



SAQ Conditions for SAQ Wholesale Ethernet

Issue 3 1st February 2010 Doc. Ref. SAQ Conditions for SAQ Wholesale Ethernet

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1 INTERPRETATION

- 1.1 The words and expressions set out in Schedule 1 shall have the meaning given to them in that Schedule.
- 1.2 Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.3 The headings in this Agreement are for convenience only and shall not affect its interpretation.
- 1.4 Words importing singular include plural and vice versa.
- 1.5 The terms “party” or “the parties” shall mean SAQ and/or the Customer.
- 1.6 All periods expressed in days shall mean calendar days unless specifically stated otherwise.

2. COMMENCEMENT AND TERMINATION

- 2.1 This Agreement begins on the date that the Contract Order Form is accepted and signed by duly authorised representatives of SAQ and the Customer and shall continue thereafter until terminated in accordance with this Agreement.
- 2.2 The Customer may terminate this Agreement on:
 - (a) not less than 30 days if SAQ materially changes the terms and conditions of this Agreement or increases the charges, to the Customer’s detriment provided that such notice to terminate shall be served on SAQ no later than 28 days from the date the change comes into effect; or
 - (b) not less than three months’ notice for any other reason.
- 2.3 The Customer may terminate the Service to a Site on not less than 30 Working Days notice provided that such notice extends the termination date in respect of the Service to a Site beyond the Minimum Period.
- 2.4 SAQ may terminate this Agreement:
 - (a) on not less than one month’s notice if SAQ does not receive a Customer Order from the Customer within 6 months of the commencement of this Agreement;
 - (b) immediately upon notice if Ofcom prohibits or suspends the Customer Service;
 - (c) on not less than three months’ notice for any other reason provided that such notice extends the termination date beyond the Minimum Period;
 - (d) immediately on notice if SAQ is directed by Ofcom to cease the Service or the provision of the Service or any part of it.
- 2.5 SAQ may terminate the provision of a Service to any Site on 30 days written notice to the Customer in circumstances where a Site has been demolished, or where the new occupant at a Site does not wish to receive the Customer Service. SAQ agrees not to use the provisions of this sub-clause as a means to terminate this Agreement. If this situation occurs SAQ will work with the Customer in order to explore the feasibility of providing the Service to an alternative Site.



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2.6 If a party is prevented, hindered or delayed in performing an obligation under this Agreement, because of Force Majeure, for a period exceeding three months, either party may terminate this Agreement by giving not less than one month's notice.

2.7 If the Customer terminates the Agreement or a Service during a Minimum Period, other than because SAQ has breached this Agreement or increased its charges or has materially changed the conditions of this Agreement to the Customer's detriment or because the Agreement is terminated under Force Majeure, the Customer must pay an Early Termination Charge for a Service.

2.8 Subject to any Early Termination Charges payable by the Customer, SAQ agrees to repay or credit the Customer with the appropriate proportion of any rental paid in advance for the period ending after the Customer's liability to pay rental ceases.

2.9 If a breach notice is served on the Customer then SAQ may at its sole discretion refuse to accept new Customer Orders and suspend access to the eCo Plus customer portal except for the processing of orders which relate to cessation of the Service and suspend such other services or facilities applicable to the Service as shall be reasonable in the circumstances:

(a) immediately upon giving notice if the Customer fails to comply with the provisions of this Agreement (following a 30 day remedy period) headed Intellectual Property Rights and SAQ Corporate Marks or Marketing and Misrepresentation; and

(b) for all other breaches detailed in sub-clause 2.10 below immediately upon giving notice, after the period specified for remedy of the breach in the breach notice expires, if the Customer has not remedied the breach. The Customer agrees to pay the charges for the Service until this Agreement is terminated.

