

STANDARD TERMS AND CONDITIONS of Elite Limited a company limited by shares and registered in England whose registered office is situated at Internet House, 33 Kingston Crescent, Portsmouth, Hampshire PO2 8AA and whose registered number is 3759064 ("Elite")

(A) Elite Limited is authorised under the Communications Act 2003 to operate an electronic communications network and to provide electronic communications services.

(B) The Parties wish to enter into this Agreement pursuant to which the Customer will be able to order ethernet services and Elite has agreed to provide and maintain (and/or procure the provision and maintenance of) such ethernet services.

Now it is hereby agreed that:-

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the meanings assigned to them below, namely:-

"Act" means the Telecommunications Act 1984 as amended and superceded by the Communications Act 2003 ;

"Acceptance Test Schedule" means a series of installation and testing procedures to be carried out by Elite on the Circuit before the Completion Certificate is issued and **"Acceptance Tests"** shall be construed accordingly;

"Agreement" means this Agreement and the Service Level Agreement attached at Schedule 1;

"Annual Rental" means the annual charges payable by Customer as set out in the CRF;

"Charges" mean the Charges payable to Elite pursuant to this Agreement and the CRF(s);

"Completion Certificate" means the Elite's standard form installation completion certificate which when signed is conclusive proof that the Acceptance Tests have been successfully completed;

"Connection" means (a) electronic communication circuit(s) to be supplied by Elite for the delivery of Ethernet Services pursuant to this Agreement. Such Connections shall be supplied as point to point only, or as part of an Ethernet VPN depending on the Customer requirements identified in the CRF ;

"Connection Commencement Date" means the date each individual Connection is available for use by the Customer and the relevant Completion Certificate is issued;

"Connection Ready for Service Date" means the date the Parties agree the Connection shall be ready for service as set out in the Order Acceptance Form;

"Completion Certificate" means the Elite's standard form installation completion certificate which when signed is conclusive proof that the Acceptance Tests have been successfully completed;

"Customer Apparatus" means any apparatus, and any software embodied therein, on the Customer's side of Elite's network termination point at any relevant Sites which does not form part of the Equipment (but which may be connected to the Equipment) and is used by the Customer in conjunction with the Equipment in order to obtain or use the Ethernet Services;

"Customer Requirement Form" (CRF) means the customer requirement form containing the details of the Ethernet Services and Connections to be supplied to the Customer which is attached to the front of this Agreement;

"Default Interest Rate" means the statutory rate of interest in accordance with the Late Payment of Debt (Interest Charges) Act 1998;

"Due Date" means the due date for payment of an invoice pursuant to clause 13;

"Emergency" means any event or circumstance which results or could reasonably be expected to result in a risk of personal injury or death or material damage to property and, without prejudice to the generality of the foregoing, an event or circumstance defined as an Emergency in the Act;

"Equipment" means any communication apparatus (as defined in the Act) or other equipment to be installed by or on behalf of Elite Limited pursuant to this Agreement from time to time. Such equipment may include an appropriate switch and/or router to be supplied by Elite to the Customer if indicated as required on the CRF;

"Ethernet Services" means the wide area communication services supplied to the Customer at an agreed bandwidth which will allow the Customer to pass ethernet frames over the Connection(s);

"Ethernet VPN" means a communications network running over a shared infrastructure which is used to supply ethernet connectivity between a Hub Site and multiple Spoke Sites;

"Force Majeure" means a circumstance described in clause 16;

"Group" means in relation to either Party, itself and each of its holding companies or subsidiaries for the time being and any subsidiary of any such holding company and the terms **"holding company"** and **"subsidiary"** shall have the meanings given to them in Section 736 of the Companies Act 1985 (as amended);

"Hub Site" means the main point of interconnection for the Ethernet VPN upon which each individual Spoke Sites are dependant;

"Installation Charge" means charges payable on installation of the Connections by Customer as set out in the CRF;

"Law" means the Act and any other law, statute or regulation, code of conduct (whether or not having the force of law), copyright or other third party rights, obligation in contract or any term of any license to which Elite or the Customer is from time to time subject;

"Minimum Period" means the relevant duration of the individual agreements to provide Connection(s) at any particular Site as set out in the CRF. Where the Connections are supplied as part of an Ethernet VPN , the Minimum Period for the Hub Site shall be no less than 12 months from the date of installation of the last Spoke Site;

"Elite PoP" means a point of presence on the Elite System where Elite Equipment is sited, excluding Customer sites;

"Elite System" means the System operated by Elite Limited;

"Order Acceptance Form" means a form sent by Elite which contains confirmation of Elite's acceptance of the CRF and confirms the Connection Ready For Service Date;

"Outage" means an event or action (not attributable to the act or omission of the Customer or arising at the request of the Customer), which prevents or restricts the passage of electronic communications signals across any Connection;

"Parties" means the Customer and Elite;

"Premises" means the building(s) where Equipment is located, and whether or not occupied by the Customer;

"RFQ" means a request for quotation submitted by the Customer to Elite;

"Self Certification Notice" means a notice issued by Elite which when signed by Elite is conclusive proof of satisfactory installation;

"Service Fee" means such sum calculated with reference to Elite's current charging rate and in accordance with clause 9.7 as shall be charged to the Customer in the event of maintenance services provided consequent on (an) event(s) specified in sub-clause 9.6.1; 9.6.2; 9.6.3; which necessitates a callout by an Elite engineer; **"Service Level Agreement"** means Elite's standard Service Level Agreement from time to time attached as Schedule 1;

"Site" means the location where a Connection provided under this Agreement starts or terminates as set out as the A End Address and B End Address on the CRF. Where the Customer contracts for the supply of an Ethernet VPN Service, the term Site(s) shall also include all references to Hub and Spoke Sites;

"Site Occupier" means the occupier (for the purposes of the Electronic Communications Code as referred to in the Act) of a Site;

"Site Wayleave" means Elite's standard wayleave agreement to be executed by Elite and the Site Occupier in respect of the relevant site if necessary for Elite to provide service under this Agreement;

"Spoke Site" means a point to point Connection which is installed as part of an Ethernet VPN service which is dependant on the Hub Site;

"System" means an electronic communication system;

"Tail Circuit" means a Connection on an electronic communications network provided by a supplier (other than Elite) between a Elite PoP and the Customer's Site over which Elite will supply Ethernet Services;

1.2 References herein to clauses are to clauses in these terms and conditions.

1.3 References in this Agreement to the **"Site Occupier"** shall include its respective successors (whether by operation of law or otherwise) and permitted assigns.

1.4 References in this Agreement to **"day"** shall be to a calendar day.

1.5 A reference in this Agreement to a statutory provision will, unless expressly provided otherwise, be interpreted as a reference to such provision as amended or re-enacted.

