

Terms and Conditions of Service: Resellers

This document contains important information. Please read it carefully in full and retain for future reference.



Last revised: October 2019

IP TELECOM TERMS AND CONDITIONS OF SERVICE (RESELLERS)

OVERVIEW

Please read this Agreement carefully. It tells you who we are, the terms and conditions on which we appoint you as a non-exclusive Reseller of Services in the Territory, how we charge, how you and we may change or terminate the Agreement, what to do if there is a problem and other important information.

PARTIES

The Agreement is between

1. Internet Protocol Telecom Limited, a company incorporated under the laws of Ireland with company registration number 482356, whose registered office is at Unit 1A Hume Centre, Hume Avenue, Park West Industrial Estate, Dublin 12, Ireland (**IP Telecom**); and
2. the **Reseller**.

Where the Reseller is more than one person or entity, each person or entity is jointly and severally liable for the Reseller's obligations under the Agreement.

WHEREAS

- A. IP Telecom provides electronic communication networks and services to End Users.
- B. IP Telecom has agreed to appoint the Reseller as a non-exclusive Reseller in the Territory for the resale of telecommunications services, and the Reseller has agreed to accept such appointment on the terms and conditions hereinafter contained.

IT IS NOW AGREED BETWEEN THE PARTIES THAT:

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| <p>1 AGREEMENT STRUCTURE</p> <p>1.1 The agreement between IP Telecom and the Reseller consists of:</p> <p>1.1.1 the Key Terms Sheet;</p> <p>1.1.2 these Terms of and Conditions of Service (Resellers) including any annexures hereto; and</p> <p>1.1.3 IP Telecom's policies and other terms that it provides to the Reseller from time to time.</p> <p>(collectively, the "Agreement").</p> <p>1.2 The Reseller acknowledges receiving, or having had the opportunity to review, a copy of this Agreement and it agrees to act in accordance with it. You may view the latest version of the Agreement at www.IPTelecom.ie or obtain a paper copy from us.</p> | <p>1.3 If there is an inconsistency between the parts of the Agreement, the document listed earlier in clause 1.1 prevails to the extent of the inconsistency.</p> <p>1.4 Key Terms Sheet and the Reseller acknowledges and agrees that all Services are subject to and governed by this Agreement to the exclusion of any other terms and conditions which the Reseller may purport to apply.</p> <p>1.5 This Agreement prevails over, supersedes and excludes any terms or conditions contained in or referred to in any correspondence or documentation which the Reseller generates, provides to IP Telecom or otherwise references (including those set out on the Reseller's website).</p> |
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2 COMMENCEMENT AND TERM

2.1 The Agreement starts and has legal effect from the earlier of:

2.1.1 the date the parties sign a completed copy of the Key Terms Sheet; or

2.1.2 the date that the Reseller commences reselling of the Services,

(the "**Start Date**") and continues for the Initial Term, unless terminated earlier in accordance with its terms.

2.2 The Agreement automatically renews on the same terms and conditions as contained herein for successive periods of 12 calendar months (each a "**Renewal Period**"), unless terminated in accordance with the terms of the Agreement.

3 APPOINTMENT

3.1 IP Telecom appoints the Reseller as its non-exclusive reseller to sell the Services to End Users who are domiciled or incorporated in the Territory, subject to the terms and conditions of the Agreement.

3.2 IP Telecom reserves to itself the rights to:

3.2.1 sell the Services to End Users in the Territory; and

3.2.2 appoint other resellers to sell the Services in the Territory.

3.3 Pursuant to the appointment of the Reseller under the Agreement, IP Telecom grants to the Reseller a non-transferable right and licence during the Term to market, distribute, offer and sell the Services to the End Users in the Territory on the terms of the Agreement.

3.4 The Reseller shall have no authority to bind IP Telecom to any contract, representation, understanding, act, or deed concerning IP Telecom or any Services covered by the Agreement without IP Telecom's prior written approval.

3.5 The Reseller shall not agree to any discounts, promotional discounts, or other

terms without IP Telecom's prior written consent. The Reseller shall not offer or

make any warranties or representations concerning the Services unless such warranty or representation is authorised in writing by IP Telecom.

