

imagine

**BROADBAND**  
**TERMS & CONDITIONS**

## BROADBAND | TERMS & CONDITIONS

imagine agrees to make available to the Customer the Service(s) described below on the following **Terms and Conditions:**

### DEFINITIONS

The following words shall have the following meaning:

**"imagine", "we" "us"** shall mean Imagine Network Services Limited, whose registered address is at Sandyford Business Centre, Blackthorn Road, Sandyford, Dublin 18 and its employees;

**"imagine Product and Price Guide(s)"** means the information published from time to time by us in respect of the product details and prices for the Service(s) and is available at [www.imagine.ie](http://www.imagine.ie) or upon written request;

**"Acceptable Use Policy"** means additional terms and conditions that govern the acceptable use of the Service(s) by you and are available online at [www.imagine.ie](http://www.imagine.ie);

**"Agreement"** means these Terms and Conditions; the Order; the Acceptable Use Policy; imagine Product and Price Guide(s) which together constitute a legally binding agreement between imagine and the Customer. The Agreement shall come into force once you start to use the Service(s) as determined by us;

**"Authorised Installer"** means any party authorised by imagine to install the Equipment but not the Customer;

**"Affiliate"** means a holding company, group company, or subsidiary direct or indirect, or a company that is under the common control of the company concerned;

**"Ancillary Services"** means all ancillary services including call management services, for example call waiting or call forwarding, applied to the telephone line and including equipment owned by you;

**"Charges"** means all charges payable by you to us to avail of the Service(s); the current Charge(s) are detailed in the imagine Product and Price Guide(s);

**"Customer"** or **"you"** means the person who has entered into this Agreement with us to use the Service(s);

**"Customer Authorisation Form"** means a form to be completed by you to take up the Service(s);

**"Customer Address"** means the residential or business premises location in the Republic of Ireland where the Service(s) are provided;

**"ComReg"** or **"Commission for Communications Regulation"** means the national regulatory authority for the telecommunications market in Ireland;

**"Connected Services"** means services that are not provided by imagine and do not form part of the Service(s) but which may use the phone line or broadband, for example alarm monitoring; remote monitoring; medical monitoring; telemetry of any kind; Content and Content services; TV services and other third party internet based services;

**"Content"** means data, information, video, graphics, sound, music, pictures, text, code, scripts, photographs, software and any other material (in whatever form) which may be accessible by use of the Service(s);

**"Equipment"** means the equipment that is supplied by imagine to you when you subscribe to the Service(s) that enables you to connect to the Network and access the Service(s) and includes any other fittings, accessories and modifications thereto by us from time to time;

**"Internet"** means the global public network based on a common communication protocol which supports communication through the world wide web;

**"Minimum Term"** means the first twenty-four (24) calendar months of the Service(s) beginning from the Start Date;

**"Network"** means the telecommunications system owned and operated by imagine in accordance with its authorisation and the regulations set out by ComReg and any other amending or additional

regulations or legislation or Codes of Practice (that are binding upon imagine);

**"Order"** means an order made by you to us for the provision of the Service(s) and includes, where necessary, a Customer Authorisation Form and, where completed, a Direct Debit Mandate and such order may be made by the Customer in writing, on-line or via a recording of the call serving as a record of the customer's consent. Acceptance of such order shall be at the sole discretion of imagine;

**"Start Date"** means the date on which imagine provides Service(s) to you or the date on which you use any part of the Service(s) as determined by imagine, whichever is the earlier;

**"Phone Service"** means the routing of calls and telephone services through an IP-based telecommunications network accessed by you using approved electronic equipment and/or device(s);

**"Broadband Service"** means the service which may be provided through specific electronic equipment, and device(s), and that enables connection to the Internet over the Network;

**"Services"** means the telecommunications service provided by imagine including voice, broadband and any other associated services supplied by us to you and in accordance with the imagine Product and Price Guide(s) and Acceptable Use Policy;

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

## **1. COMMENCEMENT OF THE SERVICE AND MINIMUM TERM**

**1.1** This Agreement shall commence on the Start Date and shall be for the Minimum Term after which the Service(s) will continue to be provided by imagine on the terms of this Agreement unless terminated in accordance with its provisions.

**1.2** On entering into the Agreement, you have confirmed to us that you are aged 18 years or over and have the authority to act on behalf of your household or business.

**1.3** At any time within a period of fourteen (14) days from receipt of the Order by imagine, you are entitled to cancel the Order for any reason whatsoever on prior written notice to imagine ("the Cooling Off Period"). You are liable for any usage charges incurred prior to this cancellation of the Service(s). No other cancellation charges shall apply in respect of cancellation during the Cooling Off Period.

## **2. SERVICE**

**2.1** For technical, operational and commercial reasons imagine shall be entitled to vary, suspend or discontinue the Service(s) and any aspect thereof at any time.

