

**DATED**

**2010**

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(1) *C.P.A*

- and -

(2) *C.P. B*

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**Geographic and Non-Geographic Portability Agreement  
Via Transit**

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	System and the conveyance by that Party in accordance with this Agreement of a Message (if any) over such transmission path, subject to the proviso that for the purposes of this Agreement, the definition of "Call" will not include Reverse Charge Calls;
<b>"Call Completion Service"</b>	a service whereby a Calling Party may record a message for later access by the Called Party;
<b>"Called Party"</b>	a person who receives a Call;
<b>"Calling Party"</b>	a person who initiates a Call;
<b>"Capacity"</b>	the circuit capacity to be made available from time to time at the Points of Connection, as referred to in Clause 3.15;
<b>"CLI"</b>	has the meaning given to Calling Line Identification in the CLI Code;
<b>"CLI Guidelines"</b>	the Guidelines for the provision of Customer Line Identification Facilities and other related services, as the same may be amended or replaced from time to time;
<b>"CP A Price List"</b>	The charges referred to in Schedule 1, as amended from time to time in accordance with Clause 4.4;
<b>"CP B Price List"</b>	The charges referred to in Schedule 2, as amended from time to time in accordance with Clause 4.4;
<b>"Customer"</b>	a third party having a contract with either Party as the context requires for the provision of electronic communications services by means of that Party's System, and, in the event that such third party is a Group Company of either Party, any third party who has a contract with such Group Company for the provision of electronic communications services by means of that Party's System;
<b>"Donor Operator"</b>	the Party whose Relevant Numbers are in the process of being, or have been passed or ported to a Recipient Operator;
<b>"Donor Operator System"</b>	the electronic communications network from which the Relevant Numbers are being ported;
<b>"End User"</b>	any natural or legal third party who or which is a party to a contract with a provider of publicly available electronic communications services by reference to a Relevant Number;
<b>"Force Majeure"</b>	an event or circumstance which is beyond the reasonable control of the party claiming the existence of Force Majeure, including, without limitation, acts of God and natural disasters, war, civil unrest and labour disputes involving employees of third parties;
<b>"Geographic Number"</b>	a fixed line Call using 01 or 02 codes as per the

	Ofcom numbering scheme current at the time;
<b>"Group Company"</b>	in respect of a Party will mean a Subsidiary or a Holding Company of that Party or a Subsidiary of any such Holding Company;
<b>"Intellectual Property Rights"</b>	patents, extensions to patents, petty patents, utility models, trade marks, service marks, applications for any of the foregoing, the right to apply for any of the foregoing, copyrights, design rights, moral rights, database rights, rights in unregistered trade marks, business names, know-how, trade secrets and confidential information;
<b>"Interconnection"</b>	the interconnection of CP A's System or CP B's System (as the case may be) to the Transit Operator System;
<b>"Message"</b>	signals of any description conveyed through an electronic communications network (as defined in the CA);
<b>"Network Termination Point"</b>	the physical point at which an End User is provided with access to a public electronic communications network and, where it concerns electronic communications networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the telephone number or the name of the End User ;
<b>"Non-Geographic Number"</b>	a fixed line Call using 03, 05, 08 or 09 codes or as per the Ofcom numbering scheme current at the time;
<b>"Number"</b>	any identifier which would need to be used in conjunction with any public switched telecommunication service for the purposes of establishing a connection with any Network Termination Point, End User, telecommunication apparatus connected to any Public Switched Network or service element, but not including any identifier which is not accessible to the generality of users of a Public Switched Network;
<b>"Number Portability"</b>	a facility provided by telecommunications operators which enables Customers and/or End Users to keep their Relevant Numbers when they change their operator;
<b>"Number Portability Service"</b>	the establishment of a transmission path through a Party's System to a Point of Connection and the conveyance of Messages over such transmission path, in relation to a Call to a Relevant Number pursuant to this Agreement;
<b>"Number Portability Prefix Code"</b>	prefix codes allocated to the Parties by Ofcom and which apply to this Agreement to the extent agreed between the Parties from time to time;

<b>"Ofcom"</b>	the Office of Telecommunications, Riverside House, 2a Southwark Bridge Road, London SE1 9HA or any successor body;
<b>"Order Handling Charges"</b>	the charges detailed in Schedules 1 and 2 to this Agreement, as amended from time to time in accordance with Clause 4.4;
<b>"Origination Rate"</b>	a charge levied in respect of a Call to a Number using 0800, 0808 or 0500 codes which is paid by the Recipient Operator to the Donor Operator.
<b>"Originating Third Party Operator"</b>	a third party Operator from whose system Relevant Numbers ported in accordance with the Number Portability Service have been conveyed by either of the Parties;
<b>"Point of Connection"</b>	means a point at which CP A's System connects to the Transit Operator System and CP B's System connects to the Transit Operator System and Calls are handed over and conveyed from one System to the other via the Transit Operator's System, as agreed pursuant to this Agreement;
<b>"Process Manual(s)"</b>	the Geographic Number Portability End to End Process Manual and the Non-Geographic Number Portability End to End Process Manual and any documents set out or referred to therein as appropriate as such may be agreed and amended from time to time by the Number Portability Commercial Group;
<b>"Price List"</b>	CP A's Price List or CP B's Price List, as the context requires;
<b>"Public Switched Network"</b>	a public electronic communication network by means of which two way telecommunication services are provided whereby Messages are switched incidentally to their conveyance;
<b>"Recipient Operator "</b>	the Party to whom Relevant Numbers are in the process of being, or have been passed or ported from a Donor Operator;
<b>"Recipient Operator System"</b>	the electronic communications network to which a Number is being ported;
<b>"Recipient Third Party Operator"</b>	the third party operator to whose system in the United Kingdom Relevant Numbers ported in accordance with the Number Portability Service will be handed over;
<b>"Relevant Numbers"</b>	the Geographic and Non-Geographic Numbers agreed by the by the Parties from time to time as being Numbers to be ported under the Agreement;
<b>"Reverse Charge Call"</b>	a Call in respect of which the Called Party is requested and agrees to pay the cost of the call from the Calling Party;