3.6 The Reseller is not appointed to negotiate or conclude sales of goods on behalf of IP Telecom.

4 RESELLER OBLIGATIONS

4.1 The Reseller shall:

4.1.1 dedicate sufficient resources and Personnel in order to comply with its obligations under the Agreement;

4.1.2 act diligently and in good faith in discharging its duties under the Agreement and will not allow its other interests to conflict with its duties to IP Telecom;

4.1.3 use its best endeavours to generate sales of Services to End Users;

4.1.4 report regularly to IP Telecom on progress made with End Users and prospective End Users;

4.1.5 ensure that the Minimum Network Requirements are met at each End User's premises and take all other appropriate measures to enable IP Telecom to provide the Services to the End User. The Reseller is responsible for any technical support or maintenance of the equipment installed;

4.1.6 promptly advise IP Telecom of any queries, complaints, local issues or any other issues arising with End Users or likely to affect the provision of the Services in the Territory;

4.1.7 comply with all Applicable Laws when dealing with End Users and discharging its obligations;

- 4.1.8 comply with all IP Telecom's reasonable and lawful instructions;
- 4.1.9 take all reasonable measures to protect the security of IP Telecom's network;
- 4.1.10 ensure that any information it provides to IP Telecom in connection with the Agreement is timely, complete and accurate;
- 4.1.11 ensure that all equipment connected to the Services by it, or on its behalf, is technically compatible with the relevant Service(s) and that each End User's premises and the equipment complies with and is used in accordance with all reasonable procedures notified by IP Telecom and any Applicable Laws;
- 4.1.12 not alter, tamper, reverse engineer, repair or attempt to repair the Services or cause, or allow, a third party to do any of these acts, without IP Telecom's prior written consent; and
- 4.1.13 cooperate with IP Telecom in relation to any complaints, enquiries or investigations in relation to the Services or End Users.

5 DIRECT CUSTOMER RELATIONSHIP

- 5.1 The Reseller acknowledges and agrees that each End User is at all times during and after the Agreement a direct customer of IP Telecom and the Reseller shall take no action to interfere with the relationship between the IP Telecom and its customers.
- 5.2 The Reseller must not, and must procure that no employees and agents of the Reseller, at any time prior to, or within 12 months of, termination or expiry of the Agreement, directly or indirectly, and without the prior written approval of IP Telecom, interfere with IP Telecom's relationship with, or endeavour to entice away from IP Telecom, any person,

company or other business organisation which at any time during the Term was a customer of IP Telecom. The Reseller acknowledges that IP Telecom will have no adequate remedy at law if the Reseller violates any term of this clause 5. In such event, IP Telecom shall have the right, in addition to any other rights it may have, to obtain in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach of or otherwise to specifically enforce any of the covenants of this clause 5.

6 ORDERS AND SALES

6.1 In the case of Reseller Sales:

6.1.1 upon receipt of a request to order Services from a prospective End User, the Reseller shall promptly submit an order to IP Telecom in the form specified by IP Telecom. Any order submitted by the Reseller will clearly identify whether the proposed End User is a business customer or a residential customer;

6.1.2 if IP Telecom approves an order for Services from a prospective End User, IP Telecom will confirm such approval to the Reseller and either authorise the Reseller to conclude a Customer Contract on IP Telecom's behalf or conclude the Customer Contract directly between IP Telecom and the End User. All Customer Contracts will be on the terms specified by IP Telecom and pursuant to the policies set by IP Telecom, which shall establish all conditions of sale, prices and payment terms. The Reseller shall ensure the End User is provided with a copy of the Customer Contract and any other relevant documentation and is given an opportunity to review same before a Customer Contract is concluded; and

6.1.3 where the Reseller concludes the Customer contract on behalf of IP Telecom, it shall promptly provide the End User with copy

of the Consumer Contract and promptly submit a copy of the Customer Contract and any related documentation to IP Telecom in accordance with the process notified by IP Telecom to the Reseller from time to time.

