

SMART TELECOM HOLDINGS LIMITED
TERMS AND CONDITIONS FOR RESIDENTIAL CUSTOMERS

1. DEFINITIONS

1.1 The following terms have the following meanings within these Terms and Conditions:

“**Access Provider**”, any company that provides us with access to the telephone line and associated services;

“**Account**”, your account with us;

“**Agreement**”, collectively these Terms and Conditions, the Tariff and the Customer Authorisation Form as such may be amended from time to time and all other documents which have been or may be notified to you by us as forming part of this agreement;

“**Associated Undertaking**”, any undertaking which from time to time is a subsidiary undertaking or a parent undertaking of Smart Telecom Holdings Limited and any subsidiary undertaking of such parent undertaking, and for the purposes of this definition “subsidiary undertaking” and “parent undertaking” shall have the meanings respectively given to them by Regulations 3 and 4 of the European Communities (Companies: Group Accounts) Regulations, 1992;

“**Bill**”, any invoice issued by us to you in respect of the Tariff;

“**Business Day**”, a day which is not a Saturday or Sunday or a bank or public holiday in Ireland;

“**Commencement Date**”, the date we begin providing the Services to you;

“**ComReg**”, the Commission for Communications Regulation, whose registered address is Block DEF, Irish Life Centre, Lower Abbey Street, Dublin 1, being the national regulatory authority responsible for the regulation of the electronic communications sector in Ireland;

“**Consumer**”, a natural person who is a Customer and, under this Agreement, is acting for purposes outside his trade, business or profession;

“**Customer**”, a person named on a Customer Authorisation Form;

“**Customer Authorisation Form**”, the form completed by you (via paper, electronic or oral form, in the case of the latter, having been verified by an independent third party) to approve registration and/or changeover to the Services and includes a Direct Debit Mandate;

“**Direct Debit Mandate**”, the form of direct debit mandate appearing on the Customer Authorisation Form or such direct debit mandate as may subsequently be provided to us for the purposes of this Agreement;

“**Due Date**”, the date on or before which payment of any Bill is due, as stated in the Bill or if not stated, fourteen (14) days from the date of the Bill;

“**Early Termination Charge**”, has the meaning ascribed to it in Clause 14;

“**Eligibility Criteria**”, has the meaning ascribed to it in Clause 5;

“**Equipment**”, the equipment (including any telephone line or any other telecommunications apparatus, node, digital subscriber line modem and cable, electronics, ducts, software, cable television outlet, remote control unit or set top box) supplied by us to you in connection with the Services;

“**Initial Minimum Period**”, the first 12 months of the Services beginning on the Commencement Date;

“**Insolvent**”, in relation to either party, where such party becomes bankrupt or is unable to pay its debts (within the meaning of section 213 of the Companies Act 1963) or is subject to an order or a resolution for its liquidation, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has a receiver, manager, trustee, liquidator or similar officer appointed over all or any substantial part of its assets or is subject to any analogous event or proceeding in any applicable jurisdiction;

“**Internet**”, the global data network comprising interconnected networks using the TCP/IP (Transmission Control Protocol/Internet Protocol);

“**Network**”, the telecommunications system owned and/or operated by us under our authorisation pursuant to Regulation 5 of the European Communities (Electronic Communications)(Authorisation) Regulations, 2003;

“**Order**”, an order made by you for the provision of Services and includes an executed Customer Authorisation Form and a Direct Debit Mandate;

“**Premises**”, the location where the Services are provided;

“**Self-Installation**” or “**Self-Install**”, installation where we provide you with the Equipment but you are solely responsible for installing the Equipment in accordance with the guidelines issued by us;

“**Services**”, the services in respect of which we received an Order from you, which may include some or all of the services named and described in the Schedule;

“**Smart Telecom**”, “**we**”, “**us**” or “**our**”, Smart Telecom Holdings Limited, registered company number 327562 (VAT No. 63475621), whose registered address is 3300 Lake Drive, Citywest Business Campus, Dublin 24 and its representatives, employees, engineers, technicians and agents;

“**Smart Telecom Website**”, our website currently with URL: www.smarttelecom.ie or such other website(s) as we may notify to you from time to time;

“**Tariff**”, all the charges (including usage, rental and connection charges) we impose for the Services as more particularly described in Clause 7;

“**Terms and Conditions**”, these terms and conditions as they may be amended from time to time under the terms hereof; and

“**you**” or “**your**”, the Customer(s) we make this Agreement with and includes a person who we reasonably believe is acting with your authority or knowledge.

