

Telcom Limited - TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms and phrases shall have the following meaning, unless the context otherwise requires.

"Agreement" shall mean, as between the Telcom Ltd Signatory and Customer Signatory, and, as between Telcom Ltd and Customer for this Agreement, the relevant Service Order(s) incorporating the terms of this Agreement.

"Business Day" shall mean, in respect of a Service, every day excluding Saturdays, Sundays and any national holidays in the jurisdiction where the Service is provided.

"Call Charges" shall mean the charges for switched telecommunications services payable in accordance with Clause 4.

"Charges" shall mean Call Charges/Usage Charges and/or Installation Charge/Start Up Charge and/or Rental Charges/Monthly Fees and any other charges of the Customer to Telcom Ltd in respect of a Service, as set out or referred to in a Service Order and revised from time to time in accordance with Clause 4.3 and/or Clause 4.4 and/or Clause 4.14.1.

"Confidential Information" shall mean all information (in whatever form) which: (i) relates to the Agreement; (ii) is designated as confidential by either Party; or (iii) relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of either Party (including, but not limited to, Customer Data) and which may reasonably be regarded as the confidential information of the disclosing Party.

"Customer" shall mean, for a Service, jointly and severally, the Customer Signatory and the Customer Affiliate that delivers a signed Service Order to Telcom Ltd pursuant to Clause 2.1.

"Customer Affiliate" shall mean: (i) any entity or person wholly owned, whether directly or indirectly, by the Customer Signatory or the Customer Affiliate; or (ii) any other entity or person as agreed by the Parties from time to time.

"Customer Data" shall include, but not be limited to, data transmissions (including the originating and terminating party, IP addresses, dates, time and duration of voice or data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of the Customer, its employees or other persons, services, and other data provided to or obtained by Telcom Ltd, Telcom Ltd Affiliates and their respective agents in connection with the provision of Services. **"Regulated Customer Data"** is that Customer Data whose use, processing or transfer is regulated by law or regulations, "personal data" where Telcom Ltd, its Telcom Ltd Affiliates or their respective agents come into possession of such Customer Data.

"Customer Equipment" shall mean hardware, software, systems, cabling and facilities provided by the Customer or a third party to which the Customer resells the Service) and used in conjunction with the Service Equipment in order to receive the Service.

"Customer Site" shall mean a site or sites specified in a Service Order, and/or any other third party termination point to which a Service is to be provided.

"Emergency Works" shall mean works, the execution of which, at the time it is proposed to execute them, is required to put an end to, or prevent, the arising of circumstances then existing or imminent that are likely to cause: (i) danger to life or property; (ii) the interruption of any service provided by the Network or the network generated by a third party; (iii) substantial loss to Telcom Ltd or any third party; and such other works as in all the circumstances it is reasonable to execute with those works.

"Force Majeure Event" shall mean any cause beyond a Party's reasonable control affecting the performance of its obligations, including, but not limited to, fire, flood, explosion, accident, war, acts of terrorism, strike, riot, or any other event, whether or not caused by an act of God, changes to laws or regulations, inability to secure materials or services, industrial disputes and acts or omissions of other providers of telecommunications services.

"Installation Charge" or "Start Up Charge" shall mean the one time charge for installation of a Service (including installation of any Service Equipment) payable in accordance with Clause 4.

"Internet" shall mean the international interconnected network of networks using the TCP/IP protocol to extend global communications.

"Internet service" shall mean a service providing access to the Internet together with any related Service Equipment or support services, and as more particularly described in the relevant Service Order.

"IP Network" shall mean the points of presence, routers, hubs, and host computers owned, operated or used by Telcom Ltd or Telcom Ltd Affiliate in connection with the provision of an Internet Service.

"Network" shall mean the Telecommunications Network and the IP Network.

"Parties" shall mean, in respect of a Service, the Customer and the Customer, and "Parties" shall be construed accordingly.

"Ready for Service Notification" shall mean a notification that may be provided in accordance with Clause 3.1 that, with respect to Telcom Ltd obligations hereunder, the Service is ready for use.

"Rental Charge" or "Monthly Fee" shall mean the monthly rental charge for a Service payable in accordance with Clause 4.

"Service" shall mean the specific telecommunications service or Internet Service provided by Telcom Ltd, and as may be further described in the relevant Service Order.

"Service Activation Date" or "Acceptance Date" shall mean, in relation to a Service, the date a Customer accepts or is deemed to accept a Service in accordance with Clause 3.2.

