

GLOBAL SWITCH
COLOCATION AGREEMENT
(full version)

Particulars

1	Date	6 th December 2019
2	Global Switch	Global Switch Estates 2 Limited (incorporated in England and Wales with company number 4729738) whose registered office is at 4 th Floor, Millbank Tower, 21-24 Millbank, London SW1P 4QP]
3	Global Switch's Address	4 th Floor Millbank Tower, 21-24 Millbank, London SW1P 4QP
4	Customer	The Secretary of State for Environment, Food and Rural Affairs
5	Customer's Address	Nobel House, 17 Smith Square, London SW1P 3JR
6	Invoicing Address	SCCL AP, Defra, PO Box 790, Newport, Gwent, NP10 8FZ
7	Data Centre	Global Switch House, 3 Nutmeg Lane, London E14 2AX
8	Rack Space	8 rack footprint(s) measuring 600 mm (width) by 1,000 mm (depth)
9	Term	3 years from (and including) the Commencement Date
10	Commencement Date	6 th December, 2019
11	Service Fee	NINETY NINE THOUSAND THREE HUNDRED AND SIXTY POUNDS (£99360.00) per annum subject to increase in accordance with clause 8.5
12	Non-technical Services Charge	EIGHT HUNDRED POUNDS (£800.00) per annum subject to increase in accordance with clause 8.3
13	Electricity Charge	FORTY SIX THOUSAND TWO HUNDRED AND TWENTY FOUR POUNDS (£46224.00) per annum subject to increase in accordance with clause 8.5
14	Power Delivery Point	All of the outgoing circuit terminals, between each phase and the neutral conductor of a power distribution unit
15	Index	Four per cent (4%)
16	Total Power Draw	24 kilowatts
17	Maximum Power Density	3000 watts per rack footprint
18	Installation Costs	Sixty Four Thousand Nine Hundred And Thirty Seven POUNDS (£64937.00)

SIGNED by

on behalf of
Global Switch Estates 2 Limited

SIGNED by 

on behalf of
**The Secretary of State for Environment, Food and Rural
Affairs**

THESE TERMS AND CONDITIONS are agreed on the date stated in the Particulars between Global Switch and the Customer whose details are set out in the Particulars

1 **Definitions and Interpretation**

1.1 In this Agreement:

Accounting Date means 1 April in each year or such other date as Global Switch notifies in writing to the Customer;

Accounting Quarter means the period from and including one Payment Date to but excluding the next Payment Date;

Accounting Year means the period from but excluding one Accounting Date to and including the next Accounting Date;

Base RPI Figure means the index value of the RPI published most recently before the commencement of the then current Accounting Year;

Cables means the cables more particularly described in the Pricing Matrix;

Commencement Date means the date stated as such in the Particulars from which date Global Switch will commence the provision of the Services;

Common Areas means all parts of the Data Centre from time to time provided for the common use of more than one of the occupiers of the Data Centre and their visitors including (without limitation) vehicular and pedestrian accesses, passages, stairways, circulation areas, lifts, escalators, loading bays, fire escapes, toilet facilities, storage areas, refuse collection and disposal areas and parking areas;

Cooling Outage means the average temperature (measured from the wall and column mounted room temperature sensors in the Suite) of the Suite either:

- (a) exceeds 28 degrees Celsius for more than 60 consecutive minutes; or
- (b) falls below 16 degrees Celsius for more than 60 consecutive minutes;

provided that at no time during the same period shall the power draw by the Equipment exceed the Total Power Draw or the Maximum Power Density;

CRC means the Carbon Reduction Commitment (Energy Efficiency) Scheme under the CRC Energy Efficiency Scheme Order 2010 or any similar equivalent or successor scheme;

Critical Outage means the occurrence of a Cooling Outage or a Humidity Outage or a Power Outage;

Critical Services means those of the services specified at paragraphs 1 to 3 (inclusive) of Schedule 1 insofar as they relate to the Rack Space;

Cross Connect One-Off Charge means the applicable one-off charge specified as such in the Pricing Matrix;

Cross Connect Notice has the meaning ascribed to it in **clause 7.2** and **Cross Connect Notices** shall be construed accordingly;

Cross Connect Recurring Fee means the applicable recurring charge specified as such in the Pricing Matrix;

Cross Connect Right has the meaning ascribed to it in **clause 7.1**;

Cross Connect Route means the installation of cables leading from the Rack Space to the equipment of any third party in the Data Centre along such routes which Global Switch shall designate;

Customer has the meaning ascribed to it in the Particulars;

Customer's Address means the Customer's registered address stated as such in the Particulars;

Customer's Manager means a senior representative appointed by the Customer from time to time empowered to make executive decisions on behalf of the Customer;

Customer Services Handbook means such rules, regulations, policies and procedures relating to the Data Centre or its use as are notified by Global Switch to the Customer from time to time and include any charges payable by the Customer pursuant to the same;

Customer's Share means the proportion which the Measured Area of the Rack Space bears to the Measured Area of the Technical Space;

Data means all data, information, text, drawings, diagrams, images or sounds that are embodied in any electronic or tangible medium;

Data Centre means the data centre facility the address of which is stated in the Particulars;

Dispute means any dispute between the parties arising under or in connection with this Agreement;

Electricity Charge means the annual charge stated as such in the Particulars payable by the Customer in respect of the provision of an electricity supply to the Rack Space equivalent to the Total Power Draw and to all plant and equipment (including but not limited to equipment for the cooling of, and humidity control within, the Suite) serving and/or installed in the Data Centre;

Electricity Provider means the third party with which Global Switch contracts, from time to time, for the supply of electricity to the Data Centre;

Environmental Levies means any tax, charge or levy properly imposed on or incurred by Global Switch under any present or future mandatory carbon reduction tax, any carbon emissions trading scheme that relates to the consumption of energy including (without limitation) the cost of purchasing allowances in respect of emissions covered by the CRC;

Equipment means the racking, telecommunications, information technology and other equipment from time to time installed in the Rack Space by the Customer;

Global Switch has the meaning ascribed to it in the Particulars;

Global Switch's Address means Global Switch's registered address stated as such in the Particulars;

Global Switch's CEO means Global Switch's Chief Executive Officer from time to time appointed by Global Switch;

Group Company means any company which is for the time being a subsidiary holding company or a subsidiary of such holding company within the meaning of section 1159 of the Companies Act 2006;

Humidity Outage means the average humidity (measured from the wall and column mounted room humidity sensors in the Suite) of the Suite is either:

- (a) higher than a value corresponding with a relative humidity of 70% for more than 60 consecutive minutes; or

- (b) lower than a value corresponding with a relative humidity of 30% for more than 60 consecutive minutes;

provided that at no time during the same period shall the power draw by the Equipment exceed the Total Power Draw or the Maximum Power Density;

Index means the percentage stated as such in the Particulars;

Installation Cost means the cost stated as such in the Particulars;

Installation Works means the works of design installations and additions to the Rack Space carried out by or on behalf of Global Switch at the entire cost of Global Switch strictly in accordance with the Specification;

Insured Risks means fire, lightning, earthquake, explosion, aircraft (other than hostile aircraft) and other aerial devices or articles dropped therefrom, riot, civil commotion, malicious damage, storm or tempest, bursting or overflowing of water tanks, apparatus or pipes, flood, impact by road vehicles and damage caused by Terrorist Activity (to the extent that insurance against such risks may ordinarily be arranged with an insurer of good repute) and such other risks or insurance as may from time to time be required by Global Switch (subject in all cases to such exclusions and limitations as may be imposed by the insurers), and **Insured Risk** means any one of them;

Invoicing Address means the address stated as such in the Particulars;

Latest RPI Figure means the index value of the RPI published most recently before the end of the then current Accounting Year;

Maximum Power Density means the maximum power draw by the Equipment installed in any one rack footprint stated as such in the Particulars subject to variation in respect of part or parts of the Rack Space in accordance with **clause 5.3(c)**;

Measured Area means the area of the Rack Space or the Technical Space (as appropriate) measured to:

- (a) where the same is bounded by walls: the external face of the perimeter walls (save where that perimeter wall comprises an external wall of the Data Centre in which event the relevant wall shall be measured to the internal face);
- (b) where the same is bounded by a cage: the external face of the perimeter cage; or
- (c) where the same is bounded by neither walls nor a cage: the external edge of the feature or features demarking the boundary of the Rack Space (or in the absence of such a feature or features the boundary shown on the plan attached at **Annexure 1**) or the Technical Space (as appropriate);

and including:

- (i) areas occupied by internal walls, partitions and cages;
- (ii) columns, piers, other internal projections, vertical ducts, and the like;
- (iii) structural, raked or stepped floors (which are to be treated as a level floor measured horizontally);
- (iv) horizontal floors, whether accessible or not, below structural, raked or stepped floors;

