

This Contract sets out the terms on which NGN Communications Ltd, trading as NGN (registered in England with number 6973069) ("NGN Communications Ltd") will provide telecommunications services to you, the Customer with whom we make this Contract ("you"). By using the Service(s) (as defined below) you agree to the following terms and conditions.

## 1 Definitions

In this Contract:

"24 x 24"	Means a 24 month mobile hardware warranty scheme which provides an on-site swap of a faulty device for a comparable equivalent within 24 hours of it being reported to NGN Communications Ltd.
"Acceptable Use Limit"	Means rules, limits or restrictions for the use of the Services as may be revised by us from time to time and may be set out in any service literature.
"Associates"	Means in relation to a party to this Contract (at the relevant time), any company which is a Subsidiary or a Holding Company or which is a Subsidiary of any such Holding Company from time to time (where 'Subsidiary' and 'Holding Company' have the meanings given in section 1159 and Schedule 6 of the Companies Act 2006).
"Authorisation"	Means the Authorisation to act as a public telecommunications operator or to operate a telecommunications system under the Legislation.
"Authorised Signatory"	Means your employee(s) notified to us in writing who can give us instructions with regard to NGN Communications Ltd.
"Bar"	Means a mobile network bar restriction placed to stop access to a given service
"Change in Control"	Means any material change in the exercise, control or holding of the voting shares in you (otherwise than solely for the purposes of a group re-organisation of a solvent group).
"Charges"	Means the charges payable by you to us for the provision of the Services or any revised charges notified to you in accordance with clause 10.2, together with all applicable taxes and any interest due in accordance with clause 10.5.
"Charges Policy"	Means the Charges Policy details of which are on the NGN Communications Ltd Website.
"CLIs"	Means the calling line identity, as that term is generally understood in the telecommunications industry.
"Committed Period"	Means, in respect of each Service, the minimum period of 12 calendar months (or if longer the number of calendar months specified) for which a Contract for each Service will run commencing on the Connection Date.
"Committed Spend"	Means the level of Spend (net of any discount, VAT, or Service Credits) to which you commit over the Committed Period or any Subsequent Contract Period as specified.
"Connection Date"	Means the date of the connection of the Service(s).
"Contract"	Means the contract application form or master service agreement between NGN Communications Ltd and you for the provision of the Services subject to these terms and conditions, as agreed over the telephone, completed in person or on the NGN Communications Ltd Website by you or on your behalf.
"Cooling Off Period"	Means the period of seven (7) Working Days from the Start Date of the Contract during which you may cancel the Contract for any recurring services. Hardware purchases have no cooling off period and are subject to re stocking fees.
"Coterminous"	Means any additional connection(s) added during the committed or subsequent terms have a common contract end date.
"Credit Limit"	Means a monthly financial limit applied for Charges incurred under this Contract.
"Customer Services"	Means the Customer Services facility provided by NGN Communications Ltd for you to report any faults with the Services or make general or account enquiries, details of which are set out on the NGN Communications Ltd Website. All calls may be monitored and recorded for training and for security purposes.
"Equipment"	Means equipment owned by us or a Third Party Operator and placed at your Site by either us or a Third Party Operator or anyone acting on their behalf for the provision of the Service.
"Fair Use Policy"	Means our policy for the use of the internet and mobile related services set out on the NGN Communications Ltd Website, as may be revised by us from time to time by posting any updated version on the NGN Communications Ltd Website.
"Fixed Line Network"	Means the telecommunications network(s) over which we provide the Service (s).

<b>“Legislation”</b>	Means any applicable legislation, authorisations, permissions, rules, regulations, orders and guidelines relating to the provision and/or marketing of the Services and includes without limitation the Communications Act 2003, the PhonepayPlus Code (formerly known as the ICSTIS Code) and/or any directives or other requirements issued by OFCOM from time to time.
<b>“Line”</b>	Means a connection (installed either by us or a Third Party Operator) from your Site to the carrier Network.
<b>“Line Rental Service”</b>	Means the Service we may agree to provide you to allow you to rent access to the main telephone line and shall include Line Rental.
<b>“MAC”</b>	Means Moves, Adds & Changes.
<b>“MSA”</b>	Means Master Service Agreement.
<b>“MPN”</b>	Means mobile phone number.
<b>“NGN”</b>	Means NGN Communications Ltd.
<b>“NGN Website”</b>	Means the website located at <a href="http://www.ngndna.com">www.ngndna.com</a> or such other website as may be notified by us from time to time.
<b>“OFCOM”</b>	Means Office of Communications.
<b>“Personal Numbers”</b>	Means a 07 number that is not associated with a mobile phone but instead acts as an overlay. These numbers typically begin 070.
<b>“PhonepayPlus”</b>	Means the regulatory body for all premium rate charged telecommunications services (formerly known as ICSTIS Limited) trading as PhonepayPlus.
<b>“Service”</b>	Means any one of the services described in the contract application form and “Services” means any combination of two or more such services.
<b>“Service Credits”</b>	Means the amounts payable, if any, by us to you in accordance with clause 5.
<b>“Service Failures”</b>	Means any failure, error or defect in the provision of the Services by us but excludes failures, errors or defects arising from, caused by or contributed to by your acts or omissions or third parties acting on your behalf including other providers of telecommunications, computers or other equipment or services including internet services or any failure, error or defect arising because of causes beyond our reasonable control.
<b>“Spend”</b>	Means the level of spend (net of discount, Value Added Tax and Service Credits) incurred by you.
<b>“Start Date”</b>	Means if related to a renewal of existing services the date upon which you sign this Contract and if related to new services, the date upon which the new services go live.
<b>“Subsequent Period”</b>	Means period equivalent to the committed period which commences on the anniversary of the committed period and subsequent periods.
<b>“Tech Fund”</b>	Means a pool of funds available to you during the initial contract term which can be used to purchase hardware from NGN Communications Ltd. These funds are held in situ by NGN Communications Ltd until utilised.
<b>“Term”</b>	Means the Committed Period and each Subsequent Period.
<b>“Termination Policy”</b>	Means the charges payable by you to us in the event that you terminate the Contract before the expiry of the Committed Period or any Subsequent Contract Period.
<b>“Third Party Operator”</b>	Means the operator of any telecommunications network or system over which we may provide our Services.
<b>“Usage Cap”</b>	Means a limitation requested by a client on a MPN to manage usage and mitigate against overspend
<b>“Usage Cap Breach”</b>	Means where a usage cap has been breached.
<b>“Working Day”</b>	Means a day which is not a Saturday, a Sunday or a bank or public holiday in England or Wales.
<b>“Working Hours”</b>	Means in respect of installation 09:00-17:00 Monday to Friday (excluding bank or public holidays in England or Wales).
<b>“Your Customer’s Calls”</b>	Means calls made by end users to your customers over the NGN Communications Ltd services(s) and which you handle on your customer’s behalf.

