



## **TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES – VIRGIN MEDIA IRELAND LIMITED**

### **1 DEFINITIONS**

1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

“Acceptance Tests”	means the standard tests to be carried out by VM as described in VM’s Service Literature and as modified or amended from time to time;
“Access Codes”	means any access code, number, user ID or password issued by VM to the Customer from time to time in a dialling plan or otherwise to enable the Customer to use Services;
“Act”	means the Postal and Telecommunications Services Act 1983 (as amended or superseded);
“Agreed Ready For Service Date”	means the date agreed between VM and the Customer for commencement of Services to a Site as confirmed by VM in the Order Form;
“Agreement”	means the contract between VM and the Customer which includes and is subject to the Order Form, these terms and conditions and VM’s Service Literature as referred to herein;
“Associated Company”	means the ultimate holding company or any subsidiary thereof (“holding company” and “subsidiary” having the meanings given in Section 155 of the Companies Act 1963) of either party as appropriate other than that party;
“Available” or “Availability”	means Services are available for use in accordance with the manner defined in VM’s Service Literature and “Availability” and “Non-Availability” shall be construed accordingly;
“Billing Period”	means such period or periods of time as may be specified in the Order Form and varied from time to time by VM for the billing of Rental and other charges hereunder to the Customer or, in default of such period being so specified, such period of time as may apply to the billing of relevant charges hereunder as may be set out from time to time, in VM’s Service Literature;
“Cancellation Charges”	means the charge(s) which shall be payable by the Customer to VM on termination of this Agreement or part thereof as set out herein and in VM’s Service Literature;
“Customer Provided Apparatus”	means any apparatus at the Sites (not being Services Equipment) provided and used by the Customer in order to use Services;
“Installation Charges”	means the charges payable for installation of Services Equipment and for the commissioning and configuration of Services, as specified in the Order Form;
“Internet”	means the global data network comprising inter connected networks using TCP/IP (“Transmission Control Protocol/Internet Protocol”);
“Internet Network”	means the network of telecommunication systems, gateways, lines and equipment providing access to the Internet which has



	been developed and is used by VM and/or its Associated Companies for the purpose of providing Internet services;
“Minimum Period”	means the period for provision of specified Services to a Site commencing on the Ready For Service Date and ending not less than twelve (12) months thereafter unless otherwise specified in the Order Form;
“Name”	means any name used by the Customer in connection with the Services including, without limitation, any domain name or mailbox name;
“Order Form”	means the order form completed by VM and the Customer;
“Provider Aggregatable” address	means internet protocol addresses assigned by regional internet registries directly to an internet service provider which can be aggregated into a single route advertisement;
“Ready For Service”	means that Services are ready for use at a Site, in accordance with this Agreement;
“Ready For Service Date”	means the date on which VM first notifies the Customer that Services or part thereof are Ready For Service or, if earlier, the date on which the Customer first makes use of Services or part thereof;
“Reconfiguration Charges”	means the reconfiguration charge(s) payable by the Customer to VM following any partial reduction of or other change to Services, as described in clause 4.10 and as set out from time to time in VM’s Service Literature or as advised by VM;
“Rental”	means the rental payable by the Customer to VM for the provision of Services and the Services Equipment, as specified in the Order Form or as increased or decreased by VM in accordance with clause 6;
“Services”	means the provision of a capability for the conveyance of voice, video, data and/or information by means of the VM Network and the provision of access to the Internet Network and the Internet and the supply of Services Equipment as specified in the Order Form and as more particularly described in VM’s Service Literature and as modified or substituted from time to time and, where the context requires, part thereof;
“Service Credits”	means reductions in certain charges in respect of VM failing to meet specified service levels calculated in the manner set out in VM’s Service Literature;
“Services Equipment”	means any apparatus, equipment and site documentation provided by VM at a Site as an essential part of providing Services under the terms of this Agreement;
“Service Levels”	means the level of service to be provided by VM to the Customer, as set out in VM’s Service Literature;
“Site”	means the premises or other locations from, to, or in respect of, which Services are to be provided to the Customer or a User as specified in the Order Form;
“Telecommunications Operator”	means any person to whom a licence is granted under Section 111 of the Act;



“Usage Charges”	means the charges payable by the Customer to VM for use of the Services and the Services Equipment which vary dependent on the volume of traffic and/or duration of connection time or otherwise, as set out from time to time in VM's Service Literature;
“User”	means any party authorised by VM and the Customer to use the Services;
“VM”	means Virgin Media Ireland Limited with its registered office at Building P2, Eastpoint Business Park, Clontarf, Dublin 3;
“VM Licences”	means the licences issued by the Communications Regulation under the Act, which apply to the VM Network and which authorise the provision of Services;
“VM Network”	means the telecommunication systems (including Services Equipment) run by VM or any Associated Company (as principal or agent) from time to time under the terms of the VM Licences for the purpose of providing Services;
“VM's Service Literature”	means any information, brochure, customer or user guide or instructions as current from time to time published by or on behalf of VM by way of description of or otherwise in connection with provision of Services;
“Working Day”	means Monday to Friday 9 a.m. to 6 p.m. excluding Bank and Public holidays.

- 1.2 The expressions “the Customer” and “VM” shall include their respective successors and permitted assigns and their respective employees and agents.
- 1.3 Any reference to any Act of the Oireachtas shall be deemed to include any amendment, replacement or re-enactment thereof from time to time in force and to include any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder and any condition attaching thereto.
- 1.4 Any reference in this Agreement to sections or clauses shall be to sections of the Order Form (unless otherwise specified) and to clauses of these terms and conditions.
- 1.5 Any undertaking by the Customer to do or not to do any act or thing shall be deemed to include an undertaking to procure or not to permit or suffer the doing of that act or thing.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 The headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.
- 1.8 In the event of any conflict between the provisions of these terms and conditions and those in VM's Service Literature then the provisions of these terms and conditions shall prevail.

## 2 THE SERVICES

In accordance with the provisions of this Agreement VM shall provide Services to the Customer at the Sites for the duration of this Agreement.



### 3 DURATION

- 3.1 This Agreement shall come into force on and with effect from the date of signing this Agreement by VM and shall, subject to the terms hereof, continue in force unless terminated by either party giving to the other party not less than three (3) months' prior written notice to expire at the end of the Minimum Period or at any time thereafter.
- 3.2 Notwithstanding the provisions of clause 3.1, the Customer shall have the right to terminate this Agreement prior to the end of the Minimum Period on serving not less than three (3) months' prior written notice on VM, subject to the payment by the Customer of the applicable Cancellation Charges.
- 3.3 VM reserves the right to amend and/or revise its terms and conditions for provision of Services at any time and shall provide the Customer with reasonable notice prior to amendment. If the Customer does not accept the revised terms and conditions the Customer shall notify VM without delay prior to the revised terms and conditions effective date a notified by VM. If the Customer does not contact VM and continues to use the Services after such date, then the Customer shall be deemed to have accepted such revised terms and conditions with effect from such date. Such revised terms and conditions shall have effect as if the expiry of the minimum period under such revised terms and conditions was the same as the expiry of the Minimum Period.

