

## **Terms and Conditions of the eir Mobile Service**

### **1. Agreement**

- 1.1 These Terms and Conditions together with your Application, the Fair Usage Policy, the Privacy Policy, the terms and conditions of any applicable plan, Promotion or service options and any other terms expressly stated to form part of this Agreement (the "Agreement") between eircom Limited of 1 Heuston South Quarter, St John's Road, Dublin 8, trading as eir Mobile ("we/us/eir Mobile") and the customer ("you" or "Customer") for the provision of any Services by eir Mobile to you.
- 1.2 By completing the Application, you confirm that all information therein relating to you is accurate and that you accept these terms and conditions of service.

### **2. Commencement and duration**

- 2.1 This Agreement is effective from (i) in the case of Bill Pay Services, the time we accept your Application; or (ii) in the case of Prepay Services, the time you are given access to the Network, and shall continue in full force and effect until properly terminated by you or by us as permitted by this Agreement. Acceptance of you as a Customer is at our sole discretion and we shall have no obligation to provide you with any reasons if we decide not to accept you as a Customer.
- 2.2 If you are a Bill Pay Customer, you may not terminate this Agreement during the Minimum Period. If the Agreement is terminated by you during the Minimum Period, you are liable to a termination charge calculated as the sum of the monthly Charges which would otherwise be payable from the date of such termination by you until the end of the Minimum Period. On expiry of the Minimum Period either party may terminate this Agreement on the giving of 30 days prior written notice to the other.
- 2.3 If you are a SIM Only Customer the provisions of clause 2.2 do not apply to you and the Agreement may be terminated by you or by us on the giving of thirty (30) days written notice to the other. In the event that we do not receive thirty days written notice from you, you acknowledge that you will be liable to pay us a termination charge amounting to one month's Charges payable under the SIM Only Price Plan you subscribed to.
- 2.4 We may terminate Prepay Services if you fail to top up the Service by a minimum of €5.00 of purchased call credit at least once every 150 days, though for a further 30 days you will continue to receive incoming service. We will lift the suspension during this 30 day period and thereafter up to 13 months from the last top up with purchased credit if you top up by a minimum of €5.00 of purchased call credit. Upon expiry of the 13 month period we may unilaterally terminate this Agreement without notice to you. We will attempt to advise you of an impending suspension if you fail to meet the minimum requirement for applying call credit to the Services. If the Services have been suspended because of a failure to apply such a minimum top-up, eir Mobile will remove any credit remaining on your account after 240 days from the last top up with purchased credit. Additionally, if your account is terminated

for any reason, you will lose any call credit remaining on your account at the time the Services are terminated.

- 2.5 In the event that you are a consumer concluding a distance contract with us, within the meaning of the EC (Consumer Information, Cancellation and Other Rights) Regulations 2013 you shall, on written notice to us and subject to returning all Equipment (to include any chargers or ancillary equipment supplied) to us, have the right to cancel the Services within fourteen days (14) of completion of the Contract, which shall in the case of provision of Services be on the day the Services are installed. In the case of contracts for the delivery of goods, such sale of mobile handsets, and mobile broadband devices, this will be within fourteen days of the date of delivery of the goods. The Customer shall remain liable for any Charges incurred prior to such cancellation.
- 2.6 This Agreement is personal to you. You may not assign this Agreement without the prior written consent of eir Mobile. We may assign, novate or create security over this Agreement to any eir Group Company or to any third party without consent.

### **3. Service**

- 3.1 We will use reasonable efforts once you have received your eir Mobile SIM Card to connect and activate your eir Mobile SIM Card within one Business Day, or as soon as practicable thereafter and to make Services available to you at all times. In order to access the Services using the Equipment you must be in an area of the Network covering the Services concerned. Certain features / services are dependent on you being located within a 3G network and may be unavailable, if you travel, or are, outside of such network. In addition, both quality and availability of the Services are affected by factors which could cause radio interference, such as physical obstructions, atmospheric conditions, technical faults in the Network including in other telecommunications networks through which the Services may be relayed or other matters beyond our control. We cannot guarantee that you will reach maximum speed advertised. Speed of internet connection assumes the Network and components are working at optimum speeds and capacity. Additionally, certain functionality (e.g. video calling) may only be available if you are calling another person who is also 3G enabled and within a 3G network.
- 3.2 We may issue reasonable instructions concerning the use of the Service including concerning self-installation of the Service and details as to minimum system requirements.
- 3.3 Reliance on Call Content is at your sole risk. eir Mobile shall not be liable for any Call Content sent or received by you. eir Mobile makes no representation as to the quality, accuracy, correctness, completeness or suitability of any Call Content. You acknowledge that Call Content may be protected by copyright, trademark or other intellectual property rights.
- 3.4 eir Mobile makes no representation and gives no warranty as to the performance of any Third Party Services. We may withdraw access to Third Party Services at any time. Third Party Services are used at your sole risk and we are not liable for any loss or damage suffered by you arising from the use of such Third Party Services. eir Mobile may be required to bill you for such services. This provision includes, but is not limited to, the use of the

Services to access third party websites not controlled by eir Mobile. eir Mobile accepts no responsibility for same, their content or services and no endorsement or approval of such sites by eir Mobile may be implied.

