



**AGREEMENT COVER SHEET**

**The enclosed documents comprise the Agreement between you (“the Customer”) and South West Communications Group Limited (“swcomms”) in respect of certain Services, Software and Equipment.**

*Capitalised terms used in this cover sheet have the same meanings given in the Agreement.*

**Please Note:**

1. By signing this Agreement cover sheet, you are accepting that you have read and agree the enclosed Terms and Conditions (including the Schedules), which govern the Agreement between us. Further copies of the Terms and Conditions (including the Schedules) are available via our website: [www.swcomms.co.uk](http://www.swcomms.co.uk).
2. An Order constitutes an offer by the Customer to purchase certain Services, Software and/or Equipment in accordance with the enclosed Terms and Conditions (including Schedules).
3. Any quotation or estimate given by **swcomms** does not constitute an offer and **swcomms** reserves the right at any time to withdraw or revise any quotation or estimate and/or reject any order from the Customer notwithstanding the issue of a quotation or estimate.
4. An Order shall only be deemed to be accepted by **swcomms** when this cover sheet enclosing the relevant Order Form(s) and Terms and Conditions is produced by **swcomms** for signature by the Customer.
5. Each Order placed with **swcomms** will constitute a separate Agreement, to which the Terms and Conditions (including Schedules) will apply.
6. The Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

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

Customer (Organisation) Name in Full:	
Address:	
Contact Name:	Company Registration Number:

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

Signed:.....

Date:.....

Name:.....

Position:.....

For and on behalf of: **[REPEAT CUSTOMER (Organisation) NAME IN FULL]**

We recommend that you read our Terms and Conditions as a PDF so that you can increase the size of the text to read easily.



# DIRECT Debit

## AGREEMENT 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 businesspeople 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.

## TERMS AND CONDITIONS

Your Agreement with **swcomms** is made up of the following:

1. The Order Form(s)
2. These Terms and Conditions (this document)
3. The Schedules to these Terms and Conditions, being:
  - a. Schedule 1 (*Acceptance Testing*)
  - b. Schedule 2 (*Service Levels, Support and Maintenance*)
  - c. Schedule 3 (*Customer responsibilities*)

Together, these documents form the “**Agreement**” between you (our Customer) and **swcomms**.

If there is any conflict or ambiguity between the provisions of the documents listed above, a provision contained in a document higher in the list shall have priority over one contained in a document lower in the list, save that each of the Schedules shall rank equally.

The Agreement has been entered into on the date stated in the relevant Order Form(s) (“**Effective Date**”).

### AGREED TERMS

#### 1 DEFINITIONS

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

<b>Acceptable &amp; Fair Use Policy</b>	<b>swcomms</b> policy concerning the use of the Services as set out by <b>swcomms</b> from time to time, a copy of which is available upon request;
<b>Acceptance</b>	the acceptance or deemed acceptance by the Customer of any applicable Service(s) determined in accordance with clause 4 and Schedule 1 ( <i>Acceptance Testing</i> ) and “ <b>Accept</b> ” and “ <b>Accepted</b> ” shall be construed according to;
<b>Acceptance Date</b>	the date on which any relevant Service is Accepted or deemed Accepted;
<b>Acceptance Tests</b>	the acceptance tests to be performed by <b>swcomms</b> in respect of any applicable Service(s) in accordance with Schedule 1 ( <i>Acceptance Testing</i> );
<b>Agreement</b>	the contract between <b>swcomms</b> and you, our Customer, for the sale and purchase of goods and services in accordance with the relevant Order Form(s), these Terms and Conditions and the Schedules, which rank in the order of priority described at the beginning of these Terms and Conditions;
<b>Authorised User</b>	those employees and independent contractors of the Customer who are entitled to use the Services, Equipment and/or Software under this Agreement;
<b>Business Hours</b>	08:00 -18:00 UK time on a Working Day;
<b>Charges</b>	the charges for the Services, Software and/or Equipment (as applicable) as calculated in accordance with the relevant Order and set out in the Order Form(s);
<b>Confidential Information</b>	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;
<b>Customer</b>	the customer identified on the Order Form(s);
<b>Customer Data</b>	any data: (i) held by the Customer which is supplied or transferred to or disclosed by or on behalf of the Customer to <b>swcomms</b> , or which is held by the Customer and is accessible to <b>swcomms</b> 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;
<b>Customer Responsibilities</b>	the dependencies and Customer's responsibilities set out in Schedule 3 ( <i>Customer Responsibilities</i> ) and any other responsibilities of the Customer specified in this Agreement or agreed in writing between the Parties from time to time in connection with this Agreement;
<b>Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (EU) 2016/679; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);
<b>Director</b>	a person registered at Companies House as a director of the relevant Party;
<b>Documentation</b>	any user manual, hierarchy documents and schematics, configuration manuals, network plan or any other document issued by <b>swcomms</b> to the Customer pursuant to this Agreement in connection with the Services;
<b>Effective Date</b>	has the meaning given at the beginning of these Terms and Conditions;
<b>Employee Liabilities</b>	means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fines, losses, orders, penalties, disbursements, payments made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation and any legal costs and expenses;
<b>Employment Regulations</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Council Directive 77/187/EEC on the approximation of laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;
<b>Equipment</b>	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 any Services, as set out in the Order Form(s);
<b>Extended Term</b>	has the meaning given in clause 19.1;
<b>Force Majeure</b>	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;
<b>Hosted or Cloud-Based Service(s)</b>	the hosted or cloud-based services provided by <b>swcomms</b> which may or may not be provided as Managed Services to the Customer under this Agreement which are accessed remotely via the internet, as more particularly described in the Managed Services Order Form;
<b>Implementation Services</b>	any implementation, integration, configuration services and/or training to be provided by <b>swcomms</b> in connection with any Services, Software and/or Equipment specified in the Order Form and in accordance with any supporting documentation provided at the point of sale (which may or may not include a Project Plan, depending upon the Services, Software and/or Equipment);
<b>Initial Term</b>	the initial term of this Agreement commencing on the Acceptance Date;
<b>Intellectual Property Rights</b>	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);
<b>Locations</b>	the Customer's offices and locations as set out in the Order Form;
<b>Malware</b>	any known thing or device (including any software, code, file or computer) which may: prevent, impair or otherwise adversely affect the operation of any program 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,

<b>Managed Services Order Form</b>	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;
<b>Managed Services</b>	any Order Form relating to any Managed Services;
<b>Managed Services</b>	the managed services described in Managed Services Order Form which may be provided at or to the Location(s) set out in that Managed Services Order Form;
<b>Network Connectivity Service(s)</b>	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, which may or may not be provided as a Managed Service;
<b>Order</b>	the Customer's order for Services, Software and/or Equipment as set out in the Order Form(s), constituting an offer by the Customer to purchase those Services, Software and/or Equipment in accordance with these Terms and Conditions;
<b>Order Form(s)</b>	the relevant Customer purchase order form(s), including any Managed Services Order Form;
<b>Party or Parties</b>	(individually and together, as the context requires) <b>swcomms</b> and / or the Customer;
<b>Project Plan</b>	a project plan setting out the timescales for performance of the Parties' respective obligations in connection with any applicable Implementation Services and otherwise pursuant to this Agreement;
<b>Regulatory Body</b>	any governmental or regulatory authority or agency of competent jurisdiction;
<b>Schedules</b>	the Schedules to these Terms and Conditions, forming part of the Agreement;
<b>Service Description</b>	the description of the Services set out in the relevant Order Form(s), including any description of Managed Services set out in a Managed Services Order Form;
<b>Service Levels</b>	the service levels set out in Schedule 2 ( <i>Service Levels, Support and Maintenance</i> );
<b>Services</b>	the Implementation Services, Managed Services, Network Connectivity Services and/or Support and Maintenance Services (and “ <b>Service</b> ” shall mean any one of them);
<b>Software</b>	any Third Party Software;
<b>Support and Maintenance Services swcomms</b>	the support and maintenance services to be performed by <b>swcomms</b> , as described in Schedule 2 ( <i>Service Levels, Support and Maintenance</i> );
<b>Term</b>	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;
<b>Third Party Software</b>	has the meaning given in clause 19.1;
<b>Working Day</b>	the software programs proprietary to third parties, listed in the <i>Order Form(s)</i> , which are to be provided to the Customer without modification;
	a day on which banks are open for business in London, other than Saturday or Sunday or public holidays in England.

