

Standard Terms for Rainbow Communications's Service

1 Definitions

1.1 The following words shall, unless the context requires otherwise, have the following meanings:

**"Agreement"** means these conditions (the "Conditions"), the Customer Application Form which shall form the entire Agreement between the Customer and Rainbow Communications;

**"Access Provider"** means the telecommunications network operator enabling connection to the Services;

**"Act"** means any other relevant legislation as modified from time to time;

**"BT"** means British Telecommunications;

**"Business Day"** means every day excluding Saturdays, Sundays and Public and Bank Holidays in Northern Ireland;

**"Call Service"** means Rainbow's carrier pre-selected and/or leased cost routing telecommunications service;

**"Call Charges"** means the charges payable by the Customer monthly in arrears for use of the Services logged by Rainbow and calculated in accordance with the relevant Tariff Sheet;

**"Charges"** mean the Call Charges, the Fixed Charges, the Connection Charge and the Committed Spend and/or any other monies due and payable by the Customer to Rainbow Communications in respect of the Services;

**"Committed Spend"** means the amount of the Committed Spend minimum spend in respect of call charges for each month of the Contract Term specified in Part 9 of the Customer Application Form;

**"Connection Charge"** means the charges set out in the Tariff Sheet and as identified as the Tariff Plan detailed in section 6 of the Customer Application Form, for the connection of each piece of equipment and/or Exchange Line to a network;

**"Contract Term"** means the period of time set out in section 9 of the Customer Application Form, calculated as commencing on the Operative Service Date. If no period of time is set out in section 9 of the Customer Application Form, the Contract Term begins on the Operative Service Date and expires on the first anniversary of that date;

**"Customer"** means the company, organisation or individual named as the Customer in section 1 of the Customer Application Form;

**"Customer Application Form"** means Rainbow's official statement signed by an authorised signatory of both parties and setting out in writing the Customer's requirements for and specific details relating to the Services;

**"Customer's Equipment"** means any equipment owned, maintained by the Customer and used in connection with the Services;

**"Equipment"** means any apparatus or equipment owned by Rainbow and supplied to the Customer to facilitate the provision of the Services;

**"Fixed Charges"** means a fixed charge levied as a regular subscription fee in respect of the WLR Service payable by the Customer to Rainbow monthly in advance;

**"Force Majeure"** means any circumstances beyond a party's reasonable control affecting the performance of their obligations under this Agreement including but not limited to acts of God, fire, flood, explosion, accidents, war, acts of terrorism, labour disputes, strikes, lock outs, embargos, subcontractor delays, acts of government, state of emergency, riots, civil commotion, malicious damage, government actions and any other similar events; means the period(s) equal in length to the Contract Term;

**"Further Contract Term"** means, in relation to any company, that company and any other company which, at the relevant time, is a parent or subsidiary undertaking of the Customer as defined by section 1162 of the Companies Act 2006 and a "member" of a group has the corresponding meaning;

**"Group"** means any telecommunications network that Rainbow may use in order to provide the Customer with the Services;

**"Network"** means any telephone number used by Rainbow to deliver calls to the Customer allowing a revenue share to be generated for the Customer by some or all of the calls;

**"Offending Material"** means any material, data, images or information that is:

- (i) in breach of any law, regulation, rule of practice or the Use Policy; and/or
- (ii) abusive, indecent, defamatory, immoral, offensive, obscene or menacing or otherwise offensive; and/or
- (iii) fraudulent or which has any illegal or unlawful purpose;

means the buildings at which the business and to which the Services are connected and this definition shall include any building to which the Customer relocates and at which it takes the Services;

**"Privacy Policy"** means Rainbow's privacy of information and data protection policy governing Rainbow's use of the personal information that Rainbow collects relating to the Services as may be amended from time to time and which is detailed in Rainbow's privacy policy available at [www.rainbowcomms.com](http://www.rainbowcomms.com)

**"Rainbow"** means TSI (Ireland) Limited trading as Rainbow Communications, 286 Ballygowan Road Belfast Northern Ireland BT21 6BL.

