

SMS Standard Terms and Conditions

DLG

These SMS Standard Terms and Conditions (“Terms”) shall be read in conjunction with DLG’s Standard Terms and Conditions. Capitalised terms contained herein shall have the same meaning as in DLG’s Standard Terms and Conditions. Should there be a conflict between DLG’s Standard Terms and Conditions and these Terms, then these Terms shall prevail.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms have the following meanings:

The Act the Communications Act 2003;

Agreement this Agreement and Order Confirmation;

Code Any Code of Practice or policy, regulation, best practice guidance or help notes issued by PhonepayPlus from time to time;

Confidential Information has the meaning set out in Clause 12;

Content means the content in respect of any of the Services supplied by the End User and sent to the End Users in messages including, without limitation, any images, audio, audio-visual, text or other information or data content;

DLG Data Locator Group Limited

End User a bona fide user who, as consumer, accesses or otherwise uses any of the services provided by the End User which are supplied by virtue of the Services;

Force Majeure means:

- (a) Acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;

- (d) nuclear, chemical or biological contamination or sonic boom
- (e) voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
- (f) fire, explosion or accidental damage;
- (g) extreme adverse weather conditions;
- (h) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
- (i) interruption or failure of utility service, including but not limited to electric power, gas or water.

Fraud Traffic is any traffic, or generation of traffic by any means, by any person(s) and under any circumstances which is artificial, dishonestly created or inflated or which is not reasonably contemplated by the parties to be the subject of the revenue share as set out in this Supplemental Agreement, and the expression “Fraud Traffic” shall include (without limitation) the following:

- (a) traffic for which there is a reasonable expectation that the End User is not likely to pay their telephone bill for any reason;
- (b) traffic which is not generated by an End User;
- (c) traffic which is created fraudulently, dishonestly or artificially as reasonably determined by DLG;
- (d) traffic which is created via some automated system, device, software, program or method (whether electronic or otherwise);
- (e) Messages which are sent or calls made specifically or primarily to inflate payments due from DLG or to the End User or any other person;
- (f) traffic being generated which is likely to result in DLG incurring a loss in receiving this traffic;

- (g) traffic for which the income received by DLG is less than the amount payable to the End User;
- (h) traffic not generated by a member of the general public;
- (i) traffic considered or suspected by DLG to be arbitrage; or
- (j) where there are repeated or continuous calls from the same number

IPR means all copyright and other intellectual property rights howsoever arising and in whatever media, whether or not registered, including, without limitation, patents, trademarks, service marks, trade names, registered designs, database rights, domain names, moral rights, performer's rights, and any application for the protection or registration of these rights and all renewals and extensions thereof throughout the world;

Liability in or for breach of contract, breach of duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including, without limitation, liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement;

Legislation means any statute or statutory provision including any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall also include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision or other statute and any current notices, guidance and codes of practice issued by any Regulatory Body or Network(s) and any updates thereto from time to time;

Message (SMS) means a message containing Content sent by the End User to DLG for onward delivery to End Users in connection with a Service;

MMS means multimedia message service provided by the Networks by which a Message can be sent;

MO means a Message originating from the End User's mobile device;

Mobile Code of Practice any code of practice issued by any Network from time to time (whether or not jointly with another person);

Month a calendar month during the Term;

MSISDN means a mobile phone number used to identify an individual End User;

Network(s) means an operator of any public network electronic communication system with whom DLG has entered into an agreement in connection with the Services;

Ofcom means the Office of Communications or any replacement body of the same;

Opt Out the ability for an End User to stop receiving any further Messages or promotions;

DLG Group means DLG and any parent or subsidiary company of the same;

DLG Mark means the name 'DLG' and the 'DLG Logo', and any other trade mark, trade name, service mark, logo or other brand feature used or applied by the DLG Group at any time and irrespective of whether or not registered;

