“Services Equipment”</td>
<td>means any equipment provided by SCC to the Customer in connection with the provision of the Services;</td>
</tr>
<tr>
<td>“Service Levels” or “SLA”</td>
<td>means the target level of the Services set out in the G-Cloud 9 Service Definitions;</td>
</tr>
<tr>
<td>“Service Period”</td>
<td>means the service period(s) defined in the G-Cloud 9 Order Form;</td>
</tr>
<tr>
<td>“Services”</td>
<td>the services described in the applicable G-Cloud 9 Order Form agreed with the Customer in accordance with the G-Cloud 9 Framework Agreement;</td>
</tr>
<tr>
<td>“Telecommunications Terms”</td>
<td>means additional terms and conditions which are applicable to Telecommunications Services and set out in Annex 2 to these terms and conditions;</td>
</tr>
<tr>
<td>“Telecommunications Services”</td>
<td>means the telecommunications Services as identified in the G-Cloud Order Form or otherwise required as part of the Services to be provided by SCC;</td>
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</table>

1.2 In these terms and conditions unless the context otherwise requires any reference to:
1.2.1 a “Clause”, “Annex” or “Appendix” is a reference to a Clause, Annex or appendix in these terms and conditions;

1.2.2 the word “including” or “includes” shall mean “including without prejudice to the generality of the foregoing phrase or term” and references to “written”, “in writing” or any similar expression shall include all data in written form whether represented in hand-writing, facsimile, printed, electronic or other format;

1.2.3 any reference to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof from time to time in force and to include any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder and any condition attaching thereto;

1.2.4 the Parties shall include their permitted successors and assigns;

1.2.5 an obligation on a Party not to do any act or thing shall be deemed to include an obligation not to permit or suffer the doing of that act or thing;

1.2.6 another agreement or any deed or other instrument shall be construed as a reference to that other agreement deed or other instrument as from time to time amended, varied, supplemented or novated;

1.2.7 headings in these terms and conditions are inserted for convenience only and shall not affect the interpretation of these terms and conditions;

1.2.8 to the singular include the plural, references to any gender include all other genders, and references to “persons” shall include individuals, bodies corporate, unincorporated associations, professions, businesses and partnerships; and

1.2.9 the Clause, Annex, and Appendix headings of these terms and conditions are for ease of reference only and shall not affect the interpretation or construction of these terms and conditions.

2. **APPOINTMENT / COMMENCEMENT / DURATION**

2.1 SCC shall provide the Services for the duration specified in the applicable G-Cloud 9 Order Form signed by SCC subject to the provisions for earlier termination set out in Clause 13 (Termination) of these terms and conditions. SCC shall be under no obligation to accept G-Cloud 9 Order Forms from a Customer and shall be under no obligation to provide Services unless and until it has signed a G-Cloud 9 Order Form.

2.2 The Telecommunications Terms shall only apply with respect to the Telecommunications Services. For avoidance of doubt the terms of Annex 2 (Telecommunications Terms) shall not apply to the provision of any Services other than the Telecommunications Services.

2.3 In the event of any conflict or contradiction between the Clauses of these terms and conditions and the Telecommunications Terms then the Telecommunications Terms shall take precedence in respect of the Fluidata Telecommunications Services to which they relate.

2.4 These terms and conditions may only be varied or amended in writing and signed by an authorised representative of each of the Parties.

2.5 The Parties agree that they shall work and co-operate with each other during the period prior to the Service Commencement Date(s) to facilitate the orderly transfer of the provision of the Services to SCC.

3. **SERVICE SUPPLY**

3.1 Where SCC has signed a G-Cloud 9 Order Form SCC shall from the applicable Service Commencement Date(s) supply the Services to the Customer in accordance with:
3.1.1 the G-Cloud 9 Service Definitions;
3.1.2 all legal requirements applicable to the provision of the Services from time to time; and
3.1.3 Good Industry Standards and with reasonable skill, care and diligence.

3.2 SCC will maintain throughout the duration of each Call-Off Agreement security practices as described in the G-Cloud 9 Service Definitions.

4. TRANSITION

4.1 If a transition plan is agreed between the Parties each Party shall have the rights and obligations allocated to it in the transition plan in relation to the transfer of the Services to SCC. For the avoidance of doubt, unless otherwise agreed by SCC including in a transition plan or set out in the applicable G-Cloud Service Definitions or the applicable G-Cloud (Call-off Agreement), SCC shall not provide any transition assistance under a Call-Off Agreement.

4.2 The Customer shall take all reasonable steps to encourage its existing suppliers/vendors to cooperate with SCC as reasonably required by SCC for the successful performance of the Services, actively and in good faith co-operate with SCC in relation to the Services and provide SCC with all the information SCC may reasonably require relating to the Customer’s business in connection with the Services.

5. CHANGE CONTROL

5.1 Either Party may submit a change request in accordance with Annex 1 (Change Control) in respect of the Services and/or a G-Cloud 9 Call-Off Agreement.

5.2 SCC may from time to time give instructions to the Customer about the use of the Services which SCC reasonably considers to be necessary for any reason, including without limitation in the interests of security, or in the interests of the quality of the Services to SCC’s other customers. The Customer shall at all times abide by any such instructions.

5.3 Prior to SCC acting in accordance with Clause 5.2 above, SCC will give as much on-line, written and/or oral notice as it, in its sole discretion, deems to be necessary.

6. CHARGES

6.1 The Charges will be calculated in accordance with the applicable G-Cloud 9 Call-Off Agreement and are exclusive of any value added tax or other applicable sales tax or duty which will be added to the sum in question.

7. PAYMENT

7.1 SCC will invoice the Customer in accordance with the timescales specified in the G-Cloud 9 Order Form. The Customer shall pay all Charges in pounds sterling within thirty (30) days from the date of invoice.

7.2 No payment will be deemed to have been received until SCC has received payment in cleared funds.

7.3 All sums payable to SCC under a G-Cloud 9 Call-Off Agreement will become due immediately upon termination of a G-Cloud II Call-Off Agreement.

7.4 All payments to be made by the Customer under a G-Cloud 9 Call-Off Agreement will be made in full and without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.

7.5 If any sum payable under a G-Cloud 9 Call-Off Agreement which is not the subject of a bona fide dispute is not paid within 5 Business Days after the due date then (without prejudice to SCC’s
other rights and remedies), SCC reserves the right to charge interest on such sum on a day to day basis (after as well as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of four percent (4%) per annum over the LIBOR base rate (or such other London Clearing Bank as SCC may nominate) from time to time in force until payment is made in full both before and after any judgment. Such interest shall be paid on demand by the Customer.

7.6 If Services are performed in stages SCC reserves the right to invoice each instalment or stage as and when delivery is made to the Customer or the performance of a stage commences in which case payment shall be due in accordance with Clause 9.1 above notwithstanding non-delivery of other instalments or stages or fulfilment of the entire order.

8. CUSTOMER WARRANTIES AND OBLIGATIONS

8.1 The Customer warrants to SCC that:

8.1.1 it has obtained all necessary permissions and consents required by it to enter into a G-Cloud 9 Call-Off Agreement;

8.1.2 it will provide SCC with such information as SCC may reasonably need concerning the Customer’s operations and which may be reasonably necessary in order for SCC to provide any of the Services. The Customer shall ensure such information is accurate and complete. SCC will, to the extent reasonably practicable, give the Customer reasonable prior notice of any information it requires in accordance with this Clause 8.1.2;

8.1.3 it shall ensure that all personnel assigned by it to provide assistance to SCC in providing the Services shall have the requisite skill, qualification and experience to perform the tasks assigned to them; and

8.1.4 it shall provide such access to its premises, personnel and facilities as SCC shall reasonably require in order to provide the Services, and at all times provide suitable secure accommodation, assistance, facilities, and environmental conditions for the installation and housing of the Services and all necessary electrical power supplies (including back-up) and other installations and fittings at the Site(s) for the commissioning and provision of the Services. The Customer shall ensure that such preparation and provision is effected at the Customer’s sole cost before the Services and Services Equipment are installed at the Sites and are in accordance with any reasonable specifications provided by SCC. The Customer shall ensure that any restoration and re decorating is effected at the Customer’s sole cost.

8.2 The Customer shall:

8.2.1 comply with the Code of Connection;

8.2.2 assist with SCC’s reasonable investigation of any Service outages or security problems relating to the Services;

8.2.3 ensure that the Customer Premises Equipment meets the requirements for provision of the Services as specified by SCC in writing from time to time including but not limited to the Code of Connection. The Customer shall have available at its expense and on its premises all such equipment, communication lines, magnetic media, programs, personnel and any other materials as are necessary for the use of the Services. The Customer shall ensure that it interfaces to the Services only hardware and software of adequate quality for such purposes and which is formally accepted in writing by SCC;

8.2.4 except where the Services expressly include SCC’s virus-checking services, be responsible for virus-checking and cleansing all incoming and outgoing
transmissions of data using commercially available up-to-date anti-virus and firewall software. The Customer acknowledges that SCC does not include any such virus-checking and/or cleansing as standard in its provision of the Services unless expressly provided for in a G-Cloud 9 Call-Off Agreement; and

8.2.5 give reasonable written notice to SCC of any significant change which it expects to make in the average monthly volume of transmissions of data by use of the Services.

8.2.6 maintain or procure the maintenance of the following insurance policies in valid and enforceable format with reputable insurers for the duration of this Agreement:

(a) public liability insurance against liability in respect of personal injury, death, property damage and the consequences arising therefrom, for not less than £5 million for any one occurrence; and

(b) property damage insurance against loss or damage to any Equipment (or any other assets owned or controlled by the Customer), for not less than their combined replacement value;

(together the “Required Insurance Policies”)

and provide, on request by SCC, certificates of currency evidencing the existence and extent of such insurance within ten Business Days of a request to do so.

8.2.7 not bring any claim or action against SCC (or any of its agents, servants, employees or subcontractors) in respect of any loss or damage which the Customer could recover under the Required Insurance Policies or any insurance required by law (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Customer or any of its employees, servants, agents or sub-contractors) and the Customer waives and shall ensure that its insurers waive any rights of subrogation against SCC in respect of any such loss or damage howsoever arising.

