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| --- |
| **Between: Surf Telecoms Ltd (a company registered in England and Wales with company number 02386327 whose registered office is at Avonbank, Feeder Road, Bristol, Avon, BS2 0TB) (“Surf”) and the Customer** |
| **Customer Details ("Customer"):** |  |  |
| **Full Company Name:**  |  |  | **Our Reference**:  |
| **Company Registered Address:** |  |  | **Customer Reference:**       |
| **Contact Name:** |  | **Telephone: Number:** |  |  | **Commencement Date**: Insert Date |
| **Email Address:** |  |  |  |  | **Term**:  |
|  |  |  |  | **Payment Instalment Period**: |
|  |  |  |  |
| **Authorisation:** |
| We agree to be bound by the Agreement (as defined in sub-clause 1.1 (Definitions and interpretation) of the attached terms and conditions). |
| **Signed by a duly authorised representative of Surf Telecoms Limited:** | **Date:** | Insert Date Signed |
| **Sign Here:** | ............................................. | **Name:**  |  | **Title:** | Insert Title |
|  |  |  |  |  |  |
| **Signed by a duly authorised representative of the Customer:** | **Date:** | Insert Date Signed |
| **Sign Here:** | ............................................. | **Name:**  |  | **Title:** |  |
|  |
| **Billing Details (if different from above):** |
| **Contact Name:** | Insert Name | **Telephone:**  | Insert Number | **Email:** | Insert Email |
| **Full Address:** | Insert Address | **Purchase Order No:** | Insert if supplied |

**Conditions to the Agreement for the Provision of Leased Bandwidth Services**

**Background:**

1. SURF operates and maintains the System.
2. The Customer wishes to use Capacity, and SURF wishes to grant to the Customer, a Right to Use Capacity.
3. SURF has agreed to grant to the Customer a Right to Use Capacity and the Customer agrees to use the Capacity on, and subject to, the terms of this Agreement.

**It is agreed as follows:**

## Definitions and interpretation

### In this Agreement, unless the context otherwise requires, the following words have the following meanings:

### "**Agreement**" this agreement (including the cover page to this Agreement, any schedule or annexure to it and any document which has been agreed in writing between the parties and is incorporated herein by specific reference);

### "**Acceptance Certificate**" the certificate referred to in paragraph 3 of Schedule 1;

### "**Acceptance Date**" the date on which the Acceptance Certificate is signed by the Customer or the Right to Use is otherwise deemed to be accepted in accordance with paragraph 3 of Schedule 1;

### “**Additional Charges**” means any BT Openreach additional excess construction charges or incidental charges identified and applicable in accordance with clause 4.7;

### "**Annual Charge**" the payment detailed in Schedule 5;

"**Applicable Law**" means:

#### any statute, directive, order, enactment, regulation, by-law, ordinance or subordinate legislation in force from time to time;

#### the common law and the law of equity;

#### any binding court order, judgment or decree;

#### any applicable industry code, policy or standard enforceable by law; and

#### any applicable direction, statement of practice, policy, rule or order that is given by a regulator,

### in any jurisdiction applicable to this Agreement;

### "**Associated Company**" any company that is a subsidiary or a holding company of SURF or the Customer, as the case may be, and "**subsidiary**" and "**holding company**" having the same meaning as they have in section 1159 of the Companies Act 2006;

### "**Authorisations**" any approvals, authorisations, consents, governmental and non-governmental licenses, easements, rights of way, ways, easements, rights of collocation and all necessary filings, registration and/or regulatory approvals;

### "**Availability**" the availability of the Capacity measured in accordance with paragraph 5 of Schedule 1;

### “**BT Openreach**” means British Telecommunications plc (company number 01800000) of 81 Newgate Street, London, EC1A 7AJ and its Group companies or such other company as is the successor to the BT Openreach business and is owned by British Telecommunications plc;

### "**Cancellation Charge**" the charge detailed in paragraph 7 of Schedule 1;

### "**Capacity**" the capacity in the System described in Schedule 5;

### "**Commencement Date**" the date as set out on the cover page to this Agreement;

### "**Committed Delivery Date**" the date, notified by SURF to the Customer as soon as reasonably practicable after the Commencement Date, by which the Capacity shall be handed over to the Customer (such Committed Delivery Date to fall as close as possible to the Target Ready for Service Date, or on that date), and in determining the Committed Delivery Date, it shall be reasonable for SURF to take into account any relevant service delivery dates notified to SURF by a regulated subcontractor (such as BT Openreach);

### "**Confidential Information**" any unpublished technical information about either party or any other confidential information in relation to a party's affairs or business or methods of carrying on its business whether written, oral or otherwise;

### "**Event of Force Majeure**" any event which is beyond the reasonable control of either party, including but not limited to:

#### acts, defaults or omissions of sub-contractors;

#### strike or lock out or other form of industrial action;

#### act of God;

#### outbreak of hostilities, riot, civil disturbance or acts of terrorism;

#### fire, explosion, flood, severe weather conditions or accident (including any impairment of the System by third parties);

#### theft and malicious damage;

#### act or omission of any government, other telecommunications operator, or competent authority;

#### delay or failure in manufacture, production or supply by third parties; or

#### the circumstances or conditions that render it unsafe for SURF to provide the Services;

### "**Fault Handling**" the repair of faults process, measured in accordance with paragraph 6 of Schedule 1;

### "**Installation Payment**" the payment detailed in Schedule 5 for the delivery of the Capacity payable in accordance with clause 4;

"**Payment Instalment Period**" means the period as set out on the cover page of this Agreement;

### "**Planned Works**" such preventative, routine or scheduled maintenance work, including tests, adjustments and reconfigurations, as SURF may consider necessary for the System, or any part of the System, to be maintained in efficient working order as further described in Schedule 4;