**"Services"** means the Call Service and/or WLR telecommunications services provided to the Customer by Rainbow under means in accordance with this Agreement and/or any other products and/or Services provided by Rainbow to the Customer from time to time;

**"Tariff Sheet"** means the list of fixed charges, call charges and other applicable charges (available on request);

**"Use Policy"** means the terms and conditions of use of the Services as issued by Rainbow and published on Rainbow's website from time to time; and

**"WLR"** (Wholesale Line Rental) means the telecommunications service where Rainbow provides access to the network directly rather than through an Access Provider and leases to the Customer the telephone lines within the Network to which the Customer's voice telephone calls are routed in addition to routing those voice telephone calls across those lines;

means the date when WLR and/or Call Service transfers to Rainbow Communications.

2 BASIS OF CONTRACT

2.1 These Conditions shall govern the Agreement between Rainbow and the Customer to the exclusion of any other terms and conditions and will supersede all previous conditions notified to the Customer.

2.2 Customer Application Forms executed by the Customer leading to an Agreement which is not expressed to be subject to these Conditions shall still be subject to these Conditions.

2.3 No verbal warranties or representations shall bind Rainbow. The Customer acknowledges that it does not rely on any representation and/or warranty not contained in these Conditions.

2.4 In specifications, brochures and Tariff Sheet are intended as a guide only and give only a general approximation of the Services. The Customer confirms and agrees that it has not relied upon the details and information detailed on Rainbow's website [www.rainbowcomms.com](http://www.rainbowcomms.com) or contained in Rainbow's brochure or other sales literature unless it has sought and obtained written confirmation from Rainbow of its accuracy.

2.5 If there is any conflict between the terms of these Conditions and the terms of any Customer Application Form of terms of these Conditions will take precedence.

2.6 This Agreement will come into effect upon Rainbow's acceptance of the Customer's application for the Services (which acceptance shall occur upon the earlier of Rainbow's signature of this Agreement, express consent provided by email or phone, or Rainbow's provision of the Services to the Customer) and will continue in accordance with clause 7 of these Conditions.

3 CONNECTION AND SUPPLY OF SERVICES

3.1 Where appropriate, Rainbow will make the arrangements to transfer the Customer to the Service. The Customer authorises Rainbow to arrange the termination of the Customer's existing services with existing telecommunications service providers and to obtain any information from the Customer's existing telecommunications services provider. Rainbow does not guarantee that the Services will be ready by any particular date and shall not be liable for any failure to provide the Services by any estimated date.

3.2 Rainbow will provide the Services with all due care and skill in accordance with this Agreement.

3.3 The Customer accepts that the Services may be affected by things outside of Rainbow's control including without limitation faults in the Network. The Customer accepts and acknowledges as reasonable that Rainbow cannot guarantee that the Services will operate error or fault free all of the time.

3.4 The provision of the Services is dependent upon the acquisition of any and all consents, approvals and authorities necessary from the Customer's existing telecommunications service provider and Rainbow will not be liable for any inability or delay in obtaining any such consents, approvals or authorities.

3.5 Rainbow, acting reasonably and without unreasonable delay, may refuse to connect the Customer to the Services if any of the information provided by the Customer is incorrect, misleading and/or the Customer does not satisfy Rainbow's Customer criteria. Rainbow will notify the Customer as soon as reasonably possible after making any decision of such non-satisfaction. Rainbow reserves the right to perform a credit check with no prior given notice on any legal entity.

3.6 The Customer is responsible for providing valid and accurate information required by Rainbow to fulfil the obligations of this Agreement and for ensuring the accuracy of that information. The Customer must inform Rainbow immediately of any changes to the information provided to Rainbow including any change of address.

3.7 Rainbow may, at any time without notice, vary the Services as Rainbow deems appropriate provided that this does not adversely affect the functionality of the Services in any material way.

3.8 The Customer will, at Rainbow's request, arrange for the Customer's Equipment to be reprogrammed by Rainbow's designated maintainer. The Customer accepts as reasonable and acknowledges that Rainbow will have no liability to the Customer in respect of such reprogramming.

3.9 The Customer shall provide Rainbow (without charge) with all assistance and/or facilities that are required to enable Rainbow to supply the Services and fulfil its obligations under this Agreement.

