

## 1. Definitions

### 1.1. Us, We, Our

The seller of services, Enlink Ltd, registered in England & Wales, company number 07240948, with registered office at 20-22 Wenlock Road, London, N1 7GU, United Kingdom.

### 1.2. You, Your

The individual or corporate entity of any kind using, purchasing or subscribing to Our Services.

### 1.3. Abuse Complaint

A complaint, either by Us or a third party, about Your use of the Services.

### 1.4. Bandwidth

The data transferred by You using the Services to other equipment on the Internet. This includes transfer of data between the Services and other equipment hosted by Us or any contractors or subsidiaries we may use.

### 1.5. Power

Electrical power supplied as part of Your Service, as outlined in any Schedule. Power may be measured in watts, kilowatt hours, volt amperes or the equivalent value in amperes at 230 volts.

### 1.6. Support Portal

The online system that You may access at <https://support.connetu.com> or via another address advised to You by Us.

### 1.7. Hardware

The servers, firewalls, equipment, cabling and systems provided by Us or Our contractors or subsidiaries in connection with the Services.

### 1.8. Notified Maintenance

Essential maintenance to be carried out by Us or Our contractors or subsidiaries in relation to the Services, Hardware and/or Software, which has been notified to You.

### 1.9. Enlink Network

Any routers, switches, optical devices, cabling and other owned or leased network equipment maintained or operated by Us or Our contractors or subsidiaries.

### 1.10. Schedules

The schedules and/or Internet/telephone orders to this Agreement, describing the Internet related services requested by You including, but not limited to, details of the requested Bandwidth, Power, Hardware and Software.

### 1.11. Services

The Internet related services described in any Schedule made hereunder and which are supplied or to be supplied by Us to

You on and subject to the terms of this Agreement and any schedules made hereunder.

### 1.12. Colocation Services

Services whereby We provide Internet hosting and associated services for servers or telecommunications equipment belonging to You or a third party ("the Equipment").

### 1.13. Commencement of the Services

The time at which We begin supplying the Service, or any part of them, to You. This shall be the date upon which we advise you that the service is 'live' or You obtain access to the Service, whichever is the earlier.

### 1.14. Software

The computer software provided by Us in connection with the Services.

### 1.15. Build Room

For colocation services, the facilities provided by Us, subject to availability, for You to perform physical maintenance on Your equipment.

### 1.16. Terms and Conditions

This document.

### 1.17. Agreement

The Terms and Conditions and the Schedules.

### 1.18. Data Protection Law

The: (a) Data Protection Act 1998; or (b) from 25th May 2018, the General Data Protection Regulation ((EU) 2016/679 ("GDPR"), read in conjunction with and subject to any applicable UK national legislation that provides for specifications or restrictions of the GDPR's rules; or (c) from the date of implementation, any applicable legislation that supersedes or replaces the GDPR in the UK or which applies the operation of the GDPR as if the GDPR were part of UK national law, which may include the Data Protection Act 2017. The terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" will have the meanings prescribed under the Data Protection Law.

### 1.19. Processing Instructions

Your documented instructions as given from time to time and as detailed in the Schedules.

### 1.20. Supervisory Authority

Any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

## 1.21. Data Protection Losses

All liabilities, including all: (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and (b) to the extent permitted by Applicable Law: (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; and (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and (c) the reasonable costs of compliance with investigations by a Supervisory Authority.

## 2. Preamble

This Agreement sets out the terms which have been agreed between Us and You for the provision of Internet services (Services) by Us to You and shall be supplemented from time to time by Schedules setting out specific details of such services requested by You.

We endeavour to provide you with as accurate a date for Commencement of the Services as possible but You agree that time shall not be of the essence in respect of the Commencement of the Services.

You as an individual, or the person entering into this Agreement on behalf of You where You are an entity, warrants that You are 18 years of age or older, and capable and authorised to enter into this Agreement.

The Services shall be as described in this Agreement and any associated Schedules. All Schedules shall be deemed to be an offer from You and shall only be deemed accepted by Us when counter-signed by an authorised representative of Us. In the event of any conflict between any provision in this Agreement and those in the Schedules then the provision in the Schedules shall prevail.

This Agreement together with the Schedule constitutes the whole and only agreement and understanding between the parties relating to its subject matter and supersedes and extinguishes any drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties in connection with the subject matter of this Agreement whether existing prior to or at the same time as this Agreement. This Agreement will be on these conditions only, to the exclusion of any other terms and conditions (including any terms and conditions which are purported to apply under any purchase order, confirmation of order, specification or other document). Your terms and conditions shall not apply to this Agreement. The parties warrant that there is no representation, warranty, promise, term, condition, obligation or statement upon which they have relied in entering into this Agreement and which is not expressly set out in this Agreement and no such representation, warranty, promise, obligation, statement or any other term or condition is to be implied in it whether by virtue of any usage or course of dealing or otherwise (including by statute or common law) except as expressly set out in this Agreement and/or except where in law it is not

possible to exclude or restrict an implied term. If either party has given any representation, warranty, promise or statement to the other party, then (except to the extent that it has been set out in this Agreement) the party to whom it is given waives any rights or remedies which it may have in respect of it. This section shall not exclude the liability of any party for fraud or fraudulent misrepresentation or concealment or any resulting right to rescind this Agreement.

## 2.1. Paragraph Headings

Headings used in this Agreement are inserted solely for convenience of reference and are neither a part of nor intended to limit the construction of any term or provision.

## 2.2. Unenforceable Provision

If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable under applicable law, then such provision shall either be amended in such a manner to as closely reflect the intention of the parties or, in the event such amendment is not permissible, the offending provision shall be excluded from this Agreement. The validity of the remainder of this Agreement shall not be affected.

## 2.3. No Waiver

Except as explicitly provided for in this Agreement, no failure or delay by either Us or You in exercising any rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Us or You of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

## 2.4. No Assignment

You may not assign this Agreement without Our prior written consent. We may assign or subcontract all or part of Our rights and obligations under this Agreement at any time upon supplying You with written notice of our intention to do so or fact that we have done so.

## 2.5. Governing Law

You agree this Agreement shall be construed in accordance with, and You agree to submit to, the exclusive jurisdiction of the laws and courts of England and Wales.

## 3. Amendments

### 3.1. Amendments to this Agreement by Us

We may, without prior notice to You, amend these Terms and Conditions or any part thereof by posting any such changes to Our website. Any such changes shall become effective and binding upon You 7 days after such changes have been posted to Our website and We have notified You of the same. If You do not agree to any such changes, Your sole recourse shall be to cancel Your account with Us and hence terminate Services used by You. If You can successfully demonstrate to Us within 14 days of the date of the new Terms and Conditions that your reason for cancellation of Services is due to a reasonable disagreement with the then recent amendments in

the Terms and Conditions, save where such amendments are necessary in order to reflect changes in applicable law, We will issue a credit note or refund as appropriate for all pro-rata unused fees for those cancelled Services.

### **3.2. Amendments to this Agreement by You**

This Agreement may not be amended or modified by You except when made in writing and signed by a duly authorised representative of Us. Nothing in this Agreement gives any third party any rights or remedies under this Agreement.

### **3.3. Amendments to Services by Us**

We reserve the right at any time and from time to time to amend, improve or correct the Services, Software and/or Hardware (or any part thereof) provided that such modification does not materially affect the overall quality of the Services. This includes the right to substitute the Hardware with Hardware of similar specification. We shall endeavour to give You reasonable notice of such modifications but this may not always be possible and We shall not be liable to You or to any third party for any such modification or any failure to give such notice.

### **3.4. Requested Amendments to Services by You**

At any time, You may propose a change to the Services. We will be entitled to charge You for investigating or implementing (or both) any suggestion for change made by You. We will supply, for Your prior approval before any work commences, an estimate in writing of the time and costs likely to be spent in investigation and implementation of the change.

