



# Terms and Conditions

12<sup>th</sup> April 2013

**The Company:** Switchconnect is a trading name of Equinet Technologies Limited, whose registered office is Edison House, Edison Road, Dorcan, Swindon, SN3 5JX, hereinafter referred to as 'Switch'

## 1. INTERPRETATION AND DEFINITIONS

The following provisions shall have effect for the Interpretation of these Terms;

1.1. Words denoting the singular number only shall include the plural and vice versa, words importing persons include bodies corporate and non-corporate.

1.2. The clause headings do not form part of this deed, are for convenience only, and shall not be taken into account in its construction or interpretation.

1.3. The '**Acts**' - the Communications Act 2003.

1.4. '**Code**' – Any Code of Practice (or like policy) issued by PhonePay Plus (or any body that shall replace them and any other regulatory body approved by Ofcom relevant to Services, that may be issued from time to time.

1.5. **Mobile Code of Practice** – Any code of practice issued jointly or singularly by any of the Mobile Network Operators relevant to Services, that may be issued from time to time.

1.6. '**Email**' – Electronic Mail.

1.7. '**End User**' – users of the services provided by the Service Provider.

1.8. '**Equipment**' – Modem access provided to the Service Provider to enable End Users to access the Internet.

1.9. '**Fraud Traffic**' - any traffic which British Telecommunications ("BT") plc or any telecommunication carrier that transmits traffic to Switch or BT plc is unable to bill or collect, or where there is a reasonable expectation that the End User is not likely to pay their telephone bill because the calls are disputed as not originating from the telephone line for which the respective end user is responsible

1.9.2. Calls are being made to inflate payments due from Switch, (known as Artificially Inflated Traffic, or AIT).

1.9.3. The income received by Switch is less than the rate given to the Service Provider, (this would not apply should this be caused by a pricing error)

1.9.4. There is repeated calling from the same number, by repeated the parties mean continual or sporadic, or habitual, where it is proven there is a repeated pattern of an origination number dialling a premium rate number

1.9.5. Any traffic which is electronically generated by a computer or some other electronic software, or continually dialled from a human operated call centre.

1.10. '**General Condition 17**' - Condition 17 is concerned with the allocation and use of numbers, and imposes restrictions on the way certain number ranges may be used by providers of networks or services.

1.11. '**PhonePay Plus**' – The Independent Committee for the Supervision of Telephone Information Services, (or any other name by which they become known) or any other independent body appointed for a self or co-regulatory purpose in order to supervise administer and enforce a Code , and is recognised by Ofcom, as an appropriate body to apply and administer that Code.

1.12. **'Intellectual Property Rights'** – copyright, database rights, patents, registered and unregistered design rights, registered and unregistered trade marks, and all other industrial or intellectual property rights or trade secrets existing at any time in any jurisdiction and all rights that shall apply to them.

1.13. **'Inbound Channels'** – Lines used to receive inbound calls to Switch's network.

1.14. **'Internet'** – Global telecommunications network.

1.15. **'National Telephone Numbering Plan'** – A document published by Ofcom (current edition 31<sup>st</sup> May 2007), which sets out the numbers Ofcom has determined are available for allocation as Telephone Numbers in accordance with Section 56(1)(a) of the Act and also sets out such restrictions as that Ofcom considers appropriate on the adoption and other uses of those numbers in accordance with Section 56(1)(b) and (c) of the Act

1.16. **'Ofcom'** – The Office of Communications, the regulator for communications, a statutory body accountable to Parliament, or its successor for material purposes

1.17. **'Port'** – the transfer of a Service Number to a third party under the Telecommunications (Interconnection) Regulations 1997 (whereby, for explanatory purposes only, that other party provides services to the Service Provider in place of Switch) and the words "Ports" and "Ported" shall be construed accordingly.

1.18. **'Rates'** – the rates specified in Annex I, and as varied from time to time, which are the rates per minute or per call payable by either party, and these rates are exclusive of value added tax.

1.19. **'Report'** - is the monthly call statement, produced by Switch and showing call minutes produced on Service Numbers allocated to the Service Provider.

1.20. **'Services'** – are the telecommunication services supplied by Switch hereunder.

1.21. **'Service Numbers'** - Numbers allocated to the Service Provider from time to time, over which the Service Provider shall not acquire any right, title or interest and 'Service Numbers' shall be construed accordingly.

1.22. **'Site'** – Location where services are provided.

## 2. FORMATION OF CONTRACT

2.1. Any error, omission or typographical error in any quotation, offer, sales information, invoice, or document supplied by Switch shall be subject to correction on notice from Switch and without liability.

2.2. Switch may vary any provision in these Terms, without prior consent from the Service Provider, if such change is reasonably required because of any significant regulatory, insurance, safety or statutory changes which become operative after the date of these Terms. Switch shall in such circumstances give the Service Provider 30 days notice of such changes. The Service Provider shall have the right by giving notice in writing to Switch to terminate their service, within 14 days of receiving such notice. Any Agreement would then be terminated within 30 days of such notification.

2.3. Each Order will with these terms comprise a separate contract between the parties unless the order specifies that it is an amendment to an existing contract.

2.4. Where an Order covers more than one Telephone Number each Telephone Number shall be deemed the subject of a separate and severable Agreement.

2.5. Where the Customer's name or, if applicable, company registered number on the Customer Order Form is incorrect or incomplete, the Customer agrees that Switch may treat as being the Customer the individual or organisation that paid the initial service charge for the Services

## 3. RESPONSIBILITIES AND OBLIGATIONS

### 3.1. Switchconnect

3.1.1. Switch shall provide the Service Provider with network service and Service Numbers, but notwithstanding this Switch is not obliged to supply Service Numbers requested by the Service Provider. It may also change numbers supplied to the Service Provider if this is reasonably required for regulatory, statutory or legal reasons, and in such instance shall notify the Service Provider as soon as is reasonably practical. Notwithstanding the above provisions of this clause, Switch shall in the event of the termination of these Terms, not re-allocate for a period of two years to another service provider, any numbers which have been allocated to the Service Provider under these Terms, for a period of six months prior to the termination date. This clause includes Switch agreeing not to allocate such numbers internally for its own services

3.1.2. Switch shall maintain equipment reasonably suitable for handling and terminating calls.

3.1.3. Switch shall notify the Service Provider as soon as reasonably practical, of any changes in rates payable, or modification to the service offered.

3.1.4. Switch shall provide the Service Provider with reasonable technical and sales support, which Switch in its sole discretion shall consider necessary and appropriate.

3.1.5. Switch may from time to time make changes to equipment used to handle calls and provide the service. Such changes are at the sole discretion of Switch, and may be made without prior consent from the Service Provider.

3.1.6. Switch will use its reasonable endeavours to make Service Numbers ready for service, and notify the Service Provider of the Service Numbers by e-mail, prior to the date on which service will commence.

3.1.7. The Services are supplied subject to all limitations of the Telecommunications Network including the risk of imposed prefix or number changes. In particular Switch is unable to guarantee that all overseas systems will be able to access the Customer using the Telephone Number or that telephone keypads will use the same alphanumeric combinations as are currently used in the UK.

3.1.8. All of the aforementioned provisions and obligations on Switch shall be construed with the following in mind, namely (1) The fact that Switch cannot provide, and does not undertake to provide, a fault free service and (2) Under the terms of these Terms Switch is required only to act at all material times with the care, skill and diligence of a reasonably competent supplier of Telecommunication services of the type supplied under these Terms.

