

Managed Services Terms & Conditions

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, the following words have the following meanings:

"Business Day" means 9 a.m. to 5.30 p.m. on any day which is not a Saturday, Sunday or bank or other public holiday in England and Wales.

"Change in Law" means any change in any law, enactment, order, regulation, directive, code of practice or other similar instrument occurring after the initial date of the Contract affecting POSTcti and suppliers of services which are the same or similar to the Services and which results in an increase in the cost to POSTcti of providing the Services.

"Charges" means the charges payable by the Customer or Reseller to POSTcti in respect of each Service (including any set-up charges) as more particularly described in the Services Agreement and, in relation to certain Services, the Service Definition (including as to the frequency of payment, the basis on which such charges may be varied (which shall be in addition to any increases in accordance with Clause 5), and the price of any equipment which is being sold by POSTcti to the Customer or Reseller).

"Commencement Date" means the date on which the Service is first available for use by the Customer or Reseller as notified to the Customer or Reseller by POSTcti in accordance with Clause 2.4. Where POSTcti is to provide more than one Service it is the date on which the first Service is available for use as notified to the Customer or Reseller by POSTcti in accordance with Clause 2.4. Where the Service is to be provided at more than one site of the Customer the date shall be the date on which the Service is available for use at the first site to be commissioned and notified to the Customer or Reseller by POSTcti in accordance with Clause 2.4.

"Confidential Information" means all information relating to a party's business and products (including operations, plans, market opportunities, customers, know-how (including designs, processes of production and technology), trade secrets and software) disclosed to the other party (whether in writing, orally or by any other medium).

"Contract" means these Terms and Conditions together with the Services Agreement, the Service Definition (if there is one), the Service Level Agreement (if there is one), the Customer Specification (if there is one), and any other documents set out or expressly referred to in any of those documents.

"Customer" means the person to whom POSTcti is to provide a Service as identified as such in the Services Agreement, either directly or on behalf of a Reseller.

"Customer Equipment" means any hardware (including Customer Racks provided by the Customer) or other equipment which as part of any Service, POSTcti permits the Customer to bring onto, install or operate at any premises of POSTcti.

"Customer Racks" means the racks or cabinets, for the time being provided by POSTcti or the Customer for installation in any data centre of POSTcti as part of a hosting or co-location Service, in which the Customer equipment is housed.

"Customer Specification" means the document entitled as such which may be prepared by POSTcti in relation to particular Services and which sets out the technical specification of those Services and any roll-out or installation timetable

"Customer Technical Summary" means a detailed technical summary of the IT infrastructure of the Customer or the Customer's data storage requirements prepared by the Customer or POSTcti on the basis of information provided by the Customer.

"Data Service" means any Service which provides the Customer with a means of backing up and restoring its data, including long term data storage.

"date of the Contract" means the date on which the Customer or Reseller signs the Services Agreement and identified therein.

"Equipment" means any equipment used in the provision of a Service and installed at the Customer's or POSTcti's premises and owned by POSTcti or a third party provider.

"Force Majeure" means any event which is beyond the control of a party or which it would not be reasonable to expect a party to control, other than any circumstance the consequences of which would have been avoided if it had taken reasonable precautions (which it did not take) which, having regard to all matters known to it before the occurrence of such circumstance and all relevant factors, it should reasonably have taken. Such events include any act of God, act of terrorism, war, national emergency, insurrection, riot, labour dispute affecting a third party (for which a substitute is not readily available), severe weather conditions or governmental interference.

"Group Company" means in respect of each party, all subsidiary companies of that party together with any parent or holding company and all other subsidiary companies of that parent or holding company (the relevant expressions being as defined by the Companies Act 2006).

"POSTcti" means Preferred One Stop Technologies Ltd (Company Number 03483521) whose registered office is at Priority House, Grove Park Court, Harrogate, HG1 4DP, United Kingdom.

"Intellectual Property Rights" means patents, trade marks, service marks, trade names, registered and unregistered designs, trade or business names, copyright (including rights in software), database rights, semi-conductor rights, design rights, rights in Confidential Information and any other intellectual property rights whatsoever, irrespective of whether such intellectual property rights have been registered or not, which may subsist in any part of the world.

"Minimum Term" means the minimum period for the provision of the Service(s) being the minimum contract term

as set out in the Services Agreement. Where a specific date is stated, it will end on that date and where a period of months is stated such period will commence on the Commencement Date or, in the case of a Service being provided to multiple sites of the Customer, the date on which POSTcti informs the Customer or Reseller that such Service is available for use at the final site to be commissioned. Where POSTcti is to provide more than one Service it commences on the date the last Service is available for use by the Customer at the last site at which that Service is to be commissioned.

"month" means a calendar month.

"Permitted AMP Usage" means the number of amps calculated by multiplying the number of Customer Racks installed at any premises of POSTcti by eight.

"PhonpayPlus" means PhonpayPlus of Clove Building, 4 Maguire Street, London, SE1 2NQ, being the current UK regulator for premium rate telephony services.

"PhonpayPlus Code of Practice" means the code of practice of PhonpayPlus from time to time in force (being, as at the date of the Contract, the eleventh edition dated April 2008 and available from: <http://www.phonpayplus.org.uk/CodeOfPractice/default.asp>).

"Regulated Service" means any Service, the provision of which by POSTcti to the Customer is subject to regulation by PhonpayPlus and/or any Service which is to be used by the Customer to provide other services which are subject to regulation by PhonpayPlus.

"Regulated Services Information Form" means the form entitled as such which the Customer is required to complete and return to POSTcti prior to commencing the provision of any Regulated Service.

"Reseller" means an organization signed up by POSTcti through on an authorized Reseller Agreement, to re-sell managed services from POSTcti to their Customers.

"Service" means each service to be provided by POSTcti to the Customer as specified in the Services Agreement and as described in the relevant Service Definition and any other applicable documents forming part of the Contract.

"Service Credit" means the amounts (if any) as set out in the applicable Service Level Agreement (if there is one) which are to be paid by POSTcti to the Customer or Reseller in accordance with Clause 13.3 in the event that POSTcti fails to provide any Service in accordance with the applicable Service Level.

"Service Definition" means the version of the detailed technical specification of each Service current at the date of the Contract as set out at <http://www.postcti.com/servicedefinitions>.

"Service Level" means the service level for a Service specified in the Service Level Agreement for that Service (if there is one).

"Service Level Agreement" means the version of the service level agreement (if there is one) applicable to the provision of a Service comprised in the Service Definition for that Service current at the date of the Contract as set out at <http://www.postcti.com/servicedefinitions>.

"Services Agreement" means the services agreement to which these Terms and Conditions are attached which sets out, amongst other things, details of the Customer, the Services to be provided to the Customer by POSTcti and the Minimum Term and Notice Periods for those Services.

"Software" means any software which is made available by POSTcti for use by the Customer or Reseller in connection with or as part of any Service.

"Telephone Service" means any Service which includes the provision of facilities to make or receive telephone calls together with any related services.

"Term" means, in respect of each Service, the period during which POSTcti is to provide that Service to the Customer commencing on the Commencement Date and ending when terminated in accordance with Clause 14.

- 1.2 In these Terms and Conditions: words denoting the singular include the plural and vice versa; words denoting any gender include all genders; reference to any person includes a reference to companies and all other legal entities; any reference to a statute, statutory provision, subordinate legislation or code of practice is a reference to that statute, statutory provision, subordinate legislation or code of practice as amended, modified or re-enacted from time to time; any reference to a regulatory body includes a reference to any successor or replacement regulatory body; and any uses of the word "include" or "including" shall be deemed followed by the words "without limitation".

