

VIATEL – DATA PROTECTION ADDENDUM

This Data Protection Addendum (“**Addendum**”) supplements, and is incorporated by reference into, the agreement or terms currently executed by, or applicable to, the entity set forth in the signature block below (“**Customer**”), for the use of Viatel’s telecommunications or cloud products or services, (“**Services**”), such existing agreement or terms being (the “**General Terms**”);

Viatel Ireland Limited, (company number 327562) (“**Viatel**”) is the party to the General Terms applicable to, or executed by, the Customer.

Customer and Viatel may be may be individually referred to as a “**Party**”, or collectively as the “**Parties**”.

In the course of providing the Services, Viatel, may have access to Personal Data as may be submitted to Viatel by the Customer.

The purpose of this Addendum is to incorporate into the General Terms the relevant provisions of the GDPR.

Where no General Terms exists, this Addendum stands alone as a contractual agreement between the Parties with regard to data processing activities.

In the event of any inconsistency between the terms of this Addendum and the terms of the General Terms, the terms of this Addendum shall govern and control. In all other respects, the General Terms is and shall remain in full force and effect.

1 INTERPRETATION

1.1 Words and phrases with defined meanings in the GDPR have the same meanings when used in this Addendum, unless they are otherwise defined in this Addendum.

1.2 In this Addendum:

“**Data Privacy Laws**” means the GDPR and other laws governing the privacy and data rights of natural persons having effect or enacted in the European Union, or the member state thereof whose laws govern the General Terms or this Addendum (as the case may be), together with any orders, guidelines and/or instructions issued under any of the above by relevant supervisory authorities or courts of competent jurisdiction;

“**GDPR**” means General Data Protection Regulation (EU) 2016/679 as applied, supplemented, modified and/or replaced from time to; and

“**Personal Data**” has the meaning given to it by the GDPR, but will only include personal data to the extent that such personal data, or any part of such personal data, is processed in relation to the Services.

For the purposes of this Addendum, the terms “**Sensitive Personal Data**” “**Data Subject**”, “**Data Controller**” and “**Data Processor**” shall have the same meanings as in the Data Privacy Laws.

2 OBLIGATIONS

2.1 Each Party will comply with the Data Privacy Laws applicable to it in connection with this Addendum, and will not negligently or in breach of this Addendum or the General Terms cause the other Party to breach any of its obligations under Data Privacy Laws.

2.2 Where Viatel processes Personal Data (as processor) on behalf of the Customer or an affiliate of Customer (as controller) in connection with the General Terms, Viatel will:

2.2.1 process that Personal Data only on behalf of the Controller, only for the purposes of performing its obligations under the General Terms, and only in accordance with instructions contained in the General Terms or instructions received in writing from the Controller from time to time, unless required to do so by applicable laws of the European Union or the relevant member state thereof whose laws govern the General Terms or this Addendum (in which case Viatel shall inform the Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest). Viatel will inform the Controller if, in its opinion, any instruction given by the Controller breaches Data Privacy Laws or other applicable law;

2.2.2 only grant access to that Personal Data to persons who need to have access to it for the purposes of

