

These Terms and Conditions apply to all customers, existing, new sign-ups or those changing product on or after Wednesday 1st July 2009.

TERMS OF USE FOR THE SWIFTCALL BROADBAND SERVICE (Love2Talk & Surf)

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**1. DEFINITIONS**

In these terms and conditions the following terms shall have the meanings allocated to them:

"Agreement" means these terms and conditions, the Price List, the Registration Details and the Technical Requirements;

"Charges" means the charges payable by you for the Service and the Modem details of which appear on the Price List;

"Eircom" means Eircom Limited or any other name or entity (including subsidiary) employed by it from time to time;

"Helpdesk Facility" means the facility provided by Swiftcall to report faults in the Service;

"Minimum Period" means a period of twelve months commencing from the Start Date;

"Modem" means the high speed modem and ancillary equipment that is supplied for the duration of the Service by Swiftcall when you subscribe to the Service that enables you to connect your PC to the public telephone network and access the Internet;

"PC" means any type of Personal Computer including Apple Macintosh;

"Premises" means the address at which Swiftcall agrees to provide the Service to you;

"Price List" means the price list published by Swiftcall on the price pages of <http://www.swiftcall.ie> setting out the Charges payable for the Service and the Modem, as may be amended by Swiftcall from time to time;

"Privacy Policy" means the privacy policy governing our use of the personal information that we collect from you in connection with the Service and set out on our website at <http://www.swiftcall.ie>;

"Registration Details" means the personal information you provide on registration for the Service;

"Service" means the Swiftcall Broadband and Telephony service that provides you with high speed access to the Internet via your Eircom (or other authorised operator's) telephone line and using the Modem, whilst retaining the ability simultaneously to carry out voice telephone conversations;

"Service Availability Area" means a geographic area specified by Swiftcall where the Service is potentially available, as published on Swiftcall's web site <http://www.swiftcall.ie> as may be amended from time to time;

"Start Date" means the date when 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;

"Technical Requirements" means the requirements to enable the Service to be provided to you as published on Swiftcall's web site <http://www.swiftcall.ie>;

"Swiftcall", "we" or "us" means Swiftcall of 3 Sandymount Green, Dublin 4, Ireland;

"you/your" means the person with whom Swiftcall is making the Agreement, as specified in the Registration Details.

**2. THE SERVICE**

2.1 The Agreement shall come into force once you have completed an on-line signup or signed an Application Form and Swiftcall has accepted same. On entering into the Agreement, you shall be deemed to have obtained the authority of the person who leases the physical telephone line(s) across which the Service is provided.

2.2 The modem and microfilters shall at all times remain the property of Swiftcall and you shall be liable for any damage caused to the equipment.

2.3 Registering with the Service gives you the ability, subject to Clause 4, using a PC (of appropriate specification) and Modem, to access the Internet on an "always-on" basis at transmission speeds up to 60MB.

2.4 The Service will be provided or procured by Swiftcall, within 10 working days subject to successful survey and line test, with reasonable skill and care and in accordance with the provisions of this Agreement.

2.5 Swiftcall will use its reasonable efforts to install the Service by the date agreed with you, but all dates are estimates and Swiftcall cannot guarantee that it will meet such dates

2.6 The Service will be provided in accordance with the customer service guarantee set out at <http://www.swiftcall.ie>.

2.7 The Service will be provided on a self-installation basis in accordance with the connection terms set out on the <http://www.swiftcall.ie>.

2.8 Before we can be sure that we can provide you with the Service we need to do the following:

2.8.1 perform a telephone line test and check that you are in a geographical area where you can receive the Service;

2.8.2 activate the Service;

2.9 If we are unable to provide you with the Service because the conditions in 2.3 cannot be successfully satisfied, such satisfaction to be determined solely by us then:

2.9.1 we will notify you as soon as possible;

2.9.2 you will return the Modem to Swiftcall. Please see clause 16.4 for full details;

2.9.3 subject to 2.9.2, we will refund any payments made for the Modem and the Service.

2.10 In the event that you move from the Premises, and you wish to continue to receive the Service, we shall terminate your Service and you will be required to register again for the Service and commit to the Minimum Period at our then current rates. If termination is during the Minimum Period you will be charged a cancellation fee as per the Price List.

