

Standalone Service Agreement

Communications House
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www.swcomms.co.uk

1.0. The Customer agrees:

- 1.1. Promptly pay the service charges in all circumstances. If at any time they are in arrears in whole or in part then **swcomms** shall be entitled to suspend all services hereunder until payment is made. Terms of payment are noted on each invoice.
- 1.2. If the Equipment is to be connected to apparatus of BT or of other network providers to comply with all such providers' requirements and at the Customer's expense to arrange the provision of any additional Equipment specially required for the Customer's purpose.
- 1.3. To orally notify **swcomms** immediately of any fault in the Equipment or of any repair which may be necessary, and to provide **swcomms** at all reasonable times with access to the Equipment and allow it to carry out service of the Equipment under the terms of this contract.
- 1.4. Not to maintain, service, repair, adjust or tamper with the Equipment or wiring nor to allow any other person to do any such thing without **swcomms**' prior consent. In the event of requiring any alteration to the Equipment or wiring to give **swcomms** 14-days written notice naming the person it wishes to carry out the work, and to comply with section 7.1 below. Should any such alteration be affected by an agent not appointed by **swcomms**, to allow **swcomms** the right of inspection of that work which should be carried out in accordance with any code of practice and standards. Should the work be found to be unsatisfactory to remedy the defects within 30-days of inspection or pay **swcomms**'s charges for effecting the remedy. Any breach of this condition may result in this contract being terminated by **swcomms**, if **swcomms** so desires.
- 1.5. To pay **swcomms**'s charges for reprogramming and/or services required as a result of instructions, acts or omissions effected by the Customer or his agent – including those demanded by any relevant statutory or commercial authority.
- 1.6. That if applicable, labour charges will include a callout fee and an hourly rate for time. Labour charges apply to works undertaken either remotely or on site and are rounded up to half-hour increments.
- 1.7. To reasonably cooperate with **swcomms** to resolve faults without physically attending the site. This may include but is not limited to remote diagnostics, liaising with **swcomms** over the telephone, dispatching (at own expense) and receiving Equipment by post/courier and fitting simple Equipment.
- 1.8. To pay any service charges levied when no faults were found with the Equipment after investigation, despite a fault being reported.
- 1.9. To pay any service charges levied where a site visit has been undertaken but the Customer has been unable to provide access to the Equipment or provide a person with knowledge of the reported fault resulting in any **swcomms** servant, agent or sub-contractor leaving site without works being undertaken.
- 1.10. To sign an Attendance Report when work had been undertaken denoting that the Customer had tested Equipment to his satisfaction - unless otherwise indicated on the Attendance Report when signed on the day of completion. If an Attendance Report is not available to be signed then the Customer will inform **swcomms** in writing if works had not been completed to his satisfaction. To be received within 2-days of completion.
- 1.11. For the avoidance of doubt, agrees to pay all labour charges in respect of fitting all parts – whether replacement, faulty or otherwise, when this agreement relates to replacements parts only.
- 1.12. Not to assign the benefit of this contract without previous written consent from **swcomms** that will not be unreasonably withheld.

2.0. swcomms agrees (subject to clause 7)

- 2.1. To be available to repair the Equipment located at the installation address in the schedule (or at such other address as may be agreed in writing by the **swcomms** remotely or otherwise and in accordance with the terms and conditions of this contract) in efficient working order and during the continuance of the contract to execute by its servants, agents or contractors

(* without charge for a remote service only

(* without charge for replacement parts only

(* without charge for repairs and replacements including labour

(* without inclusion of manufacturer support agreements

- to the Equipment necessitated by fair wear and tear and/or, where provided by **swcomms** or its servants or agents faulty materials, provided the Customer shall have duly notified **swcomms** of such fault or necessary repair in accordance with clause 1.3 hereof. Such service is to be provided according to the levels of service specified overleaf. Provided however that **swcomms** or subsidiary thereof (without prejudice to the terms and conditions of this contract or the Customer's liability for payment of service charges) shall not be obliged to provide service if any such charges or subsidiary account is overdue.
- 2.2. At the expense of the Customer to provide service where failure of the Equipment is due to mis-operation or failure of network provider's Equipment and/or host systems and/or electricity supply service and/or electricity surge or fluctuation due to storms or adverse weather conditions or if any person not authorized by **swcomms** to do so shall have tampered with the Equipment.
- 2.3. At the request and expense of the Customer
 - 2.3.1. To carry out any alterations to the Equipment or extension wiring.
 - 2.3.2. Upon receipt of 14-days' notice as in section 1.4 above to allow the Customer's appointed agents to carry out alterations to the Equipment or wiring. Such alterations to be in accordance with any current code of practice or industry standards. **swcomms** reserves the right of inspection of such work and to charge for such inspections. If found to be unsatisfactory shall require the Customer to remedy the defect within 30-days of the inspection.
- 2.4. At the request and expense of the Customer to move the Equipment to alternative premises where in the opinion of **swcomms** suitable service and reception facilities exist provided the Equipment does not thereby pass out of possession or control of the Customer.
- 2.5. To warrant any parts or replacement parts relating to Equipment detailed in the schedule for 3-months from installation.
- 2.6. To warrant any labour only work not involving parts for a period of 4-weeks from when work commenced.
- 2.7. The warranty period shall commence from the date of the first day of repairing a reported fault.