<b>"Subsequent Portability Service"</b>	the process by which a Customer who receives switched service from a Recipient Third Party Operator, requests (and the Subsequent Recipient agrees) that switched service be supplied to it by the Subsequent Recipient using the same Relevant Number;
<b>"Subsequent Recipient"</b>	the third party or Donor Operator to whose System the number is being ported;
<b>"Subsidiary" and "Holding Company"</b>	have the meanings given to these terms in s.736 of the Companies Act 1985, as amended by s.144 of the Companies Act 1989 and s. 1159 and Schedule 6 of the Companies Act 2006;
<b>"System"</b>	has the same meaning as in The Communications Act 2003;
<b>"Term"</b>	the period commencing on the date of this Agreement and continuing until the date of termination of this Agreement.
<b>"Termination Rate"</b>	the conveyance charge, which if the Donor Operator is CP A will be the amount set out in the CP A's Price List and if the Donor Operator is CP B, will be the amount set out in CP B's Price List both of which will reflect their respective termination rates agreed with the Transit Operator from time to time;
<b>"Transit Charge"</b>	the conveyance charge paid by the Donor Operator to the Transit Operator in accordance with the Transit Operator Carrier Price List, which if the Donor Operator is CP A will be the amount set out in the invoice received by CP A from the Transit Operator and if the Donor Operator is CP B, will be the amount set out in the invoice received by CP B from the Transit Operator;
<b>"Transit Operator"</b>	the telecommunications operator specified in Schedule 3 selected by agreement between the Parties for the purpose of conveying Calls from the Donor Operator System to the Recipient Operator System;
<b>"Transit Operator Carrier Price List"</b>	the latest version of "BT Wholesale Carrier Price List" or the Transit Operator Price list as published by the Transit Operator from time to time;
<b>"Transit Operator System"</b>	those electronic communications networks run by the Transit Operator from time to time the running of which is authorised by Ofcom and granted to the Transit Operator by the CA;
<b>"Transit Service"</b>	the service to be provided by the Transit Operator whereby the Transit Operator will convey Calls received from the Donor Operator System across the Transit Operator System from the Point of Connection with the Donor Operator System to the Point of Connection with the Recipient Operator

System; and

**"Working Day"**

any day other than Saturdays, Sundays, public or bank holidays in the United Kingdom.

- 1.2. In this Agreement, the headings are for convenience only and will not affect the interpretation of this Agreement.
- 1.3. In this Agreement, unless the context requires otherwise, references to legislation will be construed as a reference to that legislation as amended, re-enacted or replaced whether in whole or in part.
- 1.4. The Schedules attached to this Agreement will form part of this Agreement.
- 1.5. In this Agreement, unless the context requires otherwise the singular includes the plural and the masculine includes the feminine and vice versa.
- 1.6. References in this Agreement to "CPA" and "CP B" will include their respective successors (whether by operation of law or otherwise) and permitted assigns.

**2. Conditions Precedent to the Provision of Service**

- 2.1. Neither Party will be under an obligation to provide the Number Portability Service under this Agreement until all of the following conditions precedent have been satisfied:-
  - 2.1.1. each of the Parties will have entered into a valid agreement with the Transit Operator for the provision by the Transit Operator of the Transit Service;
  - 2.1.2. the interconnection of each Party's System and the Transit Operator System will have been established to the reasonable satisfaction of each Party;
  - 2.1.3. end to end testing of the Number Portability Service will have been completed to the reasonable satisfaction of both Parties in accordance with the relevant Process Manual; and
  - 2.1.4. each Party has implemented the relevant data management amendments to activate the Number Portability Prefix Codes in that Party's System at its own cost.
- 2.2. Each Party will use its reasonable endeavours to fulfil the conditions precedent which are applicable to that Party within 95 Working Days of the date of this Agreement and, where appropriate, in accordance with the industry Process Manuals.

**3. Description of Service**

- 3.1. Subject to the provisions of this Agreement, the Parties will provide the Number Portability Service in general accordance with the relevant Process Manual(s) where reasonably practicable, taking into account technical, operational and financial considerations and will comply with the following obligations:
  - 3.1.1 the conveyance of Calls to the Transit Operator System for onward conveyance to the Recipient Operator System; and
  - 3.1.2 the re-routed Call will be addressed to the Recipient System using the Number Portability Prefix Code.

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For the avoidance of doubt neither Party will have any obligation under this Agreement to port any Numbers other than Relevant Numbers.