**2.2** On acceptance of a valid Order from you imagine will provide the Service(s) to you with all commercially reasonable skill, care and diligence subject to the payment of the Charges as set out at Clause 9 and the terms of this Agreement.

**2.3** imagine will use commercially reasonable endeavours to provide the Service(s) by any date we indicate to you for that purpose, but all dates are estimates only and imagine will have no liability for any failure to meet any such date(s).

**2.4** imagine does not warrant that the Service(s) will meet your requirements or that the operation of the Services will be uninterrupted, timely, secure or error-free. The quality and availability of the Service(s) is subject to certain limitations, such as the proximity of base stations and other aspects that are outside imagine's reasonable control including, but not limited to, man-made and/or geographic obstructions.

**2.5** imagine does not warrant that calls will not be dropped; broadband sessions will not be lost; that transmission of data will occur at any particular speed or that any or all traffic can or will be transmitted by the Network. imagine does not accept responsibility for the security of broadband sessions or voice calls. The Customer conducts any broadband sessions or voice calls at its own risk and is solely responsible for adopting such appropriate security measures against unauthorised access to and interference with the Equipment (or associated software/hardware and data) or voice or data traffic as may be necessary.

**2.6** imagine is not responsible for Connected Services. We give no warranty as to the availability, suitability, quality or the continuation of any Connected Services or in relation to suspension;

discontinuation; re-commencement or lack of interruption thereof. Your use of Connected Services is at your sole risk and we will not be responsible or liable for any loss or damage suffered by you arising from the availability or use of such Connected Services with the Service(s).

**2.7** imagine will use commercially reasonable endeavours to provide uninterrupted Service(s) but from time to time faults or outages may occur whether on the Network or otherwise and imagine does not accept any liability for any direct or indirect loss, damage or claims which may arise as a result of such an interruption or faults.

### **3. CUSTOMER CARE**

**3.1** imagine's customer care number is 1890 929 139 and our address is Sandyford Business Centre, Blackthorn Road, Sandyford, Dublin 18. You can contact us by phone, by post or emailing us on support@imagine.ie with regard to your account or you're Service(s). Calls to and from our Customer Support Centre may be recorded or monitored for training and other purposes.

**3.2** imagine's Code of Practice which sets out our complaints and dispute resolution procedure is available online at [www.imagine.ie](http://www.imagine.ie) or upon written request.

### **4. PROVISION AND INSTALLATION OF THE SERVICES**

**4.1** On Order acceptance by imagine we will provide you with the use of Equipment for the duration of this Agreement to facilitate connection to the Service(s). You must take all reasonable care in the use and storage of the Equipment and at your own risk; cost and expense protect the Equipment from loss and damage. Title to the Equipment will at all times remain with imagine and you will be liable for any damage caused to or loss of the Equipment from the date of delivery to you.

**4.2** The Equipment may only be used by you to connect to the Network.

**4.3** imagine will use its commercially reasonable endeavours to deliver the Equipment to the Customer Address by the date we indicate to you. This is normally within ten (10) working days from the date we accept your order, but all dates are estimates and imagine shall have no liability for any failure to meet any such date. You must inspect the Equipment immediately upon receipt and inform us in writing within five (5) working days of delivery of any damage or missing items from the delivery.

**4.4** If you fail to take delivery of the Equipment (or fail to give us appropriate delivery instructions) then without prejudice to any other rights or remedies available to us, we may store the Equipment until actual delivery and charge you for the reasonable costs of same, including re-delivery as a result of a failed delivery.

**4.5** If Equipment supplied to you is faulty you must return the faulty Equipment (in its original packaging and with any associated equipment and documentation) to imagine within twenty-eight (28) days of receipt of the Equipment. We will (at our sole discretion) either repair the Equipment or supply you with replacement Equipment. If you fail to return the faulty Equipment to us within twenty-eight (28) days, we reserve the right to charge you an unrecoverable Equipment charge.

**4.6** Where you elect to install the Equipment, you must ensure when installing it that any Equipment connected to or used with the Service(s) is connected and used in accordance with all applicable instructions, safety and security procedures as set out by imagine from time to time. Prior to installing the Equipment, you should read the installation instructions carefully and back up or save any data on your personal computer or other device. imagine does not accept responsibility for any failure by you to follow such procedures or failure by you to follow correct procedures in relation to your own equipment and/or its compatibility with the Equipment or the Service(s).

**4.7** The following terms apply where imagine or its agents or Authorised Installers install the Equipment on your behalf:

**4.7.1** You will at your own cost ensure that the premises is suitable for the installation, use and accommodation of the Equipment. If you are not the owner of the premises on which the Equipment will be installed, it is your responsibility prior to the installation of the Equipment, to ensure you have received all requisite consents and authorisations from the owner of the premises to install the Equipment at the premises. We assume no liability whatsoever arising from your failure to procure such consent. You acknowledge and agree that you shall fully and effectively indemnify and keep imagine indemnified for any costs incurred as a result of your breach of your obligations in this

Clause.

