

# General Terms and Conditions



1. **Scope and Overview of the Agreement.** The Agreement consists of an applicable Service Schedule, the General Terms, the Service Order, and the Addendum (if any), to the exclusion of any purchase order, confirmation, terms and conditions or other document issued or provided by Customer.
2. **Definitions.** In the Agreement the following terms and phrases will have the following meanings:
  - 2.1. **"Addendum"** means a specific set of amendments to Orixcom's General Terms and Conditions in a form prepared by Orixcom by which Supplier and Customer agree to a set of standard amendments to the Orixcom General Terms and Conditions. An Addendum may pertain to one or more Agreements.
  - 2.2. **"Affiliate"** means any entity or person Controlled by, Controlling, or under common Control with, a Party.
  - 2.3. **"Agreement"** means the aggregate of an applicable Service Schedule, the General Terms, a Service Order, and an Addendum (if any), subject to the order of precedent described in clause 3.
  - 2.4. **"Authorisations"** means any and all permissions, rights, licences, licence conditions, consents, approvals, authorities, registrations, filings, agreements, notices of non-objection, notarisations, certificates, exemptions and any and all analogous authorisations which may be required from time to time by law or by any regulator or other competent authority or government agency.
  - 2.5. **"Business Day"** shall mean every day excluding Saturdays, Sundays, and any national holidays in the United Arab Emirates.
  - 2.6. **"Cause"** is defined as a breach by the other Party of any material provision of the Agreement.
  - 2.7. **"Charges"** means all fees and charges payable by Customer to Orixcom including monthly recurring and usage based, one time, set up, equipment or other charges as specified in the Service Order (or elsewhere in writing) and may include third party charges early termination Charges and Late Payment Charges.
  - 2.8. **"Confidential Information"** is defined as information (in whatever form) (i) designated as confidential; (ii) relating to the Agreement or to potential changes to the Agreement; (iii) relating to the Party's business affairs, networks, customers, products, developments, trade secrets, know-how or personnel (including in the case of Customer, Customer Data); or (iv) received or discovered during the term by a Party (including through an Affiliate or other agent) which should reasonably have been understood as confidential to the Party (or one of its Affiliates or subcontractors), either because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Confidential Information does not include information that: (a) is in the possession of the receiving Party free of any obligation of confidentiality at the time of its disclosure; (b) is or becomes publicly known other than by a breach of this provision; (c) is received without restriction from a third party free to disclose it; or (d) is developed independently by the receiving Party without reference to the Confidential Information.
  - 2.9. **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity whether through the ownership of voting securities, by contract, or otherwise.
  - 2.10. **"Customer"** means the Party identified as Customer on the Service Order.
  - 2.11. **"Customer Data"** means stored data provided to Orixcom, data transmissions (including IP addresses, date, time and duration of data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of Customer, its employees or authorised End Users of the Service, and other data provided to or obtained by Orixcom, its Orixcom Affiliates and their respective agents in connection with the provision of Service.
  - 2.12. **"Customer Equipment"** means equipment, systems, cabling and facilities provided by Customer and used in conjunction with the Service Equipment (as applicable) in order to obtain and/or use the Service.
  - 2.13. **"CPE" or "Customer Premises Equipment" or "Service Equipment"** means any equipment, systems, cabling and facilities (excluding the networks of Orixcom and Orixcom's Provisioning Entities) provided by or on behalf of Orixcom at the Customer Site to make the Service available to Customer. Ownership of the Service Equipment does not pass to Customer from Orixcom absent an express provision in a Service Order.
  - 2.14. **"Customer Site"** means the property or building specified in the Service Order to which the Service will be provided and may include, if the context requires, a Provisioning Entity, third party, End User or Orixcom premises at which Service Equipment and/or Customer Equipment is co-located.
  - 2.15. **"Effective Date"** means the date upon which Orixcom has accepted a Service Order as more fully described in clause 4.2.
  - 2.16. **"Emergency Works"** means works undertaken by Orixcom or its Provisioning Entities to repair a fault in the Service, equipment or facilities as a result of any unplanned outage, to prevent a potential Network or Service outage, or to repair a chronic customer impacting problem that would result in unavailability of the service if the work are not undertaken or for any other reason beyond Orixcom's reasonable control.
  - 2.17. **"End Users"** means any of Customer's employees, agents, 3rd party contractors, and Affiliates whom Customer is allowing use of, access to, or enjoyment of a Service. If Customer has resold a Service then

## General Terms and Conditions



Customer's End Users include all third parties using or accessing a Service even if unrelated to Customer and/or under no direct contractual relationship with Customer.