2 PROVISION AND USE OF THE SERVICES

- 2.1 POSTcti shall provide each Service to the Customer for the applicable Term with reasonable skill and care and in accordance with the applicable Service Definition and Service Level Agreement and as specified in the Services Agreement.
- 2.2 POSTcti shall ensure that it complies at all times with all legislation, laws, codes of practice, and licence conditions applicable to the provision of the Services, including any applicable obligations under the Data Protection Act 1998 and the PhonpayPlus Code of Practice.
- 2.3 The Customer and Reseller shall ensure that it complies at all times with all legislation, laws, codes of practice, and licence conditions applicable to its use of the Services, including any applicable obligations under the Data Protection Act 1998, any reasonable policies of POSTcti regarding the use of any Services which are advised to it by POSTcti from time to time in writing.
- 2.4 POSTcti shall use its reasonable endeavours to commence the provision of each Service by any dates (if any) set out in the Customer Specification or the Contract and shall notify the Customer or Reseller when each Service is first available for use at each Customer site. At the request of the Customer or Reseller, POSTcti shall provide reasonable supporting evidence to the Customer or Reseller to demonstrate that any Service has been made available for use by it. The Customer will provide POSTcti with all access to its premises and assistance reasonably required by POSTcti to install Equipment and commission the Service by the agreed date(s) and, if no date has been agreed, as soon as reasonably practicable after the date of the Contract.

- 2.5 POSTcti reserves the right to amend, vary or change any Equipment, Software or Service (including the technical specification for any Service, the Equipment or the Software used to provide any Service or the Service Definition for any Service) provided that such amendment, variation or change does not materially and adversely affect the provision of any Service. Where POSTcti reasonably considers that it is necessary to suspend the provision of any Service or any part of a Service (including, without limitation, the provision of the Service to a particular site of the Customer) for the purposes of carrying out amendment, variation, change, repair, maintenance or improvement of or to any Service, Software and / or Equipment, POSTcti shall use its reasonable endeavours to ensure that the Customer receives reasonable notice of any such work. During the continuance of any such work, POSTcti shall continue to provide the Services in accordance with any applicable Service Level.
- 2.6 The Customer shall not use (nor allow any third party to use) any Service:
- (a) in a way which is offensive, indecent, menacing, a nuisance or defamatory;
 - (b) to send, knowingly receive, upload, download, store, display or use any material which is offensive, abusive, indecent, defamatory, obscene or menacing or which is in breach of copyright, confidence, privacy or any other third party right;
 - (c) fraudulently or in connection with the commission of any criminal offence;
 - (d) to "spam" or to send or provide unsolicited advertising or promotional material or to knowingly receive responses from "spam" or unsolicited advertising or promotional material sent or provided by the Customer or any third party acting on its behalf; and/or
 - (e) in an unlawful manner or in contravention of any legislation, laws, codes of practice, licence conditions, third party rights or any reasonable instructions of POSTcti from time to time regarding the use of any Service.
- The provisions of this Clause 2.6 shall not apply in respect of any material which is sent, stored or reproduced by the Customer for the legitimate and lawful purposes of the usual business of the Customer. The Customer and Reseller shall indemnify POSTcti against any liability, cost, claim or expense made against POSTcti arising out of any breach by the Customer or Reseller of its obligations pursuant to this Clause 2.6 and the indemnity shall not be limited by Clause 13.4.
- 2.7 POSTcti may suspend the provision of any Service (or any part of a Service) without liability to the Customer or Reseller (including to pay Service Credits) where there is (or POSTcti reasonably suspects there is):
- (a) any unauthorised access to the Customer's network which may result in unauthorised access to POSTcti's network, the suspension to last until such time as that unauthorised access ceases or is demonstrated by the Customer not to have occurred); and/or
 - (b) any breach by the Customer or Reseller of any of its obligations under Clause 2.6.
- The Customer or Reseller shall remain liable to pay the Charges for all Services during any period of suspension pursuant to this Clause 2.7.
- 2.8 POSTcti reserves the right to suspend or vary any Service (or part of a Service and whether generally or in respect of the Customer or Reseller only) where it is required to do so by law, or at the direction of any court or governmental or other regulatory body (including PhonepayPlus), or as a result of the loss or revocation of any licence which POSTcti requires to provide that Service. During the period of any such suspension the Charges for the suspended Service (or part thereof) will not be payable unless the suspension arises as a consequence of an act or omission of the Customer or Reseller, its employees or agents or persons authorised by it to use the Service.

3 REGULATED SERVICES

- 3.1 In respect of any Regulated Service, the Customer or Reseller warrants that it is aware and fully familiar with all applicable requirements of the PhonepayPlus Code of Practice and shall fully comply with its obligations under the PhonepayPlus Code of Practice together with any directions which are made by PhonepayPlus in accordance with that Code of Practice from time to time.
- 3.2 Without prejudice to the generality of Clause 3.1, the Customer or Reseller warrants that:
- (a) it has (and will maintain) sufficient financial and other resources necessary to fully discharge its obligations under the PhonepayPlus Code of Practice in light of its intended Regulated Services and shall provide to POSTcti such evidence of those resources as POSTcti may request from time to time;
 - (b) it has (and will maintain) in place adequate customer service arrangements (including a non-premium rate UK customer services telephone number) and refund mechanisms for users of any Regulated Service which are provided by the Customer or Reseller, such arrangements being as a minimum sufficient to enable the Customer or Reseller to discharge its obligations under the PhonepayPlus Code of Practice;
 - (c) no sanction has been imposed against it (or any officer, employee, agent or sub-contractor of the Customer or Reseller) by PhonepayPlus which would prohibit POSTcti from providing any Regulated Service to the Customer or Reseller; and
 - (d) it shall immediately inform POSTcti should any sanction be imposed against it (or any officer, employee, agent or sub-contractor of the Customer or Reseller) by PhonepayPlus which would prohibit POSTcti from providing any Regulated Service to the Customer or Reseller.
- 3.3 Prior to POSTcti making any Regulated Service available to the Customer or Reseller, the Customer or Reseller shall:
- (a) complete and return to POSTcti a Regulated Services Information Form and inform POSTcti of any subsequent updates to the information provided on that form; and
 - (b) provide to POSTcti a copy of the registration form lodged by the Customer or Reseller with PhonepayPlus together with a copy of the acknowledgement of receipt of that form issued by PhonepayPlus.
- 3.4 POSTcti reserves the right to:
- (a) immediately terminate without any liability to the Customer or Reseller (including to pay Service Credits) the provision by POSTcti of all or part of any Regulated Service (including to terminate the Customer or Reseller's

access to any or all telephone numbers allocated to it by POSTcti) either at the direction of PhonepayPlus or in order to prevent or remedy any actual or suspected breach by POSTcti or the Customer or Reseller of the PhonepayPlus Code of Practice;

- (b) withhold out of any amount due from POSTcti to the Customer or Reseller (including out of any revenue share due to the Customer or Reseller) such amount of money as may be specified by PhonepayPlus for such period of time as may be specified by PhonepayPlus; and/or
- (c) pay out of any sums withheld by it pursuant to Clause 3.4(b) such outstanding fines or administrative charges which may be due from the Customer or Reseller to PhonepayPlus as may be requested by PhonepayPlus.

