

# EX Networks Limited

## Master Service Agreement

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<https://www.exn.uk/resources/>

# EX Networks Limited Master Service Agreement

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## 1. OVERVIEW

1.1 This Agreement states the terms and conditions by which EX Networks Limited will deliver and the Customer will receive services and equipment as described in this Agreement and on the Signed Sales Order Forms (SOF).

(a) Addendum A is the SLA for Connectivity and Leased Line Services.

(b) Addendum B is the SLA for Internet Data Centre facilities.

All capitalised terms are as defined in Clause 1.2, unless the contrary is stated. References to clause numbers in the Agreement are to clauses in the MSA, unless the contrary is stated. In the event of any conflict between the MSA, Signed Sales Order Forms and the Addenda, the order of precedence is as follows: (1) the Signed Sales Order Form, (2) the MSA and (3) the Addenda.

### 1.2 Definitions

“Addendum” or “Addenda” mean the addendum documents set out in Clause 1.1 and any other addenda agreed between the parties and incorporated into the Agreement.

“Affected Service” means the Service actually impacted by a Service Failure or element of each Service if only a portion of that Service is impacted by the Service Failure.

“Affiliate” means any person which is, in relation to a company, its parent undertaking or its subsidiary undertaking, or a subsidiary undertaking of its parent undertaking or any other person controlled directly or indirectly by the relevant company or under the same control either directly or indirectly as the relevant company. “Parent undertaking” and “subsidiary undertaking” will have the meanings attributed to them in section 1162 of the Companies Act 2006.

“Agreement” means this Master Service Agreement, the Addenda, Signed Sales Order Form(s), and any other documents expressly incorporated herein.

“AUP” means the EX Networks’ Acceptable Use Policy.

“Bursting” means the data rate used in a particular month calculated on the industry standard 95th percentile basis which is in excess of the CDR for that month.

“CDR” means the committed data rate for IP connectivity for each month calculated on the industry standard 95th percentile basis which the Customer has committed to on a Signed Sales Order plus any valid amendments.

“Confidential Information” means any non-public information of the parties hereto relating to its business activities, financial affairs, marketing, sales plans, customers, products and services that is disclosed to, and received by, the other party to this Agreement. Confidential Information includes the terms and pricing of the Agreement, EX Networks Technology and Customer Technology. Confidential Information will not include information which: (i) is or becomes public knowledge through no breach of this Agreement by the receiving party, (ii) is received by the recipient from a third party not under a duty of confidence, or (iii) is already known or is independently developed by the receiving party without use of the Confidential Information.

“Connectivity Services” means those of the Services relating to the provision of internet connectivity (either IP transit or BGP) and intra-datacentre connectivity (or Layer 2 connectivity) across the EX Networks Systems, but exclude Leased Line Services.

“Customer Area” means those racks or portions of the Internet Data Centre(s) made available to the Customer for the placement of Customer Equipment and/or EX Networks Supplied Equipment. EX Networks grants Customer a licence to occupy the Customer Area for the Term and no lease or other real property right is created by this Agreement.

“Customer Data” means all data processed by EX Networks or provided to EX Networks for processing or otherwise processed as part of the Services including, but not limited to, data generated by the website from visitor input.

“Customer Equipment” means the Customer’s computer hardware and other tangible equipment placed by Customer in the Customer Area.

“Customer Authorisation & Access List” means the list that contains the names and contact information of Representatives as delivered by the Customer to EX Networks and amended in writing from time to time by the Customer.

“Customer Systems” means the Customer infrastructure comprising the network, servers, equipment and EX Networks Supplied Equipment that is connected to the EX Networks Systems and on which the Customer applications are run.

“Customer Technology” means Customer-owned and licensed technology, Internet operations design, content, software, hardware designs, algorithms, user interface designs, architecture, class libraries, documentation, network designs, know-how, trade secrets and any related intellectual property rights throughout the world and including any derivatives, enhancements and extensions of the same.

“Data Protection Laws” means:

- prior to 25 May 2018, the Data Protection Act 1998;
- from 25 May 2018, the General Data Protection Regulation (EU 2016/679) (“GDPR”) and any legislation which amends, re-enacts or replaces it in England and Wales;
- the Electronic Communications (EC Directive) Regulations 2003, together with any legislation which replaces it; and
- at all times, any other data protection laws and regulations applicable in England and Wales.

“Data Controller, process and Data Processor” have means given to them in the “Data Protection Laws”

“Data Subject” means an individual who is the subject of personal data.

“EEA” means the European Economic Area.

“Emergency Maintenance” means any necessary maintenance that is required from time to time to ensure the availability of the EX Networks Systems that EX Networks reasonably believes cannot be delayed.

“Excluded Event” means any event that adversely impacts a Service that is caused by (i) the acts or omissions of the Customer, its employees, customers, contractors or agents; (ii) the failure or malfunction of equipment, applications or systems not owned by EX Networks or forming part of the Managed Systems; (iii) a Force Majeure Event; (iv) a DOS or DDoS attack to the Customer (unless DDoS mitigation forms part of the Services); (v) Scheduled Maintenance; (vi) a Planned Change Request requested by the Customer which has been correctly performed by EX Networks that results in the degradation of a Service; (vii) an Emergency Change Request made by the Customer and correctly performed by EX Networks; (viii) a suspension of Services by EX Networks pursuant to Clause 6.1(b); (ix) a suspension of

the Services by EX Networks pursuant Clause 3.8; and, (x) a suspension of the Service by EX Networks pursuant to a breach of its AUP.

“EX Networks Supplied Equipment” means any equipment owned by EX Networks for use by the Customer.

“EX Networks Systems” means systems, networks, servers and equipment operated by EX Networks and used to deliver the Services.

“EX Networks Technology” means EX Networks-owned and licensed technology, Internet operations design, content, software, hardware designs, algorithms, user interface designs, architecture, class libraries, documentation, network designs, know-how, trade secrets and any related intellectual property rights throughout the world and including any derivatives, enhancements and extensions of the same.

“Force Majeure Event” means an unforeseeable event beyond a party’s reasonable control, including but not limited to, acts of war, acts of God, earthquake, flood or extreme weather conditions, embargo, riot, sabotage, labour shortage or dispute, failure of the Internet, terrorist acts, failure of data, products or services controlled by a third party including providers of communications or network services and utility power failures.

“Handover Document” means the document produced by EX Networks when the Services on the Signed Sales Order Form are deemed to be Live. This may also be communicated via a support ticket response.

“Hardware Maintenance Services” means the provision of preventative and remedial maintenance to hardware owned by the Customer being provided by EX Networks, but does not include technical management of the hardware.

“Hosting Services” means those services provided by EX Networks to the Customer relating to hosting of Customer Systems in the Internet Data Centre.

