

DEFINITIONS

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

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

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

"**Commencement 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;

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

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

"**Equipment**" means the Radio Antenna that is supplied for the duration of the Service by Kerry Broadband when you subscribe to the Service that enables you to connect your personal computer to the Kerry Broadband network and access the Internet and includes any other equipment to include all fittings, accessories and modifications thereto from time to time provided as an essential part of providing the Service under this Agreement;

"**Kerry Broadband**", "**we**", "**us**" or "**our**" shall mean Kerry Broadband Internet Services;

"**Minimum Subscription Period**" means the term commencing on the Commencement Date and the date six months thereafter;

"**Notice Date**" means the date written notice is given to Kerry Broadband by the Subscriber requesting termination of the Service;

"**Parties**" or "**the Parties**" means the Subscriber and Kerry Broadband including its assignees;

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

"**Service**" means an Internet Protocol (IP) based internet connectivity service provided by Kerry Broadband connecting the Subscriber to the Internet via Kerry Broadband's network, including any such additional services as may be subscribed to by the Subscriber;

"**Subscriber**" or "**you**" means the party to whom Kerry Broadband provides the Service;

"**Subscription**" means the amount payable by the Subscriber to Kerry Broadband for the provision of the Service and the use of the Equipment together with any Value Added Tax and any other taxes (at applicable rates from time to time);

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

1. ORDERING THE EQUIPMENT AND THE SERVICE

1. This Agreement shall come into force if the Subscriber's order is accepted by Kerry Broadband. Taking payment from your debit account or debit card does not indicate acceptance. Acceptance of your order takes place at the point where such offer is expressly accepted by us by dispatching the Equipment/commencing Services. You should review the email confirmation carefully to ensure that all details are correct. If you have any queries about or wish to correct any of your order details, you should contact Kerry Broadband.
2. If your account is debited before the contract is formed, and if your order is ultimately rejected, we will refund any monies debited from your account. If Kerry Broadband accepts your order, it will provide the Services to you from the date the Service is activated. Your use of the Service shall be deemed to be an acceptance by you of these terms and conditions. A copy of the terms and conditions is available on our website <http://www.kerrybroadband.ie>
3. You warrant that any information provided by you when placing your order is up-to-date, accurate in all material respects and is sufficient for us to fulfil your order; and that you have the legal capacity to enter into a contract. You are responsible for maintaining and promptly updating your account information as necessary to ensure accuracy and completeness.
4. Any prices, quotations and descriptions made or referred to on the Kerry Broadband website are subject to availability, do not constitute an offer and may be withdrawn or revised at any time prior to our acceptance of your order.
5. While Kerry Broadband will make reasonable efforts to facilitate the efficient processing of your order, your order may be rejected (without liability) if for any reason Kerry Broadband is unable to process or fulfil your order.

2. THE SERVICES

1. Kerry Broadband supplies a Service and /or the Equipment to the Subscriber, pursuant to this Agreement. Kerry Broadband hereby grants the Subscriber the right to use the Equipment and the Service in accordance with the terms of this Agreement, and the Subscriber hereby accepts such use on the terms and conditions as set out in this Agreement.
2. Kerry Broadband will use it's reasonable commercial efforts to maintain constant access to the Service and ensure that it is available for use by the Subscriber. However Kerry Broadband does not represent or warrant that the operation of the Services will be uninterrupted, timely, secure or error free or that they will meet any of the Subscribers specific requirements. You acknowledge that Kerry Broadband cannot be held responsible for accidental non-availability for outages of services, or for unforeseen interruptions or deterioration of the Service.
3. If the Service provided to the Subscriber is of unacceptable quality (the quality of the Service to be determined by Kerry Broadband) the Subscriber shall be entitled to terminate this Agreement and receive a full refund of the Subscription provided that the Service is cancelled and the Equipment is returned to Kerry Broadband (in accordance with Clause 5.4) within seven days of the commencement of the Service.
4. The Service will be provided in accordance with Kerry Broadband's Code of Practice which can be found at <http://www.kerrybroadband.ie>

