

## MISCELLANEOUS TERMS SCHEDULE

### I. ACCEPTANCE TESTS

- a. Where **swcomms** considers that the Implementation Services in respect of a Managed Service have been completed and the respective Managed Service is ready for activation, it shall provide the Customer with notice. The Acceptance Tests, test success criteria and test data used by **swcomms** shall be such as are reasonably required to demonstrate that the Managed Service perform in all material respects in accordance with the Services Description.
- b. **swcomms** shall carry out the Acceptance Tests in respect of each Managed Service.
- c. The Customer shall ensure that it provides all necessary employees to witness, deal with enquires for Acceptance Tests during the period in which Acceptance Tests are to be performed. The Customer shall ensure that such employees are empowered to make relevant decisions or have prompt access to empowered individuals for decisions to be made on behalf of the Customer in connection with the Acceptance Tests.
- d. If the Managed Service meets the relevant criteria for such Acceptance Tests the Customer shall issue written notice of Acceptance in respect of the relevant Managed Service within five (5) Working Days of such criteria being met or in the absence of Written Acceptance, denote Acceptance by the practical use of the service.
- e. If the Managed Service fails to meet the relevant criteria for the Acceptance Tests the Customer shall be entitled to:
  - i. notify **swcomms** that the Managed Service has failed to meet the relevant criteria for the Acceptance Tests and, in such event **swcomms** shall in a timely manner, and in any event within any period for the Acceptance Tests for that Managed Service specified in the Project Plan remedy the relevant failures and thereafter submit the Managed Services for further Acceptance Tests;
  - ii. notify **swcomms** that it deems the Managed Service to have met the relevant criteria for the Acceptance Tests conditional on **swcomms** remedying any failures to meet the relevant criteria within a reasonable period that the Parties agree (acting reasonably and in good faith);
  - iii. notify **swcomms** that it deems the Managed Services to have met the relevant criteria for the Acceptance Tests "as is", subject to an agreed reduction in the applicable Charges which reflects the value of the Managed Service.
- f. Acceptance of Managed Service or shall be deemed to have occurred on whichever is the earliest of:
  - i. the issuing by the Customer of written notice of Acceptance for the Managed Service that is the subject of the Acceptance Tests;
  - ii. the issuing of notice that the Managed Service is deemed by the Customer to have met the relevant criteria for the Acceptance Tests, notwithstanding failures to meet the relevant criteria;
  - iii. the expiry of five (5) Working Days after the completion of all the Acceptance Tests for that Managed Service, unless the Customer has given any written notice of acceptance or rejection under Clauses d or e; and/or
  - iv. the use in whole or in part of the Managed Service that is the subject of the Acceptance Tests by the Customer.

### 2. DATA PROTECTION AND CUSTOMER DATA

- a. Each Party, when performing its obligations hereunder, shall comply with the provisions of the Data Protection Legislation relating to the processing of personal data, including any notification requirements.
- b. If **swcomms** processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Parties record their intention that the Customer shall be the Data Controller and **swcomms** shall be a Data Processor and **swcomms** will:
  - i. process the personal data to the extent necessary for the purposes of performing its obligations under this Agreement and otherwise in accordance with the Customer's reasonable and lawful instructions from time to time; and
  - ii. have at all times during the Term appropriate technical and organisational measures in place to protect any personal data against unauthorised or unlawful processing and against accidental loss or destruction or damage.
- c. References to "personal data", "data controller", "data processor" and "process" in this clause **Error! Reference source not found.** are to their meaning as defined by the relevant Data Protection Legislation.
- d. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer shall also ensure that it is entitled to transfer the relevant Customer Data (including, without limitation, any Personal Data) to **swcomms** so it may lawfully process the Customer Data in accordance with this Agreement on the Customer's behalf.
- e. In relation to Hosted and Cloud-Based Services, **swcomms** shall follow its archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for **swcomms** to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by **swcomms** in accordance with the archiving procedure. **swcomms** shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by **swcomms** to perform services related to Customer Data maintenance and back-up).