## **3.2. Service Provider**

3.2.1. The Service Provider shall ensure that they have all necessary approvals, permissions or authorisations for the services operated through Switch including those offered to its End Users. The Service Provider shall be responsible for the content, quality and delivery of services offered, and for ensuring that these services fully comply with the Code, Mobile Code of Practice, Act, The National Telephone Numbering Plan, General Condition 17, Switch's Numbering Plan and these Terms. Switch may recover from the Service Provider all fines, claims or administrative expenses resulting charged by PhonePay Plus (or any other regulatory body approved by Ofcom, resulting from a breach of the Code. Should any such fines be overturned, Switch will immediately reimburse the Service Provider upon receipt of such funds

3.2.2. The Service Provider shall provide Switch on request with information or material regarding the service operated through Switch, including those offered to its End Users or agents upon and to the extent of any request made by Switch.

3.2.3. The Service Provider shall ensure that Services are not used for any unlawful purpose whatsoever including the transmission or offering of any information or services which are unlawful, abusive, harmful, threatening, defamatory, or which in any way infringe copyright, intellectual property rights, trademarks, or which is illegal pornography, or any other material that may cause offence in any way. In addition, the Service Provider shall ensure that services are not used in contravention of General Condition 17, the National Telephone Numbering Plan, Switch's Numbering Plan or contrary to the acceptable use of Personal Numbers as issued by Ofcom (revised January 2004) and as per General Condition 17.8. For ease of use, a link to the Ofcom Guidance for Personal Numbers is shown here:  
[http://www.ofcom.org.uk/telecoms/ioi/numbers/num\\_070\\_guide](http://www.ofcom.org.uk/telecoms/ioi/numbers/num_070_guide)

3.2.4. The Service Provider specifically agrees to indemnify Switch against all costs and liabilities arising out of all claims which result from, or involve an allegation of, any breach of clause 3.2.3.

3.2.5. The Service Provider shall co-operate with Switch in relation to any complaints, enquiries or investigations regarding services offered by the Service Provider. The Service Provider shall, at the discretion of Switch, without limitation bear half of all costs associated with such complaints, investigations, or enquiries or any action whether or not bought by or against Switch.

3.2.6 The Service Provider shall ensure that any third party using its facilities shall be bound by the terms of these Terms.

3.2.7 The Service Provider is responsible for ensuring that no third party intellectual property right is infringed by its choice of telephone number for a particular service and indemnifies Switch against all costs and liabilities arising out of a breach or allegation of a breach of any such third party's intellectual property rights.

3.2.8 The Service Provider shall ensure it has registered its company details and all relevant information with PhonePay Plus as per Section 3.2.1 of the current PhonePay Plus Code of Practice (the 11<sup>th</sup> Edition and any subsequent section for versions of the Code that may supersede the current version), and that it has paid all necessary financial bonds or any other monies required by PhonePay Plus to enable it to operate in the PRS market. In addition, the Service Provider shall provide Switch with all documentary evidence and proof to confirm it has registered its services and numbers and company details with PhonePay Plus, and should PhonePay Plus advise Switch it has no record of any such registration, Switch reserves the right to suspend these Terms and any Services without notice, or as so required by PhonePay Plus, Ofcom or any other competent legal authority, including any law enforcement agency.

3.2.9 The Service Provider acknowledges the rules and definitions concerning Artificial Inflation of Traffic and shall indemnify Switch for the inappropriate use of its numbers or network by way of AIT which is governed by BT. The Service Provider further warrants that any numbers allocated to it by Switch shall not be used contrary to the rules governing AIT. For the purpose of these Terms the terms and rules which the service provider agrees to provide in relation to AIT is shown at Annex 3.

3.2.10 The Service Provider shall ensure it has sufficient financial and human resources to enable it to discharge its obligations under the Code of Practice. This is a requirement of the PhonePay Plus Code of Practice

3.2.11 The Service Provider shall ensure it has a published consumer refund policy and that it is reviewed and updated from time to time and copies of this policy must be provided on request.

3.2.12 The Service Provider shall ensure it has a sufficient Customer Service function to enable it to process and handle any consumer enquires as necessary. This function must be accessible via a Non Premium Rate telephone number.

3.2.13 The Service Provider shall ensure it's customers have copies of and are made aware of the PhonePay Plus Code of Practice and/or Mobile Code of Practice

3.2.14 The Service Provider shall ensure it has made notification to the office of the Information Commissioner under the Data Protection Act 1998 and must in their notification disclose PhonePay Plus as a potential recipient of personal data and state that data collected from service users may be used by PhonePay Plus for regulatory purposes

3.2.15 Service providers must not engage or permit the involvement in the provision of premium rate services of any service provider and/or associated individual in respect of whom a sanction, which has been published, has been imposed under paragraphs 8.7.2f or 8.7.2g of the PhonePay Plus Code of Practice so as to enable the service provider and/or associated individual to operate in breach of that sanction.

3.2.16 The Service Provider, by accepting these Terms, shall take all reasonable steps to ensure all of their clients or customers fully comply with the obligations set out in detail in this Paragraph 3 of these Terms.

3.2.17 The Service Provider must ensure their clients or customers are aware of these obligations and shall also ensure that in the case of where numbers from the 'Personal Number Services' range are allocated, that revenue share with end users is forbidden. Details of these obligations are shown in Annex 4 of these Terms

#### **4. ASSIGNMENT & NOVATION PhonePay Plus and the Contracts (Rights of Third Parties) Act 1999**

4.1. The Service Provider shall not assign the rights and obligations of these Terms to any other party without

the express permission in writing of Switch which Switch may or may not grant at its sole discretion

4.2. Switch may assign the rights and obligations of these Terms (including for the avoidance of doubt the right given to PhonePay Plus pursuant to the clause 4.3 hereof) to any third party without the prior consent of the Service Provider;

4.3. In conformity with the requirement set out in paragraph 2.3.2 b of the Eleventh Edition of the PhonePay Plus Code the parties hereby agree that for the purpose of Section 1 of the Contracts (Rights of Third Parties) Act 1999 PhonePay Plus may in its own right enforce any term of these Terms and have the powers of enforcement provided by clause 1(5) of the Contracts (Rights of Third Parties) Act 1999 thereof.

## **5. PROVISION OF SERVICES AND WARRANTIES**

5.1. Switch cannot provide a fault free service. Switch gives no warranty that its network or services shall be continuous, or will be free from faults. Switch will, however, take steps to ensure its network and services are reasonably fault free, and that service is reasonably uninterrupted.

5.2. In addition to clause 5.1, Switch gives no warranty or guarantee that the service is satisfactory or suitable for the Service Provider's purposes, or that the Services shall be uninterrupted or fault free.

5.3. The parties acknowledge that no representations, warranties or statements made prior to concluding these Terms forms any part of the contract, nor has induced either party.

5.4. The Service Provider acknowledges that:

5.4.1. No representation, warranty or statement other than that detailed in these Terms, forms any part of a Contract, nor has induced the Service Provider to use Switch.

5.4.2. The service provided by Switch was not designed for the Service Provider's individual requirements, and it is up to the Service Provider to decide if the service provided by Switch is of satisfactory quality and fit for the purpose for which it is used

5.4.3. Switch is reliant on a third party for delivery of Inbound Channels, and therefore Switch can have no liability of whatever nature for any delay or any other shortcomings in provision of the same. .

5.5. In the event that the Service Provider wishes to provide its own equipment, or provide leased lines to connect to its equipment, this shall require the prior consent of Switch, and mutual Agreement of charges that the Service Provider shall pay to Switch. If so agreed, the Service Provider is solely responsible for any costs, without limitation, to include, the installation, delivery and maintenance of the same, and Switch can have no liability whatsoever for any lines or equipment provided at the Site by the Service Provider.

