

The Customer's attention is particularly drawn to the provisions of clauses 6.6, 7.3, 8.3 and 9.3 (Contract Extended Term), and clause 14. (Limitation on Biscuit's Liability).

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: A day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Carrier: The relevant third-party telecommunications operator or network service provider.

Charges: The applicable charges payable by the Customer for the supply of any Services and/or Equipment in accordance with clause 9.

Commencement Date: Means the date on which Biscuit shall start to provide the Service which shall mean in the case of:

(a) Maintenance Services the Installation Date or where Biscuit has not contracted with the client to install Equipment in connection with the Maintenance Services the date specified as the Commencement Date for the Maintenance Services;

(b) Fixed Network Services the Handover Date in respect of those Fixed Network Services;

(c) Data Services the relevant Handover Date in respect of those Data Services; and (d) IT Support Services the date specified as the Commencement Date in the Order Form.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.7.

Connection Date: Means in the case of the provision of Data Services the date when the Carrier commences the provisioning of Data Services to the Customer on behalf of Biscuit.

Contract: The contract between Biscuit and the Customer for the supply of any Services and/or goods (including where appropriate Equipment) in accordance with these Conditions, the Order and any Service Specific Conditions.

Contract Date: The date on which a Contract between the Customer and Biscuit is formed and comes into existence as determined pursuant to the provisions of clause 2.2.

Customer: the person or firm specified as such in the Order Form who contracts to purchase Good and/ or Services from Biscuit.

Customer's Allocated Allowance: Unless otherwise stated on the order form, the customer will be allocated no more than 10 Hours per month support.

Customer Default: has the meaning given to it in clause 8.3.

Data Services: the data services to be provided by Biscuit to the Customer as described in the Order, together with such other data services that Biscuit agrees to supply to the Customer from time to time.

Data Services Contract: where applicable, the Contract for the supply of Data Services.

Delivery: has the meaning given to in clause 4.2.

Equipment: the equipment as set out in the Order Form.

Estimated Installation Date: the date on which Biscuit estimates that the Equipment will be installed, as advised by Biscuit to the Customer.

Extended Term: in relation to:

(a) a Contract for the supply of Fixed Network Services has the meaning given to it in clause 5.3 or if applicable, clause 5.4; and

(b) a Contract for the supply of Data Services has the meaning given to it in clause 6.3 or if applicable, clause 6.4;

(c) a Contract for the supply of Maintenance Services has the meaning given to it in clause 4.6 or if applicable, clause 4.7; and

(d) a Contract for the supply of the IT Support Services has the meaning given to it in clause 7.3 or if applicable, clause 7.4.

Fixed Network Services: the voice services to be provided by Biscuit to the Customer as specified in the Order Form.

Fixed Network Services Contract: where applicable, the Contract for the supply of Fixed Network Services.

SECURE TECHNICAL SERVICES LIMITED registered in England and Wales with company number 10185582 of 11 Appleton Court, Calder Park, Wakefield, West Yorkshire, WF2 7AR

Handover Date: means

a) in the case of the provision of Fixed Network Services the date when the Fixed Network Services are available for use by the Customer with Biscuit as the supplier of the Fixed Network Services.

b) in the case of Data Services, the date when the Data Services are available for use by the Customer with Biscuit as the supplier of the Data Services.

Hosted Sub Licence: a sub licence granted by Biscuit to the Customer for a hosted product for use in connection with Fixed Network Services.

Installation Date: the date on which the Equipment is installed.

Installation Services: the services relating to the installation by Biscuit (or its duly authorised agents) of the Equipment (where applicable).

IT Support Services: the IT support services to be provided by Biscuit to the Customer as specified in the Order.

IT Support Services Contract: where applicable, the Contract for the supply of IT Support Services.

Maintenance Services: the maintenance services to be provided by Biscuit to the Customer as described in the Order, together with such other maintenance services that Biscuit agrees to supply to the Customer from time to time.

Maintenance Services Contract: where applicable, the Contract for the supply of Maintenance Services.

Minimum Term: The minimum contract term that applies to the Maintenance Services, the Fixed Network Services, the Data Services and/or the IT Support Services as the case may be shall unless a different minimum term is specified for any such Service in the Service Specific Conditions section of the Order Form be the period of five years commencing on the Commencement Date.

Notes Section: the section of the order form marked "Notes Section".

OFCOM: The Office of Communications or any equivalent successor body.

Order: The Customer's order for Services as set out in the Order Form; such Order being subject to these Conditions.

Order Form: The document which sets out amongst other things the Services which the Customer would like Biscuit to provide to it and certain details in respect thereof including when read in conjunction with these Conditions the basis on which the charges for providing the Services will be calculated. The Order Form shall be prepared by Biscuit and sent to the Customer for signature by or on behalf of the Customer and returned to Biscuit. The Order Form may be prepared, sent, signed or returned either electronically or physically.

Personal Data: has the meaning given to it in the Data Protection Act 1998.

Services: the services to be supplied by Biscuit to the Customer being any or all of the Installation Services, Maintenance Services, Fixed Network Services, Data Services and/or IT Support Services, as the case may be, and Service shall be construed accordingly but shall exclude the provision of DNS servers and mail servers Service Specific Conditions: any policies, terms or procedures that apply to and shall be incorporated into the Contract, as specified in the notes section of the Order Form.

Site: The Customer's place of business as specified in the Order Form where any Services are to be provided or carried out and/or (where applicable) Equipment is to be delivered and any Installation is to take place, as specified in the Order Form.

Small Business Customer: A Customer identified on the Order Form as not being a communications provider, and who has 10 or fewer individuals working for that Customer (whether as employees, volunteers or otherwise).

Specification: the description or specification of the relevant Services and/or Equipment provided in writing by Biscuit to the Customer as set out in the Order Form.

Tariff: The standard tariff as set out at <http://www.biscuit.uk.com/Tariffs> and as varied in the Notes Section of the Order Form for Fixed Network Services, Data Services and the IT Support Services as attached to the Order Form and as amended or notified to the Customer from time to time.

VOIP: Voice Over Internet Protocol being the use of a data connection as the transmission medium for telephone calls by digital means (rather than the traditional telephone system based on copper wires carrying analogue data).

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

(a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its personal representatives, successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to writing or written includes e-mails but excludes faxes.

2. BASIS OF CONTRACT

2.1 The sending of the Order Form by Biscuit to the customer constitutes an offer by Biscuit to the Customer to provide services and/or Equipment in accordance with these conditions, the Order and any service specific conditions ("the Offer"). The Offer may be withdrawn at any point by Biscuit prior to it being accepted by the Customer.

2.2 The offer shall be accepted and the Contract shall be formed and come into existence at the point when Biscuit receives the Order Form, either electronically or physically, duly signed (either electronically or physically) by or on behalf of the Customer at which point and on which date the Contract shall come into existence (subject where applicable to clauses 4.2.1, 6.6, 7.3 and 8.3). If Biscuit has not received the Order Form duly signed for or on behalf of the Customer within [30 days] from the date on which it is sent to by Biscuit to the Customer the offer to

contract with the Customer shall be deemed to have been withdrawn unless otherwise agreed between Biscuit and the Customer.

2.3 The Contract 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 Biscuit which is not set out in the Order Form, the Service Specific Conditions or the terms (or incorporated by reference in any of them).

2.4 Any samples, drawings, descriptive matter or advertising issued by Biscuit, and any descriptions or illustrations contained in Biscuit's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of the Contract nor have any contractual force.

2.5 These Conditions apply to the Contract 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. In the event of any conflict between these Conditions and any Service Specific Conditions, the Service Specific Conditions shall prevail. In the event of any conflict between these Conditions, any Service Specific Conditions and the Order Form, the Order Form will prevail in relation to that Service.

2.6 Any quotation given by Biscuit shall not constitute an offer, and is only valid for a period of 30 Days from its date of issue.

2.7 The Customer warrants to Biscuit that it is entering into the Contract for the purpose of its business, trade or profession and not as a consumer.

2.8 Except for Installation Services that shall form part of a Contract for the supply of Equipment, each order for Maintenance Services, Data Services or Fixed Network Services shall be deemed to be a separate Contract (irrespective of whether more than one or all of them are included on the same Order Form).

2.9 To the extent that there is any failure or delay by Biscuit to supply one of the Services, that shall not entitle the Customer to terminate the Contract for the supply of any other Service or Services as the case may be (if any).

3. Sale of Goods

3.1 Accuracy of Order

3.1.1.1 The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer.

3.2 Software

3.2.1 All software, whether supplied, installed or implemented is provided within the terms and conditions and license of the software provider.

3.2.2 If the software comprised in the Goods is not owned by Biscuit then the Customer will be required to enter into an end-user license agreement with the owner of the software concerned.

3.2.3 If any software has to any extent been written or developed by Biscuit then subject to clause 3.2.2 above, Biscuit hereby grants a non-exclusive, non-transferable license for the use of such software by the Customer for the duration of this Contract and all copies of such software are the property of Biscuit and notwithstanding clause 1.5.1 no title or ownership thereof will be transferred to the Customer.

