

**DEFINITIONS**

<b>"Act"</b>	The Telecommunications Act 1984 as amended by the Communications Act 2003
<b>"Agreement"</b>	Any agreement to which these Terms are attached or to which they form part by reference (including without limitation any quotation or relevant pricing supplied by Digital Select Ltd to the Service Provider) as amended from time to time, whether confirmed in writing (by email or fax) or executed by the Service Provider on-line from Digital Select Ltd's web site; any reference to the "Agreement" shall include a reference to these Terms
<b>"Billing Operator"</b>	The exclusive, or exclusive operator in each country, region or geographical location or any other fixed local operator with whom Digital Select Ltd and/or the Interconnect Operator contract for the payment and receipt of interconnect fees
<b>"Bureau Services"</b>	Template bureau services supplied and managed by Digital Select Ltd for inclusion in a Premium Rate Service, whether or not content is also provided by the Service Provider
<b>"Call Routing"</b>	The transmission route between a Caller and a Termination Number
<b>"Caller"</b>	An end user that places a call to the Premium Rate Numbers or who sends a message to the SMS Short Codes to access the Service Provider's services
<b>"Clawback"</b>	Any overpayment made to the Service Provider in relation to Non-billable Traffic or in relation to any amount that the Billing Operator or Interconnect Operator has overpaid or otherwise seeks to recover from Digital Select Ltd in relation to the Premium Rate Numbers or SMS Short Codes, or by way of any pro-rata and/or future/retrospective reduction in the interconnect fees or other fees payable to Digital Select Ltd by the Billing Operator or Interconnect Operator from time to time
<b>"Code"</b>	Any code of practice issued by the Phonepay Plus or such other body or Regulator that shall replace them in relation to the Services
<b>"Digital Select Ltd"</b>	The company named in the Agreement whose registered office is 271 Regent Street London W1B2ES and its employees agents or otherwise
<b>"Equipment"</b>	The transmission; Call Routing; number translation and other telecommunications systems and resources employed by Digital Select Ltd and the Interconnect Operator to permit the Call Routing from time to time
<b>"IPR"</b>	All existing or future intellectual property rights which include without limitation copyright, database right, patents, registered and unregistered trade and service marks, registered and unregistered design rights and any and all other industrial or trade secrets

<b>"Information Services"</b>	The services of whatever type provided by the Service Provider and Service Provider's re-sellers, agents, distributors and sub-contractors through the use of the Services
<b>"Interconnect Operator"</b>	Any licensed operator or carrier of telecommunications systems with whom Digital Select Ltd contracts for the supply or management of interconnection pursuant to the Telecommunications (Interconnection) Regulations 1997 No. 2931 as amended by the Telecommunications (Interconnection) (Number Portability, etc.) Regulations 1999 No. 3449
<b>"Managed Content"</b>	<p>Shall include:</p> <ul style="list-style-type: none"> <li>▪ All content available for download on any web-site managed by Digital Select Ltd, including without limitation Ringtones, Polyphonic Ringtones, Logos, Picture Messages, Screensavers, Java Games and other items available for download to or use on mobile phones and other mobile devices, whether such content is provided by Digital Select Ltd, the Service Provider or a third party;</li> <li>▪ SMS services including chat and visual and other content</li> </ul>
<b>"Minutes/Calls"</b>	Call duration to the Premium Rate Numbers by a Caller
<b>"Mobile Network Operator"</b>	Includes without limitation 02, Orange, T-Mobile, Virgin, Vodafone or "3"
<b>"Payment Rate"</b>	Unless otherwise amended by Digital Select Ltd the rate set out in the Agreement as payable to Service Provider for each Unit generated to each Premium Rate Number or for each billed chargeable to a SMS or any other charges specified in the Agreement for the Services provided by Digital Select Ltd
<b>"Payments"</b>	The payments owing to the Service Provider by Digital Select Ltd on the dates stated in the Agreement calculated by multiplying the Minutes or Calls (as appropriate) generated by the Payment Rate applicable to the Service, less any amounts to be deducted in accordance with any provision of the Agreement; and less any other fees owing to Digital Select Ltd from time to time as set out in the Agreement
<b>"Personal Customer Number"</b>	A number commencing "070", otherwise termed a "follow me" number allowing a customer of that number to be called using a single access number and used in accordance with OFCOM regulations
<b>"Premium Rate Service"</b>	Live or recorded information or entertainment provided by telephone or SMS and such other similar services provided by the Service Provider to Callers where a proportion of the charge rendered to the Caller is paid to the Service Provider
<b>"Premium Rate Numbers"</b>	The telephone numbers allocated by Digital Select Ltd to the Service Provider