8.3 The Customer must not, and must procure that its employees, contractors, users, agents and representatives do not, use the Services:

8.3.1 to send, receive, access or disseminate any material which is offensive, abusive, indecent, obscene, menacing, fraudulent, or in breach of:

8.3.1.1 any obligation of confidentiality;

8.3.1.2 any Intellectual Property Rights;

8.3.1.3 privacy or any applicable data protection legislation; or

8.3.1.4 any law or regulation;

8.3.2 to send or receive any material which contains any viruses or other computer programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any information;

8.3.3 to cause annoyance, inconvenience or needless anxiety;

8.3.4 in breach of instructions given by SCC, other than in conformance with any and all user policies of any networks to which it is connected via the Services including, without limitation, the Code of Connection; and/or

8.3.5 to gain access to or disseminate any information over the Internet (where the Services include access to the Internet) where SCC reasonably believes such access or dissemination would breach any of the terms of this Clause 8.3.
8.4 The Customer is responsible for the use of the Services by:
   8.4.1 any of its employees;
   8.4.2 any person the Customer authorises to use the Services; and
   8.4.3 any person to whom the Customer has given access to the Services and any person
   who gains access to the Customer’s data or the Services as a result of the
   Customer’s failure to use reasonable security precautions, even if such use was not
   authorised by the Customer. The Customer may not use the Services to send any
   unsolicited advertising or promotional messages, except with the prior written
   consent of SCC.

8.5 If the Customer breaches Clauses 8.2, 8.3, 8.4 or 22.7, SCC may remove or block access to any
   relevant material or suspend access to the Services, and may refuse to restore the Services until it
   receives an acceptable assurance from the Customer that there will be no such further breach.

8.6 For the avoidance of doubt SCC has no obligation to the Customer to monitor, and will have no
   liability for, the contents of any communications transmitted by virtue of the Services.

9. DELIVERY AND CANCELLATION

9.1 SCC will use its reasonable endeavours to ensure delivery of the Services and/or Access by the
   Service Commencement Date(s) but the Service Commencement Date(s) are estimates only and are not guaranteed. Time is not of the essence in relation to such dates.

9.2 If SCC fails to provide the Services and/or Access by the Service Commencement Date(s) the Customer shall have no right to reject the Services and shall have no right to rescind a G-Cloud 9 Call-Off Agreement unless the Customer has served on SCC a written notice requiring SCC to provide the Services and/or Access not less than thirty (30) days after the Service Commencement Date and the notice has not been complied with.

9.3 If the Customer refuses to allow SCC to take any steps necessary for it to provide the Services
   and/or Access, then SCC shall be entitled to withhold performance of any Services and to treat a G-Cloud 9 Call-Off Agreement as repudiated by the Customer and shall have the right to rescind a G-Cloud 9 Call-Off Agreement.

9.4 SCC reserves the right to withdraw or modify any particular aspect of the Services in the interest of maximising the effectiveness of its services, provided that such withdrawal or modification does not have a material adverse effect on the Services.

10. LIABILITY

10.1 The following provisions of this Clause 10 set out the total liability of the Parties in respect of any breach of its obligations, tort (including negligence) or any other form of liability whatsoever arising under or in connection with a G-Cloud 9 Call-Off Agreement but shall be subject to any overriding provisions (including any overriding provisions that are more favourable to SCC) which are included within the applicable G-Cloud 9 Call-Off Agreement.

10.2 Nothing in a G-Cloud 9 Call-Off Agreement shall limit or exclude either Party’s liability:
   10.2.1 for fraud; or
   10.2.2 for death or personal injury resulting from negligence; or
   10.2.3 to the extent not permitted by law.

10.3 SCC’s total aggregate liability in respect of loss of or damage to tangible property shall not in any circumstances exceed one million pounds (£1,000,000).

10.4 Subject to Clauses 10.2 and 10.5 if SCC is determined to be liable to the Customer under a G-
Cloud 9 Call-Off Agreement, SCC’s total aggregate liability for any loss or damage arising under a G-Cloud 9 Call-Off Agreement (other than loss of or damage to tangible property) shall not in any circumstances exceed one million pounds (£1,000,000) or a sum equal to the Charges payable in the previous twelve (12) months for the relevant Service, whichever is the lower.

10.5 SCC will have no liability under or in connection with a G-Cloud 9 Call-Off Agreement in respect of:

10.5.1 loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or savings (whether direct, indirect or consequential); or

10.5.2 any indirect or consequential loss, howsoever arising.

11. LOSS OF SOFTWARE AND DATA SECURITY

11.1 The Customer acknowledges that SCC does not have any knowledge of the quantity or value of the data or software used by the Customer in utilising the Services. The Customer shall take all reasonable steps to mitigate the risks of data and software loss inherent in its use of the Services. The Services that SCC has agreed to provide to assist the Customer to mitigate such loss including any back-up of data and software (if applicable) are set out in the G-Cloud 9 Service Definitions. The Customer agrees that SCC shall not be liable for loss of Customer data or software to the extent that the Customer data or software has changed since the time that SCC was last required to perform a backup (if a back-up was required) pursuant to a G-Cloud 9 Call-Off Agreement.

11.2 SCC is not responsible to the Customer or any third party for unauthorised access to the Customer’s data or software or the unauthorised use of the Services unless the unauthorised access or use results from SCC’s negligence or its failure to meet its security obligations set out in a G-Cloud 9 Call-Off Agreement.

12. SUSPENSION

12.1 SCC may at its sole discretion and without liability suspend forthwith Access or provision of the Services either in whole or in part until further notice on notifying the Customer either verbally (confirming such notification in writing) or in writing in the event that:

12.1.1 SCC is entitled to terminate a G-Cloud 9 Call-Off Agreement in whole or in part by reason of an event under Clause 13 (Termination);

12.1.2 SCC or any third party providing equipment or services to SCC in connection with the provision of the Services needs to carry out work relating to emergency upgrading or maintenance of SCC’s network and/ or computer systems;

12.1.3 SCC reasonably believes that the Services are being used by the Customer in breach of the Code of Connection or the Customer’s obligations under Clause 8 and the Customer has failed to remedy such breach within the time period that SCC has given the Customer to do so;

12.1.4 the Customer engages in activities that, in SCC’s sole and reasonable discretion, may cause disruption or damage to SCC’s network and/ or computer systems or SCC’s provision of services to SCC’s other customers;

12.1.5 there is an attack on the Customer’s system or the Customer’s system is accessed or manipulated by a third party without the Customer’s consent; and/ or

12.1.6 SCC or any third party providing equipment or services to SCC in connection
with the provision of the Services are required by an order, instruction or request of government, regulatory authority, emergency services organisation, or other competent authority that suspension is required.

12.2 SCC will use reasonable endeavours to give the Customer at least twelve (12) Business Hours’ advance notice of a suspension pursuant to Clause 12.1 unless SCC reasonably determines that a suspension on shorter notice is necessary to protect SCC, the Customer or SCC’s other customers from imminent or significant operational or security risk.

12.3 SCC shall restore Access to the Customer as soon as reasonably practicable after SCC verifies that the cause of suspension has been appropriately resolved.

12A MANDATORY PSN STANDARD TERMS

12A.1 SCC shall ensure that any PSN and GCN services that it supplies, or are supplied by others, pursuant to a G-Cloud 9 Call-Off Agreement shall have been awarded and retain at all times a PSN compliance certificate.

12A.2 SCC shall ensure that any PSN and GCN services that it supplies, or are supplied by others, pursuant to a G-Cloud 9 Call-Off Agreement are delivered in accordance with the applicable code, codes or Documents of Understanding ("DoU").

12A.3 The Customer shall ensure that any PSN customer environment used to consume PSN and GCN services supplied pursuant to a G-Cloud 9 Call-Off Agreement shall have been awarded and retain at all times a PSN compliance certificate.

12A.4 The Customer shall ensure that any PSN customer environment used to consume PSN and GCN services supplied pursuant to a G-Cloud 9 Call-Off Agreement shall be provided and maintained in accordance with the applicable code or codes.

12A.5 Each of the parties warrants and undertakes that they shall throughout the term, where specifically requested in writing by the PSN team acting on advice from the Infrastructure SIRO, immediately disconnect its GCN services, PSN services or customer environment (as the case may be) from such PSN services (including any Direct Network Services (DNS)), GCN services and customer environments as the PSN team instructs where there is an event affecting national security, or the security of the GCN or PSN.

12A.6 The parties acknowledge and agree that the PSN team shall not be liable to them or any other party for any claims, proceedings, actions, damages, costs, expenses and any other liabilities of any kind which may arise out of, or in consequence of any notification pursuant to clause 12A.5.

12A.7 Each of the parties acknowledges and agrees that these clauses 12A.4 and 12A.5 are for the benefit of and may be enforced by the PSN team, notwithstanding the fact that the PSN team is not a party to a G-Cloud 9 Call-Off Agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999.

12A.8 The PSN service provider shall cooperate with suppliers of other PSN services and GCN service providers to enable the efficient operation of PSN.

12A.9 The PSN services shall be delivered in a way that enables the sharing of services across customers of PSN services and maximises the savings to be achieved by such sharing of services.

13. TERMINATION

13.1 Either Party may by notice in writing served on the other Party terminate a G-Cloud 9 Call-Off Agreement forthwith if:

13.1.1 the other Party is in material breach of any of the terms of a G-Cloud 9 Call-Off Agreement and, where the breach is capable of remedy, the other Party fails to remedy such breach within thirty (30) days service of a written notice from the Party not in default, specifying the breach and requiring it to be remedied; or
13.1.2 the other Party;

13.1.2.1 convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors; or

13.1.2.2 if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or

13.1.2.3 if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party; or

13.1.2.4 if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction); or

13.1.2.5 other circumstances arise which entitle the court or a creditor to appoint a receiver, administrator or administrative receiver to make a winding up order in relation to the other party; or

13.1.2.6 has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Clause 13.1.2.

14. **CONSEQUENCES OF TERMINATION**

14.1 The termination of a G-Cloud 9 Call-Off Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either the Customer or SCC accrued prior to termination and all provisions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination).

