

<b>Viatel Ireland Limited:</b>	<b>General Terms and Conditions ("GTC").</b>
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**1. Provision of the Service and Service Credits**

1.1 Viatel shall provide the Service and the Service Credits on the terms and conditions set out in, and for the duration of, the Agreement, and the Customer agrees to use the Service on the terms and conditions set out in the Agreement and the AUP.

1.2 In the event of conflict between any of the terms of the Agreement, the conflict shall be resolved according to the following order of priority: (i) any terms and conditions in the Order; (ii) the Service Schedule(s); then (iii) these general terms & conditions ("GTC").

1.3 After, and notwithstanding the acceptance of an Order, Viatel shall be entitled to change the terms, specifications or conditions applicable to a Service for bona fide operational reasons (including changes made in consequence of governmental, regulatory or third-party action). Viatel shall give at least twenty one (21) days' notice of any such change to the Customer, except where such changes are being made as a consequence of governmental, regulatory or third-party action, in which case Viatel shall give as much notice as is reasonably practicable in the circumstances. In the event that any such changes materially adversely affect the provision of the Service then the Customer may (save where such change is as a consequence of government, regulatory or third-party action), within fourteen (14) days of receipt of notice by Viatel of such changes, terminate in writing the affected Service without penalty. If no such notice is given by the Customer, the change shall be deemed accepted.

1.4 Viatel may make reasonable changes to the terms of the AUP at any time and such changes shall apply to all Services. For the avoidance of doubt, any such change shall not give rise to any right of termination under clause 1.3.

1.5 Viatel agrees to provide the Service(s) in accordance with the Service Levels set out in the Service Schedule.

1.6 In order to claim any Service Credits, the Customer must have paid all sums due to Viatel under the Agreement and must submit a request in writing for reimbursement within twenty (20) Business Days at the end of the calendar month in which the alleged breach of any Service Level has occurred.

1.7 The Customer shall, in respect of each such request, provide to Viatel such information regarding the alleged breach as Viatel may reasonably request.

1.8 The Customer's sole and exclusive remedy for a cause of action that results in a deviation from the Service Levels is the Service Credits as set out in the relevant Service Schedule. The Customer agrees that the compensation provided under the Service Schedule represents a reasonable pre-estimate of all of its losses and Viatel shall have no further liability to Customer for the failure to achieve

the Service Levels. Customer shall not be able to claim for more than one failure to meet a target arising from the same occurrence.

1.9 All Service Credits shall be granted by way of a deduction from the Charges included in the Customer's next invoice.

1.10 The aggregate monetary amount of Service Credits per month is limited to 50% of the MRR for the Service during that month (excluding any variable or usage-based charges).

1.11 Service Credits will not be payable by Viatel to the Customer for a failure to meet a Service Level that:

- 1.11.1 is caused directly or indirectly by any act, omission or default of the Customer or of any third party or which occurs during any cure period of a notice served by Viatel under the GTC and/or any period of suspension of a Service; or
- 1.11.2 is due to a failure of power, equipment or services provided by the Customer or any third party for or on behalf of the Customer (including any provider of a Tail Circuit), in which case, Viatel shall coordinate with such provider to endeavour to cure the failure as quickly as practicable; or
- 1.11.3 occurs during any period in which Viatel is not given access to the Customer Sites; or
- 1.11.4 occurs due to a Force Majeure Event; or
- 1.11.5 is due to scheduled maintenance and repair; or
- 1.11.6 is caused by a sub-sea cable failure, provided such failure was not the result of Viatel's negligence; or
- 1.11.7 is due to any Fault on the Customer's side of the Demarcation Point; or
- 1.11.8 results from Viatel implementing an instruction and/or variation from the Customer for a change of whatever nature in the Service; or
- 1.11.9 occurs during any period when the Customer declines to allow Viatel to test or repair the relevant Service and/or continues to use the same on an impaired basis; or
- 1.11.10 occurs in relation to a Fault requiring mast ascent during the hours of darkness or severe inclement weather where, in the reasonable judgment of Viatel, a potential safety hazard exists.

1.12 The measurement of Service performance shall be based on Viatel's own measurements of the core performance of the Viatel Network (acting reasonably and in good faith) and excludes any performance in relation to third party access or network infrastructure.

1.13 A period of Service non-availability will commence at the time a Fault is first reported to Viatel by the Customer representative in accordance with the Fault reporting procedures, or when the Fault is first identified and recorded by Viatel, whichever occurs first.