2.11 In the event that you terminate your telephone account with Eircom or other authorised operator or you change the services on the telephone line on which you currently use the Service, so that the Service is unable to operate normally, your Service will terminate and you will be liable for the Charges during the Minimum Period.

2.12 Eircom or other authorised operator requests that we inform you that activation of the Service may result in you experiencing a temporary loss of your analogue Eircom or other authorised operator line and the loss of ISDN service. Swiftcall shall not be held liable to you for any losses or damages howsoever arising during such period of provisioning of the Service.

2.13 You acknowledge that the bit rates in respect of the Service, may be reduced by contention within the network from time to time and speeds are not guaranteed.

2.14 The cancellation fee during the Minimum Period is set out in the Price List.

2.15 The cancellation fee beyond the Minimum Period is set out in the Price List.

2.16 If you wish to use the Service on an ISDN line, you must inform Swiftcall during the signup process. Failure to do so may result in a delay in activating the Service. A separate installation fee will be charged for ISDN lines.

**3. PERSONAL INFORMATION**

3.1 The Registration Details that you provide shall be true, accurate and complete. You agree to inform Swiftcall of any changes to your Registration Details immediately by e-mail addressed to [support@swiftcall.ie](mailto:support@swiftcall.ie).

3.2 Swiftcall will respect your personal information and undertakes to comply with all applicable RoI Data Protection legislation.

3.3 In relation to your Registration Details, you agree and hereby consent to Swiftcall passing those details to Eircom or other appointed agent and to such other third parties as may be necessary in order to provide and operate the Service and deliver the Modem.

3.4 Use of your Registration Data will be in accordance with our Privacy Policy. If applicable, our use will however be subject to any limitations you selected or choices you made on the registration form in which you have provided Registration Details. As a member of the Service you agree that we may send you information mailings and/or emails regarding the Service.

3.5 Other than as required by law, or as permitted under this Agreement, Swiftcall shall not disclose your Registration Details to any third party without your permission.

#### **4. SWIFTCALL'S OBLIGATIONS**

4.1 In consideration of the Charges, Swiftcall shall provide the Service in accordance with the terms and conditions of this Agreement. You acknowledge that Swiftcall's provision of the Service and its ability to provide the Service is dependent upon other telecoms providers and its ability to provide certain parts of the Service to Swiftcall. You acknowledge that there may be technical limitations that inhibit the activation or provision of the Service. Swiftcall agrees to notify other telecoms providers of any issues concerning the Service that you bring to Swiftcall's attention, but we cannot guarantee rectification of these issues by other telecoms providers.

4.2 Swiftcall does not accept any responsibility for any defects or errors in either the Service or the Modem.

4.3 You acknowledge that Swiftcall cannot warrant that the Service will be interruption free or that the transmission of information through the Service will be secure. The Service may be suspended for operational reasons (such as maintenance or Service upgrades) or because of an emergency. Before suspending or interrupting the Service (as aforesaid) Swiftcall shall use reasonable endeavours to give you as much notice as possible.

4.4 You acknowledge that it is technically impracticable to provide the Service free from errors and/or faults and Swiftcall does not undertake to do so. Swiftcall shall provide a Helpdesk Facility to enable faults to be reported and resolved but does not warrant that all faults will be corrected.

4.5 The obligations of Swiftcall to provide the Service shall be conditional upon the Technical Requirements being satisfied. You acknowledge that the Service shall not be available to you outside the Service Availability Area and that:

(a) it will only be available to you if you have a valid contract for the use of an Eircom analogue direct exchange line which terminates on a master socket forming part of Eircom's (or other authorised operator's) telecommunications network;

(b) you have a PC that satisfies the Technical Requirements; and

(c) your Premises falls within the Service Availability Area.

4.6 Except as may be expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.

4.7 You acknowledge that, due to contention on both the network of Eircom or other authorised operator and Swiftcall's access link, the speed of the Service may be reduced or may not be available at times.

