

1/08/08

Maints Broadband

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Terms & Conditions

1 DEFINITIONS

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

1.1 “Acceptable Usage Policy” means the policy specifying actions deemed unacceptable usage under this Agreement, published by MAINTS BROADBAND and as amended from time to time.

1.2 “Agreement” means this Agreement together with the Acceptable Usage Policy.

1.3 “Commencement Date” means the commencement of this Agreement, which shall be the date on which MAINTS BROADBAND agrees to provide the Service.

1.4 “Equipment” means the equipment and/or any other item to include all fittings, accessories and modifications thereto from time to time provided as an essential part of providing the Service under this Agreement.

1.5 “Notice Date” means the date 30 (thirty) days after written notice is given to MAINTS BROADBAND by the Subscriber requesting termination of the Service.

1.6 “Parties” or “the Parties” means the Subscriber and MAINTS BROADBAND including its assignees.

1.7 “Premises” means the location at which the Subscriber receives the Services and where the Equipment is normally kept.

1.8 “Service” means an Internet Protocol (IP) based internet connectivity service provided by MAINTS BROADBAND, connecting the Subscriber to the Internet via the MAINTS BROADBAND network, including such additional services as may be subscribed to by the Subscriber.

1.9 “Subscription” means the amount payable to MAINTS BROADBAND for the provision of Service and the use of the Equipment together with any Value Added Tax and any other taxes (at applicable rates from time to time).

1.10 “Subscription Period” means the entire term of this Agreement, until cancelled by either Party upon thirty (30) days’ notice.

1.11 “MAINTSBB” means MAINTS BROADBAND.

1.12 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.

2 GENERAL TERMS

2.1 MAINTSBB supplies a Service and Equipment to the Subscriber, pursuant to this Agreement. MAINTSBB hereby grants use of the Equipment to the Subscriber, which accepts such use on the terms and conditions as set out in this Agreement, for the Subscription Period.

2.2 This Agreement contains the entire agreement between the Parties. 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.

2.3 No indulgence, leniency or extension of time which MAINTSBB may grant or show to the Subscriber, shall in any way prejudice MAINTSBB or preclude MAINTSBB from exercising any of its rights in the future.

2.4 The Subscriber acknowledges that the particulars provided are true and correct.

3 ACCEPTANCE

3.1 The Subscriber shall at its own cost ensure that the Premises is suitable for the installation, use and accommodation

of the Equipment.

3.2 In order to facilitate delivery, the Subscriber shall grant access to the Premises to allow for installation (and subsequently for repair and maintenance) of the Equipment.

3.3 All risk of loss and damage in and to the Equipment shall from the date of delivery to the Subscriber vest with the Subscriber.

3.4 MAINTSBB will make every possible endeavour to maintain constant access to the Service and ensure that it is available for use by the Subscriber. However MAINTSBB cannot be held responsible for accidental non-availability for outages of services, or for unforeseen interruptions to service.

4 PAYMENT OF CHARGES

4.1 The Subscriber shall pay the Subscription to MAINTSBB in the amount stipulated monthly in advance.

4.2 Should Equipment be connected later than the 5th day of any calendar month, the Subscriber shall only pay such portion of the monthly subscription fee as is equal, pro-rata, to the number of days which remain in that month in relation to the total number of days in that month.

4.3 The Subscription shall change at such times and rates as may be notified from time to time.

4.4 MAINTSBB 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 breach of the terms of this Agreement.

4.5 Should the Subscriber ever be occasioned to pay to MAINTSBB any reconnection fee or any ancillary amount, as is not provided for in this Agreement, then such amount shall be paid directly to MAINTSBB over and above the charges set out in this Agreement.

4.6 Should the Service not be available as a result of damage to the Equipment by the Subscriber, whether inadvertently or intentionally, the Subscriber shall still be liable for the full Subscription during such period where the Service is not available to the Subscriber.

4.7 Any additional charges (Callout, CPE replacement etc.) are displayed on www.maintsbb.com and are subject to change from time to time.

4.7 MAINTSBB will under no circumstances be liable to the Subscriber for consequential loss or damage.

5 DURATION

5.1 The Subscriber will have, a "cooling off period" of 7 working days to cancel this Agreement. Such cancellation must be in writing by sending notice of cancellation to MAINTSBB on the address listed in this Agreement.

5.2 This Agreement will commence on the Commencement Date, and will continue for the Subscription Period of 12 months. The Subscriber must pay Subscription up to the Notice Date.

6 OWNERSHIP OF THE EQUIPMENT

The Equipment is and shall remain the property of MAINTSBB and the Subscriber shall not in terms hereof, be entitled to acquire ownership during or after termination of this Agreement.

7 INSURANCE

7.1 The Subscriber shall, unless otherwise agreed to by the Parties in writing, for the period of this Agreement, cover the risk of loss and damage to the Equipment.

7.2 The Subscriber absolves MAINTSBB from all liability if all costs in respect of the repair and/or replacement of the Equipment are not fully or all recovered from the insurer.