2.10 Either party may terminate this Agreement or the Service provided under it immediately, on notice, if the other:

(a) commits a material breach of this Agreement, which is capable of remedy, and fails to remedy the breach within the following periods from the date of the notice from the other party:

(i) 14 calendar days, where there is a failure to pay a sum due under this Agreement; or

(ii) 30 calendar days; or

(iii) a shorter time, reasonably specified in the notice, in the case of Emergency; or

(b) commits a material breach of this Agreement which cannot be remedied; or

(c) is repeatedly in breach of this Agreement (including without limitation repeatedly late in paying sums due under this Agreement); or

(d) has bankruptcy or insolvency proceedings brought against it; or it makes an arrangement with its creditors; or a receiver, an administrative receiver or an administrator is appointed over any of its assets; or it goes into liquidation; or there is a corresponding event under the law of any other country; or

(e) ceases to carry on business.

2.11 If SAQ terminates this Agreement on the grounds of insolvency specified above, SAQ may communicate directly with End Users to inform them of the termination of the Service and how this will affect the



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communications services they receive from the Customer and/or SAQ including the options available to End Users in order to avoid disconnection or interruption to End Users' existing communications services. Such communication will not favour SAQ's own products and services. This sub-clause will survive termination of the Agreement.

2.12 The Customer agrees that if this Agreement is terminated for any reason, it will inform the End User that the Customer Service may be terminated and the End User needs to make alternative arrangements. This subclause will survive termination of the Agreement.

2.13 Termination or expiry of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement and shall be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry. If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.

2.14 Each of the parties' rights to terminate or suspend performance is without prejudice to any other rights or remedies available to either party.

2.15 If SAQ serves a notice to terminate pursuant to sub-clause 2.4 (c), it will, if the Customer requests, discuss suitable alternative services where migration charges may be kept to a minimum.

3. PROVISION OF THE SERVICE

3.1 SAQ agrees to:

- (a) provide the Customer with the Service on the terms of this Agreement;
- (b) exercise the reasonable skill and care of a competent telecommunications service provider in providing the Service and if required, in determining how best to provide the Service to a Site;
- (c) grant the Customer a non-exclusive non-transferable right to use the Service for the sole purpose of enabling the Customer to provide the Customer Service;
- (d) use its reasonable efforts to provide a Service within the timeframes specified in the Agreement and in accordance with the Service Levels set out in Schedule 3. However, the Customer acknowledges that all timeframes are estimates only and the Service Levels are targets only. Except as set out in the Service Level Guarantee provisions in Schedule 3, SAQ has no liability for failure to meet any timeframe or Service Level;
- (e) notify the Customer of the Service Handover Date.

3.2 It is technically impracticable to provide a fault free Service and SAQ does not undertake to do so. SAQ agrees to repair a fault in accordance with Schedule 2 and 3.

3.3 SAQ will provide the Service only in the Territory.

3.4 SAQ will only supply a Service to an entity whose normal business is the provision of telecommunications services to multiple End Users or resellers. By entering into this Agreement the Customer warrants that it is such an entity.

4 SERVICE MANAGEMENT

4.1 SAQ may:



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- (a) occasionally, for operational reasons, introduce or withdraw Service features, introduce process changes to improve the quality of the Service, change the technical specification of the Service including, without limitation, Service upgrades upon giving not less than 28 days notice, provided that any such changes do not have a materially adverse effect on the performance or provision of the Service; or
 - (b) give the Customer instructions which it believes are necessary for reasons of health, safety or the quality of the Service and it is the Customer's responsibility to ensure these are adhered to;
- or
- (c) interrupt a Service for operational reasons (such as planned maintenance or Service upgrades) or because of an emergency. SAQ agrees to restore the interrupted Service as quickly as possible and, where practicable, SAQ will give the Customer as much notice as possible (such notice to be given in the manner to be reasonably determined by SAQ) and agree with the Customer when the Service will be interrupted; but SAQ will use reasonable efforts to provide an uninterrupted Service to the Customer.

4.2 If the Customer reports a fault in the Service, SAQ agrees to respond in line with the Service Levels at Schedule 3.

4.3 The Customer agrees to provide a Forecast to SAQ (Only applicable to reseller customers and partners).

4.4 The Customer and SAQ agree to complete a Customer Service Plan if one does not already exist and both parties agree to use their reasonable endeavours to keep the Customer Service Plan up to date.

