

## TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES – IRELAND

### 1 DEFINITIONS

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

1.2 The expressions “the Customer” and “Virgin Media” 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 the re-under 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 Virgin Media’s Service Literature then the provisions of these terms and conditions shall prevail.

“Acceptance Tests” means the standard tests to be carried out by Virgin Media as described in Virgin Media’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 Virgin Media 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;

“Agreed Ready For Service Date” means the date agreed between Virgin Media and the Customer for commencement of Services to a Site as confirmed by Virgin Media in the Order Form;

“Agreement” means the contract between Virgin Media and the Customer which includes and is subject to the Order Form, these terms and conditions and Virgin Media’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 Virgin Media’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 Virgin Media 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 relevant charges hereunder as may be set out from time to time, in Virgin Media's Service Literature;

- "Cancellation Charges" means the charge(s) which shall be payable by the Customer to Virgin Media on termination of this Agreement or part thereof as set out herein and in Virgin Media'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 Virgin Media 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, an domain name or mail box name;
- "Virgin Media Licences" means the licences issued by the Commission for Communications Regulation under the Act, which apply to the Virgin Media Network and which authorize the provision of Services;
- "Virgin Media Network" means the telecommunication systems (including Services Equipment) run by Virgin Media or any Associated Company (as principal or agent) from time to time under the terms of the IPC Licences for the purpose of providing Services;
- "Virgin Media'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 Virgin Media by way of description of or otherwise in connection with provision of Services;
- "Order Form" means the order form completed by Virgin Media and the Customer;
- "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 Virgin Media 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 Virgin Media 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 Virgin Media's Service Literature or as advised by Virgin Media;

“Rental”	means the rental payable by the Customer to Virgin Media for the provision of Services and the Services Equipment, as specified in the Order Form or as increased or decreased by Virgin Media 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 Virgin Media 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 Virgin Media’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 Virgin Media failing to meet specified service levels calculated in the manner set out in Virgin Media’s Service Literature;
“Services Equipment”	means any apparatus, equipment and site documentation provided by Virgin Media 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 Virgin Media to the Customer, as set out in Virgin Media’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 Virgin Media for use of the Services and the Services Equipment which vary dependent on the volume of traffic and/or duration of connection time and in the case of voice calls are rated per second but billed per minute rounded up to the next whole minute or otherwise, as set out from time to time in Virgin Media’s Service Literature
“User”	means any party authorised by Virgin Media and the Customer to use the Services;
“Working Day”	means Monday to Friday 9 a.m. to 6 p.m. excluding Bank and Public holidays;

## **2 THE SERVICES**

In accordance with the provisions of this Agreement Virgin Media 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 Virgin Media 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 Virgin Media, subject to the payment by the Customer of the applicable Cancellation Charges.

3.3 If Virgin Media sends the Customer a revised version of Virgin Media's current standard terms and conditions for provision of Services, together with a notice stating when such revised terms and conditions will come into force and the Customer 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 Virgin Media 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 Virgin Media 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 Virgin Media'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 Virgin Media 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 commencement of Services, the Customer shall submit to Virgin Media:

- (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, Virgin Media shall set an Agreed Ready for Service Date upon receiving all such documentation and payments. In either case, Virgin Media may conduct a survey of any Site and may further amend the Agreed Ready for Service Date based on the results of such survey.

4.1.6 Any lead times contained in the Order Form or Virgin Media's Service Literature are general estimates only and are not binding on Virgin Media only and are not binding on Virgin Media.

### **4.2 STANDARD OF SERVICE**

4.2.1 Virgin Media reserves the right to modify, change, add to or replace the Virgin Media Network, the Internet Network, the Services Equipment or any apparatus comprised therein. Any such modification, change, addition or replacement shall be carried out at Virgin Media's own expense and Virgin Media shall use reasonable endeavours to ensure it does not materially detract from, reduce or impair the overall performance or operation of Services addition or replacement shall be carried out at Virgin Media's own expense and Virgin Media 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 Virgin Media 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, Virgin Media shall, where reasonably practicable, notify the Customer of such change by written notice to be given not less than three (3) months prior to the proposed date of implementation, and the Customer shall have the right to terminate this Agreement by

giving Virgin Media 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 Virgin Media. 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 Virgin Media shall be responsible for the maintenance of the Virgin Media Network, the Internet Network and Services Equipment.

4.3.2 Virgin Media shall provide a twenty four (24) hour a day fault reporting facility to the Customer that may be used by such representative of the Customer as agreed by Virgin Media. Such agreement shall not be unreasonable withheld.

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

4.3.4 Virgin Media shall have the right to charge (as set out in Virgin Media's Service Literature) the Customer for work carried out by Virgin Media 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 willful 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 Virgin Media's normal working hours, the Customer will pay a charge for such work calculated at Virgin Media's applicable hourly rate as set out in Virgin Media's Service Literature.

### **4.4 INFORMATION EXCHANGE**

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

4.4.2 Virgin Media shall supply the Customer with all relevant information necessary to enable the Customer suitable 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 Virgin Media. The Customer shall ensure that any restoration and redecorating 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 Virgin Media to deliver, install and provide Services and Services Equipment at the Sites.

4.5.3 To enable Virgin Media expeditiously and properly to exercise its rights and fulfill 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 Virgin Media and any other person(s) authorised by Virgin Media to have immediate access at any time to the Sites and Services Equipment, and shall provide Virgin Media with or procure such facilities and co-operation as Virgin Media shall reasonable request.

4.5.4 A secure electricity power supply (including backup) 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 Virgin Media via the Virgin Media Network. Backup 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. Virgin Media 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 Virgin Media 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 Virgin Media to enable Virgin Media to deal with the Customer's designated maintainers of Customer Provided Apparatus. Virgin Media shall not authorise any work or incur any costs on behalf of the Customer without prior written approval of the Customer.

4.5.6 Virgin Media 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 Virgin Media 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 reasonable 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 Virgin Media, notify or obtain, as applicable, any necessary permission or co-operation of a Telecommunications Operator or other relevant person for the connection of Customer Provider Apparatus to the Virgin Media Network or the Internet Network. Virgin Media 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. Virgin Media reserves the right to disconnect any Customer Provided Apparatus if the Customer does not fulfill its obligations under this clause 4.7, or if in the reasonable opinion of Virgin Media the Customer Provided Apparatus is liable to cause the death of, or personal injury to, or damage to the property of Virgin Media or any person engaged in the operation of the Virgin Media Network or the Internet Network, or materially to impair the quality of any telecommunications services provided by means of the Virgin Media Network or the Internet Network.

#### **4.8 HEALTH HAZARDS**

The Customer undertakes to advise Virgin Media of any rules or regulations relating to health and safety at work applicable at the Sites and Virgin Media 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. Virgin Media 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 Virgin Media named as a co-insured. Upon request from Virgin Media 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 Virgin Media 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 Service 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 Virgin Media;
- 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 Virgin Media 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 operations; and
- g) Not to remove, tamper with or obliterate any words or labels on the Services Equipment or any party thereof.

