

# Hibernia Services Limited (trading as eir business) Master Terms and Conditions for the Supply of Goods and Services

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

**Affiliate:** any subsidiary, or holding company, or any other subsidiary of a holding company of a party from time to time, as the terms “subsidiary” and “holding company” are defined in Section 7 and 8 of the Companies Act 2014, as amended from time to time.

**Agreement:** these master terms and conditions, the Order(s), the Service Schedule(s), any SOW, and the Charges.

**Applicable Data Protection Law** means:

- (i) the Irish Data Protection Acts 1988 to 2018;
- (ii) the European Communities (Electronic Communications Networks & Services) (Privacy & Electronic Communications) Regulations 2011;
- (iii) the EU Data Protection Directive 95/46/EC;
- (iv) the EU ePrivacy Directive 2002/58/EC (as amended) (the “ePrivacy Directive”);
- (v) the General Data Protection Regulation (Regulation (EU) 2016/679 (the “GDPR”)) and
- (vi) any successor or replacement to the laws set out above (including, the successor to the ePrivacy Directive).

**Business Day:** a day other than a Saturday, Sunday or a public holiday in the Republic of Ireland.

**Charges:** the charges payable by the Customer for the Services in accordance with Clause 3 and as specified on the Order or Charges Schedule (if any).

**Confidential Information:** information disclosed (whether in writing, orally or by any other means and whether directly and specifically designed as ‘confidential’ or which ought reasonably be regarded as confidential) under or in connection with this Agreement by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) or to which, under or in connection with the Agreement, the Receiving Party has gained access whether before or after the Effective Date including, without limitation, information relating to the Disclosing Party’s products, developments, services, operations, processes, plans or intentions, know-how, product information or trade secrets.

**Customer:** the customer as set out on the Order.

**Customer Equipment:** equipment (including software embedded in or run on such equipment), other than eir business Equipment, used by the Customer in connection with the Service.

**Deliverables:** any Goods and/or Services and/or Third Party Software (as the context requires) to be delivered to the Customer and expressly stated in an agreed Order or Statement of Work accompanying this Agreement:

**Dispute:** any disagreement, conflict or claims arising out of or in connection with this Agreement or its validity.

**eir business Equipment:** equipment (including any software embedded in or run on such equipment) other than Customer Equipment or Goods, owned or licensed by eir business and placed on a Site by eir for provision of the Service.

**Effective Date:** the date the first Order comes into force (or if there is no Order the Operational Service Date).

**eir business:** Hibernia Services Limited, incorporated in Ireland, number 170309, with address at 2 Heuston South Quarter, St. John’s Road West, Dublin D08 Y42N.

**Goods:** third party manufactured equipment and accessories supplied by or on behalf of eir business including the hardware upon which the Third Party Software, if any, is stored.

**Intellectual Property Rights:** all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not), and all applications for the same which may now, or in the future, subsist anywhere in the world.

**Minimum Period of Service:** the minimum duration of a Service as set out in an Order, commencing on the Operational Service Date.

**Operational Service Date:** the date(s) on which a Service is first made available by eir business to the Customer in accordance with Clause 2.4.

**Order(s):** the Customer’s order for the Goods and/or Services in accordance with eir business’s order form.

**Personal Data:** means any information relating to an identified or identifiable natural person (the “Data Subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**Personnel:** means the employees, agents and/or contractors of eir business.

**Service Schedule:** a service description appended to the Order or available online at [eirbusiness.ie/termsandconditions](http://eirbusiness.ie/termsandconditions) which describes in detail the Service and/or Goods to be provided by eir business, any applicable service levels and specifications and Statements of Work.

**Services:** the services to be provided by eir business as described in detail in the Service Schedule, which may include the delivery of Goods.

**Site:** a location at which eir business agrees to provide the Services to the Customer.

**Statement of Work or SOW:** a description of the Goods and Services which may be appended to the Service Schedule or Order for non-standard Goods and/or Services.

**Third Party Software:** third party software supplied by or on behalf of eir business for use with the Goods.

**Transaction Taxes:** any applicable taxes including but not limited to VAT, custom and excise and all other taxes and surcharges.

**Transfer Regulations:** the European Communities (Protection of Employees on Transfer of Undertakings) Regulations SI 131/2003 and the Employees (Provision of Information and Consultation) Act, 2006, in Ireland.

