

Amocom Net Acceptable Usage Policy

Please read these conditions carefully. They set out the terms under which Amocom Net's Internet access and other Internet services provided by Amocom Net on an ongoing basis are made available.

1. Interpretation

1.1 In this Agreement the following words shall have the following meaning(s):

Acceptable Usage Policy, ("AUP"), shall mean the usage policy as on Amocom Net's website, also described in this Agreement as AUP;

Access Point ("AP") means the wireless telecommunications link between the Customer Equipment and the Network;

Agreement, shall mean in order of precedence, this Acceptable Usage Policy, Terms and Conditions, the Customer Contract Form and any other document signed by both Parties which is expressly stated to form part of this Agreement;

Amocom Equipment means equipment placed on a Site by Amocom in connection with the provision of the Service;

Amocom Net, **Amocom**, "we", or "us" shall mean the provider of the Service being Amocom Technologies Limited, trading as Amocom Net, and in this agreement referred to as Amocom Net of Temple Hill Lawn, Ballintemple, Cork.

Amocom Website is available at www.amocom.com

Application Form means the Application Form on which the Customer specifies Goods or the Service(s) required;

Authorised User shall mean anyone registered and authorised to use the Service;

Charge means the amount specified as payable by the Customer for Goods and/or connection to a service to which such a charge is applicable;

ComReg Commission for Communications Regulation (formerly ODTR), the national regulatory authority for the telecommunications market in Ireland;

Conditions shall mean these terms and conditions and those specified in the separate Amocom Net "Terms and Conditions" document and Customer Contract Forms documents;

Confidential Information shall mean all information (whether oral or written) designated as such by the disclosing party together with all other information which relates to the business, affairs, customers, products, developments, trade secrets, know-how and personnel of the disclosing party which may be regarded as the confidential information of the disclosing party;

Connection Details shall mean the password identity and or account formula including but not limited to user name and authorisation codes which are given exclusively to the Customer and the Customer's connected equipment identity (e.g. MAC address) collected from the Customer for the purposes of gaining access to the Network.

Content shall mean information, video graphics, sound, music, photographs, software and any other materials (in whatever form) published or otherwise made available on the Internet;

Continuation Periods shall mean successive periods of one year, during which the Agreement is continued after the expiration of the Minimum Period or the previous Continuation Period, each such period being referred to as a Continuation Period;

Customer, you means the company, corporation, individual, or other legal entity so named on the Customer Contract Form and anyone reasonably or by implication appearing to Amocom Net to be acting with that entity's authority;

Customer Equipment means all computer hardware, software, cabling, apparatus and facilities provided by the Customer to enable the Customer to link to the Network Connection;

Customer Information means data, information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) transported over the Network by the Customer;

Domain Name shall mean a name registered with an Internet registration authority for use as part of the Customer's URL;

Emergency, shall mean a situation where in Amocom Net's sole view there has been, is or may be an immediate threat of serious harm or damage to the Network, facilities or property of Amocom Net or property managed or under the control of Amocom Net or its customers;

Goods means the articles or things to be sold by Amocom Net to the Customer under the terms of this Agreement including but not limited to the Software, and any medium on which it is contained;

Information shall include but shall not be limited to ideas, information, inventions, specifications and dialogue in a form in which it can be processed through the Network;

Internet shall mean the global data network comprising interconnected networks using the TCP/IP protocol suite;

Internet Connection shall mean the Customer's connection with the Network;

Internet Standards shall mean the applicable protocols and standards defined by the Internet Engineering Task Force (IETF) and any other applicable protocols and standards;

ISP means an Internet Service Provider;

Line of Site means a clear unobstructed view between the subscriber unit located on the Customer's premises and the Amocom Net radio transmitter/receiver;

Minimum Period means the Minimum Period of one year commencing on the Operational Service Date;

Network shall mean that collection of access equipment, computers, special interfaces and agreements that belong to and are controlled by Amocom Net and make up both the logical and physical connection between the end customer and the information provider;

Network Connection means all Amocom Net's cabling, interface panels, cabinets, systems, apparatus, facilities and any other equipment which may be utilised by Amocom Net to provide the Service;

NTP means a network terminating point, which is the physical point at which traffic exits the Service;

Operational Service Date means the date when a Service is first made available to the Customer at a Site or the date when the Customer first starts to use a Service whichever date is the earlier;

Other Network(s) means that collection of telecommunications lines and/or computers and/or special interfaces and/or equipment and agreements that belong to and are controlled by a third party;

Party means either Amocom Net or the Customer;

Parties mean both Amocom Net and the Customer;

Planned Maintenance shall mean any work planned in advance to be carried out by Amocom Net or on behalf of Amocom Net which will cause the availability of the Service to be suspended;

Service means a service or, where appropriate, part of a Service as outlined in the Customer Contract Form to this Agreement;

Site(s) means the property (properties) at which Amocom Net agrees to provide the Service;

Software means any software provided by Amocom Net to enable the Customer to access or use the Service;

Subsidiary or Holding Company shall mean that company or companies as defined under section 155 of the Companies Acts 1963 as amended, save that the term "company" as used therein shall be taken to refer to any body corporate;

Tariff Sheet means the price list for the provision of the Service(s);

Third Party Information means data, information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) not owned or generated by or on behalf of the Customer, transported over the Network (or otherwise) during the Customers use of the Service;

URL shall mean a Uniform Resource Locator, which is the full address for a web site;

VAT shall mean Value Added Tax;

Working Day means every day of the week excluding Saturday, Sunday and statutory holidays;

- 1.2 The headings in this Agreement are inserted only for convenience and shall not affect its construction.
- 1.3 Where appropriate words denoting a singular number only shall include the plural and vice versa.
- 1.4 Reference to any statute or statutory provision includes a reference to the statute or statutory provisions as from time to time amended, extended or re-enacted.

2. Duration

- 2.1 This Agreement is effective from the date of signature of the Contract Form by the Parties and shall come into full force and effect upon the Operational Service Date and shall continue for the Minimum Period and thereafter for one or more Continuation Periods until terminated in accordance with clause 29.
- 2.2 Amocom Net will endeavour to provide the Service by the date agreed with the Customer but all dates are estimates and Amocom Net accepts no liability for failure to meet those dates.