- performing Viatel's obligations under the General Terms and, to the extent such persons are granted access, that they are only granted access to the part or parts of that Personal Data necessary for carrying out their role in such performance;
- 2.2.3 endeavour to ensure that all persons with access to that Personal Data (i) are reliable; and (ii) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 2.2.4 take all measures required pursuant to Article 32 GDPR (including, but not limited to, any specific security measures or standards set out in this Addendum);
- 2.2.5 taking into account the nature of the processing and insofar as is possible, assist the Controller with the fulfilment of the Controller's obligation to respond to requests for exercising data subject's rights under the Data Privacy Laws and in responding to any other request, complaint or communication by, but not limited to, providing information requested by the Controller and relevant Personal Data within a reasonable time and in a commonly used electronic format, taking into account the timescales for the Controller complying with the data subject's request under Data Privacy Laws;
- 2.2.6 taking into account the nature of the processing and the information available to Viatel, assist the Controller in ensuring compliance with its obligations pursuant to Articles 32 to 36 GDPR inclusive;
- 2.2.7 in particular and without prejudice to the generality of clause 2.2.6, inform the Controller without delay (and in any event within 24 hours of becoming aware of it) of any personal data breach which occurs in respect of that Personal Data, providing sufficient details to enable the Controller to comply with its own notification obligations (provided that, where it is reasonable to do so and provided that it nevertheless acts expeditiously, Viatel may provide such details in stages as they become available to it);
- 2.2.8 at the Controller's option, delete or return to the Controller the Personal Data, and procure that any party to whom Viatel has disclosed the Personal Data does the same:
- 2.2.8.1 when the Controller instructs Viatel to do so, in which case Viatel will be entitled to treat that instruction as a termination event under the General Terms if (but solely to the extent that) it is thereby prevented from performing the General Terms as a result; or
- 2.2.8.2 after the termination of the Services which involve processing the Personal Data, such obligation to include deleting or returning all copies of the Personal Data, unless applicable law requires Viatel to retain the Personal Data. Where the Controller requests the return of Personal Data, Viatel will use reasonable endeavours to ensure it is in the format and on the media reasonably specified by the Controller;
- 2.2.9 where reasonably possible, store the Personal Data in a structured, commonly used and machine readable format;
- 2.2.10 not transfer Personal Data outside of the European Economic Area (as the case may be) without the prior written consent of the Controller. Where the Controller consents to the transfer of Personal Data outside of the European Economic Area, Viatel will:
- 2.2.10.1 Provide and demonstrate to the Controller appropriate safeguards pursuant to Article 46 GDPR for any Personal Data so transferred, unless, in the Controller's reasonable opinion, a derogation under Article 49 GDPR applies; and

- 2.2.10.2 comply with any reasonable instructions of the Controller in relation to such transfer;
 - 2.2.11 make available to the Controller all information necessary to demonstrate compliance with this Addendum; and
 - 2.2.12 allow the Controller, or its external advisers (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit Viatel's data processing activities and those of its relevant agents, group companies and sub-contractors, and comply with all reasonable requests or directions by the Controller, to enable to Controller to verify and procure that Viatel is in compliance with its obligations under this Addendum.
 - 2.3 Notwithstanding anything in this Addendum, information provided by Viatel to a Controller, whether through audit or otherwise, may be disclosed by the Controller if requested or required generally or specifically by applicable law, a court of competent jurisdiction, a relevant regulator or supervisory authority, a certification body (as referred to by Article 43 GDPR) or a monitoring body (as referred to by Article 41(1) GDPR) for the purposes of responding to a claim, request for information, inquiry or investigation.
- 3 SUB-PROCESSING**
- 3.1 Viatel uses certain subcontractors and sub-processors, (including members of the Viatel group and third parties), to assist it in providing the Services.
 - 3.2 In relation to the processing of Personal Data, the Controller hereby consents, by way of general written authorisation, to the use by Viatel of sub-processors.
 - 3.3 Viatel may continue to use those sub-processors already engaged by Viatel as at the date of this Addendum, subject to Viatel as soon as practicable meeting the obligations set out in clause 3.4.
- 3.4 Viatel shall ensure that the arrangement between Viatel and any sub-processor is governed by a written contract including terms which offer at least the same level of protection for Controller customer's Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR.
 - 3.5 Viatel will provide notice of updates to the list of sub-processors that are utilized or which Viatel proposes to utilize to deliver its services.
 - 3.6 The Controller can object in writing to the processing of its Personal Data by a new sub-processor within thirty (30) days after such notice and shall describe its reasons to object. If Subscriber does not object during such time period the new sub-processor(s) shall be deemed accepted.
 - 3.7 If in accordance with clause 3.4, the Controller objects to the use of a new sub-processor, Viatel shall have the right to cure the objection through one of the following options (to be selected at Viatel's sole discretion):
 - 3.7.1 Viatel may cease to use the sub-processor with regard to Personal Data;
 - 3.7.2 Viatel may take the corrective steps requested by Controller in its objection (which remove Controller's objection) and proceed to use the sub-processor to process Personal Data; or
 - 3.7.3 Viatel may cease to provide or Controller may agree not to use (temporarily or permanently) the particular aspect of an Viatel service that would involve use of the sub-processor to process Personal Data.
- 4 CONSENTS FROM CUSTOMERS**
- 4.1 With regard to its customers, the Controller shall collect and process all Personal Data in compliance with the Data Privacy Laws, and the Controller warrants and represents to Viatel that:
 - 4.1.1 it has and shall maintain all necessary consents, or another valid legal basis within the meaning of the Data

Privacy Laws, to process such Personal Data in connection with the provision or receipt of the Services; and

- 4.1.2 such consents, or other valid legal basis, shall permit the disclosure of such Personal Data by the Controller to Viatel and by Viatel to its third party service providers for further processing in connection with the provision or receipt of the Services including SMS text messaging or marketing related services that the Customer may select.