3.2.4 Where software has been written or developed by Biscuit for the Customer, the Customer acknowledges that such software may only be compatible with the current versions of other software and/or hardware and Biscuit provides no guarantee that it will be compatible with later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the parties in writing, Biscuit is under no obligation to supply the Customer with any updates or add-ons to the software.

3.3 Delivery

3.3.1 Delivery of the Goods will take place by Biscuit delivering the Goods to the place agreed in writing with the Customer.

3.3.2 Any dates and times quoted for delivery are estimates only and unless otherwise agreed in writing, delivery times are not of the essence of the contract. Biscuit will not be liable for any loss or damage (howsoever arising) to the Customer should Biscuit be unable to deliver the Goods within the quoted period.

3.3.3 Biscuit is entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery.

3.3.4 If the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by Biscuit to deliver any one or more instalments in accordance with these Terms will not entitle the Customer to treat the Contract as a whole as terminated.

3.4 Transfer of Property and Risk

3.4.1 Risk in respect of the Goods passes to the Customer at the time of delivery but the title in the Goods will not pass to the Customer until Biscuit has received payment in full of the price of the Goods and all

other goods agreed to be sold or services to be provided by Biscuit to the Customer for which payment is then due.

3.4.2 Until title in the Goods has passed to the Customer, Biscuit will be entitled at any time to require the Customer to deliver up the Goods to Biscuit and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

3.4.3 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as Biscuit's fiduciary agent and bailee, will not dispose of the Goods and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as Biscuit's property.

3.5 Installation

3.5.1 Where Biscuit's written quotation for the sale of the Goods or the Customer's written order for the Goods (if accepted by Biscuit) specifies installation of the Goods or Biscuit otherwise undertakes any such installation then the Customer will complete all necessary works that may be required to receive the installation of the Goods including all necessary IT infrastructure and suitable electrical supply. If Biscuit is prevented or delayed from carrying out the installation through no fault of Biscuit then Biscuit is entitled to charge the Customer at Biscuit's then current prices for any additional works carried out by or on behalf of Biscuit to enable it to complete the installation and/or for compensation for any losses or costs incurred by Biscuit by reason of such delay.

3.6 Warranty

3.6.1 The Goods supplied hereunder are warranted to be free from defects in materials and workmanship for a period of 90 days from the date of delivery by Biscuit. The Customer must within the said period of 90 days notify Biscuit in writing of any such defects and permit Biscuit to inspect the Goods as required by Biscuit. If the Customer does not so notify then the Customer will not be entitled to reject the Goods and Biscuit will have no liability for such defect.

3.6.2 The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by Biscuit and does not apply to any Goods that have been repaired or modified by anybody other than Biscuit.

3.6.3 If a valid claim is notified under clause 1.7.1 above then Biscuit may at its discretion repair or replace the Goods free of charge or refund the price of the Goods (or a proportionate part) in which case Biscuit will have no further liability to the Customer.

3.7 Charges and Payment

3.7.1 In respect of the sale of Goods:

3.7.1.1 Payment will be made by the Customer on the date(s) agreed in writing between the Customer and Biscuit at the point of order for the Goods.

3.7.1.2 Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Customer or if the Customer fails to take delivery when required Biscuit may invoice the Customer at any time after the Goods become available.

3.7.1.3 Biscuit may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof.

3.7.1.4 Any quantity discount given by Biscuit at the point of order may be removed if the order quantity is subsequently reduced.

4. Provision of BiscuitCare

The following terms and conditions apply to the service described in the Scope of Service ("BiscuitCare")

4.1 Biscuit Responsibilities

4.1.1 Biscuit will, subject to these Terms, provide BiscuitCare in accordance with the terms of the Scope of Service and Definition of Service.

4.1.2 Biscuit will use its reasonable endeavours to respond to a valid Call within the response time set out in the Definition of Service.

4.1.3 Biscuit will use its reasonable endeavours to rectify defects or malfunctions in the Equipment on the telephone or by use of remote access in accordance with the Definition of Service.

4.1.4 If a defect or malfunction in the Equipment cannot be resolved on the telephone or by remote access, Biscuit will use its reasonable endeavours to visit the Installation Address within the response times set out in the Definition of Service.

4.1.5 When carrying out work in accordance with these Terms, Biscuit will use its reasonable endeavours to return the Equipment to service and, subject to these Terms, reinstate the Customer's applications.

4.1.6 Biscuit may at its discretion provide a permanent replacement part for the Equipment, either new or refurbished, and on exchange that part becomes the property of the Customer, and the faulty part replaced becomes the property of Biscuit.

4.1.7 Biscuit may repair the Equipment away from the Installation Address when it considers it necessary to do so.

4.1.8 Biscuit may at its discretion, lend the Customer temporary replacement equipment (as compatible as may be available) while repairs are carried out. Equipment loaned to the Customer remains Biscuit's property and will be returned to Biscuit on demand. The Customer is entirely responsible for such equipment and will indemnify Biscuit in respect of any loss or damage to that equipment.

4.1.9 Biscuit may make use of new releases, patches and updates of Third-Party Software to rectify known problems where this is permitted under the applicable software license agreement.

4.1.10 Where Biscuit is required to carry out or does carry out work that is subsequently found to be outside BiscuitCare, Biscuit will be entitled to charge for that work at Biscuit's then current rates.

4.2 Term

4.2.1 Subject to clause 4.2.3, supply of the BiscuitCare shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter the BiscuitCare Contract shall automatically extend for three years (**Extended Term**) at the end of the Minimum Term and at the end of each **Extended Term**. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant **Extended Term**, to terminate the BiscuitCare Contract at the end of the Minimum Term or the relevant **Extended Term**, as the case may be.

4.2.2 If for any reason clause 4.2.1 is deemed to be unreasonable and unenforceable by way of a final court judgment then this clause 4.2.1 shall apply. Subject to clause 2.2, supply of BiscuitCare shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter the BiscuitCare Contract shall automatically extend for 12 calendar months (**Extended Term**) at the end of the Minimum Term and at the end of each **Extended Term**. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant **Extended Term**, to terminate the BiscuitCare Contract at the end of the Minimum Term or the relevant **Extended Term**, as the case may be.

4.2.3 Where the Customer is a Small Business Customer, the Customer may terminate the BiscuitCare Services Contract by giving not less than 90 days' notice in writing to Biscuit, such notice to expire no earlier than the end of the Minimum Term.

4.3 Period of Availability

4.3.1 Biscuit will only provide BiscuitCare during the Scheduled Service Hours. If the Customer requests Biscuit to carry out any BiscuitCare outside the Scheduled Service Hours then, Biscuit will use its reasonable endeavours to comply with this request but will charge the Customer for such services at Biscuit's then current rates.

4.3.2 The time taken by Biscuit to respond to a Call will only be measured during the Scheduled Service Hours.

4.4 Customer Responsibilities

4.4.1 The Customer will keep the Equipment in the environmental conditions recommended by the Equipment manufacturer and ensure that the external surfaces, cables and fittings of the Equipment are kept clean and in good condition.

4.4.2 The Customer will ensure that the Equipment is only used by properly trained staff in accordance with the manufacturer's user instructions, current computing practice and instructions issued by Biscuit from time to time.

4.4.3 The Customer will ensure that only personnel authorised by Biscuit adjust, or the Customer's in-house IT support personnel, modify, configure, maintain, repair, replace or remove any part of the Equipment.

4.4.4 The Customer will maintain adequate records of the use, maintenance and malfunction of the Equipment and will provide Biscuit with such information and assistance concerning the Equipment, its application, use, location and environment as Biscuit may reasonably require to enable it to carry out BiscuitCare.

4.4.5 The Customer will immediately notify Biscuit if there is any failure of the Equipment and will allow Biscuit full and free access to the Equipment and all documentation, software, materials and services necessary for the provision of the BiscuitCare Maintenance.

4.4.6 The Customer will ensure that relevant trained and experienced staff are available when required by Biscuit to provide Biscuit with information required by Biscuit to diagnose and/or repair the Equipment.

4.4.7 Where Biscuit provides remote diagnostic services in respect of the Equipment, the Customer will put and keep in place a remote access link to the Equipment which is acceptable to Biscuit. The Customer hereby agrees that Biscuit shall have the right at any time to access the Customer's Equipment remotely for the purpose of providing BiscuitCare. The Customer acknowledges and agrees that such remote diagnostic services may be undertaken at times where the Customer is

unavailable (for example, outside the Customer's working hours) and Biscuit shall have the right to perform any diagnostic and maintenance services as it sees fit even if it has not been possible to contact the Customer and inform the Customer of the proposed performance of such services.

4.4.8 The Customer must tell Biscuit in writing immediately that the Equipment or any part of it is changed.

4.4.9 The Customer will notify Biscuit of change in the location of any part of the Equipment. Whilst any Equipment is being moved, all Biscuit's obligations to provide BiscuitCare will be suspended. BiscuitCare will be reinstated following re-installation of the Equipment provided that the Equipment has not been damaged or affected during the move. If the Equipment has been damaged or affected during the move Biscuit shall have the option to inspect such Equipment at Biscuit's then current rates.

4.4.10 Unless specifically included in the Scope of Service, the Customer is responsible for the cost of any Third-Party Software upgrades which Biscuit advise are required.

