

These terms and conditions govern SCG South West's (SCGSW) provision of services to its customers. They should be read in conjunction with each request for service form, containing the details of a customer's order, and our services schedule, containing details of our services.

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following words shall have the following meanings:

- "Confidential Information" this Agreement and all materials, data, documents and information (i) disclosed by one party to the other in fulfilling the provisions and intent of this Agreement or (ii) concerning the business, affairs, customers, clients or suppliers of the disclosing party.
- "Customer Equipment" any equipment or apparatus that the Customer owns, leases or otherwise makes available in order for it to access, use or receive the Services, excluding any SCGSW Equipment but including any equipment or apparatus that is clearly stated to be purchased in an RFS that is accepted by SCGSW
- "Customer Software" any software, applications or programs that the Customer owns, licences or otherwise makes available in order for it to access, use or receive the Services, excluding any SCGSW Software
- "Data Protection Legislation" (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
- "SCGSW Equipment" any equipment or apparatus provided or made available by SCGSW to the Customer in order for it to access, use or receive the Services
- "SCGSW Software" any software, applications or programs provided, licensed or made available by SCGSW to the Customer under any Services Schedule or for the purposes of accessing, using or receiving any Services
- "SCGSW" SCG South West
- "Force Majeure Event" any cause beyond a party's reasonable control as further detailed in condition 18
- "Initial Period" "HMRC" Her Majesty's Revenue and Customs
12 months or such other minimum term for a particular Service as set out in the Services Schedule (such period to commence from the Provisioning Date or as otherwise determined in the Services Schedule)
- "Intellectual Property Rights" any patents, rights to inventions, applications for patents, trade marks, service marks and domain names and applications for the same, trade names, business names and domain names, copyright and related rights, rights in get-up, goodwill and the right to sue for passing off, moral rights (including copyright in computer software), know-how, trade secrets and confidential information, database rights, rights in designs and rights in inventions, and any rights of the same or similar effect or nature as the foregoing, in each case whether registered or unregistered and including all applications and rights to apply for and granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world
- "Ombudsman" the ombudsman service for communications operated by The Ombudsman Service Limited (company registration number 4351294) with a website at www.ombudsman-services.org/communications.html
- "Provisioning" the process by which SCGSW or its suppliers prepare or equip the network or system over which a Service is to be provided so that the relevant Service can commence, which may require SCGSW to advise its suppliers of the number or line over which a Service is to be provided or such other details as may be required by the relevant suppliers
- "Provisioning Date" the date on which the Provisioning process is completed
- "Renewal Period" any period after the Initial Term during which the Agreement remains in force
- "RFS" Request for Service Form
- "Services Schedule" a schedule containing details of the services offered by SCGSW from time to time, as made available at www.scg-sw.co.uk or as otherwise notified to the Customer, and as updated by SCGSW from time to time in accordance with these terms and conditions

- 1.2 In this Agreement (as defined in condition 2):
- 1.2.1 all other capitalised terms and terms beginning with a capital letter shall have the meaning expressly given to them in this Agreement;
- 1.2.2 if no meaning is expressly given to such a term, it shall be given its generally accepted meaning in the telecommunications industry or, if

- there is no such meaning, its ordinary meaning within the context of the Agreement;
- 1.2.3 words in the singular shall include the plural and words in the plural shall include the singular unless the context requires otherwise;
- 1.2.4 words denoting any gender include all genders;
- 1.2.5 the headings are for convenience only and shall not affect the construction of this Agreement;
- 1.2.6 references to each party herein include references to its successors in title and permitted assigns;
- 1.2.7 the words, "includes", "including", "in particular", "such as" and any other similar expression shall be construed without limitation and shall not limit the meaning of the terms preceding them; and
- 1.2.8 references to conditions shall be construed as references to the conditions of these terms and conditions.
- 1.2.9 The Services Schedule forms part of this Agreement and shall have effect as if set out in the full body of this Agreement and any reference to this Agreement includes the Services Schedule.

2. THE SERVICE AND APPLICATION OF THESE TERMS AND CONDITIONS

SCG South West ("SCGSW") agrees to supply the telecommunications service or services ordered in the RFS (the "Service"), and the authorised legal person named in section 1 of the RFS (the "Customer") agrees to use the Service in accordance with these terms and conditions and the Services Schedule. The completed RFS, these terms and conditions, and those parts of the Services Schedule which are applicable to the Services ordered in the RFS, constitute the entire agreement between SCGSW with respect to the Services (this "Agreement") to the exclusion of any other terms and conditions or agreement that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or dealing. Each RFS processed by SCGSW shall constitute a separate contract between the Customer and SCGSW.

3. COMMENCEMENT AND DURATION

- 3.1 SCGSW shall use its best endeavours to process the Customer's completed RFS within 24 hours of it being signed by the Customer or its receipt by SCGSW (whichever shall be the later). This Agreement shall not commence until the RFS has been processed. The Customer may at its option cancel this Agreement within 24 hours of completing and signing the RFS at no cost to the Customer, provided that it has not used the Services. In the event that the Customer has used the Services within this period, it shall not be entitled to cancel this Agreement, save in accordance with condition 10 (Cancellation) or as expressly permitted by law.
- 3.2 This Agreement shall remain in force until the expiry of the Initial Period and shall automatically continue thereafter unless or until it is terminated by either the Customer or SCGSW pursuant to condition 9 (Termination) or it is cancelled by the Customer pursuant to condition 10 (Cancellation).