### "**Quarter Days**" 31 March, 30 June, 30 September and 31 December each year and "Quarter Day" means any one of them;

### "**Right to Use**" the exclusive right, subject to the terms of this Agreement, to use, for the purposes described in this Agreement, the Capacity for the Term, provided that no ownership, interest or other right to physical access or to encumber the System or any part thereof is granted;

### "**Services**" means the provision of the Right to Use Capacity by SURF to the Customer as detailed in further detail in Schedule 5;

### "**System**" the interconnected cable system or radio transmission system used to supply Capacity between the agreed termination points as described in Schedule 5;

### "**Target End to End Availability**" the target Availability of the Capacity from the A End to the B End as described in paragraph 5 of Schedule 1;

### "**Target Ready for Service Date**" the date specified in Schedule 5 by which the Customer has requested that the Capacity be handed over to it;

### "**Target Time to Repair**" the target time to repair faults affecting the Capacity stipulated in paragraph 6 of Schedule 1;

### "**Term**" the term of this Agreement which subject to being extended or shortened under clause 9 shall run for the term as set out on the cover page to this Agreement;

### "**Type Approved**" (in the case of SURF) that the System will, and (in the case of the Customer) that equipment connected to the Capacity will, comply with all applicable laws, regulations and (in the case of the Customer’s equipment) rules of bodies accredited under applicable legislation which apply to such equipment;

### "**Unavailability**" the Right to Use being unusable by, or not available to, the Customer as described in more detail in paragraph 5 of Schedule 1 and "Unavailable" shall be construed accordingly; and

### "**VAT**" value added tax or any sales use or similar tax imposed by any jurisdiction.

### In this Agreement, unless the context otherwise requires:

#### words in the singular include the plural and vice versa and words in one gender include any other gender;

#### a reference to a statute or statutory provision includes:

##### any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it;

##### any repealed statute or statutory provision which it re-enacts (with or without modification); and

##### any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it except to the extent that it would create or increase the liability of SURF under clause 11;

#### a reference to:

##### any party includes its successors in title and permitted assigns;

##### clauses and schedules is to clauses of and schedules to of this Agreement and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear; and

#### the table of contents and headings are for convenience only and shall not affect the interpretation of this Agreement.

## Duration

### This Agreement shall become effective on the Commencement Date and will remain in force until the end of the Term (when it shall renew automatically for a term equivalent to one Payment Instalment Period) unless terminated earlier in accordance with the provisions of this Agreement.

## Grant and Use of Capacity

### Subject to the terms and conditions of this Agreement, SURF grants the Customer a Right to Use in the Capacity for the Term and agrees that the Customer may use the Capacity for its own use which subject to clause 10.3 includes the provision of telecommunication services to end user third parties.

### SURF shall use its reasonable endeavours to supply and test the Capacity by the Target Ready for Service Date.

### The Customer shall ensure that any use of the Capacity:

#### complies with its Authorisations, any Applicable Laws, any statutory provision and any order or determination of any competent authority;

#### is in accordance with SURF’s technical instructions communicated from time to time; and

#### will not cause SURF to be in breach of any relevant Authorisations, any Applicable Laws, any statutory provision and any order or determination of any competent authority applicable to it.

### The Customer undertakes that equipment connected by it to the Capacity during the Term in accordance with clause 6.1 will at all times be Type Approved and will meet all of SURF’s reasonable requirements. SURF will not be liable for any defects in the Capacity where such defects arise as a result of the use, fault or operation of the Customer's equipment.

## Payment

### SURF shall send an invoice for the Installation Payment to the Customer on or as soon as reasonably practicable after the Acceptance Date. The Installation Payment shall be payable in full by the Customer within 30 days of the invoice date. The Installation Payment shall be non-refundable.

### SURF will send the Customer an invoice for each quarterly instalment of the Annual Charge not less than 30 before each Quarter Day. Each quarterly instalment of the Annual Charge shall be payable in full by the Customer within 30 days of the invoice date.

### All sums payable to SURF by the Customer shall be payable in cleared funds without deduction or set off.

### All amounts payable to SURF under this Agreement are exclusive of VAT which shall be paid by the Customer in addition to their Installation Payment and Annual Charge.

### SURF reserves the right to charge the Customer interest at the rate of 3% above the base rate of National Westminster Bank plc from time to time on all outstanding sums from the date when such payment was due until the date of actual payment whether before or after judgment. Such interest shall accrue from day to day and be compounded annually.

### All payments payable by the Customer under this Agreement shall become immediately due and payable on termination of this Agreement for any reason. This clause 4.6 is without prejudice to any right of SURF to claim for interest under this Agreement.

### The following provisions apply where Circuits are provided by a regulated subcontractor:

#### where the Capacity made available by SURF under this Agreement utilises (in part or in whole) circuits and/or services provided by a regulated subcontractor (including BT Openreach) then SURF reserves the right to pass on to the Customer in full the costs of any price increases levied by the regulated subcontractor in connection with the relevant System;

#### the timely delivery of the Capacity under this Agreement and the prices quoted in Schedule 5 are subject to the satisfactory conclusion of any BT Openreach and SURF site surveys and upon all the necessary street works, landlords and third party consents being obtained by the Customer; and

#### the charges set out in Schedule 5 exclude any Additional Charges. In line with and subject to the relevant BT Openreach terms and conditions, any Additional Charges identified following conduction of the surveys set out in clause 4.7(b) above will be advised to the Customer promptly by SURF. SURF shall not provide, and shall not be obliged to provide, the System to which such Additional Charges apply until and unless the Customer accepts the relevant Additional Charges and advises SURF to proceed with the provisioning of the Capacity. Any such System will be provided by SURF subject to payment by the Customer of the full cost of any Additional Charges.