**VAT:** value added tax chargeable by virtue of the Value Added Tax Consolidation Act 2010 (as amended).

1.2 In this Agreement, headings and bold type are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to writing or written includes faxes but not e-mails.

1.3 Order of Precedence

In the case of conflict or ambiguity between any provision contained in the body of these master terms and conditions and any provision in any Service Schedule or Order or other attachment in this Agreement the order of precedence shall be as follows:

- (i) Master Terms and Conditions
- (ii) Service Schedule
- (iii) Order form (including Charges Schedule)

## 2. SUPPLY OF THE GOODS AND SERVICES

2.1 In consideration for the payment of the Charges by the Customer, eir business agrees to provide the Customer with the Goods and/or Services in accordance with the Agreement.

2.2 Each Service shall have a Minimum Period of Service commencing on the Operational Service Date as set out in the relevant Order.

2.3 eir business, if requested by the Customer, may provide a provisional Operational Service Date, which unless otherwise agreed by eir business in the Order, is an estimate only and time shall not be of the essence.

2.4 Each Order shall come into force on the date of signature of the Order by both parties and eir business will:

2.4.1 commence providing Services with effect from the Operational Service Date; and/or

2.4.2 use reasonable efforts to deliver the Goods within the time specified by eir business, if any, in the Order.

2.5 eir business reserves the right at all times to suspend a Service in an event of an emergency or, subject to providing the Customer reasonable advance notice, to:

2.5.1 change the technical specification of a Service, or any part thereof, being provided by eir business to the Customer, provided that any change to the technical specification will not materially decrease or impair the scope or the performance of the Service; and

2.5.2 change a Service as may be necessary to comply with applicable laws or health and safety requirements.

2.6 This Agreement shall be binding on both parties in respect of the supply by eir business of all Goods and Services to the Customer in accordance with the terms of each Order, which may include provisions that apply only in respect of the particular Goods and/or Services the subject of that Order.

2.7 The Customer agrees (unless otherwise advised by eir business) to waive the provisions of Article 102(1), (3) and (5) of the European Electronic Communications Code which relate to the provision of a contract summary, contract information and a facility to monitor usage and to be notified when a Service is fully consumed.

## 3. PAYMENT AND SET OFF

3.1 The Charges for individual Goods or Services shall be those that are set out in the relevant Order or Charges Schedule.

3.2 The Customer shall pay the Charges within thirty (30) days of the date of issue of an invoice from eir business to the Customer (the "Due Date"), without any set-off, counterclaim or deduction, except in accordance with Section 3.4.

- 3.3 eir business may, at its discretion, add interest charges to any past due amounts from the expiry of the Due Date in the manner and at the rates set out in the European Communities (Late Payments in Commercial Transactions) Regulations 2012 (S.I. 580/2012), PROVIDED THAT, eir business will not add such interest charges until the conclusion of an additional five (5) Business Days from notification in writing by eir business to the Customer that invoice(s) are past due.
- 3.4 The Customer will promptly notify eir business in writing of any disputed invoice or amount and provide eir business with all information relevant to the dispute, PROVIDED THAT any disputed invoice or amount must be brought to eir business's attention without delay and in any event not later than the Due Date ("**Payment Dispute**"). Any Payment Dispute will be subject to the dispute resolution provisions of Clause 12. On resolution of the dispute the agreed amount, if any, shall be paid immediately and in any event not later than 5 Business Days after the resolution of the dispute.
- 3.5 In addition to the provisions set out in Clause 3.3, in the event that a payment due to eir business from the Customer following the issue of an invoice pursuant to Clause 3.2 has not been received by eir business by the Due Date, eir business reserves the right to not to deliver the Goods or to suspend the provision of the Service until payment is made by the Customer in full.
- 3.6 Without prejudice to any other right or remedy it may have, eir business may set off any payment owed to it by the Customer in accordance with this Agreement against any amount owed by eir business to the Customer, whether in connection with this Agreement or any other agreement in place between eir business and the Customer.
- 3.7 eir business may, at its sole discretion, where it has any reasonable concern as to the ability of the Customer to meet its payment obligations pursuant to Clause 3.2, at any time, require full, or partial, payment of the Charges prior to supply of the Good or Service or to require the provision of security for payment by the Customer in a form acceptable to eir business.
- 3.8 Any extension of credit allowed by eir business to the Customer may be changed or withdrawn at any time at the discretion of eir business, upon eir business giving reasonable prior written notice to the Customer.
- 3.9 eir business reserves the right to review and amend the Charges annually. At least two (2) months prior written notice shall be given to the Customer in respect of any increase in the Charges arising from the annual review. In the event that the Charges increase during a Minimum Period of Service the Customer shall have a right to reject the increase in Charges until the expiry of the Minimum Period of Service.
- 3.10 If the cost to eir business of providing a Service changes to a material extent, eir business shall have the right to amend the Charges at any time by giving written notice to the Customer, such notice setting out details of the:
- 3.10.1 reasons for the change in the cost of providing the Service; and
- 3.10.2 change to the Charges and the date the change will take effect.
- 3.11 Unless provided otherwise in the Order, eir business will invoice the Charges in Euro and the Customer will pay the Charges in Euro. The Charges are exclusive of the Transaction Taxes. The Customer will pay the Transaction Taxes for the Service supplied under this Agreement except to the extent a valid exemption certificate is provided by the Customer to eir business prior to the delivery of the Goods or Services.
- 3.12 A failure by the Customer to pay any validly due sums owed under the Agreement by the Due Date shall be regarded as a material breach of the Agreement for the purposes of Clause 13.2.1.

