

# UKS LIMITED STANDARD TERMS AND CONDITIONS

## Version 5.1 – Master Service Agreement

### BACKGROUND

The Supplier has agreed to provide to the Client, equipment hosting, connectivity and other related services upon the terms set out in these Terms and Conditions. The specific details of such services to be set out in Schedules agreed between the Supplier and the Client from time to time.

### OPERATIVE PROVISIONS

#### 1 Definitions and Interpretation

1.1 In these Terms and Conditions the following words shall have the following meaning:

“Accepted Standards” means generally accepted standards as being in accordance with industry best practice in relation to provision of similar services in the United Kingdom;

“Business Day” means any day which is not a Saturday, Sunday or public or bank holiday in England;

“Business Hours” means 9.00 am to 5.00 pm on a Business Day;

“Client” means the individual, Company or Group entering into a Contract with the Supplier for the provision of Services;

“Client Equipment” means any equipment belonging to the Client which the parties have agreed should be stored at the Facility;

“Commencement Date” means in relation to the Contract the date when the first applicable Schedule is executed and in relation to any subsequent Schedule the date upon which the applicable Schedule is executed;

“Confidential Information” means all information relating to the trade secrets, operations, processes, plans, intentions, product information, know-how, designs, market opportunities, transactions, affairs and/or business of the other party and/or its customers, suppliers, clients, holding companies and/or subsidiaries;

“Contract” means the contract between the Supplier and the Client for the sales or lease of Hardware and/or provision of Services which consists of this Master Service Agreement (including any Appendix hereto);

“Control Panel” means a website installed on the Supplier’s server and which monitors the volume of information passing from the Internet through the Client’s Equipment and the cost to the Client of the Connection Services;

“Connectivity” means a Service to provide data transport from the Client Equipment to the Internet; or between various other sites where locations, capacities and delivery technology are defined in the Schedule;

“Connectivity Infrastructure” means any computer hardware, cabling, power source, telecommunications links and other infrastructure used by the Supplier in the provision of the Services;

“The Facility” means any building belonging to or occupied by the Supplier at Birmingham Road, Studley, Warwickshire B80 7BG or as detailed in a Contract;

“Fees” means the Fees to be paid by the Client for the Services;

“Group” means in respect of a company, the ultimate holding company of that company, together with every subsidiary of that ultimate holding company;

“The Hardware” means the equipment, cabling and systems provided by the Supplier in connection with the Services;

“Intellectual Property Rights” means copyright, database right, patents, registered and unregistered design rights, registered and unregistered trade marks, all other intellectual property (and similar) rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world;

“Invoice Due Date” means the date for payment set out on a Suppliers invoice or if no date for payment is stated, 30 days from the date of the Invoice;

“Maintenance Services” means the services relating to the maintenance of Client Equipment;

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“Master Service Agreement” means this document;

“Personal Data” means as defined in the Data Protection Act 1998;

“Power” means the Service to provide a reliable mains electricity supply to the Client Equipment where at the Facility;

“Rackspace” means space in a 19” wide data cabinet for hosting the Client Equipment;

“RFS” and “Ready for Service” means the date at which the Service is expected, but not guaranteed, to be ready for the Client to use;

“Schedule” means a schedule describing the Services requested by the Client and issued by the Supplier subject to these Terms and Conditions including without limitation and, as appropriate, details of requested Connectivity, Rackspace, Hardware together with Client Equipment and ‘applicable Schedule’ shall be construed accordingly;

“Services” means the provision of Rackspace, Power, Connectivity and other services described in any Schedule and which are supplied or to be supplied by the Supplier on and subject to the terms of these Terms and Conditions and any Schedules;

“Service Credits” means the credits against Fees set out in the Service Level Agreement which are payable by the Supplier for failure to meet the Service Levels;

“Service Demarcation Point” means the interconnection point between the Service and the Client Equipment such as the metered power socket used to deliver Power or network cable used to deliver Connectivity;

“Service Levels” means the service levels to be achieved by the Supplier set out in the Service Level Agreement;

“Service Level Agreement” means the Service Level Agreement set out in Appendix 1;

“Software” means the computer software programs provided by the Supplier in connection with the Services;

“Supplier” means UKS Limited (company number 3036806) whose registered office is at Birmingham Road, Studley, Warwickshire B80 7BG;

“Term” means the period during which this agreement continues in force set out in clause 2 (Term);

“Terms and Conditions” means the terms and conditions of this Master Service Agreement;

“Time and Materials Rates” means the rates at which the Supplier's personnel or other resources are charged to the Client as may be published by the Supplier from time to time;

“UKSolutions” means the Supplier;

“VAT” means value added tax.

- 1.2 Each agreed “Applicable Schedule” shall constitute a separate contract and “applicable contract” shall be construed accordingly.
- 1.3 The Schedules form part of this agreement and (unless the context otherwise requires) references to this agreement include the Schedules.
- 1.4 In these Terms and Conditions, unless specified, any reference to:
- (a) a subsidiary or holding company is to be construed in accordance with section 1159 of the Companies Act 2006; and
  - (b) a statutory provision includes a reference to any modification or re-enactment of it from time to time.