### 4 OBLIGATIONS OF THE PARTIES

#### 4.1 IMPLEMENTATION PLAN

- 4.1.1 VM shall use all reasonable endeavours to ensure that Services are ready for use by the Customer on the Agreed Ready For Service Date.
- 4.1.2 VM and the Customer agree that no Agreed Ready For Service Date shall be changed except by express agreement in writing between the parties or if a delay is caused by the Customer's wilful act or failure to fulfil its obligations hereunder or if a delay is due to any other cause beyond VM's reasonable control in accordance with clause 23.
- 4.1.3 Save in the circumstances set out in clause 4.1.2, if the Agreed Ready For Service Date is not met in respect of any Site VM shall use all reasonable endeavours to ensure that the actual Ready For Service Date is as near as practicable to such date.
- 4.1.4 Prior to the commencement of Services, the Customer shall submit to VM:
- (a) all documentation which may be required in advance as specified in the Order Form; and
  - (b) all payments which may be required in advance in accordance with clause 6.
- 4.1.5 Where the Order Form specifies an Agreed Ready For Service Date, it may also specify a deadline for the Customer's submission of such documentation and payments, and any failure by the Customer to meet any such deadline may result in the Agreed Ready For Service Date being amended. Where the Order Form does not specify an Agreed Ready For Service Date, VM shall set an Agreed Ready For Service Date upon receiving all such documentation and payments. In either case, VM may conduct a survey of any Site and may further amend the Agreed Ready For Service Date based on the results of such survey.

#### 4.2 STANDARD OF SERVICE

- 4.2.1 VM reserves the right to modify, change, add to or replace the VM Network, the Internet Network, the Services Equipment or any apparatus comprised therein. Any such modification, change, addition or replacement shall be carried out at VM's own expense and VM shall use reasonable endeavours to ensure it does not materially detract from, reduce or impair the overall performance or operation of Services, or require any material alteration to the VM Network, Internet Network, physical interface or protocol used by the Customer in using Services.

4.2.2 If any such modification, change, addition or replacement is reasonably likely to substantially change the cost to the Customer of using Services, VM shall, where reasonably practicable, notify the Customer of such change by written notice prior to the proposed date of implementation, and the Customer shall have the right to terminate this Agreement by giving VM not less than thirty (30) days' prior written notice to be sent within sixty (60) days of receipt of notice of the proposed change from VM. Cancellation Charges shall not be payable upon termination under this clause 4.2.2.

4.2.3 The Customer's access to the Internet Network may occasionally be restricted to allow implementation of new facilities and to allow data archival.

#### 4.3 MAINTENANCE

4.3.1 VM shall be responsible for the maintenance of the VM Network, the Internet Network and Services Equipment.

4.3.2 VM shall provide a fault reporting facility to the Customer that may be used by such representatives of the Customer as agreed by VM. Such agreement shall not be unreasonably withheld.

4.3.3 When a fault is reported, VM shall use reasonable endeavours to take such steps and give such advice as may be appropriate to restore normal operation of Service.

4.3.4 VM shall have the right to charge (as set out in VM's Service Literature) the Customer for work carried out by VM to locate, rectify or repair faults if such result from:

- (a) any cause or reason associated with the Customer Provided Apparatus; or
- (b) faults of a minor nature which do not significantly affect or materially detract from the standard of the provision of Services; or
- (c) power failure, accident, Customer's neglect or any force majeure event as set out in clause 23; or
- (d) any fault or other problem caused by the Customer's wilful act, fault or negligence, or the Customer's failure to comply with its obligations hereunder; or
- (e) misuse or improper use of Services.

4.3.5 Where, at the request of the Customer, any work to provide the Services is done outside VM's normal working hours, the Customer will pay a charge for such work calculated at VM's applicable hourly rate as set out in VM's Service Literature.

#### 4.4 INFORMATION EXCHANGE

4.4.1 The Customer undertakes promptly to provide VM (free of charge) with all information and co-operation that VM may reasonably require and which the Customer is able to provide from time to time to enable VM to perform uninterrupted its obligations under this Agreement.

4.4.2 VM shall supply the Customer with all relevant information necessary to enable the Customer suitably to prepare the Sites for the delivery, installation and commissioning of Services and for the ongoing provision of Services.

#### 4.5 ACCESS TO THE SITES, SECURITY AND CUSTOMER PROVIDED APPARATUS

4.5.1 The Customer shall provide at all times suitable secure accommodation, assistance, facilities, and environmental conditions for the installation and housing of Services Equipment and all necessary electrical power supplies (including back-up) and other installations and fittings for the commissioning and provision of Services. The Customer shall ensure that such preparation and provision are effected at the Customer's sole cost before Services and Services Equipment are installed at the Sites and are in accordance with any specifications provided by VM. The Customer shall ensure that any restoration and re-decorating are effected at the Customer's sole cost.

- 4.5.2 The Customer shall procure all permissions, licences, waivers, consents, registrations and approvals necessary for or reasonably considered desirable by VM to deliver, install and provide Services and Services Equipment at the Sites.
- 4.5.3 To enable VM expeditiously and properly to exercise its rights and fulfil its obligations under this Agreement including, without limitation, delivery, installation, inspection, commissioning, alteration, maintenance, testing and ongoing provision of Services, the Customer undertakes to permit or procure permission for VM and any other person(s) authorised by VM to have immediate access at any time to the Sites and Services Equipment, and shall provide VM with or procure such facilities and co-operation as VM shall reasonably request.
- 4.5.4 A secure electricity power supply (including back-up) is required at the Sites for installation, provision, operation and maintenance of Services and Services Equipment. Unless otherwise agreed in writing, this power supply shall be supplied by the Customer at the Customer's expense and not supplied by VM via the VM Network. Back-up power with sufficient capacity to conform to the stand-by requirement of the relevant national and European standards is needed if Services are required to continue uninterrupted in the event of a power failure in the principal power supply. VM will not be responsible for faults arising in the Services Equipment or interruption in the provision of Services caused by failures in the power supply. The Customer shall only employ electrical engineers approved by VM to undertake any work in this regard.
- 4.5.5 The Customer shall procure all permissions, licences, waivers, consents, registrations and approvals necessary for or reasonably considered desirable by VM to enable VM to deal with the Customer's designated maintainers of Customer Provided Apparatus. VM shall not authorise any work or incur any costs on behalf of the Customer without prior written approval of the Customer.
- 4.5.6 VM will not be responsible for any faults or interruptions in the Services or any inability of the Customer to access the Services where this is caused by a failure or inadequacy in any Customer Provided Apparatus or any incompatibility between any Customer Provided Apparatus and the VM Network or the Internet Network.

#### 4.6 BEHAVIOUR OF EMPLOYEES AND AGENTS

Each of the parties hereto undertakes with the other to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement and to ensure as far as reasonably possible that their respective employees, agents and representatives comply with such undertakings.