- 3.2. Subject to the provisions of this Agreement, the Parties will provide the Subsequent Portability Service in general accordance with the relevant Process Manual(s) where reasonably practicable, taking into account technical, operational and financial considerations.
- 3.3. Neither Party will make or permit to be made any alterations or adjustments or additions to the Interconnection of their respective Systems to the Transit Operator System in such a way as materially to impair the operation of the System of the other Party or (except as may be necessary to carry out necessary operational maintenance on its own System) otherwise materially to affect the conveyance of Messages between each Party's System.
- 3.4. The Donor Operator will only be required to provide the Number Portability Service on request by the Recipient Operator, as described in the relevant Process Manual(s).
- 3.5. Each Party will carry out the Number Portability Service during those periods of time and at the same standard and quality of service as such Party conveys similar Calls. For the avoidance of doubt, neither Party will have responsibility or liability for the acts or omissions of a Recipient Third Party Operator where a Relevant Number is handed over by either Party to such operator or for the acts or omissions of an Originating Third Party Operator where a Relevant Number is handed over by that operator to either Party and will be under no obligation or liability for any Call once it is handed over to the Transit Operator System.
- 3.6. Each Party will correct faults which occur in its System which affect the Number Portability Service in accordance with such Party's normal engineering practices. For the avoidance of doubt, neither Party warrants or represents that its System is, or will be, free from faults, errors or interruptions. The procedures for clearance of faults in any Interconnection or otherwise affecting any Interconnection or the Number Portability Service will be as may be agreed between the Parties from time to time.
- 3.7. If there are abnormally high volumes of Calls or attempted Calls (which have not been included in a forecast pursuant to Clause 3.15) which are ported pursuant to the Number Portability Service that the relevant System cannot convey, either Party may apply network management controls in its System and will notify the other Party that such controls have been implemented.
- 3.8. Each party will comply with the CLI Guidelines. In respect of the conveyance of CLI for display to Customers and/or End Users in relation to the Number Portability Service:
  - 3.8.1. each Party will inform the other in writing at the time of signature of this Agreement, whether that Party's CLI indicator across the Point of Connection is conveyed without alteration or altered in accordance with the CLI Guidelines, to show only "Available", "Withheld" or "Unavailable";
  - 3.8.2. if conveyed without alteration at date of such signature, each Party will give the other not less than 3 months' notice in writing of a change to the status of the default setting of that Party's CLI indicator to "Available", "Withheld" or "Unavailable"; and
  - 3.8.3. if altered in accordance with the CLI Guidelines to show only "Available", "Withheld" or "Unavailable" at the time of such signature, each Party will inform the other as soon as reasonably practicable in writing of any change to the status of the default setting of that Party's CLI indicator to provide for conveyance without alteration.

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3.9. If a Customer and/or End User who has ported its Relevant Number from the Donor Operator System to the Recipient Operator System or subsequently, later terminates its contract with the a Recipient Operator System, the Recipient Operator will notify the Donor Operator as described in the relevant Process Manuals.

3.10. If,

3.11.1 a failure to port will occur; and

3.11.2 the Recipient Operator on behalf of the porting Customer will request the provision of emergency restoration to a porting Customer,

then, subject to Clause 5, the Recipient Operator will indemnify the Donor Operator for Call charges and rental if appropriate incurred by the Customer to the Donor Operator, in accordance with the Donor Operator's standard conditions for provision of service to such Customer provided always that the Recipient Operator will have no liability to the Donor Operator (i) if the failure to port will have occurred because of an act or omission by the Donor Operator, or (ii) where the End User or Customer subsequently pays the Donor Operator for the Call charges and rental (and the Donor Operator will use its reasonable endeavours to collect the Call charges and rental from the End User or Customer).

3.11. If any such charges to a Customer are outstanding 30 days after the due date, being charges in respect of the period during which emergency restoration will have been provided by the Donor Operator, the Donor Operator will invoice the Recipient Operator under this Agreement. If the Customer subsequently pays such charges, the Recipient Operator will be relieved of its obligation to pay such charges and, if the Recipient Operator has already paid such charges to the Donor Operator, the Donor Operator will repay such sums to the Recipient Operator as and when the Customer pays such charges.

3.12. For the avoidance of doubt, the provisions of this Agreement will also apply as appropriate to the situation where a Customer, having ported a Relevant Number from the Donor Operator to the Recipient Operator, then opts to port that Relevant Number back to the Donor Operator ("Return to Donor Operator"), and will be construed accordingly.

3.13. Each Party will:

3.13.1 take all reasonable endeavours to agree adequate safeguards to prevent and detect fraud in connection with Calls made pursuant to this Agreement, and the Parties will co-operate to deal appropriately with any fraud or potential fraud identified; and 3.13.2 perform its AIT obligations set out in Annex E (AIT) of the British Telecommunications plc Network Charge Standard Interconnect Agreement., as amended from time to time.

3.14. The Recipient Operator will ensure that the network facility on the Recipient Operator System which provides the Recipient Operator's service to its Customer will return to the Donor Operator System an Address Complete Message immediately followed by an Answer Signal or one of the following tones:-

3.14.1. ring;

3.14.2. engaged;

3.14.3. number unobtainable;

3.14.4. equipment engaged; or

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- 3.14.4 messages limited to direct replacements for those tones provided that any message contains no form of information identifying the Recipient Operator without first sending an Answer Signal.
- 3.15. Each Party will use its reasonable endeavours to maintain sufficient Capacity at any Point of Connection between each Party's System and the Transit Operator System at its own cost and in order to facilitate this, each Party will provide forecasting information in accordance with the procedures set out in the relevant Process Manual.
- 3.16 Each Party will instruct its respective operators not to accept Reverse Charge Calls in connection with the Number Portability Service and will use reasonable endeavours to ensure that no such Reverse Charge Calls are so accepted.
- 13.17 For the avoidance of doubt, each Party confirms that all services attached or connected to a Number ported under this agreement shall be PATS compliant.