3.5 The Customer or Reseller warrants that all information provided by it to POSTcti from time to time in accordance with this Clause 3 is complete, accurate, up-to date, not misleading in any way and will be provided in sufficient time to enable POSTcti to comply with its obligations under the PhonepayPlus Code of Practice and any requests for information received by it from PhonepayPlus. The Customer or Reseller shall inform POSTcti without delay of any changes to any information provided by it. At the request of POSTcti, the Customer or Reseller shall provide such evidence as POSTcti may request to verify the accuracy of any information provided by the Customer or Reseller pursuant to this Clause 3.

3.6 Any information or guidance which POSTcti may provide to the Customer or Reseller concerning the obligations of the Customer or Reseller under the PhonepayPlus Code of Practice is provided on an "as is" basis based on POSTcti's own understanding and interpretation of the PhonepayPlus Code of Practice. POSTcti makes no representation as to the accuracy or completeness of any such information or guidance which may be provided by it and the Customer or Reseller shall have no claim against POSTcti in respect of any errors or omissions which may be contained in that information or guidance.

4 CHARGES AND PAYMENT

4.1 In consideration for the provision of the Services, the Customer or Reseller shall pay the Charges to POSTcti. The monthly or quarterly (or other period as may be specified in the Services Agreement) recurring Charges will commence on the Commencement Date. Installation Charges will become due from the Customer or Reseller on the Customer or Reseller signing the Services Agreement. Other Charges will become due as specified in the Services Agreement or elsewhere in the Contract.

4.2 All Charges and other payments which may become due under the Contract are exclusive of VAT which (if applicable) shall be payable by the party making the payment in question at the rate from time to time in force.

4.3 All invoices issued by POSTcti shall be paid by the Customer or Reseller within thirty days of the date of invoice. POSTcti will despatch the invoice no later than two Business Days after the date of the invoice.

4.4 The Customer or Reseller must provide any purchase order number or other reference which it wishes to appear on any invoice to be issued by POSTcti at least twenty-eight days prior to the date on which the invoice in question is to be raised. The Customer or Reseller shall not be entitled to reject any invoice issued by POSTcti on the ground that it fails to include a purchase order number or other reference where the Customer or Reseller has failed to notify it to POSTcti in accordance with this Clause 4.4.

4.5 POSTcti shall be entitled to suspend the provision of any Service (or part of a Service) without liability to the Customer or Reseller (including to pay Service Credits) during any period during which any overdue sums are due to it from the Customer or Reseller. During any such period of suspension, the Customer or Reseller shall remain liable to pay the Charges for the suspended Services.

4.6 If a debt becomes in our opinion seriously overdue then it will be passed to a third party collections agency who will add interest to the debt under The Late of Commercial Debts (Interest) Act 1998. Interest shall accrue on all overdue amounts due from one party to the other before as well as after any judgment at a rate of 2% per annum above the base lending rate from time to time of National Westminster Bank Plc. No interest shall be payable (whether pursuant to this Clause 4.6 or otherwise) in respect of any amounts withheld by POSTcti in accordance with Clauses 3 or 6.

4.7 Save as provided for by Clauses 4.8 and 4.9, the Customer or Reseller shall not be entitled to make any deduction from any amount due from it to POSTcti nor shall the Customer or Reseller be entitled to exercise any right of set-off (including in respect of any amounts withheld by POSTcti in accordance with Clauses 3 or 6).

4.8 Where the Customer or Reseller has a bona fide dispute as to the amount of any invoice issued by POSTcti which it has informed POSTcti of in writing within fourteen days of the date of the invoice, the Customer or Reseller shall be entitled to withhold payment of the disputed amount only (provided it pays the undisputed amount in accordance with Clause 4.3) pending resolution of that dispute. Following resolution of that dispute, the Customer or Reseller shall pay to POSTcti within seven days (or before the end of the original period for payment if earlier) any amount which it agrees or is ordered to pay together with interest (if applicable) calculated in accordance with Clause 4.6.

4.9 Should POSTcti fail to issue a credit note to the Customer or Reseller for any Service Credits which have become payable by POSTcti within the time period for issuing such credit note as specified in the relevant Service Level Agreement then the Customer or Reseller shall be entitled to deduct the value of those Service Credits from the next invoice issued by POSTcti for the Charges for the Services to which those Service Credits relate.

5 CHARGES ADJUSTMENT AND ADDITIONAL COST ITEMS

5.1 In addition to its other rights under this Clause 5 to increase the Charges in certain specified circumstances, POSTcti shall also be entitled to increase the Charges for any Service following the expiry of the Minimum Term for the Service in question by serving not less than twenty-eight days' written notice on the Customer or Reseller. In the event that the Customer or Reseller does not wish to pay the increased Charges then it shall within twenty-eight days of receipt of the relevant notice from POSTcti serve three months written notice to terminate the provision of the Service in question. During that Notice Period, the Charges for the Service in question shall not include the increase proposed by POSTcti which resulted in the Customer or Reseller electing to terminate the provision of that Service.

5.2 Where any Charge is stated to be based on the volume of the Customer or Reseller's use of a Service then POSTcti

shall be entitled to vary such Charge at any time in accordance with the relevant Services Agreement or Service Definition to reflect the actual use of that Service by the Customer or Reseller from time to time.

- 5.3 If any Service is to include DSL or similar technology at any Customer site and such technology is found to be unavailable at that site, the Customer or Reseller shall pay all reasonable costs incurred by POSTcti in installing that technology and undertaking any necessary network upgrades. Alternatively, within five Business Days of the Customer or Reseller being informed that such technology is unavailable, the Customer or Reseller may terminate the provision of that particular Service (or part of the Service) by serving written notice on POSTcti subject to the Customer or Reseller paying all reasonable costs incurred by POSTcti in anticipation of providing that Service to the Customer or Reseller.
- 5.4 Where in connection with the provision of any Service it is necessary for a circuit to be installed at the Customer's site by a third party network provider, the Customer or Reseller accepts that the installation Charges may be higher than those specified in the Services Agreement because the third party's site survey identifies circumstances or issues not originally contemplated by the parties at the date of the Contract. Within five Business Days of the Customer or Reseller being informed that the installation Charges are to be increased, the Customer or Reseller may terminate the provision of that particular Service (or part of the Service) by serving written notice on POSTcti subject to the Customer or Reseller paying all reasonable costs incurred by POSTcti in anticipation of providing that Service to the Customer.
- 5.5 The capacity of any circuits located at each of the Customer's sites has been agreed between POSTcti and the Customer or Reseller as the bandwidth required as at the date of the Contract for the then current traffic flow across the Customer's network. In the event that any subsequent modifications are required as a result of variances in actual traffic flow, such modifications shall be paid for by the Customer or Reseller in addition to the relevant Charges.
- 5.6 Where any third party network provider increases its charges to POSTcti for the ongoing provision of any network or circuit used by the Customer as part of any Service, POSTcti shall be entitled to increase the relevant Charges by an amount equal to the increase in charges payable by POSTcti to the relevant third party network provider by serving not less than twenty-eight days' written notice on the Customer or Reseller.
- 5.7 If during any month the electricity consumed by the Customer Racks (based on peak usage during the relevant month) exceeds the Permitted Amp Usage then the Customer or Reseller shall pay the additional amp charge of POSTcti from time to time in force (being, as at the initial date of the Contract, £250 per amp (or part thereof) consumed by the Customer Racks in excess of the Permitted Amp Usage).
- 5.8 The initial Charges for any data centre hosting or co-location Service are based on the assumption that there will be no increase in the cost to POSTcti of the electricity required to operate the Customer Equipment and the relevant data centre generally (including electricity used for heating/cooling) during the Term of the provision of those Services. In the event of any subsequent increase in the cost of electricity to POSTcti, POSTcti shall be entitled to increase the relevant Charges to reflect the increased cost of electricity committed for consumption by the Customer Equipment and by an amount (calculated by reference to the space used by the Customer at the relevant data centre) to reflect the increased cost in operating the data centre environment by serving not less than twenty-eight days' written notice on the Customer or Reseller.
- 5.9 POSTcti shall be entitled to increase the Charges for any data centre hosting or co-location Service annually on 1 April to reflect any increase in the costs to POSTcti generally of providing that Service since the preceding 1 April. Such cost increases may include increases in rent, rates, taxes, service charges and utility charges. Any increase applied by POSTcti pursuant to this Clause 5.9 shall take into account any increases in the Charges which have been made by POSTcti in the preceding twelve months in accordance with Clauses 5.8 and 5.11.
- 5.10 In the event that in any month or quarter (as applicable, depending on the Customer or Reseller's payment terms) the actual Charges payable by the Customer or Reseller in respect of any Data Service or data centre hosting or co-location Service would be less than 50% of the value of the highest amount of Charges paid by the Customer or Reseller in any preceding month or quarter (as applicable) then the applicable Charges payable by the Customer or Reseller for that month or quarter (as applicable) shall be 50% of such higher Charges instead of the lower actual Charges.
- 5.11 In the event of any Change in Law occurring, POSTcti shall be entitled to increase the Charges to reflect the increased cost to POSTcti of providing the Services as a result of that Change in Law by serving not less than twenty-eight days' written notice of such increase on the Customer or Reseller.
- 5.12 At the request of the Customer or Reseller, POSTcti shall provide to the Customer or Reseller such reasonable supporting evidence as may be necessary to support any increase to the Charges made by POSTcti pursuant to Clauses 5.3 to 5.11. Any such evidence provided by POSTcti shall constitute Confidential Information of POSTcti.