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 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”;
- 1.2.3 references to this Agreement are references to this Agreement as amended from time to time;
- 1.2.4 headings have been included for convenience only and shall not be used in construing any provision in this Agreement;
- 1.2.5 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.6 a reference to a clause or to a Schedule is a reference to a clause of, or a Schedule to, these Terms and Conditions;
- 1.2.7 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;
- 1.2.8 a reference to “writing” or “written” includes e-mail save in relation to the service of legal proceedings, variation of this Agreement or contractual notices, which must each be delivered by registered post;
- 1.2.9 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.

#### 2 APPOINTMENT

2.1 The Customer hereby appoints **swcomms** to provide, and in consideration for the payment of the Charges, **swcomms** shall provide to the Customer the Services, Software and/or Equipment set out in the relevant Order Form(s) in accordance with the provisions of this Agreement.

2.2 **swcomms** will use its reasonable endeavours to perform the Services in accordance with applicable Service Levels.

2.3 The parties do not intend or envisage that the commencement of the Term, or the provision of any Services under this Agreement, or the provision by **swcomms** of any additional services to the Customer, will constitute a relevant transfer for the purposes of the Employment Regulations. The Customer shall be liable to **swcomms** for all and any costs, expenses, liabilities (including Employee Liabilities) damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise or be made against **swcomms** by virtue of the Employment Regulations in connection with the provision of the Services under this Agreement or the provision by **swcomms** of any additional services to the Customer, made by or in respect of any person who was, or who claims to have been, employed or engaged by the Customer or a Past Service Provider in the provision of services of a similar nature to those provided by **swcomms** to the Customer at any time.

#### 3 IMPLEMENTATION SERVICES

3.1 Where applicable, **swcomms** shall provide the Implementation Services and perform each of the activities identified in any Project Plan.

3.2 Subject to clause 7 (*Delays*), **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.

#### 4 ACCEPTANCE TESTS

4.1 Where applicable to any Service, Software and/or Equipment, **swcomms** shall carry out Acceptance Testing in accordance with Schedule 1 (*Acceptance Testing*).

4.2 Where an Acceptance Test is not applicable to any of the Services, Software and/or Equipment, or prior to the completion of any applicable Acceptance Test, the Customer is deemed to have Accepted the relevant Services, Software and/or Equipment if it or they (as the case may be) is/are used commercially in the day to day business of the Customer (whereupon any applicable Acceptance Test is deemed waived).

#### 5 MANAGED SERVICES

5.1 Where applicable and 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 Managed Services comply in all material respects with the Service Description.

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

5.3 **swcomms** shall also provide the Support and Maintenance Services set out in Schedule 2 in accordance with the applicable Service Levels in respect of the Managed Services.

#### 6 EQUIPMENT

6.1 Where the Services include the delivery and, if applicable, installation of Equipment, that Equipment shall be made available for the Customer's benefit and use by Authorised Users in connection with the Services, in accordance with the following provisions of this clause 6.

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

6.3 **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 dated 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.

6.4 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.