4.5 SAQ and the Customer each agree to comply with their respective obligations under applicable data protection legislation including, but not limited to, the Data Protection Act 1998 and maintain all relevant registrations and notifications. The Customer agrees to obtain and maintain all registrations, notifications and consents that it needs to enable SAQ to process the personal data of End Users for the purposes of the performance by SAQ of its obligations under this Agreement.

5 SAQ EQUIPMENT

5.1 SAQ Equipment remains the property of SAQ at all times.

5.2 The Customer agrees to:

- (a) prepare the Site and provide a suitable place, conditions, connection points and electricity for SAQ Equipment at the Site in accordance with SAQ's reasonable instructions, if any; and
- (b) either:
 - (i) obtain all necessary third party consents (excluding wayleaves or third party consents ordinarily obtained by SAQ); or
 - (ii) provide reasonable assistance to SAQ where SAQ is the Party obliged to obtain necessary third party consents; in relation to building alterations or additions, access to land or permission to put SAQ Equipment on the Site if such consents are necessary for SAQ to provide the Service.

5.3 The Customer is responsible for SAQ Equipment and agrees to take reasonable steps to ensure that nobody (other than someone authorised by SAQ) adds to, modifies or in any way interferes with it. The Customer will be liable to SAQ for any loss of or damage to SAQ Equipment, except where such loss or damage is due to fair



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wear and tear or is caused by SAQ, or anyone acting on SAQ's behalf. The Customer's liability under this subclause 5.3 is limited to the replacement value of the SAQ Equipment together with any associated costs of replacement.

6. CONNECTION OF EQUIPMENT TO THE SERVICE

6.1 Any equipment connected to the Service must be:

(a) technically compatible with the Service and not harm the SAQ or Supplier Network, the Service or SAQ Equipment or another customer's network or equipment;

(b) connected and used in line with any relevant instructions or laws; and

(c) connected and used in line with any relevant standards including any standards set out in the relevant SIN and, in the order of precedence set out below:

(i) any legal requirements imposed upon the parties including requirements arising from General Condition 2 set under section 45 of the Communications Act 2003;

(ii) any relevant specification notified by Ofcom in implementation of the recommendations of the Network Interoperability Consultative Committee;

(iii) any relevant recommendations by the European Telecommunications Standards Institute; and

(iv) any relevant recommendations by the Telecommunications Standards Bureau (formerly the International Telegraph and Telephone Consultative Committee) of the International Telecommunication Union.

6.2 The Customer agrees to connect equipment to the Service only by using the NTE provided by SAQ with the Service, unless otherwise agreed in writing by the parties.

6.3 If upon becoming aware that the equipment does not meet the relevant instructions, standards or laws, the Customer must immediately disconnect it or SAQ will do so, at the Customer's expense.

6.4 SAQ will not be liable for failure to meet any Service Level or other obligations under this Agreement to the extent that such failure was caused by equipment found to be connected otherwise than in accordance with this clause.

7. ACCESS AND SITE REGULATIONS

7.1 SAQ will conduct Site visits during SAQ Normal Working Hours. If SAQ agrees to work outside of these hours, the Customer must pay the additional quoted charges.

7.2 The Customer agrees to take reasonable steps to provide access to the Customer's Site and to ensure that the End User provides SAQ with access to the End User's Site including for the purpose of installation and use of the SAQ Equipment at the Customer's Site and at the End User's Site. SAQ shall not tamper or interfere with any End User or Customer equipment save to the extent it is necessary to provide, repair or maintain the Service.

7.3 SAQ agrees to observe the Customer's and the End User's reasonable Site safety and security requirements.

7.4 The Customer agrees to provide and agrees to take reasonable steps to ensure that the End User provides a suitable and safe working environment for SAQ at the Customer's Site and the End User's Site. Subject to



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sub-clause 13.1, the Customer indemnifies SAQ for death or personal injury claims or actions threatened or brought against SAQ resulting from the Customer's breach of this sub-clause 7.4.

7.5 It is the responsibility of the Customer or End User to carry out any making good or decorator's work required but SAQ accepts responsibility for any property damage caused by SAQ's negligence subject to the limitation of liability provisions of this Agreement.