<b>"Pricing Schedule"</b>	The rates payable to the Service Provider as set out in the Agreement
<b>"Prior Permission Service"</b>	A Premium Rate Service that requires the prior permission of the Regulator before commencement thereof or as otherwise from time to time requiring the Service Provider to obtain additional amended permission
<b>"Refunds"</b>	Payments made by Digital Select Ltd at its discretion and without legal obligation to a Caller by way of compensation in respect of any complaint made by the Caller to Digital Select Ltd and made in an amount not exceeding the retail cost of the call
<b>"Regulator"</b>	Phonepay Plus or any successor statutory or non statutory regulatory body which may assume its powers and/or functions of regulation of Telephone Information Services or the corresponding regulatory authority or body in country, region or geographical location
<b>"Report"</b>	The monthly narrative of Units generated by Callers to the Premium Rate Numbers or invoiced chargeable SMS Short Codes
<b>"Retention"</b>	An amount from time to time set at Digital Select Ltd's absolute discretion to cover any actual or potential Clawback, any sum due or likely to be due in respect of any indemnity given by the Service Provider under the Agreement or pursuant to these Terms or which Digital Select Ltd believe is necessary to otherwise secure performance of the Agreement
<b>"Service Fee"</b>	The fee payable to Digital Select Ltd as set out in the Agreement, including any initial set-up or similar costs for the Service
<b>"Service Live Date"</b>	The date upon which the Services set out in the Agreement shall be ready for use by the Service Provider or the date when any (in the case of a Prior Permission Service) evidence of such permission has been supplied to Digital Select Ltd, whichever is the later
<b>"Services"</b>	The service provided by the Service Provider to Callers using one or more of the Premium Rate Numbers, SMS Short Codes, managed content, Bureau Services or Interactive Voice Recognition or Interactive Voice Response services or as otherwise set out in the Agreement
<b>"Service Provider"</b>	The individual, firm or body corporate named as a party to any Agreement
<b>"SMS Short Codes"</b>	The shared telephone short code numbers non-exclusively allocated by Digital Select Ltd to the Service Provider
<b>"Terms"</b>	These terms and conditions as attached to or forming part of any Agreement
<b>"Termination Number"</b>	The telephone numbers to which calls to the Premium Rate Numbers are translated to (and delivered to) from time to time
<b>"Unbillable traffic"</b>	Any minutes, units or otherwise billable SMSs which Digital Select Ltd, the party contracted by or to Digital Select Ltd or as agent on Digital

Select Ltd's behalf is unable (or unlikely to be able ) to bill or collect for any reason whatsoever, or where:

i. The Minutes are accrued or are believed to be accrued due to artificial traffic inflation, breach of regulation, or unauthorised access to the Premium Rate Numbers or SMS Short Codes;

ii. The Minutes are accrued or are believed to be generated by any other illegal, unlawful, unauthorised or unbillable method used by any Caller;

iii. Calls are being made or are believed to have been made to inflate or otherwise misrepresent payments due to the Service Provider;

iv. It is likely that the income generated by Digital Select Ltd or the Interconnect Operator is less than that due to the Service Provider;

v. Digital Select Ltd believes that there is repeated and/or continuous calling from the same Caller

**"Units"**

Number of billable items generated, as defined in the quotation or relevant pricing provided to the Service Provider prior to commencement of the Agreement

**1. INTERPRETATION, AND CONTRACT FORMATION**

**1.1.** No warranties or statements made by Digital Select Ltd prior to execution of the Agreement shall form any part of the Agreement unless confirmed in writing by Digital Select Ltd and in entering into the Agreement the Service Provider acknowledges and agrees that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

**1.2.** Prior to execution of the Agreement the Service Provider acknowledges and agrees that:

**1.2.1.** The Services are not specifically designed for the Service Provider, or Service Provider's use; and

**1.2.2.** Digital Select Ltd is dependent on the Billing Operator; any Interconnect Operator and other third parties from time to time as to the provision of the Services in respect of which Digital Select Ltd offers no assurances; warranties or guarantees.

**1.3.** Reference in the Agreement to any party include references to its successors in title and its assigns and reference to legislation shall be deemed to refer to such legislation as amended, replaces or substituted (whether in whole or in part) from time to time.

**1.4.** Words denoting the singular shall include the plural and vice versa and words denoting the masculine shall include the feminine and vice versa and the clause headings do not form part of this Agreement, are for convenience only and shall not be taken into account in its construction or interpretation.

**1.5.** Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other documentation issued by Digital Select Ltd to the

Service Provider from time to time shall be subject to correct without any liability on the part of Digital Select Ltd.

- 1.6. Digital Select Ltd shall be entitled to amend any provision or clause of the Agreement at any time whatsoever and without the prior consent of the Service Provider where such amendment is required for regulatory, insurance, safety or statutory reasons or to comply with any such requirement upon the Billing Operator or the Interconnect Operator or other third party upon whom Digital Select Ltd relies for the provision of the Services.
- 1.7. The Terms shall apply to the Agreement to the exclusion of all other terms and conditions (including without limitation conditions of purchase) that the Service Provider may from time to time seek to apply or offer to Digital Select Ltd.

## 2. DURATION

- 2.1. The initial term ("**Initial Term**") of the Agreement shall be for the reasonable period specified by Service Provider in the Agreement.
- 2.2. The Agreement will automatically renew at the end of the Initial Term for successive periods of the Initial Term length, unless either party provides written notice to the other of its intention not to renew the Agreement at least 28 days prior to the end of the then current term.
- 2.3. The Initial Term and all renewals thereof are collectively referred to herein as the "**Term**" of the Agreement.