1.6 In this Agreement unless the context otherwise requires:

1.6.1 Words in the singular include the plural and vice versa; and

1.6.2 Words importing any gender include all genders.

1.7 The headings are for convenience only and do not affect the interpretation of this Agreement.

1.8 References in this Agreement to a "person" shall include any person, partnership, firm, company (as defined in Section 735 Companies Act 1985 as amended), body corporate or corporation (as defined in Section 740 Companies Act 1985 as amended) or organisation.

1.9 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wide construction is possible.

2. Purpose of Agreement

Subject as set out in this Agreement:-

2.1 Elite shall provide the Customer with the Ethernet Services Connection(s) and maintenance thereof as set out herein (the "Service"); 2.2 The Customer shall make the relevant payments to Elite, as set out in clauses 12 and 13, and the CRF herewith and any subsequent CRFs submitted and accepted by Elite.

3. Wayleave

3.1 The Customer hereby irrevocably gives permission to Elite and its employees, agents or contractors on reasonable notice at such reasonable times to:

(a) Execute any works on the property comprised in the relevant Site(s) (the "Property") for, or in connection with, the installation, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of the Equipment; (b) Keep and operate the Equipment installed on, under or over the Property; (c) Enter the Property to inspect any of the Equipment kept on, under or over the Property or elsewhere for the purpose of the Elite System.

3.2 Elite agrees with the Customer to cause as little disturbance, damage and inconvenience as reasonably possible when exercising any of its rights under this permission and to make good (to the reasonable satisfaction of the Customer) as soon as reasonably practicable any damage that Elite, its employees, agents or contractors may cause to the Property.

3.3 The Customer agrees not to do or allow anything to be done to the Property that may cause damage to, or interfere with, the Equipment or prevent reasonable access to it.

3.4 The Customer warrants that: (a) It is the current occupier of the Property; (b) It is either the freeholder of the Property or is a tenant of it under a lease expiring not before the expiry of the Minimum Period and any Subsequent Period; (c) It will not do or allow to be done at the Property anything which might damage the Equipment in any way and that it will take all steps reasonably necessary to ensure that no one interferes with or tampers with the Equipment; (d) If it wants to carry out works to refurbish, demolish or substantially reconstruct all or part of the Property and requires the Equipment to be removed or relocated or altered it will give Elite as much notice of its proposed works as is reasonably practicable (and in any event no less than six calendar months' prior written notice). Upon receipt of such notice the Parties shall agree to consult with each other and respectively to use all reasonable endeavours to find alternative sites or routes for the Equipment as are reasonably acceptable to Elite and as are necessary to allow the Customer to carry out its refurbishment, demolition or reconstruction.

3.5 Those wayleave terms set out in clause 3.1 to 3.4 (inclusive) above shall continue in force while this Agreement remains in force and for a period of 60 days following cancellation or termination of this Agreement. Upon such cancellation or termination, the Customer shall give Elite or its sub-contractors or suppliers all reasonable access to the Property to remove Equipment.

3.6 The Customer shall procure and/or continue throughout the term of this Agreement all site related permissions and approvals necessary for Elite to deliver, install and maintain the Equipment for the provision of the Ethernet Services and Connection(s).

4. Ordering and Provision of Connection(S)

4.1 If the Customer wishes to order Ethernet Services it may submit an RFQ to Elite's sale team at sales@eliteukserve.net.

4.2 If an RFQ is submitted to Elite pursuant to clause 4.1, Elite shall use all reasonable endeavours to respond in writing within 10 working days. At Elite's sole discretion, a credit check may be conducted against the Customer.

4.3 If the Customer submits a duly completed CRF within 30 days of a positive response from Elite the following provisions will apply:

4.3.1 Elite will send the Customer an Order Acceptance Form and the Customer shall use its reasonable endeavours to procure that the Site Occupier(s) of the relevant Site(s) enters into the applicable Site Wayleave(s);

4.3.2 On the grant of a Site Wayleave (if applicable) for the relevant Site and on execution of the Order Acceptance Form by Elite and Elite faxing it back to the Customer the CRF will be deemed to be a binding contract for the provision of the Ethernet Services in accordance with and subject to the terms of this Agreement whereupon any equipment required for the provision of the Connection will be deemed to be Equipment (as defined), excluding the provisioning of applicable routers and/or switches which may be supplied by Elite if indicated as being required in the CRF. If Elite is not supplying any applicable routers and/or switching equipment it shall be the sole responsibility of the Customer to ensure that they have adequate routing and switching equipment at each Site for the operation of the Ethernet Services.

4.3.3 Subject to clauses 14 and 15 below, the contract for the provision of the Ethernet Services and each Connection shall continue for the Minimum Period stated on the relevant CRF. Where the Customer has ordered Ethernet Services as part of an Ethernet VPN the Minimum Period for the Hub Site shall be no less than 12 months from the date of the installation of the last Spoke Site.

4.4 Elite shall use its reasonable endeavours to meet any dates specified in this Agreement and/or the CRF.

4.5 Subject to the existence of the Site Wayleave if appropriate Elite shall provide the Customer with the Ethernet Services and Connections between the Sites in accordance with the terms set out in this Agreement.

4.6 Elite shall provide the Customer with the relevant information to enable the Customer to prepare or procure the preparation of the Sites for delivery and installation of the Equipment and the Customer shall suitably prepare or procure the preparation of the Sites for delivery and installation of the Equipment and comply or procure the compliance in all material respects with Elite's reasonable instructions and requirements relating to the preparation of the Sites. Such instructions shall include confirmation of applicable switching and/or routing equipment which will be required at each Site for the operation of the Ethernet Services.

4.7 The Customer shall at its own cost procure the provision to Elite at all times of suitable accommodation, assistance, facilities and environmental conditions for the Equipment (as specified in clause 4.8) and all reasonably necessary electrical and other installations and fittings relating to the Equipment and shall ensure that any necessary preparation is effected before the Equipment is delivered and installed.

4.8 The Customer shall ensure that air conditioning and all other environmental controls in the premises where Equipment is located are maintained within the following humidity and temperature ranges:

	Minimum	Maximum
Humidity between	35%	65%
Temperature	10°C	35°C

4.9 Elite shall deliver the Equipment to the Customer (or as directed by the Customer) and install the Equipment at the Sites. Elite shall use its reasonable endeavours to comply with the Customer's requests in respect of installation but Elite's reasonable decision on the routing of cables and wires and the positioning of outlets and other apparatus constituting the Equipment or part thereof shall be final and binding.

4.10 Elite will use all reasonable endeavours to provide and install and the Parties will test the Equipment at the Sites so that the Connection(s) can be provided on or before the appropriate Connection Ready For Service Date.