### Where an appointment has been agreed with the Customer and arrangements for SURF or BT Openreach on behalf or SURF to carry out work at any Customer site and the engineer arrives within the appointed time slot but is unable to carry out the work at, or gain access to the end user site solely as a result of a failure by the Customer or the site to keep the appointment or facilitate the agreed arrangements, then the Customer will reimburse SURF for any costs, expenses and losses incurred by SURF as a result of the abortive visit.

### Where a reported fault is not found to be due to any SURF provided or BT Openreach service or equipment, or where a repair visit is made to investigate the fault and no fault is found, or where the fault is found to be solely on the end users Services or equipment, or is solely due to damage caused by someone at the Customer's premises, then the Customer will reimburse SURF for any costs, expenses and losses incurred by SURF in investigating and responding to such alleged fault.

### Without prejudice to any other right or remedy that it may have, if the Customer fails to pay SURF any sum due under this Agreement on the due date, SURF may suspend the Customer's Right to Use in the Capacity until payment has been made in full.

### The provisions of this clause 4 shall survive the expiry or termination of this Agreement by either party for whatever reason.

## Operation and Maintenance of the System

### SURF shall operate and maintain the System and the Capacity with all due care and skill.

### SURF shall notify the Customer as soon as reasonably practicable if it becomes aware that it has not met or is unlikely to be able to meet the Target End to End Availability for the Capacity.

### SURF shall comply with the escalation procedures for fault resolution and Planned Works set out in Schedule 2 of this Agreement.

### SURF shall be entitled to carry out Planned Works which may necessitate System downtime. SURF shall, where reasonably possible, provide the Customer with not less than 12 working days' notice of any Planned Works which may affect the Customer. SURF will use all reasonable endeavours to minimise any disruption caused by the Planned Works and SURF shall make reasonable efforts to ensure that Planned Works is carried wherever possible at times that the Customer may from time to time notify to SURF.

### Once a Planned Works appointment has been confirmed between the Customer and SURF, either party shall not unreasonably postpone, delay or disrupt the Planned Works program.

## Access and co-operation

### The Customer shall have the right to connect its telecommunications system with the System in accordance with any of SURF’s oral or written instructions. SURF shall ensure that the Customer is granted access to the System at each end point specified in Schedule 5 to enable it to make this connection.

### The Customer shall, on receiving reasonable notice in writing from SURF, ensure that SURF or any employee, sub-contractor, regulated sub-contractor, supplier or agent of SURF is granted full, free and safe access to its premises and/or will procure the same as necessary for SURF to carry out its obligations under this Agreement.

### The Customer will, at its own expense, provide SURF with any co-operation, assistance and information which SURF reasonably requires in order to be able to carry out:

#### any installation works that SURF has to carry out on the Customer's premises, (in which case assistance may include (without limitation) the provision of a clean electricity supply and removal of floor coverings);

#### any maintenance work SURF or its suppliers or sub-contractors need to carry out; and

#### the Services carried out by SURF as detailed in Schedule 5.

### The Customer will, and will ensure that its employees, staff, and subcontractors will at all times:

#### comply with SURF's requirement regarding types and specifications of equipment to be connected to the System; and

#### comply with SURF's instructions regarding physical and network security, and regarding security and health and safety when accessing any point on the System.

### Each party undertakes to observe and comply with and to procure that its employees observe and comply with, all statutory and other reasonable rules and regulations relating to health, safety and security applicable at the other party's premises.

### In the event of the Customer discovering a fault in relation to the provision of the Services, it shall notify SURF of the same without undue delay in accordance with the fault reporting procedure as set out in Schedule 3.

## Non Interference and Compliance with Law

### The Customer will ensure that use of the Capacity shall not:

#### interrupt, interfere with, degrade or impair service over any of the facilities comprising the System or any circuits or facilities of any other user of the System; or

#### impair privacy of any communications over such circuits or facilities to the public; or

#### knowingly involve the transmission of material which is racist, offensive, libellous, defamatory or blasphemous; or

#### cause damage of any nature to the System; or

####  create hazards to employees of SURF or users of the System of any third party.

### SURF will use all reasonable endeavours to ensure that neither it nor any third party’s use of the System shall:

#### interfere with or impair service of the Capacity; and

#### impair privacy of any communications over the Capacity.

### SURF will provide, operate and maintain the Capacity and provide the Services in accordance with its Authorisations, any Applicable Laws, any statutory provision and any order or determination of any competent authority and shall not knowingly do or procure or permit anything to be done which might cause or otherwise result in breach by SURF of any such laws.

### The Customer agrees to indemnify SURF and keep it fully indemnified from all and any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim arising from a breach by the Customer of clauses 3.3 or 7.1.

## Data Protection

### The Customer and SURF acknowledge that for the purposes of the Data Protection Act 1998, the Customer is the Data Controller and SURF is the data processor in respect of any Personal Data.

### SURF shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Customer.

### SURF shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

### Each party warrants to the other that it will process the Personal Data in compliance with all Applicable Laws, enactments, regulations, orders, standards and other similar instruments.

### SURF warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

#### take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

##### the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

##### the nature of the data to be protected.

#### take reasonable steps to ensure compliance with those measures.

### The Customer acknowledges that SURF is reliant on the Customer for direction as to the extent to which SURF is entitled to use and process the Personal Data. Consequently, SURF will not be liable for any claim brought by a Data Subject arising from any action or omission by a Data Subject arising from any action or omission by SURF, to the extent that such action or omission resulted directly from the Customer's instructions.

