

**CAVENDISH COMMUNICATIONS LIMITED
STANDARD EQUIPMENT AND SERVICES SUPPLY TERMS AND CONDITIONS**

1. Definitions and Interpretation

1.1 In these Terms and Conditions, ("Terms and Conditions"), except where the context otherwise requires, the following words and expressions shall have the following meanings:

Agreement:	means the agreement for the Equipment and Services to which these Terms and Conditions form part of together with the Purchase Order and/or any Service Tariff relating to the Services and as further described in Condition 2;
Associated Company:	means any company which is from time to time a subsidiary or holding company of a party or a subsidiary of any such holding company, or whereby the shares of that company are held directly or indirectly by that party;
Charges:	the charges payable for the Equipment and Services as set out in a Purchase Order;
Customer:	the person or entity who purchases Equipment or Services from Cavendish Communications;
Equipment:	the equipment being supplied, installed and maintained for the Customer, as set out in the Purchase Order;
Equipment Price:	means the price for the Equipment and/or Services set out in the Contract or Purchase Order;
Fault:	means a condition that causes the Equipment or Services to fail to operate in substantial compliance with its specifications and causes a material adverse impact on the use of the Equipment or Services;
Intellectual Property Rights:	all patents, copyrights and related rights, database rights, design rights, trademarks, service marks, trade names, rights in undisclosed or confidential information (such as knowhow, trade secrets and inventions (whether patentable or not)) and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world;
Manufacturer:	the person or entity who manufactures the Equipment;
Manufacturer Warranties:	the standard warranties provided by the Manufacturer in relation to its Equipment;
Minimum Spend:	means the minimum amount of monthly spend the Customer has committed to spend on Services as detailed in the Contract or Purchase Order;
Minimum Term:	means the period specified in the Purchase Order from the later of the commencement date specified in the Purchase Order or (in relation to Equipment) the date that such Equipment is installed and commissioned and (in relation to Services) the date that the Services commence or are taken over;
Party:	Cavendish Communications or the Customer and "Parties" means both;
Purchase Order:	means an order placed by the Customer with Cavendish Communications detailing amongst other things, the Equipment and associated Services that the Customer wishes to receive, the Charges and Service Tariffs which the Customer will be charged and any Minimum Spend;
Service Tariff:	means the tariff detailing the individual Service charges (exclusive of VAT) payable by the Customer as set out in the Purchase Order or as notified to the Customer from time to time;
Services:	means the services which Cavendish Communications has agreed to provide the Customer, as detailed in the Purchase Order;
Specification:	the description or specification of the Equipment and Services as set out in a Purchase Order;
Working Day:	between the hours of 09.00 and 17.00 on any day (other than a Saturday or Sunday) on which the clearing banks are open for normal banking business in England.

1.2 In these Terms and Conditions (except where the context otherwise requires):

- 1.2.1 any reference to a Condition is to the relevant clause of these Terms and Conditions;
- 1.2.2 headings are included for convenience only and shall not affect the construction or interpretation of the Agreement;
- 1.2.3 the singular includes the plural and vice versa;
- 1.2.4 words importing a particular gender or number do not exclude other genders or numbers; and
- 1.2.5 references to any statute, statutory provision or statutory instrument include a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it all as from time to time amended, consolidated or re-enacted.

1.3 These Terms and Conditions apply to and govern the supply of all Services by Cavendish Communications to the Customer to the exclusion of all other terms (unless expressly agreed by Cavendish Communications in writing).

2. Agreement

- 2.1 The agreement between Cavendish Communications and the Customer consists of:
 - 2.1.1 a Purchase Order (and any schedules to a Purchase Order);
 - 2.1.2 these Terms and Conditions;
 - 2.1.3 any documents expressly incorporated into a Purchase Order.
- 2.2 If there is any conflict or inconsistency between any of the above, they shall have the following order of precedence: (i) these Terms and Conditions; (ii) the Purchase Order; and (iii) any documents referred to in Condition 2.1.3.
- 2.3 All Purchase Orders are governed by the terms of the Agreement and any terms put forward by the Customer are excluded unless agreed to in writing by Cavendish Communications.
- 2.4 Each acceptance of a Purchase Order by the Customer shall be deemed to be an offer by the Customer to purchase the Equipment and/or Services from Cavendish Communications subject to the terms of the Agreement.
- 2.5 No Agreement shall come into existence until the Customer has agreed the Purchase Order and it has then subsequently been agreed by Cavendish Communications. Any Purchase Order is valid for a period of thirty (30) days only from its date, provided that Cavendish Communications has not previously withdrawn it.
- 2.6 No acceptance of a Purchase Order which has been acknowledged by Cavendish Communications may be cancelled by the Customer, except with the agreement in writing of Cavendish Communications and provided that the Customer indemnifies Cavendish Communications in full against the loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Cavendish Communications as a result of such cancellation.

3. Commencement and Duration

- 3.1 The Services (except equipment maintenance agreements) shall be provided for the Minimum Term and continue following expiry. The Services can be cancelled at any time after the Minimum Term by giving three months written notice.
- 3.2 If after the commencement of any Services, the Customer orders any additional Services, they shall be provided for the Minimum Term notwithstanding any unexpired period for the existing Services.
- 3.3 Equipment Maintenance agreements shall be provided for the Minimum Term and following its expiry, the Services shall automatically continue on a rolling twelve (12) month period. The Services may be terminated on the anniversary of the start date of the Minimum Term by giving three months prior written notice to Cavendish Communications, such notice to expire on the anniversary of the Minimum Term.

4. Price and Payment

- 4.1 Cavendish Communications shall invoice the Customer for all Equipment and Services in accordance with the Purchase Order and the Customer shall pay for such Services in accordance with the Purchase Order.
- 4.2 Notwithstanding the foregoing, in the event that the Customer is permitted to pay any Charges by instalments then each instalment must be paid before the commencement of the period of the Term to which it relates.
- 4.3 Unless agreed otherwise by Cavendish Communications in writing, all Charges shall be exclusive of VAT delivery, packaging, shipping, carriage, insurance and other charges and duties.
- 4.4 Cavendish Communications reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of any Equipment that has not been delivered if the price of such Equipment increases in cost to Cavendish Communications and is due to any factor beyond the control of Cavendish Communications.
- 4.5 If the Customer fails to pay any amount due to Cavendish Communications by the date required by the Purchase Order or subsequent invoice, the whole of the balance of all amounts due to be paid to Cavendish Communications by the Customer shall become immediately due and payable and without prejudice to any other right or remedy available to Cavendish Communications, subject to a total breakdown of communications between both parties and the commencement of legal proceedings after express notice to the customer Cavendish Communications may:
 - 4.6.1 terminate the Agreement or suspend any further deliveries of Equipment or Services (whether ordered under the same Agreement or not) to the Customer;
 - 4.6.2 charge interest on the amount outstanding from the due date to the date of receipt by Cavendish Communications (whether or not after judgment), at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Save as where the Customer is a consumer, Cavendish Communications reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
 - 4.6.3 suspend all other Services provide by Cavendish Communications or any Associated Company until payment has been made in full;
 - 4.6.4 make a storage charge for any undelivered Equipment at its current rates from time to time;
 - 4.6.5 stop any Equipment in transit; and/or
 - 4.6.6 make a general lien on all Equipment and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to Cavendish Communications. Cavendish Communications shall be entitled, on the expiry of fourteen (14) days' notice in writing, to dispose of such Equipment or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.
- 4.6 :

- 4.7 Where the Customer has agreed to commit to a Minimum Spend but fails to reach the Minimum Spend commitment in respect of a Service over any Minimum Term or other period agreed with Cavendish Communication in writing, the Customer shall pay any additional amount to cover the difference between the actual charges incurred and the Minimum Spend amount.
- 4.8 Our Payment Terms for any monthly, quarterly or annually recurring bill is 14 days from the date of the invoice or 21 days if collected by direct debit. If payment by direct debit is not made a £10 processing fee will be levied. Deposit invoices are due on presentation. Payment in respect of all other equipment or services is due 30 days from the invoice date. Cavendish Communications reserve the right to charge interest on overdue balances in accordance with 4.5.2.
- 4.9 We may change this Agreement (including changing or introducing new Charges or changing or withdrawing the Services of Third Party Services) where required: (a) to comply with applicable law or regulation; (b) because of a change imposed by a third party supplier.
- 4.10 If we increase our charges, we'll give you at least 30 days' written notice. However, we may not give you notice of such changes if they relate to services which you don't regularly use or where the increase in charges is 5% or less.
- 4.11 You may terminate the affected part of the Agreement where a change or clause causes you a material detriment which cannot be offset by us to your reasonable satisfaction on 30 days' written notice to us. This right to terminate ends 30 days after the effective date of the change. The following shall be a material detriment for the purposes of this clause: an increase in your UK monthly Charges of more than 10% in a 12 month period