"Service Equipment" shall mean the hardware, software, systems, cabling, and facilities provided by Telcom Ltd at the Customer Site in order to make available the Service to the Customer, or any third party to which the Customer resells the Service). Service Equipment shall not include the Network or any hardware or software which is the subject of a separate supply contract between Telcom Ltd or Telcom Ltd Affiliate and the Customer.

"Service Order" shall mean a request for a specific Service delivered by the Customer to Telcom Ltd and accepted by Telcom Ltd in accordance with Clauses 2.1 and 2.2.

"Service Term", in relation to a Service, shall mean the total period for which the Service is provided pursuant to a Service Order. The "Initial Service Term" shall mean the (initial) service term from the Service Activation Date or Acceptance Date as stated on the Service Order or, if not stated, one year from the Service Activation Date or Acceptance Date.

"Telecommunications Network" shall mean the telecommunication system(s) that are owned, operated or used by Telcom Ltd or a Telcom Ltd Affiliate from time to time.

"Usage Charges" shall mean the usage-based charges for Internet Services payable in accordance with Clause 4.

"Telcom Ltd" shall mean the usage-based charges for Internet Services payable in accordance with Clause 4.

"Telcom Ltd Affiliate" shall mean any person controlled by, controlling, or under common control with Telcom Ltd, including, if different, the Telcom Ltd Signatory.

1.2 Unless the context otherwise requires, in this Agreement, a reference to: 1.2.1 a person includes a reference to a body corporate, association or partnership; 1.2.2 a person includes a reference to that person's legal personal representatives, successors and permitted assigns; 1.2.3 any statute or statutory instrument includes reference to that statute or provision as amended, modified or re-enacted; and 1.2.4 a document is a reference to that document as supplemented or varied from time to time.

2. **SERVICE**

2.1 The Customer may from time to time deliver to Telcom Ltd a Service Order on the terms of this Agreement. A Service Order shall be in such form as is notified to the Customer by Telcom Ltd or Telcom Ltd and/or as Telcom Ltd may in its sole discretion accept.

2.2 A Service Order shall be binding on both Parties only after it is accepted by Telcom Ltd in written form, such acceptance to include the carrying out by Telcom Ltd of its satisfaction of the requirements of the Service Order and the Customer in accordance with Clause 4.11. Each Service Order issued and accepted pursuant to the terms of this Agreement shall create an individual contractual relationship between the Parties to provide and receive the Service for the Service Term. This relationship shall be governed by this Agreement, together with the relevant Service Order and any specific terms contained in such Service Order, to which terms the Parties to such Service Order agree. In addition to these terms, the Services shall be subject to the regulatory legal requirements in the jurisdiction where the Service is to be provided, including but not limited to the regulatory and data protection requirements in the respective countries. In the event of any conflict between the terms of the Service Order and the relevant regulatory legal requirements, the terms of the Service Order shall take precedence.

2.3 Without releasing it from any of its obligations, Telcom Ltd shall be entitled at any time, and without notice, to use Telcom Ltd Affiliates and/or subcontractors to perform some or all of such obligations.

2.4 Subject to the provisions of Clause 4.11, the Customer may resell the Services to third parties providing written consent is agreed with Telcom Ltd.

2.5 The Customer shall not in its dealings with third parties: 2.5.1 except with Telcom Ltd's prior written consent refer to Telcom Ltd in any marketing or service literature; 2.5.2 purport to act on behalf of or represent itself as acting on behalf of Telcom Ltd; 2.5.3 seek to resell the Service to other Telcom Ltd customers; 2.5.4 The Customer shall indemnify Telcom Ltd and shall hold Telcom Ltd harmless against any and all losses, damages, costs and expenses arising from or in connection with any claims or proceedings brought by third parties against Telcom Ltd in respect of, or arising directly or indirectly from, the resale of the Service(s) by the Customer.

2.7 Telcom Ltd reserves the right from time to time to change the configuration of the Network or the Service Equipment, or to change any applicable access code for receipt of a Service, provided always that such change does not materially affect the relevant Service. Telcom Ltd shall use reasonable endeavours to give the Customer a minimum of twenty five (25) Business Days' notice of any such changes to access codes.

3. **SERVICE ACTIVATION**

3.1 Prior to the provision of the Service, Telcom Ltd shall conduct such work as it considers to be appropriate to enable the relevant regulatory work has been done to provide the Service to the Customer and, upon successful completion of such tests, Telcom Ltd shall use reasonable endeavours to deliver a Ready for Service Notification to the Customer.