## Termination

### If the Customer fails to make any payment due under this Agreement or is otherwise in material breach of this Agreement and such failure or material breach (where capable of remedy) is not remedied within 30 days following written notice by SURF to the Customer, SURF may suspend provision of the Services and the Right to Use the Capacity until such failure or breach is remedied or, at SURF's sole option, terminate this Agreement and the Right to Use granted hereunder with immediate effect by written notice to the Customer.

### If SURF commits a material breach of this Agreement and such breach (where capable of remedy) is not remedied within 30 days following a written notice by the Customer, the Customer may terminate this Agreement with immediate effect by written notice to SURF.

### For the purposes of clause 9.2 the following shall (in respect of Availability, Target End to End Availability and Fault Handling) constitute material breaches of this Agreement:

#### the failure of SURF to operate and maintain the System such that the Availability in respect of the Capacity is less than 99.5 % during any 90 day period (pursuant to paragraph 5 of Schedule 1); or

#### any failure of SURF to achieve the Target End to End Availability and/or any failure of SURF to correct faults within the Target Time to Repair Faults, where such failure(s) result in the aggregate of the credits to which the Customer has become entitled at any time during the Term, pursuant to paragraphs 5 or 6 of Schedule 1 (whether or not used), exceeding the aggregate of the Annual Charge and the Installation Payment.

### SURF may terminate this Agreement and the Right to Use at any time on 3 months' notice. The Customer may terminate this Agreement and the Right to Use prior to the end of the Term by giving 30 days written notice to SURF subject to paying the early termination charge stipulated in paragraph 8 of Schedule 1.

### Without prejudice to any right or remedy which either party may have against the other for breach or non-performance of this Agreement, each party will have the right by notice in writing to the other to terminate this Agreement with immediate effect on or at any time after the happening of any of the following events:

#### SURF ceases to have the authority to provide the Services;

#### if other than for the purposes of amalgamation or reconstruction, any of the following occur in relation to the other party ("**Breaching Party**"):

##### the Breaching Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

##### the Breaching Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;

##### a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Breaching Party;

##### an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Breaching Party;

##### the holder of a qualifying floating charge over the assets of the Breaching Party has become entitled to appoint or has appointed an administrative receiver;

##### a person becomes entitled to appoint a receiver over all or any of the assets of the Breaching Party or a receiver is appointed over all or any of the assets of the Breaching Party;

##### a creditor or encumbrancer of the Breaching Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Breaching Party's assets and such attachment or process is not discharged within 14 days;

##### any event occurs, or proceeding is taken, with respect to the Breaching Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 9.5(b)(i) to Clause 9.5(b)(vii)(viii) (inclusive); or

##### the Breaching Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

### The termination or expiry of this Agreement and the Right to Use granted hereunder for any reason shall be without prejudice to any rights or remedies available to, or any obligations or liabilities accrued to the parties as at the date of termination or expiry.

### If either party terminates this Agreement:

#### the Right to Use granted under clause 3.1 shall automatically terminate;

#### the Customer shall immediately pay to SURF all of SURF's outstanding unpaid invoices and interest and, in respect of the services supplied but for which no invoice has been submitted, SURF may submit an invoice, which shall be payable immediately on receipt.

#### the Customer shall, within 48 hours, disconnect its telecommunications systems from the System and confirm the same has been done in writing;

#### SURF may, at its sole option, reclaim and resell the Capacity to a third party; and

#### those clauses of this Agreement which are expressly or by implication intended to survive termination of this Agreement, shall survive termination of this Agreement.

## Warranties

### SURF and the Customer warrant that:

#### it has the power and authority to, and has taken all requisite corporate action to enable it to, execute and deliver and to perform its obligations under this Agreement; and

#### all Authorisations have been obtained in connection with the execution and performance of its obligations under this Agreement;

#### it will use all reasonable efforts to maintain or renew all Authorisations throughout the Term and replace Authorisations with reasonably suitable Authorisations if any expire or are terminated or discontinued during the Term; and

#### there are no existing agreements or arrangements with third parties the terms of which prevent it from entering into this Agreement or which would impede or prevent the substantial performance of its obligations under this Agreement.

### SURF warrants that:

#### the Capacity conforms in all material respects to the specifications referred to in Schedule 5;

#### it owns the System and that it will not do or allow to be done anything in respect of the System which might prejudice the rights of the Customer set out in this Agreement without the Customer's prior written consent, such consent not to be unreasonably withheld or delayed;

#### the System is Type Approved and will continue to be Type Approved during the Term;

#### it will allow the Customer to use the Capacity with peaceful and quiet enjoyment and without unreasonable interference from SURF:

#### it will use reasonable endeavours not to do anything which is likely to cause damage, interference or disruption to the Capacity; and

#### it shall comply with all Applicable Laws in respect of its obligations under this Agreement.

### Consistent with its rights under clause 3.1, the Customer shall not sublet the Capacity nor grant rights to any third party in relation to the Right to Use greater than those granted to the Customer under this Agreement. The Customer warrants that:

#### it will not assign, subcontract or otherwise transfer the Right to Use nor grant rights to any third party in relation to the Capacity other than those granted to it in clause 14.8 of this Agreement;

#### it will not charge, mortgage or otherwise encumber the Capacity;

#### it has all the consents and regulatory licences necessary for the use of the Capacity and will not infringe the provisions of any such consent or licence;

#### it shall comply with all Applicable Laws in respect of its obligations under this Agreement; and

#### it shall provide SURF with all information and assistance it shall reasonably require in order for SURF to provide the Services,

and the Customer shall indemnify SURF and at all times keep it fully indemnified from and against all liabilities, damages, costs, claims, fines and proceedings that may be brought or awarded against SURF or agreed to be paid by SURF to any third party arising from: (i) any failure by the Customer to comply with this clause 10.3; and (ii) any claim by a customer of the Customer arising from the failure by the Customer to comply with the provisions of this clause 10.3.