6.5 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		
6.4.1	any risk in the Equipment shall pass to the Customer, who must obtain appropriate insurance cover in respect of that Equipment in accordance with clause 6.7.2;	8.4	The Customer undertakes to ensure it has appropriate security in place to protect information and communication systems from any threat from whatever source.
6.4.2	delivery shall be deemed to have taken place; and	9	<b>CUSTOMER RESPONSIBILITIES</b>
6.4.3	the Customer shall pay to <b>swcomms</b> all costs and expenses arising from such failure to take delivery (including storage and insurance charges).	9.1	In addition, and without prejudice to its other obligations set out in these Terms and Conditions, the Customer shall have the responsibilities and comply with the obligations set out in Schedule 3 ( <i>Customer Responsibilities</i> ) (as applicable to each Service).
6.5	Notwithstanding delivery and the passing of risk in the Equipment, the Equipment shall at all times remain the property of <b>swcomms</b> 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 <b>swcomms</b> .	10	<b>DELAYS</b>
6.6	The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Equipment, but if the Customer does so it will be an irremediable breach of this Agreement pursuant to clause 19.2.1 and all monies owing by the Customer to <b>swcomms</b> shall (without prejudice to any other right or remedy of <b>swcomms</b> ) forthwith become due and payable.	10.1	The Customer acknowledges that a failure or delay in fulfilling a Customer Responsibility may adversely impact <b>swcomms</b> ' ability to provide the Services. To the extent that <b>swcomms</b> 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), <b>swcomms</b> shall:
6.7	The Customer shall:	10.1.1	not be in breach of this Agreement;
6.7.1	have the right to use the Equipment in accordance with the terms of the Agreement and shall hold the Equipment as the <b>swcomms</b> ' bailee;	10.1.2	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 <b>swcomms</b> not being liable for any costs or losses sustained or incurred by the Customer arising from such failure;
6.7.2	not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;	10.1.3	be granted a time extension to any date affected by such failure to the extent attributable to the Customer's breach;
6.7.3	maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price on <b>swcomms</b> ' behalf from the date of delivery or deemed delivery;	10.1.4	be entitled to the full reimbursement of such reasonable additional cost and expense caused by the failure; to the extent within its own control, take commercially reasonable steps to mitigate and overcome the effects of the Customer's failure;
6.7.4	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 <b>swcomms</b> ;	10.1.5	keep the Customer reasonably and regularly updated on the progress of its attempts to mitigate the effects of the Customer's failures.
6.7.5	notify <b>swcomms</b> immediately if it becomes subject to any of the events described in clauses 19.2.2 to 19.2.11 of these Terms and Conditions; and	10.2	Where a delay is attributable in part to the Customer's default (including the Customer breaching the Customer Responsibilities) and in part due to <b>swcomms</b> ' default, the Parties shall negotiate in good faith with a view to:
6.7.6	give <b>swcomms</b> such information relating to the Equipment as <b>swcomms</b> may require from time to time. In the event of a breakage or defect in respect of the Equipment:	10.2.1	agreeing a fair and reasonable apportionment of responsibility for the delay; and
6.8.1	the Customer shall give notice in writing to <b>swcomms</b> within a reasonable time of discovery of such breakage or defect;	10.2.2	identifying and mitigating the consequences of the delay.
6.8.2	the Customer shall give <b>swcomms</b> a reasonable opportunity to examine such Equipment;	10.3	Any disputes about or arising out of such delays shall be resolved through the dispute resolution procedure set out in clause 23 ( <i>Dispute Resolution</i> ). Pending the resolution of the dispute both Parties shall continue to work to resolve the causes of, and mitigate the effects of, such delay.
6.8.3	the Customer shall provide <b>swcomms</b> at the Customer's cost; and		
6.8.4	<b>swcomms</b> shall provide a suitable replacement or repaired Equipment of substantially the same or greater functionality.	11	<b>WARRANTIES</b>
6.9	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.	11.1	Each Party warrants and undertakes to the other that:
6.10	Except as provided in this clause 6, <b>swcomms</b> shall have no liability to the Customer in respect of any Equipment failure.	11.1.1	it has full right, power and authority to enter into this Agreement;
7	<b>SALE OF EQUIPMENT AND RELATED WARRANTY</b>	11.1.2	this Agreement is executed by its duly authorised representative;
	Where the Customer wishes to obtain title and ownership of any Equipment supplied to it by <b>swcomms</b> (which shall only occur when specifically indicated in the Order Form), the terms in this clause 7 shall apply.	11.1.3	it shall ensure required resources of an appropriate level, background, skill and understanding are made available in order to comply with its obligations under this Agreement; and
7.1	The Equipment will be supplied substantially to any design or configuration described in any quotation. However, <b>swcomms</b> reserves the right to make reasonable changes at its discretion during the Term provided that such changes shall not reduce the design performance of the Equipment.	11.1.4	it shall comply with all applicable legislation in the performance of its obligations under this Agreement.
7.2	<b>swcomms</b> 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.	11.2	<b>swcomms</b> warrants that:
7.3	The relevant Order Form(s) shall specify the Charges applicable to such Equipment. The Customer shall pay an initial payment of 40% of the total applicable Charges upfront, followed by 50% of the total applicable Charges on delivery of the Equipment to the relevant Location(s) and 10% on completion of the installation of the Equipment. Where <b>swcomms</b> is not responsible for installation (which will be specified in the relevant Order Form), then the balance of 60% of the total applicable Charges shall be payable on delivery of the Equipment to the agreed Location(s).	11.2.1	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;
7.4	<b>swcomms</b> reserves the right to increase the Charges (price of the Equipment) to reflect any increase in the cost to <b>swcomms</b> in accordance with clause 15.1.1 of these Terms and Conditions.	11.2.2	the Documentation, Software and Services shall not infringe the Intellectual Property Rights of any third parties when used by the Customer in accordance with this Agreement, save that <b>swcomms</b> shall not be liable where Documentation, Software and/or Services fail to meet the warranties set out in this clause 11.2.1, where such failure is caused by:
7.5	If <b>swcomms</b> is delayed in or prevented from performing its obligations under this Agreement by any Customer event of Force Majeure (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 Order Form) or is requested by the Customer to delay delivery and/or installation and such delay, prevention or request results in delivery and installation not being completed within five (5) days of the estimated completion date the Customer shall:	11.2.2.1	software other than the Software running in the Customer's computing environment; and/or
7.5.1	promptly pay to <b>swcomms</b> the Charges attributable to any completed work, including for any Equipment ready to be delivered to the relevant Location(s), together with all costs and expenses of incurred by <b>swcomms</b> attributable to or resulting from such delay, prevention or request; and	11.2.2.2	modifications or customisations made by or on behalf of the Customer to the Equipment, Software or Services without <b>swcomms</b> ' prior written consent;
7.5.2	renegotiate with <b>swcomms</b> the time within which and the terms under which delivery and installation shall be completed.	11.2.3	the Services shall be undertaken with reasonable skill and care and in accordance with good industry practice.
7.6	Access and/or any permissions (including any third party permissions or consents required) to install Equipment in any Location shall be the responsibility of the Customer at the Customer's cost. <b>swcomms</b> does not include the cost of access requirements (including any access platforms, scaffolding or similar) in quotations. The Customer agrees to pay these costs invoiced by <b>swcomms</b> where adequate and legislatively compliant facilities are not provided by the Customer. <b>swcomms</b> shall not be liable for the cost whether direct or indirect of any delays to Equipment delivery and/or installation because access and permissions have not been granted, and such delays shall result in an additional Charge for lost time payable by the Customer to <b>swcomms</b> .	11.3	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 <b>swcomms</b> to the maximum extent permitted by law.