#### 4.7 POSTAL AND TELECOMMUNICATIONS SERVICES ACT 1983

- 4.7.1 The Customer shall, if required by any applicable licence granted under the Act or if so requested by VM, notify or obtain, as applicable, any necessary permission or co-operation of a Telecommunications Operator or other relevant person for the connection of Customer Provided Apparatus to the VM Network or the Internet Network. VM shall have no liability whatsoever in any case where such notification is not given or such permission or co-operation is not obtained.
- 4.7.2 The Customer shall ensure at all times that the Customer Provided Apparatus shall to the extent and manner necessary be approved for connection to other telecommunication systems and the Customer shall at all times comply with the conditions of such approval. VM reserves the right to disconnect any Customer Provided Apparatus if the Customer does not fulfil its obligations under this clause 4.7, or if in the reasonable opinion of VM the Customer Provided Apparatus is liable to cause the death of, or personal injury to, or damage to the property of VM or any person engaged in the operation of the VM Network or the Internet Network, or materially to impair the quality of any telecommunications service provided by means of the VM Network or the Internet Network.

#### 4.8 HEALTH HAZARDS

The Customer undertakes to advise VM of any rules or regulations relating to health and safety at work applicable at the Sites and VM shall observe and procure that the persons so authorised as referred to in clause 4.5.3 (other than the Customer) observe the rules or regulations so advised while at the Sites.

#### 4.9 USE AND CARE OF SERVICES EQUIPMENT

- 4.9.1 The Customer shall ensure that Services Equipment is properly insured for all usual risks including without limitation fire, destruction, theft, damage and injury or death of any person. VM shall on request provide the Customer with details of the insurance value of the Services Equipment on or before delivery thereof and the Customer shall ensure that such values are incorporated into any such insurance policies with VM named as a co-insured. Upon request from VM the Customer shall produce evidence of such insurance.
- 4.9.2 The Customer shall be responsible at all times for the safety, safe custody and safe use of the Services Equipment after installation at the Sites and in particular (but without limitation to the generality of the foregoing) the Customer undertakes:
- (a) to house, keep and use the Services Equipment in accordance with such written instructions as may be notified by VM to the Customer from time to time or, in the absence of such instructions, to the same standard as if the Services Equipment were the property of the Customer;
  - (b) at all times to keep the Services Equipment at the Sites and free from movement, external vibration or collision;
  - (c) not to add to, modify, or in any way interfere with, the Services Equipment;
  - (d) not to cause Services Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of VM;
  - (e) not to cause any attachments to be fitted to the Services Equipment except in accordance with such written authorisation as may be notified by VM to the Customer from time to time;
  - (f) not to do anything nor to allow to subsist any circumstances, matter or thing which is likely to damage Services Equipment or detract from or impair its performance or operation; and
  - (g) not to remove, tamper with or obliterate any words or labels on the Services Equipment or any part thereof.
- 4.9.3 The Customer confirms that it has read and understood VM's Service Literature relating to the Services Equipment and is satisfied that the Services Equipment will meet the Customer's requirements. The Customer acknowledges that the effectiveness of the Services Equipment depends to a great extent upon how the Customer uses it. It is the Customer's responsibility to ensure that it uses the Services Equipment in accordance with the instructions supplied, whether by VM or its manufacturers. Neither VM nor its manufacturers shall be liable for any breaches of security in the Customer's network arising from the Customer's failure to comply with such instructions or its misuse or improper use of the Services Equipment.

#### 4.10 CHANGES TO SERVICES AND SITES

- 4.10.1 The Customer shall be entitled at any time by notice in writing to request a change to Services. Agreement to such request shall be at VM's sole and absolute discretion. Where VM agrees to change Services, VM shall reconfigure the VM Network or the Internet Network as appropriate as soon as reasonably practicable.
- 4.10.2 If the Customer's use of the Services to access the Internet Network exceeds a desirable level, VM shall notify the Customer that it may either upgrade the Services or terminate its use of the Services for access to the Internet Network. If the Customer chooses to upgrade the Services, then VM shall arrange for such upgrade to be performed within a reasonable period of time. Such upgrade shall constitute a change in Services and this Agreement shall be treated as varied accordingly. If the Customer chooses not to upgrade the Services after notification from VM under this clause 4.10.2 then VM shall be entitled to terminate the Customer's use of the Services for access to the Internet Network.
- 4.10.3 The Customer shall pay VM Reconfiguration Charges for changes requested under clauses 4.10.1 and 4.10.2 and such applicable Installation Charges, Rental and other Site charges for Services and Services Equipment, from the Ready For Service Date of the relevant Site.



- 4.10.4 In the event that the Customer requests that a Site address or location is to be changed before or after the Ready For Service Date, then:
- (a) VM shall have the right to charge (as set out in VM's Service Literature) and seek advance payments thereof for any work required to be undertaken; and
  - (b) VM shall have the right to amend (subject to prior agreement) the Installation Charges, Usage Charges and Rental and the Agreed Ready for Service Date for the new Site dependent on the location of the new Site; and
  - (c) any Service Credits relating to the original Site shall cease to apply and shall not be transferred to the new Site.

#### 4.11 CANCELLATION OF PART OF THE SERVICES

- 4.11.1 The Customer shall be entitled at any time to cancel part or some of the Services.
- 4.11.2 Where the Customer cancels part or some of the Services within the Minimum Period, except where otherwise specified in VM's Service Literature, the Customer shall pay all arrears of charges payable under this Agreement in respect of the cancelled Services and by way of liquidated damages shall pay a sum equivalent to the Rental due in respect of the cancelled Services from the date of cancellation to the expiry of the Minimum Period, less a rebate for accelerated receipt of such Rental at the rate of five (5) per cent per annum from the date of payment to the expiry of the Minimum Period, except where the date of termination falls three months or less from the date of expiry of the Minimum Period in which event there shall be no such rebate.
- 4.11.3 Where the Customer wishes to cancel part or some of the Services following the expiry of the Minimum Period, the Customer shall give VM three (3) months' written notice, except where otherwise specified in VM's Service Literature, of its intention to cancel and shall pay all charges payable under this Agreement in respect of the cancelled Services during this three month notice period.

### 5 MISUSE OF AND LIMITATIONS ON USE OF SERVICES

- 5.1 The Customer undertakes to use the Services and to procure that each User uses Services in accordance with such reasonable operating instructions as may be notified in writing or verbally (and confirmed in writing) to the Customer by VM from time to time and in accordance with any telecommunications or other licences which govern the running of a telecommunication system by the Customer.
- 5.2 Without limitation to the generality of clause 5.1, the Customer undertakes not to use the Services and undertakes to prevent each User from using Services:
- (a) for the communication, publication, transmission or receipt of any material which is defamatory, offensive or abusive or of an obscene, nuisance, hoax threatening or menacing character; or
  - (b) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright, privacy or confidentiality); or
  - (c) in a manner that is associated with a criminal offence; or
  - (d) to cause annoyance, inconvenience or needless anxiety.
- 5.3 The Customer undertakes not to re-sell for money or monies worth Services or any part thereof to any third party, other than with prior written consent of VM.
- 5.4 The Customer shall not use a Name such as to infringe the rights of any other person, whether in statute or common law, in a corresponding trade mark or name.
- 5.5 The Customer shall indemnify VM for all costs, claims, damages or proceedings made or threatened to be made by reason of the Customer's or a User's use or misuse of Services or Services Equipment or by reason





of the malfunction or non-function of the same or the breach by the Customer of its obligations under this Agreement.