4.4.11 It is the Customer's sole responsibility, in a manner acceptable to Biscuit, to operate and verify a proper back up routine, maintaining all backup copies in a secure environment such that they can and will be provided to Biscuit when required.

4.4.12 The Customer undertakes to put and keep in place adequate security measures to protect the Equipment and any other software or data from viruses, harmful code or unauthorised access. Biscuit shall not be responsible for any unauthorised access to the Equipment by means of hacking, any unauthorised access of the Equipment with intent to commit or facilitate the commission of an offence or any unauthorised modification of Equipment by a third party.

4.4.13 Whilst every effort is made to maintain a remote access link to the Equipment, Biscuit will not be liable for any loss suffered by the Customer if for any reason the remote access link is unavailable or interrupted for any period of time.

4.4.14 The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Equipment.

4.5 Proactive Support Visits

4.5.1 During the Initial Term and any Renewal Period, Biscuit will provide to the Customer the number of support visits specified in the Scope of Service during Normal Working Hours, the purpose of which is to provide general support in respect of the operation of BiscuitCare. Any unused support visits that are remaining at the end of the Initial Term and/or any Renewal Period will automatically lapse and shall not be rolled on to the next Renewal Period.

4.6 System Audit

4.6.1 Biscuit will, as often as Biscuit thinks necessary and (save in the event of an emergency) upon reasonable notice carry out a System Audit within Biscuit's Normal Working Hours to confirm that, in Biscuit's opinion, the Equipment is in reasonable operating condition.

4.6.2 If work is required to put the Equipment in such full working order Biscuit will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, Biscuit may on written notice exclude such equipment from BiscuitCare and will refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period.

4.7 Service Exclusions

4.7.1 BiscuitCare does not extend to:

- (i) any Equipment not specified or included in the Scope of Service including any part of the Equipment which is in any way changed from that included in the Scope of Service;
- (ii) any Equipment which was, in Biscuit's reasonable opinion, operating in an unstable or unsuitable manner prior to the commencement of BiscuitCare;
- (iii) any work arising as a result of any breach by the Customer of any of its obligations under these Terms;
- (iv) any work arising from any incident, wilful act or any error or omission in the operation of the Equipment or any other cause (except for wear and tear) which is not due to the neglect or default of Biscuit;
- (v) any failure or defect caused by hardware or software not covered by these Terms;
- (vi) failures or defects due to manufacture or design defects over which Biscuit has no control;
- (vii) refurbishment or repair of casings or outer surfaces;
- (viii) any work to accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the Scope of Service;
- (ix) reinstatement of customised versions of the standard desktop/operating system;

(x) reinstatement of the Customer's software and data not identified within the Scope of Service;

(xi) any consultancy, training or software or hardware Biscuit may provide;

(xii) integration of the Equipment or any part thereof with other systems;

(xiii) cleansing of viruses and spyware, or resolving the consequences of security breaches and incompatibilities in hardware and/or software.

(xiv) upgrading the Operating Platform to be able to operate the Customer's selected software applications;

(xv) consumable supplies or accessories such as magnetic media, batteries, print heads, toner cartridges, ink, paper, and any other items identified as consumable by the Equipment manufacturer, unless listed in the Scope of Service;

(xvi) any Equipment in respect of which a notice has been served by Biscuit under clauses 4.8 or 4.9; work arising by reason of any maintenance or repair work carried out in respect of the Equipment by a third party not previously approved in writing by Biscuit;

(xvii) in respect of any personal digital assistants or other mobile solutions comprised within the Equipment anything other than support of the Third-Party Software to enable synchronisation to such server of the Customer as is specified in the Scope of Service;

(xviii) any services which are specifically excluded in the Definition of Service.

4.8 Beyond Economic Repair

4.8.1 Biscuit will give the Customer written notice if, in its reasonable opinion, the Equipment (or any part of it) is identified as "end of life", becomes beyond reasonable repair or spare parts become not readily available, or if faults and/or its condition are such that overhaul or replacement is necessary at which point any obligations of Biscuit to provide BiscuitCare in respect of such equipment will be suspended. If the Customer declines to have the Equipment overhauled or replaced at its expense within thirty days of such notification, Biscuit may on written notice exclude such equipment from this Contract.

4.8.2 The provisions of clause 4.8.1 will apply equally in respect of any software included within the Equipment which, in the reasonable opinion of Biscuit, is no longer economically viable to maintain or requires upgrading or updating.

4.9 Take on Visit

4.9.1 Prior to commencement of BiscuitCare, Biscuit may during Normal Working Hours inspect the Equipment, or any part of it, at the Installation Address to confirm that it is, in Biscuit's reasonable opinion, in full working order in accordance with the manufacturer's requirements. If work is required to put the Equipment in such full working order Biscuit will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, Biscuit may on written notice exclude such equipment from BiscuitCare and will refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period.

4.10 Charges and Payment

4.10.1 The Charges quoted in the Scope of Service for BiscuitCare are for the Initial Term only.

4.10.2 In respect of BiscuitCare for the Initial Term the Customer will pay the charges to Biscuit on the agreement date, or if paying by DD, the first payment must be received first for cover to commence.

4.11 Changes to BiscuitCare

4.11.1 In any single 12 months period, the Customer can reduce their Biscuitcare cover by a maximum of 10% of their hardware estate without financial penalty. The number of new users being added to Biscuitcare at any time has no limitation.

5. SUPPLY OF SERVICES

5.1 Biscuit shall supply the Services to the Customer in accordance with the Contract in all material respects. In the event that the Order Form specifies:

(a) the supply by Biscuit to the Customer of Equipment and Installation Services and/or Maintenance Services, clause 4 of these Conditions shall also apply to the Contract; (b) the supply by Biscuit to the Customer of Fixed Network Services, clause 5 of these Conditions shall also apply to the Contract;

(c) the supply by Biscuit to the Customer of Data Services, clause 6 of these Conditions shall also apply to the Contract; and

(d) the supply by Biscuit to the Customer of IT Support Services, clause 7 of these Conditions shall also apply to the Contract.

5.2 Biscuit shall use all reasonable endeavours to deliver any Services on or by any date or dates specified in the Order Form, but any such dates

shall be estimates or for guidance only and time shall not be of the essence for the performance of the Services.

5.3 Biscuit shall have the right to make any changes to any 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 relevant Services. Biscuit shall notify the Customer in writing or by email of any such change.

5.4 Biscuit warrants to the Customer that the relevant Services will be provided using reasonable care and skill, subject to clauses 4, 5, 6 and 7 of these Conditions.

6. TERMS APPLICABLE TO EQUIPMENT, INSTALLATION SERVICES AND MAINTENANCE SERVICES

6.1 Any Order for Equipment is conditional on the availability of such Equipment prior to the Estimated Installation Date. Biscuit shall use reasonable endeavours to deliver the Equipment and supply the Installation Services with reasonable care and skill in accordance with the estimated period for delivery and installation. Installation within such period is not guaranteed and time shall not be of the essence.

6.2 Delivery of Equipment shall be deemed to take place when the relevant Equipment arrives at the Customer's Site (prior to unloading or unpacking) as specified in the Order (**Delivery**) (and **Delivered** shall be construed accordingly). In relation to Delivery of any Equipment:

(a) the Customer shall be responsible for checking that all details specified in the Order are correct;

(b) if the Customer fails to take Delivery of any Equipment within 10 Business Days of Biscuit notifying the Customer that the Equipment is capable of being delivered, the Equipment shall be deemed to have been Delivered in accordance with the Contract and the Equipment shall be at the risk of the Customer and thereafter clause

6.3 shall apply to the Equipment;

(c) if any Equipment is to be Delivered in instalments, any delay in the Delivery of one instalment shall not entitle the Customer to reject the other instalments or to terminate the Contract; and

(d) the risk in any Equipment shall pass to the Customer on Delivery (or deemed Delivery in accordance with clause 6.2(b)) and the Customer shall be responsible for insuring the Equipment from that time.

6.3 Notwithstanding clause 6.2(d), ownership of any Equipment contracted to be purchased by the Customer shall not pass to the Customer until such time as the Customer has paid to Biscuit all sums due for the Equipment and the Installation Services. Unless and until ownership of the Equipment passes to the Customer (if at all), the Customer shall:

(a) not remove, deface or obscure any identifying mark on or relating to the Equipment;

(b) maintain (except where Biscuit is also at the time supplying Maintenance Services) the Equipment in satisfactory condition and insured it against all risks for its full price from the date of Delivery or deemed Delivery;

(c) not lease, charge or otherwise encumber the Equipment;

(d) not remove the Equipment from the Site without Biscuit's prior written consent;

6.4 If the Equipment is leased or rented to the Customer the Customer shall: -

(a) return the Equipment at the Customer's cost to Biscuit immediately on request at the end of the lease or agreement; and

(b) permit Biscuit or its agents to enter any premises of the Customer or of any third party where the Equipment is located in order to recover it.

6.5 If the Customer is in breach of the Contract the Customer shall return the Equipment at the Customer's cost to Biscuit immediately on request and permit Biscuit or its agents to enter any premises of the Customer or of any third party where the Equipment is located in order to recover it.