7.7	If the Customer uses Equipment provided under this clause at any time before <b>swcomms</b> has received full payment, then any balances of the total applicable Charges outstanding becomes immediately payable.	12	<b>INTELLECTUAL PROPERTY AND LICENCES</b>
7.8	Subject to clauses 7.10 and 7.11 below, <b>swcomms</b> warrants the Equipment (excluding software, which is not warranted to be error free) against any defects in workmanship, or materials for a period of 12 months from the date of delivery. If any defect manifests itself during that 12-month period <b>swcomms</b> will, at its expense and option, repair or replace the defective Equipment, or refund the portion of the Charges applicable to the defective Equipment (or part of it, as the case may be) and <b>swcomms</b> shall have no further liability to the Customer.	12.1	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:
7.9	Where <b>swcomms</b> elects to repair or replace the defective Equipment pursuant to clause 7.8 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 <b>swcomms</b> proves not to be defective or proves to be defective because of a reason outside <b>swcomms</b> ' direct control, the Customer will pay or refund to <b>swcomms</b> any repair, replacement, storage, testing, inspection and other incidental costs incurred by <b>swcomms</b> .	12.1.1	in the Software, Services, Equipment shall be owned by <b>swcomms</b> or its respective licensors; and
7.10	The above warranty does not extend to parts, materials or Equipment not manufactured by <b>swcomms</b> 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 <b>swcomms</b> .	12.1.2	in the Customer Data shall be owned by the Customer or its respective licensors.
7.11	Notwithstanding the warranty at clause 7.8, <b>swcomms</b> shall have no liability to the Customer unless the Customer allows <b>swcomms</b> 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 Charges for the Equipment have not been paid by the due date for payment.	12.2	The Customer shall take all such steps as shall be necessary to protect <b>swcomms</b> 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.
7.12	Any claim pursuant to the warranty at clause 7.8 must be in accordance with the following conditions:	12.3	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 <b>swcomms</b> . 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 <b>swcomms</b> and its successors and assigns.
7.12.1	where reasonable inspection of the Equipment would have revealed the alleged defect, the Customer must submit a full written report complying with clause 7.12.2 within seven (7) days after delivery of the Equipment;	12.4	In consideration for the Charges paid by the Customer to <b>swcomms</b> , <b>swcomms</b> 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 connection with the Services and in accordance with the terms of this Agreement. The Customer may not copy all or any part of the Software or the Documentation.
7.12.2	in any other case, the Customer must submit a full written report complying with clause 7.12.2 within ten (10) days following: (a) discovery of the alleged defect; (b) the point at which the alleged defect is or reasonably ought to have been discovered, and in any event within 12 months after delivery of the Equipment;	12.5	Use of the Services, Software and/or Equipment (as applicable) 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 <b>swcomms</b> 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 <b>swcomms</b> , 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.
7.12.3	the full written report to be submitted by the Customer shall include full details and information of the defect or problem encountered, a detailed description of any faults and the circumstances in which it arose, together with such other information as <b>swcomms</b> shall reasonably require at any time.	12.6	The Customer shall not:
7.13	The Customer acknowledges and agrees that 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 environmental 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, <b>swcomms</b> 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 and in respect of which <b>swcomms</b> excludes all liability. <b>swcomms</b> cannot guarantee performance as a result of such analysis. Due to extensive factors that can affect wireless performance, <b>swcomms</b> cannot guarantee performance unless otherwise expressly agreed in writing between <b>swcomms</b> and the Customer and subject to recognised tolerance standards in any event. The Customer further acknowledges and agrees that it is solely responsible for registering (when required) the location and use of such wireless Equipment with OFCOM.	12.6.1	(other than to the extent permitted by clause 12.4) copy or attempt to copy, 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;
7.14	The Customer acknowledges and agrees that Equipment security and other settings shall be provided at the default level. <b>swcomms</b> does not accept any liability whatsoever for any form of security breach affecting any Equipment or related software.	12.6.2	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 <b>swcomms</b> . 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 <b>swcomms</b> ;
8	<b>COMMUNICATION SYSTEMS</b>	12.6.3	access all or any part of the Software, Equipment or Services in order to build a product or service which competes with the Software and / or the Services;
8.1	Where <b>swcomms</b> undertakes to construct a communications system incorporating Equipment for a Customer then it shall do so in accordance with a specification (including system configuration details) given by and agreed with the Customer in writing as at the Effective Date. The Customer will be deemed to have accepted such specification (including system configuration details) by placing an Order.	12.6.4	license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, Services or the Equipment available to any third party;
8.2	The Customer must notify <b>swcomms</b> in writing of any subsequent changes required that will affect the specification and the configuration of the system within five days from installation. Any changes required after this period will be charged to the Customer at <b>swcomms</b> ' normal rates in addition to the Charges.	12.6.5	use the Software, Services or Equipment to provide services to third parties; or
8.3	<b>swcomms</b> will have no obligation or liability to the Customer where functionality of the supplied Equipment is dependant (partially or wholly) on the performance of equipment (including software) not provided under this Agreement.	12.6.6	attempt to obtain, or assist third parties in obtaining, access to the Software, Services or Equipment other than as provided under this clause.
		12.7	The Customer grants to <b>swcomms</b> a non-exclusive, royalty free licence during the Term and any exit assistance period pursuant to clause 20.1.3 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 <b>swcomms</b> 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, subject always to clause 14.9.
		12.8	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 <b>swcomms</b> .
		12.9	<b>swcomms</b> 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 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. The Customer's sole remedies in respect of any such infringement are as set out in clause 12.10 below.
		12.10	If the Customer's use of the 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 <b>swcomms</b> there is likely to be an infringement, of a third party's Intellectual Property Rights, <b>swcomms</b> shall at its own expense:
		12.10.1	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
		12.10.2	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
		12.10.3	if the remedies in clauses 12.10.1 and/or 12.10.2 cannot be achieved, terminate this Agreement and make a pro-rata refund to the Customer of any Charges paid in advance under this Agreement.
		12.11	The Customer shall indemnify on demand, defend and hold harmless <b>swcomms</b> 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 <b>swcomms</b> 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. <b>swcomms</b> shall act in accordance with clause 16 ( <i>Conduct of Indemnified Claims</i> ) in relation to such third party Intellectual Property Rights claims.