3. Obligation to Provide Goods and Service(s)

- 3.1 The Customer agrees that access to services and Amocom Net networks is allowed at the sole discretion of Amocom Net. Amocom Net reserves the right, at its sole discretion to refuse certain customers access to certain services if Amocom net considers it likely that allowing the customers in question to access the services and Amocom networks would be likely to lead to a breach of the terms of this Acceptable Usage Policy.
- 3.2 The Customer agrees to provide true, accurate, current and complete information which the Customer is required to provide when registering as a User of Amocom Net ("User Information"); and notify Amocom Net immediately of any changes to the User Information.
- 3.3 The Customer agrees not to impersonate any other person or entity or to use a false name or a name that you are not authorised to use.
- 3.4 Amocom Net reserves the right to terminate your account (including user name and password) if any User Information is untrue, inaccurate, out-of-date or incomplete.

- 3.5 Notwithstanding that Amocom Net may have given a detailed quotation, no request for the provision of the Service and no order for the supply of Goods shall be binding on Amocom Net unless and until it has been accepted in writing by Amocom Net.
- 3.6 Amocom Net's catalogues, brochures, leaflets or correspondence are for information purposes only and the documents collectively making up the Agreement shall be the only documents setting out the terms of the Agreement between the parties. Amocom Net may make reasonable variations to the service without notice, and the service and/or the goods so varied shall be accepted as complying with this agreement.

GOODS

4. Delivery

- 4.1 The period for delivery of Goods shall be the period within which the Goods are intended to be dispatched from Amocom Net's premises and shall be calculated from the time of the receipt by Amocom Net of the Application Form or from the receipt of all necessary information to enable Amocom Net to manufacture or procure the manufacture of the Goods whichever shall be the later and the Customer shall take delivery of the Goods within that period.
- 4.2 If for any reason the Customer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery Amocom Net may at its sole discretion without prejudice to its further rights store the Goods at the risk of the Customer and take all reasonable steps to safeguard and insure them at the cost of the Customer provided that the Customer shall be immediately informed thereof.
- 4.3 Amocom Net shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide and to submit invoices to the Customer in respect of each separate instalment, and any express provision as to instalments in the Agreement shall be in addition to and not in derogation of this right.
- 4.4 Unless otherwise stated Charges are exclusive of carriage and insurance to the Customer's premises and delivery shall take place at Amocom Net's premises.

5. Passing of Title and Risk

- 5.1 From the time of delivery, the Goods shall be at the risk of the Customer who shall be solely responsible for their custody and maintenance but unless otherwise expressly agreed in writing, title in the Goods shall not pass to the Customer until Amocom Net has received in cash or cleared funds payment in full settlement for all sums due under this Agreement.
- 5.2 Until title in the Goods shall have passed to the Customer in accordance with clause 5.1, the Customer shall:
- 5.2.1 hold all Goods as fiduciary agent and bailee and
 - 5.2.2 keep such Goods separate from those of the Customer or any other person stored, protected and identified as the property of Amocom Net
 - 5.2.3 keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business for which the Goods have been supplied in an amount at least equal to the balance of the price for the same from time to time remaining outstanding.
- 5.3 At all times Amocom Net shall be entitled to require the Customer to deliver up or to recover directly the Goods in which title has not passed to the Customer and for that purpose the Customer hereby grants to Amocom Net its agents and employees an irrevocable license to enter any premises where such Goods are stored in order to repossess the same.
- 5.4 If in the normal course of business the Customer would sell the Goods to a third party then he would do so as agent and trustee for Amocom Net and hold on trust absolutely for Amocom Net all the rights and benefits arising under such sale and further shall retain out of the proceeds of such sale the amount due to Amocom Net in a separate identified bank account as a trustee for Amocom Net.
- 5.5 Notwithstanding that title in Goods has not passed to the Customer, Amocom Net shall be entitled at any time to maintain an action against the Customer for the price of Goods supplied by Amocom Net to the Customer.

- 5.6 Amocom Net retains Title and Ownership of all gear that enables the NTP in the Customers premises.

6. Defective Goods

- 6.1 No liability for non-delivery, loss or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Agreement will attach to Amocom Net unless claims to that effect are notified in writing by the Customer to Amocom Net (and in the case of claims for non-delivery loss or damage, with a copy to the carrier if Amocom Net's own vehicles have not been used to deliver the Goods): -
- 6.1.1 within thirty days of delivery for loss, damage or non-compliance with the Agreement or
 - 6.1.2 for non-delivery, within ten days of the date of the invoice
- 6.2 If the Customer shall fail to give notice in accordance with clause 6.1 the Goods shall be deemed to be in all respects in accordance with the Agreement and the Customer shall be bound to accept and pay for the same accordingly.
- 6.3 In the event of a valid claim for non-delivery, loss, damage or non-compliance with the Agreement, Amocom Net undertakes at its option either to credit the full price for the Goods to the Customer; or to repair, re-configure, re-supply or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery, loss, damage or non-compliance.
- 6.4 Amocom Net's obligations contained in clause 6.3 are subject to:
- 6.4.1 the Goods having been used in an appropriate manner and/or as prescribed in the operating instructions (if any); and
 - 6.4.2 faulty parts being returned to Amocom Net at the Customer's expense if so requested; and
 - 6.4.3 the Goods not having been modified or repaired except by Amocom Net or otherwise interfered with.
- 6.5 Where the Goods are delivered by instalments any defect in any instalment shall not be a ground for cancellation of the remainder and the Customer shall be bound to accept delivery thereof.