- 3.5 You can only Roam once your request to Roam has been approved by us. Roaming can be requested on your Application or by contacting our Customer Care team on 1800 690 000. The Services available while Roaming shall depend upon the arrangements between local operators and eir Mobile. The terms and conditions which apply to Roaming, which may be amended from time to time, shall apply to this Agreement and are available on [www.emobile.ie](http://www.emobile.ie). New Bill Pay Service Customers will no longer require approval from us to Roam outside the Republic of Ireland or to make International Calls from the Republic of Ireland to countries which are not on the list of international barred destinations which can be found at [www.eMobile.ie](http://www.eMobile.ie). Such New Bill Pay Service Customers will within 5 days of joining eir Mobile receive a service SMS from eir Mobile confirming that Roaming is available and that they can make International Calls.

#### **4. Equipment and the Number**

- 4.1 You do not own the Number allocated to you. We can change the Number at our discretion and will not be liable for any loss or damage, direct or indirect, which might arise from such change.
- 4.2 The eir Mobile SIM Card remains our property at all times. All other Equipment (excluding the eir Mobile SIM Card) shall remain the property of eir Mobile until the expiry of the Minimum Period.
- 4.3 You will ensure that all eir Mobile instructions (including any instruction manuals relating to the Equipment) are followed correctly in using the Equipment and we shall have no liability arising from your failure to follow such instructions. You will maintain the Equipment in good working order. You are solely responsible for the manner in which the Equipment is used.
- 4.4 We will have no liability for any equipment, plug-ins or other devices, hardware or software provided by you, rather than the Equipment provided by us, for use in connection with the Services. Any such equipment must be compatible with the Services, must not cause damage or loss to the Services, the Network or the Equipment and must be used in accordance with relevant instructions, safety and security procedures.

#### **5. Your obligations**

You agree as follows:

- 5.1 to provide all information, as may be reasonably required by eir Mobile, to enable us to deliver the Services to you and/or in relation to the investigation of any alleged offences relating to the use or provision of the Services;
- 5.2 not to use (or allow others to use) the Services, the Network or the Equipment:

- (a) for any improper, indecent, unlawful, immoral or fraudulent purpose;
- (b) to cause any nuisance, injury, offence, or annoyance to any person or for the transmission of material which is, may be or is intended to be defamatory, offensive, abusive, obscene, indecent or menacing;
- (c) in a manner which may impinge in any way upon other customer's ability to use or access the Services or which may damage or put at risk the Network or the Equipment or which, in our absolute discretion makes excessive or unusual demand on the Service or Network;
- (d) for the infringement of the intellectual property rights, including but not limited to copyright, of any person; (e) in a manner which does not comply with any relevant legislation or licence or with any instructions or direction given by us from time to time; (f) in any way which infringes the proprietary rights in any software; (g) in a manner contrary to this Agreement.

eir Mobile reserves the right to notify any relevant agencies or authorities where the Customer is in breach of the obligations in clause 5.2 or otherwise.

- 5.3 to indemnify and hold us harmless against all liabilities, claims, damages, losses, expenses, costs and proceedings howsoever arising from or in connection with use of the Service, the Network or the Equipment in breach of clause 5.2;
- 5.4 that the Services are provided solely for your use and you will not resell or attempt to resell the Services (or any part of them) to any third party without the prior written consent of eir Mobile;
- 5.5 to only use an eir Mobile handset on the Network and not on the network of any other Service Provider (save for Roaming) unless you have been provided with an Unlocking Code by us (please contact our Customer Care team on 1800 690 000). A Charge may apply for unlocking your handset;
- 5.6 to maintain the confidentiality of all user details assigned to you to enable you to use the Services or access the Network;
- 5.7 to comply with the reasonable requests and directions of eir Mobile concerning the use of the Services;
- 5.8 to promptly notify eir Mobile in writing or contact eir Mobile Customer Care on 1800 690 000 to inform us of any change of name, address or other contact details from these provided in your Application;
- 5.9 to tell us immediately if your Equipment (in particular your eir Mobile SIM Card) is lost or stolen or your eir Mobile SIM Card is damaged. You will remain liable for all Charges incurred until you do so. We will provide a replacement eir Mobile SIM Card to you and you will be liable to pay a charge of up to fifteen euro, including VAT (€15 inc. VAT) for the replacement eir Mobile SIM Card;

- 5.10 to promptly pay all Charges in accordance with clause 6; and
- 5.11 to ensure that all persons having access to the Services or the Equipment comply with this Agreement. You are responsible for the acts and omissions of your employees and agents and any other person you authorise or allow to use the Services or the Equipment from time to time and you are liable for any failure by such person to comply with these terms and conditions.