## **6. SERVICE/TERMINATION FEES**

6.1. Switch shall invoice the Service Provider for the Service Fees in accordance with the applicable Price List (or monthly in advance if the Price List does not specify invoicing periods). Such invoice shall take account of any applicable Service Credits.

6.2. The Service Provider shall pay Switch's invoices within the agreed terms (fourteen (14) days for call charges and within thirty five (35) days for supplemental payments) of the invoice date in full without any set-off, deductions or withholding. Credit terms are only applicable upon Service Provider successfully being granted credit terms. Failure to pay within the terms set out in this Agreement and relevant Service Terms may result in additional charges being applied. Switch reserve the right to charge administration fees. Credits terms will be withdrawn from Service Providers who are outside of their minimum contract terms.

6.3. All sums in this Agreement are stated exclusive of VAT and the Service Provider shall pay the same.

6.4. Without prejudice to its other rights or remedies, Switch shall be entitled, at its sole discretion, to suspend any or all of the Services in the event that: (a) the Service Provider fails to make payment of any sum payable in accordance with this Agreement by the due date; or (b) the End User fails to make payment of any sum payable in accordance with this Agreement or any Service Terms by the due date, provided always that in the case of (a) and (b) above Switch will use reasonable endeavours to provide the Service Provider or End User (as applicable) with (where possible) not less than three (3) days. notice thereof. Upon receipt of the overdue amounts, in full or rectification of the breach (as the case may be), Switch shall

reinstate the suspended Services but reserves the rights to charge a reasonable administration fee to cover any costs incurred before so doing. For the avoidance of doubt, Switch shall be entitled to continue to charge Service Fees during any period of suspension.

6.5. Switch shall be entitled to vary Service Fees for a Service upon not less than one (1) months notice effective at any time on or after the end of the relevant Minimum Term.

6.6. Notwithstanding any other term of this Agreement, Switch may, on serving the Service Provider not less than one (1) months written notice at any time revise the Service Fees for a Service in the event that regulatory changes in the UK telecommunications market increase Switch's cost base in providing such Services. This revision will be equivalent to the percentage by which the new tariffs have been revised as compared to the previously effective tariffs.

6.7. All payments to be made via a valid debit card. Card details will be safely held in an encrypted database in a secure location. Future payments will be taken on the due date or within three (3) working days from the due date. By providing your card details you are authorising recurring payments.

## **7. RATES & PAYMENTS**

7.1. Payments shall be made as follows:

7.1.1. Where a revenue share payment is due, Switch shall pay the Service Provider for all call minutes generated according to the Rates agreed (subject to clause 7.2) the total amount of which will be set out in the monthly report or Advice Note.

7.2. Switch may at any time vary the rates charged for services and calls or revenue payments given. Your current rates are available from your account manager. Switch shall give the Service Provider 30 days written notice of such change, unless the rate variation has been imposed as specified in clause 7.3

7.3. Switch may at any time, be issued with a notice of rate variation which is imposed on it by BT, or any other carrier. In any such notice of variation, the change of rates may be retrospective or immediate. By accepting these Terms the Service Provider accepts that the rate change shall take immediate effect upon receipt of written notice by Switch, and the 30 day notice terms as described in clause 7.2 or elsewhere in these Terms will not be applicable.

7.4. In the event that any sums due to Switch under these Terms are not paid by the due date then Switch shall be entitled to charge interest at 2% over the base rate of Barclays Bank (or any other bank that the parties may agree from time to time), in force at the time being. Full details on how the rate is calculated and applied can be obtained by writing to the Financial Director of Equinet Technologies Limited.

7.5. Switch shall send the Service Provider a monthly report within 10 days from the end of the month in which the traffic was generated. The Service Provider must send Switch an invoice for the amount detailed in the Report, no later than 30 days from the end of the month in which the traffic was generated. Switch shall make payment to the Service Provider 45 days from the end of the month in which the traffic was generated. If the Service Provider fails to deliver an invoice within 30 days of the month end then payment will be made 30 days after invoice is received. Claims not made within 12 months will be void.

7.5.1. Revenue payment will only be paid to a minimum invoice value of £50 and will rollover monthly until the minimum amount is attained.

7.5.2 Switch shall be entitled to offset charges due to Switch against revenue payments due to the customer.

7.6. All rates in the monthly reports shall be exclusive of all taxes or duties.

7.7. In the event that Ofcom, or any other regulatory body, or BT plc or any other Carrier with which Switch contracts make retrospective price adjustments to revenues paid to Switch, which result in Switch having overpaid the Service Provider, then Switch at its sole discretion and without prejudice to Switch's rights to reclaim such overpayment from the Service Provider, may deduct from subsequent payments to the Service Provider, sufficient revenues to reflect the sums overpaid to the Service Provider.

7.8. The Service Provider's Call Minutes shall be calculated according to data logged by Switch which shall be accepted, except in the case of manifest error, as being conclusive for the determination of revenues due

to the Service Provider.

7.9. Switch shall at its sole discretion, not pay any fees to the Service Provider for Call Minutes generated on Service Numbers allocated in the following circumstances;

7.9.1. Where Switch reasonably suspects there has been Fraud Traffic, and it shall be accepted that Switch's decision (at its sole discretion) shall be final and binding.

7.9.2. Where BT plc, or any other Carrier with which Switch contracts, does not pay Switch for traffic generated.

7.9.3. Where PhonePay Plus or Ofcom (or any other regulator or authorised body) considers or suspects the services operating on the Service Provider numbers to be in breach of the PhonePay Plus Code of Practice, or is contrary to the National Telephone Numbering Plan

7.10. Switch may deduct any sum owed to Switch by the Service Provider, from any sum due to Service Provider. Switch may on direction from any regulatory or governmental body, withhold any sum owed to the Service Provider to cover fines, claims or administrative expenses due to any person from the Service Provider under these Terms or otherwise.

7.11. Switch reserves the right to impose a charge or reclaim and terminate the provision of services through any Service Number that produces less than 25 minutes per month for any consecutive 4 month period. The charge for each applicable number shall be £1. Any such numbers which Switch wishes to reclaim instead of imposing a charge, shall be reclaimed and the service terminated upon Switch giving the Service Provider 14 days notice

7.12. If during or after the period while these Terms remains in force, the Service Provider Ports any of Switch's numbers, then the Service Provider shall pay Switch such sums as are reasonably required by Switch to replace the switching capacity utilised in Switch's network by the use of such ported numbers. The Service Provider shall, without prejudice to the foregoing, replace such Ported Switch numbers, with numbers that do not utilise the Switch network, as soon as is technically and commercially practical after Switch Ports such telephone numbers and in any event within 7 calendar days of any request from Switch.

## **8. Refund Policy**

8.1. Switch may provide refunds when the following clauses are met :-

8.2. Unless we say otherwise, we will only make a refund either to the person named on the credit card, or to the person who paid for the services.

8.3. You must, if you want a refund, state your reasons and prove to us that you are the person named on the credit card or, if this applies, the person who paid for the services.

8.4. If the services have been paid for by someone other than the person named on the credit card, we will only make the refund to the person who paid for the services.

8.5. We may refuse a refund if more than 30 days has elapsed since the services were purchased.

8.6. We will pay you a refund in the same way and in the same currency that you used to pay for the services, unless we agree otherwise. For example, if you paid in GB pounds by credit card, we will make a refund in GB pounds to your credit card account. Your statutory rights are not affected

8.7. In the event the Customer terminates the Agreement in accordance with the due notice period, Switch shall refund to the Customer the retainer less any sums that are due to Switch together with any sums which are not recoverable from any subcontractor or other third party as will have been paid by Switch in connection with the Services less than ten (10) percent of the total sum to be returned by means of a cancellation charge.

