

General Terms and Conditions

BY USING THIS WEBSITE, YOU CONFIRM THAT YOU ARE AGREEING TO KEEP TO OUR TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT OUR TERMS AND CONDITIONS, PLEASE DO NOT USE THE WEBSITE. WE WILL SHOW THE MOST UP-TO-DATE VERSION OF THESE TERMS AND CONDITIONS ON OUR WEBSITE AT WWW.CHESSICT.CO.UK/TERMS-AND-CONDITIONS IF YOU DO NOT HAVE ACCESS TO THE INTERNET, PLEASE CONTACT CHESS ON 0844 700 6060 AND WE WILL SEND YOU THE LATEST VERSION.

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY AS THEY SET OUT THE AGREEMENT BETWEEN YOU AND CHESS AND YOUR RIGHTS AND OBLIGATIONS. IN PARTICULAR, YOUR ATTENTION IS DRAWN TO CLAUSES 3.1, 3.5, 5.2, 7, 9 & 10.9.

Your agreement with us (this "Agreement") is made up of the following documents:

- (i) The Order Form or Voice Recording (as applicable);
- (ii) Any Product Specific Terms and Conditions together with any Schedules and Appendices attached;
- (iii) These General Terms and Conditions;
- (iv) The relevant Tariffs for the Services (where applicable); and
- (v) any further conditions relating to specific services (where set out in an applicable schedule).

The documents are listed in order of precedence. In the event of an express conflict between the documents above whichever is higher on the list will take precedence, but in absence of an express conflict the terms and conditions referred to above are supplemental to one another. All terms and conditions are available at <http://chessict.co.uk/terms-and-conditions/>.

In this document references to "Us", "We" and "Chess" shall mean Chess ICT Limited.

References to "You", "Your" and "Customer" shall mean the customer entering into this agreement.

References to "Both of us" or "the Parties" shall mean both Us and You.

1. Definitions in this agreement:

"Act" means the Communications Act 2003 and any amendments to the Act from time to time or any subsequent substitution thereof.

"Airtime Service Provider"	means a third party supplying airtime services to the Customer.
"Change of Control"	means in relation to the Customer where there is a material change in the exercise, control or holding of the voting shares (unless this is due to an internal group reorganisation).
"Chess"	means Chess ICT Limited (also trading as Chess) whose registered office is at Bridgford House, Heyes Lane, Alderley Edge, Cheshire SK9 7JP (registered number 04512773).
"Commencement Date"	means the date upon which the Customer either signs the Contract or if the Service(s) have been ordered over the telephone or via the internet, the date upon which the Customer agrees to the terms of this Contract.
"Connection Date"	means the date of the connection of the Service(s).
"Credit Limit"	means the monthly amount (if any) of Charge which Chess has determined cannot be exceeded by the Customer.
"Customer"	means the person or company so named on the agreement. Chess reserves the right to deal with anyone reasonably appearing to Chess to be acting with the Customer's authority or permission.
"Direct Debit"	means any request(s) for any payment or series of payments by bank direct debit payment method.
"Early Termination Charges"	means any charges which become due and payable to Chess if the Customer decides to end the contract before the end of the Minimum Term and (if applicable) where the Customer has not achieved the Minimum Call Spend as at the date of the notice of termination.

“Equipment”	means any equipment or product (including for the avoidance of doubt mobile telephones) supplied by Chess or any third party on behalf of Chess to the Customer.
“Minimum Call Spend”	means the level of spend which the Customer has committed to over the Minimum Term as set out in this agreement.
“Minimum Term”	means the minimum period of 12 months from the Commencement Date or such other period as is prescribed for the relevant service or as is otherwise detailed in the agreement.
“Mobile Services”	means the provision of services in relation to mobile telephony.
“Rebate”	means where any Services (if any) comprise or include services where an amount is paid by Chess to the Customer by way of a return on what has already been paid (“Rebate Service” shall be construed accordingly).
“Service Credit”	means the amounts payable (if any) by Chess to the Customer in accordance with clause 2.17.
“Service Failure”	means any failure, error or defect in the provision of the Service(s) by Chess but excludes failures, errors or defects arising from, caused or contributed to by the Customer’s acts and/or omissions or third parties including, but not limited to, any third party operator of the communications services or equipment or anything that arises as a result of something beyond Chess’s reasonable control.
“Service Level”	means the standard of performance (if any) in relation to a Service(s)

“Services” means the provision of telecom services and/or Equipment and/or Mobile Services and/or fraud monitor, line assurance and services provided by Chess relating to the Internet and any related service provided by Chess to the Customer under this agreement.