4.11 Following the installation of the Equipment, Acceptance Tests shall be carried out by both Parties to ensure that the Ethernet Service and applicable Connection is ready for use. If the Ethernet Service and Connection is not ready for use, Elite shall either repair or replace, at its sole option, the Equipment or any part thereof and repeat the tests. All tests shall if the Customer so requires be carried out in the presence of a duly authorised representative of the Customer provided the representative is available at such reasonable times as Elite may specify.

4.12 Elite shall on successful completion of the Acceptance Tests present a Completion Certificate for signature to the Customer by a duly authorised representative of the Customer. The Customer shall ensure that its duly authorised representative signs such Completion Certificate without delay. If in the opinion of Elite the Customer delays in signing the Completion Certificate Elite shall have the right to issue a Self Certification Notice. The original of each such Completion Certificate or Self Certification Notice shall be retained by Elite who shall make a copy available to the Customer's representative at the time of delivery.

5. Service Levels

5.1 Elite shall use its reasonable endeavours to ensure that the Connection is available for use twenty-four (24) hours a day throughout each calendar year. To achieve this Elite shall design the Connection to provide an availability of 99.7%. The Connection shall be deemed unavailable if it is completely interrupted, for greater than ten consecutive seconds.

5.2 If the Connection is not available (other than for Planned Outages or for a Force Majeure event or as otherwise set out in this Agreement when Elite shall have no liability) as set out in clause 5.1 above, Elite shall be liable as set out in the Service Level Agreement in relation to Standard Level Services or Tail Circuits (as defined in the Service Level Agreement) which shall be the total of Elite's liability hereunder or otherwise for lack of availability of the Ethernet Service and individual Connection.

5.3 Elite's total aggregate liability under the Service Level Agreement shall in no event exceed the amount of annual Charges per individual Connection affected by any lack of availability.

6. Customer's Obligations

6.1 To facilitate the provision of the Ethernet Services and Connection(s), the Customer shall use its reasonable efforts to procure, at its own expense, a secure electricity supply of such type, at such points as Elite shall reasonably require in for each Connection. No electricity will be supplied by Elite through the Customer's or any third party's System. The Customer shall also procure the provision of back-up power with sufficient capacity to conform to the stand-by requirement of the relevant British Standards as needed if the Connection, including the provision of access to emergency services, is required to continue uninterrupted in the event of a power failure in the principal power supply for Equipment at the Customer Site.

6.2 The Customer will ensure that the location and position of all Equipment comply with all applicable health and safety regulations in force on the date of this Agreement. The Customer shall pay for the relocation of any and all Equipment found to be in breach of any such regulations. Should new legislation or regulations come into force after the commencement of this Agreement which would require any Equipment to be relocated, the Customer will pay such relocation costs.

6.3 If the Customer wishes other than for reasons connected to applicable health and safety regulations to move any part of the equipment to a different location within the premises, the Customer shall give the maximum notice reasonably practicable (but not less than three (3) months notice in writing). On the expiry of such notice and with the consent of Elite (not to be unreasonably withheld or delayed) the Customer shall be entitled (at its own expense) to move any Equipment to such different location within the premises. The Customer shall consult with Elite to ensure that any such relocation takes place at a time when the least disruption shall be caused to Elite's business.

7. Equipment

7.1 The Equipment shall remain the property of Elite or its nominee and Elite may modify, substitute, renew or add to the Equipment from time to time at its sole discretion **PROVIDED THAT** such modifications, substitutions, renewals or additions shall not affect the supply of Ethernet Services and Connection(s). Where such modification would impact on a Connection then modifications will be carried out as a Planned Outage as described in the Service Level Agreement.

7.2 The Customer shall be responsible for ensuring at all times the safe keeping and proper use of the Equipment at the Sites and shall be liable for any loss or damage to the Equipment pursuant to clause 7.3. In particular (but without prejudice to the generality of the foregoing) the Customer covenants:-

7.2.1 To comply with all reasonable instructions as Elite may notify to the Customer;

7.2.2 Not to (and to ensure that no other person shall) sell, let, transfer, dispose of, mortgage, charge, modify, repair, service, tamper with, remove or interfere with the Equipment or suffer any distress, seizure or execution to be levied against or of the Equipment or otherwise do anything prejudicial to Elite's rights in the Equipment;

7.2.3 To keep the Equipment at the Sites and stationary at all times;

7.2.4 Not to add to, modify, or in any way interfere with, the Equipment;

7.2.5 Notwithstanding clauses 7.2.3 and 7.2.4, in the case of an Emergency, to take whatever steps as are reasonably necessary to safeguard the Equipment and to notify Elite as soon as possible of the circumstances of such Emergency;

7.2.6 Other than in the event of an Emergency not to cause the Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of Elite;

7.2.7 Not to do anything or knowingly to allow to subsist any circumstance, matter or thing, which is likely to damage the Equipment or detract from or impair its performance or operation;

7.2.8 Not to remove, tamper with or obliterate any words or labels on the Equipment or any part thereof and in any event to ensure the Equipment can be identified as belonging to Elite or its supplier;

7.2.9 To permit Elite to inspect or test the Equipment at all reasonable times; and

7.2.10 At the request of Elite to produce evidence to Elite that it has effected and is maintaining suitable insurance in respect of relevant risks in accordance with standard industry practice relating to such Equipment.

7.3 For the purposes of this Agreement the "point of interconnect" for Ethernet interfaces for hand off will be 10/100 Base T ethernet or 1000 Base SX/LX.

7.4 The Customer shall be liable for any loss or damage howsoever caused at or beyond the Customer's side of the point of interconnect at the Sites (including but not limited to lightning or electrical damage) to any part of the Equipment within the Sites and the Customer undertakes to hold harmless and reimburse Elite against all such loss or damage. The Customer will notify Elite immediately of any such loss or damage.

7.5 The Customer shall obtain reasonable insurance of its liabilities under clause 7.4

7.6 For the avoidance of doubt the Customer shall not be liable for any loss or damage to the Equipment where such loss or damage occurs before the point of interconnect within the Sites **PROVIDED THAT** if such loss or damage is due to the negligent, malicious or willful action or inaction of the Customer, its employees or sub contractors, or by the Customer's breach of this Agreement, the Customer shall be liable to and shall reimburse Elite therefore to the extent of all losses, damages and costs incurred by Elite by such action and/or inaction of the Customer, its employees or subcontractors and/or by such breach of this Agreement by the Customer.

8. Customer Apparatus

8.1 The Customer shall be responsible for procuring that the Customer Apparatus is programmed, equipped, compatible and connected for the operation of the Ethernet Services and installation of the Connection(s) in accordance with Elite's reasonable instructions and the specifications contained in the Service Level Agreement. The Customer shall be responsible for procuring the connection of the Customer Apparatus to Elite's System.