### SURF and the Customer confirm that this Agreement:

#### is not intended to and does not grant either party any estate or interest in land; and

#### shall not provide the Customer with any ownership, interest or other right of physical access to the System other than as expressly provided in this Agreement.

### The Customer acknowledges:

#### the possibility of an unscheduled, continuous or interrupted period of time when the Capacity or the System, or a portion thereof, is Unavailable, interrupted or materially degraded; and

#### that SURF cannot guarantee, nor is it liable for, the security of information transmitted using the Right to Use.

## Limitation of Liability

### Nothing in this Agreement will limit a party's liability to the other for death or personal injury resulting from its own or its employees' or agents' negligence.

### Subject to clause 11.1, SURF shall not be liable to the Customer, whether in contract, tort (including negligence and breach of statutory duty), arising under or in connection with this Agreement for:

#### loss of profits;

#### loss of sales or business;

#### loss of agreements or contracts;

#### loss of anticipated savings;

#### loss of or damage to goodwill;

#### loss of use or corruption of software, data or information;

#### damage to computer hardware/software;

#### loss of electricity supply; or

#### any indirect or consequential loss.

### Subject to clause 11.1, the Customer shall indemnify SURF and keep SURF indemnified fully at all times against all demands, damages, losses, costs (including reasonable legal costs), expenses and charges arising from damage to SURF's property caused by or attributable to the Customer.

### Subject to clause 11.1, to the maximum extent permitted by law any condition, warranty or other term concerning the subject matter of this Agreement which might otherwise be implied into or incorporated into this Agreement, whether by statute, common law, course of dealing or otherwise is excluded from this Agreement.

### Subject to clause 11.1 and 11.2, SURF’s maximum aggregate liability in contract, tort (including negligence or breach of statutory duty) or otherwise, arising out of or in connection with any breach of its obligations required to be performed or observed under this Agreement shall be limited to the total Annual Charges paid by the Customer during the Term of this Agreement.

### At SURF's request, the Customer shall take out and, during the Term, maintain insurance against its liability for physical damage to the System caused by its negligence or breach of this Agreement, or caused by the negligence of its staff, employees, subcontractors or customers. The Customer will provide evidence of the insurance policy taken out in compliance with this clause promptly on request from SURF.

### The provisions of this clause 11 shall survive the expiry or termination of this Agreement by either party for whatever reason.

## Confidentiality

### Subject to clause 12.2, each party undertakes to the other party, both during the Term and for 2 years after termination of this Agreement, that it will treat as confidential, and will use its reasonable efforts to ensure that those directors, employees, advisers and shareholders to whom it may disclose the Confidential Information on a strict need to know basis, will treat and maintain as confidential, the Confidential Information and will not (and will use its reasonable efforts to ensure that its directors, employees, advisers, and shareholders will not) disclose or use such information other than strictly for the purpose of fulfilling its obligations under this Agreement, except with the written permission of the other party.

### The restrictions in clause 12.1 do not apply to information which a party discloses with the prior written consent of the other or which a party can prove:

#### is known to it at the date of disclosure as evidenced from its written records;

#### is, after the date of disclosure, acquired by it in good faith from an independent third party;

#### has in its entirety become public knowledge otherwise than in breach of these restrictions;

#### is required to be disclosed either by law or by the rules of a relevant stock exchange;

#### is disclosed more than 5 years after the receipt of the information; and/or

#### is disclosed to its professional advisers.

## Force Majeure

### Neither party shall be deemed to be in breach of this Agreement, or otherwise liable to the other by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to an Event of Force Majeure.

### The party affected by an Event of Force Majeure shall immediately give the other party written notification of the nature and extent of the Event of Force Majeure and the parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing on such alternative arrangements as may be fair and reasonable.

### Without prejudice to sub-clause 13.4, if the parties cannot agree alternative arrangements in accordance with sub-clause 13.2 within 3 weeks of receiving the written notification of the Event of Force Majeure, either party may treat the matter as a dispute and refer the dispute in accordance with clause 14.9.

### Either party may terminate this Agreement with immediate effect by serving written notice on the other where a written notice in relation to an Event of Force Majeure has not been withdrawn within 8 weeks or where the parties agree that the Event of Force Majeure cannot be alleviated by alternative arrangements. The service of such notice shall be without prejudice to any rights or obligations which have accrued prior to termination.

## General

### Notices

#### Unless provided otherwise in this Agreement, any notice shall be in writing and shall be deemed validly delivered if sent by hand (in which case delivery will be deemed to have been effected immediately) or by first class pre-paid post (in which case delivery will be deemed to have been effected 2 days from the date of posting), or by email (in which case delivery shall be deemed to have occurred when the recipient acknowledges having received the email either by sending confirmation of receipt to the email address of the other party or by confirming receipt through another notice method listed in this clause 14.1). Any such notice shall be sent to the office of the party set out on page 1 or such other office as notified in writing from time to time (and in the case of the Customer shall be marked for the attention of the Finance Director).

### No Waiver

#### No failure or delay of either party in requiring compliance with any requirements or in exercising any right or remedy under this Agreement shall constitute a waiver of such, or any other, requirement, right or remedy. The waiver by either party of any requirement, right or remedy shall be limited to the specific instance.

### Relationship of the Parties

#### Nothing in this Agreement shall create a partnership or joint venture between the parties or constitute any party as the agent, employee or representative of the other party or empower any party to act for, bind or otherwise create or assume any obligation on behalf of any other party, and no party shall hold itself out as having authority to do the same.

