



COMMERCIAL IN CONFIDENCE

DEFINITIONS

In these Terms and Conditions the following words shall have the following meanings:

"Act"	the Communications Act 2003
"Agreement"	any agreement to which these Terms and Conditions are annexed or by which they are incorporated by reference (including any quote or relevant pricing supplied by Liquid11 to the Reseller) as amended from time to time, whether evidenced in writing, by email or fax or executed by the Reseller on-line from Liquid11's web site; any reference to the "Agreement" shall include a reference to these terms and conditions
"Billing Carrier"	the monopoly or former monopoly operator in each country, state, region or geographic location or any other fixed local carrier with whom Liquid11 and/or the Interconnect Carrier contract for the payment and receipt of interconnect fees
"Bureau Services"	off the shelf services supplied and managed by Liquid11 for inclusion in a Premium Rate service, whether or not content is also provided by the Reseller
"Call Conveyance"	the transmission path between a Caller and a Termination Number
"Caller"	a distant end user that makes a call to the Premium Rate Numbers or who sends a message to the SMS Short Codes to access the Reseller's services
"Free Message"	a messages that is sent to the caller's phone that is not billed to the user but is received by them free of charge.
"Clawback"	any amount overpaid to Reseller in relation to Un-billable Traffic or in relation to any amount that the Billing Carrier or Interconnect Carrier has overpaid or otherwise seeks to recover from Liquid11 in relation to the Premium Rate Numbers or SMS Short Codes, or by way of any pro-rata and/or future/retrospective reduction in the interconnect rates or fee's payable to Liquid11 by the Billing Carrier or Interconnect Carrier from time to time
"Code"	any code of practice issued by the PhonePayPlus, the Mobile Network Operators, Ofcom or any other statutory Regulator or appointed organisation or other such body that shall replace them in relation to the Service
"Equipment"	the transmission; Call Conveyance; number translation and various other telecommunications systems and resources employed by Liquid11 and the Interconnect Carrier to allow the Call Conveyance from time to time
"Intellectual Property Rights"	copyright, database right, patents, registered and unregistered trade and service marks, registered and unregistered design rights and any and all other industrial or intellectual property rights, trade secrets existing or future and all other rights in relation or supplementary thereto from time to time
"Information Services"	the services of whatever type provided by the Reseller and Reseller's re-sellers, agents, distributors and sub-contractors through the use of the Services
"Interconnect Carrier"	any licensed carrier or operator of telecommunications systems with whom Liquid11 contracts for the provision or management of interconnection pursuant to the Telecommunications (Interconnection) Regulations 1997 No. 2931
"Minutes"	call duration to the Premium Rate Numbers by a Caller

"Managed Content"	shall include i. all content available for download on any web-site or WAP site managed by Liquid11. including (but not limited to) items available for download to or use on mobile phones and other mobile devices, whether such content is provided by Liquid11, the Reseller or a third party; ii. SMS services including chat and visual and other content via WAP iii. Voice services accessed by telephone, both recorded and live or data based information given via a telephone.
"Payment Rate"	The rate set out, or from time to time amended, in the Agreement as payable to Reseller for each Unit generated to each Premium Rate Number or for each billed unit chargeable by SMS or any other charges specified in the Agreement for the Services provided by Liquid11
"Payments"	The payments due to Reseller by Liquid11 at the frequency stated in the Agreement calculated by multiplying the Minutes or Calls (as the case may be) generated by the Payment Rate applicable to the Service, less any amounts to be deducted in accordance with any provision of the Agreement; any other fee's due to Liquid11 from time to time as set out in the Agreement
"Personal Number"	A number commencing "070" or "06", otherwise termed as a "follow me" number allowing a customer of that number to be called using a single access number and used in accordance with Ofcom or PhoneyPayPlus regulations
"Premium Rate Service"	Live or recorded information or entertainment provided by telephone or SMS and other like services provided by the Reseller to Callers where a portion of the charge rendered to the Caller is paid over to the Reseller
"Premium Rate Numbers"	The telephone numbers allocated by Liquid11 to the Reseller inc geographic and non geographic numbers or premium rate number and follow me numbers
"Pricing Schedule"	The rates payable to the Reseller as set out in the Agreement
"Prior Permission Service"	A Premium Rate service that requires the prior permission of the Regulator before commencement thereof or as otherwise from time to time requiring additional amended permission to the Reseller
"Refunds"	Payments made by Liquid11 at their discretion and without legal obligation to a Caller by way of compensation in respect of any complaint made by the Caller to Liquid11 and made in an amount not exceeding the retail cost of the call
"Regulator"	Phone Pay Plus or OFCOM or any statutory or non statutory regulatory body which may replace it or assume its powers and/or functions of regulation of Telephone Information Services or the corresponding regulatory authority or body in country, state, region or geographic location
"Report"	The monthly statement of Units generated by Callers to the Premium Rate Numbers or billed chargeable SMS Short Codes
"Retention"	An amount from time to time set at Liquid11's sole discretion to cover any actual or potential Clawback, any sum due or likely to be due in respect of any indemnity given by the Reseller under the Agreement or pursuant to these Terms and Conditions or which Liquid11 believe is necessary to otherwise secure performance of the Agreement
"Service Fee"	The applicable fee payable to Liquid11 as set out in the Agreement, including any initial set-up costs for the Service
"Service Live Date"	The date upon which the Services set out in the Agreement shall be ready for use by the Reseller or the date when any in the case of a Prior Permission Service evidence of such permission has been supplied to Liquid11, whichever is the later
"Services"	The service provided by the Reseller to Callers using the Premium Rate Numbers, SMS Short Codes, managed content, Bureau Services or Interactive Voice Recognition or Interactive Voice Response ("IVR") services or a combination of those services or as otherwise set out in the Agreement

