

# Siemens Enterprise Communications Limited Ireland

## General Terms & Conditions

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**Siemens Enterprise Communications Limited,**  
Registered No: 427432 Ireland.  
Registered Office: Fitzwilliam Court, Leeson Close, Dublin 2.

### 1. DEFINITIONS

“**Acceptance**” means, where Siemens is carrying out the implementation, that the Customer accepts that the Product has passed the Acceptance Tests and is in accordance with the Specification and, where Siemens is not carrying out the implementation, delivery of the Product.

“**Acceptance Certificate**” means Siemens' standard acceptance certificate.

“**Acceptance Tests**” means Siemens' standard tests which are applicable to the Product where Siemens is carrying out the implementation.

“**Agreement**” means this agreement made between Siemens Enterprise Communications Limited (“Siemens”) and the Customer, all matters agreed in writing as anticipated in these Terms and Conditions and all documents expressly incorporated herein.

“**Contract Value**” means the sum agreed in writing together with any additions or deductions to it in accordance with this Agreement.

“**Customer**” means the party with whom Siemens has contracted for supply of the Product and/or Professional Services.

“**Customer Network**” means any of the Customer's IT infrastructure, inclusive of but not limited to, personal computers, data network equipment, telecommunications network and all associated equipment with which the Product is to inter-operate.

“**Date for Acceptance**” means the date agreed in writing for Acceptance to take place and any amendments thereto under this Agreement.

“**End User Customer**” means the party with whom the Customer contracts for resale of the Products and/or Professional Services.

“**End User Licence Agreement(s) / EULA(s)**” means a licence agreement(s) directly between a third party licensor of the Software and the Customer or an End User Customer, as appropriate, which accompanies this Agreement or the Software.

“**Hardware**” means the hardware agreed in writing.

“**Invoice Address**” means the address agreed in writing or any amendment thereto notified to Siemens in writing.

“**Licensed Software Users**” means, where applicable, the number of users licensed hereunder to use the Software agreed in writing.

“**Network Operator**” means a public or private telecommunications operator providing a network or services regulated by statutory licence.

“**Personal Data**” means the data which relates to a living individual who can be identified from that data or from that data and other information and which is provided to Siemens by the Customer.

“**Phases**” means the discrete phase(s) for supply and/or implementation of the Product referred to in Clause 27 and agreed in writing.

“**Product**” means the Software and/or the Hardware.

“**Professional Services**” means any professional services agreed in writing.

“**Professional Services Fees**” means the fees for Professional Services agreed in writing.

“**Professional Services Fees Payment Milestones**” means the milestones for payment of the Professional Services Fees agreed in writing.

“**Site(s)**” means the site(s) for delivery and, where applicable, implementation of the Product agreed in writing.

“**Software**” means the object code version of the software agreed in writing.

“**Special Software Licence Terms**” means any differing or additional licence terms agreed in writing.

“**Specification**” means the document identifying the features and functionality of the Product agreed in writing.

“**Working Day**” means Monday to Friday inclusive, exclusive of bank holidays.

“**Working Hours**” means 09.00 to 17.00 inclusive on Working Days.

### 2. SIEMENS' OBLIGATIONS

2.1 Siemens shall supply the Product in accordance with this Agreement and implement it where implementation is included in the Contract Value.

2.2 Siemens shall provide the Professional Services.

### 3. CUSTOMER'S OBLIGATIONS AND RESPONSIBILITIES

The Customer is responsible for undertaking and bearing the cost of the following (unless otherwise agreed in writing by a duly authorised officer of Siemens):

#### (a) Customer Provided Information and Equipment

The Customer shall provide or ensure that its other suppliers and/or consultants provide all necessary services, information, including technical information regarding the Site, programming information, databases, interfaces, gateways and cables, to enable Siemens to put the work and any Professional Services in hand promptly and in any event in accordance with any agreed timescales or project plan and so as to enable Siemens to carry out its obligations under this Agreement, including the provision of the Product in accordance with the Specification. Any changes to information provided by the Customer and relied upon by Siemens shall constitute a variation and Siemens may claim the costs thereby incurred.

#### (b) Preparation of the Site

Before delivery is due to take place the Customer shall prepare the Site in accordance with any specifications stipulated by Siemens and any reasonable extra costs incurred as a result of failure to do so, including storage costs, will be paid to Siemens by the Customer. The Customer shall ensure that the implementation area is sufficient in floor space and height.

