

1. Interpretation

1.1

In these Conditions, the following definitions apply:

"**Acceptable Use Limit**" means any and all rules, limits or restrictions for the use of the Services stated on NGC's website or otherwise provided to the Customer by NGC from time to time;

"**Associates**" means in relation to a party, any company which is Subsidiary or a Holding Company of that party or which is a Subsidiary of a Holding Company of that party from time to time ("**Subsidiary**" and "**Holding Company**" have the meaning set out in the Companies Act 2006);

"**Authorisation**" means an authorisation to act as a public electronic communications service provider or to operate a communications network under applicable Legislation;

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday) when banks in England are open for business;

"**Charges**" means the charges payable by the Customer for the supply of the Services in accordance with condition 9;

"**Commencement Date**" has the meaning set out in condition 2.2;

"**Committed Period**" means with respect to each Service, a minimum period of 24 calendar months (or such other period agreed between the parties in writing) for which a Contract for each Service will run commencing on the Connection Date;

"**Connection Date**" means the date of the connection of the Service(s);

"**Control**" means in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person:

- (a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or
- (b) as a result of any powers conferred by the articles of association or any other document regulating that or any other body corporate,

and a **Change of Control** occurs if a person who controls any body corporate ceases to do so or if another person acquires Control of it;

"**Conditions**" means these terms and conditions as amended from time to time in accordance with condition 19.8;

"**Connection Date**" means the date of connection of the relevant Service;

"**Contract**" means the contract between NGC and the Customer for the supply of Services comprising the Proposal (if applicable), the NGC Service Agreement and these Conditions and any applicable Third Party Operator's terms and conditions;

"**Credit Limit**" means a monthly financial limit applied by NGC from time to time for Charges incurred under the Contract;

"**Customer**" means the person or firm who purchases Services from NGC as set out in the NGC Service Agreement;

"**Customer Services**" means the Customer Services facility provided by NGC for the Customer to report any faults with the Services or make general account enquiries, by calling 0344 980 0340 or emailing network.services@ngcnetworks.co.uk. All calls may be monitored and recorded for training and security purposes;

"**DPA**" the Data Protection Act 1988 (as amended);

"**Equipment**" means the Equipment set out in the NGC Service Agreement, if any;

"**Early Termination Charge**" means all of the Charges relating to the provision of the Services which would be due to the end of the Committed Period;

"**Fair Use Policy**" means any fair use policy provided by NGC to the Customer in relation to the use of the Services;

"**Fixed Line Network**" means an electronic communications network over which NGC provide the Services;

"**Installation Services**" means Services related to the installation of the Equipment at the Site by NGC in accordance with condition 6;

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"**Legislation**" means any applicable legislation, authorizations, permissions, rules, regulations, orders and guidelines relating to the provision, marketing and use of the Services and includes without limitation the Communications Act 2003, the PhonepayPlus Code and/or any directives or other requirements issued by OFCOM from time to time;

"**Line**" means a connection (installed either by NGC or a Third Party Operator) from the Site to a selected Network Operator;

"**Line Rental Service**" means the Service NGC provides the Customer to enable the Customer to rent access to a main telephone line and may include line rental extras (such as call divert);

"**Minimum Spend**" means the level of spend (net of any discount, VAT, or Service Credits) to which the Customer commits over the Committed Period as set out in the NGC Service Agreement;

"**Network Operator**" means an electronic communications network supplier whom NGC select and may change from time to time;

"**NGC**" means NGC Network Services registered in England and Wales with company number 06133204 whose registered office is at 2 Navigation Court, Calder Park, Wakefield, West Yorkshire WF2 7BJ;

"**NGC Service Agreement**" means the agreement prepared by NGC further to an order from the Customer;

"**OFCOM**" means the Office of Communications;

"**Order**" means the Customer's order for Services as set out in the NGC Service Agreement;

"**PhonepayPlus**" means the regulatory body for all premium rate charged communications services (formerly known as ICSTIS Limited);

"**PhonepayPlus Code**" means the Code of Practice (in time to time in force) and/or any guidance in relation to the operation of premium rate telephone call lines and any similar services issues by PhonepayPlus from time to time;

"**Proposal**" means NGC's Proposal prepared for the Customer relating to the Services;

"**Services**" means the Services and/or supply of the Equipment as stated in the NGC Service Agreement;

"**Service Credit**" means the amounts payable, if any, by NGC to the Customer in accordance with condition 4 and as specified in the NGC website from time to time;

"**Service Failure**" means any failure, error or defect in the provision of the Services by NGC or a Network Operator engaged by NGC but excludes failures, errors or defects arising from, caused by or contributed to by the Customer's acts or omissions or those of third parties including Third Party Operators and/or other providers of communications services or equipment, including internet services;