3.0. Service Levels

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| 3.1. Bronze | Monday to Friday, 8am to 6pm. Excluding Public Holidays (A). |
| 3.2. Bronze Plus | Monday to Friday, 8am to 6pm. Excluding Public Holidays. Remote 24 x 7 engineering support (H). |
| 3.3. Silver | 7-day service, 8am to 6pm. Excluding Public Holidays. 4-hr response for complete system failures (B). |
| 3.4. Gold | 7-day service, 8am to 6pm. Excluding Public Holidays. Remote 24 x 7 engineering support, 4-hr response for complete system failures (C). |
| 3.5. Platinum | 4-hour response, 24-hour cover, 7-day service. Remote 24 x 7 engineering support (D). |

4.0. Duration of this Contract:

The initial term of this contract shall be fixed for 5-years ("Initial Term") and will continue yearly thereafter until terminated by either party on giving no less than forty-two days written notice delivered by registered post. Such notice to terminate at the end of the Initial Term or at the end of any following year but not otherwise. Notwithstanding the previous sentence, **swcomms** shall be entitled to terminate this Contract if the Customer has committed any breach of this Contract and has not remedied such breach with 14-days notice to that effect from **swcomms**. If the Customer purports to terminate the Contract during the Initial Term or subsequent yearly renewal the charges shall nevertheless continue to be payable as if the Contract had continued up until the end of the Initial Term or yearly thereafter. This charge can be aggregated with payment due in full on presentation of an invoice to the Customer. It is intended that the charges applicable to this agreement shall be fixed for the Initial Term.

5.0. Variation of Maintenance Charge:

- 5.1. **swcomms** may vary the service charge payable hereunder provided that no such variation shall take effect during the initial period nor within a year of a previous increase. The increase in the maintenance charge shall not be greater than the rate of inflation as determined by the Average Earnings Index.
- 5.2. Any additional Equipment supplied but not shown on the schedule overleaf will attract service charges at **swcomms**'s prevailing rates from the date of its supply and is subject to the terms of this agreement.

6.0. Prohibition of Oral Variations:

The terms and conditions in this contract are the sole terms and conditions of the contract between **swcomms** and the Customer. No variation or modification of these terms or conditions (including specifically but without prejudice to the generality of the foregoing a variation of the fixed initial period) and no agreement made or purported to be made between **swcomms** and the Customer inconsistent with these terms and conditions shall be valid or of any effect unless made in writing and signed by a Director or the appointed officer of **swcomms**. No representation relating to or in any way connected with the Equipment shall be deemed to be made on behalf of **swcomms** nor shall such representation bind **swcomms** or the appointed officer of **swcomms**.