#### (c) Customer Network

The Customer shall ensure that where prior to the date of this Agreement it engaged Siemens under a professional services agreement to assess the sufficiency of the Customer Network to enable the Product to function in accordance with the Specification that the recommendations within any resulting report are and shall remain implemented.

#### (d) Provision of Facilities

The Customer will provide at its own expense building and civil work, electric power, heating, lighting and ventilation, and where electrical supplies are required these shall be electrically clean and stable and will be provided and installed and maintained by the Customer in accordance with current European Standards at its own expense unless otherwise agreed in writing.

#### (e) Access

The Customer shall provide Siemens and Siemens' contractors with access to the Site at all reasonable times, or as reasonably requested by Siemens.

#### (f) Approvals/Licences

The Customer must obtain and pay for all necessary licences, consents and approvals for the implementation and/or use of the Product and/or its connection to relevant networks and comply with any conditions attached to such licences, consents and approvals.

#### (g) Third Party Software

The Customer shall, at no cost to Siemens, ensure that Siemens is authorised under a valid software licence to use any software (which is not provided by Siemens hereunder) necessary for the purposes of this Agreement.

#### (h) Other Attachments

Any other attachments, or additions to the Product that are made by the Customer without the prior written approval of Siemens shall be at the Customer's risk and the Customer shall be responsible for ensuring that they are suitable for use with the Product and comply with any Network Operator's regulations and do not diminish performance or reliability of the Product.

#### (i) Cabling

The Customer shall ensure that all cabling (insofar as it is not provided by Siemens hereunder) is or is brought up to the requirements of the appropriate European Standards for;

- a) Telecommunications Equipment,
- b) Telecommunications Cabling,
- c) Specification for Installations,
- d) Operation and Maintenance for voice solutions
- e) Information Technology - Generic Cabling Systems
- f) General Requirements and Office Areas (for data solutions)

at its own expense and shall pay the cost of any acceptance tests carried out by Siemens in respect of it.

## 4. THE SPECIFICATION

4.1 The features and functionality of the Product are as detailed in the Specification and the Customer assumes responsibility for ensuring that the Product is sufficient and suitable for its purposes and, save where the Customer has engaged Siemens under a professional services agreement to assess the sufficiency of the Customer Network to enable the Product to function in accordance with the Specification, that the Customer Network is sufficient to support the Product.

4.2 The Customer shall not rely upon any warranty (other than those stated in this Agreement) or technical statements concerning the Product which is to be supplied under this Agreement except where such statements have been confirmed in writing and signed by a duly authorised officer of Siemens and expressly incorporated herein.

4.3 Catalogue and data sheets are intended to display the general features of the Product and the information contained in such publications do not constitute a representation or warranty and shall not form part of this Agreement.

4.4 Siemens reserves the right to change the configuration and parameters of the Product to be supplied insofar as such changes do not materially affect the operational performance of the Product.

4.5 Hardware may contain recycled/remanufactured parts which shall be equivalent to new in performance.

## 5. VARIATIONS

All variations to this Agreement shall be in writing.

## 6. DELIVERY

6.1 Delivery of the Product to the Site will be recorded by a Siemens' delivery note and the Customer or its nominated agent shall acknowledge receipt by countersigning a copy of the delivery note. If the Customer, or its nominated agent, is not available at the time of delivery, Siemens' site personnel may sign to acknowledge receipt of deliveries and they do so as the Customer's agent.

6.2 Delivery of the Software, which is dispatched electronically, shall be upon dispatch by Siemens to the Customer and the Software which is downloaded, upon commencement of the download.

6.3 Siemens shall repair or (at Siemens' option) replace free of charge any part of the Product which is lost or damaged in transit, provided that Siemens is promptly given written notification of such loss or damage.

## 7. IMPLEMENTATION

Where implementation is included, the Contract Value is based on the work being carried out during Siemens' Working Hours and proceeding without hindrance to completion and may be increased if the Customer requests the work to be carried out at any other time or if the work is interrupted for reasons outside Siemens' control.