## 2 Services, Hardware, Software and Goods

- 2.1 The Services, Software, Hardware and Client Equipment shall be as described in the Contract. All Schedules shall be deemed to be an offer from the Client and shall only be deemed accepted by the Supplier when counter-signed by an authorised representative of the Supplier or, if earlier, the commencement of the applicable Services by the Supplier. In the event of any conflict between any provision in this Agreement and those in the Schedule then the provision in the Schedule shall prevail.

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- 2.2 Upon acceptance of the Schedule, the Supplier shall provide the services in accordance with the terms of the applicable Contract.
- 2.3 The terms of each Contract together with this Agreement contain the whole agreement between the Supplier and the Client in relation to the Services, Hardware and Software detailed in the Schedule thereto. All other understandings, agreements, warranties, conditions, terms or representations, whether expressed or implied, statutory or otherwise, are excluded to the fullest extent permitted by law save as otherwise provided in these Terms and Conditions.
- 2.4 If either party requires any variations or additions to the Services, Hardware and/or Software or Client Equipment to those set out in an agreed Schedule then the parties may agree a new Schedule, or a replacement Schedule superseding an existing identified Schedule.
- 2.5 Subject to clause 2.4 the Supplier reserves the right at any time and from time to time to amend, improve, modify or cancel the Services, Software and/or Hardware (or any part thereof) as the case may be provided that such modification does not materially affect the Services, Software and/or Hardware (or any part thereof). This includes the right to substitute the Hardware with Hardware of similar specification where necessary. The Supplier shall give the client reasonable notice of such modification but in any event at least 3 days' advance notice of the same.
- 2.6 No order of Goods submitted by the Client shall be deemed to be accepted by the Supplier until confirmed in a Schedule.
- 2.7 The quantity, quality and description of the Services, Software and Hardware to be supplied by the Supplier in connection with the Services shall be set out in the applicable Schedule.

### 3 Term

- 3.1 This agreement shall commence on the Commencement Date. Unless otherwise agreed in writing by the Supplier (in any Schedule or otherwise) the period of each Contract for the provision of the Services detailed in its corresponding Schedule is 12 months from the date on which such Services are accepted or deemed accepted by the Client pursuant to clause 2 above ("Initial Term") and thereafter unless and until terminated by either party (process as defined in the Appendix) giving not less than 90 days written notice of termination at any time to the other party so as to expire at any time on or after the end of the Initial Term provided that where the Client has been invoiced for Services in advance, any due date for termination will be extended, as necessary, to the date up to which the provision of the Services has been invoiced for.
- 3.2 In the event of termination or cancellation by the Client of any Contract prior to the expiry of the Initial Term, the Client remains liable to pay for the Services for the entire Initial Term together with any extension thereto as provided for in clause 3.1 except where such termination was due to a default by the Supplier or pursuant to clause 18.2.

### 4 Appointment and performance

- 4.1 In consideration of the Client's payment of the Fees, the Supplier shall perform the Services in accordance with this Agreement.
- 4.2 In performing the Services the Supplier shall:
- (i) use all reasonable skill and care and carry out its obligations under this Agreement in accordance with the Accepted Standards;
  - (ii) meet the Service Levels and if it does not, credit the Client in line with the Service Level Agreement; and
  - (iii) respond to and use its reasonable endeavours to comply with the Client's reasonable requests and written instructions and act in a professional manner.
- 4.3 It is not intended that the storage of Client Equipment within the Rackspace will constitute a lease of any real or personal property. The Client acknowledges and agrees that it has been granted only a licence to occupy a Supplier space and use any Supplier facility and any equipment provided by the Supplier in accordance with this agreement. The Client has not been granted any real property interest in the Supplier space or any Supplier facility and the Client has no rights as a tenant or otherwise any real property or landlord/tenant laws, regulations or ordinances. In its sole discretion the Supplier may suspend the right of any Client representative or other person to visit The Facility.

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4.4 Save where the Supplier is required to do so in order to fulfil its obligations under this Agreement, by applicable law, by RIPE or any governmental or emergency service organisation or other competent administrative authority or regulatory body of competent jurisdiction, the Supplier shall not alter or withdraw any of the IP Addresses supplied in the provision of the Services which are registered to the Client in the RIPE Regional Registry database during the Term.

## 5 Fees

5.1 The Fees payable by the Client to the Supplier for the Services will be set out in the applicable Schedule(s).

5.2 The Supplier shall be entitled to charge at its standard Time and Materials Rates for all time spent in resolving any complaints or reports received from any governmental or other competent authority or from any emergency service organisation in relation to the Client Equipment or the Services. Save where prohibited from doing so by applicable law or regulation, the Supplier:

- (i) shall inform the Client without delay of any such complaint or report,
- (ii) wherever possible, shall not respond to the relevant authority or organisation without the Client's prior consent (which shall not be unreasonably withheld or delayed), and
- (iii) shall consult with the Client with regard to such complaint or report.