4. PAYMENT

- 4.1 Unless agreed in advance in writing with the Customer to the contrary, the prices which SCGSW shall charge to the Customer for the Service shall be as set out in the SCGSW published price list as is current from time to time, which SCGSW may vary in accordance with condition 4.8. All quoted prices are exclusive of Value Added Tax, which shall be added to each invoice at the then current rate in accordance with condition 4.3. The SCGSW published price list shall be made available at www.scg-sw.co.uk or such other location as notified by SCGSW to the Customer from time to time.
- 4.2 SCGSW shall calculate charges by reference to data recorded or logged by SCGSW and not by data recorded or logged by the Customer.
- 4.3 SCGSW shall invoice the Customer monthly in advance for all service charges, and monthly in arrears for call charges, under this Agreement plus any Value Added Tax for which SCGSW considers it is liable to account to HMRC at the applicable rate in connection with such invoice. All SCGSW invoices are payable in full by the Customer within 14 days of the date shown on them without any set off, abatement, counterclaim, withholding or deduction of any kind whatsoever (other than any deduction or withholding of tax as required by law).
- 4.4 All SCGSW's charges must be paid either by cheque, variable direct debit, BACS or internet transfers from a current account maintained by the Customer. Payment by credit card is not accepted by SCGSW unless expressly agreed with the Customer on a case by case basis.
- 4.5 If any credit/charge/debit card, direct debit or account payment collection by the Company is unsuccessful, the Customer will pay an administration charge of £25 and a late payment charge and VAT in accordance with clause 4.6. This condition 4.5 is without prejudice to any statutory rights or remedies available to SCGSW to claim costs for debt recovery or any interest associated with unpaid overdue balances.
- 4.6 Late payment charge at a rate of 4% above bank base rate per month will be liable to all overdue balances, including any sums for VAT forming part of any unpaid invoices.
- 4.7 In the event of any dispute as to any invoices or charges set out therein, the Customer shall notify SCGSW promptly and in any event within fourteen (14) days of the date of the relevant invoice which is the subject of the dispute. Upon receiving such notice, SCGSW shall consult its records in order to determine whether or not the relevant invoice is correct and shall notify the Customer as soon as reasonably practicable after making a determination as to the accuracy

of the relevant invoice. SCGSW's records shall, in the absence of any evidence as to fraud by SCGSW, its suppliers or their respective officers, employees or agents, be conclusive evidence of the charges that are to be paid by the Customer hereunder. The Customer shall remain liable to pay all invoices raised by SCGSW upon the due date even if there is a dispute as to the amount of or the Customer's liability to pay the relevant charges and/or VAT set out therein in whole or in part, pending SCGSW's consideration of the relevant dispute in accordance with this condition 4.7.

- 4.8 SCGSW shall be entitled to vary the charges in relation to any or all Services at any time in accordance with condition 19.
- 4.9 SCGSW may set off any amounts it owes or for which it is liable to the Customer under this Agreement or otherwise against any amounts the Customer owes or for which the Customer is liable to SCGSW under this Agreement or otherwise.

5. CUSTOMER RESPONSIBILITIES

- 5.1 The Customer shall at all times comply with its obligations and perform any tasks or responsibilities that are allocated to it under this Agreement (the "Customer Obligations").
- 5.2 The Customer shall be entitled to use the Services for the Customer's own internal business purposes only.
- 5.3 The Customer undertakes to use the Services in accordance with this Agreement, such conditions and instructions as may be notified in writing to the Customer by SCGSW from time to time (including any acceptable use policies) and at all times in accordance with the relevant provisions of the Telecommunications Act 1984, the Communications Act 2003, any successor legislation to these Acts, and any condition, rule or regulation made under them, any other applicable laws and regulations, directions given by the Secretary of State, Ofcom or any other competent person or authority ("the Rules").
- 5.4 The Customer shall not use and shall ensure that the Service is not used:
 - 5.4.1 improperly, unlawfully or fraudulently or in breach or contravention of the Rules or in connection with any criminal offence; or
 - 5.4.2 as a means of communication for a purpose other than that for which the Service is provided; or
 - 5.4.3 for any transmission which is intended to be a hoax call to emergency services or which is of a defamatory, offensive, abusive, indecent, obscene or menacing character; or
 - 5.4.4 to create, send, knowingly receive, upload, download, use or re-use any material which is defamatory, offensive, abusive, indecent, obscene or menacing;
 - 5.4.5 in a manner which constitutes a contravention, violation or infringement of any licences or third party rights, including any breach of confidence or privacy or infringement of any Intellectual Property Rights; or
 - 5.4.6 to cause annoyance, inconvenience or anxiety;
 - 5.4.7 to "spam" or to send or provide unsolicited advertising or promotional material or, knowingly to receive responses to any spam, unsolicited advertising or promotional material sent or provided by any third party;
 - 5.4.8 to forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted via the Services or spoof or monitor IP packets;
 - 5.4.9 to upload, post or otherwise transmit any content that the sender does not have a right to transmit under the Rules or under contractual or fiduciary relationships;
 - 5.4.10 to harm minors in any way;
 - 5.4.11 to impersonate any person or entity or falsely state or otherwise misrepresent an affiliation with a person or entity;
 - 5.4.12 to upload, post or otherwise transmit any content that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or electronic communications equipment;
 - 5.4.13 to promote or provide instructional information about illegal activities, or to promote physical harm or injury against any group or individual;
 - 5.4.14 in any way that SCGSW considers is or is likely to be detrimental to the provision of the Services or SCGSW's provision of services to other customers or to SCGSW's business and/or reputation.
- 5.5 The Customer shall:
 - 5.5.1 obtain and maintain all licences and consents that are necessary for the use of any material, information or data provided by the Customer and any Customer Equipment in connection with the Customer's receipt or use of the Services;
 - 5.5.2 not make or permit any modifications to the Services without SCGSW's prior written consent (save as may be expressly permitted in the Services Schedule);
 - 5.5.3 be responsible for any access and use of the Services by end users, all charges incurred and compliance with all terms and conditions by end users of the Services;
 - 5.5.4 ensure that it maintains a database of its end users and terminates access immediately for anyone who is no longer authorised to use the Services;
 - 5.5.5 provide, in a timely manner, any cooperation, material, information or data or any Customer Equipment that it is required to provide under a