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## 2 General

- 2.1 Any reference to 'days' relate to working days.
- 2.2 All quotes we provide relate to works during our working hours of Mon-Friday 9am – 5pm unless explicitly outlined in writing. As a result, if these works are required out of hours, fees will apply.
- 2.3 Where a co terminus agreement is in place, all services that form part of the overall agreement must be ported/novated to NGN Communications Ltd in line with the project plan or schedule provided in advance of the agreement being executed. For the avoidance of doubt, the appropriate project plan/schedule will be communicated in advance of contract execution and referenced within the MSA.
- 2.4 Where a phased transition of services is agreed, all services that form part of the overall agreement must be ported/novated to NGN Communications Ltd in line with the project plan or schedule provided in advance of the agreement being executed. For the avoidance of doubt, the appropriate project plan/schedule will be communicated in advance of contract execution and referenced within the MSA.
- 2.5 Failure to port or novate services over to NGN Communications Ltd in line with the agreed schedule will result in charges being raised equivalent to the agreed rentals for the services that have not ported or novated across at the correct time.
- 2.6 Service charges relating to clause 2.5 will remain in place until services are ported/novated across or until the end of the co terminus agreement (whichever comes first)
- 2.7 NGN Communications Ltd will not store client login information for any portals or systems outside of our own administrator level access. As a result, we cannot provide client password information and a reset may be required. Any password reset work will be provided as MAC.
- 2.8 NGN Communications Ltd treat, store and manage all data responsibly, please refer to our Data Processing Agreement if you require more information.
- 2.9 In the event of a service issue, NGN Communications Ltd can only provide support where a you provide the necessary circuit number/identifier and type of circuit.
- 2.10 NGN Communications Ltd operate a three-strike rule. This means, if we have requested information relating to a support case, we will only chase these three times after which a case is closed. Cases can be reopened but the SLA for a re-opened case will restart.
- 2.11 Any issues caused by a cyber-attack are not covered by NGN Communications Ltd.

## 3 When this Contract Begins and How Long It Lasts

- 3.1 Your obligations under this Contract will commence on the Start Date and will continue during the Term. Upon expiry of the Committed Period this Contract will automatically continue for the Subsequent Contract Period unless and until terminated under clause 15 or 17.
- 3.2 Our obligations under this Contract will commence from the Connection Date.
- 3.3 Where you request a Tariff Review and we agree to amend your tariff, a new Committed Period of the chosen duration will be deemed to start from the date upon which the Tariff is amended. Any charges arising as a result of us agreeing to amend your Tariff are set out in clause 10.15.
- 3.4 Any dates given in this Contract regarding our provision of the Services to you are estimates and are provided for planning purposes only. We will have no liability for any failure to meet the Connection Date or any other date as time is not of the essence in relation to our provision of the Services to you.

## 4 What Level of Service We Will Provide to You

- 4.1 We will provide the Services in accordance with the terms of this Contract and our Charges Policy.
- 4.2 We will use reasonable skill and care when providing the Services.
- 4.3 The Services are provided for use by you in the course of your business and on the condition that you do not resell or otherwise make the Services available to any other person.
- 4.4 If you elect to apply for the Line Rental Service and already receive line rental services from another provider, the service from the other provider will continue until the transfer to our Service is complete unless your other provider agrees that it can be done earlier.
- 4.5 We may select and at any time change any carrier or service provider for the purposes of providing the Service(s), and you authorise us to give all notices, nominations and other authorisations that are necessary for us to provide the Service(s) to you.

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- 4.6 Whilst we provide the Services to you, you authorise us to act on your behalf in all dealings with any Third-Party Operator in connection with any matter that enables us to provide or to continue to.
- 4.7 It is your responsibility to ensure the compatibility of the Services with any monitored alarm system you may have, and you should check this with your monitored alarm system provider. If there is an interruption to the provision of the Services under this Contract we do not accept any liability in connection with your use of a monitored alarm system with the Services, except for liability for death or personal injury caused by our negligence or that of our agents.
- 4.8 Certain services which are provided by Third Party Operators may not be compatible with the Services (e.g. BT Surftime). You should be aware that such services may be automatically removed from your line during set up and may no longer be available to you.

## 5 What Services We Provide

- 5.1 We will provide the Services in accordance with the terms of this Contract and our Charges Policy. We do not guarantee that the Services will be continuously available to you or free from Service Failures
- 5.2 Where you believe that you are experiencing a Service Failure you must immediately report this to us via the NGN Communications Ltd Service Helpdesk, providing sufficient information to enable us to investigate the problem. We will log the time of receipt of all such reports.
- 5.3 Where we spend time investigating a fault(s) that is being continuously reported by you and conclude each time that there has been no Service Failure, we reserve the right to charge you for all reasonable costs and expenses incurred in investigating the alleged fault and you agree to pay such charges. Details of our charges are available on request.
- 5.4 Where the parties agree, as a result of a Service Failure, an applicable Service Level specified in the Contract is not achieved we will, subject to clause 10.7, pay to you a Service Credit by issuing a credit note to you for a sum equivalent to the amount of the Service Credit.
- 5.5 The duration of any Service Failure, for the purposes of calculating Service Credits, will be measured from the time your fault report is logged by the NGN Communications Ltd Service Help-desk to the time we can demonstrate that the Service has been restored. It will be a maximum of £250 per claim.
- 5.6 Service Credits will be the maximum extent of our liability and your exclusive remedy in respect of any failure to achieve Service Levels and/or any Service Failures, and all other rights, remedies and liabilities are excluded to the maximum extent permitted at law.