- (v) corridors of a permanent essential nature (including fire corridors and the like);
- (vi) mezzanine areas intended for use with permanent access; and
- (vii) areas with a headroom of more than 1.5 metres;

but excluding voids over or under structural, raked or stepped floors;

Non-technical Expenses has the meaning ascribed to it in Schedule 2;

Non-technical Plant means any Service Media, plant or equipment from time to time serving the Data Centre (except any that is wholly within the Technical Space or exclusively serves that Technical Space) the provision and maintenance of which is not specifically comprised in the Technical Services;

Non-technical Services has the meaning ascribed to it in Schedule 2;

Non-technical Services Charge means the annual service charge stated as such in the Particulars payable by the Customer in respect of the provision of the Non-technical Services by Global Switch;

Non-technical Services Cost means all costs of the Non-technical Services and the Non-technical Expenses relating to the Data Centre (including a fair proportion of any costs incurred in relation to the Data Centre and other property) (including irrecoverable VAT);

Non-technical Space means all parts of the Data Centre which are not from time to time Technical Space including (without limitation):

- (a) the Common Areas;
- (b) office and other accommodation for staff managing the Data Centre;
- (c) plant rooms;
- (d) storage areas;
- (e) loading bays; and
- (f) all parts of the structure, walls, foundations and roofs of the Data Centre that are not included in the Rack Space nor would be included in the property demised under leases of all other Technical Space if those leases were on the same basis as this Agreement;

Operational Management Requirement means the costs for the provision of operation supervision, input and assistance in respect of any works conducted by or on behalf of the Customer specified as such in the Pricing Matrix;

Particulars means the particulars set out on the first page and forming part of this Agreement;

Payment Dates means 1 January, 1 April, 1 July and 1 October in each year of the Term;

Portal means Global Switch's website located at the internet address notified by Global Switch to the Customer or such other website as may replace it from time to time;

Power Delivery Point means the power delivery point stated as such in the Particulars;

Power Outage means the voltage level of the Power Delivery Point providing electrical power supply to the Equipment is nil;

Pricing Matrix means the document attached to this Agreement at **Annexure 2** or any revision of it made by Global Switch in accordance with **clause 8.9**;

Project Management Requirement means the costs for the provision of management supervision, input and assistance in respect of any works conducted by or on behalf of the Customer specified as such in the Pricing Matrix;

Rack Space means the equipment racking space comprising the dimensions set out in the Particulars and shown for the purpose of identification on the plan attached at **Annexure 1** or located in such other place or places within the Data Centre as Global Switch shall from time to time designate pursuant to **clause 15**;

RPI means Retail Prices Index (all items) published by the Central Statistical Office (or other ministry government department or other body on which the duties in connection with the said index shall devolve) or any official index replacing it;

Service Fee means the annual fee stated as such in the Particulars;

Service Interruption means the unavailability of a Service with the consequence that the Customer's business at the Rack Space is materially prejudiced or damaged;

Service Media means sewers, drains, pipes, wires, cables, conduits and other conducting media;

Services means the Technical Services and the Non-technical Services and **Service** shall be construed accordingly;

Specification means the specification plans and documents attached at **Annexure 3**;

Suite means the hall or suite in which the Rack Space is located;

Supervision Requirement means (as relevant):

- (a) Project Management Requirement;
- (b) Technical Management Requirement; or
- (c) Operational Management Requirement;

Supervisory Services means the provision of the Supervision Requirement in accordance with **paragraph 2** of Schedule 3;

Supervisory Services Charge means the sums due in respect of the Supervision Requirement calculated in accordance with **paragraph 2** of Schedule 3;

Technical Management Requirement means the costs for the provision of technical supervision, input and assistance in respect of any works conducted by or on behalf of the Customer specified as such in the Pricing Matrix;

Technical Services means the services set out in Schedule 1;

Technical Space means a part of the Data Centre which is the subject of a lease or services agreement or other licence, or constructed or adapted for that purpose, from time to time;

Term means the term of this Agreement stated as such in the Particulars;

Terrorist Activity means acts of persons acting on behalf of or in connection with any organisation which carries out activities directed towards the overthrowing or influencing by force or violence of

any government de jure or de facto;

Total Power Draw means the maximum power draw by all of the Equipment installed in the Rack Space stated as such in the Particulars;

VAT means Value Added Tax and any similar tax substituted for it or levied in addition to it.

- 1.2 All sums payable hereunder are exclusive of VAT or any other applicable tax or duty payable upon such sums that shall be added if appropriate at the rate prevailing at the relevant tax point.
- 1.3 Any obligation to do or not to do something shall include an obligation to procure that it be done or not done.

2 Installation Works and Handover

- 2.1 Global Switch has obtained all necessary planning, building regulations and other consents (**Consents**) required for the Works and has carried out or procured the carrying out of the Installation Works:
- (a) in accordance with the applicable requirements of all relevant statutes and delegated legislation (including permissions and consents issued pursuant to the same) and statutorily binding codes;
 - (b) in accordance with all relevant national standards and codes of practice from time to time in force;
 - (c) in a good and workmanlike manner and exercising all reasonable skill and care;
 - (d) using only suitable good quality materials and equipment of their several kinds;
 - (e) in accordance with the Specification; and
 - (f) in accordance with the Consents.
- 2.2 Clause not used.
- 2.3 Upon receipt of the Installation Costs, Global Switch will undertake the Installation Works.
- 2.4 Global Switch will obtain all necessary planning, building regulations and other consents (Consents) required for the Installation Works and will carry out the Installation Works:
- (a) in accordance with the applicable requirements of all relevant statutes and delegated legislation (including permissions and consents issued pursuant to the same) and statutorily binding codes;
 - (b) in accordance with all relevant national standards and codes of practice from time to time in force;
 - (c) in a good and workmanlike manner and exercising all reasonable skill and care;
 - (d) using only suitable good quality materials and equipment of their several kinds;
 - (e) in accordance with the Specification; and
 - (f) in accordance with the Consents.
- 2.5 Upon completion of the Installation Works, Global Switch will notify the Customer in writing that practical completion of the Installation Works in accordance with the Specification has been achieved.

In the event that the Installation Works have not been completed by the Commencement Date owing to any act or omission by the Customer the Service Fee shall remain payable on the Commencement Date.

- 2.6 The Installation Works shall be the property of the Customer upon completion of such Installation Works and payment of the Installation Cost and shall therefore be considered as Equipment of the Customer for the purpose of the Agreement.

3 Use and Rights

- 3.1 Subject to the Customer paying the Service Fee, the Non-technical Services Charge and all the other sums due under this Agreement and to the Customer complying at all times with the Customer Services Handbook Global Switch hereby grants to the Customer with effect from the Commencement Date for the duration of the Term the right:

- (a) (subject to **clause 5.7**) to install and retain the Equipment in the Rack Space and to use the same in accordance with **clause 5.5**;
- (b) to use any cables installed by Global Switch in accordance with **clause 7**;
- (c) (subject to **clause 5.3**) to connect into the low voltage panel designated by Global Switch to serve the Rack Space for the purposes only of the provision of an electrical power supply to the Equipment; and
- (d) to pass and repass at all times over the Common Areas.

- 3.2 Global Switch reserves the right:

- (a) to refuse access to the Data Centre or remove from the Data Centre any employees and sub-contractors of the Customer whose admission or presence is or would be in the reasonable opinion of Global Switch detrimental to the security of the Data Centre or in respect of whom the Customer has failed to request a right of access from Global Switch and Global Switch will not be responsible for the consequences of any such refusal or failure or delay by the Customer in notifying it of its access requirements; and
- (b) at all reasonable times and on reasonable notice (except in case of emergency) to enter the Rack Space in order to:
 - (i) inspect and record the condition of the Rack Space or any other parts of the Data Centre;
 - (ii) remedy any breach of the Customer's obligations under this Agreement;
 - (iii) repair, maintain, clean, alter, replace, install, add to or connect up to any Service Media;
 - (iv) repair, maintain, alter or rebuild any part of the Data Centre;
 - (v) comply with any of its obligations under this Agreement.

- 3.3 The Customer accepts that Global Switch shall be entitled to:

- (a) disconnect or physically terminate or detach or remove cables laid by the Customer in breach of this Agreement and in particular in breach of **clause 3.1(b)**; and

- (b) carry out such cleaning works in the Rack Space as Global Switch deems necessary in order to in compliance with the Customer Services Handbook subject to Global Switch first giving notice of the same to the Customer;

and the cost (in the case of **clause 3.3(b)**) as specified in the Pricing Matrix) shall be reimbursed by the Customer on demand as a debt.

- 3.4 The Customer acknowledges and agrees that any rights conferred on the Customer by this Agreement are the rights of a licensee only. Nothing in this Agreement is intended to create any relationship of landlord and tenant between Global Switch and the Customer.