- 2.18. **"Force Majeure Event"** means an event beyond the reasonable control of the Party affected, including, but not limited to, acts of God, embargoes, governmental restrictions, strikes, riots, insurrection, wars or other military action, civil disorders, acts of terrorism, rebellion, fires, explosions, accidents, floods, vandalism, cable cuts and sabotage. Market conditions or fluctuations are not a Force Majeure Event.
- 2.19. **"General Terms"** means the version of the Orixcom General Terms and Conditions identified in an applicable Addendum or Service-Specific Special Terms, or if there is no such mention, the version of the Orixcom General Terms published on Orixcom's website on the day that Customer submits the Service Order to Orixcom (which is applicable for the Initial Service Term), or the version of the Orixcom General Terms published on Orixcom's website on the day that the Term automatically renews as described in clause 5.2 (which is then applicable for that renewal term).
- 2.20. **"Initial Service Term"** or **"Initial Term"** means the initial period starting on the Service Commencement Date during which the Service will be provided to Customer as stated in the Service Order or, if not stated, the period starting on the Service Commencement Date and ending on the day before the first anniversary of the Service Commencement Date.
- 2.21. **"Installation Charge"** or **"Non-Recurring Charge"** or **"NRC"** means the one-off Charges payable by the Customer to Orixcom for installation of the Service and for the commissioning and configuration of the Service as specified in a Service Order.
- 2.22. **"Late Payment Charges"** or **"LPC"** shall have the meaning described in clause 9.2.
- 2.23. **"Local Access"** means the connection between the CPE and the Network and may be provided by Orixcom or a Provisioning Entity.
- 2.24. **"Network"** means any network or system, cable, transmission facility owned, leased, operated or managed by or on behalf of Orixcom or an Orixcom Provisioning Entity.
- 2.25. **"Orixcom"** or **"Supplier"** means the Orixcom legal entity identified on the Service Order, and will where the context requires, include Provisioning Entities.
- 2.26. **"Orixcom Indemnitees"** or **"Supplier Indemnitees"** means Orixcom, its Affiliates and Provisioning Entities and their respective, employees, officers, agents and subcontractors.
- 2.27. **"Party"** and **"Parties"** means individually as a Party: Customer and Orixcom as the context requires, or including Customer and Orixcom collectively: Parties.
- 2.28. **"Planned Outage"** means any routine maintenance or upgrade work to be performed by Orixcom or its Provisioning Entities that may affect the availability of a Service, notified to the Customer with at least 5 days prior written notice.
- 2.29. **"Provisioning Entity"** means the entity providing or assisting in the provision of the Service to Customer and may include any Orixcom Affiliate or sub-contractor, including licensed carriers or other service providers.
- 2.30. **"Reseller"** means any contractual intermediary between Customer and End Users.
- 2.31. **"Security"** means a cash deposit, director's guarantee, parent company guarantee, credit card payment, direct debit guarantee or bank guarantee or any combination of these as determined by Orixcom.
- 2.32. **"Service"** means the specific service (and Service Equipment in certain cases) identified in a Service Order to be supplied by Orixcom or a Provisioning Entity to Customer.
- 2.33. **"Service Commencement Date"** means, (a) with respect to internet, data and on-network services, the date the hub and data circuits are prepared to route packets to the Customer Site; and (b) with regard to other Services, the earliest of (i) the date stated in the Service Order as being the Service Commencement Date, (ii) the date that Orixcom or its Provisioning Entity dispatches notice to Customer or Customer's representative that the Service is ready for use (commonly known as an "RFS" or "Ready For Service" notice); or (iii) the date Customer begins actual use of the Service. Notwithstanding the foregoing, if within 5 Business Days of the Service Commencement Date Customer gives written notice to Orixcom that the Service is materially non-compliant with the Service Schedule, and Orixcom confirms same, then the Service Commencement Date will retroactively be adjusted to be the date that Orixcom corrects the material non-compliance and notifies the Customer that the material non-compliance has been corrected.
- 2.34. **"Service Level Agreement"** or **"SLA"** means the SLA, if any, applicable to the Service. SLAs are contained in the Service Schedule or may be provided on-line on an Orixcom or Provisioning Entity website.
- 2.35. **"Service Control Panel"** means the Orixcom-provided web control panel wherein Customer may provision, connect, configure and activate the various components of certain Orixcom Services.
- 2.36. **"Service Order"** means the Orixcom or Orixcom-ratified documents by which the Service may be ordered, naming the specific Service and Customer-specific details. Service Orders may take the form of a document signed by Customer or an on-line 'click-through' form on an Orixcom website or the website of Orixcom's Provisioning Entity.