## **6. Payment, Charges and Price Plans**

- 6.1 You must pay for all Charges incurred through your eir Mobile SIM Card whether or not incurred by you personally. We will make every effort to ensure that all messages are delivered, however you will be liable for all Charges in respect of any MMS and SMS messages that are not delivered.
- 6.2 Services may be available on the basis of different Price Plans with different rates of Charges. We may vary the Charges at any time at our discretion. In the event that Charges are varied we will post notification of such changes on our web site, in stores and/or notify you through the Services (e.g. SMS), by e-mail or by post. You may therefore not receive notification if we have no contact details for you. Details of Price Plans and Charges are available on [www.eir.ie](http://www.eir.ie) or by request to eir Mobile, 1 Heuston South Quarter, St. John's Road, Dublin 8.
- 6.3 eir Mobile reserves the right, in its sole discretion, at all times to migrate customers to other Price Plans, to amend or vary the terms and conditions of a Promotion or to withdraw or terminate a Promotion, generally in whole or part, at any time from any Customer, on reasonable notice. For the latest terms and conditions of a Promotion, please visit [www.eir.ie](http://www.eir.ie).
- 6.4 You will be liable to pay VAT on the Charges.
- 6.5 We will invoice Bill Pay Services monthly in advance for fixed Charges, and monthly in arrears for connection, calls, text messages (SMS), data units and other non-fixed Charges. Payment is due on the date specified on the invoice. We reserve the right to include Charges from a prior billing period in any invoice where the time period for calculation of the appropriate usage rate makes this necessary. We will send all invoices and notices to your billing address shown on your Application unless you tell us in writing or call eir Mobile Customer Care on 1800 690 000 to inform us of any change.
- 6.6 Every invoice and notice from us to you will be deemed served 48 hours after posting or on earlier proof of delivery. We reserve the right to alter invoicing periods, charge interest on overdue payments at 2% above the Central Bank of Ireland prevailing base rate from due date to receipt of payment, contact you directly through the Services (e.g. SMS), by e-mail, by post or by telephone in relation to overdue payments and to fix a credit limit on your account and to discontinue the Services without notice if the limit is exceeded.
- 6.7 As a Bill Pay Customer you may apply to change from your Price Plan (other than from SIM Only to another plan, which would require you to enter into a new agreement with us) to a

higher Price Plan with effect from the beginning of any charging period by giving us at least 30 days advance written notice or by calling eir Mobile Customer Care. You can only change to a lower Price Plan (including a SIM only plan) after the conclusion of your existing Minimum Period, or upon settlement of termination charges for your prior Price Plan in accordance with clause 14, unless we specify otherwise, and where, at the time of requesting or effecting the change, you do not have unpaid amounts owing.

- 6.8 We can seek an Advance Payment and/or Deposit to enable you to Roam or to access some or all of the Services or Third Party Services. In addition, pending credit checking, we may seek an Advance Payment and/or Deposit to enable you to Roam or to access the Services or Third Party Services. We may set off such amounts against any amounts due by you to eir Mobile or any eir Group Company. We will not seek Advance Payments from New Bill Pay Service Customers for International Calls or Roaming.
- 6.9 eir Mobile may apply a limit to the amount of unpaid Charges that you may incur and may alter this limit from time to time and may consolidate Customer accounts for the purpose of aggregating any balance due. You remain liable for all charges incurred by multiple users on your account.
- 6.10 In the event that payments under this Agreement are overdue, eir Mobile reserves the right to suspend or disconnect the Services and/or other telecommunications services, including fixed line services, supplied by an eircom Group Company to the Customer.
- 6.11 You agree that we may freely transfer existing and/or future debts to or from any accounts held by you with any other eir Group Company without notice. You agree that we may contact any person named in any proof of identity and/or references provided by you in order to verify the accuracy (or continuing accuracy) thereof.
- 6.12 If you are a Prepay Service Customer and have incurred Charges for Services in excess of the credit standing to your account (or accounts), credit subsequently added by you to your account will firstly be used to discharge any balance owed to us.
- 6.13 As a Prepay Service Customer, you are entitled to a maximum amount of €280 call credit on your account at any one time.

## **7. Insurance**

We may offer you insurance to cover accidental damage to and loss of certain of the Equipment. This policy will be subject to its own terms and conditions and will be governed by an agreement between you and the insurance company. If you fail to make insurance payments your insurance policy will be invalidated immediately.

