

SUNRISE TERMS AND CONDITIONS

1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (“**Conditions**”).

“**Additional Charges**” means Charges which may be made (in addition to the Annual Support Charge) for additional services supplied pursuant to condition 7.3.3.

“**Airtime**” means wireless airtime and network capacity procured from the Carrier.

“**Annual Support Charge**” means the support charge for the Maintenance Services as set out on the Order Form.

“**Anti-Bribery Laws**” means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws which relate to the anti-bribery and/or anti-corruption, including the Bribery Act.

“**Bribery Act**” means the Bribery Act 2010.

“**Business Day**” means any and all days between Monday and Friday in any week but excluding English bank holidays or public holidays.

“**Carrier**” means the relevant third party public telecommunications operator or third party network service provider including but not limited to any network operator who operates the wireless network or networks to which SIM cards are connected and from whom Airtime is procured for the Customer.

“**Charges**” means the charges payable by the Customer for Services.

“**Client Review Meeting**” means a meeting attended by a representative of the Customer and a representative of Sunrise where Sunrise reviews the services supplied to the Customer and makes an offer to extend the term of the Contract.

“**Code**” means any code of practice published by PhonepayPlus (or equivalent) from time to time.

“**Commencement Date**” means the commencement date for the Minimum Term of the Maintenance Services (where applicable) being the date of Delivery of the relevant Equipment or such other date as specified in the Order Form or as otherwise agreed in writing between the parties.

“**Commission Clawback**” means any request for repayment of funds by the Carrier associated with this agreement.

“**Connection Date**” means the date when the Carrier having received the relevant information from Sunrise is in a position to and has agreed to commence provision of the Network Services to the Customer.

“**Contract**” means the agreement between the Customer and Sunrise for the provision of the Equipment and/or Services (or any of them) incorporating these Conditions, the Order Form and any other Service Specific Conditions.

“**Contractor**” means any person who, on or prior to the commencement of the Contract (and/or the transfer of such services to Sunrise), supplied services to the Customer which were the same as or similar to those provided or to be provided by the Sunrise to the Customer under that Contract.

“**Customer**” means the person, firm or company specified on the Order Form and any other person reasonably appearing to act within that person’s, firm’s, or company’s authority and includes where relevant the Customer’s permitted assigns employees and agents.

“Delivery” means the point that the Equipment arrives at the Customer’s Sites before (where applicable) the unloading of Equipment from the delivery vehicle and “Delivered” shall be construed accordingly.

“Emergency Call” means a call to the numbers “112” or “999”.

“Employee” means any employee, former employee, consultant, former consultant, contractor, former contractor, agent or former agent of the Customer or any Contractor or Subcontractor.

“Employment Regulations” means any laws in any country in the world implementing the provisions of EC Directives No. 77/187 dated 14 February 1977, 2001/23 dated 12 March 2001 or equivalent or similar regulations that protect the rights of employees on a transfer of a business or undertaking or any laws providing for the automatic transfer of employees on transfer of the whole or part of an undertaking, business or service provision change, including in the United Kingdom the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time.

“End User Service” means such entertainment, live or recorded information or other service (including Premium Rate Services) made available by the Customer from time to time for itself or any Information Provider.

“Equipment” means the equipment and/or software related products to be supplied under the Contract as set out in the Order Form (and also has extended meanings under condition 6.4.2 and condition 7 in the case of and for the purposes of those conditions only) including, but not limited to, any equipment provided “free on connection” and any Switching Equipment.

“General Conditions” means the general conditions of entitlement set out in the notification issued by the Director General For Telecommunications, in accordance with section 48(1) of the Communications Act 2003, pursuant to section 45 of said Act, as may be amended, modified or replaced from time to time.

“Group” means Sunrise, any subsidiary or holding company from time to time of Sunrise, and any subsidiary from time to time of a holding company of Sunrise.

“holding company” has the meaning given in condition 1.10.

“Information Provider” means any organisation or person providing information or with whom the Customer contracts in respect of the provision of Premium Rate Services.

“Initial Consultancy Fee” means the fee payable by the Customer to Sunrise for the Initial Proposal of £500 or 15% of the amount specified in the Initial Proposal as the amount that the Customer would save over the Minimum Term if the Customer had followed Sunrise’s recommendations in that report, whichever is the greater.

“Initial Proposal” means the document setting out what Sunrise recommends including the appropriate services for the Customer.

“Installation” means the physical installation of Equipment at the Customer’s Sites.

“Installation Services” means services relating to the supply and Installation (where applicable).

“Intellectual Property Rights” means all intellectual property belonging to or licensed by Sunrise and includes without limitation, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in confidential information (including know-how and trade secrets) in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“Maintenance Services” means the maintenance services more particularly detailed on the Order Form (as modified or substituted from time to time) to be provided hereunder by Sunrise to the Customer.

“Minimum Contract Spend” means the minimum sum of money as set out on the Order Form that will be spent by the Customer on Charges commencing on the Connection Date.

“Minimum Term” means the minimum contract period applying to each of the Services as specified in the Order Form.

“Network Services” means any use to which any telecommunications or data services could be put more particularly detailed on the Order Form (as modified or substituted by Sunrise from time to time) to be provided by Sunrise to the Customer subject to these Conditions, including but not limited to Carrier pre-selection (CPS), analogue lines, ISDN 2, ISDN 30, SIP, Voice over Internet Protocol (VOIP), hosted switches, Wide Area Network (WAN), Local Area Network (LAN) and Microsoft 365.

“Normal Working Hours” means 9am to 5pm on any Business Day.

“Number” means either (i) such telephone number from within a national number group range (used by the Customer in connection with an End User Service) as may be allocated by Sunrise to the Customer from time to time (“Company Number”) or (ii) such telephone number not being a Company Number from within a national number group range (used by the Customer in connection with an End User Service) and as may be programmed by Sunrise for the purposes of making available a Network Service in respect of such telephone number.

“Order Form” means the order form which is expressed to be subject to these Conditions which sets out the details of the order, including (without limitation) the Customer’s details and the Equipment and/or Services to be supplied under the Contract, and constitutes the Customer’s order.

“PhonepayPlus” means the regulatory agency for Premium Rate Services or any similar body which may be appointed in addition to or in substitution of PhonepayPlus by any competent authority.

“Premium Rate Service” means any service comprising live or recorded telephone information and/or entertainment and similar services which would be defined as such in the Code.

“Price” means the price for the Equipment and Installation Services (where applicable).

“Recommended Retail Price” means the price which the manufacturer recommends that the retailer sells the product.

“Relevant Laws” means any statute, regulation, by law, ordinance or subordinate legislation which is in force for the time being to which a party is subject; the common law as applicable to the parties (or any one of them); any binding court order, judgment or decree applicable to the parties (or any one of them); and any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being, and/or (ii) stipulated by any regulatory authority to which a party is subject, in each case, for the time being.

“Services” means any of the services supplied by Sunrise including but without limitation the Installation Services, the Network Services and the Maintenance Services (as applicable).

“Service Specific Conditions” means any additional terms and conditions which are to apply to the Contract as specified in the Order Form or these Conditions in respect of specific Services, for example (and without limitation) the broadband acceptable use policy .

“Site” means a place of business at which the Services and/or Equipment are to be provided as specified in the Order Form.

“Subcontractor” means any subcontractor of a Contractor.

“**subsidiary**” has the meaning given in condition 1.10.

“**Sunrise**” means Sunrise Associates Limited registered in England and Wales with company number 06373049 or Sunrise Unified Solutions Limited registered in England and Wales with company number 07712155 or Sunrise ICT Limited registered in England and Wales with company number 07881156, as specified in the Order Form.

“**Switching Equipment**” means a switch or other fixed telephony equipment that is financed as confirmed on the Order Form.

“**Tariff**” means Sunrise’s tariff for each of the Services as is notified to the Customer by the Supplier from time to time.

“**VAT**” means value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Headings in these Conditions shall not affect their interpretation.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a party includes its successors or permitted assigns.
- 1.5 Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to writing or written includes faxes but not e-mail.
- 1.8 Any obligation in these Conditions on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9 References to conditions are to the conditions of the Contract.
- 1.10 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee.

2 CONTRACT FORMATION

- 2.1 The Order Form constitutes the Customer's offer to Sunrise to purchase the relevant Equipment and/or Services on and subject to the terms of the Order Form, these Conditions, and any other Service Specific Conditions referred to as being applicable. Once such offer is accepted by an authorised representative of Sunrise signing the Order Form, a Contract shall come into effect. The details recorded on the Order Form, together with these Conditions and any other Service Specific Conditions referred to as being applicable to the relevant Contract, shall be the exclusive terms and conditions of the Contract between the parties (to the fullest extent permitted by law) and any such Contract shall be conditional upon the credit status of the Customer being to the satisfaction of Sunrise (in its sole and absolute discretion) and, in respect of a Contract which provides for the supply of:
 - 2.1.1 Equipment and/or Installation Services, (without limitation) the condition in condition 5.1.1 being met; and/or
 - 2.1.2 Network Services, (without limitation) the conditions in condition 6.2.1 being met; and/or
 - 2.1.3 Maintenance Services, (without limitation) the condition in condition 7.1.1 being met.
- 2.2 All quotations, estimates and tenders are given and contracts are made by Sunrise subject to and only upon these Conditions which cannot be varied unless agreed in writing by Sunrise

and these Conditions supersede and override all other terms and conditions appearing elsewhere including (without limitation) any terms and conditions of the Customer referred to on any website or which the Customer may purport to apply under any purchase order or acknowledgement of delivery or similar document; and/or established between Sunrise and the Customer by course of dealing.

- 2.3 Any quotations, estimates or tenders are given by Sunrise on the basis that no Contract shall come into existence except in accordance with condition 2.1. Any quotation is valid for a period of 30 days from its date, provided that Sunrise has not previously withdrawn it and provided that the Carrier does not change its terms and conditions or any other offer available to Sunrise.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any illustrations, samples or descriptive material provided by Sunrise, including drawings, specifications of weight, capacity or dimensions and particulars of shade shall not form part of the Contract but shall be treated as approximate only unless specifically stated otherwise. Any savings quoted are estimates and illustrative only. All documents containing such illustrative or descriptive material (as well as the copyright therein) shall remain the exclusive property of Sunrise and must not be copied or loaned or transferred. The Customer acknowledges and agrees that in entering into the Contract, it has not relied on any such illustrations, samples or descriptive material.
- 2.6 No variation of the terms of the Contract however notified will be accepted by Sunrise unless authorised by notice in writing by a director of Sunrise.
- 2.7 Each order for Equipment and/or Services (except in the case of Installation Services which will form part of the contract for the supply of Equipment) shall (for the purposes of this condition 2.7) be deemed (subject to condition 2.1) a separate Contract (whether or not included on the same Order Form) to the effect that any delay or failure to supply Equipment and/or Services shall not entitle the Customer (to the extent that any such entitlement exists) to terminate the Contract for other Equipment and/or Services or any other contract entered into under these Conditions.
- 2.8 Any undertaking by the Customer not to do any act or thing shall be deemed to include an undertaking that the Customer shall procure that any user of the Services or Equipment to include (without limitation) any employee, agent or contractor, shall not do such act or thing.
- 2.9 The Customer warrants and undertakes to Sunrise that it is entering into the Contract for the purposes of its trade, business and/or profession.