5.3 Unless otherwise agreed in writing by the Supplier (in any Schedule or otherwise) the Supplier shall invoice the Client for the Services quarterly in advance and will set out in the invoice reasonable details of the Services and expenses to which the invoice relates.

5.4 Unless the subject of a genuine dispute, the Client shall pay the Fees by the Invoice Due Date.

5.5 If no notice of a disputed invoice is given within two calendar months of the date of the invoice, the Client is deemed to accept the invoice in full.

5.6 The Fees do not include VAT which the Client shall pay in addition to the Fees at the rate prevailing on the date of the invoice. Any sums payable by the Client shall be paid clear of any deductions, withholdings, set offs or counterclaims, except any deduction or withholding which may be required by law in relation to tax.

5.7 If the Client fails to make any payment in full on the due date under this agreement the Supplier may:

5.7.1 Charge interest on the outstanding amount. Such interest shall accrue on a daily basis at the rate of 4% above the base rate of NatWest Bank PLC from time to time in force or such higher rate as is prescribed under the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until the date of payment, whether before or after judgment.

5.7.2 Suspend the provision of the Services

5.7.3 Exercise a lien over Client Equipment until such time as all outstanding payments are made in full

5.7.4 Where payment of any invoice has been outstanding for more than 60 days after the Invoice Due Date sell any Client Equipment and account to the Client for all sums received less a sum equal to all sums outstanding due to the Supplier and an administrative fee to cover the costs of sale equal to 15% of the sums outstanding due to the Supplier at the time of sale of the Client Equipment such fee to be a minimum of £75 plus VAT

5.8 As a matter of principal the supplier generally collects unpaid invoices in accordance with the provisions of Appendix 6.

5.9 The Supplier may increase the Time and Materials Rates at any time per annum subject to giving the Client one month's prior notice of any increase.

5.10 If the Supplier has agreed to a fixed price in relation to any particular Services then the Supplier reserves the right to amend the fixed price on giving notice to the Client if:

5.10.1 the scope of, or functionality required in, the Services changes or increases as a result of the Client's changes, requirements or instructions; or

5.10.2 there is any material increase in the cost of the Connectivity Infrastructure.

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- 5.11 The Client shall pay to the Supplier the sum of £45 plus VAT to cover the costs incurred by the Supplier
- 5.11.1 in the event that any cheque rendered to the Supplier by the Client or any third party on its behalf is returned or required to be represented.
- 5.11.2 in respect of any rejected charge arising out of a credit or debit card payment. The Client shall pay to the Supplier a sum equal to 7% of any fees discharged by way of credit or debit card.

## 6 Client's obligations

- 6.1 The Client shall be responsible for ensuring that
- 6.1.1 Any Client Equipment is electronically and mechanically sound and safe to be connected to 230V power for an unspecified duration with or without interruption and, for this purpose, the Client shall ensure that the Client Equipment is tested at least every 12 months during the course of this agreement.
- 6.1.2 Any Client Equipment complies with applicable Health and Safety Standards and all relevant legislation.
- 6.1.3 At all times The Supplier is supplied with an up-to-date, complete and accurate inventory of all of the Client Equipment including details of the value of the Client Equipment and the likely consequence for the Client in terms of loss of or damage to the Client's business in the event of damage to, loss of or other unavailability of the Client Equipment.
- 6.1.4 Any Client Equipment hosted at the Facility is clearly identified as belonging to the Client and that the Client Equipment is labelled and all individual components which make up the Client Equipment is easily identifiable from front or rear.
- 6.1.5 The Client takes all necessary steps to ensure that it has in place appropriate business continuity and disaster recovery arrangements in the event of a 'Disaster'. The Client acknowledges that the Services do not include the provision by the Supplier of additional space for hosting the Client Equipment or any replacement equipment or the making of any contingency arrangements to support the Client in the event of 'Disaster' of whatever kind.
- 6.1.6 That any software loaded or stored on the Client Equipment is appropriately licensed for the Client's use.
- 6.1.7 That the Client Equipment will not store or have loaded upon it any software which is designed adversely to affect, interfere with or be malicious to any other equipment.
- 6.1.8 That any software loaded or stored on the Client Equipment will be self-contained and will not interact with the Internet in any way, with the exception of normal internet operation via the recognised internet protocol as published by the Internet Engineering Task Force (IETF) under RFC 5000 (as amended)
- 6.1.9 All data (including sequences of binary numbers) stored in permanent (including but not limited to hard disk, CD-ROM, DVD) or temporary (RAM) form on the Client Equipment is of a lawful nature and does not so far as it is reasonably aware violate or infringe any intellectual property rights, copyright, patent, statutory or common law or other proprietary rights of others or contain any obscene, immoral or libellous material.
- 6.1.10 Any and all data transmitted or received by the Client Equipment does not so far as it is reasonably aware violate or infringe any intellectual property rights, copyright, patent, statutory or common law or other proprietary rights of others or contain any obscene, immoral or libellous material.
- 6.1.11 No data received or transmitted by the Client Equipment will knowingly adversely affect, interfere with or be malicious to the Client Equipment or any third party hardware or software connected to the Internet
- 6.1.12 The Client Equipment will not, at any time, perform operations designed to intercept data not directly addressed to the Client Equipment or otherwise breach or disrupt internet communications and will be operated in accordance with Accepted Standards.
- 6.1.13 Apply such security updates and patches as may, from time to time, be required to ensure compliance with this agreement and generally Accepted Standards of information security.