#### Clause 4

***NB: the shaded section below is repeated in the annexes and a provider may wish to delete or keep either version. It is intended for clarity as this is one of the more difficult areas.***

#### 4. Charging and Invoices

- 4.1 Operator specific Termination rates, Average Porting Conveyance Charge and Number Port Order Handling charges for GNP calls are specified in Schedule 1 & 2 to this Agreement.
- 4.2 For GNPT, the Recipient Operator will pay the Transit Operator an amount equal to the Transit charge as per the BT CPL B1.8.1.3
- 4.3 For NGNPT the Recipient Operator shall pay to the Donor Operator an amount equal to the Transit Charge as per BT CPL B3.27.6, the Average Porting Conveyance Charge using BT CPL B3.26.1 as guidance (see also schedules 1 & 2 in this agreement) and any associated Order Handling charges specified in schedules 1 & 2 to this agreement.
- 4.4 For NGNP (Excluding 0800) the Donor Operator shall pay the Recipient Operator an amount equal to the Termination Rate as per CPL BT B1.02.3.
- 4.5 For NGNP, in the case of 0800 Numbers, the Recipient Operator shall pay the Donor Operator a Termination Rate as per the BT Carrier Price List BT B1.02.3.
- 4.6 Both Parties reserve the right to vary any of their charges or to introduce new charges by publication of a revised version of that Party's Price List and such revised Price List shall become effective upon a date to be specified by that Party being not less than 28 days following the receipt of the revised Schedule by the other Party's contact for the receipt of notices detailed in Clause 13. Both Parties agree to consult with each other before issuing any such revised Price List and to use reasonable endeavours to achieve agreed pricing Notwithstanding the foregoing any revised version a Price List may become effective on shorter notice or retrospectively (to the extent necessary to take account of the variation implemented by OFCOM or any other regulatory authority as described below) if the variation is as a result of any order direction determination or requirement of OFCOM or any other regulatory authority or body of competent jurisdiction or person of competent jurisdiction which takes effect upon notice which is shorter than 28 days or which takes effect retrospectively.
- 4.7 Invoicing for the Number Portability charges shall be carried out on a calendar monthly basis in arrears. An accounting summary report shall be sent with each invoice in a format to be agreed between the Parties.

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- 4.8 Invoices issued by either Party under this Agreement shall be payable by the other Party within 30 days of the date of the invoice ("**the due date**"). All charges set out in the attached Schedules /or otherwise referred to in this Agreement are exclusive of value added tax which shall be payable in addition at the prevailing rate from time to time.
- 4.9 If either Party shall fail to pay any amount due hereunder by the due date then the other Party shall be entitled to charge and receive interest at the rate of [ ] per cent per annum above Barclays Bank plc base lending rate from time to time, provided that such Party shall not have the right to charge interest in accordance with this Clause unless it has given the other Party at least 7 days' prior written notice of its intention to do so and the other Party has failed to pay within the 7 day period in which event interest shall accrue from the due date until the date of payment. All invoices must be issued within six (6) months from the date the relevant charges are incurred.
- 4.10 In the event that either Party disputes the amount of any invoice the Parties shall consult to try to resolve the dispute. Failing resolution, after a period of 15 Working Days, the dispute shall be escalated to senior management, if after a further 15 days the dispute is still not resolved it shall be referred for investigation and determination by an agreed designated chartered accountant, or in default of agreement, such chartered accountants as may be nominated by the President of the Institute of Chartered Accountants in England and Wales to act as an expert and not as an arbitrator and whose decision, in the absence of evidence of manifest error, shall be final and binding. The Parties shall co-operate in such investigation and any sum thus found to be due or overpaid shall be promptly paid or refunded (including any interest payable or paid pursuant to Clause [4.9] as the case may be). Each Party shall maintain and retain for a period of 3 years from its submission of each invoice true and accurate books of account and information contained in or on discs tapes document or other records as may reasonably be required by such chartered accountants for calculation or verification of the amounts payable under such invoice. The costs of such chartered accountants agreed upon or nominated as aforesaid shall be paid by the Party disputing the invoice unless the invoice is established to have been incorrect in which case the other Party shall pay such costs

***NB: Alternatively or in addition a CP may wish this to read as an internal escalation path.***

## **5. Warranties and Limitation of Liability**

### **5.1. Each Party warrants and undertakes that:**

- 5.1.1 it will exercise reasonable skill and care of a competent telecommunications operator in performing its obligations under this Agreement;
- 5.1.2 it will comply with its Authorisation and all applicable laws; and
- 5.1.3 it has all necessary rights and authority to enter into and to perform its obligations under this Agreement.

There are no other representations, terms, warranties or conditions in respect of the performance of the Parties obligations other than those expressly set out in this Agreement. Any and all other warranties, statutory, implied or otherwise, are hereby expressly excluded to the extent permitted by relevant law.

- 5.2. Subject to Clause 5.3, if a Party is in breach of any of its obligations under this Agreement to the other Party (excluding obligations arising under this Agreement to pay moneys in the ordinary course of business), or otherwise in connection with this Agreement (including liability for negligence or breach of statutory duty) such Party's liability to the other will be limited to two hundred and fifty thousand pounds sterling (£250,000) for any one event or series of connected events and five hundred thousand

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pounds sterling (£500,000) for all events (connected or unconnected) in any consecutive period of 12 calendar months (the first such period of 12 months commencing on the date hereof).