4.9.3 The Customer confirms that it has read and understood Virgin Media'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 Virgin Media or its manufacturers. Neither Virgin Media 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 Virgin Media's sole and absolute discretion. Where Virgin Media agrees to change Services, Virgin Media shall reconfigure the Virgin Media 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, Virgin Media 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 Virgin Media 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 Virgin Media under this clause 4.10.2 the Virgin Media 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 Virgin Media Reconfiguration Charges for changes requested under clause 4.10.1 and 4.10.2 and such applicable Installation Charges, Rental and other 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) Virgin Media shall have the right to charge (as set out in Virgin Media's Service Literature) and seek advance payments thereof for any work required to be undertaken; and
- b) Virgin Media shall have the right to amend 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 Virgin Media'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 of some of the Services following the expiry of the Minimum Period, the Customer shall give Virgin Media three (3) months' written notice, except where otherwise specified in Virgin Media'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 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 Virgin Media 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 Services and undertakes to prevent such User from using Services:

- a) For the communication, publication, transmission or receipt of any material which is defamatory, offensive or abused or of an obscene, nuisance, hoax threatening or menacing character; or
- b) In 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 criminal offense; or
- d) To cause annoyance, inconvenience or needless anxiety.

5.3 The Customer undertakes not to resell for money or monies worth Services or any part thereof to any third party, other than with prior written consent of Virgin Media.

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 Virgin Media of 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 Virgin Media's obligations hereunder the Customer shall pay to Virgin Media the Installation charges, usage charges, rental and any other charges due under this Agreement

6.2 All sums due to Virgin Media 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 Virgin Media under this Agreement shall be of the essence of this Agreement. Without prejudice to Virgin Media's right to treat non-payment or late payment as a repudiatory breach of this Agreement, Virgin Media reserves the right to charge daily interest on outstanding amounts, until payment in full is received by Virgin Media, 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 judgment. Interest shall continue to accrue notwithstanding termination of this Agreement for any cause whatsoever. If any payments are more than thirty (30) days overdue, Virgin Media 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 installment 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 prior at a daily basis.

6.5 Usage Charge shall be payable in arrears except where notified to the Customer in writing by Virgin Media. Usage Charges shall be calculated by Virgin Media by reference to data recorded or logged by Virgin Media 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 Virgin Media'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 willful act, neglect or failure to fulfill its obligations hereunder, the Installation Charges and Rental for that Sites 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 Virgin Media under this Agreement shall be payable by the Customer upon receipt of Virgin Media'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 Virgin Media. 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 Virgin Media shall be entitled to change the Rental, Usage Charges and any other charges payable by the Customer at any time. Virgin Media 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 Virgin Media may require payment from the Customer of a deposit of such amount as Virgin Media reasonably requires as security for the payment of any charges payable under this Agreement.

6.10.2 Virgin Media may hold the deposit until receipt from the Customer of all charges due under this Agreement and Virgin Media 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, Virgin Media shall be entitled to hold the deposit until the Services Equipment has been returned and Virgin Media is assured that it is in good working order.

6.10.3 Virgin Media 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 Virgin Media may reasonably require) provided that the Customer has paid to Virgin Media all charges due under this Agreement on the due date(s) for payment of such charges. Notwithstanding repayment of any deposit held, Virgin Media 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, Virgin Media 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 Virgin Media shall notify to the Customer. Virgin Media shall be entitled to credit the amount of such interest against any charges due from the Customer under this Agreement.

## **7 ACCEPTANCE**

7.1 Virgin Media shall be responsible for the installation and commissioning of Services and Services Equipment at the Sites. Following such installation and commissioning Virgin Media 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 Virgin Media may specify. Where the Customer is receiving Services solely to provide access to the Internet, Virgin Media shall cooperate with the Customer in connecting the Customer Provided Apparatus to the Internet Network.

7.2 Virgin Media shall present a written acceptance certificate to the Customer representative when Virgin Media 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 Virgin Media may conduct the Acceptance Tests and where such tests are successfully concluded in Virgin Media'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, Virgin Media shall either replace or repair, at its sole option, such as any part thereof and repeat said Acceptance Tests until they are successfully concluded.

## **8 TITLE AND RISK**

### **8.1 LEASING**

8.1.1 Where Virgin Media 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 Virgin Media and shall ensure that all third parties comply with the provisions of clause 4.9.2.

8.1.2 Where Virgin Media 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 Virgin Media for and shall indemnify Virgin Media 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 Virgin Media). The Customer shall notify Virgin Media 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 Virgin Media'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 Virgin Media shall deliver the Equipment to the Customer. Any date agreed for delivery of the Equipment shall be treated as an estimate only and Virgin Media shall have no liability for any failure to meet such date.

8.2.2 Unless otherwise state, 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, Virgin Media reserves the right to vary the price to include any changes in Virgin Media 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 willful act or negligence of Virgin Media.

8.2.5 Until Virgin Media has received payment in full for all Equipment delivered by Virgin Media, the Equipment shall remain Virgin Media'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 Virgin Media 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 in to liquidation, receivership or administration then (without prejudice to its other rights) Virgin Media 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 Virgin Media 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 Virgin Media has authority to make any warranty, representation or promise concerning the Equipment except in writing and signed by a duly authorised officer of Virgin Media.

8.2.8 Virgin Media 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. Virgin Media 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 Virgin Media has provided written advice to the Customer and the Customer has relied on that advice.

8.2.10 Virgin Media reserves the right to make minor alterations to the specification of the Equipment which does not materially affect the Equipment's performance.

## **9 WARRANTIES AND REPRESENTATIONS**

9.1 Virgin Media warrants that Services shall be performed in a timely and professional manner and with reasonable skill and care.

9.2 Virgin Media warrants that Services shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments, and that Virgin Media will obtain all licences and permits required to comply with such laws, enactments, regulations, standards or other similar instruments.

9.3 Virgin Media 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 Virgin Media 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 Virgin Media 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 WEBSpace**

### **10.1 SOFTWARE**

10.1.1 Intellectual property rights in all software (in whatever form) provided by Virgin Media to the Customer for the purpose of using the Services Equipment shall remain the property of Virgin Media or its licensor. Virgin Media grants the Customer a nonexclusive non-transferable 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 Virgin Media only at the Site and on that number of computers which is agreed by Virgin Media in advance.

10.1.3 The Customer shall:

- a) Keep the software in confidence;
- b) Not reproduce the software except for archival or backup 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 Virgin Media 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, Virgin Media reserves the right to charge the Customer for transferring such Names onto the Internet Network.

10.2.2 If Virgin Media allocates one or more of its own Names to the Customer, such Names shall remain the property of Virgin Media and shall be returned to Virgin Media upon termination of this Agreement.

10.2.3 If the Customer so requests, Virgin Media will arrange the registration of Name on the Customer's behalf. The Customer shall pay Virgin Media 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 Virgin Media for any loss or damage suffered as a result of the use of such Names.

10.2.4 The Customer acknowledges that Virgin Media 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 Virgin Media in its sole discretion) to supply Virgin Media with the applicable registration or other documents in confirmation of such warranty.

10.2.6 Virgin Media may require the Customer to select replacement Names and/or suspend Services if, in Virgin Media's opinion, there are reasonable grounds for Virgin Media to believe that the Customer's current use of 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 Virgin Media 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 with the Exception of Provider Independent IP addresses.

10.3.2 The Customer acknowledges that, in the event that Virgin Media is required by order of Government or other authority to reconfigure the Internet Network, then the Customer may be obligated to reconfigure its own networks in order to continue receiving the Services. Virgin Media shall not be liable for any costs incurred by the Customer in connection with any such reconfiguration.

