

**SCG Wales LIMITED**  
**SERVICE PROTECT TERMS AND CONDITIONS**

Please read these Terms in conjunction with our Privacy Notice available from our website

**1. DEFINITIONS AND INTERPRETATION**

1.1. In these terms and conditions (“**Terms**”) the following words shall have the following meanings:

<b>Agreement</b>	the agreement between you and the Company for the supply of the Service Protect Services in accordance with the Order and these Terms;
<b>Authorised Provider</b>	the Company’s authorised third party provider of the Service Protect Services;
<b>Charges</b>	the monthly fee payable by the Customer for the Service Protect Services, as set out in Schedule 1 or as otherwise notified by the Company from time to time;
<b>Commencement Date</b>	the date the Company starts providing the Service Protect Service to the Customer;
<b>Company, We, Us, Our</b>	SCG Wales Limited (Company Number: 06367634 whose Registered Office is at Glebe Farm, Down Street, Dummer RG25 2AD
<b>Customer, you</b>	the individual, company, entity, organisation or business that purchases the Service Protect Services from the Company;
<b>Customer Information</b>	any documents or other materials and any data or other information provided by the Customer relating to the Service Protect Services;
<b>Customer IT</b>	any components of the Customer's IT infrastructure (including but not limited to cabling, systems, hardware and software);
<b>Data Protection Legislation</b>	up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR 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;
<b>Early Termination Fee</b>	means the total amounts of all Charges still remaining on the Minimum Term or Service Protect Extended Term (as the case may be) from the date of termination until the date of expiry of the Minimum Term or Service Protect Extended Term (as the case may be);
<b>GDPR</b>	General Data Protection Regulation ((EU) 2016/679);
<b>Minimum Term</b>	twelve (12) months (or such other minimum period as is set out in the Order) from the Commencement Date;
<b>Ofcom</b>	the Office of Communications or other replacement authority;
<b>Order</b>	the Customer’s order for the Service Protect Services;
<b>Personal Data</b>	as defined in Clause 12.2;

<b>Service Protect Extended Term</b>	as defined in Clause 3.4;
<b>Service Protect Services</b>	the Service Protect Services as set out in Schedule 1;
<b>Service Protect Support Hours</b>	08:00 to 18:00 Monday to Friday but excluding public holidays in the United Kingdom;
<b>Third Party Hardware</b>	hardware supplied by a third party and not the Company including but not limited to This could be quite extensive however the common items would be non-maintained private branch exchange ( <b>PBX</b> ), local network, switches, firewalls, routers, servers, wireless access points, Session Initiation Protocol ( <b>SIP</b> ), data & hosted PBX;
<b>Working Hours</b>	08:00 to 18:00 Monday to Friday but excluding public holidays in the United Kingdom.

1.2. **Construction.** In these Terms, the following rules apply:

- 1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. a reference to **writing** or **written** includes faxes and e-mails.
- 1.2.3. a reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.2.4. headings in the Agreement shall not affect interpretation.

## 2. **ORDERS**

- 2.1. If you qualify for the Service Protect Services – please see Clause 3.7, you may submit an Order. The Order constitutes an offer by the Customer to purchase the Service Protect Services in accordance with these Terms.
- 2.2. The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order or (if earlier) the Company provides the Service Protect Services to the Customer at which point and on which date the Agreement shall come into existence.
- 2.3. Once an Order has been accepted by the Company, the Customer may not cancel an Order.
- 2.4. We may accept or reject an Order at Our sole discretion.
- 2.5. The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Agreement.
- 2.6. These Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 3. **SUPPLY OF SERVICE PROTECT SERVICES**

- 3.1. The Company shall provide one level of Service Protect Services as set out in Schedule 1.
- 3.2. The Company shall provide the Service Protect Services from the Commencement Date for the Minimum Term and any Service Protect Extended Term in accordance with these Terms.