### Entire agreement

#### This Agreement sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Agreement. In particular, the a parties acknowledge that the terms of this Agreement apply to the provision of the Services to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

#### The Customer acknowledges that it has entered into this Agreement in reliance only on the representations, warranties and promises specifically contained or incorporated in this Agreement and, save as expressly set out in this Agreement, SURF will have no liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

#### Without prejudice to the effect of clause 14.4(b) above, the Customer acknowledges that the only remedy available in respect of any misrepresentation or untrue statement made to (other than those made fraudulently) shall be a claim for damages for breach of contract under this Agreement and, to the extent that any such representation or statement is not contained or expressly referred to in this Agreement, then it shall be deemed to be contained or expressly referred to for the purpose of applying this provision.

### Variations

#### No purported variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

### Counterparts

#### This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

### Third party rights

#### Other than an Associated Company of SURF’s, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

###  Assignment

#### Either party may assign its rights and obligations under this Agreement to an Associated Company.

#### Except as permitted in sub-clause 14.8(a), the Customer may not assign or dispose of its rights or obligations under this Agreement without the prior written consent of SURF (but that consent is not to be unreasonably withheld or delayed).

#### The appointment or authorisation of any sub-contractor shall not relieve a party of any obligations under this Agreement, and the acts or omissions of such sub-contractor shall, for the purposes of this Agreement, be deemed to be the acts or omissions of that party.

### Dispute resolution

#### The parties shall use the escalation procedures set out in Schedule 2. If a dispute arises out of or in connection with this Agreement, and cannot be resolved using such procedures the parties agree the following:

##### to try in good faith to resolve the dispute through negotiations between the parties' senior representatives who have authority to settle it; and

##### except where there is a total loss of access to the Right to Use the Capacity, pursuant any other remedies available to them for at least 2 months after the first written notification of the dispute.

#### The appointed representatives must use all reasonable endeavours meet within 21 days of written notification of the dispute and must use all reasonable endeavours to resolve it.

#### If the dispute is not resolved at that meeting, either party may propose to the other in writing that the matter be referred to a non-binding mediation. If the parties are unable to agree on a mediator either party may apply to the Centre for Dispute Resolution (CEDR) to appoint one.

### Severability

#### If any provision of the Agreement is declared invalid or unenforceable, the remaining provisions shall remain in full force and effect.

### Survival

#### Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after expiry or termination of this Agreement shall survive and remain in full force and effect notwithstanding termination or expiry.

## Governing law and jurisdiction

### This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with laws of England and Wales.

### Each of the parties irrevocably submits for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales.

## This Agreement has been signed on the date of signature shown on the front page.

1. Schedule 1

**Delivery, Acceptance and Performance**

## Delivery

### If the Committed Delivery Date is delayed, the Annual Charge stipulated in Schedule 5 shall be adjusted as set out in this paragraph 1, save where such delay arises as a result of an act, omission, neglect or default of the Customer, in which case no adjustment shall be made;

### In the case of SURF provided circuits, a reduction in the first quarter payment of the affected circuit as set out in the following table:

|  |  |
| --- | --- |
| **Calendar days past Committed Delivery Date** | **Downwards adjustment (% 1st Quarter Charge)** |
| 1 to 5  | 1% |
| 6 to 10 | 3% |
| 11 to 20 | 5% |
| 21 to 30 | 10% |
| more than 30 | 15% |

### In the case of third party provided circuits (in part or in whole), a reduction in the connection payment of the affected circuit as set out in the following table:

|  |  |
| --- | --- |
| **Calendar days past Committed Delivery Date** | **Downwards adjustment (% Connection Charge)** |
| 1 to 10 | 5% |
| 11 to 15 | 10% |
| 16 to 20 | 15% |
| more than 20 | 20% |

## Acceptance testing and commissioning

### Commissioning tests will be performed by SURF between the end points of the Capacity according to ITU-T Standards. The Customer will co-ordinate with SURF's specified contact persons for all acceptance testing activities. SURF will give the Customer reasonable prior written notice of its intention to carry out such tests and the Customer shall be entitled to attend the same. SURF will take account of all representations made by the Customer at such tests. SURF will remedy any fault identified as soon as possible.

## Handover - Capacity

### Upon successful results having been obtained arising from SURF acceptance tests (performed in accordance with International Telecommunications Union (ITU) Standards), an Acceptance Certificate, with detailed measurements in accordance with ITU Standards, will be released to the Customer. The Capacity will be deemed to be accepted upon the signing and dating of the Acceptance Certificate by the Customer (or, if earlier, on the first date on which the Customer puts the Right to Use into commercial operation). If SURF has not received a signed and dated Acceptance Certificate within 10 business days of the date the Acceptance Certificate was released and the Customer has not provided SURF notice of non-acceptance within that time, the acceptance tests shall be deemed to have been satisfactorily passed and the Right to Use will be deemed to be accepted.

## Circuit Shifts

### Circuit shifts will be provided where requested by the Customer. The maximum charge for a single end shift will be equivalent to 50% of the relevant installation charges specified in Schedule 5, plus any Additional Charges that might apply.

### Circuit shifts within a single room will incur a charge less than 50% of the installation charge provided in Schedule 5, to be agreed between the parties.

### In cases where the installation charge in Schedule 5 is zero, the shift charge will be equal to 15% above the price quoted by BT Openreach plus any Additional Charges with might apply.

## Performance - Availability

### SURF shall operate and maintain the System so that the Target End to End Availability of 99.95% is achieved in respect of individual non protected services in the Capacity, for:

#### the first 90 days following the Acceptance Date; and

#### during each 90 day period thereafter for the remainder of the Term.

### In ensuring the Target End to End Availability, SURF shall ensure that the Capacity shall exceed the ITU Standards for Bit Error Rate and Severely Errored Seconds (as delivered in ITU Standards) at all times and that for each circuit there shall be no more than three instances of failure in any 90 day period.