- 5.3. Notwithstanding anything else in this Agreement neither Party excludes or restricts its liability for fraud, death or personal injury caused by its own negligence or the negligence of its employees or for any other liability that cannot be excluded or limited under applicable law.
- 5.4. Neither Party will be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise in connection with this Agreement for loss (whether direct or indirect) of profits, business or anticipated savings, wasted expenditure or for any indirect or other consequential loss whatsoever arising in connection with the operation of this Agreement, howsoever caused.
- 5.5. Each provision of this Clause 5 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

## 6. **Confidentiality**

- 6.1. Subject to Clause 6.2, each Party will treat and procure that its directors, employees and Group Companies treat as confidential all information whether of a technical or business nature or otherwise relating in any manner to the business or affairs of the other Party or relating to this Agreement and will not disclose such information to any person firm or company and will not use such information other than for the purposes of this Agreement.
- 6.2. The provisions of Clause 6.1 will not apply to any information which:-
  - 6.2.1. is already in the possession of the recipient Party prior to its receipt provided the recipient Party is not bound by any existing obligation of confidentiality in respect of such information;
  - 6.2.2. is in the public domain other than by default of the recipient Party;
  - 6.2.3. is obtained by the recipient Party from a bona fide third party having free right of disposal of such information and without breach by the recipient Party;
  - 6.2.4. is properly disclosed pursuant to and in accordance with a relevant statutory or regulatory obligation or to obtain or maintain any listing on a Stock Exchange, or as required to be disclosed by a court or other tribunal of competent authority.
- 6.3. Information which is the subject of the provisions of Clause 6.1 will only be used for the purpose for which it was delivered and/or for the purposes of performing the obligations of the Parties under this Agreement.
- 6.4. Information which is the subject of the provisions of Clause 6.1 may be disclosed to professional advisers agents and sub-contractors of the Parties hereto on a need to know basis provided that all such agents and sub-contractors will prior to receiving such information enter into a confidentiality undertaking in substantially the same form as this Clause (with the exception of this sub-clause 6.4) with the disclosing Party.
- 6.5. The provisions of this Clause 6 will apply for a period of 3 years from the date of disclosure or the date of termination of this Agreement, if later.

## 7. **Commencement, Expiry and Termination**

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- 7.1 This Agreement will come into force on the date hereof and unless terminated earlier in accordance with the provisions of this Agreement, will continue for an initial term of 12 months ("Minimum Term") and will remain in force thereafter until terminated by either Party giving to the other not less than 12 months' written notice of termination expiring on the last day of the Minimum Term or at any time thereafter.
- 7.2 At any time during or after the expiry of the Minimum Term, within 28 days following the issue by either Party of a revised version of that Party's Price List in accordance with Clause [4.4], and which the other Party has not agreed to, the Party which has not agreed to the revised Price List may issue a written notice to terminate this Agreement, such termination to take place no earlier than the date on which the revised Price List shall take effect.
- 7.3 The operation of this Agreement and the provision of Services provided under or pursuant to this Agreement may be suspended forthwith (in whole or in part) by either Party:-
- 7.3.1 in the event that and for so long as the other Party will be in material breach of this Agreement (including non-payment of any sums due hereunder) and will have failed to remedy such breach within 30 days after receipt of a notice specifying the breach and requiring it to be remedied;
  - 7.3.2 in case of emergency without prior notice, but such suspension will only apply to such Services provided under this Agreement as are affected by the emergency;
  - 7.3.3 in the event that the Transit Operator ceases to provide the Transit Service or if the Transit Service is otherwise unavailable or is not performing to the reasonable satisfaction of either Party for any reason;
  - 7.3.4 to the extent necessary to prevent or restrict the incidence of any fraud in connection with the Number Portability Service;
  - 7.3.5 to the extent necessary to comply with an order or direction of Ofcom or any other competent regulatory authority;
  - 7.3.6 the other Party becomes Insolvent (as defined Clause 7.6 below);
  - 7.3.7 the other Party's telecommunications Authorisation expires, is revoked or amended (and not replaced by an equivalent Authorisation or right); or
  - 7.3.8 the other Party acts in, or is reasonably believed to have acted in, a fraudulent manner in any way in relation to this Agreement.
- 7.4 Notwithstanding Clause 7.3.1, either Party may terminate this Agreement or suspend the provision of the Service by serving [ ] days' written notice to the other Party, if the other Party does not pay any sums payable within the time provided under this Agreement subject to Clause [4.8].
- 7.5 Termination or expiry of this Agreement will not:-
- 7.5.1 operate as a waiver of any breach by a Party hereto of any of the provisions hereof and will be without prejudice to any rights liabilities or obligations of either Party which have accrued up to the date of such termination or expiry;

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7.5.2 affect the coming into force or the continuation in force of any provisions hereof which are expressly or by implication intended to come into force on or after such termination or expiry.

7.6 In this Clause "Insolvent" means, in respect of a Party to this Agreement, the appointment of or the application to a court for the appointment of a liquidator, provisional liquidator, administrator, administrative receiver or receiver, the entering into a scheme of arrangement or composition with or for the benefit of its creditors generally, any reorganisation, moratorium or other administration involving its creditors or any class of its creditors, a resolution or proposed resolution to wind it up or becoming unable to pay its debts as and when they fall due or becoming deemed to have become unable to pay its debts as and when they fall due within the meaning of Section 123 of the Insolvency Act 1986.

## **8 Protection of the Operator System**

Neither Party will do or permit to be done or omit or permit the omission of anything in relation to that Party's System which either will cause damage to the other Party's System or will, save as permitted under or pursuant to this Agreement, result in modification of the proper and normal operation of the other Party's System.