3. THE EQUIPMENT

1. Kerry Broadband will use it's reasonable endeavours to deliver the Equipment to the notified location by the delivery date communicated to you. You should be aware that this delivery date is not guaranteed and Kerry Broadband shall not be liable in any way to you for failure to deliver the Equipment in accordance with any delivery schedule. You shall inspect the Equipment immediately upon receipt and inform us in writing within five working days of delivery of any damage or missing items from the delivery.
2. If you fail to take delivery of the Equipment (or fail to give us appropriate delivery instructions) unless this was out of your reasonable control then without prejudice to any other rights or remedies available to us, we may store the Equipment until actual delivery and charge you for the reasonable costs (including re-delivery) as a result of a failed delivery.
3. Your rights of repair or replacement of any Equipment or any part or parts thereof which are found to be defective will (except where agreed otherwise) be negated or rendered void where:
 1. the Equipment has been repaired or altered by persons other than the manufacturer or Kerry Broadband; and/or
 2. defective Equipment have not been returned together with full details in writing of the alleged defects within twenty eight days from the date on which such Equipment was delivered; and/or
 3. defects are due (wholly or partially) to mistreatment, improper use or storage or maintenance or installation, or failure to observe any manufacturers' instructions or other directions issued or made available by us in connection with the delivered Equipment.
4. Prior to installing the Equipment, you should read the installation instructions carefully and back up or save any data on your personal computer.
5. The equipment which is installed by Kerry Broadband remains the property of Kerry Broadband at all times.
6. The subscriber agrees that Kerry Broadband has the right to access it's own equipment for the purpose of installation, maintenance and on termination of contract, the removal of same.
7. The Subscriber shall take all reasonable care in the use of the Equipment and shall at its own cost and expense protect the Equipment from loss and damage. Title to the Equipment will at all times remain with Kerry Broadband and the Subscriber shall be liable for any damage caused to or loss of the Equipment. All risk of loss and damage in and to the Equipment shall, from the date of delivery to the Subscriber, vest with the Subscriber.
8. **On termination or expiry of this Agreement, the Subscriber shall return the Equipment to Kerry Broadband within ten working days. Failure to return the Equipment in good working order shall result in a charge of €175 (one hundred and seventy five Euro) inc 21% VAT being levied against the Subscriber.**

4. PAYMENT OF CHARGES

1. The Subscriber shall pay the Subscription to Kerry Broadband monthly in advance.
2. The Subscription may increase or decrease at such times and rates as may be notified to the Subscriber from time to time. The Subscriber shall give 30 days notice in writing, any changes they wish to make to their subscription.
3. Kerry Broadband shall be entitled and is hereby specifically authorised to, at its election, either immediately cancel this Agreement and/or suspend the supply of Services to the Subscriber and/or to recover the Equipment (as provided for in this Agreement), upon failure by the Subscriber to pay the Subscription or if the Subscriber is in breach of the terms of this Agreement.
4. Should the Subscriber have to pay to Kerry Broadband any re-connection fee or any ancillary amount, as is not provided for in this Agreement, then such amount shall be paid directly to Kerry Broadband over and above the Subscription or any other charges set out in this Agreement.
5. Should a Subscriber's payment fail for any reason that is due to the Subscriber, Kerry Broadband shall apply an administration charge of €9.50 on the following invoice for each and every event of failure.
6. If the Service is disconnected by Kerry Broadband following two continued payment failures, or non-payment of the Subscription or ancillary charges, a reconnection charge of €25 must be paid by the Subscriber in order to reconnect the Service.
7. If the Service is not available to the Subscriber as a result of damage to the Equipment by the Subscriber, whether inadvertently or intentionally, the Subscriber shall nonetheless remain liable for the full Subscription during such period where the Service is not available to the Subscriber.