"Incident" means any technical event which is not part of the standard operation of a device or service running on that device and which causes or may cause an interruption or reduction in the quality of the service running on the device or to the Managed Systems.

“Internet Data Centre(s)” means the data centre(s) as identified on the Sales Order Form.

“Initial Term” means a period of either: (1) stated on the Sales Order Form for the Services contracted at the Effective Date; or (2) the term for new Services as stated on subsequent Signed Sales Order Forms or where no term is specified a period twelve (12) months for the Service in either case from the Service Commencement Date of that particular Service.

“Installation Completion” means the date on which a Service has been installed.

“Leased Lines” means any third party leased lines or third party point to point circuits provided by EX Networks to the Customer as the Customer’s dedicated circuits. These do not form part of the EX Networks Systems.

“Managed Services” means the Services except Hosting Services; Connectivity Services; Hardware Maintenance Services; and, Monitoring Services.

“Managed Systems” means the elements of the Customer Systems which are managed by EX Networks as part of the Services, but exclude those parts of the Customer Systems which are not managed by EX Networks.

“Monitoring Services” means those of the Services which comprise the monitoring of, but not management of, the Customer Systems.

“MSA” means Master Services Agreement, this document (excluding any Signed Sales Order Forms and Addenda to the Agreement).

“Network Operations Centre” means a service, which forms part of the Services provided by EX Networks to the Customer, whereby EX Networks handles Support Tickets relating to Incidents, Problems and Change Requests on a 24/7/365 basis.

“On Demand Services” means those of the Services which are taken by the Customer where the price is stated but the monthly quantity for which the Customer is charged depends on the volume used by the Customer. These will include Bursting, storage used in excess of that billed in advance, cloud services and software and hardware provided under SPLA agreements.

“Payment Dates” means the first working day of each month during the Term unless otherwise specified on the Sales Order Form.

“Personal Data” has the meaning given to it under the Data Protection Laws, so far as it relates to the personal data, or any part of such personal data, of which EX Networks is the processor acting on the Customer's behalf and in relation to which the Customer is the controller.

“Problem” means the unknown root cause of one or more existing or potential Incidents.

“Purchased Equipment” means any equipment purchased by the Customer from EX Networks or Affiliate of EX Networks.

“Representatives” mean the Customer individuals identified in writing on the Customer Authorisation & Access List and authorised by the Customer to enter the Customer Area.

“Scheduled Maintenance” means any maintenance performed on the EX Networks Systems or Customer Systems from time to time which shall be notified to the Customer at least 72 hours in advance of the commencement of such maintenance and the timing of which has not been requested to be changed by Customer at least 24 hours prior to the time the maintenance is due to occur.

“Service(s)” means the specific service(s) provided by EX Networks as stated in Signed Sales Order Forms or provided as On Demand Services. These will comprise the Hosting Services, Connectivity Services, Leased Line Services, Managed Services, On Demand Services, supply of Purchased Equipment and other Services as specified.

“Service Live Date” means the date EX Networks begins providing each of the Service(s) to the Customer as specified in Clause 2.1(a).

“Service Credits” are as defined in Clause 5.2 and the relevant Service Level Agreements.

“Service Failure” means the period of unavailability, outage or other failure in a Service. All Service Failure measurements are based on EX Networks' internal monitoring equipment and records. Periods of at least one (1) minute are counted and measurements will be rounded to the nearest minute increment. The unavailability of a Service due to an Excluded Event will not constitute a Service Failure.

“Service Levels” and “Service Level Agreements” or “SLAs” are as set out in the relevant Addenda.

“Signed Sales Order Form” or “SOF” means either an EX Networks proposal that is returned and signed by Customer, a purchase order raised by Customer referencing an EX Networks proposal or a signed EX Networks Sales Order Form. All cases are accepted by EX Networks.

“Subsequent Term” means additional service term(s) of one year following the Initial Term, unless otherwise specified in the Sales Order Form.

"Supervisory Authority" means any data protection authority with jurisdiction over the processing of the Data.

"Support Ticket" means a ticket generated by EX Networks in response to the Customer reporting a fault to the EX Networks Network Operations Centre or EX Networks detecting a fault with a Service.

"System" means the hosting services, the EX Networks' Hardware and the Network as the same operate together in the provision of the hosting services.

"Term" consists of the Initial Term and any Subsequent Terms.

"Ticket Closure" is when the Support Ticket is deemed closed, when a Service Failure has been rectified.

"Ticket Open" means the logging of a Support Ticket by EX Networks or the Customer.

## **2. SERVICES COMMENCEMENT AND TERM**

### **2.1 Commencement of Services**

- (a) The Service Live Date for each Service shall be on Installation Completion.

### **2.2 Term**

- (a) The term for each Service will commence on the Service Live Date. Each Service shall be provided for its Initial Term and any Subsequent Terms, subject to the provisions of Clause 10.
- (b) After the expiry of the Initial Term each Service shall be provided for further periods of the Subsequent Term on each anniversary of the Service Live Date for each Service unless that Service is terminated by either party in accordance with the provisions of Clause 10.1. Customer recognises EX Networks' pricing takes into account many factors including but not limited to advance replacement equipment commitments, commitments to Internet Data Centre providers, carrier commitments, external software costs, initial costs of learning client systems, technical pre-sales and implementation costs which are not fully re-charged to the Customer, technical staffing, staff training and insurance arrangements. Strict commitments to Initial and Subsequent Term commitments and notice periods are therefore of the essence.

### **2.3 Repurposing of Services**

Subject to clause 2.4, during the term of the Agreement EX Networks may, on written request of the Customer, repurpose any of the Services for other Services which form part of the then service catalogue of EX Networks and are substantially similar in nature to the existing Services being repurposed. Unless EX Networks agrees in writing Services may not be repurposed for other Services which are not substantially similar in nature, for example Managed Services may be repurposed for other Managed Services but may not be repurposed for Hosting Services. On terms agreed with the Customer EX Networks may charge the Customer for:

- (a) Any additional engineering time, set-up fees or one-off costs to provision the new Services.
- (b) Additional monthly management costs where EX Networks' standard price for the monthly management costs of the new requested Services is in excess of the monthly management costs for the existing Services which are being re-provisioned. Only the incremental monthly management cost would be charged and would be subject to receiving a Signed Sales Order Form for the incremental amount.