## **9. AUDIT**

9.1. The Service Provider may at its own expense, and after giving 14 days written notice, inspect the relevant books of Switch to audit revenues due to the Service Provider. Such audit shall only be made in regard to the traffic due to the Service Provider only, and shall only be undertaken by a Chartered

Accountant, in a manner that shall not disrupt Switch's business.

9.2. The Service Provider shall have no audit rights with respect to BT plc or with any other telecommunication carrier with whom Switch contracts.

## **10. INTELLECTUAL PROPERTY RIGHTS**

10.1. All Intellectual Property Rights owned by one party shall remain vested in such party, and for clarity, and avoidance of doubt;

10.1.1. The Intellectual Property Rights of the Service Numbers shall be vested in - Switch;

10.1.2. Equipment provided at the Site (unless purchased by the Service Provider), all rights of any nature, trade name, documents, drawings and information including any access codes provided to the Service Provider, and information in Switch's database accessed by the End Users and the Service Provider remain vested in Switch;

10.1.3. Information provided to the Service Provider by Switch pursuant to these Terms, pertaining to the Service Provider's End Users is the property of the Service Provider.

10.2. The Service Provider shall not use Switch's name, trademarks, or copyrights in any way that implies any approval or connection with the services or products offered by the Service Provider.

## **11. CONFIDENTIALITY**

11.1. During and after the period while these Terms remains in force, both parties shall not disclose to any third party the information gained in connection with these Terms, nor the terms and payments due, but each of the parties may disclose to its officers and employees such information as may be required for them to fulfil their proper performance of their duties, and may be used in the proper exercise of its respective rights and obligations under these Terms.

11.2. The obligations of confidence, and restrictions on disclosure shall not apply in the following circumstances;

11.2.1. where such information was already known prior to these Terms and it is acknowledged in writing by both parties this knowledge was known prior to these Terms

11.2.2. Where such information was already in the public domain, save as a result of a breach of Clause 11.1.;

11.2.3. where a third party, who did obtain the same from the disclosing party, disclosed such information to it lawfully; or

11.2.4. Where disclosure is required by law.

11.3. The Service Provider shall ensure that the confidentiality provisions of these Terms bind all its employees and agents and shall indemnify Switch against loss or damage suffered as a result of a breach of confidence by any employees or agents.

11.4. Switch shall have the unconditional and irrevocable right to disclose the identity and address of the Service Provider and any End User in the event of any complaint received from any regulatory or governmental body, law enforcement agency, PhonePay Plus or BT plc, or any licensed telecommunications carrier, in connection with services offered by the Service Provider.

## **12. LIMITATION OF LIABILITY**

12.1. Switch shall not be liable for any indirect, incidental, special or consequential damages or for interrupted communications, lost data, or loss of profit, or economic loss arising out of or in connection with these Terms and in particular shall not be liable for any delay in rectification of any such problem.

12.2. Switch shall not be liable for negligence except for death or personal injury caused by its negligence or that of its officers or employees except where such negligence is determined by a competent authority to be wilful.



12.3. Except as otherwise stated the Service Provider's sole remedy for any disruption of service shall at Switch's sole discretion be;

12.3.1. Correction in a reasonable timescale of any fault;

12.3.2. Replacement of service supplied.

12.4. Direct damages caused as a result of Switch's breaches of these Terms shall be limited to the previous 1 months revenue generated by the Service Provider, and received by Switch, but shall not exceed £20,000.

12.5. Switch shall have no liability to the Service Provider in respect of any demand or claim where;

12.5.1. The demand or claim arises as a result of the Service Provider's negligence, misconduct or breach of these Terms

12.5.2. If the Service Provider does not immediately notify Switch of any claim

12.5.3. If the Service Provider does not give Switch full authority to deal with the claim, or does not provide all information requested by Switch and complete and proper co-operation for Switch to defend the claim.

### **13. INDEMNITY**

13.1. Without prejudice to any other indemnity for the benefit of Switch referred to in this or any other Agreement between the parties, the Service Provider agrees to indemnify Switch and its parent, subsidiaries, affiliates, officers and employees against any claim or demand, including any made by a third party, arising out of the Service Provider's or End User's use of the service and all costs relating thereto. The Service Provider agrees not to hold Switch and its parent, subsidiaries, affiliates, officers and employees responsible for any direct or indirect damage resulting from the use of Switch software or Services, in particular, but not limited to; the use or impossibility to use the Service, confidence in information obtained, errors and omissions, defects, viruses, delay in transmission, interruption of service or loss of data.

13.2. The Service Provider agrees to indemnify Switch, and its parent, subsidiaries, affiliates, officers and employees against any claim or demand, arising from any act of the Service Provider or third party including but not limited to:

13.2.1. A breach or allegation of breach of the conditions of these Terms

13.2.2. Negligence, misconduct or any allegation of negligence or misconduct by the Service Provider or by any third party

13.2.3. The marketing or promotion undertaken by or on behalf of the Service Provider

13.2.4. The service content provided or marketed by or on behalf of the Service Provider, and all costs relating thereto.

### **14. TERM & TERMINATION**

14.1. These Terms shall commence on the date hereof and thereafter shall continue for an indefinite period, but for a minimum of twelve (12) months, until terminated by either party in accordance with either clause 13.2, 13.3, 13.4 or 13.5.

14.2. Either party shall be entitled to terminate these Terms by giving to the other not less than One (1) months notice of termination, such notice may be served to expire on the expiry of either the minimum twelve month period or at any time thereafter, otherwise the minimum period of the contract becomes 13 months.

14.3. Switch may terminate these Terms with immediate effect by giving notice at any time, if;

14.3.1. The Service Provider does not comply with the terms of these Terms

14.3.2. The Service Provider says, that it will not abide by the terms of these Terms

14.3.3. Switch has reasonable suspicion the Service Provider will not abide by the terms of these Terms

14.3.4. The Service Provider ceases trading, convenes a meeting of, or comes to an arrangement with its creditors, has distress or other seizure levied over any of its assets or does not satisfy any demand for payment from any legal person;

14.3.5. Any step is taken to wind up or dissolve the Service Provider, a receiver, and/or manager or administrator appointed over any assets

14.3.6. Switch believes and has reasonable grounds for suspicion, the Service Provider has allowed services to be used for any unlawful purpose or any use prohibited by these Terms; or

14.3.7. Switch or the Service Provider, is instructed by, or receives any complaint or objection from BT PLC, any Carrier with whom it Contracts, Ofcom, or regulatory or governmental body (including but not limited to for example the rules governing AIT contained in Annex 3 of these Terms.)

14.3.8. The Service Provider becomes insolvent

14.3.9. Either party may terminate these Terms if

14.3.10. Either party has committed a breach of these Terms, and fails to remedy the breach within 30 days of notice requiring it to do so, and

14.3.11. Either party takes any steps to wind up or dissolve, or a receiver and/or manager or administrator is appointed over any assets

14.4. Termination shall be without prejudice to the rights and obligations accruing up to and including the date of termination.

## **15. GENERAL**

15.1. These Terms represents the entire understanding between the two parties. No other prior arrangements, representations or understandings, orally or in writing shall have any validity.

15.2. Switch's rights and powers under these Terms are not affected if it fails to or chooses not to enforce any of them at any time. If any part of these Terms is not enforceable it will not affect the remainder.