5. DURATION, CANCELLATION & TERMINATION

1. If the Subscriber is a Consumer who has purchased the Equipment or the Service over the telephone or online, that Subscriber may cancel this Agreement for any reason without penalty within the following time limits :
 1. for the Equipment, up to seven working days from the date of delivery of the Equipment; or
 2. for the Service, up to seven working days from the date Kerry Broadband accepting your Customer Authorisation Form.
2. You agree that your right to cancel the Service will not apply where the provision of the Service commences before the seven day cooling off period expires.
3. All cancellation notices must be sent in writing to Kerry Broadband, Ballygarron, The Spa, Tralee, Co.Kerry and the notice will be treated as given on the day it was delivered to the above address if sent by post or the date the email or the fax was sent to the specified address.
4. If you terminate this Agreement in accordance with clause 5.1, you undertake to discontinue use of the Equipment and immediately return the Equipment (in its original packaging, and with any associated equipment and documentation) to Kerry Broadband in good working order. You will be responsible for the cost of returning the Equipment to Kerry Broadband.
5. If, during the Minimum Subscription Period, Kerry Broadband (following seven days notice to the Subscriber) either increases the Subscription by a total of more than ten per cent or makes significant changes to the Services, the Subscriber may terminate this Agreement by giving at least thirty days notice in writing. In such circumstances, the Subscriber shall not be liable for the remainder of the Charges for the Minimum Subscription Period. If no notice of such intention to terminate is received by Kerry Broadband within thirty days of the date of increase in the Subscription or change in the Service, the Subscriber will be deemed to have accepted the increase in the Subscription and/or the changes to the Service.
6. The Minimum Subscription Period for this Service is twelve months. The Subscriber shall have the right to terminate this Agreement after the Minimum Subscription Period by giving Kerry Broadband thirty days notice in writing. The Subscriber must pay the Subscription up to the end of that thirty day notice period.
7. If the Subscriber terminates this Agreement during the Minimum Subscription Period (except as set out in Clause 5.1 or Clause 5.5), the Subscriber shall be liable for the balance of the Subscription for the remainder of the Minimum Subscription Period.
8. On termination or expiry of this Agreement for whatever reason, the Subscriber shall ensure that the Equipment is returned to Kerry Broadband (in its original packaging, and with any associated equipment and documentation) in good working order and condition, fair wear and tear excepted. Failure to return the Equipment in good working order shall result in a charge of €175 (one hundred and seventy five Euro) plus 21% VAT levied against the Subscriber.
9. Kerry Broadband provides the Service under authorisation granted by ComReg. Kerry Broadband may terminate this Agreement with immediate effect (without liability) by giving written notice if the licence is revoked or otherwise terminated for any reason whatsoever.
10. Kerry Broadband may at any time, without notice to you, immediately terminate this Agreement, or suspend the Service, take possession of the Equipment, recover from the Subscriber payment of all such amounts due at the date of cancellation, retain all monies already paid by the Subscriber and claim as agreed pre-estimated liquidated damages all outstanding amounts which would have been due until expiry of this Agreement and to recover all costs from the Subscriber, including legal costs where;
 1. the Subscriber is in breach of this Agreement;
 2. the Subscriber fails to pay all or any part of the Subscription or any other fees when due;
 3. the Subscriber is suspected of involvement with fraud or acts which are of defamatory, offensive, abusive, obscene, menacing, unsuitable or unlawful character in connection with use of the Service;
 4. Kerry Broadband cannot verify or authenticate any information submitted on the Customer Authorisation Form; or
 5. for any reason Kerry Broadband suspends or discontinues the Service, or is unable to supply the Service to you including where Kerry Broadband is obliged to comply with an order, instruction or request of Government, ComReg, an emergency service organisation or other competent authority.
11. Kerry Broadband reserves the right, at its sole discretion, to pursue all of its legal remedies upon breach by the Subscriber of this Agreement, including but not limited to stopping any Equipment in transit and/or stopping or suspend provision of the Service and/or terminating your order and all or any other contracts between us and you. Further, you agree that Kerry Broadband shall not be liable to you or any third party for any modification, termination or suspension of your access to the Service.

6. THE SUBSCRIBER'S RESPONSIBILITIES AND USE OF THE SERVICE

1. When a Subscriber uses the Service for Internet access, they may only do so in accordance with Kerry Broadband's Acceptable Usage Policy which can be accessed at <http://www.kerrybroadband.ie>, the terms of which are hereby incorporated by reference.
2. Without prejudice to the generality of the foregoing, the Subscriber agrees that in using the Service it shall not violate the law or aid another in any unlawful act.
3. Except for information, products or services clearly identified as being supplied by Kerry Broadband, Kerry Broadband does not operate or control any information, products or services on the Internet.
4. The Internet contains unedited materials that Subscribers may find offensive or objectionable. Subscribers access such materials at their own risk. Kerry Broadband has no control over and accepts no responsibility for these materials. Subscribers may wish to utilize software designed to limit access to certain material on the Internet.
5. Kerry Broadband is not responsible for content or policies available on other sites linked to its site. Use of any links to other web pages, is at the Subscribers own risk.
6. Kerry Broadband may take any action it deems appropriate without notice to protect the Service and its facilities for provision of the Service. If Kerry Broadband denies Subscribers access to the Service pursuant to this Section, Subscribers will have no right;
 1. to access through Kerry Broadband to any materials stored on the Internet; or
 2. to access third party services, merchandise or information on the Internet through Kerry Broadband, and Kerry Broadband will have no responsibility to notify any third-party providers of services, merchandise or information nor any responsibility to any consequences resulting from lack of notification.
7. Kerry Broadband has no obligation to monitor the Service. Subscribers agree that Kerry Broadband has the right to monitor the Service electronically from time to time, and consent to Kerry Broadband's access, use and disclosure of any information as necessary to satisfy any law, regulation or other governmental request, to operate the Service properly, to improve the Service, or to protect itself or its customers. Kerry Broadband reserves the right to refuse or to remove any information or materials, in whole or in part, that in its sole discretion are unacceptable, undesirable, or in violation of this Agreement.

