

**TERMS AND CONDITIONS****1. INTERPRETATION****1.1. Definitions In this Agreement:**

<b>Access Line</b>	means a line obtained by the Customer from a PTSP connecting Customer Equipment to an Access Port.
<b>Access Port</b>	means a physical and logical termination point of access to the Network.
<b>Access Provider</b>	means the person that provides the Customer with a physical telephone line and (if applicable) associated telephone number.
<b>Agreement</b>	means, in order of precedence, these conditions, the Form and any other document signed by both Parties which is expressly stated to form part of this Agreement.
<b>BT</b>	means BT Communications Ireland Limited of Grand Canal Plaza, Upper Grand Canal Street, Dublin 4.
<b>BT Equipment</b>	means equipment placed on Site by BT for the provision of the Service.
<b>Business Day</b>	means a day (other than a Saturday or Sunday) on which dealing banks are generally open for business in Ireland.
<b>Carrier Pre-Selection</b>	("CPS") means the facility whereby a Customer may preselect a telecommunications service provider to carry calls in accordance with Decision Notices D2/99 and D13/99 of ComReg.
<b>ComReg</b>	means the Commission for Communications Regulation, the national regulatory authority for the electronic communications sector in Ireland.
<b>CPS Voice Service</b>	means the provision by BT of a voice telephony service using Carrier Pre-Selection. means the facility whereby the customer may select a telecommunications service provider to carry calls by means of inserting a dial prefix on calls made across the public switched telephony network.
<b>CS Voice Service</b>	means the provision by BT of a voice telephony service to customers using the BT Carrier Select prefix.
<b>Customer</b>	means the company, corporation or other legal entity so named on the Form and anyone reasonably appearing to BT to be acting with that entity's authority.
<b>Customer Equipment</b>	means all cabling, apparatus and facilities provided by the Customer to enable the Customer to connect to the Network Connection.
<b>Direct Access Line ("DAL")</b>	means a line obtained by the Customer from BT connecting Customer Equipment to an Access Port.
<b>Emergency</b>	means any crisis necessitating prompt action by BT.
<b>Form</b>	means the application form on which the Customer specifies the Services required by it.
<b>ISDN</b>	means ISDN primary and fractional access circuits consisting of 30 and 16 bearer channels and one delta channel.

<b>ISDN Voice Services</b>	means the provision by BT of a voice telephony service over BT ISDN Circuits.
<b>Minimum Term</b>	means the relevant term as specified on the Order and commencing on the Operational Service Date.
<b>Network</b>	means the telecommunications system owned and/or operated by BT.
<b>Network Connection</b>	means all BT cabling, interface panels, cabinets, systems, apparatus, facilities and any other equipment which may be utilised by BT to provide the Service.
<b>NTP</b>	means a network terminating point at which calls exit the Service.
<b>Operational Service Date</b>	means the date when the Service is first made available to the Customer.
<b>Other Networks</b>	means electronic systems owned or operated by third parties.
<b>Party</b>	means either BT or the Customer.
<b>Parties</b>	means both BT and the Customer.
<b>Planned Maintenance</b>	means any work planned in advance to be carried out by BT or on behalf of BT which requires the availability of the Service to be suspended.
<b>PTSP</b>	means a public telecommunications service provider.
<b>Routing Plan</b>	means a BT Customer plan which contains either a preferred path through the Network and/or the public telephony network via which a call should be delivered or other routing parameters as agreed by BT.
<b>Service</b>	means a voice telephony service requested by the Customer in the Form to this Agreement and this Agreement shall be construed as if an individual agreement, on the terms and conditions of this Agreement, had been entered into by the Parties in respect of each such service.
<b>Site</b>	means the property at which BT agrees to provide the Service.
<b>Tariff Sheet</b>	means the BT price list in force from time to time in respect of the provision of voice telephony services within the Republic of Ireland.
<b>Termination Charge</b>	means the rental charges which would have been payable by the Customer for the Service (excluding CPS Voice Service) for the remainder of the Minimum Period as if the Agreement had not been terminated.

## 1.2. Interpretation Generally

In this Agreement:

- 1.2.1. words denoting the singular include the plural and vice versa;
- 1.2.2. in construing this Agreement general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words and any reference to the word "include" or "including" is to be construed without limitation;
- 1.2.3. any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

- 1.2.4. any reference to a person includes his successors, personal representatives and permitted assigns; and
- 1.2.5. if any action or duty to be taken or performed under any of the provisions of this Agreement would fall to be taken or performed on a day which is not a Business Day such action or duty shall be taken or performed on the Business Day next following such day.

