

1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context requires otherwise, the following phrases shall have the following meanings in this Agreement:

“**Access Dates**” means the dates on which Customer access to the Services is made available as notified in writing by Packet Media Ltd. to the Customer.

“**Affiliate**” means a company that controls, is controlled by, or is under common control with Packet Media Ltd., where “control” means the holding of fifty percent (50%) or more of equity ownership.

“**AIT**” means Artificial Inflated Traffic, which includes, without limitation, Service usage which results in (i) disproportionate traffic patterns from that which would be expected from good faith usage of the Services; (ii) any situation where Users are misled into incurring premium rate charges; (iii) breaches of any relevant law or ruling by a Regulatory Body.

“**Codes of Practice**” means all legal and regulatory codes of practice, rules of procedure, guidelines directions, policies and other requirements applicable to the Services. Without prejudice to the above, Codes of Practice shall include the PhonepayPlus Code of Practice and any industry guidelines.

“**Content**” means any data sent or received by the Customer through the Services including without limitation all data, information, material and content, including text, pictures, photographs, video, music, sound and graphics.

“**Intellectual Property Rights**” means all intellectual and industrial property rights anywhere in the world including, without limitation, any invention, patent, design or utility model rights, any copyrights and trademarks, service marks, database rights, domain names, commercial or confidential information, know-how or trade secrets, and any other rights of a similar nature or effect whether or not any of the same are registered, and the right to apply for any of them.

“**Minimum Period**” means the minimum subscription period for each Service, as detailed in the Schedules.

“**Networks**” means the communications networks through which the Content is delivered, as more particularly described in the Schedules.

“**OFCOM**” means the Office of Communications; the regulator for the UK communications industries.

“**PhonepayPlus**” means the industry-funded regulatory body for all premium rate charged telecommunications services. (Or any similar body that may be appointed in addition to or substitution for it in the UK).

“**Public Networks**” means the Networks and any other network over which the communication of information for the purposes of providing the Services or relating to the Services may be necessary.

“**Regulatory Body**” means any government constituted regulatory body, including without limitation PhonepayPlus and OFCOM whose function it may be (amongst other things) to enforce and administer any Codes of Practice.

“**RPI Percentage**” means the percentage increase in the UK Index of Retail Prices (All Items) maintained by the Central Office of Information.

“**Service(s)**” means the service(s) provided to the Customer by Packet Media Ltd., as specifically detailed in the Schedules to this Agreement.

“**Schedules**” means the Service-specific terms and conditions as applicable.

“**User**” means a person who is connected to a Network.

1.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules. In the event of any inconsistency between these terms and the terms of a Service Schedule, these terms will prevail to the extent of the inconsistency unless specified otherwise in the relevant Schedule.

1.3 On and from the Commencement Date the contracted Services will be available to the Customer. During the currency of this Agreement, if the Customer wishes to obtain access to an additional Service or Services, the Customer must complete a Schedule for such Service. Packet Media Ltd. may, at its discretion,

agree to the provision of the additional Service subject to these Terms and Conditions and those specific to the Service Schedule.

1.4 Reference to any statute, licence or other regulation includes a reference to that statute, licence or regulation as re-enacted or amended from time to time.

1.5 Where the context so admits words denoting the masculine gender shall include the feminine and vice versa and words denoting the singular the plural and vice versa. The Clause headings are for the purpose of reference only and do not form part of this Agreement, nor do they affect the validity or enforceability of this Agreement.

2 DURATION

2.1 This Agreement shall commence on the Commencement Date and (subject to earlier termination in the manner hereinafter provided) shall continue in force until the termination of the provision of the Services. Upon termination of all Schedules entered into, these Terms and Conditions shall be capable of termination by either party providing notice thereof to the other

2.2 If this Agreement or the provision of any Service is terminated pursuant to Customer default of its obligations hereunder the Customer shall pay a sum (by way of agreed compensation for Packet Media Ltd.’s loss of revenue by reason of such early termination and not as a penalty) equal to the total Service charge(s) that would have been payable under the terms of this Agreement. This Clause shall not apply where:-

2.2.1 the Customer gives 30 days written notice of termination of a Service because of an increase in the charges for that Service of more than 10% within any one year period commencing on the Access Date and;-

2.2.1.1 the notice is given within two weeks of the date on which the increase takes effect in accordance with Clause 5.4; and

2.2.1.2 the RPI Percentage for the period from the Access Date to the date referred to in Clause 2.2.1.1 above is less than the percentage increase in the charges.