- 6.2 In the case of Reseller Sales, the Reseller will be solely responsible for and will enter into a separate written agreement with the End User for the provision of installation services and support and maintenance services.
- 6.3 In the case of Referrals, the Reseller shall submit a referral to IP Telecom and IP Telecom will, at its discretion, reject any order, request further information from the Reseller or conclude a Customer Contract
- 6.4 All orders for Services, whether through Reseller Sales or Referrals, are subject to acceptance by IP Telecom in its absolute discretion. IP Telecom reserves right to reject any order without the requirement to give a reason.
- 6.5 IP Telecom will provide to the Reseller IP Telecom's standard terms for Customer Contracts, as updated by IP Telecom from time to time.
- 6.6 IP Telecom shall carry out all billing to the End User and all payments for the Services shall be sent directly from the End User to IP Telecom. Credit limits for each End User are subject to IP Telecom's prior approval.
- 6.7 Orders for Services and Referrals must only be submitted by the Reseller to the service delivery team that IP Telecom nominates in accordance with the process agreed between the parties.
- 6.8 If an End User contacts the Reseller directly in relation to the Services or the Customer Contract, the Reseller will advise that End User to contact and deal with IP Telecom.

7 END USER RECORDS

- 7.1 The Reseller must maintain auditable and up to date records and supporting documentation in relation to End Users, the Services, Reseller Sales and/or

Referrals. If requested by IP Telecom, Reseller must provide IP Telecom with such records and supporting documentation as reasonably required by IP Telecom to perform its rights and obligations under the Agreement and comply with any Applicable Laws.

- 7.2 The Reseller acknowledges that IP Telecom may access certain information about an End User when IP Telecom deals with them, including details about services supplied by the Reseller to that End User.

8 BRANDING AND INTELLECTUAL PROPERTY

Branding

- 8.1 The Reseller acknowledges and agrees that IP Telecom controls the description and scope of the Services and the Reseller must not re-brand, repackage or modify the Services except as expressly permitted in this Agreement or otherwise agreed in writing by IP Telecom.
- 8.2 The Reseller must not do anything in respect of the Services or otherwise in connection with the Agreement which damages IP Telecom's reputation or brings IP Telecom (including its Personnel), IP Telecom's brand or services into disrepute.
- 8.3 The Reseller must promptly notify IP Telecom after becoming aware of any claim or complaint by an End User in connection with their use of a Service.
- 8.4 The Reseller shall not, without IP Telecom's prior written consent, use, reproduce or display any trade marks or logos in connection with the performance of the Reseller's obligations under the Agreement, including but not limited to the use of IP Telecom's trade marks or logos on the Reseller's premises, website, or business cards. The Reseller shall obtain IP Telecom's prior approval of any marketing materials produced by or on behalf of Reseller for the purpose of promoting the Services to End Users or future customers.
- 8.5 IP Telecom may, but shall not be obliged to, make available to the Reseller, at IP

Telecom's own expense, sales and marketing and sales and trade marketing support (including training, sales kits and presentation materials in hard and/or soft copies as the case may be) relating to IP Telecom and its Services.

Intellectual Property Rights

- 8.6 A party must not use the other party's Intellectual Property except as expressly permitted in the Agreement or in writing by the other party.
- 8.7 All intellectual property in the Services shall be owned by IP Telecom or IP Telecom's related companies save to the extent that any of the same contains intellectual property rights owned by third parties.
- 8.8 Nothing in the Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property of a party or any other rights or licences in respect of the Services or any related documentation.
- 8.9 IP Telecom grants the Reseller the limited right, on the terms of the Agreement, to use IP Telecom's Intellectual Property to the extent solely necessary for the Reseller to perform its role as a Reseller and to provide installation and support services to End Users, in accordance with the terms of the Agreement.

9 MINIMUM SALES TARGET

- 9.1 If the Reseller fails to meet or surpass the Minimum Sales Target (for any reason) for a Quarter, IP Telecom:
- 9.1.1 is not required to pay the Reseller any Commission or other costs and expenses in respect of Referrals or Reseller Sales made during that Quarter; and/or
- 9.1.2 in its sole discretion may amend the level of any Commission paid or payable in respect of that Quarter; and/or
- 9.1.3 in its sole discretion may immediately terminate the Agreement on written notice to the Reseller.