12.12	The Customer will agree, when requested, to act as a reference and provide case study material for <b>swcomms</b> or its suppliers.	15.4	Where Services, Software and any Equipment 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), <b>swcomms</b> shall invoice, and the Customer shall pay, the relevant Charges (without deduction or set-off) as set out in this clause and clause 7 in the case of any Equipment sale to the Customer.
13	<b>CONFIDENTIALITY</b>	15.5	In the event of any partial delivery of the Services, Software or any Equipment, without prejudice to any claim that the Customer may have in respect of any part of the Services that have not been delivered, <b>swcomms</b> shall be entitled to invoice the Customer the proportion of the Charges due for those parts of the Services, Software or any Equipment that have been provided to the Customer or otherwise used or benefited from by the Customer.
13.1	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.	15.6	The Customer shall pay any invoice submitted to it by <b>swcomms</b> , in full and in cleared funds, within fourteen (14) days from the date of <b>swcomms'</b> invoice without deduction or set-off.
13.2	Nothing contained in clause 13.1 shall apply to prevent either Party from disclosing any Confidential Information:	15.7	If any sums invoiced to the Customer by <b>swcomms</b> (other than those that are subject to a bona fide dispute pursuant to clause 15.9) are not paid within the specified time limits set out in this clause 15, <b>swcomms</b> shall be entitled to:
13.2.1	that is in the possession of the receiving Party (with full right to disclose) prior to receiving it from the disclosing Party;	15.7.1	suspend all Services and/or the provision of all Software and any Equipment until payment has been made in full; and/or
13.2.2	to its professional advisers and potential investor and acquirers provided they are made aware of this clause;	15.7.2	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.
13.2.3	which is or becomes public knowledge other than by breach of this clause;	15.8	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 <b>swcomms'</b> invoice(s) at the appropriate rate and payable by the Customer to <b>swcomms</b> in accordance with this clause 15.7.1.
13.2.4	which it may independently develop or receive from a third party (with full right to disclose); or	15.9	If the Customer (acting in good faith) disputes part or all of any invoice, it shall notify <b>swcomms</b> 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 15.6, and the disputed element of any invoice will be dealt with in accordance with clause 23 (Dispute) of these Terms and Conditions.
13.2.5	pursuant to a statutory, legal or parliamentary obligation or court order placed upon the Party making the disclosure.	15.10	<b>swcomms</b> 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:
13.3	Nothing in this clause 13 shall prevent <b>swcomms</b> 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 <b>swcomms</b> or the Customer of any Intellectual Property Rights or the Data Protection Legislation.	15.10.1	5 per cent (5%); or
13.4	This clause shall survive the expiry or termination of this Agreement for a period of three (3) years.	15.10.2	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.
14	<b>CUSTOMER DATA AND DATA PROTECTION</b>	15.11	In addition and without prejudice to clause 15.10, <b>swcomms</b> reserves the right to increase the Charges to reflect any increase in costs to <b>swcomms</b> (whether such costs are incurred directly or indirectly, through the supply chain or otherwise) which is due to:
14.1	The Customer shall have sole responsibility for:	15.11.1	any change in delivery dates, quantities or specifications for the Services, Software or any Equipment or any delay caused by any instructions of the Customer or failure of the Customer to give <b>swcomms</b> adequate information or instructions or carry out any of its obligations under this Agreement;
14.1.1	the legality, reliability, integrity, accuracy and quality of the Customer Data;	15.11.2	legislative changes, quasi governmental organisation or public body sanctioning or mandating any increase in cost for regulated products or services;
14.1.2	maintaining appropriate security, protection and backup of Customer Data (which might include use of encryption to protect Customer Data from unauthorised access and routinely archiving Customer Data); and	15.11.3	foreign currency fluctuations;
14.1.3	determining the suitability of the Services in light of the type of Customer Data used with the Services.	15.11.4	costs passed on by <b>swcomms'</b> suppliers.
14.2	<b>swcomms'</b> obligations with respect to Customer Data are limited to those obligations described in this clause 14. <b>swcomms</b> makes no other representation regarding the security of Customer Data.	15.12	In addition to the Charges, <b>swcomms</b> shall have the right to charge the Customer:
14.3	In relation to Hosted and Cloud-based Services, <b>swcomms</b> shall follow its archiving and security procedures in respect of Customer Data. <b>swcomms</b> shall promptly notify the Customer in writing of any actual or suspected loss or damage to the Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for <b>swcomms</b> to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data. <b>swcomms</b> shall not be responsible for any loss, destruction, alteration or unauthorised access to or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by <b>swcomms</b> to perform services related to Customer Data maintenance). This clause 14.3 is without prejudice to the generality of clause 14.4.	15.12.1	in the event that the need for Support and Maintenance Services results from any of the events in Schedule 2 (Service Levels, Support and Maintenance) or where a fault has arisen (in the reasonable opinion of <b>swcomms</b> ) from improper use, act or omission, act of god, any third party acts or omissions or maintenance by the Customer of the Services, Software or Equipment;
14.4	Both the Customer and <b>swcomms</b> will comply with all applicable requirements of the Data Protection Legislation in relation to any processing of Personal Data. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.	15.12.2	for all costs incurred as a result of carrying out maintenance or repair works which in <b>swcomms'</b> reasonable opinion is considered unnecessary;
14.5	The Customer and <b>swcomms</b> acknowledge and agree that, if and only to the extent that <b>swcomms</b> processes any Personal Data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the Controller and <b>swcomms</b> is the Processor of that Personal Data for the purposes of the Data Protection Legislation.	15.12.3	when no faults were found with the Services, Software or any Equipment after investigation, despite a fault being reported.
14.6	Without prejudice to the generality of clause 14.4, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to <b>swcomms</b> for the duration and purposes of this Agreement so that <b>swcomms</b> may lawfully use, process and transfer the Personal Data in accordance with and for the duration of this Agreement on the Customer's behalf.	15.13	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.
14.7	Without prejudice to the generality of clause 14.4, <b>swcomms</b> shall, in relation to any Personal Data processed in connection with the performance by <b>swcomms</b> of its obligations under this Agreement:	15.14	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.
14.7.1	process that Personal Data only on the documented written instructions of the Customer (being this Agreement unless otherwise agreed in writing with the Customer) unless <b>swcomms</b> is required by applicable law to otherwise process that Personal Data. Where <b>swcomms</b> is relying on applicable law as the basis for processing Personal Data, <b>swcomms</b> shall promptly notify the Customer of this before performing the processing required by such applicable law unless that applicable law prohibits <b>swcomms</b> from so notifying the Customer;	16	<b>CONDUCT OF INDEMNIFIED CLAIMS</b>
14.7.2	ensure that all <b>swcomms</b> personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;	16.1	In respect of any indemnity given by either Party (" <b>Indemnifying Party</b> ") to the other Party (" <b>Indemnified Party</b> ") under this Agreement, the Indemnified Party shall:
14.7.3	not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled: (a) the Customer or <b>swcomms</b> has provided appropriate safeguards in relation to the transfer; (b) the data subject has enforceable rights and effective legal remedies; (c) <b>swcomms</b> complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; (d) <b>swcomms</b> complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;	16.1.1	allow the Indemnifying Party (at its request) to use its chosen advisors and to have the exclusive conduct of the proceedings;
14.7.4	taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible and at the Customer's cost, in responding to any request from a Data Subject;	16.1.2	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
14.7.5	taking into account the nature of the processing and the information available to <b>swcomms</b> , assist the Customer in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;	16.1.3	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.
14.7.6	notify the Customer without undue delay on becoming aware of a Personal Data Breach;	16.2	The Indemnified Party shall have the right but not the obligation to join in any proceedings conducted by the Indemnifying Party pursuant to clause 16.1.1 and be represented by its own legal advisors.
14.7.7	at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this Agreement unless required by applicable law to store the Personal Data; and	17	<b>LIABILITY</b>
14.7.8	maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and allow for audits by the Customer or the Customer's designated auditor and, in this regard, immediately inform the Customer if, in the opinion of <b>swcomms</b> , an instruction infringes the Data Protection Legislation.	17.1	This clause 17 sets out the entire financial liability of <b>swcomms</b> (including any liability for the acts or omissions of its officers, employees, agents, suppliers and sub-contractors) to the Customer in respect of:
14.8	Each of <b>swcomms</b> and the Customer shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).	17.1.1	any breach of this Agreement;
14.9	To the extent applicable, the Customer consents to <b>swcomms</b> appointing such third-party processors of Personal Data under this Agreement as may be required to deliver the Services to the Customer. <b>swcomms</b> confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 14 and in either case which <b>swcomms</b> confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and <b>swcomms</b> , <b>swcomms</b> shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 14.9.	17.1.2	any use made by the Customer (including its officers, employees and contractors) of the Documentation, Services, Software and/or any Equipment or any part of any (them); and
15	<b>CHARGES AND PAYMENT TERMS</b>	17.1.3	any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
15.1	In consideration of the provision of the Services, Software and any Equipment by <b>swcomms</b> , the Customer shall pay the Charges (without deduction or set-off) as set out in the Order Form(s) or otherwise calculated in accordance with the relevant Order(s).	17.2	Subject to clause 17.3, 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:
15.2	Clause 15.3 shall apply to any Services which <b>swcomms</b> provides on a time and materials basis (if any) and clause 15.4 shall apply to any Services, Software and/or Equipment <b>swcomms</b> provides for a fixed price. The other provisions of this clause 15 shall apply in either case.	17.2.1	loss of revenue, profits, contracts, business or anticipated savings;
15.3	Where any Services are provided on a time and materials basis:	17.2.2	loss of goodwill or reputation;
15.3.1	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 <b>swcomms</b> standard fee rates;	17.2.3	loss or corruption of data or information;
15.3.2	<b>swcomms</b> standard daily fee rates for each individual engaged in providing the Services are calculated on the basis of an eight-hour day worked during Business Hours;	17.2.4	special, indirect or consequential loss or damage,
15.3.3	<b>swcomms</b> 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 Business Hours;	17.3	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. Nothing in this Agreement shall exclude or limit liability of either Party for:
15.3.4	<b>swcomms</b> shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom <b>swcomms</b> 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 <b>swcomms</b> for the performance of the Services, and for the cost of any materials; <b>swcomms</b> shall ensure that every relevant individual whom it engages on the Services completes time sheets recording time spent on the Services, and <b>swcomms</b> shall use such time sheets to calculate the time and materials portion of the Charges;	17.3.1	death or personal injury resulting from its negligence; fraud or fraudulent misrepresentation; or
15.3.5	<b>swcomms</b> 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 <b>swcomms</b> 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; the Customer shall correctly sign a direct debit mandate to pay <b>swcomms</b> for applicable Services. Provision and payment by direct debit by the Customer is a specific condition of <b>swcomms</b> supplying certain Services to the Customer.	17.3.2	any other liability that cannot be excluded or limited by law.
18		17.4	Subject to clauses 17.2 and 17.3:
18.1		17.4.1	the total liability of <b>swcomms</b> 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
18.2		17.4.2	(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 <b>swcomms</b> in a calendar year.
18.3		17.5	<b>swcomms</b> will have no liability under the Agreement if and to the extent that any alleged defect or breach of this Agreement has been caused or the cost of remedying the defect has been increased by:
19		17.5.1	the alteration or repair of the Services, Software and/or any Equipment or any part of them otherwise than by <b>swcomms</b> , or without <b>swcomms'</b> prior written consent or not in accordance with <b>swcomms'</b> instructions;
19.1		17.5.2	the use of the Documentation, Services, Software and/or any Equipment other than for the purpose(s) for which it was intended;
		17.5.3	the misuse, neglect or improper storage of Services, Software and/or any Equipment;
		17.5.4	the installation or continued use of the Services, Software and/or any Equipment after the time at which the alleged defect is, or ought reasonably, to have been discovered; and / or
		17.5.5	any error or omission in any specification design, information, Customer Data or other item provided by the Customer.
		18	<b>INSURANCE</b>
		18.1	<b>swcomms</b> shall take out and maintain the following insurances on a per occurrence or series of occurrences arising from one event basis throughout the Term:
		18.1.1	Employers liability insurance of not less than £10 million;
		18.1.2	Public liability insurance of not less than £5 million.
		18.2	Within a timely manner of the Customer's request, <b>swcomms</b> will provide the Customer with evidence that the relevant premiums have been paid.
		18.3	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 Services, Software, Equipment or any part of them.
		19	<b>TERM AND TERMINATION</b>
		19.1	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 Form(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 " <b>Extended Term</b> ") unless either Party notifies the other Party of termination, in writing by registered post (or similar), at least ninety (90) Working Days, but not more than six (6) calendar months 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