**4.7.2** In order to facilitate installation of the Equipment, you shall grant access to imagine or an Authorised Installer to the premises to allow for installation (and subsequently for the repair and maintenance) of the Equipment. Should you fail to grant access to the premises, you shall be responsible for all reasonable costs associated with the labour time lost and we shall not be responsible for non-provision of the Service(s) as a consequence.

**4.7.3** In the event the premises are not suitable for installation using only standard Equipment, it may be necessary to install additional Equipment to enable you to avail of the Service(s). Any costs associated with the additional Equipment shall be borne by you in addition to the Charges.

## **5. YOUR OBLIGATIONS AND USE OF THE SERVICE**

**5.1** You undertake not to use the Service(s) or the Equipment:

**5.1.1** for any improper, immoral or unlawful purpose, nor cause any nuisance by the use of the Service(s), nor allow others to use the Service(s) for any of the foregoing purposes in a way that may cause degradation of service levels to other customers as determined by imagine or put the Network at risk; or

**5.1.2** for the transmission of any material which is, may be or is intended to be a hoax or is of a defamatory, offensive, abusive, obscene or menacing nature; or

**5.1.3** for the infringement of intellectual property rights or trade secrets of another party or for the processing of automated personal data as defined in the current Data Protection Regulations as amended; or

**5.1.4** to engage in activities which, in the opinion of imagine, cause or are liable to cause disruption or denial of service to any third-party internet or online user; or

**5.1.5** to run programs or servers that provide network services to others through the Services which includes, but is not limited to, operating a web/mail/ftp server to serve external connections;

**5.2** You hereby agree to avail of the Service(s) subject to the provisions of any telecommunications scheme directed by ComReg or any other regulatory body and in force for the time being and the provisions of any legislation applicable hereto.

**5.3** You shall ensure that all persons having access to the Service(s) or the Equipment comply with the terms and conditions herein stated.

**5.4** The Service(s) are provided solely for your own use and you shall not resell the Service(s) (or any part of the Service(s)) to any third party.

**5.5** Where software is provided to enable you to use the Service(s), imagine grants you a non-exclusive, non-transferable licence solely for the term of this Agreement to use the software for that purpose and you undertake to comply with and be bound by all conditions of the licence under which the Equipment is supplied.

**5.6** You shall comply and are bound by all conditions of any licence under which the Equipment or the Service(s) is provided.

**5.7** You shall comply with all reasonable instructions given to you by us in relation to the use of the Service(s).

**5.8** You shall inform imagine in writing of any change of your name, address, email address and/or telephone number and/or Customer Address. We may charge you any reasonable costs we incur as a result of such change(s).

**5.9** You shall indemnify and hold us harmless against all liabilities, claims, damages, losses, expenses and proceedings howsoever arising from or in any way connected with the use of the Service(s) or the Equipment.

**5.10** imagine may at its absolute discretion take any action it deems reasonably necessary up to and including withdrawal of the Service(s) from any Customer whose use of the Service(s) either risks degradation of service levels to other customers, puts the Network at risk or where the usage of the Service(s) is inconsistent with normal residential or small business usage or, in the sole opinion of imagine, is for purposes that are not reasonably used or envisaged for usage by residential or small business Customers.

## **6. PHONE SERVICE**

**6.1** We will provide you with a new telephone number as part of the Phone Service unless you have chosen to keep your existing telephone number.

**6.2** If you would like to keep your existing telephone number you can move your number to the Network by means of porting your number from your current service provider in accordance with ComReg regulations ("Number Porting"). Once the porting process commences it may not be possible to discontinue it. The porting process takes one working day to complete after your Service(s) is installed.

**6.2.1** Your request to port your number shall be as instructed by you on your completed Order. Your request to port your number serves as formal notice on your current service provider of termination of your contract for all telephony services with them. If you cancel your telephone number directly with your existing service provider, then you may lose that number and imagine shall not be responsible for this.

**6.2.2** When you port your number to imagine any Ancillary Services such as call waiting, call barring, voicemail, voicemail messages, data or facsimile services on your line will not be transferred to the Phone Service. We do provide call features with the Phone Service as set out in the imagine Product and Price Guide(s) and any such additional features are available subject to successful application to us and payment of any associated charge.

**6.2.3** During the porting process there may be a period of outage of your existing telephone service, which will not exceed one working day in accordance with ComReg regulations ("Number Porting"). If there is an outage of your existing telephone service, Connected Services and any related or Ancillary Services imagine will not be liable or responsible for any damage, loss, costs or expenses or other liability in contract, tort or otherwise direct or indirect incurred as a result thereof.

