

## 1. Definitions

Wherever these capitalized words and expressions appear in these terms and conditions of Service (each a “Condition” and collectively, the “Conditions”) the following definitions shall apply:

- “Account” means the account in which we record all your Charges;
- “Agreement” means the contract between you and us comprising of any Order Forms agreed, Purchase Orders and the Conditions;
- “Charges” refers to the monthly or other periodic fee and all other fees payable by Customer to Netcelero Limited for the Service and Equipment;
- “Conditions” means these terms and conditions of Service which shall apply to all Orders Forms and Purchase Orders for Services and Equipment agreed between us;
- “Equipment” means any customer premise equipment (CPE), SIM, antenna or other equipment or apparatus provided by us from time to time as part of providing Services under the Agreement;
- “Minimum Term” is the minimum term indicated on the Order Form or Purchase Order;
- “Network” means the electronic communications network run by us or any of our associated companies over which the Services are delivered;
- “Price Lists” means the prices and rates for the Services and Equipment we offer including the usage rates for the Services as issued by us and as may be amended from time to time;
- “Purchase Order” means any purchase order document issued by Customer and accepted by Netcelero in respect of the purchase of Services and Equipment by Customer subject to these Conditions;
- “Services” means the Software as a Service (SaaS) provided to you under these Conditions via the Network;
- “us” or “we” means Netcelero Limited, with its principal place of business located at Unit 721 Northwest Business Park, Blanchardstown, Dublin D15YD30, and whose website is located at [www.netcelero.com](http://www.netcelero.com);
- “VAT” means value added tax;
- “You” or “Customer” means the customer that orders our Services as indicated on the Order Form and includes any person you authorise to act on your behalf. These Conditions will apply jointly and severally to all those requesting Services and the word “you” shall be understood accordingly.

## 2. TERM

- 2.1 Customer may place order for the Services and Equipment using an Order Form or Purchase Order. These Conditions apply from your signature of the Order Form or upon acceptance of a Purchase Order by Netcelero. Billing shall commence from the

date of activation of the Equipment and Services by Customer.

- 2.2 For the avoidance of doubt, any terms and conditions attached to a Customer Purchase Order or any Customer documentation shall not apply to the provision of these Services and the Agreement shall always take precedence over such terms and conditions.
- 2.3 Terms and Conditions. We reserve the right, at our own discretion, to update or revise these Conditions. Please check the Conditions periodically on our website [www.netcelero.com](http://www.netcelero.com) for changes. Your continued use of the Services following the posting of any changes to the Conditions constitutes acceptance of those changes. We can also change the Charges at any time. We will notify you one month in advance of making any change to the Charges. If you do not accept the amended Charges you may exercise your termination right in clause 9.2.
- 2.4 We reserve the right to introduce new or enhanced features and functionalities to the Services.

### **3. ACCESS TO SERVICES**

- 3.1 Subject to the terms and conditions of this Agreement, Netcelero hereby grants to Customer a non-exclusive, non-transferable right of access to and use of the Services during the Term from the date of activation of the Equipment.
- 3.2 Customer is responsible for keeping any passwords safe and for their proper use. If you suspect that any of them has become known to an unauthorised person you must inform us immediately. We have no liability if there is a breach of your security in these circumstances.
- 3.3 You will ensure that all persons having access to the Services or the Equipment comply with these Conditions and shall be responsible for the acts and omissions of all such persons who access the Services or the Equipment as though they were your acts and omissions. Customer agrees to indemnify Netcelero against any claims, costs, losses, damages or liability (including any reasonable legal and professional costs and expenses) arising from the acts or omissions of such persons.
- 3.4 You are not permitted to resell the Services and or Equipment to any third party without prior agreement from Netcelero Limited and any such permitted reselling shall be subject to separate terms and conditions to be agreed between the parties.
- 3.5 If we supply you with any Services as part of a promotion or for promotional purposes, whether or not for a Charge, we reserve the absolute right to terminate at any time the supply of such Service or change the promotional Services, or subscription of Services, that we are supplying. We will notify you one month in advance of any such changes.
- 3.6 Other than with respect to the express warranties set forth herein, the Services are

provided “as is” and all warranties express or implied, representations, conditions and all other terms of any kind whatsoever implied by statute or common law, including those of non-infringement, merchantability and fitness for a particular purpose, all are, to the fullest extent permitted by applicable law, are hereby disclaimed and excluded by Netcelero from this Agreement.

