



# **Schools Internet Service Service User Agreement**

# Document Control and Key Information

<b>Version</b>	V2.0
<b>Reference</b>	<i>[customer-specific details inserted here]</i>
<b>Customer</b>	
[please provide the name of the legal entity the Service User will be contracting under, along with its company number (if applicable), charity number (if applicable) and its registered address]	<i>[customer-specific details inserted here]</i>
<b>Effective Date</b>	
[please state the date of the last party signing this agreement]	<i>[customer-specific details inserted here]</i>
<b>Start Date</b>	
[please state when the services commence under this agreement]	<i>[customer-specific details inserted here]</i>
<b>Initial Term</b>	
[please state for how long this agreement will continue initially]	<i>[customer-specific details inserted here]</i>

IN WITNESS of which this Agreement has been duly executed by the parties.

Signed for and on behalf of **SOUTH WEST GRID FOR LEARNING TRUST LIMITED** by:

Signature: .....

Name (block capitals) .....  
Director/authorised signatory

Signed for and on behalf of **[insert the Service User's legal entity name above]** by:

Signature: .....

Name (block capitals) .....  
Director/authorised signatory

(1) South West Grid for Learning Trust Limited

and

(2) A Service User

# **Service User Agreement**

relating to the provision of Schools Internet Services

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THIS AGREEMENT is made on the date set out in the Key Information.

BETWEEN:

1. **SOUTH WEST GRID FOR LEARNING TRUST LIMITED** an English company (company number 5589479) and a charity (charity number 1120354) whose registered office is at SWGfL, Belvedere House, Woodwater Park, Pynes Hill, Exeter, EX2 5WS ("SWGfL");

and

2. A **SERVICE USER**, as described in the Key Information.

IT IS AGREED:

## 1. Definitions and Interpretations

### 1.1. Definitions

- "**Acceptable Use Policy**" or "**AUP**" means any such policy as maintained and updated by SWGfL from time to time;
- "**Additional Services**" means those services made available by SWGfL from time to time for service users to purchase;
- "**Agreement**" means this document entitled the Service User Agreement and all documents referred to in it, including without limitation the Customer Manual;
- "**Business Continuity Plan**" means the plan implemented, maintained and updated by SWGfL from time to time;
- "**Change**" has the meaning given to it in clause 19.1 of this Agreement;
- "**Charges**" means the charges as set out for the relevant Services in the Quote and Order Form as may be updated in accordance with the Customer Manual;
- "**Confidential Information**" means any of SWGfL's or the Service User's confidential or proprietary information, including this Agreement but excluding any information: (a) that is publicly known or becomes publicly known other than by a breach of this Agreement; (b) that, when it was disclosed to the other party, was already known by that party; or (c) that, after being disclosed to the other party, is disclosed to that party again by a third party at liberty to disclose it;
- "**Core Service**" means SWGfL's package of core services delivered to each of its service users;

- "**Customer Manual**" means the manual relating to the Services as maintained and updated by SWGfL from time to time;
- "**Data Controller**" shall have the same meaning as set out in the Data Protection Act 1998;
- "**Data Processor**" shall have the same meaning as set out in the Data Protection Act 1998;
- "**Data Protection Act**" or "DPA" means the Data Protection Act 1998;
- "**Disaster Recovery Plan**" means the plan designed to mitigate risk in the event of a disaster implemented, maintained and updated by SWGfL from time to time;
- "**Dispute Resolution Procedure**" means the procedure for resolving disputes as determined by SWGfL acting reasonably, from time to time;
- "**Due Date**" shall have the meaning set out in clause 9.2 of this Agreement;
- "**Effective Date**" means the date on which this Agreement was signed, being set out in the Key Information;
- "**Exit Plan**" means the plan implemented, maintained and updated by SWGfL from time to time;
- "**FOIA**" means the Freedom of Information Act 2000;
- "**Hardware**" means the computer equipment, file-servers, web-servers, network cards, disk drives, modems, telecommunications equipment (including wide area and local area equipment), cache devices, uninterruptible power supplies, fail-over generators, ISDN gateways, video multi- control units, fixtures, fittings and other hardware;
- "**Initial Term**" means the initial period for which the Services shall be provided as specified in the Key Information, commencing from the Start Date, subject to earlier termination;
- "**Intellectual Property Rights**" or "**IPRs**" means any rights in or to any patent, copyright, database right, design right, utility model, trade mark, brand name, service mark, trade name, business name, chip topography right, know-how or Confidential Information and any other rights in respect of any other industrial or intellectual property, whether capable of being registered or not and including all rights to apply for any of the foregoing rights;
- "**IPR Claim**" means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPRs used to

provide the Services or as otherwise provided by SWGfL (or to which SWGfL has provided access) to the Service User in the fulfilment of its obligations;