### If the Availability (either in respect of part or all of the Capacity) falls below 99.95% per 90 day period then the Customer shall be entitled to a credit in respect of previously paid Annual Charges against future Annual Charges (or, in the case of the final 90 day period or part thereof, by way of a payment by SURF to the Customer) in an amount calculated as shown in the table below:

|  |  |
| --- | --- |
| **Availability Pop to Pop Services** | **Credit Calculation if service level is not met** |
| 99.94%-99.85%  | 5% of Annual Charges |
| 99.84%-99.60% | 7% of Annual Charges |
| 99.59% or less | 10% of Annual Charges |

### Availability is measured over the whole Capacity from the designated A End to the B End to the C End as described in the Capacity description set out in Schedule 5.

### Availability is calculated in the following way:

#### Total time for the 90 day period = Sum of all events of Unavailable time as determined below (during the 90 day period) x 100%, divided by the total time for the 90 day period.

### Unavailability of the Capacity is measured from the recorded time of a fault being reported by the Customer or a fault detected by SURF, whichever is earlier.

### Unavailable time finishes when the Customer agrees that the fault has been cleared or restoration of the fault by SURF is proved by appropriate tests.

### The following exclusions apply and will not be included in the calculation for Unavailable time:

#### force majeure events within the meaning of clause 13;

#### Unavailability due to outages caused by the Customer including the default or negligence of the Customer, its employees', agents', suppliers' or customers' negligence, or by a failure to adhere to SURF's reasonable instructions or breach of this Agreement;

#### Unavailability caused by difficulties with the Customer's or with a regulated subcontractor's network;

#### Unavailability due to regularly scheduled maintenance (at times previously agreed with the Customer) not exceeding 4 hours on each occasion and for not more than 2 occasions per annum; and

#### Unavailability arising as a result of restricted access to the Customer's site.

### Where an entitlement to a credit in respect of the Annual Charge(s) arises following a quarterly payment by the Customer, it shall be set off against the Annual Charge(s) payable in the following quarterly payment.

## Fault Handling

### The Target Time to Repair service affecting equipment faults (excluding a cable fault is 4 hours.

### The Target Time to Repair service affecting faults related to a cable fault is 12 hours for underground cables and 18 hours for overhead cables.

### This is measured as the time from the actual unavailability of the Capacity, until fault clearance is notified by the Customer to SURF or restoration of the fault is proved by appropriate test.

### Repair times in excess of the target time to repair will enable the Customer to a credit in respect of the Annual Charge(s) paid for each individual circuit effected payable under this Agreement, of an amount shown in the table below to be set against future Annual Charges:

|  |  |
| --- | --- |
| **Time to Repair (hours) past target time to repair**  | **Compensation (% of Annual Charge)** |
| Up to 1  | 1% |
| 1-2 | 2% |
| 2-3 | 3% |
| 3+ | 5% |

### The right to a credit under this paragraph shall be in addition to the credits available under paragraph 4 above of this schedule and shall be established every month by SURF.

### Where an entitlement to a credit arises in a particular month pursuant to this paragraph, the credit shall be set off against the next Annual Charge until such stage as the amount of the credit is exhausted.

## Cancellation

### If the Agreement is terminated by the Customer after acceptance by the Customer of the Surf advised Committed Delivery Date, and prior to the handover of the Capacity by Surf, the Customer will be liable for cancellation charges equal to the full amount of the Installation Payment plus any third party cancellation charges (including excess construction charges) that may be incurred and advised to Surf at the time that Surf cancels the service element with its regulated subcontractor.

### Subject to clause 9.3, if the Agreement is terminated by the Customer after the Acceptance Date but prior to the end of the Term by giving at least 30 days' written notice to SURF pursuant to clause 9.4 then early termination charges and fees shall be payable as set out below:

#### Installation and the first year Annual Charges are not refundable;

#### the balance of any outstanding Annual Charges or Installation Charges shall be paid by the Customer to SURF within 30 days of termination; and

#### Termination charges shall be payable for early termination (following the first year of the term) and shall be calculated at 35% of unpaid Annual Charges for the outstanding term.

### The parties agree that the cancellation and termination fees and charges in this paragraph 7 represent a genuine pre-estimate of SURF's loss.

## Early termination charges

### Installation and the first year Annual Charges are not refundable.

### Termination charges shall be payable for early termination (following the first year of the term) and shall be calculated at 35% of unpaid Annual Charges for the outstanding term. The parties confirm that this termination fee represents a genuine pre-estimate of SURF's loss.

1. Schedule 2

**Escalation Procedure**

## Escalation Levels

### The table below sets out the escalation levels for SURF in respect of both planned work and fault restoration.

|  |  |
| --- | --- |
| **Level** | **SURF** |
| Level 1  | NMC Engineer  |
| Level 2 | Operations Team Manager |
| Level 3  | Surf Telecoms Manager |
| Level 4  | Director of Surf Telecoms |

### The following table sets out the times by which a fault must be escalated. Faults may be escalated at any time in advance of the below where either party feels that there is an undue delay on behalf of one party:

|  |  |
| --- | --- |
| **Level** | **Maximum time by which escalation must take place** |
| Level 1 | Immediate |
| Level 2 | 4 hours |
| Level 3  | 20 hours |
| Level 4 | 24 hours |

### Escalation for Planned Works may take place during the planning stages and hence the times cannot be specified. However during the carrying out of planned works any problems will be escalated as per fault restoration.

1. Schedule 3

**Fault Reporting Procedure**

## Fault Reporting Procedure

### Customers are requested to phone 01823 330777 to report a fault incident. Customers are asked to provide sufficient detail to allow diagnosis to commence.

### Wherever possible, the customer will be issued with a fault reference number. (This may be a temporary number issued by the standby engineer, and clarified later)

## Escalation

### If the fault has significant impact on customers, or its resolution is taking significant resource or resolution time the nominated person may escalate the matter in accordance with the escalation procedure as set out in Schedule 2.