### **10.4 WEBSITE**

10.4.1 Where the Customer is renting website from Virgin Media, 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 Virgin Media's servers and to satisfy itself of the effectiveness of any system it establishes to monitor the website contents and use.

10.4.3 Virgin Media may at its absolute discretion move any website which generates abnormally high hit levels. Virgin Media 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 Virgin Media provides the Customer with numbers and/or Access Codes then all rights associated with such numbers and Access Codes belong to Virgin Media. 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 pre judicial to Virgin Media's rights therein.

11.2 Virgin Media shall be entitled, for operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on Virgin Media or by the Virgin Media Licences or any other competent authority, to withdraw any number or Access Codes allocated to the Customer provided that Virgin Media 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 Virgin Media there are reasonable grounds for believing the Customer has not complied or is not complying with this Agreement Virgin Media 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 Virgin Media 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 Virgin Media or the Customer, the Customer shall notify Virgin Media immediately and Virgin Media shall immediately prevent access to Services by the use of any such Access Code and allocate a new Access Code in its place. If Virgin Media 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 Virgin Media or the Customer, Virgin Media shall notify the Customer and Virgin Media 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**

12.1.1 Virgin Media 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 under taking 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 Virgin Media or shall default in due performance or observance of any material obligation under this Agreement or any other agreement with Virgin Media or an Associated Company of Virgin Media 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 Virgin Media 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 Virgin Media 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 Virgin Media Licences or any one or more of them, or Virgin Media's agency in respect thereof, expire or are revoked, in which event Virgin Media 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 Virgin Media with any false, inaccurate or misleading information for the purpose of obtaining Services (or any part thereof); or
- g) The Customer is suspected, in Virgin Media's reasonable opinion, of involvement with fraud or attempted fraud or any other criminal offense 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 Virgin Media 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) percent per annum from the date of payment to the expiry of the Minimum Period, except where the date of termination falls three (3) 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 Virgin Media 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 Virgin Media 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) Virgin Media shall be entitled to terminate this Agreement; or

b) Virgin Media shall be obliged to comply with an order, instruction or request of Government, regulatory authority, emergency services organisation or other competent authority; or

c) Virgin Media shall need to carry out work relating to exceptional upgrading or maintenance of the Virgin Media Network and Virgin Media agrees the times of such work with the Customer beforehand in writing; or

d) Virgin Media 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 Virgin Media of its right of suspension in respect of an event referred to in this clause 12 shall be without prejudice to Virgin Media's right to terminate this Agreement subsequently in respect of the same or any other event.

12.2.3 The Customer shall reimburse Virgin Media 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 Virgin Media 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 PROVISION OF THIS CLAUSE 13.**

13.1 The following provision and those in clause 17 set out Virgin Media'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 Virgin Media 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 Virgin Media's liability to the Customer for death or injury resulting from its own or that of its employees' or agent s' negligence while acting in the course of their employment shall not be limited.

13.4 The Customer acknowledges that Virgin Media has no control over the information and/or software transmitted via the Services and that Virgin Media 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, Virgin Media 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, Virgin Media may choose not to publish or transmit certain

newsgroup or other material via the Services, and Virgin Media shall have no liability to the Customer for any such action or decision.

13.5 Subject to the provisions of clause 13.3 Virgin Media'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 Virgin Media 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 Virgin Media 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 Virgin Media 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 Virgin Media 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 Virgin Media 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 provision 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 Virgin Media to the Customer, Virgin Media 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 Virgin Media and the Customer shall have no rights therein beyond a nonexclusive 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 Virgin Media 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 Virgin Media 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 Virgin Media of any Intellectual Property Infringement forthwith upon becoming aware of the same;

b) gives Virgin Media 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 Virgin Media; and

c) acts in accordance with the reasonable instructions of Virgin Media and gives to Virgin Media 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 Virgin Media shall reimburse the Customer its reasonable costs incurred in complying with the provisions of clause 14.2.

14.4 Virgin Media 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 Virgin Media 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 of function.

14.6 If Virgin Media in its reasonable judgment is not able to exercise any of the options set out at clause 14.5 then Virgin Media shall be entitled to terminate this Agreement by giving thirty (30) days' notice to the Customer without further liability to Virgin Media.

14.7 The Customer shall indemnify Virgin Media against any claims, proceedings and expenses finally awarded against Virgin Media 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 Virgin Media, 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.

14.8 Virgin Media 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 Virgin Media:

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 subcontractors are bound by an undertaking in substantially the same terms as contained in this clause 15.

15.3 The obligation 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 Virgin Media'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, "land" includes seashore, land covered with water and foreshore other than foreshore which is the property of the State; in fee simple in perpetuity or for any lesser estate of the Customer therein to Virgin Media (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 Virgin Media 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 Virgin Media 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 Virgin Media to meet the Service Levels, calculated in the manner set out in Virgin Media's Service Literature. Such Service Credits shall be the Customer's sole and exclusive remedy with respect to the failure of Virgin Media to meet Service Levels.

17.2 Subject to clause 13 Virgin Media 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 Virgin Media 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 Virgin Media 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 SUBLETTING**

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 Virgin Media in writing by the Customer as an address to which notices, invoices and other documents may be sent and to, in the case of Virgin Media, the address stated at the head of this Agreement or such address as Virgin Media 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 mailbox.

## **20 PROTECTION OF PERSONAL DATA**

20.1 Each party warrants that it is properly registered under the Data Protection Act 1988 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 Act 1988 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 reexport 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, lockout, 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**

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

26.1 Prior writings, negotiations or understandings with respect hereto. 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 26.2 the law governing this Agreement.

## **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 this 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**

30.1 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

30.2 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

31.1 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

31.2 copying of these then we may prevent you (if we are bound by contract to prevent such copying) receiving the Services.

31.3 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.

31.4 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.

## **32 GOVERNING LAW AND JURISDICTION**

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

## **SME TELEPHONY TERMS AND CONDITIONS**

### **33. Telephone Number and Directory**

33.1 If you accept the Telephone Service we will allocate a number to each of your telephone lines. The telephone numbers and any rights belong to us and, subject to Paragraph 36 below; you may not sell or agree to transfer the numbers to any person. We are entitled to change your telephone number or code number or the specification of the Services for operational reasons but will always endeavour to advise you of this by giving at least 30 days' prior notice.

33.2 We do not provide a telephone directory service. You agree that we may make your name, address and telephone number available to the emergency services and to any other licensed public telecommunications operators for the purpose of telephone directories and a public directory enquires service. You must notify us, in writing, should you wish any such information to be withheld or if you wish to opt out of the National Directory Database and if this is your wish then we shall only disclose such information if and to the extent that we are legally required to do so. We do not accept any liability whatsoever for a failure by the Operator to whom we provide such information to comply with any listing request that you make to us or to that Operator.

### **34. Fraud, Nuisance High Usage and Prohibited Calls**

The Services are for normal business use, including any unlimited calling plans. We can suspend or terminate the Services if we determine, at our sole discretion that the number of calls or charges for calls made by you indicate that the Services are not being used in a manner consistent with normal business usage or that you are otherwise in violation of this agreement. We will make reasonable efforts to contact you before suspending or terminating the Services but we are not liable for any loss you may suffer through any suspension covered by this condition.

