



Breeze Talk

TERMS & CONDITIONS



## BREEZE TALK | TERMS & CONDITIONS

### Preamble

IMAGINE RESERVES THE RIGHT TO REVISE THE TERMS OF THIS AGREEMENT AT ANYTIME. IMAGINE SHALL INDICATE ON ITS WEBSITE THE DATE OF THE LAST REVISION OF THE TERMS OF THIS AGREEMENT. SUCH CHANGES WILL TAKE IMMEDIATE EFFECT WHEN THEY ARE POSTED ON THIS WEBSITE, OR UPON SUCH DATE AS MAY BE REASONABLY NOTIFIED. IMAGINE RECOMMENDS THAT THE SUBSCRIBER PRINTS OFF A COPY OF THESE TERMS AND CONDITIONS AND PRIVACY STATEMENT FOR YOUR OWN RECORDS. THE PARTIES AGREE THAT THE FACT THAT THIS AGREEMENT MAY BE STORED OR EXCHANGED IN ELECTRONIC FORM SHALL NOT AFFECT ITS VALIDITY. THE SUBSCRIBER ACKNOWLEDGES THAT IT HAS READ, UNDERSTOOD AND AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT. THE SUBSCRIBER FURTHER ACKNOWLEDGES THAT THIS AGREEMENT WAS FULLY COMPLETED AND THE PARTICULARS SET FORTH THEREIN ARE TRUE AND CORRECT.

In this Agreement, unless the context clearly indicates otherwise the following words and expressions shall have the meaning ascribed:

### DEFINITIONS

*“Acceptable Usage Policy”* means the policy specifying actions deemed unacceptable usage under this Agreement, published on <http://www.imagine.ie/> as may be amended extended or replaced by imagine from time to time and which is hereby incorporated into this Agreement by reference;

*“Agreement”* means the Customer Authorisation Form, the Talk terms and conditions and Acceptable Usage Policy (each as may be amended, extended or replaced by imagine from time to time);

*“Call Package”* means the package of call minutes and additional services defined by imagine, selected by the Subscriber and included in the Subscription;

*“Commencement Date”* means the date when the Equipment is despatched to you or the Service or any part of it is first made available to you or when you first start to use the Service, whichever is the earlier;

*“Consumer”* means a consumer as defined in the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations, 2001 – i.e. a natural person who, as regards a distance contract, is acting for purposes which are outside that person’s trade, business or profession;

*“Customer Authorisation Form”* means either the online form submitted by you to imagine requesting provision of the Equipment and the Service or if you order by telephone, a form completed by the imagine representative containing the details we require from you to enable us to provide you with the Service;

*“Equipment”* means the Analogue Terminal Adaptor (ATA) that is supplied by imagine and purchased by you when you subscribe to the Service that enables you to connect your telephone to the imagine network and access the Service and includes any other equipment to include all fittings, accessories and modifications thereto from time to time provided as an essential part of providing the Service under this Agreement;

*“Fair Use Policy”* means the policy, as described in Section 7, associated with the use of Call Packages including unlimited call minutes to end destinations defined in the Call Package;

*“imagine”, “we”, “us” or “our”* shall mean imagine Internet Services Limited;

**“Minimum Subscription Period”** means the term commencing on the Commencement Date and the date twelve months thereafter;

**“Notice Date”** means the date written notice is given to imagine by the Subscriber requesting termination of the Service;

**“Pay As You Go Credit”** means the amount paid by the Subscriber to imagine in advance for calls to be made which are not included in the Subscribers Call Package;

**“Parties”** or **“the Parties”** means the Subscriber and imagine including its assignees;

**“Premises”** means the location at which the Subscriber receives the Services and where the Equipment is located;

**“Service”** means a Voice over Internet Protocol (VoIP) based telephone service provided by imagine allowing the Subscriber to make telephone calls over the Internet via imagine’s network and it’s partner’s network, including any such additional services as may be provided by imagine or as may be subscribed to by the Subscriber.