**2. DURATION**

- 2.1. This Agreement is effective from the date of signature by the Parties of the Form.
- 2.2. This agreement shall continue for the Minimum Period in respect of voice telephony ISDN circuits only, unless terminated in accordance with clause 23. At the end of the Minimum Period for ISDN circuits, this Agreement shall continue for successive periods of one year.
- 2.3. This agreement shall otherwise be terminated in accordance with clause 22 and 23 of this Agreement.

**3. CPS VOICE SERVICE DESCRIPTION**

- 3.1. This Service is BT's voice service, which is offered to all customers that are not directly connected to BT's fibre optic network. BT provides a connection between the customer's site(s) and the Network by means of remote programming on customer's PSTN or ISDN lines.

**4. PROVISION OF THE SERVICE**

- 4.1. BT will provide the Customer with the Service upon the terms of this Agreement.
- 4.2. BT will endeavour to provide the Service by any date agreed with the Customer however all dates agreed are estimates and BT accepts no liability for failure to meet those dates.
- 4.3. BT will provide the Service with the reasonable skill and care of a competent telecommunications service provider. BT, however, does not guarantee a fault free Service.
- 4.4. BT will remedy any faults which significantly impair the Service quality in accordance with the fault repair service it agrees to provide to the Customer.
- 4.5. BT reserves the right, from time to time, to:
  - 4.5.1. change the technical specification or any other aspect of the Service provided that the change does not materially and adversely affect the Service; or
  - 4.5.2. give the Customer instructions which it believes are necessary for reasons of health, safety or the quality of any telecommunications service provided by BT to the Customer or any other customer.
- 4.6. The Parties will agree a Routing Plan.

**5. BT EQUIPMENT**

- 5.1. To enable the installation and use of BT Equipment on Site, the Customer will, at its own expense, if necessary:
  - 5.1.1. obtain all necessary consents, permissions and approvals including consents for any necessary alterations to buildings;
  - 5.1.2. provide suitable accommodation, foundations and environment for the equipment including all necessary trunking, conduits and cable trays in accordance with relevant installation and use standards;

- 5.1.3. make such internal building alterations as BT advises are necessary and carry out afterwards any making good or decorator's work required;
  - 5.1.4. provide all necessary support for the Service to include but not limited to electricity supply;
  - 5.1.5. provide BT with a detailed map marking the location of BT Equipment on Site and verify that such equipment does not damage or interfere with either the equipment or services of the Customer or any third party; and/or
  - 5.1.6. provide BT with such co-operation and assistance as it requires.
- 5.2. The Customer is responsible for any BT Equipment on Site and must not add to, modify or in any way interfere with BT Equipment. The Customer will be liable to BT for any loss of or damage to BT Equipment on Site, except where such loss or damage is due to fair wear and tear or is caused by the negligent or wilful act or omission of BT, its agents, employees or subcontractors.
- 5.3. Title to BT Equipment on Site shall at all times remain with and belong to BT.

## **6. USE OF EQUIPMENT**

- 6.1. Any equipment used in the provision of the Service must be used in accordance with any applicable instructions and safety or security procedures.
- 6.2. Any equipment which is used for the provision of the Service must be technically capable of providing the Service and approved for that purpose under any relevant legislation.

## **7. ACCESS AND SITE REGULATIONS**

- 7.1. The Customer hereby authorises BT to contact the owner of the Site, if necessary, in order to obtain the owner's consent to install and connect any equipment necessary to provide telecommunications services to the Customer. The Customer hereby indemnifies and agrees to keep BT indemnified against all costs, damages, losses, proceedings, claims and other liabilities incurred by BT howsoever arising from any such contact whether or not consent is actually granted.
- 7.2. The Customer will, where necessary, and at all reasonable times, permit access to any Site to BT and anyone acting on BT's behalf, on production of a valid identity card, to enable BT to carry out its obligations under this Agreement. BT will normally only require such access during the Customer's usual working hours, however, BT may, on reasonable notice, require the Customer to provide it with access at other times.
- 7.3. Employees of BT and anyone acting on BT's behalf will observe reasonable Site regulations of the Customer, copies of which have been previously advised in writing to BT. In the event of any conflict between the Site regulations and these Conditions, these Conditions shall prevail.
- 7.4. The Customer will provide a suitable and safe working environment for BT employees and anyone acting on BT's behalf.