## 6 Your Use of the Services

- 6.1 You agree that you will not use the Services in a way which would:
- 6.1.1 contravene or cause us to contravene any Legislation;
  - 6.1.2 contravene our Fair Use Policy or Acceptable Use Limit (where applicable);
  - 6.1.3 be for any improper, immoral or unlawful purpose;
  - 6.1.4 enable or permit unauthorised access by you or third parties to data stored on our network;
  - 6.1.5 cause a degradation of service to any of our other customers;
  - 6.1.6 involve the sending of unsolicited marketing or advertising materials;
  - 6.1.7 result 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;
  - 6.1.8 breach or cause us to breach any applicable data protection legislation including, but not limited to, the Data Protection Act 1998;
  - 6.1.9 cause an overload of our network;
  - 6.1.10 lose or cause us to lose or breach or cause us to breach our Authorisation.
- 6.2 You will indemnify us against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by us arising from any breach of your obligations under this Contract, including this clause 6, and for all costs and expenses reasonably incurred by us in investigating and defending ourselves in relation to any such claims, proceedings or threatened proceedings.
- 6.3 You will give us not less than two (2) Working Days written notice of any advertising, promotion or other campaigns which may result in abnormal demands being placed in our network.


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- 6.4 You are solely responsible for safeguarding your data by taking backup copies, maintaining a disaster recovery process and through any other means you believe appropriate.
- 6.5 To enable us to perform our obligations under this Contract, you will obtain (where necessary) all requisite licenses, consents and permissions.
- 6.6 If you want to connect equipment to the Fixed Line Network other than using a main phone socket, you must obtain our permission and you agree that we may request permission from a Third-Party Operator in order for us to make any decision.
- 6.7 You agree that you 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. If you do connect such equipment, you must disconnect it immediately or allow us to do so at your expense.
- 6.8 For operational reasons, we or Third-Party Operators may need to change your phone number, or the codes used for the Line Rental Services. We will give you as much notice as possible of this.
- 6.9 You shall ensure that all calls (save for any calls required to be made over another third-party network by law or regulation) you make on any Line that is the subject of Line Rental Service shall be made using the NGN Communications Ltd Network. If you switch any calls you make on any Line that is the subject of Line Rental Service to any other service provider then NGN Communications Ltd shall be entitled to either (i) terminate this Contract with immediate effect by giving you notice in writing (ii) bar your use of indirect access codes, (iii) charge you a higher fee for your use of the Line Rental Service, (iv) amend your tariff or (v) disconnect the Line Rental Services.
- 6.10 Where you have agreed to a Committed Spend you must use all reasonable endeavours to meet the Committed Spend in the Committed Period and any Subsequent Contract Period.
- 6.11 You will comply with our reasonable instructions from time to time in relation to your use of the Services.
- 6.12 You will provide us on our reasonable request with copies of any information we may require to comply with our obligations under the Legislation both during the term of this Contract and following termination.
- 6.13 In the case of any Services regulated by PhonepayPlus, you:
- 6.13.1 acknowledge, agree and confirm that for the purposes of the PhonepayPlus Code, in connection with this Contract, you are a Service Provider and you are recognised by PhonepayPlus as a Service Provider;
  - 6.13.2 confirm that you have and will ensure that you continue to have adequate customer service and refund mechanisms in place (including a non premium-rate UK customer service phone number) in order to discharge your obligations under the PhonepayPlus Code;
  - 6.13.3 agree always to comply with all applicable Legislation including but not limited to the PhonepayPlus Code, a copy of which is available on the PhonepayPlus website at [www.phonepayplus.org.uk](http://www.phonepayplus.org.uk) or on written request from us. You must also abide by any directive, direction, instruction, recommendation or other similar advice that OFCOM and/or PhonepayPlus gives from time to time;
  - 6.13.4 will help us to comply with all requirements and conditions imposed by PhonepayPlus, OFCOM or by law which affects the Services;
  - 6.13.5 will provide us promptly with any information or material relating to your use of the Services as we (for ourselves, PhonepayPlus or OFCOM) may request from time to time;
  - 6.13.6 will immediately cease to use any of the Services the use of which we have notified to you is in breach of this Contract;
  - 6.13.7 will inform us of (a) any changes or additions to any information you have supplied to us at any time; and (b) any sanctions imposed on you or any associated individuals by PhonepayPlus and/or OFCOM.

## 7 Managed Data & Mobile

- 7.1 Managed data services such as connectivity, hosting and hardware can only be upgraded in life, not downgraded. If a downgrade is required, standard termination fee calculations will apply in respect of the service. For the avoidance of doubt, a downgrade means where the overall rental for that service decreases due to the requested change.
- 7.2 NGN Communications Ltd will not allow any third-party access to managed hardware. If third party access is gained, all NGN Communications Ltd support services will revert to a best endeavours dynamic.
- 7.3 There can be a delay of between 2 to 24 hours between mobile usage cap breach and the bar invoking (all mobile caps). This applies when the said user is in the UK. If a user is abroad then the delay could be up to 48 hours between the cap being reached and a bar being invoked.
- 7.4 Mobile bolt on uplifts are contracted in line with the MPN contract term end date.
- 7.5 Mobile bolt ons can only be uplifted in life not downgraded. If a downgrade is required, standard termination fee calculations will apply in respect of that bolt on. For the avoidance of doubt, a downgrade is where the overall rental for that MPN decreases due to the requested change. Any change made to a tariff will be pro rata from the point the change is made.