2.2.2 the Customer terminates this Agreement pursuant to its rights set out in Clause 12.1.

3 CUSTOMER OBLIGATIONS

3.1 The Customer shall, at all times throughout the duration of this Agreement, provide Content and otherwise utilise the Services in accordance with such reasonable conditions as may be notified in writing to the Customer by Packet Media Ltd. from time to time and the relevant provisions of the Communications Act 2003 (“the Act”). The Customer shall provide services in accordance with any applicable conditions of entitlement of the Act, any direction of OFCOM or other competent authority and any applicable legislation (including but not limited to the Data Protection Act 1998 the Consumer Protection (Distance Selling) Regulations 2000 (SI 2334) and the Privacy and Electronic Communications (EC Directive) Regulations 2003, law or Codes of Practice regulating the provision of the services contemplated by this Agreement. Under no circumstances may the Customer directly advertise or market any of its services where the services have not been solicited by the recipient. The Customer shall at all times throughout the duration of this Agreement provide Content which complies with the PhonepayPlus Code of Practice and all Network Codes of Practice and which is not likely to bring the Networks (at their sole discretion) or Packet Media Ltd. (at its reasonable discretion), into disrepute.

3 In any publicity or other promotional activity the Customer shall not state or imply any approval by any of the Networks or by Packet Media Ltd. (or any associated company of the Networks or Packet Media Ltd.) of any Content nor refer to the Networks or Packet Media Ltd. without the express written approval of a duly authorised officer of Packet Media Ltd..

3.3 The Customer shall not at any time provide any Content the provision of which is or may be a criminal offence or which infringes or may infringe any third party intellectual property rights or is or may otherwise be unlawful under or by virtue of any rule of common law or equity or under any enactment for the time being and from time to time in force or involves a wrong actionable at the suit of any person.