Services Schedule or which SCGSW may reasonably request from the Customer in order to provide the Services or perform any other obligations under this Agreement.

- 5.5.6 ensure that any material, information or data that it provides to SCGSW is true and accurate in all material respects;
- 5.5.7 be responsible for ensuring that it has in place adequate technical and organisational measures to ensure that there is no unauthorised access to or use of the Services including the measures set out in condition 15;
- 5.5.8 act reasonably and in good faith at all times in relation to this Agreement and the Services; and
- 5.5.9 not do anything to bring SCGSW, any of its affiliates or any of their employees, officers or directors into disrepute.
- 5.6 Where the Customer elects to transfer, migrate or port any of its Services or any lines, numbers or names associated with such Services from SCGSW to another service provider, the Customer is responsible for ensuring that any such transfer, migration or porting is effected by such service provider on the correct date. The Customer acknowledges that it may be liable for cancellation charges and other charges under this Agreement notwithstanding any transfer, migration or porting contemplated by this condition 5.6.
- 5.7 The Customer hereby indemnifies, will keep indemnified and will hold harmless SCGSW, its directors, officers, employees, contractors and agents against all liabilities, claims, damages, losses and expenses arising from any breach of its obligations as prescribed in this condition 5. The third parties referenced in this condition 5.7 shall have the right to enforce this condition directly against the Customer in accordance with the Contracts (Rights of Third Parties) Act 1999.

6. CUSTOMER'S EQUIPMENT

- 6.1 The Customer undertakes that any Customer Equipment shall be in good working order and conform at all times to the relevant standard or approval under the Rules and the Customer shall at all times comply with the conditions of such standard and approval. SCGSW will not be under any obligation to connect or keep connected any such equipment which they reasonably believe does not conform to this condition 6.1. The Customer is responsible at all times for the safety and safe custody of the Customer Equipment and for the safe use of it and the Service.
- 6.2 The Customer shall ensure that all Customer Equipment connected to or used with the Service is connected and used in accordance with any instructions, safety and security procedures applicable to such connection or use, does not cause harm to or otherwise interfere with any SCGSW Equipment or any networks or systems used by SCGSW or its suppliers to provide the Services, are technically compatible with the Services and are approved for that purpose under any applicable laws or regulations, and are approved by SCGSW for such connection or use. If any Customer Equipment does not comply with this condition 6.2, the Customer shall notify SCGSW and SCGSW shall (or shall use reasonable endeavours to procure that its suppliers shall) disconnect the Customer Equipment from the Services, subject to payment by the Customer of any disconnection fees or charges reasonably incurred or requested by SCGSW.
- 6.3 To enable SCGSW to fulfil its obligations under this Agreement the Customer shall permit or procure the permission for SCGSW and its authorised representatives to have access to the Customer's premises and shall provide SCGSW with such reasonable access as the SCGSW shall request. SCGSW will normally require access only during SCGSW's normal working hours but may, on reasonable notice, require access at other times in order to ensure the provision of the Service. At the Customer's request, SCGSW may agree to work outside its normal working hours provided that the Customer reimburses SCGSW its reasonable charges for complying with such request.
- 6.4 The Customer duly authorises SCGSW, its dealers, agents or personnel to reprogram, reflash and/or remove existing access equipment as may be necessary in order to provide the Service. It is the Customer's obligation to allow SCGSW or its authorised representative's specifications regarding any construction work at the Premises necessary for the installation of the equipment or reprogramming of the Customer's telephone system for the Customer's use of the Service. Failure to grant access may result in abortive visit charges and SCGSW shall be entitled to invoice the Customer for any such charges in any subsequent invoice raised under condition 4.3. The Customer shall provide such reasonable assistance as SCGSW shall request.
- 6.5 The Customer must provide a suitable and safe working environment for such personnel at the Customer's premises and shall be responsible for carrying out any making good or decoration work that may be required as a result of any installation, repair or maintenance activities. The Customer shall also ensure that remote access is provided to SCGSW and any suppliers referred to in condition 6.4 to any routers, computers or other devices where such access is reasonably required for the provision of the Services or the performance of any remote maintenance or support services.
- 6.6 SCGSW reserves the right to charge the Customer for all costs incurred as a result of carrying out maintenance or repair work which is requested or required by the Customer but which is, in SCGSW's reasonable opinion, unnecessary for SCGSW to satisfy its warranty obligation under condition 8.