- **"Key Information"** means the information section set out on the initial pages of this Agreement;
- **"Law"** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
- **"Month"** means any calendar month;
- **"Net Book Value"** means the net book value of the relevant asset calculated in accordance with the depreciation policy as maintained and updated by SWGfL from time to time;
- **"Optional Services"** means those services made available by SWGfL from time to time for service users to purchase;
- **"Personnel"** means the directors, employees, consultants, agents, advisors or sub-contractors of the Supplier, SWGfL or the Service User as applicable;
- **"Prohibited Act"** means any act of the Service User which: (a) involves bribery or dishonesty; (b) any illegal act or any act which is an offence under the Public Bodies (Corrupt Practices) Act 1889, the Prevention of Corruption Acts 1906-1916, section 117 of the Local Government Act 1972, the Bribery Act 2010; or (c) any act which does or attempts to defraud SWGfL, and which is committed in relation to the obtaining or performance of this Agreement;
- **"Quote and Order Form"** means the document received by the Service User which sets out the calculation of the Charges to be paid by the Service User in return for the provision of the Services;
- **"Regulatory Body"** means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of, but not limited to, the Service User;
- **"Security Policy"** means any such policy as maintained and updated by SWGfL from time to time;

- "**Service Description**" means the description of the relevant Services as provided for in the Quote and Order Form, which SWGfL may update and amend from time to time;
- "**Service Desk**" means the service desk provided by SWGfL, the contact details for which will be provided to the Service User by SWGfL from time to time;
- "**Service User**" means the person identified by this Agreement as the person to whom SWGfL will supply services as anticipated by this Agreement;
- "**Service Level Summary**" or "**SLS**" means the service level summary contained within the Customer Manual which may be updated and amended by SWGfL from time to time;
- "**Services**" means the services to be provided by or on behalf of SWGfL to the Service User as anticipated by this Agreement, being the Core Service and any Additional Services ordered by the Service User;
- "**Site**" means premises and/or any relevant ICT systems owned, controlled or occupied by the Service User which are made available for use by SWGfL and/or Supplier or any subcontractor of SWGfL and/or Supplier for provision of the Services (or any part of them) on the terms set out in this Agreement;
- "**Software**" includes computer programs, operating systems, firmware and all associated files and data (including job control and other procedure language files, macros and configuration files);
- "**Start Date**" means the date on which the Services shall commence, being set out in the Key Information;
- "**Supplier**" means any person who is contracted to supply the Services (or any part of them) on behalf of SWGfL under this Agreement;
- "**Supplier Equipment**" means the Hardware and Software to be provided by the Supplier to the Service User in the course of providing the Services;
- "**Supplier Personnel**" means all employees, agents, consultants and contractors of the Supplier and/or any subcontractor of the Supplier;
- "**SWGfL Personnel**" means all employees, agents, consultants and contractors of SWGfL and/or any subcontractor of SWGfL which shall include the Supplier Personnel;
- "**System**" means any Hardware (including the Supplier Equipment) to be supplied by or on behalf of SWGfL as anticipated by this Agreement, and references to the System includes any part of the System;



- **"Termination Fees"** means the fees as set out in the Customer Manual that will be charged to the Service User on termination of this Agreement or on termination of a relevant Service;
- **"Terminating Party"** has the meaning given to it in clause 11.2 of this Agreement;
- **"Transferred Assets"** means any assets required by the Service User to be transferred to the Service User on or prior to the Start Date;
- **"Working Day"** means any day which is not a Saturday, Sunday or a public holiday in England.