## **8. USE OF THE SERVICE**

- 8.1. The Customer agrees not to use the Service for any purpose or in any manner that:
  - 8.1.1. does not comply with the terms of any legislation or any licence or authorisation applicable to the Customer or BT or is in any way unlawful;
  - 8.1.2. does not comply with any instructions given by BT;
  - 8.1.3. does not comply with any instructions given to BT by any other public telecommunications operator or any competent authority in any country where the Service is provided;

- 8.1.4. would result in BT being in breach of any agreement between BT and any public telecommunications operator which has been notified in writing by BT to the Customer; or
- 8.1.5. in the reasonable opinion of BT, is improper.
- 8.2. The Customer agrees to comply with any applicable code of practice on number portability issued from time to time by ComReg and/or any other competent authority.
- 8.3. BT's obligations under this Agreement are owed solely to the Customer, and not to any third party. Accordingly, to the extent not prohibited by law, the Customer hereby indemnifies and agrees to keep BT indemnified against all costs, damages, losses and other liabilities which it incurs howsoever arising out of any and all claims by any third party in connection with the Service including, inter alia, because:
  - 8.3.1. the Service is used in breach of the provisions of clause 8.1 and/or
  - 8.3.2. the Service is faulty and/or cannot be used by that third party.

## **9. BT'S RESPONSIBILITIES**

- 9.1. Prior to commencement of the Service, BT shall perform a survey of the Site and inspect the Customer Equipment, if necessary.
- 9.2. Where the Customer chooses to avail of the Service via Direct Access Lines provided by BT these shall be at a capacity agreed between BT and the Customer.
- 9.3. Unless BT notifies the Customer otherwise, BT will be responsible for obtaining and providing any Direct Access Line needed to provide the Service between the Sites specified on the Form. Unless BT notifies the Customer otherwise, BT will also provide any equipment necessary to remotely monitor and maintain each DAL/Access Line.
- 9.4. BT will manage traffic flows within the Network and any failure of hardware, software or leased lines within the Network or BT Equipment. BT will endeavour to remedy any such failure as soon as reasonably practicable. BT hereby undertakes to manage the Network 24 hours a day, 365 days per year.
- 9.5. BT will respond to reported faults without undue delay by taking network management measures it deems appropriate. BT will notify the Customer if the fault does not relate to either the Network or BT Equipment. Where the Customer is availing of the CPS Voice Service and correction of the fault lies within the control of a PTSP, BT shall endeavour to rectify the fault in liaison with the PTSP as soon as reasonably practicable (according to the PTSP's normal service maintenance conditions).
- 9.6. For the purposes of providing new connections, changing routing tables, updating facilities and general inspection, repair and maintenance, scheduled downtime may be required from time to time. BT will use all reasonable endeavours to schedule Planned Maintenance in accordance with the Customer's requirements. Except in the case of an Emergency, BT shall give fourteen (14) days notice to the Customer of any scheduled Planned Maintenance.
- 9.7. BT will provide a help desk facility, for the reporting of faults within the Network by the Customer and advice on the day to day use of the Service. BT's customer care helpdesk number is freephone 1800 924 924 and is accessible 24 hours a day, 7 days a week.
- 9.8. BT shall be responsible for the maintenance and repair of BT Equipment on Site.
- 9.9. BT shall not be responsible for calls routed over a PTSP's network.

## **10. CUSTOMER'S RESPONSIBILITIES**

- 10.1. The Customer undertakes:
  - 10.1.1. to inform BT of existing facilities which run the risk of being damaged during the installation

and connection of BT Equipment on Site and provision of the Service;

- 10.1.2. to make available to BT, at no charge, all equipment, space and other resources as are reasonably required by BT to enable BT to provide the Service;
  - 10.1.3. to use the Service strictly in accordance with instructions provided by BT;
  - 10.1.4. not to use the Service in a manner which would jeopardise the operation of the Network;
  - 10.1.5. not to interfere with any labels or warnings on BT Equipment;
  - 10.1.6. to permit BT to examine or test the BT Equipment on Site at all reasonable times;
  - 10.1.7. not to create or permit any charges, pledges, liens or encumbrances of any kind to be created in respect of BT Equipment on Site;
  - 10.1.8. to be responsible for the maintenance of all Customer Equipment;
  - 10.1.9. to promptly report faults in the Service to the help desk facility provided by BT; and
  - 10.1.10. to inform BT of any change of name, address and/or telephone number of the Customer.
- 10.2. The Customer shall not, nor permit any other person to:
- 10.2.1. attach anything directly or indirectly to a DAL or an Access Line;
  - 10.2.2. place anything in electrical connection with a DAL or an Access Line; or
  - 10.2.3. use anything in such a way that it is capable of transmitting or receiving any message, signal or communication to or from either a DAL and/or an Access Line.
- 10.3. In respect of the CPS Voice Service, the Customer shall:
- 10.3.1. contact their Access Provider, if they wish to initiate or change call barring options;
  - 10.3.2. inform BT whenever a new telephone line is ordered from their Access Provider in order to ensure that BT can provide the Customer with the CPS Voice Service in respect of the Customer's new line; and
  - 10.3.3. inform BT if the Customer wishes to change options available under the CPS Voice Service.
- 10.4. The Customer may override the Carrier Pre-Selection options provided under this Agreement by dialling the specific short code of an alternative service provider before the proposed telephone number, subject to prior arrangement with that alternative provider. Any usage charges incurred by means of this override method are payable to the alternative provider.
- 10.5. In respect of the 'All Calls' option under the CPS Voice Service, the Customer shall be liable to BT for usage of the 'call forward' function.
- 10.6. If the Customer changes from the 'All Calls' option to another option available under the CPS Voice Service, this Agreement shall be construed as having been re-executed on the date of any such change.
- 11. CONNECTION TO THE NETWORK**
- 11.1. Connection of equipment or Other Networks to the Network can only be made with the prior written approval of BT. It is the Customer's responsibility (unless otherwise agreed by BT) to arrange for the connection of equipment or Other Networks to the Network.