3 COMMENCEMENT AND DURATION

The Services and Equipment supplied under the Contract shall be provided by Sunrise to the Customer for the Minimum Term and, after that, shall continue to be supplied unless the Contract is terminated in accordance with condition 14.

4 CUSTOMER'S ORDER AND SPECIFICATIONS

- 4.1 The Customer shall be responsible for providing Sunrise with all information relevant to the supply of the Equipment and the provision of Services (as the case may be) within sufficient time to enable Sunrise to perform its obligations.
- 4.2 Without limitation to the generality of condition 4.1, the Customer shall be responsible for ensuring that the details set out on the Order Form and any drawings, sketches, specifications, descriptions or other instructions supplied by the Customer or any agent or representative of the Customer in connection with the supply of any Equipment or the supply

of any Services (as the case may be) by Sunrise are accurate and fully describe the Customer's requirements and the Customer shall be liable in respect of any liability, loss, injury, damage, demand, claim, cost, charge or expense which may be incurred or sustained by Sunrise by reason of or arising directly or indirectly out of or in respect of any inaccuracy in respect of any such drawings, sketches, specifications, descriptions or other instructions in relation thereto, or where the compliances with any such drawings, sketches, specifications, descriptions or other instructions by Sunrise constitutes the infringement of the intellectual property or other rights of another person.

5 SUPPLY OF EQUIPMENT AND INSTALLATION SERVICES

In the event that the section related to Equipment is completed on the relevant Order form, this condition 5 shall apply to the Contract.

5.1 DELIVERY

- 5.1.1 Any Contract including the provision of Equipment and/or Installation Services based on an order which is accepted by Sunrise pursuant to condition 2.1 is, until the delivery of the Equipment, conditional upon the availability of the relevant Equipment and Sunrise providing confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Equipment and/or Installation do not contain any errors or omissions.
- 5.1.2 In consideration of payment of the Price pursuant to condition 10.1 Sunrise shall (subject to condition 5.3.2) supply the Equipment, and shall take reasonable steps to deliver the Equipment and where applicable supply the Installation Services within an estimated period for delivery and such period shall (unless otherwise specified) commence from the date of receipt by Sunrise of all instructions and information for the execution of the Contract, but such time is not guaranteed nor deemed to be of the essence of the Contract.
- 5.1.3 Without prejudice to the generality of condition 4, the Customer shall be responsible for providing Sunrise with any necessary instructions for delivery of the Equipment within a reasonable period prior to the estimated delivery date advised by Sunrise to the Customer.
- 5.1.4 If the Customer fails to take delivery of the Equipment or through instructions or lack of instructions from the Customer the delivery of any Equipment in accordance with the Contract is delayed for more than fourteen days after Sunrise has given notice in writing to the Customer that the Equipment is ready for delivery the Equipment shall be deemed to have been Delivered in accordance with the Contract and thereafter the Equipment shall be deemed to be at the risk of the Customer. The Customer shall pay to Sunrise the reasonable costs of storing, protecting and preserving such Equipment after the expiry of such period of fourteen days.
- 5.1.5 If by reason of refusal or delay of delivery or installation the Equipment shall be deemed to have been Delivered in accordance with condition 5.1.4 above then payment shall be made by the Customer to Sunrise of the balance of the Price within seven days of such deemed delivery date.

5.2 CONNECTION

- 5.2.1 The Customer is responsible for the cost of connection to the public switch network and/or the provision of additional lines to the public telephone system.
- 5.2.2 The Customer shall (if appropriate for the Services) ensure that a suitable earthed mains electricity supply of 240 volts ac to the Institution of Engineering and Technology's IEE Wiring Regulations in force at the date of Delivery is available for each piece of Equipment within 3 metres of such pieces of Equipment.

- 5.2.3 The Customer shall prepare the Site(s) in accordance with Sunrise's instructions so that any necessary Equipment can be installed. The Customer will meet the costs of preparing the Site(s).
- 5.2.4 In the event that the Customer is not able to procure the necessary consent to provide the Services or fails to proceed within 3 months from the Connection Date Sunrise will be able to terminate the Contract forthwith by giving the Customer written notice without any liability. If Sunrise has commenced work, without prejudice to any other remedies Sunrise has against the Customer, the Customer shall refund to Sunrise the cost of all such work (including, without limitation, staff costs and equipment costs) to an amount no less than £500.00.

5.3 PROPERTY AND RISK

- 5.3.1 The Equipment shall be at the Customer's risk from the moment of Delivery or deemed Delivery (as described in condition 5.1.4) whether or not property in the Equipment has passed or payment or part payment made, and thereafter the Customer shall be responsible for insuring the Equipment for its full replacement value.
- 5.3.2 Notwithstanding Delivery and the passing of risk, the property and the legal and beneficial title in the Equipment supplied under the Contract shall not pass to the Customer until the end of the Minimum Term and until Sunrise has received in cash or cleared funds payment in full for the Equipment and Installation Services (where applicable) and all other equipment and/or services agreed to be sold by Sunrise to the Customer for which payment is then due, save that the property and the legal and beneficial title in the Switching Equipment shall not pass to the Customer in any circumstances.
- 5.3.3 Until such time as the property in the Equipment has passed to the Customer, the Customer shall hold such Equipment as Sunrise's fiduciary agent and bailee, and keep such Equipment properly stored, protected and insured and identified as being Sunrise's property until title passes. Until such time as the property in the Equipment passes to the Customer, Sunrise shall be entitled at any time to require the Customer (at the Customer's cost) to deliver up the Equipment to Sunrise to its nominated location and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Equipment is stored and repossess such Equipment.
- 5.3.4 The Customer shall not, without the written consent of Sunrise, be entitled to pledge or in any way charge by way of security for indebtedness, or alter or modify, any Equipment which remains the property of Sunrise or any Equipment supplied by Sunrise which remains the property of any other organisation, but if the Customer does so all monies owing by the Customer to Sunrise shall (without prejudice to any right or remedy of Sunrise) forthwith become due and payable. The Customer shall ensure that any Equipment provided by Sunrise which remains the property of Sunrise or any Equipment provided by Sunrise which remains the property of any other organisation shall remain identifiable and shall be kept free from any loss, damage, and/or deterioration and insured against all risks for its full reinstatement value.
- 5.3.5 The Customer grants Sunrise, 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 it, or, where the Customer's right to possession has terminated, to recover it. Sunrise will ensure that any such employee, agent or other person in possession of Equipment will return the same to Sunrise.

5.4 LIABILITY FOR REPLACEMENT OR REPAIR

- 5.4.1 Subject to the following sub-clauses of this condition 5.4 Sunrise shall, for a period of twelve months from the date of Delivery or Installation (where applicable) whichever is the earlier, at

its option and without cost to the Customer either arrange repair or replace any defective Equipment to make good any defect which shall be proved to the satisfaction of Sunrise to be the result of faulty design, materials or manufacture or Installation (only where Sunrise supplies Installation Services under the Contract) provided that Sunrise shall have no liability for any such defects unless the Customer notifies Sunrise, within three Business Days from Delivery or Installation (where applicable) whichever is the earlier, of any defect arising prior to and/or on Delivery or Installation (as the case may be) and (subject to condition 5.4.2) within twenty four hours of any latent defect arising within such twelve month period.

- 5.4.2 Where the Customer enters into an agreement for maintenance of the Equipment with a third party, Sunrise's liability for repair, replacement, renewal shall be transferred to the relevant third party maintenance provider on Delivery. Where Sunrise is to supply Maintenance Services in respect of the relevant Equipment under the Contract, condition 7 shall apply and in the event of any conflict between this condition 5.4 and condition 7, the provisions in condition 7 shall prevail.
- 5.4.3 The liability of Sunrise shall apply only to defects that appear under proper use and under conditions of operation not more onerous than those declared to Sunrise by the Customer prior to entering into the Contract, and in particular shall not apply to defects which arise from the neglect, misuse or faulty maintenance of the Customer or any of its other contractors or from alterations carried out without the prior written consent of Sunrise or from repairs carried out improperly by the Customer or its servants or agents or arising from normal wear and tear.
- 5.4.4 Any Equipment (or part) which has been returned to Sunrise and replaced by Sunrise shall become the property of Sunrise.
- 5.4.5 Sunrise reserves the right to charge on a quantum meruit basis for the costs of repairs and/or call-outs where the damage has resulted from misuse or unauthorised repair or alteration of the Equipment by the Customer, or from normal wear and tear.
- 5.4.6 Neither acknowledgement of receipt nor investigation by Sunrise of any claim hereunder or consent given hereunder shall constitute or imply admission by Sunrise of any liability in respect of such claim.
- 5.4.7 Save where the Customer has purchased Maintenance Services in respect of the relevant Equipment (in which case condition 7 shall apply) the Customer acknowledges and agrees that, subject to condition 12.5, the rights and remedies provided to the Customer (in connection with any defect in the Equipment resulting from faulty design, materials or manufacture or installation) under this condition 5.4 shall be the Customer's sole and exclusive remedies in respect of any defect in the Equipment resulting from faulty design, materials or manufacture or installation.

5.5 TRADE MARKS AND BRANDING

- 5.5.1 Sunrise shall be entitled to fix legends bearing Sunrise's and/or its third party supplier's name and/or trade marks or other marks ("**Marks**") to any Equipment.
- 5.5.2 The Customer shall ensure that no Marks affixed to the Equipment are removed or defaced at any time.
- 5.5.3 Except with the prior written consent of the other party, neither party shall use any trade marks or identifying logos owned or licensed to any member of the other party in any manner.

6 NETWORK SERVICES

In the event that the section(s) relating to Network Services is completed on the relevant Order Form this condition 6 shall apply to the Contract.

- 6.1 **DURATION.** Subject to earlier termination under condition 14 or as otherwise stated in this condition 6:

- 6.1.1 The Network Services will commence on the Connection Date and continue for the Minimum Term as set out in the Order Form.
- 6.1.2 Subject to conditions 6.1.3 and 6.1.4, upon the expiry of the Minimum Term, or any anniversary thereafter, the Contract will renew automatically for further periods of twelve months.
- 6.1.3 Subject to condition 6.1.4, the Customer may terminate the Contract by giving ninety days' notice in writing to Sunrise, such notice to become effective no earlier than the day after the last day of the Minimum Term or upon each anniversary of such date thereafter (as applicable).
- 6.1.4 Where the Customer is a person who is neither a communications provider nor a person who is a Customer for the Network Services in relation to an undertaking carried on by him with more than 10 workers (and the same has been indicated in the Order Form), the Customer may terminate the Contract by giving ninety days' notice in writing to Sunrise, such notice to become effective no earlier than the day after the last day of the Minimum Term.