## 4. WARRANTIES

- 4.1 Each of eir business and the Customer warrants to the other its full capacity and authority to enter into and to perform the Agreement in accordance with its terms.
- 4.2 eir business warrants to the Customer that it:
- 4.2.1 shall perform the Service with reasonable skill, care and diligence through appropriately experienced, qualified and trained personnel;
- 4.2.2 has all rights, authorisations and licences required to provide the Service to the Customer; and
- 4.2.3 shall provide the Service in accordance with the Order and/or Service Schedule.
- 4.3 Except as expressly set forth in this Agreement, all express or implied warranties, whether arising by statute, custom and practice or otherwise, including terms and conditions as to fitness for any particular purpose, are hereby excluded.

## 5. CUSTOMER OBLIGATIONS

- 5.1 The Customer shall:
- 5.1.1 co-operate with eir business in all matters relating to the provision of the Goods and Services;
- 5.1.2 provide eir business with any information it reasonably requires in connection with the provision of the Services;
- 5.1.3 obtain all necessary permissions and consents which may be required before the commencement of the Services; and
- 5.1.4 comply with such other requirements as may be set out in the Order.
- 5.2 If eir business's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (a "**Customer Default**"):

- 5.2.1 eir business shall without limiting its other rights or remedies have the right to suspend performance of the Service until the Customer remedies the Customer Default;
- 5.2.2 eir business shall not be liable for any costs or losses sustained or incurred by the Customer arising from a Customer Default; and
- 5.2.3 the Customer shall reimburse eir business on written demand for any vouched costs or losses sustained or incurred by eir business arising directly or indirectly from a Customer Default.

## 6. EIR BUSINESS EQUIPMENT

- 6.1 In circumstances where eir business requires access to a Customer Site to carry out works for the purposes of the installation, review, support, repair or removal of eir business Equipment, (such access shall be in accordance with reasonable Customer policies on health and safety and security expressly notified in writing to eir business), the Customer will at its own cost, and before the commencement of any installation or other works by eir business:
  - 6.1.1 obtain all necessary rights and consents for eir business, including, but not limited to access rights;
  - 6.1.2 provide a suitable and safe working environment, including all necessary trunking, conduits and cable trays, in accordance with the relevant installation standards;
  - 6.1.3 provide any electricity and telecommunication connection points reasonably required by eir business; and
  - 6.1.4 keep, maintain and insure the eir business Equipment in good condition and in accordance with the eir business's instructions as notified in writing from time to time and shall not dispose of or use the eir business Equipment other than in accordance with eir business's written instructions or authorisation.

If the Customer fails to provide any of the facilities listed in this Clause, eir business reserves the right to charge the Customer with the cost of any abortive work or time spent trying to access the Site.