**12. ALLOCATION AND USE OF TELEPHONE NUMBERS AND CODES**

- 12.1. The Customer shall, at no time, acquire any rights or title in the numbers and/or codes allocated to it by BT. BT reserves the right to withdraw or replace any numbers or codes allocated to the Customer for operational or technical reasons or where any such withdrawal is required by law. Where numbers or codes are to be withdrawn or replaced, BT will endeavour to provide the Customer with the maximum notice practicable having regard to the circumstances of the withdrawal or replacement.

**13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1. In the event that BT provides the Customer with software to enable the Customer to use the Service, BT hereby grants the Customer a non-exclusive non-transferable licence to use the software for that purpose.
- 13.2. The Customer shall not copy nor, except as permitted by law, decompile or modify the software in any way or copy any accompanying manuals or documentation without BT's prior written consent.
- 13.3. The Customer agrees to sign any agreement required by the owner of the copyright in the software to protect the owner's interest in that software.

**14. INTELLECTUAL PROPERTY RIGHT INFRINGEMENT**

- 14.1. BT hereby agrees to indemnify the Customer against all fees, losses and damages incurred by the Customer arising from all and any claims that use of the Service has infringed the intellectual property rights of a third party provided that the Customer:
- 14.1.1. notifies BT promptly in writing of any allegation of infringement;
  - 14.1.2. makes no admission relating to the alleged infringement;
  - 14.1.3. permits BT to conduct and settle, if appropriate, all negotiations and proceedings in respect of any such claims; and
  - 14.1.4. provides BT with all reasonable assistance (BT will reimburse the Customer's reasonable expenses in respect of any such assistance).
- 14.2. The indemnity in clause 14.1 does not apply to alleged infringements occasioned by use of the Service in conjunction with apparatus or software not supplied by BT, or to infringements occasioned by the Customer. The Customer hereby indemnifies and agrees to keep BT indemnified against all fees, losses, damages and liabilities incurred by BT howsoever arising from all such alleged infringements.

**15. CONFIDENTIALITY**

- 15.1. The Parties hereby agree to treat as confidential all information which they obtain or receive in the performance of this Agreement ("Confidential Information"). The Parties agree not to disclose any Confidential Information without the prior written consent of the other Party.
- 15.2. Clause 15.1 does not apply in respect of:
- 15.2.1. any information which is in the public domain otherwise than by means of a breach of this Agreement or any other confidentiality obligation;
  - 15.2.2. information lawfully already in the possession of the recipient;
  - 15.2.3. information lawfully obtained from a third party; and
  - 15.2.4. information which a Party is required by law to disclose.
- 15.3. The Parties agree to use Confidential Information only for the purposes of this Agreement.

- 15.4. If a Party is required by law to disclose Confidential Information, it shall so far as reasonably practicable consult with the other Party and provide it with an opportunity to oppose the disclosure and/or otherwise agree the timing and content of any such disclosure.