10 COMMISSION

- 10.1 Without limiting clause 9, IP Telecom shall pay the Commission to the Reseller in accordance with this clause 10.
- 10.2 With 30 days of the end of each Quarter, IP Telecom will issue a commission report to the Reseller detailing the Commission the Reseller has earned for that Quarter in respect of the Referrals or Reseller Sales it has completed along with a statement as to whether the Reseller has met the Minimum Sales Target ("Commission Report").
- 10.3 If the Reseller believes there is an error or discrepancy in a Commission Report, it shall notify IP Telecom within 14 days of the date of the Commission Report.
- 10.4 The Reseller shall produce an invoice for IP Telecom in respect of the Commission Report within 30 days of the date of the Commission Report.
- 10.5 Any dispute regarding the Commission Report shall be dealt with in terms of clause 11 (*Dispute Resolution*).
- 10.6 IP Telecom will pay each undisputed invoice for Commission issued by the Reseller in accordance with clauses 9 and 10 within 30 days of receipt.
- 10.7 IP Telecom will not be liable to pay the Reseller any on-going Commission in respect of Reseller Sales in the event that the Reseller fails or ceases to supply installation or continued support services to the End User in accordance with clause 6.2.

11 DISPUTE RESOLUTION

- 11.1 In the event of any dispute arising out of or relating to the Agreement or the breach, termination or invalidity thereof, any Party may give written notice to the other Party or Parties, setting out the nature and full particulars of the dispute together with supporting documents, to initiate the procedure set out below (the Dispute Notice).
- 11.2 On service of the Dispute Notice, a duly authorised representative of each Party shall attempt to resolve the dispute in good faith. If the Parties' representatives are unable to resolve the dispute within 15 (fifteen) days of service of the Dispute Notice or such later date as agreed between the Parties, the dispute shall be referred to mediation on the expiry of that period.
- 11.3 The Parties shall agree in writing on a mediator within 5 (five) Business Days of the referral to

- mediation, failing which the Parties shall request the director of the Arbitration Foundation of Southern Africa (AFSA) to appoint a mediator.
- 11.4 The Parties shall agree in writing on the mediation procedure and failing agreement within 5 (five) Business Days of the Dispute Notice or such longer period of time as may be agreed to in writing, then the mediation shall take place in accordance with the AFSA Commercial Rules in force at the time of the dispute.
- 11.5 If for any reason, including lack of co-operation by the Parties, a dispute is not settled by mediation (and reflected in a document signed by the relevant Parties) within 20 (twenty) Business Days of the Dispute Notice or such longer period of time as may be agreed to in writing, then the dispute shall be determined by arbitration.
- 11.6 The Parties may agree in writing on the arbitrator and the arbitration procedure and, failing such agreement within 5 (five) Business Days of the expiry of the period referred to in clause 1.5 above, or such longer period of time as may be agreed to in writing, then the arbitration shall take place in accordance with the AFSA Commercial Rules in force at the time of the dispute.
- 11.7 Unless agreed otherwise the mediation and the arbitration shall be administered by the Parties. The number of mediators shall be 1 (one) and the number of arbitrators shall be 1 (one). The place of the mediation and the arbitration hearing shall be Cape Town, South Africa. The mediation and arbitration shall be conducted in the English language.
- 11.8 The governing substantive law of the Agreement shall be the law of South Africa. The governing procedural law of the mediation and the arbitration shall be the law of South Africa.
- 11.9 The arbitrator shall have the same remedial powers as a court of law in South Africa would have were it adjudicating the Dispute. The arbitrator shall deliver an award together with written reasons within 20 (twenty) Business Days from the date upon which the arbitration ends. The arbitrator's award shall be final and binding on the Parties, who shall have no right of appeal against such award (except in the case of manifest error).
- 11.10 Nothing in this clause shall preclude any Party from applying for urgent interim relief from a duly constituted court of competent jurisdiction pending the decision of the arbitrator.
- 12 TERMINATION**
- 12.1 IP Telecom may terminate the Agreement with immediate effect by giving notice in writing to the Reseller if the Reseller is in breach of the Agreement and does not rectify such non-compliance (where such non-compliance is capable of rectification) within 30 days of receipt of the receipt of written notice requiring rectification of the breach.
- 12.2 Either party may terminate the Agreement immediately on written notice to the other party if the other party:
- 12.2.1 continues to be subject to a Force Majeure Event for a continuous period of more than 30 consecutive days; or
- 12.2.2 has a petition presented for its winding up, has a liquidator appointed to it or has a receiver or an examiner appointed to it or over part or all of its assets or enters into a composition with its creditors (save for the purposes of a bona fide reconstruction or amalgamation on terms approved in advance by the other party), is dissolved, becomes bankrupt, convenes any meeting of creditors, or be unable to pay its debts or in any like case in any jurisdiction or otherwise ceases to trade.
- 12.3 Either party may give the other party notice of termination, in writing, at least 30 days before the end of the Initial Term or any Renewal Period, in which case the Agreement terminates upon the expiry of the applicable Initial Term or Renewal Period.
- 12.4 Either party may terminate the Agreement at any time on 60 days' prior written notice to the other party.
- 12.5 On termination or expiry of the Agreement for any reason:
- 12.5.1 the Reseller shall, as soon as practicable return to IP Telecom all Confidential Information belonging to IP Telecom (in such electronic and/or paper format as IP Telecom shall reasonably request) and any material provided to the Reseller pursuant to clause 8.5;