"**Service Level**" means in relation to a Service the performance standard, if any, set out in the Proposal and any Third Party Operator's Terms & Conditions of Supply;

"**Service Provider**" means has the meaning given to it in the PhonepayPlus Code;

"**Site**" means the Customer's site for which the Line Rental Service is to be provided, as set out in the NGC Service Agreement;

"**Spend**" means the level of spend (net of discount, Value Added Tax and Service Credits) incurred by the Customer;

"**Tariff Review**" means a review which subject to condition 2.3 the Customer can request NGC carry out on its tariff at any time after the twelfth month following the Commencement Date;

"**Third Party Operator**" means an operator of any communications network or system over which NGC may provide the Services including without limitation a Network Operator and a general supplier;

"**Third Party Services**" any part of the Services which NGC procures from a third party, including Access Connections, and any third party hosting services, telecommunications services and/or equipment which NGC uses in order to provide the Services;

"**Working Hours**" means 09:00-17:30 on a Business Day; and

"**Year**" a period of 12 consecutive months commencing on the Commencement Date and each 12 month period thereafter during the term of the Contract.

In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to writing or written includes faxes and e-mails.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when NGC receives the written acceptance of the Order, as set out in the NGC Service Agreement, signed by the Customer, at which point and on which date the Contract shall come into existence ("**Commencement Date**") and will continue, unless terminated in accordance with the Contract, for the Committed Period.

2.3 Where the Customer requests a Tariff Review and NGC agree to amend the Customer's tariff, a new Committed Period will be deemed to start from the date upon which the relevant tariff is amended.

2.4 If the Customer elects to apply for Line Rental Services and already receives line rental services from another provider, the service from the other provider will continue until the transfer to the Line Rental Service to NGC is complete unless the Customer's other provider agrees that it can be done earlier.

2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of NGC which is not set out in the Contract.

2.6 Any samples, drawings, descriptive matter or advertising issued by NGC or any Third Party Operator and any descriptions or illustrations contained in NGC's or any Third Party Operator's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.8 Any quotation given by NGC shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

3.1 NGC shall supply the Services to the Customer in accordance with the Proposal and NGC Service Agreement in all material respects.

3.2 NGC shall use all reasonable endeavours to meet any performance dates specified in the Proposal/NGC Service Agreement or as otherwise agreed between the parties in writing, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 NGC shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and NGC shall notify the Customer in any such event.

3.4 NGC warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Service Failures

4.1 NGC do not guarantee that the Services will be continuously available or free from Service Failures.

4.2 The Customer shall immediately report any Service Failure to NGC via the NGC Network Services Helpdesk and shall provide such information as necessary to enable NGC to investigate the Service Failure.

4.3 If the Customer reports a Service Failure pursuant to condition 4.2 and it is determined by NGC that no Service Failure has occurred, NGC may charge the Customer all reasonable costs and expenses incurred by NGC in investigating the alleged Service Failure and recover the same as a debt due from the Customer.

4.4 If as result of a Service Failure NGC determines in its reasonable discretion an applicable Service Level specified in the Contract is not achieved NGC will, subject to condition 9.8, pay the Customer a Service Credit by issuing a credit note to the Customer for a sum equivalent to the amount of the Service Credit.