## **16. CHARGES, PAYMENT TERMS AND DEPOSITS**

- 16.1. The Customer agrees to pay all charges for the Service set out in BT's Tariff Sheet. These charges may vary from time to time. BT may revise the charges on 28 days notice to the Customer, where the Customer shall be notified in writing. Value Added Tax will be included in BT invoices.
- 16.2. Unless otherwise specified, all charges set out in BT's Tariff Sheet are exclusive of any connection charges.
- 16.3. The Customer is liable for all calls made via the Service. This applies irrespective of whether the Customer knows or consents to such use.
- 16.4. Charges are payable as and from the Operational Service Date.
- 16.5. Charges for the provision of the Service, including CPS Voice Service, are payable on a monthly basis.
- 16.6. Rental charges for either Access Lines or DALs are payable on a monthly basis.
- 16.7. Charges for installation of DALs are payable on the Operational Service Date.
- 16.8. Charges for the use of the CPS Voice Service shall be calculated in accordance with details recorded by or on behalf of BT.
- 16.9. BT reserves the right to charge the Customer for work done by BT in investigating faults reported by the Customer in the Service, where BT finds no fault exists with BT Equipment.
- 16.10. All charges shall be paid within thirty days of the date of invoice
- 16.11. BT reserves the right to charge interest on any overdue amount at 4% per annum above Allied Irish Bank plc's base lending rate as varied from time to time until any outstanding amount due to BT has been paid in full.
- 16.12. BT may, at any time, require the Customer to pay a deposit or provide or procure a guarantee as security for payment of future bills.
- 16.13. The Customer authorises BT to check its credit status with any credit reference agency or bureau as it deems fit from time to time and to pass credit information about the Customer to any credit reference agency or bureau at any time. If the Customer is not satisfied with the information about the Customer which BT receives from any credit reference agency or bureau the Customer must deal directly with the credit reference agency or bureau.
- 16.14. If, following a credit check, BT is dissatisfied with the credit status of the Customer, BT reserves the right to: (a) decline the Customer's application for the Service; or (b) where the provision of Service has commenced, suspend the Service to the Customer and or terminate this Contract immediately without liability to BT.
- 16.15. Without prejudice to any other rights of BT hereunder, if the Customer wishes to dispute a portion of the amount stated on an invoice(s), the Customer shall notify BT within 15 days of the date of the specified invoice, with sufficient detail for BT to investigate the dispute and if such dispute has not been resolved by the due date for payment of the invoice, payment shall be made as follows:-(a) if the amount in dispute is less than 5% of the total invoice amount (excluding VAT) the total invoice shall be payable by the due date; (b) if the amount in dispute is 5% or more of the total invoice amount, payment of the amount in dispute may be withheld until the dispute is resolved. The undisputed amount of the invoice must be paid in accordance with the payment term. When the dispute is resolved BT shall credit any overcharged amount on the next invoice to the Customer. Both Parties shall use reasonable endeavours to resolve the



dispute through consultations within 30 days after notification and the resolved amount, if any, payable immediately after resolution. Interest will accrue from the due date on subsequent payments of amounts withheld or credits on overpayments refunded.

- 16.16. Without prejudice to any other clause herein, non-payment of charges in accordance with this Agreement shall be deemed a material breach, giving BT the right on seven days notice to (1) suspend the Service; and/or (ii) terminate the Service.
- 16.17. Credit terms are subject to review by BT from time to time and BT shall at all times have the right to suspend or vary credit terms granted. If at any time the Customer should be in default in payment in any sums due to BT or BT's relationship with the Customer should be terminated for any reason then all sums (including interest) due by the Customer shall be payable immediately to BT.

## **17. LIMITATION OF LIABILITY**

- 17.1. BT accepts unlimited liability for death or personal injury resulting from its negligence arising from or in connection with the provision by it of the Service to the Customer.
- 17.2. BT shall not be liable to the Customer in contract, tort (including negligence) or otherwise for direct or indirect loss of profits, business, revenue, goodwill or anticipated savings or for any indirect, consequential or special loss or damage whatsoever.
- 17.3. Subject to Clause 17.1 that BT's liability to the Customer in contract, tort (including negligence) or otherwise in relation to this Agreement or the provision by it of the Service to the Customer shall be limited to Euro 1,000,000 for any one incident or series of related incidents and Euro 2,000,000 for all incidents in any calendar year.
- 17.4. BT does not accept liability to the Customer for the acts or omissions of other telecommunication operators.
- 17.5. BT shall implement reasonable measures to prevent any unauthorised access by third parties to any part of the Network under its control, however, BT shall not be liable for any such unauthorised access.
- 17.6. The Customer hereby indemnifies and agrees to keep BT indemnified in respect of any costs, damages, losses or other liabilities incurred by BT in respect of any damage or interference caused to the services or equipment of the Customer or any third party by BT Equipment on Site.
- 17.7. In the event BT is unable to obtain a telecommunications service on terms satisfactory to it, BT shall have no liability to the Customer for failure to supply the Service and shall be entitled to terminate this Agreement in accordance with clause 23.

## **18. INDEMNITY**

- 18.1. The Customer hereby indemnifies and agrees to keep BT indemnified against any costs, damages or losses or other liabilities incurred by it arising from or in connection with any claims for loss, damage, costs, expenses, injury or death to third parties howsoever arising (whether directly or indirectly) out of or in connection with any act of the Customer in relation to its use of the Service.