DLG Service means the Services to be provided by DLG to the End User under this Agreement as specified in the Order Confirmation each service as more specifically defined in the relevant Order Confirmation;

DLG Suppliers the persons with whom DLG has contracted in order to obtain the rights for DLG to supply the Services;

Order Confirmation means DLG's prescribed order form(s) for the Services in force from time to time;

PhonepayPlus means PhonepayPlus or its successors;

Regulatory Body means any UK or international regulatory body including government and self-regulatory and industry bodies with authority over, or which issue guidance in respect of the subject matter of the Services, the End User's Services and End User rights in existence from time to time and including, without limitation, PhonepayPlus, the Information Commissioner's Office, the Financial Services Authority and Ofcom;

Regulatory Fine means any fine or charge imposed by a Regulatory Body in respect of an End User's Service or arising in consequence of the End User's Service;

Regulatory Network Guidelines and Information means the Regulatory Network Guidelines and Information provided by DLG to the End User and which the End User and any customer or End Users of the End User must adhere to;

Regulator Network Guidelines means the guidelines and compliance regulations relating to each of the Services as supplied by DLG from time to time and which terms are deemed to be included into this Agreement;

Services Start Date means the dates on which each Service shall commence as detailed in the Order Confirmation (as appropriate) and each one shall be a Start Date;

Site the location where any of the Services are provided;

SMS means short message service operated by the Networks by which a message of up to 160 text characters can be sent;

Term has the meaning set out in clause 3.1 provided that where a reference to Term is used in relation to a particular Service the definition of Term shall be construed to refer to that Service only;

User Data means any personal data (as such expression is defined in the Data Protection Act 1998 as amended and replaced from time to time)

and related information in respect of an End User including, without limitation, name, contact details, comments and information relating to or any enquiries by or regarding such User in respect of the End User's Service;

Working Day a day when banks are generally physically open to the public for business in England.

1.2 In this Agreement:

1.2.1 Where the context so admits or requires words denoting the singular include the plural and vice versa, words denoting any gender (or the neuter) include both genders and the neuter;

1.2.2 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.

1.2.3 References to clauses in this Agreement are to clauses of this Agreement.

1.2.4 References to "include" and "including" shall be deemed to mean respectively "include(s) without limitation" and "including without limitation".

1.2.5 References to each party to this Agreement include references to its successors in title, permitted assigns and novatees.

2. PARTIES' OBLIGATIONS

2.1 Subject to the terms of this Agreement, DLG warrants that it shall provide the Services with the reasonable care and skill.

2.2 Each party warrants to the other that it has all necessary approvals, permission and authorisations for their respective obligations and their respective roles under this Agreement.

2.3 Throughout the Term the End User agrees to cooperate fully with DLG and to take all steps DLG reasonably specifies in order for DLG to provide the Services

3. TERMINATION AND DURATION

3.1 This Agreement shall take effect on the first Service Start Date. The Service shall continue for the initial period set out on the Order Confirmation (if applicable) ("Initial Term") from the Start Date applicable to that Service and each Service shall continue thereafter until terminated in accordance with this Agreement. The period of time between a particular Service's Start Date and its termination date shall be referred to as the "Term" of that Service and only where the context requires shall the word "Term" refer to the entire term of this Agreement being the period from the first Service Start Date to the date on which the last Service is terminated.

3.2 Either party may terminate a Service under this Agreement after the relevant Initial Term by giving written notice to the other party such notice to expire after such Initial Term as follows:

3.3 DLG may terminate or suspend this entire Agreement or, at its discretion, a particular Service, immediately at any time by written notice to the End User if the End User:

3.3.1 commits a material breach of this Agreement and the breach is irremediable, or if remediable, is not remedied within 15 Working Days after the service of written notice requiring the End User to remedy such breach(es). For the purposes of this Clause 3.3.1 the breach of the following Clauses shall be considered a material breach:

3.3.1.1 Clause 5

3.3.1.2 Clause 6; and

3.3.1.3 Clause 8

3.3.2 goes into administration, administrative receivership, liquidation or either compulsory or voluntary receivership (save for the purpose of reconstruction or amalgamation); or

3.3.3 compounds with any one or more of its creditors or suffers a petition for winding up (otherwise than for reconstruction or amalgamation); or

3.3.4 has a receiver or administrative receiver appointed in respect of the whole or any part of its assets or makes an assignment for the benefit of or composition with its creditors; or

3.3.5 submits a proposal by its directors for voluntary arrangement under Part 1, Insolvency Act 1986; or

3.3.6 is unable to pay or suspends payment of its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986; or

3.3.7 threatens to do or have done to it or suffers any similar or analogous action in consequence of debt as mentioned in clauses 3.3.2 to 3.3.7.

3.4 The Agreement may be terminated in whole or terminated or suspended in respect of a particular Service with immediate effect if;

3.4.1 agreed, in writing, by both parties;

3.4.2 a Force Majeure event prevents either party from performing its obligations for a period of 30 days or more; or

3.4.3 an agreement between DLG and DLG's Supplier is terminated, or the services provided to DLG under any such agreement are suspended or terminated, in each case for any reason whatsoever; or

3.4.4 DLG or the End User, is so instructed by, or receives any complaint or objection from any Network with whom DLG contracts or any Regulatory Body or Ofcom; or

3.4.5 material breach of this Agreement.

3.5 On termination of this Agreement in its entirety, each party shall return to the other party all property of the other in its possession or control and, each party shall, as soon as practicable.

3.6 The provisions of Clauses 4, 7, 12 and 15 shall survive termination.

3.7 DLG may vary any provision in this Agreement, without prior consent from the End User, if such change is reasonably required because of

significant regulatory, insurance, safety or statutory changes which become operative after the date of this Agreement. DLG shall in such circumstances give the End User not less than 30 days written notice of such changes. The End User shall have the right by giving notice in writing to DLG to terminate the Services affected within 14 days of receiving such notice but in the absence of exercising such right to terminate the End User shall be deemed to have accepted such change(s) and this Agreement shall be deemed to have been altered accordingly.

4. INTELLECTUAL PROPERTY RIGHTS (IPR) AND MARKS

4.1 DLG shall own and shall continue to own:

4.1.1 all rights, title and in interest in the IPR relating to or created or used during the Term of this Agreement including IPR arising in any systems or technology used in connection with any of the Services; and

4.1.2 all IPR and goodwill in and relating to the DLG Mark; and

4.1.3 any rights or interests in or ownership over any property including any telecommunications equipment, land, leases and licences of any variety owned or held by DLG;

4.2 The End User hereby grants to DLG a non-transferable, royalty-free, worldwide licence for the Term to use, alter, adapt, exploit, reproduce, distribute and transfer the Content and all IPR therein solely for the purposes of providing the Services under this Agreement (and, for the avoidance of doubt, not for any other purpose without the End User's prior written consent).

4.3 Nothing in this Agreement shall entitle either party to use the other party's name, logo or trademark in any way or any context whatsoever without prior consent of the other.

4.4 If the End User learns of any threatened or actual infringement of the DLG IPR, or of any circumstance which suggests that the use of any

IPR may infringe the intellectual property of a third party, it shall immediately inform DLG, giving all such details DLG requests.

4.5 DLG shall have conduct of any proceedings relating to the IPR and may take whatever action it, in its sole discretion, decides in respect of any infringement or alleged infringement of it, or arising from its use. The End User shall co-operate with DLG in taking such action and the DLG shall meet any reasonable expenses of the End User in doing so.

4.6 The End User shall:

4.6.1 not apply for registration of any of the DLG IPR (or any intellectual property that is confusingly similar to the DLG IPR) in its own name, in any part of the world;

4.6.2 not use any IPR that is confusingly similar to the DLG IPR;

4.6.3 not do anything that may adversely affect the DLG IPR or DLG's right or title to it.