#### **5. YOUR OBLIGATIONS**

5.1 Swiftcall Love2Talk is included you agree to all of the Swiftcall Love2Talk Terms and conditions as set out at [www.swiftcall.ie](http://www.swiftcall.ie)

5.2 You agree to notify Swiftcall of any change in e-mail address for billing or communication purposes;

5.3 You agree that you will be responsible for any equipment (including the Modem) that may be provided to you for the purpose of receiving the Service and that you will be responsible for all charges necessary to access and use the Service and that you will use any equipment (including the Modem) connected or used with the Service in accordance with any instructions, safety and security procedures applicable to it.

5.4 You agree to notify Swiftcall of any proposed move of Premises.

5.5 You agree that as part of your wish to take part in the Service, some minor modifications may need to be made to your PC to make it operate with the Service. It is your responsibility to ensure that such modifications do not invalidate the terms of any warranty you may have concerning your PC. Swiftcall shall incur no liability for any claim that your warranty has been invalidated (if applicable) as a result of work carried out by you, Swiftcall or its agents (including Eircom or other appointed agent) in order to make your PC operate with the Service.

5.6 You will be allocated both a user name and a password in order to access the Service and you will be responsible for keeping your password confidential and agree to take all necessary steps to ensure that it is kept secure and is not disclosed to any unauthorised person. You will inform us upon becoming aware of any suspected or actual unauthorised use of the Service and will take all steps necessary (or requested by us) to prevent such use.

5.7 You acknowledge that Swiftcall and/or its agents (including Eircom or other appointed agent) may give you instructions from time to time which they believe are necessary for health, safety or quality of other telecommunications services provided by Eircom or other appointed agent to you.

#### **6. USE OF THE SERVICE**

6.1 You shall not use the Service:

(a) in a way that does not comply with the terms of any legislation or any licence applicable to you or that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;

(b) without prejudice to the generality of (a) above, in connection with the carrying out of a fraud or criminal offence against Swiftcall and/or its agents (including Eircom or other appointed agent), or any public telecommunications operator;

(c) to send, knowingly receive, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing, or in breach of any copyright, confidence, privacy or any other rights;

(d) to send or procure the sending of any unsolicited advertising or promotional material;

(e) in a way that does not comply with any instructions Swiftcall or its agents (including Eircom or other appointed agent) has given under Clauses 5.3 and 5.7;

(f) in a way that in the reasonable opinion of Eircom or other authorised operator could materially affect the quality of any telecommunications service, including the Service, provided by Swiftcall;

6.2 Swiftcall shall have the right to enforce such provisions set out in Clause 6.1 above by suspending or terminating the provision of the Service to you if Swiftcall knows you are in breach of such obligations.

6.3 You will indemnify Swiftcall and/or its agents against any claims or legal proceedings that are brought or threatened against Swiftcall and/or its agents by a third party:

(a) because the Service is used in breach of Clause 6.1 (a) to (f) inclusive; or

(b) in circumstances where you are in breach of Clause 6.2.

6.4 You will notify Swiftcall of any such claims or proceedings referred to in Clause 6.3 and keep Swiftcall informed as to the progress of such claims and proceedings.

6.5 You will be entitled to a monthly data transfer limit as specified from time to time on the website, <http://www.swiftcall.ie>. If you go over this limit we reserve the right to charge you for any excess data transfer at 2c per Mb.

#### **7. DELIVERY OF MODEM**

7.1 Swiftcall, or its representative, shall deliver the Modem to either the Premises or any other location (only in Ireland) notified to us by you [and for the avoidance of doubt you shall be liable for any reasonable additional costs incurred by us in relation to carriage, postage and packing and any other applicable duties taxes and charges].

7.2 We shall use our reasonable endeavours to deliver the Modem to the notified location by the delivery date communicated to you. You should be aware that this delivery date is not guaranteed or of the essence of the Agreement.

7.3 You shall inspect the Modem immediately upon receipt and inform us in writing within 5 (five) days of delivery of any damage or missing items from the delivery.

7.4 If you fail to take delivery of the Modem (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 Modem until actual delivery and charge you for the reasonable costs (including insurance) of this storage.