- 4.5 The duration of any Service Failure, for the purposes of calculating Service Credits, will be measured from the time the Customer reports the Service Failure to NGC pursuant to condition 4.2 to the time NGC can demonstrate the relevant Service Failure has been resolved.
- 5. Allocation and use of telephone numbers**
- 5.1 Where NGC allocate any telephone numbers or codes to the Customer as part of the Services, the Customer will not acquire any legal, equitable or other rights in relation to such numbers or codes. All Intellectual Property Rights or other rights in any allocated numbers or codes shall at all times remain the property of NGC.
- 5.2 NGC may on giving the Customer written notice withdraw or change any allocated numbers or codes but will only do so in the event it is required to do so under applicable Legislation.
- 5.3 The Customer shall not be entitled to sell or transfer or seek to sell or transfer any allocated numbers or codes. However the Customer may port numbers to NGC and may also port numbers to other carriers with whom NGC's Network Operators have porting agreements.
- 6. Equipment and Installation**
- 6.1 The Equipment remains the property of either NGC or (where applicable) the relevant Third Party Operator and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of the Contract). Equipment will be at the Customer's risk immediately on delivery to the Site (or into custody on the Customer's behalf, if sooner).
- 6.2 The Customer shall procure that a duly authorised representative of the Customer shall be present at the delivery of the Equipment. Delivery will be evidenced by signature by the Customer's authorised representative. NGC shall not have any liability for any delay in performing the Services and reserve the right to charge carriage and/or storage if an authorised signatory is not available, or the Customer refuses to accept delivery of Equipment.
- 6.3 The Customer must inspect the Equipment and inform NGC of any damaged or missing items within seven (7) days of delivery (or expected delivery in the case of missing items) pursuant to condition 6.1 by telephoning NGC's Customer Services.
- 6.4 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on delivery pursuant to condition 6.1. The Customer will hold the Equipment on NGC's behalf and keep it secure, safe, insured and identified as NGC's property. The Customer will notify NGC immediately of any loss, theft or damage of any Equipment.
- 6.5 The Customer will ensure that the Equipment and any other equipment and/or hardware connected to or used with any Services is connected and used in accordance with any applicable instructions, safety or security procedures provided by NGC and/or the relevant manufacturer of the Equipment.
- 6.6 Where the Equipment is required to be installed at the Site to enable NGC to provide the Line Rental Service the Customer shall:
- (a) prepare the Site in accordance with NGC's and/or the Third Party Operator's reasonable instructions;
 - (b) make available a suitable place and conditions for the Equipment; and
 - (c) provide (at the Customer's cost) sufficient electricity to power the Equipment and connection points to the Fixed Line Network.
- 6.7 NGC shall not be responsible for any redecorating or making good that may be required after the installation of the Equipment is completed.
- 6.8 The Customer must not add to, modify, carry out any maintenance on or in any way interfere with the Equipment nor permit anyone else (other than someone authorised by NGC) to do so. The Customer is liable to NGC for any loss of or damage to the Equipment, except where such loss or damage is due to fair wear and tear or is caused by NGC or anyone acting on its behalf.
- 6.9 The Customer shall obtain all necessary consents to put any Equipment on the Site including, without limitation, consents for any alteration to buildings, or permission to cross other people's land.
- 6.10 The Customer acknowledges and agrees that NGC has no obligation to review or edit any of the Customer's information which it stores on or transmits through the Equipment or uses in connection with the Services. However, NGC reserves the right to access, retain and disclose copies of such information for the purposes of:
- (a) correcting, maintaining and improving the Services;
 - (b) complying with any Legislation, conditions or its Authorisation or the terms of NGC's contracts with third parties;
 - (c) observing the performance of the Services including, for Service Level monitoring;
 - (d) retaining a record of activity on the Equipment or systems;
 - (e) complying with any request for information or disclosure from a court or other appropriately authorised body; and
 - (f) ensuring that the Customer is complying with the Fair use Policy.
- 7. Access to the Customer's site**
- 7.1 In respect of certain Services notified to the Customer it may be necessary to access the Site prior to the Connection Date in order to provide the Installation Services. NGC will use reasonable endeavours to ensure the relevant Third Party Operator performs and completes the Installation Services however for technical or operational reasons installation may not be possible. In this event, NGC may terminate the Contract or the affected Service or part thereof by notice to the Customer in writing. The Customer accepts that such notice of termination may be on short notice as the technical or operational reason may not be discovered until an attempt is made to access and install Equipment.