## **4. Customer Details**

### **4.1. Accuracy of Details**

You shall have sole responsibility for maintaining the accuracy of Your contact and billing information You supply to Us, including, but not limited to, Your electronic mail (e-mail) address(es) for correspondence and notification purposes. You must ensure such contact details are current and up to date at all times. We shall have no liability whatsoever for any consequences arising from lost or misdirected communications, including but not limited to electronic mail (e-mail), between You and Us.

### **4.2. Service Notifications**

You agree to receive announcements and notifications relating to Services supplied to You by Us via electronic mail (e-mail) or any other means of communication.

### **4.3. Promotional Communications**

You have the option to receive sales and marketing materials relating to the Services made available by Us via electronic mail (e-mail) or any other means of communication. Such materials may include, but are not limited to, newsletters, tips, newly available Services, special offers and promotions. You may elect to opt in to these communications by methods advised from time to time, and You may later opt out by using

the unsubscribe link shown in any promotional e-mail.

### **4.4. Use of Name**

Unless otherwise restricted in writing by You, We retain the right to use Your registered company or trading name in Our sales and marketing activities which include, but are not limited to, press releases, sales and marketing materials, web pages and presentations. We agree not to disclose personal or personnel names, project names, and project details without Your prior written consent.

## **5. Fees and Payments**

You agree to pay the price for the Services as set out in the Schedule. If You are purchasing a new Service, You will pay the prevailing fees for that Service as at the time of placing Your order for the service with Us. If You are renewing an existing Service, You will pay the prevailing fees for the Service on the date of the renewal of the Service. Invoices in respect of the Services will be sent to You on a regular basis and shall be payable within the timeframe stated on each invoice. Time shall be of the essence with regards to payment of all fees and any other sums due to Us.

### **5.1. Renewals**

This Agreement will automatically renew unless and until terminated by Us or by You in accordance with section 19. Immediately prior to renewal further charges for the Services shall become due to Us. Payment shall only be deemed received by Us upon receipt of cleared funds. You agree to make payment in full without any abatement, set off or deduction on any grounds, in sufficient time to allow funds to clear all payment processors and banks before the renewal date. Time for payment shall be of the essence. We shall have no liability whatsoever for the consequences, if any, of Service interruption(s) resulting from Our inability to obtain full and cleared payment in a timely manner, or resulting from Your non-receipt of any renewal reminders or other notices sent by Us. Any exercise by Us of Our rights to suspend the Services in the case of late payment shall be without prejudice to any other of Our rights under this Agreement.

### **5.2. Exceeding Limits**

The price for the Service covers Bandwidth and Power as stated in the Schedule. If You exceed these limits then We reserve the right to make additional charges for Your usage above the limits at Our then prevailing charge rates. We will endeavour to let You know if Your Bandwidth usage exceeds the agreed levels, however it is Your responsibility to monitor the Bandwidth being used by Your Services. Where Power is supplied as part of the Services, We routinely monitor the Power consumption of Your equipment and We reserve the right to vary the Power charges You pay for the Services should the Power calculated from the peak current usage of Your equipment exceed the Power You purchased as part of the Services listed in the Schedules.

## 5.3. Data Transfer and Bandwidth

For Your convenience We may provide Bandwidth to You in the form of monthly data transfer ("Monthly Data Transfer"), stated in the Schedules in decimal gigabytes per month. Where this is the case, You agree that We define 300 decimal gigabytes per month as the average data passed in one month over a connection speed of one megabit per second (1Mbps). You accept that We reserve the right to charge You for excess Bandwidth usage, as stipulated in clause 5.2, if the connection speed to Your Services required to support your pattern of Monthly Data Transfer exceeds the equivalent connection speed allowance calculated from your Monthly Data Transfer allowance, using the aforementioned conversion.

## 5.4. Excluding VAT

All prices quoted to You for the provision of services by Us are exclusive of any value added tax (VAT) for which You may be additionally liable at the prevailing rate.

## 5.5. Debt Recovery

Notwithstanding suspension of the Services by Us, You shall continue to pay the price for the Services until this Agreement is terminated in accordance with the terms of this Agreement. We understand and will exercise Our statutory right to interest and debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 if not paid according to agreed terms. We reserve the right to send overdue accounts to a debt collection agency. All charges involved in the collection of overdue accounts will be payable by You.

## 5.6. Refunds and Credits

Save as set out elsewhere in this Agreement, refunds and/or credit notes will be given only at Our sole discretion.

## 5.7. Supply Costs

You will reimburse Us on demand for all expenses which We have undertaken to incur in connection with the provision of Services to You when You have supplied Your prior written consent for that provision and those expenses. For the avoidance of doubt, unless and until You do supply the aforementioned consent, We shall not be obliged to incur any such costs on your behalf and that as a result there may be a delay in supplying the Services, or any part thereof, to You. For the avoidance of doubt, where you instruct us to proceed with such third party services shall be a deemed agreement to the charges advised to You for providing the same.

## 5.8. Pricing Changes

Prices for the Services are subject to change at any time. We shall supply You with 28 days written notice before any variation of the Service pricing takes effect. Pricing changes, other than those detailed in clauses 5.9 and 5.10, apply only upon Your renewal of the Services.

## 5.9. Power and Bandwidth At-Cost Increases

If the Schedules for the Service include Power and/or Bandwidth purchased on a forward pricing basis by Us, We reserve the right to increase Power and Bandwidth pricing by

any increase in the cost to Us of the Power and Bandwidth on 28 days written notice to You ("Variation Notice"). We warrant that any increase in Power and Bandwidth pricing shall be the same as the increase in costs We pay to Our suppliers for Power and Bandwidth. These increases in Power and Bandwidth pricing may occur during a contracted period for the Services, in which case You will be invoiced with 30 day payment terms by Us for surplus charges due for the remaining contracted period, less the 28 days Variation Notice. The varied Power and Bandwidth pricing will then apply to renewals made by You for the Services thereafter. The cost of Power shall be deemed to include the costs of any Carbon Reduction Commitment allowances or any similar levy incurred by Us or Our suppliers in the operation of the data centre from which the Services are provided.

## 5.10. Third Party Costs

We will be entitled at any time to amend Our charges to You for the Services to take into account any increase in the payments specified in the Schedules which We make to any third party at Your request. This includes, but is not limited to, third party software licences. Should (a) You vary your requirements during this Agreement and such variation results in an increase in third party costs; or (b) the third party's costs increase, You will be issued with an invoice with 30 day payment terms by Us for the increased third party charges due for the remaining contracted period. Such variations in charges will then also apply to any renewals of the Service thereafter. Where third party costs are incurred by Us on your behalf or as part of the provision of any Service to You, prior to the Commencement of the Services, such third party costs will be payable by You regardless of the fact that the Service has not commenced.

## 5.11. Disputes

If You reasonably dispute any portion of an invoice, You must pay the undisputed portion of the invoice and submit a written claim for the disputed amount within 14 days of Your receipt of the invoice.

If You dispute any portion of an invoice based upon usage of the Services, Our records of such usage shall be presumed to be accurate unless proved otherwise by an independent expert.

You waive the right to dispute any charges not disputed within 14 days of the invoice date. If the dispute is resolved against You, You shall pay all owed amounts in full plus late payment interest in accordance with clause 5.5.

## 5.12. Delays from Alterations to Service

If after placing an Order with Us, You request to Us an alteration of the Service which results in a delay of delivery of the Service to You, then Our charges and expenses shall all be due no later than the original Commencement of the Services date.

## 5.13. Fees Due on Termination

The provisions of this clause 5.13 shall not apply where You terminate this Agreement because We are in breach or cease trading, or where You terminate this Agreement in accordance with clauses 3.1 or 16.