6 REVENUE SHARE PAYMENTS

- 6.1 Where any Service includes any element in respect of which a revenue share is payable by POSTcti to the Customer or Reseller, POSTcti shall inform the Customer or Reseller of the amount of revenue share due to it within fifteen days of the end of each month (or other applicable billing period). Following receipt of such information, the Customer or Reseller shall issue an invoice to POSTcti for the amount of revenue share due to it and POSTcti shall then pay such invoice within 45 days of receipt or (if later) within seven days of receipt by POSTcti from the relevant network carrier of the full payment from which such revenue share is derived.
- 6.2 POSTcti may withhold from any revenue share payable to the Customer or Reseller or demand payment by the Customer or Reseller of such sums as are sufficient to meet any fines, administrative charges or other sums payable by POSTcti to PhonepayPlus or the relevant carrier and to which PhonepayPlus claim entitlement under the PhonepayPlus Code of Practice.
- 6.3 POSTcti shall be entitled to extend the period for payment of any revenue share on notice to reflect any extension after the date of the Contract to the period for which POSTcti is required to withhold such payment from the Customer or Reseller under the PhonepayPlus Code of Practice.

7 TELEPHONE SERVICES AND INTERNET PROTOCOL ADDRESSES

- 7.1 POSTcti shall use its reasonable endeavours to provide uninterrupted Telephone Services, however no warranty or other representation is given by POSTcti that any Telephone Service will be error or fault free or offer all of the services and facilities associated with traditional telephone lines (and for this reason, the Customer or Reseller shall ensure that appropriate alternative arrangements are in place for the making of emergency calls). POSTcti shall have no liability to the Customer or Reseller in respect of any interruptions to any Telephone Service (other than to pay any applicable Service Credits) and the Customer or Reseller shall not be entitled to any refund of Charges (or to withhold payment of any Charges). In particular, the Customer or Reseller acknowledges that the performance of any Telephone Services may be impaired by the uploading or downloading of data by the Customer across the same network used to provide those Telephone Services and that POSTcti shall have no liability to the Customer or Reseller (including to pay Service Credits) in such circumstances.
- 7.2 Where the Customer uses equipment in connection with any Telephone Service of a type not approved for use with that Service by POSTcti, POSTcti shall have no liability to the Customer or Reseller (including to pay Service Credits) as a result of any errors or faults with any Service which are attributable to the Customer's use of such un-approved equipment.
- 7.3 POSTcti shall use its reasonable endeavours to resolve any fault with any Telephone Service which is reported to it by the Customer or Reseller as soon as reasonably practicable. In the event that POSTcti agrees to work outside of its normal working hours to remedy any such fault, then this shall be subject to the Customer or Reseller agreeing to pay POSTcti's additional charges for such out of hours work. POSTcti reserves the right to charge the Customer or Reseller for any work undertaken by POSTcti in investigating and/or remedying any fault with any Telephone Service which is reported to it by the Customer or Reseller which subsequently turns out not to exist, to have been caused by the act or omission of the Customer or Reseller or to have been caused by the Customer using equipment in connection with any Telephone Service of a type not approved for use with that Service by POSTcti.
- 7.4 Where POSTcti provides any internet protocol addresses, telephone numbers or codes to the Customer or Reseller as part of any Service then the Customer or Reseller shall not acquire any legal, equitable or other rights in respect of the same other than the right to use the internet protocol address, telephone number or code in question during the Term of the relevant Service in accordance with the terms of the Contract. All Intellectual Property Rights subsisting in any internet protocol address, telephone number or code provided to the Customer or Reseller by POSTcti shall at all times remain vested in POSTcti or its third party licensor (as applicable).
- 7.5 The Customer or Reseller shall not sell, transfer or lease any internet protocol address, telephone number or code which is provided to it by POSTcti and, subject to Clause 7.6, upon termination of the Service in connection with which any internet protocol address, telephone number or code was provided, the right to use such internet protocol address, telephone number or code shall revert back to POSTcti.
- 7.6 Subject to there being an appropriate porting agreement in place between POSTcti and the relevant network carrier, the Customer or Reseller may 'port' telephone numbers to and from POSTcti.
- 7.7 POSTcti reserves the right to withdraw or change any internet protocol addresses, telephone numbers or codes which have been provided by it to the Customer or Reseller at any time on notice.

8 CUSTOMER TECHNICAL SUMMARY

- 8.1 Any Customer Technical Summary which is included as part of a Customer Specification shall be relied on by POSTcti to produce the technical specification for the Service to which it relates and the applicable Charges for that Service. The Customer or Reseller warrants that any Customer Technical Summary provided by it or any information provided by it to enable POSTcti to complete the Customer Technical Summary is complete, accurate and not misleading in any way.

9 PREMISES

- 9.1 Access by the Customer or Reseller and its representatives to any premises of POSTcti shall at all times be subject to compliance with the access and security policies of POSTcti for the time being in force. The Customer or Reseller shall indemnify POSTcti against all loss, damage, liability, claims and expense that POSTcti or any of its other customers may incur by reason of any act or omission of the Customer or Reseller or any of its representatives whilst on any premises of POSTcti (including any failure by the Customer or Reseller to comply with its obligations pursuant to the Contract). Where as part of any Service POSTcti permits the Customer or Reseller to install any Customer Equipment at any premises of POSTcti, the only right which is granted is the right to locate such Customer Equipment upon the premises of POSTcti during the term of the provision of the Service in question. The provision of any such Service shall not create any relationship of landlord and tenant between POSTcti and the Customer or Reseller.
- 9.2 Each of POSTcti and the Customer or Reseller shall ensure that all of its employees, agents, sub-contractors and other persons authorised by it whom the other may permit access to its premises are suitably qualified, skilled and experienced to carry out the work for which they are entering the premises of the other. POSTcti or the Customer or Reseller shall be entitled to refuse any individual access to its premises without liability to the other party where it has reasonable grounds for suspecting that such individual does not have the appropriate skills, qualifications or experience or who may pose a threat to safety or security.
- 9.3 Whilst on any premises of the other party, POSTcti and the Customer or Reseller shall comply with all reasonable site procedures of the other party notified to it in advance in writing.
- 9.4 In respect of any work to be undertaken by either party or a third party at any premises of the Customer in connection with the provision of a Service, the Customer shall be solely responsible for obtaining at its own cost and in sufficient time to enable the work in question to be undertaken any necessary consents required to undertake that work, including landlord's consent and wayleaves or easements required to enable network communications to be made to the Customer's premises.
- 9.5 Where it is agreed that the Customer is to make alterations to its premises in order to allow the installation of Equipment or a circuit or to receive a Service, this shall be recorded in the relevant Customer Specification together with the dates by which those alterations must be completed and the Customer shall complete any such alterations by those specified dates.

- 9.6 The Customer shall allow POSTcti such access to any of the Customer's premises at such times as POSTcti may request to enable it to perform its obligations under the Contract, including access to enable POSTcti to install, alter, vary, change, maintain, repair, replace or upgrade Equipment and Software or, on termination or expiry of the Contract or any applicable Service, to remove Equipment and Software from any premises of the Customer (and the Customer shall not be entitled to deny POSTcti or any third party access to any of its premises in such circumstances by reason of any dispute). Where requested by POSTcti, such access may include remote (as opposed to physical) access to Equipment and Software installed at any Customer premises. Subject to the Customer providing POSTcti or any third party with the necessary access to its premises, POSTcti undertakes to remove all Equipment from any premises of the Customer within fourteen days of the expiry or termination of the provision of the Services to which the Equipment in question relates (unless it is necessary for such Equipment to remain on-site in order to enable the continued provision of a Service the provision of which has not expired or terminated).
- 9.7 POSTcti shall use its reasonable endeavours to undertake any work which requires access to the Customer's premises during the normal working hours of the POSTcti but reserves the right to require the provision of out of hours access. Where the Customer requests that POSTcti undertakes any work at its premises outside of the normal working hours of POSTcti, POSTcti reserves the right to make an additional charge in respect of the provision of such out of hours work.

10 POSTCTI EQUIPMENT

- 10.1 Where as part of any Service POSTcti or a third party installs any Equipment or Software at any premises of the Customer, such Equipment and Software shall at all times remain in the ownership of POSTcti or the third party owner. The Customer or Reseller shall not acquire any rights of ownership in or title to any such Equipment or Software and shall not (whether by operation of law or otherwise), have any lien or other similar rights over such Equipment or Software.
- 10.2 Risk of damage to or loss of any Equipment or Software of POSTcti or the third party owner installed at any premises of the Customer shall be borne by the Customer or Reseller from the time such Equipment or Software is installed by POSTcti or the third party until POSTcti or the third party commences its removal. The Customer or Reseller shall ensure that such Equipment and Software is insured at its own cost against fire, theft and all usual risks (including loss or damage caused by an event of Force Majeure). In the event of any damage to or loss of any Equipment or Software whilst at the risk of the Customer or Reseller (other than damage or loss caused by POSTcti or the third party), the Customer or Reseller shall pay to POSTcti the cost of repairing or replacing (as applicable) the Equipment or Software in question regardless of whether or not such costs are recoverable by the Customer or Reseller under the policy of insurance maintained by it.
- 10.3 Where POSTcti agrees to sell any equipment to the Customer or Reseller and delivers such equipment to the Customer or Reseller prior to payment being received, risk of damage to or loss of that equipment shall pass to the Customer or Reseller upon delivery. Title to any such equipment shall remain with POSTcti until payment for that equipment in full is received from the Customer or Reseller, at which point title shall transfer to the Customer or Reseller. Prior to title passing to the Customer or Reseller, POSTcti shall be entitled to enter any premises of the Customer or Reseller at any time to recover that equipment should payment for it be overdue from the Customer or Reseller or should any of the events as listed in Clause 14.5(b) occur to the Customer or Reseller.
- 10.4 In respect of any Equipment or Software installed at any Customer premises, the Customer or Reseller shall:
- take reasonable care of that Equipment or Software, such obligation to include prohibiting any person other than those authorised by POSTcti to damage, alter, tamper with, move, remove, replace or repair that Equipment or Software;
 - immediately inform POSTcti of any damage to, loss of or alterations to such Equipment or Software;
 - maintain at its own cost any operating environment for that Equipment or Software as may be reasonably specified by POSTcti from time to time;
 - provide at its own cost an adequate electricity supply and suitable earth connections for that Equipment or Software;
 - not remove, alter or obscure any labels or markings which identifies that Equipment or Software as the property of POSTcti or a third party; and
 - not charge, mortgage or otherwise encumber that Equipment or Software.

The obligations of the Customer or Reseller pursuant to this Clause 10.4 shall continue notwithstanding the termination of the Contract or any applicable Service until such time as POSTcti has removed any of its Equipment and Software from the Customer or Reseller's premises which is no longer required to be located there as a result of the termination of the Contract or Service in question.

11 CUSTOMER EQUIPMENT

- 11.1 Where, as part of any Service, POSTcti permits the Customer or Reseller to install any Customer Equipment at any premises of POSTcti, the only right which is granted to the Customer or Reseller is the right to locate that Customer Equipment at the premises of POSTcti during the Term of that Service. No relationship of landlord and tenant is created between POSTcti and the Customer or Reseller.
- 11.2 POSTcti shall be entitled to access any Customer Equipment located at its premises (including any Customer Equipment located in a private suite or locked cabinet) at any time for the purposes of performing maintenance or other works in the case of an emergency or for health and safety reasons. The Customer or Reseller shall provide POSTcti with any security codes, access passes or keys necessary to enable access by POSTcti in accordance with this Clause 11.2.
- 11.3 POSTcti reserves the right to require the Customer or Reseller to relocate, at POSTcti's cost, any Customer Equipment located at any premises of POSTcti to an alternative location within the same premises. In the case of a private suite, POSTcti shall ensure that the alternative location provides at least the same floor space. POSTcti shall provide the Customer or Reseller with at least ten Business Days' written notice of any requirement for it to

relocate any Customer Equipment pursuant to this Clause 11.3.

- 11.4 The Customer or Reseller shall be solely responsible for the provision, installation, configuration and maintenance of all Customer Equipment. Risk of loss or damage to Customer Equipment shall remain with the Customer or Reseller at all times and the Customer or Reseller shall be responsible for insuring all Customer Equipment against fire, theft and all usual risks (including loss or damage caused by an event of Force Majeure).
- 11.5 The Customer or Reseller shall ensure that all Customer Equipment:
- (a) is supplied, configured and used in accordance with all applicable manufacturer's instructions, safety standards, best industry practice and the reasonable instructions of POSTcti;
 - (b) is not added to, modified, removed or changed without the prior written consent of POSTcti (such consent not to be unreasonably withheld or delayed); and
 - (c) does not exceed any power utilization agreed with POSTcti or specified in the Contract.
- 11.6 At the request of POSTcti from time to time, the Customer or Reseller shall provide POSTcti with an accurate list of all Customer Equipment installed at any premises of POSTcti.
- 11.7 Within seven days of the date of termination of any Service in respect of which any Customer Equipment is located at any premises of POSTcti, the Customer or Reseller shall remove that Customer Equipment from the premises of POSTcti during the usual working hours of POSTcti (making good any damage and subject to access being granted by POSTcti). In the event that the Customer or Reseller fails to remove the Customer Equipment within:
- (a) such seven day period, then the Customer or Reseller shall continue to pay the Charges for the terminated Service as though the Service was continuing (although POSTcti shall not be obliged to provide that Service) until such time as the Customer Equipment is removed by the Customer or Reseller or otherwise disposed of by POSTcti in accordance with Clause 11.7(b) ; and
 - (b) twenty-eight days of the date of termination, POSTcti shall be entitled to: (i) place that Customer Equipment into storage (and the Customer or Reseller shall pay to POSTcti on demand all reasonable costs incurred by POSTcti in connection with that storage); (ii) sell that Customer Equipment accounting to the Customer or Reseller for the proceeds of any sale (after first deducting any amounts owing from the Customer or Reseller to POSTcti and the costs of effecting any sale); or (iii) dispose of that Customer Equipment (and the Customer or Reseller shall pay to POSTcti on demand all reasonable costs incurred by POSTcti in disposing of that Customer Equipment).