### 3. INSURANCE

- a. **swcomms** shall take out and maintain the following insurances on a per occurrence or series of occurrences arising from one event basis throughout the Term:
  - i. Employers liability insurance of not less than £10 million;
  - ii. Public liability insurance of not less than £5 million; and
- b. Within a timely manner of the Customer's request, **swcomms** will provide the Customer with evidence that the relevant premiums have been paid.
- c. The Customer must have in place appropriate insurance for the Equipment and the Customer's business risks associated with the availability or non-availability of the Managed Service

### 4. CONDUCT OF INDEMNIFIED PARTIES

- a. In respect of any indemnity given by either Party ("**Indemnifying Party**") to the other Party ("**Indemnified Party**") under this Agreement, the Indemnified Party shall:
  - i. allow the Indemnifying Party (at its request) to use its chosen advisors and to have the exclusive conduct of the proceedings;
  - ii. make no admission of liability or any other statement in respect of or settle the matter without first obtaining the Indemnifying Party's prior written consent (such consent not to be unreasonably withheld or delayed); and
  - iii. at the cost of the Indemnifying Party, provide in a timely manner any assistance as the Indemnifying Party may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party the Indemnified Party's rights in relation to the matter.
- b. The Indemnified Party shall have the right but not the obligation to join in any proceedings conducted by the Indemnifying Party pursuant to clause a.i and be represented by its own legal advisors.

### 5. DISPUTE RESOLUTION

- a. All disputes between **swcomms** and the Customer arising out of or relating to this Agreement shall be referred by **swcomms**' Commercial Director (or similar) or the Customer's Senior Representative to the other for resolution. **swcomms**, Commercial Director and the Customer's Representative shall use all commercially reasonable endeavours to resolve the dispute within 10 (ten) Working Days of notice of the dispute being raised by either Party.
- b. If any dispute cannot be resolved pursuant to the provisions of clause a within 10 (ten) Working Days, that dispute shall be referred to a Director of **swcomms** and a Director of the Customer for resolution. Such Directors shall use all commercially reasonable endeavours to resolve the dispute within 10 (ten) Working Days of notice of the dispute being raised by either Party.
- c. Nothing contained in this clause shall restrict either Party's freedom to commence legal proceedings to preserve any legal right or remedy in the case of:
  - i. breach or threatened breach of confidentiality;
  - ii. infringement or threatened infringement of its Intellectual Property Rights; and / or
  - iii. infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose **swcomms** or the Customer to liability.

### 6. NOTICES AND CONTACT DETAILS

**swcomms**  
Address: Communications House, Moor Lane, Sowton, Exeter, Devon, EX2 7JF  
For the attention of: Commercial Director  
With a copy to: Managing Director

**The Customer**  
Address: Customer's address on the Order form  
For the attention of: Customer's Representative or such other person or address as may be notified in writing from time to time by the relevant Party to the other Party. Any change to the place of service shall take effect five (5) Working Days after notice of the change is received or (if later) on the date (if any) specified in the notice as the date on which the change is to take place.

**SERVICE LEVEL AGREEMENT SCHEDULE**

**1 DEFINITIONS**

In this Schedule, the following additional definitions shall have the meaning as set out below:

<p><b>Emergency Maintenance Incident</b> means where <b>swcomms</b> requires service downtime to carry out infrastructure works and <b>swcomms</b> shall endeavour to provide the Customer with advanced notice; means any Break Fix event that causes or may cause an interruption to or loss of quality of the Services that is reported by the Customer to <b>swcomms</b>' service desk;</p> <p><b>Performance Monitoring Report</b> means those reporting requirements outlined below;</p> <p><b>Planned Maintenance</b> means where <b>swcomms</b> requires service downtime to carry out works such as routine service maintenance where operational impact to the Customer anticipated by <b>swcomms</b> is expected to be reduced with such works likely to be outside of Business Hours;</p> <p><b>Reporting Period Service Call</b> shall mean a 12-mth rolling period; initial call from the Customer's IT service desk to <b>swcomms</b>' service desk providing full details of the Incident that has arisen;</p> <p><b>Service Credit</b> means the amount of a credit note provided as a rebate against the Charges calculated according to the process below where a Service Level standard has not been achieved;</p>	<p><b>Seriously Deficient Service Level Failures</b> means a drop in the Service Level beyond the levels detailed; means <b>swcomms</b>' failure to deliver the Services in accordance with the agreed Services Levels;</p> <p><b>Resolution Time</b> is defined as the period of time from when <b>swcomms</b>' service desk records full details of the Incident during the Service Call to the point of its resolution. Resolution means:</p> <ul style="list-style-type: none"> <li>the cause of the Incident has been removed and the Services are being provided in accordance with the services description; or</li> <li>the Customer has been provided with a workaround or temporary fix in relation to the Incident;</li> </ul> <p><b>Response Time</b> is defined as the time between <b>swcomms</b>' service desk receiving full notification of an Incident from the Customer's IT service desk during a Service Call and confirming to the Customer Incident is caused by a fault in the Managed Service being provided by <b>swcomms</b> and the time that <b>swcomms</b> notifies the Customer's IT service desk of the Incident reference and agreed Severity Level Response during Business Hours;</p> <p><b>Severity Levels System Unavailability</b> means the severity levels set out below; shall take the meaning detailed below.</p>
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**2 SERVICE LEVELS & SERVICE CREDITS**

