

CONTRACT – THIS IS AN IMPORTANT LEGALLY BINDING DOCUMENT

This document contains the Order, Terms and Conditions and Schedules of the Sale (“Terms and Conditions”) which govern the Contract(s) (“the Contract”) made between you (“the Customer”) and the South West Communications Group Ltd (“the Company”)

Please Note:

1. By signing this Contract you are accepting that you have read and agreed the Terms and Conditions.
2. The Company reserves the right to terminate the Contract without liability if a site inspection reveals matters of which the Company was unaware or if it perceives (in its absolute discretion) that the Contract cannot be performed for any reason. In such circumstances the Customer may be liable to pay the Company for any reasonable costs incurred.
3. These Terms and Conditions will apply to the services detailed below and (unless otherwise required by the Company) to any future Contract(s) which you may enter into with the Company. Each separate agreement below is regarded as an individual contract and thus this document does not represent one single contract.
4. Any quotation or estimate given by the Company does not constitute an offer and the Company reserves the right to withdraw or revise the quotation order or estimate at any time prior to the formation of the Contract.
5. The Contract is not formed until the Customer’s order is accepted by the Company. Where different and various quotations have been issued to the Customer, the Company reserves the right to reject one or more orders from the Customer, notwithstanding the issue of a quotation or estimate.
6. The Terms and Conditions will govern the Contract and shall apply in place of and prevail over any terms or conditions contained or referred to in the Customer’s order or implied by trade practice or used in the course of previous dealings.

Order Reference Number and date – if different	Tick to confirm purchase	Agreement details applicable to the Customer Purchase	Contract notes
		Sale of Equipment (section 28)	Prices as detailed in the Order
	✓	Managed Services (if applicable but not limited to Horizon, Office 365, Data & Voice Network Connectivity services, hosting, virtual and specified cloud services)	Prices detailed in the Order with a fixed Initial Term
		Standalone Service Agreement	Fixed price as detailed in the Order with a fixed Initial Term
		Business Mobile Agreement	Prices as detailed in the Order with a fixed Initial Term

Organisation Name in Full:	
Address:	Installation Address if different:
Contact Name:	Company Registration Number:

Terms and Conditions are directly attached and Schedules are provided separately and also on our website www.swcomms.co.uk.

I confirm that I have read and accept this Contract(s) and understand the Terms, Conditions and Schedules that govern this Agreement.

Signed.....

Date:.....

Name:.....

Position:.....



DIRECT Debit

CONTRACT BOOK VERSION – MANDATE AUTHORITY Mandate Originator

Important confirmation of the set-up of your new Direct Debit instruction to make payments

Thank you for placing your order with us and this letter is to confirm your verbal instruction to pay for our services by Direct Debit. Having accepted your Direct Debit details, we would like you to confirm that they are correct. Please can you check the details and sign below as confirmation of your acceptance.

- Account Name: _____
- Bank Name: _____
- Bank Sort Code: _____
- Account Number: _____

You have the right to cancel your Direct Debit at any time. A copy of the Direct Debit Guarantee is attached. For your information, Direct Debit collections will be made using these reference numbers for the following separate companies. Each company provides a different service and where you contract with one or more companies, a Direct Debit for each is put in place as per your verbal instruction and agreement. If you are happy with this, then you need to do no more.

Banks and building societies may not accept Direct Debit Instructions for some types of account.

This Guarantee should be detached and retained by the payer. The Direct Debit Guarantee

This Guarantee is offered by all banks and building societies that accept instructions to pay Direct Debits

If there are any changes to the amount, date or frequency of your Direct Debit South West Communications Group Ltd (**swcomms**) will notify you 5 working days in advance of your account being debited or as otherwise agreed. If you request **swcomms** to collect a payment, confirmation of the amount and date will be given to you at the time of the request

If an error is made in the payment of your Direct Debit, by **swcomms** or your bank or building society, you are entitled to a full and immediate refund of the amount paid from your bank or building society

If you receive a refund you are not entitled to, you must pay it back when **swcomms** asks you to

You can cancel a Direct Debit at any time by simply contacting your bank or building society. Written confirmation may be required. Please also notify us

*By giving us your verbal instruction to pay our charges by Direct Debit, you have given us your authority to instruct your Bank or Building Society to pay **swcomms** monies when due for payment.*

N.B. If more than one signatory is required by your bank as an authority, then the Direct Debit mandate must be completed in the same way.

Please also sign this authority if you wish an existing Direct Debit mandate to be used for collecting monies due for all our products and services.

Signed..... Date:.....

Name:..... Position:.....

Customer Check Points

Our customers are business people that know about their own business needs and how trading relationships work between businesses. Because our customers have this experience, then all agreements are established safe in the knowledge you are not an inexperienced general consumer. We explain about the technical and commercial aspects of each sale to make sure you are informed and that you have ample opportunity to question anything you may be unsure about. If you remain unsure about anything, then you should always take independent advice. The following is a quick check list to think about and help you when you buy from us.

Only sign if you understand what you are buying and the communications system does what you want it to do as defined by the written specification supplied by/or signed by you at the point of sale.

Check you are happy with the payment terms and the charges that must be paid for all the Initial Term of the Agreements. Consider if the Service Levels meets your needs.

Be sure you agree to pay the installation charges for network services as well as the monthly rentals and the expected call charges (based on the noted tariffs) for all the Initial Term of the Agreement.

It is in your own interests to sign or at least initial every page of this Agreement.

Payment by Direct Debit for services such as line rental and installation, call routing, hires, finance, cloud services, mobile and internet access are conditional on a valid Direct Debit Mandate being in place. If you cancel a Direct Debit Mandate or a Direct Debit is returned by your bank (of which you will be aware), then the service may (at our discretion and without notification) be either suspended or the tariff for the service increased to reflect the increased costs of managing your account. Reconnection costs and further administration charges may be applied in these circumstances.