**6.2.4** Upon termination of this Agreement, for whatever reason, we will port your number to your new service provider provided a valid porting request is received from your new service provider and they are able to accept the number from imagine.

**6.3** We do not provide a telephone directory service.

**6.3.1** If you request, we will make your name, address and telephone number (as stated on your Order) available to the National Directory Database for the purpose of inclusion in telephone directories and a public directory enquires service. However, it is not the responsibility of imagine to maintain these databases.

**6.3.2** You must notify us, in writing, of the way in which your name, address, and telephone number is to be made available by the National Directory Database or if you wish to opt out of receiving telemarketing calls and if this is your wish then we will disclose such information only to the extent that we are legally required to do so or if we receive a request from ComReg or other regulatory authority.

**6.3.4** We do not accept any liability whatsoever for a failure by the licensed operator responsible for the National Directory Database service to whom we provide such information to comply with any listing request that you make to us or to that licensed operator.

**6.4.4** *YOU MAY ACCESS THE EMERGENCY SERVICES WITH THE PHONE SERVICE FREE OF CHARGE. IF THERE IS AN INTERNET OR ELECTRICITY FAILURE OR NETWORK INTERRUPTION FOR ANY REASON, IT WILL PREVENT ALL VOICE SERVICES SUCH AS THE PHONE SERVICE AND OTHER DATA TRANSMISSION AND RECEIVING SYSTEMS FROM DIALLING THE EMERGENCY SERVICES AND ANY OTHER CONNECTED SERVICES INCLUDING BUT NOT LIMITED TO ALARM SYSTEMS OR MEDICAL MONITORING SYSTEMS. CUSTOMERS SHOULD HAVE AN ALTERNATIVE MEANS OF ACCESSING THE EMERGENCY OR CONNECTED SERVICES IN SUCH INSTANCES INCLUDING, FOR EXAMPLE, HAVING A CHARGED MOBILE PHONE AVAILABLE.*

**6.5** *NETWORK CONGESTION OR VARIATIONS IN THE SPEED OF THE NETWORK CAN RESULT IN IMPAIRMENT OR DELAY IN ROUTING CALLS TO EMERGENCY SERVICES OR CONNECTED SERVICES. IT IS YOUR RESPONSIBILITY TO INFORM ANY HOUSEHOLD RESIDENTS, GUESTS AND OTHER THIRD PERSONS WHO MAY BE PRESENT AT THE PHYSICAL LOCATION WHERE YOU UTILISE THE SERVICE(S) OF THE IMPORTANT DIFFERENCES OF THE PHONE SERVICE COMPARED WITH TRADITIONAL FIXED LINE PHONE SERVICES.*

**6.6** *IT MAY NOT BE POSSIBLE TO DETERMINE ACCURATELY THE EXACT GEOGRAPHIC LOCATION OF A CALLER FROM THE PHONE SYSTEM AS IT IS NOMADIC AND CAN BE USED IN VARIOUS LOCATIONS. THE EMERGENCY SERVICES (999 OR 112 OR OTHER SUCH NUMBER) OR THE OPERATOR MAY BE UNABLE TO DETERMINE YOUR PHYSICAL LOCATION OR ADDRESS INFORMATION. YOU SHOULD GIVE THEM THIS INFORMATION AS SOON AS THE CALL IS CONNECTED AS OTHERWISE THE EMERGENCY SERVICES MAY NOT BE ABLE TO RESPOND PROPERLY.*

**6.7** imagine does not have any control over and accepts no responsibility of any nature or to any extent for the manner in which calls using our Phone Service are answered or addressed by the emergency services or Connected Services provider or whether they respond at all. You shall defend, indemnify, and hold imagine and its Affiliates and agents and Authorised Installers and any other service provider who furnishes services to you in connection with the Service(s) harmless, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, legal costs ) by, or on behalf of, you or any third party relating to the absence, failure, interruption or outage of the Service(s) including the inability of any user of the Service(s) to be able to access emergency services or Connected Services.

**6.8** imagine will use its commercially reasonable endeavours to protect the security of your calls however the security of your calls is not guaranteed, and we accept no liability with respect to call confidentiality.

**6.9** If we identify unusual call patterns, suspicious payment patterns or any usage that indicate that the Service(s) is not being used in a manner consistent with normal residential or small business usage or if we suspect a fraud is being committed we may restrict your ability to make calls including but not limited to premium rate, mobile and international calls permanently or temporarily suspend or terminate the Service(s). We will make reasonable efforts to contact you before suspension or termination of the Service(s). Imagine will not be liable for any damage, loss, cost or expenses as a result of such suspension or termination. You are liable for all usage of the Service(s).