2. CONSTRUCTION

2.1 In these Terms and Conditions (except where the context otherwise requires) any:

2.1.1 reference to a Clause, Schedule or paragraph shall be a reference to a section, sub-section, clause, sub-clause, schedule, paragraph or sub-paragraph (as the case may be) of this Agreement;

2.1.2 use of the singular includes the plural and vice versa;

2.1.3 reference to persons includes natural persons, firms, bodies corporate, unincorporated associations and partnerships, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);

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

2.1.5 undertaking by any party not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing; and

2.1.6 words such as “hereunder”, “hereto” and “herein” and other words commencing “here” shall refer to the whole of these Terms and Conditions and not to any particular Clause hereof.

2.2 The headings set out in this Agreement are for convenience only and shall not affect its interpretation.

3. COMMENCEMENT, TERM & RENEWAL

3.1 This Agreement shall become binding on both parties when we notify you of our acceptance of your Order. You shall become liable to pay the Tariff from the Commencement Date.

3.2 Subject to Clauses 4 and 14, this Agreement will last for the Initial Minimum Period and upon expiry of the Initial Minimum Period it will automatically renew each month for a one-month period.

4. CANCELLATION BY CONSUMERS

4.1 Without prejudice to Clause 14, and subject to Clause 4.2, if you are a Consumer, you may cancel this Agreement without penalty for any reason whatsoever during the period of seven (7) Business Days from the date you placed your Order (the “**Cooling-Off Period**”), by notifying us in writing in accordance with Clause 18 (a “**Cancellation Notice**”).

4.2 Where you cancel this Agreement pursuant to Clause 4.1, you shall be liable for any charges for usage (including line rental and call charges, where applicable) actually incurred up to and including the date of disconnection (which shall be no later than 30 days after receipt of your Cancellation Notice). You must also return any Equipment supplied by us and you shall be

responsible for any costs in respect of the return of the Equipment. We shall refund any remaining charges which you have paid in advance for the Services.

5. CONNECTING TO THE SERVICES

5.1 When we receive your Order, we shall at the earliest reasonable opportunity confirm to you whether we accept it and if we do accept it, we shall also confirm to you a Ready for Service Date. We shall use all reasonable endeavours to provide the Services by the RFS Date but we shall have no liability for any failure to do so. We shall inform you in advance if we anticipate difficulties in meeting the RFS Date.

5.2 We may reject your Order if it does not fulfil certain criteria, namely: (1) if you do not have an existing telephone line; and/or (2) if your Premises is located in an area where the Services are not available; and/or (3) if you do not meet our credit policy requirements; and/or (4) for any operational, commercial or other reason as we may in our discretion determine (the “**Eligibility Criteria**”).

5.3 If we accept your Order, we will begin to provide the Services to you by the RFS Date or in any event within thirty (30) days from the day after we received your Order. If we become aware that we will not be able to provide you with the Services within the aforementioned 30 days, we will inform you of that fact and provide you with a full refund (including the reasonable postage and packaging costs you may incur in returning any Equipment to us) within 30 days of our notification to you (where any monies have been paid by you) unless you agree to a revised date for delivery by us of the Services. Where we are obliged to pay you a refund under this Clause 5.3, we will do so within a maximum of thirty (30) days.

5.4 You hereby grant us all necessary licences and/or wayleaves required to enter on the Premises to perform all installation, maintenance, adjustment, repair, replacement, renewal, inspection or removal work at or on the Premises from time to time and to maintain any Equipment on your Premises.

5.5 The provision of the Services may require you to accept a new telephone number from us. If so, we will notify you of that fact before the Commencement Date.