- 3.7 Netcelero does not warrant that your use of the Services will be uninterrupted or error-free, free of other problems that are beyond our control or that the Services will operate in combination with third party services used by Customer save where otherwise agreed. The Services may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications. Netcelero is not responsible for any delays, delivery failures, or other damage resulting from the transfer of data over communications networks and facilities, including the internet. If at any time the Service is affected or unavailable by circumstances beyond our control it shall not be a breach by us of these Conditions.
- 3.8 If a fault in the Services occurs you should notify us by contacting our customer management centre where a problem may be resolved over the telephone or a technician may be sent out to investigate the problem. We are not responsible for correcting problems which are connected with the use of any equipment that is not provided by us (and in such circumstances, we may make a reasonable call out charge to cover our costs).
- 3.9 We warrant the Equipment will be free from material defects for a period of twelve months from the date of purchase (Warranty Period). If a defect occurs in the Equipment during the Warranty Period, Customer must notify us and Netcelero shall replace the defective Equipment. Customer shall return the defective Equipment at our cost. This is Customer’s sole and exclusive remedy and Netcelero’s only liability for any defective Equipment. Netcelero shall not be liable for any defect if: (a) the defect arises because Customer failed to follow instructions for the storage, installation, and use of the Equipment or (if there are none) good trade practice regarding the same; (b) Customer alters or repairs the Equipment without the written consent of Supplier; or (c) the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions at Customer premises.
- 3.10 Broadband speed is subject to availability, line quality and is based on an ‘up to’ speed. We can only provide you the available speed that your network operator and/or line can support at any present time.

## 4. CUSTOMER OBLIGATIONS

- 4.1 Regarding the use of the Services and Equipment, you agree to the following:
  - 4.1.1 Customer shall comply at all times with the Netcelero Acceptable Use Policy available at [www.netcelero.com](http://www.netcelero.com) which shall be incorporated into and form part

of the Agreement;

- 4.1.2 Customer shall follow all reasonable instructions we give you about the Services and Equipment from time to time and provide us any information we reasonably ask for;
  - 4.1.3 Customer will not connect any of your own equipment to the Network which may harm it, the Equipment or equipment owned by other customers. If you do, you agree to disconnect such equipment immediately on our request;
  - 4.1.4 Customer shall not, except to the extent expressly permitted under this Agreement access all or any part of the Services in order to build a product or service which competes with the Services;
  - 4.1.5 Customer shall comply with all applicable laws and regulations with respect to its activities under this Agreement including but not limited to any applicable export or re-export laws; and
  - 4.1.6 Customer shall obtain and maintain all necessary licences, consents, and permissions necessary for Netcelero and its third party providers and subcontractors to perform their respective obligations under this Agreement.
- 4.2 Without prejudice to Netcelero's other rights in law or equity, Netcelero reserves the right, without liability to Customer, to suspend or disable Customer's or any authorised users access to the Services where Customer breaches the provisions of this clause 4 and Customer shall not thereby be entitled to claim any refund or compensation for such suspension. Customer shall indemnify Netcelero and its affiliates and subcontractors from and against all third party claims, suits, demands and actions and for resulting damages, awards of damages, losses, costs, expenses and liabilities (including any regulatory fines and reasonable legal fees and expenses) that result or arise from Customer's breach of this Agreement including any warranties, representations or obligations.