SERVICE

7. Provision of Service

- 7.1 Amocom Net will provide the Customer with the Service upon the terms of this Agreement.
- 7.2 Provision of the Service may depend upon a satisfactory Site survey, installation of Amocom Net Equipment and subsequent activation of the Service.
- 7.3 Amocom Net will provide the Service with the reasonable skill and care of a competent Internet service provider.
- 7.4 It is technically impracticable to provide a fault free Service and Amocom Net does not undertake to do so. Amocom Net will however endeavour to remedy any faults which significantly impair performance in so far as same may be attributable to any aspect of the Goods or Service over which Amocom Net has control
- 7.5 Occasionally for operational, technical, commercial or other reasons Amocom Net may:
- 7.5.1 change the codes and the numbers allocated to the Customer or alter or vary the technical specification or any other aspect(s) of the Service
 - 7.5.2 suspend or terminate Service immediately without notice
 - 7.5.3 give the Customer instructions which it believes are necessary
- Amocom Net will give the Customer as much notice as is possible before taking any of the above actions and whenever practicable will agree a time for suspension of the Service with the Customer.
- 7.6 Line of Sight is required to provide Amocom Net Service. Line of Site is defined as a clear unobstructed view between the subscriber unit located on the Customer's premises and the Amocom Net radio transmitter/receiver. Amocom Net shall not be liable should any obstructions or topographical changes arise, which are beyond Amocom Net's control.

8. Amocom Net Equipment

- 8.1 The Amocom Net Equipment remains the property of Amocom Net at all times.

9. Connection of Equipment to the Service

- 9.1 Any Customer Equipment must be connected and used in accordance with any instructions and any safety or security procedures applicable to the use of such equipment, and must be technically compatible with that Service and approved for that purpose under any relevant legislation.

10. Access and Site Regulations

- 10.1 Anyone acting on Amocom Net's behalf will observe any of the Customer's reasonable site regulations that have previously been advised in writing to Amocom Net. In the event of any conflict between the site regulations and these Conditions, these Conditions shall prevail.

11. Use of the Service

- 11.1 The Service is provided solely for the Customer's own use (including use by Authorised Users) and the Customer will not resell or attempt to resell the Service (or any part or facility of it) to any third party unless otherwise expressly agreed by the Parties.
- 11.2 The Customer shall only access the Service through the Software or otherwise as permitted by Amocom Net and shall not attempt at any time to circumvent Service security or to gain access to the source software or compiled code.
- 11.3 The Service must not be used for any purpose that:
- 11.3.1 does not comply with the terms of any legislation or any licence applicable to the Customer or Amocom Net; or
 - 11.3.2 does not comply with any instructions given by Amocom Net or other public telecommunications operator, government, governmental or other regulatory or other competent authority in any country where the Service is provided; or
 - 11.3.3 would put Amocom Net in breach of the terms of any agreement between Amocom Net and any backbone service provider; or
 - 11.3.4 constitutes a violation or infringement of the rights of any person, firm or company (including, without limitation, rights of copyright or confidentiality) or a violation or infringement of any statutory duty or obligation or any duty or obligation in contract, tort or otherwise, to any third party; or
 - 11.3.5 constitutes a use of the Service which is illegal, improper, unlawful, or harassing or which otherwise constitutes network abuse, and the Customer shall be responsible for any such misuse of the Service.
- 11.4 The Service must not be used:
- 11.4.1 to send, receive, upload, download, use or re-use any Customer Information, Third Party Information or other information or material which is illegal, fraudulent, offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights; or
 - 11.4.2 to cause annoyance, inconvenience or needless anxiety; or
 - 11.4.3 to send or provide unsolicited advertising or promotional material or to receive responses to any unsolicited advertising or promotional material sent or provided using the Service, where applicable, by any third party that are in any way connected with the transmission of "junk mail" "spam", "chain letters", "pyramid schemes" or the unsolicited mass distribution of e-mail, or with any unethical marketing practices; or
 - 11.4.4 other than in accordance with the AUP and the acceptable usage policies of any connected networks and the Internet Standards
 - 11.4.5 in a manner that would jeopardise the operation of the Network.
- 11.5 Amocom Net's performance obligations under this Agreement shall be solely to the Customer, and not to any third party. Accordingly, to the extent not prohibited by law, and without prejudice to the general indemnity pursuant to the provisions of clause 26.1 the Customer agrees to indemnify, defend, and hold Amocom Net harmless against and from all liabilities and costs (including reasonable legal fees) arising from any and all claims by any such third party in connection with the Services regardless of the form of action, whether in contract, tort (including Amocom's active or passive negligence), warranty, or strict liability arising from

the provisions of the Service which are brought or threatened against Amocom Net by a third party, including, inter alia, because:

- 11.5.1 the Service is used in breach of the provisions of this clause 11 and/or
- 11.5.2 the Service is faulty, and/or cannot be used by that third party.
- 11.6 The Customer shall notify Amocom Net of any such claims or proceedings and keep Amocom Net informed as to the progress of such claims or proceedings.
- 11.7 The Customer must not gain or attempt to gain unauthorised access to any computer systems for any purpose, including accessing the Internet. As well as being in breach of your contract for the particular service, such hacking or attempted hacking is a criminal offence. You must not run Port Scanning software which accesses remote machines or networks, except with the explicit prior permission of the administrator or owner of such remote machines or networks. "Port Scanning is an activity, which by using a particular type of software gives the user the ability to scan the computer system of another Internet user. The purpose of which can be (but is not limited to), obtaining passwords and usernames, remotely controlling that computer or destroying data on that computer. "This includes using applications capable of scanning the ports of other Internet users. If you intend to run a port scanning application, you must provide Amocom Net with a copy of the written consent received from the target of the scan authorising the activity. This must be supplied to Amocom Net prior to the application being run.