4 Provision of the Services

- 4.1 Subject to the other provisions of this Agreement and the Customer paying the Service Fee, the Non-technical Services Charge and all the other sums due under this Agreement Global Switch agrees with the Customer to provide the Services to the Customer in accordance with this **clause 4**.

- 4.2 Global Switch warrants and undertakes to the Customer that it shall perform the Services with reasonable care and skill and in accordance with this Agreement but:

- (a) Global Switch will not be in breach of this **clause 4** as a result of any failure or interruption of any of the Services:
 - (i) resulting from circumstances beyond Global Switch's reasonable control, so long as Global Switch uses its reasonable endeavours to remedy the same as soon as reasonably practicable after becoming aware of such circumstances save that (other than where **clause 13.1(d)** applies) Global Switch will procure that a Critical Outage does not occur; or
 - (ii) to the extent that the Services (or any of them) cannot reasonably be provided as a result of works of inspection, maintenance and repair or other works being carried out at the Data Centre save that (other than where **clause 13.1(d)** applies) Global Switch will procure that a Critical Outage does not occur; or
 - (iii) resulting from a breach of the obligations of the Customer set out at **clause 5**;
- (b) Global Switch does not warrant or undertake that the Services will cause the Equipment to operate without fault or interruption; and
- (c) Global Switch shall be entitled to suspend the provision of the Services in the event that the Customer's operations at the Rack Space or from the Equipment are unlawful or illegal.

- 4.3 Global Switch agrees with the Customer to provide to the Customer:

- (a) the Supervisory Services in accordance with **paragraph 2** of Schedule 3; and
- (b) such other additional services requested by the Customer that Global Switch agrees (at an additional cost to the Customer) in writing to provide.

5 Customer's obligations

The Customer agrees with Global Switch:

- 5.1 To keep and maintain in good and substantial repair and condition (damage by the Insured Risks excepted save to the extent that insurance moneys are irrecoverable as a result of the act or default of the Customer) the Rack Space.

- 5.2 To maintain the Equipment in good working order and (save to the extent that the same is the responsibility of Global Switch in accordance with the Customer Services Handbook) to procure that the Rack Space is kept clean, tidy and safe at all times.
- 5.3 To comply with the requirements of Global Switch's technical and installation standards in respect of the Data Centre and Global Switch's electrical power management procedures and Global Switch's method statements on cable management and cable installation procedures each as set out in the Customer Services Handbook and ensure that (without limitation):
- (a) no installation of, or modification, alteration or addition to, the Equipment would result in increases to the floor loading or environmental conditions of the Equipment above the levels specified by Global Switch's technical and installation standards in respect of the Data Centre;
 - (b) the power draw by the Equipment does not exceed the Total Power Draw; and
 - (c) the power draw by the Equipment does not exceed the Maximum Power Density provided that the Customer shall be permitted to exceed the Maximum Power Density where:
 - (i) Global Switch's technical and installation standards in respect of the Data Centre (including, without limitation, the cooling system for cooling in the Suite and the ventilation installations for the provision of fresh and conditioned air to the Suite) are not (in Global Switch's opinion) prejudiced; and
 - (ii) the Customer has submitted to Global Switch details of the Equipment and its proposed configuration for the approval of Global Switch (at the cost of the Customer equivalent to the applicable charge for the corresponding Supervision Requirement); and
 - (iii) the Customer has first obtained the consent of Global Switch to the Maximum Power Density being exceeded (such consent not to be unreasonably withheld) provided that Global Switch shall be entitled at any time thereafter to withdraw such consent where (in its opinion) Global Switch's technical and installation standards in respect of the Data Centre are likely to be prejudiced.
- 5.4 To comply with the requirements of:
- (a) the Customer Services Handbook; and
 - (b) any statutes, regulations and codes of practice applicable to the Data Centre or its use.
- 5.5 Not to use the Rack Space except for the hosting of information technology equipment and uses ancillary thereto.
- 5.6 Not to cause any injury, damage or nuisance to, or interference with any person or property including (without limitation) the Data Centre and/or any equipment owned by third parties which may from time to time be located in the Data Centre.
- 5.7 Not to make:
- (a) any structural alteration or addition whatsoever in on or to the Rack Space; or
 - (b) any non-structural alteration or addition whatsoever in on or to the Rack Space without the prior written consent of Global Switch (such consent not to be unreasonably withheld) and then only by appointing Global Switch to supervise the same in accordance with **paragraph 2** of Schedule 3.

- 5.8 To make good any disrepair for which the Customer is liable or any unauthorised alterations within fourteen (14) days after the date of written notice from Global Switch (or sooner if Global Switch reasonably requires) and if the Customer fails to comply with any such notice Global Switch may carry out the work, and the cost shall be reimbursed by the Customer on demand as a debt.
- 5.9 To maintain at all times a complete and accurate inventory of the Equipment and to supply to Global Switch a copy of the same (and any variation thereto from time to time).
- 5.10 To be responsible for the payment directly to the relevant carriers or suppliers of all fees and charges payable in relation to the ordering and/or installation and/or rental and use of communications circuits from public telecommunications carriers or suppliers and in relation to the provision of maintenance and support services.
- 5.11 To pay all business rates and other taxes in respect of the Rack Space (even if they are levied on Global Switch) and reimburse to Global Switch any such sums including any irrecoverable VAT which Global Switch pays (but the Customer is not liable for tax payable by Global Switch in respect of Global Switch's own interest in the Rack Space or any devolution of it).
- 5.12 To pay to Global Switch on demand amounts equal to such liabilities, claims, demands, proceedings, damages, losses and proper costs and expenses as it may incur:
- (a) in connection with any application for consent made necessary by this Agreement (including where consent is lawfully refused or the application is withdrawn);
 - (b) incidental to or in reasonable contemplation of the preparation and service of a schedule of dilapidations (whether before or after expiry of the Term);
 - (a) in connection with the enforcement or remedying of any breach of the covenants in this Agreement on the part of the Customer and any guarantor; and
 - (b) in compliance with and the implementation of the CRC or an Environmental Levy by Global Switch including a fair share of the management and administrative costs incurred by Global Switch in respect of the same and payments for allowances reasonably attributable to the Customer's use of the Rack Space and the Common Areas whether incurred or received by Global Switch directly or by a Group Company of Global Switch.

6 Excess Power Draw

- 6.1 The Customer acknowledges and agrees that:
- (a) Global Switch has calculated the fees, expenses and charges payable by the Customer to Global Switch under this Agreement on the basis that the power draw by the Equipment shall not exceed the Total Power Draw; and
 - (b) if the power draw by the Equipment exceeds the Total Power Draw this will have a materially adverse effect on other occupiers of the Data Centre and the equipment owned by third parties which may from time to time be located in the Data Centre.
- 6.2 Without prejudice to **clause 5.3(b)** if the power draw by the Equipment exceeds the Total Power Draw then Global Switch may (but is not obliged to) give notice to the Customer of such breach (the **Excess Power Breach**) and the Customer shall within a period of twenty eight (28) days of such notice (or sooner in case of emergency) desist from the Excess Power Breach.
- 6.3 Without prejudice to any other remedy or right of claim on the part of Global Switch pursuant to this Agreement if the Customer fails to desist from the Excess Power Breach within such period of twenty eight (28) days (or sooner in case of emergency) then the Customer will pay to Global Switch liquidated and ascertained damages calculated as follows:

- (a) where the power draw by the Equipment:
 - (i) in the case of the first Excess Power Breach: exceeds the Total Power Draw by more than 5% of the Total Power Draw; or
 - (ii) in the case of each subsequent Excess Power Breach: exceeds the Total Power Draw;
- (b) and in either case by up to (but excluding) 100% of the Total Power Draw: a sum equal to 200% of one twelfth of the aggregate of the annual Service Fee and Non-technical Services Charge then payable pursuant to this Agreement; or
- (c) where the power draw by the Equipment exceeds the Total Power Draw by 100% or more of the Total Power Draw: a sum equal to 400% of one twelfth of the aggregate of the annual Service Fee and Non-technical Services Charge then payable pursuant to this Agreement.

6.4 The Customer acknowledges that the liquidated and ascertained damages calculated in accordance with **clause 6.3** shall apply and be payable irrespective of the duration that the power draw by the Equipment exceeds the Total Power Draw and on each occasion that the power draw by the Equipment is measured by Global Switch as being in excess of the Total Power Draw.

6.5 Notwithstanding this **clause 6** the parties agree that the liquidated and ascertained damages payable in accordance with **clause 6.3** are likely to be an insufficient remedy for any breach of **clause 5.3** (including, without limitation, circumstances where the heat output of the Equipment exceeds an amount equivalent to the Total Power Draw) and that Global Switch is entitled to protect against such a breach by injunctive relief or specific performance.

7 Cross Connect Right

7.1 Global Switch grants to the Customer the right (**the Cross Connect Right**) for the duration of the Term to request that Global Switch installs Cables along the Cross Connect Route.