8.2 The Customer acknowledges that Elite shall not be responsible for the repair and maintenance of Customer Apparatus.

8.3 The Customer shall ensure or procure that all Customer Apparatus complies with all relevant Laws and applicable industry standards for the time being in force. The Customer shall disconnect any Customer Apparatus if such apparatus does not, or ceases to conform to any relevant Law or to any applicable and industry standards for the time being in force. Elite reserves the right to disconnect any Customer Apparatus if the Customer does not fulfill any of its obligations under this clause 8 or, if in the reasonable opinion of Elite, such apparatus does not comply with any relevant Law or applicable industry standard for the time being in force or may cause the death of or any personal injury to any person, or material damage to property or materially impair the quality of any electronic communication service provided by means of Elite's System.

9. Maintenance

9.1 Elite shall provide such maintenance services for the proper functioning of the Connection(s) and, where appropriate, the switching and routing equipment supplied by Elite, as are reasonably required to provide the Ethernet Services in accordance with this Agreement and the Service Level Agreement.

9.2 The Customer shall permit Elite or its agents upon reasonable notice (except in an Emergency, when no notice is required) to enter the Sites for the purpose of monitoring and maintaining the Equipment.

9.3 If the Customer detects any defect or impairment in the operation or performance of the Ethernet Services and/or applicable Connection, it shall notify Elite of the nature of such defect or impairment. Elite shall respond promptly after such notification and shall make the necessary corrections in accordance with the Service Level Agreement.

9.4 If Elite detects any defect or impairment in the operation or performance of the Equipment, it shall notify the Customer of the nature of such defect or impairment. The Customer shall after such notification comply with its obligations under clause 1.3 of the Service Level Agreement and shall make the necessary corrections in accordance with the Service Level Agreement.

9.5 Subject to clause 9.6 below, Charges for maintenance are included in the Charges set out in the relevant CRF.

9.6 Elite will be entitled to charge the Customer and the Customer will pay a Service Fee at Elite's then current reasonable charging rates to the extent that the need for any maintenance results from any one or more of the following:-

9.6.1 Misuse or neglect of or accidental or willful damage to the Equipment where such misuse, neglect or damage occurs beyond the point of interconnect in the Sites; or

9.6.2 Failure by the Customer to comply with any of the provisions of this Agreement; or

9.6.3 Fault in, or other problem associated with the Customer's System other than the Connection(s)

PROVIDED THAT in the case of any event referred to in clause 9.6 Elite shall have given the Customer reasonable written notice of its intention to charge such Service Fee.

9.7 From 1 January 2003 (until otherwise notified by service of written notice to the Customer) Elite's current Service Fee is calculated on the following basis:

9.7.1 £500.00 plus VAT for each callout which shall include a period of time of four (4) hours duration, which period shall include one engineer's travel time to the fault address premises identified by the Customer; and

9.7.2 thereafter each additional man-hour on the same callout shall be charged at £80.00 plus VAT, for a minimum of one (1) hour or part thereof.

9.8 In the event that the Customer prevents or delays the performance of maintenance services as described in this Agreement, Elite shall have the right to charge to the Customer all reasonable costs incurred by such delay or prevention.

10. Use of Service

10.1 The Customer undertakes not to use or knowingly permit anyone else to use the Ethernet Service and Connection(s):-

10.1.1 To send a message or communication which is offensive, abusive, indecent, obscene or menacing; or

10.1.2 To cause annoyance or inconvenience; or

10.1.3 In a manner which is contrary to any applicable English Law.

10.2 The Customer shall indemnify and hold harmless Elite against all liabilities, claims, damages, losses and proceedings arising out of or in any way connected with any such use of the Ethernet Service and Connection(s) by the Customer which infringes clause 10.1, provided that Elite shall not compromise, admit or settle any such actions without the prior written consent of the Customer which is not to be unreasonably withheld or delayed.

11. Suspension of Services

11.1 Without prejudice to the Parties' other rights and remedies under this Agreement and otherwise at law and subject to clause 11.2, Elite may suspend the performance of its obligations under this Agreement for a period of not longer than six (6) months, on prior written notice (such notice not to apply with respect to 11.1.2 and 11.2) in the event that:-

11.1.1 Elite is entitled to terminate this Agreement in accordance with clause 15 or the Customer is in breach of this Agreement; or

11.1.2 Elite is required to suspend such performance in order to comply with any Law or request of any governmental department, emergency services organisation or other competent administrative authority **PROVIDED THAT** if Elite is entitled to suspend this Agreement pursuant to clause 11.1.2, Elite shall use its reasonable endeavours to minimise such period of suspension.

11.2 In the event of an Emergency, Elite may at its sole discretion interrupt or suspend its obligations hereunder for so long as the Emergency lasts (but no longer) without giving any notice to the Customer but shall notify the Customer as soon as reasonably practicable following the start of the interruption or suspension and shall use its reasonable endeavours to minimise the period of such interruption or suspension.

11.3 Where the suspension is implemented as a consequence of the breach, fault, act or omission of the Customer, the Customer shall reimburse Elite for all reasonable costs and expenses incurred by Elite in connection with the implementation of such suspension and/or the recommencement of the provision of Elite's services hereunder as appropriate.

12. Charges and Review

12.1 In consideration for the provision by Elite of the Ethernet Service(s) in accordance with this Agreement, the Customer will in respect of the Ethernet Service and each Connection provided by Elite under this Agreement, pay the Charges.

12.2 The Installation Charges and the Annual Rental Charge relating to the Ethernet Service and Connection(s) shall remain fixed during the relevant Minimum Period.

12.3 Subject to clause 12.2 above and as set out in the CRF, Elite shall give the Customer not less than one (1) month's notice of any increases in Charges.

13. Payment

13.1 All Charges payable under this Agreement shall be payable (without any set off or deduction) within thirty days of the date of receipt of invoices from Elite.

13.2 Installation Charges on the CRF shall be invoiced by Elite prior to each relevant Connection Commencement Date

13.3 Annual Rental Charges on the CRF shall be invoiced by Elite quarterly in advance.

13.4 All Charges expressed to be payable under this Agreement shall be exclusive of VAT.

13.5 If the Customer shall fail to pay any amount due under this Agreement by the Due Date, Elite shall be entitled to charge to and receive from the Customer interest in respect of any such amount outstanding at the Default Interest Rate (whether before or after judgment) as at the Due Date. Such interest shall be payable from and including the day after the Due Date until and including the date of payment in full. Such interest shall accrue day by day and shall be compounded quarterly.