8. USE OF THE SERVICE

8.1 The Customer agrees not to use the Service and agrees to take all reasonable steps to ensure that the Customer Service is not used

(a) unlawfully or fraudulently or in breach of any legislation; or

(b) to send, knowingly receive, upload, download, use or re-use material which is offensive, indecent, defamatory, obscene or menacing; or

8.1A From time to time SAQ may need to give the Customer reasonable instructions regarding the use of the Service and/or Customer Service which SAQ believes are necessary for reasons of:

(a) health and safety;

(b) quality of the Service;

(c) an interruption to the Service for:

i. unplanned engineering works due to an Emergency; or

ii. planned engineering works or Service upgrades notified in accordance with this Agreement;

or

(d) an Emergency;

(e) ensuring compliance by SAQ and the Customer with relevant and applicable EU regulation and/or UK legislation, And the Customer shall use reasonable endeavours to follow those instructions unless it is unreasonable to do so.

8.2 If SAQ notifies the Customer or if the Customer is aware that the End User has used the Service in breach of clause 8.1 then the Customer will take all reasonable steps to co-operate with SAQ and will notify the End User that the Service will be disconnected if they continue to use the Service in breach of clause 8.1. If the End User continues to use the Customer Service in breach, the Customer agrees to immediately disconnect that End User's service.

8.3 If a Customer uses the Service in breach of sub-clause 8.1 or supplies the Customer Service to a user who is in breach of sub-clause 8.1, SAQ may on notice where reasonably practicable suspend the Service, in so far as it is reasonable in the circumstances, without prejudice to SAQ's rights of termination under this Agreement. Provided that where reasonably practicable, SAQ shall first warn the Customer that it is in breach of sub-clause 8.1 and that SAQ may suspend the Service.

9 INTELLECTUAL PROPERTY RIGHTS AND SAQ CORPORATE MARKS

9.1 The Customer acknowledges that all Intellectual Property Rights in or relating to the Service vest in or are licensed to SAQ and nothing in this Agreement is to be construed as and it shall not have the effect of assigning or otherwise giving the Customer any rights in SAQ's Intellectual Property Rights except as provided in this clause 9.

9.2 The Customer only has the right to use the Service and any documentation and manuals relating to the Service (including those on the SAQ Website) and to make copies of those documents and manuals, to the extent necessary to provide the Customer Service and for its own internal use in connection with its obligations under this Agreement.



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9.3 All rights in any developments, improvements or variations to SAQ's Intellectual Property Rights will vest in SAQ.

9.4 The Customer agrees not to, or to permit anyone else to, use (without the prior written consent of SAQ) including in any promotional literature, any:

- (a) SAQ Intellectual Property Rights or the SAQ Corporate Marks or the SAQ name or any element thereof either alone or in combination with another word or device mark, nor any other brand, get-up or trade mark of SAQ or its affiliated companies, where such use constitutes or would constitute an infringement of SAQ's registered trade mark or common law rights; or
- (b) photographs or representations of any SAQ buildings.

However, nothing in this clause prohibits the Customer from making legitimate use of the SAQ name or any other trade mark of SAQ whether in the form of factual statements or in accordance with the terms of Section 10(6) of the UK Trade Marks Act, 1994 or in any other way which does not constitute an infringement of SAQ's registered trade mark or common law rights.

9.5 The Customer agrees not to use or register or attempt to register as a trade mark, company name or domain name, anything that is identical to, similar to, or likely to be confused with any of the SAQ Corporate Marks.

9.6 The Customer agrees to include and maintain in its contracts with any reseller appointed by the Customer, conditions equivalent to those contained in sub-clauses 9.4 and 9.5 above, and undertakes to diligently and properly enforce such conditions and also agrees;

- (a) to notify SAQ if a reseller is in breach of such conditions; and
- (b) to assist SAQ in any action that SAQ considers to be necessary to stop and/or prevent infringement of SAQ's Intellectual Property Rights by a reseller acting in breach of such conditions; and
- (c) if SAQ reasonably believes that a reseller is acting in breach of such conditions, upon request by SAQ, to suspend the reseller's right to place orders through the Customer, except for orders which relate to End User deBT management or cessation of services.

