

# Terms and Conditions

*eircom* agrees to make available to the Customer the Facility described below on the following terms and conditions:

## 1.1 In this Agreement:

"ADSL Line" means an asymmetric digital subscriber line.

"Agreement" means this agreement between *eircom* and the Customer for the provision and where applicable for the installation of the Facility.

"Rental" is the recurring charge payable by the Customer to *eircom* in respect of the Facility.

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

"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 Facility.

"Charges" means rental, connection charge and any other charge payable by the Customer to *eircom* hereunder.

"Customer" means the person with whom *eircom* 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.

"*eircom*" means *eircom* Limited of 114 St. Stephen's Green West, Dublin 2.

"*eircom* broadband" means the Facility.

"Facility" means the provision of an ADSL line at the Premises to enable the customer to avail of high speed Internet access at a level selected by the Customer.

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

"Initial Period" means six calendar months from the RFS date.

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

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

"Ready for Service date" (otherwise "RFS date") means the date on which *eircom* establishes the Facility for the Customer.

"Welcome Letter" means any letter supplied to the Customer with the Kit.

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 Customer hereby agrees to avail of the Facility subject to the provisions of the Telecommunications Scheme in force for the time being and the provisions of any legislation applicable thereto (all together hereinafter referred to as "the Regulations"). The Telecommunications Scheme is available on the Internet at [www.eircom.ie/](http://www.eircom.ie/)

pricing or by dialling *eircom* Customer Information Service on 1800 203105 and at *eircom* HQ, 114 St. Stephen's Green West, Dublin 2. Use of the Facility by the Customer shall be deemed to be an acceptance by the Customer of these terms and conditions.

2.2 The Facility shall be provided either by way of Full-Install (the installation of the Facility at the Premises by an *eircom* technician) or, by way of Self-Install (the provision of a Kit by *eircom* to the Customer to enable the Customer to carry-out the installation itself).

2.3 The Facility is available at different levels. Each level has a particular bandwidth and a monthly upload and monthly download limit. The Customer shall select the level of the Facility it wishes to avail of and shall inform *eircom* of its selection. The Customer agrees to be bound by the Monthly Upload and Monthly Download Limits attaching to its selected level of the Facility. In the event that Customer usage exceeds the download/ upload limits attaching to its selected level of the Facility, *eircom* may, without prejudice to its right to charge the Customer for the excess usage in accordance with the Regulations, request the Customer to select a level more appropriate to its usage. In the event of the Customer refusing or neglecting to select an alternative level of the Facility, *eircom* may, upon due notice, terminate the provision of the Facility to the Customer. Customers who have 12Khz pulse monitoring on their line and request The Facility will have the 12Khz pulse monitoring removed automatically. Broadband Guardian software is provided as standard for 2 levels - Home Starter and Home Plus.

2.4 The Customer may change the level of the Facility selected by it on giving at least five (5) days notice to *eircom*. There shall be no charge payable to *eircom* by the Customer for an upgrade of a level. A fee, as set out in the Regulations, shall be charged by *eircom* and paid by the Customer in respect of a downgrade of a level.

3.1 This Agreement shall commence on the Ready for Service date and shall be for the Initial Period. Provided that this Agreement has not been terminated in accordance with its terms or in accordance with the Regulations, this Agreement shall thereafter automatically renew for successive six-month periods. For the purposes of this clause 3, a six-month period will be calculated from the anniversary of the RFS date.

3.2 The Customer may cancel its order for the Facility at any time prior to the RFS date. In the event of such cancellation by the Customer it shall be obliged to return any Kit, which may have been provided to it by *eircom*. Any Kit shall be returned to *eircom* by posting it to the freepost address detailed in the welcome pack. In the event of any Kit not being returned to *eircom* within fourteen (14) days of the cancellation of the Order for the Facility, the Customer shall be charged by *eircom* and shall pay to *eircom* such sum as is set out in the Regulations as being the charge payable in respect of the non-return of any Kit.