5. WARRANTIES

5.1 Any times specified by DLG (in an Order Confirmation or otherwise) for performance of any part of the Services shall be an estimate only, and in respect of such performance, time shall not be of the essence. Furthermore, DLG gives no warranty in relation to the safe storage or transmission of any data owned or controlled by the End User or any of its customers, agents or employees.

5.2 The End User acknowledges the foregoing and accepts that DLG is reliant upon (but not responsible for) Network operators in providing any of the Services and cannot be held responsible for any failure of Service caused by the act of any Network. Accordingly the End User shall be responsible for implementing any appropriate safeguards and back-up systems which it deems fit.

5.3 The End User warrants that:

- 5.3.1 its use, promotion and implementation of the Services shall be performed in compliance with all applicable Legislation and other similar instruments in each jurisdiction in which the Services are supplied and in each country or territory which exercises effective jurisdiction over the use of the Services;
- 5.3.2 it shall not transmit or promote any material which is or may be reasonably considered by DLG to be libellous, seditious, defamatory, threatening, unlawful, harmful, liable to incite racial hatred, discriminatory, menacing or blasphemous.
- 5.3.3 it shall not post or promote any materials of any kind or nature that encourages conduct that could constitute a criminal offence, give rise to civil Liability or otherwise violate any applicable laws or regulations or appropriate codes of practice;
- 5.3.4 it shall not use the Services or permit the Services to be used for illegal purposes;
- 5.3.5 it shall not use the Services in any way that may diminish or damage DLG's goodwill (including the goodwill in DLG's Marks);
- 5.3.6 the use of the Services and the End User's actions pursuant to the Contract shall not infringe the Marks of any third party;
- 5.3.7 it shall not make any statement, orally or in writing, publicly or privately, or do any act or otherwise conduct itself in such a manner as will or may in the opinion of DLG disparage DLG;
- 5.3.8 it shall not interfere with or disrupt DLG's computer networks or the Networks of those to whom DLG provides Services;
- 5.3.9 it shall not, directly or indirectly, use, create, promote, participate in or encourage any Fraud Traffic;
- 5.3.10 it shall not act directly or indirectly to encourage or require any person(s), either willingly or unwillingly, to benefit from the Services through any means that could reasonably be interpreted as being coercive, incentivised, misleading, malicious or otherwise contrary to the spirit and intent of the Agreement;
- 5.3.11 it shall not commit any act that would or does impose an unreasonable or disproportionately large load on DLG's infrastructure;
- 5.3.12 it shall, upon request from DLG from time to time, provide DLG with any information and/or materials regarding the services offered to the End User's End Users, End Users and other persons in each case deriving from the Services;
- 5.3.13 it shall not copy, modify, deliver to any third party or decompile any software which DLG supplies in connection with the Services;
- 5.3.14 it owns and/or is licensed to use the IPR subsisting in the Content and use of the Content by DLG in connection with the Services will not infringe any third party IPR;
- 5.3.15 the Content contains no viruses and nothing that is libellous, defamatory, offensive, racist, discriminatory or indecent, or which infringes or contravenes any Legislation or statutory or common law rights, or IPR, of any third party and will comply with all applicable Legislation;
- 5.3.16 it has obtained all necessary permissions, licences and consents to use the Content for the purposes of this Agreement and will maintain such permissions, licences and consents during the Term of each Service; and
- 5.3.17 it shall not act in a way, whether knowingly or otherwise, which might impair or otherwise affect the operation of any Network or put any part of it in jeopardy. Except as expressly stated in this Agreement, all warranties, conditions and other terms, whether express or implied, by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.
- 6. CONTENT RESPONSIBILITY**
- 6.1 The End User shall bear full responsibility for all aspects of any Content and the End User's Services including without limitation, ensuring:

- 6.1.1 that such Content and the End User's Services comply with all relevant Legislation (including legislation applying in any other jurisdiction where such Content is sent/able to be sent) and, without limitation, any Acceptable Use Policy provided to the End User by DLG from time to time;
- 6.1.2 the provision by a third party of such back office management, order processing and fulfilment services as are required in connection with the Content and End User's Service;
- 6.1.3 the provision of all support and liaison reasonably required by End Users including, without limitation, the provision of responses to End User enquiries and complaints concerning the Content and End User's Service and the provision of any after-sales support in connection with such Content and End User's Service;
- 6.1.4 that such Content shall not be sent by the End User via a Network that would be prejudicial to that Network's commercial interests including but not limited to enticing away End Users of that Network to become customers of any other mobile phone network or virtual mobile network;
- 6.1.5 that no Message may be sent by the End User which changes the WAP settings of a consumer's mobile device, including (without limitation) any Message which changes a End User's home page, GPRS settings or CSD settings without DLG's prior written consent;
- 6.1.6 that the relevant Network validation procedures in respect of the End User's Service (as the Networks may prescribe from time to time) are followed in order to verify the Network of the User's mobile device and to ensure that the Users request to use the End User's Service is validated; and
- 6.1.7 installation and maintenance of up to date, generally accepted virus-checking software to ensure that all data transmission including Content has been checked before delivery to DLG;
- 6.1.8 where End Users contribute to or create Content the End User must ensure that appropriate

controls are in place to ensure that any End User generated Content complies with the terms of this Clause 6.1. Controls shall include but shall not be limited to ensuring the End Users are bound by legal terms and conditions and are made aware of their obligations with regard to the content generated by them.

- 6.2 The End User shall implement and maintain appropriate controls to ensure that the Services are not being used or operated fraudulently or illegally.
- 6.3 The End User shall promptly notify DLG of and promptly correct any error, omission or inaccuracy in the Content and the End User undertakes (at DLG's request) to promptly remove any Content or discontinue any of the Services that may result in a breach by the End User of this Agreement

7. INDEMNITY

- 7.1 Nothing in this agreement shall limit or exclude the liability of either party for:
 - 7.1.1 death or personal injury resulting from negligence; or
 - 7.1.2 fraud or fraudulent misrepresentation; or
 - 7.1.3 the indemnity in 7.2 below.
- 7.2 The End User shall indemnify DLG (on an after tax basis) against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) as well as all financial penalties or charges imposed on DLG pursuant to a breach or suspected breach, act or omission, by the End User of its obligations under this Agreement or otherwise in respect of the End User's Service including, without limitation:
 - 7.2.1 any breach of the warranties contained in clause 5;
 - 7.2.2 the End User's breach or negligent performance or non-performance of this Agreement;

