

TELCOM 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 Signatory and Customer Signatory, and, as between Telcom and Customer for a Service, 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 or fees payable by the Customer to Telcom 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 4.10 and/or Clause 4.14.1.

"Confidential Information" shall mean all information (in whatever format) 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, in the case of the Customer, 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 pursuant to Clause 2.1.

"Customer Affiliate" shall mean: (i) any entity or person wholly owned, whether directly or indirectly, by the Customer Signatory as at the date of this Agreement; 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 destination numbers and IP addresses, date, time and duration of voice or data transmissions, and other data needed for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of the Customer, its employees or authorised users of the Services, and other data provided to or obtained by Telcom, Telcom 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 regulation as "personal data" where Telcom, its Telcom 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 any 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 third party termination point, at 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 persons 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 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, embargo, governmental requirement, civil or military authority, Act of God, changes to laws or regulations, industry or services, 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 exchange data.

"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, network hubs, and host computers owned, operated or used by Telcom or Telcom Affiliate in connection with the provision of an Internet Service.

"Network" shall mean the Telecommunications Network and the IP Network. **"Party"** shall mean, in respect of a Service, each of Telcom and the Customer. **"Parties"** shall mean 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 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 to the Customer, 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 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 or Telcom Affiliate and the Customer.

"Service Order" shall mean a request for a specific Service delivered by the Customer to Telcom and accepted by Telcom 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 or a Telcom Affiliate from time to time.

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

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

"Telcom Affiliate" shall mean any entity or person controlled by, controlling, or under common control with Telcom, including, if different, the Telcom 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 provision includes references 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 a Service Order on the terms of this Agreement. A Service Order shall be in such form as is notified to the Customer from time to time by Telcom and/or as Telcom may in its sole discretion accept.

2.2 A Service Order shall be binding on both Parties only after it is accepted by Telcom in written form, such acceptance to include the carrying out of Telcom's satisfaction of appropriate credit checks against 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 Contract Term. That contractual relationship shall be governed by this Agreement, together with the relevant Service Order and any specific terms contained in such Service Orders, to which terms the Parties to such Service Order agree. In addition to these terms, the Services shall be subject to all mandatory 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 terms of this Agreement, the terms of the Service Order shall take precedence.

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

2.4 Subject to the provisions of Clauses 2.5 and 2.6, the Customer may resell the Services to third parties providing written consent is agreed with Telcom.

2.5 The Customer shall not in its dealings with third parties:

- 2.5.1 accept in Telcom's prior written consent refer to Telcom in any marketing or service literature;
- 2.5.2 purport to act on behalf of or represent itself as acting on behalf of Telcom;
- 2.5.3 seek to resell the Service to other Telcom customers.

2.6 The Customer shall indemnify Telcom and shall hold Telcom 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 in respect of, or arising directly or indirectly from, the resale of the Service(s) by the Customer.

2.7 Telcom 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 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 shall conduct such tests as it considers to be appropriate to determine that all necessary work has been done to provide the Service to the Customer and, upon successful completion of such tests, Telcom 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 either (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 pay the Charges in accordance with this Clause 4.

4.2 Subject to the provisions of Clauses 4.3, 4.10 and 4.14.1:

4.3 Telcom shall be entitled to amend (i) Usage Charges and/or Rental Charges/Monthly Fees on thirty (30) Days' notice and (ii) Call Charges on seven (7) days' notice on 1 April each year.

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 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 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 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.

4.8 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.

4.9 All Charges or other sums which may from time to time be due, owing or incurred to Telcom 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 at the then prevailing rate where the Service is provided.

4.10 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's negligence or breach of this Agreement. The Customer also agrees to comply with any Initial Service Term commitment by the Customer of its obligations under this Clause 4.10 shall, in addition to constituting a material breach of this Agreement, entitle Telcom to:

- 4.10.1 in the case of a minimum usage or payment commitment, increase to no more than the then prevailing Telcom base rate, the Charges for the relevant Service with effect from the commencement of the period to which the breach 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 to the expiry of the Initial Service Term, levy an early termination charge upon the Customer (which the Customer hereby acknowledges to be reasonable and a genuine pre-estimate of Telcom's loss) equal to: (i) 50% (fifty percent) of the annual Rental Charges or Monthly Fees (not including any part relating to payment for local access circuits) payable by 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 Affiliate for the cancellation of the local access circuits or related services or equipment provided to Telcom in connection with the Service.