3.10 Rainbow will provide fault-handling and resolution services, on condition that:

- 3.10.1 the Customer notifies Rainbow within 48 hours of the occurrence of a fault;
- 3.10.2 if Rainbow does not find any fault in the Services, or considers the fault to have been caused by the Customer, Rainbow may charge for any costs incurred in carrying out any maintenance or repair.

3.11 If it is necessary to carry out scheduled or unscheduled maintenance, or to suspend the Services temporarily, Rainbow will endeavour to provide reasonable notice to the Customer, wherever reasonably possible.

3.12 Rainbow cannot guarantee that the Access Provider will not charge the Customer for any calls, nor can Rainbow guarantee that the Access Provider will route any calls to the Network. The Customer remains liable to the Access Provider for charges levied against the Customer by the Access Provider.

3.13 Where the Customer requests WLR, Rainbow will, at the Customer's cost (as specified on the Tariff Sheet) and request, use all reasonable endeavours to arrange for a standard entry to be made into the appropriate BT telephone directories detailing the Customer's contact information.

3.14 Once the Customer has been connected to the Services, any telephone voice calls made by the Customer over a network owned and controlled by BT using any override code will be charged to the Customer by BT at BT's then current rates for such calls.

3.15 The Customer acknowledges that any call barring features requested in conjunction with the WLR part of the Services may take up to 5 Business Days from the time of the Customer Application Form to become operational.

3.16 If the Customer intends to relocate its Premises the Customer must provide Rainbow with at least 30 days notice in writing prior to such relocation. Following such notice Rainbow will, at no extra charge to the Customer, use all reasonable endeavours to disconnect the Call Service from the Premises and re-connect the Call Service to the Customer's new Premises and this agreement will continue unaffected. Re-connection charges will be levied against the Customer. If the Customer is unable to provide the Services due to technical reasons Rainbow and/or the Customer may cancel without liability this Agreement. The Customer remains responsible for all charges up to the point that the Services are disconnected. Termination by the Customer in relation to a relocation of its Premises or otherwise, other than as expressly permitted by this clause, will be dealt with in accordance with clause 7.5 of these Conditions.

4 USE OF THE SERVICES

4.1 The Customer must not use the Services:

- 4.1.1 to send any messages or communications which contain Offending Material; and/or
- 4.1.2 to intentionally harass, annoy, inconvenience or cause anxiety to any person.

4.2 The Customer will, during each month of the Contract Term, use and pay Rainbow for Services which are equal to or more than the Committed Spend.

4.3 The Customer's continued use of the Services is on condition that the Customer:

- 4.3.1 follows all reasonable instructions that Rainbow may provide for the provision and operation of Services from time to time;
- 4.3.2 complies with all relevant provisions of the Use Policy and any and all relevant law, code of practice, regulation, or any direction of the Office of Communications or other competent authority, and any licence which governs the running of the Customer's own telecommunications system;
- 4.3.3 shall ensure that the Customer's Equipment is in good working order, of correct specification and conforms to the relevant standard of approval for the time being designated under relevant law;

4.4 Rainbow will carry out any work required, by appointment between 9.00am and 5.00pm, on Business Days. If the Customer requires Rainbow to carry out work outside those hours, Rainbow reserves the right to charge the Customer for Rainbow's costs incurred in such work at its then current hourly "out of hours" rates.

4.5 Where the Customer reports a fault, Rainbow will, at no extra charge to the Customer, allow Rainbow's designated maintainer to check the Customer Equipment. Rainbow may charge the Customer for any work undertaken in respect of a fault where the fault was not Rainbow's responsibility at Rainbow's then current hourly rates.

4.6 All rights in the allocated telephone numbers will remain with Rainbow and the Customer shall have no rights in any number that Rainbow allocates to the Customer. The Customer is not permitted to register allocated numbers as a trademark or assert ownership of any other rights, including without limitation intellectual property rights, in respect thereof, and the Customer will not sell or agree to transfer them to anyone else.

4.7 Rainbow may modify or amend any telephone numbers given to the Customer or introduce additional access codes.

4.8 The Customer will not act or rely upon the provision to it of a specific Non-Geographic Number until it has received confirmation from Rainbow that the Non-Geographic Number has been obtained and allocated to it.