- 7.2 The Customer will provide a suitable and safe working environment for the Third Party Operator and NGC employees and anyone acting on its behalf in relation to work carried out at the Site. In normal circumstances, access to the Site will only be required during Working Hours. If the Third Party Operator or NGC require access outside Working Hours, the Customer will, where reasonably requested by NGC, permit or procure permission for such Third Party Operator, NGC or its agents to have access to the Site.
- 8. Customer's obligations and acknowledgements**
- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides to NGC from time to time are complete and accurate;
 - (b) co-operate with NGC in all matters relating to the Services;
 - (c) provide the Third Party Operator, NGC, its employees, agents, consultants and subcontractors, with access to the Site and the Customer's other facilities as reasonably required by NGC or the Third Party Operator;
- (d) be responsible for ensuring the compatibility of the Services with any monitored alarm system the Customer may have and the Customer should check this with its monitored alarm system provider;
 - (e) provide NGC with such information and materials as NGC may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (f) provide NGC with an email address for the invoicing of the Charges and will immediately notify NGC of any changes to that email address;
 - (g) permit the Third Party Operator, NGC or its duly authorised representative entry to the Site to inspect the Equipment at all reasonable times and to provide the Installation Services and for such purposes the Customer hereby grants the Third Party Operator and NGC a licence to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for the same;
 - (h) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
 - (i) keep and maintain all materials, equipment, documents and other property of the Third Party Operator and/or NGC ("NGC Materials") at the Customer's premises in safe custody at its own risk, maintain NGC Materials in good condition until returned to the Third Party Operator or NGC (as applicable) and not dispose of or use NGC Materials other than in accordance with NGC's or the Third Party Operator's written instructions or authorisation;
 - (j) give NGC at least two Business Days written notice of any advertising, promotion or other campaigns which may significantly increase traffic on the relevant Network Operator's network;
 - (k) permit NGC to use the Customer's name and trade marks in NGC marketing materials and activities; and
 - (l) immediately inform NGC in writing of any changes or additions to any information supplied to NGC at any time and any sanctions imposed on the Customer or any associated individuals by PhonepayPlus and/or OFCOM.
- 8.2 The Customer acknowledges and agrees:
- (a) NGC may select and at any time change any carrier or service provider for the purposes of providing the Services, and the Customer hereby authorises NGC to give all notices, nominations and other authorisations that are necessary for it to provide the Services;
 - (b) whilst the Services are provided to the Customer, NGC is authorised by the Customer to act on its behalf in all dealings with any Third Party Operator in connection with any matter that enables NGC to provide or to continue to provide the Services;
 - (c) certain services which are provided by Third Party Operators may not be compatible with the Services and may be automatically removed from the Customer's line during set up (as applicable) and may no longer be available to the Customer; it is solely responsible for safeguarding its data by any necessary means including, without limitation, making backup copies and maintaining a disaster recovery process;
 - (e) if it wishes to connect equipment to the Fixed Line Network other than using a main phone socket, the Customer must obtain NGC's prior written consent and acknowledges that NGC may have to request permission from the relevant Third Party Operator prior to granting any consent;
 - (f) it will not connect any equipment to the Fixed Line Network that may harm the Fixed Line Network or the equipment of other users of the Fixed Line Network;
 - (g) that for operational reasons, NGC or Third Party Operators may need to change the Customer's phone numbers or the codes used for the Line Rental Services. In such an event NGC shall use reasonable endeavours to give the Customer as much notice as reasonably practicable;
 - (h) it shall ensure all calls (save for any calls required to be made over another third party network by any applicable Legislation) made by the Customer on any Line that is the subject of Line Rental Service shall be made using the Network Operator;
 - (i) if it switches any calls on any Line that is the subject of Line Rental Service to any other service provider then NGC shall be entitled to either:
 - (i) terminate this Contract with immediate effect by giving the Customer written notice;
 - (ii) bar the Customer's use of indirect access codes;
 - (iii) charge the Customer a higher fee for the use of the Line Rental Service;
 - (iv) amend its tariff; or
 - (v) disconnect the Line Rental Services;
 - (j) where it has agreed to a Minimum Spend it will meet the Minimum Spend in the Committed Period;
 - (k) it is responsible for the security of its use of the Services including, without limitation, protecting passwords, backing-up all data, using appropriate security devices (such as virus checking software) and having a disaster recovery processes in place;
 - (l) it shall immediately notify NGC of any threat to the security of the Services of which the Customer becomes aware;
 - (m) in relation to any Services regulated by PhonepayPlus and for the purposes of the PhonepayPlus Code, it:
 - (i) is the Service Provider and will be recognised by PhonepayPlus as the Service Provider;
 - (ii) will have adequate customer service and refund mechanisms in place (including a non-premium-rate UK