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- 6.1.14 The Client Equipment is monitored for throughput of data and other statistics as may be required and reported to the Client using the Control Panel.
- 6.1.15 Where required by the Supplier, it will alter its network or IP address allocation assigned for the Client's use by the Supplier or other names, code or numbers allocated in connection with the Services other than 'Domain Names' owned by the Client held in international domain name registers. The Client confirms that it will not seek to claim any rights in any such IP address allocation or other names, code or numbers and that they cannot be transferred to another provider.
- 6.1.16 That the Client Equipment shall not exceed the weight limits of the Rackspace, and at no time exceed 250KG per full rack.
- 6.1.17 Where the Supplier agrees to provide Connectivity or other Services at premises other than the Facility, the Client:
  - (i) will provide or, as necessary, will procure the provision of such space, power, environmental conditions to Accepted Standards and security free of charge at the premises in question as the Supplier may need for the safe and reliable storage of the Supplier's equipment
  - (ii) will permit the Supplier, its sub-contractors, employees and agents to access to those premises free of charge at such times (which will generally be Business Hours) as may be necessary to enable the Supplier to perform the Services

6.2 The Client acknowledges that:

- 6.2.1 unless explicitly detailed in a Schedule and in that case only to the extent detailed, the Services do not include the provision by the Supplier of additional space for hosting the Client Equipment or any replacement equipment or the making of any contingency arrangements to support the Client in the event of disaster of any kind;
- 6.2.2 the Rackspace is not designed to withstand weights exceeding 250KG per full rack.

## 7 Moving the Client Equipment

- 7.1 If required to do so to fulfil its obligations under this Agreement, the Supplier shall have the right from time to time, upon giving to the Client not less than 30 days notice to the Client to require some or all of the Client Equipment to be relocated to and/or installed in any other part of the Facility provided that the direct costs and expenses of such relocation activity incurring by the Supplier shall be borne by the Supplier. The Supplier shall, so far as possible, consult with the Client in connection with such relocation and use its reasonable endeavours to ensure that such relocation causes as little disruption to the operation of the Client Equipment as possible.

## 8 Use of the Service

- 8.1 The Supplier agrees not to use the Client Equipment or any other equipment belonging to the Client save for the purposes of performing its obligations under this agreement or otherwise as directed by the Client in writing.

## 9 Insurance

- 9.1 The Client Equipment shall be stored at the Facility at the Client's risk and the Client shall be responsible for ensuring, at all times, that the Client Equipment and ancillary equipment is fully insured against all risks including without limitation public liability, fire, theft and flood etc. Such insurance shall be maintained with a reputable insurer and will include a waiver of subrogation from the Client's insurers in favour of the Supplier and the Client shall produce on demand for inspection by the Supplier adequate proof of such insurance.

## 10 Termination and suspension

- 10.1 In addition to any termination permitted elsewhere in this Agreement, either party may terminate this agreement and/or (at the option of the terminating party) the applicable Contract immediately by notice in writing if the other party:
  - 10.1.1 commits a material breach of any of the terms of this agreement or a Contract (including without limitation late payment) and, if such breach is capable of remedy, fails to remedy the breach within 30 days of receiving notice from the terminating party specifying the breach and requiring the breach to be remedied;