- 3.3. **Rights to terminate.** The Customer acknowledges that it has limited rights to terminate the Service Protect Services during the Minimum Term or the Service Protect Extended Term (as the case may be). These rights are set out in this Clause 3.5. If the Customer terminates the Agreement before the expiry of the Minimum Term or Service Protect Extended Term, the Customer shall pay any applicable Early Termination Fee.
- 3.4. If, on the expiry of the Minimum Term or Service Protect Extended Term (as the case may be) you have not given notice to the Company in accordance with Clause 3.5 to terminate the Agreement, then We shall automatically continue to provide the Service Protect Services to you for one (1) year (the **Service Protect Extended Term**) at the end of the Minimum Term and at the end of any Service Protect Extended Term, as the case may be.
- 3.5. **Terminating the Agreement.** You may give written notice to the Company, not later than thirty (30) days before the end of the Minimum Term or any Service Protect Extended Term, to terminate the Service Protect Services at the end of the Minimum Term or the relevant Service Protect Extended Term, as the case may be.
- 3.6. If you:
- 3.6.1. terminate the Agreement pursuant to Clause 3.5 then you will not incur any Early Termination Fees;
  - 3.6.2. terminate the Agreement before the Minimum Term or Service Protect Extended Term (as the case may be) has expired you will have to pay the Early Termination Fee to the Company.
- 3.7. You are only eligible for the Service Protect Services if We supply one or more of the following services to you:
- 3.7.1. DSL/FTTC;
  - 3.7.2. EFM;
  - 3.7.3. Ethernet;
  - 3.7.4. Wholesale Line Rental plus one additional service listed in this Clause 3.7;
  - 3.7.5. Domain/Email Hosting;
  - 3.7.6. Firewall;
  - 3.7.7. Anti-virus;
  - 3.7.8. Telephone System Maintenance;
  - 3.7.9. SIP Trunks; and / or
  - 3.7.10. Hosted Voice.

Please contact us if you are not sure if you are eligible for the Service Protect Services.

- 3.8. You will not be eligible for the Service Protect Services if:
- 3.8.1. you have opted out of the Service Protect Services; or
  - 3.8.2. We only supply you with:
    - 3.8.2.1. Wholesale Line Rental; or

3.8.2.2. Mobiles.

- 3.9. To request the Service Protect Services you should contact:
- 3.9.1. **During the Service Protect Support Hours:** as advertised on the company website or
  - 3.9.2. **Outside the Service Protect Support Hours:** as defined in your out of hours service agreement
- 3.10. The Company's support team will raise a ticket with the Service Protect Services Team. Calls received by the Company's support / service team outside of Working Hours will be logged with the Service Protect team the next Working Day.
- 3.11. Within 8 hours of the Service Protect Services Team receiving the ticket and provided the ticket is received during Working Hours, the Service Protect Services Team will:
- 3.11.1. assign a Service Protect engineer to you; and
  - 3.11.2. notify you by email with:
    - 3.11.2.1. the name of the Service Protect engineer; and
    - 3.11.2.2. your site attendance date,  
  
(the **Service Level Response Time**).
- The Service Level Response Time will be measured as the time between a ticket being received by the Company's Service Protect Services Team and the initial response by the Company's engineer or Authorised Provider (and not from the time you contact the Company's support / service team).
- 3.12. **Support Hours.** We shall only provide the Service Protect Service to you during the Service Protect Support Hours.
- 3.13. Service Protect Services outside the Service Protect Support Hours are limited to remote diagnostics only. All calls outside the Service Protect Support Hours must be logged with the out of hours service team.
- 3.14. **Site Visits:** The Service Protect Support Services includes up to 40 hours of onsite engineering time at the Customer's site per annum. We will track this on our appointments module and notify you at the time of your request for the Service Protect Service if you have reached your maximum number of hours. Any site visits in excess of 40 hours per annum will be charged at our then current standard engineering rates or your account manager can provide you with a quotation to perform the request. We would not proceed with any request until we receive your acceptance of any charges in writing.
- 3.15. You acknowledge and agree that the Service Protect Services is a diagnostic service only and the Company does not warrant or guarantee:
- 3.15.1. a full resolution of all reported issues; or
  - 3.15.2. that the Company's engineers will have the technical ability to operate on all Third Party Hardware.
- 3.16. The Company shall replace, free of charge, any equipment or hardware provided to you directly by the Company. In the event that the Company's engineer diagnoses a fault with Third Party Hardware it shall notify the Customer of:

- 3.16.1. details of the fault and /or Third Party Hardware requiring replacement;
- 3.16.2. the charges to replace the Third Party Hardware; and
- 3.16.3. the standard manufacturer lead time to replace the Third Party Hardware.

We would not proceed with ordering any replacement Third Party Hardware until we receive your acceptance of any charges in writing. The Company shall not be responsible for managing or for the maintenance of any replacement Third Party Hardware unless the Customer has entered into a separate contract with the Company for such maintenance.

- 3.17. Any advisory best practice and solution recommendations provided by the Company's engineers are based on the Company's engineers or its Authorised Provider's technical understanding of the Customers topology and requirements as notified to the Company's engineers or its Authorised Provider by the Customer and the Customer providing the Customer Information in accordance with Clause 5.1.1 and these Terms.
- 3.18. The following exclusions and exceptions shall apply to the Service Protect Services:
  - 3.18.1. incidents on BT Applications and / or network and application equipment due to acts or omission of the Customer;
  - 3.18.2. incidents reported by the Customer not observed/confirmed by the Company or its Authorised Provider;
  - 3.18.3. disruptions occurring within pre-notified engineering works window;
  - 3.18.4. failure of access from suspension of the Service Protect Services pursuant to Clause 7 of the Terms for breach of the Agreement by the Customer or failure of access from suspension of other services provided by the Company;
  - 3.18.5. outages due to scheduled maintenance;
  - 3.18.6. outages due to unscheduled upgrades, requested by the Customer that cannot be performed during the regularly scheduled maintenance windows;
  - 3.18.7. outages due to applicable national laws, customs, or regulations;
  - 3.18.8. outages due to incidents of Force Majeure Events;
  - 3.18.9. any failure caused by the Customer to (i) action, (ii) inaction, (iii) unavailability of Customer personnel in order to determine and/or isolate the problem including "Customer Pending Status", or (iv) the Customers delay in installations, or (v) failure caused by the Customer's applications, equipment or supplier;
  - 3.18.10. outages whereby the Company or its Authorised Provider is unable to gain access to the Customers site, for reasons attributable to the Customer, to carry out necessary repair work; or
  - 3.18.11. unavailability of the BT Application and / or Network as a result of problems with environmental conditions including but not limited to power, climate, housing, switch off at the Customer's premises, the Customer's failure to follow agreed procedures, the introduction of unauthorised changes to supplier CPE (if applicable) or failure of the Customer's equipment.
- 3.19. At your cost, you shall ensure that We shall have such remote and other access to the systems and infrastructure of the Customer as We shall require to provide the Service Protect Services.