- 12.5.2 the Reseller shall immediately eliminate from all its literature, business stationery, publications, notices and advertisements all references or other representations of the Reseller's appointment hereunder; and
- 12.5.3 all licences granted under the Agreement immediately terminate.
- 12.6 Subject to clauses 9 and 10, the Reseller shall be entitled to submit a claim for Commission for concluded Customer Contracts, in respect of which, at the date of termination or expiry:
- 12.6.1 orders had already been submitted by the Reseller to IP Telecom in accordance with clause 6.1.1; and/or
- 12.6.2 Referrals had already been received by IP Telecom in accordance with clause 6.3 at the date of termination,
- save that no on-going Commission shall accrue or be payable following termination or expiry of the Agreement.
- 12.7 Termination or expiry of the Agreement will be without prejudice to any accrued rights and remedies available to either party. The following clauses continue in force clauses 5, 7.1, 8, 9, 10, 12.5 12.7, 12.8, 13, 14, 16, 18, 19 and 21, and such other clauses as are necessary to give effect to those clauses.
- 12.8 All other clauses of the Agreement that by their nature should survive termination or expiration of the Agreement survive any such termination or expiration.
- 13 CONFIDENTIALITY**
- 13.1 Neither party may use, copy, adapt, alter, disclose or part with possession of the other party's Confidential Information except as strictly necessary to perform its obligations or exercise its rights under the Agreement.
- 13.2 The provisions do not apply to Confidential Information which:
- 13.2.1 the receiving party can prove was already in its possession at the date it was received or obtained;
- 13.2.2 the receiving party obtains from some other person without any breach of confidentiality;
- 13.2.3 comes into the public domain otherwise than through the default or negligence of the receiving party or which is independently developed by or for the receiving party; or
- 13.2.4 the receiving party is obliged to disclose in order to comply with any Applicable Law; regulation, court order or order of any other competent authority.
- 13.3 Each party must ensure that its Personnel are bound by an undertaking in substantially the same terms as contained in this clause 13.
- 14 DATA PROTECTION**
- 14.1 Each party must (and must ensure that its Personnel will) in connection with the Agreement:
- 14.1.1 comply with all applicable Privacy Laws;
- 14.1.2 not do or omit to do anything that would cause the other party to breach any applicable Privacy Law; and
- 14.1.3 only use the personal data supplied by the other party in connection with the Agreement to the extent necessary to perform its obligations under the Agreement.
- 14.2 The Reseller agrees and will ensure that each End User agrees that IP Telecom may collect, use and disclose personal data about it and each of them in accordance with IP Telecom's privacy policy which is available on its website.
- 15 WARRANTIES**
- 15.1 Each party represents and warrants to the other that:
- 15.1.1 it is validly existing under the laws of its place of incorporation and has the power and authority to carry on its business as that business is now being conducted;
- 15.1.2 it has the power and authority to enter into and perform its obligations under the Agreement; and

15.1.3 entering into and performing its obligations under the Agreement will not breach any contractual obligations it owes to any other person.