7. LIABILITY –

- 7.1 SCGSW shall accept liability for physical damage caused to the property of the Customer caused by any negligent act or omission of SCGSW, its employees or agents. SCGSW's liability for physical damage shall be limited to £10,000 for any one incident or £25,000 in total for any series of incidents arising from a common cause in any twelve month period.
- 7.2 Subject to condition 7.5, SCGSW shall in no circumstances, in relation to any matter or series of matters (and whether taken individually or collectively) arising under or in connection with this Agreement during the period which it shall be in force, be liable to the Customer for more than £50,000.
- 7.3 Subject to condition 7.5, SCGSW shall not be liable to the Customer, whether in contract, tort, breach of statutory duty or otherwise, including any liability for negligence, for:
- 7.3.1 loss of revenue;
 - 7.3.2 loss of business;
 - 7.3.3 loss of anticipated savings;
 - 7.3.4 loss of profit, whether actual or anticipated;
 - 7.3.5 loss of contracts;
 - 7.3.6 loss of customers;
 - 7.3.7 loss of goodwill;
 - 7.3.8 loss of reputation;
 - 7.3.9 loss of or corruption or damage to data, systems or programs;
 - 7.3.10 any other economic loss, in each case whether direct or indirect, or for any indirect or consequential loss whatsoever and howsoever arising.
- 7.4 The exclusions and limitations of liability in condition 7.3 shall apply even if the Customer has notified SCGSW or if SCGSW is otherwise aware that any of the above may occur.
- 7.5 In the event of any failure in the Service, SCGSW shall not be liable to the Customer for any charges incurred by the Customer should the Customer divert its traffic to another electronic communications network or services provider.
- 7.6 SCGSW relies on third party suppliers in order to provide the Services and SCGSW shall not be liable to the Customer where any interruption in or failure of the Service occurs due to a failure, fault or damage in or to any line, equipment, hardware, software, system or network or any failure, fault or problem with any communications or network service that a third party supplier is responsible for providing to SCGSW or is otherwise due to the actions or omissions of the relevant line, equipment, hardware, software, system or network provider or the relevant communications or network service provider or any of their employees, agents or sub-contractors. SCGSW shall use reasonable endeavours where possible to recover any costs or expenses that the Customer suffers as a result of any failure, action or omission referred to in the foregoing sentence from the relevant third party supplier where the Customer promptly notifies SCGSW of the costs and expenses that it has suffered and provides SCGSW with adequate details for SCGSW to pursue a claim under its contract with the relevant third party supplier, as reasonably determined by SCGSW.
- 7.7 Nothing in this condition 7 or elsewhere in this Agreement shall act so as to exclude or restrict any liability which SCGSW may have to the Customer for:
- 7.7.1 death or personal injury resulting from the negligence of SCGSW, its employees or agents;
 - 7.7.2 fraud or fraudulent misrepresentation;
 - 7.7.3 breach of obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - 7.7.4 matters for which liability cannot be excluded or limited or for which an exclusion or limitation of liability would be void or unenforceable under applicable laws and regulations
- 7.8 Subject to condition 7.7, SCGSW shall not be liable to the Customer (whether under contract, tort including negligence, breach of statutory duty or otherwise) for any claim that is not notified by the Customer to SCGSW within one (1) month of the Customer becoming aware of the circumstances giving rise to such claim.
- 7.9 The provisions of this condition 7 shall continue to apply even after this Agreement has ended.

8. AVAILABILITY WARRANTY

- 8.1 The Service is provided with no warranty whatsoever save as set out in this condition 8. All other warranties, conditions and guarantees are excluded to the fullest extent permitted by law, unless expressly provided for elsewhere in this Agreement. In particular, SCGSW does not guarantee that the Services will be uninterrupted or error free, that the Services will be continuous or uninterrupted, nor that the Services are free of viruses, malware or any malicious or disabling code.
- 8.2 SCGSW agrees to use its best endeavours:
- 8.2.1 to supply the Services to the Customer using the reasonable skill and care of a competent communication provider and in accordance with the Agreement; and
 - 8.2.2 to ensure that the Service is available for use by the Customer in accordance with the Service standards for the time being set out in the

Services Schedule

- 8.3 In the unlikely event of any fault with the Service or non-compliance with the warranty set out in condition 8.1, SCGSW will endeavour to fix, correct or provide a workaround for the fault or non-compliance as soon as reasonably practicable, except where an alternative course of action is required in accordance with condition 7.6. SCGSW's sole liability shall be to repair, rectify or re-perform the Services in accordance with this condition 8.3, at SCGSW's election.
- 8.4 Any timescales set out in the Agreement for the provision of the Services are indicative only and time shall not be of the essence for the provision of the Services. SCGSW will use its best endeavours to meet such timescales.