4.11 Telcom reserves the right to carry out a credit check against the Customer prior to the acceptance by Telcom 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 approved by Telcom and issued by a bank acceptable to it or such other form of security as Telcom 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 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 initial deposit or bank guarantee provided by the Customer to Telcom in accordance with this Clause 4, Telcom may request an additional amount by way of cash deposit or bank guarantee, acceptable to Telcom, or such other form of security as Telcom at its sole discretion may request, provided that the total amount of any cash deposit or bank guarantee shall not exceed the total Charges which Telcom 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 under Clauses 4.11, 4.12 or 4.15 shall constitute a material breach of this Agreement which is not capable of remedy.

4.14 If the Customer fails to make payment in accordance with Clause 4.7 of invoices delivered to it under either Clause 4.4, 4.5 or 4.6, Telcom 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 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 in accordance with this Clause 4;
- 4.14.3 to terminate this Agreement in accordance with Clause 7.7;

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

5. **SERVICE PERFORMANCE**

5.1 In performing its obligations under this Agreement, Telcom shall at all times exercise the reasonable skills of a competent public telecommunications operator or a provider of Internet related services, as the case may be.

5.2 Telcom 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 set out in this Agreement, all warranties, representations or agreements made by Telcom in connection with the Service, 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 may, at its sole discretion and without prejudice to any right which it might have to terminate this Agreement and/or this Agreement, elect to immediately suspend the provision of a Service (or part thereof) if:

- 6.1.1 Telcom has reasonable grounds to consider it is entitled to terminate the Service and/or this Agreement pursuant to Clause 7;
- 6.1.2 Telcom is obliged to comply with an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority;
- 6.1.3 Telcom needs to carry out Emergency Works to the Network or Service Equipment;
- 6.1.4 Telcom 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 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 hereunder; or
- 6.1.6 Telcom has reasonable grounds to consider that the Customer has been involved or connected with criminal activity or other activity, which is or may be detrimental to Telcom.

6.2 If Telcom 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 prior notice of such suspension to the Customer, such notice to state the grounds of such suspension and its expected duration. Telcom 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 all reasonable costs and expenses incurred by the implementation of such suspension and/or reimbursement of the cost of the Service.

6.4 Telcom 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, except to the extent that such suspension is made pursuant to Clause 6.1.3 and for reasons which are solely and directly attributable to the negligence of Telcom.

7. **TERM AND TERMINATION**

7.1 This Agreement shall take effect from the date first stated below, the date the Service Order is accepted by Telcom 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 Clause 7.

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, otherwise agreement will automatically be renewed for 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 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;
- 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 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;
- 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;
- 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 (other than for the purpose of a 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 with its creditors or ceases or threatens to cease to carry on business, or undergoes or is subject to any analogous acts or proceedings under any foreign law;
- 7.3.4 in the event of a Force Majeure Event, which has application to all Services then provided hereunder, and which subsists for a continuous period exceeding three (3) months.

7.4 Telcom Signatory (or Telcom) may terminate this Agreement (or the relevant Service) immediately by notice if a suspension of a Service pursuant to Clauses 6.1 A, 6.1.5 or 6.1.6 has continued for a period of at least two (2) consecutive months.

7.5 If Telcom has reasonable grounds to consider that there has been a violation of Clause 8.5.2, Telcom may notify the Customer and require it to remedy the violation:

- 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.

If the Customer fails to notify Telcom that such a remedy has been effected in accordance with this Clause 7.6 or if Telcom reasonably determines that the violation is continuing or is likely to occur again, the Telcom Signatory (or Telcom) 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 Signatory (or Telcom) may terminate this Agreement (or the relevant Service) on five (5) Business Days' notice 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 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;
- 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 of such rights of access to each Customer Site, including any necessary licences, waivers or consents to enable it to perform its obligations or exercise its rights under this Agreement. The Customer shall advise Telcom in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at the Customer Site, and Telcom shall use all reasonable endeavours to observe 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 with such facilities and information as Telcom may reasonably require, to enable it to perform its obligations or exercise its rights under this Agreement.

8.3 The Customer warrants and undertakes that it shall:

- 8.3.1 use the Service Equipment only for the purpose of receiving the Service and in accordance with Telcom's reasonable 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;
- 8.3.4 insure and keep insured all Service Equipment installed at 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, a Telcom Affiliate or their subcontractor;
- 8.3.6 permit Telcom to inspect, test, maintain and replace the Service Equipment at all reasonable times;
- 8.3.7 comply with Telcom'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
- 8.3.8 upon termination of a Service, allow Telcom access to each Customer Site to remove the Service Equipment. Should any construction or alteration to the Customer Site have occurred to facilitate any Service, Telcom 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 and all damage to 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 agents, employees, or suppliers, including but not limited to the Customer Equipment, nor shall Telcom be liable for any costs incurred by Customer arising out of any malfunction or failure of any such equipment or facility, including Customer Equipment.

