

TERMS AND CONDITIONS OF Comharchumann Dhún Chaoin Teoranta AGREEMENT

Supplier agrees to make available to the Subscriber the Facility described below on the following Terms and Conditions:

1.1 In this Agreement:

"Agreement" means this agreement between Comharchumann Dhún Chaoin Teoranta and the Subscriber for the provision and where applicable for the installation of the Facility.

"Facility" means any or all equipment be it mechanical, hardware or software provided or licensed to the subscriber under the terms of this Agreement.

"Anticipated Savings" means any expense, which the Subscriber expects to avoid incurring or to incur in a lesser amount than would otherwise have been the case by reason of using the service.

"Rental" is the recurring charge payable by the Subscriber to Supplier in respect of the Service.

"Connection Charge" means the once off non-recurring charge payable by the Subscriber for initial provision and where applicable installation of the Service.

"Content" means data, information, video, graphics, sound, music, pictures, text, code, scripts, photographs, software and any other material (in whatever form) which may be made available as part of the Service.

"Charges" means rental, connection charge and any other charge payable by the Subscriber to the Supplier hereunder.

"Subscriber" means the person with whom Supplier makes has made or is deemed to have made an agreement for the provision to such person of the facility and also means a person to whom such facility has been or is being provided.

"Supplier" means Comharchumann Dhún Chaoin Teoranta.

"Internet" means the global data network comprising interconnected networks using TCP/IP (Transmission Control Protocol/Internet Protocol).

"Initial Period" means twelve calendar months from the SUD date.

"Kit" means equipment comprising of, inter alia, hardware and software.

"Premises" means the location where the Facility is provided.

"Set Up Date" (otherwise "SUD") means the date on which Supplier establishes the Service for the Subscriber.

1.2 This Agreement shall be governed by and construed in accordance with Irish law.

1.3 The headings in this Agreement are for convenience only and shall not affect its interpretation.

1.4 The parties agree that the fact that this Agreement may be stored or exchanged in electronic form shall not affect its validity.

2.1 The service consists of a connection from the subscriber to the internet

2.2 The supplier has no responsibility for material contained in the service and the subscriber acknowledges that the supplier does not and cannot filter the content. The subscriber indemnified the supplier in respect of any right or cause of action arising from the subscriber's use, solicitation or receipt of any material obtained under this Agreement.

2.3 The subscriber acknowledges that in order to provide the service the supplier has contracted with communications operators and that the supplier will only supply uninterrupted and continuous service to the subscriber pursuant to this agreement to the extent same is made available to the supplier by said operators.

2.4 The subscriber acknowledges that while the supplier will make all efforts to ensure that the subscriber is able to use the service on a twenty four hour basis but nothing in this agreement shall make the supplier liable to the subscriber in respect of any loss of service how so ever arising

2.5 The subscriber acknowledges that the connection speeds quoted are maximum speeds and may not be achieved at all times

2.6 The Subscriber acknowledges that the supplier may from time to time be required to temporarily suspend the service for legal and or technical reasons. The supplier undertakes to restore the service to minimize any such disruption.

2.7 The supplier may at any time change or withdraw any element of the service from time to time and undertakes to notify the subscriber of any change in the service.

2.8 At all times the supplier reserves the right to transfer the subscribers service to another operator but will only do so with good cause, said good cause to be determined by the supplier.

2.9 The subscriber acknowledges that it is the subscribers sole and exclusive responsibility to install configure and maintain such necessary security measures to protect the subscribers property from unauthorized, illegal or malicious access from the internet.

2.10 The supplier will exercise its best endeavors but does not warrant that the service will meet the Subscriber's specific requirements or that the operation of the service will be uninterrupted or error-free.

2.11 The service is provided solely for the Subscriber's own use and the Subscriber shall not resell the service (or any part of the service), whether for consideration or not, to any third party.

2.12 Where the service is provided to the subscriber as part of a community group or where the subscriber is a community group the subscriber acknowledges that there may be an interruption to the service due to maintenance or damage to group equipment and that the Supplier is not responsible in such circumstances for any loss or interruption to the service howsoever arising to the group or any individual in the group.

2.13 The supplier shall provide as is reasonably available uncapped usage of the service to individual or group subscribers. The supplier however reserves in its absolute discretion to restrict or limit the use of the service by any subscriber having regard to the quality of service to be provided to other users/subscribers of the service.