## General Terms and Conditions



- 2.37. **"Service Schedule"** means the Orixcom-provided description of the Service to be provided. A Service Schedule may take the form of an on-line document on the Orixcom website or may be provided to Customer as a separate document. Service-specific terms and conditions may appear in the Service Schedule or in the Service Order.
- 2.38. **"Service-Specific Special Term"** means terms and conditions appearing in a Service Order under the heading *"Service-Specific Special Terms"*. Service-Specific Special Terms are prepared and inserted by Supplier on a Service Order-specific basis pursuant to negotiations with Customer and apply only to the Service Order where they appear.
- 2.39. **"Tax/Taxes"** means all taxes (whether existing or new), tax-like charges, duties and tax-related and other surcharges of whatever nature imposed on the purchase, sale, supply or consumption of a Service by any taxing or government authority including, without limitation, a value added tax (VAT) or withholding taxes, excluding any tax assessments applicable to Orixcom's income.
- 2.40. **"Term"** means the period from the Service's Service Commencement Date until the Service is terminated in accordance with this Agreement and includes the Initial Service Term together with any renewal or extension period.
3. **Precedence.** If there is a conflict between the documents incorporated in this Agreement, then the documents will be given the following order of priority (with paragraph 3.1 being the highest in the order of priority) such that the conflicting provision in the document lower in the order of priority will be read down or, if necessary, severed to the extent necessary to resolve the conflict:
- 3.1. The Addendum (if any);
  - 3.2. The Service Order, inclusive of any Service-Specific Special Terms appearing therein;
  - 3.3. The General Terms; then
  - 3.4. The terms of each relevant Service Schedule.
4. **Service Orders and Delivery of Service**
- 4.1. **Ordering Services.** To order the Service, Customer will complete and submit a Service Order to Orixcom. Submission via an on-line dialog is available for some Services. Customer warrants the accuracy of the Customer-provided details contained in the Service Order.
- 4.2. **Acceptance of Service Orders by Orixcom.** Orixcom shall be deemed to have accepted a Service Order, thus creating a binding Agreement of the Parties and establishing an Effective Date upon the earlier of (i) written notice by Orixcom to Customer of acceptance of the Service Order, or (ii) Orixcom provisioning the service and issuing a Service Commencement Date notification.
- Orixcom reserves the right to not to accept any submitted Service Order.
- 4.3. **Concurrent Services.** Each accepted Service Order constitutes an independent contract for the provision of Services. The Term of multiple Services may run concurrently, but shall not be co-terminus except where expressly provided for in writing in an Addendum or in each of the Service Orders.
- 4.4. **Acceptance of Service by Customer.** Except as otherwise expressly stated in the Service Order or an Addendum, Customer is deemed to have accepted a Service upon the Service Commencement Date.
- 4.5. **Use of Provisioning Entities.** Without releasing Orixcom from any of its obligations, Orixcom may use the services of one or more Provisioning Entities in connection with the performance of its obligations under the Agreement. Orixcom shall be responsible for the acts or omission of Orixcom's Provisioning Entities in so far as they relate to provision of a Service under this Agreement.
- 4.6. **Service Schedules and Service Level Agreements.**
- 4.6.1. **Service Schedules.** If a Service Schedule is attached to a Service order when submitted, then that version of the Service Schedule shall be incorporated into the Agreement. If no Service Schedule is attached to the Service Order when submitted, then Supplier's then-current Service Schedule shall be incorporated into the Agreement.
- 4.6.2. **Service Level Agreements.** If applicable, the SLA appears in the Service Schedule and sets forth Customer's sole remedies for any claim relating to a failure of the Service or the Service failing to meet a guarantee set forth in the SLA.
- 4.6.3. **Amendment of Service Schedules and SLAs.** Orixcom reserves the right to amend Service Schedules and SLAs from time to time during the Term effective 30 days after Supplier posts the revised Service Schedule on Supplier's website or Supplier otherwise provides the revised Service Schedule to Customer in writing, whichever occurs earlier. Customer may within this 30-day period object in writing to the revisions. Absent timely objection Customer shall be deemed to have accepted the revision and the revised Service Schedule shall be incorporated into the Agreement. In the event that Customer does make a timely objection to a Service Schedule revision Orixcom shall within 30 days from receipt of the notice of objection either (i) offer Customer a bespoke Service Schedule, (ii) agree to provide the Service for the remainder of the then-extant Term under the prior version of the Service Schedule, or (iii) allow the Customer to terminate the Service for Customer's convenience without paying early termination Charges; the choice being at Supplier's discretion.