14.2 Upon termination of a G-Cloud 9 Call-Off Agreement all payments due to SCC for the Services provided up to the point of termination (either in whole or in part) shall become immediately due for payment.

14.3 Subject to Clause 14.5 below, upon termination of the Agreement for any reason, the Customer shall cease to make use of the Services and shall permit SCC or any nominated representative of SCC to enter the Sites during any Business Day, upon reasonable notice, for the purpose of removing any or all of the Services Equipment.

14.4 In the event of termination of a G-Cloud 9 Call-Off Agreement for any reason, SCC shall be entitled (in addition to any other rights it may have) to be paid on a quantum meruit basis for any work completed by it prior to the date of termination of a G-Cloud 6 Call-Off Agreement. SCC may invoice the Customer accordingly and such monies shall be immediately due for payment.

14.5 Upon termination or expiry of the relevant Service Period or a G-Cloud 9 Call-Off Agreement for any reason SCC shall return and/or, where specifically requested by the Customer in writing, destroy the Customer’s data in accordance with the CESG guidelines appropriate to the IL level of the Customers data.

15. **INTELLECTUAL PROPERTY**

15.1 All Intellectual Property Rights in or in relation to the Services (including any manuals and
operating documentation relating thereto) or in any materials (including software) provided by SCC during the course of supplying the Services shall vest in SCC or its suppliers as the case may be. The Customer shall have no title to or interest in any such Intellectual Property Rights except to the extent specifically set out in a G-Cloud 9 Call-Off Agreement.

15.2 SCC shall be free to utilise for the benefit of its other customers any skill and/or know-how that it may develop or acquire in the performance of the Services.

15.3 The Customer shall notify SCC immediately if it becomes aware of any illegal or unauthorised use of any of the Intellectual Property Rights in the Services and will assist SCC and/or its suppliers in taking steps necessary to defend the owners’ rights.

15.4 To the extent that the Customer provides SCC, for the purpose of or in connection with providing the Services, with any materials, including the data and/or software supplied by the Customer, in respect of which the Customer owns (or is licensed by a third party to use) the Intellectual Property Rights, SCC acknowledges and agrees that nothing in a G-Cloud 9 Call-Off Agreement grants to SCC any right, title or interest in such materials other than a limited non-exclusive right to use or process those materials solely for the purposes of providing the Services. All Intellectual Property Rights in such materials are and shall remain the exclusive property of the Customer or (if applicable) its third party licensors.

15.5 Subject to the provisions of this Clause 15, the Customer undertakes that it shall not (and that it shall not employ nor permit any third party to) attempt to copy, adapt, amend, disassemble, de-compile or reverse engineer any software supplied by SCC under a G-Cloud 9 Call-Off Agreement except to the extent allowed by English law.

15.6 The Customer further acknowledges that any software supplied by SCC and all accompanying operating documentation and manuals are confidential and subject to the terms of Clause 18 (Confidentiality).

16. EMPLOYEES

16.1 The Customer and SCC do not believe that Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) will apply in relation to the Services. The Customer shall be liable for, and irrevocably and unconditionally agrees to indemnify SCC and any of its sub-contractors (who shall have no duty to mitigate its/their loss) in full and on demand, and keep them so indemnified, against all claims, demands, actions, proceedings, costs and expenses (including without limitation, on an indemnity costs basis, legal and other professional advisers’ fees) and all direct and indirect damages and direct, indirect and consequential losses claimed or made against or incurred or suffered by SCC or any of its sub-contractors arising or resulting directly or indirectly from or in relation to the employment or termination of employment of any person whose employment transfers to SCC or any of its sub-contractors as a result of a G-Cloud 6 Call-Off Agreement by virtue of TUPE or otherwise, or who claims that his/her employment or such claims transfer.

17. NON SOLICITATION

17.1 The Parties acknowledge that each has incurred significant costs in the recruitment and training of its employees engaged in connection with the Services. Accordingly each Party agrees with the other that each Party will not solicit or approach in any way, any of the other’s employees who are engaged in connection with the Services with a view to offering them employment or to solicit services from them on their own account (whether for itself or another party) during the period of a G-Cloud 9 Call-Off Agreement and for a period of six (6) months after the termination or expiration of a G-Cloud 9 Call-Off Agreement.

17.2 If any employee leaves the employment of SCC or the Customer (as appropriate) (the “Non-
**Breaching Party**”) as a result of a breach by the other Party ("the Breaching Party") of Clause 17.1 and commences employment with, or provides services to the Breaching Party, the Breaching Party shall pay to the Non-Breaching Party fifty percent (50%) of the higher of:

17.2.1 the annual salary (including any benefits-in-kind, bonus payments, commissions and other emoluments) of the employee at the date that they ceased to be an employee of the Non-Breaching Party; or

17.2.2 the annual salary of the employee at the time they commence employment with the Breaching Party,

and the Parties acknowledge that any such payment is by way of liquidated damages and is reasonable and genuine pre-estimate of the Non-Breaching Party’s losses.

18. **BUSINESS CONTINUITY PLANNING & DISASTER RECOVERY**

18.1 SCC will not provide any DR or BCP services unless specifically stated in the G-Cloud 9 Order Form.

18.2 Where SCC has not contracted to provide DR and/or BCP services, it is the Customer’s responsibility to create and maintain the same and the Customer acknowledges that SCC has no liability whatsoever for the maintenance and/or amendments to without limitation, any DR and/or BCP plans, procedures or processes.

19. **PASSWORDS**

19.1 In order to obtain Access the Customer will be issued with SCC’s telephone number(s), unique user-ID(s) and unique password(s). The Customer will be responsible for the security and proper use of all passwords and user IDs relating to the Services and must take all necessary steps to ensure that all passwords and user IDs are kept confidential, kept secure, used properly and not disclosed to unauthorised people.

19.2 The Customer must immediately give SCC written notice if it becomes aware or should reasonably have become aware that a password or user ID has become known to someone not authorised to use it or if any password or user ID is being or is likely to be used in an unauthorised way.

19.3 If Clause 21.2 applies, or if the Customer forgets a password or user ID, it shall immediately contact SCC and satisfy such security checks as are required by SCC so that a new password(s) or user ID can be issued to enable Access to be resumed.

20. **NAME**

20.1 The Customer confirms and warrants that it is the owner of, or is authorised by the owner to use, any trade mark or name requested and/or allocated as its Name.

20.2 The Customer acknowledges that SCC cannot guarantee that any Name requested by the Customer will be available or approved for use.

20.3 SCC may require the Customer to select a replacement Name and may suspend the Services if, in SCC’s opinion, there are reasonable grounds for SCC to believe that the Customer’s current choice of Name is, or is likely to be, in breach of the provisions of Clause 22.1 or likely to cause confusion.

20.4 The Customer acknowledges that it has no right, title or interest in the IP address allocated to it by SCC as part of the Services and such IP address is not portable or otherwise transferable by the Customer in any manner whatsoever.

20.5 If an IP address is renumbered or reallocated by SCC, SCC shall use its reasonable endeavours to avoid any disruption to the Customer.
20.6 The acquisition by the Customer of a new IP address following termination of a G-Cloud 9 Call-Off Agreement shall be the exclusive responsibility of the Customer and at the Customer’s cost.

20.7 The Customer must not use the Name so as to infringe any Intellectual Property Rights or any other rights of any person in a similar trademark or name.

20.8 The Customer shall indemnify, keep indemnified and hold harmless SCC (including their respective employees, sub-contractors and agents) (the “Indemnified Party”) against all losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach of this Clause 22 and any other infringement of a third party’s Intellectual Property Rights.

21. **GENERAL**

21.1 Each right or remedy of a Party under a G-Cloud 9 Call-Off Agreement is without prejudice to any other right or remedy of the Party under a G-Cloud 9 Call-Off Agreement.

21.2 If any condition or part of a G-Cloud 9 Call-Off Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from a G-Cloud 9 Call-Off Agreement and will be ineffective without, as far as is possible, modifying any other provision or part of a G-Cloud 9 Call-Off Agreement and this will not affect any other provisions of a G-Cloud 9 Call-Off Agreement which will remain in full force and effect. If any void or unenforceable part of a G-Cloud 9 Call-Off Agreement would be valid and enforceable if some part of it were deleted, the part shall apply with the minimum modification necessary to make it valid and enforceable.

21.3 No failure or delay by a Party to exercise any right, power or remedy will operate to diminish, waive, or extinguish it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

21.4 SCC may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under a G-Cloud 9 Call-Off Agreement.

21.5 The Agreement is personal to the Customer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under a G-Cloud 9 Call-Off Agreement without SCC’s prior written consent (which shall not be unreasonably withheld or delayed).

21.6 A person who is not a party to a G-Cloud 9 Call-Off Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of a G-Cloud 9 Call-Off Agreement.

21.7 A G-Cloud 9 Call-Off Agreement contains the entire agreement between the parties in relation to the provision of the Services and supersedes any prior written or oral agreements, representations or understandings between the Parties relating to the Services. The Customer acknowledges that it has not relied on, nor has SCC given, any statement, promise or representation made which is not set out in a G-Cloud 9 Call-Off Agreement. Each party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind a G-Cloud 9 Call-Off Agreement which it might otherwise have had in relation to them. All warranties, conditions, terms and representations not set out in a G-Cloud 9 Call-Off Agreement whether implied by statute or otherwise are excluded to the extent permitted by law. Nothing in this Clause will exclude any liability in respect of misrepresentations made fraudulently.
21.8 The Parties shall use all reasonable endeavours to mitigate losses, damages and expenses that it may suffer or incur as a result of any breach by the other Party of its obligations under a G-Cloud 9 Call-Off Agreement or otherwise and in respect of which it desires to make recovery in whole or in part from the other Party.

21.9 Neither Party shall be entitled to recover from the other Party under a G-Cloud 9 Call-Off Agreement more than once to the extent and in respect of the same liability of the other Party or its own loss.