## **9 Operational Liaison**

The Parties will consult on a periodic basis for the purpose of discussing and resolving any problems which may arise relating to the operation of this Agreement and apply their reasonable endeavours to resolve any such problems.

## **10 Customer Care**

Each Party will instruct its customer care operators that (save in respect of enquiries which that Party believes relate to any fault in that Party's System which relates to the Number Portability Service) they will refer enquiries regarding ported Calls received by that Party's customer care services to the other Party or to the other Party's customer care services. However, neither Party will have any further obligation under this Agreement to provide customer care services or support in respect of ported Calls following the porting, however, the transferring customer care operators will provide reasonable assistance in relation to any faults arising from their Party's Systems pursuant to the Number Portability Service (or as they are otherwise obligated to in accordance with their customer terms and conditions) prior to the date of transfer.

## **11 PhonepayPlus**

Each Party declares its general support for and recognition of PhonepayPlus, (formerly the Independent Committee for the Supervision of Telephone Information Services or "ICSTIS"), and its permitted successors or assigns, and the Codes of Practice established by PhonepayPlus insofar as PhonepayPlus and the code of Practice established by PhonepayPlus may reasonably relate to any Services made available by that Party from time to time.

## **12 Intellectual Property Rights**

Except as expressly provided otherwise in this Agreement, Intellectual Property Rights will remain the property of the Party creating or owning the same and nothing in this Agreement will be deemed to confer any assignment or licence of the Intellectual Property Rights of one Party to the other Party.

## **13 Notices**

13.1 Any notice required under this Agreement or required by law or regulation shall be delivered in person, sent by registered mail, properly posted and fully pre-paid in an envelope or sent by facsimile (subject to a hardcopy fax being sent by registered mail in accordance with this Clause) to the respective party in question as set out below.

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**Operator A [ address info + fax details]**

**Operator B[ address info + fax details]**

***NB: A provider may wish to add in the provision for e-mail notices***

- 13.2 Any notice given under Clause 13.1.1 will be deemed to have been received:-
- 13.2.1 on the date of delivery if delivered by hand prior to 5:00 pm on a Working Day, otherwise on the next Working Day following the date of delivery;
  - 13.2.2 on the second Working Day from and including the day of posting in the case of pre-paid first class post within the United Kingdom;
  - 13.2.3 on the next Working Day following the day of transmission in the case of facsimile (confirmed by pre-paid first class post/airmail as provided above).
- 13.3 Either party may at any time notify the other of a change of address or person for the purposes of the serving of notices and the provisions of this Clause 13 shall apply to such notice.

#### **14 Miscellaneous**

- 14.1 This Agreement together with the Schedules to it constitutes the entire understanding between the parties concerning the subject matter hereof and supersedes all prior discussions, agreements and representations, whether oral or written and whether or not executed by CP A and CP B.
- 14.2 No failure or delay of either party in exercising its rights hereunder (including but not limited to the right to require performance of any provision of this Agreement) shall be deemed to be a waiver or release of such rights. Any waiver or release must be specifically granted in writing signed by the party waiving its rights and shall:
- 14.2.1 be confined to the specific circumstances in which it is given;
  - 14.2.2 not affect any other enforcement of the same or any other right; and
  - 14.2.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.
- Any single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 14.3 If at any time any provision of this Agreement is or becomes illegal, invalid, illegal or unenforceable in any respect under the law of any jurisdiction that shall not affect or impair:
- 14.3.1 the legality, validity, or enforceability in that jurisdiction of any other provision of this Agreement; or
  - 14.3.2 the legality, validity, or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 14.4 All work performed by either Party under this Agreement shall be performed as an independent contractor and not as an agent of the other Party and neither Party shall be, nor represent itself to be, the employee, agent, representative, partner or joint venture of the other. Neither Party shall have the right or authority to assume or create an obligation on behalf of or in the name of the other or to otherwise act on behalf of the other. The

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performing Party shall be responsible for its employees' compliance with all applicable laws, rules, and regulations while performing work under this Agreement.

14.5 Neither Party shall have any liability or remedy in tort in respect of any representation, warranty or other statement (including any contained in this Agreement) being false, inaccurate or incomplete unless it was made fraudulently.

14.6 Each Party acknowledges that in entering into this Agreement it places no reliance on any representation, warranty or other statement relating to the subject matter of this Agreement save as expressly set out in this Agreement.

## **15 Assignment**

15.1 This Agreement is personal to the Parties hereto and neither Party shall assign, transfer, charge, encumber or otherwise deal with the whole or any part of this Agreement or its rights or obligations hereunder without the prior consent in writing of the other Party which is not to be unreasonably withheld or delayed. Notwithstanding the aforesaid either Party may assign, transfer or novate the whole or any part of this Agreement to a Group Company.

15.2 Subject to Clause 15.1 above, even if a Party gives its consent in writing to an assignment by the other Party, then it shall be a condition precedent of such consent and any assignment, transfer or novation to a Group Company that the assignee is Authorised to run the System of the assigning Party and the assigning Party shall procure that the assignee enters into a novation agreement with the other Party and the assigning Party whereby the assignee agrees to observe and perform the terms and conditions of this Agreement referable to the assigning Party and the other Party may require the assigning Party to guarantee the performance by the assignee of such terms and conditions.