16 LIABILITY AND INDEMNITIES

16.1 Nothing in the Agreement limits or excludes a party's liability for:

16.1.1 death or personal injury caused by its negligence;

16.1.2 fraud or fraudulent misrepresentation; or

16.1.3 any other liability which cannot be limited or excluded by Applicable Law.

16.2 Subject to clause 16.1, IP Telecom will have no liability, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, interruption of communications, loss of use or corruption of software, data or information, or any indirect or consequential loss.

16.3 To the extent allowed by Applicable Law, IP Telecom shall have no liability in respect of any claim for breach of contract, negligence, breach of statutory duty or other claim arising from any delay or failure by IP Telecom to perform any of its obligations under the Agreement where such failure results directly from any breach or negligence by the Reseller or its Personnel.

16.4 To the extent allowed by Applicable Law, IP Telecom expressly excludes all warranties, representations, terms, conditions or other commitments of any kind, whether express or implied, statutory or otherwise. IP Telecom specifically disclaims any warranty or representation that the operation of the Services will be uninterrupted or error-free or that its security procedures and mechanisms will prevent the loss, alteration of, or improper access to information or content by third parties.

16.5 Subject to clauses 16.1 to 16.4, to the extent allowed by Applicable Law, IP Telecom's total aggregate liability for all claims, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement is limited to R50 000 (fifty thousand Rands).

16.6 The Reseller shall indemnify, hold harmless and keep indemnified, IP Telecom and its Personnel from and against any liability for loss and from and against any damages, costs, awards, proceedings, claims, demands, expenses (including reasonable legal fees) and inconvenience which arise as a result of:

16.6.1 the Reseller's breach of clause 3 (Appointment), clause 4 (Reseller Obligations), clause 6 (Orders and Sales), clause 13 (Confidentiality), clause 14 (Data Protection), or clause 15 (Warranties); and

16.6.2 services provided by the Reseller to the End User, including installation and support and maintenance services provided in accordance with clause 6.2.

16.7 Notwithstanding anything else in this Agreement, IP Telecom's liability will be reduced to the extent the loss or damage is caused or contributed to by the Reseller, its Personnel or an End User.

17 ASSIGNMENT AND SUBCONTRACTING

17.1 The Reseller shall not novate, assign, transfer, charge, sub-license, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement without IP Telecom's prior written consent.

17.2 IP Telecom may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement and the Reseller agrees to execute any document necessary or desirable, in IP Telecom's sole opinion, attesting and/or giving effect to such assignment.

18 NOTICE

18.1 The Parties choose for the purposes of the Agreement physical address, postal address and email addresses as contained in the Key Terms Sheet.

18.2 Notices may be delivered by hand or sent by registered post or email (provided that all notices in relation to termination and/or any document concerning legal proceedings or proposed legal

proceedings or claims will be delivered by registered post in accordance with the provisions of this clause 18 .

- 18.3 Notices sent by registered post shall be deemed to have been delivered 72 hours after posting.
- 18.4 Notices sent by email shall be deemed to have been delivered, if transmitted before 5.30pm on a Business Day, on the day it was transmitted (provided the sender does not receive a notification of email delivery failure or an automatic notification message advising that the recipient is not available, in which case the sender will re deliver the notice by another means as permitted by this clause 18).
- 18.5 If notice by email is not sent on a Business Day, or is sent after 5.30pm on a Business Day, it will be deemed to be received at 9.00am on the next Business Day (providing the sender does not receive a notification of email delivery failure or an automatic notification message advising that the recipient is not available, in which case the sender will re deliver the notice by another means as permitted by this clause 18).