GENERAL TERMS AND CONDITIONS

DEFINITIONS

In this Agreement, unless the context otherwise requires, capitalised expressions shall have the following meanings:

swcomms policy concerning the use of the Managed Services as set out by **swcomms** from time to time. Copy available on request;

in respect of each of the Managed Services, the acceptance or deemed acceptance by the Customer by its use of each such Managed Service;

the date on which the relevant Managed Service is Accepted or used by the Customer;

as appropriate, the tests as are to be performed as agreed by the Customer. In the absence of an Acceptance Test, the Customer is deemed to have accepted the Service if it is used commercially in the day to day business of the Customer;

the Order Form, these terms and conditions and the Schedules in the order of Priority as set out below;

those employees and independent contractors of the Customer who are entitled to use the Managed Services, Equipment and/or Software under this Agreement;

08:00 -18:00 UK time on a Working Day;

the charges for the Services as calculated in accordance with the relevant Order;

any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party;

the customer identified on the Order form;

any data: (i) held by the Customer which is supplied or transferred to or disclosed by or on behalf of the Customer to **swcomms**, or which is held by the Customer and is accessible to **swcomms** pursuant to this Agreement (including operational and deployment data); and (ii) the data inputted into the information fields of the Software and / or Services by the Customer;

the dependencies and Customer's responsibilities as set out in Customer Responsibilities Schedule and any other responsibilities of the Customer set out in this Agreement or agreed in writing between the Parties from time to time in connection with this Agreement;

any applicable laws relating to processing of personal data and privacy, including the Data Protection Act 1998 and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (also known as the EU General Data Protection Regulation 2016) as and when it comes into force;

a person registered at Companies House as a Director of the relevant Party;

any user manual, hierarchy documents and schematics, configuration manuals, network plan or any other document issued by **swcomms** to the Customer pursuant to this Agreement in connection with the Services;

means the effective date of this Agreement as set out in the Order form;

the hardware, computer and telecoms devices, equipment, plant, materials and such other items that are made available for use by the Customer in connection with the provision of Managed Services, as set out in the Order;

Has the meaning given in clause 16.1;

means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies (including appointed contractors), industrial disputes, strikes, lockouts, labour disputes, failure in public communications networks, failures in the internet, power cuts, fire, flood, storm or earthquake, or disaster;

the Managed Services provided by **swcomms** to the Customer under this agreement which are accessed remotely via the internet, as more particularly described in the Managed Services Order form;

any implementation, integration, configuration services and/or training to be provided by **swcomms** in accordance with any supporting documentation provided at the point of sale. This may or may not include a Project Plan;

the initial term of this Agreement commencing on the Acceptance Date;

means any intellectual property including without limit any copyright, design rights (whether registrable or otherwise), registered and unregistered trademarks, topography rights, patents, database rights, know-how, trade or business names, domain name rights together with any applications to register the same and other similar rights and obligations whether registrable or not in any country (including, but not limited, to the United Kingdom);

the Customer's offices and locations as set out in the Order form and/or in the Managed Services Order form;

any known thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or in part or otherwise); or adversely affect the user experience, including worms, Trojan horses, malicious software, spyware, ransomware, adware, scareware, viruses and other similar things or devices;

include but is not limited to point to point, point to multipoint and mesh connectivity for wired or wireless transmission of voice and data Services.

the managed services described in Managed Services Order which may be provided at or to the Location and/or which may be made available as a Hosted or Cloud-Based Service;

the Order Form for the Services contained in this Customer Contract;

swcomms and / or the Customer (as appropriate);

a project plan setting out the timescales the performance of the Parties' respective obligations in connection with the Implementation Services;

any governmental or regulatory authority or agency of competent jurisdiction;

the separate listing of the components governing this Agreement that may be attached, further available on the **swcomms** website or on Customer request;

the description of the Managed Services set out in the Order form;

the service levels set out in Service Level Agreement Schedule;

the Implementation Services, Managed Services, Network Connectivity, Support and Break Fix Maintenance Services;

any Third Party Software;

the support and maintenance services to be performed by **swcomms**, as described in the Service Level Agreement Schedule;

South West Communications Group Limited (a company incorporated in England and Wales with company number 01863384) whose registered office address is at Communications House, Moor Lane, Sowton, Exeter, Devon, EX2 7JF;

has the meaning given in clause 16.1;

a day on which banks are open for business in London, other than Saturday or Sunday or public holidays in England.

In this Agreement, unless the context otherwise requires:

the singular includes the plural and vice versa;

reference to a gender includes the other gender and the neuter; the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";

references to this Agreement are references to this Agreement as amended from time to time;

headings have been included for convenience only and shall not be used in construing any provision in this Agreement;

a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

a reference to a clause or to a Schedule is a reference to a clause or Schedule to this Agreement. The Schedules to this Agreement form part of this Agreement;

a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it;

a reference to "writing" or "written" includes e-mail save in relation to the service of legal proceedings, variation of the agreement or contractual notices which must be delivered by Registered Post (or similar). The Customer consents to general communications concerning contractual compliance being communicated in writing that includes the written letter and e-mail; and

any obligation in this Agreement on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

In the event and to the extent only of any conflict or inconsistency in the provisions of Order Form, the Clauses of this Agreement and the provisions of the Schedules, the following order of precedence shall prevail:

the Order Form; and

the Clauses of the Agreement (excluding the Schedules); and

the Schedules including and not limited to; the Miscellaneous Terms Schedule, the Service Level Agreement Schedule and the Operational Obligations Schedule; and

any product, sales, general literature, digital media content or similar.

APPOINTMENT

The Customer hereby appoints **swcomms** to provide, and **swcomms** shall provide to the Customer in accordance with the provisions of this Agreement:

the Implementation Services;

the Managed Services; and

the Support and Maintenance Services.

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IMPLEMENTATION SERVICES

swcomms shall provide the Implementation Services and perform each of the activities identified in any Project Plan.

Subject to clause 7, **swcomms** shall use reasonable endeavours to perform the Implementation Services in accordance with the timescales set out in any Project Plan but any such dates shall be estimates only and time for performance by **swcomms** shall not be of the essence of this Agreement.

ACCEPTANCE TESTS – SEE MISCELLANEOUS TERMS SCHEDULE

MANAGED SERVICES

In consideration for the payment of the Charges, **swcomms** shall provide the Managed Services for use by the Customer and its Authorised Users from the relevant Acceptance date and thereafter for the duration of the Term and shall ensure that the Services comply in all material respects with the Services Description.

Where any Managed Service is a Hosted, Connectivity or Cloud-Based Service, **swcomms** shall provide the Managed Service in accordance with the applicable Service Levels.

swcomms shall provide the Support and Break Fix Maintenance Services in accordance with the applicable Service Levels in respect of the Managed Services.

EQUIPMENT

Where the Services include the delivery and, if applicable, installation of Equipment, as set out in Equipment Schedule, which Equipment is then made available for the Customer's benefit and use by Authorised Users in connection with the Services, the following provisions of this clause 6 shall apply.

The Equipment is deemed delivered to the Customer when **swcomms** makes it available to the Customer at the Location or any other delivery point agreed in writing by the Parties.

swcomms shall use reasonable endeavours to ensure delivery of the Equipment at the time(s) and date(s) specified in the Project Plan or, to the extent that such dates are not set out in the Project Plan, the dates quoted by **swcomms** for delivery. Any such dates shall be estimates only and time for performance by **swcomms** shall not be of the essence of this Agreement. **swcomms** shall not be liable for any delay in delivery of the Equipment that is caused by Force Majeure or the Customer's failure to provide adequate delivery instructions.