1.14 The period of Service non-availability shall end upon the Customer representative being advised by Viatel that Service is available or, in the event that Viatel is unable to contact the Customer representative, then from the time logged by Viatel that Service is available.

## 2. Duration of Agreement

2.1 The Agreement shall come into effect only when an Order is accepted and signed by Viatel.

2.2 The Initial Service Term shall commence upon Acceptance.

2.3 On expiry of the Initial Service Term, the Agreement shall continue in full force and effect until terminated by either party providing thirty (30) days written notice.

## 3. Delivery

3.1 After the Order is accepted, Viatel shall use all reasonable endeavours to provide the Service by the Requested In Service Date. Viatel shall notify the Customer of the Committed Delivery Date as soon as is reasonably practicable following acceptance of the Order.

3.2 The Service shall be provided by Viatel to the relevant Demarcation Point(s). The Customer shall ensure the Customer side of the Demarcation Point (including any equipment provided by the Customer) meets all technical specifications included in the Order or as otherwise specified by Viatel.

3.3 Where the Demarcation Point is within a Site owned or occupied by Viatel, then the Customer shall comply with the access and operating procedures of that Site and/or any other procedures that may be notified to the Customer. Where the Demarcation Point is in a non-Viatel location, to enable Viatel to deliver the Service, the Customer shall: (i) provide to Viatel the Site and demarcation information as reasonably required by Viatel; (ii) at its own expense prepare the Site in accordance with Viatel's reasonable instructions and in accordance with all applicable health and safety requirements; (iii) procure the grant to Viatel of access to the Site including the obtaining of all necessary wayleaves, consents, licenses or other permissions. Where such information or access is delayed, the Committed Delivery Date may be extended by Viatel by one day for every day of delay.

3.4 Viatel shall use reasonable endeavours to issue an In-Service Notification when the Service is ready to hand over. The Customer shall, within five (5) Business Days of receipt of such In Service Notification, notify Viatel of any Fault. In the event that a Service is to be provided to multiple Sites, such notification shall specify the Sites which are affected by the Fault, with the Service being deemed Accepted with respect to all other Sites. In the event that Customer notifies Viatel of a Fault then, as the Customer's sole and exclusive remedy, Viatel shall use reasonable endeavours to rectify the Fault and either provide the Customer with a new In-Service Notification or reconfirm the previous In-Service Notification.

3.5 The Service shall be deemed Accepted by the Customer upon; (i) the expiry of the ten (10) Business Days period referred to in Clause 3.4 where no notification as to any Fault has been made by the Customer; or (ii) reconfirmation by Viatel of an In Service Notification in accordance with Clause 3.4; or (iii) where no In Service Notification has been issued, upon the date the Customer first uses the Service.

3.6 Where Viatel is solely responsible for the delay in meeting the Committed Delivery Date, then Viatel shall provide the Customer with applicable Service Credits as defined in the Service Schedule.

3.7 Unless procured by the Customer, Tail Circuits required for the provision of the Service shall be detailed in the Order and shall be provided by a third-party operator. Any rights, remedies, credits or service the Customer may have, or be entitled to regarding a Tail Circuit, are limited to those rights, remedies, credits or service which Viatel (and/or any relevant Viatel Affiliate) may be entitled to under its agreement with the third-party operator of the Tail Circuit;

3.8 The estimated costs for any relevant Tail Circuit(s) shall be incorporated within the Charges indicated on the Order but may remain subject to a survey of the relevant Customer Site by the third-party operator and may be subject to change, with any such change (whether constituting an increase or decrease in the Charges) being passed onto the Customer in its entirety.

3.9 The Customer acknowledges that Viatel may use Affiliates and/or subcontractors to provide a Service (or any part thereof).

3.10 Viatel acknowledges that, subject to the Customer's compliance with the obligations and undertakings set out in clause 6 the Customer may resell a Service to any third party

## 4. Charges, Payment and Taxes

4.1 In consideration for the provision of the Service, the Customer agrees to pay the Charges in accordance with the Agreement.

4.2 The Charges shall accrue from the earlier of (i) Acceptance, and (ii) the In-Service Notification Date (if Viatel has, in its In-Service Notification, indicated matters within the control of the Customer delaying the delivery of the Service). Charges (other than Call Charges) shall be invoiced in advance (unless otherwise agreed in writing) at the frequency and currency identified in the Order, and if not so identified shall be paid monthly in advance. Call Charges shall accrue from the date on which the Customer commences use of the Service and shall be invoiced by Viatel monthly in arrears. All invoices shall be paid within thirty (30) days of the date of invoice without deduction or set-off. Charges may be pro-rated, based on a calendar month.