6.6 Subject to clause 6.8, supply of the Maintenance Services shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter the Maintenance Services Contract shall automatically extend for three years (**Extended Term**) at the end of the Minimum Term and at the end of each **Extended Term**. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant **Extended Term**, to terminate the Maintenance Services Contract at the end of the Minimum Term or the relevant **Extended Term**, as the case may be.

6.7 If for any reason clause 6.6 is deemed to be unreasonable and unenforceable by way of a final court judgment then this clause 6.7 shall apply. Subject to clause 2.2, supply of the Maintenance Services shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter the Maintenance Services Contract shall automatically extend for 12 calendar months (**Extended Term**) at the end of the Minimum Term and at the end of each **Extended Term**. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant **Extended Term**, to terminate the Maintenance Services Contract at the end of the Minimum Term or the relevant **Extended Term**, as the case may be.

6.8 Where the Customer is a Small Business Customer, the Customer may terminate the Fixed Network Services Contract by giving not less than 90 days' notice in writing to Biscuit, such notice to expire no earlier than the end of the Minimum Term.

6.9 The Maintenance Services shall only be supplied by Biscuit in relation to the Equipment and to any other equipment agreed by Biscuit in writing from time to time. Unless agreed otherwise in writing by Biscuit shall supply the Maintenance Services in accordance with Biscuit's Maintenance Service Levels.

6.10 The Maintenance Services shall not include or be deemed to include repair or maintenance to:

- (a) equipment that is faulty or has failed due (in whole or in part) to or caused by:
 - (i) fair wear and tear;
 - (ii) the Customer's (including its agents or workers) acts, operating errors, omissions or default;
 - (iii) failure in air-conditioning or fluctuations in electrical power;
 - (iv) any failure of equipment or software attached to or integrated to the Equipment where such equipment or software was not supplied by Biscuit;
 - (v) vandalism, fire, theft, water or lightning;
 - (vi) any defect or error in software loaded on to the Equipment;
 - (vii) any defect or fault in connection with services supplied to Biscuit by any Carrier; (viii) failure by the Customer (including its agents or workers) to adequately maintain any Equipment or operate it in accordance with the manufacturer's specifications, guidelines or recommendations; or
 - (ix) any attempt by the Customer or any third party other than Biscuit or its duly authorised agents to repair, reconfigure, re-program or otherwise alter the Equipment or any equipment or cabling attached to it.

- (b) ancillary items, including but not limited to, answer-phones, analogue phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, any cabling and/or consumables unless otherwise agreed in writing;
- (c) the maintenance or repair of any extension wiring, any Equipment not at the Site, or of anything other than the Equipment; or
- (d) the reprogramming of the Equipment to provide improved or modified services or facilities.

6.11 In the event that Biscuit carries out Maintenance Services to any Equipment which has, in its reasonable opinion failed or become faulty due (wholly or partially) to any of the circumstances described in clause 6.10, Biscuit shall be entitled to charge additional fees for such services calculated in accordance with clause 9.5.

6.12 In carrying out the Maintenance Services Biscuit shall not (subject to clause 6.13) be liable for the loss of any data or information stored on the Equipment or any other equipment that may be affected by the carrying out of the Maintenance Services and the Customer shall ensure that appropriate backups of all data and information are maintained.

6.13 In rectifying any fault to Equipment it may be necessary for Biscuit to reset the Equipment's software. In such cases, Biscuit shall not be responsible for resetting or reloading equipment programming and user profiles.

6.14 The Maintenance Services are limited to the provision and repair of the Equipment by Biscuit on a like for like basis, which may include Biscuit supplying reconditioned parts for Equipment and reconditioned Equipment. Any Equipment that is removed or replaced and any parts that are removed or installed in Equipment in the carrying out of the Maintenance Services shall become or shall remain (as the case may be) the property of Biscuit.

6.15 Subject to clause 6.13, Biscuit shall not be liable for any delay in the performance of the Maintenance Services where such delay is attributable to no or poor or delayed availability of spare parts for any item of Equipment.

6.16 If the Customer terminates a Contract (in whole or in part) for Maintenance Services before the end of any applicable Minimum Term or **Extended Term**, the Customer shall pay to Biscuit all charges that would have accrued during the period from the expiry of the Customer's notice to terminate (or where no notice is given the date of indication by the Customer of an intention to no longer be bound by the Contract (in whole or in part)) to the end of the Minimum Term or **Extended Term** (as the case may be).

6.17 If the customer signs an order form to;

- a) Upgrade an existing service.
- or
- b) Add extra users, features or services to an existing service.

All services relating to this new order shall also be included in the new contract, with start and end dates changed to reflect this new duration.

7.1 Subject to clause 2.2 and clause 7.5, the supply of the Fixed Network Services shall commence on the Commencement Date and shall continue for the Minimum Term.

7.2 If the Commencement Date for the provision of Fixed Network Services has not occurred prior to the first anniversary of the Contract Date for the Fixed Network Services then the Contract in respect thereof shall be deemed to have terminated unless otherwise agreed between Biscuit and the Customer. The rights of the parties that have accrued prior to such termination shall not be affected by such termination.

7.3 Subject to clause 7.5, the Fixed Network Services Contract shall automatically extend for five years (**Extended Term**) at the end of the Minimum Term and at the end of each **Extended Term**. A party may give notice in writing or email (support@biscuit.uk.com) to the other party no later than 90 days before the end of the Minimum Term or the relevant **Extended Term** to terminate the Fixed Network Services Contract at the end of the Minimum Term or the relevant **Extended Term**, as the case may be.

7.4 In the event that clause 7.3 is deemed to be unreasonable and unenforceable by way of a final court judgment then this clause 7.4 shall apply. Subject to clause 7.5, the Fixed Network Services Contract shall automatically extend for 12 calendar months (**Extended Term**) at the end of the Minimum Term and at the end of each **Extended Term**. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant **Extended Term** to terminate the Fixed Network Services Contract at the end of the Minimum Term or the relevant **Extended Term**, as the case may be.

7.5 Where the Customer is a Small Business Customer, the Customer may terminate the Fixed Network Services Contract by giving not less than 90 days' notice in writing to Biscuit, such notice to expire no earlier than the end of the Minimum Term.

7.6 The provision of any Fixed Network Services by Biscuit under a Fixed Network Services Contract is conditional on:

- (a) Biscuit carrying out such surveys as it deems necessary to satisfy itself that that it is possible for it to supply the Fixed Network Services;
- (b) the installation of the lines over which the Fixed Network Services are to be provided and such lines being fully operational; and
- (c) the Customer providing to Biscuit to its satisfaction accurate information and data to enable Biscuit to calculate the Charges and to carry out a site survey.

7.7 Biscuit warrants to the Customer that Fixed Network Services will be provided using reasonable care and skill. The Customer agrees that Biscuit cannot guarantee that the Fixed Network Services will work without interruption and will be fault or error free. Any interruption, fault or error with the Fixed Network Services must be notified to Biscuit in accordance with clause 7.8.

7.8 The Customer shall notify Biscuit of any interruption, fault or error with the Fixed Network Services in accordance with Biscuit's Fault Handling Policy (<http://www.biscuit.uk.com/terms-and-conditions>) as amended from time to time. Biscuit shall use reasonable endeavours to correct or cure any interruption, fault or error with the Fixed Network Services in accordance with Biscuit's Fault Handling Policy, save that time shall not be of the essence.

7.9 Notwithstanding any other provision of these Conditions, Biscuit shall not be liable to the Customer in contract, tort (including negligence) or otherwise for any acts or omissions of Carriers that may (wholly or partially) cause, impact or result in any interruption, fault error with or withdrawal of (temporarily or permanently) the Fixed Network Services.

7.10 All and any telephone numbers allocated to the Customer in connection with the Fixed Network Services may be withdrawn by OFCOM and accordingly Biscuit does not warrant or represent that such telephone numbers can be provided to the Customer. The Customer acknowledges and agrees that any telephone numbers allocated to it are allocated on the basis of a licence and the Customer agrees not to sell or transfer any telephone number provided to it (except where the Customer has a right to port that telephone number).

7.11 In relation to the use of the Fixed Network Services the Customer agrees:

- (a) to ensure that the Fixed Network Services are not used to make offensive, indecent, menacing, nuisance or hoax calls;
- (b) not to use the Fixed Network Services in any way that may, in Biscuit's reasonable opinion, damage its reputation;
- (c) not to contravene any laws, regulations or codes of conduct that may, from time to time, be applicable to the use or supply of the Fixed Network Services;
- (d) to implement and maintain appropriate security and control over its networks, equipment and business to prevent fraud and to prevent calls being generated by third parties;
- (e) to maintain adequately all equipment utilised in connection with the Fixed Network Services and ensure its compatibility in terms of technical specification;

7. TERMS APPLICABLE TO FIXED NETWORK SERVICES

(f) not to use nor permit the Fixed Network Services to be used in any way that would constitute or contribute to the commission of any crime, tort, fraud or other unlawful activity;

(g) not to allow any unauthorised use of the Fixed Network Services and to take all reasonable security measures to prevent such use;

(h) not to sell or resell the Fixed Network Services in whole or in part;

(i) not to misuse the Fixed Network Services in any way, including without limitation causing the volume of calls made to the telephone numbers allocated to the Customer to significantly exceed that which can be answered by the Customer where this would cause congestion to a network;

(j) that Biscuit may publish details of the Customer's name, address and telephone number(s) in the Directory Enquiries Service, unless the Customer expressly confirms to Biscuit in writing that it would like a special entry to be made, for which Biscuit may make an additional charge;

(k) that to the extent the Fixed Network Services contain VOIP services, clause 6.12 shall also apply save that references in that clause to Data Services shall be deemed to be references to Fixed Network Services; and

(l) in order to protect the Customer against unauthorised transfer of Fixed Network Services, in the event that the Customer fails to contact Biscuit not less than 48 hours prior to any transfer date in accordance with Biscuit's Customer Transfer Preference Policy, Biscuit may cancel any order made with a third-party supplier.