7.2 The Cross Connect Right may be exercised by the Customer by giving written notice (**Cross Connect Notice**) to Global Switch and the Cross Connect Notice is to specify the desired Cables and connection points for the Cables (which shall be along the Cross Connect Route) in respect of which the Cross Connect Right is exercised and the Customer may serve any number of Cross Connect Notices.

7.3 Following the receipt by Global Switch of a Cross Connect Notice:

- (a) Global Switch will procure the installation of the Cables between the connection points in each case as specified in the Cross Connect Notice in accordance with this **clause 7.3**;
- (b) Global Switch warrants and undertakes to the Customer that it shall procure the installation of such cables with reasonable care and skill in a proper and efficient manner and using suitable materials and competent staff but Global Switch does not warrant or undertake that such installation of the cables specified in the Cross Connect Notice will cause the Equipment to operate without fault or interruption; and
- (c) within thirty (30) days after the receipt by the Customer of an undisputed invoice from Global Switch for the same (provided that Global Switch shall not issue such invoice prior to the completion of the installation of the cables specified in the Cross Connect Notice) the Customer shall pay to Global Switch the applicable Cross Connect One-Off Charge for the installation of the cables specified in the Cross Connect Notice;

provided that Global Switch shall not be required to install any cables where to do so would breach Global Switch's method statements on cable management and cable installation procedures as set out in the Customer Services Handbook.

- 7.4 The Customer will pay to Global Switch the applicable Cross Connect Recurring Fee such fee to be payable:
- (a) with effect from the date of the installation of the cables (**the Installation Date**) specified in the Cross Connect Notice until the expiry of the Term or (if earlier) the date twenty-eight (28) day after the Customer gives notice to Global Switch terminating its requirement for the same (whereupon Global Switch will be entitled but not obliged to remove or disconnect such cables); and
 - (b) by equal instalments quarterly in advance on the Payment Dates in every year of the Term (and proportionately for any period less than a year), provided that the first instalment shall comprise an appropriate proportion of the Cross Connect Recurring Fee calculated with effect from the Installation Date until the end of the then current quarter to be payable on the Installation Date.

8 Fees and payment terms

- 8.1 The Customer acknowledges that Global Switch has undertaken or has agreed to undertake certain works in the Rack Space on behalf of the Customer and the Customer undertakes to pay to Global Switch the Installation Costs in respect of those works within thirty (30) days of receipt by the Customer of an undisputed invoice without any deduction, counterclaim or set-off.
- 8.2 The Customer undertakes to pay to Global Switch during the Term and within thirty (30) days of receipt by the Customer of an undisputed invoice, without any deduction, counterclaim or set-off:
- (a) the Service Fee and the Electricity Charge and any VAT thereon by equal instalments quarterly in advance on the Payment Dates in every year of the Term (and proportionately for any period less than a year), provided that the first instalment shall comprise an appropriate proportion of the Service Fee and the Electricity Charge calculated with effect from the Commencement Date until the end of the then current quarter to be payable on the date of this Agreement;
 - (b) the Non-technical Services Charge and any VAT thereon;
 - (c) the Supervisory Services Charge and any VAT thereon;
 - (d) the Cross Connect Recurring Fee and any VAT thereon in accordance with **clause 7.4**;
 - (e) interest in accordance with **clause 8.10**; and
 - (f) all sums payable under **clause 13.2 (Insurance)**;
- 8.3 In relation to the Non-technical Services Charge:
- (a) the Customer shall pay the Non-technical Services Charge and any VAT thereon to Global Switch by equal instalments quarterly in advance on the Payment Dates in every year of the Term (and proportionately for any period less than a year), provided that the first instalment shall comprise an appropriate proportion of the Non-technical Services Charge calculated with effect from the Commencement Date until the end of the then current quarter to be payable on the date of this Agreement;
 - (b) as soon as practicable after the end of each Accounting Year Global Switch shall provide to the Customer a statement of the Non-technical Services Cost in respect of that Accounting Year;
 - (c) (save in respect of the first Accounting Year where the Non-technical Services Charge shall be the amount specified as such in the Particulars) the Non-technical Services Charge for each

Accounting Year shall be the Customer's Share of the Non-technical Services Cost in respect of the preceding Accounting Year multiplied by the product of the Latest RPI Figure divided by the Base RPI Figure and:

- (i) if Global Switch does not notify the Customer of the Non-technical Services Charge for any Accounting Year the Non-technical Services Charge for the preceding Accounting Year shall apply;
 - (ii) where Global Switch is delayed in notifying the Customer of the Non-technical Services Charge for any Accounting Year Global Switch shall be entitled to adjust the Non-technical Services Charge after the start of an Accounting Year and any such adjustments shall adjust the payments on the following Payment Dates equally;
 - (iii) if there is any change to the methods used to compile the RPI, including any change to the items from which the RPI is compiled, or if the reference base used to compile the RPI changes, the calculation of Non-technical Services Charge shall be made taking into account the effect of any such change;
- (d) Global Switch shall have the right to adjust the Customer's Share to make reasonable allowances for differences in the services provided to or enjoyable by the Rack Space; and
- (e) if only part of an Accounting Year falls within the Term the Non-technical Services Charge shall be the Customer's Share of the Non-technical Services Cost in respect of the relevant Accounting Period divided by 365 and multiplied by the number of days of the Accounting Year within the Term.

8.4 Invoices shall be sent by post to: SCCL AP, Defra, PO Box 790, Newport, Gwent, NP10 8FZ. All invoices shall contain the following information:

- a) the date of the invoice;
- b) a unique invoice number;
- c) the title of this Agreement "Defra Colocation Agreement"
- d) the reference number of the purchase order to which it relates (if any);
- e) the dates between which the Services subject of each of the charges detailed on the invoice were or will be performed;
- f) a description of the Services;
- g) a contact name and telephone number of a responsible person in Global Switch's finance department in the event of administrative queries; and
- h) the banking details for payment to Global Switch via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number)

8.5 The Service Fee shall upon each anniversary of the Commencement Date increase by the Index.

8.6 Each applicable Cross Connect Recurring Fee payable by the Customer in accordance with **clause 7.4** shall upon each anniversary of the Commencement Date increase by the Index.

8.7 The Electricity Charge shall upon each anniversary of the Commencement Date increase by the greater of:

- (a) the Index; and
- (b) Global Switch's reasonable and proper estimate of the increase in the costs and expenses relating to the provision of power to the Rack Space equivalent to the Total Power Draw and to all plant and equipment (including but not limited to equipment for the cooling of, and humidity control within, the Suite) serving and/or installed in the Data Centre.

8.8 The sums specified in the Pricing Matrix may be subject to revision by Global Switch on not less than thirty (30) days' prior written notice to the Customer.

8.9 If any sum due under this Agreement is not paid on the due date then (without prejudice to Global Switch's other rights and remedies) Global Switch:

- (a) reserves the right to charge interest on such sum on a daily basis (after as well as before judgment) from the due date to the date of payment at the rate of 4% above the base rate from time to time of The Royal Bank of Scotland plc (or of such other bank as Global Switch may nominate from time to time); and
- (b) has a general and particular lien over the Equipment for all sums owing by the Customer to Global Switch under this Agreement until such sums have been paid.

9 Reactive Maintenance

9.1 Immediately on becoming aware of a Service Interruption the Customer shall give written notice of the same to Global Switch.

9.2 On becoming aware of a Service Interruption or following notification in accordance with **clause 9.1** Global Switch shall (unless **clause 4.2(c)** applies):

- (a) specify to the Customer an estimated time scale for resumption of the Service which is the subject of the Service Interruption;
- (b) use its reasonable endeavours to remedy the Service Interruption as soon as practicable; and
- (c) update the Customer as necessary until the provision of the Service which is the subject of the Service Interruption is resumed.

9.3 The Customer shall allow Global Switch free access to the Rack Space at all times for so long as the Service Interruption persists in order to inspect and/or test the Service and carry out any remedial works.

10 Planned Maintenance

Global Switch shall give to the Customer at least twenty eight (28) days' notice in writing in advance of any work that it intends to carry out in relation to the Critical Services where such works will adversely affect the required service level or resilience of those Critical Services as specified in this Agreement, and such notice shall include details of the nature of the work to be carried out, the disruption to the Critical Services and the dates and estimated times for carrying out such work.