3.2 The Customer shall be deemed to have accepted the Service: (i) upon the date of delivery of the relevant Ready for Service Notification or, (ii) if earlier, or where no Ready for Service Notification is received by the Customer, upon the date the Customer first uses the Service. Such date for a particular Service may be further described and defined in the relevant Service Order.

4. **CHARGES AND PAYMENT TERMS**

4.1 The Customer shall be liable for the charges in accordance with this Clause 4.

4.2 Subject to the provisions of Clauses 4.3, 4.10 and 4.14.1, the Charges shall not be increased during the Initial Service Term.

4.3 Telcom Ltd shall be entitled to amend (i) Usage Charges and/or Rental Charges/Monthly Fees in accordance with notice and (ii) Call Charges on seven (7) days' notice and, in the case of all Charges except Call Charges, such notice shall only take effect on or at any time after the expiry of the relevant Initial Service Term.

4.4 Call Charges and/or Usage Charges shall accrue from the date on which the Customer commences use of the Service and may be invoiced by Telcom Ltd monthly in arrears.

4.5 Installation Charges and/or Start Up Charges shall accrue on the relevant Service Activation Date or Acceptance Date and may be invoiced by Telcom Ltd on or at any time thereafter.

4.6 Rental Charges and/or Monthly Fees shall accrue from the relevant Service Activation Date or Acceptance Date and may be invoiced by Telcom Ltd monthly in advance. Service provided for part of a month will be charged on a pro-rata basis.

4.7 Any invoice for Charges shall be due on issue of the invoice and shall be paid by the Customer within twenty one (21) days of the date of the invoice. Interest shall accrue on any overdue invoice from the due date until payment (whether before or after judgment) at the annual rate of three (3) percent above the base lending rate from time to time of the Bank of Ireland.

4.8 All Charges on other sums which may from time to time be due, owing or incurred to Telcom Ltd are stated exclusive of value added tax and any similar sales tax, levy or duty which shall be payable by the Customer and invoiced by Telcom Ltd at the then prevailing rate where the Service is provided.

4.9 The Customer agrees to comply with any obligation as to minimum usage and/or minimum payment as may be set out in the relevant Service Order, except to any extent that any non-compliance in this respect is the direct result of Telcom Ltd's negligence or breach of contract. The Customer also agrees to comply with any Initial Service Term commitment. Any breach by the Customer of its obligations under this Clause 4.10 shall, in addition to constituting a material breach of this Agreement, entitle Telcom Ltd to: 4.10.1 in the case of a minimum usage or payment commitment, increase to no more than the then prevailing Telcom Ltd base rate, the Charges for the relevant Service with effect from the commencement of the non-compliance with the relevant relates; or 4.10.2 in the case of early termination of a Service (or part of a Service) any time from acceptance of a Service Order by Telcom Ltd to the expiry of the Initial Service Term, levy an early termination charge upon the Customer equal to the greater of (i) the amount of the annual Rental Charges or Monthly Fees (not including any part relating to the provision of the Service) and (ii) the amount of the Customer for the unexpired portion of the Initial Service Term; and (ii) any termination charges or other costs or expenses incurred by Telcom

Ltd or a Telcom Ltd Affiliate for the cancellation of the local access circuits or related services or equipment provided to Telcom Ltd in connection with the Service.

4.11 Telcom Ltd reserves the right to carry out a credit check against the Customer prior to the acceptance by Telcom Ltd of any Service Order in accordance with Clause 2.2 and subsequent to the carrying out of such credit check may request from the Customer a cash deposit or bank guarantee in a form to be provided by the Customer to Telcom Ltd or a bank acceptable to it or such other form of security as Telcom Ltd may at its sole discretion request, provided that the total amount of any cash deposit or bank guarantee shall not exceed the total Charges which Telcom Ltd might reasonably expect the Customer to incur during any twelve (12) month period.

4.12 If the unpaid Charges incurred by the Customer (including Charges which have accrued but have not yet been invoiced) shall at any time exceed the amount of any cash deposit or bank guarantee provided to Telcom Ltd in accordance with this Clause 4, Telcom Ltd may request an additional amount by way of cash deposit or bank guarantee, acceptable to Telcom Ltd, or such other form of security as Telcom Ltd in its sole discretion may require, provided that the total amount of any cash deposit or bank guarantee shall not exceed the total Charges which Telcom Ltd might reasonably expect the Customer to incur during any twelve (12) month period.