21.10 Unless otherwise expressly agreed, all communications between the Parties shall be in the English language.

22. LAW AND JURISDICTION

A G-Cloud 9 Call-Off Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales. Subject to first complying with Clause 18 (Dispute Resolution Procedure), all disputes or claims arising out of or relating to a G-Cloud 9 Call-Off Agreement shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the parties irrevocably submit.
ANNEX 1

CHANGE CONTROL PROCEDURES

1. Changes

1.1 Where the Customer or SCC see a need to change the Services they may at any time request, such change only in accordance with the Change Control Procedure as set out at in Paragraph 2 below.

1.2 Neither the Customer nor SCC will unreasonably withhold its agreement to any change.

1.3 Until such time as a change is made in accordance with the Change Control Procedure, SCC will, unless otherwise agreed in writing, continue to supply the Services as if the request or recommendation had not been made.

1.4 Any discussions which may take place between the Customer and SCC in connection with a request or recommendation before the authorisation of a resultant change to the Services will be without prejudice to the rights of either party.

1.5 Any work undertaken by SCC, its sub-contractors or agents which has not been authorised in advance by a change to the Services and which has not been otherwise agreed in accordance with the provisions of Paragraph 1.3 will be undertaken entirely at the expense and liability of SCC.

2. Procedures

2.1 Discussion between the Customer and SCC concerning a change to the Services will result in any one of the following:

2.1.1 no further action being taken;

2.1.2 a request to change the Services by the Customer; or

2.1.3 a recommendation to change the Services by SCC.

2.2 Where a written request for an amendment is received from the Customer, SCC will, unless otherwise agreed, submit two copies of a Change Control Note (CCN) signed by SCC to the Customer within three weeks of the date of the request.

2.3 A recommendation to amend by SCC will be submitted direct to the Customer in the form of two copies of a CCN signed by SCC at the time of such recommendation.

2.4 Each CCN will contain:

2.4.1 the title of the change;

2.4.2 the originator and date of the request or recommendation for the change;

2.4.3 the reason for the change;

2.4.4 full details of the change including any specifications;

2.4.5 the price, if any, of the change;

2.4.6 a timetable for implementation together with any proposals for acceptance of the change;

2.4.7 a schedule of payments if appropriate;

2.4.8 details of the likely impact, if any, of the change on other aspects of the Services including but not limited to:

2.4.8.1 the Service Period;
2.4.8.2 the personnel to be provided;
2.4.8.3 the Charges;
2.4.8.4 the payment profile;
2.4.8.5 the Documentation to be provided;
2.4.8.6 the training to be provided;
2.4.8.7 Service Levels;
2.4.8.8 working arrangements and other contractual issues;
2.4.9 the date of expiry of validity of the CCN; and
2.4.10 provision for signature by the Customer and SCC.

2.5 For each CCN submitted the Customer will, within the period of the validity of the CCN:
2.5.1 allocate a sequential number to the CCN;
2.5.2 evaluate the CCN and, as appropriate:
   2.5.2.1 request further information;
   2.5.2.2 arrange for two copies of the CCN to be signed by or on behalf of the Customer and return one of the copies to SCC; or
   2.5.2.3 notify SCC of the rejection of the CCN.

2.6 If SCC considers that the preparation of a CCN, requested by the Customer, would necessitate significant allocation of resources over and above those stated in a G-Cloud 9 Call-Off Agreement SCC will notify the Customer accordingly and, on agreement by the Customer, SCC will make a proposal for a paid study of the cost and implications of producing the required CCN. Pending the Customer’s acceptance of that proposal SCC will be relieved of its obligations to produce such CCN.

2.7 A CCN signed by both parties will constitute an amendment to a G-Cloud 9 Call-Off Agreement.
## Change Control Note (CCN) Pro-forma

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### Reason for Change

#### Full Details of Change

#### Impact on SMTC Services or Service Levels

#### Implementation Plan

#### Timetable for Implementation

#### Amendments Required to the Terms and Conditions and/or Schedules

#### Change Pricing

#### Schedule of Payments

#### Other Issues

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Page 17 of 47
ANNEX 2
TELECOMMUNICATIONS TERMS

Where Telecommunications Services are to be supplied by SCC then the Additional Terms for Telecommunications Services detailed within this Annex 2 shall apply in addition to the main terms of the Agreement. For avoidance of doubt the terms of this Annex 2 shall not apply to the provision of any Services provided under the terms of this Agreement which are not Telecommunications Services.

In the event of any conflict or contradiction between the terms of this Annex A and the main terms of the Agreement then the terms of this Annex A shall take precedence in respect of the Telecommunications Services only, and the equivalent subject matter contained in the main terms of the Agreement shall not apply.

In this Annex unless the context otherwise requires any reference to a “Clause” is a reference to a clause in this Annex;

The defined terms used in this Annex shall supplement the defined terms in the main terms of the Agreement.

INTRODUCTION

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

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

IT IS AGREED THAT:

4 ORDERS

4.1 This Agreement shall govern all Orders for Services placed by the Customer and accepted by SCC. SCC will provide the Services to Customer in accordance with the terms of this Agreement.

4.2 From time to time where the Customer requires the delivery of any Services then it shall request a Quotation for such from SCC. Following acceptance of the Quotation by the Customer it will provide SCC with an Order for such. Customer shall procure that each Order is signed by a person authorised to sign an Order on behalf of the Customer.

4.3 Once an Order is accepted by SCC, each Order shall form a separate Contract between Customer and SCC incorporating the terms of this Agreement, the
Quotation, the Order and the Service Description. In the event of any conflict between the terms of this Agreement, the Quotation, the terms of an accepted Order and/or the terms of the Service Description, the following order of precedence shall apply: (1) Quotation (2) Service Description (3) Agreement (4) the Order.

4.4 All terms and conditions contained in a Customer Order, purchase order, letter or other document produced or provided by the Customer are excluded and shall be of no effect to the extent they conflict with any of the terms and conditions specified in this Agreement.

5 ACTIVATING THE SERVICE

1.1 Before Activating a Service, SCC may:

(a) verify that each Service Location is in an area in which the Service is available;
(b) carry out a line test and/or site survey;
(c) where appropriate, provide and/or install Service Equipment;

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

1.3 If SCC determines at any time before Activation that the Service cannot be activated SCC shall notify Customer and any relevant Order and relevant Contract will be automatically terminated.

1.4 SCC shall endeavour to notify Customer if Activation is not possible as soon as commercially practicable. In such event, for the avoidance of doubt, Clause 2.9 shall not apply.

1.5 To allow the installation to proceed Customer shall as and when required by SCC and at Customer’s sole cost and expense:

- obtain all necessary consents, including consents for any necessary alterations to buildings;
- take up or remove any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers advised by SCC, or the engineer contracted for the installation or Activation of the Service; and
- provide any electricity and connection points required by SCC or its agents.

5.1 Customer acknowledges that during, and as a result of, the installation and activation of the Services at Service Locations, temporary loss, interference or disruption to other telecommunications services may occur. SCC will use its reasonable endeavours to minimise such interruption or interference and it shall undertake checks for such interference in connection with any such installation. To the maximum extent permitted by law, SCC will not be liable for any loss, interruption or interference to such other services during installation.

5.2 If Customer cancels or terminates:

- An Order at any time before the Order Committed Date, it shall be liable for payment of a £120 admin fee and any Carrier or other specific charges or costs incurred in relation to such Order (it being acknowledged and agreed by the parties that significant costs or charges may be incurred by SCC in the event of cancellation of an Order or Contract); and
- A Contract at any time after the Order Committed Date and prior to Activation, it shall upon such termination be liable to pay SCC an amount equal to the Early Termination Charges.
- A Contract at any time after after Activation, it shall upon such termination be liable to pay SCC an amount equal to the Charges that would have been payable during the entire Initial Term less any already paid.

5.3 Where the Customer resells the Service to an End User and the Service Location is owned or controlled by an End User, the Customer shall procure that the End User complies with this Clause 2 (as if the End User were the
Customer) to the extent necessary to enable SCC to install and Activate the Service at the Service Location and comply with this Agreement.

5.4 If SCC is unable to Activate a Service due to the act or omission of Customer (including the provision of incorrect information) or End User, SCC may treat the Contract as terminated by giving written notice to Customer and following such notice may levy the charges provided in Clause 2.7 (and the Customer shall be deemed to have terminated the Order and/or Contract at the time of such notice for the purposes determining the payment under Clause 2.7). Where the Customer delays the installation or completion of a Service for more than 60 calendar days, SCC may terminate the Order and Contract related to that Order by written notice to Customer in which event the Customer shall be liable to pay SCC the Early Termination Charges.

6 PROVISION OF THE SERVICE

6.1 SCC shall provide the Services from the Activation Date for the term of the relevant Contract as described in the relevant Service Description on the terms of this Agreement.

6.2 SCC shall provide the Services in a manner befitting a competent telecommunications service provider.

6.3 Further terms relating to the installation and provision of the Services (including any applicable Service Levels) are set out in the relevant Service Description.

6.4 Any dates and timelines specified in this Agreement or in any Quotation, or Order for performance of a SCC obligation are estimates only and time shall not be of the essence of this Agreement.

7 SERVICE EQUIPMENT AND SERVICE LOCATIONS

7.1 SCC and its agents and subcontractors may during the term of each Contract: (i) install and keep installed the Service Equipment at each Service Location; and (ii) the right to enter and re-enter each Service Location as and when required in order to install, test, operate, maintain and remove the Service Equipment.

7.2 Customer shall prepare and provide (and, where applicable, procure that End Users provide) (i) reasonable access to the Service Location to enable SCC (and/or its sub-contractors) to provide the Services and (ii) a safe and suitable environment for housing the Service Equipment, including appropriate protection from weather, security, availability of power, cooling, heating and ventilation. Customer shall comply (and, where applicable, procure that End Users comply) with health and safety regulations and other applicable standards in relation to staff of SCC and its sub-contractors attending each Service Location.

7.3 The Customer shall be responsible for and shall procure that it’s End Users are responsible for the maintenance of Customer Equipment and cables.
connected to the Network unless otherwise agreed by the Parties pursuant to an Order.

7.4 Customer shall not make any replacement, interference, modification, adjustment or connection to the Service Equipment save as agreed by SCC in writing.