“Small Business Customer” has the meaning as set out in the OFCOM General Conditions from time to time and currently means a customer who is neither himself a communications provider, nor a person who is such a customer in respect of an undertaking carried on by him for which more than 10 individuals work (whether as employees or volunteers or otherwise).

2. The Services and Equipment

What Services Chess Provide

2.1 Save as provided in these terms and conditions Chess shall provide the Customer with such Services and Equipment as are requested by the Customer and any use of the Services or payment for the Services is deemed acceptance of these terms and conditions.

In respect of fraud monitor, line assurance and other services the additional terms and conditions set out on our website shall be deemed to be incorporated herein. Chess shall only become liable to supply Services to the Customer once satisfactory responses to credit checks and criminal bureau checks have been received by Chess and (where appropriate) any airtime service provider. Chess will monitor and record information relating to a customer’s trade performance and such records will be made available to credit reference agencies, who may share that information with other businesses in assessing applications for credit and fraud prevention.

2.2 The Customer shall be responsible for the safe keeping and safe and proper use of the Services and any related Equipment after installation of the Services and the Customer undertakes in particular:

2.2.1 not to cause any attachments other than those approved for connection under the Act to be connected to any Equipment.

2.2.2 not to contravene the Act or any other relevant regulations or licences.

2.2.3 not to allow any unauthorised access to the Equipment or the Services.

- 2.3 The Customer hereby agrees that its apparatus shall at all times conform to the standard or standards (if any) for the time being designated under the Act and Chess shall not be under any obligation to connect or keep connected any Customer apparatus if it does not comply or if in the reasonable opinion of Chess it is likely to cause death, personal injury, damage or to impair the quality of any Services provided by Chess.
- 2.4 The Customer undertakes to use the Services in accordance with the Act and Chess's acceptable use policy and fair usage policy (as published from time to time at www.chessict.co.uk/terms-and-conditions) and the Customer further undertakes not to use the Services and to procure that none of its employees use the Services:
- 2.4.1 as a means of communication for a purpose other than that for which the Services are provided, and
- 2.4.2 for the transmission or receipt of any material which is defamatory offensive or of an abusive or menacing character or otherwise is in breach of Chess's acceptable use policy.
- 2.5 Any Equipment supplied by Chess further to a rental agreement remains the property of Chess and must be made available for collection on the expiry or termination of this agreement.
- 2.6 The Customer will not procure or be party to an agreement or arrangement to provide or receive telecommunications material, Services or services similar to the Services by way of telecommunication provision via the Equipment without the permission of Chess in writing and the prior payment in full for the Equipment. For the avoidance of doubt the use and/or provision of services using the Equipment and/or Services which may be deemed by the airtime services provider as a gateway is a material breach of this agreement.
- 2.7 The Customer shall not publicise any number in any way or commit to any advertising or publicity until such time as it has received from Chess in writing confirmation that the number is live and tested. Chess will use reasonable endeavours to provide you with the Services by the dates agreed with you and to continue to provide the services until this agreement is terminated. Chess will not be liable for any loss or damage should the Service not commence or restart on the agreed date. Where Chess is supplying network services as part of the Services the Customer must provide to Chess details of all the related services that it wishes to receive relating to any telephone number that the Customer wishes to use. Chess will provide network Services through such party as it deems appropriate.

- 2.8 The Customer shall give Chess at least 30 days' written notice in the event that above average use of the Services is likely to occur. Chess shall not be liable for failure/withdrawal of any part of the Services should such notice not be given.
- 2.9 Chess's acceptable use policy and fair usage policy form part of this agreement and includes any restrictions imposed on Chess by the provider to it of the Services and/or Equipment and is designed to protect the level and quality of the services that Chess offers to all of its customers and permits Chess to regulate the Customer's use of the Services. The Customer acknowledges that, in respect of any broadband speeds, any speeds quoted by Chess are approximate only and that the level of service that can be obtained by the Customer will be dependent on factors outside the control of Chess including but not limited to the geographical proximity of the Customer to the local exchange and the quality of the infrastructure serving the Customer's premises.
- 2.10 The Customer hereby specifically authorises Chess to send/resend CPS during the continuance of this agreement, and hereby waives Chess's obligation to notify it of the same being done. If the Customer wishes to receive such notification, then it must so inform Chess in writing.
- 2.11 Where Chess provides software to the Customer as part of the Services and/or Equipment Chess, the Customer acknowledges that, unless otherwise set out in this agreement, all intellectual property rights in any such software and/or Equipment remain with Chess, or its suppliers or licensors. Chess hereby grants a non-exclusive licence of the software to the Customer solely for the use of the same by the Customer in connection with the Services and/or Equipment. This licence automatically terminates on termination of this agreement. Chess does not warrant that the software will be error-free and the Customer hereby agrees to make proper back-ups of all data. The Customer agrees that it will not copy, decompile or modify the software without the prior written consent of Chess and will not distribute the software to any third party.
- 2.12 Where Chess incur site survey, provisioning, engineering or other fees (whether its own or to a third party) associated with meeting the customer's requirements and/or subsequently the line does not become operational for any reason then Chess have the right to charge the customer fees of up to £120 per line together with any charges levied on Chess by a third party in bringing the associated infrastructure up to the relevant standard.
- 2.12.1 If the Customer instructs Chess to cease or port the provision of a NGN (non-geographic number) Chess has the right to charge the Customer a disconnection fee of £99 for each NGN number.