5. Specification

- 5.1 The quantity, quality and description of the Equipment and Services shall, subject as may otherwise be provided for elsewhere in these Terms and Conditions, be specified in the Specification.
- 5.2 Cavendish Communications reserves the right, but does not assume the obligation, to make any changes in the Specification which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which does not materially affect their quality or performance. (Cavendish will give written notice to the customer prior to 5.2)

6. Supply and Installation of Equipment

- 6.1 Unless otherwise agreed in writing by Cavendish Communications, delivery of the Equipment shall take place at the Customer's place of business and Cavendish Communications will use all reasonable endeavours to deliver, install and commission the Equipment by dates agreed between the parties but accepts no liability for any failure to do so. Any dates specified by Cavendish Communications for delivery, installation and commissioning of the Equipment are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified in the Purchase Order, delivery shall be within a reasonable time.
- 6.2 Should the Customer postpone delivery (or installation and commissioning as the case may be) of any Equipment for a period in excess of 30 days from the said agreed dates, Cavendish Communications shall be entitled to adjust any price for delivery and or the Equipment.
- 6.3 Unless otherwise agreed in writing by Cavendish Communications, the Customer shall have no right to inspect the Equipment prior to delivery.
- 6.4 While Cavendish Communications may be willing at times to make any necessary arrangement for installation and commissioning of Equipment with another network provider at the Customer's request, Cavendish Communications does not accept responsibility for any failure on the part of that network provider or their agents and that those arrangements form no part and are expressly excluded from any Agreement.
- 6.5 Cavendish Communications warrants to the Customer that the Equipment will be supplied, installed and maintained with due skill and care to the standards of a competent supplier and maintainer of telecommunications equipment and in accordance with any telecommunication regulatory requirements.
- 6.6 The Customer warrants that (if applicable) the Customer's existing telecommunications equipment (if any) is in proper working order and complies with all applicable standards and approvals so as to enable Cavendish Communications to supply and continue to supply the Services.
- 6.7 Cavendish Communications may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Agreement.
- 6.8 Each instalment shall be a separate Agreement and no cancellation or termination of any one Agreement relating to an instalment shall entitle the Customer to repudiate or cancel any other Agreement or instalment.
- 6.9 If for any reason the Customer fails to accept delivery of any of the Equipment when they are ready for delivery or Cavendish Communications is unable to deliver the Equipment on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
 - 6.9.1 risk in the Equipment shall pass to the Customer.
 - 6.9.2 the Equipment shall be deemed to have been delivered; and
 - 6.9.3 Cavendish Communications may store the Equipment until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

7. Risk and Title

- 7.1 Risk in the Equipment will pass to the Customer from the time of delivery to the Customer.
- 7.2 Title or licence to use the Equipment shall pass to the Customer on the later of completion of delivery of the Equipment or when Cavendish Communications has received in full, cleared funds, all sums due to it in respect of the Equipment and all other sums which are or will become due to Cavendish Communications from the Customer on any account.

- 7.3 Until ownership or licence of the Equipment has passed to the Customer, the Customer shall:
- 7.3.1 hold the Equipment on a fiduciary basis as Cavendish Communications' bailee;
 - 7.3.2 store the Equipment (at no cost to Cavendish Communications) separately from all other Equipment of the Customer or third party in such a way that they remain readily identifiable as Cavendish Communications' property;
 - 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
 - 7.3.4 maintain the Equipment in satisfactory condition and keep it insured on Cavendish Communications' behalf for its full price against all risks to the reasonable satisfaction of Cavendish Communications. On request the Customer shall produce the policy of insurance to Cavendish Communications.
- 7.4 The Customer's right to possession of the Equipment shall terminate immediately if:
- 7.4.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
 - 7.4.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his property or obtained against him/it, or fails to observe or perform any of his obligations under the Agreement or any other contract between Cavendish Communications and the Customer, or is unable to pay his within the meaning of s.123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - 7.4.3 the Customer encumbers or in any way charges any of the Equipment.
- 7.5 Cavendish Communications shall be entitled to recover payment for the Equipment notwithstanding that ownership of the Equipment has not passed from Cavendish Communications.
- 7.6 Until payment for the Equipment is received in full, the Customer shall not be entitled to in any way charge by way of security for any indebtedness any of the Equipment.

8. Hiring of Equipment

- 8.1 In the event that Cavendish Communications agrees to loan any Equipment to the Customer or the Customer hires or leases the Equipment through a third party, the Customer agrees:
- 8.1.1 that Cavendish Communications or its appointed agent shall install the Equipment at the Customers site or premises;
 - 8.1.2 the Equipment shall at all times remain the property of Cavendish Communications and at all times when the ownership of the Equipment is in question, the Customer shall advise any third party that the Equipment is the property of Cavendish Communications; and
 - 8.1.3 the Customer shall be responsible for the Equipment whilst it is in the Customer's custody and shall indemnify Cavendish Communications against any loss or damage to the Equipment together with all costs associated with returning the Equipment to Cavendish Communications.

9. Support and Maintenance and other Services

- 9.1 Cavendish Communications shall supply or provide and the Customer shall purchase the Services in accordance with the Purchase Order which shall always be subject to the limitations set out in Condition 10 below.
- 9.2 In the event of a Fault, the Customer shall immediately submit a request for support and maintenance service ("Support and Maintenance Services" to Cavendish Communications' help desk ("Help Desk") using the following contact details [01273 615600].
- 9.3 Cavendish Communications shall acknowledge receipt of a request to rectify a Fault and shall respond to it in accordance with the response times set out below.
- 9.4 Subject to Condition 9.5 below, An engineer shall endeavour to respond to all requests for the correction of a Fault and general maintenance calls to its Help Desk, within 16 working hours. (Respond means an engineer either on site or remotely dealing with the fault).
- 9.5 In the event that the Customer is experiencing a Fault that affects more than 50% of the operating capacity of the Equipment or Services, an engineer shall use all reasonable endeavours to respond to any call for assistance to such Fault within 4 hours of it being logged with the Help Desk, however this and all other response times are best estimates only and a guaranteed response or repair within any time period quoted is not given by Cavendish Communications.
- 9.6 On receipt of a request for correction of a Fault or general support and maintenance services covered in the Specification, Cavendish Communications shall at its sole option:
- 9.6.1 carry out remote diagnostic checks where possible;
 - 9.6.2 provide advice, including but not limited to advice as to tests and checks to be carried out by the Customer, by telephone; and/or
 - 9.6.3 visit the Customer's site to diagnose and correct the Fault.
- 9.7 Cavendish Communications shall take whatever actions it deems necessary to correct the Fault and in the event that Cavendish Communications deems it necessary to permanently replace any part of the Equipment

then such replacement may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent and will be furnished only on an exchange basis.

- 9.8 Cavendish Communications shall not be required to respond to requests for support and maintenance in the sequence in which they are received.
- 9.9 The Customer shall provide all reasonable assistance to Cavendish Communications (including access to all locations at which Cavendish Communications' Equipment is situated or is to be situated) so as to enable Cavendish Communications to supply and continue to supply the Services.

10. Service Limitations

- 10.1 Unless otherwise specified in the Purchase Order, the Support and Maintenance Services do not include:
- 10.1.1 the replacement of consumable materials;
 - 10.1.2 maintenance or replacement of any internal cabling;
 - 10.1.3 maintenance or replacement of any Equipment damaged or lost due to an act of God including but not limited to war, fire, flood, earthquake or storm, acts of terrorism, explosion, civil commotion or industrial dispute ("Force Majeure Event");
 - 10.1.4 rectification of any fault in Equipment which :
 - (a) is not covered under a Manufacturer's Warranty;
 - (b) arises after the Customer notified Cavendish Communications of a different Fault in the same item of Equipment but then continued to use the Equipment; or
 - (c) arises from the Customer alteration or attempted repair of Equipment which took place without the written consent of Cavendish Communications; or
 - (d) arises because the Customer failed to follow Cavendish Communications' oral or written instructions;
 - (e) is caused by improper use of the Equipment or use outside its normal application; or
 - (f) is caused by fair wear and tear..
- 10.2 Cavendish Communications shall charge and the Customer shall pay for Cavendish Communications' employees' time at its then current rates and for any expenses incurred by Cavendish Communications in responding to a Support and Maintenance Service Request in the event that the Fault is caused as a result of:
- 10.2.1 a condition or act specified in Condition 10.1.4(f) above, or
 - 10.2.2 the Fault is not found and cannot be replicated; or
 - 10.2.3 the Customer is in breach of any of these Terms; or
 - 10.2.4 the rectification and/or repair of the Fault is not included in the Specification; or
 - 10.2.5 Cavendish Communications determines that no Fault exists and that reconfiguration work is required to the Equipment.
- 10.3 Cavendish Communications cannot guarantee and does not warrant that any Service will be free of interruptions or will be fault-free or that there will be no degradations to the quality of the Service from time to time beyond its control and will not be liable for any loss, damage, cost or expense should any Service be interrupted from time to time.