- 5.6 Where VM assigns Provider Aggregatable address space to the Customer, those addresses are assigned only for the duration of the Service and become invalid at such a time as VM no longer provides the Service to the Customer. A temporary extension (usually thirty (30) days from the date of Service termination) may be made at VM's sole discretion. After termination or after such extension period (if any) those addresses may be reassigned to other customers by VM. If the Customer wishes to apply for addresses that will subsist beyond the duration of the Service, it must do so directly to the relevant authority. Any decision by the relevant authority or by another Internet service provider relating to IP addresses is the responsibility of that party and UPC accepts no responsibility for any such decision.
- 5.7 Provider Aggregatable addresses are not permitted to be advertised or propagated to other carriers or service providers.
- 5.8 The Customer shall indemnify VM for all costs, claims, damages or proceedings made or threatened to be made by reason of the Customer's or a User's use or misuse of Services or Services Equipment or by reason of the malfunction or non-function of the same or the breach by the Customer of its obligations under this Agreement.

## 6 CHARGES, VALUE ADDED TAX AND DEPOSITS

- 6.1 In consideration of VM's obligations hereunder the Customer shall pay to VM the Installation Charges, Usage Charges, Rental any other charges due under this Agreement.
- 6.2 All sums due to VM under this Agreement are exclusive of Value Added Tax ("VAT"), and any other applicable taxes which may from time to time be introduced, which shall be charged thereon in accordance with the relevant regulations in force at the time of making the taxable supply and shall be paid by the Customer.
- 6.3 Time of payment of all sums due to VM under this Agreement shall be of the essence of this Agreement. Without prejudice to VM's right to treat non-payment or late payment as a repudiatory breach of this Agreement, VM reserves the right to charge daily interest on outstanding amounts, until payment in full is received by VM, at a rate equal to four (4) per cent per annum above the Ulster Bank Limited base lending rate as current from time to time whether before or after judgement. Interest shall continue to accrue notwithstanding termination of this Agreement for any cause whatsoever. If any payments are more than thirty (30) days overdue, VM may at its absolute discretion, suspend the provision of all or part of the Services.
- 6.4 Rental shall be payable in advance and the first instalment shall be due on the Ready For Service Date for that Site and subsequently at the beginning of each Billing Period. Between the Ready For Service Date for that Site and the date of commencement of the first Billing Period a proportionate part of the Rental shall be payable calculated on a pro-rata daily basis.
- 6.5 Usage Charges shall be payable in arrears except where notified to the Customer in writing by VM. Usage Charges shall be calculated by VM by reference to data recorded or logged by VM and not by reference to any data recorded or logged by the Customer.
- 6.6 Installation Charges for Service to each Site shall be payable no later than the Ready For Service Date for that Site, or where VM's Service Literature so provides, at other dates as specified therein. Installation Charges for Service to any Site shall not be dependent on the Ready for Service Date for any other Site.
- 6.7 Where the Ready For Service Date for a Site is delayed at the Customer's request or by virtue of the Customer's wilful act, neglect or failure to fulfil its obligations hereunder, the Installation Charges and Rental for that Site shall be payable no later than the Agreed Ready For Service Date for that Site unless otherwise agreed in writing between the parties.
- 6.8 Subject as otherwise provided in clauses 6.4, 6.6 and 6.7, all sums due to VM under this Agreement shall be payable by the Customer upon receipt of VM's invoice in respect thereof. Payment shall be made by the Customer in full (without any set-off, deductions or withholding whatsoever) by direct debit, cheque or by such other method as may reasonably be specified from time to time by VM. Where payment is by direct



debit there will be a fourteen (14) day advice period from the date of the invoice prior to the debit being made.

- 6.9 VM shall be entitled to change the Rental, Usage Charges and any other charges payable by the Customer at any time. VM shall publish any such changes in its main offices before such changes take effect and in the event of a price increase at least fourteen (14) days before such increase takes effect.

#### 6.10 DEPOSITS

- 6.10.1 VM may require payment from the Customer of a deposit of such amount as VM reasonably requires as security for the payment of any charges payable under this Agreement.
- 6.10.2 VM may hold the deposit until receipt from the Customer of all charges due under this Agreement and VM reserves the right to use all or part of the deposit in or towards payment of any charges which the Customer is liable to pay under this Agreement. In addition, VM shall be entitled to hold the deposit until the Services Equipment has been returned and VM is assured that it is in good working order.
- 6.10.3 VM shall repay any deposit held (or the balance of any deposit where any part of it has been used towards the payment of charges) to the Customer upon the expiry of the Minimum Period (or such other period as VM may reasonably require) provided that the Customer has paid to VM all charges due under this Agreement on the due date(s) for payment of such charges. Notwithstanding repayment of any deposit held, VM may at any time thereafter require payment from the Customer of a further deposit as security for the payment of any charges.
- 6.10.4 In the event of the termination of this Agreement prior to the expiry of the Minimum Period, VM shall repay any deposit to the Customer provided that the Customer has paid all charges due under this Agreement for the Minimum Period (including, without limitation, any charges due under clause 12) and the Services Equipment has been returned in good working order.
- 6.10.5 Where a deposit or part of a deposit is repaid to the Customer, the Customer will receive interest on such deposit or part thereof in accordance with such formula as VM shall notify to the Customer. VM shall be entitled to credit the amount of such interest against any charges due from the Customer under this Agreement.

#### 7 ACCEPTANCE

- 7.1 VM shall be responsible for the installation and commissioning of Services and Services Equipment at the Sites. Following such installation and commissioning VM shall carry out the Acceptance Tests to establish whether Services are Ready For Service. All such Acceptance Tests shall be carried out in the presence of an authorised representative of the Customer, provided such Customer representative is available at such reasonable times as agreed between the Parties. Where the Customer is receiving Services solely to provide access to the Internet, VM shall co-operate with the Customer in connecting the Customer Provided Apparatus to the Internet Network.
- 7.2 VM shall present a written acceptance certificate to the Customer representative when VM considers the Acceptance Tests have been successfully concluded and the Customer shall procure that the Customer representative shall countersign such acceptance certificate if the Customer is satisfied that the tests have been so concluded, such signature not to be unreasonably withheld or delayed. In the event that a Customer representative is not available at such reasonable times as agreed between the Parties, VM may conduct the Acceptance Tests and where such tests are successfully concluded in VM's reasonable opinion then the acceptance certificate shall specify that the Acceptance Tests shall be deemed to have been successfully concluded and Service shall be Ready For Service notwithstanding that the Customer representative has not countersigned the acceptance certificate.
- 7.3 In the event that Services are not Ready For Service, VM shall either replace or repair, at its sole option, such or any part thereof and repeat said Acceptance Tests until they are successfully concluded.