GENERAL

12. Customer's Rights and Obligations

- 12.1 The Customer agrees to pay the Charges and any sums due in accordance with the provisions of the Agreement.
- 12.2 With the exception of the Amocom Net Equipment and the Software, the Customer is responsible for providing suitable computer hardware, software and telecommunications equipment (where applicable) and services necessary to access and use the Service.
- 12.3 The Customer shall be responsible for the provision and maintenance of all Customer's Equipment, associated cabling and connection to the NTP necessary for the provision and use of the Service and shall undertake identified modifications under clause 13.1, such modification to be at the Customer's own cost.
- 12.4 The Customer shall be responsible for the safe-keeping and proper use of the Amocom Net Equipment, and the Customer shall pay for the replacement and or repair of any such apparatus which is lost, damaged (otherwise than by fair wear and tear) or destroyed and Amocom Net's charge for replacement of the apparatus shall be at Amocom Net's discretion, together with a charge for materials for the replacement or repair of the apparatus.
- 12.5 The Customer shall be responsible for configuring the Customer Equipment (e.g. computer equipment) with the Software and shall ensure that the Customer Equipment complies with all requirements specified by Amocom Net during the provision of Service.
- 12.6 The Customer shall return all Amocom Net Equipment to Amocom at the termination of this agreement upon request (howsoever that termination may occur and whether lawful or not), and hereby grants Amocom Net full licence to enter any place where such Amocom Net Equipment may be for the purpose of inspecting, disconnecting and removing any equipment not so returned and further undertakes to indemnify and hold Amocom Net harmless against all costs of so doing.
- 12.7 The Customer undertakes at its own expense:
 - 12.7.1 To obtain all necessary consents, including consents to install and connect all necessary equipment and for any necessary alterations to buildings to enable the installation and use of Amocom Net Equipment;
 - 12.7.2 To provide suitable accommodation, foundations and environment including all necessary trunking, conduits and cable trays in accordance with the relevant installation standards;
 - 12.7.3 To take up or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers, as Amocom Net advises are necessary, and carry out afterwards any making good or decorator's work required;
 - 12.7.4 To provide all appropriate support for the Service to include but not to be limited to appropriate electricity supply together with a detailed map marking the position where the Amocom Net Equipment is to be installed and ensure that the Amocom

- Net Equipment which is used does not damage or interfere with any other services such as electric cables etc.
- 12.7.5 To complete all preliminary preparation work.
 - 12.7.6 To be responsible for the Amocom Net Equipment and not to add to, modify or in any way interfere with the Amocom Net Equipment. The Customer will be liable to Amocom Net for any loss of or damage to the Amocom Net Equipment, except where such loss or damage is due to fair wear and tear or is caused by the negligent or wilful act or omission of Amocom Net, its agents, employees or subcontractors.
 - 12.7.7 To provide a suitable and safe working environment for anyone acting on Amocom Net's behalf;
 - 12.7.8 To inform Amocom Net, in advance, of existing facilities (where appropriate) which run the risk of being damaged during the installation of the Network Connection and provision of a Service;
 - 12.7.9 To make available to Amocom Net, at no charge, all equipment, space and other resources as may be reasonably required by Amocom Net to enable Amocom Net to provide the Service;
 - 12.7.10 To use the Service strictly in accordance with this Agreement and clause 11 in particular, and in accordance with the Acceptable Usage Policy and the instructions provided by Amocom Net;
 - 12.7.11 To ensure that the Network Connection is housed in accordance with Amocom Net's instructions;
 - 12.7.12 To permit access to any Site, to anyone acting on Amocom Net's behalf, on production of a valid identity card, to enable Amocom Net to carry out its obligations under this Agreement, and/or to inspect, repair, maintain, test or remove the Network Connection or the Amocom Net Equipment or any part thereof. Amocom Net will normally only require such access during its usual working hours but may, on reasonable notice, require the Customer to provide access at other times;
 - 12.7.13 Not to create or permit any charges, pledges, liens or encumbrances of any kind to be placed on the Network Connection. Title to the Network Connection shall at all times remain with and belong to Amocom Net;
 - 12.7.14 Not to allow the Network Connection to be serviced, repaired, or otherwise interfered with other than by an authorised representative of Amocom Net;
 - 12.7.15 Not to interfere with any labels or warnings on the Network Connection;
 - 12.7.16 Upon and after termination of the Agreement to allow Amocom Net access to remove all Amocom Net Equipment. Should any alteration of the Site have occurred in order to facilitate the Service, the Customer shall make all reasonable efforts to restore the Site to the same physical state as prior to delivery of Service;
 - 12.7.17 To inform Amocom Net of any change of name, address and/or telephone number of the Customer;
 - 12.7.18 To provide and to maintain the provision during the currency of this Agreement, at its own expense, all electricity supply required for the maintenance and operation of the service and the Amocom Net Equipment at the points and with the connections specified by Amocom Net.
 - 12.7.19 To keep secure all information relating to Authorised Users it acquires using the Service; and
 - 12.7.20 To keep personal data or other information subject to the Data Protection Act 1988, as amended, in accordance with all applicable Data Protection and privacy requirements (of whatever jurisdiction) and not use or disclose such information for any unlawful purpose.
 - 12.8 The Customer shall be responsible for the creation, maintenance and design of all Customer Information.
 - 12.9 The Customer is solely responsible for evaluating any goods (including software) or services offered by third parties via the Internet. Amocom Net will not be a party to and is not responsible for any transactions between the Customer and third parties.
 - 12.10 The Customer acknowledges that there may be additional Amocom Net or third party conditions displayed online or otherwise relating to particular content. If the Customer accesses such content, then the Customer shall be deemed to have full notice of such conditions and will be obliged thereafter to fully comply with those conditions.
 - 12.11 The Customer shall not use a Domain Name or URL which infringes the intellectual property rights of any person in a corresponding trade mark or name.

- 12.12 The Customer is responsible for the acts and omissions of all Authorised Users in connection with the Service and is liable for any failure by any Authorised User to perform or observe the terms and conditions of this Agreement.
- 12.13 The Content is protected by copyright, trademark and other intellectual property rights, as applicable. In this regard, the Customer shall observe and comply fully with the laws of copyright and all intellectual property rights in respect of the Content. The Customer must not and must not permit anyone else to copy, store, adapt, modify, transmit, distribute externally, play or show in public, broadcast or publish any part of the Content, and the Content may only be used for the Customer's own purposes.
- 12.14 The Customer is solely responsible for any transactions of any kind entered into between the Customer and the Authorised User or any other third parties accessing or acting in reliance on the Service, Customer Information, Content, or Third Party Information. Amocom Net will not be a party to or in any way responsible for any transaction between the Customer and an Authorised User or other third party.
- 12.15 If the Customer or anyone else, with or without the Customer's knowledge or approval, uses:
 - 12.15.1 the Service in contravention of clause 11 or
 - 12.15.2 the server capacity or the Software made available to it in any way which, in Amocom Net's opinion, is, or is likely to be, detrimental to the provision of the Service to the Customer or any other customer and fails to take corrective action within a reasonable period of receiving notice from Amocom Net to do so,
 Amocom Net may treat the contravention as a breach of this Agreement for the purposes of clause 29.
- 12.16 The Customer acknowledges that limits on storage allocation and data transfer levels may apply to the Service. If the Customer wishes to exceed such limits, if applicable, then it must request such additional size in writing to Amocom Net and additional charges may be payable. Amocom Net may at its absolute discretion move any Customer Website from a shared server to a dedicated server with all additional charges payable thereto, if the Customer Website generates abnormally high hit levels or otherwise exceeds data transfer limitations. Amocom Net shall give the Customer reasonable notice of such a move and/or the additional charges this may incur. Amocom Net shall have no liability for faults occurring with the Service as a result of moving the Customer Website from a shared to a dedicated service.