13.6 In the event that Elite is unable to proceed with the installation of Equipment and/or Tail Circuit(s) due to acts or omissions of the Customer which prevent or delay installation beyond an agreed Connection Ready for Service Date, then Elite shall have the right to invoice the Customer (which invoice the Customer shall pay) for all costs incurred in provisioning such Equipment and/or Tail Circuit(s) in readiness for that original Connection Ready for Service Date in accordance with the terms of clause 13.2 notwithstanding any such delay in actual installation of Equipment and/or Tail Circuit(s).

14. Duration

14.1 This Agreement shall come into force on the date hereof and shall continue for the Minimum Period unless and until terminated in accordance with clauses 14.2 and/or clause 15.

14.2 Either Party shall have the right to terminate this Agreement in relation to the provision of a Connection for the supply of Ethernet Services with effect from expiry of the relevant Minimum Period subject to giving the other Party no less than two (2) month's prior written notice.

15. Termination

15.1 Notwithstanding anything to the contrary in this Agreement, either Party (without prejudice to its other rights) shall be entitled to terminate this Agreement forthwith by notice to the other Party if:-

15.1.1 The authorisations and consents granted to Elite under the Act necessary for the provision of the Ethernet Service and Connection(s) is revoked or otherwise varied for any reason whatsoever and is not immediately replaced by a new authorisation or consent that would permit Elite to continue to provide the Ethernet Services on the same terms and conditions as set out in this Agreement, in which event Elite shall give the Customer the maximum period of notice of termination practicable in the circumstances; or

15.1.2 Any authorisation or consent under which the Customer has the right to run a System and to connect it to the Connection(s) is revoked or otherwise terminated and is not immediately replaced by another authorisation or consent conferring such right or if the Customer is in breach of any such authorisations or consents; or

15.1.3 Any action or proceedings under insolvency law is taken against the other Party or the other Party makes any arrangement or compromise with its creditors, or ceases to carry on business or suffers any execution or distress over its assets, or shall be the subject of a voluntary or compulsory liquidation (other than for the purpose of reconstruction or amalgamation) or an administrator or administrative receiver is appointed; or

15.1.4 The other Party commits a material breach of any of the provisions of this Agreement (including without limitation, non-payment of any charges hereunder) and, in the case of a material breach of any of the provisions which is capable of remedy, fails to remedy the same within 30 days after receipt of a notice in writing from the first Party giving particulars of the breach and requiring it to be remedied. If the Customer terminates this Agreement it may do so by email to sales@eliteukserve.net provided a copy of that notice is also sent to Elite by fax or by letter in accordance with clause 24.

15.2 The right to terminate this Agreement shall not prejudice any other right or remedy of the relevant Party in respect of any breach or any rights, obligations or liabilities accrued prior to termination.

15.3 Upon the termination of this Agreement, Elite will, subject to Elite having a right of set off for any payment due to Elite repay to the Customer the appropriate proportion of any Charges paid in advance for any period ending after the Customer's liability to pay such Charge ceases.

15.4 Without prejudice to the Parties' other rights and remedies under this Agreement or otherwise at law, if this Agreement is terminated by Elite in accordance with clauses 15.1.2 to 15.1.4 (inclusive) the Customer shall pay Elite all arrears of Charges and sums due payable to Elite under this Agreement until the expiry of the Minimum Period or the date of termination (if longer) for each Connection delivered by Elite to the Customer pursuant to this Agreement;

15.5 The termination or expiry of this Agreement shall not operate so as to terminate any Site Wayleave.

15.6 The obligations of the Parties under clauses which are of a continuing nature and capable of surviving expiry or termination of this Agreement shall continue in full force and effect notwithstanding such expiry or termination.

16. Force Majeure

16.1 Neither Party (for the purpose of this clause, the "**Affected Party**") shall be liable for any failure to perform its obligations hereunder caused by act of God, insurrection or civil disorder, terrorism, war or military operations, national or local emergency, acts or omissions of government, highway authority, industrial disputes of any kind (not involving employees of that Affected Party or of sub-contractors working for that Party pursuant to this Agreement), fire, lightning, explosion, subsidence, inclement weather, insolvency of a supplier, acts or omissions of persons or bodies for whom the Affected Party is not responsible (which shall include, but not be limited to, third party communication suppliers to Elite) or any other cause whether similar or dissimilar outside the reasonable control of that Party **PROVIDED THAT**, in such circumstances the Affected Party can demonstrate that it has taken all reasonable steps to continue service under this Agreement.

16.2 The Affected Party shall promptly notify the other of the estimated extent and duration of such inability to perform its obligations (for the purposes of this clause 16.2, a "**Force Majeure Notification**").

16.3 Upon cessation of the delay or failure resulting from the event of Force Majeure the Affected Party shall notify the other of such cessation.

16.4 If as a result of the event of Force Majeure the performance of the Affected Party's obligations under this Agreement is only partially affected, such Party shall, subject to the provisions of clause 16.5, nevertheless remain liable for the performance of those obligations not affected by the event of Force Majeure.

16.5 In the case of either Party making a Force Majeure Notification then:-

16.5.1 If the delay or failure caused by the event of Force Majeure lasts for a continuous period of three (3) months or less from the date of the Force Majeure Notification (whether or not notice of cessation has been given pursuant to clause 16.3) any obligation outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the event of Force Majeure has ended, save to the extent that such fulfillment is no longer possible or is not required by the other Party; or

16.5.2 If the delay or failure caused by the event of Force Majeure lasts for more than three (3) months from the date of the Force Majeure Notification and notice of cessation has not been given pursuant to clause 16.3 and such event of Force Majeure prevents the Affected Party from performing such Party's obligations in whole or in part during that period, the unaffected Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than thirty (30) days' written notice to the Affected Party on expiry of the said three (3) months period **PROVIDED THAT** such notice shall be deemed not to have been given in the event that notice of cessation of the event of Force Majeure given pursuant to clause 16.3 is received by the unaffected Party prior to the expiry of the thirty (30) days' notice.

16.6 If this Agreement is not terminated in accordance with the provisions of clause 16.5.2 then any obligations outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the event of Force Majeure has ended, save to the extent that such fulfillment is no longer possible or is not required by the other Party.

17. Limitations of Liability

17.1 Nothing herein shall limit either Party's liability for death or personal injury resulting from its own negligence or that of its employees, agents or contractors while acting in the course of their employment.

17.2 Nothing in this Agreement shall exclude or restrict any liability of either party which cannot by law be excluded or restricted.

17.3 Subject to the provisions of this clause 17, the liability of each of the Customer and Elite to the other in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Agreement shall be limited to £1,000,000.00 for any one incident or series of events arising from a single incident.