5.6 The Services are provided by way of Self-Installation. Where you Self-Install the Services, you must ensure that the Equipment and any other equipment connected to or used with the Services is connected and used in accordance with all applicable instructions, safety and security procedures.

5.7 You can request us to instruct our engineers and/or technicians to install the Services at the Premises. Provision of this service is subject to availability of our engineering and technical personnel. We may charge an additional connection fee for any installation undertaken by us. Any such charge will be notified to you in advance.

6. SERVICE SUPPLY AND SERVICE STANDARDS

6.1 We shall provide the Services to you subject to the terms of this Agreement and with all reasonable skill, care and diligence.

6.2 We will supply the Equipment required to provide the Services in accordance with Clause 11.

6.3 We monitor the quality of the Services we provide. We shall use all reasonable endeavours to connect you to the Services by the RFS Date, provide uninterrupted Services and ensure that the Services are available for use in accordance with the standards for the time being relating to the Services.

6.4 Notwithstanding Clause 6.3, sometimes faults may occur whether on the Network or otherwise and interruptions or deterioration to the Services may be experienced. We do not offer compensation nor do we make any reduction to your Bill for the resulting unavailability of the Services but if interruptions or faults occur frequently or persistently, this may constitute a material breach of our obligations to you and may give you the right to terminate this Agreement under Clause 14.

6.5 Subject to Clause 23, there are no specific download or upload limits imposed on you by us in connection with the Smart Broadband service.

6.6 From time to time we may suspend the Services to carry-out routine maintenance or necessary adjustments to the Services or Equipment. We shall try to ensure that all such suspensions are notified to you in advance and, insofar as reasonably possible, take place at times that will cause the least disruption to you. Nevertheless, we do not accept liability for any loss or damage arising because of such suspensions.

6.7 You shall notify us as soon as possible if you detect any defect, fault or impairment in the operation of the Services and we shall use all reasonable endeavours to attend at the Premises or at the location of the fault or defect if necessary during normal business hours to examine and if necessary undertake repairs.

6.8 If you choose our Television Service, the television programme contents, packages of channels, broadcast hours for any channel, schedules of programmes, channel allocations and any other such material may change at any time, or channels may cease to be available due to reasons beyond our control and we shall have no liability whatsoever for any such changes, lack of availability or failure to transmit any television programme or channels.

- 6.9 We shall not be liable for any interruption in the provision of our Television Service including reception, picture degradation or other such problems which are beyond our reasonable control or which arise because of the actions or omissions of the channel supplier, distributor, other network operators or service providers.
- 6.10 You agree that for operational and commercial reasons, we may vary any programming services and/or channel allocations and television channels as we consider necessary.
- 6.11 If we increase the Tariff or significantly reduce the quality of the Services or the content provided as part of the Services, you may give us not less than thirty (30) days notice to cancel those Services in respect of which the charges we impose have increased or concerning which the quality or content has been significantly reduced, irrespective of whether the Initial Minimum Period for those Services has expired or not.
- 6.12 The customer acknowledges that the Facility is dependant on the customer's access line characteristics. If your line won't support the data rate speed requested we will offer you the best available speed that your line will support and downgrade your contract to reflect the speed you are able to achieve.