11 Service Credits

11.1 Except where the same is due to any act omission or default by the Customer or to destruction or damage by an Insured Risk, if a Critical Outage occurs:

- (a) for a period up to (and including) three (3) hours (from the time of the occurrence of the Critical Outage), then the Customer will receive a credit against the Service Fee of a sum equal to 20% of one twelfth of the annual Service Fee then payable pursuant to this

Agreement;

- (b) for a period between three (3) hours and six (6) hours (from the time of the occurrence of the Critical Outage), then the Customer will receive (in addition to any amounts under **clause 11.1(a)**) a credit against the Service Fee of a sum equal to 10% of one twelfth of the annual Service Fee then payable pursuant to this Agreement;
- (c) for a period between six (6) hours and twenty-four (24) hours (from the time of the occurrence of the Critical Outage), then the Customer will receive (in addition to any amounts under **clauses 11.1(a) and 11.1(b)**) a credit against the Service Fee of a sum equal to 10% of one twelfth of the annual Service Fee then payable pursuant to this Agreement; and
- (d) for each subsequent period of twenty-four (24) hours (or part thereof), then the Customer will receive (in addition to any amounts under **clauses 11.1(a), 11.1(b) and 11.1(c)**) a credit against the Service Fee of a sum equal to 40% of one twelfth of the annual Service Fee then payable pursuant to this Agreement;

provided that:

- (i) Global Switch shall not be obliged to allow such credits unless and until the Customer first supplied to Global Switch evidence reasonably satisfactory to Global Switch that the occurrence of such Critical Outage has directly caused loss or damage to the Customer or to the Equipment;
- (ii) where a Cooling Outage and/or a Humidity Outage occurs as a result of a Power Outage such credits shall be allowed only in respect of the Power Outage and the same shall be deemed to comprise just one (1) Critical Outage;
- (iii) where a Critical Outage affects part or parts only of the Rack Space such credits shall be apportioned and allowed per rack footprint (and pro rata in the case of a part) of the Rack Space so affected; and
- (iv) Global Switch shall not be required to allow such credits in respect of more than four (4) Critical Outages in any one period of twelve (12) months during the Term;

and any such credits shall be set off against the Service Fee or other amounts due to Global Switch for the next following Payment Date (or such longer period if appropriate) or, if no such sums are due, such credit shall be paid by Global Switch to the Customer within fourteen (14) days of the expiry or earlier determination of the Term.

- 11.2 Global Switch's entire liability to the Customer and the Customer's sole and exclusive remedy against Global Switch in respect of a Critical Outage and in respect of all loss, damages, costs and expenses caused by or relating thereto, regardless of the form of action, whether in contract, tort (including negligence and breach of statutory duty), or otherwise howsoever caused are as set out in this **clause 12**.

12 Limitation of liability

- 12.1 **Clauses 11 and 12** set out the entire liability of the parties (including without limitation any liability for the acts and omissions of its employees, agents and sub-contractors) to each other under or in connection with this Agreement howsoever arising (including without limitation as a result of negligence or any breach of its obligations under this Agreement), but nothing in this Agreement shall exclude or limit the parties' liability for death or personal injury caused by negligence or for fraudulent misrepresentation.

- 12.2 Neither party shall be liable to the other (**the Non-Defaulting Party**) for:

- (a) loss of contracts or goodwill; or
- (b) any type of economic loss (including loss of profit, loss of revenue, loss of anticipated savings or loss of business); or
- (c) loss of Data; or
- (d) indirect, consequential or special loss, damage or liability (including loss or damage suffered by the Non-Defaulting Party as a result of an action brought by a third party);

even if such loss or damage was reasonably foreseeable.

12.3 The total liability of a party to the other party hereunder in any period of twelve (12) months during the Term shall not exceed 120% of the aggregate of the Service Fee payable by the Customer during such period of twelve (12) months.

12.4 The Customer acknowledges that:

- (a) Global Switch has calculated the fees, expenses and charges payable by the Customer to Global Switch under this Agreement on the basis that Global Switch shall exclude or limit its liability to the Customer as set out in this Agreement;
- (b) the Customer is responsible for providing and maintaining an adequate back-up copy of any Data held on the Equipment;
- (c) the Customer is responsible for maintaining and implementing all necessary business continuity and disaster recovery plans;
- (d) the Customer is responsible for insuring the Equipment and accordingly Global Switch shall not be liable for any damage caused to it;
- (e) Global Switch is not aware of the processing that the Equipment engages in or the purpose of the Equipment; and
- (f) the Customer shall be responsible for insuring against or bearing any loss for which Global Switch has excluded or limited its liability under this Agreement;

12.5 The Customer acknowledges that given the nature of the Data Centre and the Services and its own obligations under this Agreement, it is reasonable for Global Switch to exclude or limit its liability as set out in this **clause 12**.

12.6 The parties acknowledge that each of the sub clauses in this **clause 12** are severable and that each of those sub clauses shall be construed as separate limitations.

13 Insurance

13.1 Global Switch agrees with the Customer:

- (a) to insure the Data Centre (other than tenant's and trade fixtures and fittings) unless the insurance is invalidated in whole or in part by any act or default of the Customer:
 - (i) with an insurance office or underwriters of repute;
 - (ii) against loss or damage by the Insured Risks;
 - (iii) subject to such excesses as may be imposed by the insurers;

- (iv) in the full cost of reinstatement of the Data Centre (in modern form if appropriate) including shoring up, demolition and site clearance, professional fees, VAT and allowance for building cost increases;
- (b) to insure against loss of the Service Fee and the Non-technical Services Charge and VAT thereon payable or reasonably estimated by Global Switch to be payable under this Agreement arising from damage to the Rack Space by the Insured Risks for three years or such longer period as Global Switch may reasonably require having regard to the likely period for reinstating the Rack Space;
- (c) at the request of the Customer (but not more than once in any period of twelve (12) months other than at the cost of the Customer), to produce evidence of the terms of the insurance under this **clause 13** and of payment of the current premium;
- (d) if any part of the Data Centre is destroyed or damaged by an Insured Risk, then, unless payment of the insurance moneys is refused in whole or part because of the act or default of the Customer, and subject to obtaining all necessary planning and other consents, to use the insurance proceeds (except those relating to loss of rent and fees) and any uninsured excess paid by the Customer under **clause 13.2(d)(ii)** in reinstating the same (other than tenant's and trade fixtures and fittings) as quickly as reasonably practicable, in modern form if appropriate but not necessarily identical in layout provided that:
 - (i) any liability of Global Switch to reinstate shall be deemed to have been satisfied if Global Switch provides accommodation substantially comparable to the Rack Space but not necessarily identical or in the same location to that previously existing;
 - (ii) in the event that the whole or substantially the whole of the Data Centre is destroyed or damaged Global Switch shall not be liable to reinstate the Rack Space if Global Switch elects to terminate this Agreement by giving notice in writing to the Customer such notice to be served no later than six months after the occurrence of such destruction or damage and upon service of such notice this Agreement shall cease and determine without prejudice to any claim by either party against the other in respect of any antecedent breach of covenant.

13.2 The Customer agrees with Global Switch:

- (a) to pay to Global Switch within fourteen (14) days of demand sums equal to:
 - (i) a fair proportion (reasonably determined by Global Switch) of the amount which Global Switch spends on insurance pursuant to **clause 13.1(a)**;
 - (ii) the whole of the amount which Global Switch spends on insurance pursuant to **clause 13.1(b)**;
- (b) to give Global Switch immediate written notice on becoming aware of any event or circumstance which might affect or lead to an insurance claim;
- (c) not to do anything at the Rack Space which would or might prejudice or invalidate the insurance of the Data Centre or cause any premium for its insurance to be increased;
- (d) to pay to Global Switch within fourteen (14) days of demand:
 - (i) any increased premium and any costs and expenses incurred by Global Switch as a result of a breach of **clause 13.2(c)**;
 - (ii) the whole of the irrecoverable proportion of the insurance moneys if the Data Centre or any part is destroyed or damaged by an Insured Risk but the insurance

moneys are irrecoverable in whole or part due to the act or default of the Customer;

- (e) to comply with the requirements and reasonable recommendations of the insurers;
- (f) not to effect any insurance of the Rack Space against an Insured Risk, but if the Customer effects or has the benefit of any such insurance the Customer shall hold any insurance moneys upon trust for Global Switch and pay the same to Global Switch as soon as practicable;
- (g) insure the Equipment with an insurance office or underwriters of repute against all usual commercial risks (including without limitation, consequential loss and loss of profits) or at the Customer's option self-insure as may be appropriate, taking into account the provisions of **clause 12**;
- (h) maintain insurance against third party liability for not less than FIVE MILLION POUNDS (£5,000,000) with that insurer or another reputable insurer) or at the Customer's option self-insure for the duration of the Term;

13.3 If the Rack Space is unfit for use because of damage by an Insured Risk then (save to the extent that payment of the loss of rent insurance moneys is refused due to the act or default of the Customer) the Service Fee and the Non-technical Services Charge (or a fair proportion according to the nature and extent of the damage) shall be suspended until the earlier of:

- (a) the date on which the Rack Space is again fit for use; or
- (b) the expiry of the loss of rent insurance period.