## **16 Publicity & Non-disclosure**

In the absence of specific agreement between the Parties, neither Party will originate any publicity, news release or public announcement, written or oral, whether to the public or press, relating to this Agreement including its existence, the subject matter to which it relates, performance under it or any of its terms, to any amendment hereto save only such announcement as in the opinion of counsel for the Party making such announcement is required by law or in the interests of day to day business (for example a customer request). Any such announcements will be factual and as brief as possible. If a Party decides to make an announcement required by law, it will give the other Party 30 days' advance written notice, where possible, of the text of the announcement so that the other Party will have an opportunity to comment upon the announcement.

## **17 Further Assurances**

Each Party will, as and when requested by the other Party, do all acts and execute all documents as may be reasonably necessary to give effect to the provisions of this Agreement.

## **18 Law and Jurisdiction**

The validity, construction and performance of this Agreement will be governed by the law of England and the Parties accept the exclusive jurisdiction of the English courts in respect thereof.

## **19 Force Majeure**

19.1 Subject to Clause 19.2 below, neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including, but not limited to, any damages whether directly or indirectly caused to or incurred by the other party by reason of any

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failure or delay in the performance of its obligations hereunder which is due to Force Majeure.

19.2 Under no circumstances shall either Party be entitled to rely upon Force Majeure in relation to any obligation to pay Charges in accordance with this Agreement.

19.3 If either of the parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

**20 Modifications**

20.1 No variation modification or waiver of any provisions of this Agreement will in any event be of any force or effect unless the same is in writing signed by the Parties hereto.

20.2 Any Party which seeks an amendment to this Agreement will deliver to the other Party a written request for such amendment together with a detailed explanation of the nature of, reasons for and implications of the modification sought.

20.3 Within 14 days of receipt of any such amendment request, the receiving Party will provide the requesting Party with a written response to the request specifying:

20.3.1 which request(s) are agreeable (if any);

20.3.2 which request(s) are not agreeable (if any) together with detailed reasons for such rejection and suggested alternatives (if any).

If the receiving Party confirms its agreement or suggests alternatives as set out in Clause 20.3.2 as soon as reasonably practicable thereafter (and in any event no later than 21 days from date on which a request is delivered pursuant to Clause 20.3.2) the parties will negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to the Agreement.

**21 Third Parties**

This Agreement does not confer any benefit which may be enforced by any third party and the provisions of The Contracts (Rights of Third Parties) Act 1999 do not apply to this Agreement.

**AGREED** by the Parties through their duly authorised representatives on the date written at the start of this Agreement:-

For and on behalf of

For and on behalf of

**CP A**

**CP B**

Signed ..... Signed.....

Name.....

Name.....

Position.....

Position.....

20/08/2010

Date.....

Date.....

**SCHEDULE 1**

**CP A's CHARGES**

**Average Porting Conveyance Charge (APC) for Non-Geographic Numbers**

This is a charge payable by CP B for Non-Geographic Numbers exported from CP A (in this case the Donor Operator) to CP B (in this case the Recipient Operator) and reflects payment from CP B to CP A.

The Recipient Operator will pay to the Donor Operator an amount equal to the appropriate Average Porting Conveyance Charges set out in Section B3.26 of the BT Wholesale Carrier Price List as amended, modified or replaced from time to time by the Transit Operator.

**Transit Charges for Non-Geographic Numbers**

This is a charge payable by CP B for Non-Geographic Numbers exported from CP A (in this case the Donor Operator) to CP B (in this case the Recipient Operator) and reflects payment from CP B to CP A.

The Recipient Operator will pay to the Donor Operator an amount equal to the transit charge as per the BT Wholesale Carrier Price List Section B.3.27.6 as amended, modified or replaced from time to time by the Transit Operator.

**Termination Rates for Non-Geographic Numbers**

This is a charge payable by CP B for Non-Geographic Numbers exported from CP B (in this case the Donor Operator) to CP A (in this case the Recipient Operator) and reflects payment from CP B to CP A.

The Donor Operator will pay to the Recipient Operator an amount equal to the specific termination rate charge as per the BT Wholesale Carrier Price List Section B.1.02.3. In the case of 080x Numbers, the Recipient Operator will pay the Donor Operator the specific termination rate charge as per the BT Wholesale Carrier Price List Section B1.02.3 as amended, modified or replaced from time to time by the Transit Operator. (The termination rate charge may appear in the BT Wholesale Carrier Price List as a negative figure.)

**Order Handling Charges for Non-Geographic Numbers**

Order Handling Charges are payable by the Recipient (in this case CP B) to the Donor Operator (in this case CP A). Or in the case of Subsequent Portability, Order Handling Charges are payable by the Subsequent Recipient to the Recipient and to the Range Holder (as defined in the Process Manual).

The Recipient Operator will pay the Donor Operator an amount equal to the appropriate Non-Geographic Number portability charges set out in the BT Wholesale Carrier Price List Section B.3.27.3 and B.3.27.4 as amended, modified or replaced from time to time by Openreach.

**Average Porting Conveyance Charge (APC) for Geographic Numbers**

This is a charge payable by CP B for Geographic Numbers exported from CP A (in this case the Donor Operator) to CP B (in this case the Recipient Operator) and reflects payment from CP B to the CP A.

The Recipient Operator will pay to the Donor Operator an amount equal to the appropriate Average Porting Conveyance Charge as per the BT Wholesale Carrier Price List Section B1.08.2.3 as amended, modified or replaced from time to time by the Transit Operator.

**Termination Rates for Geographic Numbers**

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This is a charge for Geographic Numbers exported from CP B (in this case the Donor Operator) to CP A (in this case the Recipient Operator) and reflects payment from CP B to CP A.