7.0. Exclusions:

- 7.1. **swcomms** shall not be liable for any delay in the execution of any work of installation, repair, replacement, alteration or removal of or to the Equipment howsoever caused.
- 7.2. **swcomms** shall not be liable for making good defects in the electricity supply, or other networks providers' services and connections and/or host systems. Service calls for these purposes will be charged to the Customers at the **swcomms**'s standard rates.
- 7.3. **swcomms** shall not be liable for repair of damage resulting from accident, transportation, neglect or misuse, failures of electrical power, surge of electrical power, electrical storms or causes other than ordinary use. Service calls for these purposes will be charged at **swcomms**'s standard rates.
- 7.4. **swcomms** shall in no circumstances be liable for any failure or defective working of the Equipment due to any fault or change in the electricity supply service and/or other network providers' Equipment and/or host systems.
- 7.5. In no circumstances shall **swcomms** be liable for any loss of profit, information, business or production or any other liability, loss or damage whether direct, indirect or consequential howsoever caused.
- 7.6. **swcomms** shall not be liable for making good defects to the Customers telephone stations or other peripheral apparatus unless specified overleaf. Service calls for these purposes will be charged to the Customer at the **swcomms**'s standard rates.
- 7.7. The **swcomms** shall not be liable under section 2.1 for costs of making good defects in cabling unless specified overleaf. In any event, overhead and underground cabling will not be covered for this purpose will be charged to the Customer at **swcomms** standard rate.
- 7.8. **swcomms** does not provide for the undertaking of any legislation that may require a service call reasons other than a reported fault in accordance with clause 1.3 hereof.
- 7.9. **swcomms** shall not be liable under section 2.1 wherein its reasonable opinion parts or Equipment have reached the end of their serviceable life, being no longer capable of economic repair and require replacement.
- 7.10. **swcomms** shall not be liable for the repair or replacement of any items deemed as consumables by **swcomms** or manufacturer. **swcomms** shall not be liable for any loss or damage incurred by the Customer or any third party (including without limitation any loss of the Equipment or loss or spoiling of the Customer's programs or data) resulting from any breakdown or fault in the Equipment unless such breakdown or fault is caused by the willful misconduct of **swcomms**.
- 7.11. **swcomms** shall not undertake to conduct works in respect of wiring and cable not supplied by **swcomms**.
- 7.12. **swcomms** is not responsible for any faults or adverse effects caused by Equipment, software or media not supplied by **swcomms**, including but not limited to computer viruses.
- 7.13. **swcomms** shall have no obligation or liability to the Customer where the functionality of the supplied Equipment and/or software is dependant (partially or wholly) on the performance of Equipment (including software) not provided by **swcomms** under this contract.
- 7.14. software upgrades are not included in this contract and thus upgrades are payable by the Customer.
- 7.15. **swcomms** does not include cordless handsets within this contract for service.
- 7.16. **swcomms** does not include toll, access or similar transport taxes in this agreement. **swcomms** reserves the right to invoice an annual surcharge in respect of these costs.
- 7.17. The Customer acknowledges and accepts that **swcomms** may have to supply and/or install software upgrades in order to carry out its obligations hereunder. The Customer acknowledges that where **swcomms** believes (acting reasonably) that a software upgrade is required to carry out its obligations hereunder then the Customer shall permit **swcomms** such access and carry out such instructions as **swcomms** stipulate in order to implement such upgrade. **swcomms** shall not be liable (and the Customer shall have no right to terminate this agreement for breach) for any failure to carry out its obligations hereunder where such failure arose as a consequence of the Customer failing to comply with this clause. Software upgrades are not included in this Contract and the Customer acknowledges and accepts that it shall be responsible for paying all the charges levied by **swcomms** in respect of such upgrade.
- 7.18. **swcomms** does not include cordless devices within this contract for service.
- 7.19. **swcomms** does not include toll, access or similar transport taxes in the agreement. **swcomms** reserves the right to invoice an annual surcharge in respect of these costs.
- 7.20. security settings for any installed Equipment shall be at the default level. **swcomms** can provide security consultation when requested by the customer. A quotation for such works can be provided.
- 7.21. **swcomms** shall in no circumstances be liable for any failure or defective working of the Equipment due to any fault or change in the electricity supply service and/or other network providers' Equipment and/or host systems.
- 7.22. In no circumstances shall **swcomms** be liable for any loss of profit, information, business or production or any other liability, loss or damage whether direct, indirect or consequential howsoever caused.
- 7.23. **swcomms** does not provide for the undertaking of any legislation that may require a service call reasons other than a reported fault.
- 7.24. **swcomms** does not include the costs of mechanical access including, but not limited to access platforms, scaffolding or similar. The Customer agrees to pay these costs invoiced by **swcomms** where adequate and legislatively compliant facilities are not provided by the Customer.
- 7.25. **swcomms** does not include any manufacturer support agreements that may or may not include software update facilities unless specific inclusion is listed in the sale document and the non-inclusion clause of 2.1 has been deleted by a director of **swcomms**.

8.0. Generally:

- 8.1. **swcomms**'s rights hereunder shall not be affected by granting any time or indulgence to the Customer.
- 8.2. **swcomms** may perform any of its obligations or exercise any of its rights under these conditions by itself or through any other **swcomms** and subcontract any of its obligations.
- 8.3. All charges under this contract are subject to value added tax. This contract is not a VAT invoice. VAT invoices will be sent to the Customer for all payments under this contract.
- 8.4. This contract is made between South West Communications Group Ltd who's head offices are Communications House, Moor Lane, Sowton, Exeter, EX2 7JA ("**swcomms**") and "the Customer" named on the Order Form.