Further information on digital telephony telephone services can be found on the Commissioner for Communications Regulation (ComReg) website at <http://www.comreg.ie/> (in particular see ComReg document number 05/50).

## **7. CALL PACKS**

The following additional terms and conditions apply to imagine Call Packs. Details of these packages are also set out in the imagine Product and Price Guide(s):

**7.1** The Phone Service may come with a Call Pack which allows you to make certain calls from your Phone Service to any local and national fixed line number in Ireland including Northern Ireland (accessed using the (048) prefix).

**7.2** Such calls are up to 60 minutes per call after which per minute standard rates apply as set out in the imagine Product and Price Guide(s). To avoid being charged the per minute rates you should hang up and redial after 59 minutes. There is no call set-up charge for calls made within Call Packs.

**7.3** The Call Pack may not include calls made to mobile numbers, international numbers, non-geographic numbers, satellite numbers, Internet subscription-based services and other numbers or services. All such calls and services will be charged at imagine standard call rates as set out in the imagine Product and Price Guide(s).

**7.4** The Call Pack can be applied to one digital phone line on your account. Any calls made on additional line(s) will be charged at the standard rates as set out in the imagine Product and Price Guide(s).

**7.5** Details regarding the Call Pack including information on the call types, rates of charge and applicable times can be found in the imagine Product & Price Guide.

**7.6** A fair use policy applies to all call packs which are intended for normal residential or small business use. If you make excessive use of your call pack your service may be restricted, or you may be asked to subscribe to an alternative service package. imagine at its sole discretion will define from time to time what constitutes excessive use of the Service(s). Once customers exceed this limit additional calls will be charged at the standard rates as set out in the imagine Product and Price

Guide(s). imagine reserves the right to cancel or change the Call Pack facility at any time.

## **8. BROADBAND SERVICE**

**8.1** The Broadband Service may be available in a number of different packages. The details of each package, including download speed, data usage allowances and the Fair Usage Policy (defined within the imagine Acceptable Use Policy) are set out in the imagine Product and Price Guide(s) (the "Broadband Package(s)").

**8.2** You acknowledge that the speed for each Broadband Package are maximum speeds and are not guaranteed. Due to the shared nature of broadband access these speeds may be reduced from time to time due to other users. You also acknowledge that the best speeds will always be achieved by connecting your device via an Ethernet cable to the modem. Speeds over wireless connections will vary based on the quality of your Wi-Fi signal, distance from and placement of the router, the amount of users connected and other electrical devices that may be using the wireless channel e.g. cordless phones, microwaves or baby monitors. You acknowledge that keeping up to date with software, firmware and antivirus updates may also ensure your device(s) will be able to achieve optimum speeds. Speeds achievable and service quality are strictly subject to your device(s) and service capabilities.

**8.3** You confirm that you have read and understand the Acceptable Use Policy and understand that it may be revised from time to time. The Service(s) may only be used by you in accordance with this Agreement and the Acceptable Use Policy which is available online at [www.imagine.ie](http://www.imagine.ie).

**8.4** Broadband Package(s) do not have a fixed monthly data usage allowance, but the service must be used in accordance with the Acceptable Use Policy. If your usage exceeds the Fair Usage Policy threshold in force at the time in the Acceptable Use Policy, we reserve the right, upon due notice, to suspend or terminate the provision of your Service(s).

**8.5** The Network is designed for normal residential or small business use and we reserve the right to apply restrictions on any Customer whose behaviour is deemed to be affecting the overall user experience of other Customers on the network in accordance with our Acceptable Use Policy. Such behaviour includes, but are not limited to, instances of running excessive concurrent internet sessions or regularly accessing excessive bandwidth intensive Peer-to-Peer applications, video streams, website hosting and large file downloads.

Customer's whom we deem to disproportionately use the service will be deprioritised which may reduce the download speed achievable at peak times. This reduced priority does not limit the usage of the service or restrict the amount of data that can be consumed over time but is necessary to ensure fair and balanced access to network resources amongst all Customers and to ensure that excessive use of the service by certain Customers does not disproportionately impact the service available to others. If we notice continual, disproportionate or abnormal download or upload usage patterns we reserve the right to terminate the provision of your Service(s).

**8.6** Customers with specific needs outside of normal residential or small business usage can contact us for bespoke solutions. Full details of the Broadband Package(s) are as set out in the imagine Product and Price Guide(s).

**8.7** You may change your Broadband Package(s) to another package if available by giving thirty (30) days' notice to imagine. A Charge may apply in respect of any such change as set out in the imagine Product and Price Guide(s).

## **9. PAYMENT**

**9.1** The Charges in respect of the Service(s) are set out in the imagine Product and Price Guide(s). The current imagine Product and Price Guide(s) is available on-line at [www.imagine.ie](http://www.imagine.ie). We reserve the right to alter such Charges and will notify you of such a change by notice, in writing, thirty (30) days in advance of the implementation date of any such change. All quoted rates shall be inclusive of Value Added Tax ("VAT") unless stated otherwise.