6.2 SUPPLY OF NETWORK SERVICES

- 6.2.1 Any Contract for Network Services based on an order which is accepted by Sunrise pursuant to condition 2.1 is (prior to the Connection Date) conditional on the following:
 - (a) Sunrise carrying out a survey which reveals to Sunrise's satisfaction that it is possible for Sunrise to supply the Network Services and that any details or information used by Sunrise to determine the Charges applicable or any other terms of the Contract, whether supplied by the Customer or otherwise, are accurate and not misleading. The Charges may change depending on the results of such survey; and
 - (b) that the Network Services can be provided, and Sunrise makes no warranty that the Network Services can be provided until lines have been installed and are operational.
- 6.2.2 Sunrise shall use its reasonable endeavours to meet any performance dates specified on the Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Network Services or supply of Equipment.
- 6.2.3 Sunrise undertakes to use reasonable endeavours to supply the Network Services to the Customer and to provide the Network Services with due skill and care as from the Connection Date subject to these Conditions. The Customer acknowledges that the Network Services cannot be provided fault free and Sunrise does not warrant error free or uninterrupted use of the Network Services. Notwithstanding any other provision of these Conditions, Sunrise shall not be liable to the Customer in contract, tort, or otherwise for any acts or omissions of Carriers which affect or otherwise impact the Network Services.
- 6.2.4 Subject to the continuing supply of the service by the relevant Carrier, in the event of a fault occurring in the Network Services Sunrise will use reasonable endeavours to rectify the fault as soon as practicable.
- 6.2.5 In providing the Network Services, the Customer agrees that Sunrise may use any Carrier. Sunrise may from time to time and in providing the Services change Carrier provided:
 - (a) the Customer is given reasonable notice of such change; and
 - (b) there is no material decline in the then current level of Service or functionality.
- 6.2.6 Except where stated on an Order Form, the broadband element (if any) of any Network Services does not include any modems or other equipment that Sunrise may supply to the Customer under a separate contract.
- 6.2.7 The Customer acknowledges that the speed of any broadband element (if any) of the Network Services depends on a number of factors including, but not limited to, distance from the exchange, local availability and line test. Sunrise gives no warranty or guarantee that the

Customer's line(s) will produce top speeds of up to the maximum speed advertised (as the final speed is governed by factors that are beyond Sunrise's reasonable control).

- 6.2.8 The Customer warrants, represents and undertakes that it is the owner of, or that it is authorised by the owner of, (and has the right to use) any trade mark or name that the Customer wishes to use as its registered domain name (or any of them) ("**Domain Names**") and/or as part of the Customer's uniform resource locator ("**URL**").
- 6.2.9 If Sunrise undertakes Domain Names and/or URL registration on behalf of the Customer, the Customer will reimburse Sunrise for any registration fees paid by Sunrise to the internet registration authorities. Sunrise does not guarantee that any Domain Names or URL requested by the Customer will be available.
- 6.2.10 Sunrise may require the Customer to select replacement Domain Names or URL and may either refuse to provide or may suspend the Services if Sunrise reasonably believes that the Domain Names or URL is, or is likely to be, offensive, abusive, defamatory, obscene, or an infringement of the rights of a third party.

6.3 **TELEPHONE NUMBERS**

- 6.3.1 The Customer hereby acknowledges and accepts that under the General Conditions the Director General for Telecommunications has the power to withdraw an allocation of telephone numbers and the Carrier may withdraw an allocation of telephone numbers to Sunrise and therefore any new telephone numbers provided to the Customer under the Contract, prior to their connection, cannot be guaranteed as available and therefore Sunrise shall not be liable for any costs or loss or damage incurred by the Customer in the use of any such telephone number (including, without limitation, in the advertising of the telephone number) which is withdrawn by the Director General for Telecommunications and/or the relevant Carrier prior to connection (save where and to the extent that such withdrawal is the fault of Sunrise).
- 6.3.2 Without prejudice to any rights the Customer may have to port a number allocated to it, the Customer acknowledges it does not own or have any right to sell any number provided to it by Sunrise. Where the Customer has a number from a national numbering plan, the charges for porting such number shall be as set out in the Tariff.

6.4 **USE OF THE NETWORK SERVICES**

- 6.4.1 The Customer shall be responsible for the safe custody and safe use by it of the Network Services and without prejudice to the generality of the foregoing the Customer agrees and undertakes:
- (a) to use the Network Services in accordance with such additional Conditions as may be notified to it in accordance with condition 18 from time to time;
 - (b) not to cause any apparatus, other than that which meets the essential requirements of regulation 4 of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (as from time to time amended) and any other requirements under the General Conditions and all other Relevant Laws, to be connected to the Network Services and Sunrise shall not be under any obligation to connect or keep connected any Customer apparatus if it does not so conform or if in the reasonable opinion of Sunrise it is liable to cause death, personal injury or damage or to impair the quality of the Network Services;
 - (c) not to contravene the General Conditions or any other relevant regulations or licences granted thereunder and otherwise not to contravene, and not by any act or omission cause Sunrise to contravene, any Relevant Laws or General Conditions;
 - (d) not to use the Network Service as a means of communication for a purpose other than that for which the Network Service is provided and as may be set out in any relevant literature supplied by Sunrise from time to time;

- (e) not to use the Network Service to make, provide, communicate, deliver, knowingly receive, upload, download, use or re-use any material or information which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does, or is intended to, cause annoyance, nuisance, inconvenience or worry to any person or which in Sunrise's opinion brings Sunrise's name into disrepute or which in any way causes damage or disruption to the Network Services;
 - (f) not to use the Network Services in a manner which constitutes a violation or infringement of the rights of any other person;
 - (g) to maintain its telecommunications apparatus at all times during the period of the Contract in good working order and in conformity with any relevant regulatory standards or approvals and Relevant Laws as from time to time applicable;
 - (h) to provide Sunrise with all such information it reasonably requests relating to the Customer's telecommunications apparatus;
 - (i) to implement adequate control and security over the Network Services provided to the Customer including but not limited to the prevention of viruses, worms, Trojan horses and/or any calls generated by rogue diallers or hackers;
 - (j) not to use the Network Services in a way that breaches any terms of any contract the Customer has entered into with a Carrier;
 - (k) not to use the Network Services in a way that breaches any Relevant Laws (including without limitation the Code or any guidelines, regulations or instructions of PhonepayPlus) or any licence applicable to the Customer or that is in any way unlawful or fraudulent; and
 - (l) not to send or procure the sending of any unsolicited advertising or promotional material.
- 6.4.2 Any equipment installed or provided by or on behalf of Sunrise for the purposes of providing the Network Service (excluding for the avoidance of doubt any Equipment purchased under a Contract by the Customer) shall at all times remain the property of Sunrise and shall be returned to Sunrise forthwith in good condition complete with any accessories and original packaging upon request. Condition 5.3 shall apply to such equipment and for the purposes of this condition 6.4.2 only such equipment shall be deemed Equipment under those conditions. The Customer shall be liable to Sunrise for all losses, costs and expenses incurred by Sunrise for the recovery, replacement or repair of such equipment (save to the extent that the same is caused by the fault of Sunrise) and, without prejudice to Sunrise's other remedies, the Customer agrees to pay Sunrise a minimum of 10% of the Recommended Retail Price as at the time of provision of the Equipment to the Customer and an administration charge.
- 6.4.3 If the Customer takes a line rental from Sunrise, the Customer is also committed to using Sunrise for the supply of Network Services over that line. Should the Customer (during the applicable Minimum Term) use an alternative carrier for Network Services once the Contract for the provision of the Network Services has commenced, or prevent Sunrise from carrying calls or data services in any monthly period so that the call or data charges are significantly reduced in comparison to the Customer's previous average invoicing profile, the Customer agrees that Sunrise may charge the Customer the differential between the average monthly spend on calls or data services prior to such commencement or prevention and the subsequent monthly spend on calls or data services (if any).
- 6.4.4 The Customer acknowledges that if it uses a different Carrier to the Carrier specified on the Order Form, before the expiry of the Minimum Term, Sunrise will be subject to Commission Clawbacks. The Customer shall immediately pay to Sunrise an amount representing the Commission Clawbacks which are attributable to the Customer's use of a different Carrier. The Customer irrevocably agrees that the amount to be reclaimed by way of Commission Clawbacks are reasonable in the circumstances and represent a genuine pre-estimate of Sunrise's loss. For the avoidance, of doubt, no amount shall be payable pursuant to this

- condition 6.4.4 where the Contract is terminated before the end of the Minimum Term due to any breach of contract by Sunrise.
- 6.4.5 Without prejudice to clause 6.4.4, Sunrise may at any time require the Customer to pay to Sunrise Commission Clawbacks if the Carrier imposes any such requirements on Sunrise.
- 6.4.6 The Network Services are provided solely for the Customer's use and the Customer cannot resell or attempt to resell the Network Services (or any part of them) to any third party. In addition, if the Customer has a mail server, the Customer must not allow relay emails from outside its domain from the Customer's mail server.
- 6.4.7 Sunrise does not warrant or guarantee the accuracy or completeness of any of the information, sound, software and/or any other materials (in whatever form) which may be accessible by the Customer from any other person once it has the Network Services (the "**Content**") or any further information or results which may be derived from it. The Customer acknowledges that the Content is outside the control of Sunrise and the Customer will not rely on any Content in making any business or other decision and that the Customer's use of the Content is at its sole risk.
- 6.4.8 The Customer acknowledges that the Content may be protected by copyright, trademark and other intellectual property rights, as applicable. The Customer will not and will not permit anyone else to copy, store, modify, distribute externally, broadcast or publish any part of the Content, and the Content may only be used for the Customer's own purposes.
- 6.4.9 The Customer is entirely responsible for evaluating any goods or services offered by third parties via the Services or on the internet. Sunrise will not be a party to or in any way be held responsible to the Customer for any transaction between the Customer and third parties.
- 6.4.10 The Customer warrants, represents and undertakes that any information the Customer makes available on their website, both the Customer's ("**Customer Information**") or that of a third party ("**Third Party Content**"), is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.
- 6.4.11 The Customer also warrants, represents and undertakes that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on the Customer's website including those notified by Sunrise to the Customer.
- 6.4.12 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to HMRC, Trading Standards, the Information Commissioner and/or OFCOM and their successors from time to time) in connection with any misuse or suspected misuse of the Network Services and the Customer consents to Sunrise co-operating with any such authority and with any other telecommunications operators in connection with any misuse or suspected misuse related to or connected with the Network Services and agrees, without prejudice to the generality of the foregoing, that Sunrise will be entitled to divulge the name and address and account information relating to the Customer to such third parties.
- 6.4.13 The Customer acknowledges that the broadband element (if any) of the Network Services is provided to other users and Sunrise owes a duty to these users as a whole to preserve its network integrity and avoid network degradation. If, in Sunrise's reasonable opinion, Sunrise believes that the Customer's use of the Services has or may adversely affect such network integrity or may cause network degradation, Sunrise may change the Customer's chosen access rate or manage the Customer's Services as Sunrise sees fit in the circumstances.
- 6.4.14 To prevent spam from entering and affecting the operation of Sunrise's systems and the Network Services, Sunrise may take any reasonable measures or actions necessary to block access to, or delivery of, any e-mail which appears to be of an unsolicited nature and/or part of

a bulk e-mail transmission. Sunrise may also use virus screening technology that may result in the deletion or alteration of e-mail and/or e-mail attachments. Sunrise gives no warranties whatsoever that such technology will be effective in any way, including against unsolicited emails or against any viruses, worms, Trojan horses or other programs or devices that are apparently intended to access and modify, delete or damage data file(s) or computer program(s).