"Site"	a location operated by the Reseller where services are provided
"SMS Short Codes"	the shared telephone short code numbers non-exclusively allocated by Liquid11 to the Reseller
"Termination Number"	the telephone numbers to which calls to the Premium Rate Numbers are translated to (and delivered to) from time to time
"Unbillable Traffic"	any Minutes, Units or otherwise billable SMSs which Liquid11, the Billing Carrier, Interconnect Carrier or other party contracted by or to Liquid11 or on Liquid11's behalf is unable to bill or unlikely to be able to bill or collect for any reason whatsoever, or where: <ol style="list-style-type: none">the Minutes are generated or are believed to be generated due to Artificial Inflation of Traffic, breach of regulation, or unauthorised access to the Premium Rate Numbers or SMS Short Codes;the Minutes are generated or are believed to be generated by any other illegal, unlawful, unauthorised or unbillable method employed by any Caller;calls are being made or are believed to have been made to inflate or misrepresent payments due to the Reseller;it is likely that the income generated by Liquid11 or the Interconnect Carrier is less than that due to the Reseller;Liquid11 believes that there is repeated and/or continuous calling from the same Caller
"Units"	number of billable items generated, as defined in the quote or relevant pricing supplied to the Reseller prior to the Agreement

1. PRIOR AGREEMENT, REPRESENTATIONS AND FORMATION OF CONTRACT

- 1.1. The Agreement replaces any previous agreements of whatever nature in relation to the Services.
- 1.2. The Agreement shall constitute the entire agreement between the parties in relation to the Services, and any former representations (of any kind, written, verbal or otherwise) shall be superseded by the Agreement.
- 1.3. No warranties or statements made by Liquid11 prior to execution of the Agreement forms any part of the Agreement.
- 1.4. The Reseller acknowledges that:
 - 1.4.1. The Services are not specifically designed for the Reseller, or Reseller's use; and
 - 1.4.2. Liquid11 is dependent on the Billing Carrier; any Interconnect Carrier and other third parties from time to time as to the provision of the Services in respect of which Liquid11 offers no assurances; warranties or guarantees.
- 1.5. Reference in the Agreement to any party include references to its successors in title and its assigns and reference to legislation shall be deemed to refer to such legislation as amended, replaces or substituted (whether in whole or in part) from time to time.
- 1.6. Liquid11 shall be entitled to amend any error in any offer or quotation for service made to the Reseller from time to time without liability to them.

- 1.7. Liquid11 shall be entitled to amend any provision or clause of the Agreement at any time whatsoever and without the prior consent of the Reseller where such amendment is required for regulatory, insurance, safety or statutory reasons or to comply with any such requirement upon the Billing Carrier or the Interconnect Carrier or other third party upon whom Liquid11 relies for the provision of the Services. The reseller shall be notified as to the amendments.

2. DURATION

- 2.1. The Agreement shall be for the term specified by in the 1st schedule of the Agreement.
- 2.2. The Agreement will automatically renew at the end of the Initial Term for successive periods of the Initial Term length, unless either party provides written notice to the other of its intention not to renew the Agreement at least 28 days prior to the end of the then current term.
- 2.3. The Initial Term and all renewals thereof are collectively referred to herein as the "Term" of the Agreement.
- 2.4. In the event that no Initial Term is specified on the Service Order Form the Agreement shall remain in force unless and until terminated by either party giving at least two months notice.