7.5 The Customer shall and shall procure that End Users shall:

- not stack any equipment or materials on top of Service Equipment;
- take all reasonable steps to secure against any unauthorised use of the Service Equipment;
- ensure the safe keeping of the Service Equipment at a Service Location and indemnify SCC for any loss or damage to the Service Equipment other than arising from the acts or omissions of SCC or its sub-contractors;
- ensure that all Service Equipment located in any Service Location or otherwise connected to the Network has the relevant electrical protection and failsafe measures, labelling and instructions for use as may be required by law and is connected to the Network and used in accordance with any applicable laws and instructions;
- ensure the compatibility of any applications, including Customer Equipment, the Customer or End Users wish to use with the Services and ensure that any such applications do not harm the Network, Services, or any other customer's network or equipment; and

7.6 SCC agrees that its staff will observe the reasonable site regulations of Customer whilst at the Service Location. In the event of any conflict between such site regulations and the Contract, the latter shall prevail.

7.7 With the exception of Service Equipment the Customer shall be responsible for providing (or procuring that the relevant End User provide) computer hardware, software and telecommunications equipment and services to access and use the Services.

7.8 Ownership and title in the Service Equipment shall remain with SCC at all times during the term of the relevant Contract, unless agreed otherwise in writing between the parties. Customer shall not (and shall procure that End Users shall not) charge, mortgage or otherwise deal with the same and shall use all reasonable efforts to prevent third parties from asserting rights in relation to the Service Equipment.

7.9 Customer shall ensure (and shall procure that End Users shall procure) that all equipment connected to a Service is connected to and used with the Service
in accordance with the published instructions and any safety and security procedures notified to Customer.

7.10 SCC makes no warranty that a Service will interoperate properly with any equipment not procured from SCC in connection with that Service.

7.11 The configuration of equipment and services provided by or on behalf of SCC (and know-how, design and information relating to such equipment and service configuration) and the Network is the intellectual property of SCC and/or its sub-contractors. Customer accepts that it does not have any right of ownership at any time during the Contract or after the Service has ceased and Customer shall not, at any time, and for any reason, attempt to gain access to the configuration of Service Equipment or the Network.

7.12 Any attempts to gain access to the Service Equipment or the Network by any means, including brute force hacking, reverse-engineering or resetting of the device shall be deemed a material breach of the relevant Contract and of this Agreement and SCC may terminate and/or suspend Service forthwith in accordance with Clause 5.1.

7.13 Where Customer needs to undertake penetration testing for security audit purposes Customer shall notify noc@SCC.com five (5) Working Days in advance in writing, detailing the tests being undertaken. Customer will receive confirmation back by email when this has been accepted. Failure to notify SCC will be deemed a hacking attempt on the SCC network and material breach of this Agreement for the purposes of Clause 7.8.

7.14 Where remote management of the Service Equipment transfers to Customer on cessation of the Service, SCC will, at Customer’s request (sent to support@SCC.com prior to the termination date), reset the Service Equipment to factory default settings so as to provide Customer with management access to the modem. A request to reset the Service Equipment after this date will require the return of the Service Equipment to SCC and collection, each at Customer’s expense.

7.15 Customer shall ensure that Service Equipment is made available to SCC for collection in its original packaging or packaging provided by SCC and in good working order within 2 weeks of cessation of Service. If not returned, SCC may charge Customer the full cost of replacement at manufacturer’s list price at that time.

7.16 SCC will have no liability to the Customer relating to the provision or performance of any Services affected by the any failure by Customer to comply with this Clause 4 or any Customer obligation set out in the Service Description.

7.17 The Customer shall notify SCC in writing promptly after becoming aware that it or an Intermediary or End User is in breach of Clause 4. Where the Customer does not comply with Clause 4 or any other obligations under a Contract or applicable Order and such non-compliance results in or is likely to result in a Service Failure or period where there is no Network Availability, SCC will use reasonable endeavours to notify the Customer of the matter promptly so that the Customer can remedy the non-compliance within a
reasonable period, and in any event no later than thirty (30) days from receiving notice of the matter from. If the Customer does not remedy the non-compliance SCC shall have the right to immediately suspend the Services, at the Customer's expense, until non-compliance has been remedied to SCC’s reasonable satisfaction. Where non-compliance is not remedied for three (3) or more months following notice of the matter by SCC, SCC shall have the right to terminate the applicable Order or the applicable Services under that Order, and the Customer shall pay the associated Early Termination Charges.

7.18 Unless otherwise agreed in an Order, SCC, its sub-contractors and/or Carriers shall not be responsible for assessing the Customer's or End Users’ space, facilities, computer and/or transmission capacity requirements, the Customer shall be solely responsible for assessing its and End Users' requirements, and for the avoidance of doubt, SCC shall have no liability under or in connection with this any Contract or an Order to the extent that the Customer’s or its End Users’ stated requirements are inadequate or are otherwise not fit for purpose.

7.19 Customer shall indemnify SCC, its representatives, agents and subcontractors in respect of all and any costs, losses, damages, expenses (including legal expenses), fines and penalties, proceedings, actions, liabilities, and claims incurred by or, brought or threatened against, SCC as a result of a breach of this Clause 4 and relevant Service Description.

7.20 Customer shall not (and shall procure that each Intermediary and End User shall not) use any Service:

- in breach of SCC’s then current Acceptable Usage Policy from time to time detailed at: [http://www.SCC.co.uk/documents/usage.pdf](http://www.SCC.co.uk/documents/usage.pdf)
- in breach of any reasonable instructions given by SCC or its subcontractors.

7.21 SCC shall have the right to examine, from time to time, Customer’s use (and where applicable End User's use) of the Services and the nature of the data/information that Customer (or End User) is transmitting or receiving via the Services where such examination is necessary: (i) to protect and/or safeguard the integrity, operation and functionality of SCC’s (and neighbouring) networks; and/or (ii) to comply with police, judicial, regulatory or governmental orders, notices, directives or requests. Customer shall procure that End User agrees to and allows such examination.

7.22 For the purposes of Clause 7.8, any breach by Customer of the provisions of this Clause 4 shall be deemed a material breach of this Agreement and of the relevant Contract.

7.23 Save where expressly permitted in this Agreement, the Customer shall not (and shall procure that each Intermediary and End User shall not) otherwise licence, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit or otherwise make use of the Services.

7.24 The Customer shall not (and shall procure that each Intermediary and End User shall not) modify, adapt, develop, create any derivative work, reverse
engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property in the Services except and only to the extent that it is expressly permitted by this Agreement or applicable law.

7.25 The Customer shall (and shall procure that each Intermediary and End User shall) conduct its business without detriment to SCC and the good name, goodwill and reputation of SCC and shall avoid deceptive, misleading or unethical practices, advertising or publications that are, or might be, detrimental to SCC, SCC services or the public.

7.26 The Customer shall ensure that it (and each Intermediary and End User where relevant) has obtained all necessary licences or permits necessary for the use of the Services or (where applicable and subject to Clause 15) the delivery to or use by End Users of the Services and it shall pay all taxes and other amounts payable by it in connection with any delivery or use of the Services.

7.27 Customer shall indemnify SCC, its representatives, agents and subcontractors in respect of all and any proceedings, actions, liabilities, and claims brought or threatened in connection with Customer’s breach of this Clause 4 (“Claims”) and in respect of all and any costs, losses, damages, expenses (including legal expenses), fines and penalties incurred by SCC directly or indirectly in connection with such Claims.

7.28 Customer is not granted any right, licence or interest in any Intellectual Property Right unless expressly stated otherwise in this Agreement.

7.29 Customer warrants and represents that:

it has full power and authority to enter into and perform this Agreement, and that its entry into and performance of this Agreement will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party, and undertakes that it shall not, during the term of this Agreement, enter into any contract or accept any obligation inconsistent or incompatible with its obligations under this Agreement or any Contract;

it has obtained all necessary licences or permits necessary for the use of the Services or the delivery to or use by the End Users of the Services and it shall pay all taxes and other amounts payable by it in connection with any delivery or use of the Service

it shall not introduce any viruses, and shall not allow any viruses to be introduced, to the Network;

it shall (and shall procure that its Intermediaries and End Users shall) comply with all applicable laws, rules and regulations of governmental entities, having jurisdiction over such performance, including any health and safety legislation and environmental legislation;

upon SCC’s request, it shall (and shall procure that its Intermediaries and End Users shall) immediately give SCC all assistance, cooperation and information necessary in order for SCC to comply with its obligations

8 SERVICE SUSPENSION/ALTERATION

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

Forthwith on written notice to Customer (i) where SCC reasonably believes Customer is in breach of Clause 4; and/or (ii) where SCC has a right to terminate the Agreement or any Contract, irrespective of whether it has exercised such right; and/or (iii) where Customer fails to pay any Charges in accordance with the relevant Contract, subject to SCC giving Customer at least 14 days prior written notice of its failure to pay and threatening suspension and such notice having expired without due payment by the Customer) (iv) where SCC is required to comply with an order, instruction or request of a Government, court, agency or other competent administrative or regulatory authority, provided that SCC gives written notice to Customer where practicable.

As provided in Clauses 5.2 and 5.3; and/or

Temporarily with as much notice as is reasonably practicable in the circumstances where such suspension is required for operational or technical reasons as provided in Clause 5.3. SCC shall reinstate the Services suspended under this Clause 5.1 (c) as soon as reasonably practicable.

SCC shall reinstate Service suspended under Clause 5.1 (a) in its absolute discretion which shall in any event be subject to payment by Customer of a charge of £150 and any direct pass through costs incurred by SCC as a result of suspension and/or reinstatement. If SCC has not reinstated a Service suspended under Clause 5.1 (a) within a period of thirty (30) days from the date of suspension, the Contract relating to such Services shall terminate automatically at the expiry of such 30 day period, in which event the provisions of Clause 7.10 shall apply.

8.2 SCC shall be entitled to terminate, suspend or modify a Service and related Contract, without any liability, if any consent, licence or authorisation which SCC requires in order to provide that Service is not obtained, withdrawn or otherwise cancelled or the provision of the Service would result in SCC being in breach of contract to a third party; in the event of a modification that is materially detrimental to the Service, Customer shall have the right to terminate the Contract in question by notice to SCC, such notice to have immediate effect. SCC shall use its reasonable endeavours to give the Customer reasonable notice prior to such termination or modification taking effect. Any Charges paid in advance for the terminated Services in respect of the period after termination shall be refunded to the Customer save to the
extent that these are in respect of committed carrier charges that cannot be recovered by SCC from the carrier.