5 CHARGES AND PAYMENT

5.1 If the call charges in any month fall below the agreed Committed Spend, the Customer will, if requested to do so by Rainbow, pay Rainbow the amount which is the difference between the actual call charges for that month and the Committed Spend.

5.2 We may vary the terms of this Agreement and the Charges from time to time. In the event that we make changes to this Agreement that are likely to cause a Material Detriment to you, you will be entitled to terminate this Agreement within 30 days of Rainbow notifying you of such changes. In the event that such changes, in our opinion, will be of the essence for your notice to be received by us and if we have not received your notice within that time, you will be bound by the terms of this Agreement as varied and will remain responsible for all Charges up to the point that the Service is disconnected.

5.2.1 Subject to clause 5.2 above, we shall be entitled to notify you of any updates and/or variations of the terms of this Agreement and our Charges, by email, through a notice in Rainbow invoices or by posting our updated Agreement or Current Prices and Offers at [www.rainbowcomms.com](http://www.rainbowcomms.com). Unless we give you our prior consent in writing, you shall not be entitled to make any variations to this Agreement.

5.3 If Rainbow is not paid for minutes generated to the Customer's Non-Geographic Numbers, Rainbow will make no payment to the Customer in respect of those minutes.

5.4 If there are any changes to the rate that Rainbow is paid for minutes generated to the Customer's Non-Geographic Numbers, Rainbow may reduce the payment made to the Customer in relation to those minutes. If the change in the rate paid to Rainbow is backdated, the change in rate to the Customer will also be backdated.

5.5 All Charges due must be paid within 14 days of the date on the invoice, by the agreed payment method as specified on the Customer Application Form. With the exception of Charges disputed by the Customer in accordance with clause 5.11 below, all Charges payable by the Customer shall be paid in full without any deduction or set-off, withholding or counterclaim and any undisputed part of a disputed invoice shall be paid by the Customer in accordance with Part 9 of these Conditions.

5.6 Rainbow does not accept responsibility for delays in the billing of any Charges and any delay will not alter the Customer's liability to pay the Charges.

5.7 Rainbow may charge the Customer a re-connection fee of £100, where the Customer has been disconnected, or suspended for non-payment and/or for any other breach of this Agreement by the Customer.

5.8 Rainbow may charge the Customer any additional administration charges, as listed in the Tariff Sheet, incurred where the Customer pays Rainbow's invoices other than by way of Direct Debit.

5.9 If the Customer fails to make any payment in full on the due date Rainbow may charge the Customer any reasonable additional administration costs and/or interest (both before and after judgment) on the amount unpaid at the rate of 4% above the base rate from time to time of Ulster Bank Ltd.

5.10 Any monies received by Rainbow from the Customer may be applied by Rainbow at its option against any additional administrative costs and/or interest charged prior to application against any principal sums due from the Customer against which it may be applied in any order. In the event that the Customer disputes an item on the invoice, the Customer must do so in writing within 14 days of receipt of the invoice. The Customer must promptly pay any undisputed element of the invoice. The notice must set out in detail the nature of the dispute and copies of any supporting documentation as appropriate. Rainbow will determine the disputed item acting reasonably and in Rainbow's responsible manner.

5.11 All Charges are exclusive of VAT at the then prevailing rate for which the Customer will be additionally liable.

5.12 Rainbow will, in its sole discretion, determine and vary the Customer's credit terms.

5.13 The Customer remains liable for all Charges due under this Agreement even if Services have been suspended, disconnected or terminated for non-payment, or the Customer has transferred the number(s) to another telecommunications provider. The Customer shall also remain liable for all Charges due under this Agreement where the Customer has terminated its Contract with Rainbow to transfer to another telecommunications provider and the Customer is still receiving Services from Rainbow during any transfer period.

5.14 The Customer is responsible for the payment of calls made using the Customer's telephone lines. The Customer remains liable for any Charges incurred through the use of the Services by any third party.

5.15 Call Charges shall be calculated by reference to data recorded or logged by Rainbow and not by reference to any data recorded or logged by the Customer, nor by reference to any information provided by Rainbow to the Customer for information purposes only.