## **8. Repairs and Refunds**

### **8.1 Repairs:**

- (a) If your phone is faulty and is older than 28 days, you will be entitled to a free repair as long as your phone is within its manufacturer's warranty.

- (b) For the duration that your device is being repaired with eir Mobile, eir Mobile will use reasonable efforts to maintain the security of your information, but you acknowledge that eir Mobile is not liable or responsible for any inadvertent loss or damage to (or to any other materials notified above not to be included as part of the repairs process), or any caused through the necessary repairs process (which may include deletion of information). It is your responsibility to remove and save in advance of sending your phone / broadband for repair.

## 8.2 Returns:

- (a) You are entitled to a full refund or exchange within 14 days of your phone/broadband device being dispatched to you. This is in accordance with the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013.
- (b) Please note the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 do not apply to business customers.
- (c) If your phone/broadband device is faulty, you may return it for a full refund or exchange within the first 28 days of the phone/broadband device being dispatched to you.
- (d) You are solely responsible for returning your phone/broadband device and all associated items received with your purchase in the returns pack we have provided. eir Mobile is not liable or responsible for any loss or delay caused through the postal system and would advise you that it is your responsibility should you wish to apply tracking or insurance to the package.
- (e) Please note that we require the return of the phone/broadband device and all associated items (as may be further specified under our returns policy) and a valid proof of purchase within 10 Business Days from the date of submitting your valid returns request. Should you fail to make a valid returns request (i.e. not within the specified period from the time of purchase), fail to return the relevant phone/broadband device, fail to return all associated items, or do not return same within the specified time above, you acknowledge and note that
- (f) eir Mobile will not be bound or obliged to accept your return and will not issue a refund in respect of same. Furthermore, should you be a bill pay customer, you acknowledge that eir Mobile may apply full termination charges, to recover the cost of the phone/broadband device supplied. If a fault appears in your phone/broadband device after the timeframe referred to here, please note that our repairs policy and procedure will apply. <http://support.eir.ie/mobile/> for more details

## 8.3 Refunds:

- (a) Your application for a cancellation and refund will be construed as a request for an immediate termination of your eir Mobile telephony service and you acknowledge that your service may be ceased at any time prior to your return.
- (b) You will remain liable for all usage incurred up to the time of actual termination and for any termination charges if all goods are not returned in accordance with these terms.

## **9. General Terms for Promotions**

- 9.1 The following terms and conditions apply generally to all Promotions from time to time (unless explicitly stated otherwise in the Promotion terms and conditions).
- 9.2 Promotions cannot be availed of by a Customer when Roaming outside the Territory, nor when using the Services in the Territory to a receiver located outside of the Territory (applicable to all Services).
- 9.3 Promotions require online registration within 60 days from the point of purchase to continue to avail of the Promotion.
- 9.4 Promotions may take up to one (1) Business Day to take effect on a Customer's Service once the Customer registers for the Promotion.
- 9.5 Promotional in-bundles (for all Services) cannot be used for Roaming.
- 9.6 If a Customer moves from one Price Plan under the Promotion to another non-eligible Price Plan, then that Customer will forfeit any benefits attached to that Promotion.

## **10. Directory Services and Caller ID**

Unless you specify otherwise to us directly, we will include you and your mobile number for National Directory Enquiry Services. The Network may allow the display of your telephone number on receiving handsets, however you will be able to disable this feature on your mobile phone or device.

## **11. Use of Customer Information**

- 11.1 For the purposes of this clause, "eir Mobile" shall mean eircom Limited and its Affiliates. Within this clause "Consent", "Data Controller", "Data Subject", "Personal Data" and "Processing" shall have the same meanings as in the Applicable Data Protection Law and "Processed" and "Process" shall be construed in accordance with the definition of "Processing".
- 11.2 In order for eir Mobile to provide the Services to the Customer it is necessary for eir Mobile to collect and Process Customer Personal Data. These may include processing your application, conducting credit and anti-money laundering checks, supplying you with our products or the Services, administering your customer account, calculating usage and charges, invoicing, customer services and the efficient management of call and Traffic Data. Note that for credit scoring purposes, we may disclose data to, or receive data from, other Affiliates. Pursuant to the provisions of the Applicable Data Protection Law eir Mobile is a



Data Controller of the Customer's Personal Data for the purposes of this Agreement. All Personal Data about the Customer which eir Mobile Processes pursuant to this Agreement will be Processed and maintained in accordance with eir Mobile's obligations under the Applicable Data Protection Law.