**Service Availability**

- 2.1 The availability of the Services shall not include any Planned Maintenance or Emergency Maintenance.
- 2.2 The availability of the Services shall be measured on a monthly basis during the "Reporting Period"
- 2.3 Where the Services are unavailable during the Reporting Period, the amount of unavailable time over the Reporting Period excluding Planned Maintenance and Emergency Maintenance (the balance of unavailability being defined as ("System Unavailability") shall be recorded and aggregated over the Reporting Period by **swcomms**.
- 2.4 Service availability shall be available at a minimum of 95% (excluding back up services) for the Reporting Period across the entire Service for all the locations and all the users of the Customer.
- 2.5 Service Availability shall be calculated as set out below:

A = Total number of minutes, excluding any Planned Maintenance and Emergency Maintenance, during the Reporting Period of one month.  
B = Total number of minutes of System Unavailability during the Reporting Period of one month.  
Availability = (A – B) / A (expressed as %)

**Worked Example** - if in a Reporting Period there is a total of 2 hours of Planned Maintenance, 1 hour of Emergency Maintenance and 4 hours of System Unavailability for 50 users, the Availability shall be as follows in a 30 (thirty) day Reporting Period for a total of 100 users (4,320,000 minutes)

A = 4,320,000 minutes  
4,320,000 minutes minus 120 Planned Maintenance minus 60 minutes Emergency Maintenance for 100 users  
Revised A = 4,302,000 minutes  
B = 12,000 minutes (4 x 60 minutes Unavailability for 50 users)  
**Availability = 99.72%**

- 2.6 System Availability is calculated for the whole estate, so A is calculated according to the number of individual sites and users in the solution (including any central data centre site) multiplied by the minutes in the reporting period and B is the total number of Unavailable Minutes for all sites and users affected by a total loss of service.

**Service Desk**

- 2.7 **swcomms** will provide to the Customer a service desk that will provide a means for fault reporting and query answering. Each Incident will be dealt with in accordance with the Incident Management Process. Each Incident shall be reported by the Customer's internal IT Service Desk to **swcomms**' service desk and responses by **swcomms** will be returned to the same.
- 2.8 **swcomms** shall record each individual communication to the service desk by the Customer of an Incident in a service incident management system. This system will be used to manage and track each ticket through its lifecycle. Each Incident will be dealt with in accordance with the Incident Management Process. **swcomms** will provide Remote Incident Management support for the Equipment and Services. On site (non-remote) attendance outside of Business Hours are provided on a pay as you use service, unless otherwise indicated on the Order Form.
- 2.9 Availability of the Services shall be assigned a Service measured in accordance with Availability in accordance with the following Table:

**2.10 Service Performance Bands**

Service Level		Service Availability Bands					Priority	Description
		A	B	C	D	E		
System Availability	Services	>=95.0 %	94.9 %	92.9 %	91.9 %	below 90.0%	P1	A total or severe loss of service.
	Availability						P2	A significant degradation greater than 50% systems failure or continual intermittent Service; some functions may be unavailable or restricted, but operations can be maintained, potentially with workarounds.
	- Service Availability is measured at the		93.0 %	91.0 %	90.0 %		P3	Problems due to failure of the Services which seriously impact activities which can be reduced to a moderate impact due to the availability of a workaround or have a moderate adverse impact on the Customer's activities. Operations generally still providing customer service but loss of functionality could continue and become serious.
							P4	Sporadic or isolated problems. Service remains acceptable and stable. Modification to configurations of equipment. Non-service affecting issues.
							P5	an Incident comprising a flaw which is cosmetic. For example, a spelling error, misalignment of data on screen display.