12 OTHER OBLIGATIONS OF THE PARTIES

- 12.1 In addition to the obligations of each party as set out in these Terms and Conditions, each party shall also comply with any other obligations and responsibilities as may be specified in any other document which forms part of the Contract.

13 LIMITATION OF LIABILITY

- 13.1 Neither party seeks to limit or exclude its liability for death or personal injury caused by negligence nor in respect of fraud or fraudulent misrepresentation and no provision of the Contract shall be interpreted as attempting to exclude or limit such liability.
- 13.2 POSTcti shall have no liability to the Customer or Reseller (including to pay Service Credits) in respect of any failure or delay by it to provide the Services in accordance with the Contract where such failure or delay is attributable to any failure or delay by the Customer or Reseller to comply with its obligations under the Contract or as a result of any action taken by POSTcti at the direction of PhonepayPlus where such action is connected with any failure by the Customer or Reseller to comply with its obligations under the PhonepayPlus Code of Practice.
- 13.3 Where the Service Level for any Service provides for Service Credits to be payable by POSTcti in the event that it fails to provide that Service in accordance with that Service Level, such Service Credits shall be paid by POSTcti in the form of a credit note. The Service Credits have been agreed between the parties as a fair and reasonable assessment of the likely loss and damage which the Customer or Reseller would suffer as a result of POSTcti failing to meet the applicable Service Level and, therefore, represent the full extent of POSTcti's liability for failure to achieve the relevant Service Level. Payment of the relevant Service Credits by POSTcti shall represent the Customer or Reseller's sole and exclusive remedy in respect of any such failure by POSTcti and the Customer or Reseller hereby waives its right to claim for any additional loss and damage suffered by it in excess of the value of the Service Credits in question. In no event shall the value of any Service Credits due from POSTcti in respect of any particular Service period exceed the value of the Charges which would have been payable by the Customer or Reseller during that Service period had POSTcti provided the Service in question in accordance with the applicable Service Level. POSTcti shall not be liable to pay any Service Credit which would otherwise become due in consequence of a breach by the Customer or Reseller of these Terms and Conditions. If there is no Service Level applicable to a Service or Service Credits are not payable for failure to achieve a Service Level, then POSTcti shall have no liability to the Customer or Reseller for non-availability of the relevant Service.
- 13.4 Subject to the other provisions of this Clause 13 and save in respect of any damage to the premises of POSTcti, the total aggregate liability of each party to the other for any and all claims by the other in connection with the provision of each Service or otherwise arising out of or in connection with a Service or the Contract for each twelve months' period commencing on the date of the Contract and the anniversary thereof shall be limited to the amount of Charges paid or payable by the Customer or Reseller for the provision of the Service giving rise to the claim in question during the preceding twelve months (or during the first twelve months of the Term the Charges paid and payable during that period) subject to a maximum amount of £1,000,000 if lower than the actual amount of the Charges over that twelve month period.
- 13.5 Subject to Clause 13.6, in no circumstances shall either party be liable to the other for the following types of loss:
- (a) loss of profit, loss of anticipated profit, loss of revenue, damage to reputation, damage to goodwill, loss of business, loss of savings or anticipated savings, or any form of indirect, consequential or incidental loss;
 - (b) any difference between the cost of making or receiving a telephone call via any VOIP Telephone Service compared to the cost of using a traditional telephone service;

- (c) any loss or damage arising as a result of any loss of or corruption to data (whether temporary or permanent); and/or
- (d) any loss or damage arising out of an inability to restore data due to the loss of or damage to any encryption key by the Customer or Reseller.

13.6 In the event that the provision of any Service is terminated prior to the expiry of its Minimum Term or without compliance with its Notice Period (as applicable) other than by reason of the Customer or Reseller exercising its right to terminate pursuant to Clauses 14.3 or 14.5 or should the Customer or Reseller purport to terminate the provision of any Service without complying with the applicable provisions of the Contract, none of the provisions of this Clause 13 shall operate so as to exclude POSTcti's right to recover from the Customer or Reseller the Charges which would have been payable by the Customer or Reseller in respect of the Service in question up until the earliest point at which the Customer or Reseller could have lawfully terminated the provision of that Service in accordance with the Contract provided that POSTcti shall be obliged to mitigate its loss in accordance with Common Law principles.

