Definitions (Section A)

Services FM means, in respect of any Services, the occurrence of any event or circumstance which is beyond the reasonable control of the DCC, including but not limited to any of the following:
(a) war, civil war, riot, civil commotion or armed conflict;
(b) terrorism (being the use or threat of action designed to influence the government or intimidate the public or for the purpose of advancing a political, religious or ideological cause and which involves serious violence against a person or serious damage to property, endangers a person's life, creates a serious risk to the public or is designed to seriously interfere with or disrupt an electronic system);
(c) nuclear, chemical or biological contamination;
(d) earthquakes, fire, storm damage or severe flooding (if in each case it affects a significant geographical area); ~~and/or~~
(e) any blockade or embargo (if in each case it affects a significant geographical area); and/or
(f) a failure or delay by any other person in the performance of that other person's obligations under or in accordance with this Code.
~~Party.~~

M3 SERVICES FM AND FORCE MAJEURE

Force Majeure affecting the Services - Services FM

M3.1 The concept of Services FM applies in respect of the obligations of the DCC to provide the Services pursuant to this Code (including pursuant to any Bilateral Agreement).

M3.2 The DCC may claim relief from Liability for non-performance of its obligations in respect of the Services to the extent this is due to Services FM. To the extent that performance of the DCC's obligations is unaffected by the Services FM, the provisions of this Code and any Bilateral Agreement will continue to apply.

M3.3 The DCC cannot claim Services FM has occurred:
(a) in relation to any wilful act, neglect or failure to take reasonable precautions against the relevant Services FM event by the DCC or its servants, agents, employees or contractors (including the DCC Service Providers);
(b) in relation to any circumstances resulting from a failure or delay by any other person in the performance of that other person's obligations under a contract with the DCC (unless that other person is itself prevented from or delayed in complying with its obligations as a result of Services FM). For the purposes of this paragraph, this Code shall not be considered a contract with the DCC; and/or
(c) as a result of any shortage of labour, material or other resources unless caused by circumstances which are themselves Services FM,
and in any event, the DCC shall not be entitled to relief if and to the extent that it is required to comply with the BCDR Procedure in accordance with Sections H10.9 and H10.10 (the Business Continuity and Disaster Recovery Procedure) but has failed to do so (unless this failure is also due to Services FM affecting the operation of the BCDR Procedure).

M3.4 The DCC shall, as soon as reasonably practicable on becoming aware of the occurrence of the Services FM (and in any event within five (5) days of becoming aware of the occurrence of the Services FM), give to the Users that were due to receive the affected Services and to the Panel full details of the Services FM and any relief the DCC wishes to claim in connection with the Services FM.

M3.5 The DCC shall be entitled to relief in respect of Services FM to the extent that the Panel agrees, after consultation with the relevant operational sub-committee of the Panel (or it is subsequently determined by arbitration) that the requirements of Sections M3.2 and M3.3 are met, and that:
(a) the DCC could not have avoided the occurrence of the Services FM (or its consequences or likely consequences) by taking steps which the DCC was required to take (or procure) under this Code and any Bilateral Agreement or might reasonably be expected to have taken;
(b) the Services FM directly caused the non-performance of the Services for which relief is claimed;
(c) the time lost and/or relief from the obligations under this Code and any Bilateral Agreement claimed by the DCC could not reasonably be expected to be mitigated or recovered by the DCC acting in accordance with Good Industry Practice; and
(d) the DCC is taking all steps in accordance with Good Industry Practice to

overcome or minimise the consequences of the Services FM on the performance of the Services.

M3.5A The Panel shall reach a determination as to whether the DCC is entitled to relief in respect of Services FM in accordance with Section M3.5 within 10 Working Days of the DCC notifying the Panel of the Services FM under Section M3.4.

M3.6 If the DCC is entitled to relief in respect of Services FM in accordance with Section M3.5, then:
(a) the DCC shall be relieved of Liability under this Code and any Bilateral Agreement in respect of the Services to the extent to which that Liability would otherwise have arisen solely as a result of the Services FM; and
(b) for the avoidance of doubt, the Charges (but not, for the avoidance of doubt, the Fixed Charges) payable by a User shall be reduced to the extent that the DCC does not provide the Services to that User as a result of the Services FM (and shall be calculated on the basis of the Services that are actually provided).

M3.7 The DCC shall notify the affected Users and the Panel as soon as reasonably practicable after the Services FM ceases or no longer causes the DCC to be unable to comply with its obligations under this Code and/or any Bilateral Agreement in respect of the Services. Following such notification, the Services shall continue to be performed in accordance with the terms and conditions existing immediately before the occurrence of the Services FM.

M3.8 The DCC hereby irrevocably and unconditionally waives all and any rights to claim any
extension or allowance of time or other relief from performance of its obligations in respect of the Services other than to the extent caused by Services FM . Each User hereby irrevocably and unconditionally waives all and any rights to claim compensation (including for breach of contract or in tort) for failure by the DCC to provide the Services to the extent caused by Services FM .

Force Majeure

M3.9 The concept of Force Majeure applies in respect of:
(a) all obligations of the DCC pursuant to this Code and any Bilateral Agreement other than the obligations of the DCC to provide the Services; and
(b) all obligations of the other Parties pursuant to this Code and any Bilateral Agreement,
all such obligations together being in this Section M3 the "**Relevant Obligations**".

M3.10 Subject to Section M3.11, the Affected Party will not be in breach of this Code and/or any Bilateral Agreement or otherwise liable for any failure or delay in performance of any Relevant Obligations to the extent such failure or delay is caused by Force Majeure.

M3.11 An Affected Party may only rely upon Section M3.10 in respect of a failure or delay in
performance of any Relevant Obligations to the extent that the Affected Party and the Party or Parties to whom the Affected Party owes the Relevant Obligations agree (or it is determined by arbitration) that the Affected Party:

(a) notified the Party or Parties to whom the Affected Party owes those Relevant Obligations of the matters constituting Force Majeure as soon as reasonably practicable following their occurrence;
(b) kept such Party or Parties fully informed as to the matter relating to the Force Majeure; and
(c) took all reasonable steps in accordance with Good Industry Practice to overcome the Force Majeure and/or minimise the consequences of the Force Majeure on the performance of the Relevant Obligations.

M3.12 The Affected Party shall notify the Party or Parties to whom the Affected Party owes the Relevant Obligations as soon as reasonably practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with the Relevant Obligations.

M3.13 Each Party hereby irrevocably and unconditionally waives all and any rights to claim any extension or allowance of time or other relief from performance of the Relevant Obligations other than to the extent caused by Force Majeure. Each Party hereby irrevocably and unconditionally waives all and any rights to claim compensation (including for breach of contract or in tort) for, or to seek to expel the Affected Party from this Code for, any failure by the Affected Party to comply with the Relevant Obligations to the extent caused by Force Majeure.

SECCo
M3.14 The provisions of this Section M3 (and the definitions used in this Section) shall apply to SECCo as if SECCo was a Party.