15.3. The parties must notify each other in writing of any change of address. All notices sent by first class post to the registered office of either party, or any address detailed in these Terms, are deemed to have been properly served on the third day after posting.

15.4. Neither party shall be deemed to be in breach of these Terms for any failure in performance (except performance of the obligation to pay any sum) caused by any matter or event outside of their reasonable control, to include, but not limited to any act of god, inclement weather, storm, flood, drought, lightning, fire, power failure, shortage of power, disturbance to power supplies, disconnection damage or disturbance to telecommunications connections and cables, trade dispute, government action, embargoes, termination of or refusal to grant a licence, damage to or loss of equipment or interruption, failure or delay in any service provided to us by any third party including governmental or regulatory authority or telecommunications operator, war, military operations, or riots.

15.5. No variation of these Terms or waiver hereunder shall be effective unless agreed in writing by Switch.

15.6. English Law applies to these Terms. Both parties hereby submit to the exclusive jurisdiction of the English Courts.

15.7. Both parties agree that they have no joint venture, partnership, or agency relationship as a result of these Terms. Neither party shall make any offer, guarantee, or warranty to any third party, in regard to the services, that purports to bind the other party.

15.8. Switch may require a variation to the terms and conditions of the Agreement if so required by legislation, the Operator, Ofcom, PhonePay Plus or any similar authority.

## **16. TECHNICAL SUPPORT**

16.1. Switch may without liability, prior warning or consent of the Service Provider, suspend the Services, in the event that it wishes to carry out maintenance, upgrade works, or back-ups. Switch will take steps to keep any consequent disruption to the service to a reasonable minimum.

16.2. In the event that the Service Provider becomes aware of any faults with the service, it shall notify Switch as soon as is practicably possible.

## **Appendix 1**

### ***Not Allowed***

**Any material which is in breach of UK Criminal Law**

### ***18 Content***

**1B. Sale or promotion of age 18 restricted products e.g. alcohol, gambling services, sex toys.**

**2B. Editorial material taken from other 18/adult sources such as 18/adult rated films, UK top shelf/adult sex magazines etc...**

**3B. Actual or realistic depictions of sex or sexual activity,**

**4B. Video clips which involve a higher degree of sexual context than in categories 1A, 2A and 3A. Images displaying views of the pubic area, vagina or penis – both frontal and rear views.**

**5B. Full frontal nudity**

**6B. Bet placing services and other licensed gambling activities**

**7B. Games rated under the PEGI system as 18/adult e.g. Featuring realistic depictions of violence, sex etc**

**8B. Un-moderated chat and dating chat services.**

**9B. Editorial material showing graphic violence which is 18 age restricted in other media or using foul language that would be required to be broadcast after the TV watershed.**

### ***UNRESTRICTED CONTENT***

**1A. Postcard humour, cartoons, pictures. (As found in 2A, 3A and 4A).**

**2A. Editorial material, which has been or which would be published in UK tabloid or other newspapers freely sold without restriction.**

**3A. Editorial material which has been or which would be published in UK editions of 'middle shelf magazines'.**

**4A. Video clips of a non sexual nature or of a nature reflecting a similar degree of sexual context found in editorial material in categories 2A and 3A.**

**5A No obvious views of pubic area, vagina or penis. Single person nudity not in 5B.**

**6A. Ring tones or logos other than where the content is 18. Betting tip services.**

**7A. Games rated below 18/adult.**

**8A. Moderated chat services, apart from the exclusions in 8b (note: Premium Rate live chat services are only available to 16's and above under the PhonePay Plus Code]**

**9A. Material including violence which would be editorially acceptable in other media e.g. TV or print news.**

**Rule of primacy:** In the event that Service Provider is uncertain under which classification to place a particular content item the most restrictive classification should apply – for example, if there is uncertainty over whether content should be classified as ‘UNRESTRICTED’ or ‘18 CONTENT’ it should be classified as the latter.

## **Annex 1 – Rates and Charges**

**Our current tariff will apply as follows (excluding VAT)**

### **Set up Charges**

- **Standard Rated Number £ 0.00**
- **Silver Rated Number £ 50.00**
- **Gold Rated Number £ 150.00**
- **Platinum Rated Number £ 500.00+**

**Annual Service Fee for each number £ 50.00**

### **Specialist Service Set Up Fee**

- **IVR application £ 150.00**

### **Ongoing Fees**

- **Monthly Charges £**
- **Annual Charges £**

**Costs in pence per minute excluding VAT**

Number Type	Peak Mon - Fri 08:00 – 18:00	Off Peak Mon – Fri 18:00 – 08:00	Weekend Sat – Sun 00:00 – 00:00
Geographic Number	2.0ppm to UK landline	2.0ppm to UK landline	2.0ppm to UK landline
Freephone Number	3.5ppm to UK landline	2.75ppm to UK landline	2.5ppm to UK landline

**Revenue Shares excluding VAT if routing to a UK landline; Charges will apply to mobile or international destinations.**

Number Type	Peak Mon - Fri 08:00 – 18:00	Off Peak Mon – Fri 18:00 – 08:00	Weekend Sat – Sun 00:00 – 00:00
0844 (5p range)	0.4ppm	1.0ppm	1.1ppm
0845	No Revenue Share	No Revenue Share	No Revenue Share
0870	2.5ppm	0.5ppm	No Revenue Share
0871 (10p range)	4.50ppm	4.9ppm	5.0ppm
Permium Rate	Service and tariff dependant	Service and tariff dependant	Service and tariff dependant

## **Annex 2**

### **Subscription Services**

#### **What is a subscription service?**

- Recurring service initiated by a sign-on process
- Scope – all services billed by a mobile payment mechanism – not just SMS services
- The result of a single sign-on process is one single subscription service, and rules apply for each single

subscription service

### **Advertising & Promotional Requirements**

- Promotional material for subscription services must clearly indicate that the service is subscription based
- Subscription services terms of use (e.g. whole cost pricing, opt-out) information must be clearly visible. PhonePay Plus will clarify minimum requirements
- Wherever stop instructions are displayed, the information provided must advertise the generic STOP command, including additionally service specific stop commands, i.e. "stop polytones"

### **What are the Operational Requirements?**

- The initiation of any form of subscription service should result in an SMS sent to the customer's handset which contains the following information:
  - Name of service
  - That the service is subscription based
  - What the billing period is (i.e. per week or per month)
  - How much the user will be charged for that billing period
  - How to terminate the service (including the universal STOP command)
  - Service operator contact details
- These points should be in the **first message(s)** sent to the customer **before any promotional content**. They may be in a free-to-receive message(s) or in the first of any billing messages.

### **Service <= 50p including VAT**

- At least once a month the cost per message (including VAT) is advised. This may be at the end of a service message, i.e. 'FA Premiership Result – Portsmouth 3, Chelsea 0. Each text costs 25p'

### **Service > 50p including VAT**

- At least once per month the following information shall be sent to subscribers:
  - Name of service,
  - That the service is subscription based
  - What the billing period is (i.e. per week or per month)
  - How much the user is charged for that billing period
  - Service operator contact details
- These points should be in the first message(s) sent to the customer, and must be before any promotional content. This may be a free-to-receive message or the first of any billing messages.

### **STOP Command Reminders**

Subscription service users must be sent a reminder of the STOP command. The frequency is determined by the cost of the service.

### **Service designed to cost >£20**

- Service operator must send a stop command reminder every time the spend reaches £20 since last stop command reminder.