- 6.2 The Customer shall ensure that any Customer Equipment connected to the eir business Equipment is technically compatible and approved for that purpose under any applicable law or regulation and is connected in accordance with any instructions or safety and security procedures applicable to the use of that eir business Equipment.
- 6.3 The Customer shall be liable to eir business for any loss of or damage to the eir business Equipment, except where the loss or damage is due to fair wear and tear or is caused by eir business or any person acting on eir business's behalf.
- 6.4 In circumstances where the Customer requires access to an eir business Site the Customer shall comply with eir business's health, safety and security requirements as notified to the Customer at the eir business Site.

## 7. INTELLECTUAL PROPERTY

- 7.1 All Intellectual Property Rights in the eir business Equipment, and in or arising out of or in connection with the Service shall be owned by eir business or its third party licensors.
- 7.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the eir business Equipment, the Customer's use of any such Intellectual Property Rights is limited to such terms as determined by eir business to sub-license such rights to the Customer and such rights to use end on termination of this Agreement.
- 7.3 If the eir business Equipment or the Goods and Service become, or eir business believes are likely to become, the subject of an allegation or claim for infringement of any third party Intellectual Property Rights, eir business, at its option and expense, may secure for the Customer a right of continued use of the Service or modify or replace the eir business Equipment, so that it is no longer infringing. If neither of those remedies is available to eir business on reasonable terms, eir business may so notify the Customer and terminate the infringing Service in accordance with the termination provisions of this Agreement without penalty to either party. eir business will refund to the Customer any prepaid Charges for the eir business Equipment and or the infringing Service.

## 8. LIMITATION OF LIABILITY

- 8.1 Nothing in this Agreement limits or excludes the liability of either party:
  - 8.1.1 for death or personal injury caused by its negligence;
  - 8.1.2 for any damage or liability incurred by either party as a result of fraud or fraudulent misrepresentation by the other party; and
  - 8.1.3 for any other liability which cannot be excluded or limited by applicable laws.
- 8.2 Each party's total liability to the other under or in connection with the supply of the Goods and Services and for any claims whether in contract, tort (including negligence) or otherwise, for any loss or damage arising out of or in connection with this Agreement or otherwise shall be limited to the aggregate of the Charges paid in the preceding twelve (12) months prior to the date of the incident giving rise to the claim.
- 8.3 Neither party will be liable to the other party for:
  - 8.3.1 loss of profits;

- 8.3.2 loss of business;
  - 8.3.3 loss of revenue;
  - 8.3.4 damage to goodwill or any similar losses;
  - 8.3.5 anticipated savings;
  - 8.3.6 loss of use;
  - 8.3.7 loss or corruption of data or information; and
  - 8.3.8 any punitive, indirect, consequential loss or damage.
- 8.4 eir business shall not be liable to the Customer for any loss or damage of whatsoever nature for late or non-delivery of the Goods or Services to the extent that such late or non-delivery of the Goods and/or Services is outside the reasonable control of, and is not attributable to the acts or omissions of eir business.
- 8.5 The Customer agrees that eir business does not have any liability, subject always to applicable law, in respect of any matter arising from the use of the Goods or Services contrary to the provisions of this Agreement or an Order and/or other written instructions provided by eir business.
- 8.6 The Customer agrees to indemnify and hold harmless eir business, its officers, Affiliates, employees, agents and their sub-contractors against any liability arising from any or all claims by any third party arising out of the use of the Goods or Services.
- 8.7 The Customer and eir business shall obtain and maintain policies of insurance with a reputable insurer in respect of its liabilities under this Agreement. The Customer shall furnish eir business with satisfactory evidence of the insurance within seven (7) days of receipt of a written request to that effect from eir business.