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- 7.6 Where a device, device subsidy or tech fund is provided, should a client port or cease a service during the contracted term, NGN Communications Ltd will invoice the client for a 100% clawback of the device, device subsidy or Tech Fund.
- 7.7 NGN Communications Ltd Tech funds can only be used to purchase hardware, software or other services from NGN Communications Ltd. A Tech Fund cannot be used for any other purpose or released in the form of a BACS or cheque payment.
- 7.8 If a Tech Fund is not wholly consumed by the contract end date, it expires and reverts to zero value balance.
- 7.9 NGN Communications Ltd will not provide support on mobile device related setting issues, NGN Communications Ltd only provide mobile device support if there is a warranty related claim for a device that has an active warranty with NGN Communications Ltd.
- 7.10 Any support related to mobile devices we supply not covered by our 24x24 scheme must be managed directly with the manufacturer. NGN Communications Ltd will be able to provide proof of purchase where necessary
- 7.11 Our 24 x 24 scheme only covers warranty related issues and does not include an identical replacement, instead a comparable device
- 7.12 If once a 24 x 24 swap occurs it transpires the issue was caused by either malicious or non-warranty related reasons, a full charge equivalent to the cost of the device will be levied.
- 7.13 If any accessories including the battery and or the headphones are missing from the reclaimed device, a charge equivalent to the value of the accessories will be levied
- 7.14 NGN Communications Ltd do not provide mobile device unlocking services. If a client transitions to NGN Communications Ltd and wishes to retain existing mobile hardware, it is the full responsibility of the client to ensure that the existing devices can support the NGN Communications Ltd sim cards/connections
- 7.15 If a PAC is requested for the same number on more than one occasion, MAC charges may apply
- 7.16 If a device under NGN Communications Ltd support is damaged because of a cut or surge in power, a replacement will not be provided
- 7.17 NGN Communications Ltd can offer a Worldwide Data Cap facility that limits and roaming data charges to a maximum of £75 a month. This cap is not applied by default. Any request to have this added must be in writing to Customer Services.
- 7.18 NGN Communications Ltd cannot bar calls to 084/087, 118, Personal numbers and other special numbers such as the speaking clock.
- 7.19 In certain circumstances that are beyond our control, such as delays in call data being received from the network, overall charges may exceed the set limit and is still liable to be paid for by the client.

## 8 Managed System & Infrastructure

- 8.1 System support for users who are not using NGN Communications Ltd data connectivity is provided on a best endeavours basis.
- 8.2 Any LAN related issues are not the responsibility of NGN Communications Ltd unless that LAN environment has been installed and is under a specific support contract.
- 8.3 NGN Communications Ltd can only provide system support where we have full remote access to our system. Where remote access is not available, a site visit may be required which will incur standard engineering costs and does not fall in line with your support contract. NGN Communications Ltd are not responsible for setting up or maintaining remote access, this is the responsibility of the client.
- 8.4 If non-Communications Ltd maintained equipment is plugged into NGN Communications Ltd maintained equipment, all support is provided on a best endeavours basis and is discretionary depending on the issue.
- 8.5 NGN Communications Ltd cannot be held responsible for issues born from client or third party works affecting our equipment or service.
- 8.6 If during a service related site visit it transpires a fault or issue has been caused due to a change made by a client, any remedial works will not be covered under any support contract and will be chargeable.
- 8.7 If any updates or changes to any LAN infrastructure or software is to take place on equipment/LAN infrastructure hosting a service NGN Communications Ltd provide, it is required for a client to give NGN Communications Ltd no less than 72 hours' notice unless this relates to emergency works where NGN require no less than 4 hours' notice. Any works that do not follow this guideline will be chargeable and best endeavours.
- 8.8 Where NGN Communications Ltd provide a softphone, support cannot be provided to users who are accessing the solution wirelessly or not directly connected to the router/switch

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8.9 If a pre-agreed visit cannot go ahead due to no access or other factors outside of our control, a wasted visit charge will apply. All wasted visit charges are defined in advance of a visit being scheduled.

## 9 Allocation and Use of Telephone Numbers

Where we allocate you any telephone numbers or codes as part of the Services, you acknowledge that you will not acquire any legal, equitable or other rights in relation to any numbers or codes. We may on giving you notice withdraw or change any such numbers or codes. You may not sell or transfer or seek to sell or transfer any numbers or codes allocated by us. You may port numbers to us and you may also port numbers to other carriers with whom we have porting agreements. All intellectual property rights or other rights in any numbers or codes allocated by us shall at all times, as between ourselves and you, remain vested in us.

## 10 How We Charge You and How You Pay

- 10.1 You will pay us the Charges. Charges will be payable with effect from the date that a Service or any part of a Service is first made available to you for commercial use. The basis upon how we charge you for the Services is set out in our Charges Policy.
- 10.2 We may vary our Charges at any time by giving you notice. We will only do this if we have a valid reason for example to reflect changing arrangements with any Third-Party Operator or changing legal, regulatory (i.e. OFCOM) or business requirements. The revised Charges will apply to all Services provided after the effective date of the notice of change.
- 10.3 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. You will be responsible for paying VAT and other applicable taxes which will be included in our invoices at the applicable rate(s).
- 10.4 You will, subject to clause 10.6 and unless otherwise agreed pay invoices within 14 days of the date of the invoice.
- 10.5 Payments will be by Direct Debit only. Without prejudice to any other rights we may have under this Contract (including but not limited to clauses 12 and 13), if a direct debit is dishonoured or cancelled we shall be entitled to pass on to you any administration fee which may include third party charges. We shall also be entitled to charge you a monthly administration fee for each month in which your direct debit is dishonoured or not reinstated following cancellation. We may charge interest on all overdue amounts from time to time on a daily basis at a rate of 2% above the base rate of the Royal Bank of Scotland plc, to run from the due date of payment until receipt by us of the full amount (including any accrued interest) whether before or after judgement in respect of the overdue amount.
- 10.6 Invoices:
- 10.6.1 Any invoices which are disputed must be done so within 30 days of the date of the invoice otherwise the invoices will be deemed to be correct. If you wish to dispute an invoice you must write to us and provide us with (i) nature and reason for dispute, (ii) amount in dispute, (iii) any evidence to support the disputed amount.
- 10.6.2 If an invoice is disputed and we can demonstrate that the invoice is in fact correct, we shall be entitled to charge interest in accordance with clause 10.5 from the date of when the invoice should originally have been paid to the date upon which we receive the full amount.
- 10.6.3 If we agree that the disputed invoice is incorrect, we shall apply a relevant credit to your account with us.
- 10.7 Where under this Contract a Service Credit or other sum of money becomes payable by us to you, we shall be entitled to deduct that sum from Charges due from you to us from time to time. We will show any such deductions as a credit in the invoice issued by us following the due date for payment of the sum owed by us to you.
- 10.8 Where the Services comprise or include services in respect of which rebates are payable by us to you ("Rebate Service"), you authorise us to raise a self-bill on your behalf. We will notify you of the amount of rebate due for each calendar month or other applicable period within 15 days of the end of each billing period. Subject to clause 8.13 we will pay the rebate within 45 days following the invoice or (if later) within 7 days of the date of receipt by us of sums from British Telecommunications plc (or other relevant carrier) paid to us in respect of the applicable Service. You do not have the right to deduct rebates payable by us to you from the payment of Charges due from you to us. For the avoidance of any doubt in the case of any Service regulated by PhonepayPlus, we shall not make any payments to you for at least 30 days after the use of the Service to which the payments relate.
- 10.9 We shall have the right at any time to revise the amount of the rebates by giving written notice prior to the effective date of revision. The revised amounts shall apply to all Rebate Services provided to you on or after the effective date of such revision.
- 10.10 Each rebate shall be calculated in accordance with our tariffs and according to the duration of calls to the Rebate Service as indicated by our equipment and not by your own or rented apparatus.
- 10.11 Following a decision or request from PhonepayPlus relating to a Rebate Service, we may withhold from any rebate payable to you or demand payment by you such sums as are sufficient to meet any fines, administrative charges or other sums payable by us to PhonepayPlus and to which PhonepayPlus claim entitlement under the PhonepayPlus Code.