2.13 Where the Customer is a Small Business Customer they have the right to cancel the agreement within 7 days of the date of the contract. Cancellation can be made by notifying Chess by fax, email or telephone. Any services used within this period will be chargeable. Any third party costs incurred by Chess within this period at the request of the Customer will be chargeable. Cancellation charges may apply if the service is terminated outside of prescribed timescale. Small Business Customers may have additional rights in respect of contract renewal periods. Please see www.ofcom.org.uk for further information.

2.13.1 Where the Customer is not a Small Business Customer but is entitled or permitted by Chess to cancel the agreement during any initial cancellation period, any services used within this period will be chargeable and any third party costs (including cancellation fees) incurred by Chess within this period at the request of the Customer will be chargeable. Cancellation charges may apply if the service is terminated outside of prescribed timescale.

2.14 Where the Customer is a Small Business Customer they have the right to take unresolved complaints to an approved Alternative Dispute Resolution agency eight weeks after the complaint was made. CISAS is an independent approved Alternative Dispute Resolution agency which provides this service free of charge.

2.15 Where Chess allocate to the Customer a telephone number or code as part of the Services, the Customer acknowledges that they will not acquire any legal, equitable or other rights in relation to any such telephone numbers or codes. Chess can withdraw or change any such telephone numbers or codes but will only do so if it is required to under any legal or regulatory changes.

What Level of Service Chess Provides

2.15 Chess will provide the Service(s) in accordance with the terms of this agreement and shall use reasonable skill and care when providing the Service(s).

2.16 Chess does not guarantee that the Services will be continuously available or free from Service Failures.

2.17 If a Service Level is not achieved by Chess as a result of a Service Failure, Chess will, subject to Clause 7, pay to the Customer a Service Credit.

3. How long this agreement lasts and when can it be ended

3.1 The obligations for each of the parties start on the following dates:

3.1.1 (a) The Customer's obligations start on the Commencement Date and will continue for the Minimum Term and thereafter for further periods each equivalent to the Minimum Term until terminated by either party giving to the other not less than 30 days' prior written notice but not greater than 60 days' prior written notice expiring at the end of the Minimum Term or at the end of any subsequent period as appropriate.

3.1.1 (b) Where the Customer has provided notice in accordance with Clause 3.1 but fails to transfer their services away from Chess within 30 days following the expiry of the Minimum Term or the expiry of any subsequent period, this will be deemed as acceptance by the Customer of continuing to contract with Chess for a further period equivalent to the Minimum Term (unless Chess agree otherwise).

3.1.2 Chess's obligations start on the Connection Date.

3.2 Either party shall be entitled forthwith to suspend and/or terminate this agreement by giving written notice to the other if:

3.2.1 the other commits a continuing or material breach of this agreement and, if the breach is capable of remedy, fails to remedy it within 14 days (but 7 days in the case of failure by the Customer to pay the Charges) after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

3.2.2 an administrator takes possession or a receiver is appointed over any of the property or assets of the other party, the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order, the other party becomes bankrupt or goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and so that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on the other party under this agreement); or

3.2.3 the other party ceases, or threatens to cease, to carry on business.

3.3 Chess may terminate this agreement immediately if:

3.3.1 any licence or agreement under which Chess or the Customer has the right to run its telecommunications system and in the case of the

Customer connect it to the Chess system is revoked, amended or otherwise ceases to be valid; or

3.3.2 the Customer is suspected, in the reasonable opinion of Chess, of involvement with fraud or attempted fraud in connection with use of the Services or this Agreement;

3.3.3 Chess are instructed by OFCOM or any other competent legal or regulatory authority to stop providing the Service(s) to the Customer;

3.3.4 the Customer has breached the agreement in such a way that Chess could be in breach of any Legislation and/or in breach of any agreements with its third party providers required to provide the Service(s);