You have the right to terminate the Service at any time on the understanding that, once the Service has commenced, all fees and charges, including future instalments due under this Agreement, or any variations thereto or renewals thereof, must be paid in full by You to Us and no refunds or credits will be issued by Us to You. Certain Services require payment in advance from You. You agree that we may at Our sole discretion delay the Commencement of the Services until We are in receipt of cleared funds for the entire agreed advance payment.

Once the Service has been commenced, no refunds or credits shall be issued for cancellation requested by You and all instalment fees under contract shall be due. You may cancel the Service prior to commencement or at any agreed renewal date without financial penalty provided You have supplied Us with the required amount of notice. In respect of third party costs, the provisions of clause 5.10 will also apply where termination is prior to the Commencement of the Service.

## 6. Distance Selling Regulations

It is hereby agreed that this Agreement and its Schedules provide You with all information required by The Consumer Protection (Distance Selling) Regulations 2000 ("the Consumer Protection Regulations"), under Regulation 10 of the Consumer Protection Regulations. You may have the right to cancel this Agreement within seven working days after this Agreement has been concluded. However, it is agreed between Us and You that the Services may, at Your request, commence before the end of that cancellation period, in which case You will lose the right to cancel from the date that We provide You with the Service.

## 7. Colocated Equipment

For Colocation Services, You agree to the following terms and conditions.

### 7.1. Ownership

Equipment located in Our data centre space belonging to You or of which You have lawful possession granted by a third party (a Third Party Owner) shall remain the property of You or the Third Party Owner and We shall do nothing to prejudice any rights of ownership, except as expressly provided for in this Agreement.

### 7.2. Third Party Ownership

Should the Equipment You provide as part of the Services be the property of a Third Party Owner (as defined in clause 7.1), You must notify Us in writing of this fact, including the nature of the Third Party Owner's interests and the Third Party Owner's name and address and contact details, before

We receive delivery of the Equipment (the "Third Party Equipment"). Any Third Party Equipment shall not be subject to any contractual lien imposed on You under clause 7.5 but shall be subject to storage fees accruing in accordance with clause 7.6.

### 7.3. Liability for Transit

You accept full responsibility for the delivery and collection of Your Equipment to and from the data centre and You shall ensure that Your Equipment is delivered to Us in fully working condition. We do not accept any liability for any loss or damage to Your Equipment caused in transit to and from the data centre.

### 7.4. Packaging

When Your Equipment is delivered, the packaging it is delivered in will be disposed of. If You require the packaging to be stored You must explicitly inform Us in writing in advance of receipt of delivery, in which instance You will be charged for storage at a standard weekly rate as advised to You at the time.

### 7.5. Recovery of Unpaid Fees

You shall not be entitled to collect Your equipment for maintenance or otherwise unless all unpaid fees for the Services are paid in full prior to such collection.

Upon termination of this Agreement, We reserve the right to exercise a lien over Your equipment in respect of any unpaid fees, until such time as all amounts due, including storage fees detailed in clause 7.6, from You to Us are paid.

Without notice to You, We shall be entitled, but not obliged, to sell the Equipment if it is not collected after 30 days from the termination date and use the proceeds to satisfy in whole or part all and any sums due from You to Us. If sale proceeds after the costs of sale exceed the amounts due to Us, We shall account to You for the balance. If the sale proceeds are less than the amounts due to Us, You shall remain liable for the balance.

If Your Equipment or any part thereof has no market value or no buyer can be found within 30 days of the right to sale being exercisable, We shall advise You accordingly and may dispose of or retain what is not saleable as We see fit and without having to account to You. In the event We elect to retain what is not saleable, title to such retained Equipment shall pass to Us on notification to You of this election. In all events, You shall remain liable for all amounts outstanding, including storage fees detailed in clause 7.6 and disposal costs, up to a maximum of 30 days from the termination date.

### 7.6. Upon Termination

Where the Services are terminated for whatever reason, Your Equipment may be removed from racks by Us or Our subsidiaries or contractors. We will then securely store Your Equipment without charge for 48 hours. If Your Equipment is stored beyond this period, We reserve the right to charge You five pounds sterling (£5) per day per item of Your Equipment held in storage.

Should You not have collected Your Equipment after 30 days from the termination date, We reserve the right to dispose of or retain Your Equipment as We see fit and without having to account to You. In the event We elect to retain what is not saleable, property shall pass to Us on notification to You of this election.

Upon request by You, whether or not in dispute with Us, any Third Party Equipment will be made available for collection by the named Third Party Owner on production of reasonable evidence of ownership, and then You shall not make any subsequent claim against Us in respect of the equipment in question.

## 7.7. Data Disposal

Before Your Equipment or any part of it is disposed of by sale or otherwise or title thereto is passed to Us, We shall enact the provisions of clause 19.5. You will be responsible for all costs of such disposal.

## 8. Physical Access to Services

### 8.1. Our Equipment, Racks and Data Floor

Physical access to Our equipment, racks or data floor by You is not permitted under any circumstances, even if such equipment is used to provide You with the Services.

### 8.2. Colocation Services

For Colocation Services, access to Your Equipment can be arranged subject to Our access policies ("Access Policy") in force at the time of the access request. This may require You to issue Us with prior written notification in the manner prescribed in the Access Policy. In the event We require to escort You and supervise Your access to Your Equipment, We may charge an escorted access fee at the prevailing rate as detailed in the Access Policy.

A Build Room or other facilities may be available for Your use. Should You wish to utilise such facilities, We will require prior written notification and may require payment of a fee, as described in the Access Policy.

In some instances, for example if You are replacing hardware components in Your Equipment, We may choose to remove Your Equipment from the data floor rack in which it is installed. Your Equipment will be moved by Us, Our representatives, contractors or subsidiaries, to a build area at the pre-booked time in order to allow You access to Your Equipment. When you are finished or your booking time expires, Your Equipment will be moved back to its rack on the data floor by Us, Our contractors or subsidiaries.

Such access is granted to You on a "best effort" basis and You agree that We shall not be held responsible for Your booking being cancelled or shortened by Us as a result of previously unforeseen incidents of any kind including, but not limited to, problems relating to staffing, illness, lock downs or acts of God. In such a circumstance We will attempt to notify You of the problem, but You acknowledge that such communication is not guaranteed. We reserve the right to decline any access

requests at Our sole discretion.

Should You need to cancel an access request booking, You must notify Us in writing, in the manner prescribed in the Access Policy, at least four hours in advance of the start of the booking. Should You fail to give the required advance notice of cancellation, We reserve the right to charge You any fees which would have been incurred by You during the booked access, plus an additional sixty pounds sterling (£60) for Our inconvenience.

## 9. Support and Maintenance

### 9.1. Standard (Unmanaged) Support

Maintenance and support shall not include Our dealing with problems arising out of (a) tampering, modification, alteration, or addition to the Hardware or Software, which is undertaken by persons other than Us or Our authorised representatives; or (b) software programmes or hardware supplied by You.

Any problems caused by You to the Services, (which include, but are not limited to, deletion of necessary operating system files, accidental or intentional infection by a virus/Trojan) may result in extra charges to You at Our then prevailing hourly rate. All such fees requested by Us shall be paid in full prior to Us commencing work.

We are not responsible or liable to You for any delay, malfunction, non-performance and/or other degradation of performance of any of the Services, Hardware or Software caused by or resulting from any alteration, modification and/or amendments due to changes and specifications requested or implemented by You.

### 9.2. Server Management and Paid Support

We will charge You at Our standard rate for any work carried out by Us which has been requested by You and is not included in the Services and for any additional work and/or expenses incurred as a result.