4.3 All Charges are exclusive of VAT and all other relevant taxes, each of which shall be for the account of the Customer. Save with respect to Call Charges, Viatel shall be entitled to increase the Service Charges on thirty (30) days' notice, such notice to take effect on or at any time after the expiry of the relevant Initial Service Term. Viatel shall be entitled to increase the Call Charges on seven (7) days' notice sent to the Customer by email at the contact details provided in the Order Form.

4.4 If the Customer fails to pay an invoice due under the Agreement, Viatel may charge interest at the annual rate of the European Central Bank (or Bank of England for Charges in Sterling) main refinancing rate (as at 1 January and 1 July in each year) plus 8 percentage points. Such interest shall be payable immediately on demand, from the due date up to the

date of actual payment, after as well as before judgment, and such interest shall accrue on a daily basis and be compounded on a monthly basis.

4.5 The Customer may be subject to a credit check at any time, and where (i) the Customer has suffered a material negative change in its financial or trading condition; or (ii) the Customer has a credit rating which Viatel reasonably considers to be unsatisfactory; or (iii) the Customer has failed to make payment to Viatel of any undisputed amount when due; Viatel may request a deposit or bank guarantee in a form approved by Viatel and in an amount equal to (3) three months Charges which Viatel might reasonably expect the Customer to incur in respect of the provision of the Service. Such deposit or bank guarantee is to be received by Viatel within seven (7) days of request, and deposits shall not carry any interest. The Customer acknowledges that any failure by it to comply with any request from Viatel pertaining to a bank guarantee or deposit shall constitute a material breach of the Agreement which is not capable of remedy.

4.6 In the event of any breach of Clause 4.1, Viatel shall be entitled to set off any sums owing to it under the Agreement against any deposit or bank guarantee provided pursuant to Clause 4.5.

4.7 If the Customer wishes to dispute any invoice or part of an invoice falling due in accordance with clause 4.2, it shall do so in good faith and shall, before the invoice is due for payment, deliver a notice (together with supporting documentation, as appropriate) to Viatel setting out the nature of its dispute, including:

- 4.7.1 the date and number of the disputed invoice;
- 4.7.2 the amount in dispute; and
- 4.7.3 the reason for the dispute.

or be deemed to have waived all rights to dispute the invoice.

4.8. The parties shall negotiate in good faith in an attempt to resolve the dispute, provided that if the dispute cannot be resolved within thirty (30) days of the date of the invoice, either party may institute legal proceedings. Any undisputed part of a disputed invoice shall be paid by the Customer in accordance with clause 4.2 and shall not be subsequently disputed.

4.9 Any failure on the part of the Customer to recover its charges from any End-User shall not, for the avoidance of doubt, excuse, whether in whole or part, the Customer's payment obligations under this clause 4.

4.10 Charges may be applied on a pro-rata basis (as calculated by reference to the applicable Order or, where such calculation is not possible, as may be reasonably determined by Viatel) where the Service is to be provided to multiple Sites, and the Service has only been Accepted with respect to certain of those Sites.

## 5. Maintenance and Service Levels

5.1 Viatel reserves the right to perform any upgrades, updates, patches, and emergency, routine or scheduled maintenance that may limit or suspend the availability of the Service and shall, where practicable, provide reasonable notice of emergency maintenance, and provide 14 calendar days' notice of such routine or scheduled maintenance.

5.2 Viatel shall use all reasonable endeavours to ensure that all maintenance activity is undertaken in such a way to

minimize any disruption to the Service. Any suspension in the availability of the Service due to maintenance by Viatel shall not be deemed to be a breach of any of its obligations under the Agreement.

5.3 Upon notification by the Customer of a Fault after Acceptance, Viatel shall use all reasonable endeavours to repair the Service. Viatel may invoice as Charges any costs associated with any maintenance or repair related to the provision of the Service to the extent that such maintenance or repair resulted from: (i) any act or omission of the Customer (including any contractor, supplier or other agent of the Customer) and/or any End-User; (ii) any failure or malfunction of Customer Equipment or on the Customer side of the Demarcation Point.