### **Service designed to cost <£20 per month**

- Service operator may choose to send the stop command reminder every month instead of when £20 has been spent

### **Examples of services “designed to cost” >/<£20**

- A £1.50 daily horoscope service is designed to cost more than £20 per month
- A 25p football alert service which could theoretically exceed £20 in a month is not a service designed to

cost more than £20 per month

- The STOP command reminder may be added to monthly subscription reminder messages
- Service operators may discharge their responsibility on STOP command reminders by including the STOP command in every service message
- Subject to prior permission from PHONEPAY PLUS, service operators may offer the facility for consumers to choose to opt out of the spend reminder for specific services.

### **Annex 3**

#### **Definitions and Responsibilities under BT Annex E – Artificial Inflation of Traffic**

##### **1. Definitions**

In this Annex, a reference to a paragraph or Appendix, unless stated otherwise, is to a paragraph or Appendix of this Annex. Words and expressions have the meaning given in Annex D, except as shown below:

**“Originating Network Operator”** the Party from whose System the Call to a Revenue Share Service is handed over to the System of the other Party who acts as Terminating Network Operator or as Transit Operator;

**“Partial CLI”** sufficient initial digits of the telephone number of the Calling Party to identify the operator holding the Number Range;

**“Terminating Network Operator”** the Party operating the Revenue Share Service to whom a Call is handed over from the Originating Network Operator or the Transit Operator;

**“Third Party Originating Network Operator”** for transit, a Third Party on whose system a Call to a Revenue Share Service is originated, and whose system hands over such Call to a Party acting as Transit Operator for conveyance to the Terminating Network Operator;

**“Third Party Terminating Network Operator”** for transit, a Third Party Operator operating a Revenue Share Service to whom a Call is handed over from a Party acting as Transit Operator, which Call is handed over from the System of the other Party as Originating Network Operator;

**“Transit Operator”** The Party who either receives Calls from the other Party to hand over to a Third Party Terminating Network Operator, or who hands over Calls to the other Party which have been received from a Third Party Originating Network Operator.

##### **2. General**

2.1 The Parties shall use reasonable endeavours to detect, identify, notify and prevent AIT, both singly and co-operatively, in accordance with paragraph 14A of the main body of these Terms and this Annex.

2.2 If a Party undertakes technical development in relation to Revenue Share Services, the Party shall reasonably enhance the facilities for the prevention and detection of AIT.

2.3 Where information is passed between the Parties under this Annex E it shall be delivered on a Working Day between the hours of 09.00 and 17.00, or it shall be deemed to have been delivered on the succeeding Working Day.

##### **3. Operational Liaison – Terminating Network Operator (Non-Transit)**

3.1 If a Terminating Network Operator suspects AIT taking into account, but not limited to, the criteria specified in Appendix E1 it shall as soon as reasonably practicable pass to the Originating Network Operator the following information:

3.1.1 The estimated total duration of the relevant Calls;

3.1.2 The dates when the relevant Calls were made;

3.1.3 The telephone number/s of the relevant Revenue Share Service, and the Partial CLI, if available, of the Calling Centre;

3.1.4 Such other information as the Terminating Network Operator considers relevant; and

3.1.5 Such other information reasonably requested by the Originating Network Operator.

3.2 If requested in writing by the Originating Network Operator in accordance with the procedures in the AIT Manual, the Terminating Network Operator may provide to the Originating Network Operator information relating to the identity of the Calling Centre and/or the identity of the Revenue Share Service concerned.

#### **4. Operational Liaison – Terminating Network Operator (Transit)**

4.1 For transit, if a Transit Operator receives Calls from a Third Party Originating Network Operator and hands over such Calls to the Terminating Network Operator:

4.1.1 the Terminating Network Operator shall pass any relevant information referred to under paragraph 3.1 relating to Calls originating from a Third Party Originating Network Operator as soon as reasonably practicable to the Transit Operator, and shall use reasonable endeavours to pass such information as soon as reasonably practicable direct to the Third Party Originating Network Operator;

4.1.2 The Transit Operator shall pass information received pursuant to paragraph

4.1.1 as soon as reasonably practicable to the Third Party Originating Network Operator;

4.1.3 If requested in writing by the Third Party Originating Network Operator in accordance with the procedures in the AIT Manual, the Terminating Network Operator may provide to the Third Party Originating Network Operator information relating to the identity of the Calling Centre and/or the identity of the calling Customer concerned.

#### **5. Operational Liaison – Originating Network Operator (Non-Transit)**

5.1 If an Originating Network Operator suspects AIT taking into account, but not limited to, the criteria specified in Appendix E1 it shall as soon as reasonably practicable pass to the Terminating Network Operator the following information:

5.1.1 The estimated total duration of the relevant Calls;

5.1.2 The dates when the relevant Calls were made;

5.1.3 The telephone number/s of the relevant Revenue Share Service, and the Partial CLI, if available, of the Calling Centre;

5.1.4 Such other information as the Originating Network Operator considers relevant; and

5.1.5 Such other information reasonably requested by the Terminating Network Operator.

5.2 If requested in writing by the Terminating Network Operator in accordance with the procedures in the AIT Manual, the Originating Network Operator may provide to the Terminating Network Operator information relating to the identity of the Calling Centre and/or the identity of the calling Customer concerned.

#### **6. Operational Liaison – Originating Network Operator (Transit)**

6.1 For transit, if a Transit Operator receives Calls from the Originating Network Operator and hands over such Calls to a Third Party Terminating Network Operator:

6.1.1 the Originating Network Operator shall pass the relevant information per paragraph 5.1 relating to Calls to a Revenue Share Service of the Third Party Terminating Network Operator as soon as reasonably practicable to the Transit Operator, and shall use reasonable endeavours to pass such information as soon as reasonably practicable direct to the Third Party Terminating Network Operator;

6.1.2 The Transit Operator shall pass information received pursuant to paragraph

6.1.1 as soon as reasonably practicable to the Third Party Terminating Network Operator;

6.1.3 If requested in writing by the Third Party Terminating Network Operator in accordance with the procedures in the AIT Manual, the Originating Network Operator may provide to the Third Party Terminating Network Operator information relating to the identity of the Calling Centre and/or the identity of the calling Customer concerned.

## **7. Restriction on Use of Information**

7.1 Any information passed between the Parties in accordance with paragraphs 3 through 6 shall only be used for the following purposes:

7.1.1 To monitor, prevent or detect AIT;

7.1.2 To assist the investigation of AIT and to undertake any associated criminal prosecutions;

7.1.3 To undertake civil proceedings to effect recovery of losses resulting from AIT.

7.2 In a transit situation the Party who acts as a Transit Operator shall ensure that information from the other Party as Originating Network Operator or Terminating Network Operator is only passed on to a Third Party Originating Network Operator or Third Party Terminating Network Operator under provisions which are equivalent to this paragraph 7.

## **8. Nominated Parties**

8.1 Any information required to be passed between the Parties in accordance with paragraphs 3 through 6 shall be collated by the nominated representative of one Party and sent to the nominated representative of the other Party in accordance with the AIT Manual.

8.2 The Parties shall nominate representatives in respect of operational liaison under paragraphs 3 through 6 and to deal with the withholding of payments under paragraphs 9 through 11. Each Party shall immediately notify the other of any changes to such representatives in accordance with the AIT Manual.

## **9. Withholding of Payment – Non-Transit**

9.1 If an Originating Network Operator:

9.1.1 having passed information to, or received information from, the Terminating Network Operator in accordance with paragraphs 3 and/or 5, and

9.1.2 Having reasonable grounds to suspect AIT in the case of the identified Calls, gives written notification to the Terminating Network Operator of the intention to withhold payment relating to the current Billing Period in accordance with the AIT Manual, then subject to such notification having been passed to the Terminating Network Operator not later than 14 calendar days from the end of such Billing Period, the Originating Network Operator may withhold payment for the identified Calls.