#### **8. FAULTY MODEM REPLACEMENTS**

In the event that Swiftcall provides you with replacement Modem as a result of a fault which is covered under the manufacturer's warranty you must return the faulty Modem (along with any other associated hardware, software and packaging) to Swiftcall or its appointed agent within 14 days of receipt of the replacement Modem as per 16.2. If you fail to return the faulty Modem to Swiftcall within 14 days, Swiftcall reserves the right to charge you the full replacement cost for such Modem unless actual proof of postage can be provided to Swiftcall.

#### **9. INSURANCE**

You will assume the risk of damage to or loss of the Modem from the moment the Modem is delivered to you.

#### **10. MODEM WARRANTIES AND LIABILITY**

10.1 The Modem is covered by a manufacturer's warranty. Swiftcall shall not be held responsible for any acts of the manufacturer or its agents including (without limitation) any failure by the manufacturer to replace or repair the Modem.

10.2 Before you install the software supplied with the Modem and before you connect the Modem to your PC, you should back up or save any data on your PC.

10.3 The Helpdesk Facility can only provide technical assistance for modems supplied by Swiftcall. You may choose to use your own modem for access to the service if you wish. Swiftcall will in no way support this equipment or make any assurances as to the quality of Service through use of this equipment. Additionally, if you choose to use your own equipment for access to this Service Swiftcall shall be in no way responsible for any damage done to your equipment or Service as a result.

#### **11. INTELLECTUAL PROPERTY RIGHTS**

11.1 You will agree to enter into any agreement reasonably required by the owner of the copyright in any software made available to you for the purpose of accessing the Service.

11.2 You acknowledge and agree that all intellectual property rights in the Service (including, without limitation, the Modem and any associated software) are vested and shall remain vested in Swiftcall, its agents (including Eircom or other appointed agent), the Modem manufacturer or their licensors, as appropriate.

#### **12. INTELLECTUAL PROPERTY RIGHT INDEMNITIES**

12.1 Swiftcall will indemnify you against all claims and proceedings arising from the infringement of any intellectual property rights by reason of Swiftcall's provision of the Service to you. As a condition of this indemnity you must:

(a) notify Swiftcall promptly in writing of any allegation of infringement;

- (b) make no admission relating to the infringement;
  - (c) allow Swiftcall or its agents (including Eircom or other appointed agent) to conduct all negotiations and proceedings and give all their assistance in doing so (Swiftcall will pay your reasonable expenses for such assistance); and
  - (d) allow Swiftcall or its agents (including Eircom or other appointed agent) to modify the Service, or any item provided as part of the Service, so as to avoid the infringement provided that the modification does not materially affect the performance of the Service.
- 12.2 The indemnity in Clause 12.1 does not apply to infringements caused by the use of the Service in conjunction with other equipment or software not supplied by Swiftcall or its agents (including Eircom or other appointed agent), or to infringements caused by designs or specifications made by you, or on your behalf. You will indemnify Swiftcall and its agents against all claims, proceedings and expenses arising from such infringements or alleged infringements.
- 12.3 Where Software is provided to enable you to use the Service, Swiftcall grants you a non-exclusive non-transferable licence to use the Software solely for that purpose during the term of this Agreement.
- 12.4 You shall not copy nor, except as permitted by law, decompile or modify the Software in any way, nor copy the manuals or documentation.

### **13. CHARGES**

- 13.1 The Charges shall apply from the Start Date. The subscription shall be charged monthly in advance with telephone calls charged monthly in arrears. You shall pay the Charges in accordance with the payment terms and billing procedures set out on the <http://www.swiftcall.ie> pages.
- 13.2 Swiftcall operates an electronic billing facility. All bills will be added to an end-users account section electronically. An e-mail notification of the bill being available will be e-mailed to customers prior to the monies owed being collected.
- 13.3 All Charges for the Service are inclusive of VAT at the applicable rate.
- 13.4 All sums due to us shall be paid in full by credit/debit card or direct debit mandate. Provision of the Service shall be conditional on the Customer making all necessary arrangements to pay for the Service by such means.
- 13.5 Swiftcall reserves the right to vary the Charges at any time on giving you 28 days notice in writing.
- 13.6 Dishonoured Direct Debits and cheques will be charged to the Customer at the rate of €5 per transaction.
- 13.7 Any unpaid monies owing to Swiftcall may be referred to a collection agency.
- 13.8 All charges shall be calculated by reference to the data recorded or logged by Swiftcall or supplied by any other authorised operator in accordance with its telecommunications logging systems. Swiftcall's determination in respect thereof is final.
- 13.9 In the event that you terminate the public switched telephone line or the contract therefore in respect of your voice services, then the Service connected to the line will also be terminated simultaneously.
- 13.10 In the event that you no longer use Swiftcall to deliver your voice service, Swiftcall may, at their sole discretion, suspend the internet service until the voice service is returned to Swiftcall or charge the surcharge as set out in the Price List.
- 13.11 Swiftcall will not issue manual cheque refunds for any amount less than €10.00; we will issue a credit to be placed on a customer account for amounts under this figure where applicable.