4.13 The Customer acknowledges that any failure by it to comply with any request made by Telcom Ltd under Clauses 4.11, 4.12 or 4.15 shall constitute a material breach of this Agreement which is not capable of remedy. If the Customer fails to make payment in accordance with Clause 4.7 of invoices delivered to it under duty or otherwise by Telcom Ltd, Telcom Ltd shall be entitled in addition to any remedy which it might have under this Agreement or otherwise at law: 4.14.1 where applicable in respect of any Service forthwith to increase the Charges to the prevailing Telcom Ltd standard rate for such Service; 4.14.2 to set off any sums owing to it against any cash deposit or bank guarantee provided to Telcom Ltd in accordance with this Clause 4; 4.14.3 to terminate this Agreement in accordance with Clause 7.7.

4.15 If Telcom Ltd is entitled to suspend a Service under Clause 6.1 then, without prejudice to Telcom Ltd's rights under Clause 6.1, Telcom Ltd may request from the Customer a cash deposit or bank guarantee in an amount not exceeding the total Charges which Telcom Ltd might reasonably expect the Customer to incur during any twelve (12) month period or such other form of security as Telcom Ltd may request at its sole discretion.

5. **SERVICE PERFORMANCE**

5.1 The Customer agrees to perform under this Agreement, Telcom Ltd shall at all times exercise the reasonable skill and care of a competent public telecommunications operator or a provider of Internet related services, as the case may be.

5.2 Telcom Ltd shall use reasonable endeavours to ensure that each Service will conform to any service descriptions and/or service levels as set out, or referred to, in the applicable Service Order and/or any applicable ancillary service level agreement.

5.3 Except as expressly provided in this Agreement, all warranties, representations or agreements, with respect to the provision of a Service or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statute or otherwise, are excluded to the extent permitted by law.

6. **SERVICE SUSPENSION**

6.1 Telcom Ltd may, at its sole discretion and without prejudice to any right which it may have under this Agreement, suspend any Service. It elect to immediately suspend the provision of a Service (or part thereof) if: 6.1.1 Telcom Ltd has reasonable grounds to consider it is entitled to terminate the Service and/or this Agreement pursuant to Clause 7; 6.1.2 Telcom Ltd is obliged to comply with an order, injunction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority; 6.1.3 Telcom Ltd needs to carry out Emergency Works to the Network or the Service; 6.1.4 Telcom Ltd has reasonable grounds to consider that the Service is being used fraudulently or illegally or in violation of Clause 8.5; 6.1.5 Telcom Ltd has reasonable grounds to consider that the Customer will not or is unable to make any payment which is due or is to fall due to Telcom Ltd hereunder; or 6.1.6 Telcom Ltd has reasonable grounds to consider that the Customer has been involved or is about to be involved with criminal activity or other activity, which is or may be detrimental to Telcom Ltd.

6.2 If Telcom Ltd exercises its right to suspend the Service (or part thereof) pursuant to Clauses 6.1.2 or 6.1.3 it shall, wherever reasonably practicable, give notice in writing to the Customer of such suspension, such notice to state the grounds of such suspension and its expected duration. Telcom Ltd shall in such circumstances use all reasonable endeavours to resume the Service as soon as is practicable.

6.3 If the Service (or part thereof) is suspended as a consequence of the breach, fault, act or omission of the Customer or a third party to which the Customer resells the Service, the Customer shall pay to Telcom Ltd all reasonable costs and expenses incurred by the implementation of such suspension and compensation of the relevant regulatory body. Telcom Ltd shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension made pursuant to Clause 6.1.2 and/or 6.1.3 and for any loss, damage or inconvenience suffered by the Customer as a result of any suspension made pursuant to Clause 6.1.3 and for any loss, damage or inconvenience suffered by the negligence of Telcom Ltd.

7. **TERM AND TERMINATION**

7.1 This Agreement shall take effect from the date first stated below, the date the first Service Order is accepted by Telcom Ltd in accordance with Clause 2.2, or the date the Customer first uses a Service, whichever of these is earlier, and shall continue in force unless and until terminated in accordance with this Agreement or otherwise.

7.2 Either Party may terminate a Service: 7.2.1 3 months prior to the time after expiry of the relevant Initial Service Term, provided that the Customer has given notice in writing to the other Party 12 months after expiry of the relevant initial service term, and, in the case of termination by the Customer, such notice to be copied to the local Telcom Ltd Customer Services department; 7.2.2 immediately by notice, if in relation to that Service, the other Party has committed a material breach which is incapable of remedy; 7.2.3 immediately by notice, if in relation to that Service, the other Party has committed a material breach capable of remedy, but which it fails to remedy within ten (10) Business Days of having been notified of such breach; or 7.2.4 immediately by notice, if in relation to that Service, a Force Majeure Event subsists for a continuous period exceeding three (3) months.