6. SUSPENSION AND/OR DISCONNECTION OF SERVICES

6.1 Rainbow may suspend provision of the Services immediately and without notice or liability to the Customer if:

- 6.1.1 Rainbow has reasonable grounds to suspect that the Customer is using the Service in contravention of the provisions of clause 4.1 above; and/or
- 6.1.2 the Customer has breached its credit terms; and/or
- 6.1.3 the Customer does not make any payment to Rainbow when due;
- 6.1.4 Rainbow has reasonable grounds to believe that the Customer will not and/or is unable and/or unwilling to make payment when due;
- 6.1.5 Rainbow has reasonable grounds to believe that the Customer is, has or may be involved in criminal activity or any other activity which in Rainbow's reasonable opinion may be materially detrimental to and/or have a materially adverse effect on Rainbow's business and/or reputation.

6.1.6 Rainbow is obliged to comply with an order, instruction or request of a court government body, regulatory authority or other administrative or legal entity;

6.1.7 the Customer's direct debit instruction fails and/or is cancelled.

6.2 In the event that the Customer is suspended or disconnected, or the Customer is liable for any other reasonable costs and expenses that Rainbow may incur as a result of such dispute, together with any re-connection fee leviable by Rainbow in accordance with clause 5.7 above for any subsequent reinstatement of the Services.

7. TERMINATION OF SERVICES

7.1 The Customer may terminate this Agreement at any point during the Contract Term or any Further Contract Term by giving 30 days written notice to Rainbow. In the event that the Customer fails to provide notice of termination, the Agreement will continue for successive periods of one calendar month after the end of the Contract Term ("Successive Periods") until the earlier of (i) the Customer giving notice to terminate the Agreement in writing and (ii) the Customer terminating this Agreement in writing.

7.2 Where termination in accordance with clause 7.1 takes effect other than during the Successive Period(s) or other than on the last day of the Contract Term or any Further Contract Term, the Customer will pay Rainbow in accordance with clause 7.6. Upon termination in any circumstance, whether during the Successive Period(s) or otherwise, and by any party, the Customer will promptly pay Rainbow all Charges outstanding at the time of termination.

7.3 Within the last six months of the Contract Term or any Further Contract Term, Rainbow shall inform the Customer of the expiry date of the Contract Term or Further Contract Term to allow the Customer sufficient time to respond indicating consent for renewal of the Agreement for a Further Contract Term. For the avoidance of doubt, should such consent fail to be provided by the Customer, Rainbow shall continue to provide Services to the Customer on a periodic basis set out in clause 7.1 and the Customer shall have the right to terminate the Agreement by written notice and without penalty during these Successive Period(s).

7.4 Either party may terminate this Agreement and/or Customer Application Form immediately on notice to the other party if:

- 7.4.1 the Customer terminates this Agreement as a result of a breach of this Agreement and the breach is incapable of remedy;
- 7.4.2 the other party is in material breach of this Agreement and the breach has not been remedied within 14 days of the other party's notice requiring the breach to be remedied. For the avoidance of doubt, any failure by the Customer to make payment on or before the due date for payment comprises material breach for the purposes of this Agreement;
- 7.4.3 where the Customer terminates the Customer's Contract with Rainbow, the Customer's equipment which remains the property of Rainbow, or (in relation to either party) where the other party ceases or threatens to cease to carry on business, or proposes to compound with its creditors, applies for an interim order under Section 123 Insolvency Act 1986 or has a bankruptcy petition presented against it, or where the Customer or the other party ceases or threatens to cease to carry on business, or proposes to compound with all or any of its assets, or takes or suffers any similar action in any jurisdiction; and/or
- 7.4.4 the other party experiences an event of Force Majeure for a continuous period of 3 months.

7.5 Rainbow may terminate this Agreement:

- 7.5.1 from the end of the Contract Term or a Further Contract Term by giving thirty days' written notice; or
- 7.5.2 at any time, immediately upon notice, if it is required to terminate this Agreement by law or regulatory authority.