If You require Our staff, or the staff of Our subsidiaries or Our contractors to perform work for You, other than in respect of outages relating to Power or Bandwidth to servers or network equipment, You agree to pay Us for doing so at a charge rate notified to You in writing before commencing said work and Us receiving your approval for such charges. For the avoidance of doubt, You instructing Us to proceed with such management/support shall be a deemed agreement to the charges advised to You for providing the same.

### 9.3. Notification of Issues

You shall document and promptly report all errors or malfunctions of the Services, Hardware or Software to Us.

### 9.4. Timely Rectification by You

You shall take all steps necessary to carry out reasonable procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been

received from Us.

If You, or any third party acting for You, do not perform any task essential for the provision of the Services within a reasonable timescale or request Us to undertake the task or in an emergency and We perform that task, You will pay Us for doing so at Our standard rate in force at that time.

## 9.5. Timely Rectification by Us

This clause does not apply (a) where We have agreed to supply the Services to You, or any part of them, in accordance with our Network and Hardware SLA as set out at clause 20; and/or (b) to Your Hardware and/or Software (or that of a third party) supplied by You as part of Colocation Services. In all other cases, upon notification to Us by You of a fault in the Services, We shall endeavour to repair or replace failed Hardware or Software within a reasonable time period. In the case of Software repair, We shall attempt to reinstall the system to the latest backup copy maintained by You (as required in clause 9.7), or in the absence of such an archived copy, We shall reinstall the system to its original configuration. In accordance with clauses 9.1 and 9.2, work involved in replacements or repairs may be chargeable to You at Our prevailing rates.

## 9.6. Remote Reboots and KVMoIP Sessions

In the event of a request by You, once notified We will endeavour to reboot Your server and/or connect a KVMoIP device as soon as possible but offer no timed guarantee.

## 9.7. Data Handling and Disclosure

You shall maintain a current archive copy of all software and data, and shall properly train Your personnel in the use of the Services, Hardware and Software.

We, and Our authorised contractors, will not access or otherwise manipulate any data stored on the Services other than under a direct written instruction from You, or as directed to do so by a court order or an order from a UK regulatory authority enforceable under English law, whether it be on Our equipment or Your equipment.

You warrant to Us that You have the right to disclose Your data to Us. Where carrying out such a request puts Us in scope as a Data Processor, We shall process Personal Data in accordance with section 21 and You shall comply with section 21 at all times and indemnify Us in full on demand for any breach of Your obligations therein.

## 9.8. IP Address Assignment

In the event We assign to You an Internet Protocol (IP) address as part of the Services, such an address shall revert to Us immediately upon termination of the Services or any of them for any reason whatsoever, whereupon You shall cease using such address. Thereafter, We may assign such address to another client and You shall have no right to use it, nor will We be liable to You for any alleged losses whatsoever resulting therefrom.

## 10. Acceptable Use Policy

Our Acceptable Use Policy ("AUP") is intended to help protect Our service, Our clients and the Internet community in general from irresponsible or, in some cases, illegal activities, and You agree to be bound by the AUP.

### 10.1. Unlawful Activity

You and Your end users shall not, nor shall they permit, enable, or assist others, to use the Services, whether directly or indirectly, for any breach of any applicable law or generally accepted transmission or application protocols applicable to the Internet or any part of it or to anything connected to it or to any user of it. Such prohibited use includes but is not limited to the following:

- a) civil infringement of and/or criminal offences relating to copyright, trade marks or any other intellectual property right in any jurisdiction;
- b) commission of any criminal offence (including deliberate transmission of computer viruses) under the Computer Misuse Act 1990 (UK) or any similar legislation in any country;
- c) accessing any systems which You do not lawfully have the right to access and, in particular, You agree that You either own or have written authorisation from the legal owner of the computer equipment to be accessed by You using Our Services;
- d) knowingly or recklessly transmitting, displaying or posting to a publicly accessible service any material which is unlawful or actionably defamatory or an invasion of privacy, breach of an intellectual property right or breach of a right of publicity in any jurisdiction with which any publicly accessible service reasonably appears to have any connection or from which it may reasonably be apprehended that a publicly accessible service is likely to be significantly accessed;
- e) transmitting, transferring, displaying or posting to a publicly accessible service any material in breach of the Data Protection Law or similar legislation in any other country or of any material which is confidential or is a trade secret or which affects the national security of the United Kingdom or any other country or which may expose Us or any of Our contractors or subsidiaries to any retribution or penalty under the laws and/or regulations and/or decrees of the United Kingdom or any other country relating to the export of or dealing with military or potentially military resources;
- f) use of the Services or the Internet in any manner which is a violation or infringement of any rights of any kind or nature (whether like to any of the foregoing or otherwise) of any person, firm or company;
- g) transmission of any obscene speech or materials or any abusive, harassing or threatening language;
- h) distribution of any malicious content including, but not limited to, viruses, worms and Trojan horses;

- i) unauthorised access to the network management equipment of Us, the Enlink Network or other Internet service providers;
- j) forgery of Internet addresses or other fields in Internet Protocol packets or Ethernet frames by You;
- k) sending of unsolicited email messages or any mass mailing of unsolicited advertising material by You;
- l) any activity that potentially could harm the Enlink Network, its clients' networks or other networks, including but not limited to traffic flooding, malicious overflows, mail bombing, denials of service etc;
- m) any activity that We decide at Our sole discretion is an unsuitable use of the Services.

## 10.2. Inconsiderate Usage

You shall not use the Services in any way that causes an unreasonable burden, as determined by Us at Our sole discretion, on Our systems, the systems of Our suppliers, contractors or the services of Our other clients.

Except as necessary for Your use of the Services, You shall not directly or indirectly cause or allow robots or other automated processes to act upon or interact with Our systems without prior written permission signed by a duly authorised representative of Us, which may be revoked at any time at Our sole discretion.

## 10.3. Abuse

You are responsible for maintaining email addresses of the forms postmaster@client.domain and abuse@client.domain for receiving Abuse Complaints of network abuse activities, as suggested by Internet Official Protocol Standard RFC 2142. Typically, these email addresses will forward emails to the real user accounts of the responsible persons for treating the network misuse complaints.

You warrant that You will respond to any Abuse Complaints within 48 hours. All complaints related to network misuse, including email abuse, are to be sent to abuse@connetu.net.

## 10.4. Banned Services

IRC services or IRC-related services are permitted only if they do not connect to EFnet and/or Undernet. This includes, but is not limited to: "IRCd servers," "eggdrops," "bots," and "bouncers." This restriction is to prevent attacks on the Enlink Network due to malicious activity that has been known to occur on the IRC networks EFnet and Undernet.

## 10.5. Use of Data Centres

For colocation services where You have access to a data centre ("Premises") from which We operate:

- a) You shall not make use of the Premises for anything other than the permitted use;
- b) You shall not do anything on the Premises which We consider to be a nuisance or disturbance to Us, Our suppliers, other clients or occupants of adjacent properties, or bring into the Premises any hazardous or dangerous substance;

- c) You shall comply with such reasonable regulations and conditions ("Site Rules") as We or Our suppliers may stipulate to facilitate the orderly running and management of the Premises. Site Rules shall be made available on request to visitors at the Premises. The principal Site Rules will be notified by signs posted in the Premises;
- d) You shall not at any time access, touch or interfere with any equipment belonging to Us, Our suppliers or any other client or third party using the Premises;
- e) You warrant that Your equipment installed on the Premises shall not cause any additional fire risk nor be likely to damage or impair the operation of other computer equipment on the Premises;
- f) You may not at any time alter or damage the Premises, nor make any additions to it or erect any signage except with Our prior written consent;
- g) You must observe all reasonable health and safety requirements whilst on the Premises;
- h) You must observe signs at or inside the Premises which indicate any restrictions on what may not be done whilst on the Premises;
- i) You agree that You will not remove tools made available for Your use from the Build Room;
- j) A stock of commonly used parts, leads and cables are available in the Build Room, and You agree that You will replace any used parts as soon as is practicable.