## 3. ENDING THE AGREEMENT

- 3.1. Digital Select Ltd may terminate the Agreement with immediate effect if:

- 3.1.1. Digital Select Ltd or the Service Provider receives an instruction, complaint or objection from a Billing Operator, Interconnect Operator, Regulator, Governmental or other official body or from any other carrier or third party with whom Digital Select Ltd contracts in relation to the Information Services; or

- 3.1.2. Digital Select Ltd believes that the Service Provider is, has been or is about to allow the Services to be used for any (including without limitation) unlawful harmful malicious threatening defamatory obscene indecent seditious offensive or abusive purposes or any purposes liable to incite racial hatred discriminatory that are menacing scandalous inflammatory blasphemous purposes in breach of confidence in breach of privacy or which may cause annoyance or inconvenience ("**Unlawful**"), to encourage any behaviour or conduct which is carried out would be Unlawful or for any other purpose prohibited under the Agreement; or

- 3.1.3. The Service Provider fails to adhere to the terms of the Agreement or the Code or to any code of conduct or practice published from time to time by any Mobile Network Operator; or

- 3.1.4. The Service Provider threatens or appears to Digital Select Ltd or one or more of its contractual third parties or the Regulator or any similar body to be about to fail to adhere to the Terms of the Agreement or the Code; or

- 3.1.5. The Service Provider ceases or threatens to cease business or is no longer able to pay its debts or is otherwise insolvent within the meaning of the Insolvency Act 1986 or otherwise convenes a meeting of, or comes to an arrangement with its creditors, has distress or other seizure or attachment order levied over any of its assets or fails to satisfy any demand for payment from any lawful person, firm or body corporate or appoints Receiver,

Administrator or Administrative Receiver.

- 3.2.** Either party may terminate the Agreement in the event that:
- 3.2.1.** The other party has committed a breach of the Agreement, and fails to remedy said breach within 30 days of a notice requiring it to do so; or
  - 3.2.2.** The other party takes any steps to wind up, dissolve or appoint a Receiver, Administrative Receiver or Administrator over the other party's assets.
- 3.3.** Digital Select Ltd may terminate the Agreement by giving 7 days notice in the event that none of the Premium Rate Numbers or SMS codes assigned generate more than £50 each per month in revenue over six months.
- 3.4.** Termination of the Agreement shall be without prejudice to the rights and obligations accruing up to and including the date of termination.
- 3.5.** Without prejudice to any other rights or remedies that Digital Select Ltd may have under the Agreement or otherwise Digital Select Ltd may, at any time, in the event of late or non-payment of any charges or refunds to Digital Select Ltd:
- 3.5.1.** Elect to terminate the Agreement forthwith;
  - 3.5.2.** Restrict the Services available to the Service Provider;
  - 3.5.3.** Demand repayment of or apply a set-off in respect of any Clawback or other payment due from the Service Provider against any amounts owed by Digital Select Ltd to the Service Provider;
  - 3.5.4.** Indefinitely withhold any payments due to the Service Provider until the Service Provider has discharged its indebtedness to Digital Select Ltd in full,
- 3.6.** Clause 3.5 shall survive termination of the Agreement; and in the event of termination of the Agreement for whatever reason the Service Provider shall:
- 3.6.1.** Cease forthwith to use the Services; and
  - 3.6.2.** Return all property (of whatever nature) in its possession belonging to, or otherwise bailed to Digital Select Ltd by a third party.

#### **4. ORDERS AND PROVISION OF SERVICES BY DIGITAL SELECT LTD**

- 4.1.** No order shall be deemed to be accepted by Digital Select Ltd unless accepted by it (or its authorised representative) in writing.
- 4.2.** Digital Select Ltd reserves the right to make changes in the specification of the Services which are required to conform with any applicable safety or other statutory requirements or which reflect any changes introduced by any supplier or which do not materially affect their quality or performance.
- 4.3.** Digital Select Ltd shall use its reasonable endeavours to ensure that the Services are ready and available at the Service Live Date. However, unless agreed in writing dates (including without limitation the Service Live Date) are estimates only and time shall not be of the essence.

