

# TERMS AND CONDITIONS

This agreement together with an accepted Order (as defined below) together with the "Agreement", sets out the terms and conditions for the supply of a Chip & PIN payment handset and associated services as set out herein and is made between:

**Chip & PIN Solutions Ltd.** ("We", "Us" or "Our") a company registered under the laws of England, registration number 05268834 having its registered office at Maurice House, Southmill Road, Bishop's Stortford, Hertfordshire, CM23 3DH.

- AND -

**The Purchaser** ("You" or "Your") identified on the order form attached hereto (hereinafter "Order").

**It is hereby agreed:**

## 1 Your Order and the Price

1.1 By placing Your Order with Us, You are agreeing to purchase the following (collectively the "Services"), subject to the terms and conditions of this Agreement: a) a Chip & PIN handset (either GPRS/GSM, Wi-Fi or fixed line as set out on the Order) and any specified accessories ("Handset") either directly or through a hire agreement, configured for Your use;

b) helpdesk and handset replacement service ("Guaranteed Replacement Service") for technical assistance and replacement of faulty Handsets, and;

c) airtime from a mobile network service provider for GPRS/GSM Handsets only ("Airtime Service").

1.2 You may purchase the Handset directly from Us or by completing and returning the lease hire agreement ("Hire Agreement") attached to this Agreement. If You lease the Handset, You agree to be bound by the terms of the Hire Agreement and any breach of the Hire Agreement shall be considered a breach of this Agreement.

1.3 The price for the initial set up ("Set-up Cost"), Handset, or the monthly rental cost for the Handset and minimum term for the Hire Agreement (as may apply) ("Handset Costs"), accessories and the Airtime Service monthly cost ("Airtime Cost") (if applicable) are set out in the Order. The Handset Costs include the Guaranteed Replacement Service for the duration of this Agreement. All prices are exclusive of VAT which shall be added to the amounts.

1.4 The Airtime Cost (if applicable) will be fixed for 12 months from the delivery of the Handset. Thereafter, We may increase the Airtime Cost should the mobile network service provider increase the cost to Us.

1.5 The Airtime Cost is based on a "reasonable use" number of transactions, should You consistently conduct a high number of transactions, We reserve the right to increase the Airtime Cost to reflect Your actual level of usage.

1.6 When We receive Your Order, We shall share such information as is relevant with specified third parties solely for the purpose of performing necessary credit checks and for provision of the Services. In signing the Order, You hereby consent to Your details being used for such purposes.

1.7 On acceptance of Your Order by Us, We agree to supply the Services to You for the duration of this Agreement. You have 7 days following receipt of Your Order by Us in which You may cancel, after which time no Order may be cancelled unless agreed by Us in writing and subject to You paying Us for any reasonable costs We have incurred in processing Your Order.

1.8 You acknowledge that as a business to business transaction You have no rights for returns or cancellations under the Consumer Protection (Distance Selling) Regulations 2000. You are responsible for checking the Handset meets Your requirements and there is mobile network coverage in the areas in which You plan to use the Handset (We shall inform you of which network provider is being used and alternatives that may be available).

## **2 Your Responsibilities**

### **Assisting in Service Delivery**

2.1 You agree to assist Us as far as reasonably possible in providing the Services to You, including but not limited to; ensuring accuracy of information You provide to Us; ensuring someone is available for delivery or collection of the Handset; carrying out tests or checks on the Handset as directed by Us; or replacement of SIM cards as directed by Us.

### **Care of the Handset**

2.2 The risk in the Handset transfers to You on delivery and You shall be responsible for the insurance and safekeeping of the Handset. The Guaranteed Replacement Service does not cover loss of or damage to the Handset and You will be responsible for the costs of repair or replacement in such cases.

2.3 You shall operate the Handset in accordance with the manufacturer's instructions; use only approved attachments or accessories; and not attempt, permit or authorise anyone other than Us to carry out adjustments, repairs or maintenance.

### **Use of Mobile Networks**

2.4 For the Airtime Services (if applicable) We shall provide You with the use of a SIM card and access to a mobile network from one of the UK mobile network providers. The SIM card and phone number remain the property of the network provider. You are liable for the cost of replacement for any lost SIM card and for all calls or data usage on the SIM card. In the event of loss of the SIM card, You should contact Us as soon as possible to arrange cancellation.

2.5 You agree that the SIM card is provided for use in the normal operation of the Handset only.

2.6 You agree that Your use of the mobile network is subject to the terms and conditions of the particular network provider and that You will comply with any of the legislation covering the use of mobile networks. Full details of the specific terms and conditions may be found on the website of the network provider and in the Telegraphy Acts 1949 to 1967, the Telecommunications Act 1984, the Communications Act 2003. These terms include but are not limited to:

- a) You shall not use, or allow others to use, the Airtime Services for any improper, fraudulent, immoral, criminal or unlawful purpose;
- b) You shall comply with any reasonable instructions issued by Us or the network provider which concern Your use of the Airtime Services or connected matters;
- c) You shall not do or allow anything to be done which in Our or the network provider's opinion will or is likely to impair or damage the mobile network or the provision of the Airtime Services or affect the security of the same.