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- 10.12 If NGN Communications Ltd has reasonable grounds to suspect that you are in breach of this Contract or that the Rebate Services are being used (whether by you or any third party) for any illegal or fraudulent activity and/or otherwise than in accordance with the terms of this Contract then we shall be entitled to withhold payment of any sum (in whole or in part) due to you in relation to the Rebate Service or deduct the same from any Rebate due to you unless and until you can prove to our reasonable satisfaction that you are not in breach of this Contract and/or that the Rebate Service was not so used.
- 10.13 In the event that we pay a rebate to you and:
- 10.13.1 following a subsequent decision or request from PhonepayPlus relating to a Rebate Service, we are required to pay PhonepayPlus any fine, administrative charges or other sums to which PhonepayPlus claim entitlement under the PhonepayPlus Code or;
  - 10.13.2 a network operator (including, without limitation, BT) subsequently withholds payment of any sum (in whole or in part) due to us in relation to a Rebate Service; and/or;
  - 10.13.3 a network operator (including, without limitation, BT) subsequently claims repayment of any sum paid to us in respect of a Rebate Service, provided such a claim does not arise as a result of our actions or the actions of our employees or representatives and/or;
  - 10.13.4 we subsequently have reasonable grounds to suspect that such rebate has been paid for a Rebate Service that has been or is being used (whether by the Reseller or any third party) for any illegal or fraudulent activity and/or otherwise than in accordance with the terms of this Contract or was paid to you whilst you were in breach of this Contract;
- (10.13.1, 10.13.2, 10.13.3 and 10.13.4 collectively referred to as "Relevant Rebate") we shall be entitled to:
- a) deduct an amount equal to the Relevant Rebate from any future rebate due to you under this Contract; or
  - b) demand payment by you of an amount equivalent to the Relevant Rebate and you agree to refund us within fourteen (14) days of the receipt of such a demand; or
  - c) deduct an amount equivalent to the Relevant Rebate from any sum held by us as security of your obligations.
- 10.14 If as a result of any future Legislation and/or as a result of a decision made by BT and/or by OFCOM the terms upon which rebates may be paid by us (as a supplier of non-geographic numbers including, but not limited to 0870) to you are regulated then we shall be entitled to amend the terms upon which the Rebate Service is supplied to you upon written notice which you will be obliged to accept including, for the avoidance of any doubt, the amounts of rebates payable to you.
- 10.15 If at the time of your Tariff Review your Spend is less than the pro-rata Committed Spend, then we reserve the right to apply reconciliation charges of 100% of the difference between the pro-rata Committed Spend and the actual Spend.

## 11 Credit Limit/Security Payment

- 11.1 We may at our sole discretion and at any time during the lifetime of the Contract impose a Credit Limit on your account and/or require payment of a security deposit or interim payment by you.
- 11.2 Any Credit Limit imposed can be amended without prior notice. If you exceed such Credit Limit (i) we may demand immediate payment of the Charges and/or suspend the Services; and (ii) you will still be responsible for all Charges incurred including those exceeding the Credit Limit.
- 11.3 If at any time we require you to pay a security deposit under clause 11.1 above we may (i) suspend provision of the Service(s) until we receive payment of the security deposit and (ii) at any time apply the security deposit (once paid) to meet any cost, loss or liability incurred as a result of any failure by you to comply with these terms or to pay any amount you owe to us.

## 12 When We Can Make Changes to the Services and to the Contract

- 12.1 This clause 12 applies to all changes to this Contract, except changes to Charges which are dealt with in clause 10.2 above and changes to rebates which are dealt with in clause 10.9 above.
- 12.2 Subject to clause 12.1 above, we may vary these terms and conditions at any time by posting the changes on the NGN Communications Ltd Website and, where reasonably practicable, giving you prior notice. We will only do this if we have a valid reason, for example to reflect changing arrangements with any Third-Party Operator or changing legal, regulatory (i.e. OFCOM) or business requirements. If any variation of these terms and conditions is likely to cause material detriment to you: (i) we will also notify you of the variation in writing or by your chosen method of contact; and (ii) you shall have the right to terminate this Contract in accordance with clause 15.1. You agree that, if you decide to use the Services after any variation(s) to these terms and conditions have been posted on the NGN Communications Ltd Website or, in the case of a variation which is likely to cause material detriment, notified to you, you will be bound by the terms and conditions as varied.