7. THE TARIFF

- 7.1 Our Tariff for the Services is updated from time to time and forms part of this Agreement. You may obtain up to date information regarding the Tariff (including call usage charges and other charges) at the Smart Telecom Website. If we change the Tariff, we shall notify you under Clause 18 at least 30 days in advance of the date of introduction of any new Tariff.
- 7.2 We shall issue a single Bill each month for all charges you incur for the Services. You shall pay each Bill (which shall be inclusive of Value Added Tax and any other applicable taxes) on or before the Due Date via the Direct Debit Mandate.
- 7.3 You accept and we consider that any person using the Services at the Premises is authorised by you to do so and you shall pay the Tariff including costs in respect of any such use. We will not charge you for services you did not order from us.
- 7.4 We shall invoice you monthly in advance for fixed charges (such as rental charges) and monthly in arrears for variable charges (such as call charges). As some usage takes longer to rate, you may be billed for charges incurred in a prior billing period.
- 7.5 You must notify us if you wish to initiate or change call barring options applied to a line.
- 7.6 If you disagree with your Bill, notify or telephone us before the Due Date. If we agree that your Bill is incorrect, we will issue a Bill for the appropriate amount when we issue the subsequent monthly Bill, such Bill then to include all charges incurred over a two-month period. Otherwise the full amount remains due.
- 7.7 Except in a case of manifest error by us, all charges shall be calculated by reference to the data recorded or logged by us and our determination concerning this is final.
- 7.8 We may impose any of the following charges:
- 7.8.1 a connection/reconnection charge for connecting you to any Services if we have notified you in advance of any such charges;
 - 7.8.2 charges for any additional customer care or telephone support we provide as described in Clause 21;
 - 7.8.3 daily interest at the rate equal to 15 percent per annum on all outstanding amounts due on your Account until payment is received in full;
 - 7.8.4 charges for maintenance or repair of Equipment where the fault or defect resulted from a failure by you to comply with the provisions of this Agreement;
 - 7.8.5 charges for any lost, damaged or unreturned Equipment or any removal or attempted removal by us of any Equipment;
 - 7.8.6 the Early Termination Charge;
 - 7.8.7 charges in respect of our reasonable expenses, including legal fees, incurred in enforcing our rights under this Agreement;
 - 7.8.8 charges for the provision of telephone equipment (if provided by us, there being no obligation to purchase telephone equipment from us provided that your telephone equipment is selected from a list available on the Smart Telecom Website);
 - 7.8.9 charges for any unpaid Direct Debit Mandates; and
 - 7.8.10 late payment charges imposed under Clause 9.

8. DEPOSIT

- 8.1 We may check your credit worthiness. If the results of that check do not satisfy us or if we reasonably decide that you or a certain category of Customers must pay a deposit, we may require you to pay a reasonable deposit to be determined by us (the “**Deposit**”).
- 8.2 We may:
- 8.2.1 use all or part of the Deposit to settle amounts due under this Agreement which are fourteen (14) days overdue including any amount due for the replacement value and/or costs of repair of the Equipment; or
 - 8.2.2 keep all or part of the Deposit if you do not report unauthorised reception of Services which in our reasonable opinion you were aware of (including channels, programmes or broadband services); or
 - 8.2.3 keep all or part of the Deposit if anyone tampers with the Equipment.
- 8.3 We will repay the Deposit (or the balance of the Deposit where any part of it has been applied by us under this Clause) to you:
- 8.3.1 at the expiration of the Initial Minimum Period (or such other date as we may agree with you) provided you have paid us the Tariff on the Due Dates; or
 - 8.3.2 on termination of this Agreement if you have paid the Tariff and returned the Equipment to us.
- 8.4 We may require you to increase the level of the Deposit or require a further deposit from you of a reasonable amount at any time if:
- 8.4.1 in our reasonable opinion, we believe that your financial circumstances have substantially changed since you executed the Customer Authorisation Form; and/or
 - 8.4.2 you are persistently late in paying your Bill; and/or
 - 8.4.3 we have used all or part of the Deposit in accordance with this Clause; and/or
 - 8.4.4 you have exceeded your Account Limit (as defined below).
- 8.5 In the circumstances set out in Clauses 8.1 and 8.4, we may, as well as or instead of requiring a Deposit, restrict the value of Services provided to you and/or impose an account limit based on the maximum Tariff which may at any time be payable by you to us (the “**Account Limit**”). We shall notify you of this Account Limit. You shall not incur charges which exceed the Account Limit over the period notified to you. If you exceed your Account Limit, we may request payment of a Deposit and/or suspend the Services until payment for the Services is received and/or terminate this Agreement under Clause 14.