## 8 TITLE AND RISK

### 8.1 LEASING

8.1.1 Where VM is leasing Services Equipment to the Customer title to the Services Equipment shall not pass to the Customer, and the Customer shall not remove, tamper with or obliterate any identification mark(s) affixed to the Services Equipment or to any part thereof. On all occasions when the ownership of the Services Equipment is in question, the Customer shall make clear to third parties that the same is the property of VM and shall ensure that all third parties comply with the provisions of clause 4.9.2.

8.1.2 Where VM is leasing Services Equipment to the Customer the Customer shall:

- (a) be responsible for the Services Equipment whilst it is at the Sites and shall be liable to VM for and shall indemnify VM against any loss or damage to the Services Equipment (except in so far as it can be shown that any such loss or damage is attributable to the negligent act or omission of VM). The Customer shall notify VM immediately of any such loss or damage;
- (b) not permit or suffer any execution or distress to be levied or used against the Services Equipment or permit or suffer the Services Equipment to be seized under or affected by any distress, execution or other legal process; and
- (c) not attempt to rent, lease, let, sell, charge, assign or otherwise deal with the Services Equipment in a manner prejudicial to VM's rights therein.

### 8.2 PURCHASING

**This clause 8.2 shall apply to all equipment (excluding software which shall be provided subject to clause 10 and/or any licence relating specifically to such software) purchased by the Customer under this Agreement (referred to as "the Equipment" in this clause 8.2).**

8.2.1 VM shall deliver the Equipment to the Customer. Any date agreed for delivery of the Equipment shall be treated as an estimate only and VM shall have no liability for any failure to meet such date.

8.2.2 Unless otherwise stated, the price for the Equipment shall include delivery to and (if expressly agreed between the parties) installation at the Site within Ireland.

8.2.3 Where the Equipment includes items supplied at prices included in the Order Form, VM reserves the right to vary the price to include any changes in VM prices occurring and notified to the Customer before delivery of the Equipment. In respect of items whose price is increased, the Customer may cancel its order for the purchase of the Equipment at any time before its delivery.

8.2.4 The Equipment shall from the time of delivery be at the Customer's risk, except as regards loss or damage caused by the wilful act or negligence of VM.

8.2.5 Until VM has received payment in full for all Equipment delivered by VM, the Equipment shall remain VM's property and ownership in the Equipment will not pass to the Customer. The Customer shall not rent, lease, sell, charge, assign or otherwise deal with the Equipment until VM has received payment in full for the Equipment.

8.2.6 If the Customer fails to pay the sums owed for the Equipment on the due date or the Customer enters into liquidation, receivership or administration then (without prejudice to its other rights) VM shall be entitled, without notice and at any time, to enter any premises in which the Equipment is installed or kept and to remove and sell the Equipment.

8.2.7 VM does not make any warranty, representation or promise in respect of the Equipment. The manufacturer's warranty documentation is included with the Equipment on delivery and it is the Customer's responsibility to ensure that such documentation is kept in a secure place. No employee

of VM has authority to make any warranty, representation or promise concerning the Equipment except in writing and signed by a duly authorised officer of VM.

- 8.2.8 VM will provide initial telephone assistance for Equipment support, however the Customer acknowledges that it will be referred to the manufacturer for warranty and support services. VM reserves the right to charge for replacement or repair of defects not covered by the manufacturer's warranty.
- 8.2.9 It is the Customer's responsibility to satisfy itself as to the suitability of the Equipment for the Customer's needs, except where VM has provided written advice to the Customer and the Customer has relied on that advice.
- 8.2.10 VM reserves the right to make minor alterations to the specification of the Equipment which do not materially affect the Equipment's performance.

## 9 WARRANTIES AND REPRESENTATIONS

- 9.1 VM warrants that Services shall be performed in a timely and professional manner and with reasonable skill and care.
- 9.2 VM warrants that Services shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments, and that VM will obtain all licences and permits required to comply with such laws, enactments, regulations, standards or other similar instruments.
- 9.3 VM warrants that the provision of Services will not in any way constitute an infringement or other violation of any intellectual property rights of any third party, and that VM has obtained valid licences of all intellectual property rights which are necessary to the performance of the Services.
- 9.4 Except in respect of death and personal injury caused by the negligence of VM and save as expressly set forth in this Agreement, all conditions and warranties, express or implied, statutory or otherwise, (including but not limited to any concerning the quality of the Services or the quality of any Equipment which might be purchased by the Customer or its fitness for any purpose) are hereby excluded (save however that the implied undertakings as to title provided for under Section 12 of the Sale of Goods Act 1893 as amended shall in no way be restricted or excluded).
- 9.5 Nothing in this Agreement is intended nor shall be interpreted so as to restrict or exclude in any manner whatsoever the rights which the Customer (being a buyer who is not dealing as a consumer) enjoys by virtue of Section 12 of the Sale of Goods Act 1893 as amended. The exclusion or restriction provided herein of the rights conferred on the Customer being a buyer other than one dealing as a consumer under Sections 13, 14 and 15 of the Sale of Goods Act 1893 as amended, is subject to Section 55 of the Sale of Goods Act 1893 as amended.

## 10 SOFTWARE, NAMES, IP ADDRESSES AND WEBSITE

### 10.1 SOFTWARE

- 10.1.1 Intellectual property rights in all software (in whatever form) provided by VM to the Customer for the purpose of using the Services or Services Equipment shall remain the property of VM or its licensor. VM grants the Customer a non-exclusive non-transferrable right to use the software for the purpose of using the Services or Services Equipment and for no other purpose. The Customer agrees to comply with the terms of any agreement reasonably required by the owner of intellectual property rights in all software supplied to the Customer for the protection of that software.
- 10.1.2 The Customer may use software supplied by VM only at the Site and on that number of computers which is agreed by VM in advance.
- 10.1.3 The Customer shall:
  - (a) keep the software in confidence;

- (b) not reproduce the software except for archival or back-up purposes where each copy contains all of the original software's proprietary notices;
- (c) not modify, translate, reverse engineer, decompile, disassemble (except to the extent that applicable laws specifically prohibit such restriction) or create derivative works based on any of the software or any documentation accompanying the software; and
- (d) on termination of this Agreement for any reason, immediately return all copies of the software to VM and expunge any copies of the software from any computer, word processor or other data storage device.

## 10.2 NAMES

- 10.2.1 Where the Customer is supplying its own Names, VM reserves the right to charge the Customer for transferring such Names onto the Internet Network.
- 10.2.2 If VM allocates one or more of its own Names to the Customer, such Names shall remain the property of VM and shall be returned to VM upon termination of this Agreement.
- 10.2.3 If the Customer so requests, VM will arrange the registration of Names on the Customer's behalf. The Customer shall pay VM on demand for all registration and subscription fees payable in connection therewith. The Customer acknowledges that it is solely responsible for the selection of such Names and agrees to indemnify VM for any loss or damage suffered as a result of the use of such Names.
- 10.2.4 The Customer acknowledges that VM cannot guarantee that any Names requested by the Customer under clause 10.2.2 or 10.2.3 will be available or approved for use.
- 10.2.5 The Customer warrants that it and any Users are the owners of, or that they have been and are duly authorised by the owners to use, any trademarks or names which are used, supplied, requested or allocated as their Names. The Customer may be required (as determined by VM in its sole discretion) to supply VM with the applicable registration or other documents in confirmation of such warranty.
- 10.2.6 VM may require the Customer to select replacement Names and/or suspend Services if, in VM's opinion, there are reasonable grounds for VM to believe that the Customer's current use or choice of Names infringes upon the rights of any other person, whether in statute or common law, in a corresponding trade mark or name.