### **14. SECURITY**

- 14.1 Swiftcall will issue you with a username and password. These are essential for the secure use of the Service and you must ensure that they are kept confidential, secure and are used in accordance with all relevant instructions.
- 14.2 To ensure that the Service remains secure, you must not change or attempt to change a username.
- 14.3 If Swiftcall believe there is likely to be a breach of security or misuse of the Service we may:
- 14.3.1 change the password and then notify you that we have done this; or
  - 14.3.2 suspend access to the Service.

### **15. LIMITATION OF LIABILITY**

- 15.1 We shall use all reasonable endeavours to ensure that the Service is available for use by you in accordance with the standards of a competent telecommunications service provider, but Swiftcall shall not be held liable for any delay, failure, interruption, or deterioration of the Service, howsoever arising
- 15.2 Swiftcall has neither control over the content of, nor is responsible for, information that is transmitted and made available on the Internet and the security of the Internet as a communication medium, or as a medium for purchasing or payment cannot be guaranteed.
- 15.3 Swiftcall shall make reasonable efforts to prevent unauthorised access to the Service by third parties but shall have no liability to you for any unauthorised access to your equipment or computer system.
- 15.4 We shall have no liability under this Agreement for the acts and omissions of other telecommunications or electronic communications operators and/or Internet Service Providers.
- 15.5 Swiftcall accepts unlimited liability for death or personal injury resulting from its negligence.
- 15.6 Neither party shall be liable to the other, either in contract, tort (including negligence) or otherwise for direct or indirect loss of profits, business or anticipated savings, nor for any indirect or consequential loss or damage or for any destruction of or impairment of access to any data arising in relation to this Agreement including, without limitation, Swiftcall's ability to provide the Service.
- 15.7 The liability of Swiftcall in contract, tort (including negligence) or otherwise in relation to this Agreement is limited to the price paid by you for the Modem and the Charges in the year (commencing from the Start Date or any anniversary of the Start Date) in which the liability first arose.
- 15.8 Each provision of this Agreement, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