3.3.5 The Customer commits persistent non-material breaches (which, in aggregate amount to a material breach);

3.3.6 Chess reasonably suspects that the Customer is unable to pay or is refusing to pay Chess charges and/or budget plan payments;

3.3.7 A Change of Control takes place or is proposed.

3.4 For the purpose of clause 3.2, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

3.5 The Customer can terminate this agreement by giving Chess one month's written notice:

3.5.1 for convenience before the end of the Minimum Term, but acknowledges that Chess shall be entitled to invoice the Customer any Early Termination Charges for either the agreed Minimum Spend Levels that the Customer would have paid for had they not terminated the agreement early, or if there is no Minimum Spend Levels, the average charges over the previous six months' invoices prior to the date of termination times by the remaining months of the Minimum Term. The Customer further acknowledges that the above remedy for Chess is a fair and reasonable estimate of Chess's loss incurred as a result of the early termination of the agreement by the Customer; or

3.5.2 If Chess changes the Terms and Conditions pursuant to clause 10.2 For the avoidance of doubt, if the Customer terminates pursuant

to this clause 3.5.2, there shall be no Early Termination Charges incurred by the Customer to Chess.

3.6 A waiver by either party of a breach of a provision of this agreement shall not be considered as a waiver of a subsequent breach of the same or another provision.

3.7 In the event of termination by either party for any reason:

(a) Chess shall be entitled to recover from the Customer:

(i) the Equipment or cost thereof as appropriate including, where appropriate, but not limited to the cost of installing or removing the Equipment;

(ii) all liabilities, claims, costs, losses and expenses incurred by Chess (including the initial CPS and engineering costs and of providing the Services);

(iii) all losses suffered by Chess by way of third party claw-back where such claw-back is due to the breach by the Customer of this agreement or the third party agreement; and

3.7.1 Until such time as the Customer has transferred to a new provider, Chess shall be entitled to amend its charges to its standard published usage charges upon giving the Customer one month's written notice of any such change. Any such increase in charges will be effective for any use of the Services after the date of such notice

3.7.2 Leased lines and certain other services may incur additional charges as a result of third party termination costs incurred by Chess. Please enquire for details of applicable charges.

3.8 The rights to terminate this agreement given by this clause 3 shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach. Continued use of the Services post termination will result in Chess levying its standard published usage charges for all Services used, which charges the Customer shall pay immediately upon demand.

3.9 Where the Customer cancels part only of a bundle of Services, Chess reserves the right (in addition to its rights under clause 3.7) to charge the Customer for the Services so cancelled in accordance with Clause 3.6 and to amend charges to the Customer for the remaining Services to its standard rates.

4. Access to premises

- 4.1 To enable Chess to comply with its obligations under the Agreement:
- 4.1.1 the Customer shall allow or procure permission for Chess and any other person(s) authorised by Chess to have reasonable access to the Customer's premises and the Services' connection points or, where network connection services form part of the Services, such location on the Customer's premises and/or any neighbouring premises as Chess reasonably requires and shall at all times provide such reasonable assistance as Chess requests.
 - 4.1.2 Chess will endeavour to carry out work by appointment and during normal working hours, but may request the Customer to provide access at other times. If at the request of the Customer Chess carries out work outside its normal working hours the Customer will be responsible for Chess's reasonable additional charges.
 - 4.1.3 unless otherwise agreed the Customer shall at its own expense carry out such site preparations as Chess may reasonably require. Where a site survey is carried out the costs thereof and of any required work identified in the site survey shall be borne by the Customer.
- 4.2 If the Customer requests maintenance or repair work which is found to be unnecessary or results from an act or omission of the Customer, Chess will charge for the work and the costs incurred.
- 4.3 The Customer hereby duly authorises Chess, its dealers and agents to reprogram and or remove existing access equipment in order to provide the Services. In the event that the work is undertaken by the Customer's existing maintainer and not Chess, Chess will pay a maximum contribution of £75 plus vat towards any charges raised by the Customer's existing maintainer. The Customer to pay all other costs.
- 4.4 Where BT Openreach charges Chess for repairs (and/or engineering call out), and the fault is due to damage to the Customer's equipment, Chess reserves the right to invoice the Customer for the amount of such BT Openreach charge together with an administration charge of £25.
- 4.5 Where required by Chess, the Customer shall ensure that environmental conditions are maintained for Equipment.

5. What Chess Charges and When the Customer Must Pay Chess

- 5.1 Unless otherwise specified in writing by Chess the Customer agrees to pay Chess's charges and/or budget plan payments monthly by Direct Debit, the

first payment to be made at the discretion of Chess within thirty days of the start of the provision of the Services and in accordance with the applicable tariffs. Where network connection and/or line rental services form part of the Services the charges shall be paid in advance.