### **2.4 Services which may not be repurposed**

Services where EX Networks has a large third party cost to deliver its Services may not be repurposed as EX Networks is likely to have specific commitments to 3rd parties to deliver these Services to Customer, specific examples would include:

- (a) Hosting in certain data centres
- (b) Leased Lines
- (c) DDoS mitigation Services
- (d) Hardware Maintenance Services

## 2.5 Relocation

- (a) EX Networks shall have the right upon prior written notice to relocate the Customer Equipment. In the event of an emergency, EX Networks may relocate the Customer Equipment within such time as may be reasonable and with such prior written notice as the circumstances reasonably warrant and EX Networks shall work in cooperation with the Customer. The site of relocation shall be comparable to the initial Licensed Space. All reasonable costs of relocating the Customer Equipment and of improving the new area to which the Customer Equipment is being relocated shall be borne by EX Networks. Upon any such relocation, the rights granted by this Agreement shall be deemed to apply to such portion of the Facility in which the Customer Equipment is then located by EX Networks.
- (b) Subject to Clause 2.5 (a), EX Networks reserves the right at its own expense to change the location or configuration of the Licensed Space, provided however that EX Networks shall not arbitrarily or discriminatorily require such changes. EX Networks and the Customer shall work in good faith to minimize any disruption in the Customer's services that may be caused by such changes in location or configuration of the Licensed Space.

## 3. FEES AND PAYMENT TERMS

3.1 Fees and Price Increases. Customer will pay all fees due as provided for in this Agreement. EX Networks may change or increase the prices it charges Customer for any Service as follows:

- (a) During the Initial Term. (1) Annually on each anniversary of the Effective Date an amount of the higher of (i) 5% or (ii) the percentage increase from the preceding 12 months in the official RPI index or, if this index ceases to be published, any other retail price index published in substitution. EX Networks is entitled to charge increased prices with retrospective effect within 1 year from the date on which the increased prices were eligible to have been charged on the basis of this Clause 3.1 (a);

and, (2) additional price increases for some of the Services live at the Live Date as specified in the Sales Order Form.

- (b) At any time after the Initial Term of the contract. Any price increase will be effective thirty (30) days after providing written notice to Customer which notice may be given during the Initial Term to be effective when it ends. In the event that Customer does not agree with the revised pricing, notwithstanding the notice periods referred to in clause 10.1 of this Agreement and excluding any prices increases under Clause 3.2, it can, within thirty (30) days of receipt of the revised pricing, give written notice to EX Networks that it will terminate this Agreement with effect from the date the revised pricing was to be effective from.

3.2 Notwithstanding the provisions of Clause 3.1 EX Networks may increase charges at any time to pass to the Customer at cost and with 30 days prior written notice, any increased charge received from an EX Networks supplier to any component of the Customer's Service. Such increases may include but are not limited to, power cost, SPLA agreements, currency



fluctuations and legislative changes or changes in taxation that increase EX Networks' costs in providing the Services.

- 3.3 **Payment Terms.** (i) payment of charges for any set-up and/or non-recurring Services is due on acceptance of Signed Sales Order Form; (ii) ongoing Services are payable each month in advance on the Payment Dates, provided that the first charge for each new Service will comprise an appropriate proportion of the fees for the Service from the Service Live Date to the next Payment Date; (iii) On Demand Services will be invoiced monthly in arrears and payable 30 days after receiving the invoice; (iv) hardware and software is payable on delivery, unless specifically stated on the Signed Sales Order Form; (v) all payments will be made in the United Kingdom in Pounds Sterling.
- 3.4 **Payment Methods.** (i) Payment methods include credit cards (including MasterCard and Visa) via Worldpay, debit cards (including Maestro (Switch), Solo and Visa Electron) via Worldpay, Bank Transfers (Standing Orders) and PayPal; (ii) Certain products may not have all methods available; (iii) should your chosen payment method fail, EX Networks will attempt to settle your invoice using any other payment facilities available on your account.
- 3.5 **Bursting Fees.** Customer will be charged for Bursting in any month at a rate of one hundred and twenty five percent (125%) of the per unit price it pays for its CDR connectivity. In the event CDR connectivity is provided to the customer at no additional charge, the customer will be charged for Bursting in any month at a rate of one hundred and twenty five percent (125%) of the per unit recommended retail price (RRP).
- 3.6 **Aggregation of power usage.** Unless specified otherwise in the Sales Order Form, where the Customer has more than one rack located in the same suite in any Internet Data Centre, EX Networks shall total the power usage across all the Customer racks in that Suite ("Aggregated Power Usage") to determine whether the Customer is using excess power in that Suite ("Excess Power Usage"). As an example, if the Customer pays for 2 racks in the same Suite which are drawing 8amps and 16amps of power respectively but has contracted for 2 racks drawing 14amps of power, the Aggregated Power Usage is 24amps and contracted power usage 28amps so there is no Excess Power Usage.
- 3.7 **Excess power usage.** Where any rack or Customer Area is drawing more power than has been contracted on a Signed Sales Order Form EX Networks may, at its sole discretion, do any or all of the following:
- (a) require that the Customer reduces the power draw to that contracted in the relevant Signed Sales Order or Addendum to this contract within thirty (30) days; and
  - (b) should the Customer: (i) not comply with Clause 3.6 (a); or (ii) EX Networks has made a request in writing under Clause 3.7 (a) in connection with any Customer Area or rack within a Customer Area four times in any six-month period, a power breach ("Power Breach") shall be deemed to have occurred. EX Networks may terminate the Hosting Services in connection with any racks or Customer Area which have committed a Power Breach by providing five (5) working days' notice to Customer; and/or
  - (c) charge the Customer for the Excess Power Usage at a rate of £150.00 per amp or part thereof.
- 3.8 **Late Payments: Interest.** Any payment not received within thirty (30) days of the invoice date will accrue interest at a rate of HSBC base rate plus 8%, or the highest rate allowed by applicable law, whichever is lower, and calculated on a monthly basis.
- 3.9 **Late Payments: Suspension of Services.** If Customer is delinquent in its payments, except in connection with invoices which have not been reasonably disputed and the reason for the

dispute notified in writing to EX Networks, EX Networks may suspend some or all of the Services provided to the Customer on the following basis:

- (a) EX Networks shall issue a written notice to Customer detailing the amounts outstanding, requesting payment of them and stating that it has the right to suspend some or all of the Services in the event that payment is not received within ten (10) working days of Customer receipt of the written notice.
- (b) In the event that payment is not received within ten (10) working days of Customer receipt of the written notice EX Networks may suspend any Service or part or portion of any Service until the outstanding payments are settled in full including amounts owed in interest.
- (c) Notwithstanding the suspension of the Services in accordance with this Clause the Customer shall remain liable to pay for any suspended Services during the period of suspension.
- (d) Following disconnection, a reconnection and administration fee is applied and charged at £200.00.