## 9. CONFIDENTIALITY

- 9.1 The Receiving Party:
- 9.1.1 will not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
  - 9.1.2 will not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party; and
  - 9.1.3 shall take all reasonable measures to prevent any unauthorised disclosure, access, use or misappropriation of Confidential Information, which for the avoidance of doubt shall not be less than the measures it takes in relation to its own similar Confidential Information, such measures to be no lesser than a reasonable standard of care.
- 9.2 The Receiving Party may disclose Confidential Information to any of its (or its Affiliates) directors, other officers and employees, or to its professional advisors, auditors and bankers (each a “**Recipient**”) to the extent that disclosure is reasonably necessary. The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under the Agreement as if the Recipient was a party to this Agreement. The Receiving Party will be liable to the Disclosing Party for any non-compliance by a Recipient. If the Receiving Party becomes aware of any threatened or actual unauthorised access to, use or disclosure of, or any inability to account for, the Disclosing Party's Confidential Information, the Receiving Party will promptly notify the Disclosing Party thereof and will assist the Disclosing Party with its efforts to terminate such access, to curtail such threatened or actual unauthorised use or disclosure, or to recover such information or materials.
- 9.3 Each party may disclose Confidential Information if and to the extent that:
- 9.3.1 it is required by the law of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction or that of a competent regulatory authority, provided always that the relevant party is promptly notified of such requirement and afforded a reasonable opportunity to seek relief therefrom, where available;
  - 9.3.2 the information has come into the public domain through no fault of that party;
  - 9.3.3 the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, or was developed independently by the Receiving Party, without reference to the Confidential Information;
  - 9.3.4 the information was obtained by the Receiving Party from a third party who was free to divulge the same;
  - 9.3.5 the Disclosing Party has given prior written approval to the Receiving Party in respect of the disclosure, such approval not to be unreasonably withheld or delayed; or
  - 9.3.6 this is required to enable that party to enforce its rights under this Agreement.
- 9.4 A breach of this Clause 9 would cause irreparable harm to the Disclosing Party, for which monetary damages would be inadequate and injunctive relief may be available for a breach of this Clause 9.
- 9.5 The obligations of both parties as to disclosure and confidentiality under this Clause 9 shall continue in force notwithstanding the termination or expiration of the Agreement.

## 10. PUBLICITY

- 10.1 eir business may reference the Customer as a customer of eir business for internal purposes and presentations of its services to third

parties, but shall not refer to or identify the Customer in advertising, publicity releases, or promotional or marketing publications without, in each case, securing the prior written consent of the Customer.

- 10.2 The Customer agrees to co-operate with the reasonable requirements of eir business in relation to customer satisfaction surveys organised by or on behalf of eir business or its suppliers.

## 11. FORCE MAJEURE

- 11.1 Neither party shall be liable for performance of its obligations caused by or resulting from a force majeure event, which shall include, but not be limited to, events which are unpredictable, unforeseeable, irresistible and beyond the parties' control, such as any extreme severe weather, flood, landslide, earthquake, storm, lightning, fire, subsidence, epidemic, acts of terrorism, outbreak of military hostilities (whether or not war is declared), riot, explosions, strikes or other labour unrest (but only to the extent that the impact of such strikes or other labour unrest are significant, regional or national), civil disturbance, sabotage, expropriation by governmental authorities or other act or any event that is outside the reasonable control of the concerned party (a "Force Majeure Event").

- 11.2 eir business shall not be liable to the Customer for any loss, damage, expenses, injury or death whatsoever arising or resulting from a Force Majeure Event.

- 11.3 In the event of:

11.3.1 a refusal or delay by a third party to supply a telecommunications service to eir business and where there is no alternative service available at reasonable cost; or

11.3.2 eir business being prevented by restrictions of a legal or regulatory nature from supplying the Good and Services,

eir business will have no liability to the Customer for failure to supply the Goods and Services.

## 12. DISPUTE RESOLUTION

- 12.1 If at any time any dispute or difference in relation to the Agreement or the Services delivered thereunder arises between eir business and the Customer that is not resolved amicably between the parties within 10 Business Days of the dispute or difference arising, the parties shall first escalate using appropriate internal procedures within both parties' organisations. If the dispute is not resolved by such meetings within a further 30 Business Days of the matter being escalated, the parties may, on agreement, refer the dispute to non-binding mediation in accordance with the International Centre for Dispute Resolution ("CEDR") procedures then in force before resorting to litigation. The mediation process will be commenced by service by one party on the other of a written notice that the issue is to be referred to mediation (the "Mediation Notice"). The Parties shall agree on a choice of mediator with at least ten years' experience in the telecoms industry and who has knowledge and experience sufficient to comprehend the issues raised. In the event that the parties are unable to agree on a choice of mediator within 10 Business Days of the date of service of the Mediation Notice, the parties shall accept a mediator nominated by CEDR. The costs of the mediation shall be shared equally between the parties.