5.4 In the provision of the Service, Viatel will exercise the reasonable skill and care of a competent telecommunications operator. Except as expressly set out in the Agreement, all warranties, representations or agreements with respect to the provision of the Service, whether oral or in writing and whether express or implied, either by operation of law, statute or otherwise, are excluded, to the extent permitted by law.

## 6. Customer Obligations and Undertakings

6.1 In connection with any specifically permitted resale of any Service and/or its provision to any End-User, the Customer warrants and undertakes that it shall:

- 6.1.1 resell the Service in its own name and for its own account;
- 6.1.2 not hold itself out or otherwise represent itself as being authorised to enter into any contract with respect to the provision of a Service on behalf of Viatel and/or any Viatel Affiliate;
- 6.1.3 be responsible at all times for reporting to Viatel any Faults or other problems that may arise in connection with the provision of the Service to and/or its use by, any End-User; and
- 6.1.4 ensure that no provision is included in any contract with an End-User which purports to give a person who is not a party to the Agreement the right to rely upon or enforce any term thereof against or in relation to Viatel.

6.2 The Customer warrants and undertakes that with respect to the use of the Service it, and the End-Users, shall: (i) not violate any applicable law, rule or regulation; (ii) not infringe, transmit or publish content that infringes, the rights of others, including without limitation, any Intellectual Property Rights of any third party; (iii) not act in a manner which is likely to cause impairment of, or interference to, the operation of the Viatel Network and/or the use thereof by Viatel and/or any third party; (iv) not act in a manner which is likely to result in Viatel having any liability to any third party; (v) comply with the AUP; and (vi) comply at all times with any operating procedures and any other interconnection requirements of Viatel as may be notified to it from time to time.

6.3 The Customer warrants and undertakes that with respect to any Service Equipment located at a Customer Site, it, and the End-Users, shall: (i) not modify, move, relocate or in any way interfere with such Service Equipment; (ii) not cause the

Service Equipment to be repaired, serviced or otherwise attended to except by an authorized representative of Viatel; (iii) insure and keep insured all Service Equipment; (iv) not remove, tamper with or obliterate any words or labels on the Service Equipment; (v) not create or allow any charges, liens, pledges or other encumbrances or security interests whatsoever to be created over or in respect of the Service Equipment; (vi) use the Service Equipment only for the purpose of receiving the Service from Viatel and in accordance with such reasonable instructions as may be given by Viatel from time to time; and (vii) permit Viatel to inspect or test the Service Equipment at all reasonable times.

6.4 Without releasing the Customer from any of its obligations hereunder, the Customer shall in each contract with any End-User by which it resells or otherwise makes available the Service, include terms (and enforce the same) which shall have the effect of requiring such End-User to give undertakings on terms identical to those set out in clauses 6.2 and 6.3.

6.5 The Customer shall indemnify and hold harmless Viatel from and against all claims, demands, actions or proceedings brought by third parties against Viatel or an Affiliate in respect of or arising directly, or indirectly: (i) out of or in connection with this Agreement; (ii) from the use of the Service or (iii) from the Customer reselling or otherwise making available the Service to a third party.

## 7. Termination and Suspension

7.1 The Customer may terminate the Agreement for convenience: (i) prior to Acceptance by paying any NRR or Installation Charge (as specified in the Order) whichever is the greater, plus fifty percent (50%) of the aggregate MRR due in respect of the Initial Service Term; (ii) during the Initial Service Term by paying 100% of the MRR that would be due as from date of termination to the end of the Initial Service Term. The Customer shall also be liable, in any event of termination under this Clause 7.1, for any and all third-party costs or cancellation charges.

7.2 Viatel may at its sole discretion and without prejudice to any other rights that it has under the Agreement, suspend the Service with immediate effect in the event of: (i) late payment of Charges by more than 10 Business Days; (ii) reasonable suspicion of fraud or illegal use of the Service or for any other violation of the Agreement; (iii) restriction of access by the Customer or its subcontractors or agents, to Viatel and /or Viatel subcontractors in contravention of the provisions of the Agreement; (iv) government, regulatory or third party changes which materially impact the provision of the Service; (v) such suspension being, in Viatel's reasonable opinion, necessary to comply with an order, instruction or request of a judicial or other public authority, including emergency service organisations; (vi) an Event of Insolvency in respect of the Customer.

7.3 Where Viatel suspends the Service as a consequence of the breach, fault, act or omission of the Customer, then the Customer shall continue to pay Charges and shall pay all reasonable costs and expenses incurred by Viatel in the implementation of such suspension and/or any subsequent reconnection of the Service.