- 4.7. **Resale.** Unless the Service is a wholesale service or otherwise specified in the Service Order, Customer is not permitted to and will not resell, charge, transfer or otherwise dispose of the Service (or any part thereof) to any third party other than an Affiliate.
- 4.8. **Delivery of Service.** Orixcom will determine the most appropriate means of providing the Service including using a Provisioning Entity to deliver all or part of the Service and the method, technology and route of delivery of the Service to Customer.
- 4.9. **Monitoring.** Customer acknowledges that subject to applicable law Orixcom may monitor Customer's use of the Service for the maintenance of the Network or Customer's Service. Conversely, Orixcom is not obliged to monitor Customer's use of the Service.
5. **Term of Service Orders and Termination.**
  - 5.1. **Termination of Service by Written Notice.** Absent a different termination notice period appearing in an Addendum, in a Service-Specific Special Term, or in a Service Schedule, which then shall govern, **Customer may terminate** the Service during the Initial Term on 45 days written notice subject to the financial consequences of an early termination of Service as described in clause 5.6. Subject to a different termination notice period appearing in an Addendum, in a Service-Specific Special Term, or in a Service Schedule, which then shall govern, **either Party may terminate** the Service during a renewal Term on 45 days written notice.
  - 5.2. **Term Renewal.** Absent a different renewal period appearing in an Addendum, a Service renewal Service Order or Amendment, a Service-Specific Special Term, or in a Service Schedule, which then shall govern, the Term shall automatically and without notice periodically renew for successive 45-day periods until a Service is terminated by written notice as described in clause 5.1.
  - 5.3. *Intentionally Deleted.*
  - 5.4. **Termination for Cause.** Either Party may terminate the Service for Cause if a Party fails to remedy within 10 Business Days of having been notified in writing of the Cause, or immediately by notice if the other Party has ceased to do business, become insolvent, entered receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, or undergoes or is subject to any analogous acts or proceedings under applicable law.
  - 5.5. **Early Termination of Service by Orixcom.** Notwithstanding any other provision of the Agreement, Orixcom may terminate the Service immediately on notice to Customer if: (a) a suspension made pursuant to clause 11.1 for a reason attributable to or within the control of Customer continues for a period of more than 10 Business Days; or (b) Customer is past due on any invoice for the Service for more than 30 days (excluding disputed amounts).
- 5.6. **Early Termination Charges.** If a Service is terminated prior to completion of the then-extant Term (being either the Initial Term or a renewal Term per clause 5.2) (i) either by Customer for any reason other than pursuant to clauses 4.6.3 (termination pursuant to the Service Schedule / SLA revision process) 5.4 (termination for Cause) or 16.8.3 (termination for extended Force Majeure conditions), or (ii) by Orixcom pursuant to clauses 5.4 (termination for Cause) or 5.5 (termination following suspension), Customer must pay Orixcom 100% of the monthly Charges for the terminated Service for each month remaining in the then-extant Term, plus a pro rata amount for each part month commencing from the effective date of termination.
6. **Obligations of the Parties in relation to the Service**
  - 6.1. **Orixcom's provision of the Service.** Orixcom will provide the Service in conformation with the Service Schedule, and Orixcom will use the reasonable care and skill expected of a competent information technology and telecommunications services provider.
  - 6.2. **Compliance with Law and Regulation.** Both Parties shall comply with applicable law and regulation.
  - 6.3. **Access.** Where Orixcom requires access to a Customer Site in order to provide a Service, Customer shall grant or shall procure the grant to Orixcom, at no cost to Orixcom, such rights of access to each Customer Site (inclusive of Customer's End User sites where applicable), including any necessary licenses, waivers or consents and 'No Objection Certificates' as Orixcom or local service providers may require.
  - 6.4. **Information and Coordination Assistance.** Customer agrees to assist Orixcom with such information and coordination as Orixcom may reasonably require so that Orixcom may perform its obligations or exercise of its rights under the Agreement.
  - 6.5. **Service Equipment and Service installation.** If Service Equipment is required for the Service, Customer agrees that it will: (a) use the Service Equipment only for the purpose of receiving the Service and in accordance with reasonable instructions of Orixcom from time to time and subject to any software license that may be provided with the Service Equipment; (b) not move, modify, relocate, or in any way interfere with the Service Equipment (or any words or labels on the Service Equipment); (c) insure and keep insured all Service Equipment installed at each Customer Site against theft and damage; (d) not create or allow any charges, liens, pledges or other encumbrances to be created over the Service Equipment; (e) permit Orixcom to inspect, test, maintain and replace the Service Equipment at all reasonable times; (e) at Customer's expense comply with the reasonable instructions of Orixcom in relation to the configuration or installation of Customer Equipment used with the Service; and (f) upon termination of the Service, allow Orixcom access to each Customer Site to remove the Service Equipment. Customer shall be responsible for any damage to Service



Equipment that is caused by the act or omission of Customer or Customer's agents, employees, contractors or suppliers. Orixcom is not obliged to restore that Customer Site to the same physical state as prior to the Service being installed.