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- 10.1.2 enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction);
  - 10.1.3 becomes insolvent;
  - 10.1.4 ceases or threatens to cease to carry on business;
  - 10.1.5 compounds or makes any voluntary arrangement with its creditors;
  - 10.1.6 is the subject of a notice of appointment of an administrator, or a notice of intention to appoint an administrator or liquidator;
  - 10.1.7 is unable to pay its debts as they fall due;
  - 10.1.8 has an encumbrancer take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets; or
  - 10.1.9 takes or suffers any similar action due to debt, or if the equivalent of any of the events described at clause 10.1.2 to clause 10.1.8 inclusive under the law of any jurisdiction occurs in relation to the other party.
- 10.2 Where the Services include the provision at the Facility of Rackspace in respect of Client Equipment the Client shall be entitled to terminate the Rackspace and associated Power Service(s) of an applicable Contract by notice in writing where the Supplier is in persistent breach of the Service Level Agreement in respect to that Contract. A persistent breach of the Service Level Agreement shall occur where the Supplier fails for 3 consecutive months to meet the terms of the Service Level Agreement in respect of the Power Service of that Contract. Notice of intent to exercise this right must be given by the Client to the Supplier within one calendar month of the classification of persistent breach.
- 10.3 The expiry or termination of this agreement for any reason shall not affect any rights and/or obligations:
- 10.3.1 accrued before the date of termination or expiry; or
  - 10.3.2 expressed or intended to continue in force after and despite expiry or termination.
- 10.4 Following expiry or termination of a Contract pursuant to clause 10.1 or 10.2
- 10.4.1 all undisputed amounts payable by the Client to the Supplier shall become immediately due (subject to receipt by the Client of a valid invoice in respect of the same) and the Supplier shall be entitled immediately to cease the Services provided under the this Agreement or applicable Contract as the case may be;
  - 10.4.2 all Service Credits payable by the Supplier shall be paid immediately to the Client;
  - 10.4.3 the Client shall pay all costs relating to the packing, transportation and administration, delivering or retrieving of the Client Equipment;
  - 10.4.4 the Client shall pay the Supplier's reasonable cost for storing any Client Equipment which is not collected from the Facility within 15 days of termination of this Agreement (provided the delay is not caused by any act or omission of the Supplier).
- 10.5 The Supplier may, without prejudice to any other of its rights contained in this agreement, suspend the Services for so long as it sees fit upon any occasion that it would otherwise be entitled to terminate this agreement pursuant to the terms of clause 10.1 including the shutting down or removal of power to any Client Equipment. Where a disconnection of Services has occurred solely as a result of suspension of the Services under this clause, a reinstatement fee of £100 will apply to reactivate the Services within Business Hours, or £250 at any other time.
- 10.6 The Supplier shall be entitled to suspend the Services (in whole or in part), including but not limited to disconnection of Connectivity and/or Power, to deny access to The Facility, etc
- 10.6.1 to investigate and rectify any reported problems or to carry out any necessary maintenance work in accordance with the Service Level Agreement
  - 10.6.2 if it is obliged to comply with an order, instruction or request of any governmental or emergency service organisation or other competent administrative authority.

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10.6.3 in the event of Planned Outages or Emergency Outages (as defined in the Appendix)

- 10.7 Save for a material or persistent breach in the provision of Services by the Supplier suspension of the Services for any reason will not alter the period of service for the current invoice and all charges and sections of this Agreement will remain in effect.
- 10.8 The Supplier shall notify the Client as soon as reasonably possible of any suspension required pursuant to Clause 10.5 (if practicable) and the Supplier shall use all reasonable efforts to minimise the downtime incurred in taking such actions.
- 10.9 Exercise by the Supplier of its right of suspension under clause 10.4 shall not function as a waiver of any right of termination which the Supplier may have under this agreement.

## 11 Title to the Client Equipment

- 11.1 Subject to clauses 5.7.3 and 5.7.4 title to the Client Equipment shall remain with the Client.

## 12 Access to the Client Equipment

- 12.1 Where the Services include the provision at the Facility of Rackspace in respect of Client Equipment, the Supplier agrees upon arrangement of an appointment, to allow the Client reasonable access to the Client Equipment. Such appointments shall be during Business Hours unless these times are extended in a Schedule.
- 12.2 Whilst at the Facility, the Client shall adhere to any site access policy issued by the Supplier from time to time.
- 12.3 Where the Client Equipment is stored in Rackspace dedicated to the Client Equipment for this purpose, the client shall be entitled to have access to the rack otherwise access shall be provided by the Supplier delivering the Client Equipment to a specific inspection room for the purpose

## 13 Confidentiality

- 13.1 Each party shall keep secret and confidential all Confidential Information of the other and shall not (and shall procure that its employees and/or officers shall not) copy, use or disclose any such information to any third party, other than as may be necessary to comply with its obligations under this agreement.
- 13.2 The obligation of confidence shall not apply where the Confidential Information:
- 13.2.1 is required to be disclosed by operation of law;
  - 13.2.2 was in the possession of the recipient prior to disclosure by the other party;
  - 13.2.3 is subsequently acquired from a third party without any obligation of confidence;
  - 13.2.4 is or becomes generally available to the public through no act or default of the recipient; or
  - 13.2.5 is disclosed on a confidential basis for the purposes of obtaining professional advice.
- 13.3 This clause 13 shall continue in force notwithstanding the expiry or termination of this agreement, whatever the reason for such termination.

## 14 Warranties

- 14.1 Each party warrants to the other that:
- 14.1.1 it has full capacity and authority to enter into and perform its obligations under this agreement;
  - 14.1.2 it will perform its obligations under this agreement with all due skill, care and diligence; and
  - 14.1.3 this agreement is executed by its duly authorised representative.

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- 14.2 The Client warrants that it is the owner or permitted user of the Client Equipment,
- 14.3 Save as expressly provided in this agreement, all warranties, conditions, or other terms implied by statute, common law or otherwise are excluded.