- 4.4.** Digital Select Ltd will use its reasonable endeavours to provide or procure that the Services are uninterrupted but faults may occur from time to time and Digital Select Ltd cannot guarantee and does not warrant that the Services will be free of interruptions or fault free.
- 4.5.** Digital Select Ltd may further allocate additional Premium Rate Numbers or SMS Short Codes to the Service Provider as requested from time to time (at Digital Select Ltd's absolute discretion).
- 4.6.** The Service Provider acknowledges that:
- 4.6.1.** It shall have no right over, ownership of or in the Premium Rate Numbers or SMS Short Codes;
- 4.6.2.** Allocation of the Premium Rate Numbers does not constitute transfer thereof to the Service Provider, nor transfer thereof any other rights, benefits, goodwill or property in the Premium Rate Numbers whatsoever;
- 4.6.3.** SMS Short Codes are non-portable and used by other customers of Digital Select Ltd;
- 4.6.4.** Any data (including without limitation Personal Data as defined by the Data Protection Act 1998) collected and retained by Digital Select Ltd as a consequence of the Service Provider's operation of the Information Services (including but not limited to telephone numbers and other details of subscribers of any of the Information Services) shall be the property of Digital Select Ltd and nothing in the Agreement shall entitle the Service Provider to view or take copies of such data.
- 4.7.** The Service Provider acknowledges and agrees that Digital Select Ltd may at its absolute discretion withdraw or re-allocate numbers or codes if it is reasonable to do so, or where:
- 4.7.1.** There are less than 10 calls per month to the Premium Rate Numbers or SMS Short Codes for 3 or more consecutive months; or
- 4.7.2.** The Service Provider is in breach of the Agreement (irrespective of whether the breach is subsequently remedied in accordance with the Agreement); or
- 4.7.3.** The Agreement is terminated (for any reason whatsoever); or
- 4.7.4.** Such action is necessary to comply with any legal requirement or re-numbering plan or as directed by the Regulator or other official or Governmental body; or
- 4.7.5.** Digital Select Ltd takes all reasonable steps so as to minimise interruption to the Service Provider's business.
- 4.8.** In the event of withdrawal or re-allocation of any Premium Rate Numbers or SMS Short Codes Digital Select Ltd shall use its reasonable endeavours to give the Service Provider as much notice as is reasonably possible.
- 4.9.** Digital Select Ltd may terminate Services to any Premium Rate Number or SMS Short Codes utilised for a Prior Permission Service where any certificate required expires or is withdrawn.
- 4.10.** Digital Select Ltd shall use its reasonable endeavours to provide the Services and the equipment suitable for providing the Services. In accordance with clause 4.4 above, the Service Provider acknowledges that:

- 4.10.1.** Digital Select Ltd cannot provide a fault free service; and
  - 4.10.2.** No capacity is guaranteed by Digital Select Ltd.
  - 4.10.3.** Digital Select Ltd gives no warranty that the Services or any Equipment used to provide the Services will be fault or error free; and
  - 4.10.4.** Digital Select Ltd gives no warranty that the Services, Equipment or its network, or that of the Interconnect Operator will be continuous or fit for the Service Providers purpose;
  - 4.10.5.** It bears sole responsible for ascertaining the suitability of the Services for its application to the Information Services.
- 4.11.** Digital Select Ltd shall notify Service Provider of any necessary technical changes in its service, Equipment or network affecting Services offered to Service Providers as soon as is reasonably practicable.
- 4.12.** The Service Provider acknowledges that:
- 4.12.1.** The use of Personal Customer Numbers is regulated by OFCOM and the Service Provider hereby agrees to be bound by and to follow any guidance issued by OFCOM or the Regulator from time to time;
  - 4.12.2.** Revenue from calls to Personal Customer Numbers may not be shared with the end user.
  - 4.12.3.** For the avoidance of any doubt, breach by the Service Provider of any OFCOM guidance, code of practice or regulation shall be deemed a breach of this Agreement.
- 4.13.** Digital Select Ltd may in its absolute discretion and without penalty to it:
- 4.13.1.** Suspend the Services at any time for the purpose of system maintenance giving the Service Provider such notice as is practical under the circumstances.
  - 4.13.2.** From time to time modify its Equipment or network and change its Service Providers and Interconnect Operator without notice to and without consulting with Service Provider.
  - 4.13.3.** Suspend, prohibit or restrict access to the Information Services if at any time the number of calls or attempted calls to the Premium Rate Numbers causes or is liable to cause congestion or other disruption within any part of Digital Select Ltd's system.
  - 4.13.4.** From time to time impose traffic restrictions on particular Premium Rate Numbers to safeguard service quality.

## **5. SERVICE PROVIDERS USE OF THE SERVICES**

- 5.1.** The Service Provider undertakes any agreement with its resellers, information providers, distributors and agents of the Services shall contain conditions imposing upon them:
  - 5.1.1.** The provisions or equivalent of this clause 5 and its sub-clauses throughout the Term of the Agreement;

- 5.1.2.**An obligation to comply with the Code, with any OFCOM or Regulator guidance, Code regulation and with any code issued by any Mobile Network Operator, above.
- 5.2.** The Service Provider shall ensure that it, and its resellers and information providers, have received all necessary approvals, licenses, permissions and certificates from the Regulator or any other body or governmental agency or authority for the Information Services offered through Digital Select Ltd and that such licenses, permissions and certificates remain in force and valid throughout the Term of this Agreement and any agreement between the Service Provider and its resellers and information providers.
- 5.3.** Save in the case of any Managed Content or Bureau Services, the Service Provider acknowledges that it is solely responsible and liable for:
- 5.3.1.**All and any Information Services provided, including content, quality and delivery; and;
- 5.3.2.**Ensuring that such Service Providers and each and every reseller and information provider of Service Providers services comply with the Code, Act and the Agreement.
- 5.3.3.**The quality and delivery of the Services.
- 5.3.4.**The use of the Premium Rate Numbers or SMS Short Codes.
- 5.4.** On demand the Service Provider shall immediately provide Digital Select Ltd and/or the Regulator with such information or material as they may demand relating to the Information Services.
- 5.5.** The Service Provider shall immediately notify Digital Select Ltd and the Regulator of any change in its name, constitution, address, telephone numbers or the nature or content of its Information Service.
- 5.6.** The Service Provider shall take all such steps as may be necessary to ensure that neither itself, its information providers or its resellers breach the Code. The Service Provider shall immediately notify Digital Select Ltd of any breach or any matter likely to give rise to a breach of the Code or any other code, guidance or regulation to which it is subject by this agreement.
- 5.7.** The Service Provider shall ensure that neither itself nor its information providers or resellers contract with any other party in a way which allows such other party to either directly or indirectly use the Premium Rate Numbers, SMS Short Codes or Termination Numbers other than as set out in the Agreement.
- 5.8.** The Service Provider acknowledges that if Digital Select Ltd or the Interconnect Operator is requested, directed or recommended to do so by the Regulator or any other governmental body or agency, then Digital Select Ltd may:
- 5.8.1.**Cease providing the Services without incurring any liability to the Service Provider whatsoever; or
- 5.8.2.**Withhold any or all payments due to Service Provider; and in either case.
- 5.9.** The Service Provider hereby agrees and acknowledges that it shall have no claim (of whatever nature) against Digital Select Ltd for any action taken by Digital Select Ltd pursuant to sub-clause 5.8.1 or 5.8.2 above.
- 5.10.** The Service Provider acknowledges that Digital Select Ltd has the absolute right to monitor all Services and record any calls made to the Premium Rate Numbers or text sent to or from SMS