17.4 Save as specifically provided in this Agreement, neither Elite nor the Customer shall be liable in any circumstance to the other hereunder in contract, tort or otherwise including any liability for negligence for any indirect or consequential loss howsoever arising. For the purposes of this Agreement, "indirect or consequential loss" includes but is not limited to, loss of computer data, wasted management time, loss of revenue, profit, anticipated savings, business or goodwill.

17.5 The provision of Service under this Agreement is supplied in accordance with the SLA and Elite's sole obligations and liabilities in respect of that provision are as stated in this Agreement and all other innocent or negligent representations (but not fraudulent), conditions, warranties and terms express or implied whether by statute, law or otherwise (including without limitation those relating to the merchantability and fitness for purpose) are hereby excluded to the fullest extent permitted by law.

18. CONFIDENTIALITY

18.1 In this clause 18, "**Confidential Information**" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a Party (for the purposes of this clause 18, the "**Disclosing Party**") to the other Party (for the purposes of this clause 18, the "**Receiving Party**") whether before or after the date of this Agreement.

18.2 During the term of this Agreement and after the termination or expiration of this Agreement for any reason, the Receiving Party:-

18.2.1 May not use Confidential Information for a purpose other than the performance of its obligations under this Agreement; and

18.2.2 May not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party.

18.3 clause 18.2 does not apply to Confidential Information which:-

18.3.1 Is at the date of this Agreement or, at any time after that date, becomes publicly known other than by the Receiving Party's breach of this Agreement; or

18.3.2 Can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or

18.3.3 Is required to be disclosed under any Law or by any stock exchange or other regulatory requirements.

18. This clause shall remain in force for five (5) years following the termination or expiration of this Agreement.

19. Publicity

Subject to clause 18 and the Proviso below the Parties may directly or indirectly make public announcements, give releases or statements to the press, television, radio or other media relating to or connected with this Agreement (in this clause "**Publicity**"), **PROVIDED THAT** the Parties agree that no Publicity shall be given by either Party either directly or indirectly that is negative, derogatory or in any way adverse in nature to the interests of the other Party.

20. Intellectual Property Rights

20.1 Copyright and all other proprietary rights in all documents, drawings and information supplied by Elite to the Customer in connection with this Agreement shall remain vested in Elite or the copyright owner. Such documents, drawings and information are confidential and shall not be copied, disclosed or used (except for the purpose for which they were supplied) without the prior written consent of Elite.

20.2 Copyright and all other proprietary rights in all documents, drawings and information supplied by the Customer to Elite in connection with this Agreement shall remain vested in the Customer or the copyright owner. Such documents, drawings and information are confidential and shall not be copied, disclosed or used (except for the purposes for which they were supplied) without the prior written consent of the Customer.

21. Assignment

21.1 Subject to clause 21.2 below, neither Party shall assign, novate, delegate or otherwise deal with all or any of its rights or obligations under this Agreement (apart from on a solvent amalgamation or reorganisation) without the prior written agreement of the other Party which is not to be unreasonably withheld or delayed.

21.2 Either Party may assign the benefit, subject to the burden of this Agreement, to a member of its Group.

21.3 For the avoidance of doubt, nothing in this clause 21 shall prevent the Customer from using the Connection(s) as part of any service it offers to its customers.

22. Entire Agreement and Variations

22.1 This Agreement (which for the avoidance of doubt shall include the Schedule 1 - Service Level Agreement and any subsequent Schedules hereto) constitutes the entire Agreement between the Parties relating to the subject matter of this Agreement and supersedes any previous agreements and all prior representations made between the Parties, whether orally or in writing.

22.2 In the event of any inconsistencies between the contents of any of the following documents, the order of precedence shall (unless expressly stated to the contrary) be as follows:- (i) CRF; (ii) this Agreement; and (iii) the Service Level Agreement. A variation of this Agreement is valid only if it is in writing and signed on behalf of each Party.

22.3 Each party agrees that it did not rely on any statement made by the other party before the signature of this Agreement in entering into this Agreement and hereby waives any remedy which but for this clause 22.3 might otherwise be available to it in respect of any untrue statement (whether made innocently or negligently) before the signature of this Agreement.

23. General

23.1 This Agreement is made solely and specifically between and for the benefit of the Parties and is not intended to be for the benefit of, and shall not be enforceable by any person who is not named at the date of this Agreement as a party to it, under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither Party can declare itself a trustee of the rights under it for the benefit of any third party.

23.2 Failure by either Party at any time to enforce any of the provisions of this Agreement shall not be construed as a waiver by such Party of any such provision or in any way affect the validity of this Agreement or any part hereof.

23.3 No granting of time or other forbearance or indulgence by either Party to the other Party shall in any way release, discharge or otherwise affect the liability of the other Party under this Agreement.

23.4 If any provision of this Agreement shall be prohibited or adjudged by a court of competent jurisdiction to be unlawful, void or unenforceable, such provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement.

23.5 This Agreement may be executed in any number of counterparts each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

24. Notices

24.1 Any notice, invoice or other document or communication required to be given for the purposes of this Agreement shall be given by post or facsimile transmission (confirming the same by post) or by electronic mail ("email") to sales@eliteukserve.net. Notice served by e-mail must be confirmed in writing within two (2) days of transmission by the sender to be valid. Any letter sent for the purposes of this Agreement shall, if addressed to Elite, be sent to The Company Secretary, Elite Limited, Internet House, 33 Kingston Crescent, Portsmouth, Hampshire, PO2 8AA, Fax Number 0870 741 5899 and if addressed to the Customer be sent to the Customer's address on the RFQ or to such other address of which notice has previously been notified by the party to be served.

24.2 Notice delivered by hand shall be deemed received when left. Notice given by post shall be deemed as served three days after the date of posting. Notice given by fax shall be deemed served when transmitted provided that the sender shall have received a transmission report by way of confirmation.

25. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English Law and both Parties hereby irrevocably agree to submit to the exclusive jurisdiction of the English courts.

SCHEDULE 1

Service Level Agreement

1. Fault Management

1.1 Faults may be reported to the Elite Technical Support Centre ("TSC") on 0871 717 0390 (or such other number as Elite notifies the Customer), or email to support@eliteukserve.net 24 hours a day, 7 days a week at which time a Fault Reference Number will be issued.

1.2 Elite will in the Notification Period take all reasonable steps to restore the Service in accordance with the terms of this Agreement.

1.3 On notification of a fault by the Customer to Elite, the Customer shall perform all necessary in-house tests to the demarcation point as specified by Elite and shall co-operate fully with the Elite Network Operations Centre in order to locate any fault.