### **35. Voicemail**

We reserve the right to suspend any voicemail account that not has been accessed for a consecutive period of 5 months without prior consent or notification. A suspended voicemail account may be reactivated by contacting business customer services. In case of a suspension, we reserve the right to delete the content of a voicemail account at the time of suspension, including any greetings and any saved voicemails. In case a suspended account remains suspended for an additional consecutive period of 1 month, we reserve the right to terminate the voicemail account.

### **36. Number Transferability on Service Disconnection**

Upon the disconnection of your Services, we will release to your new service provider the telephone

number(s) that you used in connection with your Services if all of the following conditions are met: (1) such new service provider is able to accept such number; (2) your account has been properly disconnected, (3) your account is completely current, including payment for all Charges and applicable disconnection fees; (4) you request the transfer upon disconnecting your account. However, please be aware that you may not be able to retain your telephone number if you move premises.

### **37. Disclaimer of Liability and Indemnification / Emergency Services / Connected Services**

37.1 SME Telephony telephone service provides access to emergency services free of charge. However, SME Telephony services depend on access to an electrical supply and the internet. If there is an internet or electricity outage for any reason, such outage will prevent all SME Telephony Services, including the dialing of emergency services and any other connected services, including but not limited to alarm systems or medical monitoring systems, from functioning. IN THE EVENT OF SUCH AN OUTAGE WE ADVISE CUSTOMERS TO USE ALTERNATIVE METHODS, SUCH AS MOBILE TELEPHONES, TO ACCESS EMERGENCY SERVICES OR ANY OTHER CONNECTED SERVICES. WE ALSO ADVISE CUSTOMERS TO PLAN ACCORDINGLY IN ADVANCE.

37.2 It may not be possible to accurately determine the exact geographic location of a SME Telephony caller.

AN EMERGENCY OPERATOR OR OTHER OPERATOR ANSWERING YOUR CALL MAY NOT HAVE YOUR PHYSICAL LOCATION OR ADDRESS INFORMATION, SO YOU MUST BE PREPARED TO GIVE THEM THIS INFORMATION. UNTIL YOU GIVE THE EMERGENCY OPERATOR OR OTHER OPERATOR YOUR LOCATION, THEY MAY NOT BE ABLE TO DISPATCH HELP IF THE CALL IS NOT COMPLETED, IS DROPPED OR IS DISCONNECTED, OR IF YOU ARE UNABLE TO SPEAK.

37.3 There may be a greater possibility of network congestion and/or reduced speed in the routing of calls to emergency services or connected services made utilizing the Service as compared to traditional calls to emergency services or connected services dialed over traditional public telephone networks. You should inform any employees, invitees and other third persons who may be present at the physical location where you utilize the Services of the important differences in and limitations of SME Telephony dialing as compared with traditional phone service as it relates to access to emergency services and connected services.

37.4 We do not have any control over whether, or the manner in which, calls using our SME Telephony service are answered or addressed by any emergency response centre or connected services provider. We disclaim all responsibility for the conduct of emergency response centers and connected services providers. Neither us nor our officers or employees may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to accessing emergency services or connected services unless such claims or causes of action arose from our gross negligence or willful misconduct. You shall defend, indemnify, and hold us and our officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service harmless, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including the inability of any user of the Service to be able to access emergency services or connected services.

37.5 Virgin Media will use reasonable endeavours to guarantee the security of your calls, however, the security of your calls is not guaranteed and we accept no liability with respect to call confidentiality.

37.6 Further information on these telephone services can be found on the Commissioner for Communications Regulation (ComReg) website at <http://www.comreg.ie/>, (in particular ComReg Document No. 05/50).

### **Call Pack**

Virgin Media Business offers a call pack 'SME Unlimited Call Pack'. This pack includes calls to Local, National and UK Fixed destinations only. All other destinations are charged at the standard SME rate for the destination.

A fair use policy of 2,500 minutes applies to this call pack, after which standard SME rates apply

## **Microsoft Office 365**

38.1 Microsoft is the owner and provider of the Microsoft Office 365 software and online services. Virgin Media has been licensed by Microsoft to licence the software in any of the Microsoft Office 365 Services (hereinafter referred to as the "Licensed Software", "Microsoft Software" , "Software" or "software") and the Microsoft Office 365 on line services to the Customer (hereinafter referred to as the "Online Services", or "online services" or "online service") and where the Customer orders any Software and or Online Services the licence granted to the Customer shall be subject to the terms and conditions set out in clauses 38.1 and 38.2. The Customer agrees to comply with these terms and conditions in its use of the Microsoft Software and Online Services.

The Customer acknowledges and agrees that while the reference to Licensor in clauses 38.1 and 38.2 is to Virgin Media, Microsoft is the provider and owner of the Software and the Online Services. The Customer acknowledges and agrees that references to Virgin Media and its Licensors, or licensors in clauses 38.1 and 38.2 are to Virgin Media and Microsoft. The Customer acknowledges and agrees that references to "You" in clauses 38.1 and 38.2 are to the Customer.

### **Software License Grant.**

#### **a. General**

These license terms are an agreement between the licensor ("Licensor") of the Licensed Software and you ("Microsoft Agreement"). License grants are subject to your obligation to pay and your compliance with the terms set out in this Microsoft Agreement and any additional product use terms associated with this Microsoft Agreement. A License is nonexclusive, non-perpetual (unless specifically allowed), and is not transferable (unless specifically allowed). The ability to use the Microsoft Software may be affected by minimum system requirements or other factors. Licensor and Microsoft reserve all rights not expressly granted (and no other rights will arise by implication, estoppel, exhaustion, or otherwise).

**b. Licensed Software.** Licensor grants you licenses for the number of copies of each Licensed Software that you ordered from Licensor and the right to use a prior (older) version in place of a Licensed Software if specified in the product use terms.

**i. When licenses become perpetual.** Unless you obtain perpetual licenses under an available buyout option from Microsoft, Licensed Software obtained under this Microsoft Agreement lasts only for the term of your agreement with the Licensor. Any references in the product use terms to running Licensed Software on a perpetual basis apply only if you obtain perpetual licenses under an applicable buy-out option.

**ii. License confirmation.** All of the following, when taken together, are proof of your license (or if the buy-out option is available and you have exercised it, your perpetual license):

- (a) this Microsoft Agreement,
- (b) the order confirmation, if any,
- (c) for any transfers allowed by this agreement, the documentation evidencing the license transfers, and
- (d) proof of payment.

**iii. License rights are not related to fulfilment of software media.** The rights applicable to Licensed Software obtained under this Microsoft Agreement are not related to any order of fulfilment of software media.

#### **iv. Transferring licenses to Affiliates or third parties.**

**1. Right to transfer.** You may transfer licenses for Licensed Software under this Microsoft Agreement only after you exercise an available buy-out option. You may transfer fully-paid perpetual licenses only to: (1) an Affiliate; or (2) to an unaffiliated third party in connection with a merger or transfer of ownership of your enterprise. No license transfer will be valid unless you provide this Microsoft Agreement to the party who is receiving the licenses and that party accepts it in writing. Any attempted

transfer not made in compliance with this section will be void. A transfer of licenses will not relieve the assigning party of its obligations under this Microsoft Agreement. The resale of licenses, and any other transfer not expressly permitted by this section, is expressly prohibited.