Short Codes.

- 5.11.** The Service Provider shall provide Digital Select Ltd and as appropriate the Regulator with such information or material relating to the Information Services as is from time to time requested including without limitation copies of recorded messages and information provided to callers, marketing copy and promotional material for the Information Services and information which Digital Select Ltd may use for debt collection and credit checking. The Service Provider hereby agrees to such checks being carried out from time to time and furthermore agrees to Digital Select Ltd storing and otherwise processing (as defined by the Data Protection Act 1998) such information.
- 5.12.** Notwithstanding any other provision in the Agreement, the Service Provider irrevocably authorises Digital Select Ltd to share information relating to the Information Services, its use of the Services and the conduct of its affairs with Digital Select Ltd with the Regulator, the Billing Operator or Interconnect Operator or other such person, firm or body corporate lawfully requiring access thereto.
- 5.13.** All marketing of the Information Services shall be approved in advance in writing by Digital Select Ltd and the Service Provider shall if requested to do so provide Digital Select Ltd at least seven days in advance of publication with a copy of any proposed marketing material.
- 5.14.** The Service Provider shall ensure that;
- 5.14.1.** The Information Services are legal and neither infringe any IPR belonging to Digital Select Ltd or a third party;
- 5.14.2.** The Information Services are not defamatory, libellous or illegal;
- 5.14.3.** All marketing and promotion of the Information Services is carried out so that no publicity from the Service Provider or its information providers, resellers, distributors, agents and subcontractors reflects adversely on Digital Select Ltd, the Billing Operator or the Interconnect Operator;
- 5.14.4.** In accordance with relevant regulatory provisions, there is no unsolicited promotion of the Information Services by email, SMS or other electronic means;
- 5.14.5.** No marketing or promotional material will state or imply any approval of the Services by Digital Select Ltd;
- 5.14.6.** All advertisements comply with the relevant regulatory provisions (including without limitation those laid down by the Advertising Standards Authority) relating to both the media within which the advert is placed and the content of the advert;
- 5.14.7.** It will not use any words, names or IPRs of Digital Select Ltd in connection with the Services which might imply any connection whatsoever with Digital Select Ltd, the Billing Operator or the Interconnect Operator.
- 5.15.** The Service Provider shall, on Digital Select Ltd demand, obtain and maintain with a reputable insurer adequate (in relation to in coverage and sum insured) insurance for claims arising out its breach of the Agreement.
- 5.16.** The Service Provider shall notify Digital Select Ltd of any television based marketing campaigns or other promotions that may result in sudden peaks in Calls or SMS traffic in order that the parties can ascertain whether the anticipated number of Calls or SMSs is likely to result in a failure of the Service. The Service Provider acknowledges that a large number of

calls to the Premium Rate Numbers or SMS Short Codes in a short period of time may cause some or all of such calls to fail, or cause a general failure in the Service and if such failure occurs the Service Provider hereby acknowledged that Digital Select Ltd shall not be liable whatsoever.

**5.17.** The Service Provider shall ensure that the equipment it or its information providers and resellers operate in connection with the Services at all times complies with the relevant provisions of the Act, the Code, any code issued by any Mobile Network Operator and any contractual right granted which govern the running of a telecommunications system by the Service Provider and shall as necessary comply at all times with the relevant provisions of the Consumer Credit Act 1974 as amended by the Consumer Credit Act 2006, where applicable, the Data Protection Act 1998 and any other applicable legislation or regulation, whether subsidiary or related to the aforementioned legislation or otherwise.

**5.18.** The Service Provider shall take such steps as are reasonably necessary to ensure that:

**5.18.1.** Access to its own and its information providers and resellers Information Services is continuous and error free; and

**5.18.2.** Sufficient lines, ports and other apparatus are available to meet all reasonably expected demand, taking account of the fact that access may be achievable not only through use of the Services but also through the systems of other public telecommunication operators.