- 3.20. In the event that We are required to engage with BT or other supplier to perform the Service Protect Services We shall not be liable for any failure to meet the SLA.
- 3.21. **Fair Usage:** The Service Protect Services are subject to fair usage. The Customer should be able to use the Service Protect Services service in an appropriate manner to meet its needs but if you are over and above fair usage, We will inform you and provide you with a quotation to perform the request. We would not proceed with any request until we receive your acceptance of any charges in writing.
- 3.22. Unless otherwise agreed with the Company in writing, the Service Protect Services will be provided in the United Kingdom.
- 3.23. We shall have the right to make any changes to the Service Protect Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Service Protect Services, and We shall notify the Customer in any such event.
- 3.24. The Company warrants to the Customer that the Service Protect Services will be provided using reasonable care and skill.
- 3.25. The Customer acknowledges that:
- 3.25.1. the Company's ability to perform its obligations under the Agreement is dependent upon:
- 3.25.1.1. the Customer's full and timely cooperation with the Company, the Company's engineer or Authorised Provider;
- 3.25.1.2. the Customer allowing access to Third Party Hardware;
- 3.25.1.3. the Customer furnishing all relevant information to the Company's engineer or Authorised Provider to enable them to fully investigate the issue or fault;
- 3.25.1.4. the accuracy and completeness of any Customer Information the Customer provides to the Company, the Company's engineer or Authorised Provider;
- 3.25.2. upon completion of each site visit, the Company shall not be responsible for any subsequent issues to or maintenance of (other than in accordance with the Service Protect Services) the Customer IT, Third Party Hardware or other services going forward;
- 3.25.3. We shall not be responsible or liable for any delay in providing the Service Protect Services which arises directly out of the Customer's failure to perform its obligations hereunder or to co-operate with the Company or the Company's Engineer or to provide complete and accurate Customer Information, all in a timely manner;
- 3.25.4. unless otherwise agreed by the Company in writing, the Service Protect Services have not been developed to meet their individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Service Protect Services meets their requirements;
- 3.25.5. the Service Protect Services may be subject to limitations, delays and other problems arising out of the Customer's third party contractors or suppliers acts or omissions, hardware replacement, access, forces of nature (including but not limited to snow, flooding), misinformation and disclosure or engineering capabilities;
- 3.25.6. some technical limitations, including but not limited to misconfiguration of existing Third Party Hardware or topology, Third Party Hardware not being fit for purpose or within specification, engineering capabilities with the Service Protect Services, may not become apparent until after the Service Protect Services have commenced;

- 3.25.7. the Company or its Authorised Provider may at any time and without liability modify, expand, improve, maintain or repair the Service Protect Services and this may require suspension of the operation or provision of the Service Protect Services and We shall have no liability to the Customer in connection with any such adverse effect on the quality and availability of the Service Protect Services.
- 3.26. The Company's Engineer, employees, agents, Authorised Provider's or sub-contractors are not authorised to make any representations concerning the Service Protect Services unless confirmed by the Company in writing.
- 3.27. Any advice or recommendation given by the Company or its employees, agents, Authorised Provider's or sub- contractors to the Customer or its employees or agents as to the Service Protect Services which is not confirmed in writing by the Company is followed or acted on entirely at the Customer's own risk, and accordingly We shall not be liable for any such advice or recommendation which is not confirmed in writing.

#### 4. **THE COMPANY'S OBLIGATIONS**

- 4.1. We shall use reasonable endeavours to meet any performance dates agreed in writing, but any such dates shall be estimates only. We shall not be liable for failure to meet them and time shall not be of the essence for performance of the Service Protect Services.
- 4.2. We may:
- 4.2.1. change or withdraw some, or part, of the Service Protect Services from time to time. This may be because of changing technologies, obsolescence, new or different product features, changing content providers or the need to remove, replace or modify content; and
- 4.2.2. determine how the Service Protect Services are presented and delivered or are otherwise made available to the Customer. The Company can change the means or method of providing the Service Protect Services or the way they are presented, delivered or otherwise made available to the Customer at any time.
- 4.3. We shall give the Customer not less than 1 months' notice in writing of any decision to vary the Service Protect Services ("**Notice of Variation**") or discontinue the supply of the Service Protect Services ("**Notice of Discontinuance**"). We shall use Our reasonable endeavours not to vary or cease to provide any service during the term of the Agreement.
- 4.4. In the event that the Company serves a Notice of Variation or Notice of Discontinuance upon the Customer, the Company or its Authorised Provider will continue to provide those Service Protect Services that are being varied or discontinued and technical support in accordance with Clause 6 during the notice period set out in the Notice of Variation or Notice of Discontinuance.
- 4.5. We shall be entitled (at Our discretion) to make changes to the Service Protect Services at any time without notice in order to comply with any safety or legal requirement applicable to the Service Protect Services.
- 4.6. Within fourteen (14) days of receipt of a Notice of Variation or Notice of Discontinuance, the Customer has the right to terminate this Agreement on fourteen (14) days' written notice to the Company if such variation or discontinuance of the Service Protect Services has a material adverse effect on the Customer's use of the Service Protect Services.

#### 5. **THE CUSTOMER'S OBLIGATIONS**

- 5.1. The Customer shall:
- 5.1.1. ensure that it provides all Customer Information required by the Company and that all such Customer Information shall be accurate, full and provided in a timely manner;

- 5.1.2. afford to the Company all access and facilities that We shall reasonably require when attending the Customer's premises;
  - 5.1.3. ensure that its equipment, IT infrastructure and connectivity shall be adequate to enable the Company to efficiently provide the Service Protect Services;
  - 5.1.4. ensure that We shall have such remote and other access to the systems and infrastructure of the Customer as it shall require to provide the Service Protect Services;
  - 5.1.5. enter into and maintain contracts directly with such third party providers as may be necessary to enable the Company to provide the Service Protect Services and ensure that such contracts permit the Company to request resources directly from each provider on behalf of the Customer when required;
  - 5.1.6. keep in place software maintenance agreements with the providers of all supported software applications used by the Customer to ensure adequate assistance from such vendors if required;
  - 5.1.7. take all reasonable precautions to protect the health and safety of the Company's engineer, personnel, agents, Authorised Providers and sub-contractors whilst at the Customer's premises;
  - 5.1.8. ensure that it is the owner of or is entitled to use all the Customer IT and equipment which is the subject of the Service Protect Services to be provided by the Company (including any machines, drawings, connectors, cables, parts or other items, computer room documents, manuals, tapes, disk media, items of furniture and other equipment), or that it is authorised by the owner thereof to make them available to the Company if necessary;
  - 5.1.9. ensure that the details of the existing hardware and software it uses and all current licenses it holds for software are complete and accurate;
  - 5.1.10. co-operate with and follow the Company's and the Company's engineers reasonable instructions to ensure the proper use and security of the Service Protect Services.
- 5.2. If the Company's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 5.2.1. We shall without limiting Our other rights or remedies have the right to suspend performance of the Service Protect Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
  - 5.2.2. We shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations under the Agreement; and
  - 5.2.3. the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 5.3. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Information.

## 6. CHARGES AND PAYMENT

- 6.1. The Charges are as set out in Schedule 1 and are payable per account.



- 6.2. We will invoice the Customer monthly in advance and the Customer shall pay the full amount invoiced by direct debit within fourteen (14) days of the date of invoice.
- 6.3. The Customer shall pay the Charges in pounds sterling without set-off or deduction.
- 6.4. The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time.
- 6.5. Time for payment of the Charges shall be of the essence of the Agreement.
- 6.6. If the Customer fails to make payment in full by the due date, in addition to the Company's right to suspend the Service Protect Services as set out in Clause 7.1, We may charge interest at the rate of 4% per annum above the base rate of the Bank of England on any amounts outstanding from the due date for payment until payment is made in full.
- 6.7. We will give the Customer as much prior notice as practicable of any alteration to the charges and in any event not less than 1 month's prior notice of such change. This notice may be included in an invoice to the Customer. If, during the Minimum Term, the Company increases the Charges by **more than** the Retail Price Index, the Customer may terminate the Agreement during the Minimum Term on written notice to the Company within thirty (30) days of receipt of the notice of increase, without the obligation to pay the Early Termination Fee.

For the avoidance of doubt, any increase to the Charges that would not have increased the Customer's immediately previous monthly total bill for that specific Service (if the increase(s) had applied for the whole of that month) by more than the RPI annual inflation rate at the date We notify the Customer of the applicable increase in the Charges shall not entitle the Customer to terminate the Agreement under this Clause 6.7.

- 6.8. If the Company becomes liable to pay any additional fees, costs or charges to the Government, a regulatory authority or self-regulatory authority and such fees, costs or charges are directly attributable to the provision of Service Protect Services to the Customer under the Agreement, We shall be entitled to pass through such fees, costs and charges to the Customer with immediate effect.
- 6.9. Where the Company agrees to do work outside a Working Day at the request of the Customer, We may charge the Customer in accordance with the Company's applicable man-hour rate.

## 7. **SUSPENSION AND VARIATION OF THE SERVICES**

- 7.1. The Company reserves the right (at its option) to terminate the Agreement or suspend or vary the Service Protect Services:
  - 7.1.1. if the Customer fails to comply with its obligations under the Agreement including the obligation to pay the Charges;
  - 7.1.2. if the Company reasonably believe the Customer has provided false or misleading Customer Information;
  - 7.1.3. the Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security in response to a request from the Company; or
  - 7.1.4. the Company considers that there is a significant credit risk;
  - 7.1.5. the Company considers that there is a fraud risk.
- 7.2. The re-instatement of suspended Service Protect Services shall be at the Company's sole discretion and the Customer shall nevertheless be responsible for payment of the Charges during any period where the Service Protect Services are suspended pursuant to clause 7.1.1 and clause 7.1.2.

## 8. TERMINATION

- 8.1. Without prejudice to any other rights or remedies to which We may be entitled, We may terminate the Agreement without liability to the Customer if:
- 8.1.1. the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
  - 8.1.2. the Customer commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
  - 8.1.3. the Customer is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution, or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer.
- 8.2. The Company may, without prejudice to any of its other rights under the Agreement, terminate the Agreement with immediate effect by notice in writing in the event that:
- 8.2.1. the Company is not, for whatever reason, permitted or authorised to provide the Service Protect Services;
  - 8.2.2. such action is required to comply with a direction from Ofcom or any competent authority to suspend or cease the provision of the Service or any part of it;
  - 8.2.3. such action is required in order to comply with any legislation;
  - 8.2.4. the Company has reasonable grounds to suspect that the Customer is involved in fraudulent or other unlawful activity.
- 8.3. If the Agreement commences before the Company has completed its credit check of the Customer, We shall be permitted to terminate the Agreement immediately by written notice if the Customer fails to pass the Company's credit policy.
- 8.4. The rights to terminate the Agreement given by this Clause 8 shall be without prejudice to any other right or remedy of the Company in respect of the breach concerned (if any) or any other breach.

## 9. EFFECTS OF TERMINATION

- 9.1. Upon termination or expiry of the Agreement for any reason:
- 9.1.1. the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Service Protect Services supplied but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 9.1.2. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry;

9.1.3. clauses which expressly or by implication survive termination shall continue in full force and effect.

**10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

10.1. This Clause 10 sets out the Company's entire liability (including any liability for acts or omissions of the Company's employees, agents or subcontractors) in respect of any breach of the Agreement and any representation, statement or tortious act or omission arising out of or in connection with the Agreement.

10.2. Except as set out in these Terms, the Company provides no warranties, conditions or guarantees as to the description or quality of the Service Protect Services, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.

10.3. Nothing in these Terms shall exclude or limit the liability of either party to the other:

10.3.1. for death or personal injury caused as a result of its negligence or the negligence of its employees, agents or subcontractors;

10.3.2. for fraud or fraudulent misrepresentation;

10.3.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.

10.4. Subject to Clause 10.3, the Company's aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall not exceed £1,000,000 (one million pounds sterling).