9. TERMINATION

- 9.1 Without prejudice to their rights under this Agreement, SCGSW and the Customer shall have the right to terminate this Agreement immediately on written notice to the other party in the event that: a) the other party is in breach of this Agreement and if the breach can be remedied, fails to remedy it within a reasonable time specified by the non defaulting party in its written notice to do so; or b) an interim order is applied for or made, a voluntary arrangement approved, a petition for a bankruptcy order is presented, or a bankruptcy order is made, against the other party; or a receiver or trustee in bankruptcy is appointed over the other party's estate; or a voluntary arrangement is proposed or approved in relation to the other party; or a receiver or administrative receiver is appointed over the other party's assets or undertaking or an order is made for the appointment of an administrator to manage the affairs, business or property of the other party; or a winding-up resolution or petition is passed or presented (otherwise than for the purpose of reconstruction or amalgamation); or a notice of intention to make any such appointment shall be served on the other party or any circumstances shall arise which entitle the court, a creditor or any other person to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or to make a winding-up order, in relation to the other party; or any similar or analogous events occur under the laws of any jurisdiction.
- 9.2 Without prejudice to any other rights or remedies at law or otherwise, SCGSW shall have the right forthwith to terminate this Agreement or any Service provided under this Agreement by notice in writing to the Customer in the event that: a) any governmental or regulatory authority with competence and/or jurisdiction over the relevant parties: (i) decides that the provision of a Service is contrary to applicable laws or regulations or any directions or guidelines issued by the such authority; or (ii) directs SCGSW that any Service should be terminated; or b) any of the authorisations, licences, consents or regulatory formalities required to provide and/or receive a Service is not obtained, is withdrawn, is revoked, is amended or otherwise ceases to be valid and is not immediately replaced by another valid authorisation, licence, consent or regulatory formality, as the case may be; or c) in any of the circumstances described in condition 12.1 (whether or not SCGSW has exercised its right under that condition to suspend the Services or any of them); or d) at SCGSW's sole discretion provided that it has given three month's prior written notice of its intention to terminate this Agreement or any Service.
- 9.3 Either party shall be entitled to terminate this Agreement immediately on notice to the other in the event that a Force Majeure Event shall have continued for a period of three months or more.
- 9.4 If SCGSW terminates this Agreement under condition 9.1 or 9.2, SCGSW shall be entitled to recover from the Customer all loss and damage suffered, and all costs and expenses reasonably incurred, by SCGSW arising from or in connection with such termination.
- 9.5 The provisions of this condition 9 shall continue to apply even after this Agreement has ended.

10. CANCELLATION

- 10.1 In addition to the Customer's right to cancel set out in condition 3.1, the Customer may cancel this Agreement or a Service provided under this Agreement by giving such notice required for cancellation as set out in the Services Schedule, provided that:
- 10.1.1 in addition to the Customer being liable to pay SCGSW for all charges incurred by the Customer up to the effective date of cancellation (including all applicable interest), the Customer must pay the cancellation charges set out in the Services Schedule on or before the effective date of cancellation; and
 - 10.1.2 the cancellation shall not be effective until the last day of the month in which the required notice period shall have expired or, if later, the last day of the month in which the cancellation charges for the relevant Services are received by SCGSW.
- 10.2 Unless terminated under condition 9 or cancelled as expressly permitted by law, the Customer shall remain liable to pay for the Services provided under this Agreement up until the effective date of cancellation under condition 10.1.2.
- 10.3 In the event that the Customer cancels one or more, but not all of, the Services ordered under an RFS in accordance with this condition 10, SCGSW shall be entitled to adjust the charges payable for the remaining Services in accordance with its then current list prices.

11. SCGSW'S RIGHTS WHERE NO NOTICE IS GIVEN BY CUSTOMER

- 11.1 In the event that at any time the Customer transfers, ports or migrates the Services (or any lines or numbers for which the Services are provided) to another electronic communications services provider or otherwise, for whatever reason, ceases to use the Services (the "Event") without first notifying SCGSW in accordance with the provisions of condition 9 (Termination) or the provisions of condition 10 (Cancellation), the Customer will be in breach of the terms of this Agreement and SCGSW shall be entitled (at its discretion) to terminate this Agreement in accordance with the provisions of conditions 9.1 & 10.
- 11.2 Until such time as SCGSW shall exercise its right of termination provided for in condition 11.1, the Customer shall remain liable to SCGSW for all charges properly incurred hereunder. The Customer shall be liable to and shall pay SCGSW for all costs, losses and expenses reasonably incurred by SCGSW arising from or in connection with the Event or the termination of this Agreement made by SCGSW following the occurrence of the Event. If the Event occurs during the Initial or Agreement Period, SCGSW shall also be entitled to charge the Customer, and the Customer shall pay SCGSW on demand, the relevant amount detailed as a cancellation charge in condition 10.1.
- 11.3 SCGSW shall in its discretion, having regard to the circumstances and the information available, determine when the Event shall have occurred.
- 11.4 The provisions of this condition 11 shall continue to apply even after this Agreement has ended.

12. SUSPENSION OF SERVICE

- 12.1 SCGSW 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 via email or letter) or in writing in the event that: a) the Customer is in breach of any term of this Agreement, including where it has failed to make a payment by the due date; or b) the Customer prevents or delays pre-arranged maintenance from being carried out; or c) SCGSW is obliged to comply with an order, instruction or request of government, an emergency Service organisation or other competent regulatory authority; or d) in SCGSW's reasonable opinion, the Customer is suspected of involvement in fraud or attempted fraud in connection with the use of the Service or is suspected to be in breach of condition 5.
- 12.2 If the Customer remedies the circumstances giving rise to SCGSW's right to suspend the Services under condition 12.1 to SCGSW's reasonable satisfaction, SCGSW shall use reasonable endeavours to restore the suspend Services provided that the Customer has paid any applicable reinstatement charges set out in the Services Schedule for the relevant Services.