11. Limitation Of Liability

- 11.1 Cavendish Communications shall not be responsible for monitoring the volume of Services which are being used or attributed to the Customer.
- 11.2 All conditions, warranties, representations, statements, liabilities and other terms implied by common law, statute or otherwise are excluded to the fullest extent permitted by law.
- 11.3 Subject to clause 11.7, Cavendish Communications shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Agreement, or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Cavendish Communications, its employees or agents or otherwise) which arise out of or in connection with the supply of the Services or the Equipment.
- 11.4 The aggregate liability of Cavendish Communications to the Customer in respect of all losses, damages, costs, claims or expenses or depletion of goodwill suffered by the Customer arising out of or in connection with any breach by Cavendish Communications of the terms of the Agreement, these Terms and Conditions or any tort or breach of statutory duty in connection with Cavendish Communications' obligations under an Agreement or these Terms and Conditions shall be limited to the Charges.
- 11.5 The Customer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer and shall provide to Cavendish Communications written evidence of any claims for which it is alleged that Cavendish Communications is liable together with written details of how loss was caused by Cavendish Communications and the steps the Customer has taken to mitigate such loss before Cavendish Communications will entertain such claim.
- 11.6 All information given by Cavendish Communications relating to the Equipment is given in good faith but for guidance only and shall not be regarded as a representation as to the method of use or function of the Equipment and it shall be the Customer's responsibility to satisfy itself that the Equipment is suitable for its intended purpose. Any knowledge that Cavendish Communications has of the Customer's intended purpose shall not, unless otherwise agreed in writing, imply any warranty that the Equipment is suitable for that purpose.
- 11.7 Nothing shall exclude or limit the liability of Cavendish Communications for the death or personal injury caused by negligence or for any matter which it would be illegal for Cavendish Communications to exclude or attempt to exclude its liability.

12. Indemnity

- 12.1 The Customer shall indemnify and forever keep Cavendish Communications indemnified in full against:
- 12.1.1 all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Cavendish Communications as a result of or in connection with the Customer's breach of Agreement;
 - 12.1.2 all telecommunication Service call and broadband costs and expenses, irrespective of whether or not such use was:
 - (a) without the Customer's consent or authorisation;
 - (b) fraudulent; or
 - (c) as a result of an act of theft from the Customer;
 - (d) incurred following the vacating of the Customer's premises without sufficient notice having been given to Cavendish Communications; or
 - 12.1.3 any failure by the Customer to maintain the Equipment in good working order where to do so was within the reasonable control of the Customer.

Cancellation of Order

- 12.2 No cancellation of any Purchase Order by the Customer shall be effective unless written notice thereof is given to Cavendish Communications before the Equipment is delivered to the Customer and unless Cavendish Communications agrees to accept such cancellation in which event the Customer shall pay to Cavendish Communications immediately on presentation of invoice, a cancellation charge of 20% of the price agreed for the delivery and installation of such Equipment.
- 12.3 In the event of an Equipment installation commences but it then being cancelled before being completed, the Customer shall pay all installation costs incurred and any management, administrative or Service cancellation costs issued by Cavendish Communications and any third party provider who has agreed to provide Services to the Customer.

13. Customer's Obligations

- 13.1 The Customer shall at all times ensure compliance with all environmental conditions specified for the Equipment from time to time by Cavendish Communications or a Manufacturer.
- 13.2 The Customer shall allow Cavendish Communications full, free and timely access to the Equipment and shall procure all necessary facilities, services, consents and permissions and provide adequate working and storage space and such other facilities as Cavendish Communications may require.
- 13.3 The Customer shall provide such access for remote technical diagnostics of the Equipment as Cavendish Communications may request. This may include the provision of a direct exchange line (a PSTN Line) within the same connection area as the Equipment location and/or VPN access to support the Equipment and/or applications thereto as appropriate.
- 13.4 The Customer shall not cause or allow the Equipment or any part thereof to be installed, altered, adjusted, repaired, relocated, reinstalled, modified or re-configured, or otherwise interfered with except by Cavendish Communications or with Cavendish Communications' prior written consent.
- 13.5 The Customer shall at all times ensure that the version(s) of all software used in connection with the Equipment is in accordance with the relevant manufacturer's guidelines and any applicable licence agreement.
- 13.6 The Customer shall, at its own expense, provide by the date agreed between the parties for delivery of the Equipment, all necessary facilities, consents, licences or other items for the installation (if applicable), operation and use of the Equipment to the standards specified by Cavendish Communications. The Customer shall pay Cavendish Communications' additional charges for any extra labour or other costs or expenses incurred by Cavendish Communications through absence or non-availability of such facilities at any time.
- 13.7 The Customer shall observe all common law and/or statutory requirements relating to health and safety.

14. Intellectual Property Rights

- 14.1 Cavendish Communications' Intellectual Property Rights in and relating to the Equipment and Services shall remain the exclusive property of Cavendish Communications and the Customer shall not at any time make any unauthorised use of such Intellectual Property rights nor authorise or permit any of its agents or contractors or any other person to do so.
- 14.2 Cavendish Communications shall retain the property and copyright in all documents supplied to the Customer in connection with the Agreement.

15. Suspension of Services

- 15.1 Cavendish Communications may suspend any or all of the Services immediately or at any time if:
- 15.1.1 Cavendish Communications has reasonable grounds for believing that the Equipment or Services are being used or may be used in an unauthorised or illegal manner; or
 - 15.1.2 Cavendish Communications suspects the Customer is involved with fraud or attempted fraud in connection with the use of the Service;
 - 15.1.3 the Customer is in breach of any of these Terms and Conditions;
 - 15.1.4 the Customer notifies Cavendish Communications that the Equipment is lost or stolen;
 - 15.1.5 Cavendish Communications' Network fails or is being tested, modified or maintained, (Customers will be given due notice of any scheduled downtime);
 - 15.1.6 the Customer fails to pay to Cavendish Communications any charges when they become due; or
 - 15.1.7 the Customer incurs unbilled Service charges in excess of those anticipated by Cavendish Communications or as otherwise agreed with the Customer.
- 15.2 In the event that Cavendish Communications suspends the Services pursuant to clause 15.1:

- 15.2.1 Cavendish Communications will not provide the applicable Services again until the Customer takes such action as may in Cavendish Communications' absolute discretion be required; and
- 15.2.2 the Customer shall continue to be responsible for Cavendish Communications' charges as set out in a Purchase Order unless Cavendish Communications terminates by giving not less than 90 days written notice in accordance with these Terms and Conditions.
- 15.3 In the event that Cavendish Communications agrees to the Customer's request to reinstate any Service following suspension of it (for any reason) Cavendish Communications reserves the right to charge the Customer for any costs, including administration costs, incurred in such reinstatement.

16. Termination

- 16.1 The Agreement may be terminated immediately by notice in writing:
 - 16.1.1 by Cavendish Communications if the Customer breaches the payment terms by any amount by its due date;
 - 16.1.2 by Cavendish Communications if the Customer is in material or continuing breach of any of its obligations under the Agreement and fails to remedy the same (if capable of remedy) within a period of thirty (30) days after written notice of the breach;
 - 16.1.3 by the Customer if Cavendish Communications is in material or continuing breach of any of its obligations under the Agreement and fails to remedy the same (if capable of remedy) within a period of thirty (30) days after written notice of the breach has been received by it from the Customer;
 - 16.1.4 by either Party if any of the following events occurs in respect of the other Party:
 - (a) a proposal is made for a voluntary arrangement within Part I of Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or for the making of an administration order, or an application is made for the appointment of a provisional liquidator or a creditor's meeting is convened pursuant to s.98 of Insolvency Act 1986;
 - (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - (e) it is or becomes insolvent within the meaning of s.123 Insolvency Act 1986.
- 16.2 This agreement can be terminated after the minimum term by giving Cavendish 90 days notice in writing.
- 16.3 If you terminate this Agreement before the expiry of the Minimum Term or prior to the end of the agreement in relation to 16.2 above, we reserve the right to charge the full rental in relation to any unexpired part of the then relevant term.
- 16.4 Where the Customer has agreed to commit to a Minimum Spend but where the agreed Minimum Spend has been exceeded in the 12 month period prior to termination, then in the event of early termination for whatever reason, Cavendish Communications reserves the right to recalculate the monthly minimum spend based on the prior use and bill the Customer immediately on termination the pro rata difference between the actual amount the Customer spent and the amount the Customer committed to spend for the remainder of the minimum term.