## 15 Indemnities

- 15.1 The Client shall indemnify and hold harmless the Supplier from and against all and any losses, liabilities, demands, claims, costs and expenses (including legal costs and disbursements on an indemnity basis) and damages incurred or suffered by the Supplier, and any damages awarded against the Supplier, arising directly or indirectly as a result of or in connection with any claim that the Client Equipment has stored upon it or receives or transmits any information which infringes any Intellectual Property Rights of any third party or is libellous, defamatory or obscene.
- 15.2 Whenever any party (“Indemnifier”) is required to indemnify another party (“Indemnified”) under this agreement, the Indemnified shall:
- 15.2.1 notify the Indemnifier promptly and in writing of any matter or claim to which the indemnity relates;
  - 15.2.2 not make any admission or settlement or take any other material steps in respect of such matter or claim without the prior consent of the Indemnifier (such consent not to be unreasonably withheld or delayed); and
  - 15.2.3 allow the Indemnifier, where appropriate, to appoint legal advisers of its choice and to conduct and/or settle negotiations and/or proceedings relating to such matter or claim or (where it is not appropriate for the Indemnifier to have conduct of such negotiations and/or proceedings) the Indemnified shall comply with the Indemnifier's reasonable requests in the conduct of any such negotiations and/or proceedings (having reasonable regard to the Indemnified's reasonable views).

## 16 Limitation of liability

- 16.1 The liability of each party to the other under or in connection with this agreement or whether arising from contract, negligence or otherwise, shall be limited as follows:
- 16.1.1 for liability arising from death or personal injury to persons caused by negligence, or for fraudulent misrepresentation, there shall be no limit;
  - 16.1.2 for any other liability, the aggregate liability arising from any single event or series of connected events shall be the greater of
    - (i) the total Fees paid or payable by the Client under the Contract in question or under this agreement in the twelve months prior to the event (or, where a series of connected events, the first event) giving rise to such liability; and
    - (ii) the total value which may be recovered under relevant insurances during the year the event or first event in the case of a series of connected events occurs.
- 16.2 Neither party shall be liable for loss of profit, loss of business, loss of goodwill or loss of data or for any indirect or consequential losses.
- 16.3 The limitation of liability in clause 16.1 shall not apply in relation to any breach by the Client of clause 13.2.

## 17 Data protection

- 17.1 Each party shall comply with the provisions of the Data Protection Act 1998 (“DPA”) and shall not do anything which may cause the other party to infringe the DPA.
- 17.2 Each party warrants that it has made all registrations required of it under any applicable data protection legislation and in respect of any Personal Data processed by a party in connection with this agreement, and each party warrants to the other that it complies, and shall continue to comply, with all applicable provisions of the DPA or other applicable data protection legislation, including data protection principles.

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17.3 Each party warrants to the other that it has in place and undertakes to maintain throughout the Term appropriate technical and organisational measures against the accidental, unauthorised or unlawful processing, destruction, loss, damage, or disclosure of any personal data and adequate security programs and procedures to ensure that unauthorised persons do not have access to any equipment used to process such data, but each party recognises that in the context of the Internet there can be no absolute guarantee that authorised or unlawful access, processing or similar will not occur.

## 18 Force Majeure

18.1 If a party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under any Contract or this agreement (other than an obligation to make payment) by a Force Majeure Event:

- (a) the Affected Party's obligations under this agreement shall be suspended while the Force Majeure Event continues to the extent that the Force Majeure Event prevents, hinders or delays the performance by the Affected Party of those obligations;
- (b) the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of all of its obligations under this agreement; and
- (c) as soon as reasonably possible after the end of the Force Majeure Event, the Affected Party shall resume performance of its obligations under this agreement.

18.2 If the Force Majeure Event continues for more than 60 days after the day on which the Force Majeure Event starts, the party other than the Affected Party may terminate this agreement by giving not less than 30 days' written notice to the Affected Party.

18.3 In this clause 18 (Force Majeure), "Force Majeure Event" means any event beyond the control of the Affected Party.

18.4 Neither party shall be liable for any breach of this agreement directly or indirectly caused by a Force Majeure Event and which prevent that party from performing its obligations to the other, provided that a lack of funds shall not be regarded as a circumstance beyond that party's reasonable control.

## 19 Notices

19.1 Notices between the parties relating to this agreement must be in writing and must be delivered personally or sent by prepaid first class post, pre-paid air mail post or facsimile transmission to the address or fax number provided for the purpose.

## 20 General

20.1 Neither party shall assign, transfer, charge, create a trust over or otherwise deal in its rights and/or obligations under this agreement or any Contract (or purport to do so) without the other party's prior written consent which shall not be unreasonably withheld or delayed.

20.2 The Supplier shall not sub contract the performance of any or all of its obligations under this agreement or any Contract without the Client's prior written consent which shall not be unreasonably withheld or delayed.

20.3 Unless the right of enforcement is expressly granted, it is not intended that any provision of this agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this agreement.

20.4 A failure or delay by either party to exercise any right or remedy under this agreement or any Contract shall not be construed or operate as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy.

20.5 The Contract represents the entire terms agreed between the parties in relation to its subject matter and the subject matter of the Schedule(s) and supersedes all previous contracts or arrangements (including any usage or custom and any terms arising through any course of dealing) of any kind between the parties relating to its subject matter.