- 6.6. **Local Access.** Local Access is provided to Customer subject to the third party provider's terms and conditions, including any installation or operation permits, permissions or 'No Objection Certificate' requirements, minimum service terms and cancellation fees. Orixcom may require Customer to sign the Local Access service documentation and/or appoint Orixcom as its agent to do same and/or to receive Local Access service correspondence on Customer's behalf. Unless otherwise indicated on the Service Order, Orixcom does not proactively monitor or manage Local Access.
  - 6.7. **Customer Responsibilities in Relation to Resale.** Customer is solely responsible for obtaining and maintaining any Authorisations required for Customer's resale of the Service to Customer's End Users or Resellers. In the case of Customer reselling a Service to a Reseller Customer must procure that Customer's Reseller obtain and maintain any Authorisations required for Reseller's resale of the Service to End Users.
  - 6.8. **Customer Responsibilities In Relation To Use.** As between Supplier and Customer, Customer is solely responsible for: (i) Customer and/or Customer's End Users use of the Service, including any data sent, stored or received using the Service; and (ii) Customer's relationship with Customer's End Users and Resellers and serving as sole point of contact for Customer's Resellers and End Users.
  - 6.9. **Indemnification by Customer.** The Customer will on demand indemnify Orixcom and pay the Orixcom Indemnities' expenses and costs, including costs of investigation, court costs, and reasonable attorneys' fees and expenses, and release Orixcom and the Orixcom Indemnities from claims, proceedings instituted, demands or actions taken by any third parties (including Customer's Resellers or End Users), regulators or government agencies, relating to (i) Customer's resale of the Service to Customer's Resellers or End Users, and (ii) the use of the Service by the Customer or Customer's End Users in violation of applicable law, regulation or decree, or contributes to the commission of a crime, tort, fraud or other unlawful activity. This clause 6.9 will survive termination of this Agreement, or any part of it.
7. **Charges and Payment**
    - 7.1. **Charges, Generally.** The Charges for a Service will be specified in the Service Order, and fixed-amount Charges will be valid for the Initial Term of that Service absent a and express provision to the contrary appearing in an Addendum, a Service-Specific Special Term, or in a Service Schedule, which then shall govern. Orixcom may vary its Charges at any time after expiration of the Initial Term upon 30 days prior written notice to Customer.
    - 7.2. **Certain Third Party Charges.** When an element of the Service is rendered by a third party service provider and Orixcom does not have a "one-stop" or reseller billing arrangement with said service provider, Customer agrees to pay said third party charges directly to the third party service provider as instructed by Orixcom. Orixcom agrees to use commercially reasonable effort to provide advance written notice to Customer of such third party charges.
  - 7.3. **Non-Recurring Charges.** Unless otherwise stated in the Service Order or Addendum, Orixcom will begin provisioning the Service only after Non-Recurring Charges have been paid.
  - 7.4. **Fixed Charges.** Fixed-amount Charges are to be paid monthly in advance of each month of Service.
  - 7.5. **Usage-Based And Variable Charges.** Unless otherwise stated in an applicable Addendum, the Service Order or the Service Schedule, usage-based and variable Charges are payable in arrears, with payment due 30 days after Orixcom's notice or invoicing to Customer.
  - 7.6. **Method Of Making Payment.** Customer is obliged to remit payment via electronic transfer to the Orixcom bank account as stated on the notice of Charges or invoice, provided that Orixcom may require online payment for some Services (e.g., certain of Orixcom's cloud-based Services).
  - 7.7. **Delayed Invoicing.** Orixcom may invoice or provide notice of Charges to Customer up to 6 months after the date a Charge accrues, provided that for cases involving fraud or third party charges, Charges may be invoiced at any time within a reasonable period after Orixcom becomes aware of such Charges.
  - 7.8. **Currency And Currency Conversion.** All Charge notices and invoices will be denominated in the currency appearing on the Service Order. If a currency conversion is necessary the conversion rate shall be as notified by Orixcom to Customer from time to time.
  - 7.9. **Bank Charges and Offsets.** The Customer must pay all undisputed amounts invoiced without set-off, counterclaim or deductions, free and clear of any withholding or deduction.
  - 7.10. **Payment by Customer's Affiliate.** Subject to Orixcom's agreement, invoices may be sent to, and Charges may be paid by, Customer Affiliates, but in such case Customer shall remain responsible for payment of such Charges whether in receipt of invoices or not.
8. **Disputed Charges.**
    - 8.1. Should the Customer dispute a Charge it must notify Orixcom of the disputed amount no later than 30 days after Customer has actual notice of the Charge. If the Customer does not notify Orixcom of any objection within this period, the Charge shall be deemed to have been accepted by the Customer unless Customer can prove that they never received notice of the Charge. Any Charge dispute notification to Orixcom must clearly identify the disputed Charge, the specific objection and include supporting data. The undisputed portions of a Charge remain due and payable.