- 5.2 Usage charges will be such charges for the use of the Services by either (i) the Customer or (ii) any third party who has accessed the Equipment without the Customer's authority and fraudulently used the Services as Chess may notify to the Customer from time to time by e-mail or by post.

Details of the Customer's current charges can be obtained by emailing Chess at CustomerServices@chessict.co.uk with full account details. There will be a minimum monthly usage charge and low usage charge for each Service as set out in Chess's price list from time to time. Usage charges payable shall be calculated by reference to any data recorded or logged by Chess or its service carrier and not by reference to any data recorded or logged by the Customer. Chess shall be entitled to estimate the usage charges in circumstances where the relevant data is not available to Chess in a timely manner, and any estimated usage charge shall be reconciled on a subsequent invoice.

- 5.2.1 Unless otherwise stated all other amounts due from the Customer to Chess shall be paid within 7 days of the date of Chess's invoice.

- 5.3 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to Chess (such failure to pay being a material breach of this agreement), Chess may charge the Customer (i) an administration fee of £25 and/or statutory compensation at the prevailing rate and (ii) interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Barclays Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

- 5.4 The price for the Services is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to Chess.

- 5.5 The Customer agrees to pay Chess in full without any set-off all sums due to Chess under this Agreement.

- 5.6 Chess shall be entitled to require the Customer to pay a deposit in respect of future usage charges and the Customer shall pay the amount so required within 7 days of a request for the same.

- 5.7 The Customer authorises Chess to vary the amount, frequency and time of any Direct Debit to such level as Chess deem reasonably appropriate (a) to

take account of either an increase or decrease in usage of the Services by the Customer (b) to reduce such indebtedness of the Customer to Chess and/or (c) to such other operational matter affecting the Services as Chess shall in its discretion deem reasonable.

- 5.8 If the Customer elects an alternative payment method to that of paying by monthly Direct Debit, Chess shall be entitled to charge a monthly administration fee of £5.50.
- 5.9 If any payment is cancelled or returned unpaid by the Customer's bank or if the Customer fails to discharge any invoice within 7 days of its date, then without prejudice to any right or remedies under this Agreement, Chess shall from the time of such failure provide the Services at the standard published usage charges and in addition the Customer agrees to pay Chess an administration fee of £25. For the avoidance of doubt the time of payment is of the essence of this Agreement and a failure to pay on time or the cancellation of a Direct Debit shall be a material breach of contract allowing Chess to terminate this Agreement immediately. Invoices paid by credit card incur an additional charge of 1.8% of the payment value.
- 5.10 Should the Customer have any dispute with regard to the usage charges or any other charges, the Customer shall give written notice to Chess of the amount in dispute and the reason for the dispute. Any rectification or amendment of such disputed charges are limited to the 6 months prior to the written notification being received by Chess and remains at Chess's sole discretion such discretion not to be unreasonably withheld. Such notice must be received prior to the Customer not paying any amount due to Chess, failing which the Customer shall be deemed to be in breach of contract and clause 3.3.3 shall apply together with clause 5.8 and clause 5.3 in respect of the entire balance. The Customer shall remain liable to pay all amounts not in dispute in accordance with the terms of this agreement.
- 5.11 The Customer remains liable for all charges whether the Customer or someone else used the services and whether the services were used with the Customer's knowledge and consent or otherwise including and not limited to fraudulent calls made by a rogue callers and calls made by any third party who has gained unauthorised access to the Customer's system.
- 5.12 Chess retain the right to vary the charges set out in the tariff at any time upon giving the Customer 7 days' notice such notice to be given either on the monthly invoice or on www.chessict.co.uk/terms-and-conditions and continued use of the Service is deemed acceptance of these changes.

5.12.1 Where the Customer is a Small Business Customer, we will provide at least 30 days' notice of a change to service pricing in writing to you and/or publish the change on our website at

www.chessict.co.uk/terms-and-conditions. The change to price will not take effect until the end of the 30 day period. As a Small Business Customer, the Customer has the right to end the contract for the service in question with Chess by giving not less than 10days' notice in writing within 10 days of our notification of the relevant change to pricing. If the Small Business Customer fails to exercise their right to cancel, continued use of service by the Small Business Customer is deemed as acceptance of the relevant change.