- 11.3 In respect of the Processing of Personal Data by eir Mobile under or in connection with this Agreement eir Mobile shall:
  - 11.3.1 only Process Personal Data to the extent required to provide the Services to the Customer in accordance with the terms of the Agreement;
  - 11.3.2 save in accordance with the Customer's instructions not otherwise modify, amend or alter the contents of the Personal Data;
  - 11.3.3 comply with its obligations under Article 32 of the GDPR to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of the Processing undertaken by eir Mobile under or in connection with the Agreement;
  - 11.3.4 comply with Applicable Data Protection Law.
- 11.4 eir Mobile does not disclose the Customer's Personal Data, except:
  - 11.4.1 where the Customer has given eir Mobile Consent;
  - 11.4.2 where eir Mobile is required or permitted to do so by law; or
  - 11.4.3 where necessary for the purposes of this Agreement, to other trusted third party entities including other network operators when you Roam ("Sub-Processor") who provide a service to eir Mobile or to the Customer.
- 11.5 From time to time eir Mobile may change the way it uses Customer Personal Data. Where eir Mobile believes the Customer may not reasonably expect such changes, eir Mobile will obtain the Customer's Consent as required by the Applicable Data Protection Law.
- 11.6 In accordance with the procedure set out at [www.eir.ie/privacycentre](http://www.eir.ie/privacycentre) the Customer has the right at any time to request a copy of the Personal Data eir Mobile holds about the Customer.
- 11.7 Where the Customer asks for any inaccuracies in their Personal Data to be corrected the Customer should contact 1905.
- 11.8 Subject to the Customer's Consent eir Mobile shall keep the Customer up to date about eir Mobile products and services, special offers and price reductions.
- 11.9 If you do not wish to be contacted while an eir Mobile Customer about eir Mobile products and services, special offers and price reductions, you should contact eir Mobile by dialling 1905 or log into your "my eir" account.

- 11.10 If you do not wish to be contacted by eir Mobile post termination of this Agreement you should contact eir by calling 1905 or log into your “my eir” account.
- 11.11 eir Mobile reserves the right to contact the Customer regarding information specific to the Services, including service enhancements, network upgrades, process changes and general information relating to the Services.
- 11.12 Upon termination of the Agreement and subject to the Customer’s preference eir Mobile shall, to the extent permitted by applicable law delete from its key systems, the Customer’s Personal Data and any copies of it or of the information it contains. The provisions of this clause shall not apply to the extent that eir Mobile is obliged by applicable law to keep copies of the Personal Data.
- 11.13 eir Mobile may also authorise a Sub-Processor to process your Personal Data where required for the provision of the Services, save that suitable provisions for complying with Applicable Data Protection Law will be in any contract with a Sub-Processor.
- 11.14 eir Mobile may need to transfer your Personal Data outside the Republic of Ireland and the European Economic Area when eir Mobile requires a Sub-Processor to work on behalf of eir Mobile in order for eir Mobile to provide you with the Service.
- 11.15 If you are an existing eir customer, you consent to eir Mobile accessing your existing customer account details on eir’s systems (name, address, credit information, etc.) for the purposes of Processing your eir Mobile application, administering your customer account and provision of the eir Mobile Service to you.
- 11.16 If you are a new Bill Pay Customer on or after 30th of November 2016 or if you are an existing Bill Pay Customer who enters into a new contract with eir Mobile on or after 30th of November 2016 please note if you allow your account to fall into arrears by not paying your bills in full and on time, information on your payment performance may be shared with other service providers of landline, broadband and mobile services through the provision of the information to a database operated by the service providers called Credit Insights. Other providers of services who also supply information on payment performance of their customers to the Credit Insights database may check this information when you apply for their services in the future to help them assess your credit worthiness. The information shared with Credit Insights includes name, address, date of birth and account details and will be held on the database for 6 years from the date you were shared with Credit Insights. This is a condition of your contract with us.

## **12. Move to eir Mobile – Keep Your Number**

- 12.1 By accepting the terms of the Customer Authorisation Form, you warrant and represent that you are the person authorised to instruct eir Mobile to Move the Number.
- 12.2 You acknowledge that:
- (a) The request to eir Mobile to Move, constitutes a request to Move the number to eir Mobile;

- (b) Terms and conditions apply to the service being offered and you have read, understood and accepted these terms and condition;
- (c) only the Number will be Moved;
- (d) The Customer Authorisation shall constitute notice of termination of any agreement with your Previous Service Provider and revokes any previous notice to terminate service with your Current Network Operator, subject to the terms and conditions of that agreement;
- (e) The Move terminates service on the mobile number with your Current Network Operator;
- (f) The services provided by your Previous Service Provider to you, including, without limitation, unused call credit or benefits, tariffs and terms and conditions of use that applied to your service will not be transferable or transferred to your eir Mobile Services; and eir Mobile does not undertake to provide these;
- (g) any contractual and other obligations, charges and costs due to your Previous Service Provider will remain due and owing and shall be subject to settlement by you with the Previous Service Provider in accordance with the terms and conditions applying to the provision of that service; and
- (h) Should you wish to continue using your existing handset, a Network Access Code (NAC), may need to be obtained from your Current Network Operator prior to Moving, in order for your new eir Mobile SIM card to work in your existing handset;
- (i) When Moving more than one mobile number, you may receive a call from your Current Network Operator existing service provider in order to validate the request;
- (j) The process will be deemed to commence on the date of signing of the Customer Authorisation Form and it may not be possible to reverse the process once the Move has started.