- 7.2.3 any and all claims made against DLG for actual or alleged infringement of a third party's IPR arising out of or in connection with the Content supplied directly or indirectly by the End User;
- 7.2.4 any and all claims made against DLG or financial penalties or charges imposed on DLG pursuant to a breach or suspected breach, act or omission, by the End User of its obligations under this Agreement or otherwise in respect of the End User's use of the Service including, without limitation, reimbursement of any Regulatory Fines imposed on DLG and/or of any penalties or other charges imposed by a Network on DLG and attributable in whole or in part to any such breach or the End User's use of the Service;
- 7.2.5 any loss arising as a result of a sanction imposed on DLG by a Network, including the suspension or termination (whether the whole or in part) of DLG's service attributable in whole or in part to any such breach or the End User's Service;
- 7.2.6 any loss arising as a result of a sanction or any adverse history imposed on DLG by a Network which is attributable in whole or in part to the End User's Service or the End User's breach of this Agreement; and
- 7.2.7 any costs of whatsoever nature incurred by DLG and associated with any End User complaints, enquiries or investigations, including, inter alia, any legal costs or fines levied by any regulator (including PhonepayPlus), Trading Standards, or a Court with relevant jurisdiction against DLG as a result of a breach of the PhonepayPlus Code of Practice, or any regulatory provision or statutory provision, or other law, being adjudicated against DLG, where such breach is the result, in whole or in part, of the failure of the End User to abide by any such Code of Practice, or regulatory provision or statutory provision, or other law.
- 7.3 DLG shall not be liable to the End User (whether in contract, tort, negligence or otherwise) for:
 - 7.3.1 any direct:
 - 7.3.1.1 loss of profit; or
 - 7.3.1.2 loss of revenue; or
 - 7.3.1.3 loss of use; or
 - 7.3.1.4 loss of anticipated savings; or
 - 7.3.1.5 loss of goodwill; or
 - 7.3.1.6 loss of data (whether direct, indirect or consequential in nature); or
 - 7.3.1.7 loss of reputation or opportunity; or
 - 7.3.1.8 economic losses (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings, whether direct, indirect or consequential in nature financial or economic loss); and
 - 7.3.2 any indirect or consequential loss or damage, costs or expenses whatsoever, and howsoever arising out of or in connection with this agreement and in any case, whether or not such losses were within the contemplation of any party at the date of this Agreement, or suffered or incurred by any party arising out of or in connection with the provision of any of the Services or any other matter under this Agreement.
- 7.4 Subject always to the indemnities under Clause 7.2 (under which liability shall not be limited), the liability of either party in respect of any loss or damage arising out of or in connection with this Agreement whether in contract, tort or otherwise shall be limited in aggregate in any 12 month period (the first of which shall commence on the first Start Date on which the first Services are taken up by the End User) to the fees owed under this Agreement by the End User to DLG for the applicable 12 month period in respect of Services to which the liability or loss relates.
- 7.5 DLG shall be entitled to deduct any such damages, loss, costs, expenses, penalties or charges directly arising under this Clause 7 or as a result of a direction from any regulatory or governmental body, from any monies owed to the End User by DLG under this Agreement and DLG

shall be entitled to such indemnity irrespective of the cumulative fine or sanctions history of DLG regarding a Network (or Networks) or Regulatory Body.

7.6 DLG shall have no liability to the End User, or to any End User for any faulty receipt or suspension or failure in the distribution or delivery or suspension of Messages or the Service or any Service or part thereof as a result of the acts or omissions by the Networks or by any other third party, or for any reformatting or storage of or editing or change to the Content or the Services by Networks or any third party.

7.7 Without prejudice to the End User's other obligations under this Agreement, the End User shall effect and maintain suitable liability insurance with a reputable insurance company of not less than one million pounds sterling for each and every claim arising under or pursuant to this Agreement, or otherwise in connection with the End User's Services and shall produce on demand a copy of such policy together with a receipt of the current premium.

7.8 The End User shall take all reasonable steps to ensure that its End Users, customers and End Users are bound by such equivalent provisions as are necessary to ensure that they will not place the End User in breach of any of its obligations as contained in this Agreement as well as any terms & conditions as DLG may reasonably require from time to time to ensure that End Users do not engage in any actions that might be an abuse of DLG's and/or a carrier's network, including, but not limited to:

7.8.1 attempting to circumvent user authentication, security of any network, or account;

7.8.2 attempting to interfere or deny access to any service or host;

7.8.3 sending any unsolicited messages, which includes adding or attempting to add addressees to any mailing list without the relevant individuals' express permission;

7.8.4 using the service for any illegal purpose, or for the transmission or offering of any information or services which are libellous, unlawful, abusive, threatening, harmful, threatening, defamatory, or in any way infringe the laws governing, including but not limited to, copyright, intellectual property rights, trademarks, pornography, or any other material that is libellous or may cause offence in any way.

7.9 The End User shall take all steps reasonably required by DLG to enforce its End User's adherence to the conditions referred to in Clause 7.8.