14 TERM AND TERMINATION

- 14.1 Subject at all times to earlier termination in accordance with the provisions of these Terms and Conditions, the provision of each Service by POSTcti to the Customer or Reseller shall continue until the expiration of the Minimum Term. Following the expiry of the Minimum Term the Contract for the provision of the Service(s) shall automatically renew for successive periods of twelve months unless either party serves on the other not less than 30 days written notice of termination, such notice to expire at the end of the Minimum Term or an anniversary of the date on which the Minimum Term expires.
- 14.2 The provision of certain Services is dependent upon the Customer or Reseller also being provided with certain other related Services. If, following the termination, for whatever reason, of the provision of any particular Service, POSTcti would be unable to continue to provide the Customer or Reseller with any such related Services, then the termination of that single Service shall be deemed to be in addition a termination of all such related Services.
- 14.3 In addition to the payment by POSTcti of any applicable Service Credits in accordance with any applicable Service Level Agreement, the Customer or Reseller shall be entitled to terminate the provision by POSTcti of a Service prior to the expiry of the Minimum Term or thereafter, without complying with the applicable Notice Period, in the event that POSTcti fails to make the Service in question available for a period in excess of twenty-four consecutive hours on three occasions in any period of three consecutive months. The Customer or Reseller shall only be entitled to exercise its right to terminate pursuant to this Clause 14.3 by serving written notice of termination on POSTcti within twenty-eight days of the date of the third qualifying period of unavailability with termination of the Service in question then taking effect on the expiry of that twenty-eight days' period. In the event that no notice of termination is received by POSTcti by the expiry of that twenty-eight days' period, the Customer or Reseller shall be deemed to have waived its right to terminate pursuant to this Clause 14.3 on that particular occasion.
- 14.4 In the event that the Customer or Reseller exercises its right to terminate the provision of a Service pursuant to Clause 14.3, POSTcti shall, within twenty-eight days of the date of termination, refund to the Customer or Reseller any advance Charges which may have been paid by the Customer or Reseller in anticipation of the provision of that Service after the date of termination.
- 14.5 Without prejudice to its other rights or remedies, either party shall be entitled to immediately terminate:
- (a) the provision of all or any of the Services by serving written notice of termination on the other party (such notice to be served within forty-five days of the breach giving rise to the right to terminate occurring) in the event that the other party commits a material breach of any of its obligations pursuant to these Terms and Conditions in connection with the provision of the Service in question, which, in the case of a material breach which is capable of remedy, is not remedied within thirty days following receipt of written notice from the party not in material breach requiring the party in breach to do so; or
 - (b) the provision of all Services in the event that the other party enters into any compromise or arrangement with its creditors or becomes unable to pay its debts within the meaning of Section 123(1) of the Insolvency Act 1986, if an order is made or an effective resolution is passed for the other party's winding up (except for the purposes of amalgamation or reconstruction as a solvent company), if a petition to wind-up the other party is presented to court (which is not withdrawn within 14 days) or if a receiver, manager, administrative receiver or administrator is appointed in respect of the whole of any part of the other party's assets.
- 14.6 Without prejudice to its other rights or remedies, POSTcti shall be entitled to terminate at its discretion the provision of all or any of the Services by written notice in the event that the Customer or Reseller fails on three or more occasions to pay any invoice (to the extent that the Customer or Reseller has not disputed it in accordance with Clause 4.8) within fourteen days of its due date and any such termination shall be deemed to be as a consequence of a material breach by the Customer or Reseller.
- 14.7 Termination of the provision of any individual Service shall not affect the continuing applicability of the Contract in respect of all remaining Services which are still to be provided nor shall it affect the continuing enforceability of any provision of the Contract concerning the terminated Service which, whether expressly or by implication, is to survive the termination of that particular Service.
- 14.8 Termination of the provision of all Services shall not affect the continuing enforceability of any provision of the Contract which, whether expressly or by implication, is to survive termination.
- 14.9 On the day following the date on which the provision of a Data Service terminates (or the expiration of the period of twenty-one days referred to in Clause 16.3) the Service will be completely decommissioned by POSTcti and, subject to Clauses 16.3 and 16.4, all data stored by POSTcti in connection with the use of the Data Service will be deleted.
- #### **15 FORCE MAJEURE**
- 15.1 No failure or delay by either party to perform its obligations in accordance with the Contract (other than the obligation to pay the Charges for the Services) shall give rise to any claim by the other or be deemed a breach of the Contract if such failure or delay results directly from an event of Force Majeure.

- 15.2 In the event that POSTcti is prevented from providing any Service to the Customer or Reseller by reason of an event of Force Majeure for a period of in excess of ten consecutive Business Days, then the Customer or Reseller shall:
- (a) not be liable to pay the Charge associated with the provision of the Service in question during the continuance of the event of that Force Majeure event; and
 - (b) be entitled to immediately terminate the provision of the Service affected by the event of Force Majeure by serving written notice on POSTcti if such event continues for a period of in excess of twenty eight days.

16 OWNERSHIP, DISCLOSURE AND RETURN OF CUSTOMER DATA

- 16.1 POSTcti acknowledges that it shall not acquire any rights of ownership in respect of any data stored by the Customer or Reseller using any Service.
- 16.2 Where a Data Service is terminated by the Customer or Reseller under Clause 5.1 or either Party under Clause 14.1 the Customer or Reseller will remove its data from POSTcti's data centre by use of the Data Service during the relevant notice period.
- 16.3 In the event that the provision of any Data Service is terminated by the Customer or Reseller pursuant to Clauses 14.3 or 14.5 and the Customer or Reseller wishes to retrieve any data stored by it using a Data Service following such termination then the Customer or Reseller shall inform POSTcti of this in writing at the same time as the Customer or Reseller gives notice of termination. Subject to the Customer or Reseller having paid POSTcti all sums for the time being due and payable to POSTcti, POSTcti shall then allow the Customer or Reseller to continue to use the Data Service free of charge for a period of up to twenty-one days for the purpose only of carrying out such retrieval or provide the Customer or Reseller free of charge with a portable disk restoration of such data (which method being entirely at the discretion of POSTcti).
- 16.4 In the event that the provision of any Data Service is terminated other than by the Customer or Reseller pursuant to Clauses 14.3 or 14.5 and the Customer or Reseller wishes to retrieve any data stored by it using a Data Service the Customer or Reseller shall by written notice to POSTcti on or before the date of termination elect for retrieval of the data carried out by POSTcti using a portable disk in which case the Customer or Reseller must pay immediately all Charges which may be outstanding at the date of termination and the then current Charge for the provision of such retrieval via portable disk. POSTcti shall have no obligation to permit the use of the Data Service beyond the termination date so that the Customer or Reseller may retrieve its data.
- 16.5 Clause 16.1 shall not act so as to prohibit POSTcti from disclosing any data stored by the Customer or Reseller using any Service to PhonepayPlus in response to any request for the same received by POSTcti from PhonepayPlus. The Customer or Reseller hereby authorises POSTcti to disclose any such data which may be requested by PhonepayPlus and acknowledges that POSTcti shall be under no obligation to inform the Customer or Reseller should any such request be received from PhonepayPlus or to disclose the disclosure made by POSTcti in response to such a request.

17 SOFTWARE LICENSING AND INTELLECTUAL PROPERTY RIGHTS

- 17.1 Ownership of all and any Intellectual Property Rights in any Software shall at all times remain vested in POSTcti and/or its third party licensors (as appropriate). The Customer or Reseller shall not acquire ownership of or title to any such Intellectual Property Rights pursuant to the Contract or the provision of any Services to it.
- 17.2 Subject to the payment by the Customer or Reseller of the Charges for the relevant Service and the compliance by the Customer or Reseller with its obligations pursuant to the Contract, POSTcti grants to the Customer or Reseller a non-exclusive, non-transferable, revocable licence to use the Software in order to utilise the Service to which it relates only during the Term of the provision by POSTcti of the Service in question.
- 17.3 The Customer or Reseller will not and will not permit any third parties to:
- (a) distribute or allow others to distribute copies of the Software or any part thereof to any third party;
 - (b) tamper with, remove reproduce, modify, amend or copy the Software or any part thereof;
 - (c) provide, rent, sell, lease, licence or otherwise transfer the Software or any copy or any part thereof or use it for the benefit of a third party;
 - (d) reverse assemble, reverse compile, reverse engineer the Software or any part thereof; and/or
 - (e) attempt to discover the source and/or object code of the Software or any other underlying proprietary information.
- This Clause 17.3 shall apply without prejudice to any rights which the Customer or Reseller may have in respect of the Software which cannot lawfully be limited or excluded.
- 17.4 Certain Software, use of which is licensed to POSTcti by third parties, may require the Customer or Reseller to enter into an end user agreement with the relevant third party licensor and it shall be a condition of the provision of the Service in question that the Customer or Reseller enters into and abides by the terms of any applicable end user agreement.
- 17.5 Subject to compliance by the Customer or Reseller with Clause 17.4, POSTcti warrants that (where applicable) it is authorised to sub-licence use of Software in which the Intellectual Property Rights are owned by a third party to the Customer or Reseller in connection with the provision of the relevant Services.
- 17.6 Subject to compliance by the Customer or Reseller with Clause 17.7, POSTcti shall indemnify the Customer or Reseller for all losses, claims, liabilities, expenses and costs which the Customer or Reseller may incur to a third party as a result of the use or possession by the Customer or Reseller in accordance with the Contract of any Software in which the Intellectual Property Rights are owned by POSTcti being found to infringe the Intellectual Property Rights of any third party (excluding any such claims which relate to data stored by the Customer or Reseller using any Service).
- 17.7 The indemnity set out in Clause 17.6 shall only have effect if the Customer or Reseller:
- (a) as soon as reasonably possible informs POSTcti of any claim which it receives or which it becomes aware that it

may receive;

- (b) makes no admission as to liability in respect of any claim or potential claim without the prior written consent of POSTcti;
- (c) allows POSTcti (at the cost of POSTcti) to have sole conduct and control of the defence and / or settlement of any claim or potential claim; and
- (d) provides POSTcti with such support, information and assistance as it may reasonably request in connection with the investigation, defence and/or settlement of any claim or potential claim. POSTcti shall on request, refund the reasonable and demonstrable expenses of the Customer or Reseller incurred in complying with its obligations pursuant to this Clause 17.7(d).