2.7 Any breach by You of Clauses 2.5 or 2.6 may result in immediate suspension or termination of the Airtime Services. You will remain liable to pay all fees due under this Agreement notwithstanding any suspension or disconnection for the reasons set out in this Clause. Furthermore, additional charges may apply to reconnect You after any such suspension.

### **Payment**

2.8 The Airtime Cost (if applicable) is payable monthly in advance, for direct purchase of Handsets and quarterly in advance for Handset lease and shall be collected by Direct Debit.

2.9 If You fail to pay any fees due under this Agreement within 30 days We reserve the right, without prejudice to any other rights or remedies, to:

- a) suspend the Services; and
- b) charge interest on any outstanding amounts at the rate of 7% per annum above Barclays Bank Plc base rate from time to time calculated (on a daily basis) from the date due until the date of actual payment; and

c) terminate this Agreement.

### **3 Our Responsibilities**

#### **Supply of the Handset and Guaranteed Replacement Service**

3.1 We shall configure the Handset with Your business details (as specified by You), provision the Airtime Services and arrange for delivery of the Handset to a UK address specified by You.

3.2 For the Guaranteed Replacement Service We shall provide:

a) Telephone-based technical support for the Handset during the hours 08:00 to 23:00 Monday to Saturday and 10:00 to 16:00 on Sundays and Public Holidays on the numbers stated on Our website [www.chipandpinsolutions.com](http://www.chipandpinsolutions.com); and

b) Replacement of a defective Handset within mainland UK, for a similar Handset configured for Your use within Our target response time of 24 hours. You acknowledge that the target response time is Our service level goal and We do not warrant that any particular replacement shall be made within the 24 hours.

3.3 The Guaranteed Replacement Service does not cover replacement of the Handset arising from the conditions below and You may be charged for the cost of repairs in such cases:

- a) Your failure to comply with Clause 2.3; or
- b) Damage, neglect or loss of the Handset; or
- c) scratching or other external marking of the external surfaces of the Handset; or
- d) renewal of consumable supplies; or
- e) network faults or outages; or
- f) any external device or attachment that is not part of the Handset or supplied by Us.

#### **Provision of Airtime Services**

3.4 We will provide You with a SIM card and access to airtime on a mobile telecommunications network (for GPRS/GSM Handsets only).

3.5 Due to the nature of the mobile network on which the Airtime Services are provided, the network may fail or require maintenance without notice and We do not represent or warrant that the Airtime Services shall be available without interruption or free from error nor can we guarantee network coverage.

3.6 Unless We agree otherwise with you, the Airtime Services do not include access to the GSM and GPRS networks in countries other than the UK.

3.7 There are a number of security measures to protect Your communications, approved by the Banks and representing increased protection against fraud, but We cannot guarantee total security as criminal activities continually seek ways to bypass bank security and to breach both networks to access traffic.

### **4 Warranty**

4.1 Subject to the exceptions set out below and the limitations upon Our liability in Clause 6, We warrant to You that:

a) the Services will be carried out with reasonable skill and care by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated; and

b) the Handset will provide the functions described in the Handset manuals for a period of three years from the Delivery Date (we do not warrant that operation of the Handset will be without interruption or error free).

4.2 Save as expressly provided in Clause 4.1 of this Agreement, We specifically exclude without limitation all other conditions, warranties, representations or other terms relating to this Agreement including any warranties that might otherwise be implied or incorporated into this Agreement, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.

## **5 Warranty Remedies.**

5.1 You agree that Your sole remedy under the warranties given in Clause 4.1 a) is for Us to remedy any breach (either ourselves or through a third party) and if, in Our reasonable opinion, We are unable to remedy such breach We will refund the fees paid by You for the breaching services.

5.2 You agree that Your sole remedy under the warranties given in clause 4.1 b) is limited to repair or, at Our option, replacement of the relevant Handset in whole or in part, at Our expense (including return shipping costs to any UK address), using all reasonable endeavours to rectify within a reasonable period of time any non-conformance with the warranty.

5.3 We shall have no liability or obligation under the warranties given in Clause 4.1 unless You notify Us in writing of any non-conformance with the warranty within one (1) calendar month from the date of such non-conformance occurring.

5.4 We shall have no liability for breach of any warranty in Clause 4.1 that arises from:

- a) the improper use of the Handset;
- b) failure to implement reasonable recommendations made by Us in relation to the Handset; or
- c) any alteration or addition to the Handset made by anyone other than Us; or
- d) Your breach of this Agreement.