3. TERMINATION

- 3.1. Liquid11 may terminate the Agreement with immediate effect in the event that:
 - 3.1.1. Liquid11 or the Reseller receives an instruction, complaint or objection from a Billing Carrier, Interconnect Carrier, Regulator, Governmental or other official body or from any other carrier or third party with whom Liquid11 contracts in relation to the Information Services; or
 - 3.1.2. Liquid11 believes that the Reseller is, has been or is about to allow the Services to be used for any unlawful purpose, to encourage any behaviour or conduct which is carried out would be unlawful or for any other purpose prohibited under the Agreement; or
 - 3.1.3. The Reseller fails to adhere to the terms of the Agreement or the Code or to any code of conduct or practice published from time to time by any Mobile Network or fixed line Operator, including but not limited to O2, Orange, T-Mobile, Virgin, Vodafone, 3, BT Mobile, or PPP or OFCOM or
 - 3.1.4. The Reseller threatens or appears to be about to fail to adhere to the terms of the Agreement or the Code; or
 - 3.1.5. The Reseller ceases or threatens to cease business or is no longer able to pay its debts or is otherwise insolvent within the meaning of the Insolvency Act 1986 or otherwise convenes a meeting of, or comes to an arrangement with its creditors, has distress or other seizure or attachment order levied over any of its assets or fails to satisfy any demand for payment from any lawful person, firm or body corporate or appoints a Receiver, Administrator or Administrative Receiver.
- 3.2. Either party may terminate the Agreement in the event that:
 - 3.2.1. The other party has committed a breach of the Agreement, and fails to remedy said breach within 30 days of a notice requiring it to do so; or
 - 3.2.2. The other party takes any steps to wind up, dissolve or appoint a Receiver, Administrative Receiver or Administrator over the other party's assets.
- 3.3. Liquid11 may terminate the Agreement by giving seven days notice in the event that none of the Premium Rate Numbers or SMS codes assigned generate more than £50 each per month in revenue over three months.
- 3.4. Termination of the Agreement shall be without prejudice to the rights and obligations accruing up to and including the date of termination
- 3.5. Liquid11 shall make no further revenue share payments to the reseller from the date of termination of the agreement; furthermore the reseller holds no claim to any future revenues generated.

- 3.6. Notwithstanding any other rights which Liquid11 may have under the agreement Liquid11 may, at any time, in the event of late or non-payment of any charges or refunds to Liquid11:
 - 3.6.1. elect to terminate the Agreement forthwith;
 - 3.6.2. restrict the Services available to the Reseller;
 - 3.6.3. demand repayment of or apply a set-off in respect of any Clawback or other payment due from the Reseller against any amounts owed by Liquid11 to the Reseller;
 - 3.6.4. Indefinitely withhold any payments due to the Reseller until the Reseller has discharged its indebtedness to Liquid11 in full.
- 3.7. Clause 3.6 shall survive termination of the Agreement; and in the event of termination of the Agreement for whatever reason Reseller shall:
 - 3.7.1. Cease forthwith to use the Services; and
 - 3.7.2. Return all property (of whatever nature) in its possession belonging to, or bailed to Liquid11 by a third party.

4. PROVISION OF SERVICES BY LIQUID11

- 4.1. Liquid11 shall endeavour to ensure that the Services are ready and available at the Service Live Date or as soon as practical thereafter.
- 4.2. Liquid11 may further allocate additional Premium Rate Numbers or SMS Short Codes to the Reseller as requested from time to time (at Liquid11's sole discretion).
- 4.3. Reseller acknowledges that:
 - 4.3.1. it shall have no ownership in the Premium Rate Numbers, SMS Short Codes or any allocated numbers;
 - 4.3.2. allocation of the Premium Rate Numbers does not constitute transfer thereof to Reseller, nor transfer thereof any other rights, benefits, goodwill or property in the Premium Rate Numbers whatsoever;
 - 4.3.3. SMS Short Codes are non-portable and used by other customers of Liquid11;
 - 4.3.4. Any data collected and retained by Liquid11 as a consequence of the Reseller's operation of the Information Services (including but not limited to telephone numbers and other details of subscribers of any of the Information Services) shall be the property of Liquid11 and nothing in the Agreement shall entitle the Reseller to view, use, resell or take copies of such data.
- 4.4. The Reseller acknowledges that Liquid11 may at its absolute discretion withdraw or re-allocate numbers or codes if it is reasonable to do so, or where:
 - 4.4.1. There are less than 20 calls per month to the Premium Rate Numbers or other allocated numbers or SMS Short Codes for two or more consecutive months; or
 - 4.4.2. The Reseller is in breach of the Agreement; or
 - 4.4.3. The Agreement is terminated (for any reason whatsoever); or
 - 4.4.4. Such action is necessary to comply with any legal requirement or re-numbering plan or as directed by the Regulator or other official or Governmental body; or
 - 4.4.5. Such action is necessary to optimise switch capacity or usage provided at all times Liquid11 takes all reasonable steps so as to minimise interruption to the Resellers business
- 4.5. In the event of withdrawal or re-allocation of any Premium Rate Numbers or other allocated number or SMS Short Codes Liquid11 shall endeavour to give the Reseller as much notice as is reasonably possible.
- 4.6. Liquid11 may terminate Services to any Premium Rate Number or other allocated number or SMS Short Codes utilised