Risk (but not title) in the Equipment shall pass to the Customer when the Equipment is delivered or deemed to be delivered to the Customer.

If the Customer fails to take delivery of the Equipment or any part of it on the due date and / or fails to provide any instructions, documents, consents or authorisations required to enable the Equipment to be delivered on the due date **swcomms** shall be entitled, upon giving notice to the Customer, to store or arrange for storage of the Equipment and, in any event:

any risk in the Equipment shall pass to the Customer;

delivery shall be deemed to have taken place; and

the Customer shall pay to **swcomms** all costs and expenses arising from such failure to take delivery (including storage and insurance charges).

Notwithstanding delivery and the passing of risk in the Equipment, the Equipment shall at all times remain the property of **swcomms** or its licensors and, if at any time the ownership of the Equipment is in question, the Customer shall advise any third party that the Equipment is the property of **swcomms**.

The Customer shall not be entitled to pledge or in any charge by way of security for any indebtedness any of the Equipment, but if the Customer does so it will be an irremediable breach pursuant to clause 16.2.1 and all monies owing by the Customer to **swcomms** shall (without prejudice to any other right or remedy of **swcomms**) forthwith become due and payable.

The Customer shall:

have the right to use the Equipment in accordance with the terms of the Agreement and shall hold the Equipment as the **swcomms'** bailee;

not remove, deface or obscure any identifying mark or packaging on or relating to the equipment;

maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on the **swcomms'** behalf from the date of delivery;

use all reasonable endeavours to prevent any unauthorised access to, or use of, the Equipment and, in the event of any such unauthorised access or use, promptly notify **swcomms**;

notify **swcomms** immediately if it becomes subject to any of the events described in Clauses 16.2.2 to 16.2.11; and

give **swcomms** such information relating to the Equipment as **swcomms** may require from time to time.

In the event of a breakage or defect in respect of the Equipment:

the Customer shall give notice in writing to **swcomms** within a reasonable time of discovery of such breakage or defect;

the Customer shall give **swcomms** a reasonable opportunity to examine such Equipment;

the Customer shall (if asked to do so by **swcomms**) return such Equipment to the **swcomms'** place of business or other address specified by **swcomms** at the Customer's cost; and

swcomms shall provide a suitable replacement or repaired Equipment of substantially the same or greater functionality.

Repair and/or replacement shall be the Customer's exclusive remedy to the extent that the Equipment does not conform with the manufacturer's description or if there are any material defects in design, material and/or workmanship. All warranties, representations, conditions and all other terms of any kind whatsoever whether express or implied by statute or common law including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality or fitness for purpose are, to the fullest extent permitted by applicable law, excluded from this Agreement.

Except as provided in this Clause in respect of the handling of returns, **swcomms** shall have no liability to the Customer in respect of any Equipment failure.

DELAYS

The Customer acknowledges that a failure or delay in fulfilling a Customer Responsibility may adversely impact **swcomms'** ability to provide the Services. To the extent that **swcomms** fails to meet its obligations under this Agreement because of the Customer's breach of this Agreement (including a failure by the Customer to perform the Customer Responsibilities), **swcomms** shall:

not be in breach of this Agreement;

be relieved of liability for the consequences of the Customer's failure to perform its obligations under this Agreement (including the Customer Responsibilities). This includes **swcomms** not being liable for any costs or losses sustained or incurred by the Customer arising from such failure;

be granted a time extension to any date affected by such failure to the extent attributable to the Customer's breach;

be entitled to such reasonable additional cost and expense caused by the failure;

take commercially reasonable steps to mitigate and overcome the effects of the Customer's failure;

keep the Customer reasonably and regularly updated on the progress of its attempts to mitigate the effects of the Customer's failures.

Where a delay is attributable in part to the Customer's default (including the Customer breaching the Customer Responsibilities) and in part due to **swcomms'** default, the Parties shall negotiate in good faith with a view to:

agreeing a fair and reasonable apportionment of responsibility for the delay; and

seek to identify and mitigate the consequences of the delay.

Any disputes about or arising out of such delays shall be resolved through the dispute resolution procedure set out in clause 22 (Dispute Resolution). Pending the resolution of the dispute both Parties shall continue to work to resolve the causes of, and mitigate the effects of, such delay.

WARRANTIES

Each Party warrants and undertakes to the other that:

it has full right, power and authority to enter into this Agreement;

this Agreement is executed by its duly authorised representative;

it shall ensure required resources of an appropriate level, background, skill and understanding shall be made available in order to comply with its obligations under this Agreement; and

it shall comply with all applicable legislation in the performance of its obligations under this Agreement.

swcomms warrants that:

it has obtained and will maintain for the duration of the Term all right, title and authority to grant to the Customer the rights expressed to be granted in this Agreement;

the Documentation, Software and Managed Services shall not infringe the Intellectual Property Rights of any third parties when used by the Customer in accordance with this Agreement. **swcomms** shall not be liable under the warranties in this clause 0 where Documentation, Software and/or Services fail to meet the warranties set out in any such clause, where such failure is caused by:

8.2.2.1	software other than the Software running in the Customer's computing environment; and/or	12.3.5	swcomms shall ensure that every relevant individual whom it engages on the Services completes time sheets recording time spent on the Services, and swcomms shall use such time sheets to calculate the time and materials portion of the Charges;
8.2.2.2	modifications or customisations made by or on behalf of the Customer to the Equipment, Software or Services without swcomms ' prior written consent;	12.3.6	swcomms shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with value added tax where appropriate) for the month concerned. Each invoice shall set out the time spent by each individual whom swcomms engages on the Services on a time and materials basis, and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
8.2.3	The Services shall be undertaken with reasonable skill and care and in accordance with good industry practice; and	12.3.7	The Customer shall correctly sign a Direct Debit Mandate to pay swcomms for Services. Provision and payment by Direct Debit by the Customer is a specific condition of swcomms supplying Services to the Customer
8.3	The express provisions of this Agreement are in place of all warranties, representations, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise (including but not limited to implied undertakings of satisfactory quality, conformity with description and reasonable fitness for purpose), all of which are hereby excluded by swcomms to the maximum extent permitted by law.	12.4	Where Software and Services are provided for a fixed price (whether such fixed price is a one off fixed price or determined by volumes, user subscriptions, usage or other factors), swcomms shall invoice, and the Customer shall pay, the relevant Charges (without deduction or set-off) as set out.
9	INTELLECTUAL PROPERTY AND LICENCES	12.5	In the event of any partial delivery of the Services, without prejudice to any claim that the Customer may have in respect of any part of the Services that have not been delivered, swcomms shall be entitled to invoice the Customer the proportion of the Charges due for those parts of the Services that have been provided to the Customer or otherwise used or benefited from by the Customer.
9.1	Each Party or their respective licensors retain ownership of all Intellectual Property Rights that they own before the Effective Date or create independently of their obligations under this Agreement and accordingly all Intellectual Property Rights:	12.6	The Customer shall pay any invoice submitted to it by swcomms , in full and in cleared funds, within fourteen (14) days from the date of swcomms ' invoice without deduction or set-off.
9.1.1	in the Software, Services, Equipment shall be owned by swcomms or its respective licensors; and	12.7	If any sums invoiced to the Customer by swcomms (other than those that are subject to a bona fide dispute pursuant to Clause 12.9) are not paid within the specified time limits set out in this Clause 12, swcomms shall be entitled to:
9.1.2	in the Customer Data shall be owned by the Customer or its respective licensors.	12.7.1	suspend all Services until payment has been made in full; and/or
9.2	The Customer shall take all such steps as shall be necessary to protect swcomms and its licensors' Intellectual Property Rights and Confidential Information. The Customer shall have appropriate security in place to protect information and communication systems from any threat from whatever source.	12.7.2	charge the Customer interest on the overdue amount, payable by the Customer immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at an annual rate equal to 4% over the then current base lending rate of Lloyds Bank plc. Such interest shall accrue and compound on a daily basis.
9.3	In the event that new Intellectual Property Rights are created as a result of either Party (or by a third party on behalf of a Party) performing its obligations under this Agreement, the Customer acknowledges that such Intellectual Property Rights and shall belong to swcomms . To the extent such Intellectual Property Rights vest in the Customer by operation of law, the Customer hereby assigns by way of present and future assignment with full guarantee all its right, title and interest in such Intellectual Property Rights to swcomms and its successors and assigns.	12.8	All sums payable by the Customer under this Agreement are stated to be exclusive of VAT and all other similar taxes and duties payable in respect of such payments, which shall be added to swcomms ' invoice(s) at the appropriate rate and payable by the Customer to swcomms in accordance with this Clause 12.7.2.
9.4	In consideration for the Charges paid by the Customer to swcomms , swcomms hereby grants to the Customer with effect from the Effective Date a non-exclusive, revocable, non-transferable, personal licence for the Customer, its officers, employees and contractors to use the Software in machine-readable object code form and the Documentation during the Term solely as part of Customer's internal business operations in accordance with the terms of this Agreement. The Customer may not copy all or any part of the Software or the Documentation.	12.9	If the Customer (acting in good faith) disputes part or all of any invoice, it shall notify swcomms in writing as soon as is reasonably possible (and in any event within 14 (fourteen) days of receiving the invoice) identifying clearly the disputed part of such invoice and the reasons why it is challenged. If a bona fide dispute exists in relation to part of an invoice, the Customer shall pay the undisputed amount in accordance with Clause 12.6, and the disputed element of any invoice will be dealt with in accordance with Clause 22.
9.5	Use of the Managed Services and/or Equipment may require the installation and use of Third Party Software. Such Third Party Software shall be supplied under and in accordance with the relevant licensor's standard terms. The licence fee for such Third Party Software is included in the Charges. The Customer acknowledges and agrees that swcomms shall be acting in its capacity as a distributor only with the licence to use the relevant Third Party Software being granted directly by the third party licensor to the Customers. The Customer agrees to comply with such third party's licence terms and shall indemnify, keep indemnified and hold harmless swcomms , in full against all losses, liability, damages, costs, claims and all expenses, including reasonable legal fees and expert fees in relation to any claim by the third party licensor arising out of or in connection with any breach of the terms of the licence by the Customer and its officers, directors, employees agents and contractors.	12.10	swcomms may increase the Charges on each anniversary of the Effective Date by giving the Customer not less than 14 (fourteen) days' prior written notice before such revised Charge is applied provided that such increase shall not exceed the greater of:
9.6	The Customer shall:	12.10.1	5 per cent; or
9.6.1	not copy or attempt to copy (other than to the extent permitted under Clause 9.4), modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means except to the extent as may be allowed by applicable law which is incapable of exclusion by agreement between the Parties;	12.10.2	the percentage increase in the retail price index as maintained by the Office of National Statistics (or such index as replaces it) during the period since the last such increase or, if there has been no such increase, during Each Party shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law or as otherwise agreed.
9.6.2	not reverse engineer, disassemble, decompile, translate, modify or otherwise reduce to human-perceivable form the Software or any part of the Software (or attempt to do any of the foregoing) without the prior permission in writing from swcomms . All information required to achieve interoperability of the Software with other software programs in accordance with Section 50B of the Copyright Designs and Patents Act 1988, as amended, is available from swcomms ;	12.11	swcomms reserves the right to increase the Charges to reflect any increase in the cost to swcomms which is due any change in delivery dates, quantities or specifications for the Equipment and Services or any delay caused by any instructions of the Customer or failure of the Customer to give swcomms adequate information or instructions or carry out any of its obligations under this Agreement.
9.6.3	not access all or any part of the Software, Equipment or Managed Services in order to build a product or service which competes with the Software and / or the Managed Services;	12.12	swcomms reserves the right to increase the Charges to reflect any increase in the cost to swcomms , whether such costs are incurred directly or indirectly through the supply chain, which is due to legislative changes, quasi governmental organisation or public body sanctioning or mandating an increase in cost for regulated products or services
9.6.4	not license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, Managed Services or the Equipment available to any third party;	12.13	swcomms reserves the right to increase the Charges to reflect any increase in the cost to swcomms , whether such costs are incurred directly or indirectly through the supply chain, which is due to foreign currency fluctuations.
9.6.5	not use the Software, Managed Services or Equipment to provide services to third parties; or	12.14	swcomms reserves the right to increase the Charges to reflect any increase in the cost to swcomms , which is due to increases in costs passed on by our suppliers.
9.6.6	not attempt to obtain, or assist third parties in obtaining, access to the Software, Managed Services or Equipment other than as provided under this clause.	12.15	swcomms shall have the right to charge the Customer:
9.7	The Customer grants to swcomms a non-exclusive, royalty free licence during the Term and any exit assistance period pursuant to clause 17.1.4 to use, copy and process the Customer Data to the extent necessary to provide the Services. Such licence will include the right on the part of swcomms to sub-license such rights to its sub-contractors and suppliers where such sub-contractors and suppliers require a sub-licence to provide the Services to the Customer.	12.15.1	in the event that the need for Support and Maintenance Services results from any of the events in the Service Level Agreement Schedule or where a fault has arisen (in the reasonable opinion of swcomms) from improper use, act or omission, act of god, any third party acts or omissions or maintenance by the Customer of the Equipment and Managed Services;
9.8	The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify swcomms .	12.15.2	for all costs incurred as a result of carrying out maintenance or repair works which in swcomms ' reasonable opinion is considered unnecessary;