9.7 If making legitimate use of the letters "SAQ", the Customer agrees to ensure that the letters "SAQ" shall be no more prominent than the immediately surrounding letters and in no case greater than the surrounding typeface.

9.8 SAQ agrees to indemnify the Customer against all claims and proceedings arising from infringement of any third party Intellectual Property Rights by reason of SAQ's provision of the Service to the Customer.

9.9 The indemnity in sub-clause 9.8 above does not apply to infringements or claims or legal proceedings:

- (a) caused by the use of the Service in conjunction with other equipment or software or any other service not supplied or approved by SAQ; or
- (b) caused by reason of any alteration or modification which was not made by SAQ or with SAQ's prior written consent; or
- (c) caused by designs or specifications made by, or on behalf of, the Customer, other than where such designs or specifications are made as part of the Service on behalf of the Customer by SAQ; or
- (d) which arise as a result of the use of the Service otherwise than in accordance with the terms of this Agreement.



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9.10 The limitations and exclusions of liability contained in clause 13 do not apply to sub-clauses 9.8 and 9.9 above.

10 CONFIDENTIALITY

10.1 The parties agree to keep in confidence any information (whether written or oral) of a confidential nature obtained under or in connection with this Agreement or the Service. The parties agree not to without the written consent of the other party disclose that information to any person other than:

- (a) their employees or professional advisers;
- (b) in the case of SAQ, the employees of a SAQ Group Company or its or their suppliers; and
- (c) in the case of the Customer, the employees of a Customer Group Company or its or their subcontractors or End Users or resellers.

Any disclosure in (a) to (c) above can only be made in order for the party to fulfill its obligations under this Agreement or in relation to this Agreement.

10.2 Sub-clause 10.1 will not apply to:

- (a) any information which is in the public domain other than through a breach of this Agreement;
- (b) information lawfully in the possession of the recipient before the disclosure under this Agreement took place;
- (c) information obtained from a third party who is free to disclose it;
- (d) information which a party is requested to disclose and, if it did not, would be required by law to do so, in which case the disclosing party must give the other party prior notice of the proposed disclosure; and
- (e) any information which has been replicated independently by someone without access or knowledge of the information.

10.3 This clause 10 will remain in effect for 2 years after the termination of this Agreement.

10.4 The disclosure of SAQ's confidential commercial information would, or would be likely to, prejudice SAQ's commercial interests. For these reasons, SAQ believes that such information will be exempt from the duty to confirm or deny, and from disclosure, under the Freedom of Information Act 2000. If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information held by the Customer which was provided to them by SAQ in connection with the Agreement, the Customer shall notify SAQ of the request and allow SAQ not less than 10 Working Days in which to make representations.

11. MARKETING AND MISREPRESENTATION

11.1 The parties undertake (in the case of the Customer, the Customer undertakes for itself and any reseller of the Customer Service) that in relation to their dealings with End Users and/or potential End Users they will not;

- (a) represent themselves as each other; or
- (b) misrepresent their relationship with each other; or
- (c) misrepresent the nature and/or effect of their Agreements with End Users; or



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(d) assert that they have any authority to provide or promote any products or services on behalf of each other.

11.2 The Customer also agrees not to represent that:

(a) the Customer Service is a service provided by SAQ; or

(b) the End User has access to a dedicated SAQ customer service.

11.3 The Customer agrees to include and maintain in its Agreements with any reseller of the Customer Service, conditions equivalent to those contained in sub-clauses 11.1 and 11.2 above, and undertakes to diligently and properly enforce such conditions including if appropriate by suspending or terminating the provision of the services under such reseller agreement.

11.4 Neither party has authority to enter into any contractual arrangements with third parties on behalf of the other party. Any breach of this sub-clause 11.4 will be a material breach of this Agreement which cannot be remedied for the purposes of sub-clause 2.10(b).

12. CHARGES AND DEPOSITS

12.1 Charges for the Service will be provided upon application by the Customer to SAQ.

12.2 All charges will be calculated using the details recorded by SAQ.

12.3 The Customer agrees to pay the charges within 28 days of the date of SAQ's invoice. SAQ may charge daily interest on late payments in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 for the period beginning on the date on which payment is due and ending on the date payment is actually made.