**2. Certain transfers not permitted.** you may not transfer any of the following:

- a. licenses on a shortterm basis (90 days or less);
- b. temporary rights to use Licensed Software;
- c. Microsoft Software Assurance coverage, if any;
- d. perpetual licenses for any version of any Licensed Software acquired through Microsoft Software Assurance separately from the full version license; or
- e. a perpetual upgrade license for a desktop operating system separately from the underlying desktop operating system license or from the computer system on which the Licensed Software is installed and to which the license is assigned.

**c. Limitations on use.** Licensed Software is licensed to you, not sold. You have no right to:

- i. reverse engineer, decompile, or disassemble any Licensed Software, except where applicable law permits it despite this limitation;
- ii. rent, lease, lend, resell, or host to or for third parties any Licensed Software, except as may be expressly permitted for a given Licensed Software in the product use terms;
- iii. separate and use the components of Licensed Software on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as may be expressly permitted in the product use terms; or
- iv. modify or create derivative works of the Licensed Software.

## **38.2 General License Terms. You may use and access the online services as described below**

### **I. Universal Terms**

**a. Your Use Rights.** You may use the software and online services only as expressly permitted in these terms and conditions.

**b. Third Party Programs.** If other terms come with a program licensed by a third party, those terms apply to your use of it.

**c. Pre-release Code.** If other terms come with pre-release code, those terms apply to your use of it.

**d. Updates and Supplements.** Virgin Media and its licensors may update or supplement the Microsoft Software you license. If so, you may use that update or supplement with the Microsoft Software. If other terms come with an update or supplement, those terms apply to your use of it.

**e. Technical Limitations.** You must comply with any technical limitations in the products that only allow you to use them in certain ways. You may not work around them. For more information, see <http://www.microsoft.com/licensing/userights/TechLimit.aspx>.

**f. Other Rights.** Rights to access the Microsoft Software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.

**g. Additional Functionality.** Microsoft may provide additional functionality for the products. Other license terms and fees may apply.

**h. Internet Based Services.** Microsoft may provide Internet based services with the products. It may change or cancel the services at any time. You may not use these Internet based services in any way that could harm them or impair anyone else's use of them. You may not use the services to try to gain unauthorized access to any service, data, account or network by any means.

**i. Consent for Internet based Services.** The Internet Based Services Notices document at <http://microsoft.com/licensing/contracts> identifies software features that connect to Microsoft or service provider computer systems over the Internet. It also identifies the products in which they are found. Some features appear in more than one product. In some cases, you will not receive a separate notice



when one of these features connects. You may switch off these features or not use them. By using these features, you consent to the transmission of this information. Microsoft does not use the information to identify or contact you.

**ii.Computer Information.** These features use Internet protocols, which send to the appropriate systems computer information, such as your Internet protocol address, the type of operating system, browser and name and version of the software you are using, and the language code of the device where you installed the software. Microsoft uses this information only to make the Internet based services available to you.

**iii.Use of Information.** Microsoft may use the computer information, accelerator information, search suggestions information, error reports, Malware reports and URL filtering reports to improve our software and services. Microsoft may also share it with others, such as hardware and software vendors. They may use the information to improve how their products run with Microsoft software.

**iv.Misuse of Internet based Services.** You may not use these services in any way that could harm them or impair anyone else's use of them. You may not use the services to try to gain unauthorized access to any service, data, account or network by any means.

**i.Documentation.** Any person that has valid access to your computer or internal network may copy and use the documentation corresponding to Microsoft Software for your internal reference purposes. Documentation does not include electronic books.

**j.Product Activation.** Some products require activation to install or access them. Activation associates the use of the Microsoft Software with a specific device. For information about when activation or a key is required, see the Product Activation section on <http://www.microsoft.com/licensing>. You are responsible for both the use of keys assigned to you and activation of products using your Key Management Service (KMS) machines. You should not disclose keys to third parties.

**a.KMS and Multiple Activation Key (MAK) Activation.** During Multiple Activation Key (MAK) activation, the software will send information about the Microsoft Software and the device to Microsoft. During Key Management Service (KMS) host activation, the software will send information about the KMS host software and the host device to Microsoft. KMS client devices activated using KMS do not send information to Microsoft. However, they require periodic reactivation with your KMS host. The information sent to Microsoft during MAK or KMS host activation includes:

- the version, language and product key of the software
- the Internet protocol address of the device
- information derived from the hardware configuration of the device.

For more information, see <http://www.microsoft.com/licensing/existing-customers/productactivation.aspx>. By using the software, you consent to the transmission of this information. Before you activate, you have the right to use the version of the software installed during the installation process. Your right to use the software after the time specified in the installation process is limited unless it is activated. This is to prevent its unlicensed use. You are not licensed to continue using the software after that time if you do not activate it. If the device is connected to the Internet, the software may automatically connect to Microsoft for activation. You can also activate the software manually by Internet or telephone. If you do so, Internet and telephone service charges may apply. Some changes to your computer components or the software may require you to reactivate the software. The software will remind you to activate it until you do.

**b.Proper Use of KMS.** You may not provide unsecured access to your KMS machines over an uncontrolled network such as the Internet.

**c.Unauthorized Use of MAK or KMS Keys.** Microsoft may take any of these actions related to unauthorized use of MAK or KMS keys:

- prevent further activations
- deactivate
- otherwise block the key from activation or validation Key deactivation may require the customer to acquire a new key from Microsoft

**k. Font Components.** While the software is running, you may use its fonts to display and print content.

You may only

- embed fonts in content as permitted by the embedding restrictions in the fonts; and
- temporarily download them to a printer or other output device to print content.

**l. Using More than One Product or Functionality Together.** You need a license for each product and separately licensed functionality used on a device or by a user. For example, if you use Office on Windows, you need licenses for both Office and Windows.

**m. Multiplexing.** Hardware or software you use to:

- pool connections,
- reroute information,
- reduce the number of devices or users that directly access or use the product, or
- reduce the number of operating system environments, devices or users the product directly manages,

(sometimes referred to as “multiplexing” or “pooling”), does not reduce the number of licenses of any type that you need.

**II. Online Services General License Terms.**

**a) User Subscription Licenses (User SLs) and Device Subscription Licenses (Device SLs).**

•If an online service is listed in the table below, you must acquire and assign User SLs or Device SLs to your users and devices as described in the table. If both User and Device SLs are listed for the online service, you may acquire and assign either type to use the online service.

•A hardware partition or blade is considered to be a separate device.

Online Services That Require User or Device SLs		
Online Service	User/Device SL	Required For Each of Your...
Exchange Online Basic	• Exchange Online Basic User SL	Users who access the online service or related software
Exchange Online Deskless Worker	• Exchange Online Deskless Worker User SL; or • Business Productivity Online Deskless Worker Suite User SL	Users who access the online service or related software
Exchange Online Kiosk	• Exchange Online Kiosk User SL, or • Office 365 Plan K1 User SL, or • Office 365 Plan K2 User SL	Users who access the online service or related software
Exchange Online Plan 1	• Exchange Online Plan 1 User SL, or • Exchange Online Plan 2 User SL, or • Office 365 Plan E1 User SL, or • Office 365 Plan E2 User SL, or • Office 365 Plan E3 User SL, or • Office 365 Plan E4 User SL	Users who access the online service or related software Archiving may be used for messaging storage only.