3.10 If a Customer reasonably disputes any portion of an invoice, the Customer must pay the undisputed portion of the invoice and submit a written claim for the disputed amount within ten (10) working days of receipt of the invoice by the Customer. If the Customer disputes any portion of an invoice based upon usage of the Services, EX Networks' records of such usage shall be presumed to be accurate unless proved otherwise by an independent expert. The Customer waives the right to dispute any charges not disputed within 14 days of the invoice date.

3.11 If an invoice remains unpaid for more than thirty (30) days after the due date, EX Networks may exercise a general lien over any equipment stored by the customer at the location agreed in the Service Order. EX Networks shall be entitled upon written notice (or immediately if the customer is found to be in insolvency) to seize and thereafter dispose of such equipment as EX Networks deems fit and apply any proceeds firstly to the cost of disposal and secondly against the amounts unpaid. In conducting any sale EX Networks shall act in good faith but shall owe the Customer no other duty.

3.12 Tax. Value Added Tax or other applicable taxes will be added to fees charged by EX Networks, which Customer will be responsible for paying.

#### **4. CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY**

4.1 Confidential Information. Each party acknowledges that it will have access to certain Confidential Information of the other party during the Term. Each party agrees that it will not use in any way, for its own account or for any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party, any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information, at least as stringent as the measures it takes to protect its own Confidential Information. Notwithstanding the foregoing, a party ("the Disclosing Party") may disclose the other party's Confidential Information (i) to any of its consultants, contractors and professional advisers who have a need to know the Confidential Information and have executed a protective non-disclosure agreement with the Disclosing Party, or (ii) as required by court order.

4.2 Intellectual Property. This Agreement does not transfer from EX Networks to the Customer any EX Networks Technology, and all right, title and interest in and to EX Networks Technology will remain solely with EX Networks. This Agreement does not transfer from the Customer to EX Networks any Customer Technology, and all right, title and interest in and to

Customer Technology will remain solely with Customer. EX Networks and the Customer each agrees that it will not reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party.

## 5. EX NETWORKS REPRESENTATIONS AND WARRANTIES

- 5.1 Service Level Agreements for the Service(s) are given in the Addenda and form an integral part of this Agreement.
- 5.2 Service Credits are as defined in the Service Level Agreements. The applicable Service Level Agreement provides the Customer's sole and exclusive remedies for any Service Failures. The parties agree that Service Credits constitute liquidated damages. Service Credits:
- (a) will not be given where any Service Failure is caused by an Excluded Event;
  - (b) may only be claimed by the Customer for the Affected Service;
  - (c) may only be claimed by the Customer for a Service Failure affecting its systems, the Customer is not entitled to claim Service Credits on behalf of its users for consequential interruption or failure of the Customer's services;
  - (d) may not be claimed by the Customer, at the date of the Service Failure, if the Customer is in arrears of payment to EX Networks or is otherwise in breach of the Agreement.
  - (e) will not exceed in aggregate in any calendar month 50% of the monthly amount paid by the Customer for the Affected Service, save where the contrary is expressly stated in the relevant Addendum;
  - (f) may only be claimed by the Customer in writing within thirty (30) days of the Service Failure.
- 5.3 EX Networks does not and cannot control the flow of data to or from the EX Networks Systems and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the Customer's connections to the Internet (or portions thereof). Although EX Networks will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, EX Networks cannot guarantee that such events will not occur and disclaims all liability resulting from or related to such events.
- 5.4 Unless the Customer has purchased a DDoS mitigation service from EX Networks, EX Networks may, following communicating such issue to Customer and using reasonable endeavours to first mitigate such attack, temporarily remove connectivity to the Customer's network or equipment if Customer is undergoing a DOS, DDOS or similar attack on their network, equipment or website
- 5.5 EX Networks warrants that it will perform its obligations under this Agreement with reasonable care and skill.
- 5.6 Save as expressly set out in this Agreement and save for any express warranties provided by the manufacturer or supplier which the Customer may enjoy the benefit of in relation to equipment, the Services, the EX Networks Supplied Equipment, Purchased Equipment and any related equipment and materials provided by EX Networks in connection with the Services are provided without any warranties or representations of any kind, whether statutory, express or implied, including but not limited to, warranties of non-infringement, merchantability, fitness for a particular purpose, accuracy, completeness or any results to be achieved herefrom. EX Networks makes no warranties or representations concerning the compatibility of the Services, software or equipment or any results to be achieved therefrom. The Services and

equipment are provided on an “as is” basis. EX Networks does not warrant that the Services or the operation of any equipment will be uninterrupted or error-free. These disclaimers do not limit Customer’s ability to seek any applicable remedies under the Service Level Agreements.

## 6. CUSTOMER OBLIGATIONS

### 6.1 Warranties

- (a) The Customer represents and warrants that during the Term: (i) it has the legal right and authority to place and use Customer Equipment; (ii) the performance of its obligations and use of the Services and EX Networks Systems by the Customer and the Customer’s users will not violate any applicable laws, regulations or AUP; (iii) the performance of its obligations and use of the Services will not cause a breach of any agreements the Customer has with any third parties, and (iii) all equipment, materials and other tangible items placed by the Customer at Internet Data Centres will be used in compliance with all applicable manufacturer specifications.
- (b) In the event of any breach of any of the foregoing warranties and following notification to the Customer, in addition to any other remedies available under this Agreement, EX Networks will have the right, at its sole reasonable discretion, to suspend immediately any relevant Services or to block or divert traffic if reasonably deemed necessary by EX Networks to prevent any harm to EX Networks and its business. Any suspension or diversion will be on the most limited basis as EX Networks reasonably determines is practical under the circumstances.

6.2 The Customer acknowledges that EX Networks exercises no control over the content passing through the EX Networks Systems. Some Backup Services allow the Customer to select which of its content it wishes to back up and EX Networks will not be responsible or liable for any failure to restore an operational system for content the Customer did not select to be backed up. In any event the Customer is under an obligation to backup content in accordance with generally accepted standard procedures applicable to its sector and/or industry.

6.3 EX Networks shall in no circumstances (whether before or after termination of this Agreement) be liable to the Customer for any loss of or corruption to data or programs held or used by or on behalf of the Customer and the Customer shall at all times keep adequate backup copies of the data and programs held or used by or on behalf of the Customer.

6.4 Customer’s access to the Internet Data Centres will be limited to the Representatives. Representatives may only access the Customer Area in the Internet Data Centre(s).

### 6.5 EX Networks Supplied Equipment

- (a) On the Service Live Date EX Networks will deliver any EX Networks Supplied Equipment to the Customer Area, which the Customer will not remove from the Customer Area at any time for any reason.
- (b) The EX Networks Supplied Equipment will remain the personal property of EX Networks. The Customer will have no right or interest in or to the EX Networks Supplied Equipment and will hold the EX Networks Supplied Equipment subject to and subordinate to the rights of EX Networks. The Customer will not attempt to sell or dispose of the EX Networks Supplied Equipment. Customer shall keep the EX Networks Supplied Equipment free and clear from any liens or encumbrances of any kind (except any caused by EX Networks). The Customer will not remove or alter any labels on the EX Networks Supplied Equipment stating that it is the property of EX Networks.
- (c) The Customer will allow the inspection of the EX Networks Supplied Equipment at any time.