13. Amocom Net's Rights and Obligations

- 13.1 Prior to commencement of the Service, and where necessary for the provision of the Service, Amocom Net shall perform a survey of the Site. Following this, Amocom Net shall instruct the Customer to make any modifications to the Customer's Site or to the Customer's Equipment to make them technically compatible with the Service to be provided. This includes seeking planning and erecting any additional structures which may be required to receive Service. The Customer shall be responsible for any Amocom Net Equipment failures arising from inadequate additional structures.
- 13.2 Unless Amocom Net notifies the Customer otherwise, Amocom Net will be responsible for obtaining and providing the standard equipment to enable Service.
- 13.3 Amocom Net will respond to reported faults without undue delay by taking network management measures it deems appropriate. Amocom Net will notify the Customer if the fault lies beyond the Network boundary.
- 13.4 For the purposes of providing new connections, changing routing tables, updating facilities and general maintenance, scheduled downtime may occur from time to time. Amocom Net will use its reasonable endeavours to schedule Planned Maintenance in accordance with the Customer's requirements.
- 13.5 Amocom Net reserves the right (without obligation or liability) to vary the Content from time to time by adding, removing, blocking or modifying Content as Amocom Net thinks fit, and Amocom Net does not guarantee or warrant that any particular item or items of Content will be available at any given time.

14. Internet

- 14.1 The Service, if applicable, enables access to the Internet. The Internet is separate from the Service and use of the Internet is solely at the Customer's risk and subject to all applicable laws. Amocom Net has no responsibility for any information, software, services or other materials obtained by the Customer using the Internet.

15. Security

- 15.1 The Customer is responsible for the security and proper use of all Connection Details and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised parties.
- 15.2 The Customer must immediately inform Amocom Net if there is any reason to believe that any Connection Details has or is likely to become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way.
- 15.3 The Customer must not change or attempt to change a user name. If a Customer forgets or loses a password or user name the Customer must contact Amocom Net and satisfy such security checks as Amocom Net may operate.
- 15.4 Amocom Net reserves the right to suspend access to the Service if at any time Amocom Net considers that there is or is likely to be a breach of security. If Amocom Net becomes aware that security has or may be compromised, Amocom Net reserves the right at its sole discretion to require the Customer to change any or all of the passwords used by the Customer in connection with the Service.
- 15.5 Amocom Net reserves the right (at its sole discretion) to require the Customer to change any or all of the Connection Details used by the Customer in connection with the Service.

16. Internet Protocol Address

- 16.1 The Customer acknowledges and agrees that where a fixed internet protocol address is provided under this Agreement, such an internet protocol address shall at all times remain the sole property of Amocom Net and/or its licensors. Each dynamic internet protocol address which is provided now or hereafter by Amocom Net to the Customer shall at all times remain the property of Amocom Net or its licensors and each such provision shall constitute a licence made by Amocom Net to the Customer pursuant to which the Customer may use such address in accessing the Service for the duration of a single session. At the end of any session, the licence made by Amocom Net to the Customer shall be automatically terminated and revoked.

17. Domain Name

- 17.1 The Customer warrants that it is the owner of, or that it is duly authorised by the owner of, any trade mark or name that it wishes to use as its Domain Name and use as part of its URL.
- 17.2 Where Amocom Net undertakes Domain Name and URL registration on behalf of the Customer, the Customer will reimburse Amocom Net in accordance with the prices quoted for any registration fees and will be responsible for paying any subsequent registration and all rental fees.
- 17.3 Amocom Net reserves the right to require the Customer to select a replacement Domain Name or URL and may either refuse to provide or may suspend Service if, in Amocom Net's opinion, there are reasonable grounds for Amocom Net to believe that the Domain Name or URL is, or is likely to be, offensive, abusive, defamatory or obscene or in breach of the provisions of clause 11.
- 17.4 The Customer acknowledges that Amocom Net cannot guarantee that any Domain Name or URL requested by the Customer will be available from or approved for use by the Internet registration authorities.

18. Intellectual Property Rights

- 18.1 Where software is provided to enable the Customer to use the Service, Amocom Net grants the Customer a non-exclusive non-transferable licence to use the software for that purpose.
- 18.2 The Customer shall not copy nor, except as permitted by law, decompile or modify the Software in any way, nor copy the manuals or documentation, without Amocom Net's prior written consent.
- 18.3 The Customer agrees to sign any agreement required by the owner of the copyright in the Software to protect the owner's interest in that software.

19. Intellectual Property Right Infringement

- 19.1 Subject to the provisions of clause 19.2 Amocom Net will indemnify the Customer against all claims and proceedings arising from infringement (or alleged infringement) of any intellectual property rights by reason of the Customer's use of the Service where such claim is based upon

an allegation that is only consistent with a breach by Amocom Net of its warranty at clause 22.1. As a condition of this indemnity the Customer shall:

- 19.1.2 notify Amocom Net promptly in writing of any allegation of infringement;
- 19.1.3 make no admission relating to the infringement; and
- 19.1.4 allow Amocom Net to conduct all negotiations and proceedings and give Amocom Net all reasonable assistance in doing so
- 19.1.5 allow Amocom Net to modify the Service, or any item provided by Amocom Net as part of the Service, so as to avoid the infringement.