9.9	swcomms does not indemnify, defend or hold harmless the Customer against all claims, actions, proceedings, losses, damages, fines, judgments, demands, fees, costs, expenses and liabilities of any nature (including legal fees and disbursements on a full indemnity basis) suffered or incurred by the Customer arising out of or in connection with any claim or allegation that the receipt or use of the Managed Services and/or use or possession of the Documentation, Equipment and/or Software in accordance with this Agreement infringes the Intellectual Property Rights of any third party, providing always that the Customer shall act in accordance with clause 13 (Conduct of Indemnified Claims) in relation to such third party Intellectual Property Rights claims.	12.15.3	when no faults were found with the Equipment or Managed Service after investigation, despite a fault being reported.
9.10	If the Customer's use of the Managed Services and/or use or possession of the Documentation, Equipment and/or Software in accordance with this Agreement is or is alleged to be an infringement or, in the reasonable opinion of swcomms there is likely to be an infringement, of a third party's Intellectual Property Rights, swcomms shall at its own expense:	12.16	All sums payable by either Party under this Agreement shall be paid in UK pounds sterling and, accordingly, the Customer shall bear the risk of any currency fluctuations, inflation and taxation in respect of the Charges
9.10.1	procure for the Customer the right to continue using the item which is subject to the claim (as appropriate under the licences granted under this clause); or	12.17	Any applicable price increases to a Customer shall reflect the underlying price increase to swcomms .
9.10.2	modify or replace the item which is subject to the claim without detracting from the overall performance of the Equipment and Software, quality of the Documentation and/or receipt of Services by the Customer so as to avoid the infringement; or	13	CONDUCT OF INDEMNIFIED CLAIMS – SEE MISCELLANEOUS TERMS SCHEDULE
9.10.3	if the remedies in clauses 9.10.1 and/or 9.10.2 cannot be achieved, terminate this Agreement and make a pro-rata refund to the Customer of any Charges paid in advance under this Agreement.	14	LIABILITY
9.11	The Customer shall indemnify on demand, defend and hold harmless swcomms against all claims, actions, proceedings, losses, damages, fines, judgments, demands, fees, costs, expenses and liabilities of any nature (including legal fees and disbursements on a full indemnity basis) suffered or incurred by swcomms arising out of or in connection with any claim or allegation that the use or possession of the Customer Data infringes the Intellectual Property Rights of any third party. swcomms shall act in accordance with clause 13 (Conduct of Indemnified Claims) in relation to such third party Intellectual Property Rights claims.	14.1	This clause 14 sets out the entire financial liability of swcomms (including any liability for the acts or omissions of its officers, employees, agents, suppliers and sub-contractors) to the Customer in respect of:
9.12	The Customer will agree, when requested, as a reference and provide case study material for swcomms or its suppliers	14.1.1	any breach of this Agreement;
10	CONFIDENTIALITY	14.1.2	any use made by the Customer (including its officers, employees and contractors) of the Documentation, Equipment, Software and the Services or any part of them; and
10.1	Each Party undertakes to the other that it and its employees, officers, agents, professional advisers and sub-contractors will keep in confidence and not use or disclose to any third party without the other Party's prior written consent any of the other Party's Confidential Information, except such disclosure to those persons on a strictly need to know basis to whom it is necessary in order to carry out the receiving Party's obligations under this Agreement. The receiving Party shall inform all recipients of the other Party's Confidential Information of their obligations of confidentiality and be liable for all acts and omissions of such recipients as if such acts and omissions were acts and omissions of the receiving Party.	14.1.3	any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
10.2	Nothing contained in clause 10.1 shall apply to prevent either Party from disclosing any Confidential Information:	14.2	Subject to clause 14.3, neither Party is liable under this Agreement or in tort (other than fraudulent or negligent misrepresentations) or breach of statutory duty or otherwise howsoever caused for any:
10.2.1	that is in the possession of the receiving Party (with full right to disclose) prior to receiving it from the disclosing Party;	14.2.1	loss of revenue, profits, contracts, business or anticipated savings;
10.2.2	to its professional advisers and potential investor and acquirers provided they are made aware of this clause;	14.2.2	loss of goodwill or reputation;
10.2.3	which is or becomes public knowledge other than by breach of this clause;	14.2.3	loss or corruption of data or information;
10.2.4	which it may independently develop or receive from a third party (with full right to disclose); or	14.2.4	special, indirect or consequential loss or damage,
10.2.5	pursuant to a statutory, legal or parliamentary obligation or court order placed upon the Party making the disclosure.	14.3	of any nature whatsoever, whatever the cause, whether or not such losses were within the Parties contemplation, suffered or incurred by the relevant Party or any third party arising out of or in connection with this Agreement.
10.3	Nothing in this clause 10 shall prevent swcomms or the Customer from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to or result in a disclosure of Confidential Information or an infringement by swcomms or the Customer of any Intellectual Property Rights.	14.3.1	Nothing in this Agreement shall exclude or limit liability of either Party for:
10.4	This clause shall survive the expiry or termination of this Agreement for a period of 3-years.	14.3.2	death or personal injury resulting from its negligence; fraud or fraudulent misrepresentation; or
11	DATA PROTECTION AND CUSTOMER DATA – SEE MISCELLANEOUS TERMS SCHEDULE	14.3.3	any other liability that cannot be excluded or limited by law.
12	CHARGES AND PAYMENT TERMS	14.4	Subject to clauses 14.2 and 14.3:
12.1	In consideration for the performance of the Services, the Customer shall pay swcomms the Charges for the Services and any Software as set out in or calculated in accordance with the relevant Order.	14.4.1	the total liability of swcomms arising under or in connection with this Agreement in any calendar year during the Term, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to an amount equal to 105% (one hundred and five per cent) of the recurring monthly Charges paid or payable in the calendar year the breach or series of breaches occur; and
12.2	Clause 12.3 shall apply to any Services which swcomms provides on a time and materials basis (if any) and Clause 12.4 shall apply to any Software and Services swcomms provides for a fixed price. The other provisions of this Clause 12 shall apply in either case.	14.4.2	(without limiting the Customer's obligation to pay the Charges) the total liability of the Customer arising under or in connection with this Agreement in any calendar year during the Term, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to an amount equal to 105% (one hundred and five per cent) of the recurring monthly Charges paid or payable by the Customer to swcomms in a calendar year.
12.3	Where any Services are provided on a time and materials basis:	14.5	swcomms will have no liability under the Agreement if and to the extent that any alleged defect or breach of this Agreement has been altered or the cost of remedying the defect has been increased by:
12.3.1	unless otherwise agreed in writing between the Parties, the Charges payable for the Services shall be calculated in accordance with the rates applicable at the time or, to the extent not specified, in accordance with swcomms standard fee rates;	14.5.1	the installation, or repair, of the Equipment and / or Services otherwise than by swcomms , or without swcomms ' prior written consent or not in accordance with swcomms ' instructions;
12.3.2	swcomms standard daily fee rates for each individual engaged in providing the Services are calculated on the basis of an eight-hour day worked between 0800 to 1800 on any Business Day;	14.5.2	the use of the Equipment and / or Services other than for the purpose(s) for which it was intended;
12.3.3	swcomms shall be entitled to charge overtime rate on a pro-rata basis for each day or for any time worked by individuals whom it engages on the Services outside the hours Business Hours above;	14.5.3	the misuse, neglect or improper storage of the Equipment and / or Services;
12.3.4	swcomms shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom swcomms engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, tolls, subsistence and any associated expenses, and for the cost of services provided by third parties and required by swcomms for the performance of the Services, and for the cost of any materials;	14.5.4	the installation or continued use of the Equipment and / or Services after the time at which the alleged defect is, or ought reasonably, to have been discovered; and / or
		14.5.5	any error or omission in any specification design, information or other item provided by the Customer.
		15	INSURANCE – SEE MISCELLANEOUS TERMS SCHEDULE
		16	TERM AND TERMINATION
		16.1	Subject to the provisions for earlier termination in this Agreement including any earlier termination rights specific to any one or more Services and set out in the Order(s), this Agreement shall commence on the Agreement Date and shall continue in force for the Initial Term from the Acceptance Date and thereafter this Agreement shall be automatically renewed for successive periods of one year (each an "Extended Term") unless either Party notifies the other Party of termination, in writing by Registered Post (or similar), at least 90 (ninety) days before the end of the Initial Term or any Extended Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Extended Term (as the case may be) (the "Term"). Unless otherwise specified in the Order Form, the Initial Term shall be 5-years.
		16.2	Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate this Agreement without liability to the other immediately on giving notice to the other if:
		16.2.1	the other Party commits a material breach of any of the terms of this Agreement which is incapable of remedy;
		16.2.2	the other Party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 (thirty) days (or (if applicable) such longer period as the Party alleging the breach may specify at its absolute discretion) of that Party being notified in writing of the breach;