## 10.6. Application to Your Customers

You are responsible for the activities of Your customer base or end-users and, by accepting Services from Us, You agree to ensure that Your clients abide by this AUP and to indemnify Us for all and any losses incurred by Us as a result of their failure or misuse as if it were Your own.

## 10.7. Enforcement

If any breach of the AUP continues for more than 5 consecutive days following the breach being notified to Us, then You may be subject to appropriate action in order to stop such breaches continuing. Such action may include, but is not limited to, suspension of all or any part of the Services, and termination of the Agreement.

# 11. Intellectual Property Rights

## 11.1. Working Processes

The contents of all reports, documents, specifications, presentations, software and all and any other documentation (which shall include hard and soft copy formats) prepared, made or written by Us for or to You, all advice given by Us to You, all the methodologies used by Us in working for You and the results of the work done by Us for You, are for Your use only and You will not divulge them to any third party, except where the third party receives or proposes to receive services under contract with You that are or will be delivered using the Services in accordance with this Agreement.

## 11.2. Products and Services

The intellectual property rights in all computer software, documentation, specifications and other materials which We produce or supply, and in all ideas, methodologies, inventions, discoveries, designs, concepts and work arising from any services We provide to You will, as between You and Us, belong to Us, save where such intellectual property rights are legally or beneficially assigned by Us to You or a third party. If requested by Us, You will do what is necessary (including executing any documents) to enable Us (or our assignee or any other entity nominated by Us) to enjoy, defend and enforce those rights.

## 11.3. Ownership

You acknowledge that You will not have any rights in respect of any products, materials or methodologies used by Us and owned by Us or any third party provider to Us, and You agree to keep the same strictly confidential.

## 11.4. Your Intellectual Property Rights

The terms of clauses 11.1, 11.2 and 11.3 shall apply mutatis mutandis to Your intellectual property.

## 11.5. Rights on Your Data

You warrant to Us that none of Your data or its provision to Us will infringe the intellectual property rights of any third party, or contain anything which is obscene or defamatory, or which is a malicious falsehood, or will breach any applicable Data Protection Law or principles.

## 12. Warranty

In performing Our obligations under this Agreement, We shall at all times exercise reasonable skill and care, but other than as set out in this Agreement and the Schedules, no representation or warranty is given that the Services will be uninterrupted or error free.

We warrant that the Services will be performed in accordance with the terms and service levels set out in this Agreement and/or the Schedules, save in the case of Force Majeure as defined herein.

All terms, conditions, representations and warranties, express or implied, not set out in this Agreement are, to the fullest extent permitted by law, excluded from applying to this Agreement including, but not limited to, any implied warranties, terms and conditions as to performance, fitness for purpose, merchantability and satisfactory quality.

We give no warranty as to the security of the Services unless you purchase a service offering enhanced security from Us. You should make your own arrangements in relation to security if such services are not purchased from Us, bearing in mind your own obligations pursuant to Data Protection Law and other applicable law.

## 13. Loss or Damage

### 13.1. Loss of Data or Software

We will not be responsible for any loss of data and/or software from any of Your Services. The insurance of any loss of data and/or software is not part of this Agreement. We do not insure You against any consequential loss arising from a loss of data and/or software.

### 13.2. Loss of or Damage to Your Hardware

For Colocation Services where We host Your Equipment in Our data centre space, We shall have no liability for the loss, theft or damage of Your Equipment (or that of any third party that you request Us to store or host) and You acknowledge that it is Your responsibility to ensure Your equipment is adequately insured against loss, theft or damage by whatever cause. We may seek additional insurance cover on Your behalf under the terms stated in clause 14.5 of this Agreement.

### 13.3. Consequential Loss

We are not in a position to assess any consequential loss which You may suffer as a result of any failure of the Services, or any other default on the part of Us and it would be impractical and uneconomic for Us to insure against such liability. Accordingly it is Your responsibility to properly assess any consequential loss that You and/or Your clients may suffer and to obtain and maintain adequate insurance in relation to such losses. You shall also ensure that You have adequate insurance cover in relation to any loss or damage which may be caused to Us and/or Our clients through negligence or default of You, Your employees, agents, or equipment. You shall, when requested, provide Us with such evidence as We may require in relation to Your insurance.

## 14. Limitation of Liability

You acknowledge that the allocation of risk in this Agreement reflects the price paid for the Services, Hardware and Software and that it is not within Our control how or for what purposes they are used. In no event shall We, nor anyone else who has been involved in the creation, production or supply of the Services, Hardware or Software, be liable for any direct, indirect, incidental, special, exemplary or consequential damages (including, but not limited to, procurement of substitute goods or services; loss of use, data or profits; or business interruption) however caused and on any theory of liability, whether in contract, strict liability or tort (including negligence or otherwise) arising in any way out of the use of the Services, even if advised of the possibility of such damage.

### 14.1. Aggregate Liability

Under no circumstances shall Our aggregate liability to You exceed the aggregate fees paid by You to Us for the Services in the 90 days previous to the time the cause of action arose. This provision is a material provision in the absence of which neither You nor Us would have entered into this Agreement.

## 14.2. Incomplete or Inaccurate Instructions

We shall have no liability to You for any loss arising from any material, data or instructions (including Processing Instructions) supplied whether digitally or otherwise by You or on Your behalf which is incomplete, inaccurate, illegible, out of sequence or in the wrong form or arising from late arrival or non-arrival or any other fault by You or on Your behalf.

## 14.3. Contracts and Software Licences

It is Your responsibility to keep the server files up to date. You are solely liable for any legal contracts or end user license agreements as a result of any third party software installed by You.

## 14.4. Death and Personal Injury

Nothing in this Agreement shall exclude or limit Our liability for death or personal injury resulting from Our negligence or fraudulent misrepresentation nor affect the statutory rights of consumers.

## 14.5. Additional Insurance

You acknowledge that the exclusions and limitations on Our liability in this Agreement have been drawn to Your attention and that they are accepted by You. In the event that You require insurance cover to cover those eventualities excluded by Us, You are reminded that this obligation lies with You and We will not take out any additional cover except without first assessing the availability of such cover and agreeing a fee for the same with You.

## 14.6. Service Level Agreements

Any Service Level Agreement ("SLA") provided with a Service does not constitute any additional liability to Us, but instead a self-assumed obligation towards You.

## 15. Indemnity

You agree to fully indemnify and keep Us, Our contractors, subsidiaries, affiliates, officers, partners and employees fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever incurred by it or them and arising from any of the following (where references to You or Your also include any authorised agent on Your behalf):

- a) Your breach of this Agreement or Your negligence or other act, omission or default;
- b) The operation or break down of any equipment or software owned or used by You but not the Hardware and/or Software;
- c) Your use or misuse of the Services;
- d) You infringing (whether innocently or knowingly) third party rights (including without limit intellectual property rights).

## 16. Force Majeure

No claim for damage or any other remedy shall arise out of any breach of, or failure to perform any of the obligations arising out of this Agreement if such breach or failure to perform is caused by: Act of God, War or military operations, insurrection or civil disorder, revolution, act(s) of terrorism, severely adverse weather that stops normal business activity in the area where the Services are provided, flood, drought, lightning or fire, blizzard, tornado, riot, strike, national or local emergency, intervening acts or omissions of government, highway authority or other government authority, restrictions of access to premises or movement arising from pandemic, compliance with statutory obligation, industrial disputes of any kind, acts or omissions of telecommunications operators or any other occurrence beyond Our reasonable control ("Force Majeure").