19.2 The indemnity in this clause 19 shall not apply to infringements occasioned by use of the Service, or any item provided by Amocom Net as part of the Service, in conjunction with other apparatus or software not supplied by Amocom Net, or to infringements occasioned by designs or specifications made by, or on behalf of, the Customer. The Customer shall indemnify Amocom Net against such infringements and to the extent not prohibited by law, the Customer agrees to indemnify, defend, and hold Amocom Net harmless against and from all liabilities and costs (including reasonable legal fees) arising from such infringements of any third party intellectual property rights by reason of the Customer's use of the Service(s).

20. Confidentiality

- 20.1 The Parties will keep in confidence any information of a confidential nature obtained under this Agreement and will not disclose that information to any person (other than their employees who may need to know the information) without the prior written consent of the other Party.
- 20.2 This clause 20 will not apply to:
 - 20.2.1 any information which has been published other than through a breach of this Agreement;
 - 20.2.2 information lawfully in the possession of the recipient before such disclosure took place;
 - 20.2.3 information obtained from a third party who is free to disclose it; and information which a party is required by law to disclose.
- 20.3 This clause 20 will remain in effect after the termination of this Agreement without limit in point of time.

21. Terms of Payment

- 21.1 The Charges and the invoice periods for the Service will commence on the Operational Service Date and shall be as set out in either the Customer Contract Form or applicable Tariff Sheet for the time being and shall be subject to change by Amocom Net after expiry of the Minimum Period by thirty days prior notice given by Amocom Net to the Customer. The new rate shall then apply on the expiry of the thirty-day notice period unless the Customer has given notice to terminate this Agreement in accordance with Clause 29.1 herein prior to the expiration of that notice period.
- 21.2 Notwithstanding the foregoing, Amocom Net reserves the right to lower the Charges applicable to the Service(s) at its discretion.
- 21.3 The Customer agrees to pay for any loss or extra cost incurred by Amocom Net through the Customer's instructions or lack of instructions or through failure or delay in taking delivery or through any act or default on the part of the Customer its servants or employees.
- 21.4 Subject to clause 21.5 all Charges, shall be due and payable within 30 days of the date of invoice. Amocom Net may charge daily interest on late payments at a rate equal to 2% per annum above the base lending rate of Bank of Ireland or at the rate of 18% per annum at the option of Amocom.
- 21.5 If at any time the Customer should be in default in payment of any sums due to Amocom Net or Amocom Net's relationship with the Customer should be terminated for any reason then all sums (including interest) due by the Customer shall be payable immediately to Amocom Net.
- 21.6 If the Goods or Services are delivered in instalments Amocom Net shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in accordance with clause 21.4 in respect of each instalment whereof delivery has been made notwithstanding non-delivery of other instalments or other default on the part of Amocom Net.

- 21.7 If under the terms of the Agreement monies due shall be payable by instalments, a default by the Customer of the payment of any due instalment shall cause the whole of the balance of the sums due to become payable forthwith.
- 21.8 The sums due to Amocom Net under the Agreement shall be due in full to Amocom Net in accordance with the terms of the Agreement and the Customer shall not be entitled to exercise any set-off, lien or any other similar right or claim.
- 21.9 The time of payment shall be of the essence of the Agreement.
- 21.10 Amocom Net reserves the right to charge the Customer for work done by Amocom Net in investigating faults reported by the Customer in the Service, where Amocom Net finds no Amocom Net fault exists.
- 21.11 All Charges will be invoiced and paid in Euros unless otherwise stated in the Tariff Sheet. VAT will be excluded and shall be payable in addition to the sums stated in Amocom Net's invoices unless expressly stated.
- 21.12 Amocom Net may, at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.
- 21.13 Amocom Net Service payment is due quarterly in advance.

22. Amocom Net Warranties

- 22.1 Amocom Net represents and warrants that the Amocom Network, and the Goods (including any subsequent versions, upgrades, enhancements, modifications and bug fixes thereto) shall not knowingly infringe upon or violate any patent, copyright, trademark, trade secret or any other proprietary right of any third party.
- 22.2 Subject to the clause 22.1, Amocom Net makes no warranty whatsoever in relation to the Service or the Goods or Amocom Net Equipment and its or their operation. Any conditions or warranties (whether express or implied by statute, common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality of the same or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to Amocom Net) is denied.
- 22.3 Amocom Net (as is hereby acknowledged and agreed by the Customer) makes no representations or warranties, express or implied, as to the accuracy, completeness, legality, veracity or reliability of the Content or the Information or results which may be derived from either.
- 22.4 The Customer accepts that Amocom Net does not monitor or exercise editorial control over messages or other data sent over the Service or otherwise available on the Internet and that the security of the Internet as a communication medium, or as a medium for purchasing or payment cannot be guaranteed and that Amocom Net shall have no liability in connection therewith.
- 22.5 The Customer acknowledges that it is the Customer's responsibility to evaluate the accuracy and completeness of the Content. In particular the Customer acknowledges that it is not entitled to rely on any Content in making any business or other decision and that the Customer's use of, or reliance upon, the Content (for whatever purpose) is at the Customer's sole risk.
- 22.6 Subject to this clause 22.1, Amocom Net (as is hereby acknowledged and agreed by the Customer) gives neither any assurance nor warranty, nor representation that the use and reception of the Service will not be interrupted or error free nor does Amocom Net give any assurances, warranties or representations as to its fitness for a particular purpose intended.
- 22.7 The Agreement for the provision of the Service or for the sale of Goods shall not constitute a sale by description or sample.
- 22.8 Except as expressed in this Agreement and subject to this clause 22.1 Amocom Net (as is hereby acknowledged and agreed by the Customer) makes no further warranties or representations either express or implied in relation to the Service, the Amocom Net Equipment, the Goods or any other aspect of the obligations on the part of Amocom Net to be performed pursuant to the terms of the Agreement.

23. Customer Warranties

- 23.1 The Customer warrants that it does not act as a consumer in relation to the transaction(s) governed by the Agreement but in the course of its business.
- 23.2 The Customer warrants that it shall not knowingly infringe upon or violate any patent, copyright, trademark, trade secret or any other proprietary right of any third party.