			infringement could expose <b>swcomms</b> or the Customer to liability.
19.2	<p><b>"Term").</b> Unless otherwise specified in the Order Form, the Initial Term shall be five (5) years.</p> <p>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:</p> <p>19.2.1 the other Party commits a material breach of any of the terms of this Agreement which is incapable of remedy;</p> <p>19.2.2 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 thirty (30) 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;</p> <p>19.2.3 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;</p> <p>19.2.4 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;</p> <p>19.2.5 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;</p> <p>19.2.6 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;</p> <p>19.2.7 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;</p> <p>19.2.8 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;</p> <p>19.2.9 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;</p> <p>19.2.10 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 19.2.3 to clause 19.2.9 (inclusive); or</p> <p>19.2.11 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.</p>	24 24.1 24.2 24.3 24.4 25 25.1 25.2 25.3 25.4	<p><b>ENTIRE AGREEMENT</b></p> <p>The Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all prior agreements, promises, assurances, warranties, representations, arrangements and understandings between them, whether written or oral, relating to the Services, Software and any Equipment (where applicable).</p> <p>Each of the Parties acknowledges and agrees that in entering into the Agreement it has not relied on, and shall have no remedies in respect of, any statement, representation, warranty, understanding, undertaking, promise or assurance (whether made innocently or negligently) of any person that is not set out in the Agreement.</p> <p>Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Agreement.</p> <p>Unless expressly stated in the Agreement, no representation relating to, or in any way connected with, the Services, Software and/or any Equipment (or any of them) shall be deemed to be made on behalf of <b>swcomms</b>, and no such representation shall bind <b>swcomms</b> or any of its employees, officers, agents or subcontractors.</p> <p><b>NOTICES</b></p> <p>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 25.2 (or as otherwise notified by that Party in writing to the other Party). Any notice shall be deemed to have been received:</p> <p>25.1.1 if hand delivered or sent by prepaid first class recorded delivery or special delivery, at the time of delivery; and</p> <p>25.1.2 if sent by prepaid first class post (other than by prepaid first class recorded delivery or special delivery), two (2) Working Days from the date of posting, provided that if deemed receipt occurs on a non-Working Day or after 17:30 on 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 25, references to any time shall be to London time.</p> <p>25.2 The addresses of the Parties for the purposes of this clause 25 shall be as set out in clause 1.1 (in the case of <b>swcomms</b>) and the relevant Order Form(s) (in the case of the Customer).</p> <p>25.3 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 25.2 (or as otherwise notified by that Party under this clause 25) 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.</p> <p>25.4 A notice required to be given under this Agreement shall not be validly given if sent by e-mail.</p>
19.3	In the event that any payment (other than those that are subject to a bona fide dispute) has not been received by <b>swcomms</b> in cleared funds by the end of the period of 14 days following the due date for payment, <b>swcomms</b> shall be entitled to (without prejudice to its other rights and remedies) terminate this Agreement by written notice to the Customer with immediate effect.	26	<b>ASSIGNMENT</b>
19.4	<b>swcomms</b> reserves the right to terminate the Agreement by written notice to the Customer with immediate effect and without liability if:	26.1 26.2	<b>swcomms</b> 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.
	19.4.1 the Customer challenges or disputes the validity of any of <b>swcomms</b> or its licensors Intellectual Property Rights;	26.2	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 <b>swcomms</b> , such consent not to be unreasonably withheld or delayed.
	19.4.2 a site inspection at any time reveals matters of which <b>swcomms</b> was unaware or if it perceives acting reasonably that the Agreement (or part of it) cannot be performed for any reason. In such circumstances, in addition and without prejudice to clause 20.1.4 below, the Customer may be liable to pay <b>swcomms</b> for any reasonable costs incurred by <b>swcomms</b> up to and arising out of such termination;	27 27.1	<b>GENERAL</b>
	19.4.3 any licence or other consent considered by <b>swcomms</b> 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;	27.2	<b>Waiver:</b> 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 to be a waiver of the provision itself or any related right or remedy. Any waiver to be effective must be in writing and specify the rights waived.
	19.4.4 a licence under which the Customer has the right to run its telecommunications system and connect it to <b>swcomms</b> ' system is revoked, amended or otherwise ceases to be valid and is not immediately replaced by another valid licence or licence acceptable to <b>swcomms</b> ;	27.3	<b>No partnership or agency:</b> 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. <b>swcomms</b> is engaged as an independent contractor and not as an employee or agent of customer.
	19.4.5 any other Agreement relating to a separate Order is terminated.	27.3	<b>Severance:</b> If any provision of this Agreement:
19.5	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 relevant Extended Term. 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 <b>swcomms</b> by its suppliers or otherwise, then in turn <b>swcomms</b> will increase charges to the Customer by a similar amount in accordance with clause 15.11. The Customer will agree to pay these varied charges until the end of this Agreement and subject to a written notification by <b>swcomms</b> of these changes.	27.3.1 27.3.2	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;
19.6	If the Customer is subject to any event set out in clause 19.2, then, without limiting any other right or remedy <b>swcomms</b> may have, <b>swcomms</b> may at any time:	27.3.2	is 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.
	19.6.1 require the Customer to promptly deliver up all Equipment in its possession; and	27.4	The Parties agree, in the circumstances referred to in clause 27.3.1 and if clause 27.3.1 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.
	19.6.2 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, Software and Equipment (as applicable).	27.5	<b>Counterparts:</b> 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.
20	<b>CONSEQUENCES OF TERMINATION</b>	27.6	<b>Non-solicitation:</b> 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.
20.1	On the termination of this Agreement:	27.7	<b>Further assurance:</b> 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.
	20.1.1 all licences granted under this Agreement shall immediately terminate and the Customer shall (at its sole cost) return (or at <b>swcomms</b> ' option, destroy) all media on which the Software is held;	27.8	<b>Third party rights:</b> 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.
	20.1.2 subject always to clause 14.7.6, <b>swcomms</b> 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);	27.9	<b>Variation:</b> These terms and conditions are the sole terms and conditions of the Agreement between <b>swcomms</b> and the Customer. No variation or modification of this Agreement and no agreement made or purported to be made between <b>swcomms</b> and the Customer inconsistent with this Agreement shall be valid or of any effect unless made in writing and signed by a Director of <b>swcomms</b> and a duly authorised representative of the Customer.
	20.1.3 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 <b>swcomms</b> ;	27.10	<b>Governing law:</b> 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.
	20.1.4 <b>swcomms</b> shall provide reasonable assistance to the Customer and or its agents/suppliers to facilitate an orderly transfer of the provision of the Services to the Customer's new service provider at <b>swcomms</b> ' then current time and materials rates for up to 6 (six) months following termination of this Agreement;		<b>Jurisdiction:</b> The Parties irrevocably agree that, subject to clause 23 (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).
	20.1.5 the Customer shall immediately pay to <b>swcomms</b> all of <b>swcomms</b> outstanding unpaid invoices and, in respect of Services, Software and any Equipment supplied but for which no invoice has been submitted, <b>swcomms</b> 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 <b>swcomms</b> in respect of works to disconnect and reverse engineer any site or data centre-based and/or internet-related Equipment, Software and/or Services.		
20.2	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 7 (Sale of Equipment and related warranty), 12 (Intellectual property and licences), 13 (Confidentiality), 14 (Data protection and Customer Data), 15 (Charges and payment terms), 17 (Liability), 19 (Term and termination), 20 (Consequences of termination) and 23 (Dispute resolution)) shall survive the termination or expiry of this Agreement.		
20.3	Where this Agreement is deemed to have been terminated, should it be subsequently revived, the same terms and conditions of this Agreement shall apply to the revived Agreement unless otherwise agreed in writing between the Parties.		
21	<b>FORCE MAJEURE</b>		
21.1	Neither Party, provided that it has complied with the provisions of clause 21.3, 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 an event of Force Majeure.		
21.2	Notwithstanding the foregoing in clause 21.1 and subject always to clause 21.5, this Agreement will remain in full force and effect for the duration of the Force Majeure event and the Parties shall use all commercially reasonable endeavours to perform or resume performance of such obligations hereunder during any such Force Majeure event.		
21.3	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.		
21.4	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.		
21.5	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.		
22	<b>GOVERNANCE</b>		
	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.		
23	<b>DISPUTE RESOLUTION</b>		
23.1	All disputes between <b>swcomms</b> and the Customer arising out of or relating to this Agreement shall be referred by <b>swcomms</b> ' Customer Service team or the Customer's Representative (as applicable) to the other for resolution. The relevant <b>swcomms</b> Customer Service representative 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.		
23.2	If any dispute cannot be resolved pursuant to the clause 23.1 within 10 (ten) Working Days, that dispute shall be referred to a Director of <b>swcomms</b> 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.		
23.3	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:		
	23.3.1 breach or threatened breach of confidentiality;		
	23.3.2 infringement or threatened infringement of its Intellectual Property Rights; and / or		
	23.3.3 infringement or threatened infringement of the Intellectual Property Rights of a third party, where such		