- 5.13 Where the Customer requests the cancellation of a Directory Listing product, they will remain liable for the Directory Listing charges until the next publication of the phone book by BT when the listing will be deemed removed.
- 5.14 Any calls that are routed by any means beyond the control of Chess and for which you are invoiced by another provider will remain the responsibility of the customer.
- 5.15 Should a Small Business Customer fail to renew their Agreement prior to the Minimum Term, Chess reserves the right to set the tariff to standard rates (for current standard rates please see www.chessict.co.uk/terms-and-conditions).
- 5.16 Chess may at its absolute discretion impose a Credit Limit on the Customer's account and any such Credit Limit can be amended at any time without prior notice.
- 5.17 Where a Rebate is due and payable to the Customer by Chess, the Customer authorises Chess to raise a self-bill on its behalf. Chess will notify the Customer of the amount of Rebate and, subject to clause 5.19, Chess will pay the Rebate due to the Customer within 45 days following the invoice or (if later) within 7 days of the date of receipt by Chess of the sums due from the relevant third party carrier.
- 5.18 Chess shall have the right at any time to amend the amount of any Rebate by giving the Customer written notice prior to the effective date of the revision which shall apply to all Rebate Services where a Rebate is payable provided to the Customer on or after the date of effective revision of the Rebate rate change.
- 5.19 Chess may withhold any Rebate due to the Customer under the following circumstances:

- 5.19.1 Chess has reasonable grounds to believe that the relevant Rebate Service is being used for illegal or fraudulent activity or otherwise in breach of this Contract; or
- 5.19.2 Chess is notified of a decision or a request by a regulatory body (e.g. Phonepay Plus) relating to a Rebate Service to pay any fine or administrative charge incurred as a result of the Customer's misuse of the relevant Rebate Service; or
- 5.19.3 The relevant network operator withholds payment of the relevant Rebate (in whole or part) due to Chess in relation to a Rebate Service used by the Customer; or
- 5.19.4 The relevant network operator claims repayment of any sum paid to Chess in relation to a Service used by the Customer

6. When Chess can Suspend the Services

- 6.1 Chess shall be entitled, for business, operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on Chess by its licence or by any other competent authority (including any network provider), to withdraw or change any telephone number or code or group of numbers or codes allocated to the Customer whether on a temporary or permanent basis provided that Chess gives the Customer the maximum period of notice in writing thereof practicable in the circumstances.
- 6.2 If the Customer is in breach of a material term of this agreement Chess may at its sole discretion and upon giving the Customer written notice elect to suspend without compensation the provision of Services for a period not exceeding 14 days. If the breach is capable of remedy and is remedied by the Customer within the 14-day period then Chess shall recommence the provision of Services. If the breach is not capable of remedy or if so capable is not remedied within the period of 14 days, then Chess shall have the option of either terminating this Agreement under the provision of clause 6.1 or of continuing the Services.
- 6.3 If the Customer's call charges exceed the estimated call spend or the Credit Limit given to the Customer by Chess, whichever is the lower, then Chess reserves the right to request immediate payment of the excess amount and to demand in accordance with clause 5.6 a deposit be paid in such amount as Chess shall deem to be reasonable. If payment is not made forthwith by the Customer, Chess shall be entitled to suspend all or any of the Services until payment of the excess amount is made in full.

- 6.4 Notwithstanding and without prejudice to any of its rights under this Agreement, Chess reserves the right to withdraw the Services or any part thereof at any time if the monthly charges to the Customer are not, in the opinion of Chess, sufficient to make provision of the Services viable for Chess.

7. Liability of each Party

- 7.1 Nothing in this agreement shall exclude or restrict the liability of either party for death or personal injury resulting from its negligence.
- 7.2 If the Services fails to operate or the Customer diverts traffic to another carrier, Chess will not be responsible for that carrier's charges.
- 7.3 Neither party shall be responsible to the other in contract, tort or otherwise for any:
- 7.3.1 loss of business;
 - 7.3.2 loss of revenue;
 - 7.3.3 loss of profit;
 - 7.3.4 loss of data;
 - 7.3.5 loss of contracts;
 - 7.3.6 loss of anticipated savings; or
 - 7.3.7. for any other indirect or consequential loss whatsoever.

save that this exclusion shall not apply to the fraudulent activities of either party nor to any claw-back or other loss suffered by Chess pursuant to the determination by an airtime services provider that the Customer has used and/or provided services using the Equipment and/or Services which it deems a gateway.

- 7.4 Chess's liability to pay Service Credits in accordance with Clause 2.17 shall be the maximum extent of Chess's liability and the Customer's sole financial remedy for Service Failures.
- 7.5 Each party's liability in tort, contract or otherwise arising out of or in connection with the performance of either party's obligations under this Agreement shall be limited to £1,000,000 for any one incident or series of incidents and £2,000,000 in aggregate. Service Credits paid or credited to the Customer by Chess will be counted and calculated for the purposes of Chess's maximum liability.
- 7.5 Neither party shall be liable to the other for any damage or loss which may be incurred by the other party due to any cause beyond the first party's reasonable control including without limitation any act of God failure or shortage of power supplies, trade dispute, any act or omission of Government, highways, regulatory bodies, other public telecommunication

operators or other competent authority, or supply of services by third parties.