- 23.3 The Customer warrants that the Customer Information and Third Party Information will not include any information or material, any part of which, or the accessing of which or use of which would be a criminal offence or otherwise unlawful. In particular the Customer warrants that all necessary licences and consents (including but not limited to those from owners of copyrights or performing rights) have been obtained.
- 23.4 The Customer represents and warrants to Amocom Net that it will not engage in any activities:
- 23.4.1 that constitute or encourage a violation of any applicable law or regulation, including but not limited to the sale of illegal goods or the violation of export control or obscenity laws;
 - 23.4.2 that defame, impersonate or invade the privacy of any third party or entity;
 - 23.4.3 that infringe the rights of any third party, including but not limited to the intellectual property, business, contractual, confidentiality or fiduciary rights of others; and,
 - 23.4.4 that are in any way connected with the transmission of "junk mail" "spam", "chain letters", "pyramid schemes" or the unsolicited mass distribution of e-mail, or with any unethical marketing practices; or
 - 23.4.5 which involve sending any email or other type of electronic message with the intention or result of affecting the performance or functionality of any computer facilities.

24. Infringements

- 24.1 If the Customer learns of any attack on or infringement of any of the Network or if any legal action or any proceedings are instituted against the Network in opposition to its proper use of the Network, it shall inform Amocom Net as soon as reasonably practicable.
- 24.2 If the Parties both wish to defend the Network, or take legal action against the infringement, or contest or defend any claim, legal action or proceedings, any compensation derived there from shall be shared in the proportions to which they may have agreed and in default of agreement, shall be shared in the proportions to which they may agree to share the costs. In the absence of express agreement the costs and compensation shall be shared equally; but
- 24.3 If one Party only wishes so to act, the other Party shall provide to that Party commercially reasonable endeavours and support, at the acting Party's expense, but such support shall not render the other Party liable to share the cost of proceedings or compensation paid nor shall that other Party be entitled to receive any part of the compensation received

25. Limitation of Liability

- 25.1 The Customer acknowledges that Amocom Net has no control over the information which can be accessed by using Amocom Net services and that we do not examine the use to which you or other users put the Services or the nature of the information you or they are sending or uploading. We therefore exclude all liability of any kind for the transmission or reception of such information of whatever nature.
- 25.2 Amocom Net exclude all liability of any kind for the information or any other material published or otherwise made available by the Customer or any other person on any web site you establish using the Services.
- 25.3 The Customer agrees that, except for death and personal injury arising from our negligence, we shall not be liable in contract, tort, negligence, or otherwise, for any loss or damage whatsoever arising from or in any way connected with this contract, including, without limitation, damage for loss of business, loss of profits, business interruption, loss of business information, or any other pecuniary loss (even where we have been advised of the possibility of such loss or damage).
- 25.4 The Service is 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.
- 25.5 Amocom Net does not guarantee that the Service will meet the Customer's requirements or that the operation of the Service will be uninterrupted or error-free or that any defect in the Service can or will be remedied. In particular, Amocom Net makes no warranties or representation to the extent that the operation of the Service is dependent on third party service providers and Amocom Net shall have no liability in respect of defects, interruptions or malfunctions in the Service which are attributable to such third party service providers.
- 25.6 Amocom Net shall have no liability of any kind in respect of: any unauthorised access to the Customer's computer system through the Service and in this respect the Customer

acknowledges that any material and/or data downloaded or otherwise obtained through the use of the Service is at the risk of the Customer and the Customer is solely responsible for any consequences thereof including any damage to the Customer's computer system or loss or corruption of data resulting therefrom.

- 25.7 Each provision of this clause 25 operates separately. If any part is held unreasonable or inapplicable in any circumstances the other parts shall continue to apply.

26. Indemnity

- 26.1 The Customer shall at all times keep Amocom Net indemnified and hold Amocom Net harmless against any claims for loss, damage, costs, expenses, injury or death to third parties howsoever arising (directly or indirectly) out of or in connection with the negligence, breach of duty of care, breach of any term of the Agreement or any other act or omission of the Customer in relation to the use of the Service or the Goods hereunder.
- 26.2 The Customer shall indemnify the Internet registration authority used for the registration of Domain Names and its servants and shall hold the Internet registration authority and its servants or agents harmless from and against any loss, damage, liability, claim or expense resulting from a claim or claims asserted by a third party regarding ownership of or right to use the Domain Name in question.
- 26.3 No liability shall attach to the Internet registration authority or its servants or agents in respect of any loss or damage whatsoever suffered by the Customer or a service provider and arising from any action or neglect on the part of the Internet registration authority or its servants or agents in the exercise of the function of naming authority.

27. Force Majeure

- 27.1 Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement (other than a payment obligation) to the extent such delay or failure is caused by: fire; flood; lightning; explosion; war; strike; embargo; labour dispute; government requirement; civil or military authority; act of god or nature; inability to secure materials or transportation facilities; act or omission of carriers or suppliers; acts or failures to act of any governmental or other competent authority, or any other causes beyond its reasonable control, whether or not similar to the foregoing; provided, however, that the Customer by reason of such cause shall not be relieved of its obligation to make any required payments that are due to Amocom Net. Each party shall endeavour to give the other reasonable notice of any such delay.
- 27.2 Amocom will have no liability to the Customer for failure to supply a Service, without prejudice to Clause 27.1 in the event of:
- 27.2.1 a refusal or delay by a third party to supply network service to Amocom Net and where there is no alternative Service available at reasonable cost; or
- 27.2.2 Amocom Net being prevented by restrictions of a legal or regulatory nature from supplying a Service
- 27.3 If any of the events detailed in clauses 27.2.1 or 27.2.2 are occurring and subsisting for more than 3 months either Party may serve notice on the other terminating the Agreement with immediate effect.

28. Suspension of Service

- 28.1 Except in the case of Emergency (where disconnection may be implemented immediately by Amocom Net without notice to the Customer) if the Customer is in breach of any of these Conditions or the AUP, and the Customer having been notified of such breach in writing has failed to remedy that breach within ten (10) days, Amocom may summarily suspend the Service.
- 28.2 Amocom Net may suspend the Service
- 28.2.1 if Amocom Net is obliged to immediately suspend the Service in connection with any order, instruction or request of any government, ComReg, governmental or regulatory organisation, emergency services or other competent authority.
- 28.2.2 in connection with the maintenance or upgrade of the Network. Amocom Net will use all reasonable efforts to provide the Customer with the maximum period of notice practicable.