**“Subscriber”** or **“you”** means the party to whom imagine provides the Service, and may with reference to use of the Service include any person given access to or permitted to use the Service by the Subscriber, where the interpretation or intent so requires in clauses 9, 10, 11 and similar

**“Subscription”** means the amount payable by the Subscriber to imagine for the provision of the Service with any Value Added Tax and any other taxes (at applicable rates from time to time). The subscription does not include payment for calls outside of the Subscribers Call Package. Calls outside of the Subscribers Call Package must be pre-paid by ensuring adequate Pay As You Go Credit in the Subscribers account.

**“Subscription Period”** means the entire term of this Agreement, which shall automatically continue after the Minimum Subscription Period until cancelled by either Party upon thirty days’ written notice;

#### **4 ORDERING THE EQUIPMENT AND THE SERVICE**

**4.1** This Agreement shall come into force if the Subscriber’s order is accepted by imagine. Taking payment from your credit or debit card does not indicate acceptance. Acceptance of your order takes place at the point where such offer is expressly accepted by us by dispatching the Equipment/commencing Services. You should review the copy of the email confirmation carefully to ensure that all details are correct. If you have any queries about or wish to correct any of your order details, you should contact imagine.

**4.2** If your credit card is debited before the contract is formed, and if your order is ultimately rejected, we will refund any monies debited from your credit card. If imagine accepts your order, it will provide the Services to you from the date the Service is activated. Your use of the Service shall be deemed to be an acceptance by you of these terms and conditions.

**4.3** You warrant that any information provided by you when placing your order is up-to-date, accurate in all material respects and is sufficient for us to fulfil your order; and that you have the legal capacity to enter into a contract. You are responsible for maintaining and promptly updating your account information as necessary to ensure accuracy and completeness.

**4.4** Any prices, quotations and descriptions made or referred to on the imagine website are subject to availability, do not constitute an offer and may be withdrawn or revised at any time prior to our acceptance of your order.

**4.5** While imagine will make reasonable efforts to facilitate the efficient processing of your order, your order may be rejected (without liability) if for any reason imagine is unable to process or fulfil your order.

## **5 THE SERVICES**

**5.1** imagine supplies a Service to the Subscriber, pursuant to this Agreement. imagine hereby grants the Subscriber the right to use the Service in accordance with the terms of this Agreement, and the Subscriber hereby accepts such use on the terms and conditions as set out in this Agreement.

**5.2** imagine will use its reasonable commercial efforts to maintain constant access to the Service and ensure that it is available for use by the Subscriber. However imagine does not represent or warrant that the operation of the Services will be uninterrupted, timely, secure or error free or that they will meet any of the Subscribers specific requirements. You acknowledge that imagine cannot be held responsible for accidental non-availability for outages of services, or for unforeseen interruptions or deterioration of the Service.

**5.3** If the Service provided to the Subscriber is of unacceptable quality (the quality of the Service to be determined by imagine) either Party shall be entitled to terminate this Agreement and the Subscriber shall receive a full refund of the Subscription minus charges for call minutes when the Subscriber has used more than 100 minutes of calls provided that the Service is cancelled and the Equipment is returned to imagine (in accordance with Clause 11.4) within twenty eight days of the commencement of the Service.

**5.4** Subscribers to Services that include Irish geographic PSTN numbers acknowledge that they are normally resident in the Irish geographic MNA (Minimum Numbering Area) that the number is for. It is in contravention of the Irish Communications Regulatory body directives to subscribe to a geographic PSTN number if you are not normally resident in the MNA of the Irish geographic number allocated to you.

**5.5** Subscribers to Services that include Ireland 076 VoIP numbers acknowledge that they are normally resident in Ireland or have a strong and genuine link with Ireland. It is in contravention of the Irish Communications Regulatory body directives to subscribe to an Irish 076 VoIP number if you do not meet one of these conditions.

**5.6** The Service will be provided in accordance with imagine's Code of Practice which can be found at [www.irishbroadband.ie/legal.php](http://www.irishbroadband.ie/legal.php)

## **6 EMERGENCY CALLS**

**6.1** Emergency calls to 112, 911 and 999 will be directed to the emergency services but no guarantee can be made about the reliability of these calls. Subscribers should be aware that power outages are likely to render computer equipment and internet connectivity non-functional and therefore preclude use of the Service for emergency calls.