**SCHEDULE 1 – ACCEPTANCE TESTING**

Where Acceptance Testing is indicated in the Order Form(s) as applying to any Service, Software or Equipment, the provisions of this Schedule shall apply.

**ACCEPTANCE TESTS**

1. Where **swcomms** considers that the Implementation Services in respect of an applicable Service have been completed and the relevant Service is ready for activation, it shall provide the Customer with notice confirming this.
2. **swcomms** shall carry out the Acceptance Tests in respect of each applicable Service that is ready for activation. The Acceptance Tests, Acceptance Test success criteria and Acceptance Test data used by **swcomms** shall be such as **swcomms** deems reasonably required to demonstrate that the Service performs in all material respects in accordance with the Service Description.
3. The Customer shall ensure that it provides all necessary employees to witness and deal with enquires relating to 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.
4. If a Service meets the relevant Acceptance Test success criteria, the Customer shall issue written notice of Acceptance in respect of that 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 pursuant to clause 4.2 of these Terms and Conditions.
5. If a Service fails to meet the relevant criteria for the Acceptance Tests the Customer shall be entitled to:
  - a. notify **swcomms** that the 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 Service specified in the Project Plan remedy the relevant failures and thereafter submit the Service for further Acceptance Tests;
  - b. notify **swcomms** that it deems the 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);
  - c. notify **swcomms** that it deems the Service 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 relevant Service.
6. Acceptance shall be deemed to have occurred on whichever is the earliest of:
  - a. the Customer issuing a written notice of Acceptance for the Service that is the subject of the Acceptance Tests;
  - b. the Customer issuing of a written notice that the Service is deemed Accepted by the Customer, notwithstanding any failure to meet the relevant Acceptance Test success criteria;
  - c. the expiry of five (5) Working Days after the completion of all Acceptance Tests in respect of a Service, unless the Customer has given any written notice of earlier Acceptance or rejection under paragraph a or b; and/or
  - d. the Customer's use in whole or in part of the Service that is the subject of the Acceptance Tests pursuant to clause 4.2 of these Terms and Conditions.

**SCHEDULE 2 – SERVICE LEVELS, SUPPORT AND MAINTENANCE**

**1 DEFINITIONS**

In this Schedule the following definitions shall have the following meanings:

- Emergency Maintenance** means where **swcomms** requires service downtime to carry out infrastructure works;
- Incident** 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;
- Performance Monitoring Report** means those reporting requirements outlined below;
- 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;
- Reporting Period** shall mean a 12-month rolling period;
- Response Time** 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;
- Resolution 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:
  - the cause of the Incident has been removed and the Services are being provided in accordance with the Service Description; or
  - the Customer has been provided with a workaround or temporary fix in relation to the Incident; the Customer has been provided with a workaround or temporary fix in relation to the Incident;
- Seriously Deficient** means a drop in the Service Level beyond the levels detailed;
- Service Call** initial call from the Customer's IT service desk to **swcomms**' service desk providing full details of the Incident that has arisen;
- 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;
- Service Level Failures** means **swcomms**' failure to deliver the Services in accordance with the agreed Services Levels;
- Severity Levels** means the severity levels set out below;
- System Unavailability** shall take the meaning detailed below.

**2 SERVICE LEVELS & SERVICE CREDITS**

- 2.1 The Services shall be available at a minimum of 95% for the Reporting Period across the entire Service for all Locations and all Authorised Users of the Customer ("**System Availability**").
- 2.2 The System Availability shall not include any Planned Maintenance or Emergency Maintenance (in respect of which **swcomms** shall endeavour to provide the Customer with reasonable notice).
- 2.3 The System Availability shall be measured on a monthly basis during the Reporting Period.
- 2.4 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 unavailable time being defined "**System Unavailability**") shall be recorded and aggregated over the Reporting Period by **swcomms**.
- 2.5 System 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 System 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)  
**System Availability = 99.72%**

- 2.6 System Availability is calculated for the whole estate, so A is calculated according to the number of individual Locations and Authorised 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 Locations and Authorised Users affected by a total loss of service.