14 Assignment

14.1 The Customer shall not:

- (a) assign, novate or transfer the whole or any part of the Rack Space, nor agree to do so;
- (b) assign, novate or transfer any of its rights under this Agreement except as permitted by this **clause 14**.

14.2 The Customer may:

- (a) use part of the Rack Space with a Group Company provided that the use by that Group Company shall cease upon it ceasing to be a Group Company;
- (b) grant rights to use parts of the Rack Space or the Equipment to third parties, provided that such third parties will use the Rack Space or the Equipment in respect of which rights are granted to it in accordance with the terms of this Agreement (except for the payment of the Service Fee and the Non-technical Services Charge and other obligations inapplicable to the part of the Rack Space in respect of which rights are granted to it);

but the Customer will remain liable to Global Switch for the observance and performance of its obligations under this Agreement and the Customer shall take all reasonable and lawful steps and proceedings to remedy any breach of the obligations of its customers.

15 Relocation of the Rack Space

15.1 Global Switch shall have the right exercisable on not less than three (3) months' written notice to the Customer from time to time during the Term to require the Equipment to be moved from the Rack Space and to be installed in some other part of the Data Centre. All costs and expenses incurred in connection with such relocation of the Equipment shall be borne by Global Switch.

15.2 Without prejudice to the rights of Global Switch pursuant to **clause 15.1**, Global Switch agrees that, in specifying the time-scale for any relocation of the Equipment, Global Switch shall use all reasonable endeavours to consult with the Customer and to specify a time-scale that causes minimum disruption to the operation of the Equipment.

16 Duration and termination

16.1 This Agreement shall automatically terminate on the expiry of the Term or (if earlier) by operation of this **clause 16**.

16.2 Global Switch may immediately terminate this Agreement without payment of compensation or other damages caused to the Customer solely by such termination by (within three (3) months of the occurrence of the same) giving notice in writing to the Customer if any one or more of the following events happens:

- (a) the Customer commits a material breach of any of its obligations under this Agreement which is incapable of remedy;
- (b) the Customer fails to remedy, where it is capable of remedy, any breach of its obligations under this Agreement (save as to payment) within a period of twenty eight (28) days after having been required in writing to remedy or desist from such breach;
- (c) if any undisputed sum payable under this Agreement is not paid within fourteen (14) days of its due date for payment in accordance with this Agreement;
- (d) the Customer calls a meeting for the purpose of passing a resolution to wind it up, or such a resolution is passed, or a resolution is passed by the directors of the Customer to seek a winding up or administration order, or the Customer is the subject of a petition for a winding up order, or an application, notice of intention or other step to appoint an administrator, or has an administrative receiver, or receiver appointed over all or any part of its business, undertaking, property or assets; or
- (e) Global Switch reasonably considers that the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (for which purpose the parties hereby agree that Global Switch need not apply to court for a declaration in order to rely upon this clause).

16.3 The Customer may immediately terminate this Agreement without payment of compensation or other damages caused to Global Switch solely by such termination by (within three (3) months of the occurrence of the same) giving notice in writing to Global Switch if any one or more of the following events happens:

- (a) Global Switch commits a material breach of any of its obligations under this Agreement that is incapable of remedy;
- (b) Global Switch fails to remedy, where it is capable of remedy, any breach of its obligations under this Agreement (save as to payment) within a period of twenty eight (28) days after having been required in writing to remedy or desist from such breach; or
- (c) Global Switch calls a meeting for the purpose of passing a resolution to wind it up, or such a resolution is passed, or a resolution is passed by the directors of Global Switch to seek a winding up or administration order, or Global Switch is the subject of a petition for a winding up order, or an application, notice of intention or other step to appoint an administrator, or has an administrative receiver, or receiver appointed over all or any part of its business, undertaking, property or assets.

16.4 Termination of this Agreement shall be without prejudice to the other rights and remedies of either

party both under this Agreement and at law.

- 16.5 On or before the expiry of the Term or the earlier termination of this Agreement the Customer shall (at the Customer's own cost):
- (a) give up the Rack Space repaired and otherwise in accordance with the Customer's obligations in this Agreement.
 - (b) if Global Switch so requires, remove all alterations made during the Term or any preceding period of use of the Rack Space by the Customer and reinstate the Rack Space as Global Switch shall reasonably direct and to its reasonable satisfaction.
 - (c) disconnect and remove the Equipment and associated cabling from the Rack Space (but not cabling located outside of the Rack Space) and make good any damage caused thereby to Global Switch's reasonable satisfaction.
- 16.6 If and for so long as the Customer fails to comply with **clause 16.5** the Customer shall pay to Global Switch on demand a sum equal to the appropriate proportion of the Service Fee and the Non-technical Services Charge that would have been payable had the Term not expired or been terminated but:
- (a) if by the date fourteen (14) days after the expiry of the Term or the earlier termination of this Agreement the Customer fails to disconnect or remove the Equipment Global Switch may (but is not obliged to) disconnect remove and sell the Equipment and hold the proceeds of sale (after deducting any costs and expenses of disconnection removal, storage and sale) to the order of the Customer; and
 - (b) the Customer will indemnify Global Switch against any liability to any third party whose goods are sold by Global Switch, having been left at the Rack Space at the end of the Term or the earlier termination of this Agreement.
- 16.7 As soon as practicable following the expiry of the Term or the earlier termination of this Agreement (or earlier with the consent of the Customer) Global Switch shall (at the Customer's cost) remove all cabling located outside the Rack Space and which serves (or served) the Rack Space (whether or not installed by Global Switch at the request of the Customer pursuant to the Cross Connect Right) and within fourteen (14) days after the receipt by the Customer of an invoice from Global Switch for the same the Customer shall pay to Global Switch the applicable Cross Connect One-Off Charge for the removal of such cables.

17 Financial Information

Where such information is not otherwise obtained by Global Switch, at the request of Global Switch the Customer shall supply to Global Switch a copy of its financial statements and accounts, audited if available, in respect of its preceding financial year or such other evidence to show creditworthiness.

18 Confidentiality

Neither party shall disclose the contents of this Agreement to any third party, or any information disclosed by the Customer to Global Switch pursuant to **clause 17**, without the other party's prior written consent (not to be unreasonably withheld) save for the purposes of the proper performance of this Agreement or to the other party's financiers for the purpose of raising finance or as required by law.

19 Publicity

- 19.1 Global Switch may use the Customer's name and logo and the fact that the Customer is a customer of Global Switch (without describing the specific nature of the relationship) in its advertising, public

relations, press releases and website, provided it obtains the prior written consent of the Customer.

- 19.2 If Global Switch wishes to publish a detailed description of the specific nature of the Customer's relationship with Global Switch (including, without limitation, in a case study) or to use the Customer as a reference site, Global Switch shall obtain the Customer's consent to the same.

20 General

- 20.1 This Agreement contains the entire agreement and understanding between the parties in relation to their subject matter.
- 20.2 If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any part of one or more of these clauses) is held to be unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

21 Jurisdiction

The Customer irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales to settle any disputes arising out of this Agreement.

22 Notices

- 22.1 Without prejudice to **clause 22.2**:

- (a) any notice required or authorised by this Agreement must be in writing; and
- (b) notices served under this Agreement shall be validly addressed and served if they expressly refer to this Agreement and are:
- (i) signed by a director of the party serving the notice, or any employee of that party with the word "manager" in that person's title or the solicitor for that party; and
- (ii) sent by registered post to (in the case of Global Switch) Global Switch's Address or by e-mail to the following address: notices@globalswitch.com and (in the case of the Customer) the Customer's Address or by e-mail to the following address: Paul.Wanless@defra.gov.uk (or such other address in England and Wales as any party shall notify in writing to the other).

- 22.2 Demands for any sums payable pursuant to this Agreement shall be sent by post to the Invoicing Address (or such other address in England and Wales as the Customer shall notify in writing to Global Switch).

- 22.3 Any notice required to be given in respect to a change to the Customer Services Handbook or the Pricing Matrix may be posted on the Portal without any requirement to give further notice by any other means.

- 22.4 Subject to **clauses 22.5, 22.6 and 22.7**, a notice is deemed given when it is received or (in the case of **clause 22.3**) when it is posted on the Portal.

- 22.5 If a notice or document is received after 4 pm on a working day, or on a day that is not a working day, it is to be treated as having been received on the next working day.

- 22.6 Unless the actual time of receipt is proved, a notice or document sent by registered post is to be treated as having been received two (2) working days after the date of posting.

22.7 An automated response to a notice sent by e-mail that the e-mail has not reached the intended recipient, or that the recipient is out of the office or some other error message received by the serving party in response to a notice sent by e-mail is sufficient to show that the e-mail notice has not been received and shall invalidate the service of any e-mail notice.

23 Third Party Rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no third party shall have the benefit of or the right to enforce any term of this Agreement.