for a Prior Permission Service where a certificate required expires or is withdrawn

- 4.7. Liquid11 shall endeavour to provide the Services and the equipment suitable for providing the Services. The Reseller acknowledges that:
- 4.7.1. Liquid11 cannot provide a fault free service; and
 - 4.7.2. No capacity is guaranteed by Liquid11
 - 4.7.3. Liquid11 gives no warranty that the Services or any Equipment used to provide the Services will be fault or error free; and
 - 4.7.4. Liquid11 gives no warranty that the Services, Equipment or its network, or that of the Interconnect Carrier will be continuous or fit for the Resellers purpose;
 - 4.7.5. it bears sole responsible for ascertaining the suitability of the Services for its application to the Information Services
- 4.8. Liquid11 shall notify the Reseller of any necessary technical changes in its service, Equipment or network affecting Services offered to Resellers as soon as is reasonably practicable.
- 4.9. The Reseller acknowledges that:
- 4.9.1. The use of Personal Numbers is regulated by OFCOM & PhonepayPlus and the Reseller hereby agrees to be bound by any guidance issued by OFCOM or PhonepayPlus or any other authorised Regulator from time to time;
 - 4.9.2. Revenue from calls to Personal Numbers may not be shared with the end user.
 - 4.9.3. For the avoidance of any doubt, breach by the Reseller of any OFCOM guidance, code of practice or regulation shall be a breach of this Agreement.
- 4.10. Liquid11 may in its absolute discretion and without penalty to it:
- 4.10.1. suspend the Services at any time for the purpose of system maintenance giving the Reseller such notice as is practical under the circumstances
 - 4.10.2. from time to time modify its Equipment or network and change its resellers and Interconnect Carrier without notice to and without consulting with Reseller.
 - 4.10.3. suspend, bar or restrict access to the Information Services if at any time the number of calls or attempted calls to the Premium Rate Numbers causes or is liable to cause congestion or other disruption within any part of Liquid11's system.
 - 4.10.4. from time to time impose traffic restrictions on particular Premium Rate Numbers to protect service quality.

5. RESELLERS USE OF THE SERVICES

- 5.1. The Reseller undertakes any agreement with its resellers, information providers, distributors and agents of the Services shall contain conditions imposing upon them:
- 5.1.1. the terms or equivalent of this clause 5 and its sub-clauses throughout the term of the Agreement;
 - 5.1.2. an obligation to comply with the Code, with any OFCOM or PhonePayPlus guidance, code of practice or regulation and with any code issued by any Mobile Network Operator as referred to at paragraph 3.1.3, above.
- 5.2. The Reseller shall ensure that it, and its resellers and information providers, have received all necessary approvals, licenses, permissions and certificates from the Regulator or any other body or governmental agency or authority for the Information Services offered through Liquid11 and that such licenses, permissions and certificates remain in force and valid.