12.4 All charges exclude Value Added Tax (VAT) which is charged at the applicable rate and is payable by the Customer.

12.5 The charges for the Service will comprise some or all of the following components set out in the table below:

Pricing component Installation charge Recurring charge Per Km charge

Etherway Access

Etherflow Connected and save to the extent where Openreach input prices for the Service increase the charges agreed between SAQ and the Customer for the Service will be applicable for the Minimum Period.

12.6 The connection charge shall be due on the Service Handover Date and shall be payable in accordance with SAQ's invoice.

12.7 Rental for the Service will commence on the Service Handover Date and shall be payable in accordance with SAQ's invoice.

12.8 The Customer agrees to pay rental in accordance with SAQ's billing cycle. If SAQ begins, or ceases, the Service on a day which is not the first or last day of the period by reference to which SAQ charges rental, SAQ will apportion rental on a daily basis for the incomplete period. Rental will be payable in quarterly or monthly (depending upon the option chosen by the Customer) installments in advance but SAQ may on occasion bill the Customer in arrears.



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12.9 If a Service is ceased during a Minimum Period other than because SAQ has breached this Agreement or increased its charges or has materially changed the conditions of this Agreement to the Customers detriment or because the Agreement is terminated under Force Majeure the Customer must pay an Early Termination Charge for a Service which will be the pro-rata amount of the rental charge for an Etherway Access or the Etherway Connected (as applicable) that would have been payable for the remainder of the Minimum Period.

12.11 The Customer acknowledges that it is subject to SAQ's credit vetting policy procedures as amended by SAQ from time to time. Should SAQ consider it necessary following the application of its credit vetting procedures or should the Customer fail to pay the charges due under or in connection with this Agreement, SAQ may (without prejudice to any other rights and remedies available to SAQ), at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future charges. The Customer agrees to pay such deposit or provide such guarantee within 28 days of receiving notice from SAQ requiring it to do so, failing which SAQ reserves the right, without prejudice to any other rights and remedies available to it under this Agreement to refuse to accept any further Customer Orders under the Agreement and to suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances until such deposit or guarantee is provided.

12.12 If the Customer disputes any invoice, it will notify SAQ in writing within 14 days of the date of the relevant SAQ invoice giving its reasons. The Customer is not entitled to withhold:

- (a) payment of any amount not in dispute; and /or
- (b) any payment to SAQ on the grounds that the Customer has a dispute with End User(s) or reseller(s).

13. LIMITATION OF LIABILITY

13.1 Neither party excludes or restricts its liability for death or personal injury caused by its own negligence or that of its employees, subcontractors or agents acting in the course of their employment or agency or for fraud or to any extent not permitted by law.

13.2 Subject to any express terms and conditions of this Agreement to the contrary either party's liability to the other (other than any liability of the Customer to pay the charges for the Service when due and payable) in contract, tort (including negligence), breach of statutory duty or otherwise in relation to direct:

- (a) loss of profits; or
- (b) loss of or physical damage to any tangible property; or
- (c) loss reasonably incurred as a result of having the Service completed to a similar standard;

is limited to £ 1 million for any one incident or series of connected incidents and to £ 2 million for all incidents connected or unconnected in any period of 12 calendar months.

13.3 Subject to express provisions of this clause 13, neither party shall be liable to the other in contract, tort (including negligence), and whether or not the party concerned was advised in advance of the possibility of such loss or damage), for:

- (a) any of the following types of loss or damage whether direct, indirect or consequential howsoever arising under or in relation to this Agreement or any part of it: loss of revenue, anticipated savings, opportunity, business, business interruption, data, loss of contracts, loss from expenditure of time by



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managers and employees, goodwill (including pecuniary losses arising from loss of goodwill), wasted expenditure; or

(b) any indirect or consequential loss or damage whatsoever.

13.4 If the Customer is entitled to a Compensation Entitlement under Schedule 3 (Service Level Agreement) the parties acknowledge that, subject to sub-clause 13.1 SAQ's liability in relation to the subject matter of that Compensation Entitlement shall be limited to that allowance or payment.