24 Dispute Resolution

24.1 Either party may refer any Dispute for resolution to Global Switch's CEO and the Customer's Manager who shall both use their reasonable endeavours to resolve any such Dispute in the first instance as soon as reasonably practicable.

24.2 In the event that Global Switch's CEO and the Customer's Manager are not able to resolve a Dispute within twenty-eight (28) days after referral in accordance with **clause 24.1** either party may request by written notice given to the other (**Dispute Notice**) that the Dispute is referred to mediation for resolution in which event:

- (a) the parties shall appoint a single mediator to perform the mediation;
- (b) where the parties are unable to agree on the appointment of a mediator within twenty-eight (28) days of the Dispute Notice, the mediator shall be appointed by the Centre for Effective Dispute Resolution or its successor or replacement body on the application of either party; and
- (c) the mediation shall be conducted in England pursuant to a procedure established by the mediator in his or her absolute discretion.

24.3 Neither party may commence any court proceedings in relation to any Dispute until (acting in good faith at all times):

- (a) it has first attempted to settle the Dispute by mediation in accordance with **clause 24.2**; and
- (b) either the mediation has terminated or the other party has failed to participate in the mediation;

provided that the right to issue proceedings is not prejudiced by unreasonable delay in the mediation proceedings.

Signed by the parties on the date set out in the Particulars.

SCHEDULE 1

Technical Services

1 **Power**

The provision and maintenance of uninterrupted power to the Power Delivery Point by way of a rotary uninterrupted power supply system with back-up diesel generators in an “n+1” configuration.

2 **Cooling**

The provision and maintenance of a cooling system for cooling in the Suite so that within the Suite an average air temperature (measured from the wall and column mounted room air temperature sensors in the Suite) of between 20 degrees Celsius and 24 degrees Celsius is maintained, provided that at no time shall the power draw of the Equipment exceed the Total Power Draw or the Maximum Power Density.

3 **Ventilation and air humidity**

The provision and maintenance of ventilation installations (including control systems) to provide fresh and conditioned air to the Suite so that the supply air to the Suite is conditioned in such a way that the average humidity (measured from the wall and column mounted room air temperature sensors in the Suite) is maintained at a value corresponding with a relative humidity of between 40% and 60% provided that at no time shall the power draw of the Equipment exceed the Total Power Draw or the Maximum Power Density.

4 **Facility Management Systems and Report**

4.1 The provision and maintenance of:

- (a) a building management system to detect a Service Interruption so that upon detection **clause 9.2** shall apply;
- (b) measuring equipment including (without limitation) data logging equipment for the recording of the electrical voltage on each power distribution unit and for the recording of the air temperature and humidity in the Suite;

and making available for inspection all such measured data by the Customer on request.

4.2 The provision of a monthly report to the Customer within fourteen (14) days of the end of each calendar month containing details of all Service Interruptions and Critical Outages.

5 **Lighting**

The provision and maintenance of lighting for the permitted use of the Suite so that the average lighting levels at 0.7 metres above the floor of the Suite are at least to the minimum Health and Safety regulation standards.

6 **Security and Safety**

6.1 **Security and safety systems**

The provision and maintenance of a three-layer physical security system comprising:

1st layer – Data Centre boundary

- (a) (Where permitted by the local planning authority) a perimeter fence around the boundary of the site upon which the Data Centre is located;
- (b) External lighting to the external perimeter of the Data Centre and the adjoining car parks;
- (c) A detection system near the perimeter fence and around the external perimeter of the Data Centre;
- (d) Automated sliding or raising gates for vehicles and (where appropriate) turnstiles for people at the main entrance to the site upon which the Data Centre is located with proximity in/out readers and video/intercom system connected to the security control centre in the Data Centre;

2nd layer – Data Centre

- (a) A circle lock with proximity in/out reader including weight sensor at the main entrance to the Data Centre;
- (b) An intruder detection system;
- (c) Alarms connected to the security control centre;
- (d) A secure loading bay facility for goods;
- (e) A system for the registration of goods delivered to and removed from the Data Centre;
- (f) A reception service by a qualified receptionist at the main entrance to the Data Centre between 8:30 a.m. to 5:30 p.m. Monday to Friday;

3rd layer – Suite

- (a) An access control system in the Common Areas;
- (b) Proximity in/out readers to all doors providing day-to-day access to the Suite;
- (c) Battery powered emergency lighting and exit signs throughout the Data Centre;
- (d) Emergency exit alarms operated on emergency power;
- (e) A panic alarm system in the security control centre;
- (f) A closed circuit television system on all doors within or giving access to and from the Common Areas;
- (g) Alarms on all doors giving access to the Suite, and the connection of such alarms to the security control centre;
- (h) A system to detect water leakage in the detection areas under the raised floor within the Suite including a signal alarm to Global Switch's building management system;
- (i) A fire alarm system (comprising heat and smoke detectors) to detect fire in the Data Centre and to activate an automatic gas extinguishing system including a signal alarm to Global Switch's building management system;
- (j) A very early smoke detection system (VESDA) to detect any smoke in the Suite including a signal alarm to Global Switch's building management system;

- (k) An automatic gas extinguishing system to extinguish any fire in a protected area of the Data Centre after activation by the fire alarm system or by a manual activation suppression system.

6.2 Operational security and safety

(a) Security staff

The provision of security staff on the following basis:

- (i) The minimum staffing is to be determined based on the duties to be undertaken and the competencies of staff members;
- (ii) A dedicated security manager is to be present at the Data Centre during daytime guarding hours and on call at all other times;
- (iii) A senior representative of the security staff is to be present at the Data Centre at all times;
- (iv) An experienced representative of the security staff is to be present in the security control centre at all times;
- (v) The following minimum requirements for each member of the security staff:
 - (A) Compliance with any legal requirements;
 - (B) Adequate English language proficiency;
 - (C) Adequate computer proficiency including (without limitation) use of Microsoft Office and dedicated security systems;
- (vi) A member of the security staff with valid "safety/first aid" certification is to be present at the Data Centre at all times.

(b) Maintenance staff

The provision of engineering maintenance staff on the following basis:

- (i) The minimum staffing is to be determined based on the duties to be undertaken and the competencies of staff members;
- (ii) At least one experienced electro/mechanical operator is to be present at the Data Centre at all times.

(c) Data Centre manager

The provision of a building manager to be present at the Data Centre between 8:30 a.m. to 5:30 p.m. Monday to Friday and on call at all other times.

(d) Access control

The provision and maintenance of an auditable access control security system for the Common Areas and the Suite with the following requirements:

- (i) Assignment of the system owner, the system administrator and the system operator(s) and their respective authorities;

- (ii) A screening procedure for Global Switch's employees and contractors;
 - (iii) Job descriptions for the system administrator and system operator(s) in maintaining the system;
 - (iv) User identifications as prescribed by the system are allotted to specific individuals including (without limitation) the system administrator, system operator(s), receptionists and other members of the security staff;
 - (v) Procedures for the logging and storage of all activities generated by the system for at least one (1) week on a rolling basis;
 - (vi) Procedures for the issue of security/passbadges.
- (e) Emergency procedures
- The maintenance of adequate emergency procedures in respect of the Data Centre including (without limitation) ensuring that all staff at the Data Centre are informed of such procedures and receive adequate training in respect of such procedures.
- (f) CCTV monitoring
- The monitoring of closed circuit television and the storage of footage generated by the system for at least one (1) week on a rolling basis.
- (g) Fire protection
- The undertaking of an annual fire protection survey in respect of fire risks at the Data Centre.

SCHEDULE 2

Non-technical Services Charge

Part 1 – Non-Technical Services

All services that Global Switch provides or arranges to be provided in the management and maintenance of the Data Centre (save to the extent that such management and maintenance is not specifically comprised in the Technical Services) including (without limitation):

- (a) inspection, testing, repair, servicing and maintenance of the Non-technical Space (including replacement where beyond economic repair);
- (b) the following services at or to the Non-technical Space:
 - (i) cleaning and lighting;
 - (ii) providing hot water, heating, air conditioning and ventilation;
 - (iii) providing soap and towels, lavatory paper and other appropriate hygiene facilities in toilet accommodation;
 - (iv) decorating and furnishing;
 - (v) providing and maintaining landscaped areas, flowers and seasonal decorations;
 - (vi) providing and maintaining emergency alarms, signage, fire extinguishers and emergency lighting;
 - (vii) providing and maintaining refuse bins and a refuse disposal service;
 - (viii) providing pest control services;
 - (ix) providing, maintaining and replacing directional signs and other information including (without limitation) a communal signboard showing the names of the tenants and other occupiers in the entrance hall of the Data Centre;
 - (x) providing a reception desk;
 - (xi) controlling pedestrian and vehicular traffic; and
 - (xii) collecting litter;
- (c) operating, maintaining, repairing and renewing Non-technical Plant and providing such further and improved Non-technical Plant as may be required for the greater amenity of those using the Data Centre or for the more efficient management or maintenance of the Data Centre;
- (d) insuring Non-technical Plant and the furnishings, contents and equipment of the Non-technical Space and such other insurance in relation to the Data Centre as Global Switch may consider appropriate (but not insurance for which the Customer is charged separately under **clause 13**);
- (e) carrying out works and taking appropriate action to comply with health and safety legislation or other statutes, regulations and codes of practice or the requirements or recommendations of an insurer relating to the Non-technical Space or the Data Centre (rather than any particular Technical Space);

- (f) obtaining an energy performance certificate and recommendation report (as those terms are defined in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007) in relation to the Rack Space or the Data Centre;
- (g) payment of rates, taxes and all other outgoings levied in respect of the Non-technical Space or the Data Centre (rather than any particular Technical Space) but not any tax payable by Global Switch in respect of Global Switch's own interest in the Data Centre;
- (h) payment of any contributions to roads, Service Media, walls, structures or other things common to, or used in common by, the Data Centre and other property; and
- (i) providing such further or improved services or facilities as may be required for the greater amenity of those using the Data Centre or for the more efficient management or maintenance of the Data Centre as Global Switch may reasonably consider appropriate.