7.4 Viatel may terminate the Agreement with immediate effect upon the Service being suspended for two (2) months or more.

7.5 Without prejudice to Viatel's rights under clause 7.2, and to the parties other rights and remedies under this Agreement, either party may terminate a contract for a Service:

- 7.5.1 forthwith by notice if, in relation to such contract, the other party commits a material breach which is incapable of remedy;
- 7.5.2 forthwith by notice if, in relation to such contract, the other party commits a material breach which is capable of remedy but which such other party fails to remedy within twenty (20) Business Days of having been notified of such breach;
- 7.5.3 on thirty (30) days notice, such notice to take effect on or at any time after the expiry of the relevant Initial Service Term;

7.6 In the event of termination of the Agreement, all accrued Charges not yet invoiced shall become due and shall be immediately payable by the Customer on receipt of invoice(s).

7.7 Termination of this Agreement shall not affect any rights or liabilities which have accrued prior to the date of termination or the continuance in force of clauses 4, 6, 8, 9, 10, 14 and 17, together with those other clauses the survival of which is necessary for the interpretation or enforcement of this Agreement.

## 8. Liability

8.1 Nothing in the Agreement shall limit or exclude either party's liability for fraud, deceit or for personal injury or death arising from their negligence.

8.2 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, loss of data or other pure economic loss, arising from, or relating to, the Agreement or the performance or non-performance of its obligations thereunder, regardless of whether any such loss was known, anticipated or reasonably foreseeable. For the avoidance of doubt, this Clause 8.2 shall not apply so as to release the Customer from any of its payment obligations under the Agreement.

8.3 Except as otherwise set out in this Clause 8, in no event shall the liability of Viatel in connection with the provision of the Service (whether in contract or tort (including negligence)), exceed: (i) in relation to a single claim or series of related claims, twice the Charges paid in respect of the Service during the month preceding the claim or, in the case of the first month of the Initial Service Term, twice the amount otherwise due for that month; and (ii) in respect of Viatel's aggregate liability in any twelve (12) month period, the total amount actually paid by the Customer to Viatel in respect of the Service during such period.

8.4 Except as otherwise set out in this clause, in no event shall Viatel be liable (whether in contract, tort (including negligence) or otherwise) for any loss, damage or claim,

including any claims for loss of revenue and/or loss of profit, arising out of: (i) any fault on the Customer side of the Demarcation Point (to the extent that such fault is not caused by any act or omission on the part of Viatel); (ii) the resale and/or anticipated resale of any Service to any End-User; and (iii) the interoperability or interconnection of the Service with applications, equipment or services provided by the Customer and/or any End-User.

maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis, and

10.3.3 to communicate to the Customer regarding products and services of Viatel, its Affiliates and their respective agents and sub-contractors by voice, letter or email.

## 9. Confidentiality

9.1 During the term of the Agreement and thereafter, each party agrees to keep all Confidential Information strictly confidential and to use it only for the purposes of the Agreement.

9.2 The provisions of this Clause 9 shall not apply to: (i) information that has come into the public domain other than by breach of this Clause 9 or any other duty of confidence; (ii) information already in the possession of the receiving party before it was made known by the other party; (iii) information the receiving party obtained from a third party without breach of this Clause 9 or any other duty of confidence; (iv) information required to be disclosed by law or by any governmental or other regulatory authority (including the United States Securities and Exchange Commission); or (v) information that is trivial or obvious.

## 10. Data Protection and Privacy

10.1 Where Viatel acts as a Data Processor in relation to Personal Data in respect of which the Customer is Data Controller, the terms of Viatel's data processing Service Schedule shall apply, and be incorporated into this Agreement as a contractual arrangement between the parties in relation to processing of such Personal Data by Viatel.

10.1 Where either party come into possession of Personal Data, both Viatel and the Customer shall comply with all current and applicable data protection legislation and shall implement appropriate measures to protect all Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against other unlawful forms of processing.

10.2 The Customer warrants that it has obtained all legally required consents and permissions for the use, processing and transfer of Personal Data.