## 8. EXTENSION OF TIME

8.1 In the event Siemens is delayed in carrying out its obligations under this Agreement for reasons beyond its reasonable control, including delay caused by the Customer, its other suppliers and/or consultants, the End User Customer, and/or industrial disputes, the Date for Acceptance shall be extended accordingly.

8.2 Siemens shall be entitled to recover the reasonable additional costs incurred as a result of such delay.

## 9. RISK AND TITLE

9.1 Risk in the Product and any part thereof shall pass to the Customer upon delivery as defined in Clause 6 and the Customer shall ensure that it has in place sufficient insurance cover for its replacement.

9.2 Risk in all other equipment, such as tools and plant taken on to the Customer's Site by Siemens for the purpose of this Agreement, shall pass to the Customer when brought onto the Site by Siemens (or its agents or sub-contractors) until such equipment is removed from the Site except insofar as any damage to such equipment is due to any act of negligence on the part of Siemens or those for whom it is responsible.

9.3 Title to the Hardware shall pass to the Customer upon receipt by Siemens of full payment for the Hardware. Title to the Software and the media on which it is embodied and copyright and other intellectual and industrial property rights in the Software and in all data and information embodied in the Hardware shall at all times remain vested in Siemens and/or its licensors.

## 10. ACCEPTANCE TESTING & ACCEPTANCE

10.1 Siemens shall use all reasonable endeavours to meet the Date for Acceptance, but time for performance shall not be of the essence.

10.2 Where Siemens is carrying out the implementation, testing of the Product shall be in accordance with the Acceptance Tests.

10.3 If the Product fails to pass the Acceptance Tests they will be repeated without undue delay.

10.4 The Product shall not fail the Acceptance Tests due to minor failures that do not materially affect its operational use. Siemens shall rectify such failures within a reasonable time.

10.5 If Acceptance is delayed beyond two weeks by the Customer or those for whom it is responsible, or due to the inability of the Customer Network to enable the Product to function in accordance with the Specification (save where due to breach of its obligations by Siemens) and notwithstanding that the Date for Acceptance may have been extended under Clause 8.1, Siemens shall be entitled to payment as if Acceptance had occurred.

10.6 Upon successful completion of the Acceptance Tests in accordance with this Agreement the Customer shall sign the Acceptance Certificate.

10.7 If prior to signature of the Acceptance Certificate, the Customer uses the Product in whole or in part for parallel running or live running for the whole or any part of its business, or if the Customer fails to sign the Acceptance Certificate in accordance with this Agreement, Acceptance shall be deemed to have occurred on the date when such use or failure to sign occurs.

## 11. PRODUCT WARRANTY

11.1 Subject to Clause 13, Siemens warrants to the Customer that the Hardware will be free from defects in materials and workmanship for twelve (12) months from Acceptance. Defects will be remedied by repair or, at Siemens' option, supply of replacement Hardware.

11.2 Subject to Clause 13, Siemens warrants to the Customer that the Software will materially incorporate the features and perform the functions detailed in the Specification for three (3) months from Acceptance. Faults in the Software which are divergences from the Specification which can be reproduced and which impair the Customer's use of the Software will be corrected by modification or replacement of the Software and where such replacement includes additional functionality it shall be chargeable at Siemens' standard prices.

## 12. PROFESSIONAL SERVICES WARRANTY

Siemens warrants to the Customer that it has carried out and will carry out the Professional Services with all reasonable skill and care expected of a professional experienced in the type of project defined in this Agreement.

## 13. WARRANTY - EXCLUSIONS & CONDITIONS

13.1 Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 ("the 1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act) in respect of the Product save where and to the extent that any such conditions or warranties may not be excluded by law

13.2 The removal and reinstallation of defective and or replacement parts does not form part of this Warranty. The costs associated with these activities are the sole responsibility of the Customer and not Siemens unless agreed otherwise in a separate Support Services Agreement.

13.3 The Customer acknowledges that the Software cannot be tested in every possible permutation and accordingly Siemens does not warrant that the Software will be free of all defects or that its use will be wholly uninterrupted.