12.2 If the signatory is not the person legally entitled to request the Service Provider to Move the Number or a person or entity authorised to complete the Customer Authorisation Form, or if fraudulent or misleading information is supplied, then the signatory will be personally liable for all or any loss or damage arising from the unauthorised transfer of the Number.

12.3 Agreement by eir Mobile to Move your number is subject to the validation of the information that you provide and the status of your service with your Current Network Operator. eir Mobile may refuse to process your instructions if:

- (a) the information provided on the Customer Authorisation Form is incorrect or misleading;
- (b) the information provided in relation to the Number is not compatible with information held by your Previous Service Provider;

- (c) there are overdue amounts outstanding to your Previous Service Provider. eir Mobile does not warrant or represent that the Move will be completed within a particular timeframe. There may be a period where no Services are available, from either your Previous Service Provider or from eir Mobile. eir Mobile will not be liable or responsible for making good any loss, damage, costs or expenses or other liability whether incurred directly, indirectly or as a consequence of the unavailability of the Services or services from a Previous Service Provider.

### **13. Exclusion of Liability**

13.1 We will have no liability to you (or to anyone claiming through you) for any direct, indirect or consequential loss (whether or not foreseen or foreseeable and including loss of profit or loss of goodwill) suffered by you for any reason whatsoever and without prejudice to the generality of the foregoing by reason of:

- (a) the suspension or termination of the Services or this Agreement or the interruption of or failure of eir Mobile to provide the Services including connecting any Call made to or by the Equipment or failing to make a mobile broadband connection through the Equipment;
- (b) any Call made to or by the Equipment being overheard or intercepted by a third party;
- (c) any data transmitted to or by the Equipment being altered, used or lost;
- (d) any failure, interruption, delay, suspension or restriction in performing its obligations under this Agreement arising as a consequence of circumstances outside its reasonable control (including but not limited to any act of God, government control restrictions or prohibitions, any other act or omission of any public or regulatory authority (whether local, national, international or supranational), an act of default of any third party, supplier, agent or other person, strikes, work stoppages or labour disputes;
- (e) the effects upon you or other users of the Equipment, or upon any equipment, vehicles or aircraft in your vicinity, of any emissions or transmissions to, from, by or through the Network and/or the Equipment;
- (f) inaccurate or misleading or unlawful information provided to you via the Services;
- (g) the acts and/or omissions of other Service Providers;
- (h) any error or omission in any directory published by us, or on our behalf, containing Customer details (including without limitation the national directory database of subscribers for publicly available telephone services); or
- (i) unauthorised access to the Equipment. eir Mobile strongly recommends that sensitive information such as bank PINS, credit card numbers etc, are not stored on the Equipment.

- 13.2 eir Mobile has no control over the telecommunications systems of other networks and makes no representation and gives no warranty as to the performance or provision of the Services when being relayed through such networks or when Roaming.
- 13.3 All conditions, warranties and representations implied by law in relation to our provision of Services are excluded to the extent permitted by law. Your rights under the Sale of Goods Act 1893 (as amended) and the Sale of Goods and Supply of Services Act 1980 (as amended) are not affected.

#### **14. Suspension and Termination**

- 14.1 eir Mobile may terminate or suspend the Services wholly or partially at any time at our option for any reason including:
- 14.1.1 if the Network requires modification or maintenance or for security reasons or if for technical reasons it is not possible to provide the Services;
  - 14.4.2 if you do not comply with, or eir Mobile in its reasonable opinion considers that you are not complying with, the terms of this Agreement, including without limitation clause 6 or non- payment of any sums due by you (in which case we reserve the right to charge for reconnection and/or to require revised payment terms or Advance Payment or Deposit);
  - 14.4.3 if you are using the Services for commercial resale use;
  - 14.4.4 if you are using the Services, the Equipment (including your eir Mobile SIM Card) or your Number in any way which breaches any security or other safeguards or in any other way which harms or interferes with the Network, Services or the network or systems of any third parties;
  - 14.4.5 where eir Mobile reasonably believes that you are unable to comply with payment obligations;
  - 14.4.6 if, having made reasonable efforts, we cannot contact you;
  - 14.4.7 where eir Mobile is of the reasonable opinion that you have provided false or misleading information on your Application; or
  - 14.4.8 if you breach any provision of clause 5 or any provision of the Fair Use Policy.
- 14.5 You will remain liable for Charges during any period of suspension.
- 14.6 eir Mobile may terminate this Agreement immediately:
- 14.6.1 if you do not rectify the reason underlying the suspension of Services pursuant to clause 14.1 within 30 days of suspension;
  - 14.6.2 if you fail to pass such credit checks or exceed any credit limit specified by eir Mobile;