## 17. Suspension

We reserve the right at Our sole discretion to suspend the Services (temporarily) on the occurrence of any unscheduled maintenance or any of the following (each of the following shall be a "Suspension Event"):

- a) Notified Maintenance;
- b) issue by any competent authority of an order which is binding on Us or Our contractors or subsidiaries and which affects the Services and which can only be dealt with properly by suspension of the Services;
- c) if You fail to pay any amounts due under this Agreement when they are due;
- d) if any events occur which would entitle Us or Our contractors or subsidiaries to terminate this Agreement;
- e) the Bandwidth used by You in relation to the Services exceeds the agreed level, and in the case of Bandwidth provided as a Monthly Data Transfer allowance this includes the equivalent connection speed limit as detailed in clause 5.3, and We determine in Our sole discretion that such suspension is necessary to protect all and any Internet solutions provided by Us.

If the Suspension Event continues for a period of 30 days, either party may terminate this Agreement with immediate effect by serving written notice to the other. You shall remain liable to pay all outstanding and future fees for the Services.

## 18. Relocation

We shall have the right upon prior written notice to You to relocate the Services, which in the case of colocation services includes Your equipment, from one piece of Hardware to any other Hardware and/or from one data centre to any other site, provided the alternative specification is comparable or better. We shall work with You during such a relocation to minimise the impact on the Services. All costs of relocation shall be borne by Us. Upon any such relocation, the rights granted by this Agreement shall be deemed to apply to the new Hardware and/or data centre site.

## 19. Duration and Termination

### 19.1. Duration of Services

This Agreement is for an initial period as detailed in the Schedules hereto (the "Initial Term") from the date of commencement of the Services and, unless terminated by You giving Us notice in writing at least for a period detailed in the Schedules hereto ("the Cancellation Notice Period"), such notice to expire the day before the anniversary of the commencement of the Services, it will automatically renew for subsequent further periods as detailed in the Schedules hereto (the "Renewal Term") until terminated by You giving Us notice in writing at least Cancellation Notice Period in advance of the start of the next Renewal Term. If the Renewal Term is not specified, it shall be considered equal in duration to the Initial Term.

The termination or expiry of Services covered by one Schedule or agreement will not affect the continuing in force of any other Services covered by any other Schedule or agreement.

All obligations and duties, which by their nature extend beyond the expiration or termination of this Agreement, shall survive and remain in effect beyond expiration or termination of this Agreement.

### 19.2. Breach of Agreement

If We become aware of any breach of this Agreement by You, We may at our sole discretion suspend or terminate access to the Services without issuing any prior notice to You. Where appropriate you will be permitted a period of 28 days to rectify said breach; failure to do so will be treated as a repudiatory breach of contract. In the event We terminate this Agreement due to a breach of this Agreement by You, no refunds or credits shall be issued to You and, in the case of a contract for the Service where future instalments remain to be paid, those instalments will remain due to be paid by You to Us.

### 19.3. Trial Periods

We reserve the right at Our sole discretion to terminate free trial periods at any time without notice and without any compensation, financial or otherwise, due to You.

### 19.4. Insolvency

Either party may immediately, upon giving notice in writing to the other, terminate this contract if the other has a receiver or administrative receiver appointed to it or over any part of its undertaking or assets, or passes a resolution for winding-up (other than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if the other party becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun, or if the other party ceases or threatens to cease to carry on its business. If the date of the Agreement is on or after 1 October 2015, to the extent that the circumstances of Your insolvency are such that

the provisions of the Insolvency (Protection of Essential Supplies) Order 2015 ("the Insolvency Order") apply, We shall not terminate this Agreement in accordance with the terms of this section except where We may do so under the terms of the Insolvency Order.

You agree to supply Us, on demand, with such financial information as we may require so as to satisfy Us that You will remain solvent for the duration or balance of the duration of this Agreement, or any renewal thereof. Failure to do so within 4 weeks of any request shall be deemed to be a repudiatory breach of contract allowing Us to terminate this Agreement with immediate effect.

### 19.5. Data Disposal

Once Your Services are terminated, We shall so far as is practicable ensure that any data stored on the Services is permanently deleted from all data storage devices.

It is ordinarily Your responsibility to ensure You have a copy and/or backup of all data stored on the Services prior to termination.

Where You have notified Us in writing at least 3 working days prior to termination and where practicable, We may create a copy of the requested data stored on the Services onto removable media which We will send either electronically or to a postal address nominated by You, subject to the payment of reasonable charges for the work and media involved.

Where data is liable to be deleted but You have notified Us in writing that the data is the property of a third party, where practicable and subject to the payment of reasonable charges for the work and media involved, We shall provide a copy of the data to the third party upon that party's presentation of reasonable proof of ownership.

You acknowledge that, if You do not issue any such written requests to Us, any data held on the Services may be irreversibly erased without further notice to You but We make no warranties or representations that data will be entirely irretrievable after this process has been carried out, unless You have paid a fee to Us for the erasure.

When the aforementioned data is delivered by Us to You by any impersonal or indirect means including, but not limited to, the use of a postal or courier service or electronic mail or third party electronic data storage, We shall use appropriate data encryption to protect the data being transferred. We shall not be held liable to You or any third party for any loss or damage of the physical media containing the data.

Where such data is Personal Data, the provisions of clause 21.2 (i) and (j) shall apply.

## 20. Service Level Agreement

Our Service Level Agreement (SLA) is a statement of the guarantees for the provision and reliability of certain Services We provide to You. This is applicable only for Services where it is stated in the Schedules that the “Network and Hardware SLA” applies to that Service. For all other Services, this section 20 does not apply.

If a Service for which the “Network and Hardware SLA” applies is provided along with ancillary Services in the Schedules, this SLA does not apply to the ancillary Services.

The “Maximum Compensation” for any failure to meet this SLA or any part of it is the monthly fee for the Service, which will be calculated pro-rata if the Service period is longer than one month, excluding any monthly fees, pro-rata if necessary, for any ancillary Services provided along with the Service in the Schedules provided those monthly fees are explicitly stated.

### 20.1. Network Availability

We endeavour as far as possible to provide to You a supply of Internet access to the Services that shall be continuous and uninterrupted other than in periods of Notified Maintenance. In the event that We are unable to provide such a continuous and uninterrupted supply (other than in the case of Force Majeure, section 16), Your remedies against Us in respect of such failure shall be limited to the payment of compensation calculated in accordance with clause 20.5.

Internet access uptime to the Service is determined to be unavailable (“Network Outage”) when data transfer to or from the Internet cannot be achieved at the backbone routers and switches of the Enlink Network.

You acknowledge that We cannot guarantee routing, latency or packet loss once data traffic has left the Enlink Network, but that We or Our suppliers, as far as is practicable, will configure routers to ensure outbound data traffic utilises appropriate routes to the destination addresses.

### 20.2. Power Availability

We endeavour as far as possible to provide to You with a supply of electrical power to the Services that shall be continuous and uninterrupted other than in periods of Notified Maintenance.

The power supply is considered to be unavailable (a “Power Outage”) when no power is available at the socket to which the Hardware providing the Services, or in the case of colocation services Your own equipment, is connected.

Where dual power feed redundancy is available, even if You have elected not to use it, terms of clause 20.8 shall apply.

### 20.3. Environment Regulation

We warrant that We shall at all times endeavour to keep the data centre within acceptable temperature and humidity ranges. These are monitored at the return air intake on the air conditioning units, or inside the cold aisle if contained, within the data centre and are nominally  $23^{\circ}\text{C} \pm 4^{\circ}\text{C}$ .

### 20.4. Planned Outages

We may undertake Notified Maintenance, including planned outages or major works that may result in outages, at any time. During Notified Maintenance periods, We do not guarantee availability of Service and the terms of clause 20.5 below will not apply. Notified Maintenance which affects availability of Service will only be invoked where there is no reasonably practical and economical workaround available. We shall endeavour to schedule Notified Maintenance so as to minimise the impact on Your business activities.