13. SCGSW EQUIPMENT AND RETENTION OF TITLE

- 13.1 The purchase of equipment or apparatus is expressly excluded from this Agreement, unless it is clearly stated to be for purchase in an RFS and accepted by SCGSW. Any equipment or apparatus provided by SCGSW to the Customer without having been clearly identified in an RFS as having been sold to the Customer shall be deemed to be SCGSW Equipment and not to have been sold or transferred.
- 13.2 SCGSW (or its affiliates or suppliers) shall at all times retain title to and interest in SCGSW Equipment. The Customer (or its affiliates or suppliers) shall at all times retain title to and interest in the Customer Equipment.
- 13.3 SCGSW and the Customer expressly agree that until SCGSW has been paid in full for any Customer Equipment that is purchased from SCGSW, whether comprised in this or any other sales contract between them, and all outstanding amounts due to SCGSW from the Customer or any associated or subsidiary or holding of the Customer or from any director or shareholder of the Customer or any other such company, the remaining provisions of this condition 13 shall apply.
- 13.4 The SCGSW Equipment shall remain the property of SCGSW and the Customer will, as bailee of them for SCGSW, store the same for SCGSW in a proper manner without charge and in such a way that the goods are clearly identified as being the property of SCGSW, notwithstanding that the risk therein shall pass to the Customer as provided herein.
- 13.5 At any time SCGSW may recover from the Customer the Customer Equipment and may repossess and resell the Customer Equipment if the Customer's right to possession of the Customer Equipment has terminated under condition 13.6 below or if any sum due to SCGSW as referred to in condition 13.3 is not paid when due. SCGSW may enter upon any premises of or occupied by the Customer or any third party (with the consent of that third party) in order to recover any Customer Equipment pursuant to this condition 13.5.
- 13.6 SCGSW shall be entitled to recover payment for any SCGSW Equipment and SCGSW Software notwithstanding that ownership has not passed from SCGSW.
- 13.7 The Customer's right to possession of the Customer Equipment shall terminate immediately if:

- 13.7.1 any circumstances occur which would entitle SCGSW to terminate this Agreement or to terminate or suspend any Service provided under this Agreement; or
 - 13.7.2 the Customer encumbers or in any way charges any of the Customer Equipment or renders it subject to a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
- 13.8 Notwithstanding the preceding conditions, all risk of loss and damage (including water damage, fire or theft) in respect of the SCGSW Equipment, SCGSW Software, Customer Equipment and Customer Software that is provided or made available by SCGSW to the Customer (including any media or tangible materials in which such Customer Equipment, Customer Software, SCGSW Equipment and SCGSW Software is packaged, stored or delivered) shall be assumed by the Customer from the point in time at which the SCGSW Equipment, SCGSW Software, Customer Equipment or Customer Software (as applicable) is delivered to the Customer or otherwise left at the disposal of the Customer (such as at a delivery address provided by the Customer to SCGSW).
 - 13.9 SCGSW does not provide (and hereby excludes) any warranties or guarantees with respect to the SCGSW Equipment, SCGSW Software, Customer Equipment and Customer Software except as expressly provided in any Services Schedule under which they are supplied to the Customer.

14. INTELLECTUAL PROPERTY

- 14.1 The Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of SCGSW, its affiliates or licensors, including any software provided or made available by SCGSW or its suppliers in the provision of the Services and all such Intellectual Property Rights shall be owned by, and remain with, SCGSW.
- 14.2 To the extent that SCGSW makes any third party software available to the Customer in accordance with a Services Schedule, the Customer will comply with any terms and conditions notified to it by SCGSW with respect to the Customer's use of such software. Such terms and conditions may include an end user licence agreement in the form required by SCGSW's licensor. Any breach by the Customer of such terms and conditions or any such end user licence agreement shall constitute a material breach of this Agreement.

15. SECURITY AND DATA PROTECTION

- 15.1 The Customer understands and accepts the performance by SCGSW of certain of the Services may carry a risk to the Customer of loss or corruption of data. The Customer accepts that it shall be responsible at all times for maintaining an appropriate data backup procedure to enable the recovery of lost or corrupted data files. The Customer understands and accepts that, save where back-up services are specifically purchased under the RFS for a particular Service, the Customer bears full responsibility for the loss or corruption of data. Further, where SCGSW provides back up services for the Customer to upload its data onto a server provided as part of the Services, SCGSW disclaims all liability in respect of the integrity of such data.
- 15.2 The Customer shall complete all appropriate data and application back up procedures at regular intervals during the continuance of a Services Agreement in accordance with accepted industry practice and at such other times as SCGSW may advise.
- 15.3 Without limiting the foregoing, the Customer shall be solely responsible for ensuring that:
 - 15.3.1 there is no unauthorised access to or use of the Services;
 - 15.3.2 there is no unauthorised access to or use of any of the Customer's information technology equipment, software or systems, including by setting up appropriate firewalls [(except to the extent that SCGSW has expressly agreed to provide any firewalls on the Customer's behalf as described in a Services Schedule)];
 - 15.3.3 all passwords, log in details and other identification or authorisation information that it has in place to regulate access to the Services are maintained in the strictest confidence and are not disclosed other than on a needs-to-know basis;
 - 15.3.4 SCGSW is notified promptly upon the Customer becoming aware of any security breach relating to the Services or their use.
- 15.4 SCGSW and the Customer will comply with all applicable requirements of the Data Protection Legislation. This condition 15 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 15.5 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and SCGSW is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 15.6 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data (as defined in the Data Protection Legislation, Personal Data) to SCGSW for the duration of this Agreement.
- 15.7 Without prejudice to the generality of condition 15.4, SCGSW shall, in relation to any Personal Data processed in connection with the performance by SCGSW of its obligations under this Agreement:

- 15.7.1 process that Personal Data only on the written instructions of the Customer unless SCGSW is required by the laws of any member of the European Union or by the laws of the European Union applicable to SCGSW to process Personal Data (Applicable Laws). Where the SCGSW is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, SCGSW shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit SCGSW from so notifying the Customer;
- 15.7.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against the 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);
- 15.7.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 15.7.4 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:
- 15.7.4.1 the Customer or SCGSW has provided appropriate safeguards in relation to the transfer;
- 15.7.4.2 the data subject has enforceable rights and effective legal remedies;
- 15.7.4.3 SCGSW complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 15.7.4.4 SCGSW complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.
- 15.7.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 15.7.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 15.7.7 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
- 15.7.8 maintain complete and accurate records and information to demonstrate its compliance with this condition 15 and allow for audits by the Customer or the Customer's designated auditor.
- 15.8 The Customer consents to SCGSW appointing a sub-processor as a third party under this Agreement. SCGSW confirms that it has entered or (as the case may be) will enter with the sub-processor into a written agreement incorporating terms which are substantially similar to those set out in this condition 15. As between the Customer and SCGSW, SCGSW shall remain fully liable for all acts or omissions of any sub-processor appointed by it pursuant to this condition 15.8.
- 16. CONFIDENTIALITY**
- 16.1 Except to the extent set out in this condition 16 or where disclosure is expressly permitted elsewhere in these terms and conditions, the Customer shall for the duration of this Agreement, and for a period of five years after termination of this Agreement:
- 16.2 treat SCGSW's Confidential Information as confidential and safeguard it accordingly; and
- 16.3 not disclose SCGSW's Confidential Information to any other person without the owner's prior written consent
- 16.4 Condition 16.1 shall not apply to the extent that:
- 16.5 such disclosure is required by applicable laws, regulations, a court of competent jurisdiction or directions of any governmental or regulatory authorities placed upon the party making the disclosure;
- 16.6 such information was already in the public domain at the time of disclosure otherwise than by a breach of a Services Agreement.
- 16.7 All data and information (such as tariffs, Services Schedules, terms and conditions and product information) that is made available to the Customer through SCGSW's customer portal on www.scg-sw.co.uk or any related domain or microsite (and is not generally available to any person who accesses that website or any related domain or microsite) shall be Confidential Information of SCGSW along with any log in or authorisation details that the Customer or any of its employees, contractors, directors or officers use to access the customer portal.
- 17. ASSIGNMENT AND CORPORATE CHANGE**
- 17.1 This Agreement and any part of it may not be assigned in whole, or in part, by the Customer without the prior written consent of SCGSW, such consent not to be unreasonably withheld. SCGSW may in its discretion assign this Agreement or any part of it to any person at any time without the Customer's consent.
- 17.2 This Agreement shall be binding upon each party's successors and permitted assigns.
- 17.3 The Customer shall promptly notify SCGSW if:
- 17.3.1 any of the circumstances referred to in condition 9.1(b) occur or arise with respect to the Customer;
- 17.3.2 if it is subject to any corporate change, such as a change of name or a merger with another company;
- 17.3.3 if it becomes a member of a partnership or joint venture in circumstances where any of the other partners or joint venture participants will make use of the Services;
- 17.3.4 (each a "Corporate Change").
- 17.4 The Customer shall remain liable to comply with this Agreement and to pay all fees and charges due under this Agreement notwithstanding the occurrence of any Corporate Change. At SCGSW's request, the Customer shall procure that any new or successor entity or any partners or participants that are referred to in conditions 17.3.2 or 17.3.3 sign a new service order, RFS or such other document as SCGSW reasonably requires in order for such entity, partner or participant to be bound by the terms of this Agreement.
- 18. FORCE MAJEURE**
- 18.1 Neither party shall be liable to the other for any failure to perform its obligations or responsibilities under this Agreement or for any loss or damage which may be suffered by the other party due to any cause beyond the first party's or any of its suppliers' reasonable control including any act of God, inclement weather, failure or shortage of power supplies, weather conditions including flood, drought and lightning, fire, explosion, strike, lockout, trade dispute or labour disturbance (whether affecting the workforce of a party and/or any other person), the act or omission of government, highways authorities, Ofcom or other regulatory authorities, war, act or threat of terrorism, military operation, riot, theft, malicious damage, sabotage, electromagnetic radiation or interference, difficulty, delay or failure in manufacture, production or supply by third parties of equipment, numbers or access lines.
- 18.2 Condition 18.1 shall not excuse the Customer from its obligation to pay the charges for the Services in accordance with this Agreement, whether it or SCGSW is affected by a Force Majeure Event.
- 19. ENTIRE AGREEMENT AND VARIATION**
- 19.1 This Agreement represents the entire agreement and understanding of the parties with respect to its subject matter and supersedes all prior understandings and representations, whether written or oral, save for any made fraudulently.
- 19.2 SCGSW may modify this Agreement on notice to the Customer in the event that SCGSW is required to make changes to it by reason of any legal or regulatory requirement. SCGSW may post its latest terms and conditions on its website from time to time. Where modifications are made, the posting by SCGSW of its modified amended terms and conditions on its website shall constitute adequate notice to the Customer of all such modifications. In the event that any modifications are made of material detriment to the Customer then SCGSW will also notify the Customer in writing.
- 19.3 SCGSW shall be entitled to vary the charges in relation to any or all Services at any time:
- 19.3.1 following the expiry of the Initial Period for the relevant Services, by such amount as SCGSW considers appropriate in its absolute discretion; or
- 19.3.2 where it is required to do so by applicable laws, regulations or directions given by Ofcom or another relevant regulatory authority; or
- 19.3.3 where there is an increase in the charges levied on SCGSW by its third party service providers for the relevant Services; or
- 19.3.4 where SCGSW reasonably considers that its costs of providing the Services have increased.
- 19.4 Where reasonably practicable, SCGSW will give the Customer not less than thirty (30) days notice of any such variation to the charges in accordance with condition 19.2.
- 19.5 The Customer agrees that any variation of the charges that complies with this condition or which amounts to an increase of less than five percent (5%) to the then current charges shall not cause or be taken to cause any material detriment to the Customer.
- 19.6 SCGSW reserves the right:
- 19.6.1 to vary the Service or replace or upgrade any software, hardware or electronic communications equipment used for the purposes of