19 GOVERNING LAW AND JURISDICTION

- 19.1 The Agreement and all non-contractual obligations arising from or connected with them are governed by and construed in accordance with, and all disputes between the parties arising out of or in any way relating to the Agreement or any disputes between the parties in any way connected with the subject matter of the Agreement (whether contractual or non-contractual) are governed by, the laws of South Africa. Each Party irrevocably and unconditionally consents to the non-exclusive jurisdiction of the High Court of South Africa (Western Cape Division, Cape Town) (or any successor to that division) in regard to all matters arising from and including a dispute relating to the existence, validity or termination of this Agreement.
- 19.2 Nothing contained in this clause limits IP Telecom's right to bring enforcement proceedings in another jurisdiction or to seek interim, protective or provisional relief in the courts of another jurisdiction to such extent as permitted by law.

20 SERVICE CHANGES

- 20.1 IP Telecom may change the features, functionality or pricing of the Services, or the way it provides a Service. For example, changes may include changing, suspending or ending any part or feature of the Services, changing the availability of a feature or part of a Service, or modifying fees and means of payment of the Services. IP Telecom may also impose limits on certain features and Services or restrict access to parts or all of the Services.
- 20.2 Unless required as a matter of urgency or reasonable necessity, a material change will be effective no earlier than 30 days after IP Telecom notifies the Reseller via notice on IP Telecom's website or by sending an email to the Reseller at the email address it provided in the Key Terms Sheet. However, non-material changes, material changes addressing new functions for a Service or material changes made to reflect changes in relevant law or regulatory requirements may be effective immediately.
- 20.3 The Reseller is responsible for reviewing and becoming familiar with any change IP Telecom makes. If the Reseller does not agree with a major change, the Reseller can terminate this Agreement by providing written notice to IP Telecom. If the Reseller continues to perform its obligations under this Agreement following notice of the changes to the Agreement, this constitutes the Reseller's acceptance of the Agreement as amended.

21 GENERAL

- 21.1 This Agreement is the entire agreement between the parties and overrides and supersedes all prior representations or agreements (whether written or oral) in relation to the Services (which will be deemed to have been terminated by mutual consent). Each party confirms that it has not relied on, and has no remedies in respect of, any representations, assurances or warranties (whether made innocently or negligently) except those expressly set out in the Agreement
- 21.2 Neither party will be liable for any failure or delay to perform its obligations under this Agreement where the failure is due to anything beyond its reasonable control including, natural disasters, flood, fire, explosion, flood, epidemic, acts of terror, war or national emergency, riots, civil commotion, malicious damage, compliance with any Applicable Law or governmental order, or mechanical, electronic or communications failure or degradation, but excluding strikes, lockouts or labour disputes ("**Force Majeure Event**").

- 21.3 If a court with jurisdiction over this Agreement finds that any part of this Agreement is wholly or partly unenforceable invalid, or illegal, the parties agree that where possible, the court should modify the terms to make that part enforceable while still achieving its intent. If the court cannot do that, the parties agree that the court should not have regard to that unenforceable, invalid, or illegal part but still enforce the rest of this Agreement.
- 21.4 Unless specifically indicated in the Agreement, any waiver by of the provisions of the Agreement or of a party's rights or remedies under the Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of the Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under the Agreement and will not in any way affect the validity of the whole or any part of the Agreement or prejudice such Party's right to take subsequent action.
- 21.5 The parties agree that the Reseller will act as an independent contractor under the terms of the Agreement and (save to the limited extent set out in clause 6.1.2) not as a legal representative or agent of IP Telecom for any purpose whatsoever. Nothing in this Agreement shall be construed to: (a) give either party the power to direct or control the daily activities of the other party; or (b) constitute the parties as principal and agent, employer and employee, franchiser and franchisee, partners, joint venturers, co-owners or otherwise as participants in a joint undertaking.
- 21.6 The Agreement may be entered into in any number of counterparts each of which are deemed to be an original and which together comprise the Agreement.
- 21.7 Without prejudice to IP Telecom's rights under clause 19, no variation of the Agreement is effective unless it is in writing and signed by an authorised representative of both parties.
- 21.8 Both parties will ensure that there are done and executed all acts, documents and other things as may reasonably be required for securing each of the rights and obligations of the parties under the Agreement.
- 21.9 The Reseller must not at any time prior to or within 12 months of termination or expiry of the Agreement solicit the employment of any person who is employed by IP Telecom other in the course of providing, assisting or developing the Services, unless first agreed between the parties.
- 21.10 IP Telecom's rights and remedies provided by the Agreement are cumulative and are not exclusive of any right or remedy provided under Applicable Law or in equity or otherwise under the Agreement.
- 22 DEFINITIONS AND INTERPRETATION**
- 22.1 In this Agreement, unless otherwise stated:
- Agreement** has the meaning given to it in clause 1.
- Applicable Law** means law applicable in Ireland or any other jurisdiction in which the Services are provided (without further enactment) including, without limitation, common law, statute, statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court, instruments, or delegated or subordinate legislation.
- Business Day** means any day which is not a Saturday, a Sunday or a public holiday in South Africa.
- Confidential Information** means all information about the organisation, affairs, plans, transactions, proposals, projections, strategies, finance, prices, know how, methodologies, costs, operations, accounts, strategic plan, operational processes, data, systems, Intellectual Property and back-ups, as the case may be, as a result of or in anticipation of or in connection with the Agreement or any other information which either party ought reasonably regard as confidential or which is marked or designated as confidential by the party disclosing the information.
- Commission** means the Commission payable to the Reseller in accordance with clause 10 as more particularly described in the Key Terms Sheet.
- Commission Report** has the meaning given to it in clause 10.2
- Customer Contract** means the standard form contract for the Services, made between IP