- (d) The Customer will, at its own expense, keep the EX Networks Supplied Equipment in good repair, appearance and condition, other than normal wear and tear. Any parts furnished in connection with any repair or maintenance of EX Networks Supplied Equipment will be manufacturer authorised parts and will become components of the EX Networks Supplied Equipment and the property of EX Networks. The Customer will use the EX Networks Supplied Equipment in compliance with the manufacturer's or supplier's instructions.
- (e) The Customer acknowledges that it has selected any EX Networks Supplied Equipment and/or Purchased Equipment and has not relied upon any statements or representations from EX Networks in making its selection. The Customer acknowledges and agrees that its use and possession of any EX Networks Supplied Equipment and/or Purchased Equipment will be subject to and controlled by the terms of any manufacturer's or, if appropriate, supplier's warranty, and Customer agrees to look solely to the manufacturer or, if appropriate, supplier with respect to all mechanical claims.
- (f) The Customer will acquire title to any Purchased Equipment upon full payment of the purchase price to EX Networks or any Affiliate of EX Networks. Prior to full payment being received title will remain with EX Networks or whichever Affiliate of EX Networks has sold the Purchased Equipment to the Customer.

6.5 EX Networks Third Party Suppliers. The Customer is aware that EX Networks uses certain third suppliers in the provision of the Hosting and DDoS Services, whom EX Networks manages to provide a seamless Service to the Customer. Should any of these suppliers cease trading or their relationship with EX Networks be terminated, EX Networks shall, in good faith, continue to provide the Customer with a similar service using a different third party supplier at the then current cost. In the event that no other third party supplier is able to provide such a service or not at the same price, EX Networks shall give the Customer the option, at its sole discretion, of: (1) taking a similar service from a different supplier at a revised cost, or (2) notwithstanding the provisions of clause 10.1 terminate the applicable Service from the date the Service ceases or supplier is changed.

6.6 Throughout the Term, the Customer will respond to EX Networks' requests for information on a timely and co-operative basis.

## **7. LIMITATIONS OF LIABILITY**

- 7.1 Nothing in this Agreement will exclude or limit a party's liability for death or personal injury arising as a result of its negligence, for fraud or fraudulent misrepresentation or for any other liability which cannot be excluded or limited under English law.
- 7.2 The liability of either party for its indemnity obligations under this Agreement will be unlimited.
- 7.3 In no event will either party be liable or responsible to the other for any type of incidental, punitive, special, indirect or consequential damages, including, but not limited to, lost revenue, lost or imputed profits or revenues, replacement goods, loss of technology, rights or services, loss of data, software or firmware or interruption or loss of use of service or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise.
- 7.4 Limitation not related to Customer Equipment. Subject to Clauses 7.1 to 7.3 above and except for: (i) loss of or damage to Customer Equipment to which Clause 7.5 applies; and (ii) the liability of the Customer to pay the fees due under this Agreement including any fees due during notice periods during this Agreement, the total aggregate liability of either party arising from or related to this Agreement, for tortious acts or omissions including negligence and breach of statutory duty or actions arising out of misrepresentation (unless fraudulent which

will be unlimited) will be limited to the higher of: (i) the total net payments paid by the Customer to EX Networks in the twelve month period immediately preceding the date on which the claim or series of connected claims arises or (ii) the total net payments due by Customer to EX Networks in the twelve month period immediately following the date on which the claim or series of connected claims arises.

- 7.5 Customer Equipment. EX Networks' total liability for loss of or damage to Customer Equipment that arises from any act or omission for which EX Networks is liable will be limited in aggregate to the lesser of: (i) the sum of twenty thousand pounds (£20,000) per year, and (ii) the actual loss of the Customer having fully complied with all the terms of this Agreement. For the avoidance of doubt, EX Networks shall have no liability for loss of or damage to the Customer Equipment caused by the acts or omissions of Customer, its employees, contractors or agents. The Customer is responsible for ensuring that its property is properly and fully insured.

## 8. INDEMNIFICATION

- 8.1 Customer Indemnification. The Customer will indemnify EX Networks and hold it harmless against any and all costs, expenses including legal costs, liabilities, losses, damages, claims, demands and judgments (collectively "Losses") resulting from any claim, action, suit or proceeding (each an "Action") which EX Networks incurs or suffers relating to:
- (a) the Customer infringing the intellectual property rights of EX Networks or a third party;
  - (b) the content or data stored on the Customer Equipment or transmitted through the EX Networks Systems;
  - (c) any damage to an Internet Data Centre or any third party's equipment at an Internet Data Centre caused by Customer, any employee, contractor or agent of Customer;
  - (d) a breach of an AUP
  - (e) the Customer's failure to keep any EX Networks Supplied Equipment free and clear from any liens or encumbrances of any kind (except any caused by EX Networks).
- 8.2 EX Networks Indemnification. EX Networks will indemnify the Customer and hold it harmless against any and all costs, expenses including legal costs, liabilities, losses, damages, claims, demands and judgements (collectively "Losses") resulting from any claim, action, suit or proceeding (each an "Action") which the Customer incurs or suffers as a result of any claim that EX Networks Technology used in the provision of the Services infringes the intellectual property rights of a third party. If EX Networks Technology has become (or in EX Networks' reasonable judgment is likely to become) the subject of an Action: EX Networks will, at its option and expense, (i) procure for the Customer the right to make continued use thereof, or (ii) replace or modify the EX Networks Technology with substantially similar technology. If (i) or (ii) above are not feasible, EX Networks may terminate the relevant Service without further liability to which the infringing EX Networks Technology relates.
- 8.3 Each party's indemnification obligations hereunder will be subject to (i) receiving prompt written notice of the existence of any Action; (ii) the indemnifying party being able to control the defence of the Action; (iii) permitting the indemnified party to participate in the defence of any Action; and (iv) receiving full cooperation of the indemnified party in the defence thereof.

## 9. TERMINATION

- 9.1 Termination by Notice. Either party may terminate this Agreement or any or all of the Services by serving the other party with at least ninety (90) days written notice prior to the end of the

Initial Term or any Subsequent Term. Pro-rata refunds will not be issued for services that are cancelled before their relevant billing cycle or next due date.