7.6 Where either (i) the Customer terminates this Agreement on notice in accordance with clause 7.1, and such notice expires to terminate this Agreement as a result of a breach of this Agreement during the last day of the Contract Term or Further Contract Term; and/or (ii) Rainbow terminates this Agreement in accordance with clause 7.4, the Customer will pay Rainbow within 14 days of the termination date:

- 7.6.1 the difference between the Fixed Charges which had been paid by the Customer at the actual date of termination and the Fixed Charges that would have been payable if the Agreement had not terminated before the expiry of such Contract Term or Further Contract Term; and
- 7.6.2 the Committed Spend for each full month remaining in the Contract Term or Further Contract Term in which termination occurs, plus a sum equal to the Committed Spend pro-rated to the number of days in any part month remaining in such Contract Term or Further Contract Term.

7.7 and the Customer undertakes to pay these sums by way of liquidated damages, and acknowledges that such amounts represent a genuine pre-estimate of Rainbow's loss arising directly as a result of early termination of this Agreement by the Customer.

7.8 The Customer shall not be obliged to pay any amount in respect of this Agreement or the Customer's Contract with Rainbow if:

- 7.7.1 no Contract Term has been specified on the Customer Application Form; or
- 7.7.2 the Contract has been terminated by the Customer in accordance with clause 3.16, 5.2 or 7.4 above; or
- 7.7.3 the Contract has been terminated by Rainbow in accordance with clause 7.5 above.

7.9.4 The Customer terminates this Agreement during the Successive Period(s) in accordance with clause 7.3 above.

7.8 Termination of this Agreement as a whole will operate to automatically terminate any Customer Application Form then in force. Termination of a Customer Application Form will not, unless expressly stated otherwise in the relevant notice of termination, operate to terminate this Agreement as a whole. Clauses 7, 8 and 9.12 shall survive termination of this Agreement.

8. LIMITATION OF LIABILITY

8.1 With the exception of the Customer's obligation to pay the Charges, each party's total liability to the other party under this Agreement in relation to any claim arising whether under breach of contract, tort (including without limitation negligence and breach of statutory duty) or otherwise shall be limited to the amount of the Committed Spend for the period of the Contract Term or Further Contract Term in this Agreement. Rainbow excludes all warranties and representations (whether express, or implied by statute, common law or in any other way) to the fullest extent permitted by law.

8.2 Neither party will be liable to the other party for any:

- 8.2.1 loss of profits, loss of data and/or damage to goodwill;
- 8.2.2 economic and/or similar losses;
- 8.2.3 business interruption, loss of business, contracts, opportunity and/or production;
- 8.2.4 special, consequential, indirect or consequential losses (whether or not such loss or damage is of the type specified in clause 8.2.1 to 8.2.3 inclusive above).

8.3 Rainbow shall have no liability to the Customer in respect of any act or default or delay by BT, the Access Provider, any other communications provider and/or any regulatory authority in carrying out their obligations under this Agreement or the provision of the Services and in respect of the entry of the Customer's number in the telephone directory or for any error or omission in relation to such an entry.

8.4 Rainbow will have no liability to the Customer for any fault or defect where the fault or defect has been caused by the Customer. The Customer shall give Rainbow a reasonable opportunity to remedy any matter capable of remedy for which Rainbow is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so Rainbow shall have no liability to the Customer.

8.5 Rainbow shall have no liability for damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective or faulty Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.

8.6 Rainbow shall have no liability for any costs, expenses, charges, losses and/or fees incurred by the Customer as a result of non-compliance with clause 4.8 by the Customer.

8.7 Each of the obligations of the Customer in this Agreement shall be deemed to be repeated and apply as a separate provision for each of:

- 8.8.1 liability for breach of contract;
- 8.8.2 liability in tort (including negligence);
- 8.8.3 liability for breach of statutory duty; and
- 8.8.4 liability for breach of contract in common law except clause 8.1 which shall apply once only in respect of all the said types of liability.

8.9 The Customer indemnifies and will keep indemnified Rainbow against any and all losses or liabilities (including but not limited to expenses, costs (including increased administration costs and all legal costs on a full indemnity basis), claims (whether actual or threatened), and proceedings, actions, claims, demands, losses, torts and other losses or liabilities incurred directly or indirectly by Rainbow directly or indirectly as a result of any:

- 8.9.1 breach of contract, tortious act and/or omissions (including negligence) breach of statutory duty or Common Law by the Customer; and/or
- 8.9.2 claim by a third party that the Customer's use of the Services infringes any rights of that third party.