**9.2** In order to avail of the Service(s) you agree to pay by monthly Direct Debit, debit or credit card only. You shall pay all sums due to us in full within seven (7) days of the date of the bill. You agree that



you are liable for any Charges incurred on your account irrespective of whether those Charges were incurred by you or anybody else with or without your consent. imagine reserves the right to charge you an additional administrative fee for any unpaid Direct Debits, debit or credit card payments. imagine also reserves the right to charge administration fees in relation to cessation, connection and reconnection of the Service(s). Charges as are set out in the imagine Product and Price Guide(s).

**9.2.1** Should a payment due by you fail for any reason, imagine shall apply an administration charge for each and every event of failure or as may be set out from time to time in the imagine Product and Price Guide(s).

**9.2.2** Should your Service(s) be disconnected by imagine following continued payment failures or non-payment, a reconnection charge will be levied and must be paid by you in each instance prior to reconnection by imagine as may be set out from time to time in the imagine Product and Price Guide(s).

**9.2.3** A once off connection charge applies to the Service(s) as may be set out from time to time in the imagine Product and Price Guide(s).

**9.3** You will be charged monthly in advance for all Service(s) that have a fixed monthly charge. Any other usage of the Service(s) shall be charged monthly in arrears or otherwise as deemed appropriate by imagine from time to time for usage of the Service(s). We may alter your billing date or billing frequency. As some usage of the Service(s) takes longer to bill you may be billed for Charges incurred in a prior billing period.

**9.3.1** The first payment shall be due by you pro-rated to and corresponding with the period for which the Service(s) has been activated and consequently the first Charge may be for a partial period in arrears in addition to the regular Charge period in advance.

**9.3.2** You will be issued a summary itemised bill by email or by paper bill if you request it.

**9.4** imagine may from time to time require a deposit or advance payment in respect of any sum of money, fee, Charge, subscription or expense payable or to be payable by you for the Service(s).

**9.5** Should you disagree with any Charges shown on your bill you must write or phone us before the date that payment is due highlighting the Charges that you are querying and, unless otherwise agreed in writing by us, all Charges will remain due in full at the payment date. If the Charges that you have highlighted are incorrect then we will apply a credit to your account in respect of any incorrect Charges. If following the application of a credit an amount remains outstanding, we will advise you of the amount and the new payment date. Unless a credit is issued the full amount remains due. Please refer to the Code of Practice on dispute resolution on-line at [www.imagine.ie](http://www.imagine.ie).

**9.5.1** All charges for the provision of the Service(s) will be calculated by reference to the data recorded or logged by imagine. The determination of imagine in respect thereof is final.

## **10. TERMINATION**

**10.1** Subject to the provisions of clauses 10.2 and 10.3 or as otherwise provided for in this Agreement this Agreement may be terminated by either party on thirty (30) days prior written notice to the other.

**10.2** If the Customer terminates this Agreement or the Service(s) or any of them, during the Minimum Term, including in circumstances where the customer is changing address, imagine may, without prejudice to its rights to treat the termination as a breach or repudiation of this Agreement, agree to accept such termination provided that the Equipment is returned in good order and that thirty (30) days prior written notice has been received of such termination and the Customer agrees to pay to imagine all outstanding charges accrued in full together with the monthly pack charge for the remainder of the contract period for early termination of the Service(s) as set out in the Imagine Product and Price Guide.

**10.3** imagine shall have the right to terminate or suspend the Agreement immediately for any reason, including, but not limited to:

**10.3.1** non-payment of charges in accordance with Clause 9 above; or

**10.3.2** breach by the Customer of the terms of this Agreement; or

**10.3.3** if any information supplied by the Customer to imagine is false or misleading; or

**10.3.4** if we are obliged to comply with an order, instruction or request of Government, ComReg, an

emergency service organisation or other competent authority; or

**10.3.5** you are suspected of involvement with fraud or acts which are of defamatory, offensive, abusive, obscene, menacing, unsuitable or of unlawful character in connection with use of the Service(s);

**10.3.6** you are in breach of the Acceptable Use Policy.

**10.4** While the Service(s) are suspended or terminated you will be unable to make calls or access the internet. You will still be liable to pay all Charges due and any other reasonable costs and expenses which imagine may incur as a result of such suspension or termination and any subsequent reconnection of Service(s). Please refer to the Code of Practice on dispute resolution on-line at [www.imagine.ie](http://www.imagine.ie).

**10.5** The termination of the Agreement or default of the Customer hereunder shall not affect any obligations of the Customer under the Agreement. Without prejudice to the generality of the foregoing, on suspension of the Service(s) or termination of the Agreement, all Charges incurred by you together with all Charges arising from such suspension or termination shall become immediately due and payable.