- 3.4 The Customer will immediately cease to provide, at Packet Media Ltd.'s written request, any Content which Packet Media Ltd. considers may have been provided in breach of this Agreement.
- 3.5 The Customer shall ensure that before any Content is made available by the Customer all such rights, authorisations, licences, consents and permissions have been obtained or granted and all such requirements of law or of any Regulatory Body or any other competent authority or public body have been complied with as may be necessary and sufficient to enable Packet Media Ltd. to provide access to the Services. Packet Media Ltd. shall have no obligation whether under this Agreement or otherwise to make available to the Customer any equipment, facilities or Services until such time as the Customer has complied with all of its obligations under this Clause 3.5 to the satisfaction of Packet Media Ltd.
- 3.6 The Customer shall indemnify and keep fully and effectively indemnified Packet Media Ltd. and all members, officers, servants and agents of Packet Media Ltd. against all liabilities (including damages, expenses and costs), actions, proceedings, claims and demands and all alleged claims and demands whatsoever arising directly or indirectly out of or in consequence of the use by the Customer of the Services and/or the associated services of the Customer (other than in respect of any errors in or omissions from any Customer use of the Services caused by a fault in the Services). Packet Media Ltd. shall, as soon as reasonably possible give notice to the Customer of any such proceeding, claim or demand. Where a Network makes any refund to a User in respect of a service provided by the Customer (whether on an ex-gratia basis or otherwise) or obliges Packet Media Ltd. to make a refund to a User or a Regulatory Body imposes a fine, the Customer shall reimburse Packet Media Ltd. for all such monies paid by Packet Media Ltd. to the Network, User or the Regulatory Body as applicable and Packet Media Ltd. shall be entitled to deduct any such reimbursement from monies payable by Packet Media Ltd. to the Customer. Such reimbursement shall amount to the actual amount of monies paid by Packet Media Ltd. to the Network, User or Regulatory Body as applicable.
- 3.7 The Customer shall, throughout the duration of this Agreement provide Packet Media Ltd. with such information relating to any Content or use of the Services and associated services by the Customer as Packet Media Ltd. may reasonably request in order to verify to its satisfaction the Customer's compliance with the terms of this Agreement. Packet Media Ltd. shall be entitled to pass such information (or any part thereof) to any Regulatory Body or any other competent authority or public body who may require the same. Additionally, the Customer shall directly provide to all Regulatory Bodies (including without limitation PhonepayPlus) such information or material relating to any service or future service the Customer may provide as the Regulatory Body may request (from either Packet Media Ltd. or the Customer) in order to carry out any investigation in connection with (i) such service; or (ii) the Customer's relationship with any other entity with whom it may contract in relation to such services. In the event that PhonepayPlus launches an investigation into the use of the Services by the Customer, the Customer shall confirm to PhonepayPlus, upon Packet Media Ltd.'s request, that it is responsible for the service in question and provide all necessary consents to enable PhonepayPlus to deal with the Customer directly in respect of such investigation. The Customer acknowledges that a fee of 50 GBP + VAT per hour may be levied on the Customer as an administration fee for correspondence with each Regulatory Body regarding the Customer's services.
- 3.8 The Customer shall not at any time assign, transfer or sub-contract this Agreement or any parts thereof to any other person without the written consent of Packet Media Ltd. Without prejudice to the foregoing and notwithstanding any assignment, transfer, sub-letting or sub-contracting the Customer shall continue to be liable and responsible to perform the obligations of the Customer hereunder and Packet Media Ltd.'s rights shall remain unaffected. The Customer acknowledges that an administration fee of 150 GBP shall be paid by the Customer to Packet Media Ltd. for each assignment undertaken and agreed to under this clause.