- 14.6.3 if you fail to pay any sums due under this Agreement by the due date;
  - 14.6.4 if you breach any of the terms of this Agreement or if any information supplied by you to eir Mobile is false or misleading;
  - 14.6.5 if we believe, on reasonable grounds, that you are unable to pay the Charges;
  - 14.6.6 if we receive a valid request to Move your Number from eir Mobile to another Service Provider. You will remain liable for all Charges and other costs due up to the date of termination, including any applicable termination Charges, plus any additional interest which accrues;
  - 14.6.7 if you are adjudicated as bankrupt, become insolvent or make any composition or arrangement with or assignment for the benefit of creditors; or
  - 14.6.8 if any meeting of the Customer's creditors is called pursuant to section 587, of the Companies Act 2014 or if the Customer enters into liquidation, receivership or examinership or any steps are taken to appoint a liquidator, receiver or examiner to the Customer.
- 14.7 In the event of changes to these terms and conditions notified by eir Mobile, you may terminate this Agreement without charge by giving notice in writing prior to the date of implementation of such changes. You will be deemed to have accepted any implemented changes by continuing to use the Services.
- 14.8 Upon termination of the Agreement we shall disconnect your Equipment from the Network, you will forfeit and lose any existing call credit applying on your account and eir Mobile will be entitled to ascribe your existing number to another customer or your original/new Network Operator Exercise of our entitlements shall not prejudice or affect the exercise of any other right or remedy which may be available to eir Mobile.

## **15. Disputes**

If you wish to raise a dispute with us in relation to this Agreement, please refer for full detail on the applicable procedure to the Customer Code of Practice available <http://support.eir.ie/article/codeofpractice> contact details for customer enquiries are available on [www.eir.ie/about/contact/](http://www.eir.ie/about/contact/).

## **16. Miscellaneous**

- 16.1 All the terms and provisions of this Agreement are distinct and severable, and if any term or provision is held unenforceable, illegal or void in whole or in part by any court, regulatory authority or other competent authority it shall to that extent be deemed not to form part of this Agreement, and the enforceability, legality and validity of the remainder of this Agreement will not be affected; provided that, in any case where as a result of the operation of this clause the rights or obligations of a party are materially altered to the detriment of the party, that party may terminate this agreement within 30 days from the date of the

relevant decision of the relevant court, regulatory authority or other competent authority. Any waiver, concession or extra time we allow you is limited to the specific circumstances and case in which it was given and does not affect our rights under the Agreement in any other way.

- 16.2 Any provisions of this Agreement which are intended by their nature to continue or to come into effect after termination or suspension shall survive termination or suspension of this Agreement and shall continue in full force and effect.
- 16.3 This Agreement constitutes the entire understanding between the parties relating to the subject matter hereof.
- 16.4 This Agreement shall be governed by the laws of Ireland and the parties submit to the exclusive jurisdiction of the Courts of Ireland.

## **17. Definitions**

In this Agreement the following terms mean:

"Advance Payment" means a payment by the Customer (excluding Charges) which may be required before the Customer is authorised to use specific Services to include, but not limited to, International Calls, Roaming and Premium Rate Services;

"Applicable Data Protection Law" means:

- (a) the Irish Data Protection Acts 1988, 2003 and 2018;
- (b) the European Communities (Electronic Communications Networks & Services) (Privacy & Electronic Communications) Regulations 2011;
- (c) the EU Data Protection Directive 95/46/EC;
- (d) the EU ePrivacy Directive 2002/58/EC (as amended) (the "ePrivacy Directive");
- (e) the General Data Protection Regulation (Regulation (EU) 2016/679 (the "GDPR"); and
- (f) any successor or replacement to the laws set out above (including, when they come into force, and the successor to the ePrivacy Directive).