## 13 Security and Backup Services

- 13.1 You are responsible for the security of your use of the Services including, but not limited to, protecting all passwords, backing-up all data, employing appropriate security devices, including virus checking software, and having disaster recovery processes in place.

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- 13.2 Where you are or become aware of any matters which you know or ought to reasonably be expected to know constitute a threat to the security of the Services you will immediately advise us of such matters.

## 14 Your Right to Cancel the Contract

- 14.1 You may cancel your Contract for the Services within the Cooling Off Period.
- 14.2 If you want to cancel your Contract, you must call our Customer Services to confirm cancellation before the Cooling Off Period expires. If you do not call our Customer Services to confirm your cancellation, we may not be able to recognise or process your cancellation.
- 14.3 If you have used the Services during the Cooling Off Period, you may still cancel your Contract, but you must pay any Charges that you or we have incurred including any administration costs.

## 15 Ending the Contract

- 15.1 You may end this Contract or any individual Service:

- 15.1.1 by giving us 90 working days' notice, such notice not to expire before the end of the Committed Period or any Subsequent Contract Period;
- 15.1.2 if we are in material breach of this Contract.

For the purposes of this clause 15.1.2 "material breach" means where there have been eight (8) Service Failures during any twelve (12) month period which result in us paying to you the maximum amount of Service Credits (to the extent that Service Credits apply in respect of the particular Service you are receiving).

- 15.2 We may terminate this Contract and/or any one or more of the Services with immediate effect by notice in writing if:

- 15.2.1 you fail to pay any sums due to us within 14 days of receiving written notice from us indicting the sums due and demanding payment;
- 15.2.2 you are in material breach of this Contract which breach is capable of remedy and you fail to remedy that breach within 30 days of receiving the notice specifying the breach;
- 15.2.3 you are in material breach of this Contract and that breach cannot be remedied;
- 15.2.4 you commit persistent breaches of the Contract;
- 15.2.5 you have any Authorisation under which you have the right to run your telecommunication system and connect it to our system removed, revoked or amended;
- 15.2.6 you make any voluntary arrangements with your creditors or become subject to an administrative order or go into liquidation, whether voluntary or compulsory (other than for the purposes of reconstruction or amalgamation), or an encumbrancer takes possession of or a receiver is appointed in respect of any of your assets;
- 15.2.7 our contract with BT for the Line Rental Service is terminated (for any reason whatsoever);
- 15.2.8 we are directed by OFCOM, PhonepayPlus and/or any other competent authority to cease the provision of the Services or any part of them to you;
- 15.2.9 you have submitted an application for the Services which in our reasonable opinion contains any false, incorrect or misleading information;
- 15.2.10 we have a right to suspend any of the Services;
- 15.2.11 we cease to be Authorised or if our Authorisation is revoked or modified in any way which has a material impact on our ability to provide the Services or any of them or if we are prohibited from providing or restricted in our entitlement to provide the whole or any part of the Services.
- 15.2.12 we consider that the breach, act, omission or default of you, a caller or any third party may result in our failure to comply with any applicable Legislation or may place us or our Associates in breach of any of our interconnect agreements with BT;
- 15.2.13 use by you, a caller or any third party of the NGN Communications Ltd Network is, or is likely to cause damage to, interrupt or otherwise prevent us from supplying services to other customers or complying with obligations owed to other customers;

- 15.2.14 such action is required to comply with any Legislation;
- 15.2.15 we have reasonable grounds to suspect that you, a caller or any third party is involved in fraudulent or other unlawful activity; or
- 15.2.16 a Change in Control takes place or is proposed.

For the purposes of clause 15.2 "material breach" shall include any failure by you to pay the Charges and/or any failure to comply with your obligations under this clause 15.

- 15.3 In the event of termination by you during the Committed Period or any Subsequent Contract Period (other than in accordance with clause 15.1.2) you will, in addition to paying any Charges which would apply to the unexpired portion of the Committed Period or any Subsequent Contract Period, be liable to pay us the cancellation charges of up to £100.00 per line.
- 15.4 Where you cancel a Service or the Contract as a result of changes made to this Contract or to the Services by us in accordance with clause 10, and where the changes have a material adverse effect on the relevant Services, you will not be liable for any charges arising as a direct result of such cancellation, but you will remain liable to pay any Charges due and payable.
- 15.5 In addition to our rights under clause 15.2 we may terminate this Contract for any reason by giving you 30 working days' notice in writing such notice to expire on or at any time after the Committed Period or any Subsequent Contract Period.
- 15.6 Termination of one or more of the Services will not automatically terminate this Contract unless notified by us.
- 15.7 On termination of the Contract each party will return to the other party any Confidential Information which it has in its possession.

## 16 Suspension of the Service or Suspension of the Contract

- 16.1 We may suspend the provision of any one or more of the Services if:
  - 16.1.1 we have a right to terminate this Contract;
  - 16.1.2 you fail to meet any of your obligations under this Contract including the notice requirements concerning abnormal demands on our network;
  - 16.1.3 we have reasonable cause to believe that you or any third party is acting in breach of the Fair Use Policy or the Acceptable Use Limit;
  - 16.1.4 technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;
  - 16.1.5 it is necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance;
  - 16.1.6 we are obliged to comply with any contract, order, instruction or request of a competent governmental regulatory or other authority;
  - 16.1.7 in our reasonable opinion your conduct is likely to result in the breach of any law or is otherwise prejudicial to our interests;
  - 16.1.8 the Credit Limit is exceeded;
  - 16.1.9 you allow to be done anything which in our reasonable opinion may have the effect of impairing the operation of the Services; or
  - 16.1.10 your direct debit is dishonoured or cancelled for any reason
- 16.2 You may be liable for an administration fee if suspension is due to your default and we, in our sole discretion, reinstate the Services following suspension.
- 16.3 We will, where practical, give you notice of our intention to suspend the Services and, in relation to suspension for the reasons stated in clauses 16.1.3–16.1.5 above, will restore the Services as soon as we are reasonably able to do so. If we exercise our right to suspend the Services, this will not restrict our rights to terminate the Contract.