8.3 Temporary changes may be made to the Network or the technical specification of a Service from time to time for operational or technical reasons including to suspend, modify, change, add to or replace any part of the Network or Services. If these changes will be materially detrimental to the Service SCC will use reasonable endeavours to inform Customer in advance.

8.4 SCC may from time to time carry out maintenance to the Network and/or Service for purposes of providing new installations, updating facilities and general maintenance (‘Scheduled Maintenance’), during which the Service will be unavailable. SCC will use reasonable endeavours to provide at least seven (7) calendar days’ notice of any Scheduled Maintenance.

8.5 Where SCC needs to carry emerge
nency maintenance or any maintenance that is not Scheduled Maintenance (‘Emergency Maintenance’) to any Service and/or the Network, SCC may carry out such Emergency Maintenance and will give as much notice as is reasonably practicable and will explain why the maintenance is necessary and why short notice has to be given. It may only be possible to give this notification after the Emergency Maintenance has taken place.

9 CHARGES AND CREDIT TERMS

9.1 Invoices shall be issued by email to the Customer “accounts” email address supplied to SCC on the relevant Order. It is Customer’s responsibility to ensure a valid email address is maintained and notified to SCC for this purpose. SCC shall not be liable for disruption of the Service as a result of the failure to maintain or to notify SCC of changes to this email address.

9.2 Not Used.

9.3 In the following cases SCC shall be entitled to impose a credit limit on Customer and/or require payment of a security deposit and on written notice to Customer may suspend or withhold any Services in excess of the credit limit or security deposit:

Where Customer suffers a material and negative change in its financial or trading condition or in its credit rating; and/or

Where Customer has failed to make payment of an undisputed due amount, SCC has notified Customer of the consequences non-payment and the
Customer has failed to make payment in cleared funds within 30 Days of such notification.

9.4 SCC only accepts payment by cheque, standing order, Direct Debit or electronic payment i.e. BACS.

9.5 Prices stated or quoted by SCC do not include VAT. VAT will be added to invoices and is payable by Customer.

9.6 SCC may invoice Customer for the Activation Charges and the first instalment of the Recurring Charges at any time following processing and acceptance of the Order, save for Leased Lines which are invoiced following the Activation Date. Activation of the Services shall be subject to payment by Customer of this invoice. Thereafter, the Recurring Charges shall accrue daily with effect from the Activation Date and shall be invoiced in advance at the frequency agreed on the Order.

9.7 Customer shall make payment of all amounts duly invoiced under this Agreement within thirty (30) calendar days of the invoice date, such payment to be made in full, without deduction or withholding except as required by law, save where an Quotation specifies some other due date for payment of Charges. Save as specifically permitted by SCC by way of credits under this Agreement, Customer shall not be entitled to any credit, set-off or counterclaim against SCC.

9.8 Services invoiced monthly can only be paid via direct debit, setup at the time of order. SCC shall provide a minimum of 10 calendar days’ notice of its intention to take each direct debit payment.

9.9 In relation to Charges which Customer agrees shall be paid by direct debit, Customer shall ensure that it has sufficient funds available for collection of each direct debit payment and shall not cancel such direct debit instruction or take or fail to take any other action that results in payment failure. Any failure to comply with these provisions may result in suspension of Services under Clause 5.1 and shall incur an additional processing fee of £75.

9.10 Where Customer disputes any amount due under an invoice Customer shall notify SCC in writing within 1 calendar month of date of issue of the relevant invoice, such notification to provide a detailed account of why the invoice is disputed, including all calculations. All undisputed parts of an invoice shall be payable in accordance with Clause 6.7 and the parties shall act in good faith and use reasonable endeavours to resolve the disputed sum following the dispute resolution procedure in Clause 16.2.

9.11 SCC may, at its sole discretion, charge interest on any overdue amounts payable from the due date until the date of payment in full, whether before or after judgement, at the rate of five (5) percent per annum above the base rate of NatWest plc.

9.12 SCC will also charge for debt collection should it be necessary, following failure to pay by Customer. This will be carried out by an agency registered
with the Office of Fair Trading. In this event Customer agrees that additional charges will be levied to cover the costs of the debt collection agency.

9.13 Where Services are provided to overseas the price quoted will be subject to currency fluctuations and hence Services cost will be linked to the local currency at the Location. SCC reserves the right to amend the cost in line with these fluctuations by 1 (one) months’ notice. This change can be made at any time, even during the Initial Term.

9.14 For 95th percentile billing SCC shall measure the Bandwidth throughout on a 5 minute average, taking the highest of the download or upload value. The top 5% of values in the billing calendar month shall be discarded, leaving the value of the 95% as the data usage rate, in Mb/s, for the month. Where the 95% value exceeds the committed data rate then the difference between the committed and 95% usage rates shall be charged at the overage rate. Where no overage rate is specified on the Quotation this shall be £40 per Mb/s.

10 TERM AND TERMINATION

10.1 Each Contract commences upon the Order Committed Date and shall continue for the applicable Initial Term set out in the Service Description and thereafter unless and until terminated in accordance with this Clause 7 or other terms of this Agreement or the relevant Service Description.

10.2 SCC will not accept any notice to terminate this Agreement (and this Agreement cannot be terminated by the Customer by notice) where overdue undisputed invoices remain unpaid. Such invoices must be settled in full prior to any termination notice being effective. Current invoices shall not prevent termination provided they are within the thirty (30) day payment term.

10.3 Customer shall not be entitled to terminate a Contract for any Service suspended under Clause 5 and any notice purporting to terminate the same shall be of no effect. Charges will continue to accrue during the period of suspension unless and until the Contract is deemed terminated or otherwise terminated by SCC pursuant to this Agreement.

10.4 Notice of termination of a Contract by the Customer in accordance with this Agreement must be effected by the Customer via email. The Customer must email SCC with a request to terminate the Contract at: cancel@SCC.com. Such email must contain the contracted company name and details of the Service being cancelled, the site address and service description and SCC contract number. No other method of notice of termination will be accepted or effective.

10.5 SCC will notify Customer of any final charges or outstanding balance on Customer’s account. If Customer does not receive an acknowledgement email from SCC confirming termination within 4 (four) working days of completing the online process, Customer must immediately contact SCC by email to
cancel@SCC.com to confirm the Customer’s request to terminate the Contract.

**Disputed Invoices**

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

**Termination for Customer fault**

10.7 SCC may terminate a Contract and/or this Agreement by written notice, to take effect forthwith if:

- Customer commits a material breach of any Contract or this Agreement and if capable of remedy such breach is not remedied within a period of seven (7) days following written request to remedy;

- Customer has provided inaccurate or misleading information concerning its registered details or financial standing, or SCC has reason to believe is likely create disruption or harm to the Network;

- Customer fails to pay any overdue amount within thirty (30) days of the date of a reminder notice and/or fails at any time to comply with Clause 6.9;

- Customer fails to pay its debts when they become due;

To the extent permitted by applicable law and subject to any applicable and compulsory conditions or requirements of the Insolvency (Protection of Essential Supplies) Order 2015 (or other applicable insolvency related legislation), any meeting is convened for the purpose of considering a resolution, or any petition is presented or any other steps taken, for the purpose of making an administration order against Customer, or for Customer’s voluntary winding-up or dissolution, or any similar action or steps are taken in relation to Customer (and such action or steps are not withdrawn within 7 calendar days or such other period as may be agreed with Customer);

Any meeting is convened for the purpose of considering a resolution, or any petition is presented or any other steps taken, for the purpose of making an order for Customer’s winding-up or dissolution, or any similar action or steps are taken in relation to Customer (and such action or steps are not withdrawn within 7 calendar days) or an
administrative or other receiver or trustee or similar officer is appointed over any of Customer's assets;

Any breach of the AUP is committed (other than technical breaches that are not knowingly made by the Customer and do not cause SCC any damage).

10.8 Notice of termination under this Clause 7 by SCC to Customer may be made by email to the primary accounts contact stated on the Order or registered with SCC if updated since time of Order.

**Effects of Termination**

10.9 On termination or expiry of a Contract or of this Agreement, howsoever occasioned:

All amounts invoiced to Customer under that Contract or this Agreement shall become immediately due and payable;

Customer shall permit SCC, its authorised representatives, agents and subcontractors access to each Service Location to remove the Service Equipment.

10.10 In the event of termination by SCC under Clause 7.8 which takes effect during the Initial Term, Customer shall immediately become liable for all Recurring Charges scheduled for payment (being all Recurring Charges that would have been payable) during the remainder of that Initial Term save that 20 per cent of any amounts that represent carrier charges that have not been incurred or committed by SCC will be deducted from such Recurring Charges (which amount Customer agrees represents a reasonable pre-estimate of SCC’s losses);

10.11 Termination or expiry of this Agreement shall be without prejudice to the accrued rights and liabilities of either party.

**11 LIABILITY**

11.1 Nothing in this Agreement shall exclude or limit either party’s liability (i) for death or personal injury caused by or arising from negligence; or (ii) for fraud or fraudulent misrepresentation.

11.2 SCC’s aggregate liability for failure to provide any part of the Service in accordance with the Service Levels and SLA shall be limited to the service credits set out in the Service Level Agreement.

11.3 Subject to Clause 8.1, SCC’s maximum aggregate liability to Customer in contract, tort (including negligence) or breach of statutory duty or otherwise arising under or in connection with each Contract:

   for claims arising during the period of 12 months from Activation shall be limited to the aggregate of the Activation and Recurring Charges payable by Customer under that Contract in respect of that period, and for claims arising in each successive 12 month period shall be limited
to the Recurring Charges payable by Customer under that Contract in respect of that period;

shall in any event be limited to the aggregate Charges paid by Customer to SCC under that Contract.

