



SCHEDULE 1

TERMS & CONDITIONS

Please read the following terms and conditions

1. INTERPRETATION

1.1 In this Agreement the following definitions apply:

“**Acceptable Usage Policy**” means the usage policy set out at Schedule 3 to this Agreement, which may be amended by Arden Broadband from time to time;

“**Arden Broadband**” means the broadband telecommunications service provided by **Arden Broadband**;

“**Commencement Date**” means date specified in section 3 of the Customer Contract Form;

“**Confidential Information**” means, in relation to **Arden Broadband**, information (in whatever form communicated or recorded) belonging or relating to that party, its business affairs or activities which is not in the public domain and which: (a) that party has marked as confidential or proprietary; or (b) has been described as confidential by that party to the Customer (orally or in writing); or (c) due to its character or nature, a reasonable person in a like position to its recipient and under like circumstances would treat as confidential;

“**Connection Details**” means the password identity and/or account formula including but not limited to user name and authorisation codes which are given exclusively to the Customer and the Customer’s connected equipment identity collected from the Customer for the purposes of gaining access to the Network;

“**Content**” means information, video graphics, sound, music, photographs, software and any other materials (in whatever form) published or otherwise made available on the Internet;

“**Customer**” means the person detailed in section 1 and 3 of the Customer Contract Form;

“**Customer Contract Form**” means the contract form completed by the Customer to which these Terms and Conditions are scheduled;

“**Customer Equipment**” means any computer hardware, software, cabling or other equipment provided by the Customer to link to the Network Connection;

“**Equipment**” means all equipment provided by **Arden Broadband** to the Customer to enable the Customer to access and use the Service, including (without limitation) the Network Connection and the Subscriber Module;

“**Fees**” means any fee payable to **Arden Broadband** under this Agreement;

“**Intellectual Property Right**” includes all patents, inventions, copyright (including but not limited to all rights in respect of software), trade marks, database rights, design rights, topography rights, whether or nor any of these is registered and including any applications for registration of any such rights, know-how, confidential information and trade secrets (including designs, processes or products which are to become or may become the subject of an application as aforesaid) and all rights or forms of protection of a similar nature of having similar effect to any of these which may exist anywhere in the world;

“**Line of Sight**” means a clear unobstructed view between the Subscriber Module and **Arden Broadband** radio transmitter/receiver;

“**Network**” means that collection of access equipment, computers, special interfaces and agreements that belong to and are controlled by **Arden Broadband** and make up both the logical and physical connection between the Customer and the information provider;

“**Network Connection**” means all **Arden Broadband**’s cabling, interface panels, cabinets, systems, apparatus, facilities and any other equipment which may be utilised by Arden Broadband to provide the Service;

“**Quarter**” means a calendar quarter, ending on any of 31 March, 30 June, 30 September and 31 December (but the first Quarter will begin on the Commencement Date and will end on the next

following quarter end date, and the last Quarter will end on expiry of the Term);

“**Service**” means the **Arden Broadband** Broadband service outlined in section 2 of the Customer Contract Form;

“**Service Credit**” means any amount to be credited against Fees payable by the Customer pursuant to Clause **Error! Reference source not found.**;

“**Setup Fee**” means the setup fee specified in section 2 of the Customer Contract Form;

“**Software**” means the software provided by **Arden Broadband** to enable the Customer to access or use the Service;

“**Software Licence**” means the licence of the Software granted to the Customer pursuant to Clause 7;

“**Subscriber Module**” means the equipment installed on the premises of the Customer for the purpose of receiving the Service;

“**Term**” means the period beginning on the Commencement Date and ending on the date on which this Agreement is terminated under Clause 13.2 (*term after initial period*), Clause 13.3 (*early termination by the Arden Broadband*) or Clause 12 (*force Majeure*);

“**Transfer Date**” means in relation to any Transfer Notice, the date for the making of the transfer as specified in that Transfer Notice;

“**Transfer Notice**” means the written notice specified in Clause 15.

“**Transferee**” means **Arden Broadband** Limited or its nominees to whom **Arden Broadband** seeks to transfer all or part of its rights, benefits and obligations under this Agreement; and

“**User Information**” means information relating to the Customer as set out in the Customer Contract Form.

1.2 Construction: In this Agreement, unless the contrary intention is stated, a reference to:

- (a) the singular includes the plural and vice versa;
- (b) either gender includes the other;
- (c) a person shall be construed as a reference to any individual, firm or company, corporation, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (d) a person includes that person’s legal personal representative, permitted assigns and successors;
- (e) time shall be construed by reference to whatever time may from time to time be in force in Ireland;
- (f) any agreement document or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time;
- (g) a Recital, Clause or Schedule, is a reference to a recital, clause or schedule of this Agreement;
- (h) a statute, by-law, regulation, delegated legislation or order is to the same as amended, modified or replaced from time to time, and to any by-law, regulation, delegated legislation or order made thereunder;
- (i) ‘month’ means a calendar month to the extent that it falls in the Term;
- (j) ‘including’ means comprising, but not by way of limitation of any class, list or category;
- (k) ‘writing’ shall include a reference to any electronic mode of representing or reproducing words in visible form; and
- (l) ‘business day’ shall be construed as a reference to a day (other than a Saturday or Sunday) on which the banks are generally open for business in Ireland.

1.3 Ejusdem Generis: This Agreement shall be construed without regard to the rule of construction known as “ejusdem generis”.

1.4 **Headings:** Headings are to be ignored in the construction of this Agreement.

1.5 **This Agreement:** References to 'this Agreement' shall be mean clauses of, and schedules, appendices and attachments (if any) to this Agreement and the Customer Contract Form, all of which shall be read together as one document.

2. THE SERVICE

2.1 **Arden Broadband** shall provide the Customer with the Service upon and in accordance with the Terms and Conditions with reasonable skill and care of a competent Internet service provider.

2.2 For technical, operational and commercial reasons, **Arden Broadband** shall be entitled to vary the Service or any aspect thereof.

2.3 The Service is provided using licence exempt spectrum on a non-interference/non-protected basis. This means that while the Service is not permitted to cause interference with other systems, it may not claim protection from interference from other systems operating in these bands.

3. ARDEN BROADBAND'S OBLIGATIONS

3.1 In consideration of the performance by the Customer of its obligations under this Agreement Arden Broadband agrees:

- (a) to provide the Service to the Customer;
- (b) to provide the Software to the Customer; and
- (c) to install the Equipment at the Customer's premises.

4. THE CUSTOMERS OBLIGATIONS

4.1 The Customer undertakes with Arden Broadband that it shall:

- (a) use the Service and the Equipment in accordance with the Acceptable Usage Policy;
- (b) procure that all persons having access to the Service and the Equipment comply with the Terms and Conditions and Acceptable Usage Policy;
- (c) provide Arden Broadband with true, accurate, complete and current User Information, and notify Arden Broadband of any changes to the User Information;
- (d) obtain all necessary consents, including consents to install and connect all necessary equipment and for any necessary alterations to buildings to enable the installation and use of the Equipment;
- (e) provide suitable accommodation, foundations and environment including all necessary trunking, conduits and cable trays in accordance with the relevant installation standards;
- (f) take up or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers, as Arden Broadband advises are necessary, and carry out afterwards any making good or decorator's work required;
- (g) provide as suitable and safe working environment at the Customer's premises for Arden Broadband, its servants, employees and agents;
- (h) provide all appropriate support for the Service to include but not to be limited to appropriate electricity supply together with a detailed map marking the position where the Equipment is to be installed and ensure that the Equipment which is used does not damage or interfere with any other services;
- (i) inform Arden Broadband in advance of any existing facilities (where appropriate) which would run the risk of being damaged during the installation of the Network Connection and the provision of the Service;
- (j) procure that the Network Connection is housed in accordance with Arden Broadband's instructions;
- (k) permit access to any Site, to Arden Broadband, its employees, servants or agents, to enable Arden Broadband to carry out its obligations under this Agreement, and/or to inspect, repair, maintain, test or remove the Network Connection or the Equipment or any part thereof;
- (l) not create or permit any charges, pledges, liens or encumbrances to subsist over the Network Connection, all

right, title and interest in which shall remain vested in Arden Broadband; and

- (m) not allow the Network Connection to be serviced or repaired, or otherwise interfered with other than by Arden Broadband, its employees, servants or agents.

5. FEES

5.1 **Setup fee:** The Customer shall pay Arden Broadband a Setup Fee.

5.2 **Ongoing fees:** The Customer shall pay Arden Broadband a monthly charge of an amount in euro as set out in section 2 of Customer Contract Form.

5.3 **Variation of fees:** Arden Broadband may alter the Fees from time to time by notice in writing to the Customer within a reasonable period in advance of the effective date of such change.

5.4 Arden Broadband reserves the right to charge the Customer an installation charge depending on level of difficulty of physical installation of the Subscriber Module. In the event that such a charge is to be levied, that fact will be identified during a visit to the site by a representative of Arden Broadband prior to the installation visit.

6. PAYMENT TERMS

6.1 Fees accrued under this Agreement:

- (a) under Clause 5.1, shall be paid by the Customer to Arden Broadband upon signature of this Agreement; and
- (b) under Clause 5.2, shall be paid by the Customer to Arden Broadband monthly in advance.

6.2 Each amount stated to be payable by the Customer to Arden Broadband under this Agreement:

- (a) **currency:** shall be paid in euro;
- (b) **method:** shall be paid by direct debit to such bank account of Arden Broadband as it may specify in writing to the Customer from time to time, or in such other manner as Arden Broadband may from time to time stipulate in writing;
- (c) **VAT:** is exclusive of value added tax and, accordingly, is to be construed as a reference to that amount plus any value added tax payable in respect of it; and any such value added tax shall be paid by the Customer to Arden Broadband in addition to the amount in question upon presentation by Arden Broadband to the Customer of an invoice for the amount in question together with the applicable value added tax, with the latter shown as a separate figure;
- (d) **free and clear:** shall be paid without set-off or counterclaim, and free and clear of, and without deduction or withholding for or on account of, any taxes unless the Customer is required by law to make a deduction or withholding for or on account of taxes, and if any withholding is so required, the Customer shall pay to Arden Broadband an additional amount such that after deduction of all amounts required to be withheld, the net amount actually received by Arden Broadband will equal the amount which Arden Broadband would have received if the relevant withholding had not been required.

6.3 **Interest:** If the Customer fails to pay to Arden Broadband any amount payable to it under this Agreement on the due date then the Customer will pay on demand from time to time to Arden Broadband, interest (as well after as before any judgment) on that amount, from the due date to the date of payment in full, at the rate per cent per annum of 200 hundred basis points above the base lending rate of the Bank of Ireland. All such interest shall accrue from day to day and shall be compounded quarterly.

6.4 **Guarantee:** Arden Broadband may, from time to time, require the Customer to pay a deposit or provide a guarantee as security for payment of the Fees.

6.5 Except in the case of manifest error by Arden Broadband, all Fees shall be calculated by reference to the data recorded or logged by Arden Broadband.

7. EQUIPMENT

7.1 All right, title and interest in the Equipment remains vested in Arden Broadband.

7.2 The Customer shall be responsible for the safekeeping and proper use of the Equipment and shall indemnify Arden Broadband on demand with respect to all costs for the replacement and/or repair of any Equipment that is lost, damaged (fair wear and tear excepted) or destroyed.

8. SOFTWARE LICENCE

8.1 **Grant:** In consideration of the performance by the Customer of its obligations under this Agreement, Arden Broadband grants to the Customer for the Term and subject to the provisions of this Agreement, a non-exclusive, non transferable licence to use the Software for the sole purpose accessing and using the Service.

8.2 **No Other Licence:** It is acknowledged and agreed that no licence under the Software is granted by Arden Broadband to the Customer other than that expressly granted by the provisions of Clause 7.

8.3 Except to the extent required by mandatory operation of law, the Customer shall not attempt to create or recreate any source program of the Software or any program used by Arden Broadband in the provision of the Service nor shall it attempt or permit the reverse compilation or assembly of any part of the Software.

9. WARRANTY AND LIABILITY

9.1 Arden Broadband warrants that it has the right to license the Service and the Software in accordance with the terms of this Agreement without infringing the Intellectual Property Rights of any third party.

9.2 Except for conditions, warranties and representations expressly stated in this Agreement or which by law may not be excluded, all express or implied conditions, warranties and representations howsoever arising are hereby expressly excluded.

9.3 Arden Broadband does not undertake to provide a fault-free Service. Arden Broadband shall use its reasonable endeavours to remedy any faults which significantly impair performance in so far as the same may be attributable to any aspect of the Service.

9.4 Line of Sight is required to provide the Service. Arden Broadband shall not be liable for any obstructions to the Line of Sight that are beyond the control of Arden Broadband.

9.5 **No Liability for Consequential Loss:** Neither party shall be liable in contract, tort or otherwise howsoever for any of the following losses or damage (whether or not such loss or damage was foreseen, foreseeable, known or otherwise): (a) loss of revenue (other than the Fees), (b) loss of actual or anticipated profits, (c) loss of contracts, (d) loss of the use of money, (e) loss of anticipated savings, (f) loss of business, (g) loss of opportunity, (h) loss of goodwill, (i) loss of reputation, (j) loss of, damage to or corruption of data, or (k) any indirect or consequential loss howsoever caused (including, for the avoidance of doubt, whether such loss or damage is of a type specified in sub-clauses (a) to (j) above) whether arising out of, or in connection with, or in relation to the Service or the supply or non-supply or purported supply or delay in supply of the Service or otherwise out of or in connection with or in relation to this Agreement or any transaction or matter contemplated by it.

9.6 **Customer Indemnity:** The Customer agrees to indemnify, and keep indemnified, Arden Broadband on demand against and from all liabilities costs, fees, expenses and losses suffered by Arden Broadband as a result of a breach by the Customer of its obligations under this Agreement.

10. SUSPENSION OF THE SERVICE

10.1 Without prejudice to its rights under Clause 13, Arden Broadband may suspend the Service if the Customer is in breach of this Agreement and has failed to remedy that breach within ten (10) days of being notified in writing of that breach by Arden Broadband. The Service shall remain suspended pending remedy by the Customer of its breaches under this Agreement to the satisfaction of Arden Broadband.

10.2 Arden Broadband may suspend the Service in any of the following circumstances:

- (a) where it is obliged to immediately suspend the Service in connection with any order, instruction or request of any

government, governmental or regulatory organisation, emergency services or other competent authority;

- (b) in connection with the maintenance or upgrade of the Network. Arden Broadband will use all reasonable efforts to provide the Customer with the maximum period of notice practicable; or
- (c) where it considers that there is or is likely to be a breach of security anywhere on the Network.

11. NON APPLICABLE

12. FORCE MAJEURE

Neither party shall be liable for failure or delay in the performance of its obligations under this Agreement (other than a payment obligation on the part of the Customer under this Agreement) to the extent that such failure or delay is caused by matters beyond that party's reasonable control including but not limited to destruction arising out of war, rebellion, civil commotion, strikes, lockouts and industrial disputes, fire, explosion, earthquake and/or other seismic activity, acts of God, flood, drought or bad weather, the unavailability or other media or other acts or orders of any government department, council or other constituted body. If performance of a material obligation under this Agreement is prevented by any such event or circumstance for a continuous period of 45 days or more, then the party in whose for whose benefit the affected obligation would have been performed shall be entitled, by the giving of notice in writing to the other party, immediately to terminate this Agreement.

13. TERM AND TERMINATION

13.1 **Initial Period:** This Agreement shall commence on the Commencement Date and continue for an initial period of one year unless terminated sooner under Clause 13.3 (*early termination by Arden Broadband*), or Clause 10 (*Force Majeure*).

13.2 **Term following initial period:** Following the initial period described in Clause 13.1, this Agreement will continue in full force and effect for successive periods of 12 months each (each a "renewal period") until terminated:

- (a) by either party, by the giving of not less than 60 days notice in writing to that effect to the other party (which notice may be given during the initial period described in Clause 13.1); or
- (b) under Clause 13.3 (*early termination by Arden Broadband*), or Clause 10 (*Force Majeure*).

13.3 **Early termination by Arden Broadband :** Without prejudice to any other remedies Arden Broadband may have against the Customer, Arden Broadband may terminate this Agreement with immediate effect, or with effect from such date specified in any notice, by the giving of notice to that effect to the Customer where:

- (a) **non-payment:** the Customer fails to make any payment due from it to the Unit Franchise under this Agreement within ten business days of the due date;
- (b) **breach:** the Customer breaches or is in breach of any provision of this Agreement and, if capable of remedy, fails to remedy that breach within 30 days of being notified of the breach by Arden Broadband ;
- (c) **incorrect User Information:** if the Customer provides incorrect or false User Information; or
- (d) **insolvency event:** the Customer is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due; or suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness; or any step (including the making of any proposal, the convening of any meeting, the passing of any resolution, the presenting of any petition or the making of any order) is taken with a view to a composition, assignment or arrangement with any creditors of, or the liquidation or dissolution of, that party; or any liquidator,

trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrator, examiner or similar officer is appointed to or in respect of that party or any of its assets.

13.4 Consequences of termination: Upon termination of this Agreement for any reason:

- (a) **suspension of the Service:** Arden Broadband may suspend the Service forthwith without further notice;
- (b) **payment of outstanding Fees:** all Fees due to Arden Broadband shall become immediately payable;
- (c) **return of Confidential Information:** the Customer shall, at the request of Arden Broadband, deliver promptly to Arden Broadband all Confidential Information in its possession or control;
- (d) **termination of licence:** the Software Licence shall terminate;
- (e) **return of Equipment** the Customer shall cease to use the Equipment and shall return the Equipment together with all related materials certifying in writing to Arden Broadband that this has been done. The Customer shall permit Arden Broadband (or its servants or agents) to enter any of the Customers premises where the Equipment is in use to ensure that the provisions of this Clause 13 have been fully performed; and
- (f) **return of Software:** the Customer shall cease to use the Software and shall at Arden Broadband's option return or destroy the Software and any materials or documentation relating to the Service together with all copies and all related materials (including, without limitation any CD's or tapes or information in electronic format which were delivered to the Customer) certifying in writing to Arden Broadband that this has been done. The Customer shall permit Arden Broadband (or its servants or agents) to enter any of the Customers premises where the Software is in use to ensure that the provisions of this Clause 13 have been fully performed.
- (g) **Continuing Obligations:** The provisions of Clause 14 shall remain in force and be fully applicable in all circumstances in accordance with their terms and in particular shall not be discharged or affected by any breach or repudiation of this Agreement in each case whatever its nature or howsoever caused or arising or by any other matter, circumstance or thing whatsoever.

14. CONFIDENTIALITY

14.1 Keep confidential: The Customer undertakes to treat as and keep confidential all Confidential Information and shall not, without the prior written consent of Arden Broadband, use, disclose, copy or modify the Confidential Information other than as necessary for the exercise of its rights, and performance of its obligations, under this Agreement.

14.2 Notify misuse: The Customer shall notify Arden Broadband of any unauthorised use, disclosure, theft or other loss of the Confidential Information promptly upon becoming aware of it.

14.3 Exceptions: The provisions of Clauses 14.1 and 14.2 shall not apply to information that

- (a) as, at the time of receipt by the Customer, was in the public domain
- (b) was already lawfully in the possession of the Customer at the time of its receipt, without any restrictions on its disposal;
- (c) is disclosed to the Customer by a third party free from any obligation of confidence on that third party for the benefit of the disclosing party;
- (d) has, following its receipt by the Customer, entered the public domain through no act or default on the part of the Customer;
- (e) is by law or by any court or order of any governmental or regulatory authority required to be disclosed, to the extent of the relevant disclosure requirement;
- (f) but, for the avoidance of doubt:
 - (i) information shall not be deemed to be in the public domain, merely because its known to a limited

number of third parties having experience in the relevant field; and

- (ii) any combination of elements of information shall not be deemed to be in the public domain, merely because individual elements of that combination are in the public domain.

14.4 Mandatory Disclosure: If the Customer is required by law or by any order of any court or governmental or regulatory authority to disclose the Confidential Information, it shall promptly notify that Arden Broadband of receipt of notice of that requirement and, at the request and cost of Arden Broadband will assist it in opposing any such disclosure.

15. ASSIGNMENT

15.1 The Customer may not assign, sublicense or transfer (whether voluntarily or involuntarily, by operation of law or otherwise) or create or permit to exist any right, title or interest (including, without limitation, any security interest and any beneficial interest under any trust) in, to or under, any of its rights under this Agreement.

15.2 Arden Broadband may at any time transfer all or any of its rights, benefits and obligations under this Agreement to a Transferee by notice in writing to the Customer ("**Transfer Notice**") in which event, on the date specified in such Transfer Notice:

- (a) to the extent that in such notice Arden Broadband seeks to transfer its rights, benefits and obligations under this Agreement, the Customer and Arden Broadband shall be released from further obligations towards one another under this Agreement and their respective rights to one another shall be cancelled;
- (b) the Customer and the Transferee shall assume obligations towards one another and/or acquire rights against one another which differ from such discharged rights and obligations only insofar as the Customer and the Transferee have assumed and/or acquired the same in place of the Customer and Arden Broadband; and
- (c) the Transferee shall become a party to this Agreement.

16. GENERAL

16.1 Further Assurance: Each party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

16.2 No Partnership or Agency: Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent, between the parties, and neither of the parties shall have any right or authority to act on behalf of the other or to bind the other in any way.

16.3 Notices: All notices under, or in connection with, this Agreement will, unless otherwise stated, be given in writing by letter or by facsimile. Any such notice is deemed effectively to be given as follows:

- (a) if by letter, 72 hours after posting;
- (b) if by facsimile, upon receipt by the transmitting party of a transmission report confirming successful transmission of all pages comprised in the notice in question;

and the address, facsimile and telephone numbers of the parties for the purpose of the giving of notices under this Agreement those set out in Customer Contract Form or such other details which either party may notify to the other in accordance with this provision from time to time.

16.4 Severability: If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

16.5 Entire Agreement:

- (a) This Agreement, the Customer Contract Form and the Acceptable Usage Policy contain the sole and entire agreement between the parties in relation to its subject matter, and supersedes all prior written and oral



- arrangements, understandings, representations, warranties and agreements between them in that regard (if any).
 - (b) Each party acknowledges that it is not relying, and will not seek to rely, on any arrangement, understanding, representation, warranty, agreement, term or condition which is not expressly set out in this Agreement.
 - (c) For the avoidance of doubt, nothing in this Clause 16.5 shall be construed as excluding liability for fraud or liability for death or injury caused by the negligence of either party.
- 16.6 **Waivers, Rights Cumulative:** Each of the rights of each party under this Agreement may be exercised as often as is necessary, is cumulative and not exclusive of any other rights

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SCHEDULE 2

NON APPLICABLE.

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SCHEDULE 3

ACCEPTABLE USAGE POLICY

Please read the following Acceptable Usage Policy

1. DEFINITIONS

Terms defined in the Agreement shall, subject to any contrary indication, have the same meanings in this Acceptable Usage Policy.

2. PROVISION OF THE SERVICE

2.1 Access to Service is at the sole discretion of Arden Broadband. Arden Broadband reserves the right, at its sole discretion to refuse certain customers access to certain services if Arden Broadband considers such access would be likely to lead to a breach of the Acceptable Usage Policy.

2.2 Arden Broadband reserves the right to modify or vary the Service or any aspect thereof for commercial, financial or technical reasons.

2.3 Limits on storage allocation and data transfer levels may apply to the Service. If the Customer wishes to exceed such limits, if applicable, then it must request additional size in writing to Arden Broadband and additional charges may be payable

2.4 The Customer agrees to provide true, accurate, current and complete User Information and notify Arden Broadband immediately of any changes to the User Information.

2.5 The Customer shall not to impersonate any other person or entity or to use a false name or a name that you are not authorised to use.

3. USE OF THE SERVICE

3.1 The Service is provided solely for the Customer's own use and the Customer will not resell or attempt to resell the Service (or any part or facility of it) to any third party unless otherwise expressly agreed by Arden Broadband.

3.2 The Customer shall only access the Service through the Software or otherwise as permitted by Arden Broadband and shall not attempt at any time to circumvent Service security or to gain access to the source software or compiled code.

3.3 The Service must not be used for any purpose that:

- (a) does not comply with the terms of any legislation or any licence applicable to the Customer or Arden Broadband ;
- (b) does not comply with any instructions given by Arden Broadband or other public telecommunications operator, government, governmental or other regulatory or other competent authority in any country where the Service is provided;

which that party may have under this Agreement, law or otherwise; and may be waived only in writing and specifically. Delay by a party in exercising, or the non-exercise by a party of, any such right will not constitute a waiver of that right.

17. LAW AND JURISDICTION

17.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Ireland.

17.2 The courts of the Republic of Ireland shall have exclusive jurisdiction over all disputes arising between the parties in connection with this Agreement.