9. LATE PAYMENT / SUSPENSION

- 9.1 You must pay your Bill by the Due Date via the Direct Debit Mandate. Your Account is in default if we do not receive payment by the Due Date.
- 9.2 If your Account is in default, we may charge you a late payment charge of €5.00.
- 9.3 If your Account is in default and thirty (30) days or more have expired since the Due Date, the following may also apply:
- 9.3.1 the Services may be interrupted; and/or
 - 9.3.2 without prejudice to our rights under this Agreement, we may notify you of our intention to disconnect you from the Services (a “**Disconnection Notice**”) and disconnect you once at least thirty (30) days have expired from the date of the Disconnection Notice.
- 9.4 If we disconnect the Services under this Clause, you will be restricted from moving to another service provider and barred from making outgoing telephone calls (emergency calls will continue to operate). On receipt of payment in full of the Bills outstanding, we will remove the service provider restriction and we may, at our discretion, reinstate the Services for you.
- 9.5 You acknowledge that such interruption of the Services, receipt of a Disconnection Notice or disconnection in no way relieves you from the obligation to pay any Bills.
- 9.6 We may impose further charges as described in Clause 7 including daily interest and fees in respect of any reasonable legal costs we incur.

10. USE OF THE SERVICES – GENERAL

10.1 You shall:

- 10.1.1 ensure that you and all other persons having access to the Services and/or the Equipment comply with these Terms and Conditions and that use of the Services and/or Equipment complies at all times with the law and does not infringe the rights of any third party;
- 10.1.2 comply with all reasonable instructions given by us concerning use of the Services and the Equipment;
- 10.1.3 notify us in writing of any change of name, address and/or telephone number (excluding number changes introduced by ComReg); and
- 10.1.4 not install or use any equipment which is designed or adapted to be used to intercept or assist in receiving or intercepting, any Service offered by us, in particular any cable television service we provide (it being a criminal offence for any person who owns, controls or manages any premises to knowingly suffer or permit any of the foregoing and any person found guilty of so doing may incur fines or imprisonment or both).

10.2 You shall not use the Services or the Equipment:

- 10.2.1 for any unlawful purpose nor cause nuisance by the use of the Services;
- 10.2.2 to transmit any material which is, may be, or is intended to be a hoax or of a defamatory, offensive, abusive, obscene or menacing nature;
- 10.2.3 to infringe the intellectual property rights or trade secrets of another party; or
- 10.2.4 to engage in activities which, in our opinion cause or are liable to cause disruption or denial of services to any third party.

11. THE EQUIPMENT

11.1 You shall:

- 11.1.1 ensure that the Equipment is maintained and kept in good working order, is used only for its intended purpose, and is not lost, stolen, removed or tampered with in any way;
- 11.1.2 ensure that the set top box, where provided, has at all times, whether in on or off-mode, a proper supply of electricity maintained for its use;
- 11.1.3 where applicable, only ever connect the supplied set top box equipment into the service port which delivers the Television Service. Under no circumstances shall you connect any other electronic equipment into these service ports;
- 11.1.4 locate all Equipment in a well ventilated location away from direct sunlight; and
- 11.1.5 not use the outlet socket decoders or cables in the Premises to provide the Services to another premises or to another part of the Premises.

11.2 You acknowledge that all Equipment remains and shall remain our property. Where we provide you with Equipment to enable you to use the Services, we grant you a non-exclusive, non-transferable licence solely for the term of this Agreement to use the Equipment for that purpose and you shall comply with and be bound by all conditions of that licence.

11.3 Where this Agreement is terminated, you are obliged to return the Equipment to us within thirty (30) days of such termination bearing the costs of such return (including postage costs if applicable). Failure to return the Equipment or damage to the Equipment may result in further charges being imposed by us under Clause 7.

11.4 We will not be responsible for the repair of any Equipment damaged through an act of God or damaged by you whether intentionally or accidentally including where you failed to comply with the recommended environmental and operating conditions for the Equipment.