- 9.2 Termination for Cause. Either party may terminate this Agreement if (i) the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within five (5) working days after receipt of written notice from EX Networks; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.
- 9.3 Termination of certain Hosting Services due to Power Breach. EX Networks may terminate certain of the Hosting Services in event of a Power Breach in accordance with Clause 3.7.
- 9.4 Upon the effective date of termination of this Agreement:
- (a) EX Networks will immediately cease providing all Services;
  - (b) all payment obligations of the Customer under this Agreement for Services provided through to the date of termination will immediately become due;
  - (c) within thirty (30) days of such termination, each party will return or destroy all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement;
  - (d) within five (5) days of termination the Customer will (i) remove from the Internet Data Centres all Customer Equipment (excluding any EX Networks Supplied Equipment) and any other Customer property; (ii) deliver or make available all EX Networks Supplied Equipment to an authorised representative of EX Networks, and (iii) return Customer Area to EX Networks in the same condition as it was on the Service Commencement Date for Customer Area, normal wear and tear excepted. If the Customer does not remove Customer Equipment and its other property within such five-day period, EX Networks will have the option to (i) move any and all such property to secure storage and charge the Customer for the cost of such removal and storage, and/or (ii) liquidate the property in any reasonable manner to satisfy any unpaid sums. Any proceeds which remain after the costs of the liquidation, including any expenses related to the removal, storage or sale and satisfaction of any outstanding balance owed by Customer to EX Networks will be returned to the Customer.
- 9.5 Survival. The following provisions will survive any expiration or termination of the Agreement: Clauses 3, 4, 7, 8, 9 and 12 (excluding 12.2).

## 10. ACCEPTABLE USE POLICY

- 10.1 It is the Customer's responsibility to ensure that no content or services are provided or made available by the Customer or to any customers or end-users of the Customer, which violate applicable laws. In this section, reference to the Customer shall always include the Customer's customers.
- 10.2 Nothing in this policy shall constitute or be construed as constituting an obligation for EX Networks to monitor the legality of the Customer's services or acknowledging any responsibility for the Customer's actions or inactions.

- 10.3 The Customer agrees that it may be held liable for actions or inactions of its customers, in particular if the Customer fails to take action in the event that it obtains actual knowledge of an infringement of this AUP.
- 10.4 The Customer agrees that whilst the contractual relationship with EX Networks is governed by the law as specified in this MSA, other national or international laws may be applicable. A violation of these laws also constitutes a violation of the Customer contract entitling EX Networks to impose the agreed sanctions on the Customer including those stated under 10.8 (d) below. For example, in the case of electronic communication, the law of the recipient is applicable to determine whether electronic communication is spam or legitimate e-mail. In brief, it is the customer's sole responsibility to ensure that domestic laws as well as laws applicable in the country of the addressee of the services are being abided by.
- 10.5 In the event that EX Networks identifies use of a Service by the Customer which causes malware infection or system vulnerability which could be used to damage EX Networks' or Customer's network, it shall be entitled to request that the Customer closes such exposures and/or removes the malware (as appropriate).
- 10.6 The Customer agrees that it will not, and will not allow third parties to, use the Services:
- (a) to generate or facilitate unsolicited bulk commercial email (spamming);
  - (b) to violate, or encourage the violation of, the legal rights of others;
  - (c) for any unlawful, invasive, infringing, defamatory, or fraudulent purpose, including for any purpose related to illegal file sharing, gambling or gaming;
  - (d) to intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes, or other items of a destructive or deceptive nature or to otherwise disseminate illicit code; or
  - (e) to alter, disable, interfere with or circumvent any aspect of the Services with the potential effect of endangering or detrimentally affecting the integrity of EX Networks' network.
- 10.7 The Customer agrees that it will not under any circumstances use or allow use by third parties of EX Networks' Services for making available, linking to or endorsing any of the following subject matter:
- (a) child pornography or depictions of children and young people in an unnatural sexual pose including virtual depictions thereof;
  - (b) bestiality;
  - (c) Nazi propaganda or incitement to racial hatred;
  - (d) denial of Holocaust;
  - (e) illegal depictions of cruelty or glorification of violence against human beings or virtual depictions thereof;
  - (f) glorification of war; or
  - (g) depictions of people suffering in a manner that violates their human dignity.
- Breaches of clauses 10.5, 10.6 and 10.7 of this AUP by the Customer shall constitute a material breach of this policy.
- 10.8 The parties agree that the following complaints procedure shall apply in respect of breaches of clauses 10.5, 10.6 and 10.7 of this AUP and the Customer authorises EX Networks to take such actions necessary to mitigate any liability or risk for EX Networks, its directors, employees or agents as is necessary as a result of a breach of this AUP by the Customer.



- (a) Communication under this complaints procedure shall be provided in writing which shall include e-mail and communications via an EX Networks support ticket. In the event that EX Networks obtains knowledge of use of its Services which is either (i) in breach of this AUP, or (ii) otherwise unlawful, EX Networks will inform the Customer. The Customer must respond to this communication within 48 hours, unless a shorter response time is required (and in such circumstances EX Networks will specify the response time required).
- (b) Within its response, the Customer must state how it will remedy the alleged breach of clauses 10.5, 10.6 and 10.7 of this AUP and when it will do so.
- (c) The Customer will provide EX Networks with evidence that the breach has been remedied within the deadline proposed by the Customer in its response. Where required by third parties or otherwise appropriate, EX Networks may make the provision of Services dependent on the execution of a cease and desist declaration or evidence that a Customer's own customer has been permanently excluded from using the services where this Customer's customer was responsible for the breach.
- (d) In the event that the Customer commits a breach of clauses 10.5, 10.6 and 10.7 of this AUP, EX Networks is entitled at its sole discretion to suspend the provision of the Services, or to terminate summarily the relevant SOF (either totally or partially):
  - (i) if the Customer fails to respond (in accordance with subsections 10.8 (a) and (b) of this AUP) to EX Networks' communication that a breach has been committed, or
  - (ii) if EX Networks is not satisfied with the time to remedy the breach proposed by the Customer, or
  - (iii) if EX Networks reasonably considers that the breach is so serious as to warrant immediate suspension of the Services or SOF or termination of the Master Services Agreement (and in these circumstances EX Networks shall not be obliged to follow the notification procedure in subsections 10.8(a) and 10.8(b) of this AUP, provided that a suspension of Services or an early termination of a SOF will not affect the Customer's obligation to pay any fees outstanding for the provision of Services).