11.4 Except in respect of the Service Credits stated and paid in accordance with the Service Level Agreement, SCC is not liable, and will not be liable in any circumstances for any loss or damage, whether direct or indirect, which results or may result from:

Customer’s, Intermediary’s or End User’s access to, or inability to access, the internet or use therefore for any purpose whatsoever; and/or

any reliance on or use of information, service or goods purchased on or through the Service or the internet.

11.5 Subject to Clause 8.1, but notwithstanding anything else in this Agreement, SCC shall not be liable in contract, tort (including negligence or breach of statutory duty) for:

losses or claims relating to the transmission or receipt of infringing or unlawful information or content of whatever nature transmitted via the Service;

loss of, damage to or corruption of data, or files, stored, transmitted or used on the Service or the SCC Network;

loss or damage suffered by Customer as a result of any virus or other hostile computer program, denial of service, spamming, or hacking being introduced via the Service.

11.6 The Customer shall notify SCC in writing of any actual or alleged failure, defect or issue with the Service that may give rise to a claim against SCC as soon as reasonably practicable and in any event within 7 days of becoming aware of the same. Without prejudice to the foregoing, SCC shall not, subject to Clause 8.1, be liable to the Customer in respect of any claim or claims where the relevant failure, defect or issue has not been notified to SCC by the Customer within 60 days of the Customer becoming aware of the failure, defect or issue.

11.7 The Customer shall notify SCC of its intention to bring a claim in connection with this Agreement (other than any claim for Service Credits which shall be governed by the Service Level Agreement) within 12 months of the failure or circumstances giving rise to the claim. SCC shall not, subject to Clause 8.1,
be liable to the Customer in respect of any claim or claims that have not been notified to SCC in accordance with this Clause 8.7.

11.8 Subject to Clause 8.1, but notwithstanding anything else in this Agreement, SCC shall not be liable to Customer in contract, tort (including negligence or breach of statutory duty) for:

any loss of actual or anticipated profits, loss of contracts, downtime costs, loss of opportunity, loss of reputation, loss of business, loss of goodwill, loss of anticipated savings or wasted expenditure; and/or

any indirect, incidental, special or consequential loss or damage.

11.9 Customer is advised to obtain insurance in respect of any liability excluded by SCC hereunder including but not limited to the loss or corruption of data.

12 WHOLESALE SERVICES

12.1 Where SCC provides Layer 2 Wholesale Services to the Customer:

the parties shall commence the relevant setup process pursuant to the Service Description and shall fulfil all their respective obligations in relation to the relevant Set Up Process as set out in the Service Description.

Customer shall, upon reasonable written request from SCC, provide SCC with all necessary facilities including rights of access to the Connection (if any), in order that SCC may ensure that the Customer complying with its obligations under this Agreement.

12.2 It is acknowledged by Customer that any protocols offered by SCC may not comply to any particular standards such as, but not limited to, IETF RFC standards and SCC does not make any warranty in relation to any expected feature set of the Connection or the Services.

13 RESALE

13.1 SCC agrees that Customer may resell the Services or use the Services as a basis for the provision of services in each case to End Users or to Intermediaries who resell to End Users. In all such cases the provisions of this Clause 10 shall apply in addition to the other provisions of this Agreement.

13.2 Unless requested otherwise by SCC and save as otherwise provided in this Agreement, Customer shall not pass SCC contact and support details to End Users or Intermediaries and all communications relating to the installation, operation and maintenance of the Services or otherwise in connection with this Agreement shall be solely between SCC and Customer.

13.3 Customer shall (and where relevant shall procure that each Intermediary shall) enter into a contract directly with End Users ("End User Contract"). Customer shall ensure (and where relevant shall ensure that Intermediaries procure that) End Users use the Services and the Network only in accordance
with the Acceptable Usage Policy and the terms of the End User Contract, except as otherwise agreed with SCC in writing. Customer shall procure (and where relevant shall ensure that Intermediaries procure) compliance by End Users with the terms of the End User Contract and shall be liable for any acts or omissions of Intermediaries and End Users relating to the End User Contract. Customer shall ensure that the End User Contract contains prudent legal terms that would be expected of a professional and competent telecommunications service provider and that such End User Contract does not contain terms that are prejudicial to SCC or its subcontractors or any Contract or in direct conflict with the terms of this Agreement or any Contract.

13.4 The Customer shall not (and shall procure that each Intermediary shall not) make any promises or representations or give any warranties or guarantees in respect of the Services (and shall, without limitation and to the extent permitted by applicable law, exclude all implied warranties, conditions and other terms) except such as is expressly set out in this Agreement or as expressly authorised by SCC in writing.

13.5 The Customer shall (and shall procure that each Intermediary shall) observe all reasonable directions and instructions given to it by SCC or its subcontractors in relation to the promotion and advertisement of the Services and shall not use any SCC or subcontractor trade mark or name except with the written consent and approval of SCC.

13.6 Customer acknowledges that all and any claims in respect of the Services lie solely between SCC and Customer and Customer shall indemnify SCC in full in respect of: (i) all claims, actions and/or proceedings in contract, tort (including negligence) or otherwise brought or threatened against SCC or its subcontractors by Intermediaries and/or End Users arising under or in connection with any Contract, End User Contract and/or the resold Services (‘Claims’); and (ii) in respect of all liabilities, damages, costs (including legal costs), losses and expenses incurred by SCC or its subcontractors directly or indirectly in connection with such Claims.

13.7 Customer warrants that it has all licences and authorisations to resell the Services supplied by SCC.

13.8 Customer shall procure that it is the End Users’ responsibility to connect the Service Equipment to the Network. The Customer (directly or by procuring that the relevant Intermediary) is responsible for the installation of the Service Equipment by the End Users and for the operating system compatibility and usability, and SCC shall have no liability in this respect. SCC is not responsible for assessing the Customer’s, Intermediary’s or an End User’s space, facilities or computer and transmission capacity requirements and Customer or each Intermediary shall be solely responsible for assessing
its own and the End Users’ requirements. Customer or each Intermediary is solely responsible for the relationship with an End User.

13.9 Customer shall not (and shall procure that the End User shall not) make any replacement, interference, modification, adjustment or connection to the Service Equipment save as agreed by SCC in writing.

14 PERSONNEL

14.1 SCC shall make available an Account Manager and use reasonable endeavours to ensure that the same person acts as its Account Manager throughout this Agreement. SCC shall use personnel who are reasonably skilled and competent to carry out the Services but may otherwise select and change personnel from time to time in its discretion.

14.2 Customer shall appoint and notify SCC of a point of contact to act as a point of contact for the administration and conduct of matters concerning the Contract and Services, who shall be the person stated on the Order unless otherwise notified to SCC in writing.

14.3 The parties do not intend that the entry into, performance and/or termination and/or expiry of this Agreement or any Contract will constitute a "relevant transfer" (as defined by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("Transfer Regulations). Notwithstanding this, in the event that there is a "relevant transfer" (as defined by the Transfer Regulations) either on entry, during or on the expiry or termination of this Agreement or any Contract, the parties agree that the provisions of clauses 11.4 to 11.5 inclusive will apply.

14.4 Subject to the provisions of clause 11.5, in the event that the contract of employment of any employee or former employee of Customer, Intermediaries, End Users or a supplier to the Customer, Intermediary or End User or any collective agreement between Customer and any trades union, has effect either during or on or after the expiry or termination of this Agreement as if originally made between SCC or any subcontractor and that employee, former employee or the relevant trade union (as the case may be) in accordance with the provisions of the Transfer Regulations, SCC or its subcontractor may terminate that contract of employment or collective agreement forthwith and Customer hereby agrees to indemnify SCC and its subcontractors and to keep SCC and its subcontractors indemnified against and to keep SCC and its subcontractors harmless at all times from any claims, actions or proceedings and all loss, damage, costs, charges and expenses (including, but without limitation, legal and other professional costs on an indemnity basis) suffered or incurred by SCC and its subcontractors which arise from:

the employment of any such employee or former employee by SCC or its subcontractors;

any claim or claims by any such employee, former employee or by any employee representative in relation to any act or omission of Customer which is deemed to be (or alleged to be deemed to be, whether
correctly or not) an act or omission of SCC or its subcontractors by virtue of the Transfer Regulations;

any claim or claims by any such employee, former employee or by any employee representative in relation to any failure to inform or consult with appropriate representatives of Customer or any Replacement Supplier or otherwise comply in all respects with Regulations 10 and 10A of the Transfer Regulations; and/or

any claim or claims by any such employee, former employee or by any employee representative in relation to the termination of any such contract of employment or collective agreement (including, but without limitation, any claim for breach of contract or unfair dismissal.

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

15 GENERAL TERMS

15.1 This Agreement and each Contract contains the entire agreement between the parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations or understandings.

15.2 Save as expressly set out in this Agreement or any Contract and subject to Clause 8.1, all representations, warranties, conditions or other terms (whether written or oral, express or implied by statute, common law or otherwise) including, without limitation, implied terms as to fitness for purpose, quality or merchantability are hereby excluded.

15.3 If any provision of this Agreement is held by a court or any governmental agency or authority to be invalid, void, or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid, and enforceable.

15.4 SCC shall not be liable for any delay or failure in performance of its obligations to the extent that such delay or failure is attributable: (i) to Force Majeure; or (ii) to the delay, act, omission or default of the Customer.

15.5 SCC’s failure to exercise or enforce, or any delay in exercising or enforcing, any right or benefit conferred by this Agreement shall not be deemed to be a
waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

15.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not party to it any right to enforce any of its provisions.

16 CONFIDENTIALITY

16.1 Each party shall: (i) keep all Confidential Information relating to the other party confidential; (ii) shall disclose such Confidential Information only to its personnel having a need to know for the purposes of this Agreement; and (iii) shall use such Confidential Information only for the purpose of exercising its rights or performing its obligations hereunder.

16.2 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 13.2, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

16.3 Customer shall keep confidential all passwords, logon codes and other access methods. SCC shall not be liable for any disclosure by Customer of the same, whether intentional or otherwise.

16.4 Customer shall keep confidential the contents of this Agreement and document. No part of this Agreement or document contents may be used, copied, disclosed or conveyed to any person in any manner whatsoever without prior written permission from SCC, save to Customer’s advisors or for reasons set out in clause 13.1 (ii) and (iii).