7.3 Either Telcom Ltd Signatory or the Customer Signatory may terminate this Agreement immediately upon notice: 7.3.1 in the event of a material breach by the other, which has application to all Services then provided under this Agreement, and which is incapable of remedy, but which the other Party fails to remedy within ten (10) Business Days of having been notified of such breach; or 7.3.2 in the event of a material breach by the other, which has application to all Services then provided under this Agreement, and which is capable of remedy, but which such other fails to remedy within ten (10) Business Days of having been notified of such breach; or 7.3.3 if the other has a receiver, examiner, administrator or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (or any other form of bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other becomes subject to an administration order or enters into any voluntary arrangement or suspension of payments or ceases or ceases to carry on business, or undergoes or is subject to any analogous acts or proceedings under any foreign law; or 7.3.4 in the event of a Force Majeure Event, which has application to all Services then provided under this Agreement, and which subsists for a continuous period exceeding three (3) months.

7.4 Telcom Ltd Signatory (or Telcom Ltd) may terminate this Agreement (or the relevant Service) immediately by notice if a suspension of a Service pursuant to Clause 6.1.2, 6.1.3 or 6.1.6 has continued for a period of at least two (2) consecutive months.

7.5 If Telcom Ltd has reasonable grounds to consider that there has been a violation of Clause 8.5.2, Telcom Ltd may notify the Customer and give it the right to remedy the violation, which shall be its use of: 7.5.1 in the event of an incident involving a violation of public law or regulation or an imminent threat to the IP Network, immediately; or 7.5.2 in all other cases, within forty-eight (48) hours.

7.6 If the Customer fails to remedy the violation, the Customer shall be deemed to have consented to the suspension of the Service if the suspension has been effected in accordance with this Clause 7.6 or if Telcom Ltd reasonably determines that the violation is continuing or is likely to occur again, the Telcom Ltd Signatory (or Telcom Ltd) may terminate this Agreement (or relevant Internet Service) immediately upon notice to the Customer.

7.6 Notwithstanding the provisions of Clauses 7.2 and 7.3, the Telcom Ltd Signatory (or Telcom Ltd) may terminate this Agreement (or the relevant Service) on five (5) Business Days if the Customer fails to make any payment, when due, in accordance with the terms of this Agreement.

7.7 Without prejudice to accrued rights or obligations, upon termination of this Agreement: 7.7.1 all Service Orders and accompanying Services shall terminate immediately; 7.7.2 notwithstanding the provisions of Clause 4, all accrued Charges not yet invoiced shall become due and shall be paid by the Customer immediately on receipt of an invoice; and 7.7.3 each Party shall promptly return to the other Party all copies of the other Party's Confidential Information and, if requested, verify to the other Party that it has done so.

7.8 Termination of this Agreement shall not affect the continuation, to the extent necessary, of Clauses 1, 2.2, 2.6, 2.7, 3.2, 4, 5.3, 6.3, 6.04, 7.9, 8.3, 8.5, 8.6,8.7, 9.11,12.14,15,16,17 and 19.

8. **CUSTOMER OBLIGATIONS**

8.1 The Customer shall grant or shall procure the grant to Telcom Ltd of such rights of access to each Customer Site, including any necessary licences, warranties or consents to enable it to perform its obligations or exercise its rights under this Agreement. The Customer shall advise Telcom Ltd in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at the Customer Site, and Telcom Ltd shall use all reasonable endeavours to ensure that it and ensure that its employees and authorised representatives observe such regulations and requirements as advised whilst at the Customer Site.