- 4.1** The Customer agrees to provide *eircom* and its agents with all such information and cooperation including, inter alia, suitable Premises, equipment and services as *eircom* may reasonably require from time to time to enable it to provide the Facility. *eircom* may, in its absolute discretion, refuse to provide the Facility where such information or co-operation is not furnished by the Customer.
- 4.2** On the placing of the order for the Facility, the Customer shall be provided with:
- (a) the RFS Date by *eircom*; and
  - (b) where the Customer so requests *eircom* shall provide it with the use of an ADSL modem for the duration of this Agreement to facilitate connection to the Facility.
- 5.** The Customer agrees to comply with the following conditions:
- 5.1** Customers may not use the Facility to seek to gain unauthorised access to *eircom* facilities, services or resources or to the facilities, services or resources of any connected Internet service providers.
- 5.2** Customers may not use the Facility to engage in activities, which cause or, in the reasonably held opinion of *eircom*, are liable to cause disruption or denial of service to any Internet customer or Internet user.
- 5.3** Customers may not use the Facility to create, host or transmit offensive or obscene material, or engage in activities, which are likely to cause offence to others on any grounds including, but not limited to race, creed or sex.
- 5.4** Customers may not use the Facility to create, host or transmit material, which is defamatory.
- 5.5** Customers may not use the Facility to create, host or transmit material, which infringes the intellectual property rights including, but not limited to, the copyright of another person or organisation.
- 5.6** Customers may not use the Facility to engage in activities, which infringe proprietary rights in any software.
- 5.7** Customers may not use the Facility to engage in activities, which compromise the privacy of others.
- 5.8** Customers may not use the Facility to engage in activities, which adversely affect the integrity of computer based information.
- 5.9** Customers may not use the Facility to transmit unsolicited commercial or advertising email material either to other customers or to other organisations 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.
- 5.10** Without prejudice to the foregoing, the Facility may only be used by Customers in accordance with *eircom* net's Acceptable Usage Policy available at [www.eircom.net](http://www.eircom.net).
- 6.1** The Customer agrees that without prejudice to the Customer's right to terminate this Agreement under due notice, to pay on demand such Charges as may be fixed from time to time by or in accordance with the Regulations in respect of the Facility.
- 7.1** This Agreement may be suspended or terminated by *eircom* for breach of its terms or, otherwise in accordance with the Regulations.
- 7.2** Subject to the provisions of clause 7.3, this Agreement may be terminated by either party on one-month's written notice to the other.
- 7.3** If the Customer terminates this Agreement during the Initial Period, *eircom* may, without prejudice to its rights to treat the termination as a breach or repudiation of this Agreement, agree to accept such termination provided notice of such termination is addressed to *eircom* and the Customer agrees to pay to *eircom* as a termination charge such sum as represents the remaining Rental due for the Initial Period.
- 7.4** On termination of this Agreement for whatever reason, the Customer shall return to *eircom* within fourteen (14) days of such termination any ADSL modem, the use of which may have been supplied to it pursuant to clause 4.2(b) by *eircom* as part of the Facility. In the event of failure by the Customer to return such modem it shall become liable to pay to *eircom* such charges as are set out in the Regulation as being payable in respect of such failure.
- 7.5** Where this Agreement is terminated by the Customer for the purposes of availing of Bitstream Port Transfer, the transfer to another authorised operator shall not come into effect until such time as the Customer has paid to *eircom* all Charges due and owing, up to the date of termination together with all Charges arising from such termination as set out in this clause 7.
- 7.6** Provision of the Facility may result in temporary loss of telephone Service to the Customer during the period in which initial installation of the Facility is taking place.
- 7.7** *eircom* does not warrant that the Facility will meet the Customer's requirements or that the operation of the Facility will be uninterrupted or error-free.
- 7.8** The Customer agrees that from time to time it may be necessary for *eircom* to temporarily suspend the Facility during periods of repair, essential maintenance or alteration or improvement to *eircom*'s telecommunications network or otherwise in accordance with the law. Where possible *eircom* will give the Customer notice prior to such suspension of the Facility and *eircom* shall restore the Facility as soon as possible after such suspension.
- 7.9** The Facility is provided in accordance with the relevant product description in the Regulations. The Customer acknowledges that the relevant product description may contain limitations and constraints on the use of the Facility. The customer agrees and undertakes to adhere to these constraints and restrictions.
- 7.10** The Facility is provided solely for the Customer's own use and the Customer shall not resell the Facility (or any part of the Facility) to any third party.
- 7.11** Where additional terms and conditions govern any access to any Content or to any Internet service, the Customer acknowledges that it is obliged to comply with such terms and conditions.