**2.11 Service Severity Levels**

**Bronze Level Service Severity Response and Resolution Time provision shall be the default (break-fix, excluding parts) remote service only, unless defined in the Order Form to include parts, manufacturer's support services and swcomms on-site engineering services (where an engineer physically attends a site). Unless stated in the Order Form, all on-site engineering services are chargeable. The services applicable to this paragraph shall be noted on the Order Form if they are to be included in this Agreement. Where not specified, only the remote service (break – fix excluding parts) shall be the default service.**

Severity	Response Time	Resolution or Workaround Time
P1	Within two (4) elapsed Business Hours	Within eight (8) elapsed Business Hours
P2	Within two (6) elapsed Business Hours	Within 24 (twenty-four) elapsed Business
P3	Within five (8) Business Hours of the initial	Within 30 (thirty) Business hours
P4	Within thirty (30) Business Hours of the	N/A
P5	Within 40 (forty) Business Hours of the	N/A

- 2.12 **swcomms** shall use the following Incident management process in respect of all Services:
- 2.12.1 When a Service Call is logged with **swcomms**, the time and date that **swcomms** receives all relevant details regarding an Incident during the Service Call will represent the start of the Service Level commitment in respect of the Incident. All incidents are assigned a Severity Level by the Service Desk upon initial notification. The Service Call and Incident may be re-assigned to a higher or lower Severity Level as a result of diagnostic investigation;

- 2.12.2 **swcomms** and the Customer (acting at all times reasonably and in good faith) shall agree on the assignment of a Severity Level during the initial Service Call in respect of each Incident which is reported to the Service Desk, which shall determine the relevant Severity Level. In the event that the Parties fail to agree on the Severity Level in respect of any Incident, the relevant Incident shall initially be managed according to the Severity Level assigned by **swcomms** and final determination of the Severity Level in respect of the relevant Incident shall be agreed through a review undertaken by the Customer and **swcomms** (acting reasonably and in good faith). If they do not agree on the Severity Level, the dispute shall be addressed in accordance with the dispute resolution procedure in clause **Error! Reference source not found.** (Dispute Resolution);
- 2.12.3 **swcomms** shall provide a response and a resolution in respect of any Incidents arising in relation to the Service in accordance with the Response Times and Resolution Times set out in the Table and in accordance with the Severity Levels;
- 2.12.4 The measurement of the time elapsed since receiving notification of an Incident for resolution (and for the purposes of determining whether **swcomms** has met the target Resolution Time) shall be suspended where **swcomms** is awaiting the completion of any action or responsibility of the Customer or of any the Customer third parties.
- 2.13 **To facilitate swcomms obligations the Customer shall:**
- 2.13.1 provide an IT Support Facility with skilled, experienced and qualified staff through which all communications between both Parties are channelled. No other Customer officer, employee or contractor shall be contact **swcomms** in relation to an Incident;
- 2.13.2 provide a point of contact to facilitate the resolution of Incidents by **swcomms** both during and if applicable outside of Business Hours;
- 2.13.3 shall (acting reasonably, in a professional manner and in accordance with good industry practice) review any fault that may appear to be the responsibility of **swcomms** before reporting it to **swcomms**. This includes ensuring the cause of the potential Incident being reported by the Customer site is not a Customer Responsibility;
- 2.13.4 promptly comply with any and all reasonable requests made by **swcomms** to assist the resolution of Incidents by **swcomms**. Where **swcomms** is waiting for a reasonably requested the Customer input to resolving an Incident, then the waiting time associated with the request shall be deducted from the Service Level calculation (just like Planned Maintenance and Emergency Maintenance). The Response Time and Resolution Time shall be on hold whilst **swcomms** are waiting for a Customer response.
- 2.13.5 provide an escalated point of contact outside of Business Hours where a fault resolution may require a relevant purchase authority or the Customer's agreement not to continue with an Incident Resolution – in which case the **swcomms** Resolution Time shall be suspended.
- 2.14 **swcomms shall:**
- 2.14.1 provide, run and maintain the Incident Management System to allow for a largely automated Incident Management process;
- 2.14.2 receive, log and dispatch or transfer Service Calls, as appropriate;
- 2.14.3 assess and determine the impact of an Incident and with Customer assign a Severity Level to it;
- 2.14.4 open an Incident ticket to document an Incident;
- 2.14.5 prioritise Incidents in accordance with the assigned Severity Levels;
- 2.14.6 perform initial Incident determination;
- 2.14.7 Incidents will be automatically closed after 2 (two)-days if no response to an Incident closure request is received;
- 2.14.8 Measure the agreed Service Levels in accordance with the Service Availability calculations
- 2.15 **Service Credits**
- Any failure by **swcomms** to provide the Services in accordance with the Service Levels will result in the provision by **swcomms** to the Customer of Service Credits as determined in the section below:
- 2.15.1 Service Credits shall represent a rebate of the monthly Charges for the Services payable in respect of the month in which the failure to meet the relevant Service Levels occurred;
- 2.15.2 The Service Credits incurred for any month during the relevant Reporting Period shall be deducted from the total Charges payable as part of the next invoice the following month. Service Credits shall be shown as a credit note on the account or, where no further invoices are due to be issued by **swcomms** to the Customer in the remainder of the Term, repayable by **swcomms** within thirty (30) days of issue of the credit note;
- 2.15.3 **swcomms** shall incur the Service Credits set out in the Table below in cases of non-compliance with the Service Levels in the Table above, and relating to the Service Performance Band.