17. Consequences of Termination

- 17.1 If the Agreement is terminated for any reason:
 - 17.1.1 any sums due to Cavendish Communications together with any cancellation or disconnection fees and all other fees due for the remainder of the Minimum Term (or any extension or thereof) will become immediately payable by the Customer without set-off or deduction. This Condition is without prejudice to any right to claim for interest under the law, or any right under the Agreement; and
 - 17.1.2 ; the Customer:
 - (a) will permit the removal of any of Cavendish Communications' Equipment situate or installed at the Customer's premises or such other location notified to Cavendish Communications by the Customer;
 - (b) grants Cavendish Communications, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect, or retake possession upon which the Agreement shall be terminated. Such termination shall not prejudice the rights of either party arising prior thereto; and
- 17.2 Termination of the Agreement howsoever caused will:
 - 17.2.1 be without prejudice to any obligations or rights of either of the Parties hereto accrued prior to such termination; and
 - 17.2.2 not affect any part of the Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after such termination.

18. Confidentiality

- 18.1 The Customer recognises and agrees that the Agreement is confidential and that it shall:
- 18.1.1 not divulge it or any confidential information of Cavendish Communications ("Confidential Information") without the prior written consent of Cavendish Communications; and
 - 18.1.2 only to divulge Confidential Information to its employees, agents or contractors who need to know it for the purpose of the Agreement and who have agreed to be bound by these obligations of confidentiality.
- 18.2 The following will not be Confidential Information for the purposes of the Agreement:
- 18.2.1 any information in the public domain otherwise than by a breach of the Agreement;
 - 18.2.2 information obtained from a third party without an obligation (express or implied) to keep the information confidential; and
 - 18.2.3 information lawfully in the possession of the Customer before use or divulgence as aforesaid.
- 18.3 The obligation of confidentiality in this Condition shall survive termination of the Agreement.

19. Entire Agreement

- 19.1 The Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it.
- 19.2 Each of the Parties acknowledges and agrees that in entering into the Agreement and the documents referred to in it, it does not rely on and will have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement.

20. Severability

- 20.1 If any provision of these Terms and Conditions shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other terms (included any attached or entered into at a later date between the Customer and Cavendish Communications, all of which shall remain in full force and effect.

21. Waiver

- 21.1 No failure or delay by either Party in enforcing its rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

22. Third Party Rights

- 22.1 No term of the Agreement is intended to confer a benefit on, or be enforceable by, any person who is not a party to the Agreement (whether under the Contracts (Rights of Third Parties Act 1999) or otherwise).

23. Relationship of the Parties

- 23.1 Nothing in the Agreement is intended to create a partnership between the Parties, or to authorise either Party to act as agent for the other. Save where expressly so stated in the Agreement neither Party will have authority to act in the name or on behalf of or otherwise to bind the other.

24. Assignment and Subcontracting

- 24.1 The Customer shall not sub-licence, assign or transfer in any way any of the Agreement or any benefits or interests arising under the Agreement on a temporary or permanent basis without the prior written consent of the other Party.
- 24.2 Notwithstanding Condition 24.1, Cavendish Communications shall be entitled to assign, novate, sub-contract or transfer all of its rights and/or obligations hereunder (including the Software Licence) provided that it shall give written notification to the Customer of any exercise of its rights under this Condition.

25. Notices

- 25.1 Notices will be delivered or sent to the addresses of the Parties on the Purchase Order or to any replacement address notified by either Party to the other in accordance with this Condition 20. Any notice must be in writing and may be delivered personally or by recorded delivery post or first class mail or fax provided faxes are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail will be deemed to be delivered two (2) Working Days after posting. Correctly directed faxes will be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above. Each Party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed in which event a notice will not be validly given unless so addressed.

26. Set-Off

- 26.1 Cavendish Communications expressly reserves the right to set off any sums owed by the Customer to Cavendish Communications under this Agreement against all and any other sums owed by the Customer or its group companies to Cavendish Communications under any agreement or arrangement for the provision of Goods or services.

27. Credit Referencing

27.1 Cavendish Communications may register information about the Customer with a licensed credit reference agency. This information may be used to make credit decisions by Cavendish Communications and third parties. The information may also be used to prevent fraud and to trace debtors.

28. Variation

28.1 No variation to the Agreement or these Terms and Conditions shall be binding unless agreed in writing by a director or authorised representative of Cavendish Communications.

29. Governing Law and Jurisdiction

29.1 These Terms and Conditions are governed by and shall be interpreted in accordance with English Law and the Parties submit to the non-exclusive jurisdiction of the English Courts to determine any dispute in relation to them.

Wholesale Line Rental Terms and Conditions

Together with our General Terms and Conditions, the following Wholesale Line Rental Terms and Conditions (“Wholesale Line Rental Terms”) shall be incorporated in and apply to each and every Purchase Order or agreement between you, the Customer and any member of the Cavendish Communication Group Ltd for the supply of Wholesale Line Rental Services (defined below).

1. Definitions and Interpretation

- 1.1. Other than as provided for in clause 1.2 below, the definitions and interpretations contained in our General Terms and Conditions shall apply to these Terms.
- 1.2. In these Terms and any attached or Scheduled terms and conditions:

Wholesale Line Rental Services: means the telephone line rental service to be provided to the Customer as specified in a Purchase Order;

- 1.3. In addition to these Wholesale Line Rental Terms, the Customer shall at all times comply with the terms and conditions of any third party supplier of Line Rental Services to the Customer.

2. Commencement, Duration and Termination

- 2.1. Cavendish Communications shall provide or arrange for the provision of Wholesale Line Rental Services for the Minimum Term from the date the Lines are connected and operative (“Commencement Date”).
- 2.2. The Line Rental Services may be terminated on the anniversary of the Commencement Date (“Anniversary Date”) by giving three months prior written notice to Cavendish Communications, such notice to expire on the Anniversary Date.
- 2.3. Following expiry of any Minimum Term, the Line Rental Service shall continue. It can then be cancelled at any time by giving three months written notice.

3. Installation and Service

- 3.1. The Lines shall be installed or repaired by Cavendish Communications or by a Third Party Provider or subcontractor.
- 3.2. Where possible, installations will be completed on the agreed date subject to our General Terms and Conditions.
- 3.3. Telephone numbers issued are subject to change and are not guaranteed until live, working & tested. Cavendish Communications shall not be responsible for any costs incurred by Customers who advertise numbers prior to such numbers being tested and confirmed by Cavendish Communications.

4. Charges, Payment and Cancellations

- 4.1. Where applicable, Line installation charges will be invoiced immediately on installation with subsequent rental charges invoiced on a monthly basis and paid by the Customer via a direct debit mandate, monthly in advance.
- 4.2. This agreement can be terminated after the minimum term by giving Cavendish 90 days notice in writing.
- 4.3. If you terminate this Agreement before the expiry of the Minimum Term or relevant Renewal Term or prior to the end of the agreement, we reserve the right to charge the full line rental in relation to any unexpired part of the then relevant term.
- 4.4. Where Customers give due and proper notice that they shall be engaging a replacement provider to provide the Services but such replacement provider fails to take over management of the lines, Cavendish Communications may, but shall not be obliged, to continue to manage those lines to prevent a loss of service to the Customer and the Customer will be invoiced for and shall pay all costs incurred by Cavendish Communications, for continuing to provide part of the Service.

5. Maintenance

- 5.1. All maintenance calls should be directed to our Help Desk which may be contacted on 01273 615600. We will aim to repair line faults by midnight on the working day following the day the fault is reported to our Help Desk. Exceptions to this are where an engineer visit is required to the Customer’s premises or exchange or third party involvement is deemed necessary.
- 5.2. Lines are installed or repaired by Engineers from Cavendish Communications or other network providers.
- 5.3. Lines are installed to within 3 metres of distribution point [DP] however any internal cabling required would be at the Customers expense & their own responsibility to maintain.

Wholesale Call Terms and Conditions

Together with our General Terms and Conditions, the following Wholesale Call Terms and Conditions (“Wholesale Call Terms”) shall be incorporated in and apply to each and every Purchase Order or agreement between you, the Customer and any member of the Cavendish Communication Group Ltd for the supply of Wholesale Call Services (defined below).