13.5 Each provision excluding or limiting liability operates separately. If any provision (or part thereof) is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

13.6 This clause 13 shall continue in force after the termination or expiry of this Agreement.

14. MATTERS BEYOND THE REASONABLE CONTROL OF EITHER PARTY

14.1 If a party is delayed in meeting or fails to perform an obligation under this Agreement because of Force Majeure, the party affected shall have no liability to the other for such delay or failure to perform.

14.2 If as a result of Force Majeure, the affected party is prevented or delayed in performing its obligations under this Agreement, it shall continue performing those obligations under this Agreement that are not affected by Force Majeure and in performing those obligations shall deploy its resources so that (when taken with obligations to third parties) there is no undue discrimination against the other party.

14.3 If the affected party is prevented from or delayed in performing its obligations under this Agreement as a result of Force Majeure the other party shall be released to the equivalent extent from its obligation in relation thereto.

15. CONDUCT OF INDEMNIFIED EVENTS

15.1 For any indemnity given by a party in this Agreement the indemnified party must:

(a) notify the indemnifying party promptly of any related claims or legal proceedings; and

(b) actively consult with the indemnifying party regarding the conduct of any action and take their views into account; and

(c) make no admissions relating to any claims or legal proceedings without the consent of the indemnifying party, which shall not be unreasonably withheld; and

(d) not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the consent of the indemnifying party, which shall not be unreasonably withheld; and

(e) if the Service is affected, allow SAQ to modify the Service, or any item provided as part of the Service, so as to avoid the infringement, such permission not to be unreasonably withheld or delayed; and

(f) allow the indemnifying party at the indemnifying party's reasonable request to conduct all negotiations and proceedings providing that the indemnifying party consults with the indemnified party and keeps the indemnified party fully informed with respect to a claim, legal proceedings or an allegation of infringement and obtains the indemnified party's approval (such approval not to be unreasonably withheld or delayed) to all material steps taken in the conduct of the defence of a claim, legal proceedings or an allegation of an infringement. The indemnified party shall give the



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indemnifying party all reasonable assistance in these matters providing the indemnifying party agrees to pay the indemnified party's reasonable expenses for such assistance.

16. ESCALATION AND DISPUTE RESOLUTION

16.1 Each party shall use its reasonable endeavours to resolve disputes with the other. A dispute will first be escalated to the nominated contacts for disputes set out in the Customer Service Plan.

16.2 If the dispute is not resolved within 30 days of the matter being raised and it relates to the accuracy of an invoice delivered under this Agreement then the parties shall refer the dispute for investigation and resolution by such chartered accountants as the parties may agree, or in default of agreement, as may be nominated by the President of the Institute of Chartered Accountants in England and Wales. Such chartered accountants shall act as an expert and not as an arbitrator and their decision, in the absence of evidence of manifest error, shall be final and binding.

16.3 For any dispute not covered by sub-clause 16.2 (and subject to sub-clause 16.5), if the dispute is not resolved within 30 days of the matter being raised then the parties (if they agree) shall have the option of:

- (a) referral of the dispute to a mediator in accordance with sub-clause 16.4; or
- (b) referral of the dispute for early neutral evaluation; or
- (c) pursuing any other dispute resolution option which the parties agree is appropriate.

16.4 If the dispute is referred to a mediator:

(a) the mediator will be appointed by agreement of the parties. If the parties fail to agree within 3 days of a proposal by one party, the mediator will be appointed by the Centre for Dispute Resolution

(CEDR);

(b) all negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings; and

(c) if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and once signed by the parties will be binding on them. Any such agreement will constitute confidential information for the purposes of the confidentiality provisions in this Agreement.

16.5 If the parties are not prepared to agree to the dispute being referred to a mediator or fail to reach agreement within 2 months of the mediator being appointed, either party may exercise any remedy that it has under this Agreement.

16.6 The costs of alternative dispute resolution shall be shared equally between the parties unless determined otherwise by competent or authorised bodies. Nothing in this clause 16 shall prevent the parties from agreeing that any mediator, adjudicator, arbitrator, court or other competent person or body selected by the parties for the purposes of alternative dispute resolution may require the costs of the alternative dispute resolution to be paid by one of the parties on the resolution of the dispute.