Categories of Service Level Credits	Service Availability Bands				
	A	B	C	D	E
System Availability Service Credits	0	2.5%	5.0%	7.0%	10%

**Service Credit Calculation and Limit:**

- Each failure to meet a Service Level shall incur a Service Credit % as determined in the Table above, capped at a maximum of 10% per month;
- 2.16 The provision of Service Credits under this Schedule is the Customer's sole and exclusive remedy for a Service Level Failure or other compensatory claim.



#### OPERATIONAL RESPONSIBILITIES & OBLIGATIONS SCHEDULE

- 1 The Customer shall perform the Customer Responsibilities and provide **swcomms** in a timely, efficient and professional manner with full co-operation and assistance that may be reasonably required in order for **swcomms** to provide the Equipment and perform the Services.
- 2 The Customer shall:
- 2.1 provide, for **swcomms**, its agents, subcontractors, consultants, suppliers, officers and employees, in a timely manner and at no charge, access to the Customer's Locations and other relevant premises, office accommodation and other facilities as reasonably required by **swcomms** in relation to the fulfilment of **swcomms**' obligations under this Agreement;
- 2.2 provide, in a timely manner free of charge, such or access to such (as applicable) information, documentation, data, other materials and systems as **swcomms** reasonably requires to provide the Services, and ensure that it is accurate in all material respects;
- 2.3 be responsible (at its own cost) for preparing and maintaining the relevant premises for the receipt of the Services and the utilities;
- 2.4 procure the full co-operation with **swcomms** of any suppliers, sub-contractors, consultants or agents to the Customer or other entities as **swcomms** reasonably requires to facilitate **swcomms**' provision of the Services;
- 2.5 inform **swcomms** in advance of all reasonable relevant health and safety rules and regulations and any other reasonable security requirements that apply at any of the Locations that **swcomms** will access whilst performing the Services. **swcomms** will ensure that its officers and employees comply with such rules and regulations whilst at the Customer's premises;
- 2.6 inform **swcomms** of all security requirements that apply in relation to any of the Customer's information technology systems that are relevant to **swcomms**' provision of the Services;
- 2.7 comply with all applicable laws and regulations with respect to its activities under this Agreement (including, without limitation, in relation to its use of the Equipment, Software and the Services);
- 2.8 only use the Equipment and Services for the normal purpose for which they were intended and for legal and legitimate purposes and comply with any and all acceptable and / or Fair Use policies. The Customer shall not abuse or fraudulently use the Equipment and Services or use the Equipment and Services otherwise than in accordance with the terms of this Agreement;
- 2.9 use all Equipment in accordance with any and all operator and safety instructions or other similar documentation provided;
- 2.10 promptly notify **swcomms**' service desk of any fault in the Equipment, loss or damage to the Equipment or of any repair which may be necessary. The Customer shall be responsible for faults arising from the Customer's (or any other person acting for or on behalf of the Customer) negligence or default, any act or omission associated with any other telecommunications system not run by **swcomms** and any other cause beyond the reasonable control of **swcomms**;
- 2.11 provide **swcomms** at all reasonable times with access to the Equipment and allow it to install and carry out repair to and service of the Equipment;
- 2.12 fully co-operate with **swcomms** to enable **swcomms** to seek to resolve faults without physically attending the site and comply with any reasonable instructions or directions issued by **swcomms** from time to time in respect of Services. 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, Equipment installation and systems administration;
- 2.13 allows **swcomms** an opportunity to conduct such investigations as are reasonably necessary for **swcomms** to satisfy itself as to the existence and consequences of any defect including an opportunity to inspect any location and surroundings where the Equipment has been installed and the Services have been used;
- 2.14 accompany any claim pursuant to a warranty under the Agreement with a full written report including full details and information of the problem encountered a detailed description of any faults and the circumstances in which it arose, together with such other information as **swcomms** shall reasonably require;
- 2.15 ensure adequate delivery and collection instructions are provided and that all of the Equipment is available for collection by **swcomms** on the agreed collection date following the termination of this Agreement;