## **6. OTHER SERVICES**

**6.1.** Where the Services include Managed Content or content for Bureau Services provided by the Service Provider the Service Provider acknowledges that it shall have sole responsibility for;

**6.1.1.** Obtaining all IPR licenses and other permissions necessary to enable the content to be used in the Information Services;

**6.1.2.** Payment of any royalties or other continuing fees due in respect of any such rights.

**6.2.** The content of any Managed Content provided by Digital Select Ltd shall always be at the absolute discretion of Digital Select Ltd;

**6.3.** Where Bureau Services are provided by Digital Select Ltd as part of the Services the content of such services shall be managed at Digital Select Ltd's absolute discretion irrespective of whether the content is supplied by the Service Provider or by Digital Select Ltd.

## **7. RATES & PAYMENTS**

**7.1.** Digital Select Ltd shall (subject as otherwise provided in the Agreement) calculate and make Payments to the Service Provider.

**7.2.** Unless otherwise specifically agreed in writing in advance by the parties, Digital Select Ltd shall calculate the Payments by reference to data recorded or logged by Digital Select Ltd and not by reference to any data recorded or logged by the Service Provider. Save as in the case of manifest error, the calculation by Digital Select Ltd shall be deemed and accepted by the Service Provider to be final and conclusive as to the amount payable to the Service Provider.

**7.3.** Digital Select Ltd shall provide the Service Provider with a Report and, in its absolute discretion and when available, with access to online statistics. The Service Provider acknowledges and agrees that the online statistics shall only be used to give an indication of

the traffic generated and shall not form the basis of billing.

- 7.4.** Payments will be made to the Service Provider the following number of days from the end of the month in which the payment was generated:
- 7.4.1.** UK Premium Rate and International Credit cards - 40 days;
  - 7.4.2.** UK SMS - 60 days;
  - 7.4.3.** International PRN and SMS - 15 days of receipt of cleared funds from the networks concerned.
- 7.5.** Payment shall be made after deducting:
- 7.5.1.** Any Clawback; and
  - 7.5.2.** Any Retention; and
  - 7.5.3.** Any Refund together with a £30.00 administration fee for each Refund made; and
  - 7.5.4.** Any Service Fee; and
  - 7.5.5.** Any element of the Payments which cannot be validated or processed by Digital Select Ltd's invoicing system (or that of the Billing Operator or Interconnect Operator) prior to the Payment becoming due and owing for any reason whatsoever; and
  - 7.5.6.** Any Unbillable Traffic or other element of the Payments which cannot be recovered or collected by Digital Select Ltd, the Billing Operator or Interconnect Operator for any reason whatsoever; and
  - 7.5.7.** Any other fees charged, expenses or costs incurred or paid by Digital Select Ltd under the Agreement or payable to Digital Select Ltd in accordance with any obligation incurred under or indemnity given in the Agreement.
- 7.6.** No interest shall be taken to accrue on any amounts retained by Digital Select Ltd pursuant to the Agreement.
- 7.7.** No payment shall be made where the amount due to the Service Provider is less than £30.00 in any month and such lesser sums shall not be carried forward from month to month.
- 7.8.** Subject to the Terms of the Agreement, and to the extent not already paid, Digital Select Ltd shall pay with the next following Payment the amounts retained pursuant to Clause 7.5.5 and 7.5.6 following receipt of accounts from the Billing Operator or the Interconnect Operator.
- 7.9.** On receipt of a demand from Digital Select Ltd, the Service Provider shall forthwith repay any Clawback to Digital Select Ltd.
- 7.10.** Digital Select Ltd may from time to time and at its absolute discretion impose or amend the Retention to cover Clawback, potential Clawback, any sum which is or may in the absolute opinion of Digital Select Ltd become due and owing from the Service Provider in accordance with the indemnity in paragraph 8.3 below and any sum which Digital Select Ltd considers reasonably necessary to secure the provision by the Service Provider of its obligations under the Agreement.