16.2.3 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

16.2.4 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

16.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

16.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party;

16.2.7 the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver;

16.2.8 a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;

16.2.9 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;

16.2.10 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2.3 to clause 16.2.9 (inclusive); or

16.2.11 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.3 In the event that any payment (other than those that are subject to a bona fide dispute) has not been received by **swcomms** in cleared funds by the end of the period of 14 days following the due date for payment, **swcomms** shall be entitled to (without prejudice to its other rights and remedies) terminate this Agreement by written notice to the Customer with immediate effect.

16.4 **swcomms** reserves the right to terminate the Agreement by written notice to the Customer with immediate effect without liability if:

16.4.1 the Customer challenges or disputes the validity of any of **swcomms** or its licensors Intellectual Property Rights;

16.4.2 a site inspection reveals matters of which **swcomms** was unaware or if it perceives acting reasonably that the Agreement cannot be performed for any reason. In such circumstances the Customer may be liable to pay **swcomms** for any reasonable costs incurred;

16.4.3 any licence or other consent considered by **swcomms** to be required by it in order to perform its obligations under this Agreement (whether for regulatory or economic reasons or otherwise) expires or is revoked; or

16.4.4 a licence under which the Customer has the right to run its telecommunications system and connect it to **swcomms**' system is revoked, amended or otherwise ceases to be valid and is not immediately replaced by another valid licence or licence acceptable to **swcomms**.

16.5 If the Customer purports to terminate the Agreement during the Initial Term or part-way through an Extended Term, the Charges shall nevertheless continue to be payable as if the Agreement had continued up until the end of the Initial Term or year(s) 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. However, the Customer acknowledges and accepts that where prices are increased to **swcomms** by its suppliers, then in turn **swcomms** will increase charges to the Customer by a similar amount. The Customer will agree to pay these varied charges until the end of this Agreement and subject to a written notification by **swcomms** of these changes.

16.6 If the Customer is subject to an event in Section 16 below, then, without limiting any other right or remedy **swcomms** may have, **swcomms** may at any time:

16.6.1 require the Customer to deliver up all Equipment in its possession; and

16.6.2 if the Customer fails to do so promptly, enter any premises of the Customer (including all Locations) or of any third party where the Equipment is stored in order to recover them and cease to provide the Services.

17 CONSEQUENCES OF TERMINATION

17.1 On the termination of this Agreement:

17.1.1 all licences granted under this Agreement shall immediately terminate and the Customer shall (at its sole cost) return (or at **swcomms**' option, destroy) all media on which the Software is held;

17.1.2 **swcomms** shall return or destroy the Customer's Confidential Information and Customer Data (or to the extent it is impractical to destroy put beyond use any electronic copies of the same);

17.1.3 the Customer shall return and make no further use of any equipment (including the Equipment), property (including Confidential Information), materials and other items (and all copies of them) belonging to **swcomms**;

17.1.4 **swcomms** shall, at the Customer's request, provide reasonable assistance to the Customer to facilitate an orderly transfer of the provision of the Services to the Customer or, at the Customer's request, a new service provider at **swcomms**' then current time and materials rates for up to 6 (six) months following termination of this Agreement;

17.1.5 the Customer shall immediately pay to **swcomms** all of **swcomms** outstanding unpaid invoices and, in respect of Services supplied but for which no invoice has been submitted, **swcomms** shall submit an invoice, which shall be payable by the Customer immediately on receipt. In addition to any termination fee (if applicable), a disconnection fee equivalent to one month's charges shall be paid by the Customer to **swcomms** in respect of works to disconnect and reverse engineer any site or Data Centre based and/or internet related Equipment and Services.

17.2 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement including Clauses 9, 10, 12, 14, 16, 22 and 28 shall survive the termination or expiry of this Agreement.

18 SERVICE LEVEL AGREEMENT – SEE SCHEDULE

19 OPERATIONAL RESPONSIBILITIES AND OBLIGATIONS- SEE SCHEDULE

20 FORCE MAJEURE

20.1 Neither Party, provided that it has complied with the provisions of clause 20.3, shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from Force Majeure.