Telecom and the End User;

End User means the customer to which the IP Telecom will supply the Services, where that customer is the ultimate end user of the Services.

Force Majeure Event has the meaning given in clause 20.2.

Initial Term means the initial term of the Agreement, as set out in the Key Terms Sheet.

Intellectual Property includes, without limitation, copyrights, discoveries, concepts, domain names, patents, secret processes, database rights, technologies, know how, inventions, ideas, improvements, information, all copyright works, business methods, logos, designs, trademarks, service marks, topography and semi-conductor chip rights, business names, literary, goodwill, dramatic, musical and artistic works anywhere in the world (whether any of the foregoing is registered or unregistered and including any application for registration).

Key Terms Sheet means the document agreed between and signed by the parties describing the Services to be provided by IP Telecom and related matters.

Minimum Network Requirements means IP Telecom's minimum network requirements, which it notifies to Reseller during the Term, as updated by IP Telecom from time to time.

Minimum Sales Target means the minimum level of sales to be generated by the Reseller during a stated period, as specified in the Key Terms Sheet.

Personnel means, in respect of a party, that party's officers, employees, agents, subcontractors and individual contractors.

Privacy Laws means the Irish Data Protection Acts 1988 and 2003 and European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (as amended) and/or such other Applicable Law governing privacy."

Quarter means each consecutive period of three calendar months, commencing on 1

January, 1 April, 1 July, and 1 October of each year.

Referral means a referral of an End User by the Reseller to IP Telecom where IP Telecom completes closure of the Customer Contract;

Renewal Period has the meaning given to it in clause 2.1.

Reseller means the Reseller of the Services, as identified in the Key Terms Sheet.

Reseller Sales shall mean sales of the Services to End Users where the Reseller completes the sale on behalf of IP Telecom.

Services means telecommunications services and related services provided by IP Telecom to End Users in accordance with its Customer Contracts.

Start Date has the meaning given to it in clause 2.1

Term means the term of the Agreement comprising the Initial Term and any Renewal Period.

Territory has the meaning given to it in the Key Terms Sheet.

22.2 Headings do not affect the interpretation of the Agreement.

22.3 Unless the context otherwise requires, words in the singular includes the plural and in the plural includes the singular.

22.4 The Agreement is binding on, and endure to the benefit of, the parties to the Agreement and their respective personal representatives, successors and permitted assigns, and references to any party includes that party's personal representatives, successors and permitted assigns.

22.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

22.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

22.7 A reference to the Agreement or to any other agreement or document referred to in the Agreement is a reference of the Agreement or such other agreement or

document as varied or novated (in each case, other than in breach of the provisions of the Agreement) from time to time.

Any words following the terms including, include, in particular, for example or any similar expression is construed as illustrative and does not limit the sense of the words, description, definition, phrase or term preceding those terms.