8.2 The Customer shall provide Telcom Ltd with such facilities and equipment as Telcom Ltd may reasonably require in order for it to perform its obligations or exercise its rights under this Agreement. The Customer warrants and undertakes that it shall: 8.3.1 use the Service Equipment only for the purpose of receiving the Service and shall not use the Service Equipment for any other purpose, instructions from time to time and/or any software licence that may be provided with the Service Equipment; 8.3.2 not move, modify, relocate, or in any way interfere with the Service Equipment (or any words or labels on the Service Equipment) or the Network; 8.3.3 not cause the Service Equipment to be repaired or serviced except by an authorised representative of Telcom Ltd; 8.3.4 not cause the Service Equipment to be damaged or damaged to each Customer Site against theft and damage; 8.3.5 not create or allow any charges, liens, pledges or other encumbrances to be created over the Service Equipment. Title to the Service Equipment shall at all times belong and remain with Telcom Ltd, a Telcom Ltd Affiliate or their subcontractor; 8.3.6 permit Telcom Ltd to inspect, test, maintain and replace the Service Equipment at all reasonable times; 8.3.7 comply with Telcom Ltd's reasonable instructions in relation to the modification of the Customer Equipment to enable the Customer to receive the Service, at its own expense; and upon termination of a Service, allow Telcom Ltd access to each Customer Site to remove the Service Equipment. The Customer shall not be liable for any loss or damage to the Service Equipment should any construction or alteration to the Customer Site have occurred to facilitate any Service, Telcom Ltd is not obliged to restore the Customer Site to the same physical state as prior to Service delivery. The Customer shall be liable for any loss or damage to the Service Equipment or the Network which is caused by (i) the act or omission of the Customer or the Customer's breach of the terms of this Agreement; or (ii) malfunction or failure of any equipment or facility provided by the Customer or its suppliers, or subcontractors, or suppliers, including the Customer Equipment, nor shall Telcom Ltd be liable for any costs incurred by Customer arising out of any malfunction or failure of any such equipment or facility, including Customer Equipment.

8.3.8 The Customer warrants and undertakes that it shall: 8.4.1 not use the Service, or any part of the Service, for any purpose other than that for which it is licensed and/or other authorities as are required under any relevant legislation, regulation or administrative order, to receive the Services and to run and connect the Customer Equipment to the Network and Service Equipment. Telcom Ltd reserves the right to disconnect any Customer Equipment where the Customer has failed to comply with the provisions of this Clause 8.4 and Telcom Ltd shall in no event be liable in respect of any such failure to comply with this Clause 8.4. The Customer warrants and undertakes that it shall: 8.5.1 the Services, comply with any relevant legislative and regulatory provisions and shall not use the Services for any illegal or immoral purposes; 8.5.2 not use the Services to transmit, disseminate, or disseminate any Internet Service, comply with the then current version of the Telcom Ltd Acceptable Use Policy (the "Policy") for the

country in which the Service is ordered. The Customer shall, prior to commencing its use of the Internet Service, read and understand the Policy. Telcom Ltd reserves the right to change the Policy.

The Customer shall indemnify Telcom Ltd and Telcom Ltd Affiliates in respect of any and all losses, damages, costs or expenses resulting from or arising out of any breach of the warranties set out in this Clause 8.5 and/or any third party claim or allegation arising out of or relating to the use of the Service, and which relates to an act or omission of the Customer which is, or if substantiated would be, a breach of this Clause 8.5.

8.6 Without prejudice to Clauses 2.5.2 and 2.6 and without in any way releasing the Customer from any obligation hereunder, the Customer shall procure that each and every third party to which it resells a Service shall comply with all of the obligations of the Customer under this Clause 8.5 and to ensure that the obligations relate or could apply to such Service and/or its provision.

8.7 The Customer shall indemnify Telcom Ltd in respect of any losses, liabilities, costs and expenses incurred as a result of any failure by the Customer to fulfil its obligations under Clause 8.6.

9. **LIABILITY**

9.1 Subject to Clause 9.5 but otherwise notwithstanding anything else in this Agreement, the Customer shall be liable to the other Party for the loss of Telcom Ltd, "Party" in this Clause 9 refers to the Telcom Ltd Signatory and each respective Telcom Ltd Affiliate providing Services under this Agreement) in contract, tort (including negligence or breach of contract) or in respect of any other claim or cause of action, except in respect of any liability arising pursuant to the Customer's obligations set out in Clauses 4 and 8.5, shall be limited to: 9.1.1 €1,000,000 (one million Euro) per event or series of connected events; 9.1.2 notwithstanding Clause 9.1.1, a maximum of €2,000,000 (two million Euro) in aggregate in any twelve (12) month period. For the avoidance of doubt, for the purposes of this Clause 9.1, the limits on liability expressed above are cumulative and apply across all Services.

9.2 Subject to Clause 9.5 but otherwise notwithstanding anything else in this Agreement, neither Party shall in any event be liable to the other for indirect or consequential loss or other loss or damage, including loss of revenues, loss of anticipated savings or lost profits, whether or not reasonably foreseeable at the time when the Agreement was entered into.

9.3 The Customer acknowledges that Telcom Ltd is unable to exercise editorial or other control over any content placed on or accessible through the Customer's use of the Services and Telcom Ltd shall have no liability as to the quality, content or accuracy of information received through or as a result of the use of the Services.