- 6.4.15 To enable customers to have a better understanding of what is and is not acceptable when using broadband products, and to help them get the best out of the internet, Sunrise has developed a broadband acceptable use policy relating to the broadband element of the Network Services. The Customer shall comply with the broadband acceptable use policy. Sunrise may change the broadband acceptable use policy at any time by publishing the changes on its website (www.sunrise-uk.co.uk or such other URL as is notified to the Customer by Sunrise from time to time) 30 days before the change is to take effect.
- 6.4.16 The Customer acknowledges that, in order to use the broadband element (if any) of the Network Services, the Customer needs an existing telephone line (if not provided under the Contract) and a personal computer ("PC") of a minimum specification suitable for the application. The Customer must also ensure that compatible cables and extension leads are used to and from their telephone socket, modem and PC in order to use the Service.
- 6.4.17 In circumstances where the Customer receives the broadband element of the Network Services, the Customer remains responsible for all rental charges made by the Customer's line rental provider relating to the Customer's telephone line (together with any repair and maintenance charges (unless the relevant damage was caused by Sunrise's negligence)) and all call charges from the Customer's fixed line telephony service provider.
- 6.4.18 The Customer agrees that PhonepayPlus may monitor any End User Service at any time.
- 6.4.19 In respect of each End User Service which requires the approval of PhonepayPlus pursuant to any regulation or code of practice, the Customer shall, before such End User Service (or any change thereto) is made available to callers, submit to Sunrise written evidence of such approval.
- 6.4.20 The Customer will not misuse the Network Services in any way and will use all reasonable endeavours to ensure that the number of telephone calls made to the Number(s) do not significantly exceed the Customer's capability to answer such calls or cause congestion (the existence of congestion to be reasonably determined by Sunrise taking into account normal levels of traffic on the network). Where Sunrise notifies the Customer of the occurrence of any such congestion or misuse, then the Customer shall immediately take all reasonable steps (which shall include, but not be limited to, arranging additional network capacity, adjusting the Customer's promotional activities or using call bureau, for the relevant period) to prevent such congestion and/or misuse continuing.

6.5 TRANSFER FROM THIRD PARTY SUPPLIERS

- 6.5.1 Where the transfer of lines and services from third party suppliers is selected by the Customer then the provision of any and all existing services supplied to the Customer by such third party supplier will be automatically transferred to Sunrise and charged for in Sunrise's invoices in accordance with the Tariff.
- 6.5.2 The Customer acknowledges and accepts that it is the Customer and not Sunrise who is liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly identified and agreed in writing on the Order Form, at the time of Sunrise formally accepting such Order Form, that Sunrise will pay for specified charges.

- 6.5.3 If Sunrise has agreed to pay for specified charges in accordance with condition 6.5.2, any such payment is limited only to the termination fee and is subject to the Customer providing evidence of the charges by way of a termination bill and/or final bill. Sunrise will in no circumstances agree to pay more than the termination fee and will not pay for the Customer's use of the third party supplier's services prior to termination.
- 6.5.4 If the Customer is migrating to the broadband element of the Network Services from a third party provider of an alternative broadband service, the Customer will need to obtain a Migration Authorisation Code ("**MAC**") from that service provider. This MAC will be valid for thirty days from the date of issue and can only be used once. It is the Customer's responsibility to obtain this code and to ensure that the Customer provides it to Sunrise in sufficient time to process the Customer's migration. Sunrise will not be responsible for any delay, costs, expenses, loss or damage arising or incurred by the Customer through failure to connect the Customer to the broadband element of the Network Services as a result of the Customer's failure to provide the MAC as required by this condition.

6.6 **SUSPENSION AND/OR TERMINATION OF NETWORK SERVICES**

- 6.6.1 Without prejudice to any other right of Sunrise to suspend or terminate the Services under these Conditions, Sunrise may at its sole discretion elect to suspend forthwith provision of the Network Services until further notice without further liability to the Customer having given the Customer reasonable notice either orally (confirming such notification in writing) or in writing in the event that:
- (a) the Customer is in breach of a material term of these Conditions including but not limited to the Customer's failure to pay the Price and/or the Charges (or any of them) to Sunrise on the due date or to comply with Sunrise's broadband acceptable use policy;
 - (b) Sunrise is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative authority;
 - (c) Sunrise has reasonable grounds to believe that the Network Services are being used fraudulently or unlawfully;
 - (d) any licence under which the Customer has the right to run its telecommunications system and connect to the Network Services is revoked, amended or otherwise ceases to be valid;
 - (e) Sunrise is entitled to suspend provision of any other telecommunications service under the terms of any other agreement with the Customer;
 - (f) any maintenance or repair is necessary or required to the relevant network or related systems or equipment (for the avoidance of doubt, in the event of emergency maintenance or repair, Sunrise shall not be required to give any advance notice);
 - (g) the Customer's access to the Switching Equipment is withdrawn by the organisation financing such equipment; or
 - (h) the Customer purchases similar equipment to the Equipment from a supplier other than Sunrise which interferes with the Contract either by disruption or a reduction in the use of the Services or which has any other material effect on the performance of the Contract.
- 6.6.2 The Customer shall reimburse to Sunrise all reasonable costs and expenses incurred by the implementation of a suspension pursuant to condition 6.6.1 and/or the recommencement of the provision of the Network Service as appropriate, save in the case of a suspension pursuant to condition 6.6.1(b).
- 6.6.3 Without prejudice to any other right of termination under these Conditions, Sunrise may terminate the Contract for Network Services forthwith in the event that its right or the right of the relevant Carrier to provide the Network Services is withdrawn by the Director General for Telecommunications pursuant to the General Conditions or otherwise.

6.6.4 On termination of the Contract for any reason the Customer shall permit the disconnection of any Number from the Network Services.

6.7 VOICE OVER INTERNET PROTOCOL (VOIP) NETWORK SERVICES

6.7.1 Any order for VOIP services which is accepted by Sunrise is conditional on the Customer accepting and acknowledging that:

- (a) the VOIP service may not offer all the features or resilience the Customer may expect from a conventional phone line;
- (b) the VOIP service may sometimes be limited, unavailable or disrupted due to events beyond Sunrise's control e.g. power disruptions, failures or the quality of any connection;
- (c) wherever possible, alternative arrangements should be made by the Customer and a primary telephone line maintained;
- (d) if the Customer uses the VOIP service to make Emergency Calls, the location information received by the emergency services will be limited to the installation address of the Site, which may not be the location from which the call originated;
- (e) Emergency Calls made using the VOIP service may fail if there is a power failure or connection failure;
- (f) the ability for the Customer to make Emergency Calls cannot be guaranteed;
- (g) it will not be possible to make Emergency Calls if Sunrise has suspended or interrupted the VOIP service for any reason;
- (h) the Customer shall be required to provide/confirm his location when making a VOIP originated Emergency Call to enable the correct emergency organisation to respond; and
- (i) a VOIP originated Emergency Call will not receive the same network priority at all points over non-emergency calls as an Emergency Call made on a mobile network or on a circuit-switched fixed line.

6.8 DISPUTE RESOLUTION

6.8.1 Sunrise will attempt to resolve any dispute that the Customer may have with Sunrise. If the dispute cannot be resolved within 8 weeks of the Customer raising the dispute with Sunrise, then the Customer may refer the matter to:

- (a) the Ombudsman Services Communication, via the website (www.ombudsman-services.org) or by telephone on 0330 440 1614 or 01925 430 049; or
- (b) OFCOM, the communications regulator, via the website www.ofcom.org.uk or by telephone on 020 7981 3040 or 0300 123 333.

6.8.2 Any dispute must be submitted in writing to Sunrise's Customer Care Centre at – Sunrise Unified Solutions Limited, no 24/25 Broughton Grounds Lane, Milton Keynes, MK16 0HZ.

6.8.3 Nothing in this condition 6.8 shall prevent the Customer or Sunrise from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Contract.

6.9 KIT FUND

6.9.1 The Customer may from time to time be allocated a credit limit by Sunrise (the "**Kit Fund**") which is set out in the Order Form.

6.9.2 Subject to the written approval of a director of Sunrise, Sunrise may at its sole discretion allocate an amount equivalent to the value in the Kit Fund for the Customer to purchase Equipment through Sunrise from a network distributor or to offset Charges.

6.9.3 Sunrise reserves the right to refuse a Customer's request to purchase Equipment.

6.9.4 Sunrise will not agree to purchase Equipment for the Customer's use following the 12th month after the Commencement Date unless a Client Review Meeting has taken place between the Customer and Sunrise.

- 6.9.5 The Kit Fund remains the property of Sunrise at all times.
- 6.9.6 Sunrise reserves the right to reduce and/or apply a charge to the Kit Fund in any of the following circumstances:
- (a) the Customer is in breach of a material term of these Conditions including but not limited to the Customer's failure to pay the Price and/or the Charges (or any of them) to Sunrise on the due date;
 - (b) Sunrise has reasonable grounds to believe that the Network Services are being used fraudulently or unlawfully;
 - (c) any licence under which the Customer has the right to run its telecommunications system and connect to the Network Services is revoked;
 - (d) Sunrise is entitled to suspend provision of any other telecommunications service under the terms of any other agreement with the Customer;
 - (e) Sunrise reasonably suspects that the client is in breach of its obligations under the Contract;
 - (f) Sunrise reasonably suspects that the Customer is intending to terminate the Contract in breach of its obligations; or
 - (g) the Carrier charges Sunrise as a result of the Customer's conduct, including if the Customer pays a Carrier's bill late or does not use the Network Services.
- 6.9.7 Any Kit Fund remaining at the expiry of the Minimum Term or the termination of the Contract will not be paid to the Customer but will be retained by Sunrise.

7 MAINTENANCE SERVICES

In the event that the section relating to Maintenance Services is completed on the relevant Order Form, this condition 7 shall apply to the Contract.

7.1 DURATION OF MAINTENANCE SERVICES

- 7.1.1 Any Contract including the provision of Maintenance Services based on an order which is accepted by Sunrise pursuant to condition 2.1 is, until the Commencement Date, conditional on Sunrise providing confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Maintenance Services do not contain any errors or omissions. Subject to this condition 7.1.1 and in consideration of (and subject to) the payment of the Annual Support Charge each year by the Customer, Sunrise shall supply to the Customer the Maintenance Services in accordance with the Contract.
- 7.1.2 Subject to earlier termination in accordance with its terms, the Contract for Maintenance Services shall run for the Minimum Term. Upon the expiry of the minimum Term, or any anniversary thereafter, the Contract in relation to the maintenance Services will renew automatically for further periods of twelve months.
- 7.1.3 The Customer may terminate the Contract by giving ninety days' notice in writing to Sunrise, such notice to become effective no earlier than the day after the last day of the Minimum Term or upon each anniversary of such date thereafter (as applicable).