13.4 The above warranties of the Product shall not apply in the event that any defect derives from:

13.4.1 any changes to the configurations of the Customer Network which may affect the quality, performance or functionality of the Product;

13.4.2 any modification or customisation of the Software and/or the Hardware by or on behalf of the Customer other than by Siemens and/or its sub-contractors or with its express fully informed prior written approval; and/or

13.4.3 use of the Software and/or the Hardware in contravention of the manufacturer's instructions or use other than for its designed purpose or in inappropriate environmental conditions; and/or

13.4.4 failure by the Customer, its agents and/or other contractors to properly maintain the Product.

13.5 Notwithstanding any other term or condition of this Agreement, the provision by Siemens of the remedies specified in Clause 11 shall be the Customer's sole and entire remedy in respect of the said non-conformity or defects.

#### 14. INTELLECTUAL PROPERTY RIGHTS - OWNERSHIP

All intellectual property rights, including the right to patent, copyright, trade marks, mask works and design rights in the Product and documents provided to the Customer in the performance of this Agreement and/or arising and created under and in connection with this Agreement shall remain vested in and/or automatically and immediately upon creation vest in Siemens and/or its licensors as the case may be.

#### 15. INTELLECTUAL PROPERTY INFRINGEMENT - INDEMNITY

15.1 Subject to Clause 23, Siemens shall indemnify the Customer against costs and damages, incurred after the date of this Agreement, arising out of claims made against it by any third party that the use of the Product infringes intellectual property rights of that third party which were published or acquired at the date of this Agreement, including patent, registered design right, trade mark, mask work, or copyright, provided always that Siemens shall not be liable to indemnify the Customer if :

15.1.1 the infringement arises because Siemens has followed a design or instruction furnished or given by the Customer, or the Product has been used in a manner or for a purpose or in a country not specified by or disclosed to and approved by Siemens in writing prior to the date of this Agreement or it has been used in association or combination with any other equipment not supplied or approved in writing by Siemens; or

15.1.2 the claim is in respect of costs and damages arising after Siemens has at its expense procured for the Customer the right to continue to use the Product or has modified or replaced it; or

15.1.3 the Customer has failed to give Siemens the earliest possible notice in writing of any claim made or to be made or actioned, threatened or brought against it, or has failed thereafter to provide such assistance as Siemens reasonably requires in defending or settling the claim to the extent that such failure has prejudiced its case; or

15.1.4 the Customer has failed to permit Siemens at its expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim in respect of any alleged infringement; or

15.1.5 the Customer has made any admission which is or may be prejudicial to Siemens in respect of an alleged infringement without Siemens' written consent.

15.2 Save as provided in this Clause, Siemens shall not be under any liability howsoever arising in respect of any infringement or alleged infringement of third party intellectual property rights.

#### 16. SOFTWARE LICENCE

16.1 In consideration of payment of monies for the Software licence, Siemens grants the Customer a non-exclusive, non-transferable licence to use the Software and any upgrade to it supplied under this Agreement at the Site solely with and for the operation of the Hardware for the Customer's internal business and, where applicable, by the number of Licensed Software Users, for the period of the licence. In the case of data media containing several software products, the Customer is only entitled to use the Software licensed hereunder. Usage rights to replaced versions will expire when upgrade versions have been supplied and installed. Existing copies must be either verifiably destroyed or returned to Siemens.

16.2 Save as expressly provided by this Agreement, the Customer may not:

16.2.1 copy or permit the Software to be copied, except for one back-up security copy which must contain Siemens' proprietary notices;

16.2.2 unless expressly agreed otherwise in writing, use the Software on behalf of any third party, operate a software bureau or similar service using the Software;

16.2.3 remove copyright or confidentiality notices contained in the Software or its related documentation;

16.2.4 amend, enhance, modify, merge, adapt or translate the Software;

16.2.5 disassemble, decompile or reverse engineer the Software.

16.3 Any technological measures in the Software that are designed to prevent unlicensed or illegal use of the Software may not be removed and the Customer agrees to the use by Siemens and/or its licensors of such measures.

16.4 Siemens and/or its licensors may automatically check the version level of the Software and/or its components that are being used by the Customer.