- 5.3. Save in the case of any Managed Content or Bureau Service, the Reseller acknowledges that it is solely responsible, :
 - 5.3.1. for all and any Information Services provided, including content, quality and delivery; and
 - 5.3.2. for ensuring that such of Resellers, and each and every reseller and information provider of Resellers services comply with the Code, Act and the Agreement;
 - 5.3.3. the quality and delivery of the Services;
 - 5.3.4. the use of the Premium Rate Numbers or SMS Short Codes
- 5.4. On request the Reseller shall immediately provide Liquid11 or the Regulator with such information or material as they may request relating to the Information Services.
- 5.5. The Reseller shall immediately notify Liquid11 and the Regulator of any change in its name, constitution, address, telephone numbers or the nature or content of its Information Service.
- 5.6. The Reseller shall take such steps as may be necessary ensure that neither itself, its information providers or its resellers breach the Code. The Reseller shall immediately notify Liquid11 of any breach or any matter likely to give rise to a breach of the Code or any other code, guidance or regulation to which it is subject by this agreement.
- 5.7. The Reseller shall ensure that neither itself nor its information providers or resellers contract with any other party in a way which allows such other party to either directly or indirectly use the Premium Rate Numbers, SMS Short Codes or Termination Numbers other than as set out in the Agreement
- 5.8. The Reseller acknowledges that if Liquid11 or the Interconnect Carrier is requested, directed or recommended to do so by the Regulator or any other governmental or agency it may:
 - 5.8.1. cease providing the Services without incurring any liability to the Reseller whatsoever; or
 - 5.8.2. withhold any or all payments due to Reseller; and in either case
 - 5.8.3. that it shall have no claim (of whatever nature) against Liquid11 for any action taken by Liquid11 pursuant to clause 5.8.1 or 5.8.2
- 5.9. The Reseller acknowledges that Liquid11 has the absolute right to monitor all Services and record any calls made to the Premium Rate Numbers or text sent to or from SMS Short Codes
- 5.10. The Reseller shall provide Liquid11 and as appropriate the Regulator with such information or material relating to the Information Services as is from time to time requested including without limitation copies of recorded messages and information supplied to callers, advertising copy and promotional material for the Information Services and information which Liquid11 may use for credit checking and debt collection. The Reseller hereby consents to such checks being carried out from time to time and furthermore consents to Liquid11 storing and processing such information.
- 5.11. Notwithstanding any other provision in the Agreement, the Reseller irrevocably authorises Liquid11 to share information relating to the Information Services, its use of the Services and the conduct of its affairs with Liquid11 with the Regulator, the Billing Carrier or Interconnect Carrier or other such person, firm or body corporate lawfully requiring access thereto.
- 5.12. All advertising of the Information Services shall be approved in advance in writing by Liquid11 and the Reseller shall if requested to do so provide Liquid11 at least seven days in advance of publication with a copy of any proposed advertising material.
- 5.13. The Reseller shall ensure that:
 - 5.13.1. the Information Services are lawful and neither infringe any Intellectual Property Rights belonging to Liquid11 or a third party;
 - 5.13.2. the Information Services are not defamatory, libellous or illegal;
 - 5.13.3. all advertising and promotion of the Information Services is carried out so that that no publicity from the Reseller or its information providers, resellers, distributors, agents and subcontractors reflects adversely on

Liquid11, the Billing Carrier or the Interconnect Carrier;

- 5.13.4. there is no unsolicited promotion of the Information Services by email, SMS or other electronic means;
 - 5.13.5. No advertising or promotional material will state or imply any approval of the Services by Liquid11;
 - 5.13.6. All adverts comply with the relevant regulatory provisions relating to both the media within which the advert is placed and the content of the advert;
 - 5.13.7. It will not use any words, names or Intellectual Property of Liquid11 in connection with the Services which might imply any connection whatsoever with Liquid11, the Billing Carrier or the Interconnect Carrier.
- 5.14. The Reseller shall, on Liquid11's request, obtain and maintain adequate insurance for claims arising out its breach of the Agreement.
- 5.15. The Reseller shall notify Liquid11 of any television based advertising campaigns or other promotions that are likely to result in sudden peaks in Calls or SMS traffic in order that the parties can ascertain whether the anticipated number of Calls or SMSs is likely to result in a failure of the Service. The Reseller acknowledges that a large number of calls to the Premium Rate Numbers or SMS Short Codes in a short period of time may cause some or all of such calls to fail, or cause a general failure in the Service.
- 5.16. The Reseller shall ensure that the equipment it or its information providers and resellers operate in connection with the Services at all times complies with the relevant provisions of the Telecommunications Act 1984, the Code, any code issued by any Mobile Network Operator as referred to at paragraph 3.1.3 above and any licence granted which govern the running of a telecommunications system by the Reseller and shall as necessary comply at all times with the relevant provisions of the Consumer Credit Act 1974, where applicable, the Data Protection Act 1986 and any other applicable legislation or regulation.
- 5.17. The Reseller shall take such steps as are reasonably necessary to ensure that:
- 5.17.1. access to its own and its information providers and resellers Information Services is continuous and error free; and
 - 5.17.2. sufficient lines, ports and other apparatus are available to meet all reasonably expected demand, taking account of the fact that access may be achievable not only through use of the Services but also through the systems of other public telecommunication operators.