- 8.1** In no event shall *eircom* be liable to the Customer 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
- “Anticipated Savings” means any expense, which the Customer expects to avoid incurring or to incur in a lesser amount than would otherwise have been the case by reason of using the Facility.
- 8.2** In so far as the same is permissible by law, *eircom* shall not be liable in contract, tort or otherwise for any loss, injury or damage, other than death or personal injury arising directly from:
- 8.2** In so far as the same is permissible by law, *eircom* shall not be liable in contract, tort or otherwise for any loss, injury or damage, other than death or personal injury arising directly from:
- (a) any act, omission, error, default, failure or delay in respect of the provision, installation, operation, maintenance or termination of the Facility;
  - (b) any failure of the Facility;
  - (c) any failure of, or defect in, anything provided as a part of or in association with the Facility.
- 8.3** In no event shall *eircom* be liable to the Customer for damage suffered by the Customer as a consequence of acts or omissions of third parties. The Customer acknowledges that it accesses the Internet at its own risk and that *eircom* has no responsibility for any goods, services, information, software or other materials accessed by the Customer whilst using the Facility.
- 9.** The Customer shall indemnify *eircom* against all claims made against *eircom*, for loss, damage or injury to any person or property occasioned by or arising from the use of the Facility by the Customer.
- 10.1** The Customer shall notify *eircom* as soon as possible after a defect, fault or impairment in the operation of the Facility is detected and *eircom* shall endeavour to attend as soon as practicable during normal business hours to the fault at the Premises or at whichever location *eircom* considers the reported fault to be located.
- 10.2** *eircom* reserves the right to charge the Customer reasonable costs and expenses incurred by *eircom* 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 wilful or negligent act or default of the Customer or of any supplier, agent of the Customer; or
  - (v) failure of the Customer to comply with any of the provisions of this Agreement; or
  - (vii) any other cause whatsoever which is beyond the reasonable control of *eircom*.
- 10.3** The charges payable in respect of the provision of such maintenance are as set out in the Regulations.
- 10.4** The term “maintenance” means maintenance of the NTU (Network Termination Unit) and/or the Splitter but not any internal wiring which at all times remains the responsibility of the Customer.
- 11.1** *eircom* reserves the right to contact the Customer via email regarding information specific to *eircom* broadband, including service enhancements, network upgrades, pricing changes and general information relating to the product purchased.
- 11.2** All notices served on the Customer pursuant to this Agreement may, at the discretion of *eircom*, be addressed to the Customer by email or by facsimile, by post or by hand, online announcement message or any other appropriate method.
- 11.3** All notices served by email will be sent to the customer's *eircom net* email address and may, at the discretion of *eircom*, also be sent to any contact email address nominated by the Customer. The Customer acknowledges that an email, sent to its *eircom* email address, regardless of whether or not such notice has also been served on any other email address, constitutes a valid service of notice. Online messages may be served directly to customers when surfing the web and constitutes a valid service of notice.
- 11.4** All customers are required to provide *eircom* with their most up to date contact email addresses as part of the terms and conditions of service. The Customer agrees to accept *eircom net's* Customer Contact Policy.