Exchange Online Plan 2	<ul style="list-style-type: none"> <li>• Exchange Online Plan 2 User SL, or</li> <li>• Office 365 Plan E3 User SL, or</li> <li>• Office 365 Plan E4 User SL.</li> </ul>	Users who access the online service or related software. Archiving may be used for messaging storage only.
Exchange Online Standard	<ul style="list-style-type: none"> <li>• Exchange Online Standard User SL,</li> <li>or</li> <li>• Exchange Online Standard User SL for Software Assurance; or</li> <li>• Business Productivity Online Standard Suite User SL, or</li> <li>• Business Productivity Online Standard Suite User SL for Software Assurance</li> </ul>	Users who access the online service or related software
Live Meeting Standard	<ul style="list-style-type: none"> <li>• Live Meeting Standard User SL, or</li> <li>• Live Meeting Professional User SL, or</li> <li>• Business Productivity Online Standard Suite User SL, or</li> <li>• Business Productivity Online Standard Suite User SL for Software Assurance</li> </ul>	<p>Authenticated users who access the online service or related software. However, i) users licensed for Lync Online Plan 1 or Plan 2 and ii) Users licensed for Lync Server Enterprise CAL</p> <p>do not need USLs for purposes other than scheduling or conducting a web conference or receiving Easy Assist.</p>
Live Meeting Professional	<ul style="list-style-type: none"> <li>• Live Meeting Professional User SL, or</li> <li>• Live Meeting Standard User SL, or</li> <li>• Business Productivity Online Standard Suite User SL, or</li> <li>• Business Productivity Online Standard Suite User SL for Software Assurance</li> </ul>	<p>Authenticated users who access the online service or related software. However,</p> <p>i)Users licensed for Lync Online Plan 1 or Plan 2 and ii) Users assigned Lync Server Enterprise CALs</p>

Online Services That Require User or Device SLs		
Online Service	User/Device SL	Required For Each of Your...
		do not need USLs for purposes other than scheduling or conducting a web conference or receiving Easy Assist.
Lync Online Plan 1	<ul style="list-style-type: none"> <li>• Lync Online Plan 1 User SL, or</li> <li>• Lync Online Plan 2 User SL, or</li> <li>• Office 365 Plan E1 User SL, or</li> <li>• Office 365 Plan E2 User SL, or</li> <li>• Office 365 Plan E3 User SL, or</li> <li>• Office 365 Plan E4 User SL, or</li> <li>• Live Meeting Professional User SL,</li> </ul> or Live Meeting Standard User SL	Users who access the online service or related software
Lync Online Plan 2	<ul style="list-style-type: none"> <li>• Lync Online Plan 2 User SL, or</li> <li>• Office 365 Plan E1 User SL, or</li> <li>• Office 365 Plan E2 User SL, or</li> <li>• Office 365 Plan E3 User SL, or</li> <li>• Office 365 Plan E4 User SL, or</li> <li>• Live Meeting Professional User SL,</li> <li>or</li> <li>• Live Meeting Standard User SL</li> </ul>	Authenticated users who access the online service or related software. However, (i) users licensed for Lync Online Plan 1 ii) Users licensed for Lync Server Enterprise CAL (iii) Users licensed for Live Meeting Standard or Professional  do not need USLs to access the online service for purposes other than scheduling or conducting a web conference.
Office 365 Plan P1	<ul style="list-style-type: none"> <li>• Office 365 Plan P1 User SL</li> </ul>	Users who access the online service or related software
Office Communications Online Standard	<ul style="list-style-type: none"> <li>• Office Communications Online Standard USL; or</li> <li>• Office Communications Online Standard USL for Software Assurance; or</li> <li>• Business Productivity Online Standard Suite User SL; or</li> <li>• Business Productivity Online Standard Suite User SL for Software Assurance</li> </ul>	Users who access the online service or related software

Office Web Applications	<ul style="list-style-type: none"> <li>• Office Web Applications User SL, or</li> <li>• Office 365 Plan K2 User SL, or</li> <li>• Office 365 Plan E2 User SL, or</li> <li>• Office 365 Plan E3 User SL, or</li> <li>• Office 365 Plan E4 User SL.</li> </ul>	Users who access the online service or related software.
SharePoint Online Kiosk	<ul style="list-style-type: none"> <li>• Office 365 Plan K1 User SL or</li> <li>• Office 365 Plan K2 User SL</li> </ul>	Authenticated users who access the online service or related software for "read only" access to view site content and "edit privileges" for InfoPath forms, and Office 365 Plan K2 Users

Online Services That Require User or Device SLs		
Online Service	User/Device SL	Required For Each of Your...
		who access the online service to create and edit Office documents. No other access and use of the service is permitted
SharePoint Online Plan 1	<ul style="list-style-type: none"> <li>• SharePoint Online Plan 1 User SL, or</li> <li>• SharePoint Online Plan 2 User SL, or</li> <li>• Office 365 Plan E1 User SL, or</li> <li>• Office 365 Plan E2 User SL, or</li> <li>• Office 365 Plan E3 User SL, or</li> <li>• Office 365 Plan E4 User SL</li> </ul>	Authenticated users who access the online service or related software. However, you may not access Infopath, Excel, Access, Visio services.
SharePoint Online Plan 2	<ul style="list-style-type: none"> <li>• SharePoint Online Plan 2 User SL, or</li> <li>• Office 365 Plan E3 User SL, or</li> <li>• Office 365 Plan E4 User SL.</li> </ul>	Authenticated users who access the online service or related software.
SharePoint Online Standard	<ul style="list-style-type: none"> <li>• SharePoint Online Standard User SL, or</li> <li>• SharePoint Online Standard User SL for Software Assurance; or</li> <li>• Business Productivity Online Standard Suite User SL, or</li> <li>• Business Productivity Online Standard Suite User SL for Software Assurance</li> </ul>	Users who access the online service or related software

<sup>1</sup> "External users" means users that are not either (i) you or your affiliates' employees, or (ii) you or your affiliates' onsite contractors or agents.

• **Reassignment of User SLs.** You may:

- a. permanently reassign a User SL from one user to another or your Device SL from one device to another; or temporarily reassign a User SL to a temporary worker while the first user is absent or your Device SL to a loaner device while the first device is out of service.

b. **Add-on Subscription Licenses (Add-on SLs).** Add-on SLs are available as optional licenses or required licenses depending on the online service. For online services listed in the table below:

- You may acquire optional Add-on SLs and use that online service as described in the table, and,
- You must acquire required Add-on SLs to use that online service as described in the table.

Online Services That Offer Add-on SLs		
Online Service	Add-on SL	When Required...
SharePoint Online Plan 1 and 2	• SharePoint Online Partner Access Add-on SL	For up to 50 authenticated external users <sup>1</sup> accessing the online service or related software per Add-on SL per month in excess of those provided in the base subscription. You do not need SharePoint Online Plan 1 and 2 USL's for these users.
SharePoint Online Standard	• SharePoint Online Extra Storage Add-on SL	For each one gigabyte of storage in excess of storage provided with User SLs

<sup>1</sup> "External users" means users that are not either (i) you or your affiliates' employees, or (ii) you or your affiliates' onsite contractors or agents.

c. **Desktop Applications User Subscription Licenses (User SLs).** If a desktop applications online service is listed in the table below, you may acquire and assign User SLs to your users as described in the table.