5 LIABILITY

- 5.1 Nothing in the Addendum shall limit or exclude either Party's liability for fraud, deceit or for personal injury or death arising from their negligence.
- 5.2 Neither Party shall be liable, whether in contract, tort (including negligence) or otherwise, to the other Party for any indirect, incidental, special or consequential damages, loss of revenue, loss of profit (whether direct or indirect), loss of goodwill, loss of anticipated savings, or other pure economic loss, arising from, or relating to, the Addendum or the performance or non-performance of its obligations hereunder, regardless of whether any such loss was known, anticipated or reasonably foreseeable.
- 5.3 Except as otherwise set out in this Clause 5, in no event shall the liability of the parties in connection with the subject matter of this Addendum exceed the liability caps in the General Terms.
- 5.4 The Customer warrants that it will comply with its obligations as a Data Controller under the Data Privacy Laws, and that it is entitled to collect the Personal Data and/or Sensitive Personal Data and pass it to Viatel for processing.

6 ACCEPTANCE OF SCANNED SIGNATURES

- 6.1 This Addendum will be considered signed when the signature of a Party on the full document is delivered by scanned image (e.g. .pdf or .tiff file extension name) as an attachment to an email, and will have the same effect as an original signature. The Party delivering any such signed scanned

image expressly agrees that it intends to be legally bound as if delivering a signed original of the same document.

7 GOVERNING LAW

- 7.1 The governing law and jurisdiction of the General Terms shall apply to this Addendum. If no General Terms is in place, and this Addendum stands as a standalone document, it shall be governed by and construed in accordance with Irish law, and the parties irrevocably agree to submit to the non-exclusive jurisdiction of the Irish courts in respect of any dispute or matter arising out of or in connection with the subject matter of this Addendum.

8 PARTICULARS OF PERSONAL DATA

- 8.1 The parties agree, in accordance with GDPR Article 28(3) that Schedule 1 summarises; (i) the subject-matter and duration of the processing, (ii) the nature and purpose of the processing, (iii) the type of personal data and categories of data subjects and (iv) the obligations and rights of the controller.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the last date below.

On behalf of Viatel Ireland Limited

On behalf of Customer; **INSERT** Legal Name at 1.:

1.

Signature: 

Print Name: Michael Doyle

Title: Group CFO

Date: 30th April 2018

Signature: _____

Print Name: _____

Title: _____

Date: _____

SCHEDULE 1**NATURE AND PURPOSE OF PROCESSING:**

Viatel will Process Personal Data as necessary to perform the Services pursuant to the General Terms and any service schedule thereto, and as further instructed by Customer in its use of the Services.

SUBJECT MATTER AND DURATION OF PROCESSING:

Viatel will Process Personal Data for the duration of the contract with the Customer, unless otherwise agreed upon in writing.

CATEGORIES OF DATA SUBJECTS:

Customer may submit Personal Data to the Services, the extent of which is determined and controlled by Customer in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Prospects, customers, business partners and vendors of Customer (who are natural persons)
- Employees or contact persons of Customer's prospects, customers, business partners and vendors
- Employees, agents, advisors, freelancers of Customer (who are natural persons)
- Customer's Users authorized by Customer to use the Services

CATEGORIES AND TYPES OF PERSONAL DATA:

Customer may submit Personal Data to the Services, the extent of which is determined and controlled by Customer in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

- First and last name
- Title
- Position
- Employer
- Contact information (company, email, phone, physical business address)
- ID data
- Professional life data
- Personal life data
- Connection and technical data

OBLIGATIONS AND RIGHTS OF CONTROLLER:

Obligations and rights of controller are as set out in this Addendum and in the General Terms.