16.7 Nothing in this clause 16 shall prevent either party from referring the dispute to Ofcom in accordance with any right either party may have to request a determination or from taking any other appropriate steps for its resolution.

16.8 Nothing in this clause 16 shall prevent either party exercising any rights and remedies that may be available in respect of any breach of the provisions of this Agreement.



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17. CHANGES TO THIS AGREEMENT

17.1 The parties may change this Agreement at any time by written agreement.

17.2 Notwithstanding sub-clause 17.1, SAQ may change this Agreement at any time by giving at least 35 days notice before the change takes effect in order to:

- (a) comply with any legal or regulatory obligation; or
- (b) change the charges payable under this Agreement; or
- (c) protect the use of the SAQ Corporate Marks; or
- (d) introduce or withdraw Service features; or
- (e) introduce new or improved Service Levels; or
- (f) maintain the integrity or security of the Service or SAQ Network; or
- (g) introduce process changes to improve the quality of the Service; or
- (h) improve clarity, or make corrections to typographical errors;

providing that the changes in sub-clauses (d) to (h) inclusive, shall not unreasonably affect the Service.

17.3 With respect to any matters not falling within sub-clause 17.2, SAQ may propose that the Agreement be changed at any time by giving the Customer written notice of the proposed changes at least 28 days before the date the changes are proposed to take effect. The Customer may serve a notice on SAQ stating its objections to the proposed changes within 28 days of the service of SAQ's notice of the proposed changes. If the Customer does not serve a notice within that period the Customer shall be deemed to have accepted the changes and the changes will take effect from the proposed effective date.

18. TRANSFER OF RIGHTS AND OBLIGATIONS

18.1 Neither party may transfer any of their rights or obligations under this Agreement, without the written consent of the other, such consent not to be unreasonably withheld or delayed, except that:

- (a) the Customer may transfer its rights and obligations by way of novation to an eligible Customer Group Company subject to SAQ's applicable Policy for Credit Vetting and the signing of a novation agreement in such form as SAQ shall reasonably require; and
- (b) SAQ may transfer its rights or obligations (or both) to a SAQ Group Company without consent provided that it notifies the Customer that it has done so.

18.2 The Customer agrees to pay any reasonable charges notified to it in writing associated with the administration of:

- (a) Customer name changes; and/or
- (b) Customer contract novations.



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19. ENTIRE AGREEMENT

19.1 This Agreement contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.

19.2 The parties acknowledge and agree that:

- (a) the parties have not been induced to enter into this Agreement by, nor have relied on any statement, representation, warranty or other assurance not expressly incorporated into it; and
- (b) in connection with this Agreement the only rights and remedies of the parties in relation to any statement, representation, warranty or other assurance are for breach of this Agreement and that all other rights and remedies are excluded.

19.3 Nothing contained in sub-clauses 19.1 and 19.2 above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation.

19.4 A person who is not a party to this Agreement has no right under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

20. NOTICES

20.1 All notices given under this Agreement must be in writing and may be delivered by hand, fax, e-mail or first class post to the following:

- (a) to the appropriate person for that matter indicated on the Customer Service Plan;
- (b) for all other matters, in the case of notices from the Customer, to the Customer's SAQ account manager;
- (c) for all other matters, in the case of notices from SAQ, to the Customer's registered office address or a fax number at its registered office or any alternative address or fax number or e-mail address which the Customer notifies to SAQ.

20.2 A notice is duly served:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by first class post, three Working Days after the date of posting;
- (c) if sent by fax, at the time of transmission; and
- (d) if sent by email, at the time of transmission.

20.3 Notices pursuant to clause 2 (breach, suspension or termination) and any document concerning legal proceedings may not be delivered by email.

21. SEVERABILITY

If any Court of competent jurisdiction holds any provision of this Agreement invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision omitted.

22. LAW

The law of England and Wales governs this Agreement and both parties submit to the exclusive jurisdiction of the English courts.