16.5 If the Customer requires information necessary to achieve the interoperability of the Software with other programs it should contact Siemens. Any such information which is provided by Siemens shall only be used by the Customer to achieve such interoperability and for no other purpose and "interoperability" has the meaning within Section 81 of the Copyright and Related Rights Act 2000

16.6 Notwithstanding any other provision herein, any Software and any upgrade to it which is delivered with click-wrap or click-on licence terms and conditions, which have been agreed in writing by Siemens, or is subject to an End User Licence Agreement, which has been agreed in writing by Siemens, shall be subject to those terms/that Agreement in lieu of the equivalent provision herein. In the event of any conflict between the End User Licence Agreement which accompanies this Agreement and the one accompanying the Software, the former shall prevail.

16.7 Where as part of the implementation Siemens installs Software which is subject to click-on or click-wrap licence terms, the Customer hereby authorises Siemens to accept such terms on its behalf and accepts responsibility in respect thereof.

16.8 The Software or parts thereof, agreed in writing, shall also be subject to the Special Software Licence Terms and in the event of any conflict between the terms and conditions of this Agreement and the Special Software Licence Terms the latter shall prevail.

#### 17. CONTRACT VALUE, PROFESSIONAL SERVICES FEES, PAYMENT AND INVOICING

17.1 The Contract Value is inclusive of : delivery of the Product and wiring and/or implementation of the Product where these form part of this Agreement.

17.2 All sums due under this Agreement are exclusive of VAT which shall be payable by the Customer.

17.3 Payment of the Contract Value shall be due and payable as follows:

Where Siemens is implementing the Product:

|        |   |
|--------|---|
| 17.3.1 | 30% of the Contract Value upon signature of this Agreement; and             |
| 17.3.2 | 60% of the Contract Value upon commencement of delivery of the Product; and |
| 17.3.3 | 10% of the Contract Value upon Acceptance;                                  |

Where Siemens is not implementing the Product:

|        |   |
|--------|---|
| 17.3.4 | 30% of the Contract Value upon signature of this Agreement; and |
| 17.3.5 | 70% of the Contract Value upon delivery of the Product.         |

17.4 In the event that the Customer is unable to take delivery of the Product upon the agreed delivery date, Siemens reserves the right to deliver the Product into Siemens' stores and the Customer shall be immediately liable to pay to Siemens the portion of the Contract Value of the Product (or the portion of it so delivered) as though delivery had been made.

17.5 Payment of the Professional Services Fees shall be due in accordance with the Professional Services Fees Payment Milestones unless included in the Contract Value.

17.6 Payment shall be made without deduction, set-off or counterclaim within thirty (30) days of the date of Siemens' invoice and payment shall not be prevented by minor defects which do not materially affect operational use of the Product and Siemens shall remedy such minor defects.

17.7 Where payment of monies due under this Agreement is not received within thirty (30) days of the date of Siemens' invoice Siemens may :

17.7.1 suspend deliveries on this and any other order held with the Customer and/or further performance under this Agreement; and/or

17.7.2 recover such sums by deduction of monies otherwise due by Siemens to the Customer; and/or

17.7.3 charge interest at the statutory interest rate specified in the Prompt Payment of Accounts Act 1997 and amendments thereto per month or part thereof on the unpaid sum for that period the sum remained properly due before and after any court judgment.

17.8 Siemens shall submit all invoices to the Invoice Address.

#### 18. CONFIDENTIALITY

18.1 The parties may have access to information which is confidential to the other, including the Software (which includes its structure, sequence, organisation and screen presentation, and any associated manuals and/or documentation which may not be copied without Siemens' prior written consent), information marked as

confidential and/or information concerning business, finance, personnel and internal procedures ("Confidential Information").

18.2 Confidential Information shall not include information which is already in the public domain through no act or omission of the other party or breach of any Agreement or within the other party's lawful possession prior to the disclosure in connection with or under this Agreement.

18.3 Confidential Information may only be used by a receiving party for the purposes of this Agreement and may not be disclosed to any third party without the express written consent of the other party.

18.4 Notwithstanding the foregoing provisions, Siemens may refer to the Customer's contract in its marketing activities (both generally and in the course of dealing with prospective customers) and internal employee news publications.

## 19. DATA PROTECTION

19.1 The Customer warrants that it is permitted to provide Siemens with Personal Data and that it has in all respects complied with its obligations under the Data Protection Act 1988 and 2003 and its amendments or re-enactments. The Customer further warrants that the Personal Data is a back-up copy and acknowledges that as Siemens may use the Personal Data in a test environment that there is an inherent risk it could be lost or corrupted. The Customer authorises Siemens to store such data and, where practicable for the performance of its obligations hereunder, to remove it from the Site and store it on the laptops of its employees who are involved in carrying out its obligations.