**6.2** Due to the nature of the VoIP service it is not possible to accurately determine the exact location of the caller. Callers using the imagine Talk Service for emergency calls will need to inform the operator of their physical location.

## **7 FAIR USE POLICY**

**7.1** Call Packages including unlimited call minutes to end destinations defined in the Call Package are subject to this Fair Use Policy;

**7.2** imagine reserve the right to cancel the Service without notice if the customer is deemed to have contravened the Fair Use Policy

**7.3** Residential Users (defined as Consumers only, excluding business use):

**7.3.1** Call Packages including unlimited call minutes to end destinations defined in the Call Package are for normal residential use only;

**7.3.2** imagine considers normal residential use to include a maximum of two thousand (2,000) minutes per month in total of calls to destinations defined within the Call Package.

**7.3.3** imagine reserve the right to determine at its sole discretion what constitutes normal residential use;

## **8 SERVICE LEVELS**

**8.1** imagine will endeavour to provide the Service with a high degree of reliability, although no guarantee is made that Service will be available in the event of power or network outages or other unforeseen events beyond the control of imagine

**8.2** The quality and availability of the Service is dependent on the quality and availability of the Subscriber's broadband internet connection, and thus the quality of the voice services cannot be guaranteed in the event of power or network outages and faults or other unforeseen circumstances beyond the control of imagine.

## **9 THE EQUIPMENT**

**9.1** The subscriber is purchasing the Equipment in full when ordering the service. Title to the equipment will transfer to the Subscriber following successful delivery of the Equipment and successful receipt of payment by imagine.

**9.2** imagine will use its reasonable endeavours to deliver the Equipment to the notified location by the delivery date communicated to you. You should be aware that this delivery date is not guaranteed and imagine shall not be liable in any way to you for failure to deliver the Equipment in accordance with any delivery schedule. You shall inspect the Equipment immediately upon receipt and inform us in writing within five working days of delivery of any damage or missing items from the delivery.

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

**9.4** If the Equipment you receive is faulty you must return the faulty Equipment (in its original packaging, and with any associated equipment and documentation) to imagine within twenty eight days from the date on which such Equipment was delivered and we will either repair the Equipment or supply you with replacement Equipment, at our option and sole discretion.

**9.5** Your rights of repair or replacement of any Equipment or any part or parts thereof which are found to be defective will (except where agreed otherwise) be negated or rendered void where:

**9.5.1** the Equipment has been opened, attempted to be repaired, repaired or altered by persons other than the manufacturer or imagine; and/or

**9.5.2** defective Equipment have not been returned together with full details in writing of the alleged defects within twenty eight days from the date on which such Equipment was delivered; and/or

**9.5.3** defects are due (wholly or partially) to damage, breakage, mistreatment, improper or incorrect use or storage or maintenance or installation, or failure to observe any manufacturers' instructions or other directions issued or made available by us in connection with the delivered Equipment.

**9.6** Prior to installing the Equipment, you should read the installation instructions carefully and back up or save any data on your personal computer. Failure to do so may result in inadvertent loss or damage.

## **10 PAYMENT OF CHARGES**

**10.1** The Subscriber shall pay the Subscription to imagine monthly in advance.

**10.2** The Subscription may increase or decrease at such times and rates as may be notified to the Subscriber from time to time.

**10.3** For calls made within the Subscriber's Call Package, the duration of a call made shall be reduced by the second from the remaining balance of call time available to the Subscriber Call Package for the month

**10.4** Call package minutes remaining at the end of any month will not be carried over to the following month

**10.5** As you make calls outside of your Call Package charges are incurred per second and they are deducted from the Pay As You Go credit in your account. When all the credit in your account has been used up, you will no longer be able to make calls outside of your Call Package until you top-up your account using the on-line portal available to you ([talk.imagine.ie](http://talk.imagine.ie)). Pay As You Go credit is a pre-payment by you to imagine for calls outside your Call Package. It is not a loan to us by you, and we do not hold any such credit as trustee for you. Payments are not refundable

**10.6** A minimum call charge of €0.05 applies for each call outside of your call package

**10.7** Call charges are rounded to the nearest tenth of a cent

**10.8** The subscriber is responsible for all charges arising from the use of the Service whether or not incurred by you personally

**10.9** imagine shall be entitled and is hereby specifically authorised to, at its election, to either immediately cancel this Agreement and/or suspend the supply of Services to the Subscriber (as provided for in this Agreement), upon failure by the Subscriber to pay the Subscription or if the Subscriber is in breach of the terms of this Agreement.