8.10 The Customer will be liable under this Agreement for the acts and/or omissions of its employees, agents, officers, managers, executives and/or subcontractors (whether or not they remain as the Customer's employees, agents, officers, managers, executives and/or subcontractors) as if they were the Customer's own acts and/or omissions under this Agreement.

8.11 The Customer shall be under a duty to mitigate any loss or damage, costs and/or expenses that it may suffer.

8.12 Notwithstanding any other provision of this Agreement, nothing in this Agreement will limit or exclude either party's liability for death or personal injury caused by that party's negligence or any liability due to that party's fraud or for any other liability which that party is not permitted to exclude or limit as matter of law.

9. GENERAL

9.1 Neither party shall have any liability to the other party for any delay in performance of this Agreement (other than in relation to payment) to the extent that such a delay is due to an event of Force Majeure. If a party is affected by any such event then time for performance shall be extended for a period equal to the period that such an event or events delayed such performance. If the event of the Force Majeure subsists for a continuous period exceeding 3 months then either party may terminate this Agreement without liability in respect of such termination.

9.2 The Customer shall give these Conditions at any time upon service to the Customer of no less than 5 Business Days written notice where Rainbow is required to do so in order to comply with new laws, rules and/or regulations, by the Office for Communications or any other regulatory body and/or any changes to Rainbow's telecommunications licence.

9.3 Except to the extent permitted by this Agreement (including without limitation in accordance with clause 9.2 above), no variation to this Agreement shall be effective unless in writing and signed by an authorised signatory of both the Customer and Rainbow respectively.

9.4 No waiver by Rainbow or any breach of this Agreement shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

9.5 The Customer may not transfer the benefits or the obligations under this Agreement to any other party without Rainbow's prior written consent and the Customer will not transfer, sub-licence or resell the Services for use by a third party. Rainbow may assign its rights, obligations, benefits and/or burdens under this Agreement to any member of its Group in whole or in part upon notice to the Customer, or to any third party with the prior written consent of the Customer, such consent not to be unreasonably withheld or charged for.

9.6 Any notices which are sent by either the Customer or Rainbow under this Agreement must be in writing and must be delivered by hand or by pre-paid mail to the relevant registered office.

9.7 If any provision of this Agreement is held to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the unaffected provision shall be unimpaired and remain in full force and effect.

9.8 The Customer shall be informed by Rainbow of any changes to the Services and will not be used to send and/or disclosed other than in accordance with the Privacy Policy. Rainbow may record and/or monitor telephone calls made to Rainbow for training or customer service purposes.

9.9 If third party rights are excluded and no third party shall have any right to enforce this Agreement. This shall not apply to members of Rainbow's Group from time to time who shall, subject to Rainbow's consent, have the right to enforce this Agreement as if they were Rainbow. Any rights of a third party to enforce this Agreement may be varied and/or extinguished by Agreement between the parties to this Agreement without the consent of any such third party.

9.10 In the event of a dispute arising between the Customer and Rainbow in respect of this Agreement and/or the Services, each party shall in the first instance promptly bring the dispute to the attention of the relevant parties. In respect of the Customer the relevant party will be the purchasing manager and in respect of Rainbow the relevant party will be the account manager responsible for the Customer's account with Rainbow.

9.11 If any dispute referred to the relevant parties under clause 9.10 has not been resolved within 5 Business Days of the date of the referral under clause 9.10 then the parties will refer to the Customer's and Rainbow's Financial Directors respectively.

9.12 This Agreement is governed by the law of Northern Ireland and the parties agree to submit disputes in connection with this Agreement to the exclusive jurisdiction of the Courts of Northern Ireland.

10. SECURITY

10.1 The Customer is responsible for the security of its equipment and the confidentiality of any and all security details and must take all necessary steps to ensure the same are kept confidential, secure and not available to any unauthorised persons.

10.2 Rainbow does not guarantee the security of the Services against unauthorised or unlawful access or use.

10.3 Rainbow shall not be responsible for any third party activities in relation to use of the Services, including any fraudulent and/or criminal activities, and/or unauthorised access or use of the Equipment, the Customer Equipment and/or the System, and any costs arising from such activities shall be the responsibility of the Customer.