19.2 Siemens warrants that it will only use the Personal Data for the purpose of carrying out its obligations and that it will ensure that all reasonable and appropriate security measures are in place to protect the Personal Data and that it will destroy or deliver up the Personal Data upon written demand from the Customer and, further, that it has in all respects complied with its obligations under the Data Protection Act 1988 and 2003 and its amendments or re-enactments.

## 20. TERMINATION OF CONTRACT

20.1 Either party may terminate this Agreement by written notice:

20.1.1 if the other party fails to remedy a material breach of this Agreement within forty two (42) days of written notice identifying the breach; and/or

20.1.2 if the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation or is deemed reasonably by Siemens to be unable to pay its debts or is dissolved; and/or

20.1.3 if an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the other party; and/or

20.1.4 the other party threatens to cease or ceases to carry on business.

20.2 Rights accrued at the date of any termination of this Agreement and clauses expressed or by their nature intended to continue in effect, shall survive any such termination and any equitable or common law implied rights of determination are hereby excluded.

## 21. VIRUSES

Siemens shall use all reasonable endeavours, inclusive of use of reasonably commercially available current technologies, to prevent the introduction by it of any virus to the Customer Network, other equipment supplied by the Customer for the purposes of this Agreement or the Product.

## 22. HEALTH AND SAFETY

22.1 The parties shall comply with all applicable health and safety legislation and codes of practice.

22.2 Siemens shall comply with all reasonable safety requirements notified to it in writing by the Customer prior to the date of this Agreement and thereafter subject to agreement in respect of any cost implications.

## 23. LIABILITY AND ITS EXCLUSION AND LIMITATION

23.1 Siemens' Contract Value is determined on the basis of the limits of liability set out in this Agreement. The Customer may, by written notice to Siemens, request Siemens to propose a higher limit of liability subject to an increase in the Contract Value.

23.2 Clauses 15, 23 and 24 set out the entire liability of and exclusion thereof by Siemens under and/or in connection with this Agreement and in respect of breach of this Agreement or statutory duty, representations, statements or tortious act or omission including negligence.

23.3 In no event shall Siemens be liable for (whether direct or indirect) any loss of contracts, profits, anticipated savings, revenue, goodwill, business, use of the Hardware and/or the Software, loss or corruption of data or software programs, financing expenses, interruption in the use or availability of data, stoppage to other work or consequential losses, nor for any indirect losses.

23.4 Siemens shall not be liable for the fraudulent use of the Product by the Customer and/or third parties (save where and to the extent due to Siemens' negligence).

23.5 Subject to Clause 23.7, Siemens' liability (which is not wholly excluded under Clause 23.3) shall not exceed the Contract Value.

23.6 Siemens shall not be liable for any loss, costs, expenses and/or damages arising due to or in connection with a Network Operator denying or withdrawing any connection facilities.

23.7 Siemens and the Customer shall indemnify each other against damage to tangible property, whether personal or real, and death or injury to persons to the extent caused by the negligence of the other party provided that:

23.7.1 the other party is immediately notified of any claim and has full power to negotiate and settle any claims;

23.7.2 the total liability of each party to the other for damage to tangible property, whether personal or real, shall be limited to € 500,000 in respect of each event or connected series of events and an annual aggregate of € 2,000,000.

23.8 Each provision of this Clause shall survive independently.

23.9 Nothing in this Agreement shall operate to limit or exclude any liability of Siemens which may not be excluded and/or limited by law.

23.10 Clause 23 shall apply before and after any termination of this Agreement.

## 24. LIQUIDATED DAMAGES FOR DELAY

If Acceptance is delayed by more than two weeks for reasons within Siemens' reasonable control and for which Siemens is not entitled to any extension of time under Clause 8, for each week of such delay there shall be deducted from the Contract Value 0.25%. The amount so deducted shall not in any event exceed 5% of the Contract Value. Such damages shall be in full and final settlement of all liability of Siemens for and in connection with delay howsoever arising, inclusive of breach of contract and/or statutory duty or negligence.