- 3.9 The Customer shall ensure that no person other than the Customer gains access to the Customer's accounts for the Services.
- 3.10 The Customer shall not knowingly engage in any activity that may, in Packet Media Ltd.'s reasonable opinion, be regarded as Artificially Inflated Traffic (A.I.T), and doing so may result in penalties that shall include, but not be limited to, the suspension of Services. Should either Party become aware of any suspected Artificially Inflated Traffic, they must inform the other Party immediately so that action can be taken in good faith to resolve the matter. Should any investigation be undertaken in relation to suspected A.I.T, Packet Media Ltd. shall not be required to out pay any revenue relating to the suspected AIT to the Customer until such investigation has been carried out and resolved to Packet Media Ltd.'s satisfaction that no A.I.T has occurred, in which case any revenue outstanding shall be passed on within 30 days of such resolution.
- 3.11 In the event that any Code of Practice or regulatory mandate requires that regulatory messages must be sent for the compliant operation of any service, where the billing for such service is undertaken by Packet Media Ltd., then such regulatory messages must be sent through a Bulk SMS Account with Packet Media Ltd., subject to the terms of access and costs associated with the Bulk SMS Service.
- 3.12 The Customer may not run any Service(s) where approval is required and such approval has not been authorised in writing by Packet Media Ltd. Typically, for services that are within the five pounds (5 GBP) to ten pounds (10 GBP) tariff rate, approval must be sought prior to launching the Service.
- 4 PACKET MEDIA LTD.'S OBLIGATIONS**
- 4.1 Packet Media Ltd. shall on and from the Access Dates use all reasonable endeavours to maintain the Services 24 hours in every day on every day but Packet Media Ltd. shall not be liable for any failure to maintain the Services in such manner whether this arises from a technical or other failure in the Services, at Network level or otherwise. Packet Media Ltd. does not warrant that the Services or the Networks or Packet Media Ltd.'s Internet connection or any Public Network will be fault free or free of interruptions. Packet Media Ltd. reserves the right from time to time to improve or alter the Services as it deems appropriate provided such changes do not substantially change the nature of the Services. Further, Packet Media Ltd. reserves the right to suspend access to part or all of the Services as required for the purposes of remedial or preventative maintenance or improvement of the Services provided that Packet Media Ltd. shall use all reasonable endeavours to keep such suspension to a minimum.
- 4.2 Subject to the Customer's performance of the obligations detailed in Clauses 3, 5 and otherwise on the terms of this Agreement Packet Media Ltd. shall on and from the Access Dates permit access to the Service(s).
- 4.3 Packet Media Ltd. shall accept fault reports by email to support@packetmedia.co.uk, or by telephone on +44 1872 657781
- 4.4 There shall be no charge by Packet Media Ltd. for receipt of support calls, and no limit on the number of support calls logged.
- 5 FINANCIAL PROVISIONS**
- 5.1 Packet Media Ltd. shall be entitled to deduct any amounts due or amounts equal to any invoices issued from any sums payable to the Customer. In the event that any Regulatory Body imposes any fine on the Customer and/or Packet Media Ltd. or requires the Customer and/or Packet Media Ltd. to pay any charge or other sum, which applies or relates to the business or activities of the Customer, then Packet Media Ltd. shall be entitled to withhold or deduct a sum equal to such fine, charge or sum from sums payable to the Customer under this Agreement and to pay the same to the relevant Regulatory Body.
- 5.2 In the event that any Network does not out-pay revenue share to Packet Media Ltd. within the usual time frame, Packet Media Ltd. will not be under obligation to out-pay the same to the Customer until such funds are out-paid by the Network(s).
- 5.3 In the event of a monetary claw-back by the Network(s), for a User refund or any other reasonable reason, Packet Media Ltd. may offset this amount from the revenue share that it would normally pay to the Customer. In the event that revenue share has already been out-paid and it is not possible to offset, the Customer is liable