12. EXCLUSIONS OF LIABILITY AND INDEMNITIES

12.1 In so far as permitted by law:

- 12.1.1 we shall only be expected to exercise reasonable skill and care in the performance of our obligations under this Agreement; and

- 12.1.2 we shall not be liable for any special, indirect, incidental or consequential damages (even if such losses were within the contemplation of either party at the date of this Agreement) including, but not limited to loss of profits, goodwill, reputation or savings, loss of or use of services, cost of capital, cost of substitute services or facilities, downtime costs or damages and economic losses howsoever arising; and
- 12.1.3 you shall indemnify and hold us harmless against all (both direct and indirect) liabilities, claims, damages, losses, expenses and proceedings howsoever arising from or in any way connected with your use of the Services or the Equipment or with installation of the Equipment. This indemnity shall not apply to any liabilities, claims, losses or damages arising as a direct result of our negligence.
- 12.2 We shall make all reasonable efforts to prevent unauthorised access to the Services by third parties but shall have no liability to you for any loss or damage arising because any third party unauthorised access to the Services or Equipment, or for any loss or damage to your own proprietary equipment, hardware, networks or any data stored thereon.
- 12.3 The parties acknowledge that the Services and Equipment are provided for residential and private use only. You are not permitted to resell the Services to any third party.
- 12.4 You acknowledge that we have no liability for any services, information, goods, software or any other materials accessed by you whilst using the Services.
- 12.5 You are responsible for taking adequate precautions against damage to the Equipment. We advise you to adequately insure the Equipment.
- 12.6 Neither party excludes or restricts any liability for death or personal injury resulting from its negligence.

13. WARRANTIES

- 13.1 The Services are provided on an "as is" basis and all conditions and warranties expressed or implied whether by statute or common law or otherwise are hereby excluded to the fullest extent permitted by law.
- 13.2 Each party represents and warrants to the other party that the execution and delivery of this Agreement and the performance of that party's obligations under this Agreement have been duly authorised (where authorisation is required), and that the Agreement is a valid and binding agreement, enforceable in accordance with its terms.
- 13.3 We do not warrant that the Services will meet your requirements or that the operation of the Services will be uninterrupted or error-free or that any defect in the Services can or will be remedied. In particular we make no warranties or representation to the extent that the operation of the Services is dependent on Access Providers or on any third party network operators or service providers and we shall have no liability specifically in respect of defects, interruptions or malfunctions in the Services, which are attributable to such Access Provider, third party network operators or service providers.
- 13.4 You warrant that:
- 13.4.1 you are at least 18 years old;
- 13.4.2 all the details on your Customer Authorisation Form are true, accurate and complete;
- 13.4.3 if we provide you with television services, you are the holder of a valid television licence;
- 13.4.4 if we provide you with broadband, you have a suitable computer and compatible cables from your telephone socket to you computer;
- 13.4.5 you will inform us if there are any changes to the information you supplied in your Customer Authorisation Form;
- 13.4.6 you are (1) the freeholder of the Premises; or (2) the tenant of the Premises with a lease with a term of one year or more before expiry of such lease; and/or (3) have obtained all relevant permissions and consents from the freeholder or such tenant as the case may be of the Premises which are necessary to enable you to comply with your obligations under these Terms and Conditions.
- 13.5 While all Equipment supplied by us is fit for the purpose for which it is intended, we do not warrant the use of the Equipment for purposes other than the provision of the Services to you.

14. TERMINATION

- 14.1 Subject to earlier cancellation or termination under Clauses 4 and 14.2 to 14.5:
- 14.1.1 either party may terminate this Agreement upon the expiry of the Initial Minimum Period or at any time thereafter by giving the other party at least thirty (30) days notice ("Termination Notice"); and