8. If Subscribers wish to make purchases on the Internet, they may be asked by the merchant or Kerry Broadband from whom they are making the purchase to supply certain information, including credit card or other payment mechanism information. Unless Kerry Broadband is a party to such transaction however, Kerry Broadband disclaims any and all liability for any failure or duplication of such a transaction as a result of any cause whatsoever, including disruption of the Service for any cause whatsoever.
9. The Service is provided on an "as is, as available" basis. Subscribers release Kerry Broadband from and Kerry Broadband shall have no liability or responsibility for any direct, indirect, incidental, or consequential damages suffered by any Subscriber in connection with their use of or inability to use the Service including, but not limited to, damages from loss of data resulting from delays, non-deliveries, mis-deliveries, or service interruptions, or due to inadvertent release or disclosure of information sent by them even if the same is caused by Kerry Broadband's own negligence. Kerry Broadband specifically disclaims any responsibility for the accuracy or quality of information obtained through the Service.
10. Any network address assignments issued by Kerry Broadband (i.e., Class C address Internet Protocol numbers) are the property of Kerry Broadband and are considered to be loaned to its subscribers. In the event the Service is discontinued for any reason, such IP addresses will revert to Kerry Broadband immediately.
11. Kerry Broadband customer account descriptions in some cases may specify limits on bandwidth or simultaneous network connections for residential Subscribers, and use up to these limits is included in the subscriptions for that type of subscriber. In the event that Kerry Broadband determines that a residential Subscriber is exceeding the bandwidth, or number of simultaneous network connections, the residential Subscriber will be notified by email of the excess usage. If the excess use continues for more than forty-eight hours after such notification, the residential Subscriber may be requested to upgrade to the appropriate service level agreement or to modify the activity creating the excess use. If excessive bandwidth or simultaneous network connections is determined by Kerry Broadband to adversely affect Kerry Broadband's ability to provide the Service for all Subscribers, immediate action (including suspension of the Subscribers access to the Service) may be taken to alleviate the problem. In such event, the residential Subscriber will be notified by email as soon as practicable.

7. **DISCLAIMERS**

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

The SERVICE IS available to all users "as is" and, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS MADE AVAILABLE without any representations or warranties of any kind, either express or implied.

KERRY Broadband makes no representations, warranties or undertakings that the SERVICE, the EQUIPMENT or any other equipment that makes the service available, will be free from defects, including, but not limited to viruses or other harmful elements. to the maximum extent permitted by applicable law, KERRY BROADBAND accepts no liability for any infection by computer virus, bug, tampering, unauthorised access, intervention, alteration or use, fraud, theft, technical failure, error, omission, interruption, deletion, defect, delay, or any event or occurrence beyond the control of KERRY BROADBAND, which corrupts or effects the administration, security, fairness and the integrity or proper conduct of any aspect of the SERVICE.

All use by you of the SERVICE is at your own risk. You assume complete responsibility for, and for all risk of loss resulting from, your using of, or referring to or relying on the EQUIPMENT or the Service, or any other information obtained from your use of the SERVICE. You agree that, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KERRY BROADBAND and providers of telecommunications and network services to KERRY BROADBAND will not be liable for damages arising out of your use or your inability to use the SERVICE, and you hereby waive any and all claims with respect thereto, whether based on contract, tort or other grounds.

No advice or information, whether oral or written, obtained by you from KERRY Broadband shall be deemed to alter this disclaimer of warranty, or to create any warranty.