Part 2 – Non-technical Expenses

Non-technical Expenses means all costs reasonably incurred by Global Switch in providing Services including (without limitation):

- (a) (save to the extent that the same comprises part of the Electricity Charge) all charges for the supply of utilities used in providing the Non-technical Services or otherwise consumed in the Non-technical Space;
- (b) the cost of the provision of offices and accommodation for staff employed at the Data Centre (and where such accommodation is provided in the Data Centre a notional rent for it equal to its market rent or a fair proportion of its market rent if it is also used for purposes other than in connection with the provision of the Non-technical Services);
- (c) the cost of providing (including by leasing), maintaining and renewing equipment and materials to provide the Non-technical Services;
- (d) the cost of engaging contractors to perform the Non-technical Services;
- (e) any bank charges and account operating costs incurred in relation to the provision of the Non-technical Services;
- (f) commitment fees, interest and any other cost of borrowing money where necessary to finance the provision of the Non-technical Services;
- (g) the reasonable fees and expenses of managing agents employed by Global Switch to manage the Data Centre or, if Global Switch itself manages the Data Centre, a reasonable management fee;
- (h) the cost of preparing and auditing Non-technical Services Charge accounts;
- (i) the cost of obtaining professional advice in connection with the management of the Data Centre and the provision of the Non-technical Services;
- (j) VAT (or other tax) where chargeable on any of the Non-technical Services Costs to the extent that it cannot be recovered by Global Switch; and
- (k) a reserve fund to meet future costs of providing the Non-technical Services (as estimated by Global Switch acting reasonably).

SCHEDULE 3

Supervisory Services

1 Definitions

In this Schedule:

Customer Works has the meaning ascribed to it in **paragraph 2.1**;

Customer Works Notice has the meaning ascribed to it in **paragraph 2.1**;

Supervision Notice has the meaning ascribed to it in **paragraph 2.2**;

2 Supervisory Services

2.1 (Without prejudice to **clause 7** relating to the supervision of the installation of cables) where the Customer wishes to undertake works in the Rack Space of the nature of those specified in the Data Centre Rules & Regulations as being ones to which the Supervisory Services Charge applies (**the Customer Works**) the Customer is required to first give written notice (**the Customer Works Notice**) to Global Switch and the Customer Works Notice is to specify:

- (a) details of the Customer Works together with such specifications and plans as would be sufficient to append to a contract for the carrying out and completion of the Customer Works;
- (b) details of the identity of the contractor that is to carry out and complete the Customer Works; and
- (c) the date on which the Customer proposes that the contractor undertakes the Customer Works which shall not (save in case of emergency) be less than seven (7) days after the date of receipt of the notice by Global Switch.

2.2 Global Switch shall within seven (7) days of receipt of the Customer Works Notice give written notice (**the Supervision Notice**) to the Customer and the Supervision Notice is to specify:

- (a) whether or not Global Switch wishes to supervise the carrying out and completion of the Customer Works; and
- (b) where Global Switch wishes to supervise the carrying out and completion of the Customer Works, the applicable charge for the corresponding Supervision Requirement;

and if Global Switch fails to serve the Supervision Notice within such seven (7) day period then Global Switch shall be deemed not to wish to supervise the carrying out and completion of the Customer Works.

2.3 Following the service by Global Switch of the Supervision Notice and where Global Switch wishes to supervise the Customer Works:

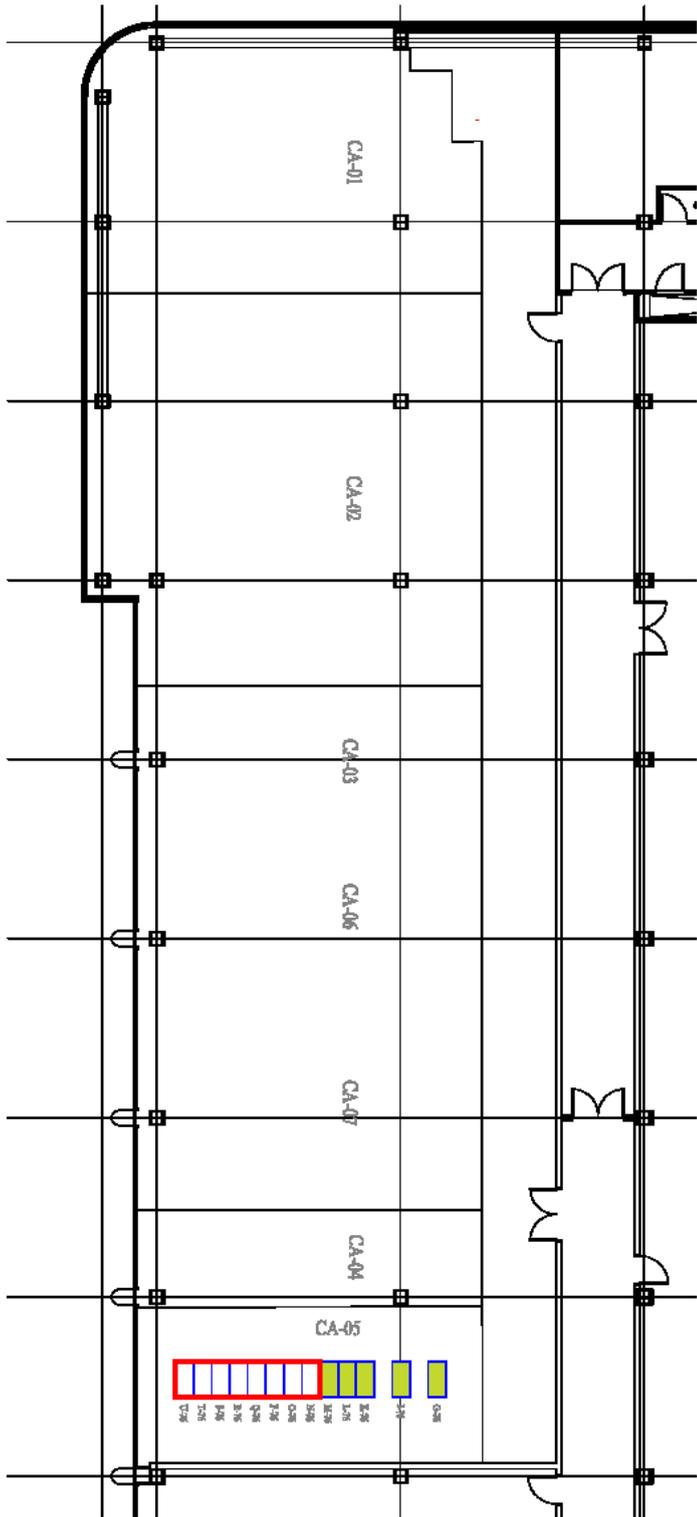
- (a) Global Switch will supervise the carrying out and completion of the Customer Works on the date specified in the Customer Works Notice; and
- (b) within fourteen (14) days after the receipt by the Customer of an invoice from Global Switch for the same (provided that Global Switch shall not issue such invoice prior to the completion of the supervision of the Customer Works) the Customer shall pay to Global Switch the applicable charge for the corresponding Supervision Requirement specified in the Supervision Notice;

ANNEXURES

- 1 Plan
- 2 Pricing Matrix
- 3 Installation Costs

LONDON EAST
 3 NUTMEG LANE
 EAST INDIA DOCK
 LONDON E14 2AX

GLOBAL
 SWITCH



DEFRA 8 RACKS
 SUITE J05 LEVEL TEN
 LONDON EAST

DATE: 02/04/19
 LATEST REVISION: 02/09/18
 SCALE: 1:100 AS
 DRG. No. LONE-10-J05-DEF-1A