7.2 PROVISION OF MAINTENANCE SERVICES

- 7.2.1 The Maintenance Services shall apply only in respect of Equipment as set out in the Order Form and any other equipment which it is agreed between the parties in writing shall be included under the Contract for Maintenance Services, which for the purposes of this condition 7 shall be deemed Equipment.
- 7.2.2 Unless it is otherwise stated on the Order Form that a different level of Service (in terms of response times and hours of attendance) will apply, Sunrise will use its reasonable endeavours to, within two Business Days of receipt of notification from the Customer of a

request for the provisions of Maintenance Services and the Equipment being made available, commence during Normal Working Hours all adjustments, repairs and replacements of defective components resulting from fair wear and tear and/or faulty workmanship of Sunrise and/or materials which in the opinion of Sunrise are necessary for the proper functioning of the Equipment. Any time period stated in respect of Sunrise's obligations under a Contract is not guaranteed nor deemed to be of the essence of the Contract.

- 7.2.3 Where Sunrise replaces defective Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof. These Conditions shall continue to apply to the Equipment embodying such substituted items.
- 7.2.4 Sunrise does not warrant that the provision of Maintenance Services (or any additional services supplied pursuant to conditions 7.3.1 and 7.3.2) will ensure that the Equipment operates without interruption or error.
- 7.2.5 Subject to spare part availability, Sunrise shall provide all necessary spare parts (in the reasonable opinion of Sunrise) required to keep the Equipment in satisfactory operation. All replaced parts shall become the property of Sunrise.
- 7.2.6 Subject to condition 7.3.1, Maintenance Services shall not include the following (the "**Excepted Services**"):
- (a) the repair of damage to the Equipment resulting from accident, neglect or causes other than ordinary use (including failure to observe any instructions supplied by Sunrise regarding the operation of the Equipment);
 - (b) repair, labour or materials required as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection of unapproved accessories, attachments or other devices or as a result of breach by the Customer of any of the terms of condition 7.5.
 - (c) the alteration, modification or maintenance of the Equipment by any person other than Sunrise without Sunrise's prior written consent;
 - (d) the transportation or relocation of the Equipment save where the same has been performed at the request of Sunrise;
 - (e) the maintenance or repair of any extension wiring (after the initial twelve month warranty period under condition 5.4.1 has passed), any Equipment not at the Site or of anything other than the Equipment;
 - (f) any defect or error in any software used upon or in association with the Equipment;
 - (g) the supply of replacement cassettes, aerials, aerial systems and batteries;
 - (h) the reprogramming of the Equipment to provide improved or modified service or facilities;
 - (i) Equipment faults caused by telephone area code changes or changes in Carriers;
 - (j) ancillary items including but not limited to answer phones, analogue and digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, any cabling and/or consumables unless otherwise agreed in writing;
 - (k) maintenance arising from loss of equipment as the Maintenance Services are limited to repair or replacement of faulty equipment on a like-for-like exchange basis; and
 - (l) a dedicated helpdesk.

7.3 **ADDITIONAL CHARGES**

- 7.3.1 Sunrise may, in its discretion, upon request by the Customer provide all or any of the Excepted Services (as referred to in condition 7.2.6 above) but shall be entitled to charge for the same by levying Additional Charges in the manner described in condition 7.3.3 below.

- 7.3.2 Without prejudice to condition 7.3.1 above Sunrise shall be entitled to levy (and receive from the Customer) Additional Charges in the manner described in condition 7.3.3 below if:
- (a) Maintenance Services are provided in circumstances where any reasonably skilled and competent person would have judged the Customer's request to have been unnecessary; and/or
 - (b) the Customer reports an apparent fault of the Equipment to Sunrise and upon investigation by Sunrise the Equipment and/or its Installation is found not to be defective (in respect of a charge for the investigation and/or for any call-out including Equipment changed in a postal exchange where Sunrise reserves the right to make a charge up to the replacement value of the item in question); and/or
 - (c) where a fault that has been reported to Sunrise has been a non-Equipment fault but instead one of the Carrier (in respect of a charge for the call-out in accordance with Sunrise's then current Tariff).
- 7.3.3 Additional Charges shall be levied by Sunrise as follows:
- (a) following completion of the work in respect of additional services supplied under condition 7.3.1 and 7.3.2(a).
 - (b) following completion of the investigation and/or call out in respect of condition 7.3.2(b) and 7.3.2(c); and
 - (c) such Additional Charges (calculated in accordance with the Tariff prevailing at the time) shall be payable by the Customer within ten days of the date of an invoice.
- 7.3.4 In respect of a fault which is a failure by the Carrier as referred to in condition 7.3.2(c) Sunrise will provide to the Customer a Carrier fault reference number that may be used by the Customer to recharge the cost Sunrise has charged on to the Carrier, however this does not constitute any acceptance of liability for such costs by Sunrise and, for the avoidance of doubt, Sunrise is not liable to the Customer where the Carrier refuses to cover such costs (or any of them).

7.4 DISCONTINUED SERVICES

- 7.4.1 Without prejudice to condition 14 or any other right of suspension or termination of Services under these Conditions, Sunrise shall have the right to discontinue the Maintenance Services in respect of specified Equipment (without further liability to the Customer) in the event that Sunrise's supplier and/or the manufacturer has ceased to supply such Equipment PROVIDED THAT Sunrise shall notify the Customer as soon as reasonably possible after it is aware of any cessation in supply of the Equipment and shall arrange with the Customer to either terminate the Contract or replace or upgrade the affected Equipment at the Customer's expense.
- 7.4.2 Without prejudice to condition 14 or any other right to terminate any Services under these Conditions, Sunrise shall have the right to terminate forthwith the supply of the Maintenance Services (without further liability to the Customer) in the event that any necessary approvals required by Sunrise to maintain any of the Equipment are disallowed or revoked by any government or regulatory agencies or any third party.
- 7.5 The Customer undertakes that:
- 7.5.1 it shall ensure that the Equipment is used in a normal and proper manner;
 - 7.5.2 it will carry out such routine day-to-day preventive maintenance measures as may be recommended in the customer operating instructions and manufacturer's written recommendations supplied with the Equipment ("**User Instructions**");
 - 7.5.3 it will carry out minor maintenance adjustments suggested by Sunrise which includes minor programming changes with telephone support and replacement of handsets and cords which are relayed by courier or post;

- 7.5.4 it will not permit alteration to call routing apparatus or extension wiring except by Sunrise, or by Sunrise's authorised agents, save that in relation to the connection of other apparatus to the Equipment, such connection may be performed by another person at the Customer's expense if either:
- (a) Sunrise so agrees in writing, or
 - (b) Sunrise fails to carry out the connection itself within twenty-eight days after receiving written notice from the Customer stating that the Customer wishes specified apparatus to be so connected and naming that other person by whom the Customer wishes the connection to be performed;
- 7.5.5 it will appoint at least one member of its staff as a "**Principal Operator**", who will be trained in the use of the Equipment. The Customer will ensure that such Principal Operator is available to carry out the instructions in the User Instructions and to liaise on Maintenance Services matters with Sunrise;
- 7.5.6 it will not employ a third party to make any alterations to the programming or physical structure of the Equipment;
- 7.5.7 it will ensure that the environmental conditions for the Equipment are maintained in accordance with the User Instructions;
- 7.5.8 if the Equipment is not (immediately prior to the Commencement Date) either already maintained by Sunrise or within the scope of an express warranty given by Sunrise thereof, then Sunrise may at its discretion inspect the Equipment and undertake such repair work as may be necessary to put the Equipment in good working order. The Customer shall pay for such inspection and repair at Sunrise's then current charge rates applying at that time, and such payment shall be in addition to the Annual Support Charge.

7.6 **CHANGE OF LOCATION**

- 7.6.1 The Customer will not move any of the Equipment, nor remove the Equipment from its location as at the Commencement Date without the prior written consent of Sunrise, (such consent not to be unreasonably withheld). Where Sunrise consents to such relocation, Sunrise shall provide a relocation and installation service, the cost of which shall be paid by the Customer in accordance with Sunrise's then current Charges applying at that time, and such payment shall be in addition to the Annual Support Charge.

8 **FINANCE AND CREDIT**

- 8.1 The Customer hereby consents to and shall procure that its owners, directors, officers and assigns consent to, Sunrise carrying out searches with credit reference agencies relating to the credit worthiness of the Customer and/or its owners, directors, officers and assigns and the Customer undertakes to supply or procure the supply of all information requested for a credit search with a credit reference agency, who will add to the Customer's records and/or those records of its directors, officers and assigns details of the searches and these will be seen by other organisations that make searches.
- 8.2 The Customer undertakes to supply all information requested by any finance provider(s) who will register searches with one or more credit agencies, who will add to the person's records details of the searches and these will be seen by other organisations that make searches.
- 8.3 Where third party indemnities are required by a relevant finance provider, failure to provide such indemnities shall constitute a breach of these Conditions by the Customer and shall entitle Sunrise to retain any deposit paid by the Customer.
- 8.4 After Delivery and Installation (where applicable) is completed any failure by the Customer to complete any relevant finance agreement documentation shall render the Customer liable to

pay to Sunrise the whole of the Price as defined in condition 9.1 within seven days of presentation of an invoice.

9 PRICE AND CHARGES

9.1 EQUIPMENT

9.1.1 The Price is as stated on the Order Form and is exclusive of VAT or any other tax or duty payable. The amount of such taxes or duties shall be added to the Price and shall be payable by the Customer in the same manner as the Price. Any invoices issued by Sunrise in respect of the Price shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

9.1.2 Unless otherwise specified the Price is based on the assumption that the Equipment and (where applicable) Installation Services will be completed in one continuous visit to the site agreed with the Customer and accordingly Sunrise may at its discretion at any time increase the Price to take account of any additional costs to Sunrise (including but not limited to storage and delivery costs) by reason of Delivery and/or the Installation Services taking more than one visit.

9.2 NETWORK SERVICES

9.2.1 The Charges will be as detailed in the Tariff unless, and as, stated on the Order Form.

9.2.2 Sunrise shall have the right to alter the Charges from time to time by publishing changes to the Tariff at <http://www.sunrise-uk.co.uk> (or at such other URL as is notified to the Customer by Sunrise from time to time) or notifying the Customer in writing and such changes shall take effect:

- (a) no earlier than thirty days after such publication in the event of changes which may be of material detriment to the Customer; and
- (b) no earlier than one day after such publication for all other changes, and if the Customer wishes to object to any proposed change which is of material detriment to the Customer, then the Customer must notify Sunrise in writing (addressed to Customer Services, Sunrise Group, 24-25 Broughton Grounds Lane, Milton Keynes, MK16 0HZ) within thirty days of publication of the proposed change, otherwise the Customer will be deemed to have accepted the proposed change. For the avoidance of doubt, the service by Sunrise of any notice in accordance with condition 9.2.2(a) shall not constitute either acceptance of or an admission by Sunrise that any proposed change is of material detriment to the Customer, nor shall the service of notice by the Customer under this condition constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.