1 Definitions and Interpretation

- 1.1. Other than as provided for in clause 1.2 below, the definitions and interpretations contained in our General Terms and Conditions shall apply to these Terms.
- 1.2. In these Terms and any attached or Scheduled terms and conditions:
Call Charges: means the charges for call made by the Customer, which shall include all those calls made by unauthorised third parties; and
Wholesale Call Service: means the call services Cavendish Communications has agreed to supply, or arranged for a third party carrier to supply to the Customer, as specified in a Purchase Order;
- 1.3. In addition to these Wholesale Call Terms, the Customer shall at all times comply with the terms and conditions of any third party supplier of Wholesale Call Services to the Customer.

2. Commencement, Duration and Termination

- 2.1. Routing of calls is provided by a third party carrier chosen by Cavendish Communications and we reserve the right to change such third party carrier at our discretion and without notice, subject to our reasonable endeavours to ensure that the Wholesale Call Services are not unreasonably interrupted.
- 2.2. Unless specified in a Purchase Order, Cavendish Communications shall notify you in writing of the date on which the Wholesale Call Service shall commence. This commencement date is subject to our General Terms and Conditions.
- 2.3. The Wholesale Call Services may be terminated on the anniversary of the Commencement Date (“Anniversary Date”) by giving three months prior written notice to Cavendish Communications, such notice to expire on the Anniversary Date.
- 2.4. Following expiry of any Minimum Term, the Wholesale Call Service shall continue. It can then be cancelled at any time by giving three months written notice.

3. Service

- 3.1. Telephone numbers issued are subject to change and are not guaranteed until live, working & tested. Cavendish Communications shall not be responsible for any costs incurred by Customers who advertise numbers prior to such numbers being tested and confirmed by Cavendish Communications.
- 3.2. Telephone number porting is subject to changes imposed by third party providers and Cavendish Communications shall not be responsible for any costs, loss or expense be incurred by the Customer (or any third party) in the event that a porting request is declined or reversed at a later date.

4. Charges, Payment and Cancellations

- 4.1. Where applicable, Call Charges will be invoiced monthly in arrears and paid by the Customer via a direct debit mandate. In the event that any part of the Wholesale Call Service is not rated within the month in which it was made, Cavendish Communications (or the third party provider) shall include it in a future invoice.
- 4.2. This agreement can be terminated after the minimum term by giving Cavendish 90 days notice in writing.
- 4.3. If you terminate this Agreement or calls are migrated before the expiry of the Minimum Term or relevant Renewal Term or prior to the end of the agreement we reserve the right to charge for Call charges based on the average Calls invoiced during the previous 6 months, in relation to any unexpired part of the then relevant term subject to a minimum charge of £500.00.
- 4.4. Where a Minimum Spend has been agreed and specified in a Purchase Order and the Customer has cancelled or terminated any Service upon which the Minimum Spend was calculated, Cavendish Communications reserves the right to invoice the customer for any loss suffered as a result of the cancellation of service(s).
- 4.5. Where the Customers give due notice that they are terminating the Wholesale Call Service and moving to a new provider, but the new provider fails to take over management of the calls, Cavendish Communications may, but is not obliged to, continue to route calls to ensure no loss of service to the Customer and the Customer agrees to meet all costs incurred in providing these services.

5. Maintenance

- 5.1. All maintenance calls should be directed to our Help Desk which may be contacted 01273 615600. Faults will be forwarded to the appropriate third party carrier who will aim to restore routing within 48 hours, however Cavendish Communications does not guarantee this in any way. Exceptions to any published or estimated Fault repair times may occur when third party involvement is required to assist in rectification of the Fault.
- 5.2. If a Fault occurs, where possible Cavendish Communications will arrange alternative routing of calls but the Customer shall remain responsible for any additional costs incurred during the time of a Fault.

Broadband, DSL and Ethernet Services Terms and Conditions

Together with our General Terms and Conditions, the following Broadband and DSL Terms and Conditions ("Broadband Terms") shall be incorporated into and apply to each and every Purchase Order or agreement between you, the Customer and any member of the Cavendish Communication Group Ltd for the supply of Broadband and DSL Services (defined below).

1. Interpretation

- 1.1. Other than as provided for in clause 1.2 below, the definitions and interpretations contained in our General Terms and Conditions shall apply to these Terms.
- 1.2. In these Terms and any attached or Scheduled terms and conditions:
Broadband and DSL Services: means the internet and digital service line connections and services detailed in the Purchase Order which are to be provided to You by a Third Party Provider;
ISP: means internet service provider;
Third Party Provider: means the third party ISP who we arrange to provide the Broadband Service to You
- 1.3. In addition to these Broadband Terms, the Customer shall at all times comply with the terms and conditions of any Third Party Provider.

2. Commencement, Duration and Termination

- 2.1. The Company shall supply the Broadband and DSL Services for the minimum contract term set out in the Purchase Order and in any event for not less than 12 months from the date the Broadband Service is connected and operative ("Commencement Date").
- 2.2. The Broadband and DSL Services may be terminated on the anniversary of the Commencement Date ("Anniversary Date") by giving three months prior written notice to the Company, such notice to expire on the Anniversary Date.
- 2.3. Following expiry of any minimum term, the Broadband and DSL Services shall continue. It can be cancelled at any time by giving three months written notice.
- 2.4. The contract for Broadband and DSL services are based on the premises that they are installed into, if you move premises during the minimum period of the contract you may incur early termination charges.

3. Installation and Service

- 3.1. Broadband lines shall be installed or repaired by engineers from the Third Party Provider.
- 3.2. Where possible, installations will be completed on the agreed date but we cannot be held responsible for matters causing a delay that are outside our reasonable control.
- 3.3. At our sole discretion and unless specifically requested in writing by You, we shall arrange for the Broadband and DSL Services to be provided to You by a Third Party Provider of our choice and we reserve the right to change Third Party Providers at any time, subject to us using our reasonable endeavours to ensure that there is no cancellation or interruption or reduction in quality of Broadband Service to You.

4. Charges, Payment and Cancellations

- 4.1. Where applicable, installation charges for the receipt of Broadband and DSL Services will be invoiced immediately on installation of all necessary Broadband and DSL equipment, with subsequent Service Tariff invoices invoiced on a monthly basis thereafter and paid by the Customer via a direct debit mandate.
- 4.2. This agreement can be terminated after the minimum term by giving Cavendish 90 days notice in writing.
- 4.3. If you terminate this Agreement before the expiry of the Minimum Term or relevant Renewal Term or prior to the end of the agreement, we reserve the right to charge the full rental in relation to any unexpired part of the then relevant term.

5. Maintenance

- 5.1. All maintenance calls should be directed to our Help Desk or designated fault repair centre by contacting 01273 615600. Broadband or DSL faults shall be forwarded by us to the appropriate ISP who will aim to restore service within 5 working days. Cavendish Communications are not responsible for any additional broadband costs incurred by the Customer during this time.
- 5.2. Where a fault is found to lie with equipment supplied by any third party provider separate to any Purchase Order for Equipment, a charge will be raised to the Customer where such a charge is raised to the Company by any network provider or ISP.
- 5.3. If a visit to your premises by a Cavendish engineer is required to resolve a fault this may be chargeable but the cost will be advised in advance and agreed prior to any visit taking place.

Appendix iv – Mobile Service Agreement

1. Terms Used in this Agreement:

- 1.1 "Agreement" means these terms and conditions, the Order Form and the Tariff.
- 1.2 "Airtime" means wireless airtime and network capacity procured from the Network Operator.
- 1.3 "End-User Licensed Software" (EUL) means any software, the licence terms for which are governed by a separate agreement with the licensor of such software typically by means of a "click-wrap" or "shrink-wrap" licence agreement.
- 1.4 "Equipment" means the items supplied by us under this Agreement and includes any Software (but not End-User Licensed Software) and documentation supplied under this agreement.
- 1.5 "GSM Gateways" are devices that transfer a fixed line call onto a radio network via a SIM card and radio channel, thus gaining a mobile-mobile call rate rather than fixed-mobile.
- 1.6 "GPRS Bearer" means the General Packet Radio Service provided by the Network Operator that forms part of the Airtime.
- 1.7 "Mobile device" means the mobile equipment incorporating a SIM card.
- 1.8 Mobile Web is full colour Internet access and email on the move.
- 1.9 "Network" is the mobile device system over which our services are provided. This is a digital network, which works in many countries and may allow you to use your Mobile Device in those countries.
- 1.10 "Network Operator" means the network operator who operates the wireless network of networks to which the SIM Cards are connected.
- 1.11 "Order Form" means the Cavendish order form to which these terms and conditions are attached and which contain details of your application for the Service and the Mobile Devices.
- 1.12 "Service" means the provision of Airtime, Equipment, GPRS Bearer, Mobile Web, SMS, SMS Land to Mobile Text Messaging Service, location based services and/or any other Wireless Services.
- 1.13 "Software" means any software (excluding End-User Licensed Software) supplied to the Customer by the Network Operator or any other supplier under the terms of or in respect of this Agreement.
- 1.14 "SIM Card" means the subscriber identity module supplied by the Network Operator (and which shall at all times remain the property of the Network Operator), which is allocated to you by Cavendish, and which contains the Number.
- 1.15 "SMS" means the short message service, which enables text messages to be sent to, and received from Devices.
- 1.16 "SMS Land to Mobile Text Messaging Service" means the short message service for text message sent to SIM Cards via a software application in conjunction with a private or virtual private circuit linking the Customer's wireless private or virtual private data network with the Wireless Services.
- 1.17 "Cavendish" or "we, us" means Cavendish Communications Ltd of Cavendish House, New Road, Newhaven, East Sussex BN9 0ES.
- 1.18 "Tariff" means the Cavendish tariff that sets out the rates, which we will charge you for your calls and other services you have chosen. Please contact us if you have not received a copy of our Tariff with the Order Form.
- 1.19 "Term" the length of time you commit to taking the Service for each Mobile Device or Mobile Device upgrade ordered as more particularly described in Clause 3. The initial Term is specified on the Order Form under the Length of Agreement.
- 1.20 "You" means the customer whose company details or personal details are set out on the Order Form.