**10.10** Should the Subscriber have to pay to imagine any re-connection fee or any ancillary amount, as is

not provided for in this Agreement, then such amount shall be paid directly to imagine over and above the Subscription or any other charges set out in this Agreement.

**10.11** Should a Subscriber's payment fail for any reason that is due to the Subscriber, imagine shall apply an administration charge of €5 on the following invoice for each and every event of failure.

**10.12** If the Service is disconnected by imagine following continued payment failures, or non-payment of the Subscription or ancillary charges, a reconnection charge of €25 must be paid by the Subscriber prior to reconnection to the Service.

**10.13** If the Service is not available to the Subscriber as a result of damage to the Equipment by the Subscriber, whether inadvertently or intentionally, the Subscriber shall nonetheless remain liable for the full Subscription during such period where the Service is not available to the Subscriber.

## **11 DURATION, CANCELLATION & TERMINATION**

**11.1** If the Subscriber is a Consumer who has purchased the Equipment and/or the Service over the telephone or online, that Subscriber may cancel this Agreement for any reason without penalty within the following time limits:

**11.1.1** for the Equipment, up to seven working days from the date of delivery of the Equipment; or

**11.1.2** for the Service, up to seven working days from the date of imagine accepting your Customer Authorisation Form.

**11.2** You agree that your right to cancel the Service will not apply where the use of the Service commences before the seven day cooling off period expires.

**11.3** All cancellation notices must be sent in writing to imagine, Unit 6, Sandyford Business Centre, Sandyford Industrial Estate, Dublin 18 and the notice will be treated as given on the day it was delivered to the above address if sent by post or the date the email or the fax was sent to the specified address.

**11.4** If you terminate this Agreement in accordance with clause 11.1, you undertake to discontinue use of the Equipment and immediately return the Equipment (in its original packaging, and with any associated equipment and documentation) to imagine in good working order. You will be responsible for the cost of returning the Equipment to imagine.

**11.5** If, during the Minimum Subscription Period, imagine (following seven days notice to the Subscriber) either increases the Subscription by a total of more than ten per cent or makes significant changes to the Services, the Subscriber may terminate this Agreement by giving at least thirty days notice in writing. In such circumstances, the Subscriber shall not be liable for the remainder of the Charges for the Minimum Subscription Period. If no notice of such intention to terminate is received by imagine within thirty days of the date of increase in the Subscription or change in the Service, the Subscriber will be deemed to have accepted the increase in the Subscription and/or the changes to the Service.

**11.6** The Minimum Subscription Period for this Service is twelve (12) months. The Subscriber shall have the right to terminate this Agreement after the Minimum Subscription Period by giving imagine thirty days notice in writing. The Subscriber must pay the Subscription up to the end of the minimum subscription period.

**11.7** If the Subscriber terminates this Agreement during the Minimum Subscription Period (except as set out in Clause 11.1 or Clause 11.5), the Subscriber shall be liable for the balance of the Subscription for the remainder of the Minimum Subscription Period.

**11.8** The Service is dependent on the availability of imagine's broadband network which is provided under a licence granted by ComReg, and installed on sites and towers provided under license and contract by various landlords. imagine may terminate this Agreement with immediate effect (without liability) by giving written notice if the licence to provide service, or to develop or maintain infrastructure essential for the provision of the Service, is revoked or otherwise terminated for any reason whatsoever.

**11.9** imagine may at any time, without notice to you, as it deems appropriate, immediately terminate this Agreement, or suspend the Service, recover from the Subscriber payment of all such amounts due at the date of cancellation, retain all monies already paid by the Subscriber and claim as agreed pre-estimated liquidated damages all outstanding amounts which would have been due until expiry of this Agreement and to recover all costs from the Subscriber, including legal costs where;

**11.9.1** the Subscriber is in breach of this Agreement;

**11.9.2** the Subscriber fails to pay all or any part of the Subscription or any other fees when due;

**11.9.3** the Subscriber is suspected of involvement with any fraud, scam or subterfuge which has the intent or

consequence of causing financial loss or obtaining of personal or private data, or acts which are deemed or are of defamatory, offensive, abusive, obscene, threatening, menacing, unsuitable, inappropriate or unlawful character in connection with use of the Service;

**11.9.4** imagine cannot verify or authenticate any information submitted on the Customer Authorisation Form; or

**11.9.5** for any reason imagine suspends or discontinues the Service, or is unable to supply the Service to you including where imagine is obliged to comply with an order, instruction or request of Government, ComReg, an emergency service organisation or other competent authority.

**11.10** imagine reserves the right, at its sole discretion, to pursue all of its legal remedies upon breach by the Subscriber of this Agreement, including but not limited to stopping any Equipment in transit and/or stopping or suspend provision of the Service and/or terminating your order and all or any other contracts between us and you. Further, you agree that imagine shall not be liable to you or any third party for any modification, termination or suspension of your access to the Service.

## **12 THE SUBSCRIBER'S RESPONSIBILITIES AND USE OF THE SERVICE**

**12.1** When a Subscriber uses the Service, they may only do so in accordance with imagine's Acceptable Usage Policy which can be accessed at <http://www.imagine.ie/>, the terms of which are hereby incorporated by reference.

**12.2** Without prejudice to the generality of the foregoing, the Subscriber agrees that in using the Service it shall not violate or permit violation of the law or aid another in any unlawful act through any action or inaction

**12.3** Subscribers shall not use the service for auto-diallers or any illegal or undesirable purposes

**12.4** Except for information, products or services clearly identified as being supplied by imagine, imagine does not operate or control any information, products or services on the Internet.

**12.5** The Internet contains unedited materials that Subscribers may find offensive or objectionable. Subscribers access such materials at their own risk. imagine has no control over and accepts no responsibility for these materials. Subscribers may wish to utilize software designed to limit access to certain material on the Internet.

**12.6** imagine is not responsible for content or policies available on other sites including those linked to its site. Use of any links to other web pages, is at the Subscribers own risk.

**12.7** imagine may take any action it deems appropriate without notice to protect the Service and its facilities for provision of the Service. If imagine denies Subscribers access to the Service pursuant to this Section, Subscribers will have no right;

**12.7.1** to access through imagine to any materials stored on the Internet; or

**12.7.2** to access third party services, merchandise or information on the Internet through imagine, and imagine will have no responsibility to notify any third-party providers of services, merchandise or information nor any responsibility to any consequences resulting from lack of notification.

**12.8** imagine has no obligation to monitor the Service. Subscribers agree that Irish Broadband has the right to monitor the Service electronically from time to time, and consent to imagine's access, use and disclosure of any information as necessary to satisfy any law, regulation or other governmental request, to operate the Service properly, to improve the Service, or to protect itself or its customers. imagine reserves the right to refuse or to remove any information or materials, in whole or in part, or limit or terminate access to same, that in its sole discretion are unacceptable, undesirable, or in violation of this Agreement, or as legally instructed by any law enforcement or governmental agency.

**12.9** If Subscribers wish to make purchases on the Internet, they may be asked by the merchant or imagine from whom they are making the purchase to supply certain information, including credit card or other payment mechanism information. Unless imagine is a party to such transaction however, imagine disclaims any and all liability for any error in, failure or duplication of such a transaction as a result of any cause whatsoever, including degradation or disruption of the Service from any cause whatsoever.

**12.10** The Service is provided on an "as is, as available" basis. Subscribers release imagine from and imagine shall have no liability or responsibility for any direct, indirect, incidental, or consequential damages suffered by any Subscriber in connection with their use of or inability to use the Service including, but not limited to, damages from loss of service or service interruptions, or due to inadvertent release or disclosure of information sent by

them even if the same is caused by imagine's own negligence or inability to deliver a consistent standard or quality of service. imagine specifically disclaims any responsibility for the accuracy or quality of information obtained through the Service.