9.2.3 Usage charges payable shall be calculated by reference to data recorded or logged by Sunrise and not by reference to any data recorded or logged by the Customer. Any invoices issued by Sunrise shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

9.2.4 Line rental is payable from the Connection Date.

9.2.5 If the Customer has agreed to a Minimum Contract Spend and at the end of the Minimum Term, the Customer has not incurred the Minimum Contract Spend, or if the Customer terminates the Contract in any way other than pursuant to condition 14, the Customer will be liable to pay to Sunrise the difference between the Charges incurred during the period of the Contract and the Minimum Contract Spend.

9.2.6 Sunrise reserves the right to apply a monthly minimum threshold of at least £10.00 per Customer account (or such other sum as notified to the Customer by Sunrise in writing from time to time) to keep the account operating at a viable level.

9.3 MAINTENANCE SERVICES

9.3.1 The Customer shall pay to Sunrise the Annual Support Charge in accordance with condition 10.3. Any invoices issued by Sunrise in respect of the Charges for Maintenance Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

9.3.2 Sunrise shall have the right to alter the Annual Support Charge from time to time by giving the Customer not less than 14 days notice.

9.4 Value added tax

All sums referred to under these Conditions, the Order Form, any Promotional Terms and any Service Specific Conditions are (unless otherwise stated) exclusive of VAT and any taxes of a similar nature which may from time to time be introduced, which will be payable at the rates ruling at the date of invoice.

9.5 Temporary Services

If the Customer orders a temporary Service, Sunrise may charge the Customer for any supplementary charges incurred, plus the line rental (if any) in advance for the whole period of the temporary Service. Other Charges as detailed in the Contract still apply as appropriate.

10 PAYMENT

10.1 **EQUIPMENT** A deposit equal to the amount set out on the Order Form is required at the time of the placing of the relevant order. The balance of the Price as defined in condition 9.1.1 is payable immediately upon completion of Delivery (subject to condition 5.1.5).

10.2 NETWORK SERVICES

10.2.1 Subject to condition 10.2.2, the Customer shall be invoiced monthly in arrears by Sunrise and shall pay the Charges by direct debit within ten days of the date of the invoice (unless otherwise expressly agreed with Sunrise and set out on the Order Form).

10.2.2 Line rental is payable monthly or quarterly in advance as specified on the Order Form, unless expressly agreed in writing by Sunrise.

10.2.3 Where Sunrise is notified by PhonepayPlus that:

(a) any sums payable by the Customer to PhonepayPlus or to any compensation fund or bond established by PhonepayPlus have not been paid; and/or

(b) the Customer or any Information Provider is in breach of the Code;

Sunrise may withhold all sums due to the Customer until Sunrise has been notified by PhonepayPlus that all such sums, fines, administrative charges or other sums payable to PhonepayPlus under the Code have been paid in full or any breach has been remedied, and if requested by PhonepayPlus Sunrise may pay such sums to PhonepayPlus in settlement of amounts owed to PhonepayPlus. In the event that amounts are paid by Sunrise to PhonepayPlus to settle amounts owed by the Customer then such amounts shall be deducted from any amounts owed by Sunrise to the Customer.

10.3 MAINTENANCE SERVICES

10.3.1 Unless otherwise agreed, the Customer will pay the Annual Support Charge to Sunrise by direct debit in advance of the relevant period as set out in the Order Form.

10.3.2 Where Sunrise has agreed to raise an Annual Support Charge annually the Customer will pay the charge in advance of the Commencement Date and annually thereafter upon each anniversary of that date.

10.4 ALL SERVICES

10.4.1 If payment of any sum payable to Sunrise is not made on or before the due date Sunrise shall be entitled to charge interest thereafter on such sum at either the rate of 4% per annum

above the current base rate of The Royal Bank of Scotland plc from time to time or, if higher, such rate as Sunrise would be entitled to claim under the Late Payment of Commercial Debts (Interest) Act 1998 (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) from the due date until the date of payment whether before or after judgement.

- 10.4.2 Unless e-billing is expressly not required on the Order Form, invoices may be made available for download by Customer. If invoices are made available for download by the Customer, the Customer will be notified at the email address set out on the Order Form that the invoice is ready for downloading. Where e-billing is expressly not required on the Order Form or if Sunrise elects to do so, the invoice may be sent to the registered address of the Customer (or the address of the Customer).
- 10.4.3 If Sunrise is unable, for whatever reason, to recover the sums due under the Customer's account within 4 days following the due date for payment, Sunrise reserves the right to suspend all or any of the Services.
- 10.4.4 If the Customer's account remains unpaid (in any part) Sunrise may require a security deposit of three times the average monthly invoice or payment in full for the next 12 months before Sunrise will reinstate the Service.
- 10.4.5 If the Customer's account remains unpaid (in any part) for a period of 30 days after the original due date for payment, the Services may then be terminated by Sunrise.
- 10.4.6 Without prejudice to the Supplier's other remedies, if the Customer's account remains outstanding for any reason after the original due date for payment, then:
- (a) the Customer will be charged an administration fee for each piece of correspondence in connection with the recovery of the overdue amount. Sunrise may also charge the Customer a fee where it suspends a Network Service for non-payment; and
 - (b) Sunrise reserves the right to refer the outstanding account to a debt collection agency. If Sunrise is required to instruct a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay Sunrise's costs payable to the agency, who will add the sum to the Customer's outstanding debt.
- 10.4.7 The Customer will ensure that the name of the account holder is the same as the name on the payment details provided.
- 10.4.8 If the Customer cancels an active direct debit instruction once a Contract has commenced an additional administration fee will be added to the monthly invoice of £3.50 (or such other amount as may be notified to the Customer by Sunrise from time to time) until the direct debit is reinstated. Sunrise also reserves the right to charge the Customer a direct debit cancellation fee at its then applicable rate.
- 10.4.9 Sunrise may, without notice, withhold any payments due to the Customer under the Contract or any other agreement between Sunrise and the Customer if:
- (a) Sunrise has reason to believe the Customer is in breach of the Contract;
 - (b) the Customer is (or Sunrise reasonably believes that the Customer is) conducting its business or using a Service illegally (including in breach of the Code or any OFCOM requirements) or for an illegal or unlawful purpose; and/or
 - (c) Sunrise has received notice from another Carrier that payment will be withheld in respect of calls and Sunrise has satisfied itself on reasonable grounds that such event has occurred.
- 10.4.10 If any sum owed by the Customer to Sunrise under the Contract or any Contract with Sunrise is not paid by the due date, Sunrise may deduct this sum from any payment or credit due to the Customer under the Contract or any other Contract with Sunrise.
- 10.4.11 Payment of all sums due to Sunrise shall be made without any set-off whatsoever.

- 10.4.12 If the Customer intends to dispute any charge on an invoice the Customer must do so in writing to Sunrise within 14 days of the date of the invoice and provide Sunrise with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to:
- (a) less than 5% of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or
 - (b) more than 5% of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute.

11 SITES

- 11.1 To enable Sunrise to fulfill its obligations under any Contract:
- 11.1.1 the Customer shall permit or procure permission for Sunrise and any other person(s) authorised by Sunrise to have reasonable access to the Customer's Sites, Equipment and any other relevant telephone system and other equipment and shall provide such reasonable assistance as Sunrise requests.
- 11.1.2 Sunrise will normally carry out work by appointment and during Normal Working Hours but may request the Customer to (and the Customer shall) provide access at other times. In the event that the Customer cancels, reschedules or misses any pre-arranged appointment, it shall be liable to Sunrise for any costs and expenses which Sunrise incurs as a result of such cancellation, rescheduling and/or missed appointment.
- 11.2 At the Customer's request, Sunrise may agree (at its sole discretion) to work outside Normal Working Hours and the Customer shall pay Sunrise's reasonable charges for complying with such a request.
- 11.3 The Customer warrants, represents and undertakes that it has adequate health and safety provisions in place at its Sites.
- 11.4 The Customer shall procure all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work, installation of Equipment and for the provision, use and operation of the Equipment and/or Services at the Sites (save to the extent Sunrise has agreed in writing to do it).
- 11.5 In the event that the Customer is not able to procure the necessary consent to provide the Services within ninety days of the Connection Date Sunrise will be able to terminate the Contract forthwith by giving the Customer written notice without any liability. If the Customer has not managed to procure the necessary consents and Sunrise has commenced work the Customer shall, on request by Sunrise, refund to Sunrise the cost of all such work (including, without limitation, staff costs and equipment costs) of an amount no less than £500.
- 11.6 The Customer shall provide Sunrise with the site and building plans (to include full details of all internal cabling runs) of the Sites and provide Sunrise with full details of all other services in the vicinity of the proposed works.
- 11.7 The Customer is responsible for making the Site good after any work undertaken by Sunrise at a Site, including without limitation replacing and re-siting items and for re-decorating.
- 11.8 If the Customer is moving a Site, Sunrise must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Customer's Services and Equipment. Unless otherwise requested, Sunrise, in addition to moving the Service and Equipment, will also endeavour (but cannot guarantee that it will be able, for example where the Customer moves to a different exchange) to retain the Customer's relevant existing telephone number(s). If Sunrise can transfer the Customer's existing number to the new Site the existing Contract will continue under the same terms and conditions. If Sunrise cannot transfer the Customer's existing number to the new Site, installation of a new line will be required at the new Site, or if the Customer requires any additional new lines, this will attract new line connection charges and a new Contract.

- 11.9 If the new installation or moving Site involves the visit of an engineer to facilitate the new installation the Customer will be responsible for the costs incurred by Sunrise for the appointment together with an administration fee in respect of any additional works required to be undertaken by Sunrise to complete the transfer of the Services and Equipment.
- 11.10 If the Customer moves Sites and leaves the Equipment for the new owner/tenant the Customer is required to inform them that the Service will be discontinued if Sunrise is not contacted by the new owner/tenant within 72 hours for the purpose of entering into a new contract with Sunrise for such services and subject in any event to the agreement of such a contract.
- 11.11 If at the new Site the Customer receives services from an alternative supplier the Customer is responsible for any contractual agreement the Customer has with them and any liabilities the Customer may incur for terminating such agreement.