20.2 Notwithstanding the foregoing in clause 20.1, this Agreement will remain in full force and effect for the duration of the Force Majeure subject to clause 20.5 and the Parties shall use all commercially reasonable endeavours to perform or resume performance of such obligations hereunder for the duration of the Force Majeure.

20.3 Any Party that is subject to an event of Force Majeure shall be entitled to a reasonable extension of time for the performance of its obligations hereunder and not be in breach of this Agreement.

20.4 As soon as reasonably possible after the end of the event of Force Majeure, the affected Party shall notify the other Party in writing that the Force Majeure has ended and shall resume performance of its obligations under this Agreement.

20.5 If either Party is prevented from performance of substantially all of its obligations by an event of Force Majeure for a continuous period of more than 90 (ninety) days in total, the other Party may terminate this Agreement immediately on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

21 GOVERNANCE

21.1 The Parties shall conduct service reviews (at which both Parties shall act reasonably and in good faith) to review the Services and both Parties performance of their obligations under this Agreement.

22 DISPUTE RESOLUTION – SEE MISCELLANEOUS TERMS SCHEDULE

23 ENTIRE AGREEMENT

23.1 The Agreement supersedes all prior agreements, arrangements and understandings between the Parties and constitutes the entire agreement between Parties relating to the Service and Equipment.

23.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it has not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance of any person other than as expressly set out herein. Each Party irrevocably waives all claims, rights and remedies which but for this clause it might otherwise have had in relation to any of the foregoing.

23.3 Unless expressly stated hereunder, no representation relating to or in any way connected with the Equipment or Services shall be deemed to be made on behalf of **swcomms** nor shall and such representation bind **swcomms** or the appointed officer of **swcomms**.

24 NOTICES

24.1 Any notice given or made under this Agreement shall be in writing and in English and signed by or on behalf of the Party giving it and shall be served by delivering by prepaid first class post, prepaid first class recorded delivery or special delivery to the address and for the attention of the relevant Party set out in clause 24.2 (or as otherwise notified by that Party under this clause). Any notice shall be deemed to have been received:

24.1.1 if hand delivered or sent by prepaid first class recorded delivery or special delivery, at the time of delivery; and

if sent by prepaid first class post (other than by prepaid first class recorded delivery or special delivery), 2 (two) Working Days from the date of posting, provided that if deemed receipt occurs on a non-Working Day or after 17:30 a Working Day the notice shall be deemed to have been received at 09:00 on the next Working Day. For the purpose of this clause 24, references to any time shall be to London time.

24.2 The addresses of the Parties for the purposes of clause 24 are in the Miscellaneous Terms Schedule.

24.3 In proving service, it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party set out in clause 24.2 (or as otherwise notified by that Party under this clause) and delivered either to that address or into the custody of the postal authorities as a prepaid first class, first class recorded delivery or special delivery letter.

24.4 A notice, required to be given under this Agreement shall not be validly given if sent by e-mail.

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27 ASSIGNMENT

27.1 **swcomms** may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Agreement, provided it gives written notice to the Customer.

27.2 The Customer shall not sub-license, assign or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of **swcomms**, such consent not to be unreasonably withheld or delayed.

28 SALE OF EQUIPMENT AND RELATED WARRANTY

28.1 In respect of where Equipment is sold to the Customer where the Customer's wish is to obtain Title and Ownership of the Equipment (which shall only occur when specifically indicated in the Order Form), the terms in clause 28 shall apply:

28.2 The Equipment will be supplied substantially to any design or configuration described in any quotation. However, **swcomms** reserves the right to make reasonable changes at its discretion during the execution of the Contract but provided that such changes shall not reduce the design performance of the Equipment. **swcomms** makes no representation and gives no warranty in respect of the source of origin of manufacture of the Equipment or any part incorporated into the Equipment.

28.3 The Customer shall pay an initial payment of 40% with the Order, 50% on delivery of the Equipment to the relevant site and 10% on completion of the installation of the Equipment. If **swcomms** is not responsible for installation then the balance of 60% shall be payable on delivery. **swcomms** reserves the right to increase the price of the Equipment to reflect any increase in the cost to **swcomms** which is due to foreign currency fluctuations, any change in delivery dates, quantities or specifications for the Equipment requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give **swcomms** adequate information or instructions or carry out any of its obligations under the Contract.

28.4 If **swcomms** is delayed in or prevented from performing its obligations under the Contract by any cause outside **swcomms** control (including but not limited to delays caused by other contractors of the Customer or failure by the Customer to have any part of the installation site ready at the time specified in the Contract) or is requested by the Customer to delay the completion of the Contract and **swcomms** is able and willing to fulfil such obligations or effect such completion and if such delay prevention or request results in the Contract not being completed within five days of the estimated completion date the Customer shall pay forthwith to **swcomms** the Contract price of completed contract work including (but not limited to) any of the Equipment ready to deliver to site and renegotiate with **swcomms** the time within which and the terms under which the Contract shall be completed. Such terms shall include (but not be limited to) the payment by the Customer of all costs and expenses of the Company attributable to or resulting from such delay, prevention or request. Access and/or any permissions (including any third parties) to install Equipment in any location remains the responsibility of the Customer. Any associated costs and associated liabilities remain the responsibility of the Customer. **swcomms** does not include the costs of access needs including but not limited to access platforms, scaffolding or similar in quotations. The Customer agrees to pay these costs invoiced by **swcomms** where adequate and legislatively compliant facilities are not provided by the Customer. Any delays because access and permissions have not been granted shall result in an additional charge for lost time payable by the Customer.

28.5 If the Customer uses Equipment provided under the Contract at any time then any balances of the contract price outstanding becomes immediately payable.

28.6 Subject to the below, **swcomms** guarantees the Equipment (excluding software) against any defects in workmanship, or materials for a period of 12 months from the date of delivery, only when a current valid Service Agreement is in place. If any defect manifests itself during that period **swcomms** will subject to the Customer's compliance with any reasonable request by **swcomms**, shall at **swcomms** expense and its option to repair, or replace the defective Equipment, or refund the price or, as the case may be, that part of the price applicable to the defective part of the Equipment and the **swcomms** shall have no further liability to the Customer. Software is not warranted to be totally error free. Where **swcomms** repairs or replaces the defective Equipment the Customer must return the defective Equipment to the company within 14 days of being notified to do so. Where the returned Equipment upon inspection by **swcomms** proves not to be defective or proves to be defective because of a reason outside **swcomms** direct control, the Customer will pay or refund to **swcomms** any repair, replacement, storage, testing, inspection and other incidental costs incurred by **swcomms**.