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- to reimburse the Network(s) or Packet Media Ltd. for the amount that has been clawed back.
- 5.4 Packet Media Ltd. shall be entitled to review and if it so desires vary from time to time the charges payable for the Services and/or introduce new charges and the varied or new charges shall take effect four weeks after written notice to the Customer of such variation or new charges. Packet Media Ltd. shall be entitled to alter the charges for each of the Services by up to 10% within any one year period commencing from the Access Date for the affected Service.
- 6 DEPOSIT
Packet Media Ltd. may at any time during the currency of this Agreement require the Customer to pay a deposit of such amount as Packet Media Ltd. reasonably thinks fit by way of security for the payment of any sums payable by the Customer to Packet Media Ltd. or which may become payable or liable to be paid by the Customer to Packet Media Ltd.. In addition, Packet Media Ltd. may appropriate sums otherwise due to the Customer for the purposes of using the same as a deposit. Packet Media Ltd. will be entitled to retain the deposit until the discharge of all liability of the Customer under this Agreement or any other agreement between Packet Media Ltd. and the Customer and may from time to time appropriate the deposit or any part of it in or towards payment of any sums due from the Customer to Packet Media Ltd. or to a Regulatory Body.
- 7 PACKET MEDIA LTD.'S RIGHTS
Without prejudice to Packet Media Ltd.'s other rights under this Agreement, Packet Media Ltd. shall have the right at any time at its reasonable discretion to:
- 7.1 require the immediate cessation of the provision of any Content or other data, matter or thing which it may determine to have been or to be in breach of this Agreement and/or the Codes of Practice and it is hereby expressly agreed that any failure by the Customer to promptly comply with any request made by Packet Media Ltd. pursuant to this Clause 7.1 shall constitute a material breach of this Agreement for the purposes of Clause 12.1.2.
- 7.2 bar access to or cease to provide the Services or any part thereof and/ or withhold payments due to the Customer at any time if:
- i. the Customer is or has been in breach or allegedly in breach of this Agreement and/or any Codes of Practice or is not or has not been providing a bona fide service to the Users; or
- ii. either any Network or Packet Media Ltd. objects to the involvement of any person either any Network or Packet Media Ltd. deems to be unsuitable to be involved in the use of the Services and the Customer does not cease using such person or prevent such person being involved in such use of the Services on written notice of such objection being given to the Customer. Packet Media Ltd. shall not be liable to the Customer for barring access to the Services or any part thereof or for withholding payment pursuant to this clause 7.2. Packet Media Ltd.'s rights to bar access or to cease to provide the Service and/or withhold payment pursuant to this Clause 7.2 may be exercised for such period as Packet Media Ltd. at its reasonable discretion see fit. If the period of such withholding, bar or cessation or any other barring, cessation, suspension or delay in providing the Services or any part thereof pursuant to any of its rights under this Agreement exceeds seven days then Packet Media Ltd. shall have the right forthwith upon notice to the Customer to terminate this Agreement.
- 7.3 Temporarily suspend access to the Services, if at any time the use of the Services by the Customer is such that it causes congestion to the Services and/ or the Networks or disrupts other services or which are, in the reasonable opinion of Packet Media Ltd., excessive. In such circumstances Packet Media Ltd. shall not be liable to the Customer for such suspension. Packet Media Ltd. shall inform the Customer as soon as reasonably possible of any temporary suspension of access to the Services.
- 7.4 Assign this Agreement to a third party.
- 8 RIGHTS
- 8.1 This Agreement shall not operate as an assignment to Packet Media Ltd. of any copyright, registered design trademark or other proprietary right as may subsist in or be contained in or be reproduced in any Content or service of the Customer or associated service and the Customer shall retain ownership of or other interest in any such copyright, registered design, trademark or other proprietary or intellectual property right to which the Customer may be entitled.
- 8.2 This Agreement shall not operate as an assignment to the Customer of any copyright, registered design, trademark or other proprietary right belonging to Packet Media Ltd. or the Networks and Packet Media Ltd. shall retain ownership of or other interest in any such copyright, registered design, trademark or other proprietary right to which Packet Media Ltd. may be entitled.
- 8.3 Subject to the rights specified in clause 8.2 hereof all copyright as may subsist in the form or presentation of any Content or associated service provided by the Customer shall be vested in the Customer.
- 8.4 Nothing in this Agreement shall entitle either the Customer to use the Networks' or Packet Media Ltd.'s names, logos or trademarks in any way whatsoever without the prior written consent of the relevant Network(s) or Packet Media Ltd. as appropriate.
- 8.5 All Intellectual Property Rights in the Services, communication media and systems associated with the Services and in any developments or enhancements thereto are and shall remain the exclusive property of Packet Media Ltd. Access to the Services is provided on a non-exclusive license basis and by using the Service(s), the Customer does not obtain any Intellectual Property Rights for the infrastructure, content, software or short codes associated with the Services.
- 9 CONFIDENTIALITY
- 9.1 Neither party shall without the prior consent of the other disclose, publish or make use for its own purposes any confidential information concerning the other which may come to its knowledge as a result of the discussions leading to this Agreement or anything done pursuant to it PROVIDED THAT this provision shall not apply to the disclosure or publication of any confidential information to any person having a legal right or duty to obtain or require such confidential information in or for the purpose of any legal proceedings or arbitration to which Packet Media Ltd., the Networks or the Customer may be a party or where such confidential information has been disclosed or published to the general public (other than as a result of a previous unauthorised disclosure) and for the avoidance of doubt this Clause 9.1 shall remain in full force and effect notwithstanding the termination if this Agreement howsoever caused.
- 9.2 Without prejudice to the generality of the foregoing Packet Media Ltd. reserves the right to disclose to any person any information relating to the Services, any Content and the associated services of the Customer in circumstances in which such disclosure is made for the purpose of assisting any civil or criminal investigations or proceedings or for the purpose of assisting or advising any Regulatory Body or as otherwise required by law. Packet Media Ltd. may also include the Customer's company name and service description in its own promotional material, as a Packet Media Ltd. customer.
- 9.3 For the avoidance of doubt Subscriber or User data is not deemed Confidential Information for the purposes of this or any other Agreement and Packet Media Ltd. reserves the right to keep record of this and submit to Regulatory Bodies or for Legal requirements as required.
- 10 CUSTOMER ACKNOWLEDGEMENT
- 10.1 The Customer acknowledges and agrees that the provision of any and all of the Services may depend on factors beyond Packet Media Ltd.'s control including but not limited to factors affecting the operation of the Networks' services and the Public Networks. Packet Media Ltd. is not obliged to provide Services where such factors prevent it.
- 10.2 The Customer agrees that it shall fully indemnify and keep indemnified Packet Media Ltd. for any and all losses suffered, claims, costs, proceedings, liability and expenses incurred by and