- 2.16 not affix the Equipment to anything unless using fixings approved and supplied by **swcomms**;
- 2.17 at all times treat the Equipment with a reasonable level of care and shall ensure that it is kept clean and in an appropriate environment, subject always to reasonable levels of wear and tear;
- 2.18 not (without the prior written consent of a **swcomms** Director) remove Equipment from the Location **swcomms** installs it at;
- 2.19 not attempt to make any repairs, alterations, modifications, extensions or attachments to the Equipment without **swcomms**' prior written consent;
- 2.20 (unless otherwise agreed by **swcomms** in writing) provide suitable accommodation to meet the environmental requirements of the Equipment and engineering personnel, a single point of contact for the duration of the project, basic configuration details (extension numbering, feature allocation, hunt group membership etc.), 240v AC mains power and earthing, a telephone extension floor plan, on-site storage, a suitable local training room, all necessary PC and/or server equipment, a jumper/patch panel schedule, details of their network design, (where wiring is not **swcomms** supplied) an original Certificate of Compliance to BS6701, voice Quality of Service LAN/WAN exists where IP Telephony is provided, UPS for LAN hardware in IP telephony environments and any RJ45 cords;
- 2.21 provide (where required by **swcomms**) new extension wiring and tie cables, cabling between peripheral equipment and the Equipment, remedial work to bring existing cabling up to the minimum requirements of BS6701, conversion from analogue to digital sockets for phones where existing wiring is to be utilised (or the provision of converter leads if required by **swcomms**), the removal of redundant cabling or other equipment, or install Building Distribution Frames, the removal, relocation or modification of any existing customer equipment, installation, labelling any, testing or connection of analogue telephones, PC or server equipment, LAN interfacing and configuration, on site changes to the initial configuration and software specification, additional user guides beyond the normal allocation of 1 (one) per user, network services disconnection/reconnection charge, network testing beyond the basic functionality testing and upgrade or re-configuration of LAN/WAN for use with IP Telephony;
- 2.22 ensure that the Customer's Representative will be single point of contact with **swcomms** and shall have the authority contractually to bind the Customer on all matters relating to this Agreement. The Customer shall use all commercially reasonable endeavours to ensure continuity of the Customer's Representative. **swcomms** recommend that Customers also have a project co-ordinator to avoid any potentially confusing instructions to our staff when **swcomms** are implementing a project;
- 2.23 (where VoIP is part of the Services) ensure that its network is suitable and has the quality security and resilience for the purpose of running high quality voice traffic;
- 2.24 understand that any additional Equipment and Services procured after the initial point of sale shall increase the liability and cost of the Support and Maintenance to the Customer
- 2.25 be responsible for any faults or adverse effects caused by equipment, software or media not supplied by **swcomms**, including but not limited to computer viruses.
- 3 In respect of Network Connectivity Services;
- 3.1 **swcomms** shall have no responsibility for faults arising from the Customer (or any other person acting for or on behalf of the Customer) negligence or default or any act or omission associated with any other telecommunications system not run by **swcomms** or any other cause beyond the control of **swcomms**. **swcomms** shall have the right to charge the Customer in the event that the need for maintenance results from any events not directly caused by **swcomms** or where a fault has arisen (in the reasonable opinion of **swcomms**) from non-normal use or maintenance by the Customer. The Customer agrees not to carry out or procure the carrying out of any alterations, modifications, replacements, extensions, attachments, additions or otherwise after the Equipment has been installed except with the prior written consent of **swcomms**, which consent will not be reasonably withheld. Any alteration and changes as aforesaid will if appropriate be carried out by **swcomms**. **swcomms** reserves the right to charge the Customer for all costs incurred as a result of carrying out maintenance or repair works which in **swcomms** reasonable opinion is considered unnecessary.
- 3.2 Telephone numbers, passwords, passcodes, IP addresses and similar remain the property of the **swcomms** and no intellectual property rights shall accrue. Telephone numbers should not be published until testing is complete. Telephone numbers can be withdrawn from use and replaced with alternatives if requested by **swcomms**, but without liability to the Customer.