8 THE SUBSCRIBER'S RESPONSIBILITIES

8.1 If The Subscriber sells The Premises or ceases to be a tenant of The Premises (as applicable) The Agreement shall be terminated and the equipment shall be returned to MAINTSBB.

8.2 The Subscriber shall not make any alteration or modification to the Equipment without MAINTSBB written consent.

8.3 The Subscriber shall keep the Equipment free from the claim of third parties and from attachment; shall not alienate, transfer or encumber the Equipment either in part or as a whole or allow any lien to arise in respect thereof.

9 MAINTENANCE

9.1 The Subscriber shall take reasonable care in the use of the Equipment and shall at their own cost and expense protect the Equipment from loss and damage.

9.2 MAINTSBB, at its own cost, remedy any damage to the Equipment caused by faulty workmanship or defects in the Equipment.

10 INDEMNITY AND LIMITS OF LIABILITY

10.1 The Subscriber hereby indemnifies and holds MAINTSBB harmless against any and all 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 whether or not such claims are caused by any act or omission of the Subscriber or anyone else.

10.2 Liability is neither restricted nor excluded for:

10.2.1 death or personal injury resulting from any act or omission by MAINTSBB or the acts or omissions of MAINTSBB representatives or contractors while acting on its behalf; or

10.2.2 direct physical damage to the Subscriber's personal property to an amount not exceeding €100,000 (one hundred thousand euros) in respect of any one event or series or connected events where such damage arises from MAINTSBB own negligence, or the negligence of its employees, representatives or contractors while acting in the course of employment by MAINTSBB; or

10.2.3 any statutory obligations which cannot by law be excluded or restricted including any liability arising by virtue of Sale of Good and Supply of Services Act 1980.

10.3 MAINTSBB will not be liable for any unforeseen, consequential or indirect loss, loss of profits, business, revenue, contracts or anticipated savings, wasted expense, financial loss, lost or destroyed data, liability to third parties or for damage or compensation for loss of use of the Services.

10.4 MAINTSBB 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 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 MAINTSBB Equipment, is beyond its reasonable control.

10.5 If MAINTSBB are unable to provide the Service the Agreement shall be terminated and the Subscriber shall return the Equipment to MAINTSBB.

11 PROCEDURE ON TERMINATION

11.1 Upon the termination of this Agreement for any reason whatsoever, the Subscriber shall forthwith allow MAINTSBB to recover the Equipment, together with all documents as are in the Subscriber's possession relating to the Equipment from the Subscriber.

11.2 The Subscriber shall ensure that the Equipment is returned to MAINTSBB in good working order and condition, fair wear and tear excepted.

11.3 The Subscriber shall return the Equipment to the Society within 5 (five) working days of the Notice Date. Failure to do so shall result in a charge of €175 (one hundred and seventy five euros) levied against the Subscriber.

12 BREACH

12.1 Should the Subscriber:

12.1.1 default in the payment of any amounts when they are due under the terms of this Agreement; or

12.1.2 fail to observe any other of the terms, conditions and/or obligations (all of which are agreed to be material) of this Agreement or of any other agreement with MAINTSBB; or

12.1.3 be sequestrated or placed under judicial management or be wound up, provisionally or finally, or abandon the Equipment, or allow the Equipment to be seized under any legal process; or

12.1.4 do or suffer to be done anything which might prejudice MAINTSBB rights under this Agreement or which might cause MAINTSBB to suffer any loss or damage; then upon the occurrence of any one or more of these events, MAINTSBB shall be entitled to take one or more of the following actions:

12.2 immediately terminate this Agreement, 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, including legal costs.

12.3 In the event of termination of this Agreement in terms of this paragraph, the Subscriber shall be obliged, at his own risk and expense, to immediately return the Equipment to MAINTSBB at the address to be nominated by MAINTSBB.

13 ASSIGNMENT AND DELEGATION

13.1 The Subscriber shall not cede any of his rights nor delegate any of his obligations hereunder without the prior written consent of MAINTSBB.

13.2 MAINTSBB shall be entitled to transfer to any third party at its absolute discretion all or any of its rights under this

Agreement, including its rights of ownership in the Equipment, either absolutely or as collateral security. This clause shall be irrevocably deemed to constitute formal notice of such cession by MAINTSBB to the Subscriber. All rights in this Agreement recorded in favour of MAINTSBB shall on cession pass to the benefit of the cessionary, who shall then be capable of enforcing such rights against the Subscriber who then shall hold the Equipment on behalf of and in accordance with the instructions and directions of the cessionary; and 13.3 MAINTSBB shall be entitled to delegate all or any of its obligations under this Agreement to any third party at its absolute discretion.

14 JURISDICTION

14.1 This Agreement shall in all respects be governed and construed in accordance with the laws of the Republic of Ireland and all disputes, actions, and other matters in connection therewith shall be determined in accordance with such laws.

15 NOTICES

15.1 Any notice required to be given under this agreement shall be deemed to be undertaken if posted by ordinary prepaid post to the party as set forth under cover letter of this agreement.

16 COSTS

16.1 Each party shall bear their own costs related to the preparation or completion of this Agreement.