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- damage occasioned to Packet Media Ltd. for the use of any equipment required for the purposes of this Agreement. In order to use the Services, the Customer must obtain access to the Internet, and pay any service fees associated with such access. In addition, the Customer must provide all equipment necessary to make such a connection to the Internet. Packet Media Ltd. will provide instructions on how to access the Services. These instructions, locations of servers and methods of accessing Packet Media Ltd. servers may be liable to change at any time. Packet Media Ltd. will advise the Customer in advance of any such changes.
- 10.3 After Packet Media Ltd. has received a correctly completed and signed copy of this Agreement with the appropriate Schedules, a username and password for the relevant Service(s) will be sent to the Customer via e-mail. Subsequently ordered Services documented by a correctly completed Schedule will similarly lead to the provision of a username and password. This login information serves as identification of the Customer to Packet Media Ltd. Packet Media Ltd. will perform no further authentication of the Customer's identity. The Customer agrees that all server activities which can be traced to the Customer's usernames and passwords are deemed as having been performed by the Customer and are legally binding upon the Customer.
- 10.4 The Customer must ensure that each Service User has "Opted In" to receiving the Customer's service. The Customer must also ensure that the Service User can "Opt Out" of such service as well. All prices need to be clearly identifiable to Service Users before they engage in a Customer service. All prices must be quoted inclusive of VAT on any promotional material.
- 11 **FORCE MAJEURE**
Neither the Customer nor Packet Media Ltd. shall be liable in respect of any breach of this Agreement (other than failure to make payment of charges when due) due to any cause beyond its reasonable control including but not limited to Act of God, inclement weather, flood or escape of water, lightning or fire, industrial action, or lockouts, the act or omission of Government, any Regulatory Body or other competent authority, war, military operations, or riot, or congestion or non-operation of the Networks and the Public Networks or any of them. It is agreed that the Customer's inability to use any of the Services by reason of failure of equipment or services not provided by Packet Media Ltd. shall not relieve it from payment of Packet Media Ltd.'s charges.
- 12 **DEFAULT**
- 12.1 Either party shall have the right at any time to terminate this Agreement immediately by giving notice to the other party if the other party:-
- 12.1.1 commits a breach of this Agreement and fails to remedy the breach within 14 days of receipt of a written notice to do so; or
- 12.1.2 commits a material breach of this Agreement; or
- 12.1.3 commits any act of bankruptcy.
- 12.2 Any waiver by Packet Media Ltd. of its rights in respect of a breach by the Customer of any provision of this Agreement shall be limited to the particular breach and shall not operate in any way in respect of any future breach or continuance of the same breach by the Customer, and no delay on the part of Packet Media Ltd. to act upon a breach or to exercise its rights hereunder shall be deemed either a waiver of that breach or a waiver of Packet Media Ltd.'s right to exercise any such rights.
- 12.3 Where Packet Media Ltd. provides any Services hereunder and any of the conditions set out in Clause 3, without limitation, have not been satisfied Packet Media Ltd. shall have the right, at any time and from time to time, to require the Customer to fulfil each such condition to Packet Media Ltd.'s satisfaction and failure by the Customer to do so within 48 hours shall be considered a material breach for the purposes of 12.1.2 and the Customer hereby agrees that Packet Media Ltd.'s rights shall be unaffected by the provision of any such services by Packet Media Ltd. prior to the date of such request.
- 13 **TERMINATION**
- 13.1 Packet Media Ltd. shall (notwithstanding anything to the contrary in this Agreement) have the right at any time to terminate this Agreement upon 14 days' written notice to the Customer without incurring any liability to the Customer.
- 13.2 This Agreement may be terminated at any time by either party if the other party is disabled from performing its obligations hereunder by reason of force majeure for any continuous period in excess of 30 days.
- 13.3 Packet Media Ltd. shall be entitled at any time and with immediate effect to suspend access to any or all of the Services or terminate this Agreement or the provision of any Service hereunder in all cases without liability in the event that any licences or any other permission or authorisation necessary for the operation of any Service or for interconnection with the Networks or for the provision to the Customer and/or to Users of access to any Service is revoked or in the event that this Agreement or anything contemplated hereunder is alleged or determined to be in contravention of any such licences, permissions or authorisations or of any relevant legislation or of the rights of any third party or is or becomes or is alleged to have become otherwise unauthorised in any way and Packet Media Ltd. makes no warranty or representation that the provision to the Customer and/or to Users of access to any Service or associated service is permitted under such licence, permission, authorisation or legislation.
- 13.4 Termination of this Agreement shall be without prejudice to any rights that either party may have against the other under the terms of this Agreement which have accrued up to the date of termination.
- 13.5 On the termination of this Agreement or the provision of any Service hereunder Packet Media Ltd. shall as soon as practicable prevent access by the Customer to the relevant Service or Services.
- 13.6 On termination of this Agreement (howsoever caused) those provisions of this Agreement capable of surviving termination (including but not limited to Clauses 9 and 14 hereof) shall continue in full force and effect.
- 14 **LIMITATION OF LIABILITY**
- 14.1 Notwithstanding any other provision of this Agreement or rule of law or statutory provision Packet Media Ltd. shall not be liable for any consequential, indirect or economic loss including but not limited to loss of profits, loss of revenue, loss of business or loss of contracts whether foreseeable or not and whether sustained by the Customer or any other person.
- 14.2 Subject to Clause 14.3 Packet Media Ltd. shall have no liability for any loss, damage or injury whatsoever and whether arising out of any failure, suspension or delay to provide access to or the operation of any or all of the Services or otherwise.
- 14.3 Packet Media Ltd. does not exclude any liability for (i) death or personal injury attributable to the negligence of Packet Media Ltd., its employees or agents or (ii) direct physical damage caused to the Customer's property and attributable to the negligence of Packet Media Ltd., its servants or agents.
- 14.4 Neither party shall be liable to the other in respect of any breach of this Agreement caused by revocation or alteration of any licence, permission or authorisation governing the operation of any of the Services, the Networks or any other Public Network from time to time.
- 14.5 Except as specified in or under these terms and conditions all warranties, terms and conditions are excluded.
- 15 **SERVICE OF NOTICE**
- 15.1 Any notice or other communication given under this Agreement shall be in the English language and shall be:-
- 15.1.1 sent by e-mail; or
- 15.1.2 sent by pre-paid first class post; or
- 15.1.3 sent by fax (confirmed by pre-paid first class post placed in the post on or on the day after the date of transmission)
- 15.1.4 to the address, email or fax number set out below or to such other address or fax number as may from time to time be notified to the other party in writing.
- Notices to the Customer:
As on front page.
- Notices to Packet Media Ltd.:
Enterprise House, Trentham Business Quarter, Trentham Lakes South, Stoke on Trent, ST4 8GB