## **11. LIABILITY**

**11.1** You are solely responsible for preventing unauthorised access to and use of the Service(s) and imagine shall have no liability in this regard.

**11.2** We shall not be liable for any loss or damage of any kind caused by the failure of the Service(s) or Equipment howsoever arising or due to the incompatibility with equipment supplied or used by you with the Service(s) or the Equipment. The Customer shall indemnify imagine against all claims made against Imagine or its sub-contractors or agents, for loss, damage or injury to any person or property occasioned by or arising from the use of the Service or the presence of Equipment.

**11.3** We shall not be liable to you or any third party in contract, tort or otherwise for any financial loss whatsoever or for any indirect or consequential loss or Anticipated Savings howsoever arising in relation to the use of the Service(s) or the Equipment or any failure or error or default by us in the provision thereof, or otherwise in connection with this Agreement. "Anticipated Savings" means any expense, which the Customer expects to avoid incurring or to incur in a lesser amount than would otherwise have been the case by reason of using the Service. Your statutory rights are not affected.

**11.4** We have no liability under this Agreement for the acts and omissions of other telecommunication operators or Content providers.

**11.5** We are not liable for claims arising out of a breach in the security or privacy of messages or calls transmitted using the Service(s).

**11.6** Equipment Warranty: imagine warrants to you that the Equipment will be substantially free from material defects under normal use (as determined by imagine) for a period of six (6) months from the date you receive the Equipment whichever shall be the earlier ("Limited Warranty"). This Limited Warranty excludes any defects resulting from abuse, misuse, neglect, theft, vandalism, fire, unusual physical or electrical stress, water, your failure to comply with imagine's policies or other instructions issued by imagine, alteration or additions to the Equipment not approved in writing by imagine, or any other cause beyond the commercially reasonable control of imagine. Repair or replacement, in imagine's sole discretion, of the Equipment is imagine's only responsibility and your exclusive remedy for breach of any warranty regarding the Equipment or the installation thereof. This Limited Warranty is personal to you and may not be assigned. Subject to the maximum period, the Limited Warranty for the Equipment shall terminate upon expiration or termination or expiry of this Agreement.

**11.7** This Clause 11 shall continue to apply notwithstanding termination of this Agreement.

## **12. MAINTENANCE**

**12.1** You agree that from time to time it may be necessary for imagine to temporarily suspend the Service(s) during periods of repair, essential maintenance or alteration or improvement to the Network or otherwise in accordance with law. Where reasonably practicable imagine will give the Customer notice prior to such suspension of the Service(s) and imagine shall restore the Service(s) as soon as reasonably possible after such suspension. Imagine shall endeavour to carry out such work outside normal usage hours. No liability will be accepted by imagine for any loss or damage arising

as a result of an interruption in the Service(s) during such maintenance or repair time.

**12.2** You agree to notify us as soon as possible after a defect, fault or impairment in the operation of the Service(s) is detected and imagine shall use its commercially reasonable endeavours to attend to the fault as soon as reasonably practicable as determined by imagine. We will do so during normal business hours at the Customer Address or at whichever location imagine considers the reported fault to be located.

**12.3** imagine reserves the right to charge you additional fees for maintenance or repair where you prevent us from carrying out our maintenance or where the fault or defect resulted from any cause whatsoever which is beyond the commercially reasonable control of imagine, its employees and agents, or if in the sole opinion of imagine it arises from the wilful neglect or default of you or of any of your suppliers or agents or from your failure to comply with the provisions of this Agreement, or from fault in or other damage to Equipment caused by you.

### **13. USE OF YOUR INFORMATION**

**13.1** In accordance with the applicable data protection legislation, any of your personal information or data obtained by imagine through an application for or the use of the Service(s) may be accessed and used by imagine or its Affiliates for the purposes to provide to you and manage for you the Service(s), for legitimate business purposes or to comply with a legal or regulatory obligation in accordance with this Agreement and as set out in the Privacy Policy.

**13.2** We use the information we collect for the purposes as set out in the Privacy Policy including to provide the products and services you request, to manage our relationship with you as our customer and administer your account for service delivery, provisioning, customer services enquires, technical support, billing, payment processing, to manage collections and to record instructions you give us and keep you updated on any changes to your service as well as to record our communications with you including emails and phone conversations. We also use your information to administer your account and for verification, training and quality assurance, to route and manage traffic and usage across our network, to ensure our network is secure and detect and prevent fraud or carry out network troubleshooting, to meet our legal or regulatory obligations, to protect or enforce our rights or those of a third party, to protect someone's vital interests, to apply your requested National Directories Database preference, to improve our products and services and offer new features, to conduct analyses of the performance of our services, network or customer services through anonymised or aggregated information which doesn't identify you.