- customer service phone number) in order to discharge its obligations under the PhonepayPlus Code; and will comply with any and all directive, directions, instructions, recommendations or other similar advice that OFCOM and/or PhonepayPlus issues from time to time;
- (n) that it will not use the Services in any way which:
- (i) breaches or causes NGC to breach any Legislation;
 - (ii) where applicable, breaches the Fair Use Policy or Acceptable Use Limit;
 - (iii) for any improper, immoral or unlawful purpose;
 - (iv) causes a degradation of service to any of NGC's other customers;
 - (v) involves the sending of unsolicited marketing or advertising materials;
 - (vi) results in the transmission or storage of any material of a pornographic, obscene, defamatory, menacing or offensive nature or material which is a nuisance, hoax, abusive, racist or indecent or which would result in the breach of any third party's Intellectual Property Rights, confidential information or privacy;
 - (vii) breaches or causes NGC to breach any applicable data protection legislation including, but not limited to, the Data Protection Act 1998;
 - (viii) causes an overload of NGC's chosen Network Operator; or
 - (ix) causes the Third Party Operator and/or NGC to lose or breach its Authorisation;
- (o) NGC shall be entitled to use traffic data and/or Personal Information (as defined in the Data Protection Act 1998) relating to the Customer (if the Customer is an individual) or the Customer's officers (if it is a limited company) in accordance with the NGC Privacy Policy in force from time to time which is available upon request.
- 8.3 If NGC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- (a) NGC shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays NGC's performance of any of its obligations;
 - (b) NGC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from NGC's failure or delay to perform any of its obligations as set out in this condition 8.3; and
 - (c) the Customer shall reimburse NGC on written demand for any costs or losses sustained or incurred by NGC arising directly or indirectly from the Customer Default.
- 8.4 The Customer undertakes to indemnify and keep indemnified NGC on demand against:
- (a) all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of the Contract; or
 - (b) any claim, losses or damages that NGC incur due to any third party liabilities (including any claim by a Third Party Operator) that is due to any acts or omissions by the Customer.
- 9. Charges and payment**
- 9.1 In consideration of the provision of the Services and the Equipment, the Customer shall pay NGC the Charges. The Charges shall be payable from the date that the Service or any part of a Services are first made available to the Customer or upon installation in the case of Equipment and the Installation Services. The Customer shall pay the Charges by direct debit. If the Customer requests payment by an alternative means and NGC agrees to the same, an administration charge of £50 will be added to each of the Customer's invoices.
- 9.2 NGC shall invoice the Customer for the Charges monthly or as otherwise notified by NGC to the Customer from time to time.
- 9.3 The Customer shall pay each invoice submitted by NGC:
- (a) unless otherwise agreed between the parties, within 14 days of the date of the invoice or 7 days in respect of the Customer's final invoice relating to the Services; and
 - (b) in full and in cleared funds to a bank account nominated in writing by NGC, and
- time for payment shall be of the essence of the Contract.
- 9.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by NGC to the Customer, the Customer shall, on receipt of a valid VAT invoice from NGC, pay to NGC such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 9.5 If the Customer fails to make any payment due to NGC under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.6 If the Customers makes payment of the Charges by direct debit and the relevant direct debit is dishonoured or cancelled for any reason, NGC shall be entitled to charge the Customer an administration fee of £50 and a further monthly administration fee of £50 for each month in which the direct debit is dishonoured or not reinstated following cancellation. In addition the Customer shall pay all costs and expenses (including reasonable legal costs) reasonably incurred by NGC or its Third Party Operator in enforcing payment of the Charges.
- 9.7 NGC may vary the Charges at any time upon giving the Customer written notice in the event there are any changes in NGC's arrangements with the Third Party Operator or as a result of any legal, regulatory or reasonable business requirements.
- 9.8 NGC may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by NGC to the Customer including, without limitation, the Service Credits.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). It is noted that any Charges that are periodical Charges shall be properly due and payable by the Customer for the whole period, even if the Services to which they relate were only provided for part of that period, and the Customer shall not be entitled to any pro-rata reduction, except where the Contract or any Service was terminated by the Customer during such period under condition 16.4 (breach by NGC or termination on notice) or condition 18 (Force Majeure) and then, insofar as any element of the Charges represents charges payable by NGC to Third Party Operators in respect of such period which are recharged to the Customer, any refund of that element shall be limited to the amount of pro-rata refund (if any) received by NGC from the relevant Third Party Operator(s) in relation to (and directly attributable to) that element of the Charges.