## 1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires:

- 1.2.1.1 references to clauses and schedules are references to clauses of and schedules to this Agreement;
- 1.2.1.2 words importing one gender shall include all genders;
- 1.2.1.3 the clause headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- 1.2.1.4 the schedules shall be deemed to form part of, and be construed as one with, this Agreement and any reference to this Agreement shall include the schedules;
- 1.2.1.5 the word "including" shall be understood to mean "including without limitation" and the word "includes" shall be understood to mean "includes without limitation".

## 2. Provision of Services

- 2.1. SWGfL shall use its reasonable endeavours to ensure the supply of Services to the Service User in accordance with the Service Level Summary.
- 2.2. Where applicable, as soon as practicable from the Effective Date, SWGfL shall use its reasonable endeavours to ensure that the Supplier shall send the Service User a project plan setting out its environmental, access and accommodation requirements and a timetable for the installation of the System.
- 2.3. The Service User shall at all times throughout the duration of this Agreement comply with the Business Continuity Plan and Disaster Recovery Plan and shall on

termination or expiry of this Agreement comply with the Exit Plan as implemented, maintained and updated by SWGfL from time to time.

- 2.4. SWGfL may from time to time make available Additional Services to the Service User. If the Service User wishes to receive any Additional Services, it shall place orders for the relevant Additional Services via the mechanism then in place for doing so, and the charges payable and the terms relating to those Additional Services shall be incorporated into this Agreement. Additional Services shall have their own Initial Terms, Start Dates and Charges as specified by SWGfL.
- 2.5. SWGfL shall be responsible for the implementation of any testing procedures in respect of the System or the Services and where applicable each party shall bear its own costs relating to the same.
- 2.6. Where for the testing procedures undertaken in accordance with clause 2.5, or for any other purpose under this Agreement, an audit is required, SWGfL will use its reasonable endeavours to ensure that the conduct of the audits do not unreasonably disrupt the Service User or delay the provision of the Services. Each party shall bear its own costs in respect of any such audits.
- 2.7. SWGfL, the Service User and the Supplier shall provide such reasonable co-operation, information, advice and assistance to each other as is necessary to implement, operate and receive the Services.

### **3. Use of Services**

- 3.1. Subject to clause 3.2, the parties agree that the Service User shall be permitted to the use of the Services in accordance with the relevant Service Description(s), the Acceptable Use Policy, the Security Policy and the Customer Manual.
- 3.2. Where use of the Services and/or the System by the Service User or any other person is not in accordance with the terms of this Agreement and more specifically clauses 3.1 and 3.3 the parties agree that SWGfL shall not be liable for and is indemnified by the Service User in respect of any costs or claims whatsoever relating to or arising from such misuse of the Services and/or System.
- 3.3. Without limitation to the generality of clause 3.1, the Service User undertakes not to use the System:
  - 3.3.1. for the publication, communication or transmission of any material which is:
    - 3.3.1.1 defamatory, offensive or abusive;

- 3.3.1.2 of an obscene, nuisance or threatening character;
  - 3.3.1.3 calculated to demean or be discriminatory of any person or vitiate their human or moral rights; or
  - 3.3.1.4 of a character such that its access by children would be to put them at risk in any way or would be considered improper;
  - 3.3.2. in a manner which constitutes a violation or infringement of the legal rights of any person; or
  - 3.3.3. in a manner that is or is associated with a criminal offence.
- 3.4. The Service User shall not (whether or not for profit) re-sell or permit the resale directly or indirectly of the Services (or any part of them) to any third party, or to allow any third party to connect to the System or otherwise receive or make use of the Services directly or indirectly.
- 3.5. The Service User warrants, represents and undertakes to SWGfL that it shall at all times comply with Law when carrying out its obligations under this Agreement.
- 3.6. SWGfL or the Supplier may suspend or limit the Services (or any part of them) if SWGfL or the Supplier reasonably suspects that the Service User is in breach of clause 3.3, clause 3.4, or 3.5 or SWGfL or the Supplier reasonably believe that suspension or limitation will prevent or usefully inhibit such an activity or risk, provided that any such suspension or limitation:
- 3.6.1. is reasonable and proportionate;
  - 3.6.2. where practical is imposed subject to advance notice being provided;
  - 3.6.3. is of a duration limited to that necessary to prevent any illegal or immoral activity; and
  - 3.6.4. informs the Service User of the action to be taken to allow the restoration of the Services.