- 3.3 Provision of services do not include business continuity facilities and the Customer must plan and make provision for such eventualities including but not limited to power outages and faults. **swcomms** recommend Customers make appropriate business continuity plans for all scenarios. Customers must check on site communications with the emergency services.
- 3.4 All charges payable under this Agreement shall be calculated by reference to data recorded or logged by **swcomms** and not by reference to data recorded or logged by the Customer. The Customer shall pay any occasional Licensed Operator fees (including but not limited to BT) incurred by **swcomms** as a result of providing services to the customer.
- 3.5 The Customer undertakes to use the Services in accordance with such additional conditions as may be notified in writing to the Customer by **swcomms** from time to time and will not use the Services for illegal purposes. Where use is related to packaged and bundled options then a Fair Use Policy is applicable in all circumstances. Customers will have the opportunity to restrict such use or pay extra according to use. The Fair Use Policy includes the option by **swcomms** to manage the Customers traffic characteristics across the Service to help benefit the wider Customer profile of **swcomms**.
- 3.6 **swcomms** shall not be responsible for call charges resulting from fraudulent use of equipment or services by the Customer or any third party and the Customer agrees to pay all additional charges relating to such fraud. The Customer should regularly check call routing, line congestion and call usage, misuse and abuse. The Customer must pay for usage of services regardless of the circumstances of use and must make appropriate plans to prevent misuse and abuse. **swcomms** provides monitoring services to help reduce the risk of call abuse, but these services are provided on a best endeavours basis and **swcomms** is not able to underwrite the losses of the Customer in any circumstances. The Customer must take all precautions to protect themselves against this risk. **swcomms** recommends all Customers use our Fraud Management Service (FMS) to protect the Customer against criminal activity resulting in fraud. FMS is a fraud protection tool that indemnifies the customer as noted in this agreement when the customer has taken reason basic security steps to reduce the risk of fraud. Examples being regularly changing passwords, not using simple or default passwords and keeping telephone systems up to date with current software releases when available from your telephone maintainer. Failure to take any appropriate reasonable and basic security steps may result in the customer not enjoying any protection or indemnity under the Fraud Management Service.
- 3.7 The Customer undertakes to promptly provide **swcomms**, free of charge, with all information, documentation or other material and data and co-operation that **swcomms** may reasonably require to enable it to proceed without interruption with the performance of its obligations under this agreement. This shall include but not be limited to information requested by the Customer from BT under a disclosure. Such information is important for the smooth provision of Services. Delays in information provided by the Customer or BT may delay the provision of services. The Customer shall ensure the accuracy of any information (whether written or oral) provided by **swcomms**
- 3.8 Service availability. **swcomms** will use all reasonable endeavours to ensure that the Services are available for the use by the Customer in accordance with the service standards for the time being set out in any appropriate service literature, subject to this Agreement. **swcomms** may (entirely at its own discretion) from time to time introduce, alter or withdraw Services and any associated service levels and related compensation schemes. **swcomms** may at any time without notifying the Customer make any changes to the Service, which are necessary to comply with any applicable safety or other statutory requirements (or similar), or which do not materially affect the nature or quality of the Service. **swcomms** may at its sole discretion elect to suspend forthwith the provision of the Service until further notice without liability to the Customer on notifying the Customer either orally, (confirming the same in writing) or in writing in the event that the Customer is in breach of any term of this Agreement or the Customer prevents or delays pre-arranged maintenance from being carried out or the Customer is suspected in **swcomms** reasonable opinion, of involvement with fraud or attempted fraud or illegal activity in connection with the use of the Service.