## 25. LEASING / FINANCE ARRANGEMENTS

Where the Customer has entered into a third party leasing or financing agreement in respect of the Product, this will not affect or invalidate the provisions of this Agreement, save that title in the Product (excluding the Software) shall pass to the third party finance provider when Siemens has received full payment of all sums due to it under this Agreement and the Customer's obligations to make payments of the Contract Value under Clause 17 (save to any extent agreed otherwise in writing) shall be deemed to be superseded by its obligations to make payments under the third party leasing or finance agreement.

## 26. FORCE MAJEURE

Neither party shall be responsible for any failure or delay in performance of its obligations under this Agreement (other than the obligation to make payments of money) due to any force majeure event including Act of God, refusal of licence (other than as a result of any act or omission of Siemens), or other Government act, war, fire, explosion, embargo, terrorism, civil disturbance, accident, lightning damage, electromagnetic interference, radio interference, strikes, industrial dispute, or any other cause beyond its reasonable control and, in the case of Siemens, the occurrence of any of the aforementioned force majeure events to its sub-contractors or suppliers which result in their delay or failure to perform. For the avoidance of doubt, breach of contract by the End User Customer shall not be force majeure unless such party is itself subject to an event of force majeure which directly causes the breach.

## 27. PHASES

Clauses 9, 10, 11, 12, 13, 16, 17, 20 and 24 shall apply separately and individually to each of the Phases.

## 28. NON-SOLICITATION

The Customer shall not, during the term of this Agreement or for twelve (12) months afterwards, without the prior written consent of Siemens, either directly or indirectly through any company, firm or organisation approach any person who has been employed or engaged by Siemens in respect of performance of this Agreement, with the intention that the Customer (or any third party) might employ that person or enter into a contract for services with them.

# SIEMENS

## Enterprise Communications Limited

### 29. ASSIGNMENT

29.1 Siemens may assign, transfer or novate this Agreement in whole or in part by notice in writing.

29.2 The Customer may assign, transfer or novate this Agreement in whole or in part with Siemens' prior written consent.

### 30. SEVERABILITY

If any provision of this Agreement is invalid, illegal or unenforceable, the other provisions of this Agreement shall remain in full force.

### 31. EFFECTIVENESS OF CONTRACT

This Agreement shall be effective upon signature by the parties.

### 32. WAIVER

Failure by either party to enforce or exercise any right under this Agreement shall not amount to a waiver or bar to enforcement of that right.

### 33. HEADINGS

Clause headings shall not affect the legal interpretation of this Agreement.

### 34. NOTICES

Notices shall be in writing and sent to the addresses set out herein, or such other address notified in writing.

### 35. PARTNERSHIPS

35.1 Where the Customer is a partnership the partners shall be jointly and severally liable in respect of this Agreement.

35.2 Where the Customer is a partnership the signatory for the Customer represents and warrants that it is acting as agent for the other partners and shall be deemed to have executed this Agreement on his own and their behalf.

### 36. ENTIRE AGREEMENT

36.1 This Agreement comprises the entire agreement between the parties and all prior written or oral agreements, representations or understandings and express or implied terms, conditions or warranties are hereby excluded.

36.2 Save as expressly set out in this Agreement, the Customer acknowledges that this Agreement has not been entered into wholly or partly in reliance on, nor has it been given, any warranty, statement, promise or representation by or on behalf of Siemens.

### 37. EXPORT RESTRICTIONS

Fulfillment of this Agreement by Siemens is subject to the proviso that the Customer has obtained all required export licences and the Customer undertakes to comply with all applicable export regulations.

### 38. RESALE

Where the Customer is entering into this Agreement in order to purchase the Hardware and/or the Software and/or the Professional Services for resale, this Agreement shall be deemed to be amended as follows : Clause 1 - "Customer Network" shall mean that of the End User Customer; "Personal Data" shall include data provided by the End User Customer; Clause 10.7 – References to the Customer shall be deemed to be references to the End User Customer; Clause 16 shall be deemed to be amended such that the Customer is granted the right to grant the licence(s) within this provision to the End User Customer and such grant shall be on substantially similar terms and conditions; Clause 28 – The Customer shall likewise obligate the End User Customer in respect of Siemens' employees. The Customer shall ensure that the above concepts shall apply similarly to an End User Customer who is a reseller of the Customer.

### 39. LAW

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