## **4. Service Levels**

- 4.1. SWGfL and the Service User shall each use its reasonable endeavours to comply with the Service Level Summary.
- 4.2. The Service User must within 2 Working Days of an issue arising report any issues it has in relation to the provision of the Services to the Service Desk.

## **5. Term of the Services**

- 5.1. Each Core Service making up the Services shall be provided by SWGfL to the Service User for the Initial Term.
- 5.2. At the end of the Initial Term, the parties agree that each of the Core Services shall continue to be provided whilst this Agreement remains in force.
- 5.3. The duration of any Additional Services will be as set out in the relevant Service Description.

## **6. Supplier Equipment**

- 6.1. The Service User acknowledges that all Supplier Equipment shall remain the property of the Supplier. The Service User will permit the Supplier reasonable access to the Site at all reasonable times upon reasonable notice for the purpose of providing any modification or maintenance of the Supplier Equipment. The Service User acknowledges that the Supplier Equipment may be required to provide SWGfL's other service users with their service, and failure to comply with this Agreement may mean that those other service users cannot be provided with their service.
- 6.2. The Service User undertakes with SWGfL that at all times it will ensure the safe keeping and proper use of the Supplier Equipment at the Site. In particular the Service User undertakes:
  - 6.2.1. to comply with all the Supplier's reasonable instructions in relation to the safe keeping and proper use of the Supplier Equipment;
  - 6.2.2. except in the case of an emergency, to keep the Supplier Equipment at its premises and stationary at all times;
  - 6.2.3. not to (or permit any other person to) add to, modify, or in any way interfere with the Supplier Equipment, or any part;
  - 6.2.4. not to do, omit to do or permit anything which is likely to damage, disable or impair the operation of the Supplier Equipment;
  - 6.2.5. not to remove, tamper with or obliterate any words or labels on the Supplier Equipment, or any part;
  - 6.2.6. procure and maintain for the duration of this Agreement suitable insurance in respect of all relevant risks relating to the Supplier Equipment; and

- 6.2.7. not to do anything which may affect the ability of SWGfL to provide services to its other service users.
- 6.3. The Service User shall be liable for:
  - 6.3.1. any loss or damage howsoever caused to the Supplier Equipment at the Site (fair wear and tear excepted) except in so far as it has taken all reasonable precautions to prevent such loss or damage; and
  - 6.3.2. any losses caused to SWGfL's other service users or claims by them against SWGfL (including but not limited to loss of service or impaired service) as a result of the Service User's breach of its obligations set out in clauses 6.2.1 to 6.2.6,
  - 6.3.3. and the Service User on its own behalf undertakes to hold harmless and reimburse SWGfL against all such losses, claims or damage.

## **7. Service User's Hardware**

- 7.1. The Service User acknowledges that it alone and that neither SWGfL nor the Supplier shall be responsible for the competence, sufficiency, repair and maintenance of the Service User's Hardware.
- 7.2. The Supplier may disconnect the Service User's Hardware from the System if the Service User's Hardware:
  - 7.2.1. does not comply with any relevant Law or any other material standards currently in force;
  - 7.2.2. may cause the death of or personal injury to any person or material damage to property (including any Intellectual Property Rights); or
  - 7.2.3. may materially impair the operation of the System or the quality of the Services made available to the Service User or to any other person.
- 7.3. The Service User shall indemnify SWGfL against all claims, costs, demands and expenses (including reasonable legal costs) arising directly or indirectly out of any claim against SWGfL or the Supplier relating to the disconnection of the Service User's Hardware from the System under the provisions of clause 7.2, unless and to the extent that any such claim arises out of the negligence or wilful default of SWGfL or the Supplier.

## **8. Access to Premises/Staff**

- 8.1. The Service User shall permit SWGfL Personnel to access any Site, at all reasonable times for the purpose of installing the System, providing the Services and/or fulfilling its obligations under clause 2.1. The Service User shall provide all reasonable assistance and facilities and all necessary electrical and other installations and fittings, and shall provide such resources at its own cost.
- 8.2. The Service User will provide SWGfL and/or the Supplier, where appropriate, access to suitably qualified staff required as is necessary to implement, operate and receive the Services.

## **9. Payment**

- 9.1. The Service User shall pay to SWGfL any fees reasonably required for the transfer of the Transferred Assets.
- 9.2. The Service User shall pay the Charges to SWGfL within 21 days of the date of any invoice ("Due Date") without any deduction, set-off, discount, abatement or otherwise, unless otherwise agreed in writing and in advance by SWGfL.
- 9.3. All Charges are exclusive of VAT which shall be added at the prevailing rate.
- 9.4. The Charges may be varied by SWGfL in accordance with the Customer Manual.
- 9.5. In addition to the Charges the Service User shall pay:
  - 9.5.1. any relevant Termination Fees; and
  - 9.5.2. all reasonable travel and subsistence expenses properly and necessarily incurred in the performance of the Services by the Supplier. Such expenses will not include expenses incurred as a result of travelling to and from, or subsistence incurred whilst performing the Services at, the Supplier's usual place of work.
- 9.6. If any payment is overdue, the Service User shall pay to SWGfL interest on the amount overdue at the rate prescribed from time to time under the Late Payment of Commercial Debts (Interest) Act 1998 from the Due Date until payment, such interest shall accrue on a daily basis both before and after judgment.
- 9.7. Without prejudice to the provisions of clause 9.6, if any payment is overdue SWGfL may suspend the supply of the Services until such time as the Service User has paid to SWGfL any such overdue amount.

## 10. Maintenance

- 10.1. The Service User will provide all reasonable assistance necessary to allow SWGfL or the Supplier to perform regular maintenance checks on the System throughout the term of this Agreement.
- 10.2. In accordance with clause 10.1 the Service User will discuss and update the maintenance schedule as created by either SWGfL or the Supplier.
- 10.3. If the Service User detects any defect or impairment in the operation or performance of the Services or the System it shall immediately notify SWGfL of any such defect or impairment.
- 10.4. If the Service User detects any health and safety hazards caused by, or as a result of, the provision of the Services it shall as soon as practicable notify SWGfL of any such health and safety hazard.

## 11. Term and Termination

- 11.1. This Agreement shall have effect from the Start Date and continue until at least the end of the Initial Term, subject to earlier termination. After that, this Agreement shall remain in force unless either party gives 3 (three) Months written notice to the other ending this Agreement with effect from the end of the Initial Term or any later date.
- 11.2. Either party ("Terminating Party") may terminate this Agreement immediately by written notice if the other commits any material breach of this Agreement, which, if the breach is capable of remedy, is not remedied within 15 Working Days of the Terminating Party providing the other with written notice specifying the breach and requiring its remedy.
- 11.3. SWGfL may terminate this Agreement if a resolution is passed or an order is made for the winding up of the Service User (save for the purpose of a bona fide reconstruction or amalgamation) or if the Service User becomes subject to an administration order, or a receiver or administrative receiver is appointed over any of the Service User's property or assets, or the Service User is insolvent or would be taken to be insolvent under section 123 of the Insolvency Act 1986 (save that the reference in that section to "£750" shall be replaced by "£10,000"), or the Service User is dissolved.

- 11.4. If any of the circumstances in clause 11.3 apply to SWGfL then the parties will have 7 Working Days to agree, both acting reasonably, an appropriate outcome. Where such agreement cannot be made the parties shall escalate the matter in accordance with the Dispute Resolution Procedure.
- 11.5. SWGfL may terminate this Agreement immediately on notice if the Service User commits any Prohibited Act.
- 11.6. On termination or expiry of this Agreement the Service User shall:
- 11.6.1. pay to SWGfL any Termination Fees due under or in relation to this Agreement;
  - 11.6.2. pay to SWGfL all arrears of any Charges due to SWGfL under this Agreement up to the date of termination; and
  - 11.6.3. return to SWGfL any of the Confidential Information and provide a written certification that such Confidential Information has not been retained save to the extent this is required in relation to the Services.
- 11.7. Any Equipment or assets used by the Service User for the purposes of the Services that the Service User elects to have transferred to it on termination of the Agreement that have not been fully paid for or otherwise amortised at the time of termination or expiry of this Agreement will be charged to the Service User at the Net Book Value.
- 11.8. On termination or expiry of this Agreement, if the Service User has pre-paid for Additional Services which can be cancelled by SWGfL and a refund obtained from its Supplier, SWGfL shall provide a refund of such pre-paid sums to the Service User within 30 days of receipt of those sums from its Supplier.

## **12. Intellectual Property Rights**

- 12.1. The Service User acknowledges that:
- 12.1.1. the Intellectual Property Rights in the System remain vested in the Supplier, SWGfL or their licensors (as applicable);
  - 12.1.2. the Service User has a licence to use the Services in accordance with the terms agreed by SWGfL and the Supplier as more particularly specified in the Services Description; and
- 12.2. Where a software license used by the Service User is terminated for any reason the Service User will return such licensed software to the licensee.



12.3. The Service User shall preserve, store and keep confidential all material that is released from escrow.

## **13. IPR Indemnity**

13.1. The Service User shall at all times, during and after the expiry or termination of this Agreement, on written demand, indemnify SWGfL and keep SWGfL indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by SWGfL arising from an IPR Claim. The Service User's liability in respect of the indemnity given in this clause 13.1 shall be unlimited.

13.2. The Service User agrees that:

13.2.1. it will notify SWGfL in writing of any IPR Claim;

13.2.2. it will allow SWGfL to conduct all negotiations and proceedings and will provide SWGfL with such reasonable assistance required by SWGfL, regarding the IPR Claim; and

13.2.3. it will not, without first consulting with SWGfL, make an admission relating to the IPR Claim.

## **14. Data Protection**

14.1. With respect to the parties' rights and obligations under this Agreement, the parties agree that the Service User is the Data Controller and that SWGfL is the Data Processor.

14.2. Where SWGfL is processing Personal Data as a Data Processor for the Service User, SWGfL shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the DPA, and:

14.2.1. shall process the Personal Data only in accordance with instructions from the Service User;

14.2.2. shall provide the Service User with full cooperation and assistance in relation to any complaint or request made;

- 14.2.3. shall not process or otherwise transfer any Personal Data outside the European Economic Area, without the Service User's prior written consent;
- 14.2.4. promptly notify the Service User of any breach of the security measures required to be put in place pursuant to clause 14.2; and
- 14.2.5. ensure it does not knowingly or negligently do or omit to do anything which places the Service User in breach of the Service User's obligations under the DPA.

## **15. Confidentiality**

- 15.1. Except as permitted by this Agreement, neither party may use any of the other party's Confidential Information.
- 15.2. Subject to clause 15.3, neither party may disclose to any other person any of the other party's Confidential Information.
- 15.3. Either party may disclose the Confidential Information of the other:
  - 15.3.1. when required to do so by Law or any regulatory authority, provided that where practicable and lawful, the disclosing party:
    - 15.3.1.1 promptly notifies the other of such a requirement; and
    - 15.3.1.2 co-operates with the owner of the Confidential Information regarding the manner, scope or timing of such disclosure or any action that the owner may take to challenge the validity of such requirement; and
  - 15.3.2. to its Personnel or any person whose duties reasonably require such disclosure, on condition that the information is only disclosed by that party on the same basis that it was disclosed to that party and the party making such disclosure ensures that each such person to whom such disclosure is made:
    - 15.3.2.1 is informed of the obligations of confidentiality under this Agreement; and
    - 15.3.2.2 complies with those obligations as if they were bound by them.
- 15.4. The Service User, and to the extent that FOIA is applicable SWGfL, shall seek to apply the commercial interests exemption as set out in section 43 of FOIA to all Confidential Information and other sensitive information, if such information is requested in a Freedom of Information request.

## 16. Warranties

- 16.1. Each party represents, warrants and represents to the other that:
- 16.1.1. it is duly authorised to enter into this Agreement on these terms;
  - 16.1.2. this Agreement is executed by a duly authorised representative of that party;
  - 16.1.3. in entering into this Agreement they have not committed and will not commit any Prohibited Act;
  - 16.1.4. they will use their best endeavours to ensure that they will not introduce any virus or disabling programmes or devices into the Hardware and Software or into any other assets of either party; and
  - 16.1.5. they will use their best endeavours to ensure that none of their Personnel will infringe or induce, instruct or encourage any Personnel to infringe any Intellectual Property Rights of either party or any third party.
- 16.2. The Service User accepts that the Services are supplied on an "as is" basis.