## 10.3 INTERNET PROTOCOL ADDRESSES

- 10.3.1 The Customer acknowledges that any internet protocol address which is allocated to it shall at all times remain the sole property of VM and the Customer shall have a non-transferable licence to use such address for so long as it remains a Customer. If the Customer ceases to be a Customer for any reason, then the licence shall automatically terminate and the Customer shall not be entitled to use such address.
- 10.3.2 The Customer acknowledges that, in the event that VM is required by order of Government or other authority to re-configure the Internet Network, then the Customer may be obligated to re-configure its own networks in order to continue receiving the Services. VM shall not be liable for any costs incurred by the Customer in connection with any such re-configuration.

## 10.4 WEBSPACE

- 10.4.1 Where the Customer is renting web space from VM, it shall ensure that the contents comply with the provisions of clause 5 of this Agreement.
- 10.4.2 It is the Customer's responsibility to keep backup copies of any data uploaded to VM's servers and to satisfy itself of the effectiveness of any system it establishes to monitor the web space contents and use.



10.4.3 VM may at its absolute discretion move any web space which generates abnormally high hit levels. VM shall give the Customer notice of such move and any additional charges this may incur, as soon as reasonably practicable.

## 11 NUMBERS AND ACCESS CODES

11.1 Where as part of the provision of Services VM provides the Customer with numbers and/or Access Codes then all rights associated with such numbers and Access Codes belong to VM. The Customer shall not or attempt to rent, lease, let, sell, charge, assign or otherwise deal with such numbers and/or Access Codes in a manner prejudicial to VM's rights therein.

11.2 VM shall be entitled, for operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on VM or by the VM Licences or any other competent authority, to withdraw any number or Access Codes allocated to the Customer provided that VM gives the Customer the maximum period on notice in writing thereof practicable in the circumstances. Upon suspension or termination of this Agreement or if in the opinion of VM there are reasonable grounds for believing the Customer has not complied or is not complying with this Agreement VM shall have the right to withdraw any number or Access Code forthwith.

11.3 The Customer shall:

- (a) keep any Access Codes confidential and personal to the Customer who shall be responsible for keeping such Access Codes safeguarded;
- (b) use such Access Codes in accordance with the reasonable rules or instructions provided to it by VM from time to time; and
- (c) be responsible for all charges incurred through the use of Services when access to Services is obtained through the use of any Access Code whether with or without the Customer's knowledge or permission.

11.4 If the Customer has any grounds for suspecting or believing that a person or persons have discovered or are making use of any Access Codes without the knowledge, consent or permission of VM or the Customer, the Customer shall notify VM immediately and VM shall immediately prevent access to Services by the use of any such Access Code and allocate a new Access Code in its place. If VM has any grounds for suspecting or believing that a person or persons have discovered or are making use of any Access Codes without the knowledge, consent or permission of VM or the Customer, VM shall notify the Customer and VM shall immediately prevent access to Services by the use of any such Access Code and allocate a new Access Code in its place.

## 12 TERMINATION AND SUSPENSION

### 12.1 TERMINATION

12.1.1 VM shall have the right (without prejudice to its other rights) to terminate this Agreement by notice in writing to the Customer in any of the following events:

- (a) a liquidator (other than for the purpose of solvent amalgamation or reconstruction), administrative receiver, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the Customer or the Customer enters into an arrangement or composition with its creditors, or if it becomes unable to pay its debts within the meaning of Section 214 of the Companies Act 1963, or other circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to make a winding up order in relation to the Customer; or
- (b) the Customer fails to make any payment when it becomes due to VM or shall default in due performance or observance of any material obligation under this Agreement or any other agreement with VM or an Associated Company of VM and (in the case of a remediable breach) fails to remedy the breach within a reasonable time (not less than thirty (30) days) specified by VM in such notice so to do; or



- (c) any licence under which the Customer has the right to run its telecommunication system and connect it to the VM Network or the Internet Network is revoked, amended or otherwise ceases to be valid and is not immediately replaced by another licence conferring such right or the Customer is in breach of the conditions of any such licence; or
- (d) the VM Licences or any one or more of them, or VM's agency in respect thereof, expire or are revoked, in which event VM shall give to the Customer the maximum period of notice of termination practicable in the circumstances; or
- (e) the Customer or a User is misusing Services under clause 5; or
- (f) the Customer has provided VM with any false, inaccurate or misleading information for the purpose of obtaining Services (or any part thereof); or
- (g) the Customer is suspected, in VM's reasonable opinion, of involvement with fraud or attempted fraud or any other criminal offence in connection with the use of Services.

12.1.2 In the event that this Agreement is terminated prior to expiry of the Minimum Period (other than by reason of an event under clause 12.1.1(d)), then notwithstanding such termination the Customer shall pay to VM all arrears of charges payable under this Agreement up to the date of termination and by way of liquidated damages a sum equal to the Rental that would have been payable from the date of termination to the expiry of the Minimum Period, less a rebate for accelerated receipt of such Rental at the rate of five (5) per cent per annum from the date of payment to the expiry of the Minimum Period, except where the date of termination falls three months or less from the date of expiry of the Minimum Period in which event there shall be no such rebate.

12.1.3 Upon termination of this Agreement for any reason the Customer shall cease to make use of Services and shall permit VM to enter the Sites during any Working Day for the purpose of removing any or all of the Services Equipment (other than Services Equipment which the Customer has purchased and paid for in full).

## 12.2 SUSPENSION OF SERVICES

12.2.1 VM may at its sole discretion suspend forthwith provision of Services either in whole or in part until further notice on notifying the Customer either orally (confirming such notification in writing) or in writing in the event that:

- (a) VM shall be entitled to terminate this Agreement; or
- (b) VM shall be obliged to comply with an order, instruction or request of Government, regulatory authority, emergency services organisation or other competent authority; or
- (c) VM shall need to carry out work relating to exceptional upgrading or maintenance of the VM Network and VM agrees the times of such work with the Customer beforehand in writing; or
- (d) VM shall need to carry out work relating to the repair, improvement, upgrading or maintenance of the Internet Network or any other facilities which are necessary to provide access to the Internet.

12.2.2 Any exercise or non-exercise by VM of its right of suspension in respect of an event referred to in this clause 12 shall be without prejudice to VM's right to terminate this Agreement subsequently in respect of the same or any other event.

12.2.3 The Customer shall reimburse VM all costs and expenses incurred by the implementation of such suspension and/or the recommencement of the provision of Services as appropriate arising out of an event referred to in clause 12.2.1, save that this shall not apply where the suspension is implemented otherwise than as a consequence of the breach, fault or omission of the Customer.