## General Terms and Conditions



8.2. The Parties agree to promptly investigate such disputes and use reasonable endeavours to resolve same.

### 9. Taxes, Remittance Fees and Interest.

9.1. All Charges are exclusive of all Taxes, remittance fees, transmitting bank's charges, intermediary bank's charges, receiving bank charges, etc., unless otherwise specified in a Service Order. All such Taxes, fees and charges are the responsibility of and are to be borne by the Customer. If any withholding is required by relevant government authorities the Customer shall be obliged to gross up the amount remitted such that Orixcom will receive full payment as stated on Orixcom's invoice. In the event that a grossing up mechanism is impermissible under the laws governing Customer's legal entity Supplier may levy a surcharge to account for the withholding and invoice Customer for same.

9.2. Orixcom may charge for Customer's late payment of Charges as follows:

$$\text{LPC} = (\text{A} \times \text{Interest Rate} \times (\# \text{ of days late}/363)) + \text{CRC}$$

Where:

LPC = Late Payment Charge

A = Amount in Arrears

Interest Rate =

European Central Bank base re-financing rate on the first of January plus 8% (for amounts calculated from 1 January to 30 June); or European Central Bank base re-financing rate on 1 July plus 8% (for amounts calculated from 1 July to 31 December)

CRC (compensation for recovery costs) =

The equivalent of 40 Euro where the amount in arrears is up to 999.99 Euro; the equivalent of 70 Euro where the amount in arrears is between 1000 Euro and 9,999.99 Euro; and the equivalent of 100 Euro where the amount in arrears is 10,000 Euro or more.

(See *EU Directive 2011/7/EU On Combatting Late Payment in Commercial Transactions*; and *European Communities (Late Payment in Commercial Transactions) Regulations 2012 - SI 580 of 2012*.)

### 10. Security.

10.1. Orixcom may require the Customer to provide Security for Charges due under this Agreement as a condition of acceptance of a Service Order by Orixcom. Orixcom also may require the Customer to provide Security for Charges due under this Agreement as a condition of continued receipt of the Service if Customer has failed to pay two consecutive undisputed invoices by their respective due dates or has failed to pay three undisputed invoices in any 12-month period by their respective due dates or if Orixcom reasonably concludes from Customer's

communication with Orixcom that Customer intends to breach any of Customer's Initial Service Term commitment(s).

10.2. Orixcom may offset against the Security any amounts due under this Agreement that are not paid by the Customer when due. If Orixcom applies any or all of the Security against any Charge, the Customer must reinstate the Security within 5 Business Days after written notice from Orixcom to Customer.

### 11. Service Suspension.

11.1. **Grounds for Suspension.** Orixcom may, without terminating this Agreement and without incurring any liability, immediately suspend all or part of the Services it provides to Customer—

11.1.1. If there is a Planned Outage, for the duration of the Planned Outage; or Orixcom needs to carry out Emergency Works, for the duration of the Emergency Works;

11.1.2. If any undisputed invoiced Charges are past due;

11.1.3. If Customer has ceased to do business, become insolvent, entered receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, or undergoes or is subject to any analogous acts or proceedings under foreign law; and

11.1.4. If Orixcom is obliged to do so to comply with a ruling, direction, directive, determination, decision/interim decision, order, instruction or request of a regulator, government agency, emergency services organisation or other competent authority; or Orixcom has reasonable grounds to consider that continued use of the Service by Customer or End Users violates applicable law; or suspension of the Service is necessary to prevent or protect against fraud, or otherwise protect persons or property.

11.2. **Non-Exclusive Remedy.** Suspension of a Service under this clause does not exclude Orixcom's right to terminate this Agreement in respect of any event resulting in the suspension of the Services or any other event.

11.3. **Resumption of Service.** If Orixcom exercises its right to suspend the Service pursuant to clause 11.1 Orixcom will use reasonable endeavours to resume the Service as soon as practicable after the reason for suspension no longer exists (subject to the exercise of any termination right on the part of Orixcom).

11.4. **Suspension Charge.** If the Service (or part thereof) is suspended as a consequence of the breach, fault, act or omission of Customer or Customer's End User(s), Orixcom may charge Customer a reasonable Charge for suspension and/or resumption of the Service.

## 12. Limitations of Liability

- 12.1. Except for liabilities imposed by clause 6.9, the maximum liability of either Party for any loss or claim arising out of or related to a Service or this Agreement, whether for breach of contract, in tort (including negligence), for breach of statutory duty, or otherwise, will be limited to the lesser of (a) direct damages proven by the moving Party or (b) 12 months of Charges for the Service(s) giving rise to, or associated with, the loss or claim.
- 12.2. Notwithstanding any other clause of this Agreement, neither Party will be liable in contract or for tort (including negligence) for breach of statutory duty or in any other way for--
  - 12.2.1. any economic loss, including any loss of goodwill, reputation, revenues, profits, contracts, business, or anticipated savings, or
  - 12.2.2. any special, punitive, exemplary, indirect, consequential or incidental losses, or
  - 12.2.3. any loss of Customer Data,regardless of whether such losses were within the contemplation of either of the Parties as of the date Customer submitted the Service Order or thereafter.
- 12.3. Notwithstanding any other clause of this Agreement, neither Party excludes liability for death, personal injury or fraud.
- 12.4. The limitations of liability set out in this clause 12 do not apply to a Customer's obligation to pay Charges.
- 12.5. No cause of action, under any theory which accrued more than one year prior to the institution of a legal proceeding alleging such cause of action may be asserted by either Party against the other, to the extent permitted by law.
- 12.6. The liability of Orixcom with respect to the Service also may be limited pursuant to provisions contained in the Service Schedule.
- 12.7. Customer and Orixcom each acknowledge and accept the reasonableness of the disclaimers, exclusions, and limitations of liability set forth in this clause 12 and the Agreement as a whole.