12 WARRANTIES AND LIMITATION OF LIABILITY

- 12.1 Unless otherwise stated in these Conditions (or any relevant Service Specific Conditions) Sunrise makes no warranty in respect of the supply of Equipment and/or Services and all other warranties which by reason of statute or other direction, regulation or governmental authority may be implied into a Contract for the supply of Equipment and/or Services are hereby excluded to the fullest extent possible, save for, and to the extent of, those warranties which cannot be lawfully excluded. If the Customer is a consumer, this shall be without prejudice to its statutory rights.
- 12.2 Subject to conditions 5.4.7, 12.3 and 12.5, in no circumstances shall Sunrise's liability, arising under or in connection with this Contract and whether in contract, tort (including without limitation negligence), breach of statutory duty or otherwise, to the Customer in respect of one incident or series of connected incidents in any one year, exceed 110% of the Price paid for Equipment and Installation Services and/or the Charges paid for Services (as the case may be) for the relevant Equipment and Installation Services and/or Services to which the claim or claims relate in the 12 months prior to the date on which the claim or claims arose.
- 12.3 Subject to condition 12.5, under no circumstances shall Sunrise be liable in any event under or in connection with the Contract and whether in contract, tort (including negligence) or otherwise for any:
- 12.3.1 loss of revenue;
 - 12.3.2 loss of business;
 - 12.3.3 loss of contracts;
 - 12.3.4 loss of, damage to or corruption of data;
 - 12.3.5 loss of anticipated savings;
 - 12.3.6 loss of profits; or
 - 12.3.7 any indirect, consequential or special losses; whether or not Sunrise knew or ought to have known that such losses or damages might be incurred.
- 12.4 Neither party shall be liable to the other party for any breach of any provision of the Contract caused by any reason outside the control or responsibility of that party including, without limitation, in respect of Network Services supplied by Sunrise, the failure of any Carrier to provide network capacity (or any element thereof) to Sunrise on which it was reliant for the purposes of the Contract, any act of God, terrorist attacks, inclement weather, accidental damage, vandalism, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.
- 12.5 Nothing in these Conditions excludes or restricts either party's liability for:

- 12.5.1 death or personal injury resulting from that party's negligence or its employee's, agent's or subcontractor's negligence (while acting in the course of their employment);
 - 12.5.2 any fraud, fraudulent misrepresentation or fraudulent misstatement;
 - 12.5.3 any indemnity given under the Contract; and/or
 - 12.5.4 for anything for which the parties cannot at law limit or exclude their liability.
- 12.6 The Customer agrees that any cause of action that it may have against Sunrise (including its affiliates, directors, officers, agents, consultants and employees) must commence within two (2) years after the cause of action arose. Otherwise, the Customer's cause of action is permanently barred.

13 CUSTOMER'S INDEMNITY

- 13.1 Without prejudice to any other rights of Sunrise, the Customer shall indemnify and hold harmless Sunrise against all costs (including without limitation legal costs and the cost of enforcement (on a full indemnity basis)), liabilities, claims, damages, direct, indirect or consequential loss (all three of which include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) expenses and/or judgments whatsoever, which it may suffer or incur, and arising from any:
- (a) breach by the Customer of any warranties, undertakings and/or representations given under the Contract and/or any failure to comply with any responsibilities and/or liabilities of the Customer set out in the Contract; and/or
 - (b) injury and/or damage suffered or incurred by or to any of Sunrise's (or any of its contractor's) employees and/or equipment whilst on the Site.

14 TERMINATION AND CONSEQUENCES

- 14.1 Subject to conditions 14.3, 14.4 and 14.6 below and without prejudice to any specific termination rights set out elsewhere in these Conditions, the Customer shall not be entitled (once an order has been accepted by Sunrise) to change or cancel an order:
- 14.1.1 at all in respect of Equipment; or
 - 14.1.2 except for termination in accordance with the conditions relating to the serving of notice to terminate the relevant Services and in particular condition 6.1.3 (which shall take effect in accordance with the applicable conditions), unless otherwise agreed in writing with Sunrise.
- 14.2 Subject to condition 14.6, in the event of any termination by the Customer of the Contract (in whole or in part), the Customer shall indemnify Sunrise in full against all loss including, but not limited to, all losses incurred by Sunrise as a result of the Customer terminating the Contract before the end of the Minimum Term or where the Contract has continued beyond the Minimum Term before the end of the relevant notice period, which will include a minimum payment to Sunrise of the amount of the outstanding line rental charges, the Initial Consultancy Fee, any Minimum Contract Spend, Annual Support Charges, contracted call bundles, subscriptions or otherwise that would have been paid by the Customer had the Contract continued for the Minimum Term and/or the relevant notice period (as the case may be), costs, damages, charges (including, but not limited to, any liability for Network Services transferred from third parties) and administration charges (of a minimum of £300 in respect of the termination of the supply of any or all of the Equipment which is the subject of a Contract) and expenses incurred by Sunrise as a result of such changes or cancellation.
- 14.3 Without prejudice to the generality of condition 14.2, in the event of any termination by the Customer of the Contract before the end of the Minimum Term, the Customer shall immediately pay to Sunrise an amount representing the Commission Clawbacks which are attributable to the Network Services being terminated and the Initial Consultancy Fee. The Customer irrevocably agrees that the amount to be reclaimed by way of Commission

- Clawbacks and the Initial Consultancy Fee are reasonable in the circumstances and represent a genuine pre-estimate of Sunrise's loss. For the avoidance of doubt, no amount shall be payable pursuant to this condition 14.3 where the Contract is terminated before the end of the Minimum Term due to any breach of contract by Sunrise.
- 14.4 Without prejudice to any other rights of Sunrise under these Conditions or otherwise, Sunrise shall be entitled at any time and for any reason whatsoever to terminate any and/or all Contracts for Services on the giving of not less than thirty days' written notice to the Customer, without further liability to the Customer. For the avoidance of doubt, in the event that Sunrise terminates a Contract under this condition 14.4, the Customer's liability to pay the Charges for Services shall end on the date of termination of the relevant Contract and the Customer shall not be liable to pay for the Charges applicable for the remainder of any Minimum Term applicable in respect of that Contract.
- 14.5 A Contract may be terminated forthwith by either party by notice in writing if the other party materially breaches its obligations under these Conditions (including non-payment of charges due) or any Service Specific Conditions and in the case of breaches which are capable of remedy such party fails to remedy such breach within 30 days of written notice by the other party of what the breach is and requesting that the breach is remedied. Without prejudice to the generality of the foregoing, Sunrise shall be permitted to terminate the Contract forthwith on notice to the Customer in the event that the Customer is in material breach of any other contract under these Conditions (as in force from time to time) and which breach, if capable of remedy, has not been remedied within fourteen days of written notice by Sunrise of what the breach is and requesting that the breach is remedied.
- 14.6 Notwithstanding anything to the contrary expressed or implied in these Conditions, either party (without prejudice to its own rights) may terminate all Contracts forthwith in the event that a liquidator (other than for the purpose of amalgamation or reconstruction) trustee in bankruptcy, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent reconstruction of such relevant party's group of companies).
- 14.7 Where the Customer is a person who is not a communications provider and is not a person who is a Customer for Network Services in relation to an undertaking carried on by him with more than ten (10) workers (and the same has been indicated in the Order Form), the Customer may cancel the provision of those Network Services, without any form of charge or compensation being required to be paid to Sunrise.
- 14.8 Sunrise shall be entitled to terminate the Contract forthwith in circumstances where it also has a right to suspend the provision of the Services pursuant to condition 6.6 and, in the event of such termination, save if such termination is pursuant to condition 6.6.1(b), the Customer shall indemnify Sunrise in full against all loss as set out in condition 14.2, including, but not limited to, all losses incurred by Sunrise as a result of terminating the Contract before the end of the Minimum term or where the Contract has continued beyond the Minimum Term before the end of the relevant notice period.
- 14.9 The termination or expiry of the Contract shall be without prejudice to any rights or liabilities which have accrued prior to such expiry or termination. Any provision of this contract which expressly or by implication is intended to survive, shall survive the termination or expiry of the Contract.
- 14.10 Any implied right to terminate for convenience that the Customer may have under applicable law is hereby expressly excluded.

15 SOFTWARE

- 15.1 Where Sunrise provides software to the Customer to enable the Customer to use the Services (“**Software**”), Sunrise will grant the Customer a non-exclusive, non-transferable licence to use the Software solely for the term and purposes of the Contract (and to the extent necessary to use the relevant Services). If required by Sunrise, the Customer shall sign such end user licence agreement as may be reasonably required by the owner of the copyright in the Software to protect the owner’s interest in that Software and for the Customer to be able to use the Software.
- 15.2 Except as permitted by applicable law or as expressly permitted under the Contract the Customer shall not de-compile, reverse-engineer or modify the Software, or copy the relevant manuals or documentation.

16 CALL MONITORING

- 16.1 The Customer agrees that Sunrise may monitor and record calls made to or by Sunrise by or to the Customer (and/or any of their employees or personnel), for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Customer undertakes to make its employees and personnel aware of the rights reserved by Sunrise under this condition.

17 CONFIDENTIALITY AND USE OF CUSTOMER’S INFORMATION AND DATA FAIR PROCESSING NOTICE

- 17.1 Sunrise and the Customer will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and any other confidential information, whether written or oral, concerning the other party’s business or its products or its services which the other party may obtain, except to the extent any disclosure is required by law. This condition 17 shall survive termination of the Contract. The Customer and Sunrise will not, without the consent of the other, disclose such information to any person other than:
- 17.1.1 their employees, contractors or professional advisers who shall require the information in order for the Customer or Sunrise to fulfill its obligations under the Contract; or
- 17.1.2 in the case of the Customer, its users to the extent that they are required to use or access the Service.
- 17.2 Information shall not be treated as confidential if it is:
- 17.2.1 lawfully in the public domain;
- 17.2.2 lawfully in the possession of the Customer or Sunrise before disclosure from the other has taken place;
- 17.2.3 obtained from a third person who is entitled to disclose it; or
- 17.2.4 replicated independently by someone without access or knowledge of the information.
- 17.3 If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by Sunrise in connection with the Contract the Customer will notify Sunrise immediately of the request and give Sunrise at least ten Business Days to make representations before releasing the requested information (save to the extent otherwise required by law).
- 17.4 The Customer acknowledges and agrees that Sunrise will only use Personal Data (as defined within the Data Protection Act 1998) and/or confidential information obtained from the Customer during or following the completion of the Order Form or as a result of the Customer’s use of the Equipment or Services and/or arising from or out of the provision of the Equipment or Services for the following purposes:

- 17.4.1 administering the Customer's account (including arranging finance with lessors of the Equipment, liaising with any Carriers who are relevant to the provision of the Network Services and sharing the data with members of the Group);
- 17.4.2 notifying the Customer of changes to the Service, including (unless stated otherwise on the Order Form) contacting the Customer regarding potential and/or actual enhancements to offers in relation to the Service;
- 17.4.3 enabling Sunrise to supply the Service and Equipment to the Customer; and
- 17.4.4 for invoicing purposes.
- 17.5 Sunrise will not pass Personal Data obtained from the Customer to any third parties for marketing purposes but may send the Customer information about Sunrise's own products and services which it considers may be of interest to the Customer, unless the Customer specifically requests in writing that Sunrise does not do so on the Order Form.
- 17.6 Any Customer who wishes to have details of the credit reference or the fraud prevention agencies Sunrise uses to obtain information about the Customer or receive a copy of the information Sunrise holds about them, may do so by submitting a request in writing for a copy of the information to Sunrise's Data Controller at Sunrise Unified Solutions Limited, 24-25 Broughton Grounds Lane, Milton Keynes, MK16 0HZ stating the Customer's full name, address, account number and phone number. Sunrise may charge a reasonable administration fee for providing such information.
- 17.7 The Customer warrants, undertakes and agrees that it will grant or procure from its employees and other personnel such consents to the use of Personal Data (referred to above) as may be necessary to enable Sunrise to use such data for the purposes described in this condition 17.