2. Scope of the Agreement:

- 2.1 Cavendish agrees to provide you with the Service and/or Mobile Devices and you agree to use the Service and the Mobile Devices on the terms set out in this Agreement.
- 2.2 This agreement and any other document referred to herein sets out the entire agreement between us relating to any Mobile Device or Service supplied to you by Cavendish. You acknowledge that you have not relied on any representation, undertaking, or statement not set out in this Agreement.

3. Length of Agreement:

- 3.1 This Agreement begins when we either accept your application for the Service and/or Mobile Device in writing or when we send you the Mobile Devices and/or SIM Card for the Service you have ordered, whichever is the earlier. Our acceptance of your application is subject to your passing a UK credit check, your consent to our submitting your details to a credit reference agency for this purpose and by signing this Agreement.
- 3.2 You agree that each Mobile Device ordered by you is subject to its own agreement. The Term commences on the date of initial connection of your Mobile Device and/or SIM Card to the Service. The initial Term is specified on the Order Form under Length of Agreement. The Service shall continue until written notice is given to terminate under clause 8.3.
- 3.3 Upgrades: If you upgrade your Mobile Device to a new model, then the new model will be subject to a new Term from the date the new model was delivered.

4. Supply of Mobile Devices:

4.1 We will try to deliver the Mobile Devices within agreed timescales, under no circumstances shall we be liable to you for any loss of any kind whatsoever caused by any delay in delivery of the Mobile Devices.

4.2 Cavendish is not the manufacturer of any Mobile Devices supplied to you under this Agreement. Cavendish warrants that each item of Equipment will conform in all material respects to the manufacturer's specification for a period of 12 months (apart from Software in which case for 90 days) from the date on which each item of Equipment is dispatched (the "Warranty Period") unless special conditions associated with certain Equipment apply.

4.3 All risks of loss or damage to Mobile Devices shall pass to you on delivery. Property in the Mobile Devices shall not pass to you until the purchase price has been paid in full. The SIM Cards shall remain the property of the Network Operator at all times.

4.4 Any Mobile Device delivered damaged must be notified to Cavendish within 3 working days and returned to us within 6 working days of the order being delivered. We may, entirely at our discretion, repair or replace such damaged Mobile Devices, substitute substantially similar goods or reimburse the price paid for the damaged Mobile Devices.

4.5 The warranty set out in this clause shall not apply where the Mobile Equipment have been altered in any way or been subjected to misuse, including without limitation being dropped in water or any other liquid, or to unauthorised repair.

5. Charges and Payment:

5.1 You have to pay for all charges for your Mobile Device and for using the Service as set out or referred to on the Order Form or in the Tariff you have chosen on the Order Form, including without limitation the Call Charges, Connection Charges, Monthly Line Rentals and Mobile Devices Prices. You acknowledge that you are responsible for paying all Call Charges made using your Mobile Device and/or SIM Card whether or not such call has been made by you personally.

5.2 Unless expressly stated otherwise, all charges and prices for Services and Mobile Devices supplied under this Agreement are exclusive of VAT, which shall be charged at the rate and in the manner prescribed by law from time to time.

5.3 We must receive payment from you for charges within 28 days of the date of the invoice. Payments must be made by direct debit. Any other payment method can only be made with prior written approval by us and may attract a surcharge of £5.

5.4 If we receive payment later than the timescales show in clause 5.3 above, we may charge interest on the amount outstanding. Interest will be charged at the rate of 2% above the base-lending rate of NatWest Bank from the date the amount becomes due to the date of full payment.

5.5 All sums due to us must be paid in full without set-off, counterclaim or deduction.

5.6 We may set monthly credit limits for call charges where you pay in arrears. We may stop you using some or all of our Services if you go over the credit limit.

5.7 You must tell us within 1 months of the invoice date if you have a query on any of your invoices. Any dispute in respect to an invoice must be submitted to us in writing within 1 months of the date of the invoice failing which it will be deemed agreed and accepted.

6. Intellectual Property

6.1 In the event that Cavendish or its sub-contractors supply software to you for use in conjunction with the Service, Cavendish grants You, so far as Cavendish is able, a non-exclusive, non-transferable licence for the use of such software for the duration of this Agreement. Except as permitted by law, the Customer is not permitted to copy, de-compile or modify the software, nor copy the manuals of documentation supplied with such software.

6.2 If requested by Cavendish, the Customer shall sign any agreement containing reasonable terms which is reasonably required by the owner of the copyright in such software to protect the owner's interest in that software. No additional charges will be payable under such agreement.

7. Your Use of the Service:

7.1 You must not use your SIM Card or Mobile Device (or allow it to be used) for any illegal, fraudulent, or immoral purpose or to make offensive or nuisance calls. We may report any incidents to the police or any other relevant official organization.

7.2 You must not use you SIM Card or Mobile Device with any equipment, which has not been approved for use on the Network. If you are not sure, you should ask the person selling the equipment or you can call the following helpline number: 01273 615600.

7.3 You agree to follow all reasonable instructions we provide you with regarding your use of the Service (for example, fair usage policy), the SIM Card and the Network and provide us with any information we reasonably ask for.

7.4 You must tell us immediately if your name, company name, address, bank account or credit card details change.

7.5 You agree not to use SMS or the SMS Land to Mobile Text Messaging Service for the purpose of marketing or advertising anything to users for wireless services without the consent of those users.

7.6 You agree that in respect of SMS, Cavendish is acting as a service provider and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent to the Users SIM Cards, which do not originate for the Service Provider.

7.7 You may establish, install or use a GSM Gateway for your own private purposes only, provided that it adheres at all times to the Network Operators policies in respect of the use of private GSM Gateways.

8. How You Can End or Terminate this Agreement:

8.1 You can end the agreement immediately if we have broken this agreement and cannot sort out the situation within 14 days of you telling us about the breach in writing.

8.2 You can end this agreement immediately if we do not give you Service for 14 consecutive days or more (by giving us written notice specifying the reason) unless you have broken this agreement or a matter covered in clause 13 or 18 occurs.

8.3 You can end this Agreement by giving us 90 days written notice to expire at the end of the initial Term. After the initial Term you can end the Service at any time by giving 90 days notice.

8.4 You can end this agreement early by giving us 30 days written notice to expire before the end of the term subject to 9.3.

9. What You Have to Pay When You End this Agreement:

9.1 If you end this agreement for any reason, you will have to pay the charges you owe on your account and any unpaid invoices for Mobile Devices.

9.2 If you end this agreement under clause 8.1 of 8.2 and you have paid the monthly charges in advance then you can receive a refund of the part of the payment you have not used or you may use the Service until the payment is used up.

9.3 In addition to the amounts payable under clause 9.1 above, if you end this agreement early under clause 8.4, you must pay:

9.3.1 The monthly line rentals for the part of the Term you have not used. The terms of this Agreement will continue to apply to paying off these charges; and

9.3.2 £25 per SIM Card for the cost of disconnecting your Mobile Devices from the Network.

9.4 The prices of Mobile Devices supplied under this Agreement are calculated using a subsidy we are paid by the Network. This subsidy applies only when you are connected to the Network. Therefore, if you end this agreement under clause 9.5 prior to the expiry of the Initial Term for any Mobile Devices supplied, you must either return those Mobiles to us in good working order and condition or if you wish to keep them you must pay us the difference between what you had paid us for the Mobile Devices and their full wholesale price. This may be up to £250 per Mobile Device.