- 14.1.2 if you terminate this Agreement during the Initial Minimum Period, including circumstances where you are changing address, we may charge you a termination charge which will be the minimum charges which would have been payable by you to the end of the Initial Minimum Period (the “**Early Termination Charge**”).
- 14.2 If:
- 14.2.1 there is a material breach of this Agreement; and
- 14.2.2 one party (in this Clause 14.2, the “**Notifying Party**”) notifies that material breach to the other party; and
- 14.2.3 the material breach is capable of remedy but is not remedied within twenty-one (21) days of such notice;
- then the Notifying Party may terminate this Agreement immediately.
- 14.3 For the purposes of Clause 14.2 a material breach by:
- 14.3.1 you shall include non-payment of any Bills or a breach of your Account Limit; and
- 14.3.2 us shall include frequent or persistent unavailability of the Services we are obliged to provide to you.
- 14.4 We may immediately terminate this Agreement where any information supplied by you to us is false or misleading.
- 14.5 Smart Telecom may immediately terminate this Agreement where:
- 14.5.1 this is necessary to comply with an order, instruction or request of Government, ComReg, an emergency service organisation or other competent authority; or
- 14.5.2 the other party is suspected of involvement with fraud or acts, which are of defamatory, offensive, abusive, obscene, menacing, unsuitable or unlawful character in connection with use of the Service(s); or
- 14.5.3 the other party becomes Insolvent.
- 14.6 Where you serve a Termination Notice all payments due to us shall become immediately due.
- 14.7 Clauses 1, 2, 7, 8, 9, 11.3, 12, 13, 14 and 26 shall survive the expiration or termination of this Agreement.
- 15. FORCE MAJEURE**
- Neither party shall be held in breach of its obligations hereunder (except in relation to obligations to make payments) nor be liable to the other party for any loss or damage which may be suffered by the other party due to any cause beyond its reasonable control including any act of God, failure, interruption of power supplies, flood, drought, lightning, fire, strike, lockout, trade dispute or labour disturbance, acts or omissions of Government, road authorities or other circumstances beyond the control of the parties.
- 16. ASSIGNMENT**
- Neither party may assign this Agreement in whole nor in part without the prior written consent of the other party provided always that we may assign this Agreement to an Associated Undertaking without such consent provided any such assignee shall be bound by the same obligations as we are under this Agreement.
- 17. NO WAIVER**
- 17.1 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right and does not operate so as to bar the exercise or enforcement thereof, or of any such right or any other right on any later occasion.
- 17.2 Any deficiency in your authority to avail of the Services or to use the Equipment shall not preclude reliance by us on any of our rights under this Agreement.
- 18. NOTICES**
- 18.1 Any notice or other communication required or permitted to be given under this Agreement shall be properly given by either us or you if it is sent in legible form by (1) confirmed fax; or (2) registered post; or (3) courier; or (4) personal delivery to, in the case of notice from you, Smart Telecom at 3300 Lake Drive, Citywest Business Campus, Dublin 24 or, in the case of notice from us, you at your last known address.

18.2 Without prejudice to Clause 18.1, any notice or other communication required or permitted to be given under this Agreement shall be properly given by us if sent to your last known multi-media correspondence address or if it is placed on the Smart Telecom Website.

18.3 Any notice shall be deemed to have been received in the case of:

18.3.1 a confirmed fax, one hour after the time of despatch, evidenced by the relevant completed transmission report; or

18.3.2 registered post, two Business Days from the date of posting, evidenced by the relevant proof of posting; or

18.3.3 personal delivery, at the time of such delivery, evidenced by signature for and on behalf of the addressee; or

18.3.4 a notice given by Smart Telecom under Clause 18.2, immediately when given.

19. USE OF INFORMATION

19.1 Under the Data Protection Acts 1988 - 2003, the EC (Data Protection and Privacy in Telecommunications) Regulations 2002, and all applicable law, any information obtained by us through an application for or the use of the Services may be accessed and used by us for the specific and sole purposes of verifying credit references, accurate billing and ensuring the efficient operation of the Services, including disclosure to the Access Provider in connection with the operation, suspension and/or termination of the Services. You shall be deemed to have given consent for the use of this information for such purposes.

19.2 The use of such information for purposes other than billing and operational purposes shall require your consent, such consent to be indicated on the Customer Authorisation Form if you so choose.

20. MISCELLANEOUS

20.1 This Agreement shall constitute the whole and entire Agreement between the parties in relation to the Services and shall supersede any previous agreement(s) that may have been executed by you for the provision of the Services at any time.