## 17 Events Outside Our Reasonable Control

- 17.1 Neither party will be liable to the other for any delay in performing or failure to perform any of its obligations under this Contract (other than the obligation to pay the Charges) which occurs as a result of circumstances beyond a party's reasonable control. For the avoidance of doubt, circumstances beyond our reasonable control include but are not limited to act of God, war or riot, civil disobedience, national emergency, strikes and other labour disputes, fire, flood, act of terrorism, power failures, non-availability of any third-party telecommunication services, breakdown of any equipment not supplied by us, acts of government or other competent authority (together "Force Majeure Events").
- 17.2 If the Force Majeure Event(s) continues for a period of more than ninety 90 working days, either party may terminate this Contract.

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## 18 Confidentiality

- 18.1 Neither party will disclose to any third party without the prior written consent of the other party any confidential information which is received from the other party as a result of this Contract. Both parties agree that any confidential information received from the other party will only be used for the purposes of providing or receiving Services. These restrictions will not apply to any information which:
- 18.1.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 18; or
  - 18.1.2 is acquired from a third party who owes no obligation of confidence in respect of the information; or
  - 18.1.3 is or has been independently developed by the recipient.
- 18.2 Notwithstanding clause 18.1, we will be entitled to disclose your confidential information to a third party to the extent that this is required by any court of competent jurisdiction or by a governmental or regulatory authority (ie OFCOM and/or PhonepayPlus), or where there is a legal right, duty or requirement to disclose such confidential information.

## 19 Our Liability to You

- 19.1 We accept liability with a limit of £25,000 for death or personal injury arising from our own negligence or for any fraudulent pre-contractual misrepresentation on which you can be shown to have relied.
- 19.2 Our liability to pay Service Credits in accordance with clause 5 will be the maximum extent of our liability and your sole remedy for any Service Failures.
- 19.3 Subject to clauses 16.1 and 16.2, we are not liable to you whether under this Contract, tort (including negligence) or otherwise for direct or indirect loss of profits, anticipated profits, business, goodwill or anticipated savings, or for any indirect or consequential loss or damage including, but not limited to, claims against you from third parties and loss of or damage to your data even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the loss.
- 19.4 Subject to clause 19.1, our liability to you in contract, tort (including negligence) or otherwise in relation to or arising out of this Contract is limited to £25,000 for one single incident in any twelve (12) month period and £30,000 for a series of incidents in any twelve (12) month period for all events, claims, losses however arising during the term of this Contract. Service Credits paid or credited by us to you will be taken into account for the purposes of calculating the limitation amounts set out in this clause 19.
- 19.5 Except as expressly set out in this Contract and to the extent permissible by law all other warranties, terms and conditions guarantees as to quality or fitness for a particular purpose of the Services or any other conditions or guarantees whether express or implied by law, custom or otherwise are excluded.
- 19.6 We are not liable to you in Contract or tort (including negligence) for any acts or omissions of you or any third party acting on your behalf, including other providers to you of telecommunications, computers or other equipment or services including internet services.
- 19.7 Each provision of this Contract excluding or limiting our liability operates separately. If any provision of this Contract is held to be invalid in whole or part such provision will be deemed not to form a part of the Contract. In any event the enforceability of the remainder of the Contract will not be affected.

## 20 Use and Disclosure of Your Personal Information

Except in relation to clauses 20.5 and 20.6 below, this clause 20 applies to personal information held about individuals, sole traders and partnerships. It does not apply to information we hold about corporate bodies, and other organisations.

- 20.1 Information you provide, or we hold about you (whether or not under our Contract(s) with you) may be used by us or our agents to:
- 20.1.1 identify you when you contact us
  - 20.1.2 help identify accounts, services and products which you could have from us from time to time (we may do this using an automatic scoring system, which uses the information provided by you, any information we hold about you and information from other agencies, including credit-reference agencies);
  - 20.1.3 help run, any accounts, services and products we provided before now or in the future;
  - 20.1.4 carry out marketing analysis and customer profiling and create statistical and testing information;
  - 20.1.5 help to prevent and detect fraud or loss; and
  - 20.1.6 contact you in any way (including mail, e-mail, phone, visit, text or multimedia messages) about products and services offered by us. We will only contact you in this way if you have previously shown your consent.

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20.2 We may disclose to and allow other people and organisations to use information we hold about you:

- a) to provide services you have asked for;
- b) as part of the process of selling one or more of our businesses;
- c) to provide information for legal or regulatory purposes;
- d) as part of current or future legal proceedings; or
- e) to enable us to manage your account.

From time to time, these other people and organisations may be outside the European Economic Area in countries that do not have the same standards of protection for personal data as the UK.

20.3 We may also allow your information to be used by any of our Associates for them to carry out any of the above purposes.

20.4 We may monitor and record communications with you (including phone conversations and e-mails) for quality assurance and compliance.

20.5 We will hold information on your phone use, including the numbers called, date, time, duration and cost of calls, together with information about your location. We will use this information to manage the phone service and provide you with any other services you may ask for. Where you have previously shown your consent, we may use this information to provide you with information about other products and services that we believe will be of value or interest to you. We will keep information for as long as is necessary to provide services you have asked for and until charges for the service

20.6 This clause 20.6 applies to personal information held about individuals (including, if you are a corporate body, any key individuals involved in that body), sole traders and partnerships. We may check your details with one or more licensed credit-reference and fraud-prevention agencies. We and they may keep a record of this search and the payment details from your account and share it with other organisations. If a person provides false or inaccurate information and we suspect fraud, this is also recorded. This information may be used by us, and other organisations may search these records to:

20.6.1 help make decisions about credit and credit-related services for you and members of your household;

20.6.2 help make decisions on motor, household, credit, life and other insurance proposals and insurance claims for you and members of your household;

20.6.3 trace debtors, recover debt, prevent fraud, and manage your accounts or insurance policies;

20.6.4 check your identity to prevent money laundering, unless you give us other satisfactory proof of your identity; and

20.6.5 carry out statistical analysis about credit, insurance and fraud.

20.7 If you give us information on behalf of someone else, you confirm that you have given them the information set out in this clause, and that they have not objected to their personal information being used in the way described in this clause. If you give us sensitive information about yourself or others (such as special needs details for bills), you agree (and confirm that the relevant subject of the information has agreed) to us processing this information in the way set out in this clause.