10.3 The Customer acknowledges and agrees that Viatel, its Affiliates and their respective agents and sub-contractors may use, process and/or transfer Personal Data and Relevant Data (including intra-group transfers and transfers to entities in countries that do not provide statutory protections for personal information):

- 10.3.1 in connection with the provision of Services;
- 10.3.2 to incorporate Personal Data and Relevant Data into databases controlled by Viatel, its Affiliates and their respective agents and sub-contractors for the purpose of administration, provisioning, billing and reconciliation, verification of Customer identity and solvency,

The Customer may withdraw consent for such use, processing or transfer of Personal Data and Relevant Data as set out above, unless it is required to (i) provision, manage, account and bill for the Services; (ii) carry out fraud detection; or (iii) comply with any statutory obligation, regulatory requirement or court or other public authority order, by sending written notice to Viatel in accordance with the prescribed form, available from Viatel on request.

## 11. Force Majeure

11.1 Except with respect to payment obligations, neither party shall be liable for any failure or delay in performing any obligations under the Agreement (and the time for performance shall be extended accordingly) if and to the extent that the failure or delay is due to a Force Majeure Event.

11.2 If such Force Majeure Event continues for at least three (3) months and such Force Majeure Event prevents a party from performing all or a material part of its obligations (except with respect to payment obligations) under the Agreement, either party shall be entitled, on five (5) Business Days notice, to terminate the Agreement without liability.

## 12. Assignment

12.1 The Customer shall not assign or otherwise transfer (including, without limitation, a transfer due to a change in control of the Customer) any of its rights under the Agreement without the prior written consent of Viatel, which consent shall not be unreasonably withheld. No permitted assignment or transfer shall relieve the Customer of its obligations under the Agreement.

12.2 The Customer agrees that Viatel may, upon prior notice to the Customer, assign its rights and novate its obligations under the Agreement to any then existing Viatel Affiliate and furthermore the Customer shall, upon request and in order to give effect to such novation, enter into a deed of novation with Viatel and the relevant Viatel Affiliate in a form reasonably required by Viatel, whereunder that Viatel Affiliate as successor to Viatel adheres to the rights and obligations of Viatel as set out in the Agreement.

## 13. Software Licence

13.1 In the event that Viatel provides the Customer with any software for use in connection with any Service (including any software comprised in Service Equipment), then the Customer shall have a non-exclusive, non-transferable and revocable (for breach only) licence to use such software

solely to the extent necessary to use the Service. Such licence shall not entitle the Customer to claim title to, or any ownership interest in, the software (or any derivations thereof or improvements thereto) and the Customer shall execute any documentation reasonably required by Viatel to document Viatel's existing and continued ownership of, or right to, the software.

13.2 The Customer agrees that it shall not, and shall not permit other persons to:

- 13.2.1 copy the software except as permitted by Viatel or as may be reasonably required for back-up purposes;
- 13.2.2 reverse engineer, decompile or disassemble the software save to the extent that it cannot be prohibited from so doing under applicable law;
- 13.2.3 sell, lease, licence or sub-licence the software, save as provided in clause 13.3;
- 13.2.4 create, write or develop any derivative software or any other software program based on the licenced software or any Confidential Information of Viatel; or
- 13.2.5 take any action prohibited by the owner of the software.

13.3 The Customer shall be entitled to sub-licence the use of the software to any End-User solely to the extent necessary for such End-User to use a Service. As a condition of any such sub-licence, but without releasing it from any of its obligations hereunder, the Customer shall, in each contract with any End-User by which it resells or otherwise makes available the Service, include terms (and enforce the same) which shall have the effect of requiring such End-User to give undertakings on terms identical to those set out in clause 13.2.

#### 14. Miscellaneous

14.1 The Customer acknowledges that all Intellectual Property Rights in the Service remain vested with Viatel.

14.2 The Agreement contains the entire agreement between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters.

14.3 The parties confirm that, in agreeing to enter into the Agreement, they have not relied on any representation other than those which are set out in the Agreement, and the parties agree that they shall not have a remedy in respect of any misrepresentation which has not become a term of the Agreement. Nothing in this clause shall operate to exclude any liability for fraud.

14.4 If at any time any provision of the Agreement is held to be invalid or unenforceable then such provision shall be deemed not to be part of the Agreement but the validity and enforceability of the remainder of the Agreement shall not be affected.

14.5 Except as expressly provided in the Agreement, a person who is not a party to the Agreement has no right to rely upon or enforce any term of the Agreement, but this shall not affect any right or remedy of a third party which exists or is available apart from that Act.

14.6 Nothing in the Agreement shall be construed as creating a partnership, joint venture or agency arrangement of any kind.

14.7 Subject to its compliance, as applicable, with clause 9, each party shall be entitled, in connection with its routine marketing and sales activity, to make reference to the relationship between the parties under this Agreement.