7.12 Any equipment installed or supplied by Biscuit to the Customer in connection with the Fixed Network Services (including but not limited to handsets) shall, except for equipment purchased by the Customer under clause 4, at all times remain the property of Biscuit. Clause 4.3 shall apply to such equipment as if it were deemed to be Equipment. The Customer shall return such equipment to Biscuit immediately on request and shall be liable for costs, losses, damages and expenses incurred by Biscuit for the repair, recovery and replacement of such equipment.

7.13 Upon termination of the Fixed Network Services Contract (for whatever reason), the Customer shall return any handsets installed or supplied by Biscuit to the Customer in connection with the Fixed Network Services at the Customer's cost. If such handsets are not returned within seven days following the termination of the Fixed Network Services Contract, Biscuit reserves the right to charge the Customer a fee in respect of each handset, as specified in the Tariff.

7.14 Biscuit shall be entitled to make additional charges in the event that the Customer supplies inaccurate or misleading information to Biscuit or if the results of any survey reveal additional construction work is required in order for Biscuit to supply the relevant Fixed Network Services.

7.15 Where the transfer of lines and services of another supplier occurs, then the provision of any and all relevant existing services supplied to the Customer by such supplier will automatically transfer to Biscuit and will be charged for by Biscuit in accordance with the Tariff.

7.16 The Customer acknowledges and accepts that it is liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly stated on the Order Form that Biscuit will pay for such charges in which case Biscuit will pay for such charges but limited to those specifically as set out on the Order Form.

7.17 The Customer accepts and acknowledges that Biscuit will prior to the Handover Date have spent a significant amount of time and incurred expense in preparation for the provision of the Fixed Network Services to the Customer. In the event that the Customer terminates the Contract for Fixed Network Services prior to the Handover Date, Biscuit reserves the right to charge £500 plus VAT for the aforementioned preparation. This clause 7.17 shall not apply where the Customer is a Small Business Customer. Where the Customer is a Small Business Customer, the Customer may terminate a Contract for Fixed Network Services at any time prior to commencement of the supply of such Services.

7.18 The following provisions of this clause 7.18 shall apply in the event that after the Handover Date the Customer terminates the Contract for Fixed Network Services in breach of contract prior to the expiry of the Minimum Term or the **Extended Terms** as the case may be.

(a) In this clause 7.18 Remainder of the Term means (where the Customer terminates or is deemed to have terminated the Contract in breach of contract) the period that the Contract would have had left to run if the Customer had instead terminated it at the earliest following opportunity without being in breach of contract.

(b) Save where the Customer has contracted for the supply of line rental only, a Customer agrees that it shall not on lines contracted to be billed by Biscuit use those lines for calls charged for by another supplier. If in breach of this clause the Customer does use lines supplied by Biscuit for the carriage of calls charged for by another supplier the Customer shall be deemed to be in breach of the Contract for the supply of Fixed Network Services and at Biscuit's option the Customer shall be deemed to have terminated the Contract for Fixed Network Services in breach of contract and the provisions of this clause 7.18 shall apply.

(c) If in breach of contract the Customer terminates a Contract for Fixed Network Services before the end of the Minimum Term or where applicable the end of an **Extended Term** (as the case may be), the Customer shall be liable to pay to Biscuit an amount calculated in the following manner: -

(i) (by reference to line rental) the sum that it would have paid to Biscuit for the rental of the lines for the Remainder of the Term calculated at the rate then applying at the time of termination; plus

(ii) (by reference to call charges) either the sum of £500 plus VAT or if greater the average of the monthly charges for calls incurred by the Customer for the three whole months prior to the termination of the Contract multiplied by the period of the Remainder of the Term (expressed in months).

7.19 The Customer agrees not to use in connection with the Fixed Network Service provided by Biscuit any telephone number that the Customer does not have the legitimate right to use. In this regard the Customer shall not "present out" any telephone number that it does not have the right to use; such as a telephone number of a competitor.

7.20 Where Biscuit grants to the Customer a Hosted Sub Licence it shall terminate at the point when Biscuit ceases to provide to the Customer the Fixed Network Services in respect of which the Hosted Sub Licence was granted and the Hosted Sub Licence and all rights in the Hosted Sub Licence shall revert to and be owned in their entirety by Biscuit.

7.21 If the customer signs an order form to;

a) Upgrade an existing service.

b) Add extra users, features or services to an existing service.

All services relating to this new order shall also be included in the new contract, with start and end dates changed to reflect this new duration.

8. TERMS APPLICABLE TO DATA SERVICES

8.1 Subject to clause 8.6, the supply of the Data Services shall commence on the Commencement Date and shall continue for the Minimum Term.

8.2 Subject to the remaining provisions of this clause if the Commencement Date for the provision of Data Services has not occurred prior to the first anniversary of the Contract Date for the Data Services then the Contract in respect thereof shall be deemed to have terminated. Biscuit may by giving written notice to the Customer extend the period referred to in this clause by an amount Biscuit sees as reasonable, if the reason why the Commencement Date has not occurred is outside of the control of Biscuit. Further, the period may be extended in by such period as Biscuit and the Customer agree. The rights of the parties that have accrued prior to such termination shall not be affected by such termination.

8.3 Subject to clause 8.5 the Data Services Contract shall automatically extend for three years (**Extended Term**) at the end of the Minimum Term and at the end of each **Extended Term**. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or of the end of the relevant **Extended Term**, to terminate the Data Services Contract at the end of the Minimum Term or the relevant **Extended Term**, as the case may be.

8.4 If for any reason clause 8.3 is deemed to be unreasonable and unenforceable by way of a final court judgment then this clause 8.4 shall apply. Subject to clause 8.5 the Data Services Contract shall automatically extend for 12 calendar months (**Extended Term**) at the end of the Minimum Term and at the end of each **Extended Term**. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or of the end of the relevant **Extended Term**, to terminate the Data Services Contract at the end of the Minimum Term or the relevant **Extended Term**, as the case may be.

8.5 Where the Customer is a Small Business Customer, the Customer may terminate the Data Services Contract by giving not less than 90 days' notice in writing to Biscuit, such notice to expire no earlier than the end of the Minimum Term.

8.6 The provision of any Data Services by Biscuit under a Data Services Contract is conditional on:

(a) Biscuit carrying out such surveys as it considers necessary to satisfy itself that that it is feasible for it to supply the Data Services and Biscuit being satisfied with the results of such surveys;

(b) Biscuit not being prevented by circumstances and factors outside of its control from being able to supply the Data Services. Examples of such circumstance and factors include (without limit) the infrastructure not being able to support the Data Services, the Customer not obtaining the necessary permission from third parties such as a landlord to install the necessary infrastructure, or a public body such as a local authority or highways authority withholding consent to the installation of the infrastructure where such consent is required;

(c) the installation of the lines over which the Data Services are to be provided and such lines being fully operational; and

(d) the Customer providing to Biscuit to its satisfaction accurate information and data to enable Biscuit to calculate the Charges and to carry out or commission a site survey.

8.7 Biscuit warrants to the Customer that Data Services will be provided using reasonable care and skill. The Customer agrees that Biscuit cannot guarantee that the Data Services will work without interruption and will be fault or error free. Any interruption, fault or error with the Data Services must be notified to Biscuit in accordance with clause 8.8.

8.8 The Customer shall notify Biscuit of any interruption, fault or error with the Data Services in accordance with Biscuit's Fault Handling Policy (available at <http://www.biscuit.uk.com/terms-and-conditions>) as amended from time to time. Biscuit shall use reasonable endeavours to correct or cure any interruption, fault or error with the Data Services in accordance with Biscuit's Fault Handling Policy, save that time shall not be of the essence.

8.9 Notwithstanding any other provision of these Conditions, Biscuit shall not be liable to the Customer in contract, tort (including negligence) or otherwise for any acts or omissions of suppliers that may (wholly or partially) cause, impact or result in any interruption, fault or error with, or withdrawal of (temporarily or permanently), the Data Services.