6. OTHER SERVICES

- 6.1. Where the Services include Managed Content or content for Bureau Services provided by the Reseller the Reseller acknowledges that they have sole responsibility for:
- 6.1.1. obtaining all Intellectual Property Right licences and other permissions necessary to enable the content to be used in the Information Services;
 - 6.1.2. payment of any royalties due in respect of any such rights.
 - 6.1.3. The accuracy of any information forwarded to Liquid11 by any means including an API.
- 6.2. The content of Managed Content provided by Liquid11 shall be at the absolute discretion of Liquid11;
- 6.3. Where Bureau Services are provided by Liquid11 as part of the Services the content of such services shall be managed at their absolute discretion whether the content is supplied by the Reseller or by Liquid11.

7. RATES & PAYMENTS

- 7.1. Liquid11 shall (subject as provided in the Agreement) calculate and make the Payments to the Reseller.
- 7.2. Liquid11 shall (unless otherwise specifically agreed in writing by the parties) calculate the Payments by reference to data recorded or logged by Liquid11 and not by reference to any data recorded or logged by the Reseller. Save as in the case of manifest error, the calculation by Liquid11 shall be deemed to be final and conclusive as to the amount payable to the Reseller.

- 7.3. Liquid11 shall provide the Reseller with a Report and, in their absolute discretion and when available, with access to online statistics. The Reseller acknowledges that the online statistics shall only be used to give an indication of the traffic generated and shall not form the basis of billing.
- 7.4. Payments will be made to the Reseller the following days from the end of the month in which the payment was generated, as follows:
 - 7.4.1. UK Premium Rate and International Credit cards – 40 days;
 - 7.4.2. UK SMS – 60 days;
 - 7.4.3. International PRN and SMS – 15 days of receipt of cleared funds from the networks concerned.
- 7.5. Payment shall be made after deducting:
 - 7.5.1. Any Clawback; and
 - 7.5.2. Any Retention; and
 - 7.5.3. Any Refund together with a £25 administration fee for each Refund made; and
 - 7.5.4. Any Service Fee; and
 - 7.5.5. Any element of the Payments which cannot be validated or processed by Liquid11's billing system (or that of the Billing Carrier or Interconnect Carrier) prior to the Payment falling due for any reason whatsoever; and
 - 7.5.6. Any Unbillable Traffic or other element of the Payments which cannot be collected by Liquid11, the Billing Carrier or Interconnect Carrier for any reason whatsoever; and
 - 7.5.7. Any other fees charged, expenses or costs incurred or paid by Liquid11 pursuant to the Agreement or payable to Liquid11 pursuant to any obligation incurred under or indemnity given in the Agreement.
- 7.6. No interest shall be taken to accrue on any amounts retained by Liquid11 pursuant to the Agreement.
- 7.7. No payment shall be made where the amount due to the Reseller is less than £50 in any month and such lesser sums shall not be carried forward from month to month.
- 7.8. Subject to the terms and conditions of the Agreement, Liquid11 shall pay (to the extent not already paid) with the next following Payment the amounts retained pursuant to Clause 7.5.5 and 7.5.6 following receipt of accounts from the Billing Carrier or the Interconnect Carrier.
- 7.9. On receipt of a demand from Liquid11, the Reseller shall immediately reimburse any Clawback to Liquid11.
- 7.10. Liquid11 may from time to time and at its absolute and sole discretion impose or amend the Retention to cover Clawback, potential Clawback, any sum which is or may in the opinion of Liquid11 become due from the Reseller as a consequence of the indemnity in paragraph 8.3, below and any sum which Liquid11 considers reasonably necessary to secure the performance by the Reseller of its obligations under the Agreement.
- 7.11. The Payment Rate may be amended by Liquid11 at any time and with immediate effect (and without liability to Liquid11) where such change is necessary to cover a change in the rate payable to Liquid11 from the Billing Carrier, Interconnect Carrier or other party that Liquid11 relies on for the provision of the Services.
- 7.12. The Payment Rate may be amended by Liquid11 at any other time, and for any other reason upon giving 30 days notice to the Reseller.
- 7.13. Liquid11 shall have the absolute right of set-off from amounts due to the Reseller under the Agreement from Liquid11 or any other Liquid11 group or associate company
- 7.14. The Reseller shall have no right of set-off from amounts due to Liquid11 from the Reseller under the Agreement or from any group company of the Reseller
- 7.15. Wherever possible the Report shall constitute the Resellers invoice, and Liquid11 shall account for VAT and any other

applicable tax in presenting such invoices to the Reseller, subject always to the prior registration, where necessary, of the Reseller and the furnishing of all relevant information by the Reseller to Liquid11 in respect thereof.