## 11. DATA PROTECTION

- 11.1 Each party shall comply with all applicable requirements of the Data Protection Law. This clause is in addition to, and does not relieve, remove, or replace, a party's obligations under the Data Protection Law.
- 11.2 The Customer is solely and wholly responsible for establishing and maintaining the lawful basis for the processing of personal data by EX Networks under this Agreement, including where applicable obtaining all necessary consents from data subjects, and the Customer shall notify EX Networks in writing on request of the applicable lawful basis for any processing EX Networks is required to perform under this Agreement. The parties acknowledge that for the purposes of the Data Protection Law, the Customer is the Data Controller and EX Networks is the Data Processor.
- 11.3 The following is a description of the data processing carried out by EX Networks under this Agreement.
  - (a) Subject matter of the processing.  
The processing of personal data to the extent necessary for the provision of the goods or services set out in this Agreement by EX Networks to the Customer.

- (b) Duration of the processing.  
The duration of the processing of personal data by EX Networks under this Agreement is the period of this Agreement and the longer of such additional period as: (i) is specified in any provisions of this Agreement regarding data retention; and (ii) is required for compliance with law.
- (c) Nature of the processing.  
Such processing as is necessary to enable EX Networks to comply with its obligations and exercise its rights under this Agreement, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.
- (d) Purpose of the processing.  
The performance of EX Networks' obligations and exercise of its rights under this Agreement, including the performance of functions required or requested by the Customer for the Customer's compliance with its statutory and/or contractual obligations.
- (e) Personal data types.  
Personal data provided to EX Networks by or on behalf of the Customer, including personal data provided directly to EX Networks by a data subject or third party: (i) on the instruction or request of the Customer; or (ii) on the request of EX Networks where EX Networks has been authorised to make such request by the Customer or is legally required to make such request. The personal data processed under this Agreement will include (depending on the scope of Services provided): name; address; date of birth; gender; nationality; shareholder reference number (SRN); national ID; tax number; email address; telephone number; fax number; bank name, account number and sort code; power of attorney details.
- (f) Categories of data subjects.  
Personal data related to individuals associated with the Customer (including its past, current, and future shareholders, directors, officers, employees, agents, and contractors).
- (g) Obligations and rights of the controller.  
As set out in this Agreement.
- 11.4 In respect of the personal data processed by EX Networks as a data processor acting on behalf of the Customer under this Agreement, EX Networks shall:
- (a) process the personal data only on the Customer's written instructions, unless required by law to process it differently (in which case it shall, if permitted by such law, promptly notify the Customer of that requirement before processing);
- (b) process the personal data only to the extent, and in such a manner, as is necessary for the purposes of carrying out its obligations under this Agreement;
- (c) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised, unlawful or accidental processing, including accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data, such measures in each case to be appropriate to the likelihood and severity of harm to data subjects that might result from the unauthorised, unlawful or accidental processing, having regard to the state of technological development and the cost of implementing any measures. Without limitation, EX Networks shall implement any and all specific technical and organisational measures required by the Customer as may be set out in this Agreement;
- (d) ensure that persons engaged in the processing of personal data are bound by appropriate confidentiality obligations;
- (e) keep a record of the processing it carries out, and ensure the same is accurate;

- (f) comply promptly with any lawful request from the Customer requesting access to, copies of, or the amendment, transfer or deletion of the Personal Data to the extent the same is necessary to allow the Customer to fulfil its own obligations under the Data Protection Law, including the Customer's obligations arising in respect of a request from a data subject (EX Networks shall be entitled to charge a reasonable fee for dealing with such requests as listed in this sub clause (f));
- (g) notify the Customer promptly if it receives any complaint, notice or communication (whether from a data subject, competent supervisory authority or otherwise) relating to the processing, the personal data or to either party's compliance with the Data Protection Law as it relates to this Agreement, and provide the Customer with reasonable co-operation, information and other assistance in relation to any such complaint, notice or communication (EX Networks reserves the right to charge a reasonable fee for any assistance required in respect of this sub-clause (g));
- (h) notify the Customer promptly if, in its opinion, an instruction from the Customer infringes any Data Protection Law (provided always that the Customer acknowledges that it remains solely responsible for obtaining independent legal advice regarding the legality of its instructions) or EX Networks is subject to legal requirements that would make it unlawful or otherwise impossible for EX Networks to act according to the Customer's instructions or to comply with Data Protection Law;
- (i) not permit any processing of the personal data processed by EX Networks under this Agreement by any agent, sub-contractor, supplier, processor or other third party (all of whom will be a "sub-processor") without the prior written authorisation of the Customer;
- (j) ensure that it has entered into or (as the case may be) will enter into written agreements with any sub-processor engaged in the processing of the personal data, which shall incorporate terms equivalent to the terms set out in this Data Protection Schedule;
- (k) not transfer personal data outside of the European Economic Area (other than the Customer's transmission and receipt of the data over the Internet and the use of similar networks that may involve part of the network being located outside the European Economic Area and/or the United Kingdom), unless the prior written consent of the Customer has been obtained;
- (l) inform the Customer without undue delay on becoming aware of a Personal Data breach;
- (m) inform the Customer promptly (and in any event within five (5) business days) if it receives a request from a data subject for access to that person's personal data and shall:
  - (i) promptly provide the Customer with reasonable co-operation and assistance in relation to such request (EX Networks reserves the right to charge the Customer a reasonable fee for any such assistance provided); and
  - (ii) not disclose the personal data to any data subject (or to any third party) other than at the request of the Customer or as otherwise required under this Agreement or by Law;
- (n) provide reasonable assistance to the Customer in responding to requests from data subjects and in assisting the Customer to comply with its obligations under Data Protection Law with respect to security, breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators (EX Networks reserves the right to charge the Customer a reasonable fee for any such assistance provided);
- (o) delete or return that personal data to the Customer at the end of the duration of the processing as referred to in clause 11.3, and at that time delete or destroy existing copies, save for those copies that the EX Networks is required to keep for its own and regulatory audit purposes;

- (p) subject to the requirements of commercial and Customer confidentiality, make available to the Customer such information as is reasonably required to demonstrate compliance with this Data Protection clause.
- 11.5 Subject always to the requirement of clause 11.4(j) regarding a written contract, the Customer hereby gives its prior written authorisation to the appointment by EX Networks of each of the sub-processors or categories of sub-processors (as the case may be) who will process personal data listed in clauses 11.5(a) 11.5(b) and 11.5(c) to this Agreement, and to the extent this authorisation is in respect of a category of sub-processors, EX Networks shall inform the Customer of any intended changes concerning the addition or replacement of other sub-processors:
- (a) Outsourced service providers subcontractors.  
Use of personal data in the provision of outsourced services which EX Networks has sourced in order to perform the contractual services and/or supply of goods.
- (b) Banks and other regulated financial services providers.  
Use of personal data where required in order to enable payment of the contract to be made.
- (c) Technology service providers such as Cloud Services providers.  
User of personal data to facilitate the performance of the contract.
- 11.6 Either party may, at any time on not less than thirty (30) days' notice, propose any variations to clause 11 which it reasonably considers to be necessary to address the requirements of any Data Protection Law and the other party shall not unreasonably withhold consent to these.