### 20.5. Compensation

The unavailability of Your Service shall be determined solely by Our own monitoring system, included as part of the Services listed in the Schedules. Your Service is considered to be unavailable (“Unavailable”) upon the second consecutive minute of complete packet loss for the Service, and where such packet loss is confirmed by Us or Our suppliers to be caused by a problem with the Enlink Network or the power supply to Your Service. The Service will be deemed to be available again (“Recovered”) immediately upon bidirectional packet flow being successfully re-established to the Service from within the Enlink Network. The time difference between the Service being Unavailable and Recovered shall be termed the “Outage Period”.

The total unavailability for the Service in any given month (“Monthly Downtime”) shall be calculated as the sum of all Outage Periods for that month, expressed in minutes.

The “Compensation Downtime” is calculated by rounding up the Monthly Downtime to the next nearest 15 minutes.

We shall compensate you to the amount of two-and-a-half percent (2.5%) of the Maximum Compensation for every 15 minutes of Compensation Downtime, up to a maximum not exceeding half the Maximum Compensation in that month.

Expressed as a standard mathematical formula, the amount We shall grant to You in compensation ( $C$ ) in any one month is determined by:

$$C = M \times \max(0.5, 0.025 \times \text{ceil}(D/15))$$

where  $M$  is the Maximum Compensation,  $D$  is the Compensation Downtime expressed in minutes and  $\text{ceil}(x)$  evaluates to the smallest integer greater than or equal to  $x$ .

For the avoidance of doubt, where failure of, or development of faults in, Hardware causes an Outage Period, compensation detailed in this clause shall not apply.

### 20.6. Hardware Repair or Replacement

If the Service relies upon Hardware owned by Us, We warrant that We will repair or replace any failed or faulty Hardware within six hours of Us receiving notification from You of that failure or fault, only if that failure or fault constitutes, or immediately causes, disruption to the Service. Notification shall only be deemed to have been received by Us if You successfully submit such notification as a new support incident ticket inside the Support Portal.

Should We fail to repair or replace the faulty Hardware within six hours of receiving notification from You, We shall compensate you to the amount of two-and-a-half percent (2.5%) of the Maximum Compensation for each additional hour (the “Extended Hardware Downtime”) until the Hardware has been repaired or replaced, up to a maximum of half of the Maximum Compensation.

For any non-essential or redundant Hardware, We will arrange with You a Notified Maintenance period to conduct replacement of the failed or faulty Hardware at a convenient time.

## 20.7. Manufacturer Repairs

Where the Service incorporates Hardware specially procured for You, You may elect to accept the manufacturer's warranty or other third party support services in place of Our usual support, normally for commercial benefit. For the avoidance of doubt, where You have contracted this option, We provide no timed guarantees for repairs and no compensation calculated by clause 20.6 shall apply to that Hardware.

## 20.8. Protected Services

The majority of services are available with options for increased hardware resilience, power redundancy, route and cabling diversity and other high availability engineering (such a service being termed a “Protected Service”).

A Protected Service shall only be considered Unavailable when all included resiliency fails to the extent that the overall Protected Service is completely Unavailable.

No compensation shall be due to You under this SLA as a result of the failure of, or development of faults in, components of the Services or Hardware where the overall Protected Service continues to operate correctly.

It is Your responsibility to ensure You utilise the provided redundancy of a Protected Service correctly. No compensation shall be due under this SLA for Your failure to utilise a Protected Service correctly.

No compensation shall be due under this SLA where the option of a Protected Service is available, whether We have pro-actively offered it to You or not, but You have declined it or otherwise not contracted a Protected Service for any reason, including on technical or commercial grounds.

## 20.9. Supplier Compensation

Where an Outage Period is caused for any reason within systems outside of Our control but operated by one or more of Our suppliers, the compensation calculated as payable to You shall be limited to at most the compensation paid to Us by those supplier(s) for Your affected Services under any similar agreement in force between Us and those supplier(s).

## 20.10. Exclusions

No compensation shall be due to You for any Outage Period resulting from:

- Notified Maintenance;

- Any cause other than faults by Us or Our suppliers, including faults or negligence of You or problems associated with equipment You have supplied;
- Delays caused by Your inability to action reasonable instructions provided by Us in a timely manner;
- Equipment You have supplied causing negative effects on the performance, quality and/or operation of the Enlink Network;
- Outage Periods reported by You in which no fault is observed or confirmed by Us;
- Suspension of the Service by Us under provision in this Agreement;
- Any Force Majeure event, as defined in clause 16;
- Virus attacks, hacking attempts, or any other external influences that are not within our control;
- Standard re-convergence or re-negotiation of any networking protocols, including but not limited to, routing, spanning tree, trunking, discovery, redundancy and fail-over protocols;
- Any routing problems, high latency or packet loss occurring on the Internet outside Our network.

## 20.11. Denial of Service Attacks

In the event of any form of denial of service (“DOS”) attack directed at or originating from the Services where the attack disrupts or threatens to disrupt the availability or reliability of the Enlink Network, We may suspend without prior notice the Service that is the target or source of the attack until the issues arising from the attack or compromised Services are resolved. In these circumstances, We shall not be liable to You in respect of the suspension of Services arising from the DOS attack. Any resulting Outage Period shall be excluded from the Compensation Downtime.

On the understanding that it takes reasonable time to identify and halt the disruptive effects of inbound DOS attacks, as these are outside Our control, the Compensation Downtime shall exclude the first sixty (60) minutes of any Outage Period incurred as a result of a DOS attack targeted towards any machine on the Enlink Network.

## 20.12. Compensation Procedure

To claim compensation under this SLA, You must write to Us, at Our accounts department, by raising a suitable support incident ticket via the Support Portal within 7 days of the start of an Outage Period or Extended Hardware Downtime for which compensation is being claimed.

At the end of the month, We will aggregate all Outage Periods reported by You (excluding those caused by Hardware failures or faults, as detailed in clause 20.6) and calculate the Compensation Downtime and credit, as described in clause 20.5.

We shall also calculate any compensation owed to You from the Extended Hardware Downtime periods.

In no event shall the total compensation due from Us to You exceed the Maximum Compensation in any one month.

## 20.13. Nature of Compensation

Any compensation arising under this SLA shall be credited to Your account for use solely in respect of future charges for the affected Service, and shall not be set-off against charges arising under any other agreement between You and Us unless agreed by Us in writing, and shall in no circumstances result in a cash refund.

You shall not be entitled to any compensation under this SLA if any payment for the Services is overdue at the time the compensation claim is made.

## 20.14. Variation

The service levels set out in the SLA of this agreement are current guidelines only and may be subject to amendment or variation at any time, for example due to the introduction of new services or as a result of changes in technologies used. For the avoidance of doubt, any such amendment or variation shall not give You the right to terminate this or any other agreements that You have with Us.

# 21. Data Protection

For the purpose of this section 21 the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” will have the meanings prescribed under the Data Protection Law.

The Parties acknowledge that for the purposes of the Data Protection Law, You act as either the Data Controller or Data Processor and We act (where applicable) as the Data Processor. Clauses 21.3 to 21.4 below set out the relevant particulars of the Processing as required by the Data Protection Law.

You acknowledge and agree that pursuant to Your obligations under Article 28(1) of the GDPR to only appoint Data Processors providing sufficient guarantees to implement appropriate technical and organisational measures to meet the requirements of the GDPR, and that You have assessed Our applicable technical and organisational measures and consider them to be sufficient, taking into account the nature, scope, context and purpose of the processing undertaken pursuant to this Agreement.

