



## DSL SERVICE TERMS AND CONDITIONS

Version 5, March 9<sup>th</sup> 2010

This Subscriber Agreement (“Agreement”) is made by and between Subscriber and Digiweb Ltd. (“DIGIWEB”), for the provision and use of DSL Internet access (the “Service”). Now therefore, in consideration of the mutual promises and covenants herein contained, the adequacy of which is hereby acknowledged, and intending to be legally bound, Subscriber and DIGIWEB hereby agree as follows:

- 1. AGREEMENT.** Subscriber agrees to be bound by this Agreement and to use the Service in compliance with the terms of this Agreement and with DIGIWEB’s Acceptable Usage Policy and any modifications made to same from time to time.
- 2. THE SUBSCRIBER.** Subscriber is at least 18 years of age, is legally able to enter into contracts and is responsible for this Subscriber account. Subscriber shall pay all fees, taxes, charges and other expenses incurred in connection with the account.
- 3. SUBSCRIBER ACKNOWLEDGEMENTS REGARDING THE SERVICE.**
  - (a) The Service consists of a DSL internet connection over a phone line. While DIGIWEB will undertake all reasonable commercial efforts to deliver the stated service the Subscriber acknowledges that service speed can vary depending on Internet traffic and other factors beyond the control of DIGIWEB. The Service may contain material that is unsuitable for minors and Subscriber acknowledges that DIGIWEB does not and cannot filter the content.
  - (b) Subscriber acknowledges that in order to provide the Service, DIGIWEB has contracted with communications and network operators for internet access. Subscriber further acknowledges that DIGIWEB will only provide uninterruptible continuous Service to Subscriber pursuant to this Agreement to the extent which DIGIWEB receives such service from linked communications and network operators.
  - (c) Subscriber acknowledges and agrees that from time to time DIGIWEB may be required to temporarily suspend the Service to subscriber to verify compliance with applicable licenses, authorizations, and compliance with the technical and operating parameters of the network. Under such circumstances DIGIWEB will use all reasonable efforts to minimize disruption to the Service including making reasonable efforts that any such suspension take place out of normal business hours.
  - (d) Subscriber accepts that DIGIWEB may change or withdraw any element of the Service from time to time and will use all reasonable efforts to notify Subscriber of any necessary change in the Services.
  - (e) Subscriber acknowledges that the Service is an “always open” connection to the internet while the equipment is powered on and that it is Subscriber’s SOLE RESPONSIBILITY to install, configure and maintain suitable security measures to protect Subscriber’s computer and equipment from unauthorised or malicious access from the internet. Any advice or equipment provided by DIGIWEB is provided ‘as is’ and DIGIWEB accepts no responsibility or liability for the security of Subscriber’s systems.
- 4. EQUIPMENT.**
  - (a) From service activation DIGIWEB will loan certain ADSL modem and associated equipment, hereafter termed “Equipment”, to Subscriber to access the service. This Equipment at all times remains the sole property of DIGIWEB and Subscriber agrees to provide DIGIWEB access and permission to recover said equipment on demand without delay, obstruction or interference.
  - (b) Subscriber agrees to use the Equipment in accordance with DIGIWEB’s instructions and to restrict access to the Equipment to only those representatives and agents authorized by DIGIWEB. Subscriber agrees to take reasonable steps to protect the Equipment from damage, loss or theft.
  - (c) Subscriber agrees to notify DIGIWEB as soon as reasonably possible once he becomes aware of any damage to the equipment or defect in the operation of the equipment by telephoning or emailing DIGIWEB at the numbers or addresses published from time to time, or [support@digiweb.ie](mailto:support@digiweb.ie)
  - (d) On termination or cancellation of the Service Contract for any reason whatsoever, it is the responsibility of the Subscriber to return to Digiweb by recorded mail and in good condition and suitably packaged the DSL Modem and Filters and any other related equipment provided by Digiweb. Failure to return equipment within 14 days of the service termination/cancellation date will generate an automatic equipment fee of €75 including VAT which will be deducted from Subscribers and Subscriber hereby agrees to same.
- 5. TERM.** This Agreement is for an initial term of 12 months, and shall automatically renew for subsequent month term, until terminated in accordance with this Agreement. After the Initial Term, Subscriber may terminate this Agreement upon thirty (30) days written notice to DIGIWEB. Should Subscriber terminate this agreement for any reason during the initial term, a cancellation fee equal to EURO 121 inc VAT will become immediately due, and Subscriber acknowledges and agrees to pay such fee and return any equipment provided. For customers who have subscribed to a DSL and Voice bundle the cancellation fee will be equal to 3 months subscription of their current service. DIGIWEB may in its sole discretion terminate this Agreement at any time. In the event that DIGIWEB terminates this Agreement for reasons other than breach of this Agreement by Subscriber, then DIGIWEB shall endeavor to the extent reasonably possible to provide 30 days notice to Subscriber. Subscriber is liable under this Agreement for all fees and charges until such time as the Agreement has been terminated. SUBSCRIBER UNDERSTANDS THAT UNLESS WRITTEN

NOTIFICATION IS RECEIVED BY DIGIWEB AFTER THE INITIAL TERM, THE SERVICE SHALL CONTINUE AND SUBSCRIBER WILL CONTINUE TO BE RESPONSIBLE FOR PAYMENT OF APPLICABLE SERVICE FEES.

## **6. TERMINATION.**

- (a) If Subscriber is dissatisfied with the Service or any related terms, conditions, rules, policies, guidelines, or practices, and if these issues cannot be resolved through Digiweb's Customer Complaints procedure Subscriber's sole remedy is to discontinue using the Service, cancel the account, and pay any cancellation fees that apply. To cancel the Service Subscriber must send a written request for termination by mail or fax to DIGIWEB and same must be signed by an authorised representative of Subscriber to arrive not less than 5 working days before the end of the current billing term. Should Subscriber terminate this agreement during the initial term for any reason other than a failure by Digiweb to provide Internet Access service for a period in excess of 5 days, a cancellation fee equal to €121 including VAT will become immediately due (or the remaining value of the initial term contract for DSL Lite), and Subscriber acknowledges and agrees to pay such fee.
- (b) Upon cancellation or otherwise upon termination of this Agreement, related email and hosting services will be terminated and all Subscriber files stored on DIGIWEB servers may be deleted. DIGIWEB may terminate this Agreement, your password, your account, or your use of the Services for any reason, including, without limitation, if DIGIWEB, in its sole discretion, believes you have violated the Agreements or if Subscriber fails to pay any charges when due.
- (c) Sections 11, 20, 21, and 22 of this Agreement shall survive termination of this Agreement.
- (d) DIGIWEB may terminate this agreement immediately if Subscriber is subject to bankruptcy, insolvency examinership, receivership, liquidation or any similar proceedings, or in DIGIWEB's exclusive opinion is unable to pay fees due to DIGIWEB.

## **7. FEES AND PAYMENT.**

- (a) Subscriber shall pay a monthly service fee and all other applicable fees, charges, taxes, and other amounts for the Service at the rates in effect for the current billing period. DIGIWEB may increase or decrease the monthly service fee. DIGIWEB will use all reasonable efforts to provide Subscriber thirty (30) days or more notice of same. If such changes to the basic monthly service fee are to Subscriber's detriment (e.g. a price increase), Subscriber may terminate this agreement by giving thirty (30) days written notice, and Subscriber will remain liable only for any balance on the account.
- (b) Subscriber must provide valid payment details to Digiweb. These details will be retained on file for payment of Subscriber charges. Should the payment details become invalid the Subscriber must provide new payment details. Payment is due in full by Direct Debit or Credit Card on the date stated on the invoice unless an alternative payment method has been formally agreed with Digiweb. Any account where a valid Direct Debit or Credit Card is not held on file will be subject to a €1.50 administration fee per invoice. All charges are considered valid unless disputed in writing within thirty (30) days of the billing date. Adjustments will not be made for charges that are more than 30 days old. If any payment is more than 7 days overdue or is returned by the bank unpaid, the Service may be suspended with immediate effect and remain suspended until the due amounts are paid in full. The Subscriber is not relieved of the obligation to pay the monthly service fee while an account is suspended. DIGIWEB may at its sole discretion terminate the Service and this Agreement for any accounts which are 14 days or more overdue. A reactivation fee or deposit may be required before Service is reactivated after suspension or termination. Credit account balances shall not accrue interest. Subscriber agrees to pay the reasonable costs of any collection agency, solicitor or court used by DIGIWEB to collect past due amounts or to enforce this Agreement. Returned cheques, failed Direct Debit or Credit Card charges will be subject to a €5 administration fee.
- (c) Monthly charges commence 2 days following the DSL Line activation date.
- (d) Package cannot be downgraded within contract, outside contract €30 downgrade fee applies.

## **8. SUBSCRIBER ACCOUNT.**

- (a) Subscriber will receive a username, password, account reference, and various other account details. Subscriber is solely responsible for use of the Service and for ensuring their information is kept confidential. Subscriber must notify DIGIWEB immediately upon discovering any unauthorized use of their account.
- (b) Subscriber acknowledges that usernames, passwords and IP addresses may change or be changed from time to time, and specifically that fixed IP addresses are not guaranteed except in the case of custom services where this specifically comprises part of the service contract.

**9. FAIR ACCESS POLICY.** To ensure equal Internet access for all subscribers, DIGIWEB operates a fair access policy. Fair access establishes an equitable balance in Internet access across high speed Internet services for all subscribers. To ensure this equity, certain types of traffic such as email and browsing may be prioritized over other traffic. DIGIWEB provides the Service on a "best effort" basis and does not guarantee upload or download speeds. Further, all services are subject to a Traffic Quota which is the sum of the upload and download traffic generated during a 30-day period. The Quota level for each service varies and is displayed with the Service details at [www.digiweb.ie](http://www.digiweb.ie) and may be modified from time to time. Accounts which exceed their quota may be restricted or suspended without notice, however DIGIWEB will endeavor to advise of such actions, and may provide web-based information to the Subscriber to review their usage level.

**10. CUSTOMER COMPLAINT POLICY.** Should you be dissatisfied for any reason with the service provided by DIGIWEB a formal complaint process is provided to ensure that your issue is addressed as quickly as possible and at the highest level necessary, as follows:

- (a) **GENERAL:** If you have a general complaint regarding DIGIWEB, email full details and your account reference us at [customercare@digiwed.ie](mailto:customercare@digiwed.ie). – issues registered in this way automatically enter Digiweb’s complaint tracking systems thus ensuring the most appropriate and quickest handling of same.
- (b) **BILLING:** If you have a billing enquiry or complaint, please contact the Accounts Department via the number shown on your invoice or statement by email to [customercare@digiwed.ie](mailto:customercare@digiwed.ie).
- (c) **WRITTEN:** If you prefer to put your complaint in writing, we will respond to your letter by telephone and will confirm any details in writing if you wish. Your letter should be addressed to: Customer Care Dept., DIGIWEB, IDA Industrial Park, Dundalk, Ireland.
- (d) **IDENTITY:** If telephoning DIGIWEB, each staff contact receiving your call will provide his or her name on request. Record same for future reference or to revert later to the same person working on your query or complaint.
- (e) **RESOLUTION:** The staff member receiving your call will either resolve your complaint or transfer your complaint to a more appropriate person to endeavor to resolve your complaint to your satisfaction. Where possible, our staff will resolve your concern at the first point of contact.
- (f) **ESCALATION:** If you are not satisfied with the resolution, or if you feel that you have not received a fair hearing, your complaint can be escalated to a supervisor or manager on your request. He or she will review your complaint and resolutions offered and discuss the complaint with you. If your complaint remains unresolved, it can be escalated to the General Operations Manager and subsequently the Managing Director of the company.

**11. SOFTWARE LICENSE.** DIGIWEB grants to Subscriber a non-exclusive, non-assignable and non-transferable license to use and display the software provided by or on behalf of DIGIWEB only for purposes of accessing the Service. Unauthorized copying of the Software is expressly forbidden. Subscriber may not sublicense, assign or transfer the license or the Software.

**12. INSTALLATION.**

- (a) The installation, use, inspection, maintenance, repair, and removal of the equipment may result in service outage or potential damage to your computer. Subscriber is solely responsible for backing up all existing computer files and data. DIGIWEB and its employees, agents, contractors, and representatives shall have no liability whatsoever for any damage to or loss or destruction of any of your hardware, software, files, data or peripherals.
- (b) DIGIWEB will endeavor to provide the Service to all eligible applicants, subject to technical and commercial feasibility. DIGIWEB may in its sole discretion determine that it cannot or will not service a particular site or subscriber, and reserves the right to cancel the installation process and refund any money that Subscriber has paid. DIGIWEB will notify you of its intent to cancel as soon as reasonably possible. It may take up to 90 or more days to determine if DIGIWEB is able to provide service in certain locations. DIGIWEB shall have no responsibility whatsoever for claims arising out of its failure or refusal to complete the installation or provide the Service.

**13. COPYRIGHTS AND LICENSES.** The content on the Service is protected under applicable copyright law. Any copying, modification, distribution, publication or other use by Subscriber, or by any user of Subscriber’s account, of any such content is prohibited, except as expressly permitted by the holder of the applicable copyrights.

**14. NO ENDORSEMENT.** DIGIWEB does not endorse or in any way vouch for the accuracy or completeness of any content made available through the Service. DIGIWEB does not recommend that such content be relied on by Subscriber without appropriate verification.

**15. SUBSCRIBER CONDUCT.** Subscriber shall comply with all laws, rules, regulations and legal obligations related to the Service and with all acceptable use policies and procedures established from time to time by DIGIWEB. Subscriber shall not use the Service to conduct any business or activity or to solicit the performance of any activity which is prohibited by any law, rule, regulation or legal obligation. Subscriber shall not intercept email in an unauthorized manner or engage in “spamming” or any similar conduct.

**16. THIRD PARTY ACCESS.**

- (a) Subscriber shall not resell, share, lease, hire or otherwise permit access to the Service to any third party, including but not limited to the connection of any third party to the Service through use of direct cable connection, network connection, wireless networking or any other means.
- (b) DIGIWEB reserve the right to suspend the Service pending investigation where it reasonably suspects the above clause is breached by Subscriber and reserves the right to terminate with immediate effect the Service and this Agreement where such breach has take place

**17. SERVICE MONITORING.** DIGIWEB has no obligation to monitor the Service, but may do so and disclose information regarding use of the Services for any reason if DIGIWEB, in its sole discretion, believes that it is reasonable to do so, including to: satisfy laws, regulations, or governmental or legal requests; operate the Service properly; or protect itself and its subscribers. DIGIWEB may immediately remove your material or information from DIGIWEB servers, in whole or in part, which DIGIWEB, in its sole and absolute discretion, determines to infringe another’s property rights or to violate DIGIWEB’s Acceptable Use Policy.

- 18. SUBSCRIBER EQUIPMENT.** Subscriber shall maintain and operate suitable and fully compatible terminal equipment and communication devices required to access the service. DIGIWEB makes no representation or warranties, either express or implied, regarding such Subscriber equipment.
- 19. DISCLAIMER OF WARRANTIES.** Access to the service is not guaranteed. The Service is distributed on an “as is” and “as available” basis without warranties of any kind, either express or implied, including but not limited to warranties of title or implied warranties of merchantability or fitness for a particular purpose or otherwise.
- 20. LIMITATION OF LIABILITY.** Neither DIGIWEB nor any of its information or content providers, service providers, licensors, employees or agents shall be liable for any direct, indirect, incidental, special, punitive or consequential damages arising out of Subscriber’s use of the service or inability to use the service or any breach of any representation or warranty. In any event, no such liability shall exceed the total amount actually paid by Subscriber for services provided under this agreement for the prior six month period.
- 21. INDEMNITY.** Subscriber assumes all risk and liability for any use of the Service. Subscriber agrees to indemnify DIGIWEB against all claims, liability, damages, costs and expenses, including but not limited to reasonable legal fees, arising out of or related to Subscriber’s use of the Service.
- 22. THIRD PARTY BENEFICIARIES.** The provisions of Sections 19, 20 and 21 are for the benefit of DIGIWEB and its respective contractors, information or content providers, service providers, licensors, employees and agents; and each shall have the right to assert and enforce such provisions directly on its own behalf.
- 23. SUPPORT SERVICES.** Subscriber shall direct all enquiries and service related issues to DIGIWEB’s Customer Sales and Support contact points, as defined on its website from time to time or directly by email to [support@digweb.ie](mailto:support@digweb.ie)
- 24. APPLICABLE LAWS.** This Agreement shall be governed by the laws of the Republic of Ireland. Any cause of action of Subscriber, or by users of Subscriber’s account, with respect to the Service or this Agreement must be instituted within six (6) months after the claim or cause of action has arisen or be barred. It is acknowledged that this is a services contract and not a contract for the sale of goods.
- 25. GENERAL.**
- (a) This Agreement constitutes the entire agreement between the parties relating to the subject matter hereunder, and supersedes any and all oral and/or written statements, discussions, representations and agreements made by either party to the other, and may not be assigned without the express written consent of DIGIWEB. No modification of this Agreement shall be binding on either party unless it is in writing and signed by both parties. Failure on the part of DIGIWEB to enforce any provision of this Agreement shall not be construed as a general waiver or relinquishment of the right to enforce such provision. If any provision shall be held unenforceable, the validity legality and enforceability of the remaining provisions shall in no way be affected thereby, and the intent of the unenforceable provision enacted to the maximum enforceable extent.
  - (b) Publicity. DIGIWEB may identify Subscriber as user of DIGIWEB’s services in reports, advertisements and other promotional literature or forms of publication. Subscriber should advise DIGIWEB in writing if it does not wish to be identified.
  - (c) These Terms and Conditions may be modified by Digiweb from time to time, the current and applicable version always being available in electronic form from the relevant section of the DIGIWEB website at [www.digweb.ie](http://www.digweb.ie) Digiweb will make reasonable attempts by email or other communication, including but not limited to national press, to inform Subscriber when the Terms and Conditions of the Service are amended. Should any modification cause a reasonable deterioration in the level of the Service the Subscriber could reasonably expect, their sole remedy is to terminate service in writing within 30 days of such change. Should Subscriber continue to use the Service 30 days following date of notice of an amendment made to the Terms and Conditions the Subscriber is deemed to have accepted the amended terms.
  - (d) Headings for Convenience. All headings preceding paragraphs and subparagraphs have been inserted for convenience of reference only, and shall not be relied upon in determining the meaning of the rights and obligations of DIGIWEB or Subscriber.