## **19. FORCE MAJEURE**

- 19.1. If a Party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event:
- 19.1.1. the Affected Party's obligations under this Agreement will be suspended while the Force Majeure Event continues and to the extent that it is so prevented, hindered or delayed;
- 19.1.2. as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other Party of the Force Majeure Event, the date the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;

- 19.1.3. the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and
- 19.1.4. as soon as reasonable possible after the end of the Force Majeure Event, the Affected Party shall notify the other Party that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.
- 19.2. For the purposes of this Agreement, a Force Majeure Event means: fire; flood; lightning; explosion; war; strike; embargo; labour dispute; government requirement; civil or military authority; act of God or nature; inability to secure materials or transportation facilities; act or omission of carriers or suppliers; acts or failures to act of any governmental or competent authority, or any other causes beyond a Party's reasonable control, whether or not similar to the foregoing.
- 19.3. Nothing in clause 19.1 shall relieve the Customer of its payment obligations hereunder.
- 19.4. If the Force Majeure Event continues for more than three months starting on the day the Force Majeure Event starts, a Party may terminate this Agreement by giving not less than fourteen days written notice to the other Party.

## **20. ESCALATION AND DISPUTE RESOLUTION**

- 20.1. If any dispute or difference of any kind whatsoever arises between the Parties in relation to this Agreement or the provision of the Service, the Parties will use their reasonable endeavours to settle the dispute as soon as possible in accordance with BT's code of practice in respect of disputes in force from time to time.
- 20.2. In the event that a dispute between the Parties is not settled by BT's Customer Services director within sixty days of the event giving rise to the dispute occurring, then the matter may be referred by either Party to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators -Irish Branch. Any such arbitration shall be conducted in Ireland, in the English language and shall be governed by the Arbitration Acts, 1954 to 2010.

## **21. SUSPENSION**

- 21.1. BT reserves the right to suspend the provision of the Service:
  - 21.1.1. in the event of an Emergency;
  - 21.1.2. in the event that the Customer fails to comply with the provisions of this Agreement; or
  - 21.1.3. in the event that BT is unable to obtain a telecommunications service on terms satisfactory to it.
- 21.2. In relation to non-payment by the Customer of any amount due to BT, prior to suspension of the Service, BT shall reasonably endeavour to contact the Customer to warn the Customer of the proposed suspension.
- 21.3. BT reserves the right to suspend the provision of the Service in order to:
  - 21.3.1. prevent damage to or degradation of the Network which may be caused by the Customer or anyone using the Customer's access;
  - 21.3.2. comply with any law, regulation, court order or other governmental request or order;
  - 21.3.3. comply with any request of an emergency service organisation; or
  - 21.3.4. prevent use of the Service which in the reasonable opinion of BT is fraudulent, defamatory or improper.

21.4. Without prejudice to its right to terminate this Agreement, BT may suspend the provision of the Service in the event that any of the circumstances listed in clause 23.3.4 occur.

21.5. In the event that the Service is suspended due to a breach by the Customer of this Agreement, the Customer shall continue to pay to BT the monthly charges.

## 22. CPS / CS TERMINATION

22.1. Either Party shall have the right to terminate this Agreement in respect of the provision of the CPS Voice Service or a CS Service within five days of signing this Agreement if the Customer wishes to revert to the Access Provider or to switch to another Carrier Pre-Selection provider. In the event that a Customer decides to so terminate these CPS or CS services under this Agreement, the Customer shall only be liable to pay to BT telephone traffic charges which are otherwise payable.

22.2. No Termination Charge is payable in respect of the termination of this Agreement by the Customer in respect of the CPS / CP Voice Service.

## 23. TERMINATION

23.1. After the Minimum Period in respect of the voice telephone ISDN service, either Party may terminate this Agreement upon three months' notice in writing to the other Party. If the Customer terminates this Agreement within the Minimum Period other than because BT has increased the charges payable for the Service, except in accordance with an agreed process, the Customer shall pay BT the Termination Charge.

23.2. If the Customer terminates this Agreement in respect of the provision of the CPS Voice Service, the Customer shall notify in writing both the new Carrier Pre-Selection provider and BT.

23.3. Either Party may terminate this Agreement immediately on giving notice in writing to the other Party, if the other:

23.3.1. commits a breach of this Agreement that is capable of remedy and fails to remedy that breach within 30 days of a written notice from the other Party to do so;

23.3.2. commits a breach of this Agreement which cannot be remedied;

23.3.3. is repeatedly in breach of this Agreement; or

23.3.4. is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if it goes into either voluntary (otherwise than for the purposes of a solvent reconstruction or amalgamation), or compulsory liquidation or a receiver, examiner or administrator is appointed over its assets.

23.4. In the event that any intellectual property used by BT for the purposes of providing the Service infringes the rights of any third party, BT reserves the right to modify or substitute same (provided any such modified or substituted intellectual property does not adversely affect Service quality) or in the event that BT is not in a position to do so on terms satisfactory to it, to terminate this Agreement by serving one month's notice on the Customer.

23.5. In the event BT is unable to obtain a telecommunications service on terms satisfactory to it, BT shall be entitled to terminate this Agreement by serving one month's notice on the Customer.