- 7.6 In accordance with clause 9, the Customer will be liable for any fraudulent activity arising at the Customer's site. Controlling unauthorised access (including fraudulent access) to PBX, trunking or other equipment or resource shall be the sole responsibility of the Customer.

8. Mobile Services

- 8.1 In respect of Mobile Services and unless Chess advise otherwise the Customer shall enter into an agreement direct with the Airtime Services Provider and is responsible for all aspects (including the management) of that airtime service agreement. Chess shall assist the Customer wherever possible in the management of the airtime service agreement.
- 8.2 If Chess agrees to reimburse to the Customer charges for specified mobile numbers in respect of the Customer's transferring Airtime Service Provider in respect of such mobile numbers reimbursement must unless otherwise agreed in writing (i) be claimed by the Customer not earlier than four months from the date of transfer and (ii) be only claimed in respect of such mobile numbers as remain live and have not had a notice of termination of agreement served at the date of the claim.
- 8.3 Chess will be paid commission (initially and on an ongoing basis) by the Airtime Service Provider for introducing the Customer and other customers to it. Such commission may be clawed back in certain circumstances due to the act or omission of the Customer, including if the airtime service agreement is terminated or in respect of gateway or unauthorised use by the Customer. The Customer shall indemnify Chess against any such claw-back and immediately on demand pay to Chess an amount equivalent to that clawed-back.
- 8.4 Where it is agreed that Chess shall pay to the Customer a cash incentive inducement or subsidy for entering into an airtime services agreement, any such amounts must be invoiced by the Customer in three equal amounts such invoices to be dated and delivered at the end of months 6, 12 and 18 of the airtime services agreement. Payment shall only be due to the Customer where the airtime services agreement has not been terminated before the end of the minimum term of the airtime service agreement. The Customer shall produce to Chess such evidence as Chess may reasonably require as to the continuation in force of the airtime service agreement.
- 8.5 Any cash incentives or subsidies due under this clause 8 that have not been claimed by the Customer within 14 days from the end of the minimum term of the airtime service agreement become null and void.

- 8.6 Any Equipment supplied in connection with Mobile Services shall be supplied subject to these terms and conditions. Chess shall endeavour to supply the Equipment as soon as practicable and reserves the right to alter specifications or designs at any time to meet such delivery target.
- 8.7 All such Equipment will be supplied with the manufacturer's guarantee, unless otherwise agreed in writing. The Customer hereby acknowledges that the manufacturer's guarantee is only valid if the Customer complies with the terms and conditions of manufacturer's guarantee.
- 8.8 The Customer shall be liable for the full costs of any repairs carried out to the Equipment which are not covered by the manufacturer's guarantee.
- 8.9 The Customer agrees that Chess shall not be liable for any loss or costs suffered by the Customer:
- 8.9.1 following any loss by the Customer of Equipment and/or the unlawful use thereof by a third party.
 - 8.9.2 resulting from loss of network service or other network issues (including the porting of numbers).
 - 8.9.3 The Customer shall be liable for the costs incurred by Chess of obtaining PAC, MAC or similar codes required for the transfer of the Services.

9. Fraud

- 9.1 For the avoidance of doubt, fraudulent activity includes but is not limited to:
- (i) Calls made from the Customer's PBX without their knowledge;
 - (ii) Calls made utilising the Customer's authentication details; (iii) Calls made from an authenticated IP address.
- 9.2 The Customer acknowledges that the Service known as "fraud monitor" is not a fraud prevention system and does not prevent unauthorised access to the Equipment. It is the sole responsibility of the Customer to setup and maintain their own security independently of Chess and therefore Chess accepts no liability whatsoever for any costs incurred as a result of a breach of security.
- 9.3 For the avoidance of any doubt, the Customer responsibilities include but are not limited to;
- (i) Secure implementation and management of their systems including any hardware not provided by Chess such as Firewalls or PBX.
 - (ii) Maintaining security and confidentiality of authentication details for online service portals and other services.