2.14 At all times the maintenance and protection of the subscribers property remains the subscribers responsibility and not the responsibility of the supplier

TERM

3.1 This Agreement shall commence on the Set Up Date (SUD) and shall be for the Initial Period. This Agreement shall thereafter automatically renew for successive twelve-month periods. For the purposes of this clause

3, a twelve-month period will be calculated from the anniversary of the SUD date.

3.2 In the event of the subscriber canceling the service the subscriber must do so by sending a written request signed by an authorized signatory of the subscriber by mail or fax to the supplier giving 1 months notice. Should the subscriber seek to terminate this agreement during the initial term a cancellation fee equal to three months service fee will become immediately due and the subscriber acknowledges and agrees to pay such fee.

3.3 The supplier reserves the right to terminate this agreement at any time without notice if in its sole discretion the supplier believes the subscriber has terminated or breached any terms of this agreement or if the subscriber fails to pay any charges when due.

3.4 Supplier may terminate this Agreement immediately by notice to the other if:

3.4.1 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other party;

3.4.2 the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;

3.4.3 the other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the other party under this Agreement);

3.4.4 the other party ceases, or threatens to cease, to carry on business;

3.4.5 if it is unable to continue to provide the service having regard to the circumstances that prevail at the time of such termination.

SUBSCRIBER AGREEMENTS AS TO PROPER USE

4.1 The Subscriber agrees to comply with the following conditions:

4.2 Subscribers may not use the service to seek to gain unauthorized access to facilities, services or resources of the Supplier or to the facilities, services or resources of any connected Internet service providers.

4.3 Subscribers may not use the service to engage in activities, which cause or, in the opinion of the supplier, are liable to cause disruption or denial of service to any Internet subscriber or Internet user.

4.4 Subscribers may not use the service to create, host or transmit material, which is defamatory.

4.5 Subscribers may not use the service to create, host or transmit material, which infringes the intellectual property rights including, but not limited to, the copyright of another person or organization.

4.6 Subscribers may not use the service to engage in activities, which infringe proprietary rights in any software.

4.7 Subscribers may not use the service to engage in activities, which compromise the privacy of others.

4.8 Subscribers may not use the service to engage in activities which adversely affect the integrity of computer based information

4.9 Subscribers may not use the service to transmit unsolicited commercial or advertising email material either to other subscribers or to other organizations connected to other networks, if the transmission of such material causes or is likely to cause nuisance and/or annoyance or is transmitted without the consent of the recipient.

4.10 Subscribers may not use the service to download from the internet any music or film

4.11 Subscribers may not use the service to download from the internet any music or film files of any kind.

4.12 The subscribers indemnify the supplier in respect of any action, cause of action, threatened or otherwise by the holder of any intellectual property including copyright, trademark, patent or otherwise.

4.13 Where additional terms and conditions govern any access to any Internet service, the Subscriber acknowledges that it is obliged to comply with such terms and conditions.

FEES

5.1 The Subscriber agrees that without prejudice to the Subscriber's right to terminate this Agreement under due notice, to pay on demand a monthly service fee and all other fees charges taxes and other amounts for the service at the rate in effect for the current billing period. The Supplier may increase or decrease the basic monthly service fee. The supplier will use all reasonable efforts to provide the subscriber with 30 days or more notice of same. In the event that the changes to the fees are to the detriment of the subscriber the subscriber may terminate this agreement by giving the supplier thirty days written notice and the subscriber will remain liable for any balance on the account and with respect to any kit not returned to the supplier within 14 days of expiry of the said thirty days.

5.2 Except where otherwise agreed, payment is due in full by standing order at the start of each billing month save and excepting where the subscriber has selected annual prepayment. All charges are valid unless disputed in writing within 60 days of the billing date and no adjustments will be made unless charges are challenged within the said period of 60 days.

5.3 In the event of any payment being overdue for more than 7 working days and/or in the event of any payment being returned by the bank unpaid the supplier may suspend the service with immediate effect and service will only be restored on payment of all outstanding amounts. In the event of the service being suspended for the foregoing reasons the subscriber is not relieved of the obligation to pay any monthly service fee arising while the service is suspended. The supplier may at its discretion terminate the service and this agreement in the event of any monthly service fee being outstanding for more than fourteen days

5.4 In the event of the service being suspended or terminated for any reason a reactivation fee or deposit may be required by the supplier at its sole discretion.