12.2.4 If VM suspends Services for contravention of clause 5.1, 5.2 or 5.4, it may refuse to restore Services until it receives an acceptable assurance from the Customer that there will be no further contravention.

### 13 LIMITATION OF LIABILITY

#### **THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 13.**

- 13.1 The following provisions and those in clause 17 set out VM's entire liability (including any liability for the acts and omissions of its employees or agents) to the Customer in respect of:
- (a) any breach of its contractual obligations arising under this Agreement; and
  - (b) any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.
- 13.2 Any act or omission on the part of VM or its employees or agents falling within clause 13.1 shall for the purposes of this clause 13 be known as an "Event of Default".
- 13.3 VM's liability to the Customer for death or injury resulting from its own or that of its employees' or agents' negligence while acting in the course of their employment shall not be limited.
- 13.4 The Customer acknowledges that VM has no control over the information and/or software transmitted via the Services and that VM does not examine the use to which Customers put the service or the nature of the information and/or software they are sending or receiving. Subject to clause 13.3, VM hereby excludes all liability of any kind for the transmission or the reception of or the failure to transmit or receive any information and/or software of whatever nature and all liability for the accuracy or inaccuracy of any such information and/or software. Notwithstanding the foregoing, where advised or required by competent authority, VM may choose not to publish or transmit certain newsgroups or other material via the Services, and VM shall have no liability to the Customer for any such action or decision.
- 13.5 Subject to the provisions of clause 13.3 VM's entire liability in respect of any Event of Default shall be limited to damages not exceeding:
- (a) one million pounds (£1,000,000) in the case of a single Event of Default; and
  - (b) two million pounds (£2,000,000) in the case of all Events of Default or series of connected Events of Default occurring in any twelve (12) month period.
- 13.6 Subject to clause 13.3 VM shall not be liable to the Customer in respect of any Event of Default for loss of profits, goodwill or corruption or destruction of data or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or VM had been advised of the possibility of the Customer incurring the same.
- 13.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- 13.8 The Customer hereby agrees to afford VM not less than thirty (30) days (following notification thereof by the Customer) in which to remedy any Event of Default hereunder.
- 13.9 Except in the case of an Event of Default arising under clause 13.3 VM shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon VM within twelve (12) months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 13.10 Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
- 13.11 The provisions of this clause shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason whatsoever.

## 14 INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY

- 14.1 If in the course of or as a result of any Services provided by VM to the Customer, VM or any of its employees or agents create any documentation or other material protected by copyright, or any other intellectual property right, all legal and beneficial rights therein shall be owned by VM and the Customer shall have no rights therein beyond a non-exclusive licence to make copies of any such document or material (but not other material including, without limitation, electronic data or software) for internal use for the purpose of using the Services. The Customer shall execute any assignment or other instrument which may be necessary to give effect to this provision.
- 14.2 VM will indemnify and hold harmless the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the provision of the Services by VM infringes the patent, copyright, registered design or trade mark rights of said third party (an "Intellectual Property Infringement") provided that the Customer:
- (a) gives notice to VM of any Intellectual Property Infringement forthwith immediately upon becoming aware of the same;
  - (b) gives VM the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise attempt to settle or compromise the said liability or otherwise attempt to settle or compromise the said claim or action except upon the express instructions of VM; and
  - (c) acts in accordance with the reasonable instructions of VM and gives to VM such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.
- 14.3 VM shall reimburse the Customer its reasonable costs incurred in complying with the provisions of clause 14.2.
- 14.4 VM shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any breach of the Customer's obligations under this Agreement.
- 14.5 In the event of an Intellectual Property Infringement VM shall be entitled at its own expense and option either to:
- (a) procure the right for the Customer to continue using the Services; or
  - (b) make such alterations, modifications or adjustments to the Services that they become non-infringing without incurring a material diminution in performance or function; or
  - (c) replace the Services with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.
- 14.6 If VM in its reasonable judgement is not able to exercise any of the options set out at clause 14.5 then VM shall be entitled to terminate this Agreement by giving thirty (30) days' notice to the Customer without further liability to VM.
- 14.7 The Customer shall indemnify VM against any claims, proceedings and expenses finally awarded against VM arising in any jurisdiction from an Intellectual Property Infringement (or alleged Intellectual Property Infringement) of any patent, design, copyright or other intellectual property right arising from:
- (a) work carried out by VM, its agents or employees in accordance with directions or specifications given by the Customer; or
  - (b) arising from the connection and/or use of any Customer Apparatus in conjunction with Services
  - (c) use of the Services by the Customer.
- 14.8 VM shall notify the Customer within seven (7) days in writing of any allegation of an Intellectual Property Infringement for which the Customer is liable under clause 14.7 and VM:



- (a) shall make no admission relating to the Intellectual Property Infringement;
- (b) shall allow the Customer full discretion to conduct or settle all negotiations and proceedings, subject to receiving reasonable security for costs and damages; and
- (c) shall give the Customer all reasonable assistance in respect thereof.

## 15 CONFIDENTIALITY

- 15.1 Neither party hereto shall use, copy, adapt, alter, disclose or part with possession of any information or data of the other which is disclosed or otherwise comes into its possession directly or indirectly as a result of this Agreement and which is of a confidential nature ("Confidential Information") except as strictly necessary to perform its obligation or exercise its right hereunder Provided That this obligation shall not apply to Confidential Information which:
- (a) the receiving party can prove was already in its possession at the date it was received or obtained; or
  - (b) the receiving party obtains from some other person without any breach of confidentiality; or
  - (c) comes into the public domain otherwise than through the default or negligence of the receiving party or which is independently developed by or for the receiving party; or
  - (d) the receiving party is under a statutory obligation to disclose to a government body, agency or regulatory body.
- 15.2 Each party shall ensure that its employees, agents and sub-contractors are bound by an undertaking in substantially the same terms as contained in this clause 15.
- 15.3 The obligations in this clause shall continue in force notwithstanding termination of this Agreement for any reason whatsoever.
- 15.4 The details of this Agreement but not the fact that the Customer is a customer of VM's shall be deemed Confidential Information.

## 16 RIGHTS OVER LAND

- 16.1 In order to perform its obligations under this Agreement the Customer agrees to grant rights over land, as defined in Section 2 of the Gas Act 1976, in fee simple in perpetuity or for any lesser estate of the Customer therein to VM (including its employees and authorised representatives), its successors and assigns, from time to time, upon giving to the Customer reasonable notice to:
- (a) enter those parts of the premises or land of the Customer or a User as necessary to the extent that they are used for the purposes of the provision of the Services;
  - (b) perform installation, maintenance, adjustment, repair, replacement, renewal, inspection or removal work at or on the said premises or land from time to time; and
  - (c) bring upon, install and keep installed at the said premises or land such equipment as is reasonably necessary for the provision of the Services and the maintaining of the Services Equipment.
- 16.2 The Customer at its own expense shall procure or provide whatever further rights over land as may be required to enable VM to exercise the rights over land granted pursuant to clause 16.1.
- 16.3 Each party shall at all times comply and procure that its employees and authorised representatives comply with all reasonable instructions of the other party or any third party pursuant to any rights over land obtained in accordance with this clause 16.