For the purposes of this Agreement, the scope of the data that we shall process in accordance with the Data Protection Laws shall be your customer information such as is required to maintain an account with Us, Your financial details for the purposes of payment collections, contacts details of Your staff for the purposes of Us carrying out Our obligations under this Agreement, where applicable such identification information as may be required in order to access physical facilities or certain electronic services and maintain audit records, plus (where applicable) any specific data scope detailed in the Schedules hereto.

## 21.1. Your Obligations

You represent and warrant to Us that with respect to any Personal Data Processed pursuant to this Agreement:

- a) All Personal Data is necessary for the purpose for which it is Processed, accurate and up-to-date (and contains nothing that is defamatory or indecent or otherwise breaches this Agreement or the Acceptable Use Policy);
- b) You have implemented appropriate technical and organisational measures to ensure a level of security appropriate to the risk to the Personal Data;
- c) You have obtained all the necessary consents from Data Subjects to Process the Personal Data and to outsource the processing of any Personal Data to Us, and You covenant that You shall notify Us in writing if there are any material changes to these consents or to the Personal Data that We process under this Agreement;
- d) You are not aware of any circumstances likely to, nor will You instruct Us to process the Personal Data in a manner that is likely to, give rise to a breach of Data Protection Law (or any other applicable data protection or privacy laws);
- e) To the maximum extent permitted by mandatory law, We shall have no liability howsoever arising, whether in contract, tort (including negligence) or otherwise, for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any Processing in accordance with Your Processing Instructions following Our receipt of that information;
- f) You shall indemnify Us and keep Us indemnified in respect of all Data Protection Losses (whether foreseeable or not, or direct or indirect) suffered or incurred by, awarded against or agreed to be paid by Us (and any Sub-Processor) arising from or in connection with any:
  - i) Non-compliance by You with the Data Protection Laws;
  - ii) Processing carried out by Us or any Sub-Processor pursuant to any Processing Instruction that infringes any Data Protection Law;
  - iii) Breach by You of any of Your obligations under section 21.
- g) You acknowledge that the Services are provided as infrastructure only, as generic IT storage repositories for and/or computational nodes for the analysis of and/or as conduits for the transmission of arbitrary data, and that We ordinarily have no visibility of, control over or responsibility for the type or use of data stored, analysed or transmitted (Data Processing in the case of Personal Data) by You or third parties using the Services. Further, You acknowledge that it would be impractical, unreasonably costly, and/or detrimental to performance to implement data security safeguards uniformly, without discrimination, across all services for all customers and usage scenarios;

h) Whilst We have procedures in place to effect compliance of the Services with applicable Data Protection Laws, in the absence of any written agreement between You and Us to the contrary, You acknowledge that the Services may not provide adequate guarantees for all Data Processing of all Personal Data and You warrant that You will not make use of the Services for such purposes without Your prior implementation of all appropriate safeguards including, but not limited to, network threat protection, timely application of security software patches, strong user authentication and authorisation, at-rest (on-disk) and in-flight (transmission) data encryption of a suitable standard and a backup strategy to protect against data loss, at Your own expense. You agree to fully indemnify Us for any Data Protection Losses should You fail in Your obligations to implement or maintain sufficient safeguards for the Services.

## 21.2. Our Obligations

Where We Process Personal Data on Your behalf, with respect to such Data Processing, We shall:

- a) Process the Personal Data only in accordance with Your Processing Instructions. You acknowledge that We are under no duty to investigate the completeness, accuracy or sufficiency of such instructions;
- b) Only permit the Personal Data to be processed by persons who are bound by enforceable obligations of confidentiality and take steps to ensure such persons only act on Our instructions in relation to the processing;
- c) Protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm and risk which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected (and You shall notify Us immediately if the nature of such Personal Data changes in any material way);
- d) Not transfer any Personal Data outside of the UK and European Economic Area (other than Your transmission and receipt of data over the Internet and use of similar networks that may involve part of the network being located outside of the UK and European Economic Area) without Your prior written consent;
- e) Notify You promptly if, in Our opinion, an instruction from You infringes any Data Protection Law (provided always that You acknowledge You remain solely responsible for obtaining independent legal advice regarding the legality of Your instructions) or We are subject to legal requirements that would make it unlawful or otherwise impossible to act according to Your instructions or comply with Data Protection Law;
- f) Notify You promptly if We receive any request, complaint, notice or communication (whether from a Data Subject, competent supervisory authority or otherwise) relating to the Data Processing, Personal

Data or either party's compliance with the Data Protection Law as it relates to this Agreement, and subject to a reasonable fee being paid by You, provide You with reasonable co-operation in relation to the same;

- g) Upon Your reasonable request and subject to a reasonable fee being paid by You, assist You to respond to requests from Data Subjects who are exercising their rights under the Data Protection Law (insofar as it is reasonable for Us to do so);
- h) Be entitled to disclose, share or transfer Personal Data or Your data that We process on Your behalf to any law enforcement agency or official public authority where We are required to do so under applicable law. Except where We are prohibited under applicable law, We shall notify You in writing of any such order request or disclosure of Personal Data or Your Data as soon as is reasonably possible and cooperate with You, subject to a reasonable fee being paid by You, with regard to the order request or disclosure;
- i) Not retain copies of Personal Data for longer than is necessary to perform our duties under this Agreement and following Your written direction, securely destroy or return such Personal Data, except where We are required to retain the Personal Data by law or regulation. We shall not actively process such retained Personal Data and shall remain to be bound by the provisions of this section 21. We shall delete such retained Personal Data promptly after We cease to be obliged to retain it and shall only process it to the extent required to comply with applicable laws;
- j) At Your written direction, delete or return to You, or permit You to retrieve, Personal Data or copies thereof stored on any Hardware supplied as part of the Services upon termination of the Services or this Agreement unless required by applicable law to store the Personal Data, subject to a reasonable fee being payable by You for the same;
- k) Subject to the requirements of commercial, technical and data confidentiality, make available to You such information as is reasonably required to demonstrate Our compliance with Our obligations under this section 21;
- l) We agree to permit at most one audit per 12 month period by an independent Registered EDP Auditor for the purposes of Data Protection Laws. This shall only take place if there are specific and well-founded grounds for suspecting abuse of Personal Data by Us, and only after You have requested and assessed any similar reports that We have available and You have made reasonable arguments to justify initiating an audit. Such an audit is justified if the similar reports that We have available provide an insufficient or inconclusive answer about compliance.

**21.3. Sub-Processing**

In the performance of Our duties under this Agreement, You generally authorise Us to appoint third-party sub-processors in accordance with any restrictions in this Agreement provided We shall:

- a) Ensure that the sub-processor has at least the same obligations as Us under this section 21;
- b) Remain fully liable to You for all acts and omissions of the third party;
- c) Maintain an up to date list of sub-processors and shall inform You with details of any intended change in sub-processors prior to any such change.

You may object to Our appointment or replacement of a sub-processor prior to its appointment or replacement, provided such objection is based on reasonable grounds relating to data protection. In such event, We shall discuss the objection with You in good faith.

**21.4. Data Breaches**

We shall notify You without undue delay after becoming aware that We or an authorised sub-processor have suffered a Personal Data Breach (as defined in GDPR Article 4), and We shall take reasonable steps to prevent further disclosure or breach and mitigate the potential adverse effects on affected Data Subjects in cooperation with You.

Upon Your reasonable request and subject to a reasonable fee being paid by You, We shall assist You (insofar as it is reasonable to do so, taking into account the nature of the information available to Us and any restrictions on disclosing the information, such as confidentiality) to comply with Your obligations pursuant to Articles 32-36 of the GDPR (or such corresponding provisions of the Data Protection Law), comprising (if applicable):

- a) Notifying a Supervisory Authority that You have suffered a Personal Data breach;
- b) Communicating a Personal Data breach to an affected individual;
- c) Carrying out an impact assessment;
- d) Where required under an impact assessment, engaging in prior consultation with a supervisory authority.