- 3.9 By signing agreeing to this agreement the Customer is requesting that **swcomms** adopt and/or install all connectivity and any associated call traffic disclosed under client authority. A BT Authority must be signed for information to be released about the BT Services the Customer currently uses and as an authority to transfer connectivity to **swcomms**. **swcomms** only uses OFCOM approved Licensed Operators for the installation, provision and maintenance of services. Target installation dates are subject to a survey by the OFCOM Licensed Operator. Actual installation dates and lead times are only indicative. Please allow extra time to take this into account. If additional costs are identified during a survey by an OFCOM approved Licensed Operator (like BT for example), then these costs must be paid by the Customer (sometimes in advance). Please note that quotations for such works are only estimates and costs may increase when the work is actually completed. Licensed Operator operational charges are passed onto the Customer in full and these may include but are not limited to any charges introduced because of governmental legislation or directives. **swcomms** reserves the right to charge a reasonable management cost for Licensed Operator charges raised in any circumstances. New and ported telephone numbers only become guaranteed when brought into service. There are risks that numbers can become unavailable during any changes due to technical reasons. Remember that your current service provider may charge you a termination fee should you end another contract early. **swcomms** is unable to act on behalf of the Customer in respect of such matters. **swcomms** cannot take responsibility for the Customer in any contractual matter with another party. Charges resulting from Customers issuing instructions concerning faults or ordering additional products and services direct with a Licensed Operator will be applied to the Customer's account (together with an **swcomms** management fee) for payment. Customers agree that issuing such instructions to the Licensed Operator denotes acceptance of any related costs charged by the **swcomms**.
- 3.10 For inclusive minutes and bundled agreements where cited, no calls are included that terminate outside the UK Mainland of England, Northern Ireland, Scotland and Wales. For agreements that include free installations and introductory offers, then in the event of the agreement being prematurely terminated, **swcomms** reserves the right to seek retrospective payment of such incentives in full.
- 4 In respect of any Hosted and Cloud-Based Services, the Customer undertakes that:
- 4.1 the maximum number of Authorised Users that it authorises to access and use the Hosted and Cloud-Based Services shall not exceed the maximum number of permitted Authorised Users in respect of which it has paid the request Charges from time to time;
- 4.2 it will not allow or suffer any Authorised User subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the relevant Hosted and Cloud-Based Services;
- 4.3 each Authorised User shall keep a secure password for his use of the Hosted or Cloud-Based Services, that such password shall be changed regularly and that each Authorised User shall keep his password confidential;
- 4.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to **swcomms** within 5 Working Days of **swcomms** written request at any time or times;
- 4.5 it shall permit **swcomms** to audit the Hosted and Cloud-Based Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the **swcomms** expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- 4.6 if any of the audits referred to in paragraph 4.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to **swcomms** other rights, the Customer shall promptly disable such passwords and **swcomms** shall not issue any new passwords to any such individual; and  
if in any audits it is revealed that the Customer has underpaid Charges to **swcomms** in respect of its use of the Hosted and Cloud-Based Services, then without prejudice to **swcomms** other rights, the Customer shall pay to **swcomms** an amount equal to such underpayment as calculated in accordance with the attached Schedule within 10 Working Days of the date of the relevant audit.