- 9.10 Where the Services include the sale of any Equipment or other goods to the Customer, the Equipment and such other goods will remain the property of NGC or its Third Party Operator, as appropriate, until all Charges relating thereto and all other sums which are or which become due to NGC from the Customer on any account have been paid in full (cash or cleared funds). Notwithstanding the foregoing, the risk in the Equipment and such other goods will pass to the Customer from the date of delivery to the Customer.
- 10. Rebates**
- Where the Services comprise or include services in respect of which rebates are payable by NGC to the Customer ("**Rebate Services**"), the Customer hereby authorises NGC to raise an invoice on the Customer's behalf. NGC will notify the Customer of the amount of rebate due for each calendar month or other applicable period within fifteen (15) days of the end of each billing period. Subject to condition 10.4, NGC will pay the rebate to the Customer within forty five (45) days following the date of invoice or (if later) within seven (7) days of the date of receipt by NGC of sums from the relevant Third Party Operator paid to NGC in respect of the applicable Service. The Customer agrees it shall be entitled to deduct rebates payable by NGC to the Customer from the payment of Charges. In the case of any Service regulated by PhonepayPlus, NGC shall not make any payments of rebates to the Customer for at least thirty (30) days after the use of the Service to which the payments relate.
- 10.2 NGC shall have the right at any time to revise the amount of the rebates payable to the Customer by giving the Customer written notice prior to the effective date of revision. The revised amounts shall apply to all Rebate Services provided to the Customer on or after the effective date of such revision.
- 10.3 Each rebate shall be calculated according to the duration of calls relating to the Rebate Service as indicated by NGC's or the Network Operator's equipment.
- 10.4 Following a decision or request from PhonepayPlus relating to a Rebate Service, NGC may withhold from any rebate payable to the Customer or demand payment by the Customer such sums as are sufficient to meet any fines, administrative charges or other sums payable by NGC to PhonepayPlus and to which PhonepayPlus claim entitlement under the PhonepayPlus Code and such sums shall be recoverable by NGC from the Customer as a debt.
- 10.5 If NGC has reasonable grounds to suspect that the Customer is in breach of the Contract or that the Rebate Services are being used (whether by the Customer or any third party) for any illegal or fraudulent activity and/or otherwise than in accordance with the terms of the Contract, then NGC shall be entitled to withhold payment of any sum (in whole or in part) due to the Customer in relation to the Rebate Service or deduct the same from any rebate due to the Customer unless and until the Customer can prove to NGC's reasonable satisfaction that it is not in breach of the Contract and/or that the Rebate Service was not so used.
- 10.6 In the event that NGC pay a rebate to the Customer and:
- following a subsequent decision or request from PhonepayPlus relating to a Rebate Service, NGC are required to pay PhonepayPlus any fine, administrative charges or other sums to which PhonepayPlus claim entitlement under the PhonepayPlus Code;
 - (a) a Network Operator (including, without limitation, BT) subsequently withholds payment of any sum (in whole or in part) due to NGC in relation to a Rebate Service;
 - (b) a Network Operator (including, without limitation, BT) subsequently claims repayment of any sum paid to NGC in respect of a Rebate Service, provided such a claim does not arise as a result of NGC's actions or the actions of NGC's employees or representatives; and/or
 - (c) NGC have reasonable grounds to suspect that a rebate has been paid for a Rebate Service that has been or is being used (whether by the Customer or any third party) for any illegal or fraudulent activity and/or otherwise than in accordance with the terms of the Contract or was paid to the Customer whilst the Customer was in breach of this Contract;
- (collectively referred to as "**Relevant Rebate**") NGC shall be entitled to: deduct an amount equal to the Relevant Rebate from any future rebate due to the Customer under the Contract; demand payment by the Customer of an amount equivalent to the Relevant Rebate and the Customer agrees to pay such amount within fourteen (14) days of the receipt of such a demand; or deduct an amount equivalent to the Relevant Rebate from any sum held by NGC or any of its Associates whether under the Contract or any other agreement as security of the Customer's obligations.
- 10.7 If as a result of any future Legislation and/or as a result of a decision made by a Network Operator and/or by OFCOM the terms upon which rebates may be paid by NGC (as a supplier of non-geographic numbers including, but not limited to 0844) to the Customer are regulated then NGC shall be entitled to amend the terms upon which the Rebate Service is supplied to the Customer upon written notice which the Customer will be obliged to accept including, for the avoidance of any doubt, the amounts of rebates payable to the Customer.
- 11. Credit limit/Security payment**
- 11.1 NGC shall be entitled to perform a credit check on the Customer at any time during the Committed Period. Further NGC may in its sole discretion and at any time during the