### **13 DISCLAIMERS**

This clause limits imagine's legal liability to you for your access to and use of the Service. You should read this clause carefully. Nothing in this Agreement is intended to limit any rights you may have as a consumer under common law or other statutory rights which may not be excluded.

**THE SERVICE IS AVAILABLE TO ALL USERS "AS IS" AND, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS MADE AVAILABLE WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, UNLESS SPECIFICALLY PROVIDED IN WRITING AS AN AMENDMENT TO THIS AGREEMENT. IMAGINE SPECIFICALLY DOES NOT WARRANT THAT THE SERVICE IS SUITABLE FOR USE FOR, WITH OR IN CONJUNCTION WITH ANY SPECIFIC HARDWARE, SOFTWARE, APPLICATION OR SERVICE. THE USER SHALL BE SOLELY RESPONSIBLE FOR DETERMINING SUITABILITY OR COMPATIBILITY OF THE SERVICE. IMAGINE DOES NOT WARRANT THAT IT CAN MAINTAIN A SPECIFIC QUALITY OF SERVICE CONSISTENTLY FOR ANY PERIOD OF TIME TO ENABLE USE OF ANY SERVICE OR APPLICATION, NOR THAT SHOULD THE SERVICE DEGRADE FOR ANY CAUSE WHATSOEVER, THAT IT WILL BE ABLE TO RESTORE THE SERVICE TO THE SAME STANDARD OR QUALITY WITHIN ANY SPECIFIC PERIOD OR TIME OR AT ALL. IMAGINE MAKES NO REPRESENTATIONS, WARRANTIES OR UNDERTAKINGS THAT THE SERVICE, THE EQUIPMENT OR ANY OTHER EQUIPMENT THAT MAKES THE SERVICE AVAILABLE, WILL BE FREE FROM DEFECTS, INCLUDING, BUT NOT LIMITED TO VIRUSES OR OTHER HARMFUL ELEMENTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IMAGINE ACCEPTS NO LIABILITY FOR ANY INFECTION BY COMPUTER VIRUS, BUG, TAMPERING, UNAUTHORISED ACCESS, INTERVENTION, ALTERATION OR USE, FRAUD, THEFT, TECHNICAL FAILURE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY, OR ANY EVENT OR OCCURRENCE BEYOND THE CONTROL OF IMAGINE, WHICH CORRUPTS OR EFFECTS THE ADMINISTRATION, SECURITY, FAIRNESS AND THE INTEGRITY OR PROPER CONDUCT OF ANY ASPECT OF THE SERVICE. ALL USE BY YOU OF THE SERVICE IS AT YOUR OWN RISK. YOU ASSUME COMPLETE RESPONSIBILITY FOR, AND FOR ALL RISK OF LOSS RESULTING FROM, YOUR USE OF, OR REFERRING TO OR RELYING ON THE EQUIPMENT OR THE SERVICE, OR ANY OTHER INFORMATION OBTAINED FROM YOUR USE OF THE SERVICE. YOU AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IMAGINE AND PROVIDERS OF TELECOMMUNICATIONS AND NETWORK SERVICES TO IMAGINE WILL NOT BE LIABLE FOR DAMAGES ARISING OUT OF YOUR USE OR YOUR INABILITY TO USE THE SERVICE, AND YOU HEREBY WAIVE ANY AND ALL CLAIMS WITH RESPECT THERETO, WHETHER BASED ON CONTRACT, TORT OR OTHER GROUNDS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM IRISH BROADBAND SHALL BE DEEMED TO ALTER THIS DISCLAIMER OF WARRANTY, OR TO CREATE ANY WARRANTY.**

### **14 INDEMNITY AND LIMITATION ON LIABILITY**

**14.1** The Subscriber hereby indemnifies and holds imagine harmless against any and all liabilities, expenses, losses, injury, damage, fines, penalties and claims of whatsoever nature and howsoever arising from or connected with the Equipment, or the use or possession thereof and/or the use of the Service and whether or not such claims are caused by any act or omission of the Subscriber or anyone else and whether the claim is based on contract, tort or other grounds.