## 13. Representations and Warranties

- 13.1. Each Party represents, warrants and undertakes to the other that it is a corporation or juridical entity properly incorporated or registered and is in good standing under the laws of its jurisdiction of incorporation or registration, and it has taken all necessary action to authorise the signing, delivery and performance of the Agreement in accordance with its terms.
- 13.2. Customer represents and warrants that the individual signing the Service Order or submitting the Service Order through the on-line dialog has the requisite authority to bind Customer in contract.

- 13.3. Except as expressly included in the Agreement all warranties, representations and agreements, whether oral or in writing and whether express or implied or imposed by applicable law, are hereby expressly excluded to the maximum extent permitted by applicable law.

## 14. Confidentiality, Customer Data & Privacy

- 14.1. **Confidentiality.** Each Party promises that during the Term and for 3 years after, it will use the other Party's Confidential Information only for purposes of the Agreement, not disclose it to third parties except as provided below, and protect it from disclosure using the same degree of care it uses for its own Confidential Information (but no less than a reasonable degree of care). A Party may disclose the other Party's Confidential Information only (a) to its employees, agents and subcontractors (including professional advisors and auditors), and to those of its Affiliates, who have a need to know for purposes of the Agreement and who are bound to protect it from unauthorized use and disclosure under the terms of a written agreement, or (b) pursuant to law, regulation or court order. Confidential Information remains the property of the disclosing Party and, upon request of the disclosing Party, must be returned or destroyed when the Agreement ends.

- 14.2. **Customer Data and Privacy.** Customer Data shall be deemed Customer's Confidential Information. Customer shall obtain natural person and legal entity consents necessary for the transfer of Customer Data to Orixcom and Orixcom's Affiliates and/or Provisioning Entities for the purpose of provisioning the Service.

15. **Intellectual Property Indemnification.** The Parties agree to indemnify and keep indemnified the other party from and against all losses suffered by, incurred by or awarded to the other party arising out of or in connection with a party's violation, misuse or misappropriation of third party trademarks, copyrights, trade secrets, or other proprietary rights or intellectual property rights.

## 16. Miscellaneous

- 16.1. **Records.** Each Party agrees to maintain records reasonably necessary to substantiate all financial, operational and billing data for a period of 2 years.
- 16.2. **Assignments.** Neither Party may assign the Agreement without the written consent of the other Party, except that (a) subject to applicable law and regulation, Orixcom may assign any and all of its rights and obligations hereunder (i) to any Affiliate or Provisioning Entity, (ii) pursuant to any sale or transfer of substantially all the assets or business of Orixcom, or (iii) pursuant to any financing, merger, or reorganisation of Orixcom, and (b) subject to applicable law and regulation, Customer may assign any and all of its rights and obligations hereunder to any Affiliate that satisfies the standard credit requirements of Orixcom.
- 16.3. **Amendments.** This Agreement may only be varied by written amendment by duly authorised representatives of the Parties.