14.8 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of any such right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy. The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law

#### 15. Notices

15.1 Any notice, given or made under this Agreement shall be in writing, signed by an authorised representative and shall be delivered personally or sent by post, recorded delivery or courier to the registered address of the party or such other address as each party may notify in writing to the other. Notices, other than notices of dispute or termination for breach of contract may also be sent by electronic communication to the address details set out in the Order.

15.2 Any such notice, demand or other communication shall be deemed to have been received:

- 15.2.1 if delivered personally, at the time of delivery;
- 15.2.2 if sent by email, 5:00 pm on the Business Day after the email is sent.
- 15.2.3 if sent by commercial courier, on the date and at the time of signature of the courier's delivery receipt;
- 15.2.4 if sent by post, 5.00 pm on the second Business Day after posting;
- 15.2.5 if sent by recorded delivery, 9.00 am on the second Business Day after posting;
- 15.2.6 if sent by airmail, 9.00 am on the fifth Business Day after posting;

#### 16. Acceptance of Scanned Signatures

16.1 Orders and related documents issued pursuant to or in connection with this Agreement will be considered signed when the signature of a party on an Order or 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.

#### 17. Governing Law

17.1 The Agreement 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 the Agreement.

**THE PARTIES UNDERSTAND, ACKNOWLEDGE AND AGREE THAT ONCE THE ORDER HAS BEEN ACCEPTED BY VIATEL, THESE GTC WILL FORM A LEGALLY BINDING CONTRACT BETWEEN THEM.**

## Definitions

Unless the context otherwise requires, words used in the singular include the plural and vice versa.

Reference to persons includes bodies corporate, unincorporated associations and partnerships and vice versa.

Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

The headings in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.

References to a clause, a Schedule or a party are references to a clause of, a Schedule to and a party of this Agreement.

Any phrase introduced by the terms "without limitation", "including", "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms

**"Acceptance"** means acceptance of the Service by the Customer in accordance with Clause 3.5 and **"Accepted"** shall be construed accordingly.

**"Affiliate"** means in relation to a party means any other person controlling, controlled by or under common control with that party where "control" and related terms means the ability to direct the affairs of the relevant party or person whether by means of the holding of shares, or the possession of voting power, by virtue of any powers conferred by its constitutional or corporate documents, or otherwise;

**"Agreement"** means these GTC, the applicable Service Schedule (as indicated in the Order), the applicable Voice Rate Card and the Order (including any special conditions set out in the Order).

**"AUP"** means the acceptable use policy of Viatel (as the same may be amended from time to time) and which is available at [www.viatel.com](http://www.viatel.com)

**"Business Day"** means 9am to 5pm any Monday to Friday excluding public, bank and national holidays in the jurisdiction where the Service is to be provided, and if the Service is provided in multiple jurisdictions shall be interpreted by reference to the jurisdiction of incorporation of Viatel.

**"Call Charges"** means the charges for switched or internet protocol telecommunication services payable in accordance with Clause 4 and specified in the Voice Rate Card.

**"Charges"** means all Call Charges, Service Charges and/or Installation Charges payable by the Customer to Viatel for a Service as set out in, or calculated pursuant to, this Agreement (and/or specified in the Voice Rate Card)

together with any other monies owing by the Customer to Viatel.

**"Confidential Information"** means all information about the business, finances, technology and affairs of the other party, regardless of its nature, and the contents of the Agreement.

**"Committed Delivery Date"** means the date on which Viatel shall deliver the Service to the Customer, as notified to the Customer by Viatel.

**"Customer Equipment"** means any equipment, systems, cabling and facilities operated by or on behalf of the Customer or any End-User and used in connection with the Service.

**"Data Controller"** has the meaning ascribed to it in the Data Protection Law

**"Data Processor"** has the meaning ascribed to it in the Data Protection Law

**"Data Protection Law"** means the General Data Protection Regulation (EU) 2016/679 (as supplemented, modified and/or replaced from time to time); the Data Protection Acts 1988 to 2018; and any orders, guidelines and/or instructions issued under any of the above by relevant supervisory authorities or courts of competent jurisdiction;

**"Demarcation Point"** means the optical distribution frame or other termination point (as identified in the Order) signifying the physical or logical boundary between: (i) the Viatel Network and/or Viatel Equipment; and (ii) the network to which the Service is to be connected.