5.5 If a problem is found upon investigation not to be Our responsibility under the provisions of Clause 4, We may charge You for, and You hereby agree to pay, all reasonable costs and expenses incurred by Us.

## **6 Limitation of Liability.**

6.1 Nothing in this Agreement shall exclude or limit Our liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of Our employees in connection with the performance of their duties hereunder or by defects in any product supplied pursuant to this Agreement, (iii) misrepresentation made by Us fraudulently, or (iv) any other liability that cannot be excluded by law.

6.2 Subject to Clause 6.1, in no event will We be liable under this Agreement for any damages resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, (iv) loss of anticipated savings, and/or (v) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.

6.3 Except as provided in Clause 6.1, Our maximum aggregate liability to You for any cause whatsoever (whether in the form of refund, the additional cost of remedial services or otherwise) will be limited to a sum equivalent to 125% of any monies paid by You under this Agreement.

6.4 We hereby exclude all liability that has not expressly accepted in this Agreement. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 6 "we", "us" and "our", includes Our employees, sub-contractors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause in terms of the Contracts (Rights of Third Parties) Act 1999.

6.5 Save as provided in Clause 6.1 You shall have no remedy in respect of any representation (whether written or oral) made to You upon which You relied in entering into this Agreement ("Misrepresentation") and We shall have no liability to You other than pursuant to the express terms of this Agreement.

## **7 Duration and Termination**

7.1 This Agreement shall commence on acceptance of Your Order by Us and continue for a period of 3 years following delivery of the Handset to You unless terminated according to this Clause 7.

7.2 You may cancel the Airtime Services by giving Us 3 months written notice provided You have paid a minimum of 12 months of the Airtime Cost.

7.3 You acknowledge that termination of this Agreement does not terminate the Hire Agreement (if applicable) or Your obligations to make payments under that agreement.

7.4 Either party ("the Initiating Party") may forthwith terminate this Agreement at any time:

- a) on giving written notice to the other party if the other party commits any material breach of any term of this Agreement and in the case of a breach which is reasonably capable of remedy fails to remedy that breach to the reasonable satisfaction of the Initiating Party within thirty (30) days of a written request to remedy the same; or
- b) if the other party shall have a receiver or administrative receiver appointed over it or any of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity shall assume all of the liabilities of it) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on its business or if any substantially similar event shall take place under the laws of another jurisdiction; or

7.5 In the event that We have ended the Agreement under Clause 7.4, 2.7 or 2.9 or through the acceptance of any repudiatory breach by You of this Agreement, You agree to pay the Airtime Cost that would be due as a result of termination under Clause 7.2

7.6 The expiry or termination of this Agreement for whatever reasons shall not affect any other rights or remedies a party may be entitled to under law and shall not affect any rights or liabilities accrued prior to termination.

7.7 Where this Agreement relates to more than one Payment Terminal, We may end this Agreement or suspend Airtime Services or Guaranteed Replacement Service in respect of the Payment Terminal(s) to which the non-payment relates or all of the Payment Terminals as We may decide.

## **8 Confidentiality**

Each party shall treat as confidential all information obtained from the other pursuant to this Agreement and shall only divulge such information to its employees or subcontractors for the purpose of meeting its obligations under this Agreement (or where the information is required to be disclosed by law). Each party shall ensure that its employees or sub-contractors are aware of and comply with the provisions of this Clause. The obligations as to confidentiality in this Clause 8 shall survive any termination of this Agreement.

## **9 Force Majeure**

We shall not be deemed to be in breach or default, and shall not be liable, under this Agreement by reason of any failure to perform any obligations under, or observe any provisions of, this Agreement if and to the extent that such failure occurs as a result of Acts of God, war (whether declared or not) sabotage, riot, explosion, Government control restrictions or any other Government act or omission whether local or national, requirement to act in accordance with the Authority, act or default of any public telecommunications operator (other than the Network Provider), supplier, agent or sub-contractor, industrial disputes of any kind, physical obstacles or atmospheric conditions or any other cause beyond Our reasonable control.

## **10 General**

This Agreement shall be governed English Law. This Agreement constitutes the entire agreement between the parties. Nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture or principle and agent relationship between the parties. No failure or delay by Us in exercising Our rights shall be deemed as a waiver of that right. If any of the provisions of this Agreement are deemed to be invalid or unenforceable by any competent authority, the validity of the remaining provisions shall not be affected thereby. Any notices under this Agreement shall be in writing and may be served by fax, email or by first class post. We

reserve the right to vary this Agreement to comply with new legislation, any revised terms of the license granted to the mobile network provider or European Community law, provided that such variation shall be limited to the extent necessary for such purposes. No other variation to this Agreement shall be effective unless agreed in writing by both parties. Except as set out in Clause 6.4, a person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any Clause of this Agreement. Our rights under this Agreement are assignable by Us without Your consent. You are not permitted to assign Your rights or obligations under this Agreement without Our written consent.