16.4 The provisions of this clause 16 shall apply for the duration of this Agreement and for other periods thereafter as may be required by VM to exercise its rights to disconnect and remove from the premises any Services Equipment.

## 17 **SERVICE CREDITS**

17.1 The Customer shall be entitled to Service Credits in respect of failure by VM to meet the Service Levels, calculated in the manner set out in VM's Service Literature. Such Service Credits shall be the Customer's sole and exclusive remedy with respect to the failure of VM to meet Service Levels.

17.2 Subject to clause 13 VM shall have no other liability in contract, tort or otherwise howsoever arising, including negligence, in respect of any loss or damage the Customer may suffer as a result of VM failing to provide the Service in accordance with this Agreement.

17.3 For the avoidance of doubt, Service Credits will not be available to the Customer to the extent that the failure of VM to meet any Service Levels results from termination or suspension of this Agreement pursuant to clause 12 or from any force majeure event as described in clause 23 or the Customer's act, fault or omission.

## 18 **ASSIGNMENT TRANSFER AND SUB-LETTING**

Neither party shall assign, delegate or otherwise deal with all or any of its rights and obligations under this Agreement other than to an Associated Company without the other party's prior written consent, which consent shall not be unreasonably withheld.

## 19 **COMMUNICATIONS**

19.1 Any notice, invoice or other document which may be given by either party under this Agreement shall be deemed to have been duly given if left at or sent by post (whether by letter or, where the parties agree, by magnetic tape or any other form) or facsimile transmission (confirmed by letter sent by registered post) or, where the parties expressly agree, by electronic mail, to, in the case of the Customer, the Customer's registered office or any other address notified to VM in writing by the Customer as an address to which notices, invoices and other documents may be sent and to, in the case of VM, the address stated at the head of this Agreement or such address as VM may prescribe for that purpose.

19.2 Any such communication shall be deemed to have been made to the other party on the day on which such communication ought to have been received in due course of hand delivery, post or facsimile transmission. Any communication by electronic mail shall be deemed to have been made on the Working Day on which the communication is first stored in the other party's electronic mail-box.

## 20 **PROTECTION OF PERSONAL DATA**

20.1 Each party warrants that it is properly registered under the Data Protection Acts 1988 and 2003 for such obtaining, storage and use of personal data as may be required in the performance of this Agreement.

20.2 The Customer agrees to comply with the relevant provisions of the Data Protection Acts 1988 and 2003 and any directions issued by the Data Protection Commissioner in its use of the Services.

## 21 **EXPORT CONTROL**

21.1 Services may comprise equipment, software, services, technical information, training materials or other technical data which, because of their origin or otherwise are subject to the United States of America export control regulations or the laws or regulations of another country. In such case, the provision of Services shall be conditional upon the parties obtaining and providing all necessary consents. The parties shall provide reasonable assistance to each other to obtain such consents.



21.2 The Customer agrees to comply with any applicable export or re-export laws and regulations, including obtaining written authority from the Government of the United States of America if the Customer intends at any time to re-export any items of U.S.A. origin to any proscribed destination.

## 22 **CORRUPT GIFTS AND PAYMENTS**

Neither party shall offer or give or agree to give any person employed by or connected with the other party any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to this Agreement, or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement.

## 23 **FORCE MAJEURE**

Neither party shall be liable to the other for any loss or damage which may be suffered by the other party, or for any failure to perform its obligations under this Agreement to the extent that such failure is due to any cause beyond the first party's reasonable control including without limitation any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, the act or omission of Government, highways authorities, public telecommunications operators or other competent authority, war, military operations, or riot, difficulty, delay or failure in manufacture, production or supply by third parties of the Internet Network or any Services Equipment or any part thereof.

## 24 **SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid provision eliminated.

## 25 **WAIVER**

Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

## 26 **ENTIRE AGREEMENT**

26.1 This Agreement and any documents expressed by this Agreement to be incorporated herein constitutes the entire understanding between the parties relating to the subject matter of this Agreement and supersedes all prior writings, negotiations or understandings with respect hereto.

26.2 Clause 26.1 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

## 32 **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed and interpreted in accordance with the laws of Ireland.

## **SPECIFIC TERMS AND CONDITIONS RELATING TO TV SERVICES**



## 27 UNAUTHORISED RECEPTION OF CHANNELS OR PROGRAMMES

You must immediately report to us your unauthorised reception of any channels or programmes as well as any other rights we may have, failure to report unauthorised reception of any channels or programmes immediately to us may result in our suspending the services, terminating the Agreement and/or retaining the whole or any part of any deposit.

## 28 TELEVISION PROGRAMMING

If you request the Television Service, we will supply it to the best of our ability. However, television programme contents, packages of channels, programming schedules, broadcast hours of any channel, channel allocations and transmission times may change or channels or television programmes may no longer be available. This may occur for reasons beyond our control, including decisions of programme providers or technical difficulties, or for reasons that we were not aware of or could not have foreseen at the time the programme was advertised or scheduled. We may also change the channels and packaging of channels if we believe it will improve the Television Service provided to our customers. We shall not be liable to you for any such changes, lack of availability or failure to transmit any advertised television programme or channels or to do so at the advertised time.

## 29 PROMOTIONAL SERVICE

If we supply you with any service, channels or programmes as part of a promotion or for promotional purposes and whether for a charger or otherwise we may if we wish at any time stop such supply or change the promotional services, channels or programmes or package of Service, channels or programmes that we are supplying.

## 30 TELEVISION RECEPTION PROBLEMS

if you request the Television Service, we will supply it to the best of our ability but we will not be liable for interruptions, reception, picture degradation or other problems which are beyond our reasonable control.

If your television signal is not being received properly then you should notify us by contacting our customer management centre where the problem may be resolved over the phone or a technician may be sent out to investigate the problem. We are not responsible for correcting problems which are connected with the use of Customer Provided Apparatus and in such circumstances we may make a reasonable call out charge to cover our costs.

## 31 UNAUTHORISED USE OF TELEVISION SERVICE

It is illegal to copy, distribute copies, show in public or rebroadcast any part of the television programmes or channels provided without the consent of the copyright owner. Therefore you may only use the Television Service for private use and it must not be accessible by the general public or in a communal viewing area. There are some limited exceptions to these restrictions that allow, for example, the Television Service to be viewed in schools or copying for the purpose of time shifting for private or domestic use. It is your responsibility to ensure you are legally entitled to rely on such exceptions or obtain the consent of the copyright owner before you do so.

We may disable or alter some functions of the Equipment so as to stop you from copying certain channels, programmes or Events in order to prevent the unauthorised copying of such services. If the Equipment allows copying of these then we may prevent you (if we are bound by contract to prevent such copying) receiving the Services.

As well as any other rights we may have, your breach of condition 31.1 may result in our suspending the Services, terminating the Agreement and/or retaining the whole or any part of any deposit.

You will be responsible for any claims made against us or losses we may suffer as a result of actual or claimed copyright infringement committed by you or any other person in your home in relation to the Television Service.