8. **INDEMNITY AND LIMITATION ON LIABILITY**

1. The Subscriber hereby indemnifies and holds Kerry Broadband harmless against any and all liabilities, expenses, losses, injury, damage, fines, penalties and claims of whatsoever nature and howsoever arising from or connected with the Equipment, or the use or possession thereof and/or the use of the Service and whether or not such claims are caused by any act or omission of the Subscriber or anyone else and whether the claim is based on contract, tort or other grounds.
2. Liability is neither restricted nor excluded for death or personal injury resulting from any act or omission by Kerry Broadband or the acts or omissions of Kerry Broadband representatives or contractors while acting on its behalf.
3. To the fullest extent permitted by applicable law, neither Kerry Broadband nor any of its directors, employees, servants, agents, affiliates or other representatives and/or their respective parent and subsidiary companies will be liable for loss or damages arising out of or in connection with the use of, or inability to use, the Equipment and/or the Service including, but not limited to, direct, indirect or consequential loss or damages, loss of data, income, profit or opportunity, loss of or damage to property and claims of third parties, even if Kerry Broadband has been advised of the possibility of such loss or damages, or such loss or damages were reasonably foreseeable.
4. Kerry Broadband shall not be liable for failure to comply with undertakings under this Agreement if hindered from doing so by something outside its reasonable control. Matters outside its reasonable control will include but not be limited to lightning, flood or severe weather conditions, fire or explosion, civil disorder, terrorist activity, war, actions of local or national government or industrial disputes, performance of leased or rented telecommunications services or network or other operators, and Internet network, outside of Kerry Broadband's Equipment, is beyond its reasonable control.

9. ASSIGNMENT AND DELEGATION

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

10. JURISDICTION

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

11. PERSONAL DATA

1. The personal data that you provide when subscribing to the service (Registration Details) shall be true, accurate and complete. You agree to inform Kerry Broadband of any changes to your registration details immediately by email to support@kerrybroadband.ie
2. Kerry Broadband respects and protects its Subscribers privacy. Any information obtained by Kerry Broadband through an application for the Service may be accessed and used by Kerry Broadband for the purposes of performing its obligations under this Agreement and for administration, risk assessment, market research, marketing, debt recovery and credit checking purposes, accurate billing and efficient operation of the Service. The Subscriber shall be deemed to have given consent for the use of their information for such purposes. For full details of how Kerry Broadband uses the information it collects, and under what circumstances we disclose information, please read the Kerry Broadband Privacy Statement which is hereby incorporated into and forms part of this Agreement.

12. GENERAL TERMS

1. None of the provisions of this Agreement shall be interpreted as to deprive you of any rights you may have as a consumer under mandatory Irish law.
2. Any prices, quotations and descriptions made or referred to on the Kerry Broadband website are subject to availability, do not constitute an offer and may be withdrawn or revised at any time prior to our express acceptance of your order.
3. This Agreement contains the entire agreement between the Parties and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein. No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to this Agreement or their duly authorised representatives.
4. Each party shall bear their own costs related to the preparation or completion of this Agreement.
5. No indulgence, leniency or extension of time which Kerry Broadband may grant or show to the Subscriber, shall in any way prejudice Kerry Broadband or preclude Kerry Broadband from exercising any of its rights in the future.
6. In this Agreement the singular shall include the plural and visa versa, one gender shall include the other genders, lower case letters shall refer to capital letters and visa versa and headings used in this Agreement are for reference purposes only and shall not be taken into account in construing the contents of this Agreement.
7. If any provision of this Agreement is prohibited by law or found to be unlawful, void or otherwise unenforceable, such provision shall, to the extent required by applicable law, be severed from this Agreement. The remaining provisions of this Agreement shall not as far as possible be changed or modified and all other terms and conditions not so severed shall continue in full force and effect.
8. Kerry Broadband reserves the right to revise the terms of this Agreement at anytime. Kerry Broadband shall indicate on its website the date of the last revision of the terms of this Agreement. Such changes will take immediate effect when they are posted on this website, or upon such date as may be reasonably notified.
9. Kerry Broadband recommends that the Subscriber prints off a copy of these terms and conditions and privacy statement for your own records. The parties agree that the fact that this Agreement may be stored or exchanged in electronic form shall not affect its validity.
10. **The Subscriber acknowledges that it has read, understood and agrees to be bound by the terms of this Agreement. The Subscriber further acknowledges that this Agreement was fully completed and the particulars set forth therein are true and correct.**