1.4 ELITE NETWORK

1.4.1 From the end of the Notification Period, Target Times to Repair for Service affecting Faults on the Elite Network are as follows:

Equipment/Electronic Related Fault	Fibre Fault
5 Hours (During Office Hours*)	24 Hours
7 Hours (Outside Office Hours*)	

* Where a fault occurs during any period outside Office Hours (whether or not it commences or finishes during Office Hours) the target time to repair shall be as for outside Office Hours.

1.4.2 From the end of the Notification Period, the Target Time to Repair for a Non Service Affecting Fault on the Elite Network is 24 hours.

1.4.3 If Elite does not meet the above Target Times for Repair for the Elite Network the Customer may claim compensation (at the Customer's sole option) as follows PROVIDED ALWAYS that Elite's total aggregate liability to the Customer under this Service Level Agreement shall not exceed the sum of one year's annual rental for the relevant Connection which has the Service Affecting Fault:

Hours past Target Time to Repair	Amount of Compensation
2 – 3	1% of annual rental of the affected Connection
3 – 4	2% of annual rental of the affected Connection
4 – 6	3% of annual rental of the affected Connection
More than 6	4% of annual rental of the affected Connection

1.4.4 Any Compensation awarded to the Customer pursuant to this Agreement will be credited by Elite against the following payment next due from the Customer or if none will be payable by Elite by cheque to the Customer at the end of the next following Quarter. Any sums recovered by the Customer for a failure by Elite to meet Target Times to Repair shall be deducted from any compensation due to the Customer for a failure by Elite to meet Ethernet Service Availability Levels as detailed in this Service Level Agreement, if attributable to the same fault.

1.5 SWITCH/ROUTER SUPPLIED BY ELITE

1.5.1 From the end of the Notification Period, Target Times to Repair for Service Affecting Faults on any Switch or Router supplied and maintained by Elite under the terms of the Agreement are:

Standard SLA
8 Hours (During Office Hours*)
24 Hours (Outside Office Hours*)

* Where a fault occurs during any period outside Office Hours (whether or not it commences or finishes during Office Hours) the target time to repair shall be as for outside Office Hours.

1.5.2 If Elite does not meet the above Target Times for Repair for the Switches/or Routers supplied by Elite the Customer may claim compensation (at the Customer's sole option) as follows **PROVIDED ALWAYS** that Elite's total aggregate liability to the Customer under this Service Level Agreement shall not exceed the sum of one year's annual rental for the relevant Connection:

Hours past Target Time to Repair	Amount of Compensation
2 – 3	1% of annual rental of the affected Connection
3 – 4	2% of annual rental of the affected Connection
4 – 6	3% of annual rental of the affected Connection
More than 6	4% of annual rental of the affected Connection

3. Standard Level Service for Circuits on the Elite Network

3.1 Under its Standard Level Service Elite guarantees the availability of Connections on the Elite Network to be at least 99.7%. The calculation used is based on the recorded number of Service Affecting Faults per Connection within the Measurement Period.

3.2 If the performance level of Standard Level Service on the Elite Network falls below 99.7 % per annum, the Customer may claim compensation as follows **PROVIDED ALWAYS THAT** Elite's total aggregate liability to the Customer under this Service Level Agreement shall not exceed the sum of one year's annual rental for the relevant Connection:

Connection Availability at end of Measurement Period	Amount of Compensation
99.69% - 99.50%	5% of annual rental of the affected Connection
Less than 99.50%	7.5% of annual rental of the affected Connection

3.3 In calculating the availability of each Connection, any service affecting fault attributable to the loss of service or failure in the operation of switches and/or routers supplied by Elite shall not be taken into account.

3.4 The above compensation is calculated at the end of the Measurement Period and will be credited by Elite against the next following payment due from the Customer or if none, will be payable by Elite by cheque to the Customer at the end of the next following Quarter. Compensation payable to the Customer for failure to meet Target Times to Repair shall be deducted from the above compensation payments if attributable to the same fault.

4. Tail Circuits

4.1 Elite's liability for Target Times to Respond, Circuit Availability, and Latency in respect of Tail Circuits will at no time exceed the published contractual liability of the third party supplier of such Tail Circuits.

4.2 Following payment of compensation to Elite by the third party supplier, Elite will credit the Customer with the relevant compensation against the next following payment due from the Customer, or, if no further payments are due from the Customer, Elite will pay compensation by cheque to the Customer at the end of the next following Quarter.

5. Outages/Re-routing

5.1 In maintaining the Service, Elite may with reasonable notice request a temporary Outage or re-routing of the Service. Wherever reasonably possible Elite will notify the Customer of the Outage or re-routing at least 28 days in advance and will co-operate with the Customer as to timing of the Outage or re-routing. However, if Elite and the Customer cannot agree the timing of an Outage/re-routing, then the decision by Elite shall be final. When notice of an Outage/re-routing has been given, the Customer will not be entitled to any compensation and lack of availability will not be counted in any Measurement Period.

5.2 If there is an Outage/re-routing that has not been previously notified to the Customer, this will be regarded as a fault.

5.3 Planned network maintenance or upgrades may be required from time to time. Notice will be given to all customers that may possibly be affected by this type of Outage. Elite will use all reasonable endeavours to carry out this work with little or no disruption to customers but if Elite and the Customer cannot agree the timing of the Outage or re-routing, Elite' decision shall be final and binding. Where notice has been given to the Customer of such planned network maintenance or upgrades no compensation will be due to the Customer for resulting Outages.

6. Customer Responsible Faults

Elite is not responsible for any fault identified as attributable to Customer Apparatus, Customer power supplies or the action or inaction of the Customer's employees and/or agents. In such event Elite will quote its terms and conditions (including price) for any remedial work necessary for Elite to fulfill its obligations under this Agreement but the provisions relating to Target Times to Repair shall not apply and any downtime occasioned by such Customer fault shall not be included in availability measurements. In the event of responsibility being the subject of dispute between Elite and the Customer then the decision of Elite in this regard shall prevail.

7. Third Party Attributable Faults

If a fault is identified as being attributable to a third party (i.e. neither the Customer nor Elite), the fault shall be deemed to be the responsibility of Elite but no downtime will be included in availability measurements. In such event Elite will use all reasonable endeavours to restore the Service within the Target Time to Repair but will not be liable to pay the Customer compensation if it cannot do so because of any fault attributable to a third party.