## 5. PAYMENT

- 5.1 Netcelero shall invoice Customer and Customer shall pay such invoices for the Services provided as set out in the Order Form. We reserve the right to assign all payments received or credits against the oldest invoice on your account.
- 5.2 All amounts are non-cancellable and non-refundable unless stated elsewhere in the Agreement and are exclusive of all sales, use, value-added, withholding and other taxes and duties which shall be added to our invoice(s) at the appropriate rate. Customer shall pay all taxes and duties (including withholding tax) assessed in connection with this Agreement. Customer shall pay all invoices in full without set off or counterclaim. If Netcelero has not received payment of any amounts due within fifteen (15) days after the due date, and without prejudice to any other rights and

remedies, Netcelero may, without liability to Customer, disable Customer's password, account and access to all or part of the Services and Netcelero shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid. Services will recommence once payment in full has been received.

- 5.3 We reserve the right to change the billing period at any time. If we fail to bill you for a month or periods of months we reserve the right to include these charges in subsequent bills. If you have a dispute about your bill, please raise this within twelve days of the date of the bill.
- 5.4 If you have chosen to pay by credit/debit card/direct debit and your card facilitator/bank is unable to make payment in any month we reserve the right to demand a different method of payment. In these circumstances we may charge an administrative fee to cover our reasonable costs per bounced transaction.

## 6. **INTELLECTUAL PROPERTY RIGHTS**

Customer acknowledges and agrees that Netcelero and/or its licensors own all intellectual property rights in the Services and Equipment. Except as expressly stated herein, this Agreement does not grant Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services. To the extent that any modifications or improvements to the Services and Equipment are carried out under or in connection with this Agreement, whether by Netcelero alone or jointly with Customer, and whether based on ideas or suggestions from Customer, all intellectual property rights to such underlying ideas and in any resulting improvement or modifications shall be assigned to and shall vest with and be solely owned by Netcelero and/or its licensors.

## 7. **LIABILITY**

- 7.1 To the maximum extent permitted by applicable law, neither party will have any liability to the other party for any lost profits, loss of business, loss of revenue, loss of data, reputational damage, or for any indirect, special, incidental, punitive, or consequential damages however caused and under any theory of liability whether or not a party has been advised of the possibility of such.
- 7.2 Nothing in this Agreement limits or excludes liability of either Party in respect of any claims for death or personal injury caused by negligence, fraud or any other liability which cannot be excluded or limited by law.
- 7.3 Subject to clauses 7.1 and 7.2, to the maximum extent permitted by applicable law, Netcelero's and its affiliates total aggregate liability arising out of or related to this Agreement or the Services under any theory of law (including liability for negligence

or breach of statutory duty or an indemnity claim) shall not exceed the total amount of the Charges paid by Customer in the three months preceding the claim under which the liability has arisen.

## 8. MAINTENANCE AND SERVICE LEVELS

- 8.1 From time to time it may be necessary for Netcelero to complete maintenance on its Network. If the maintenance is likely to result in unavailability of the Services then Netcelero will endeavor to advise Customer in advance. Unscheduled maintenance in respect of a significant event may be required to be performed at any time without notice. Netcelero's Service Level Agreement available at [www.netcelero.com](http://www.netcelero.com) shall be incorporated into and form part of this Agreement.

## 9. TERMINATION

- 9.1 This Agreement shall commence on the date indicated on the Order Form or Purchase Order and shall, unless otherwise terminated as provided in this clause 9, continue for the Minimum Term. Thereafter this Agreement shall automatically renew for renewal periods of twelve months unless either party notifies the other party of termination, in writing, at least 30 days before the end of the Minimum Term or any renewal period, in which case this Agreement shall terminate upon the expiry of the applicable Minimum Term or renewal period. The Minimum Term together with any subsequent renewal period shall constitute the Term.
- 9.2 Customer may terminate all or part of the Agreement during the Minimum Term in the event Netcelero provide notice of increase to the Charges, provided that Customer gives Netcelero one (1) months' written notice of termination of those Services in respect of which the Charges have increased, within thirty (30) days of the relevant Charges increase. During that notice period, the increased Charges shall not be applied to your Account.
- 9.3 Netcelero may terminate the Agreement at any time if (i) Customer materially defaults hereunder, provided that Netcelero gives Customer written notice and at least ten (10) days to cure such default, or (ii) in the event Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or (iii) your Account has been suspended for forty five days or more.
- 9.4 If the service is terminated by either party you must pay everything you owe on your Account at the date of termination.