20.8 If you are making a joint application or you have told us about some other financial association with someone else, a 'financial association' between you and that other person (or people) will be made at credit-reference agencies. This will link your financial records with that other person (or people) so that both (or all) of your records will be taken into account in all future applications by either or both (or all) of you. This will continue until one of you successfully files a notice with the credit-reference agencies asking for the financial association with that person to be removed.

20.9 If you would like us to tell you what information we hold about you, please write to us c/o The Data Controller, NGN Communications Ltd. We may charge a £10.00 administration fee; please quote your full name, address, phone number and account number on all requests. You can also call Customer Services to correct or update any inaccurate or incomplete information and to advise us of any preferences you may have concerning how you can be contacted for marketing purposes or to indicate your preferences for directory enquiries. We, and other credit and insurance organisations, may also use technology to detect and prevent fraud. If you need details of those credit agencies and fraud-prevention agencies from which we get, and with which we record, information about you, please write to us at NGN Communications Ltd, Building 3 NLBP, Oakleigh Road South, London, N11 1GN.

## 21 Equipment

21.1 The Equipment remains the property of either us or (where applicable) the Third-Party Operator.

21.2 Where Equipment is required to be installed at your Site to enable us to provide the Line Rental Service you must:

21.2.1 prepare your Site in accordance with our or the Third-Party Operator's reasonable instructions;

21.2.2 make available a suitable place and conditions for the Equipment; and

21.2.3 provide (at your own cost) sufficient electricity to power the Equipment and connection points to the Fixed Line Network.

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- 21.3 We shall not be responsible for any redecorating that may be required after the installation is completed.
- 21.4 You 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 us) to do so. You are liable to us 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 us or anyone acting on our behalf.
- 21.5 You agree to obtain all necessary consents, including for example, consents for any alterations to buildings, permission to cross other people's land or permission to put any Equipment on your property.

## 22 Access to Your Site

- 22.1 To enable us to carry out our obligations under this Contract you must permit or procure permission etc. for us or anyone acting on our behalf who produces a valid identity card, with access to your Site and any other premises at all reasonable times.
- 22.2 Our employees or anyone acting on our behalf will observe your reasonable regulations affecting your Site as previously advised in writing to us. In the event of any conflict in the site regulations and these conditions, these conditions will prevail.
- 22.3 You will provide a suitable and safe working environment for our employees and anyone acting on our behalf in relation to work carried out at your Site.
- 22.4 In normal circumstances, access to your Site will only be required during Working Hours. If we require access at other hours, you will permit or procure permission for us or our agents to have access to your premises and will provide such reasonable assistance and information as we request from time to time. We will routinely work during normal Working Hours. Any request by us to carry out work at other times may be refused by you. Any request by you that we carry out work at other times may be refused by us, but if accepted such work will be charged to you at our then current standard rates.

## 23 Intellectual Property

- 23.1 Except as expressly set out in this Contract, all intellectual property rights in our Equipment will remain with us or our suppliers or licensors.
- 23.2 Where Software is provided to enable you to make use of the Services, we grant to you a non-exclusive non-transferable license to use the Software solely for the purpose of receiving the Services. Where any additional terms and conditions apply to your use of Software we will make these known to you and you will, if requested, sign any agreement reasonably required to protect the owner's rights in the Software.
- 23.3 You will not copy, decompile or modify the Software without our prior written consent (except as permitted by law) and will not distribute or disclose the Software to any third party.
- 23.4 You acknowledge that we have no obligation to review or edit any of your information or third-party information which you store on or transmit through our Equipment or use in connection with the Services. However, we reserve 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 of our Authorisation or the terms of our contracts;
  - c) observing the performance of the Services including for Service Level monitoring;
  - d) retaining a record of activity on our Equipment or systems;
  - e) complying with any request for information or disclosure from a court or other appropriately authorised body
  - f) ensuring that you are complying with our Fair Use Policy.

## 24 Assigning the Contract

- 24.1 We may assign, sub-contract or otherwise transfer this Contract or any part of it to any third party in our absolute discretion. Notwithstanding any such sub-contract we will remain primarily liable to you under this Contract.
- 24.2 You may not assign, sub-license or otherwise transfer this Contract or any of your rights or obligations arising under it without our written consent.

## 25 Entire Agreement

This Contract sets out the whole agreement between you and us for the provision of the Services and supersedes all prior agreements, understandings and agreements between us.

## 26 Waiver

The failure or delay by us in exercising any of our rights, powers or remedies under this Contract shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by us of any right, power or remedy under this Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy. Any waiver of a breach of, or default under, any of the terms of this Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Contract.

## 27 Third Party Rights

- 27.1 Subject to clause 27.2 a third party which is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 27.2 In respect only of any Services regulated by PhonepayPlus, in accordance with the provisions of Section 1 of the Contracts (Rights of Third Parties) Act 1999, PhonepayPlus may directly enforce the relevant provisions of this Contract.

## 28 Law and Disputes

- 28.1 This Contract will be construed in accordance with and governed by the laws of England.
- 28.2 In the event of any dispute relating to or arising from this Contract the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

## 29 Notices

- 29.1 Notices must be in writing and shall be served by hand delivering it or sending it by pre-paid first class post, or registered post, or prepaid recorded delivery or prepaid international recorded airmail addressed to the other party at the address shown on the Contract application form or any other address as notified in accordance with this clause or fax to the number notified by each party to the other or e-mail to the address notified by each party to the other.
- 29.2 Any such notice shall be deemed to have been received:
- 29.2.1 if hand delivered or sent by prepaid recorded or registered post or international recorded airmail at the time of delivery;
  - 29.2.2 if sent by post (other than by recorded or registered post) two days from the date of posting;
  - 29.2.3 if sent by airmail (other than prepaid recorded airmail) five days from the date of posting;
  - 29.2.4 in the case of fax, at the time of receiving a successful transmission report; and
  - 29.2.5 in the case of e-mail, a copy of the e-mail must also be sent by first class post.