8. Cancellation of Service

8.1 If the Customer cancels the order prior to the Planned Ready for Service Date the Customer shall upon demand immediately pay the following; **(i)** all third party costs directly incurred in consequence of cancellation by the Customer; and **(ii)** the following proportions of the quoted installation charge:

Number of working days before Planned Ready for Service Date	Percentage of installation charge payable
0 – 1	100% of cancelled order installation charge
2 – 5	90% of cancelled order installation charge
6 – 10	80% of cancelled order installation charge
11 –20	70% of cancelled order installation charge
21 – 30	50% of cancelled order installation charge
31 – 40	25% of cancelled order installation charge
More than 40	0%

8.2 Where installation charges were not payable or were discounted, Elite may at its sole discretion claim from the Customer reasonable costs (including but without limitation all third party costs) incurred as a result of such cancellation and the Customer shall become liable for payment of such costs forthwith. Where installation charges were discounted the amounts claimed under this paragraph 6.2 shall be in addition to any sums claimed under paragraph 6.1.

8.3 The above amounts are payable in addition to any termination payments due under the Service Contract.

9. Modification of Service

9.1 If the Customer significantly modifies the order (e.g. changes in address, point of presence or presentation) prior to the Planned Ready for Service Date the Customer shall be liable to pay, in addition to the full install cost, for the following proportions of the quoted installation charge:

Number of working days before Planned Ready for Service Date	Percentage of installation charge payable
0 – 1	100%
2 – 5	90%
6 – 10	80%
11 –20	70%
21 – 30	50%
31 – 40	25%
More than 40	0%

9.2 Where installation charges were not payable or were discounted, Elite may at its sole discretion claim reasonable costs incurred as a result of the modification and the customer shall become liable for payment of such costs forthwith. Where installation charges were discounted the amounts claimed under this paragraph 9.2 shall be in addition to any sums claimed under paragraph 9.1.

9.3 Where the Customer modifies the order, Elite will present the customer with a revised installation charge.

9.4 If such revised installation charge is LESS than the initial quoted installation charge, the amount due under this paragraph 9 will be credited by Elite against the revised installation charge.

9.5 If such revised installation charge is MORE than the initial quoted installation charge, the amount due under this paragraph 9 will be added by Elite to the revised installation charge and shall be payable by the Customer in accordance with the Service Contract.

9.6 If the Customer modifies the order (excluding a variation of bandwidth provided for in paragraph 2.3) by requesting a "Move and Change" for an "A"-End location and/or address and/or a "B"-End location and/or address of a Connection and/or an increase/decrease in bandwidth for Connections already installed by Elite, the Customer shall be liable to pay all relevant costs incurred by the relevant Move and Change. This clause shall apply to both the Elite Network and Tail Circuits.

10. Service Delivery Compensation Scheme

In the event that Elite fails to meet the Connection Ready for Service Date for orders then the customer will have the right to claim compensation as detailed below (except in relation to the supply of Tail Circuits and in such event the provisions of clause 4 shall apply), **PROVIDED ALWAYS THAT Elite'** total aggregate liability to the Customer under this Service Level Agreement shall not exceed the total installation charge:

1-7 working days late delivery	5% of the installation charge for the affected Connection
8-14 working days late delivery	10% of the installation charge for the affected Connection
15-21 working days late delivery	15% of the installation charge for the affected Connection
22-28 working days late delivery	20% of the installation charge for the affected Connection
More than 28 Working days late Delivery	25% of the installation charge for the affected Connection

11. Escalation

In the event of Elites' normal point of contact (nominated and/or as may be amended from time to time) not being able to respond satisfactorily the following escalation procedures should be used.

Any requests from either Party for the escalation procedure(s) to be implemented should be initiated through the relevant Network Operations Personnel identified in the table below or as notified from time to time.

Level	Elite Contacts	Escalation
1	* Technical Support Centre (TSC)	4 hours after initial fault is reported
3	* Technical Support Director	4 hours after level 1 escalation

Elite operates a personnel roster system for escalation purposes and provides a series of Duty Officers for all levels. Accordingly the dedicated telephone number for Duty Officers is the TSC fault report number for contact purposes at all times.

12. Claims Procedures

Fault Handling: All claims for compensation under these terms of this Agreement must be submitted to the Elite Account Executive within 30 days of the date of the Fault Reference Number.

Service Availability: All claims must be submitted to the Elite Account Executive within 30 days from the end of the Measurement Period.

Service Delivery: All claims regarding late delivery must be submitted to Elite within 30 days from Actual Delivery Date.

13. SERVICE LEVEL AGREEMENT DEFINITIONS

In this Agreement unless listed below all words and phrases shall have the same meaning as in the Service Contract. The following terms shall have the following meanings:-

"Actual Delivery Date" the actual date on which Elite provides the Connections tested and ready to use;

"Availability" the time for which a Connection is available. A Connection shall be deemed unavailable if it is completely interrupted for greater than ten consecutive seconds;

"Connection Ready for Service Date" means the date which Elite confirms to the Customer as being the date upon which the individual Connections will be ready for service. Such date shall be confirmed by the Elite engineering team upon order acceptance.

"Fault Reference Number" the unique number issued when logging a fault with Elite fault management centre;

"Initial Capacity Order" means the initial capacity requested by the Customer for the Minimum Term as stated in the CRF;

"Latency" means the amount of time elapsed or the delay between receiving and transmitting a packet across the Elite Network.

"Measurement Period" periods of twelve (12) calendar months, the first being calculated from the Actual Delivery Date;

"Elite Network" means the collection of Elite Pops and network equipment and transmission facilities used to interconnect these Pops as may be amended or re-engineered from time to time [On-Net];

"Elite Network POP" means a point of presence on the Elite Network where Elite equipment is located for the aggregation of customers onto the Elite Network (excluding customer sites).

"Technical Support Centre" is sited at Elite' registered office location from where Elite Network management functions are directed;

"Non Service Affecting Fault" any fault which does not cause an interruption to the Service;

"Notification Period" the period of 1 hour from the time a fault is reported to Elite or an alarm is registered by the Elite fault management centre;

"Office Hours" 0900 – 1730 Monday to Friday excluding bank holidays;

“Outage” an event or action (not attributable to the act or omission of the Customer or arising at the request of the Customer) which prevents the passage of electronic communications signals in the Service;

“Quarter” each three month period commencing 1 January, 1 April, 1 July, 1 October;

“Service Affecting Fault” means any fault originating on the Elite Network which causes an interruption to the actual use of the Service which is not attributable solely to Latency in excess of 10milliseconds;

“Site” means the location where a Connection provided under this Agreement starts or terminates as set out as the A End Address and B End Address on the CRF. Where the Customer contracts for the supply of an Ethernet VPN Service, the term Site(s) shall also include all references to Hub and Spoke Sites;

“Tail Circuit” the electronic communications network supplied by a third party Circuit provider to the Customer [“Off-Net”];

“Target Time to Repair” the target length of time to restore Service which is measured from the end of the Notification Period registered by the Elite fault management centre as set out in paragraph 1 above;

“Working Days” Monday to Friday inclusive, excepting Bank Holidays and excluding Saturday and Sunday.