10. Right to Cancel for Consumer Purchases:

10.1 If your purchase is for personal usage (i.e. The Personal Details on the Order Form contained within the Mobile Service Agreement was completed rather than the Business Details, you can cancel your order for the Service and/or Mobile Devices within 7 working days of receipt of the Mobile Devices and/or Services.

10.2 On cancellation, you must return your Mobile Devices and SIM Cards to us in the same condition as they were delivered to you (including the original packaging and any accessories that were included in the price), and we will refund you the purchase price you have paid.

10.3 On cancellation, you must also pay for any Call Charges and use of the Service you have made.

11. How We Can End This Agreement:

11.1 We can end this agreement immediately if you become bankrupt, insolvent or go into liquidation or if you enter into a voluntary arrangement or have a receiver or/and administrator appointed over any or all of your assets. We do not have to give you notice in these circumstances.

11.2 We can also end this agreement in the following circumstances:

11.2.1 If you break this agreement and do not fully resolve the situation within 14 days of us telling you about the break. An example of a break of this agreement is not paying your invoices.

11.2.2 If the Network closes down for any reason.

11.2.3 If you give us false information.

12. What You Have to Pay When We End this Agreement:

12.1 If we end this agreement because you break it, become bankrupt, or go into liquidation, or provide us with false information you will have to pay us all the charges set out in clauses 9.1, 9.2 and 9.4 above that you would have paid if you had ended this Agreement early under clause 8.4 and/or return to us any Mobile Devices that are still subject to an Initial Term.

12.2 If we end this Agreement because the Network closes down, you will only have to pay the charges you already owe. We will repay any monthly charges you have paid in advance.

13. What to do if your SIM Card or Mobile Device is lost, stolen or damaged:

13.1 You must inform us immediately if a SIM Card supplied to you by us is lost, stolen or damaged. You will remain liable for all Charges incurred until you do so. We will send you a replacement SIM Card as soon as reasonable practicable, but we reserve the right to charge you for doing so.

13.2 If you need us to replace a Mobile Device because it has been lost, stolen or damaged, we reserve the right to charge you the full price of any replacement.

14. Limits of Liability:

14.1 We are only liable to you as set out in this Agreement. We have no other duty or liability to you.

14.2 Nothing in this Agreement shall limit or exclude our liability for death or personal injury resulting from our negligence or that of our employees or for fraudulent misrepresentation or any other liability, which may not by applicable law be excluded or limited.

14.3 Except as set out in clause 14.1 above, our entire liability to you for something we or anyone who works for us does or does not do in connection with this Agreement and the equipment and services supplied by us is limited to £2,500 for one incident and to £5,000 for all incidents in a 12 month period.

14.4 We shall not be liable to you in any way for any loss of income, business or profits, loss of data or for any loss or damage that was not reasonable foreseeable at the time you entered this agreement.

14.5 We are not liable to you in respect of any products or services you order from other companies using your Mobile Devices.

14.6 We will not be liable to you if we cannot carry out our duties or provide our services because of something beyond our reasonable control.

14.7 Where your Mobile Device allows access to the Internet, we shall not be liable to you for the content of any website or other material that you access via the Service.

14.8 Clause 7 will apply even after this Agreement has ended.

15. Refund Policy:

15.1 A refund will be granted within 30 days of purchase for:

15.1.1 Software supplied which is defective at the time of purchase and provided it has not been tampered with or altered in any way by you.

15.1.2 Software not delivered on the delivery date due solely to an error by Cavendish.

15.2 We cannot offer refunds in the following instances:

15.2.1 Time purchased after a trial period has been used.

15.2.2 Over 30 days have elapsed from the date of purchase.

15.2.3 Software purchased for use on Networks not supported.

Note: Where a refund is available to you a £5.00 administration fee will be charged if it is as a result of circumstances beyond Cavendish's control.

16. Service Availability and Suspension:

16.1 We shall use all reasonable endeavours to provide and maintain the availability of the Service. However, we do not warrant that the Service shall be available without interruption or that it will be free from error. We may suspend the Service immediately if:

16.1.1 The Network fails or if it is being modified, maintained or repaired, or if the Network is unavailable for any other reason.

16.1.2 You tell us about the loss or theft of your SIM Card or Device (but you must still pay the service charges under this agreement for any calls made using your stolen Device or SIM Card).

16.1.3 If we do not receive full payment for any of your invoices in time or you exceed any credit limits set under clause 5.6.

16.1.4 If we reasonably suspect or know your Device or SIM Card is being used fraudulently or illegally.

17. What You Must Pay if the Service is Suspended:

17.1 If the Service is suspended for reasons set out in clause 16.1 for more than 3 days in any month you will not have to pay line rental for that period.

17.2 If the Service is suspended for any of the reasons set out in clauses 16.1.2, 16.1.3 and 16.1.4, you will still have to pay the monthly line rental.

17.3 If we bar your access to the Service for non-payment of invoices, we shall charge you a fee of £35 per Mobile Device for reconnection.

18. Changes to this Agreement:

18.1 We may change this Agreement (including changing or introducing new Charges or changing or withdrawing the Services or Third Party Services) where required: (a) to comply with applicable law or regulation; (b) because of a change imposed by a third party supplier. If we increase our charges, we'll give you at least 30 days' written notice. However, we may not give you notice of such changes if they relate to services which you don't regularly use.

19. Transferring this Agreement:

This agreement is personal to you but please contact us if you want to transfer you SIM Card or Mobile Device. We can transfer this agreement to someone else if we give you written notice beforehand.

20. Ownership of the SIM Card and Device number:

20.1 We control the SIM Card and Mobile Device number although they belong to the Network operator. We reserve the right to charge you an administration fee of up to £25 for porting or migrating to other service providers and disconnection from the Network.

20.2 We may change or reallocate your Mobile Device number where required to do so by any UK statutory or regulatory authority.

21. Coverage:

21.1 Your Device will only work in the areas covered by the Network you have chosen.

21.2 We cannot guarantee coverage in any area as we have no control over this but you can get coverage information from us. The Service may be affected by interference caused by the weather, high buildings, geographical feature and tunnels.

22. Use of Your Details:

22.1 For the purposes of fraud prevention, debt collection, credit management and emergency services provision, you agree that we may disclose information about you and your account with us to debt collection agencies, credit

reference agencies, financial institutions, emergency service organizations and other Device companies. We may also pass you details to third parties in the event that we sell our business in order that you can continue to receive a Mobile Device Service.

22.2 Unless you indicate otherwise on the Order Form, we may also use you details to send you information and other services that we offer that we think you may be interested in.

23. No Third Party Rights

Under the terms of this Agreement a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from by that Act.

24. Disputes and the Law:

24.1 Any concession or extra time we allow you under this Agreement applies only to the specific circumstances in which we give it. It does not affect our rights or remedies under this Agreement in any other way and will not constitute a waiver of our rights.

24.2 If any term or part of this Agreement is not legally effective, it shall not affect the enforceability of the remainder of the Agreement. The parties shall also agree that any ineffective or unenforceable term or part of this Agreement shall be substituted with a provision as similar in meaning to the original as is possible without rendering it unenforceable or ineffective.

24.3 You have the right to refer any disagreement regarding the service to an Arbitration Procedure. This was set up by the Chartered Institute of Arbitrators and the Network operators and we will provide details on request.

24.4 This Agreement shall be governed by the laws of England and Wales and according to English Law and subject to the non-exclusive jurisdiction of the English Courts to which both parties hereby submit.

Terms and Conditions for the Provision of Cavendish Hosted VOIP Services

These terms, together with any order confirmation issued by Cavendish Communications Ltd, represents the entire agreement between Cavendish Communications Ltd and the subscriber named on the order form for the provision of Hosted VOIP unless otherwise agreed by both parties in writing. The subscriber hereby agrees that the agreement cannot be modified by its own terms and conditions of business. These terms are in addition to Cavendish Communications Ltd standard equipment and services supply terms and conditions.

Provision

Cavendish Communications Ltd shall provide Hosted VOIP Services as set out on the Order Form from the connection date, subject to and on the terms of this agreement. Cavendish Communications Ltd shall have the right to refuse to connect any subscriber.

Acceptance

We will notify you when the Installation Service has been completed. You will inspect and test the Service for the purpose of Acceptance ("Acceptance Testing"). During Acceptance Testing, you may notify us by email, telephone or fax of any material non-conformity of the Service. To the extent that such non-conformities will have, in our opinion, a material detrimental effect on the Service, we will use our reasonable endeavours to remedy such non-conformities. Acceptance shall be on an individual site by site basis and shall take place on the earlier of:

- a) Your written confirmation to us that the Acceptance Testing has been completed.
- b) Where you have not notified us of any non-conformities five (5) Working Days from the date of our notification to you that the Installation Service has been completed, or
- c) Where you have notified us of material non-conformities, five (5) Working Days from the date on which the notified non-conformities were remedied, or immediately upon our demonstration that the notified non-conformities will not, in our opinion, have a detrimental effect on the Service.