## 12. MISCELLANEOUS PROVISIONS

- 12.1 Force Majeure. Neither party will be liable for any failure or delay in performance under the Agreement (other than a failure to comply with payment obligations) due to a Force Majeure Event. If EX Networks is unable to provide Service(s) for a period of thirty (30) consecutive days as a result of a continuing Force Majeure Event, either party may terminate the Agreement by providing thirty (30) days written notice to the other party.
- 12.2 Marketing. The Customer agrees that EX Networks may publicly refer to the Customer as a customer of EX Networks. Any press release about the Customer's use of the Services requires the written consent of the Customer.
- 12.3 Non-Solicitation. During the Term and continuing for one (1) year after termination, the Customer agrees that they will not, and will ensure its Affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed or contracted by EX Networks. In the event that the Customer employs or engages an Employee of EX Networks, the Customer will pay a sum equivalent to the annual salary or remuneration of the Employee, which the parties agree is a genuine estimate of the loss suffered by EX Networks for the breach.
- 12.4 No Third Party Beneficiaries. EX Networks and the Customer agree that there will be no third party beneficiaries to this Agreement.
- 12.5 Governing Law and Jurisdiction. This Agreement is made under and will be governed by and construed in accordance with English Law and subject to the exclusive jurisdiction of the courts of England.
- 12.6 Severability; Waiver. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will

not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

- 12.7 Assignment. Neither party may assign its rights or delegate its duties under this Agreement either in whole or part without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.
- 12.8 Notice. All legal notices required to be given hereunder will be in writing and deemed given if sent to the address of the receiving party as listed on this Agreement or at such other address for service as may hereafter be furnished in writing by either party to the other party. Notification by fax, second class post and by e-mail will not be accepted as legal notice for this purpose. Legal notice will be deemed served (a) by first class United Kingdom post, two business days after such mailing or (b) by courier or hand, the next business day. All other notices (e.g. notice reminder of non-payment) may be sent via facsimile or email and will be deemed given on the day such notice is delivered.
- 12.9 Relationship of Parties. EX Networks and the Customer are independent contractors and this Agreement will not establish any relationship or partnership, joint venture, employment, franchise or agency between third party beneficiaries and the Customer.
- 12.10 Entire Agreement. This Agreement represents the entire agreement between the parties relating to equipment and the Services. Each party acknowledges that in entering into this Agreement (and in ordering and accepting orders made pursuant to it) it does not rely on any statement, representation, assurance or warranty other than as expressly set out in this Agreement. The parties do not exclude any liability for fraudulent misrepresentation.

Authorised representatives of the Customer and EX Networks have read the foregoing and all Addenda incorporated therein and agree and accept such terms.

## ADDENDUM A: SLA FOR CONNECTIVITY AND LEASED LINE SERVICES

1. EX Networks will endeavour to provide the Connectivity Services and Leased Line Services in accordance with the Service Levels set out in this SLA.

2. Additional Definitions

The following capitalised terms consist of definitions used specifically in this Addendum:

(a) "Availability" is defined as the time during which the Customer is able to pass traffic through the EX Networks Systems.

(b) "Average Hourly Packet Loss" is calculated via the following formula =

$$\frac{\text{Sum of packets lost per hour} * 100}{\text{Total packets sent per hour}}$$

(c) "Average Monthly Availability" is calculated via the following formula =

$$\frac{(\text{Total Minutes in month} - \text{Total Unavailable Minutes in month}) * 100}{\text{Total Minutes in month}}$$

(d) "IP Transit Service" means an IP (Internet Protocol) Service whereby EX Networks customers are provided with connections to multiple providers' networks with dual connection points to the EX Networks IP platform.

(e) "Latency" means the average delay in milliseconds over a fifteen (15) minute period that it takes for a data packet to make a round trip around the EX Networks Systems and returned to Customer.

(f) "Packet Loss" means average percentage of (data) packets not delivered over EX Networks Systems when sent.

(g) "Total Unavailable Minutes" are defined as the period in minutes of Unavailability from Ticket Open to Ticket Closure.

(h) "Unavailability" is the monthly percentage of time (in minutes) during which Customer cannot pass traffic.

Time related to Excluded Events is excluded from all definitions used in this Addendum.

3. Service Levels and Service Credits

3.1 Unavailability

(a) Subject to the remaining provisions of this SLA, the target Availability for the Connectivity Services is one hundred percent (100%).

(b) Customer will be entitled to Service Credits for Unavailability (which will constitute a Service Failure) to the following amount:

Total Unavailable Minutes	Corresponding Service Credit
Each complete tranche of fifteen (15) minutes measured in any one calendar month	Equivalent of one day's charges for the Affected Service per each Unavailable fifteen (15) minute tranche
Therefore, by way of example, if Total Unavailable Minutes equal sixty five (65) minutes in one calendar month, Customer will be entitled to a Service Credit equivalent to four (4) days' charges for the Affected Service.	

3.2 Packet Loss Service Credit

If in any hour the Average Hourly Packet Loss exceeds one percent (1%) this will constitute a Service Failure and the Customer will be entitled to a Service Credit equivalent to the daily charge for the Affected Service.

3.3 Latency Service Credit

If the Latency exceeds 50 milliseconds in any calendar day this will constitute a Service Failure and the Customer will be entitled to a Service Credit equivalent to the daily charge for the Affected Service.

3.4 No multiple claims of Service Credits covering the same time period

The Customer will only be entitled to claim for one of the above Service Credits in relation to one time period affected by multiple Service Failures at the same time. Therefore if on one particular day the Customer is affected by Unavailability in excess of fifteen (15) minutes, one Average Hourly Packet Loss in excess of one percent (1%) and Latency exceeds 50 milliseconds, the Customer will only be entitled to claim one day's charges for the Affected Service in relation to the three failures.

3.5 Service Credits cannot be claimed in relation to time relating to Excluded Events and the Customer's entitlement to Service Credits is subject to the rest of the provisions of this Agreement, particularly Clause 5.2 of the MSA.

4. Leased Lines: Service Levels and Service Credits

4.1 3rd Party SLA

In connection with any Leased Lines, the SLA and Service Credit mechanism provided by the 3rd party providing the Leased Line Service shall be applied.

## **ADDENDUM B: DATA CENTRE FACILITIES SLA**

1. EX Networks provides like-for-like third party SLAs. In the event of a Service Outage at a third party facility, EX Networks shall pass the equivalent SLA Service Credit provided by the third party operator to the customer. Further details in relation to the specific SLA of the Colocation facility can be provided upon request.