**14.2** Liability is neither restricted nor excluded for death or personal injury resulting from any act or omission by imagine or the acts or omissions of imagine representatives or contractors while acting on its behalf.

**14.3** To the fullest extent permitted by applicable law, neither imagine nor any of its directors, employees, servants, agents, affiliates or other representatives and/or their respective parent and subsidiary companies will be liable for loss or damages arising out of or in connection with the use of, or inability to use, the Equipment and/or the Service including, but not limited to, direct, indirect or consequential loss or damages, loss of data, income, profit or opportunity, loss of or damage to property and claims of third parties, even if imagine has been advised of the possibility of such loss or damages, or such loss or damages were reasonably



foreseeable. In the event that imagine is liable for any damage, the Parties herewith agree that such liability shall be limited to the total of subscriptions paid to date or the value of subscriptions for the last 12 month period, whichever is the lower amount.

**14.4** imagine shall not be liable for failure to comply with undertakings under this Agreement if hindered from doing so by something outside its reasonable control. Matters outside its reasonable control will include but not be limited to lightning, flood or severe weather conditions, fire or explosion, civil disorder, terrorist activity, war, actions of local or national government or industrial disputes, performance of leased or rented telecommunications services or network or other operators, and Internet network, outside of imagine's Equipment, is beyond its reasonable control.

## **15 ASSIGNMENT AND DELEGATION**

The Subscriber may not assign or transfer any of their rights or obligations under this Agreement without the prior written consent of the imagine. imagine shall be entitled to assign, transfer, mortgage or novate all or part of its rights and obligations under this Agreement to any third party at its absolute discretion, including for the avoidance of doubt it's rights of ownership in the Equipment.

## **16 JURISDICTION**

This Agreement shall be governed by and construed in accordance with Irish law and the parties hereby submit to the exclusive jurisdiction of the Irish Courts.

## **17 PERSONAL DATA**

**17.1** The personal data that you provide when subscribing to the service (Registration Details) shall be true, accurate and complete. You agree to inform imagine of any changes to your registration details immediately by email to support@imagine.ie

**17.2** imagine respects and protects its Subscribers privacy. Any information obtained by imagine through an application for the Service may be accessed and used by imagine for the purposes of performing its obligations under this Agreement and for administration, risk assessment, market research, marketing, debt recovery and credit checking purposes, accurate billing and efficient operation of the Service. The Subscriber shall be deemed to have given consent for the use of their information for such purposes. For full details of how imagine uses the information it collects, and under what circumstances we disclose information, please read the imagine Privacy Statement which is hereby incorporated into and forms part of this Agreement.

## **18 GENERAL TERMS**

**18.1** None of the provisions of this Agreement shall be interpreted as to deprive you of any rights you may have as a consumer under mandatory Irish law.

**18.2** Any prices, quotations and descriptions made or referred to on the imagine website are subject to availability, do not constitute an offer and may be withdrawn or revised at any time prior to our express acceptance of your order.

**18.3** This Agreement contains the entire agreement between the Parties and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein. No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to this Agreement or their duly authorised representatives.

**18.4** Each party shall bear their own costs related to the preparation or completion of this Agreement.

**18.5** No indulgence, leniency or extension of time which imagine may grant or show to the Subscriber, shall in any way prejudice imagine or preclude imagine from exercising any of its rights in the future.

**18.6** In this Agreement the singular shall include the plural and visa versa, one gender shall include the other genders, lower case letters shall refer to capital letters and visa versa and headings used in this Agreement are for reference purposes only and shall not be taken into account in construing the contents of this Agreement.

**18.7** If any provision of this Agreement is prohibited by law or found to be unlawful, void or otherwise unenforceable, such provision shall, to the extent required by applicable law, be severed from this Agreement. The remaining provisions of this Agreement shall not as far as possible be changed or modified and all other terms and conditions not so severed shall continue in full force and effect.