9.2 The Originating Network Operator shall take all reasonable steps to recover any outstanding charges for the origination of Calls affected by such withheld payment. If the Originating Network Operator receives payment from its Customer at any time in respect of the identified Calls, it shall immediately pass the appropriate termination element of any payment it receives to the Terminating Network Operator.

9.2.1 If an agent or sub-agent of the Originating Network Operator has received bona fide payment for the origination of Calls affected by such withheld payment, for the purposes of this paragraph 9, the Originating Network Operator shall be deemed to have received appropriate payment for those Calls unless an AIT situation exists concerning such Calls.

9.3 If at any time during the period of six months commencing on the date of the first invoice following the end of the Billing Period referred to in paragraph 9.1 the Originating Network Operator ceases to have reasonable grounds to believe that the Calls are the result of AIT, the Originating Network Operator shall immediately pay the amount of such withheld payment to the Terminating Network Operator. If the Originating Network Operator fails to pay such withheld payment within five Working Days, the Terminating Network Operator shall be entitled to interest at the Default Interest Rate with effect from the date such



reasonable grounds cease.

9.4 If after the period of 6 months specified in paragraph 9.3 (or such lesser period agreed by the Parties) the Originating Network Operator has not received payment from its Customer and the Originating Network Operator continues to have reasonable grounds to believe that the Calls are the result of AIT, the Originating Network Operator shall so notify the Terminating Network Operator, and:

9.4.1 The Terminating Network Operator shall immediately release the Originating Network Operator from the obligation to pay such withheld payment; and

9.4.2 The Originating Network Operator shall, at the option of the Terminating Network Operator, assign (at no cost) to the Terminating Network Operator the indebtedness of the relevant Customer.

## **10. Withholding of Payment – Originating Network Operator and Transit Operator**

10.1 If an Originating Network Operator:

10.1.1 having passed information to, or received information from, the Transit Operator in accordance with paragraphs 4 and/or 6, and

10.1.2 Having reasonable grounds to suspect AIT in the case of the identified Calls, gives written notification to the Transit Operator of the intention to withhold payment relating to the current Billing Period in accordance with the AIT Manual, then subject to such notification having been passed to the Transit Operator not later than 14 calendar days from the end of such Billing Period, the Originating Network Operator may withhold payment for the identified Calls.

10.2 The Originating Network Operator shall take all reasonable steps to recover any outstanding charges for the origination of Calls affected by such withheld payment. If the Originating Network Operator receives payment from its Customer at any time in respect of the identified Calls, it shall as soon as reasonably practicable pass the appropriate transit and termination elements of any payment it receives to the Transit Operator.

10.2.1 If an agent or sub-agent of the Originating Network Operator has received bona fide payment for the origination of Calls affected by such withheld payment, for the purposes of this paragraph 10, the Originating Network Operator shall be deemed to have received appropriate payment for those Calls unless an AIT situation exists concerning such Calls.

10.3 If at any time during the period of six months commencing on the date of the first invoice following the end of the Billing Period referred to in paragraph 10.1 the Originating Network Operator ceases to have reasonable grounds to believe that the Calls are the result of AIT, the Originating Network Operator shall immediately pay the amount of such withheld payment to the Transit Operator. If the Originating Network Operator fails to pay such withheld payment within five Working Days, the Transit Operator shall be entitled to interest at the Default Interest Rate with effect from the date such reasonable grounds cease.

10.4 If after the period of 6 months specified in paragraph 10.3 (or such lesser period agreed by the Parties), the Transit Operator has not received payment from the Originating Network Operator and the Originating Network Operator continues to have reasonable grounds to believe that the Calls are the result of AIT, the Originating Network Operator shall so notify the Transit Operator, and:

10.4.1 the Transit Operator shall release the Originating Network Operator from its obligation to pay such withheld payment to the Transit Operator, subject to the Transit Operator having been released from the associated obligation to pay the Third Party Terminating Network Operator; and

10.4.2 The Originating Network Operator shall, if so directed by the Transit Operator, assign (at no cost) to a Third Party Terminating Network Operator nominated by the Transit Operator the indebtedness of the Originating Network Operator Customer.

## **11. Withholding of Payment – Terminating Network Operator and Transit Operator**

11.1 If a Transit Operator:

11.1.1 having passed information to, or received information from, the Terminating Network Operator in accordance with paragraphs 4 and/or 6, and

11.1.2 Having reasonable grounds to suspect AIT in the case of the identified Calls,

11.1.3 gives written notification to the Terminating Network Operator of the intention to withhold payment relating to the current Billing Period, then subject to such notification having been passed to the Terminating Network Operator not later than 14 calendar days from the end of such Billing Period, the Transit Operator may withhold payment for the identified Calls.

11.2 The Transit Operator shall take all reasonable steps to recover any outstanding charges for the origination of Calls affected by such withheld payment. If the Transit Operator receives payment from the Third Party Originating Network Operator at any time in respect of the identified Calls, it shall as soon as reasonably practicable pass the appropriate termination element of any payment it receives to the Terminating Network Operator.

11.2.1 If an agent or sub-agent of the Transit Operator has received bona fide payment for the origination of Calls affected by such withheld payment, for the purposes of this paragraph 11, the Transit Operator shall be deemed to have received appropriate payment for those Calls unless an AIT situation exists concerning such Calls.

11.3 If after the period of six months commencing on the date of the first invoice following the end of the Billing Period referred to in paragraph 11.1 (or such lesser period agreed by the Parties), the Transit Operator has not received payment from the Third Party Originating Network Operator, the Transit Party shall so notify the Terminating Network Operator, and:

11.3.1 The Terminating Network Operator shall immediately release the Transit Operator from its obligation to pay such withheld payment to the Terminating Network Operator;

11.3.2 The Transit Operator shall, at the option of the Terminating Network Operator, direct the Third Party Originating Network Operator to assign (at no cost) the indebtedness of the Third Party Originating Network Operator's Customer to the Terminating Network Operator.

11.4 Notwithstanding the provisions herein, the Terminating Network Operator shall pay the Transit Operator for the transit element of transit Calls in the ordinary course of business.

## **12. Arbitration**

12.1 If any dispute arises relating to the operation of paragraphs 9, 10 or 11 either Party may serve a notice on the other requiring any matters in dispute to be referred to arbitration in London by a single arbitrator appointed by Agreement between the Parties or in default of Agreement upon the application of either Party by the President for the time being of the Law Society of England and Wales in accordance with and subject to the Arbitration Act 1996.

### **The following are indicators of AIT in relation to any Revenue Share Service and Calling Party:**

#### REVENUE SHARE SERVICE

1. For each of the first 3 months after commencement of service the number of Calls delivered to any new Revenue Share Service exceed by 25% (or such other percentage as the Parties may agree in writing) or more the average number of Calls to similar Revenue Share Services ascertained after the first month and monthly thereafter.

2. After the first 3 months the number of Calls delivered to any Revenue Share Service increases at a rate of 25% or more from any one month to the next.

3. A high proportion of Calls delivered to any Revenue Share Service originate at a small number of Calling Centres whether or not limited in geographical location.

4. The average duration of Calls delivered to any Revenue Share Service differs significantly from that of Calls to similar Revenue Share Services or there are repeated Calls of similar duration.