- 12.2 If any dispute or difference is not settled by reference to mediation within 45 days of the commencement of the mediation then either party may, on agreement refer the matter to arbitration in accordance with the Arbitration Rules of the Chartered Institute of Arbitrators – Irish Branch for final and binding settlement. The place of arbitration shall be Dublin, Ireland. The language of arbitration shall be English.

- 12.3 Nothing contained in this Clause 12 shall restrict either party's freedom where such relief is required to preserve any legal right or remedy, to sue for breach of contract, to protect any Intellectual Property Rights or rights in Confidential Information or to otherwise prevent irreparable harm and each party shall be free to issue court proceedings at any time.

## 13. TERM AND TERMINATION

- 13.1 The Agreement shall commence on the Effective Date and shall remain in force until all Minimum Periods of Service set out in all Orders have expired or been terminated in accordance with the provisions of this Agreement. After the expiry of all Minimum Periods of Service all Services provided hereunder and this Agreement shall thereafter automatically continue, unless and until either party terminates the Agreement by serving a thirty (30) day notice in writing.

- 13.2 Either party may immediately by notice terminate this Agreement or any Order if one of the following events occurs:

13.2.1 the other party commits a material breach of the Agreement or an Order and has failed to cure such breach within thirty (30) days after the terminating party has given a notice of default to the party in breach; or

13.2.2 the party is deemed bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of amalgamation or reconstruction, is the subject of a winding up petition or has a receiver or manager appointed over all or any of its assets; or

13.2.3 a Force Majeure Event continues for more than thirty (30) days.

- 13.3 Upon termination of the Agreement or an Order:

13.3.1 the rights of the parties accrued up to the date of such expiry or termination shall remain unaffected;

13.3.2 the Customer shall co-operate fully with eir business to recover the eir business Equipment;

13.3.3 if eir business terminates the Agreement for a material breach by the Customer, or if the Customer terminates the Agreement prior to the expiry of the Minimum Period of Service the Customer shall be liable to pay to eir business the balance of the

Charges;

13.3.4 eir business may exercise a lien over any of the Customer Equipment or Goods located on an eir business Site at the date of such termination for any amount due pursuant to the terms of the Agreement or otherwise from the Customer to eir business; and the Customer shall immediately upon such termination become liable to pay to eir business the amount of any loss or damage suffered by eir business as a result of the termination; and

13.3.5 eir business shall have an automatic right to the Charges for a Service up to and including the date of termination.

## 14. EXPORT CONTROL

The parties acknowledge that products, software, and technical information (including, but not limited to, provision of the Service, technical assistance and training) provided under the Agreement may in certain circumstances, be subject to export laws and regulations of Ireland, the USA and other countries, and any use or transfer of the products, software, and technical information must be in compliance with all applicable regulations. The parties will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with all applicable export regulations. If requested by either party, the other party also agrees to sign written assurances and other export-related documents as may reasonably be required to comply with all applicable export regulations.

## 15. NOTICES

All notices given under this Agreement shall be in writing in the English language, and may be sent by registered post to the registered office address of the party receiving the notice. Any notices sent to eir business shall be addressed to the Managing Director of eir business Business and copied to the eir business Legal Department at eir business's registered office address.

## 16. ASSIGNMENT

16.1 Except as expressly set out in this Agreement, neither party shall be entitled to give, sell, transfer, assign, let or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party, provided however that eir business may without the consent of the Customer transfer, assign or otherwise dispose of all of its rights and obligations under this Agreement to (a) any Affiliate of eir business or (b) any other third party to which all of the business and assets of eir business are transferred in the event, inter alia, of any acquisition of eir business by any third party or the restructuring of the eir business group. eir business may assign all or part of this Agreement to any party or body for the purposes of financing without the consent of the Customer.

16.2 This Agreement shall be binding on, and inure to the benefit of, the parties and their business successors and permitted assigns.

16.3 eir business may subcontract the performance of any of its obligations under the Agreement, but without relieving eir business from any of its obligations to the Customer. The Customer agrees and understands that it may need to interact directly with a subcontractor for the delivery of the Service.

## 17. VARIATION

The Agreement shall not be amended, modified or supplemented except in writing signed by authorised representatives of both parties.