20.6 This agreement and any Contract may be amended, superseded, or cancelled (or any of its terms and conditions waived) only by written instrument signed by or on behalf of the Client and the Supplier, or in the case of waiver, of the party waiving compliance.

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- 20.7 Each of the provisions contained in this agreement shall be construed as independent of every other such provision, so that if any provision of this agreement shall be determined by any court or competent authority to be illegal, invalid and/or unenforceable then such determination shall not affect any other provision of this agreement, all of which other provisions shall remain in full force and effect.
- 20.8 This agreement shall be governed by and construed in accordance with English law.
- 20.9 The English courts shall have exclusive jurisdiction to determine any disputes which may arise out of, under, or in connection with this agreement.

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### Appendix 1

#### Service Level Agreement

To apply to Connectivity and/or Power Services (as the case may be)

- 1 The Supplier will endeavour to ensure that the Client will be able to access the Connectivity or Power Services (as the case may be) for at least 99.9% of the total hours in any calendar month
- 2 If the Client is unable to access the Service for fewer than 99.9% of the total hours in any calendar month as a result of Downtime (as defined below) the Client shall be entitled to apply for Service Credits calculated as follows:

- 2.1 For each complete hour of Downtime, the Client shall be entitled to a payment determined by reference to the following formula

$$\frac{a}{b} * (c - b * 0.1\%)$$

Where:

a= monthly charge for the service; b= total hours in the month; c= amount of Downtime

- 2.2 By way of example only, where the Client suffers 24 hours of Downtime in July, the compensation payment will be calculated as follows:

$$\frac{£710}{744 \text{ hours}} * (24 \text{ hours} - 744 \text{ hours} * 0.1\%) = £22.19$$

- 2.3 Claims made pursuant to clause 2.1 above are subject to the following:

2.3.1 Claims must be made within one calendar month of the month to which it relates

2.3.2 The Claim for any given month must exceed £10

- 3 "Downtime" means a period of time commencing when the Client reports to the Supplier via telephone, and the Supplier acknowledges the report via the issuing of a reference number, that the Client Equipment is unable to utilise the Service, by reason of a failure on the part of the Supplier to provide the Service, which includes the following:

- 3.1 Connectivity Services (internet access): total loss of connectivity between the whole Internet and the Service Demarcation Point
- 3.2 Connectivity Services (site to site): total loss of connectivity between the Service Demarcation Points at each Site
- 3.3 Power Service: Power failure of all power supply Demarcation Point which are available to the Client Equipment at The Facility

but excludes for the avoidance of doubt periods of apparent downtime when the reason is (a) failure of the Client Equipment (b) the Client Equipment has caused a power or network failure (c) the failure would have been avoided if the Client had elected, as part of the Services, to take advantage of the availability of more than one power or network supply, (d) during periods of Planned Outages or Emergency Outages, or (e) and event as defined by clause 18 (Force Majeure). Downtime must be reported by the Client at the time of the Downtime to allow the Supplier to reasonably fulfil its obligations under this Service Level Agreement.

- 4 "Planned Outage" means a period of time during which a Service is suspended for the purposes on the part of the Supplier of planned maintenance work required to be undertaken by the Supplier to ensure the continuing quality of the Service where the Supplier has given to the Client at least five days notice of its intention to undertake such maintenance, or where the work is required to be done as a result of the requirement of a third party supplier or body, such period of notice as may be reasonable taking into account the notice which the Supplier may have received from such third party. The Supplier will endeavour to undertake Planned Outage outside Business Hours.
- 5 "Emergency Outage" means a period of time during which a Service is suspended for the purpose on the part of the Supplier of unplanned maintenance work required to be undertaken by the Supplier to prevent the failure or serious degradation of the Service where the Supplier is unable to give 48 hours notice of its intention to undertake such maintenance the Supplier will endeavour to undertake Emergency Outage outside Business Hours.
- 6 For the avoidance of doubt, the Supplier shall at all times use its best endeavours to ensure (regardless of the reason for any Downtime) that the disruption caused to the Client is minimised and that the Services are restored as soon as reasonably practicable.

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**Appendix 2**

**Enhanced Service Level Agreement**

(this section has been intentionally left blank)

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### Appendix 3

#### Excess Connectivity Charges

(To apply where the Agreement includes Connectivity Services)