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 Fax: +44 1782 657716

- 15.2 Any notices given under Clause 15.1 shall be deemed to have been received:
 - 15.2.1 on the next business day following the sending of an email; or
 - 15.2.2 on the second business day from and including the day of posting in the case of pre-paid first class post; or
 - 15.2.3 on the next business day following the day of transmission in the case of a facsimile (confirmed by pre-paid first class post as provided above).
- 15.3 In this Clause 15, business day shall mean any day other than a Saturday, Sunday or a public holiday in the United Kingdom.
- 16 **AGENCY**
For the avoidance of doubt Packet Media Ltd. is not the Customer's agent for any purpose connected with this Agreement.
- 17 **LAW**
This Agreement and the performance of all obligations hereunder shall be governed according to English law and the parties hereby submit to the jurisdiction of the English Courts.
- 18 **ENTIRE AGREEMENT**
 - 18.1 This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes all prior oral or written agreements, representations, understandings or arrangements between the parties relating to the subject matter of this Agreement.
 - 18.2 The parties acknowledge that they are not relying on any agreement, understanding, arrangement, warranty, representation or term which is not set out in this Agreement and that all terms which would otherwise be implied into this Agreement by law, including without limitation as to skill and care or time for performance, are hereby excluded.
 - 18.3 The parties irrevocably and unconditionally waive any rights and/or remedies they may have to the fullest extent permitted by law (including without limitation the right to claim damages and/or to rescind this Agreement) in respect of any misrepresentation other than a misrepresentation which is contained in this Agreement or a misrepresentation which was made fraudulently.

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- 18.4 Nothing in this Agreement shall operate to:
 - 18.4.1 exclude any provision implied into this Agreement by English law and which may not be excluded by English law; or
 - 18.4.2 limit or exclude any liability, right or remedy to a greater extent than is permissible under English law.
- 18.5 No change shall be made to this Agreement except in writing in the English language signed by the duly authorised representatives or directors of all parties.
- 19 **THIRD PARTIES**
The Contracts (Rights of Third Parties) Act 1999 shall not apply in relation to this Agreement or any agreement, arrangement, understanding, liability or obligation arising under or in connection with this Agreement except that pursuant to section 1 of the Contracts (Rights of Third Parties) Act 1999, PhonepayPlus may directly enforce any relevant terms of this Agreement.
- 20 **COUNTERPARTS**
This Agreement may be executed in any number of counterparts, and by the parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
- 21 **WAIVER**
Failure of delay by either party to exercise any right or remedy under this Agreement shall not be deemed to be a waiver of that right or remedy, or prevent it from exercising that or any other right or remedy on that occasion or any other occasion.
- 22 **SEVERABILITY**
If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable then the remaining provisions of this Agreement shall continue in full force and effect. The judicial or other competent authority making such determination shall have the power to limit, construe or reduce the duration, scope, activity and/or area of such provision, and/or delete specific words or phrases as necessary to render such provision enforceable.

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