## 17. Limitation of Liability

- 17.1. Nothing herein shall limit either party's liability for:
- 17.1.1. death or personal injury resulting from its own negligence or that of its Personnel; or
  - 17.1.2. any liability which cannot by Law be excluded or restricted.
- 17.2. Subject to clauses 13.1, 17.1 and in addition to the Service User's obligation to pay the Charges in full, the Service User's aggregate liability of all causes of action arising out of or in connection with this Agreement during any 12 month period shall not exceed an amount equal to 125% of the total of the sums paid by the Service User to SWGfL under this Agreement during that 12 month period.
- 17.3. SWGfL's liability during any 12 month period in respect of:
- 17.3.1. the supply of the Services, or any part, (whether for breach of contract, in negligence or any other tort, under statute or otherwise at all) shall be limited at SWGfL's option, to:
    - 17.3.1.1 re-supplying the Services;
    - 17.3.1.2 paying the cost of having the Services re-supplied; or
    - 17.3.1.3 repaying any Charges in respect of the part of the Services in dispute,

17.3.2. any damage to a Site caused by the negligence of SWGfL or any of SWGfL's Personnel, shall be limited to £1 million during that 12 month period.

## 18. Dispute Resolution

- 18.1. The parties shall use all reasonable endeavours to resolve any dispute in good faith. Where either party considers that a dispute cannot be resolved within acceptable timescales the dissatisfied party may escalate the dispute in accordance with the Dispute Resolution Procedure.
- 18.2. Each party shall bear its own costs in relation to any dispute escalated through the Dispute Resolution Process.
- 18.3. Where the Service User wishes to make a claim in relation to the Services under this Agreement the Service User must assign such claim to SWGfL who will then bring the claim, within a reasonable time, on behalf of the Service User.

## 19. Change Control Procedure

- 19.1. Subject to clauses 19.2 and 19.3, any change to this Agreement, ("Change") shall be agreed by both parties, acting reasonably, and shall be made in writing and signed by both parties.
- 19.2. The provisions of clause 19.1 will not apply to the Acceptable Use Policy, the Customer Manual, the Services Description or the Service Level Summary, the contents of which may be updated by SWGfL from time to time.
- 19.3. Any change to the Services will be dealt with in accordance with the Customer Manual.

## 20. General

### 20.1. Force majeure

Save for the Service User's obligation to pay the Charges, neither party shall be liable to the other for any delay in, or failure of, performance of its obligations under this Agreement arising from any cause beyond its reasonable control.

### 20.2. Exclusion of other terms

This Agreement sets out the entire agreement and understanding between the

parties in connection with its subject matter. Nothing in this clause 20 shall affect the liability of either party in respect of any misrepresentation, warranty or condition that it makes fraudulently.

20.3. **Assignment and Novation**

The Service User may not assign or in any other way make over to any third party the benefit of this Agreement, either in whole or in part, without SWGfL's express prior written consent.

20.4. **Waiver**

Failure by either party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under this Agreement or otherwise.

20.5. **Notices**

Notices under this Agreement shall be in writing and delivered to the other party by hand, by first class post or by facsimile. Any notice or document shall be deemed served:

20.5.1. if delivered by hand at the time of delivery;

20.5.2. if posted, two Working Days after posting; and

20.5.3. if sent by facsimile, at the time of transmission.

20.6. **Severance**

If any provision or part of a provision of this Agreement is or becomes invalid or unenforceable it will be severed from the rest of this Agreement so that it is ineffective to the extent that it is invalid or unenforceable and no other provision of this Agreement shall be rendered invalid, unenforceable or be otherwise affected.

20.7. **Survival**

The provisions of clauses 3.2, 7.3, 17, 15, 20.2, 20.4, 20.6, and 20.9 shall survive the termination of this Agreement for any reason.

20.8. **Relationship**

Nothing in this Agreement shall make either party the agent or partner of the other, or give either party the power to bind the other.

20.9. **Third Party Rights**

A person who is not a party to this Agreement shall have no rights under the Act to enforce any term of it. This clause 20.9 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the 1999 Act.

20.10. **Jurisdiction**

This Agreement shall be governed by and construed in accordance with English law.  
The parties hereby submit to the non-exclusive jurisdiction of the English Courts.