9.5 On termination of this Agreement for any reason, all licences and rights of access granted under this Agreement shall immediately terminate and all right to access the Services shall immediately terminate, and Customer shall use reasonable endeavours to return and make no further use of any Equipment, property, documentation and other items (and all copies of them) belonging to Netcelero.

9.6 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## 10. **EQUIPMENT**

10.1 We will supply you certain Equipment to facilitate the provision and use of the Services. Optional or additional Equipment requested by you will be subject to additional charges.

10.2 You will need a safe electricity power supply within the site location (which shall be supplied by you at your own expense). We shall not be responsible for faults arising in the Equipment or interruption in the provision of Services caused by failures in the power supply.

## 11. **CONFIDENTIALITY**

Each party shall keep in confidence all confidential information obtained from the other party. Neither Party will use, copy, adapt, alter or part with possession of any information of the other which is disclosed or otherwise comes into its possession under or in relation to this Agreement and which is of a confidential nature. This obligation will not apply to information which the recipient can prove was in its possession at the date it was received or obtained or which the recipient obtains from some other person with good legal title to it or which is in or comes into the public domain otherwise than through the default or negligence of the recipient or which is independently developed by or for the recipient.

## 12. **DATA PROCESSING**

12.1 The Parties shall comply with their respective obligations under the General Data Protection Regulation (EU) 2016/679) and any other applicable data privacy laws and regulations (together, the “Data Protection Laws”), in connection with this Agreement.

## 13. **MISCELLANEOUS**

13.1 Force Majeure. Netcelero shall not have any liability to Customer under this agreement if it is prevented from or delayed in performing its obligations under this

Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, pandemic, epidemic, provided that Customer is notified of such an event and its expected duration. If the period of delay or non-performance continues for three (3) months, Customer may terminate this Agreement by giving one calendar month written notice to Netcelero.

- 13.2 Assignment. Customer may not assign, novate, delegate, or otherwise transfer this Agreement without Netcelero's prior written consent. Netcelero may assign, novate, delegate, or otherwise transfer this Agreement at any time.
- 13.3 Waiver. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law, or a single or partial exercise of such right or remedy, shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.
- 13.4 Invalidity. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 13.5 Entire Agreement. This Agreement and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 13.6 Publicity. Neither party may publicly announce this Agreement except with the other party's prior consent or as required by applicable laws. However, Netcelero may include Customer and its trademarks in Netcelero's customer lists and promotional materials but will cease this use at Customer's written request.
- 13.7 No agency. Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture between the parties, or authorize either party to act as agent for the other.
- 13.8 Survival. The following Clauses shall survive the termination or expiration of this Agreement: clause 3, 4, 6, 7, 9, 11, 12, and this clause 13.
- 13.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.
- 13.10 Dispute Resolution. The Parties shall do their best acting in good faith to settle amicably any dispute, controversy or claim arising out of or in connection with the existence, validity, construction, performance and termination of the Agreement (or any terms thereof). Escalation to the Senior Management of the Parties shall be the



preferred dispute resolution methodology. If Senior Management cannot resolve the dispute within 30 days of first notification of the dispute the matter shall be referred to the courts of Ireland in accordance with clause 15.12. The provision of the Services shall not be delayed or suspended pending the resolution of any dispute.

- 13.11 Governing Law and Jurisdiction. This Agreement and any disputes or claims arising out of or in connection with it are governed by and construed in accordance with the laws of the Republic of Ireland. The parties irrevocably agree that the courts of the Republic of Ireland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non- contractual disputes or claims).