8.10 In relation to the use of the Data Services the Customer agrees and where appropriate accepts:

(a) to comply with the obligations in clauses 5.11(a) to 5.11(i) (inclusive) as if references in those clauses to Fixed Network Services were references to Data Services;

(b) not to misuse the Data Services in any way, including sending or receiving data in such a manner or volume so as to exceed agreed usage limits or so as to adversely affect the network, Biscuit or its other customers;

(c) that the speed of any Data Services or connection depends on a number of factors beyond Biscuit's control (including external factors and physical factors) (such as local availability, the distance from the exchange and peak traffic volume) and that Biscuit does not warrant or represent that the Customer's connection(s) will produce the maximum advertised speed;

(d) that except where stated otherwise in the Order Form, the Data Services do not include the supply by Biscuit of lines, modems and other equipment that might be required by the Customer to utilise the Services nor advice on these unless Biscuit is specifically engaged to do so under a separate contract which shall be in addition to the provision of Data Services under the Data Services Contract;

(e) to comply with Biscuit's Fair Use Policy (available at <http://www.biscuit.uk.com/terms-and-conditions>) as amended from time to time;

(f) provide suitable space and environment at the Site for the equipment used in the provision of the Data Services (such as sufficient cooled space on a rack) and to do so in a timely manner. Compliance by the Customer with this clause shall be entirely at the Customers cost.

(g) In respect of any router supplied by or on behalf of Biscuit for a managed internet Ethernet circuit unless otherwise specifically agreed with Biscuit:-

(i) the router will be provided in a routed IP configuration and its sole purpose is to create an interface for the Customer to plug equipment into and it is not to be used for any other purpose;

(ii) the router is the demarcation point at which the responsibility for the provision of Data Services by Biscuit ends;

(iii) access to the command interface of the router (which would be required to configure the router) will not be provided to the Customer, nor will other functions that the router may be capable be enabled such as wireless connectivity and firewall functionality;

(iv) Biscuit is not responsible for configuration of the router other than to an IP configuration; and

(v) Biscuit shall not be responsible for installing firewalls or plugging in the router and if the Customer requires firewalls the Customer shall be responsible for processing their installation.

(h) In respect of a router supplied by or on behalf of Biscuit for an internet broadband service it will be provided in a NAT (Network Address Translation) configuration with DHCP Scope enabled unless otherwise agreed.

8.11 Biscuit is under a duty to all of its customers to preserve network integrity and capacity and avoid degradation. The Customer agrees that:

(a) if in Biscuit's reasonable opinion the Customer's use of Data Services is adversely affecting, or may adversely affect, integrity and capacity of networks, Biscuit may take such steps as it deems appropriate to manage the Customer's Data Services;

(b) Biscuit and/or the Carrier may take such steps as it deems necessary to stop emails that appear to be bulk emails or which appear to be of an unsolicited nature from entering networks and this may include blocking access to or delivery of any such emails; and

(c) Biscuit and/or the Carrier may operate virus screen technology which may result in the deletion or alteration of emails or their attachments.

8.12 Where the Data Services involve the supply of VOIP services, then it is agreed that the following shall apply and the Customer accepts that:

(a) the Customer's ability to make emergency calls and their priority treatment cannot be guaranteed and that any suspension or

interruption of the VOIP service may result in the Customer being unable to make emergency calls;

(b) the VOIP services are generally not considered to be as reliable as calls made over conventional telephone lines and Customers are advised to maintain the ability to make telephone calls other than as through a VOIP system, such as by maintaining a conventional telephone line;

(c) the Customer acknowledges that the VOIP service may sometimes be limited, unavailable or interrupted due to events beyond Biscuit's control, such as those specified in clause 15.1 (force majeure); and

(d) the VOIP services may not offer all of the features or resilience that the Customer may expect from a conventional telephone line.

8.13 Other than Equipment purchased by the Customer, any equipment installed or supplied by Biscuit to the Customer in connection with the Data Services (including but not limited to routers) shall at all times remain the property of Biscuit. The provisions of clauses 4.3 (a) to (d) shall apply to all such equipment. The Customer shall return such equipment to Biscuit immediately on request or cessation of the provision of Data Services and the Customer shall be liable for all costs, losses, damages and expenses incurred by Biscuit for the repair, recovery and replacement of such equipment.

8.14 Upon termination of the Data Services Contract (for whatever reason), the Customer shall return any routers installed or supplied by Biscuit to the Customer in connection with the Data Services at the Customer's cost. If such routers are not returned within 30 days following the termination of the Data Services Contract, Biscuit reserves the right to charge the Customer a fee in respect of each router, as specified in the Tariff.

8.15 Where the Customer wishes to transfer the provision of any lines or services from another supplier to Biscuit, the Customer shall:

(a) provide to Biscuit such accurate information as is required by Biscuit to enable the migration from the current supplier; and

(b) be responsible for all costs, charges and penalties that may arise as a result of or in connection with such transfer.

8.16 The Customer acknowledges and accepts that it is liable for all cancellation or termination payments and charges (including without limitation any early termination charges) levied by a previous supplier for the transfer of the provision of services and lines to Biscuit unless it is stated on the Order Form that Biscuit will be responsible for the payment of such Charges.

8.17 The Customer accepts and acknowledges that Biscuit will prior to the Connection Date have spent a significant amount of time and incurred expense in preparation for the provision of the Data Services to the Customer. In the event that the Customer terminates the Contract prior to the Connection Date it shall pay to Biscuit:

(a) £500 plus VAT in respect of the time spent by Biscuit in preparation for the provision of the Data Services to the Customer; and

(b) an amount equal to the direct expenses (plus vat) incurred by Biscuit to its supplier(s) in the preparation of Data Services to the Customer limited to £2,000 plus VAT. This clause 8.17 shall not apply where the Customer is a Small Business Customer.

8.18 Where the Customer is a Small Business Customer, the Customer may terminate a Contract for Data Services at any time prior to commencement of the supply of such Data Services.

8.19 The following provisions of this clause 8.19 shall apply in the event that after the Connection Date the Customer terminates the Contract for Data Services in breach of contract prior to the expiry of the Minimum Term or the **Extended Terms** as the case may be.

(a) In this clause 8.19 Remainder of the Term means (where the Customer terminates or is deemed to have terminated the Contract in breach of contract) the period that the Contract would have had left to run if the Customer had instead terminated it at the earliest following opportunity without being in breach of contract. Where the Customer terminates the Contract for Data Services in breach of contract after the Connection Date but before the Handover Date then the Remainder of the Term shall be deemed to have commenced on the Connection Date.

(b) The Customer acknowledges and accepts that to enable Biscuit to provide the Data Services to the Customer, Biscuit will enter into a contract for a fixed term with its supplier at the Connection Date. As is common with such contracts Biscuit may remain liable to its supplier whether or not the Contract for Data Services with the Customer terminates prior to the end of the Minimum Term or the **Extended Term** as the case may be.

(c) In the event that the Customer is in breach of contract by terminating the Contract for Data Services otherwise than in accordance with clause 8.3 or 8.4 if applicable (and/or 8.5 where the Customer is a Small Business Customer) before the end of the Minimum Term or where applicable the end of an **Extended Term** (as the case may be) the Customer shall pay to Biscuit (subject to the provisions of clause (d)) as liquidated damages an amount equal to the sum that the Customer would have been liable to pay to Biscuit for the Remainder of the Term for the Data Services (calculated at the rate which applied at the time of termination) less any reduction that may apply pursuant to the provisions of clause 8.19(d) below. Where such termination occurs after

the Connection Date but before the Commencement Date then the rate shall be the rate that would have applied at the Commencement Date had the Contract not been terminated.

(d) If the provisions of clause 8.19(c) apply and in the event that a supplier used by Biscuit to provide the Data Services to the Customer reduces the amount that it charges to Biscuit from that which it is contractually entitled to charge in respect of the Remainder of the Term Biscuit shall advise the Customer of the amount of the reduction and that reduction shall be deducted from the amount payable under clause 8.19(c).

8.20 If the customer signs an order form to;

a) Upgrade an existing service.

or

b) Add extra users, features or services to an existing service.

All services relating to this new order shall also be included in the new contract, with start and end dates changed to reflect this new duration.

9. TERMS APPLICABLE TO IT SUPPORT SERVICES

9.1 For the purpose of the IT Support Services, the following terms shall have the following meanings:

Service Level Agreement: the service levels for the provision of IT Support Services as set out at <http://www.biscuit.uk.com/terms-and-conditions> amended from time to time.

System: the hardware, operating systems and software listed in the Order Form.

Support Hours: the hours listed on the Order Form.

Out of Hours: such hours and times that not within the Support Hours. Support

Request: includes the following: a request submitted by the Customer via telephone or email for support by Biscuit under the IT Support Services; and automated messages for support generated by the System and sent directly to Biscuit for attention.

9.2 Subject to clause 2.2, the supply of the IT Support Services shall commence on the Commencement Date and continue for the Minimum Term.

9.3 The IT Support Services Contract shall automatically extend for three years (**Extended Term**) at the end of the Minimum Term and at the end of each **Extended Term**. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant **Extended Term**, to terminate the IT Support Services Contract at the end of the Initial Period or the relevant **Extended Term**, as the case may be.

9.4 If for any reason clause 9.3 is deemed to be unreasonable and unenforceable by way of a final court judgment then this clause 9.4 shall apply. The IT Support Services Contract shall automatically extend for 12 calendar months (**Extended Term**) at the end of the Minimum Term and at the end of each **Extended Term**. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or of the end of the relevant **Extended Term**, to terminate the IT Support Services Contract at the end of the Minimum Term or the relevant **Extended Term**, as the case may be.