10.5. Subject to Clause 11.0, We shall not be liable to the Customer for:

10.5.1. loss of profits; or

10.5.2. loss of revenue;

10.5.3. loss of income or business;

10.5.4. depletion or loss of goodwill, reputation or similar losses;

10.5.5. loss of anticipated savings;

10.5.6. loss of or corruption of data or information;

10.5.7. loss of use;

10.5.8. loss of contract;

10.5.9. any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.

10.6. The provisions of this Clause 10 shall survive termination or expiry of the Agreement.

## 11. CONFIDENTIALITY AND DATA PROTECTION

- 11.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2. The Company's Privacy Notice, which can be found on our company website, sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of personal data (where **Personal Data** has the meanings as defined in the Data Protection Legislation) and the Company collects.
- 11.3. Without prejudice to the generality of Clause 11.1, 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) to the Company for the duration and purposes of the Agreement.

## 12. FORCE MAJEURE

- 12.1. For the purposes of the Agreement, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 12.2. We will not be liable to the Customer for any failure or delay in performing Our obligations under the Agreement or supplying the Service Protect Services:
- 12.2.1. as a result of a Force Majeure Event;
- 12.2.2. if another supplier delays or refuses the supply of an electronic communications service to the Company or any of the Company's suppliers and no alternative service is available at reasonable cost; or
- 12.2.3. if legal or regulatory restrictions are imposed upon the Company or any of the Company's suppliers that prevent the Company or any of the Company's suppliers from supplying the Service.
- 12.3. If the Force Majeure Event prevents the Company from providing any of the Service Protect Services for more than 12 weeks, We shall, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the Customer.

## 13. NOTICES

- 13.1. Notices must be in writing. The address for service on the Company (subject to any change notified by the Company) is: Southern Communications Ltd, Glebe Farm, Down Street, Dummer, Hants, RG25 2AD. The address for service on the Customer is as set out in the most recent invoice.
- 13.2. Notices may be delivered by hand, sent by first-class mail, fax or e-mail. Correctly addressed notices if delivered by hand, shall be deemed to have been delivered at the time of delivery, if sent by first-class mail shall be deemed to have been delivered 72 hours after posting, correctly directed faxes shall be deemed to have been received instantaneously on transmission and in proving the service of any notice by e-mail, it will be sufficient to prove that such e-mail was sent to the specified e-mail address of the addressee.

14. **VARIATION**

- 14.1. Except as set out in these Terms, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed by the Company in writing and signed by an authorised representative of the Company.

15. **GENERAL**

15.1. **Assignment and other dealings.**

15.1.1. We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of Our rights under the Agreement and may subcontract or delegate in any manner any or all of Our obligations under the Agreement to any Authorised Party, third party or agent.

15.1.2. The Customer shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.

- 15.2. **Severance.** Each of the clauses of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

- 15.3. **Waiver.** Any failure by either party to exercise or enforce its right under the Agreement shall not be a waiver of that right, nor prevent such party from exercising or enforcing such right at a later time.

- 15.4. **No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 15.5. **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.

- 15.6. **Governing law.** The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

- 15.7. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

**Schedule 1**

**SERVICE PROTECT SERVICE LEVELS**

**1. SERVICE PROTECT SERVICE LEVEL AGREEMENTS (SLAS)**



	Standard	Service Protect
Resolution of fault or issue up to SCL provided demarcation point	✓	✓
Further investigation into a <b>non maintained PBX fault</b>		✓
Interrogation and review of <b>existing local network, switches &amp; servers in a fault scenario</b>		✓
Review and fault finding on customer supplied/ <b>3<sup>rd</sup> party firewalls &amp; routers</b>		✓
Fault investigation and review of <b>wireless access points</b>		✓
Investigations into 3 <sup>rd</sup> party provider <b>SIP, Data and Hosted</b> products that are part of the customers overall solution		✓
Guaranteed engineering visit date with 8 working hours of Service Protect being invoked		✓
Access to specialist engineering resource to resolve a fault for a 40 hour period per annum		✓
Best practice advice & recommendations on customers overall solution to resolve a fault or performance issue		✓