- Committed Period impose a Credit Limit on the Customer's account. Any Credit Limit imposed can be amended by NGC without prior notice to the Customer. If the Customer exceeds such Credit Limit NGC shall be entitled to demand immediate payment of the Charges and/or suspend the Service.
- 11.2 Upon demand by NGC, NGC may require the Customer to pay NGC a security deposit as a condition of providing the Services. NGC may suspend provision of the Services until it receives payment of the security deposit. NGC may hold the security deposit until the Customer has paid all sums due to NGC under the Contract. NGC will refund to the Customer any security deposit it is still holding on request upon termination of the Contract or at NGC's discretion after three (3) months of continuous on time bill payments. No interest shall be payable on any security deposit held by NGC.
- 12. Intellectual property rights and software**
- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services, the NGC Materials and the Equipment shall be owned by NGC, its suppliers or licensors (as applicable).
- 12.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on NGC obtaining a written licence from the relevant licensor on such terms as will entitle NGC to license such rights to the Customer.
- 12.3 The Customer hereby warrants that it is the owner of or properly licensed to use any brands, logos, trade marks, graphics, text, sounds, data, works, and other materials hosted or processed using the Services and shall ensure that NGC and its Third Party Operators are properly licensed to copy and reproduce such materials where this is required for the supply of Services under this agreement.
- 12.4 Where any software is provided by NGC to the Customer to enable it to make use of the Services ("**Software**"), NGC grants the Customer a non-exclusive, non-transferable licence to use the Software solely for the purpose of receiving the Services. Where any additional terms and conditions apply to the Customer's use of the Software NGC will notify the Customer and, if requested, the Customer shall sign any agreement reasonably required to protect the owner's rights in the Software.
- 12.5 Except where the Customer obtains NGC's prior written consent, the Customer acknowledges and agrees that it shall not:
- (a) rent, loan, lease, sub-licence, translate, merge, adapt, vary or modify the Software, in whole, or in part; and
 - (b) disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the Software nor attempt to do such things except to the extent that by virtue of section 26A of the Copyright, Designs and Patents Act 1998 such acts cannot be prohibited and provided that the information obtained by the Customer during such activities:
 - (i) is used only for the purpose of achieving inter-operability of the Software with another software program; and
 - (ii) is not disclosed or communicated to any third party without NGC's prior written consent; and
 - (iii) it is not used to create any software which is substantially similar to the Software, in whole or in part.
- 13. Confidentiality**
- 13.1 A party ("**receiving party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this condition as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority (such as OFCOM and/or PhonepayPlus) or by a court of competent jurisdiction. This condition 13 shall survive termination of the Contract.
- 14. Limitation of liability**
- 14.1 Nothing in these Conditions shall limit or exclude NGC's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) for any liability that, by law, cannot be limited or excluded.
- 14.2 Subject to condition 14.1:
- (a) NGC shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
 - (i) any loss of business; or
 - (ii) loss of profits; or
 - (iii) loss of anticipated savings; or
 - (iv) loss of reputation; or
 - (v) loss or depletion of goodwill and/or similar losses; or
 - (vi) loss of goods; or
 - (vii) loss of contract; or
 - (viii) loss of use; or
 - (ix) loss or corruption of data or information; or
 - (x) business interruption; or
 - (xi) increase of bad debt; or
 - (xii) any indirect, special, pure economic or consequential loss, cost, charge, expense or damage, arising out of or in connection with the Contract; and
 - (b) NGC will have no liability to the Customer for the additional cost incurred by the Customer in engaging and transferring to a replacement provider for any of the Services.
 - (c) NGC's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed:
 - (i) where the liability occurs in the first Year of this Contract, to the sums received by NGC under the Contract from the Commencement Date to the date of the liability first arises or to £30,000, whichever is the greater; or
 - (ii) where the liability occurs in the second or any subsequent Year of the Contract, to the sums received by NGC under the Contract in the Year preceding the Year in which the default occurred.
- 14.3 Except as expressly and specifically provided in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 15. Suspension of the Services and/or contract**
- 15.1 NGC may suspend the provision of the Services in whole or in part if;
- (a) it has an entitlement to terminate the Contract;
 - (b) it has reasonable ground to believe the Customer is acting in breach of the Fair Use Policy or the Acceptable Use Limit;
 - (c) technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services including, if the Services depend on a Third Party Operator, the suspension of the Services by the Third Party Operator;
 - (d) it is necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance or to deal with any actual or suspected security breach, virus, attack or any misuse;
 - (e) it is obliged to comply with any contract, order, instruction or request of a competent governmental regulatory or other authority;
 - (f) if in NGC's reasonable opinion the Customer's conduct is likely to result in the breach of any Legislation or is otherwise prejudicial to NGC's interests;
 - (g) the Customer exceeds the Credit Limit;
 - (h) the Customer allows anything to be done which in NGC's reasonable opinion may have the effect of impairing the operation of the Services; or
 - (i) the Customer's direct debit for the payment of the Charges is dishonoured or cancelled for any reason.
- 15.2 Where the suspension of the Services and/or Contract is the result of the Customer's default, NGC shall be entitled to charge the customer an administration fee where NGC, in its sole discretion, reinstates the Services and/or Contract following suspension.
- 15.3 NGC will, where reasonable practicable, give the Customer notice of its intention to suspend the Services and/or Contract and, in relation to suspension for the reasons stated in conditions 15.1(c) to (e) above, will restore the Services as soon as NGC is reasonably able to do so.
- 15.4 For the avoidance of doubt, if NGC exercise its right to suspend the Services and/or Contract pursuant to this condition 15 this will not restrict its rights to terminate the Contract under condition 16.
- 16. Termination**
- 16.1 Without limiting its other rights or remedies, NGC may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 7 days after being notified in writing to do so;
 - (b) the Customer commits a breach or persistent breaches of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 days of that party being notified in writing to do so;
 - (c) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (d) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;
 - (f) the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - (g) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - (i) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (j) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - (k) any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 16.1(c) to condition 16.1(j) (inclusive);
 - (l) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - (m) the Customer's financial position deteriorates to such an extent that in NGC's opinion the Customer's capability to adequately