**13.3** We share your information with trusted third parties for a number of reasons as set out in our Privacy Policy including with other Affiliates, third party suppliers who work on our behalf to provide and manage our services, to detect, prevent or otherwise address fraud, security or technical issues, to carry out credit checks or debt collection processes, if you fail to meet your contractual obligations with us, to protect or enforce our rights or those of a third party, to deal with complaints, queries and protect our legal rights, to protect someone's vital interests, if there was a merger or change of ownership of Imagine, if a third party who is processing your data on our behalf is required to disclose it by law and if required to comply with a law, regulation or legal request. If we need to transfer your data outside the EEA when we require a third party to work on our behalf for the performance and delivery of a product or service, we require any such service providers to process your information in a secure manner and in accordance with Irish and EU law on data protection.

**13.4** We will only use your information with your consent for marketing purposes or when you accept the use of cookies on our sites or applications. You can manage your contact preferences and decide how you would like us to keep you updated or not about our products, services and exclusive promotions via post, telephone, text or email at any time via your My Imagine customer portal using the contact preferences link at the bottom of our website or just click unsubscribe at the bottom of

any email or text message we may send you. We don't share your information with third parties for marketing purposes – we only send you information that's relevant to our services. To provide you with your service and manage your account with us we will always send you communications about your Account, Billing or important Service updates.

**13.5** Your personal information or data will not be retained for longer than required for the purposes of its processing, subject to any limitation periods imposed by law.

**13.6** You have rights in relation to the personal information that we hold about you, as defined by data protection legislation and as set out in our Privacy Policy. As we use your information to provide you with your services and for the performance of our contract with you, if you object to processing information or make requests for restriction or erasure of your data these may affect our ability to provide you with the service requested. You can exercise any of your rights by contacting our Data Protection Officer at [dataprotection@imagine.ie](mailto:dataprotection@imagine.ie)

**13.7** Further information on how imagine obtains, holds and uses such Customer information or data is available online in our Privacy Policy at [www.imagine/privacypolicy.ie](http://www.imagine/privacypolicy.ie) which forms part of this Agreement.

**13.8** By entering this Agreement, you acknowledge that your personal information or data will be used to provide and manage the Service(s), for legitimate business purposes or to comply with a legal or regulatory obligation in accordance with this Agreement and as set out in the Privacy Policy.

## **14. MISCELLANEOUS**

**14.1** The Order, these Terms and Conditions and the Acceptable Use Policy together with the current imagine Product and Price Guide(s) (as amended from time to time constitutes) the entire agreement ("the Agreement") between the parties in relation to the Service(s) and shall supersede any previous agreement(s) that may have been executed by you for the provision of the Service(s) at any time. In the event of a conflict between these Terms and Conditions and any of the other documents referred to then these Terms and Conditions shall prevail.

**14.2** The parties agree that the fact that this Agreement may be stored or exchanged or displayed or notified in electronic form shall not affect its validity.

**14.3** imagine reserves the right to change any terms of this Agreement, the Service(s) or any part thereof and the imagine Product and Price Guide(s) upon one (1) months written notice to you. You have the right to withdraw from this Agreement without penalty if you do not accept the changes. The continued use of the

service after the effective date of the change shall be deemed acceptance of the change. The changed Terms and Conditions shall then become applicable to you.

**14.4** If any of the provisions of this 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.

**14.5** Notices to Customer: imagine will send all relevant notices either to your billing address and/or by email and/or by SMS text message to your mobile phone as provided by you on your completed Order and this shall be accepted as proper notification. All correspondence from imagine shall be deemed served 48 hours after posting or immediately on emailing or on earlier proof of delivery. Notices to imagine: imagine's address for service of any notice hereunder shall be Sandyford Business Centre, Blackthorn Road, Sandyford, Dublin 18 or such other address as we may specify.

**14.6** Assignment: You may not assign this Agreement in whole or in part without the prior written consent of imagine. imagine may assign this Agreement to an Affiliate or third party at any time.

**14.7** No Waiver: 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 of any such right or any other right on any later occasion. Any deficiency in the Customer's authority to avail of the Service(s) or to use the Equipment shall not preclude reliance by imagine on any of its rights under this Agreement.

**14.8** Force Majeure: In the event of Force Majeure, imagine shall not be held in breach of its obligations hereunder nor be liable to the Customer or any other party for any loss or damage which may be suffered by the other party due to any cause including, without limitation, any act of God, failure, interruption of power supplies, flood, drought, lightning or fire, strike, lockout, trade dispute or labour disturbance, acts or omissions of Government, highway authorities or other circumstances beyond the commercially reasonable control of imagine that prevents it from providing the Service(s).

**14.9** Use of the Service(s) or any part of them also constitutes acceptance of these Terms and Conditions.

**14.10** 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.

Version R1-February-2019