7.10 In the event that DLG identifies any breach of Clause 7.8, it reserves the right to suspend the Service (or part thereof) forthwith. DLG shall notify the End User of the alleged breach. If DLG does not within a reasonable period of such notice receive a satisfactory response from the End User detailing what action is to be taken to enforce compliance, then DLG can discontinue the Service (or part thereof) in question. The determination of a reasonable period or whether or not such response is satisfactory is at DLG's sole discretion.

7.11 The End User will provide all reasonable cooperation with DLG to ensure compliance by its End Users, customers and End Users with the conditions referred to in Clause 7.8.

7.12 DLG may on direction from any Regulatory Body or at its discretion where there is an alleged material breach of this Agreement or the Code, withhold any sum owed to the End User to cover fines, claims or administrative expenses due to any person from the End User under this Agreement or otherwise.

8. DATA PROTECTION

8.1 All User Data shall be and remain the property of the End User (subject always to any rights that any third party may have in such User Data).

8.2 The End User grants to DLG a non-exclusive, royalty-free, non-transferable licence for the Term to use the User Data, where necessary, for the sole purpose of providing the Services.

8.3 Each of the parties shall comply with the provisions of the Data Protection Act 1998 and other relevant Legislation where and to the extent that such provisions relate to that party.

8.4 The End User acknowledges and consents that DLG may be required to disclose User Data to Regulatory Bodies, the police or Networks (who in turn may disclose such User Data to Regulatory Bodies or the police). The End User also acknowledges and consents that DLG may disclose User Data to Networks for Networks' own use. The End User hereby confirms that it has the necessary permissions in order to grant such consent under this Clause 8.

9. USER COMPLAINTS SERVICE

The End User shall cooperate with DLG in relation to any complaints, enquiries or investigations regarding the Services offered by the End User pursuant to this Agreement.

10. AUDIT

In respect of each Service received by the End User, the End User may at its own expense, and after giving 14 days written notice, inspect the relevant books of DLG to audit revenues due to the End User. Such audit shall only be made in relation to the traffic relating to the End User, and shall only be undertaken by a Chartered Accountant, in a manner that shall not disrupt DLG's business.

11. ASSIGNMENT

11.1 The End User shall not give, bargain, sell, assign, sub-let or otherwise dispose of this Agreement or any part of it or the benefit or advantage of this Agreement or any part of it without the prior consent in writing of DLG.

11.2 DLG may assign the rights and/or obligations of any of the Services (including for the avoidance of any doubt the right given to PhonepayPlus pursuant to this Agreement) to any third party without the prior consent of the End User.

12. CONFIDENTIALITY

Confidential Information: for the purposes of this Clause 12 confidential information means all information concerning the business, finances, technology, affairs, End Users, marketing plans of the other party and other information which is identified as such or is confidential by its nature (including, but not limited to, the terms of this Agreement) ("Confidential Information") but not including any information that:

- (a) was known or in the possession of the receiving party before it was provided by the other party;
- (b) is, or becomes, publicly available through no fault of the receiving party;
- (c) is provided to the receiving party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
- (d) was developed by the receiving party (or on its behalf) who had no direct access to, or use or knowledge of the confidential information supplied by the other party; or
- (e) is required to be disclosed by order of a court of competent jurisdiction.

12.1 Each party shall keep the Confidential Information of the other party confidential and secret. Each party shall only use the Confidential Information of the other party for the purposes contemplated by this Agreement.

12.2 This clause 12 shall survive termination of this Agreement for a period of five years.

13. FORCE MAJEURE

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from Force Majeure.

14. VARIATION

No alteration to or variation of this Agreement shall take effect unless it is in writing and signed on behalf of each of the parties by an authorised representative.

15. LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with English law, and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts. Notwithstanding the foregoing, DLG may commence an action in any court in any jurisdiction.

16. THIRD PARTIES

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

17. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which when delivered shall be an original but all the counterparts together shall constitute one and the same instrument.