**Support and Maintenance Services**

- 2.7 **swcomms** will provide to the Customer a support desk that will provide a means for fault reporting and query answering (being the Support and Maintenance Services). 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**' support desk and responses by **swcomms** will be returned to the same.
- 2.8 **swcomms** shall record each individual communication to the support 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 outlined at paragraph 2.12 below. **swcomms** will provide Remote Incident Management support for the Equipment and Services. On site (non-remote) attendance outside of Business Hours are provided on a pay as you use service, unless otherwise indicated on the Order Form.
- 2.9 Availability of the Services shall be assigned a Service measured in accordance with Availability in accordance with the following Table:

**2.10 Service Performance Bands**

Service Level		Service Availability Bands				
		A	B	C	D	E
System Availability	Services Availability - Service Availability is measured at the operating system level	>=95.0%	94.9 -93.0%	92.9 -91.0%	91.9 -90.0%	below 90.0%

Priority	Description
P1	A total or severe loss of service.
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.

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.

Severity Level	Response Time	Resolution or Workaround Time
P1	Within four (4) elapsed Business Hours	Within eight (8) elapsed Business Hours
P2	Within six (6) elapsed Business Hours	Within 24 (twenty-four) elapsed Business Hours
P3	Within eight (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

- 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 23 (Dispute Resolution) of these Terms and Conditions;
- 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 above and in accordance with the Severity Levels;
- 2.12.4 The measurement of the time elapsed since receiving notification of an Incident for resolution (and for the purposes of determining whether swcomms has met the target Resolution Time) shall be suspended where swcomms is awaiting the completion of any action or responsibility of the Customer or of any the Customer third parties.
- 2.13 To facilitate swcomms obligations the Customer shall:
- 2.13.1 provide an IT Support Facility with skilled, experienced and qualified staff through which all communications between both Parties are channelled. No other Customer officer, employee or contractor shall be contact swcomms in relation to an Incident;
- 2.13.2 provide a point of contact to facilitate the resolution of Incidents by swcomms both during and if applicable outside of Business Hours;
- 2.13.3 shall (acting reasonably, in a professional manner and in accordance with good industry practice) review any fault that may appear to be the responsibility of swcomms before reporting it to swcomms. This includes ensuring the cause of the potential Incident being reported by the Customer site is not a Customer Responsibility;
- 2.13.4 promptly comply with any and all reasonable requests made by swcomms to assist the resolution of Incidents by swcomms. Where swcomms is waiting for a reasonably requested the Customer input to resolving an Incident, then the waiting time associated with the request shall be deducted from the Service Level calculation (just like Planned Maintenance and Emergency Maintenance). The Response Time and Resolution Time shall be on hold whilst swcomms are waiting for a Customer response.
- 2.13.5 provide an escalated point of contact outside of Business Hours where a fault resolution may require a relevant purchase authority or the Customer's agreement not to continue with an Incident Resolution – in which case the swcomms Resolution Time shall be suspended.
- 2.14 swcomms shall:
- 2.14.1 provide, run and maintain the Incident Management System to allow for a largely automated Incident Management process;
- 2.14.2 receive, log and dispatch or transfer Service Calls, as appropriate;
- 2.14.3 assess and determine the impact of an Incident and with Customer assign a Severity Level to it;
- 2.14.4 open an Incident ticket to document an Incident;
- 2.14.5 prioritise Incidents in accordance with the assigned Severity Levels;
- 2.14.6 perform initial Incident determination;
- 2.14.7 Incidents will be automatically closed after 2 (two)-days if no response to an Incident closure request is received;
- 2.14.8 Measure the agreed Service Levels in accordance with the Service Availability calculations.
- 2.15 Service Credits
- Any failure by swcomms to provide the Services in accordance with the Service Levels will result in the provision by swcomms to the Customer of Service Credits as determined in the section below:
- 2.15.1 Service Credits shall represent a rebate of the monthly Charges for the Services payable in respect of the month in which the failure to meet the relevant Service Levels occurred;
- 2.15.2 The Service Credits incurred for any month during the relevant Reporting Period shall be deducted from the total Charges payable as 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.

## SCHEDULE 3 – CUSTOMER RESPONSIBILITIES

- 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 Services, Software and Equipment (as applicable) in accordance with the Agreement.
- 2 In respect of the Services, Software and Equipment (where applicable) generally, the Customer shall:
- 2.1 provide, for swcomms, its agents, subcontractors, consultants, suppliers, officers and employees, in a timely manner and at no charge, access to the Customer's Locations and other relevant premises, office accommodation and other facilities as reasonably required by swcomms in relation to the fulfilment of swcomms' obligations under this Agreement;
- 2.2 provide, in a timely manner free of charge, such or access to such (as applicable) information, documentation, data, other materials and systems as swcomms reasonably requires to provide the Services, and ensure that it is accurate in all material respects;
- 2.3 be responsible (at its own cost) for preparing and maintaining the relevant premises for the receipt of the Services and the utilities;
- 2.4 procure the full co-operation with swcomms of any suppliers, sub-contractors, consultants or agents to the Customer or other entities as swcomms reasonably requires to facilitate swcomms' provision of the Services;
- 2.5 inform swcomms in advance of all reasonable 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 Services, Software and Equipment (as applicable) 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 or otherwise use the Services, Software or Equipment (as applicable) otherwise than in accordance with the terms of this Agreement;
- 2.9 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;
- 2.10 (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;
- 2.11 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 Services to the Customer;
- 2.12 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 any Equipment supplied by swcomms under this Agreement, the Customer shall:
- 3.1 use all Equipment in accordance with any and all operator and safety instructions or other similar documentation provided;
- 3.2 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;
- 3.3 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;
- 3.4 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 the Customer's own expense) and receiving Equipment by post/courier, Equipment installation and systems administration;
- 3.5 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;
- 3.6 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;
- 3.7 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;
- 3.8 not affix the Equipment to anything unless using fixings approved and supplied by **swcomms**;
- 3.9 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;
- 3.10 not (without the prior written consent of a **swcomms** Director) remove Equipment from the Location **swcomms** installs it at;
- 3.11 not attempt to make any repairs, alterations, modifications, extensions or attachments to the Equipment without **swcomms**' prior written consent;
- 3.12 (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 Agreement, 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;
- 3.13 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.
- 4 In respect of Network Connectivity Services:
- 4.1 **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.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 The Customer undertakes to use the Services in accordance with such additional conditions as may be notified in writing to the Customer by **swcomms** from time to time and will not use the Services for illegal purposes. Where use is related to packaged and bundled options then a Fair Use Policy is applicable in all circumstances. Customers will have the opportunity to restrict such use or pay extra according to use. The Fair Use Policy includes the option by **swcomms** to manage the Customers traffic characteristics across the Service to help benefit the wider Customer profile of **swcomms**.
- 4.6 **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.
- 4.7 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**.
- 4.8 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.
- 4.9 By signing 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**.
- 4.10 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.
- 5 In respect of any Hosted and Cloud-Based Services, the Customer undertakes that:
- 5.1 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;
- 5.2 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;
- 5.3 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; 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;
- 5.5 it shall permit **swcomms** to audit the Hosted and Cloud-Based Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the **swcomms**' expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- 5.6 if any of the audits referred to in the paragraph above 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
- 5.7 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 within 10 Working Days of the date of the relevant audit.