Online Services That Require User SLs		
Online Service	User SL	Permits the Following:
Office Professional Plus Subscription	• Office Professional Plus User SL, or • Office 365 Plan E3 User SL, or • Office 365 Plan E4 User SL	Each user to whom you assign a User SL may install and use one copy of the software per device on up to 5 devices at a time. •

- **Reassignment of User SLs.** You may:
  - a. permanently reassign a User SL from one user to another; or
  - b. temporarily reassign a User SL to a temporary worker while the first user is absent.
- **Online Service and Software Upgrade.** If Virgin Media and its Licensors provide a major upgrade to software licensed under your User SLs for the online service, you must install the upgrade on all devices using the online service to prevent an interruption of the online service.
- **Required Connection.** Each user to whom you assign a User SL must connect each device upon which they have installed the software to the Internet at least once every 45 days. If a user does not comply with this requirement, the functionality of the software may be affected.
- **Remote Use.** You may allow other users to remotely access the software to provide you with support services. No other remote access use is permitted.

• **Subscription Validation.** Microsoft may automatically check the version of any version of software installed by your users on any device. Devices on which the software is installed may periodically provide information to verify that the software is properly licensed and that the Term has not expired. This information includes the software version, the user's Windows Live ID, product ID information, a machine ID, and the internet protocol address of the device. If the software is not properly licensed, its functionality will be affected. You may only obtain updates or upgrades for the software from Microsoft or authorized sources. For more information on obtaining updates from authorized sources, see [www.microsoft.com/genuine/downloads/faq.aspx](http://www.microsoft.com/genuine/downloads/faq.aspx). **By using the software, you consent to the transmission of the information described in this section.**

• **Media Elements and Templates.** Media images, clip art, animations, sounds, music, video clips, templates and other forms of content are "media elements". You may have access to media elements provided with the software or as part of a related service. You may copy and use those media elements in projects and documents. You may not

- sell, license or distribute copies of the media elements by themselves or as a product if the primary value of the product is the media elements;
  - grant rights to further license or distribute the media elements;
  - license or distribute for commercial purposes media elements that include the representation of identifiable individuals, governments, logos, trademarks, or emblems or use these types of images in ways that could imply an endorsement or association with your product, entity or activity; or
  - create obscene or scandalous works using the media elements.
- For more information, go to [www.microsoft.com/permission](http://www.microsoft.com/permission).

• **Font Components.** You may use the fonts installed by the software or as part of a related service to display and print content. You may only embed fonts in content as permitted by the embedding restrictions in the fonts and may temporarily download them to a printer or other output device to print content.

### III. Additional Terms.

**License Terms Updates.** Virgin Media and its licensors may update these license terms from time to time. Changes to these license terms that Virgin Media and its licensors make whether introduced with updates or supplements or are required by law to make, or that do not materially affect your use of the online service will apply immediately. For any other changes, your use of the online service under any existing license type will be governed by these license terms without those updates during the greater of either:

- 12 months from the time you first use it or
- the length of your committed term.

Virgin Media and its licensors will endeavour to notify you of updates at least 30 days before they are generally effective. You agree to the new terms by using the online service after we send you email notice or provide you with notice in any other form about the updates.

d) **Online Service Updates.** Virgin Media and its licensors may modify the functionality or features or release a new version of the online service and software from time to time. After an update, some previously available functionality or features may change or no longer be available. If Virgin Media and its licensors update the online service or software and you do not use the updated online service or software, some features may not be available to you and your use of the online service and software may be interrupted.

e) **Online Service Suspension.** Virgin Media and its licensors may suspend the online service in whole or in part and without notice:

- if Virgin Media and its licensors believe that your use of the online service represents a direct or indirect threat to our network function or integrity or anyone else's use of the online service;
- if reasonably necessary to prevent unauthorized access to customer data; or
- to the extent necessary to comply with legal requirements.

If Virgin Media and its licensors suspend the services without notice, we will provide the reason for such suspension if you request.

If Virgin Media and its licensors believe you have violated your license agreement, including these online service use rights, we may suspend the online services, in whole or in part, after providing you notice via email or other commercially reasonable mechanism.

Any suspension of services shall apply to the minimum necessary portion of the online services and only be in effect for as long as reasonably necessary to address the issues giving rise to the suspension.

**Online Service Expiration or Termination.** Upon expiration or termination of your online service subscription, your account will be disabled unless you contact Virgin Media and its licensors and tell Virgin Media and its licensors that you require your customer data to be retained in a limited function account for 90 days after expiration or termination of your subscription (the "retention period") so that you may extract the data. Following the expiration of the retention period, Virgin Media and its licensors will disable your account and then delete your customer data. Cached or backup copies will be purged within 30 days of the end of the retention period.

•**No Liability for Deletion of Customer Data.** You agree that, other than as described in these terms, Virgin Media and its licensors have no obligation to continue to hold, export or return your customer data. You agree that Virgin Media and its licensors have no liability whatsoever for deletion of your customer data pursuant to these terms.

f) **Availability of Online Service.** Availability of the online service, some of its functionality and language versions vary by country. End users may only use the online service, or certain functionality of online service, as is made available in the primary location of the end user. Information on availability is located at <http://www.microsoft.com/online/faq.aspx#international> or at an alternate site Microsoft identifies.

g) **Responsibility for Your Accounts.** You are responsible for your passwords, if any, and all activity with your online service accounts including that of users you provision and dealings with third parties that take place through your account or associated accounts. You must keep your accounts and passwords confidential. You must tell Virgin Media and its licensors right away about any possible misuse of your accounts or any security incident related to the online service.

h) **Use of Software with the Online Service.** You may need to install certain Microsoft software in order to sign into and use the online service. If so, the following terms apply:

•**Microsoft Software License Terms.** You may install and use the software on your devices only for use with the online service. Your right to use the software ends when your right to use the online service terminates or expires, or when Virgin Media and its licensors update the online service and it no longer supports the software, whichever comes first. You must uninstall the software when your right to use it ends. Virgin Media and its licensors may also disable it at that time.

•**Automatic Updates for Microsoft Software.** From time to time, Virgin Media and its licensors may check your version of the software and recommend or download updates to your devices. You may not receive notice when we download the update.

i) **Use of Other Web Sites and Services.** You may need to use certain Microsoft web sites or services to access and use the online services. If so, the terms of use associated with those web sites or services, as applicable, apply to your use of them.

j) **Third Party Content and Services.** Virgin Media and its licensors are not responsible for any third party content you access directly or indirectly via the online service. You are responsible for your dealings with any third party (including advertisers) related to the online service (including the delivery of and payment for goods and services).

k) **Your Customer Data.** You may be able to submit customer data for use in connection with the online service. "Customer data" are all data, including all text, sound, or image files that are provided to us by, or on behalf of, you through your use of the online service. When you submit customer data



for use with any online service that enables communication or collaboration with third parties, you acknowledge that those third parties may then be able to:

- Use, copy, distribute, display, publish, and modify your customer data;
- Publish your name in connection with the customer data; and
- Facilitate others' ability to do the same.

Some online services may offer functionality that restricts third parties' ability to do so. It is your responsibility to make use of that functionality as appropriate for your intended use of your customer data.

**l)Ownership of customer data.** As between the parties, you retain all right, title and interest in and to customer data. We acquire no rights in customer data, other than the rights you grant to us for the applicable online service. This does not apply to software or services Virgin Media and its licensors license you.