18 CHANGES TO THE CONDITIONS, SERVICE SPECIFIC CONDITIONS AND CONTRACT

- 18.1 Sunrise may change the Conditions and/or Service Specific Conditions at any time and will publish any change in line with condition 18.2.
- 18.2 Sunrise will publish any changes to the Conditions and/or Service Specific Conditions online at <http://www.sunrise-uk.co.uk> (or at such other URL as is notified to the Customer by Sunrise from time to time):
 - 18.2.1 at least 30 days before the change is to take effect for changes that may be of material detriment to the Customer; and
 - 18.2.2 at least one day before the change is to take effect for all other changes.
- 18.3 If the Customer wishes to object to any proposed change which is of material detriment to the Customer, the Customer must notify Sunrise in writing (addressed to Customer Services, Sunrise Group, 24-25 Broughton Grounds Lane, Milton Keynes, MK16 0HZ) within 14 days of publication of the proposed change, otherwise the Customer will be deemed to have accepted the proposed change. For the avoidance of doubt, the service by Sunrise of any notice in accordance with condition 18.2.1 shall not constitute either acceptance of or an admission by Sunrise that any proposed change is of material detriment to the Customer, nor shall the service of notice by the Customer under this condition 18.3 constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.
- 18.4 Without liability to the Customer, in order to reduce the risk of fraud or for any commercial purpose, the Customer acknowledges that on capped price call tariffs (if any) Sunrise may at its sole discretion on not less than 7 days' notice:
 - 18.4.1 limit call price caps to the first four hours of calls per day; and/or
 - 18.4.2 remove the relevant call price caps from the Customer's pricing and Tariff should call profile deviate significantly from Sunrise's standard call profiles and notify the Customer of the new pricing to apply in respect of the relevant Network Services.

- 18.5 In order to reduce the risk of fraud or for any commercial purpose, the Customer acknowledges that on bundled minute call packages (if any) Sunrise may at its sole discretion on not less than 7 days' notice remove the relevant bundled minute call package from the Customer's pricing and Tariff should the Customer's call profile deviate significantly from Sunrise's standard call profile and over seventy five per cent of the Customer's bundled minutes be used in any month.
- 18.6 Sunrise may, if requested by the Customer, provide additional services to be included within the Services under such additional terms and conditions as may be notified from time to time.

19 SECURITY

- 19.1 The Customer must ensure that user names and passwords used by it and/or its personnel and/or users in connection with the Services are kept confidential and are only used by authorised users. The Customer will inform Sunrise immediately if the Customer knows or suspects (or ought reasonably to know or suspect) that a user name or password has been disclosed to an unauthorised user or is being used in an unauthorised way. The Customer must not change or attempt to change a user name without Sunrise's written consent.
- 19.2 Sunrise reserves the right (at Sunrise's sole discretion):
- 19.2.1 to suspend user names and password access to the Services if at any time Sunrise thinks that there has been or is likely to be a breach of security; and
- 19.2.2 to ask the Customer to (in which case, the Customer shall) change any or all of the passwords the Customer uses in connection with the Services.
- 19.3 The Customer will inform Sunrise immediately of any subsequent changes to the information the Customer supplies to Sunrise in connection with the Contract.
- 19.4 The Customer accepts and acknowledges that the Services are not guaranteed to be secure and Sunrise does not guarantee the prevention or detection of any unauthorised attempts to access the Services.
- 19.5 The Customer acknowledges that Sunrise has no control of a Customer's PABX/switch configuration, voice mail security or other feature services enabled, except where Sunrise agrees to be contractually responsible under management services.
- 19.6 Sunrise shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment or Services by the Customer or any third parties (who are not employees of Sunrise) and the Customer agrees to pay all additional charges related to such fraudulent and/or unauthorised use. Customers are therefore urged to verify with their equipment provider that all necessary steps to combat fraudulent and/or unauthorised use have been taken.
- 19.7 Any assistance given by Sunrise in relation to fraudulent and/or authorised use by the Customer or third parties (or the prevention of such use) will be on a reasonable endeavours basis only and no liability can be accepted by Sunrise for any loss sustained by the Customer via fraudulent and/or unauthorised means that are beyond Sunrise's reasonable control (save for any fraud and/or unauthorised use by an employee of Sunrise acting in that capacity).

20 ANTI-BRIBERY

- 20.1 The Customer shall, and shall procure that its officers, employees, agents and any other persons who perform the services for and on behalf of it in connection with a Contract shall;
- 20.1.1 comply with all applicable Anti-Bribery Laws;
- 20.1.2 not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act;

- 20.1.3 comply with Sunrise's Ethics and Anti-bribery Policy (available at www.sunrise-uk.co.uk or at such other URL as is notified to the Customer by Sunrise from time to time) as Sunrise may update them from time to time ("**Relevant Policies**");
- 20.1.4 have and shall maintain in place throughout the term of all Contracts its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Anti-Bribery Laws and the Relevant Policies, and will enforce them where appropriate;
- 20.1.5 not do or omit to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws;
- 20.1.6 not do or omit to do any act or thing which causes or may cause Sunrise and/or any member of the Group to be in breach of and/or commit an offence under any Anti-Bribery Laws;
- 20.1.7 without prejudice to condition 20.1.6, not do or omit to do any act or thing which causes or may cause Sunrise or any member of the Group to be guilty of an offence under section 7 of the Bribery Act (or would or may do so if Sunrise was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct); and
- 20.1.8 provide Sunrise and any member of the Group (at the Customer's cost) with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws.
- 20.2 The Customer shall:
- 20.2.1 promptly report to Sunrise and any member of the Group any request or demand for any financial or other advantage of any kind received in connection with the performance of the Contract by it or by its officers, employees, agents or any other person who performs the services for or on behalf of it in connection with the Contract; and
- 20.2.2 upon request, certify in writing signed by a director of the Customer that the Customer has complied with all of its obligations under this condition 20. The Customer shall provide such supporting evidence of compliance as Sunrise or any member of the Group may reasonably request.
- 20.3 The Customer warrants to Sunrise and all members of the Group that it has not, and its officers, employees, agents and any other persons who perform the services for or on behalf of it in connection with the Contract have not breached any applicable Anti-Bribery Laws; been convicted of any offence involving bribery, corruption, fraud or dishonesty; offered, promised, given, requested, agreed to receive, received or accepted a bribe or financial or other advantage or committed any corrupt act; done or omitted to do any act or thing which constitutes or may constitute an offence under the Anti-Bribery Laws; done or omitted to do any act or thing which caused or may cause any person to be in breach of and/or commit an offence under any Anti-Bribery Law; done or omitted to do any act or thing which caused or may cause any person to be guilty of an offence under section 7 Bribery Act; or given any financial or other advantage, inducement or reward to any person in connection with the awarding or continuation in force of this Contract.

20.4 Sunrise and/or any member of the Group may terminate the Contract immediately if the Customer is in breach of any of its obligations under this condition 20 or if Sunrise or any member of the Group has reasonable cause to believe that such a breach has occurred or may occur. If Sunrise or any member of the Group terminates the Contract in accordance with this condition 20.4, the Customer shall not be entitled to claim any compensation or any further remuneration from Sunrise or any member of the Group.

21 GENERAL

21.1 Subject to any deemed acceptance by the Customer under condition 9.2.2 and/or condition 18.3, no forbearance or indulgence shown or granted by Sunrise to the Customer whether in respect of these Conditions and/or any Service Specific Conditions or otherwise shall in any way affect or prejudice the rights of Sunrise against the Customer or be regarded as a waiver of any of these Conditions and/or any Service Specific Conditions.

21.2 The Contract (including in relation to non-contractual matters) shall be governed by and construed in all respects in accordance with English law and the Customer hereby submits for all purposes of and in connection with the Contract to the exclusive jurisdiction of the English Courts (including in relation to non-contractual disputes).

21.3 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else and no third party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

21.4 Any notice, invoice or other document which may be given by either party under the Contract shall be in writing (except as provided otherwise) sent for the attention of the relevant person, and to the address or fax number given on the Order Form (or such other address as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first class post or recorded delivery.

21.5 A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting or if earlier upon receipt and, if deemed receipt under this condition 21.5 is not within Normal Working Hours, at 9.00am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

21.6 Any director or representative of the Customer who signs on behalf of the Customer will be deemed an authorised signatory and thereby Sunrise shall be entitled to rely on such signatory as binding the Customer to the obligations set out in these Conditions and any relevant Service Specific Conditions in all respects.

21.7 The Customer shall not, without the prior written consent of Sunrise, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

21.8 Sunrise may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the consent of the Customer. However, the Customer shall, if Sunrise requires, execute such deeds and/or documents as may be necessary or required by Sunrise to give effect to any such dealing in such rights and/or obligations.

21.9 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

- 21.10 The Customer shall not, without the prior written consent of Sunrise, at any time from the date of the Contract to the expiry of six months after the termination of the Contract (or in the case of multiple Contracts the last Contract to be terminated or expire), actively solicit or entice away from Sunrise or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement by the Customer for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of Sunrise in the provision of the Services to the Customer. Any consent given by Sunrise in accordance with this condition 21.10 shall be subject to the Customer paying to Sunrise a sum equivalent to 20% of the then current annual remuneration of Sunrise's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee or sub-contractor.
- 21.11 The Customer agrees to indemnify and keep indemnified Sunrise against all liabilities, losses, actions, proceedings, damages, costs (including legal and employment costs), claims, demands and expenses brought or made against or suffered or incurred by Sunrise arising out of or connected with:
- 21.11.1 the transfer or alleged transfer of the employment or engagement of any Employee to Sunrise pursuant to the Employment Regulations or otherwise; and
- 21.11.2 the employment or engagement or termination of employment or engagement by the Customer or a Contractor and/or any Subcontractor of any Employee.
- 21.12 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and Personal Data will be processed by and on behalf of Sunrise in connection with the Services.
- 21.13 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 21.14 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal whilst still giving effect to the commercial intention of the parties.
- 21.15 Except with the prior written consent of the other party, neither party shall make any public statement about the Equipment and/or Services or otherwise publicise the Contract or any information relating to it.
- 21.16 Nothing in the Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as the agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer. Except where, and to the extent that, the Contract expressly states otherwise, no party may incur any expenses or negotiate on behalf of any other party or commit any other party in any way to any person without that other party's prior written consent.
- 21.17 Each party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of the Contract.
- 21.18 The Contract may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.