- 28.3 Where Amocom Net has suspended the Service pursuant to clause 28.1 Amocom Net shall only re-establish a connection to the Service when the Customer remedies all breaches to Amocom Net's satisfaction. Any such reconnection shall require payment of a Connection Fee and the establishment of a direct debit for the payment of all charges accruing under this Agreement and/or the implementation of such changes as Amocom Net may require pursuant to the provisions of clause 21.12.
- 28.4 Any suspension of the Service shall not exclude Amocom Net's right subsequently to terminate this Agreement.

29. Termination

- 29.1 Amocom Net may terminate the Agreement upon 60 days written notice to the customer and any such termination shall be effective on the expiry of such notice period, such notice to expire on or after the end of the Minimum Period.
- 29.2 Without prejudice to Amocom Net's other rights. Amocom Net shall be entitled to terminate forthwith in the event that:
- 29.2.1 the Customer fails to pay any sums due to Amocom Net in accordance with the terms for payment, or
 - 29.2.2 the Customer is in material breach of any term of the Agreement; or
 - 29.2.3 the Customer fails to comply with any reasonable condition specified by Amocom Net in relation to use of the Services and/or where such a breach is capable of remedy, the Customer has failed to remedy same within 10 days of a request so to do, or
 - 29.2.4 any information supplied by the Customer to Amocom Net is false or misleading; or
 - 29.2.5 Amocom Net is obliged to comply with an order, instruction or request of Government, ComReg, governmental or other regulatory authority, an emergency service organisation or other competent authority; or
 - 29.2.6 the Customer 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, or where Amocom Net has reasonable grounds to believe that the Customer is responsible for the breach of any applicable law; or
 - 29.2.7 the Customer commits, or allows to be committed, a breach to the security and/or integrity of the Network and/or facilities belonging to or managed by Amocom Net; or
 - 29.2.8 an encumbrancer takes possession of, or an examiner or a receiver is appointed over, any property or assets of the Customer; or the Customer makes any voluntary arrangement with its creditors, or (being a company) goes into liquidation save for purposes of reconstruction or amalgamation,

Amocom Net shall have the option at its discretion either to terminate the Agreement or to require the Customer within such period as Amocom Net may specify, to do such things or take such steps and furnish satisfactory proof to Amocom Net that such event has been cured, or never occurred or has ceased to exist as the case may be.

30. General

- 30.1 If any provisions of the Agreement are held to be unenforceable, illegal or void in whole or in part the remaining portions of the Agreement shall remain in full force and effect.
- 30.2 Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties or constitute one party the agent of the other for any purpose whatsoever.
- 30.3 The parties acknowledge and agree that:
- 30.3.1 they have not been induced to enter into this Agreement by any representation, warranty or other assurance not expressly incorporated into it; and
 - 30.3.2 in connection with this Agreement their only rights and remedies in relation to any representation, warranty or other assurance shall be for breach of this Agreement and that all other rights and remedies are excluded, except in the case of fraud.
 - 30.3.3 Details of the Agreement and the Connection Details issued to the Customer there under may not be divulged by either Party to any third party without the prior written consent of the other party.

31. Entire Agreement, Variation and Waiver

- 31.1 This Agreement represents the entire understanding of the Parties and supersedes all prior written and oral agreements relating to its subject matter and cannot be modified except by a written instrument signed by the Parties hereto.
- 31.2 Failure, omission, delay or waiver 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.

32. Assignment

- 32.1 This agreement is personal to the Customer who may not assign or transfer any of its rights or obligations under this Agreement, without the prior written consent of Amocom Net.
- 32.2 Amocom Net may assign all its rights and obligations under this agreement to any party to which it transfers all or part of its business provided that the assignee undertakes to be bound by and perform the obligations of Amocom Net under this Agreement.
- 32.3 Amocom Net also reserves the right to subcontract the provision of Service (or part thereof) to a subcontractor without consent, whereby Amocom Net's obligations to the Customer as contained herein shall remain vested with Amocom Net.

33. Discretion

- 33.1 Any decision, exercise of discretion, judgement or opinion or approval of any matter mentioned in this Agreement or arising from it shall be binding on a party only if in writing and shall be at its sole discretion unless otherwise expressly provided for in this agreement

34. Use of Information

- 34.1 Unless indicated to the contrary by the Customer in the Customer Contract Form Amocom Net shall be at liberty to use the information supplied by the Customer under the terms of the Agreement for the purpose of introducing and offering to the Customer, from time to time, additional, improved or new products and services of Amocom and other companies within the Amocom Group or any third parties which may be of interest to the Customer.
- 34.2 Amocom Net shall comply with its obligations under the Data Protection Act 1988 as regards the relevant data in its possession relating to the Customer.

35. Notices

- 35.1 Amocom Net reserves the right to forward correspondence to the Customer by electronic mail, at the email address provided by the Customer or at the option of Amocom Net, notice. Notices given under this Agreement (including invoices sent by Amocom Net to the Customer) must be in writing and may be delivered by hand or sent by telex, facsimile, email, or first class post to the addressee at the following addresses:
 - 35.1.1 to Amocom Net at the address of the Amocom Net office shown on the Customer Contract Form or any alternative address which Amocom Net notifies to the Customer;
 - 35.1.2 to the Customer either to the Customer's billing address as provided on registration, or place same on the Amocom Net's Web Site;
 - 35.1.3 all written correspondence from Amocom Net shall be deemed served 48 hours after posting or on earlier proof of delivery
- 35.2 This Acceptable Usage Policy will be amended from time to time as is deemed necessary by Amocom Net. A copy of this policy will be made available to all new customers and the current policy will also be available over Amocom Net's web site. It is the customer's responsibility to ensure familiarity and observance of this Acceptable Usage Policy.

36. Law

- 36.1 This Agreement shall be governed by and construed in accordance with the laws of Ireland and the parties hereby agree to submit to the exclusive jurisdiction of the Irish Courts.