9.4 In the event that the Customer does not meet any liability to Telcom Ltd arising out of or in connection with this Agreement and/or any of the Service Orders (including but not limited to the payment of the Charges), the Customer Signatory acknowledges and agrees that it is jointly and severally liable to Telcom Ltd in respect of any such liability and Telcom Ltd may demand that the Customer Signatory satisfies such liability in whole or in part.

9.5 Nothing in this Agreement shall serve to limit either Party's liability in respect of death, personal injury caused by or arising from its negligence.

9.6 Telcom Limited and Telcom Ltd accept no liability in relation to fraudulent activity carried out on a customer's site. All charges associated with fraudulent "toll fraud on call charges" or any fraudulent activity must be paid in full by the customer.

10. **FORCE MAJEURE**

Notwithstanding anything herein to the contrary, neither Party shall be liable to the other for any suspension or failure in performance of any part of this Agreement (other than for payment obligations set out in Clause 4) to the extent such delay or failure is attributable to a Force Majeure Event. Subject to Clauses 7.2 and 7.3, any such delay or failure shall suspend this Agreement (or the relevant Service) until the termination of the Agreement or until Service Term(s) shall be extended by the length of the suspension.

11. **INTELLECTUAL PROPERTY**

11.1 The Customer acknowledges that: 11.1.1 that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, which are used in connection with the provision of the Services and the Service Equipment, shall remain the sole property of Telcom Ltd or Telcom Ltd Affiliates; and 11.1.2 without limitation to the foregoing, that the Customer shall not be entitled to use the names of either Party, or any of their respective proprietary identifying marks or symbols of Telcom Ltd or Telcom Ltd Affiliates without Telcom Ltd's prior written consent.

11.2 The Customer warrants that any domain name registered or administered on its behalf or on behalf of any third party, or any other intellectual property rights of any third party and that it shall comply with the rules and procedures of the applicable domain name authorities, registries and registrars. The Customer shall indemnify Telcom Ltd and Telcom Ltd Affiliates (or either of them) for any loss, damage, costs and expenses arising from or in connection with breach of this Clause 11.2. The Customer irrevocably waives any claims against Telcom Ltd or Telcom Ltd Affiliates which may arise from the acts or omissions of unauthorised persons in connection with the registration of domain names.

11.3 Any Internet Protocol ("IP") addresses assigned to the Customer by Telcom Ltd in connection with an Internet Service shall be used solely in connection with the Internet Service. If such Internet Service is discontinued for any reason (including termination of the Agreement or the Internet Service), the Customer's right to use the IP addresses shall immediately cease and the IP addresses shall be returned immediately to Telcom Ltd. Any breach of this Clause 11.3 is a material breach of the Agreement.

11.4 If the Customer does not move the domain name(s) registered by Telcom Ltd to another Internet provider within one month after termination of the Agreement and/or the Internet Service, Telcom Ltd reserves the right to terminate the domain name(s) registered by Telcom Ltd by the Customer with the applicable domain name authorities, registries and registrars.

12. **CONFIDENTIALITY**

12.1 Subject to Clause 12.2, the Telcom Ltd Signatory, the Customer Signatory, and each Party hereunder, shall: 12.1.1 only use Confidential Information for the purposes of this Agreement; 12.1.2 only disclose Confidential Information to a third party with the prior written consent of the other Party (except that Telcom Ltd or the Telcom Ltd Signatory (if different) may disclose Confidential Information to Telcom Ltd Affiliates or its employees, agents or contractors, including professional advisors or auditors, and Customer Signatory may disclose Confidential Information to Customer Affiliates for the purposes of this Agreement); and 12.1.3 ensure that any third party to whom Confidential Information is disclosed exercises a confidentiality undertaking substantially similar to the terms of this Clause 12.

12.2 The provisions of Clause 12.1 shall not apply to any Confidential Information which: (i) is in or comes into the public domain other than by breach of this Clause 12; or (ii) is or has been independently generated by the recipient Party; or (iii) is properly disclosed pursuant to a separate written agreement or statutory requirement, or the order of a court of competent jurisdiction or the requirement of a competent regulatory body.

13. **ASSIGNMENT**

Neither Party shall assign, charge, transfer or otherwise dispose of this Agreement, any Service Order, or any rights or obligations therein in whole or in part, without the written consent of the other Party (which consent shall not be unreasonably withheld or unduly delayed), except that Telcom Ltd may assign any and all of its rights and obligations in respect of this Agreement to Telcom Ltd Affiliates or to any sale or transfer of substantially all the assets or business of Telcom Ltd or a Telcom Ltd Affiliate; or (iii) to a third party pursuant to any financing, merger, or reorganisation of Telcom Ltd or a Telcom Ltd Affiliate.