"Application" means the application for the Services completed by or on behalf of the Customer for the Services and all information, consents and statements which it contains (which information, consents and statements may be obtained over the telephone or online);

"Bill Pay Service" means the postpaid eir Mobile service whereby the Customer is charged for Services already availed of;

"Business Day" means a day (other than a Saturday or a Sunday or public holiday in Ireland) on which clearing banks are generally open for business in Dublin; "Call" means a transmission made over the Network for the purpose of communicating a voice or data message (which includes,

without limitation, short text messages ("SMS"), multi-media messages ("MMS"), and usage of Data Sessions);

"Call Content" means the content of any Call received or made by a Customer over the Network;

"Charges" means the charges for the Services, whether Bill Pay Service or Prepay Service, as specified on [www.eir.ie/termsandconditions/](http://www.eir.ie/termsandconditions/) including, but not limited to, connection charges, monthly rental, or tariff charges, call charges, modem charges, any applicable additional usage charges calculated according to the rates prevailing from time to time, administrative charges and charges for Third Party Services which the Customer may choose to receive;

"Customer" means the individual or entity named on the Application and any person reasonably appearing to us to be acting with such individual's or entity's authority;

"Customer Authorisation" means the authorisation, verbal or written required from the Customer to process a Move;

"Customer Authorisation" -means the authorisation, verbal or written required from the Customer to process a Move.

"Customer Authorisation Form" means the form which eir Mobile may require a customer to complete in order to complete a Customer Authorisation.

"Data Session" means a connection to the internet or mobile internet ("WAP") established using GPRS, 3G/UMTS, or other technology made available over the Network;

"Deposit" means a payment made by the Customer to us before or after connection to the Network, as security for payment of Charges;

"eir Group Company" means eircom Limited or any company controlled by, or controlling, eircom Limited;

"eir Mobile SIM Card" means the card, bearing a unique mobile telephone number, the related personal Unlocking Code and personal identification number, used with a handset or other terminal or modem (e.g. PDA/dongle for mobile broadband) to access the Services;

"Equipment" means, unless otherwise specified, the handset or other terminal or modem (e.g. PDA / dongle for mobile broadband), the eir Mobile SIM Card and/or any other equipment which is provided by eir Mobile to the Customer pursuant to this Agreement in connection with the Services;

"Fair Usage Policy" means the fair usage policy as applicable to the Services as displayed on [www.eir.ie/termsandconditions/](http://www.eir.ie/termsandconditions/) as may be amended from time to time;

"International Call" means a Call made from the Republic of Ireland to an international landline or international mobile;

"Minimum Period" means the minimum period associated with your Price Plan, as specified on the Application Form, commencing on the date on which the Service is first made available to the Bill Pay Customer pursuant to this Agreement or from any re-execution or new execution of this



Agreement or written acceptance of new terms, during which period the Customer is not entitled to terminate the Agreement;

"Mobile Broadband" means the service which may be provided through specific Equipment, which in conjunction with a personal computer, enables connection to the world wide web over eir Mobile's 3G Network;

"Move" means the transfer of the Number used by you on a mobile network of a third party Service Provider, to the Network or from the Network to a mobile network of a third party Service Provider and "Move" and "Moving" shall be construed accordingly as the context requires. Also referred to as Port or Porting;

"New Bill Pay Service Customer" means a new Bill Pay Service customer (excluding Mobile Broadband Customers) who become an eir Mobile Customer on or after 16 April 2013;

"Network" means mobile telecommunications networks and systems used to provide the Services including all of the cables, exchanges, transmitters, receivers, computer hardware and software, and other equipment and facilities (excluding equipment owned by the Customer and by other users and customers of the Services); "Number" means the unique ten-digit Mobile Station International Subscriber Directory Number (MSISDN) programmed into an eir Mobile SIM Card;

"Prepay Service" means the pre paid eir Mobile service whereby the Customer is charged for Services to be availed of; "Previous Service Provider" means the authorised Service Provider, other than eir Mobile, which, immediately prior to the Customer entering this Agreement and Moving the Number, was supplying services to the Customer through the Number;

"Price Plans" means the various tariff structures applicable to the different Services offered by eir Mobile and available to the Customer (as published by eir Mobile periodically and available on [www.emobile.ie](http://www.emobile.ie)) and Price Plan will be interpreted accordingly;

"Promotion" means any offer available to the Customer (as may be published from time to time and available on [www.emobile.ie](http://www.emobile.ie));

"Roam/Roaming" means an optional Service which allows you to use the Equipment on other networks, usually outside the Republic of Ireland;

"Service" means the services provided by eir Mobile to you and specified by you in your Application to be provided by eir Mobile to you on the terms and subject to the conditions of this Agreement;

"Service Provider" means an authorised mobile telephony service provider;

"SIM Only" means a Price Plan under which the Customer avails of a SIM card only;

"Territory" means Ireland (excluding Northern Ireland);

"Third Party Service" means any service promoted or provided by third parties to the Customer over the Network;

"Traffic Data" means the information relating to your use of the Services processed for the purpose of the effective use of the Services or for billing purposes including information relating to the date,

time and duration of the use of the Services, the Equipment (including the identity of the eir Mobile SIM Card) and/or the Networks used; and

"Unlocking Code" means the code to disable security settings that restrict the use of a phone handset to a specific SIM Card or to a specific Service Provider's services.