### **16. TERM AND TERMINATION**

- 16.1 This Agreement may be terminated as follows and the cancellation provisions of the Consumer Protection (Distance Selling) Regulations 2000 (the "Distance Selling Regulations") will not apply to the Service:
- 16.1.1 by either of us in writing (fax, letter or email). The customer's account must be paid up to date, any Cancellation fee, as per the Price List, be paid and the Modem returned as per 16.4, unless we terminate pursuant to Clauses 2.7 and 2.8 without notice;
  - 16.1.2 by you giving 7 days notice if we inform you of a material change to the Service or we give notice of an amendment to this Agreement pursuant to Clause 17 where such changes are to your detriment;
  - 16.1.3 If you give notice of termination of this Agreement, or we terminate pursuant to Clause 6.2, during the Minimum Period and the Service has been made available for you to use, you must pay all Charges payable during the Minimum Period.
  - 16.1.4 Any fees charged to Swiftcall by Eircom or other appointed agent for cancelling an order will be passed onto the customer.
  - 16.1.5 Swiftcall reserve the right to charge a termination fee to you, on top of any other money owed, should you cease your Eircom or other authorised operator's line or contract therefore or discontinue your Love2Talk & Surf service.
  - 16.1.6 The Customer shall have the right to terminate the Service within five days of placing an order with UTV, or prior to the Start Date, whichever is earlier. Failure to do so will result in payment of fees incurred by Swiftcall during provision and subsequent termination of the ADSL service.
- 16.2 Either party may terminate this Agreement immediately, on notice if the other:
- (a) commits a material breach of this Agreement, which is capable of remedy, and fails to remedy the breach within a reasonable time of a written notice to do so; or
  - (b) commits a material breach of this Agreement which cannot be remedied; or
  - (c) is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administrator is appointed over their assets.
- 16.3 Swiftcall shall be entitled to terminate this Agreement in the event that:
- (a) the contract between Swiftcall and Eircom or other authorised operator enabling Swiftcall to provide the Service is terminated;
  - (b) the service provided to Swiftcall by Eircom or other authorised operator is not of the quality deemed by Swiftcall to be appropriate to provide the Services;
  - (c) you no longer have a valid contract for the use of an Eircom or other authorised operator analogue direct exchange line as referred to in Clause 4.5(a);
  - (d) we are obliged to comply with an order, instruction or request of Government, the Commission for Communications Regulation (ComReg), an emergency service organisation or other competent authority; or
  - (e) you are suspected of involvement with fraud or acts which are of a defamatory, offensive, abusive, obscene, menacing, unsuitable or unlawful character in connection with use of the Service, or
  - (f) if for technical reasons it is not possible to provide the Service.
- 16.4 The broadband modem equipment at all times is the property of Swiftcall, If requested to do so you may be required to return this equipment to the address notified in the modem return document, which will be issued to you upon termination of this contract. If Swiftcall does not request the return of the broadband modem equipment then we respectfully ask you to dispose of this in a safe and environmentally friendly manner, please consult this web site for advice <http://www.wceireland.ie/>. Swiftcall is not responsible for the content on external websites. Failure to return the modem and microfilters within 14 days of the effective date of termination shall result in Swiftcall debiting €40.00 from your Bank Account/Credit Card for the equipment and you hereby expressly consent to such debit. The line will not be ceased until the modem is returned to the appropriate destination. Upon receipt of your modem, Swiftcall will cease your service with our supplier.
- 16.5 If any of the events detailed in 16.2 occur as a result of your default, Swiftcall may suspend the Service without prejudice to its right to terminate this Agreement. Where the Service is suspended under this Clause 16.4 you must pay all the Charges due in respect of the Service until this Agreement is terminated.

16.6 In the event that Swiftcall agrees to you terminating this Agreement before the expiry of the Minimum Period, you must pay all the Charges due up to and including the date of expiry of the Minimum Period.

16.7 In the event that Swiftcall agrees to you cancelling the service after the Minimum Period you must pay all the Charges due for the service as per the Price List and including the cancellation fee.

16.7 Termination in accordance with this Clause 16 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party and all provisions which are expressed to survive this Agreement or implied to do so shall remain in full force and effect.

#### **17. FORCE MAJEURE**

17.1 If either party is unable to perform any obligation under this Agreement because of a matter beyond that party's reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving that party's employees), breakdown of telecommunications systems, deterioration of your telephone line or acts of local or central Government or other competent authorities or events beyond the reasonable control of that party's suppliers, the party will have no liability to the other for that failure to perform.

17.2 If any of the events detailed in Clause 17.1 continue for more than one month either party may serve notice on the other terminating this Agreement.

#### **18. ASSIGNMENT**

18.1 Swiftcall may assign this Agreement to an Affiliate of it without consent.

18.2 The Customer shall not assign this Agreement in whole or in part without the prior written consent of Swiftcall.

#### **19. NO WAIVER**

19.1 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right and does not operate so as to bar the exercise or enforcement thereof, or of any such right or any other right on any later occasion.

19.2 Any deficiency in the Customer's authority to avail of the Service or to use the Equipment shall not preclude reliance by Swiftcall on any of its rights under this Agreement.

#### **20. NOTICES**

20.1 Swiftcall shall send all notices either to the Customer's e-mail billing address as provided on registration or place same on the Swiftcall webpage (<http://u.tv>).

20.2 Swiftcall's address for service of any notice hereunder shall be such address as appears on the last written correspondence rendered to the Customer or such other address as may be prescribed by Swiftcall for the purpose.

