

General Terms and Conditions – Rev 1.10

YOUR CONTRACT WITH SWAINS PLC IS COMPRISED OF THE FOLLOWING DOCUMENTS:

- (i) GENERAL TERMS AND CONDITIONS
- (ii) THE SERVICE AGREEMENT, ORDER SCHEDULES AND ANY ADDITIONAL ORDERS
- (iii) RELEVANT TARIFF(S) FOR THE SERVICES; AND
- (iv) ANY ADDITIONAL TERMS AND CONDITIONS RELATING TO SPECIFIC SERVICES.

Definitions

“Act” means the telecommunications Act 1984 and any amendments to the Act
“Additional Order” means additional services added to the Agreement
“Customer” means the company, partnership, organisation or individual listed on the order documentation
“CPE” means Customer Premises Equipment
“Equipment” means any equipment supplied by or on behalf of Swains to the Customer for the purpose of providing Service(s)
“Order Schedule” Document(s) detailing customer service requirements
“Services” means the service(s) as described in 1.4 below
“Agreement” Document(s) detailing services required by the customer, relevant conditions, and pricing
“Service Provider/Swains” means Swains Plc whose registered office is 11 King Street, Kings Lynn, Norfolk PE30 1ET

1. Provision of Services

- 1.1 The Services we supply to you are those Services which:
 - 1.1.1 you have elected to receive as set out in the Order Schedules, or
 - 1.1.2 you have ordered via telephone and are set out in the order confirmation, or
 - 1.1.3 have been ordered via our website or,
 - 1.1.4 you have subsequently ordered in writing, by fax, by email or by telephone, and in each case which we have agreed in writing or by email to supply to you.
 - 1.1.5 services which have been ordered on your behalf by an authorised Swains Partner and which you have subsequently confirmed that you wish to receive.
- 1.2 “The Services” means the services Swains Plc has agreed to provide as described in the Service Agreement, order schedules and various editions of Swains Plc’s literature and publications and price lists. In the event that there is any inconsistency or ambiguity between words of these terms and conditions and Swains Plc’s literature and publications and price lists, the provisions of these terms and conditions shall prevail. Swains Plc reserves the right from time to time to revise or vary the terms of their literature, publications and price lists and provided they have given you notice, such variations and revisions shall form part of the contract.
- 1.3 These terms and conditions in conjunction with any service specific terms and conditions prevail over any other documents published or delivered to you by Swains Plc, or any representation made orally to you, and any provisions of your order which attempts directly or indirectly to vary, add to, or restrict these terms and conditions however made or attempted to be made shall fail unless and until you have Swains Plc’s express written consent (signed by a Company Director) to such variations, additions or restrictions. Nor shall any oral representation similarly form any part of the contract or amount to any inducement to enter into the contract or contract collateral to the contract or restrict any enforcement by Swains Plc of any of the terms of the contract.
- 1.4 Services may include (but are not limited to):
 - 1.4.1 The ability to make or receive a Telephone Call (Telephony service);
 - 1.4.2 The provision of a Telephone Line or Lines for a rental charge (Line rental service);
 - 1.4.3 The provision of Data Services and internet access (Data service);
 - 1.4.4 The provision of Inbound telephony services (Inbound service);
 - 1.4.5 The provision of IP telephony services (IPT service);
 - 1.4.6 Any other Services which we may offer from time to time.
- 1.5 Swains will use reasonable endeavours to provide Services by the date(s) we agree with you and to continue to operate, maintain and where applicable restore the Services in the event of a failure until this Agreement is terminated. However we will not be liable for any loss or damages whatsoever should the Services not commence or restart on the agreed date.
- 1.6 In providing the Services we shall use the reasonable skill and care that may be expected from a competent Communications Service Provider.
- 1.7 Services may be subject to Acceptable Use or Fair Usage Policies which at the time of application will be the latest version and available at www.swainsplc.co.uk
- 1.8 Swains cannot guarantee and do not warrant that the Service(s) will be free of interruptions or will be fault-free and we will not be liable for any loss or damages should the Service(s) be interrupted from time to time. You accept that there may also be degradations of the quality of the Service from time to time due to matters beyond our control, and that we will not be liable for any loss or damages should the quality of the Service we provide be affected by such matters. Service level guarantees may apply to certain services and which at the time of application will be the latest version available at www.swainsplc.co.uk

2. Duration and Termination

- 2.1 The contract shall commence from the date of acceptance by Swains and shall continue until terminated in accordance with these terms and conditions and any service specific terms and conditions. The contract is subject to a minimum term, dependant on the services provided. The minimum term shall run from the connection date of all services for the agreed minimum term and continue thereafter, subject to the service by either party of a minimum of a ninety day written notice of termination expiring on the last day of a calendar month.
- 2.2 For the avoidance of doubt the standard minimum term is 12 Months unless specified on the Service Agreement or order schedule.
- 2.3 Where additional services are ordered during this contract, the minimum term of the entire Agreement for all services will be extended to either:
 - 2.3.1 the original minimum term of the entire Agreement or;
 - 2.3.2 the standard minimum term of the additional service(s) whichever expires latest.
- 2.4 The customer may bring the contract to an end before the expiration of the minimum term by service of a ninety day written notice of termination expiring on the last day of a calendar month provided that they shall pay to Swains Plc liquidated damages, calculated using the following formula, (the formula) namely multiplying the average of the period of the last six monthly charges (or the lesser period that the term has run if under six months) by the number of unexpired whole number months of the remaining minimum term divided by 2.
- 2.5 Once the initial minimum term has expired the customer may bring the contract to an end by service of a ninety day written notice of termination expiring on the last day of the calendar month. Where notice is not received as specified the customer shall pay Swains Plc, liquidated damages calculated using the formula (specified in 2.6).
- 2.6 As standard, all Services will be ceased on the agreed contract termination date. Where Swains Plc has agreed in writing to provide service after the contract termination date all services shall be subject to standard charges available at www.swainsplc.co.uk.
- 2.7 Should you during the fixed term obtain telephone carrier network services from another Service Provider you will pay Swains agreed liquidated damages calculated using the formula (specified in 2.6) but substituting for the average six monthly charges (or lesser period) the diminution in the charges which Swains Plc would otherwise have charged you.
- 2.8 Where notice is not received in accordance with the contract, Swains reserve the right to suspend services immediately, pending payment of all outstanding invoices, termination charges, and any anticipated charges which may be accrued during the contracted minimum term or notice period.

- 2.9 The customer has the right to cancel the contract without incurring termination charges by providing written notice within 7 days of the date of the Agreement. The customer agrees to pay any charges reasonably incurred through the provisioning of any services. Where the customer has commenced using any service or equipment you will have deemed to have accepted these conditions and will be subject to the minimum term and termination procedures as specified in clause 2.
- 2.10 Notwithstanding anything to the contrary expressed or implied in the Agreement, Swains (without prejudice to it’s other rights) may terminate the contract forthwith and without notice in the event that:
 - 2.10.1 A liquidator (otherwise other than for the purpose of amalgamation or reconstruction), trustee in bankruptcy, administrator, receiver or receiver and manager is appointed in respect of the whole or part of your assets and undertaking or you enter into an arrangement or composition with creditors, or if you become unable to pay your debts within the meaning of S123 of the Insolvency Act 1986, or other circumstances arise which entitle a court or creditor to appoint a receiver administrator or to make a winding up order, or if any of the proceedings are threatened, or
 - 2.10.2 You are in breach of obligation to Swains Plc other than the payment of money and upon being given notice of that breach in writing you fail to remedy that breach within twenty-eight days.
 - 2.10.3 Any licence under which you have the right to run your telecommunications system and connect it to the Swains Plc system is revoked amended or ceases to be valid.
 - 2.10.4 You fail to utilise the Services either to the extent anticipated or at all.
 - 2.10.5 You fail to pay Swains Plc’s charges whether demanded not.

3. Use of the Services

- 3.1 You are responsible for the safe custody and safe use of The Services and any related equipment after installation of The Services, and in particular you undertake.
 - 3.1.1 Not to cause any attachments other than those approved for connection under the Act to be connected to The Services.
 - 3.1.2 Not to contravene the Act or any other relevant regulations or licenses.
 - 3.1.3 Not to tamper with equipment or add any unauthorised additions thereto.
- 3.2 Should you contravene your obligations it is agreed that Swains Plc will not be liable for any costs associated with rectification and that all such costs shall be borne by you.
- 3.3 Your apparatus shall at all times conform to the relevant standard or standards (if any) for the time being designated under the Act and Swains Plc shall not be under any obligation to connect or keep connected any apparatus if it does not conform or if in the reasonable opinion of Swains Plc it is liable to cause death, personal injury, damage or impair the quality of any Services provided to you.
- 3.4 You undertake to use The Services in accordance with the terms of the Act and any licence granted there under. Without limitation, you undertake to use reasonable endeavours not to use The Services.
 - 3.4.1 As a means of communication for a purpose other than that for which The Services are provided; and
 - 3.4.2 For the transmission of any material which is defamatory, offensive or of an abusive, obscene or menacing character.
- 3.5 You shall not assign or delegate or otherwise deal with all or any of your rights under the contract which shall only, if at all be enforceable by you against Swains Plc but this sub-clause does not restrict the rights of Swains Plc.

4. Suspension of Services

- 4.1 Swains has the right to suspend or cease the provision of services without notice and without compensation in the event of the following:-
 - 4.1.1 The Customer is in serious breach of the terms of their Agreement with Swains
 - 4.1.2 Swains believes the services are being used fraudulently or
 - 4.1.3 Swains believes that the services are being used for any purpose as set out in section 3.4.2 above.
 - 4.1.4 Swains are required to comply with an order, instruction or request from Central of Local Government, the emergency services or other relevant administrative body.
 - 4.1.5 Swains reasonably believes the customer is attempting to transfer services to an alternative provider in breach of the Agreement without providing relevant notice or payment of outstanding invoices and termination charges
- 4.2 You shall reimburse Swains for all reasonable costs incurred by the implementation of the suspension and subsequent reconnection or provision of the services, where the suspension is caused by breach of Agreement, fault or omission on your part.

5. Changes and interruptions to the Services

- 5.1 Occasionally we may have to implement alterations that could affect the Services. These alterations are listed in sub clause 5.2. If we have to interrupt the Services we will use reasonable endeavours to restore them as quickly as possible.
- 5.2 Occasionally we may have to:
 - 5.2.1 change the code or phone number or the technical specification of the Services for operational reasons;
 - 5.2.2 interrupt the Services for operational reasons or because of an emergency;
 - 5.2.3 give you instructions that we believe are necessary for health or safety or to maintain the quality of the Services that we supply to you or to our other customers.

6. Access to Premises and provision of information

- To enable Swains Plc to exercise its obligations under the Service Agreement(s);
- 6.1 The Customer will permit or procure permission for Swains Plc or any other person(s) authorised by Swains Plc to have reasonable and safe access to the premises and service connection points where the services are to be installed.
 - 6.2 The Customer shall provide information and reasonable assistance where requested
 - 6.3 Swains Plc will normally carry out work by appointment during working hours, but may request you to provide access at other times. Such requests shall not oblige you to provide access
 - 6.4 At the Customers request, Swains Plc may agree to work outside of standard working hours and if so you shall pay all reasonable charges for complying with the request
 - 6.5 The Customer consents to Swains Plc disclosing information relating to (but not limited to) the nature, timing, and level of usage of The Services as required for the provision, operation, and ongoing maintenance of The Services.

7. Equipment

- 7.1 The Customer agrees that any equipment installed or provided by Swains shall at all times remain the property of Swains until payment is received in full at which point title will transfer to the Customer
- 7.2 Equipment will be delivered to the address specified on the Order Schedule or Agreement and liability for the equipment shall transfer to the customer at the point of delivery
- 7.3 The Customer is responsible for any loss or damage, howsoever caused (except damage or loss caused by Swains), and you agree to pay for any repairs or replacement
- 7.4 Swains will use reasonable endeavours to pass on the benefit of the manufacturers warranty
- 7.5 All equipment is supplied with a standard “back to base” warranty and it is the customers’ responsibility to arrange and pay for the return of the equipment to Swains where a claim under the manufacturers warranty is requested

8. Charges and Payment

- 8.1 You agree to pay charges levied by Swains Plc on demand (time being of the essence). The charges will include hardware, rental, installation (where applicable), usage and any other charges as specified in the service Agreement, order schedule, or current price list in force at the time.
- 8.2 Any costs incurred by Swains Plc associated with moving customer premises equipment at your request will be borne by you. You will also be responsible for the payment of any costs of modification and costs associated with and previously unforeseen by Swains Plc.
- 8.3 Should increased charges become necessary due to regulatory requirements Swains will provide you with twenty-eight days notice in writing and you will be obliged to pay the revised charges under the remaining term of the contract.
- 8.4 Should increased charges become necessary due to non-regulatory requirements Swains will provide you with twenty-eight days notice in writing. The customer may provide Swains within seven working days of notification, twenty-eight days written notice to terminate the contract without incurring any liability to pay liquidated damages. Where notice is not received within seven working days of the notification, the customer is obliged to pay the revised charges for the remaining term of the contract.
- 8.5 Usage charges payable by you shall be calculated by reference data recorded or logged by Swains Plc or its carrier and not by reference to any data recorded or logged by you.
- 8.6 Swains Plc reserves the right to charge interest at the rate of 3% above the published Bank of England base rate on a daily basis on any overdue amounts until final payment in full is received, together with any solicitors costs and disbursements on the indemnity losses involved in enforcing payment, whether before or after judgment.
- 8.7 You will be invoiced by Swains Plc at the billing address specified by you. Payment of the invoice shall be made by you to Swains Plc at Wilson House, Saxon Way, Dersingham, Norfolk, PE31 6LY. Payment shall be made by direct debit (unless otherwise agreed in writing) and collected on or around the 25th day following the date of invoice. Receipt of payment by Swains Plc will be deemed the only valid discharge of all debts.
- 8.8 Swains reserve the right to charge a fee for non direct debit payments, or for cancelled Direct Debit Mandates.
- 8.9 Where a Direct Debit Mandate is cancelled or an indemnity claim is lodged, Swains reserve the right to suspend services immediately, pending payment of all outstanding invoices, termination charges, and any anticipated charges which may be accrued during the contracted minimum term or notice period.
- 8.10 Where Swains Plc makes a supply to you and value added (or similar) tax is payable in respect of such supply you shall pay on demand, supported by a value added (or similar) tax invoice the amount of value added (or similar) tax so payable.
- 8.11 Payment of all sums due from you shall be made without any set-off, cross claims, or deduction whatsoever and howsoever arising.
- 8.12 For the avoidance of doubt, you shall be liable for all and any charges payable to Swains Plc or any third party arising out of use of the Services.
- 8.13 Failure to pay by the due date is considered a serious breach of the Agreement (see clause 4)
- 8.14 Swains reserve the right to request the payment on demand of any outstanding sums, or anticipated charges.

9. Liability

- 9.1 Swains Plc nor any authorised representatives or agents are under any liability to you or any third party in respect of any injury, loss, damage or expense of whatever nature, directly or indirectly arising from any defect in or failure of the services to operate in the way you expect or anticipate and whether in contract or tort or otherwise and whether in respect of loss of any business contracts, actions and claims at law, anticipated savings or profits, claims for interest or otherwise.
- 9.2 Swains Plc shall not be responsible for any loss or damage which you may suffer resulting from any cause whatsoever beyond Swains Plc's actual control, nor has any person not directly employed by Swains Plc any authority to make any representations as to quality to fitness for purpose of the services unless Swains Plc shall have informed you in writing, signed by a Company Director, that such person has such authority.

- 9.3 Swains Plc shall not be liable to the subscriber for any delay in either providing a Connection Date to the Subscriber or another reason for delay in connection.
- 9.4 In the event The Services fail to operate and call or data traffic is routed over an alternative carrier, Swains shall not in any circumstances be liable for that carriers charges.
- 9.5 The Subscriber shall indemnify Swains Plc against all liabilities, claims, damages, losses and expenses arising from the use of the services in breach of this Agreement.
- 9.6 Statutory Rights not excluded. If Statute has the effect of modifying the effects of any other terms of this clause then in so far as may be practicable the same shall continue in full.

10. Other Terms

- 10.1 Failure by either party to exercise or enforce any right shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any other occasion.
- 10.2 For operational reasons Swains Plc may vary the technical specification of The Services and after variation The Services so varied shall constitute the services Swains Plc is obliged under the contract to render to you.
- 10.3 You must indemnify Swains Plc against any costs, claims or proceedings arising from the use, by you of The Services where such costs, claims or proceedings are brought or threatened against Swains Plc by any other party.
- 10.4 Any notice, invoice or other document which may be given by Swains Plc shall be deemed to have been duly given if left at or sent by post to an address notified to Swains Plc in writing by you as an address which notices, invoices or other documents may be sent or your usual or last known place of abode or business; or if sent by facsimile to your last known facsimile number or if by e-mail to your last known e-mail address.
- 10.5 Swains Plc's address for services of any such notices by you under this Agreement shall be the correspondence address as is shown on the last invoice rendered or such address as Swains Plc may prescribe for that purpose.
- 10.6 This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby agree to submit to the exclusive jurisdiction of the English Courts.

11. Variation

- 11.1 Swains may vary the terms and conditions of the Agreement by providing a minimum of twenty eight days notice.
- 11.2 Terms and Conditions in force will be published on the Swains Plc website at www.swainsplc.co.uk
- 11.3 Where Swains provides notice of a date the variation of the terms and conditions is applicable from, and the customer continues to utilise the Service after the variation date, the customer will be deemed to have accepted the revised terms and conditions and these will form the applicable terms and conditions of the Service Agreement for the remaining term of the Agreement.
- 11.4 The customer agrees any terms and conditions cannot be modified by their own terms and conditions of business without the prior written consent of a Director of Swains Plc.

12. Assignment

- 12.1 Swains may assign or delegate the rights under this Agreement
- 12.2 The Customer may only assign its rights or obligations under this Agreement with the prior written consent of Swains.

13. Data Protection/Confidentiality

- 13.1 Swains complies with its obligations of the Data Protection Act 1998. Swains will utilise any personal or sensitive personal data obtained for the purposes of establishing and administering the customer, enabling Swains' Service Providers, authorised agents and representatives to supply the service(s), and for invoicing and marketing purposes
- 13.2 Swains may from time to time use the data to provide information on services which it considers may be of interest to the customer. The customer can request information is not used for this purpose by writing to Marketing Manager, Swains Plc, Wilson House, Saxon Way, Dersingham, Norfolk, PE31 6LY
- 13.3 For the purposes of this clause personal or sensitive data shall have the meanings given to them by the provisions of the data protection act 1998.

The Direct Debit Guarantee



- This Guarantee is offered by all banks and building societies that accept instructions to pay Direct Debits
- If there are any changes to the amount, date or frequency of your Direct Debit, Swains Plc will notify you 10 working days in advance of your account being debited or as otherwise agreed. If you request Swains Plc to collect a payment, confirmation of the amount and date will be given to you at the time of the request
- If an error is made in the payment of your Direct Debit, by Swains Plc or your bank or building society, you are entitled to a full and immediate refund of the amount paid from your bank or building society - If you receive a refund you are not entitled to, you must pay it back when Swains Plc asks you to
- You can cancel a Direct Debit at any time by simply contacting your bank or building society. Written confirmation may be required. Please also notify Swains Plc