28.7 The above warranty does not extend to parts, materials or Equipment not manufactured by **swcomms** in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to **swcomms**. Notwithstanding the warranty, **swcomms** shall have no liability to the Customer unless the Customer allows **swcomms** an opportunity to conduct such investigations as are reasonably necessary 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 or if the total price for the Equipment has not been paid by the due date for payment. Any claim pursuant to the warranty above must be in accordance with the following conditions; where reasonable inspection of the Equipment delivered would have revealed any alleged defect the Customer must submit a full written report within seven days after delivery of the Equipment; the Customer must submit a full written report within 12 months after the time at which the alleged defect is or reasonably ought to have been discovered and in any event within 12 months after delivery; the full written report to be submitted by the Customer shall include 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.

28.8 Wireless Equipment has a higher risk of security breaches compared to more conventional systems and service quality of transmission and reception for wireless Equipment is subject to changing conditions, including but not limited to buildings, topography, vegetation, electrical interference and other local wireless sites. Site surveys provide visual assessments of potential locations and may include radio link testing in order to improve the probability of predicting a successful wireless link. Because numerous factors can affect the performance of a wireless link, **swcomms** cannot guarantee performance from a survey. Computer modelling can assist with calculating the probability of achieving a wireless link between specific points based on landscape data and theoretical radio propagation. Such analysis is carried out using third party analytical software which is subject to errors. **swcomms** cannot guarantee performance as a result of such analysis. Due to extensive factors that can affect wireless performance, **swcomms** cannot guarantee performance unless guaranteed in writing and being subject to recognised tolerance standards anyway. The customer must register (when required) the location and use of such equipment with OFCOM.

28.9 Security and other settings for any installed Equipment shall be at the default level. The **swcomms** does not accept any liability for security breaches. **swcomms** can provide security consultation when requested by the customer. A quotation for such works can be provided.

29 GENERAL

29.1 Where **swcomms** undertakes to construct a communications system incorporating Equipment for a Customer then it shall do so in accordance with a specification given by and agreed with the Customer in writing at the point of sale. A Customer placing an order denotes acceptance of any specification and system configuration. The Company must be notified in writing of any subsequent changes required that will affect the specification and the configuration of the system within five days from installation. Any required changes to the configuration of the system after this period will be charged to the customer at **swcomms** normal rates in addition to the Contract price. **swcomms** will have no obligation or liability to the Customer under the Contract where functionality of the supplied Equipment is dependant (partially or wholly) on the performance of Equipment (including software) not provided under this contract.

29.2 The Customer is expected to have appropriate security in place to protect information and communication systems from any threat from whatever source.

29.3 No failure to exercise and no delay in exercising on the part of either Party any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude the enforcement of any other right, power or privilege nor shall the waiver for any breach of any provision herein be taken or held to be a waiver of the provision itself. Any waiver to be effective must be in writing and specify the rights waived.

29.4 Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the Parties, nor constitute any Party the agent of the other for any purpose. No Party shall have authority to act as agent for, or to bind, the other Party in any way. **swcomms** is engaged as an independent contractor and not as an employee or agent of customer.

29.5 If any provision of this Agreement:

29.5.1 shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect;

29.5.2 is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such deletion(s) as may be necessary to make it valid.

The Parties agree, in the circumstances referred to in clause 29.5.1 and if clause 29.5.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

29.6 This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, shall constitute a full original of this Agreement for all purposes.

29.7 Neither Party shall, except with the prior written consent of the other Party directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any person employed or engaged by such other Party in the provision of the Services or (in the case of the Customer) in the receipt of the Services at any time during the Term or for a further period of nine (9) months after the expiry or termination of this Agreement other than by means of a national advertising campaign open to all and not specifically targeted at any of the staff of the other Party.

29.8 At any time after the Effective Date, each Party shall, at the request of the other Party, execute or cause to be executed all documents and do or cause to be done all further acts and things as that other Party may reasonably require to give full effect to the terms of this Agreement.

29.9 A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

29.10 These terms and conditions are the sole terms and conditions of the Agreement between **swcomms** and the Customer. No variation or modification of this Agreement and no agreement made or purported to be made between **swcomms** and the Customer inconsistent with this Agreement shall be valid or of any effect unless made in writing and signed by a Director of **swcomms** and a duly authorised representative of the Customer.

29.11 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England and Wales.

29.12 The Parties irrevocably agree that, subject to clause 22 (Dispute Resolution), the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

MISCELLANEOUS TERMS SCHEDULE

1. 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 the 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 11 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>Emergency Maintenance Incident means where swcomms requires service downtime to carry out infrastructure works and swcomms 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 swcomms' service desk;</p> <p>Performance Monitoring Report means those reporting requirements outlined below;</p> <p>Planned Maintenance means where swcomms requires service downtime to carry out works such as routine service maintenance where operational impact to the Customer anticipated by swcomms is expected to be reduced with such works likely to be outside of Business Hours;</p> <p>Reporting Period Service Call shall mean a 12-mth rolling period; initial call from the Customer's IT service desk to swcomms' service desk providing full details of the Incident that has arisen;</p> <p>Service Credit 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>Seriously Deficient Service Level Failures means a drop in the Service Level beyond the levels detailed;</p> <p>Resolution Time means swcomms' failure to deliver the Services in accordance with the agreed Services Levels;</p> <p>Response Time is defined as the period of time from when swcomms' 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"> • the cause of the Incident has been removed and the Services are being provided in accordance with the services description; or • the Customer has been provided with a workaround or temporary fix in relation to the Incident; <p>Severity Levels System Unavailability is defined as the time between swcomms' 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 swcomms and the time that swcomms notifies the Customer's IT service desk of the Incident reference and agreed Severity Level Response during Business Hours;</p> <p>means the severity levels set out below;</p> <p>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:

Service Performance Bands

Service Level		Service Availability Bands					Priority	Description
		A	B	C	D	E		
System Availability	Services Availability - Service Availability is measured at the operating system level	>=95.0%	94.9	92.9	91.9	below 90.0%	P1	A total or severe loss of service.
			93.0	91.0	90.0		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.
							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 Level	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 Hours
P3	Within five (8) Business Hours of the initial report	Within 30 (thirty) Business hours
P4	Within thirty (30) Business Hours of the initial report	N/A
P5	Within 40 (forty) Business Hours of the initial report	N/A

NOTES: In the circumstances of Force Majeure, then the obligated Resolution Times do not apply. Response Times and Resolution Times shall be measured in Business Hours - the clock stops measuring the Resolution Time at 18:00 on a Working Day and restarts at 0800 the following Working Day.

- 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 22 (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

- 2.15.1 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:

- 2.16 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;
- 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 fulfillment 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 Customer's 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 **sw comm's** 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.