- 7.11.** The Payment Rate may be amended by Digital Select Ltd at any time and with immediate effect and without liability to Digital Select Ltd where such change is necessary to cover a change in the rate payable to Digital Select Ltd from the Billing Operator, Interconnect Operator or any other party that Digital Select Ltd relies on for the provision of the Services.
- 7.12.** The Payment Rate may be amended by Digital Select Ltd at any other time, and for any other reason upon its giving 30 days notice to the Service Provider.
- 7.13.** Digital Select Ltd shall have the absolute right to set-off all amounts due by it to the Service Provider against all and any amounts due under the Agreement by the Service Provider to Digital Select Ltd or any other Digital Select Ltd group or associate company.
- 7.14.** The Service Provider shall have no right to set-off any amounts due to it by Digital Select Ltd or any other Digital Select Ltd group or associate company against any amounts due under the Agreement by the Service Provider to Digital Select Ltd or any other Digital Select Ltd group or associate company.
- 7.15.** The Report shall where possible constitute the Service Provider's self-billing invoice and Digital Select Ltd shall account for VAT and any other applicable tax in presenting such invoices to the Service Provider subject always to the prior registration (where required) of the Service Provider and the supplying of all relevant information in respect thereof by the Service Provider to Digital Select Ltd.
- 7.16.** All sums detailed in the Agreement are exclusive of VAT at the prevailing rate.
- 7.17.** The Service Provider shall forthwith on demand:
- 7.17.1.** Pay all fines or regulatory costs, claims and penalties imposed (as a consequence of the mode of operation or performance of the Information Services) by the Regulator either upon Digital Select Ltd or upon any Billing or Interconnect Operator or Mobile Network Operator or other individual or business entity but in respect of which Digital Select Ltd is liable to render or reimburse payment under any indemnity given by it or other obligation imposed upon it; and
- 7.17.2.** Pay Digital Select Ltd's administrative costs and expenses at the rate of £70.00 per hour (or part thereof) in dealing with any and all such matters, including without limitation dealing with any complaint (including the investigation of any such complaint) notified to it by the Regulator, document collation, information gathering from the Service Provider or third parties, the preparation of written statements or such other information and the preparation for and conduct of any oral hearing before the Regulator.
- 7.18.** The Service Provider shall be liable for and hereby undertakes to fully and effectively indemnify Digital Select Ltd against any and all taxes imposed by any taxing entity of any jurisdiction in connection with the Service Provider's performance or obligations under the Agreement, including any Payments Digital Select Ltd are required to render which are found to subsequently be liable to any taxes.
- 7.19.** Notwithstanding any other provision in the Agreement, Digital Select Ltd may at its absolute discretion withhold any Payment due to Service Provider if ordered to do so by the Billing Operator, the Interconnect Operator, the Regulator or any other Governmental or law enforcement agency or equivalent, or where Digital Select Ltd believes that the Service Provider is not operating its business pursuant to the Code or in an otherwise lawful and/or legitimate manner.

## 8. LIMITATION OF LIABILITY & INDEMNITY

- 8.1.** Except as set out in the Agreement or in the event of death or personal injury neither party shall be liable to the other or to any third party for any direct, indirect or consequential losses or damages whatsoever whether in contract, tort or otherwise (including either party's negligence or the negligence of either of its employees or agents acting in the course of their employment or agency). Reference in this clause to "direct, indirect or consequential losses or damages" shall include any economic loss including without limitation any direct or indirect loss of profits, anticipated profits or savings, business, contacts, revenue, time or goodwill or any loss or damages of whatever nature including but without limitation loss of data or equipment other than intentional damage by Digital Select Ltd whilst on the Service Provider's property.
- 8.2.** Except as expressly set out in these Terms all conditions warranties terms undertakings and obligations implied by statute common law custom trade usage or otherwise are hereby specifically excluded from the Agreement.
- 8.3.** The Service Provider holds harmless, fully and effectively indemnifies and keeps fully and effectively indemnified Digital Select Ltd and Digital Select Ltd's parents, subsidiaries, affiliates, officers, shareholders and employees in respect of all liabilities, penalties, regulatory fines , costs (including without limitation legal costs and disbursements), expenses and losses arising (directly or indirectly) from;
- 8.3.1.** The use or misuse of the Services by the Service Provider or any third party;
- 8.3.2.** Any demand or claim (including without limitation any made by a third party) arising from use of the Services by a third party;
- 8.3.3.** Any action, investigation, adjudication or equivalent or oral hearing or appeal arising as a consequence of any complaint made to the Regulator against Digital Select Ltd in respect of any breach of the Code by the Service Provider or any of its resellers, information providers, distributors or agents;
- 8.3.4.** Any breach of the Code or any code of conduct or practice published from time to time by any Mobile Network Operator;
- 8.3.5.** A breach or alleged breach of the Agreement by the Service Provider or a third party.
- 8.3.6.** Any actual or alleged negligence or misconduct by the Service Provider or a third party;
- 8.3.7.** The marketing, promotion or equivalent of the Information Services by the Service Provider or a third party;
- 8.3.8.** The Services supplied (and including without limitation any content or materials or documentation or recordings or otherwise in relation thereto) by Digital Select Ltd on the Service Provider's behalf;
- 8.3.9.** Any illegal or unlawful action, criminal act, libellous or slanderous statement, breach of any IPRs of Digital Select Ltd or a third party whatsoever;
- 8.3.10.** Any other act or omission committed by the Service Provider causing loss or damages (including damage to reputation and/or goodwill) suffered by Digital Select Ltd.
- 8.4.** In the event of a breach of the Agreement by Digital Select Ltd, Digital Select Ltd shall have

30 days in which to remedy such breach.

- 8.5.** Each part of this Clause 8 operates separately. If any part of this clause is disallowed or is not effective the other parts will continue to apply.
- 8.6.** The provision of this clause 8 shall continue to apply notwithstanding the termination of the Agreement.