9.5 The provision of any IT Support Services by Biscuit under an IT Support Services Contract is conditional on:

(a) Biscuit carrying out such surveys as it deems necessary to satisfy itself that it is possible for it to supply the IT Support Services; and

(b) the Customer providing to Biscuit to its satisfaction accurate information and data to enable Biscuit to provide IT Support Services.

9.6 Subject to the Customer's payment of the Charges, Biscuit will provide the IT Support Services to the Customer:

(a) during Support Hours, unless support during Out of Hours is requested by the Customer and this is agreed to be provided by Biscuit;

(b) meeting or exceeding the service levels referred to in the Service Level Agreement; (c) remotely, unless otherwise agreed between Biscuit and the Customer.

9.7 In relation to the use of the IT Support Services the Customer agrees:

(a) that the IT Support Services shall be provided by Biscuit (or any agent acting on behalf of Biscuit) remotely, unless otherwise agreed;

(b) to permit Biscuit remote access to its System and inform Biscuit (or any agent acting on behalf of Biscuit) of any changes to passwords or other security devices to enable Biscuit to access the System;

(c) to keep back-up copies of its operating systems and software;

(d) to keep back-up copies of its data in line with recommendations made by the relevant software providers or Biscuit from time to time;

(e) to make available such personnel of the Customer with appropriate skills, knowledge and authority to assist Biscuit in the diagnosis of faults and the implementation of reasonable instructions intended to rectify or prevent recurrence of faults;

(f) to promptly check that files have been restored from back-up when restoration from back-up has been tested.

9.8 Biscuit shall prioritise all Support Requests based on its reasonable assessment of the severity level of the problem reported and use its reasonable endeavours to respond to all Support Requests with a break

fix in accordance with the response times set out in the Service Level Agreement.

9.9 Biscuit will seek to acknowledge all Support Requests within two working office hours of being logged.

9.10 The Customer acknowledges and agrees that:

(a) in the event that a fault in the System is caused by an error or defect in the operating system or software, the sole responsibility of Biscuit will be to notify the Customer of the issue and to devise (where possible) a workaround for the Customer;

(b) the sole responsibility of Biscuit in respect of any hardware issues shall be to diagnose faults in the hardware. The correction of any faults in the hardware shall be undertaken in accordance with the manufacturer's warranty;

(c) Biscuit will not be liable for any loss of data, loss of productivity or financial losses incurred due to incomplete or corrupt back-ups of data or back-up procedures.

9.11 In the event that the Customer requests and Biscuit provides IT Support Services in excess of the Customer's allocated allowance, Biscuit shall be entitled to charge additional fees for such services in accordance with clause 9.10.

9.12 Biscuit shall, at the request and cost of the Customer, provide the Customer with a report summarising the Support Requests received, the time of receipt, the time of response and the time the Support Request is cleared. Any such request must be made in writing to Biscuit and the Customer acknowledges and agrees that reports can only be provided by Biscuit in respect of the month or months following the receipt of the request.

9.13 Biscuit warrants to the Customer that the IT Support Services will be rendered by personnel with appropriate skills and experience to provide the IT Support Services. The Customer agrees that Biscuit cannot guarantee that the provision of the IT Support Services will cause the System to work without interruption or error. The warranties provided by Biscuit in clause 5.4 and this clause 9.13 shall be in lieu of and shall operate to exclude any other condition or warranty whether express or implied by law as to the provision of the IT Support Services.

9.14 The Customer warrants to Biscuit that it owns or has the benefit of a valid and subsisting licence to use every element of the System and it has full authority to permit Biscuit to perform the IT Support Services hereunder.

9.15 The Customer will fully indemnify and hold harmless Biscuit against all costs, expenses, liabilities, losses, damages and judgments that Biscuit may incur or be subject to as a result of a breach of clause 9.14.

10. CUSTOMER'S GENERAL OBLIGATIONS AND TERMS APPLICABLE TO ALL SERVICES

10.1 In relation to the Services, the Customer:

(a) shall ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;

(b) shall co-operate with Biscuit in all matters relating to the relevant Services;

(c) shall provide Biscuit, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Biscuit;

(d) shall provide Biscuit with such information and materials as Biscuit may reasonably require in order to supply the relevant Services and/or Equipment, and ensure that such information is accurate in all material respects;

(e) shall prepare its premises for the supply of the relevant Services (where applicable);

(f) shall obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start (where applicable);

(g) agrees that Biscuit may from time to time monitor or record calls made to Biscuit or by Biscuit to improve customer service, for training or for marketing purposes;

(h) agrees that Biscuit shall not be liable or responsible for any failure or delay in the Services due to or in connection with any third-party infrastructure applicable to the supply of any Services;

(i) agrees to co-operate with any criminal investigations or any investigation of any regulatory body that is applicable to the supply of any of the Services;

(j) be responsible for ensuring the accuracy of all specifications, drawings, sketches, plans, descriptions and instructions provided to Biscuit in connection with the supply of any Services and/or Equipment; and

(k) shall comply with all Service Specific Conditions.

10.2 The Customer is responsible and shall be liable to Biscuit for the use of the Services (including for any Charges incurred) by the actions of any of its employees and any other person who has been given access to use the Services by the Customer and any person who gains access to use the Services for fraudulent purposes including in each case where such use was not authorised by the Customer. The Customer is strongly

advised to install robust and effective security provisions to prevent unauthorised and/or fraudulent use.

10.3 If Biscuit's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation or comply with any obligation or policy under the Conditions (**Customer Default**):

(a) Biscuit shall without limiting its other rights or remedies have the right to suspend performance of any Service 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 that the Customer Default prevents or delays Biscuit's performance of any of its obligations;

(b) Biscuit shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Biscuit's failure or delay to perform any of its obligations as set out in this clause 10.3; and (c) the Customer shall reimburse Biscuit on written demand for any costs or losses sustained or incurred by Biscuit arising directly or indirectly from the Customer Default.

10.4 Without prejudice to clause 10.3 or any other remedy available to Biscuit shall be entitled to suspend the performance of any Service or terminate the Contract relating to the relevant Service without further liability to the Customer in the event that Biscuit:

(a) is obliged to comply with any order, instruction or request of any competent governmental body;

(b) terminates the provision of telecommunications services;

(c) in its reasonable opinion, Biscuit or the Carrier believes the Service are being used fraudulently or unlawfully; or

(d) in its reasonable opinion Biscuit or the Carrier needs to carry out improvements or repairs to any networks or equipment relating to the applicable Services.

10.5 Biscuit shall not be liable for any charges resulting from or in connection with fraudulent or unauthorised use of a Service and/or Equipment and the Customer shall be responsible for and pay all charges, costs, fees and expenses resulting from or in connection with any fraudulent or unauthorised use of any Service and/or Equipment.

10.6 If the customer signs an order form to;

a) Upgrade an existing service.

or

b) Add extra users, features or services to an existing service.

All services relating to this new order shall also be included in the new contract, with start and end dates changed to reflect this new duration.

11. CHARGES AND PAYMENT FOR SERVICES

11.1 The Charges for the Services and/or the Equipment shall be charged to and payable by the Customer in accordance with this clause 9 and in the case of Data Services and Fixed Network Services in accordance with this clause 9 and clause 10.

11.2 The Charges for the Equipment and Installation Services shall be as specified in the Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Order Form, Charges for Equipment and Installation Services shall be payable on Delivery.

11.3 The Customer shall pay any deposit specified in the Order Form within seven days of submitting the Order Form to Biscuit.

11.4 The Charges for the Maintenance Services shall be as specified in the Order Form and calculated in accordance with these Conditions.

Except as otherwise specified in the Order Form, Charges for Maintenance Services shall be payable annually in advance with the first payment due on the Commencement Date, and continuing to be payable thereafter on each anniversary of the Commencement Date.

11.5 Where clause 4.10 applies in relation to Maintenance Services, Biscuit shall be entitled to make such additional charges as are calculated in accordance with the Tariff.

11.6 Biscuit may charge the Customer a call out fee where such a call out occurs based on incorrect information being provided to Biscuit or where a call out occurs but the operative is unable to gain access to the premises within the times notified to the Customer for the call out.

11.7 The Charges for the Maintenance Services shall increase on each anniversary of the Commencement Date by up to 8%.

11.8 The Charges for the IT Support Services shall be as specified in the Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Order Form or these Conditions, Charges for IT Support Services shall be payable monthly in advance with the first payment due on the Commencement Date, and continuing to be payable each month thereafter on the anniversary of the Commencement Date.

11.9 Where IT Support Services are provided during Out of Hours or at the Customer's premises (or such location as is required by the Customer), the Charges shall be calculated by reference to the applicable hourly rates specified in the Order Form, or, if not stated in the Order Form, such hourly rates as specified in the Tariff. Biscuit may invoice the Customer in respect of such services rendered, immediately after their provision.

11.10 Where clause 7.11 applies in relation to the IT Support Services, Biscuit shall be entitled to make such additional charges as are calculated in accordance with or stipulated in the Tariff.