- providing or receiving the Services; or
- 19.6.2 to require the Customer to vary, replace or upgrade the Customer Equipment, for technical, operational and other reasons (a "Technical Change").
- 19.7 The Customer agrees that any Technical Change consisting of the replacement, repair or upgrade of any SCGSW Equipment or SCGSW Software or any Customer Equipment or Customer Software, such as routers, modems or other standard equipment required for the Customer to receive the Services, or any new requirement for the Customer to use any such new or upgraded Customer Equipment, shall not cause or be taken to cause any material detriment to the Customer.
- 19.8 If a legal or regulatory intervention or ruling of any sort prevents the accomplishment of the purpose of an Agreement, SCGSW and the Customer shall immediately commence good faith negotiations to explore whether a similar economic effect can be obtained consistent with the applicable legal or regulatory requirements and SCGSW shall have the right to make such amendments to the Services as it reasonably required to ensure compliance with such legal or regulatory intervention or ruling.
- 19.9 Save as provided in this condition 19, this Agreement may only otherwise be modified in writing and signed by a duly authorised representative of SCGSW and the Customer. Where the Customer requires services which are additional to the Services specified in the RFS and which SCGSW is willing to make available to the Customer, the Customer may add these services by placing their request, via an authorised representative by telephone, email or in writing.
- 19.10 The Customer hereby irrevocably consents to SCGSW recording and monitoring any correspondence that SCGSW has with the Customer over the telephone, by email or through any other means in order to evidence Customer's acceptance of the terms and conditions of this Agreement and any Services Schedule, any other terms and conditions that are agreed by SCGSW and the Customer in connection with the Services, and any actions taken by SCGSW in order to comply with this Agreement or to perform the Services. The Customer will procure that irrevocable consent to such recording or monitoring is given by any employees, contractors, directors or officers of the Customer who may communicate with SCGSW from time to time in connection with this Agreement or the Services.
- 20. NO WAIVER**
Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of such right nor operate so as to bar the exercise or enforcement thereof, or of any other right on any later occasion, except as expressly provided herein.
- 21. NOTICES**
- 21.1 Save as provided by condition 10 and conditions 21.2 and 21.4 below, any notice, statement or other document which is to be given by either party under this Agreement shall be made in writing and delivered by hand or sent by first class post or sent by facsimile transmission or by electronic mail to an address properly notified to it by the other party in writing from time to time as an address to which such notices, statements or other documents may be sent. Such notices shall be deemed to have been properly served (if delivered by hand) on signature of a delivery receipt, (if sent by first class post) 48 hours after posting and (if sent by fax or by email) on the first working day after the fax or email was sent. This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 21.2 Notwithstanding condition 21.1, SCGSW shall be entitled at any time to serve notice on the Customer to the address or email address set out in the RFS or such other email address as the Customer shall provide to SCGSW from time to time.
- 21.3 SCGSW's address details are set out as follows: Registered Office: Glebe Farm, Down Street, Dummer, Basingstoke, Hampshire, RG25 2AD
- 21.4 Notwithstanding condition 21.1, the Customer shall be required to serve notice on SCGSW to SCGSW's registered address via recorded delivery if the Customer wishes to exercise any right to terminate this Agreement or to make any claim against SCGSW in relation to any errors, defects, faults or failures in the provision of the Services and no other form or method of notice shall be deemed effective.
- 22. SEVERABILITY**
In the event that any provision, condition or any part of the same set out in this Agreement shall be found by any court of competent jurisdiction to be void, invalid or otherwise unenforceable, the other provisions, conditions or parts shall not be affected and shall continue in full force and affect to the fullest extent possible in law.
- 23. GOVERNING LAW**
- 23.1 This Agreement shall be governed by and construed and interpreted in accordance with the law of England and Wales.
- 23.2 The parties hereby submit to the exclusive jurisdiction of the courts of England

and Wales.

24. THIRD PARTY RIGHTS

- 24.1 Except as expressly provided otherwise in these terms and conditions, no person other than the Customer and SCGSW shall be entitled to rely on or enforce any provision of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No consent shall be required from any third party in order for SCGSW and/or the Customer to vary or rescind the Agreement or any provision of it.

25. DISPUTES

- 25.1 Where any dispute, difference or question of interpretation arises in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services (a "Dispute"):
- 25.1.1 domestic and small business customers shall have the right to refer the Dispute to the Ombudsman; and
- 25.1.2 nothing in condition 25.1.1 will prevent or delay either party from referring that Dispute to Ofcom.

Registered office: Glebe Farm, Down St, Dummer, Basingstoke RG25 2AD
SCG South West Ltd t/a SCG South West | Company No: 03707357
Horizon Telecom t/a SCG South West | Company number: 03638405
Channel Comms t/a SCG South West | Company number: 03899940
Oak House, Fountain Court, New Leaze, Bristol, BS32 4LA