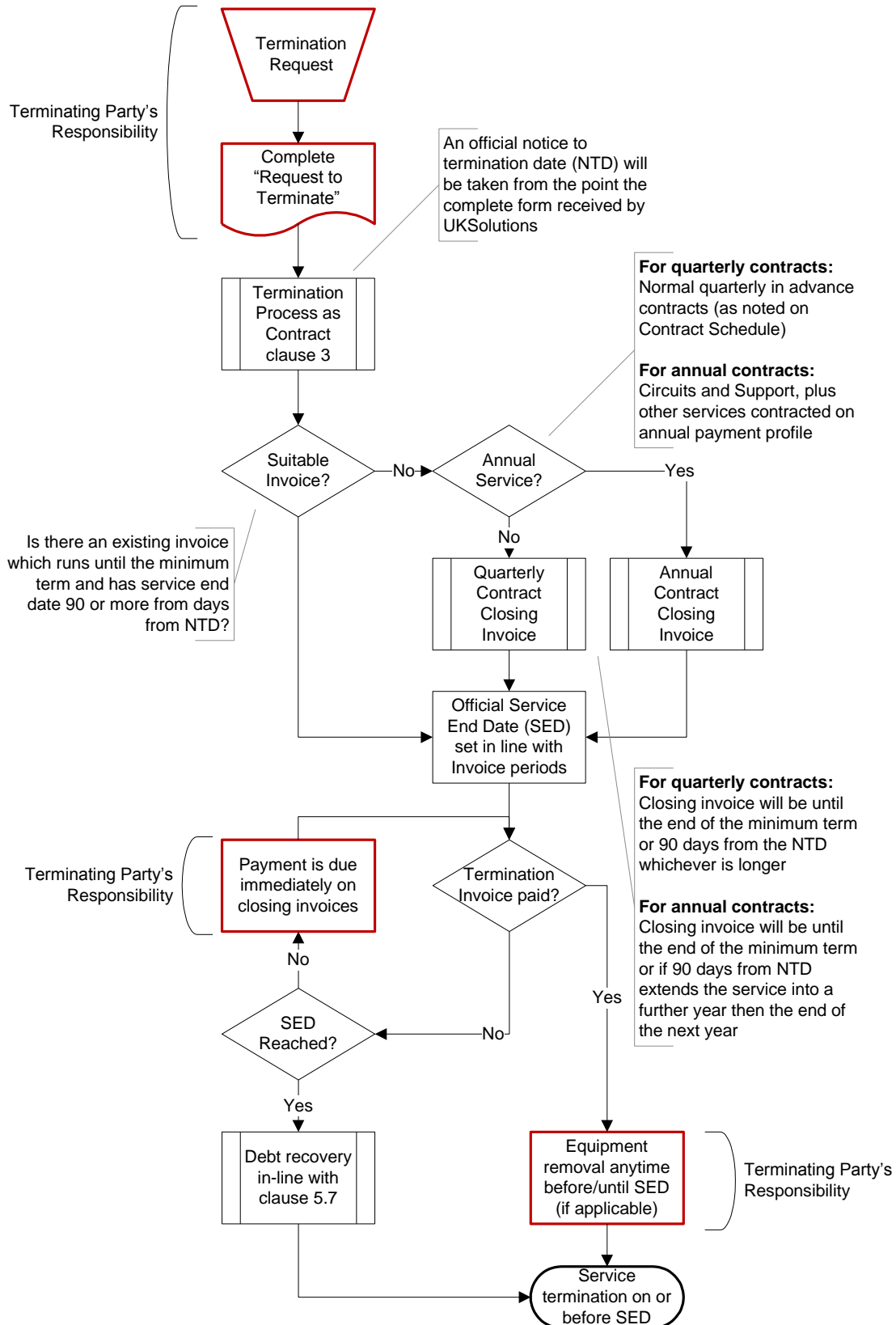
- 1 Where the Connectivity Services are formed from a “Committed Data Rate” which is lower than the physical limitation on the Service, then excess charges (“Burst”) shall be calculated using the “95<sup>th</sup> Percentile” Accepted Standard at the end of each calendar month and invoiced to the Client.
- 2 Where the Connectivity Services are formed from a “Monthly Data Transfer” then excess charges shall be calculated by upgrading the Connectivity Service to the next appropriate Service and invoicing the Client.

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Appendix 4

Termination Process



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## Appendix 5

### “Request to Terminate” – Client Version

(Written notice of termination)

#### Details of Services

Contract Schedule Number

Company Name

Original RFS Date

Preferred Termination Date\*

List Services to Terminate

Reason for Termination

\* The official Service End Date will be calculated from the entire Agreement, however if you wish to indicate a preferred termination date which falls later than the official Service End Date then this may be able to be accommodated.

#### Client Acceptance

This document must be signed by an “authorised signatory” of the Client, usually a Director or Senior Manager and in all cases someone with the same level of authority as the representative of the contracting organisation who entered the original contract.

Full Name

Position in Organisation

Email Address

Telephone

Signature

Date of Signature

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#### **Appendix 6**

##### **Accounts Receivable Escalation Process**

This process outlines the general escalation steps undertaken by the Supplier in the management of overdue invoices. The purposes of this appendix is to illustrate to the Client how the Supplier may exercise its rights in clause 5.7.

- Stage 1: A senior member of the Supplier's credit control department will attempt to escalate to a senior member of the Client's accounts payable team via email and/or telephone to secure immediate payment
- Stage 2: The Supplier's credit control department will formally escalate to the Supplier's Management for attempted escalation to the Client's escalation point/Contract Schedule signatory to secure immediate payment via email and/or telephone.
- Stage 3: The Supplier's Management can authorise the suspension of all Services provided to the Client to secure immediate payment.
- Stage 4: The Supplier's Management can authorise legal action, the sale of the Clients assets and/or refer the debts to a collection agency.