20.3 All written correspondence from Swiftcall shall be deemed served 48 hours after posting or on earlier proof of delivery.

#### **21. USE OF INFORMATION**

21.1 In accordance with the provisions of the Data Protection Act 1988, any information obtained by Swiftcall or through the use of the Service and (subject to the right of the Customer to request otherwise on the application form overleaf) may be used by Swiftcall to identify other products and services which may be offered to the Customer.

21.2 In accordance with the Data Protection Act 1988 and the Carrier Pre-Selection Code of Practice, any information obtained by Swiftcall through an application for or the use of the CPS Residential Calling Service may be accessed and used by Swiftcall and its Affiliates for the purposes of accurate billing and efficient operation. The Customer shall be deemed to have given consent for the use of his information for such purposes. The use of such information for purposes other than billing and operation shall be subject to the Customer's consent as given on the application form and the Customer Authorisation Form.

21.3 In respect of Services other than the CPS Residential Calling Service, use of such information shall be confined to Swiftcall and its Affiliates. Any information so obtained may be disclosed by Swiftcall to any person where this is necessary for the provision of the Service or to any person who assumes the rights of Swiftcall under this Agreement and to any credit reference agency or bureau, subject to the right of the Customer to request otherwise on the application form overleaf.

#### **22. VARIATION**

Swiftcall reserves the right to vary the terms of this Agreement or the nature of the Service (where the technical specification of the Service is varied) at any time and Swiftcall will inform you of any such changes through e-mail, newsletter or such other medium, as Swiftcall considers appropriate not less than one month prior to the implementation of such variation.

#### **23. MISCELLANEOUS**

23.1 This Agreement shall be governed by and construed in accordance with Northern Ireland Law and, subject to Clause 19.9 herein, the parties hereby agree to submit to the exclusive jurisdiction of the High Court of Northern Ireland in respect of any dispute or matter arising out of or in connection with the Agreement.

23.2 This Agreement constitutes the entire agreement between the parties and supersedes representations, communications and prior agreements (oral or written). This Clause shall not apply to any statement, representation, or warranty made fraudulently, or to any provision of this Agreement that was induced by fraud for which the remedies available shall be all those available under the law.

23.3 Any notice or other communication to be given under the Agreement must be in writing to the other party and may be delivered or sent by email, pre-paid first class letter post or fax transmission at the party to be served last known address. Any notice or document shall be deemed served if delivered, at the time of delivery; emailed, at the time of delivery to your email server; posted, 48 hours after posting; and if sent by facsimile transmission, at the time of transmission.

23.4 This Agreement shall not be assigned, sub-contracted, novated, sub-licensed or otherwise disposed of by you. Swiftcall reserves the right to assign, sub-contract or otherwise transfer its obligations to provide the Service and/or supply the Modem to any third party.

23.5 The illegality, invalidity or unenforceability of any provision in this Agreement shall not affect the continuation in force of the remainder of this Agreement.

23.6 A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 (if it should be applicable) to enforce any of these terms. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

23.7 All written correspondence must be directed to the Administration or Accounts department within Swiftcall.

23.8 Swiftcall operates a customer service guarantee. This service guarantee is detailed in our code of practice, <http://www.swiftcall.ie> and provides that where we do not meet target dates for complaint resolution you may be entitled to a rebate.

23.9 All disputes under the Agreement shall be settled in accordance with the Customer Care Code of Practice for Complaint Handling at <http://www.swiftcall.ie>. All complaints shall be lodged directly with Swiftcall. In the event that a dispute remains unsettled under the Code of Practice procedure, ComReg shall decide on its ultimate resolution.

#### **24. SWIFTCALL PROMOTIONS**

24.1 From time to time, Swiftcall may announce promotions for both existing customers and new customers. Swiftcall reserves the right to amend, withdraw and extend promotions at anytime.

24.2 In all cases, unless otherwise stated within the promotion details, customer credits will be allocated to their Swiftcall subscription account and cannot be transferred to any other account.

24.3 Promotions specifically targeted at new customers will not be applicable to existing customers. Existing customers who cancel and then subsequently re-apply for the Service may not be eligible for promotions open to new customers.