16.5 With regards to the Freedom of Information Act and where applicable the Freedom Of Information Scotland Act (the “Acts”), if any requests for information are received in respect of any dealings SCC has with the Customer including in respect of any contract that SCC has agreed or may agree with the Customer, then SCC would expect that any non-public financial information, the price payable for goods and services supplied or to be supplied together with terms and conditions of trade are treated as “trade secrets” the disclosure of which would have a material adverse effect on our commercial interests because of a reduction in our “competitive edge” and therefore such information should be considered exempt from disclosure in accordance with the exemptions contained in the Acts including in Part 2, Section 43 in the case of the Freedom of Information Act and Section 33 in the case of the Freedom of Information Scotland Act. Customer shall consult with SCC regarding any requests for information received by the Customer.
which relate to any dealings SCC has with the Customer and which may encompass such trade secrets save as required by law.

16.6 This Agreement may be amended, modified or varied only by an agreement in writing signed by a duly authorised representative of the parties.

16.7 Neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor or have any authority to bind the other party.

17 INSURANCE

17.1 SCC confirms that, as a reputable service provider, it has in place the following insurance policies in relation to potential liabilities under this Agreement:

- Public liability insurance with cover of £10 million;
- Product liability insurance with cover of £10 million;
- Employers’ liability insurance with cover of £10 million;
- Professional indemnity insurance with cover of £10 million;
- Director’s liability insurance with cover of £5 million.

18 DATA PROTECTION

18.1 SCC and its subcontractors may store and process personal data provided on the Order for its internal use and for the purposes of providing the Services. From time to time SCC and its subcontractors may contact Customer about future SCC and subcontractor products and services and may pass such personal data to respected organisations selected by SCC for the purposes of enabling such organisations to provide marketing and other relevant information relating to such organisations’ products and services. Customer may opt-out of receiving mailings by contacting SCC at contact@SCC.com.

18.2 In this Clause, the "DPA" means the Data Protection Act 1998 and any replacement or supplemental legislation; and the terms "process" (and its derivatives), "data controller" and "personal data" shall have the meanings given to them in the DPA.

18.3 In order for SCC or its Subcontractors to provide the Services, the Customer may need to supply certain information or data to SCC and its subcontractors. Where such information or data constitutes personal data SCC and its subcontractors shall only undertake processing of that personal data of which the Customer is a data controller (the "Relevant Personal Data") for the purposes of and to the extent reasonably required to enable it to perform its obligations under the relevant Contract or an applicable Order. The Parties acknowledge that, in respect of all personal data that the Customer provides
to SCC, the Customer is the data controller and SCC and its subcontractors are the data processor.

18.4 SCC shall bring into effect and maintain appropriate technical and organisational measures (a) to maintain security of the Relevant Personal Data; and (b) to prevent unauthorised or unlawful access to or processing of Relevant Personal Data and accidental loss or destruction of, or damage to, Relevant Personal Data.

18.5 SCC may not transfer any Relevant Personal Data to a country or territory outside the European Economic Area which is not deemed by the applicable data protection regulator(s) to provide an adequate level of protection other than in compliance with the Customer’s instructions, provided that the Customer’s instructions shall be deemed to include any transfers which are necessary in connection with the provision of the Services where subject to adequate safeguards including those prescribed by Clause 15.4 above.

18.6 If the data subject of any Relevant Personal Data makes a written request to SCC for access to Relevant Personal Data, SCC shall notify the Customer and refer the data subject to the Customer (as data controller) to respond to the request.

18.7 SCC shall promptly notify the Customer as soon as reasonably practicable, if it becomes aware that any End User personal data provided to SCC or its subcontractors by the Customer has been the subject of a Data Breach and SCC shall consult with the Customer (both Parties acting reasonably) regarding what measures and actions are necessary to mitigate or remedy the effects of the Data Breach. For this purpose, a “Data Breach” means an accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access of personal data of an End User that has been provided to SCC or its subcontractors by the Customer;

18.8 It shall be the Customer's responsibility to keep any Relevant Personal Data up to date and the Customer undertakes to SCC and its subcontractors that it has used reasonable endeavours to ensure that all of its personal data and contact details are accurate and complete.

19 GOVERNING LAW AND DISPUTES

19.1 This Agreement shall be governed and construed in accordance with English law, and the Parties irrevocably agree to the exclusive jurisdiction of the English courts.

19.2 If any dispute arises in connection with the Contract, the parties shall attempt to settle it by negotiation:

   in the first instance, the parties should attend a conference call between a member of SCC’s finance team and the Customer’s account manager within 7 Working Days of the dispute arising,

   failing resolution of the dispute at such conference call the parties shall hold a meeting between the respective account manager’s appointed under Clause 11 within 7 Working Days of the above conference call, or where
an invoice is disputed, the date of notification of such dispute by the Customer;

failing resolution of the dispute at such meeting, the matter shall be escalated to a meeting between senior director of each party which shall be held within 7 Working Days of the first meeting.

19.3 Each party shall use their respective reasonable endeavours to consult or negotiate with each other in good faith, and recognising their mutual interests, attempt to reach a just and equitable settlement satisfactory to both parties.

19.4 If the parties are unable to settle any dispute by negotiation within the earlier of 21 Working Days of the dispute arising or within 3 Working Days of the second meeting, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) (use Ombudsman Services Services) procedure to be completed within a further 45 days, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators.

19.5 If the parties are unable to settle any dispute by negotiation through ADR or either party refuses or declines to follow ADR procedure as required under clause 16.4, either party may exercise its rights and remedies under this Agreement and to take such proceedings as it deems necessary pursuant to Clause 16.1.

19.6 Nothing in this Clause 16 shall prevent either party from seeking injunctive or similar relief at any time if such action is necessary to preserve or protect its commercial or business interests under the Contract or this Agreement.

19.7 Nothing in this Agreement shall be construed as creating any form of partnership or relationship of agency or joint venture between the Parties.

20 NOTICES

20.1 Unless provided otherwise in this Agreement, any notice or other communication to be given under this Agreement ("Notice") shall be in writing (which for this purpose excludes email), signed by or on behalf of the Party giving it (which may include an electronic signature) and may be served by (i) sending it by delivering it by hand or sending it by a recorded postal delivery service to the address and for the attention of the relevant Party whose details are set out in the Order as otherwise notified from time to time under this Agreement) or (ii) to the email set out below:

For SCC:

Email: contact@SCC.com

Copied To: accounts@SCC.com
20.2 Any Notice shall be deemed to have been served:

if delivered by hand, at the time and date of delivery;

if sent by post, at the expiration of 2 Business Days after the envelope containing the same was delivered into the custody of the postal authorities,

if sent by email, immediately upon transmission provided that no error message is received or generated within 48 hours of being sent,

provided that where, in the case of delivery by hand, such delivery or transmission occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day.

21 INTELLECTUAL PROPERTY

21.1 The Intellectual Property Rights in the Services together with Intellectual Property Rights in all training and other documentation provided to Customer or any Intermediaries are and shall remain the property of SCC, the SCC Group or its licensors.

21.2 Customer shall notify SCC immediately if Customer or any Intermediary becomes aware of any unauthorised use of the Services or any of the Intellectual Property Rights relating to the Services and will assist SCC at SCC’s cost in defending SCC’s rights. Customer and its Intermediaries shall
not have any rights to use the mark or logo of SCC or any member of the SCC Group, unless otherwise agreed in writing.

22 SUB-CONTRACTORS

22.1 SCC shall use commercial endeavours to manage its sub-contractors who it uses to carry out the Services in a manner consistent with a competent telecommunications service provider. However, it is acknowledged and agreed by the parties that the acts or omissions of sub-contractors who install the Service or any part of the Service are beyond the control of SCC. SCC shall not, to the extent permitted by law, be liable to Customer contract, tort (including negligence) or breach of statutory duty for any acts or omissions of any sub-contractors during installation of any part of the Service for the Customer at the Customer Location. In the event of any failure of such sub-contractor during such installation that affects the Customer, SCC shall use reasonable endeavours to procure that the benefit of any warranty or guarantee provided to SCC by such sub-contractor (in respect of any Service or part of Service provided to Customer and to the extent that it is permitted to do so by the relevant sub-contract) is transferred to the Customer.

22.2 SCC may assign the benefit and/or burden of this Agreement and any Contract upon written notice to Customer, and may subcontract the provision of all or any part of the Service or Services to third parties.

22.3 Customer shall not (without SCC’s prior written consent), and shall procure that its Intermediaries shall not, assign, transfer or otherwise dispose of its rights and/or obligations under (i) this Agreement; or (ii) any contracts between Customer and an Intermediary; or End User Contract

23 DEFINITIONS

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

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

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

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

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

Activation Charges mean those amounts payable by Customer to SCC for the connection and Activation of a Service as set out in the relevant Order or otherwise communicated to Customer by prior to installation of the Service;
**Activation Date** in relation to a Service provided under any Order means the date that Service is Activated;

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

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

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

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

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

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

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

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

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

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

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

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

**Customer Equipment** means any hardware provided by Customer or its End User to access the Service or connects to SCC owned and managed hardware;
**Service Location** means any premises controlled by the Customer at which the Services are to be provided;

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

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

**Emergency Maintenance** as defined in Clause 5.5;

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

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

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

**Initial Term** has the meaning set out in the Service Description;

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

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

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

**Direct Service** means the supply of Services using Layer 3 technology and ultimately SCC IP addresses to access the Public Internet;
Layer 2 means a Service provided by SCC without an IP address delivered over a private interconnect;

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

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

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

Network Availability means the CPE, when correctly connected and configured, is able ping one of SCC’s DNS servers. These are currently 89.105.96.51 and 89.105.96.52, but may be subject to change;

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

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

Order Committed Date means the date defined in section 11 of the Service Description;

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

Service Description means the document titled “Service Description” describing the Services, Service Levels and other related matters, which will form part of each Contract;

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

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

Scheduled Maintenance as defined in Clause 9.5;

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

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

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

**Service Levels** means the performance service levels set out in Section 10 of the Service Description;

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

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

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

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