- 16.4. **Waiver.** No waiver by either Party of any provision in this Agreement will be binding unless expressly confirmed by written variation in accordance with clause 16.3. Further, any such waiver will relate only to such particular matter, non-compliance or breach to which it is expressly stated to relate, and will not apply to any subsequent or other matter, non-compliance or breach.
- 16.5. **Notices.** Any notice required or permitted to be given in writing under the Agreement (and for the avoidance of doubt unless otherwise specified all notices must be in writing) will be in English, and sent by an individual with authority to act for and bind that Party in contract, via email, facsimile, courier, hand delivery or ordinary, certified or registered mail, to a Party at the addresses set out in the Service Order in the case of Customer, and in the case of Orixcom:
- General Counsel  
Orixcom Limited  
22, Northumberland Road  
Ballsbridge,  
Dublin 4, Ireland
- With a copy via email to [finance@orixcom.com](mailto:finance@orixcom.com)
- 16.6. A Party may from time to time designate another address or addresses by notice to the other Party. Such notice will be deemed effective: (a) the day after being sent, if by email; (b) when electronic confirmation is received, if sent by facsimile; (c) as of the delivery date, if sent by courier; (d) when received, if hand delivered; or (e) 15 days after being sent, if sent via ordinary, certified or registered mail.
- 16.7. **Survival.** Certain provisions of the Agreement are intended to have effect after the expiration or termination of the Agreement including but not limited to clause 2 (Definitions), sub-clause 2.40 (Precedence), sub-clause 6.9 (Indemnification by Customer), clause 7 (Charges and Payment), clause 8 (Disputed Invoices), clause 9 (Taxes and Interest), sub-clause 10.2 (offsets), clause 12 (Limitations of Liability), clause 14 (Confidentiality, Customer Data and Privacy), sub-clause 16.4 (waiver), sub-clause 16.8.4 (Consequences of Termination), sub-clause 16.9 (Severability), sub-clause 16.10 (No Publicity), clause 17 (Governing Law), clause 18 (Mediation and Arbitration), and this sub-clause 16.7 will continue to bind, and to be enforceable by, the Parties to the Agreement.
- 16.8. **Force Majeure**
- 16.8.1. **General.** Neither Party will be liable for any failure to perform or for breach of this Agreement caused by a Force Majeure Event, provided that Customer will not be relieved of its obligations to make any payments for Services rendered under this Agreement. Both Parties agree to use reasonable commercial endeavours to minimize the effects of a Force Majeure Event
- 16.8.2. **Notices.** A Party claiming that a Force Majeure Event has impacted its ability to perform this Agreement must immediately inform the other Party in writing of the occurrence of the Force Majeure Event, and the estimated extent and duration of such inability to perform its obligations.
- 16.8.3. **Termination Right.** If the affected Party is prevented by the Force Majeure Event from performing its obligations under the Agreement for 30 days or such other period as the Parties agree in writing, then either Party may in its sole discretion immediately terminate the Agreement by giving notice of termination to the other Party.
- 16.8.4. **Consequences of Termination.** Where the Agreement is terminated by a Party in accordance with sub-clause 16.8.3:
- 16.8.4.1. Orixcom shall be entitled to payment of: (a) all accrued but unpaid Charges incurred through the date of such termination; together with (b) any documented termination charges or other costs or expenses incurred by Orixcom for the cancellation of the Service in relation to 3<sup>rd</sup> party suppliers or equipment provided to Orixcom in connection with the Service; and
- 16.8.4.2. The Parties shall otherwise bear their own costs and shall be under no further liability to perform the Agreement.
- 16.9. **Severability.** If any provision of the Agreement is held by a court or any government agency or authority to be invalid, void, or unenforceable, the remainder of the Agreement will nevertheless remain legal, valid and enforceable.
- 16.10. **Publicity.** Subject always to the other Party's trademark guidelines, and other than as an appearance on a Party's web site as part of a customer or supplier logo page, neither Party may use the other Party's name, trademarks, or trade names, or issue any press release or public statement relating to the Agreement, any Service Order, or the other Party, without the prior written consent of the other Party.
- 16.11. **Export and Import.** Customer acknowledges that the export, re-export, import and use of certain hardware, software and technical data provided hereunder may be regulated and Customer agrees to comply with applicable law and regulations.
- 16.12. **Reliance.** Customer confirms that, in agreeing to enter into the Agreement, it has not relied on any representation except as set out in an Addendum, these General Terms, the Service Schedule or the



Service Order, and Customer agrees it shall have no remedy in respect of any representation not incorporated therein.

16.13. **Intellectual Property.** Customer acknowledges that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, which are used in connection with the Service and/or Service Equipment, shall remain the sole property of Orixcom, or an Orixcom Affiliate, Provisioning Entity or supplier.

16.14. **English Language Shall Prevail.** If the Agreement is made available in a language other than English, such other version shall be for reference only. In the event of any inconsistency between the English and any other language version of the Agreement, the English version shall prevail.

17. **Governing Law.** This Agreement is governed by the laws of Republic of Ireland.

18. **Mediation and Arbitration**

18.1. In the event of a dispute arising out of or relating to this contract, including any question regarding its existence, validity or termination, the parties shall first seek

settlement of that dispute by mediation in accordance with the Mediation Rules of the Dubai International Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause.

18.2. If the dispute is not settled by mediation within 10 Business Days of the commencement of the mediation, or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Dubai International Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. The language to be used in the mediation and in the arbitration shall be English. The arbitration shall be conducted by a single arbitrator and the seat of arbitration shall be Dubai, United Arab Emirates.

19. **Entire Agreement.** The Agreement expresses the entire understanding of the Parties and replaces any and all former agreements, understandings, solicitations, offers and representations relating to Orixcom's, Orixcom's Affiliate's or Provisioning Entity's performance in connection with the Agreement and contains all the terms, conditions, understandings, representations and promises of the Parties hereto.