14. **GENERAL**

14.1 **Severability.** If any provision of this Agreement, including any limitation, is held by a court or any governmental agency or authority to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid, and enforceable.

14.2 **No Waiver.** Failure or delay by either Party to exercise or enforce any right or benefit conferred by this Agreement, including Telcom Ltd's right to deliver Services in arrears, shall not constitute a consent to be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

14.3 **Relationship.** Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall be construed as creating, forming or confirming the relationship between the Parties a partnership, agency, association, joint venture or other co-operative entity.

14.4 **Third Party Beneficiaries.** Except as otherwise contemplated by this Agreement, nothing herein will create or confer any rights or other benefits in favour of any person other than the Parties.

14.5 **Variation.** This Agreement (or any part thereof) shall be modified only by the written agreement of the Parties.

15. **NOTICES**

Except as otherwise expressly provided for herein, any notice required or authorised to be given under this Agreement shall be delivered by prepaid registered post or by facsimile transmission (immediately confirmed by post) to the address stated above and shall be deemed to have been served forty-eight (48) hours after such posting or such transmission.

16. **ENTIRE AGREEMENT**

This Agreement sets out the entire and exclusive agreement between the Telcom Ltd Signatory and the Customer Signatory, and Telcom Ltd and Customer, as the case may be, superseding all prior or contemporaneous representations, warranties or undertakings concerning the subject matter addressed herein. No oral explanation or oral information provided shall alter the interpretation of this Agreement. The Customer confirms that, in agreeing to enter into this Agreement and/or a service Order, it has not relied on any representation except as set out in this Agreement and the Customer agrees that it shall have no remedy in respect of any misrepresentation which has not been a term of this Agreement, excluding any fraudulent misrepresentation.

17. **DISPUTE RESOLUTION**

17.1 In the event of a dispute concerning this Agreement, each Party shall in the first instance promptly bring the dispute to the attention of a Director or other senior person in a management position in the other Party.

17.2 If the Customer wishes to dispute any invoice or part of an invoice falling due in accordance with Clause 4.7, the Customer shall, 10 days after invoice date, deliver a notice in writing to Telcom Ltd setting out the nature of the dispute, including: (i) date and number of disputed invoice; (ii) amount in dispute; (iii) reason for dispute; and (iv) supporting documentation, as appropriate. Any undisputed part of a disputed invoice shall be paid by the Customer in accordance with Clause 4.7.

17.3 The Customer agrees that it shall use all reasonable endeavours to resolve such payment disputes as soon as is reasonably practicable.

18. **CUSTOMER DATA AND PRIVACY**

18.1 The Customer acknowledges that Telcom Ltd, its Telcom Ltd Affiliates and their respective agents will, by virtue of the provision of Services, come into possession of Customer Data.

18.2 Telcom Ltd shall implement appropriate technical and organisational measures to protect Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against other Unlawful forms of processing. The Customer acknowledges that it has right to access Regulated Customer Data upon written notice and have any agreed errors in such Regulated Customer Data rectified.

18.3 The Customer acknowledges and agrees that Telcom Ltd, its Telcom Ltd Affiliates and their respective agents may use, process and/or transfer Customer Data (including intra-group transfers and transfers to entities in countries that do not provide statutory protections for personal information): 18.3.1 in connection with the provision of Services; 18.3.2 to incorporate Customer Data into databases controlled by Telcom Ltd and its Telcom Ltd Affiliates for the purposes of marketing, sales, administration, provisioning, billing and reconciliation, verification of Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer data analysis and reporting, market and customer use analysis; and 18.3.3 to communicate to the Customer regarding products and services of Telcom Ltd and its Telcom Ltd Affiliates by voice, letter, fax or email.

The Customer may withdraw consent for such use, processing or transfer of Customer Data as set out above, unless it is required to (i) provision, manage accounts or fulfil its obligations under the Service Order; or (ii) comply with any statutory obligation, regulatory requirement or court or other public authority order, by sending written notice to Telcom Ltd in accordance with the prescribed form, available from Telcom Ltd on request. The Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of Customer Data as described in this Clause 18.

19. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed and construed in accordance with Irish law, and the Telcom Ltd Signatory and the Customer Signatory (and the relevant Parties hereto) irrevocably agree to the exclusive jurisdiction of the Irish courts.