1. Schedule 4

**Planned Works Procedure**

## Purpose and Responsibilities

### To ensure a controlled and consistent approach to Planned Works. Planned Works include work that may have a disruptive effect on customer services, and are distinct from fault works.

### The Operations Manager is responsible for the Planned Works Process.

### Operations Team Managers are responsible for resource management and liaising with the NMC to arrange Planned Works.

### SURF Support are responsible for customer contact, and the planning of individual Planned Works. Responsibility also includes cross checking all planned works to assess impact on services and feedback of the actual duration to the Operations Manager.

### Associated Documents:

#### Notice of Planned Works S-P03-F01

#### Planned Works Summary S-P03-F02

#### Notice of Multiple Planned Works S-P03-F03

## Classifications

### The following classifications are used on notifications to define the type of work:

#### Protected Services:

##### Possible loss of protection, primary route secure, - there is no planned outage, but there is physical work on or in the vicinity of the network.

##### Loss of Protection, primary route secure, – an outage is planned on a protected ring network, but any traffic on the outage route will automatically be rerouted onto the other route.

##### Loss of Protection, reduced bandwidth, – an outage is planned on a protected ring network. As traffic is split across the two routes around the ring, any bandwidth on the outage route will not be available.

##### Planned Loss of Service – the outage will affect all traffic.

#### Unprotected Services:

##### Unprotected service at risk - there is no planned outage, but there is physical work on or in the vicinity of the network.

##### Planned Loss of Service – the outage will affect all traffic.

## Process

### The Operations Team Managers assess the impact of any Planned Works, with Surf Support and NMC, as necessary, to evaluate the level of risk to the networks and their customers, and the level of resource required. Consideration is given to alternative works that could reduce any disruption.

### Where Planned Works have an impact on customer traffic, notice is given to all customers affected.

## Notification

### Notification of the Planned Works is given by fax, e-mail or pro forma, giving details of:

#### classification

#### the reason for the Planned Works

#### circuits/ service affected,

#### date and time and duration of the Planned Works

#### contingency date in case of postponement

### The Notice of Planned/ Multiple Planned Works is peer vetted before sending to the Customer.

### Confirmation of receipt of the notification and agreement of the Planned Works are actively obtained.

### If a change is requested by a customer, and accepted, new notifications are issued and old notices cancelled.

### The NMC communicate actual planned details to the Operations Team Managers so the work can be programmed.

### The Planned Works Summary is completed to aid notification planning, outage management and review.

## Notice Periods

### Surf Support gives a minimum of:

#### 30 (calendar) days' notice for dark fibre customers and,

#### 12 (working) days' notice to bandwidth customers,

### subject to discussion with customers, as to the best day and time for the outage.

### In high risk situations, this notice period may be shortened in consultation with the Operations Management team and its customers

## Preparation

### During the working day prior to the Planned Works date, Surf Support check to see if it is still ok to continue with the works. A minimum of one hour before, a further check is made with the customers to obtain final clearance and any reference numbers.

## Planned Works

### Depending on the type and impact of the works, the NMC is occupied, as necessary.

### During extended works, the customers are contacted and updated at regular intervals.

### If the Planned Works look like exceeding the declared duration, then customers are notified, where possible, as soon as this becomes apparent. If necessary, the escalation procedure can be implemented.

### Once a planned maintenance time has been confirmed between the Customer and SURF, either party should not unreasonably postpone, delay or disrupt the planned maintenance program but planned works may need to be postponed at short notice if emergency (force majeure) conditions arise. This applies to Surf Telecoms and their customers.

## Post works

### Following the Planned Work, customers are contacted to confirm that their services are reinstated and available for reuse, within 60 minutes of the completion of the works. Where customers do not have 24/7 support services, a voicemail/ email message is left. Phone contact is made the next working day.

## Records

### Actual times and duration of the works are reported to the Operations Manager on completion.

## Contact

### Regular checks are made to ensure contact details are correct and still valid.

1. Schedule 5

**System and Capacity**

## The System

### The System is an [Optical / Ethernet / SDH] network connected over [Fibre Optic / Copper Cables / Licensed Microwave Link/s] which extends between the following locations:

#### A End: [Insert address]

[Floor/Room/Cabinet]

#### B End: [Insert address]

#### [Floor/Room/Cabinet]

#### Media: [Single mode/Multi mode/Electrical]

#### Connector Type: [SC, LC, RJ45]

## The Right to Use Capacity

### The Right to Use Capacity shall consist of a protected / unprotected full duplex non contended Ethernet / SDH Connection.

#### Circuit Reference: [Insert circuit reference]

#### Connections: [Insert A & B ends]

#### Capacity: [Insert Mbit/s full duplex Ethernet]

#### Target Ready for Service Date: [Insert date]

### The above Target Ready for Service Date is subject to the terms and conditions of this Agreement including Surf providing the Customer with a "**Committed Delivery Date**" on which date the Capacity shall be handed over to the Customer, (such Committed Delivery Date to fall on or as close as possible to the Target Ready for Service Date), and the Customer accepting that Committed Delivery Date. In determining the Committed Delivery Date, it shall be reasonable for SURF to take into account any relevant service delivery dates notified to SURF by a regulated subcontractor (such as BT Openreach) and the time it will take to obtain all the necessary street works, landlord and any other third party consents.

## The Services, Charges and Initial Options:

### The Installation Payment and Annual Charges are as follows (all pricing is exclusive of VAT):

#### Circuit Reference: [Insert circuit reference]

#### Connections: [Insert A & B ends]

#### Installation Payment: £[Insert]

#### Annual Charge: £[Insert]