## **9. CONFIDENTIALITY**

- 9.1.** Both during and after the termination of the Agreement each party, and each of its directors, offices, shareholders and employees shall keep secret and confidential and shall not reveal the same to any other party without the other party's previous written consent, or as set out in the Agreement, any information of whatever nature relating to any matter in relation to the other parties business, goods, services, or Payment, with the exception of information:
- 9.1.1.** That was already previously known to either party;
- 9.1.2.** Which is ordered to be revealed by competent court of jurisdiction or by the Regulator or other Governmental authority or recognised law enforcement agency or equivalent; and;
- 9.1.3.** Revealed to the disclosing party by a third party lawfully entitled to disclose it.
- 9.1.4.** That is already in the public domain without either party committing a breach of this clause 9 or any other provision of the Agreement.
- 9.2.** Each of the parties may reveal to its officers and employees information required by them to perform their rights and obligations under the Agreement; and
- 9.3.** The Service Provider undertakes that it will not during the currency of the Agreement and for a period of 9 months following termination of the Agreement for whatever reason:
- 9.3.1.** Solicit any person, company or firm who is or has been a client of Digital Select Ltd's at any time during the currency of the Agreement.
- 9.3.2.** Enter into any relationship (whether commercial or business) with any person who is an employee of Digital Select Ltd or who has been an employee at any time during the currency of this Agreement or during a period of 9 months prior to the commencement of this Agreement where such relationship would, in the case of an employee, be in conflict with the employee's duty of good faith to Digital Select Ltd or where, in the case of a previous employee, such a relationship would involve or require the former employee to make use of confidential information (whether business or otherwise) acquired by him as a consequence of by virtue of his employment with Digital Select Ltd.
- 9.3.3.** Solicit any employee of Digital Select Ltd to leave his employment or to disclose any confidential information (whether business or otherwise) relating to Digital Select Ltd, its business, clients, processes or IPR, whether or not such solicitation would amount to a breach of the employee's contract.

## **10. GENERAL**

- 10.1.** The parties will comply with their respective obligations under the Data Protection Act 1998 and any data protection privacy or similar laws that apply to any personal data or sensitive personal data processed in connection with the Agreement.

- 10.2.** If any one or more of the provisions contained in the Agreement shall be invalid illegal or unenforceable in any respect then those provisions in question shall be deemed severed from the Agreement and the validity legality and enforceability of the remaining provisions contained in the Agreement shall not in any way be affected or impaired.
- 10.3.** Subject to Digital Select Ltd's compliance with obligations imposed on it from time to time by third parties which are not a party to the Agreement, Digital Select Ltd reserves the right to transfer the Agreement to any third party at any time whereas the Service Provider may not transfer the Agreement to anyone else unless it has obtained Digital Select Ltd's prior written consent.
- 10.4.** Failure or neglect by Digital Select Ltd to enforce each of its rights under the Agreement shall not be construed nor be deemed to be a waiver of Digital Select Ltd's rights under Agreement nor shall it prejudice Digital Select Ltd's rights to take subsequent action. No waiver shall be effective unless made in writing. A waiver of any breach shall not constitute waiver of a subsequent breach.
- 10.5.** All notices sent by either party to the other must be in writing and sent by Recorded Delivery post, or by courier to the other party's registered office or last known address and shall be considered served as follows:
- 10.5.1.** First class post – on the second day after posting;
- 10.5.2.** Courier when delivery is signed for.
- 10.6.** Paragraph 10.4 shall not prevent the parties from agreeing from time to time alternative means of giving or receiving notices under the Agreement and any notice acknowledged by the other party or proved to have been received at their address shall be deemed to have been validly given under the Agreement.
- 10.7.** The parties agree that the Agreement does not constitute a joint venture, employment or partnership of any kind whatsoever.
- 10.8.** Neither party shall actually or attempt to bind the other party or in any way represent the services of the other.
- 10.9.** The Service Provider hereby authorises Digital Select Ltd to use the Service Provider's logo for the purpose of Digital Select Ltd's identifying the Service Provider as a client of Digital Select Ltd.
- 10.10.** The Service Provider shall advise Digital Select Ltd as soon as is practicable of any potential faults in the Services or the Equipment.
- 10.11.** Nothing in the Agreement shall be deemed to confer any assignment or licence of the parties' respective IPR.
- 10.12.** In the case of any conflict between these Terms and terms (whether expressed to be by way of variation or not) set out in the Agreement signed by the parties, then those terms shall prevail.
- 10.13.** The parties to the Agreement do not intend that any provision of its terms will be enforceable by virtue of the Contract (Rights Of Third Parties) Act 1999 by any person, firm or body corporate not a party to it.
- 10.14.** The Service Provider may not assign or otherwise transfer or dispose of any of its rights or

obligations without the previous written consent of Digital Select Ltd.

- 10.15.** The Agreement replaces any previous agreements of whatever nature in relation to the Services and shall constitute the entire agreement between the parties in relation to the Services, and any former representations (of any kind, written, verbal or otherwise) shall be superseded by the Agreement.
- 10.16.** Each of the signatories to the Agreement below hereby personally warrants to the other that they are duly empowered to enter into the Agreement and have, where applicable, sought board or other such approval.
- 10.17.** If any dispute arises in connection with the Agreement then Digital Select Ltd shall be entitled but not obliged to serve a notice (ADR Notice) requiring the Service Provider to agree to a referral to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties the mediator will be nominated by CEDR. To initiate the mediation Digital Select Ltd must provide a copy of the ADR Notice to CEDR. The mediation will start not later than 10 days after the date of the ADR Notice. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.
- 10.18. The Agreement shall be construed and governed by English Law. The parties shall submit themselves to the non-exclusive jurisdiction of the Courts of England.