The Donor Operator will pay the Recipient Operator an amount equal to the Donor Operator specific Termination Rate as per the BT Wholesale Carrier Price List Section B1.02.1 as amended, modified or replaced from time to time by the Transit Operator.

**Order Handling Charges for Geographic Numbers**

Order Handling Charges are payable by the Recipient to the Range Holder (as defined in the Process Manual). Or in the case of Subsequent Portability, Order Handling Charges are payable by the Subsequent Recipient to the Recipient and to the Range Holder. This a charge for Geographic Numbers exported from CP A to CP B and reflects payment from CP B to CP A.

The Recipient Operator will pay the Donor Operator an amount equal to the appropriate Portability Charge as per the Openreach Pricing Schedule 4.3.1 as amended, modified or replaced from time to time by Openreach.

**In the event that of any significant changes to the structure of the Transit Operator's Carrier Price List or the Openreach Pricing Schedule which affect the charges payable under this Agreement the Parties will meet to discuss and agree a revised charging structure.**

**Each Operator may amend charges as set out in Clause 4**

## **SCHEDULE 2**

### **CP B's CHARGES**

#### **Average Porting Conveyance Charge (APC) for Non-Geographic Numbers**

This is a charge payable by the Operator for Non-Geographic Numbers exported from CP B (in this case the Donor Operator) to CP A (in this case the Recipient Operator) and reflects payment from CP A to CP B.

The Recipient Operator will pay to the Donor Operator an amount equal to the appropriate Average Porting Conveyance Charges set out in Section B3.26 of the BT Wholesale Carrier Price List as amended, modified or replaced from time to time by the Transit Operator.

#### **Transit Charges for Non-Geographic Numbers**

This is a charge payable by the Operator for Non-Geographic Numbers exported from CP B (in this case the Donor Operator) to CP Ar (in this case the Recipient Operator) and reflects payment from CP A to CP B.

The Recipient Operator will pay to the Donor Operator an amount equal to the appropriate transit charge as per the BT Wholesale Carrier Price List Section B.3.27.6 as amended, modified or replaced from time to time by the Transit Operator.

#### **Termination Rates for Non-Geographic Numbers**

This is a charge payable by the Operator for Non-Geographic Numbers exported from CP A (in this case the Donor Operator) to CP B (in this case the Recipient Operator) and reflects payment from CP A to CP B.

The Donor Operator will pay to the Recipient Operator an amount equal to the specific termination rate charge as per the BT Wholesale Carrier Price List Section B.1.02.3. In the case of 080x Numbers, the Recipient Operator will pay the Donor Operator the specific termination rate charge as per the BT Wholesale Carrier Price List Section B1.02.3 as amended, modified or replaced from time to time by the Transit Operator. (The termination rate charge may appear in the BT Wholesale Carrier Price List as a negative figure.)

#### **Order Handling Charges for Non-Geographic Numbers**

Order Handling Charges are payable by the Recipient (in this case CP B) to the Donor Operator (in this case CP A). Or in the case of Subsequent Portability, Order Handling Charges are payable by the Subsequent Recipient to the Recipient and to the Range Holder.

The Recipient Operator will pay the Donor Operator an amount equal to the Non-Geographic Number portability charges set out in the BT Wholesale Carrier Price List Section B.3.27.3 and B.3.27.4 as amended, modified or replaced from time to time by the Openreach.

#### **Average Porting Conveyance Charge (APC) for Geographic Numbers**

This is a charge payable by the Operator for Geographic Numbers exported from CP B (in this case the Donor Operator) to CP A (in this case the Recipient Operator) and reflects payment from CP A to CP B.

The Recipient Operator will pay to the Donor Operator an amount equal to the appropriate Average Porting Conveyance Charge as per the BT Wholesale Carrier Price List Section B1.08.2.3 as amended, modified or replaced from time to time by the Transit Operator.

#### **Termination Rates for Geographic Numbers**

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This is a charge for Geographic Numbers exported from CP A (in this case the Donor Operator) to CP B (in this case the Recipient Operator) and reflects payment from CP A to CP B.

The Donor Operator will pay the Recipient Operator an amount equal to the Donor Operator specific Termination Rate as per the BT Wholesale Carrier Price List Section B1.02.1 as amended, modified or replaced from time to time by the Transit Operator.

**Order Handling Charges for Geographic Numbers**

Order Handling Charges are payable by the Recipient to the Range Holder (as defined in the Process Manual). Or in the case of Subsequent Portability, Order Handling Charges are payable by the Subsequent Recipient to the Recipient and to the Range Holder. This is a charge for Geographic Numbers exported from CP B to CP A and reflects payment from CP A to CP B.

The Recipient Operator will pay the Donor Operator an amount equal to the appropriate Portability Charge as per the Openreach Pricing Schedule 4.3.1 as amended, modified or replaced from time to time by Openreach.

**In the event that of any significant changes to the structure of the Transit Operator's Carrier Price List or the Openreach Pricing Schedule which affect the charges payable under this Agreement the Parties will meet to discuss and agree a revised charging structure.**

**Each Operator may amend charges as set out in Clause 4**

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**SCHEDULE 3**

**THE TRANSIT OPERATOR**

As of the date of the Agreement, the Transit Operator will be:

British Telecommunications plc:

81 Newgate Street, London EC1A 7AJ

Registered in England and Wales with Company Number 1800000

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**SCHEDULE 4**

**NUMBER PORTABILITY PRE-FIX CODES**