18 ENCRYPTION KEYS

- 18.1 Where, in order to make use of any Service, the Customer or Reseller is provided with any encryption keys by POSTcti, those encryption keys shall be held at the risk of the Customer or Reseller and it shall be the sole responsibility of the Customer or Reseller to ensure that those encryption keys are kept safe and secure. The Customer or Reseller acknowledges that POSTcti shall not be able to undertake the restoration of any data where the Customer or Reseller has lost any applicable encryption key provided to it and that POSTcti shall have no liability to the Customer or Reseller in such circumstances.

19 ENFORCEMENT OF THE CONTRACT BY THIRD PARTIES

- 19.1 PhonepayPlus may enforce the terms of Clauses 3, 16.5 and 20.3 in accordance with Section 1 of the Contracts (Rights of Third Parties) Act 1999.
- 19.2 Subject to Clause 19.1 no person who is not a party to the Contract shall have any right to enforce the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

20 CONFIDENTIALITY

- 20.1 Other than to its responsible employees, sub-contractors, professional advisers who need to have such Confidential Information disclosed to them or except insofar as a party may have a statutory duty to disclose any Confidential Information of the other party or is required by law or a regulatory body to do so (including as envisaged pursuant to Clause 20.3), neither party shall divulge or communicate to any third party any Confidential Information of the other party but such restriction shall cease to apply to any Confidential Information of a party which may lawfully come into the public domain other than through the act or default of the other party.
- 20.2 Each party shall be entitled to use the Confidential Information of the other party only in connection with the performance of the Contract and not otherwise or for its benefit or the benefit of any third party.
- 20.3 POSTcti shall be entitled to disclose to PhonepayPlus without the consent of the Customer or Reseller such information relating to the Customer or Reseller (which may include Confidential Information of the Customer or Reseller or information provided by the Customer or Reseller to POSTcti in accordance with Clause 3) as may be requested by PhonepayPlus. POSTcti shall not be obliged to inform the Customer or Reseller should any such request be received by it from PhonepayPlus or that POSTcti has released any information relating to the Customer or Reseller in response to such a request from PhonepayPlus.

21 AMENDMENTS TO THE CONTRACT

- 21.1 POSTcti shall be entitled to make such reasonable amendments to any document comprising the Contract as may be necessary from time to time to ensure continuing compliance with any applicable legislation, law, code of practice (including the PhonepayPlus Code of Practice) and/or licence condition.
- 21.2 Subject to Clause 21.1 and save where otherwise provided in the Contract that a document may change, no amendment to any document comprising the Contract shall be valid unless and until made in writing and signed by POSTcti and the Customer or Reseller.
- 21.3 If a Customer or Reseller adds users above their contracted amount and these remain in use for 3 months, then this new total will now be considered the contracted amount of users for the remainder of the contract length.
- 21.4 If within 6 months of the contract start date a Customer or Reseller increases the user base permanently by over 20%, then the appropriate setup fee for the new total user amount will then be payable. The setup fee paid previously will be deducted from this amount.

22 ASSIGNMENT OF THE CONTRACT AND SUB-CONTRACTING

- 22.1 The Customer or Reseller shall not be entitled to assign or novate any of its rights or obligations under the Contract without the prior written consent of POSTcti, such consent not to be unreasonably withheld or delayed. For the purposes of this Clause 22.1, POSTcti shall not be deemed to have acted unreasonably should it refuse to consent to any assignment or novation by the Customer or Reseller to any third party who is not, in the reasonable opinion of POSTcti, of the same financial standing or creditworthiness as the Customer or Reseller.
- 22.2 POSTcti shall be entitled to assign or novate any of its rights or obligations under the Contract to any Group Company who shall in turn be entitled to assign or novate those rights or obligations to other Group Companies.
- 22.3 POSTcti shall be entitled to sub-contract the performance of any of its obligations under the Contract provided that any such sub-contracting shall not reduce POSTcti's liability to the Customer or Reseller under the Contract. If, as a result of any act, omission or default by a sub-contractor, POSTcti is liable to compensate the Customer or Reseller under the Contract in respect of any claim, loss, damage, cost or liability, the Customer or Reseller will (or will procure that the relevant member of its Group will) on written request from POSTcti and at no cost to POSTcti assign to POSTcti any and all rights of action against the sub-contractor in respect of such claim, loss, damage, cost or liability which vests in the Customer or Reseller or any member of its Group.

23 GENERAL

- 23.1 Any notice or other communication to be given under the Contract shall be in writing (and in the case of POSTcti, addressed to the Company Secretary), shall be deemed to have been duly served on a party if it is left at the authorised address of that party or posted by pre-paid first class post addressed to that party at such address and

shall if:

- (a) personally delivered, be deemed to have been received at the time of delivery, provided that where delivery occurs after 5.00 pm on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 9.00 am on the next following Business Day; or
 - (b) posted to an inland address in the United Kingdom, be deemed to have been received on the second Business Day after the date of posting.
- 23.2 For the purposes of Clause 23.1, the authorised address of POSTcti shall be its registered office for the time being and, in the case of the Customer or Reseller, the address as set out in the Services Agreement. Either party may notify the other party in writing from time to time of a change in its authorised address to another address in the United Kingdom provided that notice of that change is given in accordance with the requirements of Clause 23.1.
- 23.3 Whilst the parties may make operational communications concerning the Contract via electronic mail, formal notice may not be validly served under the Contract by electronic mail.
- 23.4 The Contract and the documents referred to in it contain the entire agreement and understanding of the parties and supersede all prior arrangements and understandings (both oral and written) relating to the subject matter of the Contract (including any proposals submitted to the Customer or Reseller by POSTcti not expressly incorporated into the Contract). The Contract shall supersede and take precedence over any purchase order or other document submitted by the Customer or Reseller setting out or referring to any contractual conditions, all of which are hereby excluded.
- 23.5 Neither party has relied upon any warranty or representation except as expressly provided for or referred to in the Contract. All warranties, conditions, terms and representations, express or implied (whether by law, statute or otherwise) if not expressly incorporated into the Contract are excluded to the fullest extent permitted by law.
- 23.6 Nothing in the Contract is intended to nor shall it create any partnership, joint venture, agency or other fiduciary relationship between the parties who are with respect to each other, independent contractors.
- 23.7 Any provision of any document comprising the Contract which is held to be invalid or unenforceable shall be deemed ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of the Contract.
- 23.8 No failure, delay or neglect by a party to enforce any provision of the Contract shall be construed nor be deemed to operate as a waiver of that party's right in respect of such provision nor shall it affect the validity of the Contract or any provision in the Contract nor prejudice that party's right to take any subsequent action.
- 23.9 The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England.
- 23.10 The Customer or Reseller consents, unless such consent is withdrawn by written notice to POSTcti, to POSTcti disclosing for marketing purposes that the Customer or Reseller is a customer of POSTcti in respect of the Services.