## 18. DATA PROTECTION

18.1 Within this Clause 18 "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing" shall have the same meanings as in the Applicable Data Protection Legislation and "Processed" and "Process" shall be construed in accordance with the definition of "Processing".

18.2 In order for eir business to meet Orders and provide the Goods and/or Services under same, it is necessary for eir business to Process Personal Data on behalf of the Data Controller.

18.3 The Parties have included these clauses to assist the Data Controller in meeting its obligations under the Applicable Data Protection Law while also binding eir business to its obligations as Data Processor under Applicable Data Protection Law.

18.4 If in the delivery of the Goods and/or Services sought under Orders, the Data Controller requires eir business to Process Personal Data in the capacity of a Data Controller or joint Data Controller (within the meaning of Article 26 GDPR), the Data Controller shall notify eir business pursuant to clause 15 of the Agreement and the Parties shall use all reasonable endeavours to determine the respective responsibilities of the Parties under Applicable Data Protection Law and any amendments to this Data Processing Annex shall be agreed in writing in accordance with clause 17 of the Agreement.

18.5 In respect of the Processing of Personal Data by eir business or eir business Personnel under or in connection with the Agreement, eir business shall as Data Processor, and shall procure that its Personnel shall:

18.5.1 only Process the Personal Data to the extent required to provide the Goods and/or Services in accordance with the terms of the Agreement (including for the avoidance of doubt Annex 1 (Data Processing Activities)) or otherwise in accordance with documented instructions of the Data Controller from time to time, and the Data Controller agrees that such instructions shall at all times be consistent with the normal provision of Goods and/or Services;

18.5.2 not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised to do so in writing by the Data Controller;

- 18.5.3 comply with eir business's obligations under Article 32 GDPR to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of the Processing undertaken by eir business under or in connection with the Agreement;
  - 18.5.4 comply with Applicable Data Protection Legislation;
  - 18.5.5 make available to the Data Controller, upon reasonable notice, all information reasonably required by the Data Controller to demonstrate compliance with Article 28 GDPR as may be requested by the Data Controller from time to time;
  - 18.5.6 not process the Personal Data anywhere outside of the European Economic Area without the prior written consent of the Data Controller (and subject then, in the event of any transfer outside the European Economic Area, to the execution of any document or agreement which, in the reasonable opinion of the Data Controller, is required in order to lawfully effect any such transfer of Personal Data); and
  - 18.5.7 cease Processing the Personal Data upon receipt of notice in accordance with clause 13.1 or 13.2 of the Agreement from the Data Controller of the termination or expiry of the Agreement or, if sooner, the Services to which it relates and within a reasonable period thereafter, at the Data Controller's option and explicit written direction, either return, or delete from its systems, the Personal Data and any copies of it or of the information it contains. The provisions of this Clause 18.5.7 shall not apply to the extent the Data Processor is obliged by applicable law to keep copies of the Personal Data.
- 18.6 To the extent that that the Data Controller requires eir business's assistance, and in response to a written request from the Data Controller, eir business shall cooperate with and reasonably assist the Data Controller:
- 18.6.1 to put appropriate technical and organisational measures in place to enable the Data Controller to comply with any exercise of rights by a Data Subject under the Applicable Data Protection Legislation (including, without limitation, in relation to the retrieval and/or deletion of a Data Subject's Personal Data); and
  - 18.6.2 in discharging the Data Controller's obligations pursuant to Articles 32 and 36 GDPR.
- Any obligations arising under this clause 18.6 shall be at no additional cost to eir business and any such costs arising in connection with the performance of eir business's obligations under this clause 18.6 shall be promptly reimbursed to eir business by the Data Controller upon reasonable request and without delay.
- 18.7 eir business may also authorize a third party (a "Sub-processor") to process the Personal Data being processed for or on behalf of the Data Controller where required for the provision of the Goods and/or Services, save that suitable provisions for complying with Applicable Data Protection Law are set out in any contract with a Sub-processor. For a current list of Sub-processors see, [eir.business.ie/subprocessors](http://eir.business.ie/subprocessors). This list may be updated from time to time.

## 19. INDUCEMENT

The parties acknowledge and agree that they have not been induced to enter into this Agreement by any representation, warranty or other assurance not expressly incorporated into this Agreement.