8.4 The Customer warrants that it holds and shall continue to hold such licences and/or other authorisations 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 reserves the right to disconnect the Customer Equipment where the Customer has failed to comply with the provisions of this Clause 8.4 and Telcom shall in no event be liable in respect of the Customer's failure to comply with this Clause 8.4.

8.5 The Customer warrants and undertakes that it shall in its use of the Service:

- 8.5.1 the Services, comply with any relevant legislative and regulatory provisions and shall not use the Services for any illegal or immoral purpose; and
- 8.5.2 any Internet Service, comply with the then current version of the Telcom 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 reserves the right to change the Policy from time to time.

The Customer shall indemnify Telcom and Telcom 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 any 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 under the Agreement, 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 to the extent that the obligations relate or could apply to such Service and/or its provision.

8.7 The Customer shall indemnify Telcom 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, each Party's total liability to the other (and, in the case of Telcom, "Party" in this Clause 9 refers to the Telcom Signatory and each respective Telcom Affiliate providing Services under this Agreement) in contract, tort (including negligence or breach of statutory duty) or otherwise arising in connection with the Service, 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; and 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 losses or otherwise for harm to business, 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 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 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 arising out of or in connection with this Agreement and/or any of the Services 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 in respect of any such liability and Telcom 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 or personal injury caused by or arising from its negligence.

9.6 In the event of a claim for damages or compensation for fraudulent activity carried out on a customer's site. All charges associated with fraudulent "hot fraud on call charges" or any fraudulent activity shall be made in full by the customer.

10. **FORCE MAJEURE**

Notwithstanding anything herein to the contrary, neither Party shall be liable to the other for any delay 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 until the Force Majeure Event ceases and the affected Initial Service Term(s) shall be extended by the length of the suspension.

11. **INTELLECTUAL PROPERTY**

11.1 The Customer acknowledges:

- 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 Service and/or Service Equipment, shall remain the sole property of Telcom or Telcom Affiliates; and
- 11.1.2 without limitation to the foregoing, that the Customer shall not be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of Telcom or Telcom Affiliates without Telcom's prior written consent.

11.2 The Customer warrants that any domain name registered or administered on its behalf will not contravene the trademark or 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 and Telcom Affiliates in respect of any and all losses, damages, costs and expenses arising from or in connection with breach of this Clause 11.2. The Customer irrevocably waives any claims against Telcom or Telcom Affiliates which may arise from the acts or omissions of domain name registries, registrars or other authorities.

11.3 Any Intellectual Property rights assigned to the Customer by Telcom 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. Any breach of this Clause 11.3 is a material breach of the Agreement.

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

12. **CONFIDENTIALITY**

12.1 Subject to Clause 12.2, the Telcom Signatory, the Customer Signatory, and each Party shall not disclose Confidential Information to any third party, except:

- 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 or the Telcom Signatory (if different) may disclose Confidential Information to Telcom Affiliates or to 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 executes 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 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 consent or a statutory obligation, the order of a court of competent jurisdiction or the requirement of a competent regulatory body.

13. **ASSIGNMENT**

Neither Party may 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. Such consent shall not be unreasonably withheld or unduly delayed, except that Telcom may assign any and all of its rights and obligations hereunder: (i) to a Telcom Affiliate; (ii) to a third party pursuant to any sale or transfer of substantially all the assets or business of Telcom or a Telcom Affiliate; or (iii) to a third party pursuant to any financing, merger, or reorganisation of Telcom or a Telcom 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's right to deliver invoices in accordance with Clause 4, shall not 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 constitute or be deemed to constitute 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 Signatory and the Customer Signatory, and Telcom and Customer, as the case may be, superseding all prior or contemporaneous representations, agreements or understandings concerning the subject matter addressed herein. No oral explanation or oral agreement 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 herein and the Customer agrees that it shall have no remedy in respect of any misrepresentation which has not become 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 similar person in a management position.

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 setting out the nature of its dispute, including: (i) the 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 Parties 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, its Telcom Affiliates and their respective agents will, by virtue of the provision of Services, come into possession of Customer Data.

18.2 Telcom 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 rights 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, its Telcom 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 or Telcom Affiliates for the purpose of administration, provisioning, billing and reconciliation, verification of Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis, and;
- 18.3.3 to communicate to the Customer regarding products and services of Telcom and its Telcom 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, account and bill for the Services; (ii) carry out fraud detection; or (iii) comply with any regulatory obligation, regulatory requirement or court or other public authority order, by sending written notice to Telcom in accordance with the prescribed form, available from Telcom on request.

18.4 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 Signatory and the Customer Signatory (and the relevant Parties hereto) irrevocably agree to the exclusive jurisdiction of the Irish courts.