**"End-User"** means any person to whom the Customer resells and/or otherwise makes available the Service.

**"Event of Insolvency"** means in relation to a party: (a) such party ceasing, or threatening to cease, to carry on business; (b) a liquidator, receiver, administrative receiver or similar officer being appointed over any of the assets or business of that party; (c) such party passing a resolution for its winding-up, otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity assumes all liabilities of such party; (d) such party entering into a voluntary arrangement with its creditors generally or any class of its creditors; (e) such party being or becoming unable to pay its debts as they fall due; or (f) such party being subject, under any foreign law, to any event that is similar or analogous to any of the foregoing.

**"Fault"** means (i) a material fault or other impairment in the Service which causes an interruption in the provision of the Service, or (ii) where "availability" or "unavailability" or "uptime" or "downtime", or similar concepts, are specifically provided for in a Service Schedule related to the Service, a fault in those circumstances shall as determined in accordance with that Service Schedule.

**"Force Majeure Event"** means any cause or circumstance beyond a party's reasonable control including acts of God, war, acts of terrorism, riot or civil commotion or industrial dispute not involving the employees of such party, laws or restrictions imposed by any governmental or judicial authority, acts or omissions of third parties, including other providers of telecommunications services, any cuts in any submarine telecommunications cables and any power outage or interruptions of other utility services.

**"GTC"** means the general terms and conditions as set out herein.

**"Initial Service Term"** means the minimum term of the Agreement as specified in the Order.

**"Installation Charge"** means the charge for the installation of the Service (including any Service Equipment) payable by the Customer to Viatel.

**"In Service Notification"** means the notification provided by Viatel confirming that the Service is (i) operational (and if appropriate, free of any Fault) or (ii) is, in the opinion of Viatel, capable of operation and subject only to matters within the control of the Customer, in which case the notification shall itemise those matters.

**"Intellectual Property Rights"** means all copyright and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including patents, trademarks, service marks, trade names, registered designs, database rights, domain names and any applications for the protection or registration of such rights and all renewals or extensions thereof throughout the world.

**"MRR"** means the monthly recurring charges payable by the Customer for the Service, as specified in the Order;

**"NRR"** means any non-recurring fee (other than Installation Charge) payable by the Customer for the Service, as specified in the Order;

**"Order"** means any order for the Service given by the Customer and accepted by Viatel in accordance with the terms of the Agreement, and **"Ordered"** shall be construed accordingly.

**"Personal Data"** has the meaning ascribed to it in the Data Protection Law.

**"Relevant Data"** shall include, but not be limited to data transmissions (including the originating and destination numbers and IP addressed, date, time and duration of voice or data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission).

**"Requested In Service Date"** means the date by which the Customer has requested the Service should be operational, as set out in the Order.

**"Service"** means the telecommunications service provided by Viatel to the Customer as described in the Order.

**"Service Credits"** means a credit the Customer shall be entitled to in accordance with the Service Schedule.

**"Service Charges"** means the recurring periodic charges payable by the Customer to Viatel in respect of the provision of a Service and/or specified in the Voice Rate Card.

**"Service Equipment"** means any equipment, systems, cabling and facilities (including any software comprised therein) supplied by Viatel to the Customer as part of and/or in conjunction with the provision of the Service.

**"Service Levels"** means the service level agreement governing the quality of the Service set out in the Service Schedule;

**"Service Schedule"** means the schedule of additional terms and conditions for the provision of the specific Service ordered by the Customer as referred to in the relevant Order and available on the Viatel website.

**"Site(s)"** means the site, premises or other location, including any third-party termination point, to and/or at which the Service is provided, and **"Customer Site"** shall mean any such site as is owned and/or operated by or on behalf of the Customer and/or any End-User.

**"Tail Circuit"** means the physical connection (local access circuit) connecting the Viatel Point of Presence to the relevant Site.

**"Viatel"** means the supplier of Services as identified in the Order.

**"Viatel Equipment"** means the Viatel equipment located in a Viatel Point of Presence at which the Service shall be delivered to the Customer.

**"Viatel Network"** means the telecommunications system which Viatel and or its Affiliates has the right to run under applicable law.

**"Viatel Point of Presence"** means a Viatel point of presence on the Viatel Network, connection to which is required in order for Viatel to provide the Service.

**"Voice Rate Card"** means the document enumerating the Charges (which include but are not limited to the Call Charges, Service Charges, Installation Charges, etc.) payable by the Customer to Viatel for a voice Service.