7.16. All amounts specified in the Agreement are exclusive of VAT at the prevailing rate.

7.17. The Reseller shall immediately on demand:

7.17.1. pay all fines or regulatory penalties, costs and claims imposed as a consequence of the manner of operation or conduct of the Information Services by the Regulator either upon Liquid11 or upon any Billing or Interconnect Carrier or Mobile Network Operator or other entity but in respect of which Liquid11 is liable to make or refund payment under any indemnity given by them or other obligation imposed upon them ; and

7.17.2. pay Liquid11's administrative costs at the rate of Ninety five pounds per hour plus VAT and disbursements or part thereof in dealing with any and all such matters, including dealing with any complaint notified to it by the Regulator, investigation of the complaint, collating documents, obtaining information from third parties or the Reseller, the formulating of written submissions or other material and the conduct of any oral hearing before the Regulator.

7.18. The Reseller shall be liable for, and fully indemnifies Liquid11 in respect of any and all taxes imposed by any taxing entity of any jurisdiction in connection with the Reseller's performance or obligations under the Agreement, including any Payments Liquid11 are required to make which are subsequently found to be liable to any taxes.

7.19. Notwithstanding any other provision in the Agreement, Liquid11 may at its absolute sole discretion withhold any Payment due to Reseller if ordered to do so by the Billing Carrier, the Interconnect Carrier, the Regulator or any other Governmental or law enforcement agency, or where Liquid11 believes Reseller is not operating its business pursuant to the Code or in an otherwise bona-fide manner.

7.20. The reseller agrees to supply an invoice based on the statement supplied by Liquid11 no later than 3 months from the date of the statement.

7.21. Invoice received later than 3 months after the date of the statements they refer to will not be eligible for payment by Liquid11 and payment of such invoice would be at the absolute discretion of Liquid11.

8. LIMITATION OF LIABILITY & INDEMNITY

8.1. Save in the event of death or personal injury or as set out in the Agreement neither party shall be liable to the other or to any third party for any direct, indirect or consequential losses or damages whatsoever whether in contract, tort or otherwise (including negligence). Reference in this clause to "direct, indirect or consequential losses or damages" shall include any economic loss including (but without this list being exhaustive) without limitation any direct or indirect loss of profits, anticipated profits or savings, business, contacts, revenue, time or goodwill or any loss or damages of whatever nature including (but without this list being exhaustive) loss of data or equipment other than intentional damage by Liquid11 whilst on the Reseller's property.

8.2. Save as expressly set out in the Agreement, all warranties whether express or implied are specifically excluded from the Agreement.

8.3. The Reseller holds harmless, indemnifies and keeps indemnified Liquid11 and Liquid11's parents, subsidiaries, affiliates, officers, shareholders and employees in respect of all liabilities, regulatory fines or penalties, costs (including administration & legal costs and disbursements), losses and expenses arising (directly or indirectly) out of:

8.3.1. the use or misuse of the Services by the Reseller or any third party;

8.3.2. Any claim or demand (including any made by a third party) arising out of use of the Services by a third party;

8.3.3. Any action, investigation, adjudication or oral hearing or appeal arising from any complaint made to the Regulator against Liquid11 in respect of any breach of the Code by the Reseller or any of its resellers, information providers, distributors or agents;

8.3.4. A breach or allegation of breach of the Agreement by the Reseller or a third party;

8.3.5. Any breach of the Code or any code of conduct or practice as referred to at paragraph 3.1.3;

- 8.3.6. Any negligence, misconduct, or any allegation of negligence or misconduct by Reseller or a third party;
 - 8.3.7. The advertising; promotion and marketing of the Information Services by Reseller or a third party;
 - 8.3.8. The Services provided (and any content or materials or recordings or otherwise in relation thereto) by Liquid11 on the Resellers behalf;
 - 8.3.9. Any unlawful action, criminal act, libellous or slanderous statement, breach of Intellectual Property of Liquid11 or a third party whatsoever;
 - 8.3.10. Any other act committed by Reseller causing loss or damages (including damage to reputation) sustained by Liquid11.
- 8.4. In the event of a breach of the Agreement by Liquid11, Liquid11 shall have 30 days in which to remedy such breach.
- 8.5. Each of the provisions of the Agreement are constructed and shall be construed independently of one another and applying and surviving even if one or more of the other provisions or clauses is held incapable, unreasonable or void.