Any additional time incurred by us remedying non-conformities notified by you shall, at our sole discretion, be reflected in corresponding extensions to the affected timescales in the project plan (if any). Any additional time incurred by us investigating any notified non-conformities which later are found not to exist, will be charged to you as a professional service on a time and materials basis in accordance with our then current standard rates.

Duration

The agreement shall come into force from the connection date, the minimum term of the agreement is set out on the order form. The agreement shall continue beyond the minimum period until either party to the agreement terminates giving 3 months written notice. For the avoidance of doubt, if not specified on the order, the initial minimum term of contract is thirty six (36) months.

Services

The subscriber agrees to the following conditions of use:-

- a. You will not use the Service in any way that would constitute or contribute to the commission of a crime, tort, fraud, or other unlawful activity (including activities deemed unlawful under a complainant's legal jurisdiction) ("Laws"). You will indemnify, and keep us fully indemnified, against all costs, claims, demands, expenses, and liabilities arising out of, or in connection with, any claim that the Service (or its use) infringes any Laws.
- b. You warrant that any material and / or communication received, transmitted, hosted, or otherwise processed using the Service will not be menacing, of a junk mail or spam like nature, illegal, obscene, threatening, defamatory, discriminatory, promote illegal or unlawful activity, or be otherwise actionable or in violation of any rules, regulations, or laws to which the Service is subject. You will indemnify and keep us fully indemnified against all costs, claims, demands, expenses and liabilities arising out of or in connection with any breach or reasonably suspected breach of this Clause
- c. You agree that all Equipment will be housed in accordance with our instructions. Equipment shall be kept at your premises, you will not add, modify, relocate, reconfigure or in any way interfere with the Equipment. You will not cause the Equipment to be removed, repaired, serviced or otherwise attended to except by our authorised representative, you will not remove, tamper with or obliterate any words or labels from the Equipment of any parts thereof, you will not use the Equipment except in accordance with such written instructions as may be notified by us or our subcontractor from time to time, you will not use any Equipment not approved in writing by us.
- d. We will provide you with an internet portal account through which the Service can be controlled online. We shall use reasonable endeavours to maintain (but do not guarantee) access to such account 24 hours in every day on every day of the year and we shall not be liable for any losses caused by any restrictions in such access.

- e. You agree to pay our standard charges applicable at the time where you request us to make changes on your behalf.
- f. The service provider has the right to disconnect any Subscriber Equipment that it has not approved, in particular where it may cause personal injury or death, or where it may damage or impair the operation of the Service.
- g. The Service supports 999/112 public emergency call services and such calls will be routed to the national emergency call handling agents. However these services do not operate in the same way as PSTN fixed line 999/112 public emergency call services and connection to such services may not be possible in the event of a service outage caused by loss of connectivity to the internet for whatever reason. In such circumstances you should use a separate line to make the emergency call. Furthermore it may on occasions not be possible for emergency services personnel to identify your location and telephone number so this information should be stated promptly and clearly by you when making such a call.
- h. The service is subject to a sufficient existing LAN infrastructure to support VoIP. Cavendish will not accept any responsibility for loss of service due to any fault as a result of LAN issues. It is the subscriber's responsibility to ensure Quality of Service mechanisms are in place within the LAN to ensure there is reduced impact on the voice quality.
- i. If your Cavendish Hosted VOIP Service includes our Ethernet or Assured access then, unless you have ordered an installation of the router, it is your responsibility to install the router at the Site or Sites where this is required and neither we nor our subcontractor shall bear any liability for any delay your failure to install may cause.
- j. Where we agree that you may use your existing or other new access circuits (including but not limited to broadband, Ethernet, leased line etc) not provided by us then it is your responsibility to ensure such access meets the necessary requirements and functionality, failure to meet such requirements and functionality may result in quality and set up issues or may mean the Hosted Service will not work. Where we do not provide the access, you agree that all responsibility and liability for such access remains with you. Should we or our subcontractor visit your Site due to a fault which is later found to be caused by access not provided by us then we will charge you for such site visit and any additional costs incurred as a direct result. Use of your own access will affect the Demarcation Point of the Service.
- k. Where we agree that you may use a third party to install the Service then you agree to indemnify us from any direct or indirect claims or losses, financial or otherwise, that you may incur as a result of such installation by a third party. Use of a third party installer will affect the Demarcation Point of the Service.
- l. Handsets supplied as part of a contract and not purchased outright by the subscriber are the property of Cavendish Communications Ltd and remain the property of Cavendish at the end of the contract. The subscriber must return all handsets in good working order should the contract be terminated for any reason. If handsets are damaged or not returned a charge equating to the replacement value will be made to the subscriber.
- m. The Services permits you to upload music files for the music on hold feature. You agree to obtain any necessary licences and consents as may be required and agree to indemnify us from any direct or indirect claims where you fail to do so.
- n. After the Initial Term, we shall be entitled to revise any fees under the Service Agreement to reflect our then current standard rates by giving you not less than thirty (30) days' written notice.
- o. We shall be entitled to increase the Service Fee at any time with immediate effect where we can reasonably demonstrate that such an increase is due to an increased cost of providing the Service caused by a third party supplier, or legal or regulatory change. Any such increase in the Service Fee will not exceed the increased cost incurred by us in providing the Service.
- p. The service may include "Inclusive Calling Plans" that provide calls at a reduced or free of charge rate which are included as part of the monthly license rental. If we deem your usage during any single month not to be within normal business use (fair usage), we reserve the right to suspend, restrict, change or cancel your service at our discretion. Call plans have been designed assuming average usage levels. In order to protect the average utilisation levels we have set upper limits which may be subject to change.

Support Cover

Cavendish shall provide support for the hosted services to the demarcation point as part of the license cost of the service.

Cavendish will use its reasonable endeavours to respond to fault reports received in normal working hours (9.00am to 5.30pm), Monday to Friday, except Bank Holidays. Details regarding terms relating to response and fault reporting can be found in section 9 within the standard equipment and services supply terms and conditions.

The following are not covered within this Agreement;

- a. Cabling, wiring, or any other equipment not supplied under this agreement.
- b. Your LAN infrastructure or any device on your network not supplied by Cavendish outside of the demarcation point.
- c. Maintenance required as a result of the subscribers failure to follow instructions or recommendations issued by Cavendish, neglect or other misuse;
- d. Support required as a result of repairs or modifications to the equipment not carried out by Cavendish;
- e. Support required as a result of damage caused by an Act of God, failures of electrical power, power surges, computer viruses or other reasons beyond Cavendish's control. Where it is found that support is required as a result of the above, Cavendish will charge the subscriber for any such work at Cavendish's normal rates.
- f. A failure attributable solely to the use of public telecommunications links.
- g. Equipment supplied as part of this contract such as handsets are not covered by any support contract. (Handsets will have a standard 12 month warranty during this period we will replace faulty handsets with no charge subject to the faulty handset being returned to Cavendish Communications Ltd).

Maintenance contracts covering all parts and labour are available as are out of hours cover please contact your account manager for more details.

Should we or our subcontractor visit your Site or deal with an extended fault remotely due to a fault which is later found to be caused by a third party or something outside of the demarcation point then we will charge you for such site visit and any additional costs incurred as a direct result.

Support Cover is subject to a fair use policy. We may have to curb the usage of the Support service should you become a persistently high user whereby it can be shown that the causes of the usage are configuration changes initiated by you and not network faults or errors. We will engage with you to ascertain the reason for persistent high usage and work on solutions that will allow the usage to return to a more reasonable level. In cases of sustained high usage due to configuration changes initiated by you then we reserve the right to notify you that the work will become chargeable and then charge you the hourly rate as applicable at the time.

Cancellation

Any individual or group of licenses cancelled during the minimum term of the contract will incur a cancellation fee of £100 per user license when it is part of a small change to the contract. (A small change is defined as less than 30% of the original number of user licenses set out in the contract).

Where more than 30% of the original user licenses are cancelled or a complete termination prior to the end of the minimum term a fee of £100 per user license plus the remaining monthly rentals to the end of the minimum term of the contract will be charged as a cancellation fee.

Where a broadband or line needs to be cancelled during the minimum period of the contract a cancellation fee equal to the remaining monthly rentals to the end of the minimum period will be charged.

Hacking

Cavendish does not accept liability for breaches of the Hosted Services system, nor any call charges that might arise from such a breach. It is the subscriber's responsibility to ensure the security of their telephone system and/or equipment.