23.6. Any termination of this Agreement shall be without prejudice to the rights of either Party accrued before the date thereof.

23.7. Those clauses the survival of which is necessary for the interpretation or enforcement of this Agreement, shall survive termination of this Agreement and continue in full force and effect.

23.8. Following termination of this Agreement:

- 23.8.1. the Customer shall make appropriate arrangements with BT for BT to remove from Site BT Equipment;
  - 23.8.2. any information which has been furnished to the Customer by BT shall be returned to BT, deleted, destroyed or expunged, as appropriate.
- 23.9. In the event that this Agreement is terminated and any alteration of the Site has taken place in order to facilitate the provision of the Service, the Customer shall be responsible for restoration of the Site.

## 24. MISCELLANEOUS

- 24.1. Binding on successors This Agreement shall be binding upon and enure to the benefit of the respective Parties hereto, their respective successors, personal representatives and permitted assigns.
- 24.2. Waiver, release and remedies
- 24.2.1. A waiver by either Party of any breach by the other Party of any of the terms, provisions or conditions of this Agreement or the acquiescence of either Party in any act (whether commission or omission) which but for such acquiescence would be a breach as aforesaid shall not constitute a general waiver of such term, provision or condition or an acquiescence to any subsequent act contrary thereto.
  - 24.2.2. Any remedy or right conferred upon either Party for breach of this Agreement shall be in addition to and without prejudice to all other rights and remedies available to it whether pursuant to this Agreement or provided for by law.
  - 24.2.3. No failure or delay by either Party in exercising any claim, remedy, right, power or privilege under this Agreement shall operate as a waiver nor shall a single or partial exercise of any claim, remedy, right, power or privilege preclude any further exercise thereof or exercise of any other claim, right, power or privilege.
- 24.3. Assignment/Subcontracting This Agreement shall not be assignable in whole or in part by either Party save that BT shall be entitled to assign and transfer all or any of its rights and obligations hereunder to a member of the BT Group and such assignee or transferee shall be entitled to enforce same against the Customer as if it were named in this Agreement as BT. BT shall notify the Customer of any such assignment or transfer. BT may sub-contract all or any part of its obligations under this Agreement.
- 24.4. Use of Information
- 24.4.1. Unless indicated to the contrary by the Customer in the Form, BT shall be at liberty to use the information supplied by the Customer under the terms of the Agreement for the purpose of introducing and offering to the Customer from time to time, additional, improved or new products and services of BT and other companies within the BT Group or any third parties which may be of interest to the Customer.
  - 24.4.2. BT shall comply with its obligations under applicable data protection legislation as regards relevant data in its possession relating to the Customer.
- 24.5. Notices. Any notice to be given by BT to the Customer under this Agreement or otherwise, shall be in writing signed on behalf of BT and delivered by hand or sent by registered post to the address last notified to BT for this purpose. Any notice to be given to BT by the Customer under this Agreement or otherwise, shall be in writing signed by or on behalf of the Customer and delivered by hand or sent by registered post to the BT office shown on the Form or the last address notified by BT to the Customer for this purpose.
- 24.6. Notice deemed to be served Any notice or communication referred to in clause
- 24.7. shall be deemed to have been served on delivery or if sent by registered post, 48 (forty-eight) hours after posting.

- 24.8. Variation BT reserves the right to amend this Agreement from time to time, such changes to be notified in writing to the Customer and to take effect from the date of receipt of such notice.
- 24.9. Whole Agreement This Agreement contains the whole agreement between the Parties hereto relating to the transactions provided for in this Agreement and supersedes all previous agreements (if any) between such parties in respect of such matters and each of the Parties to this Agreement acknowledges that in agreeing to enter into this Agreement it has not relied on any representations or warranties except for those contained in this Agreement. Nothing in this clause shall have the effect of limiting or restricting any liability of either Party arising as a result of any fraud.
- 24.10. Severability. Each of the provisions of this Agreement is separate and severable and enforceable accordingly and if at any time any provision is adjudged by any court of competent jurisdiction to be void or unenforceable the validity, legality and enforceability of the remaining provisions hereof and of that provision in any other jurisdiction shall not in any way be affected or impaired thereby.

**24.11. Anti-Corruption and Bribery Act Compliance:**

In connection with any actions or activities associated with this Agreement or in connection with the relationship between the Parties, neither Party shall engage in any unlawful trade practices or any other practices that are in violation of the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act of 2010, and the Ireland Prevention of Corruption Acts, 1889 to 2010 or any other law in Ireland that prohibits bribery or similar activity. Each Party shall ensure that neither it nor its Affiliates, subcontractors and agents: either directly or indirectly, seek, receive, accept, give, offer, agree or promise to give any money, facilitation payment, or other thing of value from or to anyone (including but not limited to government or corporate officials or agents) as an improper inducement or reward for or otherwise on account of favourable action or forbearance from action or the exercise of influence; or fail to establish appropriate safeguards to protect against such prohibited actions. Each Party shall, upon request from the other Party, provide evidence of the steps being taken to avoid prohibited actions, including the establishment of policies, practices, and/or business controls with respect to these laws.