- fulfil its obligations under the Contract has been placed in jeopardy;
- (n) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation;
- (o) the Customer has an Authorisation under which it has the right to run a communication systems and to connect it to NGC's system removed, revoked or amended;
- (p) NGC's contract with Network Operator for a Line Rental Service is terminated or if any Third Party Operator which is essential to the provision of the Services is terminated or ceases to be available for any reason whatsoever, at all or at any appropriate quality, and no suitable replacement shall be available on commercially reasonable terms. NGC shall give such advance notice in writing to the Customer as it is reasonably able to give;
- (q) NGC is directed by OFCOM, PhonepayPlus and/or any other competent authority to cease the provision of the Services or any part of them to the Customer;
- (r) it is found the Customer has submitted an application for the Services which in NGC's reasonable opinion contains any false, incorrect or misleading information;
- (s) if NGC's Authorisation is revoked or modified in any way which has a material impact on NGC's ability to provide the Services or any of them or if NGC is prohibited from providing or restricted from providing the whole or any part of the Services;
- (t) a breach, act, omission or default by the Customer may result in NGC breaching any applicable Legislation or place NGC or any of its Associates in breach of its interconnect agreements with BT or any other Network Operator;
- (u) the Customer's use of the Network Operator's network is, or in NGC's reasonable opinion is likely to cause damage to, interrupt or otherwise prevent NGC from supplying services to other customers or complying with obligations owed to other customers;
- (v) such action is required to comply with any Legislation;
- (w) NGC has reasonable ground to believe the Customer is involved in fraudulent or other unlawful activity;
- (x) the Customer undergoes a Change of Control; or
- (y) the Customer moves Site.
- 16.2 Without limiting its other rights or remedies, NGC may suspend provision of the Services under the Contract or any other contract between the Customer and NGC if the Customer becomes subject to any of the events listed in condition 16.1(c) to condition 16.1(n), or NGC reasonably believes that the Customer is about to become subject to any of them.
- 16.3 NGC may terminate the contract on giving the Customer not less than 30 days' written notice to expire on or after the Committed Period.
- 16.4 The Customer may terminate the Contract:
- (a) on written notice to NGC if NGC commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (b) on giving NGC not less than 30 days' written notice to expire on or after the Committed Period.
- 17. Consequences of termination**
- 17.1 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to NGC all of NGC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, NGC shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return the Equipment and any of NGC's confidential information to NGC. If the Customer fails to do so, then NGC may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) NGC will arrange for disconnection of the Equipment from the Network;
- (d) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (e) conditions which expressly or by implication survive termination shall continue in full force and effect.
- 17.2 Upon termination of a Contract pursuant to condition 16.1 before the end of the Committed Period and notwithstanding any other remedy under the Contract or at law NGC reserve the right to charge the Customer the Early Termination Charges which shall be added to the Customer's final invoice. The Customer agrees the Early Termination Charges are a fair assessment of the losses and damage that NGC will suffer as a result of the termination of the contract prior to the expiry of the Committed Period. The sums payable pursuant to this condition 17.2 shall be agreed compensation for NGC's loss and shall be payable in addition to the sums payable pursuant to condition 17.1(a).
- 18. Force majeure**
- 18.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of NGC including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of NGC or any other party), any default, delay or failure of the Third Party Operator, a utility service or transport network, shortage of or prevention from obtaining in any way labour, parts, materials, fuel, energy or other supplies, act of God, war, riot, civil commotion, act or threat of terrorism, hostilities, blockade or sabotage, theft or malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, lightning, earthquake, lack of water arising from weather or environmental problems or default of suppliers or subcontractors.
- 18.2 NGC shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 18.3 If the Force Majeure Event prevents NGC from providing any of the Services for more than 90 days, NGC shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 19. General**
- 19.1 NGC may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 19.2 The Customer shall not, without the prior written consent of NGC, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights under the Contract.
- 19.3 The Customer must bring any legal proceedings against NGC arising under or in connection with the Contract within twelve (12) calendar months from the date the Customer first became aware (as can be evidenced by reasonable record) of the facts giving rise to the liability or alleged liability or within the relevant statutory limitation period, whichever is the earlier.
- 19.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 19.5 Each provision of the Contract is severable and distinct from the others and if any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 19.6 Failure or delay by NGC in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of that right or any other rights under the Contract, nor separate to bar exercise or enforcement of it or any other right at any time or times thereafter.
- 19.7 Except for PhonepayPlus who may directly enforce any provisions of the Contract related to Services regulated by PhonepayPlus, no term of this Contract shall be enforceable by any party who is not a party to the Contract under the Contracts (Rights of Third Parties) Act 1999.
- 19.8 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by NGC.
- 19.9 The Contract shall be governed by and construed in accordance with English law and the courts of England shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract.