



TOOWAY SATELLITE SERVICE
TERMS AND CONDITIONS
Version 5, March 9th 2010

This Subscriber Agreement ("Agreement") is made by and between Subscriber and Digiweb Ltd. ("DIGIWEB"), each as defined above, for the provision and use of satellite communications services (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. **THE SERVICE.** The Service consists of an internet connection incorporating transmission of data communications via satellite uplink and downlink facilities and satellite transponders. The Service may contain material that is unsuitable for minors and Subscriber acknowledges that DIGIWEB does not and cannot filter the content. The Service speed can vary depending on Internet traffic, extreme weather conditions, and other factors beyond the control of DIGIWEB.
4. **SUBSCRIBER ACKNOWLEDGEMENTS REGARDING THE SERVICE.**
 - (a) Subscriber acknowledges that in order to provide the Service, DIGIWEB has contracted with communications and satellite operators for space segment capacity and internet access capacity. Subscriber further acknowledges that DIGIWEB will only provide uninterrupted continuous Service to Subscriber pursuant to this Agreement to the extent which.
 - (b) Subscriber acknowledges and agrees that from time to time DIGIWEB may be required to temporarily suspend the Service to verify compliance with applicable licenses, authorizations, and compliance with the technical and operating parameters of the Satellite. 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.
 - (c) 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.
 - (d) Subscriber acknowledges and agrees that DIGIWEB have the right to move Subscriber's service to a satellite other than the Satellite provided, however, that DIGIWEB shall give Subscriber ten (10) days advance notice of any planned move and provided that DIGIWEB will not exercise this relocation without good cause, such cause to be determined in DIGIWEB's sole discretion, and that DIGIWEB will take all reasonable efforts to avoid that the Subscriber be required to take any related adjustment actions to maintain Service. In any event, DIGIWEB shall have the right by providing 24 hours notice to Subscriber to change the Satellite transponder frequency on any day, provided that such change in frequency would not require more than minimal Subscriber action.
 - (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
5. **TERM.** This Agreement is for an initial term of 12 months, and shall automatically renew for subsequent 12 month terms, 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 three (3) months monthly service fee will become immediately due, and Subscriber acknowledges and agrees to pay such fee. 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, 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 for any reason during the initial term, a cancellation fee equal to three (3) months monthly service fee will become immediately due, and Subscriber acknowledges and agrees to pay such fee.

- (b) Sections 11, 20, 21 and 22 of this agreement shall survive termination of this agreement
- (c) 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 basic 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 basic 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 Subscribers detriment, 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) Payment is due in full by Direct Debit at the start of each billing month, except where annual prepayment has been selected. 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 sixty (60) days of the billing date. Adjustments will not be made for charges that are more than 60 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 Debits or Credit Card charges will be subject to a €5 administration fee.

8. SUBSCRIBER ACCOUNT.

- (a) Subscriber will receive a username, password, account reference, IP information 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.

- 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, a monthly usage limit is applied to each package. These monthly usage allowances are displayed on Digiwebs website at:

<http://support.digiweb.ie/questions/3808/Tooway+Satellite+Traffic+Usage+%26+Fair+Access+Policy+Explained>

DIGIWEB provides the Service on a "best effort" basis and does not guarantee upload or download speeds.

- 10. 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.

11. INSTALLATION.

- (a) Subscriber acknowledges that as the equipment is complex and that broadcast regulations for installing and aligning the antenna are stringent, the equipment must only be installed by DIGIWEB Approved Installer. DIGIWEB will arrange for the installation and commissioning of the equipment at your site in advance of service provision
- (b) 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. Subscriber assumes responsibility for impacts to or loss of any warranty associated with the opening of your computer for installation.
- (c) Subscriber acknowledges that this is a fixed-location service for one personal computer only. Moving to another location will require the service to be re-provisioned by a DIGIWEB Approved Installer at the new location. This may result in interruption of the Service, and will incur installation fees which Subscriber will be required to pay in advance of moving.
- (d) DIGIWEB will make its best effort to provide the Service to all applicants. DIGIWEB may in its sole discretion determine that it can not 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. DIGIWEB shall have no responsibility whatsoever for claims arising out of its failure or refusal to complete the installation or provide the Service.

- (e) The installer will need to work internally and externally at your premises for which they will require access. Subscriber acknowledges responsibility for securing, including any associated costs, the following:
 - (i) Obtaining all necessary consents including planning permission if needed, landlord, occupier and other building consents for both access and installation and maintenance of the equipment; and
 - (ii) Full, free and safe access to relevant premises at agreed times.
- (f) If for any reason an installation must be cancelled due to error, omission, oversight or for any other cause attributable to Subscriber the following arrangements apply. The installation may be cancelled 5 or more working days before the installation date without penalty. If cancelled less than 5 working days from installation, a cancellation fee of €50 will be payable. If cancelled within 1 day of an agreed installation date an installation abort fee of €150 will be payable. The payment of the abort fee includes but is not limited to the situation where the installer must cancel the installation having arrived on site where the Subscriber has provided inaccurate or incorrect information, or where the Subscriber has omitted to make known information relevant to the installation.

12. 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.

13. 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.

14. 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.

15. 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

16. 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.

17. SUBSCRIBER EQUIPMENT.

- (a) 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.
- (b) A 12-month limited warranty is available from the equipment manufacturer for the equipment purchased from DIGIWEB in connection with the Service and DIGIWEB will comply with all reasonable requirement necessary to affect the pass-through of the warranty to Subscriber. At its sole option within the initial term, DIGIWEB or its agent may replace a defective equipment on behalf of the manufacturer, provided Subscriber follows all applicable procedures. This warranty does not cover defects resulting from acts outside of DIGIWEB's control, use contrary to specifications or instructions, misuse or abuse, or repair or modification by anyone other than the manufacturer, DIGIWEB, or its contractors. DIGIWEB reserves the right to modify this warranty at any time. Title and all associated risks associated with the Equipment shall pass to Subscriber when equipment purchase costs are paid in full.

18. 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.

19. 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, expressly not including any amount paid for equipment purchase or installation.

- 20. 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.
- 21. 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.
- 22. 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 to time.
- 23. 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.
- 24. GENERAL.**
- (a) Entire Agreement. 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) Notices. All notices, requests, consents and other communications hereunder, shall be in writing and shall be forwarded by either Registered Mail, fully prepaid, sent via facsimile or delivered in person to the address of each party as set forth at the beginning of this Agreement, or at such other address as may have been furnished in writing; provided that any notice of termination shall be sent via registered mail in addition to any other means of communication used. Notices, if mailed, shall be deemed effective 5 working days following deposition with the mail service.
 - (c) Non-Assignment. This Agreement is personal to the parties hereto and the rights and obligations of Subscriber hereunder cannot be assigned, delegated, or in any manner transferred, except as approved by DIGIWEB, and, provided that DIGIWEB may assign this Agreement to a subsidiary, affiliate, or other entity.
 - (d) 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 if it does not wish to be identified.
 - (e) Remedies. Any of the remedies set forth herein, are not exclusive of remedies that DIGIWEB or Subscriber may obtain in a Court of Law, on Legal or Equitable grounds.
 - (f) 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