

# 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 billing, settlement, 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, 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 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.

## 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.

## 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, the Charges shall not be increased during the Initial Service Term.
- 4.3 Telcom shall be entitled to amend (i) Usage Charges and/or Rental Charges/Monthly Fees on thirty (30) Business Days' 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 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.

## 5. SERVICE PERFORMANCE

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

## 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, 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.

## 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.

## 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 the Customer Site for the purpose of inspecting, testing, maintaining, repairing or alteration to the Customer Site to enable it to facilitate any Service. Telcom is not obliged to restore the Customer Site to the same physical state as prior to Service delivery.

## 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 this Agreement, 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
  - 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.

## 10. FORCE MAJEURE

- 10.1 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.

## 12. CONFIDENTIALITY

- 12.1 The Customer acknowledges:
- 12.1.1 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
  - 12.1.2 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.

## 13. ASSIGNMENT

- 13.1 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. Any 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 third party pursuant to any sale or transfer of substantially all the assets or business of Telcom or a Telcom Affiliate; or (ii) 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 or any later course of dealing.
- 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

- 15.1 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

- 16.1 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 statement 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.

## 19. GOVERNING LAW AND JURISDICTION

- 19.1 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.

## 20. ACCEPTANCE OF TERMS AND CONDITIONS

- 20.1 The Customer acknowledges that the terms and conditions of this Agreement are set out in this Agreement and in the Service Order(s) and that the Customer agrees to be bound by the terms and conditions of this Agreement.

## 21. FORCE MAJEURE

- 21.1 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.

## 22. INTELLECTUAL PROPERTY

- 22.1 The Customer acknowledges:
- 22.1.1 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
  - 22.1.2 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.

## 23. CONFIDENTIALITY

- 23.1 The Customer acknowledges:
- 23.1.1 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
  - 23.1.2 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.

## 24. ASSIGNMENT

- 24.1 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. Any 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 third party pursuant to any sale or transfer of substantially all the assets or business of Telcom or a Telcom Affiliate; or (ii) to a third party pursuant to any financing, merger, or reorganisation of Telcom or a Telcom Affiliate.

## 25. GENERAL

- 25.1 **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.
- 25.2 **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 or any later course of dealing.
- 25.3 **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.
- 25.4 **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.
- 25.5 **Variation.** This Agreement (or any part thereof) shall be modified only by the written agreement of the Parties.

## 26. NOTICES

- 26.1 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.

## 27. ENTIRE AGREEMENT

- 27.1 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 statement 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.

## 28. DISPUTE RESOLUTION

- 28.1 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.
- 28.2 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.
- 28.3 The Parties shall use all reasonable endeavours to resolve such payment disputes as soon as is reasonably practicable.

## 29. CUSTOMER DATA AND PRIVACY

- 29.1 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.
- 29.2 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.
- 29.3 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):
- 29.3.1 in connection with the provision of Services;
  - 29.3.2 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;
  - 29.3.3 to communicate to the Customer regarding products and services of Telcom and its Telcom Affiliates by voice, letter, fax or email.

## 30. GOVERNING LAW AND JURISDICTION

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## 31. ACCEPTANCE OF TERMS AND CONDITIONS

- 31.1 The Customer acknowledges that the terms and conditions of this Agreement are set out in this Agreement and in the Service Order(s) and that the Customer agrees to be bound by the terms and conditions of this Agreement.

## 32. FORCE MAJEURE

- 32.1 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.

## 33. INTELLECTUAL PROPERTY

- 33.1 The Customer acknowledges:
- 33.1.1 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
  - 33.1.2 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.

## 34. CONFIDENTIALITY

- 34.1 The Customer acknowledges:
- 34.1.1 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
  - 34.1.2 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.

## 35. ASSIGNMENT

- 35.1 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. Any 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 third party pursuant to any sale or transfer of substantially all the assets or business of Telcom or a Telcom Affiliate; or (ii) to a third party pursuant to any financing, merger, or reorganisation of Telcom or a Telcom Affiliate.

## 36. GENERAL

- 36.1 **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.
- 36.2 **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 or any later course of dealing.
- 36.3 **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.
- 36.4 **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.
- 36.5 **Variation.** This Agreement (or any part thereof) shall be modified only by the written agreement of the Parties.

## 37. NOTICES

- 37.1 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.

## 38. ENTIRE AGREEMENT

- 38.1 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 statement 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.

## 39. DISPUTE RESOLUTION

- 39.1 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.
- 39.2 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.
- 39.3 The Parties shall use all reasonable endeavours to resolve such payment disputes as soon as is reasonably practicable.

## 40. CUSTOMER DATA AND PRIVACY

- 40.1 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.
- 40.2 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.
- 40.3 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):
- 40.3.1 in connection with the provision of Services;
  - 40.3.2 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;
  - 40.3.3 to communicate to the Customer regarding products and services of Telcom and its Telcom Affiliates by voice, letter, fax or email.

## 41. GOVERNING LAW AND JURISDICTION

- 41.1 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.

## 42. ACCEPTANCE OF TERMS AND CONDITIONS

- 42.1 The Customer acknowledges that the terms and conditions of this Agreement are set out in this Agreement and in the Service Order(s) and that the Customer agrees to be bound by the terms and conditions of this Agreement.

## 43. FORCE MAJEURE

- 43.1 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.

## 44. INTELLECTUAL PROPERTY

- 44.1 The Customer acknowledges:
- 44.1.1 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
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