11.11 Biscuit shall not increase the monthly charge or its hourly rates in respect of the IT Support Services unless the Customer's network or user count has increased and at which point, any increase would need to be agreed by both parties prior to any increase being applied. The Customer's network and user count will be reviewed by Biscuit every six months from the Commencement Date.

11.12 The provisions of this clause apply to any proposed increase in the Charges other than those referred to in clause 11.14 below (which reflect an increase caused by regulatory changes in respect of which the provisions of clause 11.14 apply). Biscuit reserves the right to increase its Charges for any Service (including without limitation by revising any Tariff). Biscuit will give the Customer written notice of any such increase not less than 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Biscuit in writing within 14 days of the date of Biscuit's notice that the Client wishes to terminate the Contract, failing which the Customer shall be deemed to have accepted the changes.

11.13 Subject to applicable regulations, Biscuit reserves the right to increase its Charges for any Service (including without limitation by revising any Tariff) as a result of any increase in charges made to Biscuit by third party providers to it by a sum equal to any such increase. In such circumstances the Customer shall not have the right to cancel the Contract.

11.14 Where Biscuit proposes to increase its Charges for any Service (including by revising without limitation any Tariff) as a consequence of a regulatory change and that the increase is no greater than the additional cost to Biscuit caused by the regulatory change, it will give the Customer written notice or email notice of any such increase not less than 30 days before the proposed date of the increase. In such circumstances the Customer shall not have the right to cancel the Contract.

11.15 Except where otherwise specified in these Conditions or the relevant Order for any Service, the Customer shall pay each invoice submitted by Biscuit:

(a) within 14 days of the date of the invoice; and

(b) in full and in cleared funds to a bank account nominated in writing by Biscuit.

11.16 Time for payment of all Charges shall be of the essence of the Contract.

11.17 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). The Customer shall pay to Biscuit such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

11.18 Invoices shall be deemed to have been accepted if the Customer does not present a written objection, identifying clearly the disputed invoice and the reasons why it is challenged, to Biscuit within 14 days of the date of the invoice.

11.19 If the Customer fails to make any payment due to Biscuit under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Lloyd Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

11.20 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Biscuit may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Biscuit to the Customer.

11.21 Biscuit may exercise a lien over any equipment or goods in Biscuit's possession belonging to the Customer, for all monies payable by the Customer to Biscuit.

11.22 Any delay in Biscuit raising an invoice for any Charges shall not prohibit Biscuit from raising an invoice for the applicable Charges at a later date and the Customer shall pay such Charges.

11.23 Biscuit reserves the right to make additional charges for paper billing, late payment, reconnection, non-direct debit payment methods and incorrect fault reporting by the Customer. Such charges will be to the value that is deemed reasonable by Biscuit.

12. ADDITIONAL TERMS RELATING TO CHARGES FOR DATA SERVICES AND FIXED NETWORK SERVICES

12.1 The Charges for the Fixed Network Services and the Data Services shall be as detailed in the Order Form (subject always to clause 9.7) and as otherwise determined in accordance with the Contract.

12.2 Charges for line rental are payable from the Handover Date monthly in advance by direct debit, or such other method as is specified in the Order.

12.3 The Customer shall pay for all Charges for calls whether made by the Customer or any third party. Subject to clause 12.4, Biscuit shall invoice the Customer monthly in arrears for all call Charges and the Customer shall pay such invoice within 14 days of the date of the relevant invoice by direct debit.

12.4 Notwithstanding clause 12.2 and clause 12.3, Biscuit reserves the right to invoice the customer for Charges at any time.

12.5 If Biscuit supplies the Customer with any temporary Data Services and/or Fixed Network Services, it may charge the Customer in advance for the whole period during which the temporary services are to be provided.

12.6 Biscuit shall have the right to charge a minimum fee for calls of not less than £10 plus VAT per month in the event that the Customer's call charges do not exceed this sum in any month.

13. CONFIDENTIALITY AND DATA PROTECTION

13.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party may disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

13.2 The Customer agrees that Biscuit may use the Personal Data provided to Biscuit to:

- (a) provide any Services;
- (b) process payment for such Services; and
- (c) inform the Customer about similar products or services that Biscuit or other members of its group provide.

13.3 The Customer agrees that Biscuit may pass its Personal Data and other information about the Customer to credit reference agencies and that Biscuit may keep a record of any search obtained in respect of a Customer from a credit reference agency.

14. LIMITATION OF LIABILITY

14.1 Nothing in the Contract shall limit or exclude Biscuit's liability for: (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation by Biscuit; or
(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

14.2 Subject to clause 14.1, Biscuit shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill;
- (f) loss of use or corruption of software, data or information;
- (g) any indirect or consequential loss.

14.3 Subject to clause 14.1 and clause 14.2, Biscuit's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall, in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, be limited to the equivalent of the total Charges paid by the Customer in that period for the Equipment and/or the relevant Service in respect of which the claim arose.

14.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

14.5 If the Customer is a consumer, nothing in these Conditions shall prejudice its statutory rights.

14.6 This clause 12 shall survive termination of the Contract.

15. TERMINATION

15.1 Without limiting its other rights or remedies, Biscuit may terminate the Contract (in whole or in part) without further liability to the Customer by giving the Customer not less than 5 days written or email notice (support@biscuit.uk.com).

15.2 Without limiting its other rights or remedies, Biscuit may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of the Customer being notified in writing to do so;
- (b) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is

deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(e) the Customer (being an individual) is the subject of a bankruptcy petition or order;

(f) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Business Days;

(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);

(h) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;

(j) any event occurs or proceedings are taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(b) to clause 15.2(i) (inclusive);

(k) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

(l) the Customer's financial position deteriorates to such an extent that in Biscuit's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(m) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

15.3 Without limiting its other rights or remedies, Biscuit may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and fails to pay all outstanding amounts within 30 Business Days after being notified in writing to do so.

15.4 Without limiting its other rights or remedies, Biscuit may suspend immediately, provision of the Services under the Contract or any other contract between the Customer and Biscuit if the Customer becomes subject to any of the events listed in clause 15.2(b) to clause 15.2(m), or Biscuit reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

16. CONSEQUENCES OF TERMINATION

16.1 On termination of the Contract for any reason:

(a) the Customer shall immediately pay to Biscuit all of Biscuit's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Biscuit shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return any Equipment which has not been fully paid for. If the Customer fails to do so, then Biscuit may enter the Customer's premises and take possession of the Equipment. Until it has been returned, the Customer shall be solely responsible for the safe keeping of such Equipment and will not use it for any purpose not connected with the Contract;

(c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination of the Contract shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
(d) clauses which expressly or by implication survive termination shall continue in full force and effect.

16.2 Where the Customer is a Small Business Customer, the Customer may terminate a Contract for Fixed Network Services or Data Services at any time prior to commencement of the supply of such Services.

17. FORCE MAJEURE

17.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Biscuit including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Biscuit or otherwise), failure of a utility service (including without limitation street cabling, network or infrastructure failure or fault), failure of a 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, subcontractors or utility suppliers.

17.2 Biscuit shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

17.3 If the Force Majeure Event prevents Biscuit from providing any of the Services for more than 10 Business Days, Biscuit shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

18. GENERAL

18.1 Assignment and other dealings:

(a) Biscuit may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract (in whole or in part) and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

(b) The Customer shall not, without the prior written consent of Biscuit, 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 Contract.

18.2 Notices:

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail. (Emails to Biscuit must be sent to support@biscuit.uk.com).

(b) A notice or other communication shall be deemed to have been received:

(i) if delivered personally, when left at the address referred to in clause 18.2(a);

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;

(iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or

(iv) if sent by e-mail, 10 Business Days after transmission.

(c) A notice or other communication sent by email to Biscuit must be sent to support@biscuit.uk.com and if sent to a different email address shall not be deemed to have been received.

(d) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

18.3 Severance:

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18.4 Waiver:

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 No partnership or agency: Nothing in the Contract 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.

18.6 Third parties: A person who is not a party to the Contract shall not have any rights to enforce its terms.

18.7 Variation: Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and

conditions, shall be effective unless it is agreed in writing and signed by Biscuit reserves the right to make changes to these Conditions from time to time.

18.8 Information about Biscuit. Biscuit operates the website www.biscuit.uk.com. Biscuit is SECURE TECHNICAL SERVICES LIMITED, a company registered in England and Wales under company number 10185582 with its registered office at 11 Appleton Court, Calder Park, Wakefield, West Yorkshire, WF2 7AR. Biscuit's VAT number is 242282035. Please refer to Biscuit's website at www.biscuit.uk.com for information about how to contact us.

18.9 Dispute resolution: The Customer must notify any complaints or disputes to Biscuit in accordance with its Complaints and Dispute Resolution Procedure available at www.biscuit.uk.com. Biscuit shall use reasonable endeavours to resolve any complaint or dispute. Further information concerning the Customer's rights in relation to any dispute or complaint are specified in the Complaints and Dispute Resolution Procedure.

18.10 Governing law: The Contract, 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.

18.11 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 Contract or its subject matter or formation (including noncontractual disputes or claims).

Biscuit's Terms & Conditions