5. Calls delivered to any Revenue Share Service appear to originate without promotion of the Revenue Share Service.

6. A significant proportion of Calls delivered to any Revenue Share Service originate at payphones or use payment systems other than a standard telephone bill.
7. Calls made by or on behalf of the Revenue Share Service to itself excessively.
8. Operating a Revenue Share Service in breach of the law, where such breach can reasonably be regarded as causing AIT.
9. Operating a Revenue Share Service in breach of the PhonePay Plus Code of Practice, where such breach is of a financial nature and/or can reasonably be regarded as causing AIT.

#### **CALLING PARTIES**

1. A high proportion of Calls delivered to any Revenue Share Service are generated at a small number of Calling Centres whether or not limited in geographical location.
2. A small number of Calling Centres generate a high volume of Calls for delivery to any Revenue Share Service.
3. The average duration of Calls delivered to any Revenue Share Service differs significantly from that of Calls to similar Revenue Share Services or there are repeated Calls of similar duration.
4. Calls delivered to any Revenue Share Service appear to originate without promotion of the Revenue Share Service.
5. A significant proportion of Calls delivered to any Revenue Share Service originate at payphones or use payment systems other than a standard telephone bill.
6. Calls made by or on behalf of the Revenue Share Service to itself excessively.
7. Calls made fraudulently.
8. Calls made at a charge to the Calling Party which is less than the out payment to the Revenue Share Service in circumstances which reasonably indicate that the Revenue Share Service was involved in making such Calls.
9. Calls which last for an excessive duration or result in lockups.
10. For Calls to PRS, Calls originating overseas.

#### **Annex 4 – Acceptable use of Numbers for Personal Numbering Services**

Service Providers should be aware of the following rules and guidelines issued by Ofcom in January 2004, relating to the acceptable use of PNS.

#### **The National Telephone Numbering Plan**

The National Telephone Numbering Plan ('the Plan') states that there are three essential requirements re use of 070 Telephone Numbers:

- Part B1 prohibits the adoption or use of telephone numbers except in accordance with the relevant designation of those numbers in Part A of the Plan. Part A1 states that 070 is set aside for Personal Numbering Services, which are defined in the 'Definitions and Interpretation' section of the Plan;
- Part B3.2 states that the numbers from the 070 range must not be used for Premium Rate Services (defined in the 'Definitions and Interpretation' Section of the Plan); and
- Part B3.2 further states that those adopting Personal Numbers must not share with End-Users any revenue obtained from providing a Personal Numbering Service (End-User is defined in Part 1 of the General Conditions - see paragraph 8 below).

## **Responsibility for sub-allocated numbers**

Condition 17.8 of the General Conditions states that:

“The Communications Provider shall take all reasonably practicable steps to ensure that its Customers, in using Telephone Numbers, comply with the provisions of this Condition, where applicable, and the provisions of the National Telephone Numbering Plan.”

Therefore, if sub-allocatees or resellers are not complying with rules it is the range holder's responsibility to ensure that this is remedied. It is therefore in range holders' interests to ensure that resellers are aware of these obligations. This should be made clear in the Numbering Plan that range holders are required to produce in accordance with Condition 17.4 of the General Conditions.

## **Acceptable use of 070 numbers**

The 070 range shall only be used for Personal Numbering Services, which are defined as services “based on number translation that enables End-Users to be called or otherwise contacted, using a single Personal Telephone Number, and to receive those calls or other communications at almost any Telephone Number, including Mobile Numbers”. A Personal Number is also defined in the Plan as a Telephone Number “assigned by a Personal Numbering Service Provider, which allows a Subscriber to receive calls or other communications at almost any Telephone Number, including a Mobile Number”. Previously the Numbering Conventions had stated that 070 numbers were “suitable for users who habitually move location”, but as this was not a requirement or prohibition, it does not appear in the Plan. Additionally, the length of time for which an 070 number is active is not a relevant consideration in deciding whether or not it is a legitimate Personal Numbering Service.

Recent examples of services that may not fit the traditional mode of Personal Numbering, but which Ofcom considers to be legitimate Personal Numbering Services include:

- 070 numbers allocated to users of Internet chat rooms who want to talk to new acquaintances without divulging their real phone numbers;
- 070 numbers allocated solely for the purpose of selling, eg, a car through a magazine; and
- 070 numbers allocated to hospital patients so that they can have their own number for the duration of their stay (but not where a generic 070 number is used that requires further PINs – see para 14 below).

## **Ofcom's Criteria for assessing appropriate use**

In the course of investigations, Ofcom has identified the following key criteria which it considers are shared by all Personal Numbering Services. These criteria will be considered when establishing whether a service being offered on an 070 number is properly considered to fall within the definition of Personal Numbering Service for the purposes of the Plan.

### **(A) The Personal Numbering Service benefits the person being called**

End-User is a term defined in the General Conditions, but for the purposes of Personal Numbering, it is the person being called, and not the caller, that is relevant. Personal Numbers can be used to offer a variety of services. What these different services all have in common is that they offer a service to the person being called. Services which allocate 070 numbers with the intention that the calling party sets the number to be called, rather than the receiving party, may not therefore be Personal Numbering Services. If the End-User is not aware that he or she has been allocated an 070 number, benefit does not accrue to the person being called but to the caller and this is not an acceptable use of the 070 range as defined in the Plan.

### **(B) The end user must be in charge of the destination number**

Although Personal Numbers were originally designed for people who habitually move location this is not an essential characteristic (see para 7 above). However, what all Personal Numbering Services have in common is that it must be the called party who decides which destination the 070 number is routed to. Additionally, if the service that is being offered is the facility to be reached at any chosen destination then the End-User must be in charge of changing as well as allocating the destination number. This follows on from Criteria A, above.

The End-User cannot be in charge of their number if that number can also be used to contact, eg through a switchboard, another End-User. Therefore requiring the addition of a PIN or the stating of a name, to either a human or automated switchboard operator or through a menu selection of some sort, amounts to offering a generic service that may not be Personal Numbering. Such generic services must be offered on other number ranges.

### **(C) Promotional material**

Promotional material must reflect the key characteristics of a Personal Numbering Service as set out above. For example, it is not acceptable to promote 070 numbers as a way of making (as opposed to receiving) international calls. Such services must be offered on other number ranges. Promotional material or instructions for use may determine whether a particular service constitutes a Personal Numbering Service. In other words, the difference between appropriate and inappropriate use may hinge on the way it is advertised.

If the service has the functionality to be used as a Personal Numbering Service, but users are not aware of this functionality, then they will not be able to use it as such. It may not therefore be considered a Personal Numbering Service. If the service is designed for people who move location, for example, service providers must ensure that instructions for changing the destination number are clear and that every customer receives them.

### **(D) Management of Personal Numbers**

The use of 070 numbers for administration of individuals' Personal Numbers may not constitute a Personal Numbering Service in itself.

It is not acceptable for service providers to use a single, generic 070 number (ie where everyone dials the same 070 number to access the service) for allocation or management (ie changing the destination number) of other 070 numbers. For generic access to a Personal Numbering Service, an 070 number should not be used. Other ranges (08, or 09, depending on price point) or geographic numbers should be used. This is because the benefit (ie, being able to receive a Personal Number or change a destination number) accrues to the calling party and not the end user. While it may be argued that the end user has control over the destination number - the other of the key criteria - Ofcom does not consider that the range holder or sub allocatee should also be the End-User of an 070 number.

However, Service Providers may enable each customer to manage his 070 number (ie changing the destination number) by calling the same 070 number, ie his individual number. In this case, the calling party and the End-User are actually the same person. Therefore the benefit of this service does accrue to the End-User of the number, and the End-User is in control of the number. As it meets both of the criteria above, Ofcom is likely to consider that this use constitutes an element of a legitimate Personal Numbering Service.