5.5 The monthly service fee will fall due on 1st day of every month.

LIMITATION AS TO LIABILITY

6.1 In no event shall Supplier be liable to the Subscriber in contract, tort or otherwise including any liability for negligence or breach of duty for:

(i) any loss of revenue, business, contracts, Anticipated Savings, or profits, or

(ii) any loss or corruption of data or software configuration

(iii) any indirect or consequential loss, howsoever arising.

6.2 In so far as the same is permissible by law, Supplier shall not be liable in contract, tort or otherwise for any loss, injury or damage, arising directly from:

(a) any act, omission, error, default, failure or delay in respect of the provision, installation, operation, maintenance or termination of the service;

(b) any failure of the service;

(c) any failure of, or defect in, anything provided as a part of or in association with the service.

6.3 In no event shall Supplier be liable to the Subscriber for damage suffered by the Subscriber as a consequence of acts or omissions of third parties. The Subscriber acknowledges that it accesses the Internet at its own risk and that Supplier has no responsibility for any goods, services, information, software or other materials accessed by the Subscriber whilst using the service.

6.4 The Subscriber shall indemnify Supplier against all claims made against Supplier, for loss, damage or injury to any person or property occasioned by or arising from the use of the service by the Subscriber.

6.5 At all times it remains the responsibility of the subscriber to take all reasonable steps to protect the subscribers property and that the subscriber is solely responsible for ensuring that all computer files and data are backed up on a regular basis

6.6 While encryption and authentication is provided on all of supplier's network links, no guarantee can be given against any unauthorized access, interception of data or any other security breach.

6.7 The supplier shall not be liable for faulty installation or any injury or loss in the course of installing the facility.

MAINTENANCE

7.1 The Supplier reserves the right to charge the Subscriber reasonable costs and expenses incurred by Supplier in providing maintenance services where the need for maintenance services results from any one of or a combination of the following:

- (i) acts of God, lightning, electric voltages and currents impressed on the telecommunications line by lightning or otherwise, fires, floods, storms or other catastrophes; or
- (ii) government control, restrictions or prohibitions; or
- (iii) any other act or omission of any public authority (including Government) whether local, national or international; or
- (iv) the willful or negligent act or default of the Subscriber or of any supplier, agent of the Subscriber; or
- (v) failure of the Subscriber to comply with any of the provisions of this Agreement; or
- (vi) fault in or other problem associated with any telecommunications systems other than that of Supplier; or
- (vii) any other cause whatsoever which is beyond the reasonable control of Supplier.

8.1 The Supplier may assign the benefit of this Agreement to a third party without the prior consent of the Customer however the Customer shall not assign this Agreement in whole or in part without the prior written consent of the Supplier.

NO WAIVER

9.1 Failure by the Supplier 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.

9.2 Any deficiency in the Subscriber's authority to avail of the service or to use the kit or facility shall not preclude reliance by the Supplier on any of its rights under this Agreement.

INTELLECTUAL PROPERTY RIGHTS

10.1 Where software is provided under this Agreement, the Supplier grants the Subscriber a non-exclusive, non-transferable license to use the software solely for that purpose during the term of this Agreement.

10.2 The Subscriber shall not copy nor, except as permitted by law, decompile or modify the software in any way, nor copy the manuals or documentation.

10.3 The Subscriber agrees to sign any agreement required by the owner of any copyright in any software to protect the owners interest in that software.

DATA PROTECTION ACT, 1988

11.1 In accordance with the provisions of the Data Protection Act, 1988 (as amended) any information obtained by the Supplier from the Subscriber under this Agreement including the details contained in the Subscriber's Application, (subject to the right of the Subscriber to request otherwise on the application form overleaf now or at a later date) may be used by the Supplier to identify other products and services which may be offered to the Subscriber by the Supplier.

ENFORCEABILITY

12.1 If any provisions of this Agreement are held to be unenforceable, illegal or void in whole or in part the remaining portions of the Agreement shall remain in full force and effect.

LAW

13.1 This Agreement shall be governed by and construed in accordance with the laws of Ireland and the parties hereto submit to the exclusive jurisdiction of the Irish Courts.