9. GENERAL

- 9.1. Each of Liquid11's rights under the Agreement shall not be affected or waived should Liquid11 choose not to enforce any such right at any time, nor shall it affect Liquid11's right to later enforce any such right previously waived or not enforced.
- 9.2. All notices sent by either party to the other must be in writing and sent by Recorded Delivery post, or by courier to the other parties registered office or last known address and shall be considered served as follows:
- 9.2.1. First class post – the second day after posting;
 - 9.2.2. Courier – when delivery is signed for;
- 9.3. Nothing in paragraph 9.2 shall prevent the parties from selecting by agreement from time to time another means of giving or receiving notices under the Agreement and any notice acknowledged by the other party or proved to have been received at their address shall be deemed to have been validly given under the Agreement.
- 9.4. The parties agree that the Agreement does not constitute a joint venture or partnership of any kind whatsoever.
- 9.5. Neither party shall bind or attempt to bind the other party or represent the services of the other.
- 9.6. The Reseller authorises Liquid11 to use the Reseller's logo for the purpose of Liquid11 identifying the Reseller as a customer of Liquid11.
- 9.7. The Reseller shall advise Liquid11 of any potential faults in the Services or the Equipment as soon as is practicable.
- 9.8. Nothing in the Agreement shall be deemed to confer any assignment or licence of the parties respective Intellectual Property Rights.
- 9.9. In the case of any conflict between these Terms and Condition and terms, whether expressed to be by way of variation or not, any set out in the Agreement signed by the parties those terms shall prevail.
- 9.10. The parties to the Agreement do not intend that any provision of its terms will be enforceable by virtue of the Contract (Rights Of Third Parties) Act 1999 by any person, firm or body corporate not a party to it.

10. CONFIDENTIALITY

- 10.1.** Each party, and each of its directors, offices, shareholders and employees shall (both during and after the termination of the Agreement) keep secret and confidential and shall not disclose the same to any other party without the other parties previous written consent, or as set out in the Agreement, any information of whatever nature relating to any matter in relation to the other parties business, products, services, or Payment, with the exception of information:
- 10.1.1.** that was already previously know to either party;
 - 10.1.2.** which is ordered to be disclosed by competent court of jurisdiction or by the Regulator or other Governmental authority or recognised law enforcement agency; and
 - 10.1.3.** disclosed to the disclosing party by a third party lawfully entitled to disclose it.
- 10.2.** Each of the parties may disclose to its officers and employees information required by them to perform their rights and obligations under the Agreement; and
- 10.3.** The Reseller undertakes that they will not during the currency of the Agreement and for a period of twelve months following termination of the Agreement for whatever reason:
- 10.3.1.** Solicit any person, company or firm who is or has been at any time during the currency of the Agreement a customer or client of Liquid11;
 - 10.3.2.** Enter into any commercial or business relationship with any person who is an employee of Liquid11 or who has been an employee at any time during the currency of this Agreement or during a period of twelve months prior to the commencement of this agreement where such relationship would (in the case of an employee) be in conflict with the employee's duty of good faith to Liquid11 or where (in the case of a former employee) such a relationship would involve or require the former employee to make use of confidential business information acquired by him by virtue of or as a consequence of his employment with Liquid11.
 - 10.3.3.** Solicit any employee of Liquid11 to leave his employment or to disclose any confidential business information relating to Liquid11, its business, customers, processes or intellectual property rights, whether or not such solicitation would amount to a breach of the employee's contract.

11. ASSIGNMENT & NOVATION – PhonepayPlus & the Contracts (Rights of 3rd Parties) Act 1999

- 11.1.** The Reseller shall not assign the rights and obligations of this Agreement to any other party without the express permission in writing of Liquid 11 Limited which Liquid 11 may or may not grant in its sole discretion.
- 11.1.1.** Liquid 11 may assign the rights and obligations of this Agreement (including for the avoidance of any doubt the right given to PhonepayPlus pursuant to any relevant clause hereof) to any third party without the prior consent of the Reseller
 - 11.1.2.** In conformity with the requirement set out in paragraph 2.3.2b of the 11th Edition of the PhonepayPlus Code of Practice, the parties do hereby agree that for the purpose of Section 1 of the Contracts (Rights of 3rd Parties) Act 1999 PhonepayPlus may in its own right enforce any term of this Agreement and have the powers of enforcement provided by clause 1(5) thereof.

12. PROPER LAW & JURISDICTION

The Agreement shall be construed and governed by English Law. The parties shall submit themselves to the exclusive jurisdiction of the Courts of England

13. CAPACITY WARRANTY

Each of the signatories to the Agreement below hereby personally warrants that they are duly empowered to enter into the Agreement and have, where applicable, sought board or other such approval.