20.2 If any provision of this Agreement is held to be invalid, illegal or unenforceable or void in whole or in part for any reason, such provision shall be deemed severed and the remaining provisions of this Agreement shall remain in full force and effect.

21. SUPPORT

21.1 Any customer care or telephone support provided by us are limited to support for the Services. This does not include:

21.1.1 on-line training or in-depth training over the telephone. Where instruction or information provided to you is likely to take more than thirty minutes of a support engineer's time, we may suggest an on-site visit (or on-site visits) to the Premises chargeable at our prevailing rates;

21.1.2 assistance in the development of your specific customisation requirements for your specific computer, network or systems. Depending upon the nature and complexity of the consulting request, we may suggest an on-site visit (or on-site visits) to the Premises, chargeable at our prevailing rates; or

21.1.3 information and assistance on technical issues related to the installation, administration, and use of enabling technologies such as databases, computer networks, and communications including but not limited to assistance with the installation and configuration of hardware including, but not limited to computers, hard disks, networks, printers.

22. SMART-2-SMART SERVICE & VOICE BUNDLES

22.1 The Smart-2-Smart Service and "voice bundles" is an additional service offered by us to Smart Broadband customers. If you receive the Smart-2-Smart Service or voice bundles, you may make fixed line local calls and fixed line national calls to our other residential customers without charge, subject to Clauses 22.2 and 22.3 (in this Clause, the "Calls").

22.2 Calls exceeding a period of sixty (60) minutes will be charged at normal rates under the terms of this Agreement.

22.3 We reserve the right to withdraw the Smart-2-Smart or voice bundles service from you if your use of the service, in our reasonable opinion, either risks degradation of service levels to other customers, puts the Network at risk or is for purposes outside normal residential use.

23. FAIR USAGE POLICY

23.1 There are no specific download or upload limits imposed on you by us, except for our budget entry bundle product which has a usage allowance as notified. For customers on service tiers higher than the entry level product we may require you to reduce your download and/or upload usage where we consider it excessive or for purposes outside of normal residential use to ensure a fair service to all customers. Where this occurs, we will request you to reduce your usage. In certain situations, we may suspend or terminate the Services, but not before giving you a reasonable opportunity to reduce your usage first.

23.2 We reserve the right to charge for excessive usage or to limit bandwidth at our discretion at all times using traffic shaping or other techniques.

24. CHANGES TO THIS AGREEMENT

24.1 For commercial or operational reasons, we may alter this agreement any time. Any changes to the Tariff will be advised with at least 30 days notice given to you in accordance with Clause 18. An up to date copy of this Agreement may at all times be obtained from the Smart Telecom Website.

25. COMPLAINTS AND HELPDESK

25.1 Any queries or complaints in addition to being notified to us in accordance with Clause 18 may be immediately raised with our customer care team, whose Lo Call number is 1890 945 945.

25.2 Our Customer Care Code of Practice for Complaint Handling is available on the Smart Telecom Website. This Code sets out in detail how to we will handle any complaint you may raise with us.

26. GOVERNING LAW

26.1 This Agreement shall be governed by and construed in accordance with Irish law and the parties hereby submit to the exclusive jurisdiction of the Irish Courts.

SCHEDULE

The Services

1. **Smart Vision:** an integrated residential communication and multi-media service incorporating a Telephone Service, Smart Broadband and Television Service which shall enable you to communicate and receive television signal with and from other parties and related services.

2. **Smart Broadband:** a mixed service including a telephone line, telephony services and a digital subscriber line to enable you to avail of high-speed data and Internet at the Premises.

3. **Smart-2-Smart Service & voice bundles:** an additional service, the terms of which are more particularly set out in Clause 22, whereby subject to certain conditions, you may make local fixed line calls and national fixed line calls to our other residential customers for free.

4. **Television Service:** means the television programming services, program on demand services (when provided, being those television programmes that you order and that are subject to payment of a separate fee on each such order) and/or audio services.

5. **Telephone Service:** means the telephone services we provide including the facility to make or receive a telephone call, rental of the telephone line and any other ancillary services for residential use (including any other facility such as caller display, phone numbers, directory enquiries and operator services).