**m)Privacy.** Personal data collected through the online service may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities. This includes any personal data you collect using the service. By using this online service, you consent to transfer of personal data outside of your country. You also agree to obtain sufficient authorization from persons providing personal data to you, to:

- transfer that data to Microsoft and its agents, and
- permit its transfer, storage and processing.

See the online service's privacy statement for more information about how Microsoft may collect and use your information:

Online Service	Privacy Statement
Exchange Online Office Communications Online SharePoint Online (online services corresponding to BPOS)	<a href="http://go.microsoft.com/fwlink/?LinkId=104970">http://go.microsoft.com/fwlink/?LinkId=104970</a>
Exchange Online Lync Online SharePoint Online Office 365 Plan P1 (online services corresponding to Office 365)	
Live Meeting	<a href="http://go.microsoft.com/fwlink/?LinkID=90654">http://go.microsoft.com/fwlink/?LinkID=90654</a>

**n)Our Use of Customer Data.**

Customer data will be used only to provide you the online service. This may include troubleshooting aimed at preventing, detecting and repairing problems affecting the operation of the online service and the improvement of features that involve the detection of, and protection against, emerging and evolving threats to the user (such as malware or spam).

**o)Security of Customer Data.**

Microsoft will implement reasonable and appropriate technical and organizational measures, as described in the security overview applicable to the online service to help secure your customer data processed or accessed by the online service against accidental or unlawful loss, access, or disclosure. You agree that these measures are:

- Virgin Media's and its licensors only responsibility with respect to the security and handling of customer data; and
- in place of any confidentiality obligation contained in your volume license agreement or any other nondisclosure or confidentiality agreement.

See the table below for information on where to find the security overview for the online service.

Online Service	Security Overview
Exchange Online SharePoint Online Office Communications Online Office Live Meeting (online services corresponding to BPOS)	<a href="http://go.microsoft.com/fwlink/?LinkID=149494">http://go.microsoft.com/fwlink/?LinkID=149494</a>
Exchange Online SharePoint Online Lync Online Live Meeting Office 365 (online services corresponding to Office 365)	

p)**Scope of Use.** You may not:

- use the online service in a way that is prohibited by any law, regulation or governmental order or decree in any relevant jurisdiction, or that violates others' legal rights;
- use the online service in a way that could harm it or impair anyone else's use of it;
- use the online service to try to gain unauthorized access to any service, data, account or network by any means;
- falsify any protocol or email header information (e.g., "spoofing");
- use the online service to send "spam" (i.e., unsolicited bulk or commercial messages) or otherwise make available any offering designed to violate these terms (e.g., denial of service attacks, etc.); or
- remove, modify, or tamper with any regulatory or legal notice or link that is incorporated into the online service.

q)**Regulatory.** Microsoft may modify or terminate the online service in any country where there is any current or future government requirement or obligation that subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there, presents a hardship for Microsoft to continue operating the online service without modification, and/or causes Microsoft to believe these terms or the online service may be in conflict with any such requirement or obligation. For example, Microsoft may modify or terminate the online service in connection with a government requirement that causes Microsoft to be regulated as a telecommunications provider.

r)**Electronic Notices.** We may provide you with information about the online service you have signed up for in electronic form. If you do not wish to receive these notifications you should opt out of these emails, or other electronic notice by using the opt out information provided.

## **B. Exceptions and Additional Terms for Particular Products.**

### **For Exchange Online\*, Office Communications Online, Live Meeting\*, and SharePoint Online\*:**

USLs for Software Assurance. USLs for Software Assurance may be acquired and assigned to users either

- 1) who have also been assigned a qualifying CAL with active Software Assurance coverage or

2) who use a device to which a qualifying Device CAL with active Software Assurance coverage has been assigned.

You may not assign USLs for Software Assurance to more than one user at a time for any given qualifying device CAL. You must maintain active Software Assurance coverage on your qualifying CALs during the term of your USL for Software Assurance. Your right to access the online service or related software under a USL for Software Assurance expires on the earlier of

- 3) the lapse of Software Assurance coverage on your qualifying CAL or
- 4) expiration of your USL for Software Assurance.

A USL for Software Assurance corresponding to a user CAL only may be (and must be) reassigned to another user, when and as the qualifying user CAL is reassigned. A USL for Software Assurance corresponding to a device CAL may be reassigned to another user only when that new user uses a device that is assigned a qualifying device CAL with active Software Assurance coverage.

USLs available for Software Assurance customers and their qualifying CALs are listed in the table below:

USL for Software Assurance	Qualifying CAL
Business Productivity Online Standard Suite USL (for Core CAL Suite)	•Core CAL Suite
Business Productivity Online Standard Suite USL (for Enterprise CAL Suite)	•Enterprise CAL Suite
Exchange Online Standard USL	•Exchange Server 2007 Standard CAL, or •Core CAL Suite, or •Enterprise CAL Suite
Office Communications Online Standard	•Lync Server 2010 Standard CAL, or

USL for Software Assurance	Qualifying CAL
USL	•Enterprise CAL Suite
Live Meeting Standard or Professional USL	•Lync Server 2010 Enterprise CAL, or •Enterprise CAL Suite
SharePoint Online Standard USL	•Office SharePoint Server 2007 Standard CAL, or •Core CAL Suite, or •Enterprise CAL Suite

**C. Service Level Agreements (SLAs).**

Details on the service levels associated with your Microsoft Office Service can be found at [www.virginmediabusiness.ie](http://www.virginmediabusiness.ie) and in your welcome pack.

**D. Additional Licence Terms**

(i) No Warranty: To the extent permitted by law, Virgin Media and its licensors give no express warranties or representations and exclude all implied warranties and conditions, such as implied warranties or conditions of merchantability and fitness for purpose and exclude all liability for damages whether direct,

indirect or consequential, arising from the sale or use of the software and or online service.

(ii) Customer Support Services will be provided to you by Virgin Media.

(iii) Intellectual Property Rights: All rights in the Licensed Software vest in Microsoft. This Microsoft Agreement does not grant the Customer any right, title, interest or license in or to any Microsoft trademarks or other Intellectual Property Rights of Microsoft. Any use by you of Microsoft's Intellectual Property other than as set out in this Microsoft Agreement shall result in Virgin Media and its licensors immediately terminating the Microsoft Agreement with you. For the purposes of this clause Intellectual Property Rights means patents, utility models, rights in design, trademarks, trading business or domain names and email addresses, copyright and future copyright (including any such rights in typographical arrangements, websites or software), whether registered or not, and any applications to register or rights to apply for registration of any of the foregoing, rights in inventions, know-how, trade secrets and other Confidential Information, rights in databases and all other intellectual property rights of a similar or corresponding character that subsist now or in the future in respect of Microsoft;

(iv) The term of the licence granted to you is for a period of twelve months, this term will auto renew each month unless the Customer advises Virgin Media that it wishes to terminate the licence.

(v) You recognise and agree that the provisions of clauses 38.1 and 38.2 are for its benefit, Virgin Media's benefit and the benefit of Microsoft and its affiliates, licensors and suppliers and these parties will be entitled to require the due performance of certain provisions within this Microsoft Agreement.

(vi) You represent and warrant that you have the necessary rights to any data, software programs or services that you use in connection with your access or use of the Licensed Software and online service and that such activities do not infringe the intellectual property or other proprietary rights of any third party.

(vii) You consent to Microsoft receiving and using information relating to you in order to provide the software and online service.