**24.12. Data:**

**24.12.1. Data**

'Customer Data' means any data provided or made available by the Customer to BT under or in accordance with this Agreement. The following terms have the meanings given in the Data Protection Directive (95/46/EC): 'personal data', 'processing', 'data subject', 'data controller' and 'data processor'.

**24.12.2. Customer Data**

Notwithstanding any other provision in this Agreement, the Customer agrees that, for BT to provide the Services and/or Products, Customer Data may be: (a) held on a variety of systems, networks and facilities worldwide including systems and databases used by BT help desks, service desks and/or network management centres used for providing the Service and/or the Products and/or used for billing, sales, technical, commercial and/or procurement purposes; (b) located, hosted, managed, accessed or transferred worldwide; and (c) provided or transferred by BT to any Affiliate, subcontractor or supplier worldwide to the extent necessary to allow that Affiliate, subcontractor or supplier to perform its obligations in respect of the Service and/or the Products.

**24.12.3. Customer Personal Data**

- (a) The Customer shall notify to BT what personal data, if any, is included in the Customer Data ('Customer Personal Data') and the Customer will provide BT with reasonable written instructions in accordance with clause 16 as to the manner and purpose of the processing by BT to the extent strictly required for the provision of the Services. Any such instructions shall require an amendment in accordance with clause 19.15.

- (b) The Customer will be the data controller and BT will be the data processor in relation to any processing of Customer Personal Data.
- (c) Each Party shall comply with any data protection laws applicable to it in its processing of Customer Personal Data under or by virtue of this Agreement.
- (d) BT will only process Customer Personal Data to the extent necessary to provide the Services and/or Products in accordance with this Agreement and will: (i) implement and maintain measures, in accordance with its security policies as amended from time to time, to protect Customer Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access; and (ii) transfer Customer Personal Data outside of the EEA, including to Affiliates, subcontractors or suppliers where required to provide the Services.
- (e) The Customer shall provide sufficient notice and obtain sufficient consent and authorisation, under any applicable laws, from any relevant data subject to permit the processing of any Customer Personal Data by BT, its respective Affiliates, subcontractors or suppliers as provided for in this Agreement.
- (f) The Customer agrees that BT, to the extent permitted by law, will not be liable for any complaint, claim or action brought by a data subject arising from any action or omission by BT to the extent that such action or omission: (i) resulted from any failure by the Customer to comply with this Clause 19.3; or resulted from BT complying with any instructions of Customer or acting on behalf of the Customer in accordance with those instructions, and the Customer shall indemnify, hold harmless and defend BT from and against any such claims or actions brought against BT.

24.13. **S.I. No. 337 of 2011 (European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (Ireland):** (i) The Customer is able to use all Voice Services provided to access the national emergency call answering services by dialing 999 or 112. However for some Voice Services the Customer acknowledges that the ability to make 999 or 112 emergency calls cannot be guaranteed. If the Customer uses the Service to make emergency calls, the location information received by the emergency services may be limited to the installation address of the primary telephone line, which may not be the location from which the call originate and hence the Voice Service may not be capable of correctly identifying the caller's location to the emergency service. Emergency calls may fail if there is a power failure or broadband connection failure. Wherever possible alternative arrangements should be made and a primary telephone line maintained. The Customer agrees that it is responsible for ensuring that it puts appropriate measures in place to enable Users to call emergency services. In respect of all other Services, the Customer is not able to use the Service to access the national emergency call answering services. (ii) For any Voice Services provided the Customer shall have the right without charge, to have an entry in a directory of subscribers and a directory enquiry service and to have their information made available to providers of directory enquiry services and/or directories. The Customer has an option as to whether or not to include the personal data in directories. The Customer must inform BT if they do not wish their data to be included in directories. The Customer also has the right to register its telephone number as directory listed or ex-directory with the National Directory Database. The Customer has a right to consent or not to consent to receipt of unsolicited calls for the purposes of direct marketing. The Customer should inform BT of its preference(s) outlined above so that this information is recorded on the National Directory Database.

24.14. **Governing Law and Jurisdiction** This Agreement shall be governed by and construed in accordance with the laws of Ireland. Each of the Parties hereto, subject to Clause 20.2 hereby agrees that the courts of Ireland shall have exclusive jurisdiction to hear and determine any suit, action or proceedings that may arise out of or in connection with this Agreement and for such purposes irrevocably submits to the jurisdiction of such courts.