- (iii) Mitigate exposure to any suspected or known security breach by resetting passwords, requesting that accounts are disabled and reporting the incident to Chess.
 - (iv) reporting the incident to the Police.
- 9.4 Chess reserves the right to invoice the Customer for any fraudulent activity made in accordance with clauses 7.6 and 9.1.
- 9.5 The Customer accepts full and complete liability for any costs, losses or damages incurred as a result of fraud and agrees to indemnify Chess against any against any costs, losses or damage suffered by Chess arising from any fraudulent activity made in in accordance with clauses 7.6 and 9.1 including any costs and expenses reasonably incurred by Chess in investigating any such fraudulent activity.
- 9.6 Chess recommends the Customer obtains professional security advice with regard to PBX, trunking or other equipment or resource.

10. General

- 10.1 Chess reserves the right to change the provider of the services to it at any time.
- 10.2 Chess reserves the right to change these Terms and Conditions at its sole discretion by giving the Customer, subject to clause 10.3, not less than one month's notice (usually on the front page of the monthly invoice and/or on its website www.chessict.co.uk/terms-and-conditions). If the changes to the Terms and Conditions is likely to cause a material detriment to the Customer, the Customer can terminate the Contract without charge (other than any outstanding invoices which remain due and payable) in accordance with clause 5.2.1. Should the Customer not notify Chess of any objection to the change to the relevant Terms and Conditions within the one month notice period the Customer's continued use of the Services thereafter will be deemed acceptance of such changes.
- 10.3 If Chess is required to make a change to these Terms and Conditions as a result of any legal or regulatory requirement, Chess will give the Customer as much notice as Chess receives from any such legal or regulatory body.
- 10.4 A notice required or permitted to be given by:
- 10.4.1 Chess under this agreement shall be in writing addressed to the Customer at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to Chess and shall be deemed

served on the second day after the same has been posted.

- 10.4.2 the Customer under this agreement to Chess shall be sent by recorded delivery, shall be in writing and addressed to Chess's principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Customer and shall be deemed served at the time of delivery.
- 10.5 If any provision of this agreement is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this agreement and the remainder of the provision in question shall not be affected.
- 10.6 The Customer shall not assign sub-license, delegate or otherwise deal with all or any of its rights and obligations under this agreement without Chess's prior written consent, such consent not to be unreasonably withheld. Nothing in this agreement shall be deemed to grant to the Customer a licence to use any software or other intellectual property right (which shall include the Chess trade marks) other than strictly in accordance with the terms of this agreement. For the avoidance of doubt, the Customer shall not be entitled to sub-license any such software or other intellectual property right.
- 10.7 These terms and conditions together with any terms set out in the order constitute the entire agreement between the parties, supersede any previous agreement or understanding and, subject to clause 10.1 and 5.2, may not be varied except in writing and signed by Chess or varied orally and then confirmed in writing by Chess. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law. In entering into this agreement the Customer acknowledges that it does not rely on any representations which are not confirmed in the terms of this agreement, but nothing in this agreement affects the liability of either party for fraudulent misrepresentation.
- 10.8 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.
- 10.9 The laws of England and Wales shall govern this agreement, and the Customer agrees to submit to the exclusive jurisdiction of the English Courts.
- 10.10 The Customer must bring any legal proceedings against Chess in connection with this Agreement within 12 months from the date which the Customer first became aware or ought reasonably to have become aware of the facts

giving rise to the liability or potential liability of Chess or within the statutory limitation period, whichever is the earlier.

10.11 The Customer and Chess undertake to each other that it shall keep and shall procure that its directors, officers, employees, servants, agents and sub-contractors (as appropriate) shall keep secret and confidential and shall not use, copy, adapt, alter or part with possession of, or disclose to any other third party any information or material of a technical or business nature relating in any manner to the affairs, business, products or services of the other which may be received or obtained in connection with the performance of this agreement PROVIDED THAT:

10.11.1 nothing herein shall prevent the use or disclosure of any information not treated by the other party as confidential or which does not properly belong to it; and

10.11.2 the party receiving such information or material shall not be prevented from using or disclosing the same to the extent that it is in or comes into the public domain otherwise than through the default or negligence of the receiving party, or to the extent that its disclosure is required by law.

10.12 Each party warrants to the other that it will at all times comply with its obligations (if any) under the Data Protection Act 1998 (as amended). Where the discharge of Chess's obligations under this agreement involves the processing of personal data, the Customer appoints Chess as the Customer's data processor to process the personal data on behalf of the Customer for the purposes of this agreement.

10.13 The Customer is responsible for the security of the use of the Services including, but not limited to, backing up all data, ensuring that appropriate anti-virus software is installed, having appropriate procedures in place to protect and update passwords and having an appropriate disaster recovery plan in place. Where the Customer knows or ought reasonably to know that there is a threat to the security of the Services, the Customer must promptly contact Chess.