- (c) would cause Arden Broadband to breach the terms of any agreement between Arden Broadband and any backbone service provider;
 - (d) constitutes a violation or infringement of the rights of any person, firm or company (including, without limitation, rights of copyright or confidentiality) or a violation or infringement of any statutory duty or obligation or any duty or obligation in contract, tort or otherwise, to any third party;
 - (e) constitutes a use of the Service which is illegal, improper, unlawful, or harassing or which otherwise constitutes network abuse, and the Customer shall be responsible for any such misuse of the Service.
- 3.4 The Service must not be used:
- (a) to send, receive, upload, download, use or re-use any information or material which is illegal, fraudulent, offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights;
 - (b) to cause annoyance, inconvenience or needless anxiety;
 - (c) to send or provide unsolicited advertising or promotional material or to receive responses to any unsolicited advertising or promotional material sent or provided using the Service, where applicable, by any third party that are in any way connected with the transmission of "junk mail" "spam", "chain letters", "pyramid schemes" or the unsolicited mass distribution of e-mail, or with any unethical marketing practices;
 - (d) other than in accordance with the Acceptable Usage Policy and the acceptable usage policies of any connected networks and the Internet Standards;
 - (e) in a manner that would jeopardise the operation of the Network.

3.5 The Customer must not gain or attempt to gain unauthorised access to any computer systems for any purpose, including accessing the Internet. As well as being in breach of this Agreement, such hacking or attempted hacking is a criminal offence. The Customer may not run "Port Scanning" software which accesses remote machines or networks, except with the explicit prior permission of the administrator or owner of such remote machines or networks. If the Customer intends to run a port scanning application, it must provide Arden Broadband with



a copy of the written consent received from the target of the scan authorising the activity prior to the application being run.

4. FAIR USAGE POLICY

4.1 In order to ensure Customer quality per grade of service Customers whose usage is particularly heavy for their selected grade, may experience throughput limitations. In order to facilitate heavy usage Customers, Arden Broadband offers a range of grades of service and reserves the right to adjust grade of service to reflect changes in pattern of usage. In the event of such an adjustment, Arden Broadband shall notify the Customer of the change electronically. Should the Customer wish to make representations in relation to the change, he should do so as soon as reasonably practicable.

5. CUSTOMER EQUIPMENT

5.1 With the exception of the Equipment, the Customer is responsible for providing suitable computer hardware, software and telecommunications equipment necessary to access and use the Service.

5.2 Any Customer Equipment must be connected and used in accordance with any instructions and any safety or security procedures applicable to the use of such equipment, and must be technically compatible with that Service and approved for that purpose under any relevant legislation.

5.3 The Customer shall be responsible for configuring the Customer Equipment with the Software and shall ensure that the Customer Equipment complies with all requirements specified by Arden Broadband during the provision of the Service.

6. SECURITY

6.1 The Customer is responsible for the security and proper use of all Connection Details and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised parties.

6.2 The Customer must immediately inform Arden Broadband if there is any reason to believe that any Connection Details have or

are likely to become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way.

6.3 The Customer must not change or attempt to change a user name. If a Customer forgets or loses a password or user name the Customer must contact Arden Broadband and satisfy such security checks as Arden Broadband may operate.

6.4 Arden Broadband reserves the right to suspend access to the Service if at any time Arden Broadband considers that there is or is likely to be a breach of security. If Arden Broadband becomes aware that security has or may be compromised, Arden Broadband reserves the right at its sole discretion to require the Customer to change any or all of the passwords used by the Customer in connection with the Service.

6.5 Arden Broadband reserves the right (at its sole discretion) to require the Customer to change any or all of the Connection Details used by the Customer in connection with the Service.

7. THE INTERNET

7.1 The Service, if applicable, enables access to the Internet. The Internet is separate from the Service and use of the Internet is solely at the Customer's risk and subject to all applicable laws. Arden Broadband has no responsibility for any information, software, services or other materials obtained by the Customer using the Internet.

7.2 Arden Broadband reserves the right to vary Content from time to time by adding, removing, blocking or modifying Content as it thinks fit.

7.3 Arden Broadband does not guarantee or warrant that any particular item of Content will be available at any given time.

8. GENERAL

8.1 Arden Broadband may amend the Acceptable Usage Policy from time to time. An up-to-date version of the Acceptable Usage Policy can be found on Arden Broadband's website.

8.2 It is the responsibility of the Customer to ensure it is familiar with the terms of the Acceptable Usage Policy.

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