## 20. NO WAIVER

Except as otherwise specifically provided in this Agreement, no failure to exercise, or delay in exercising, any right, power or privilege set forth in this Agreement will operate as a waiver of any right, power or privilege.

## 21. SEVERANCE

If any provision of this Agreement is held to be invalid or unenforceable, it will be severed from the Agreement, the remaining provisions will remain in full force and effect and the parties will promptly negotiate a replacement.

## 22. INDEPENDENT CONTRACTORS

The parties acknowledge that eir business is acting as an independent contractor and that nothing in this Agreement will be construed to create an agency or employment relationship between the Customer and eir business.

## 23. TRANSFER REGULATIONS

- 23.1 The parties agree that it is not their intention that the Transfer Regulations should apply on their entering into this Agreement.
- 23.1.1 Notwithstanding the foregoing the parties acknowledge and agree that if the Transfer Regulations apply to the commencement of this Agreement and any Customer employees or employees of Customer suppliers transfer employment to eir business then the following provisions shall apply:
  - 23.1.2 The Customer shall be liable for and shall indemnify eir business and keep eir business indemnified against all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs, employment costs or demands arising out of any claim by any person employed by the Customer or the Customer's supplier relating to or arising out of his/her employment or non-employment or engagement or non-engagement by eir business including, without limitation, any claim:

- (i) for breach of contract, wrongful dismissal, unfair dismissal, loss of office, redundancy, loss of earnings or otherwise for which eir business is or may be liable by reason of the operation of the Transfer Regulations following the commencement of this Agreement; or
- (ii) of whatsoever nature by any third party against eir business for which eir business is or may be liable by virtue of the Transfer Regulations.
- (iii) for statutory and non-statutory redundancy payments arising out of or in connection with a dismissal by eir business of any person whose employment transfers (or is alleged to transfer) to eir business as a consequence of the Transfer Regulations applying by operation of law or being asserted to so apply or otherwise upon the commencement of this Agreement howsoever or whenever arising.

The Customer shall fully indemnify eir business and hold eir business harmless keep eir business indemnified against each and every claim and/or damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) whether arising under statute, contract or at common law or in connection with judgements, proceedings, internal costs or demands

#### **24. RIGHTS OF THIRD PARTIES**

The Agreement is intended solely for the benefit of the parties to it. Other than as specifically provided for in the Agreement, nothing in the Agreement shall be construed so as to create any duty to, or standard of care with reference to, or any liability to, any person or entity not a party to the Agreement.

#### **25. GOVERNING LAW AND JURISDICTION**

The Agreement shall be governed by and construed in accordance with the laws of Ireland and the Courts of Ireland will have non-exclusive jurisdiction.

#### **26. ENTIRE AGREEMENT**

The Agreement supersedes all prior oral or written agreements or understanding between the parties and constitutes the entire agreement with respect to the subject matter.

## ANNEX 1 DATA PROCESSING ACTIVITIES

### Subject matter of the Processing

All information, whether in oral or written (including electronic) form, created by or in any way originating with the Customer (including but not limited to its employees, agents, independent contractors and/or sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the Customer provided under the Agreement which relates to an identified or identifiable natural person;

### Duration of the Processing

In accordance with the term of the Agreement or the Processing activities, whichever is the later.

### Nature of the Processing

Depending on the Service(s) provided by eir business to the Customer, the Personal Data may be subject to the following basic Processing activities

- Receive data, including collection, accessing, retrieval, recording and data entry.
- Hold data, including storage, hosting, organisation and structuring.
- Use data, including analysing, consultation, migrating and testing.
- Update data, including correcting, adaptation, alteration, alignment and combination.
- Send data, including electronic transmission and sending by other means.
- Protect data, including restricting, encrypting, and security testing.
- Share data, including disclosure, dissemination, allowing access or otherwise making data available.
- Backup data, including taking, storing and restoration of data.
- Erase data, including destruction and deletion.

### Purpose of the Processing

Processing of Personal Data for the purposes of providing the Service to Customer in accordance with the Agreement and as further instructed by the Customer.

### The type of Personal Data

Personal Data relating to individuals provided to eir business via the Services, and at the direction of the Customer or by Customer suppliers, affiliates or Customer end users.

### Categories of Data Subjects

Data Subjects include the individuals about whom data is provided to eir business via the Services by (or at the direction of) Customer or by Customer end users.