

# **Airwave Internet Terms & Conditions**

**Please read the following terms and conditions.**

## **1. Interpretation**

"Acceptable Usage Policy" shall mean the usage policy as displayed on Airwave Internet's web site at [www.airwaveinternet.net](http://www.airwaveinternet.net). This policy may be amended by Airwave Internet from time to time.

"Access Provider" shall mean the company that provides the physical single Network Termination Point.

"Affiliate" shall mean a holding company, group company, or subsidiary direct or indirect, or a company which is under the common control with the company concerned.

"Agreement", shall mean these Terms and Conditions, the Acceptable Usage Policy, Airwave Internet's tariffs for the Service and the Airwave Internet Contract Form which together constitute a legally binding agreement between Airwave Internet and the Customer. The Agreement shall come into force once the Customer commences to use the Service as determined by us.

"Airwave Internet", "we", or "us" shall mean the provider of the Service being Lackabeha Services trading as Airwave Internet and in this agreement referred to as Airwave Internet of Lackabeha, Carrigtwohill, Co. Cork

"Airwave Internet Service" shall mean the internet service whereby the Customer agrees to purchase a specific grade of internet connection from Airwave Internet.

"Airwave Internet's Web Site", is available at [www.airwaveinternet.net](http://www.airwaveinternet.net)

"ComReg" the Commission for Communications Regulation (formerly ODTR), the national regulatory authority for the telecommunications market in Ireland.

"Connection Details" shall mean 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 (e.g. MAC address) collected from the Customer for the purposes of gaining access to the Network.

"Connection Software" shall mean all software provided on the PC to the Customer under licence to facilitate connection to Airwave Internet's Internet Service(s) where required.

"Customer" shall mean the person using the Service ("Customer" or "you").

"Customer Equipment" means all computer hardware, software, cabling, apparatus and facilities provided by the Customer to enable the Customer to link to the Network Connection.

"Network" shall mean the telecommunications system owned and operated by Airwave Internet in accordance with its licence granted by ComReg.

"Network Connection" means all Airwave Internet's cabling, interface panels, cabinets, systems, apparatus, facilities and any other equipment which may be utilised by Airwave Internet to provide the Service.

"NTP" means a network terminating point, which is the physical point at which traffic exits the Service.

"Service" shall mean any service offered by Airwave Internet.

## **2. Assignment**

2.1 Airwave Internet may assign this Agreement to an Affiliate of it without consent.

2.2 The Customer shall not assign this Agreement in whole or in part without the prior written consent of Airwave Internet.

## **3. No Waiver**

3.1 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right and does not operate so as to bar the exercise or enforcement thereof, or of any such right or any other right on any later occasion.

3.2 Any deficiency in the Customer's authority to avail of the Service or to use the Equipment shall not preclude reliance by Airwave Internet on any of its rights under this Agreement.

## **4. Notices**

4.1 Airwave Internet reserves the right to forward correspondence to the Customer by electronic mail,

at the email address provided by the Customer or at the option of Airwave Internet, notice. Notices given under this Agreement (including invoices sent by Airwave Internet to the Customer) must be in writing and may be delivered by hand or sent by telex, facsimile, email, or first class post to the addressee at the following addresses:

4.1.1 to Airwave Internet at the address of the Airwave Internet office shown on the Customer Contract Form or any alternative address which Airwave Internet notifies to the Customer;

4.1.2 to the Customer either to the Customer's billing address as provided on registration, or place same on the Airwave Internet's Web Site

4.2 All written correspondence from Airwave Internet shall be deemed served 48 hours after posting or on earlier proof of delivery.

## **5. Service**

5.1 For technical, operational and commercial reasons we shall be entitled to vary the Service and any aspect thereof at any time.

5.2 The Airwave Internet Service is provided utilizing licence exempt spectrum on a noninterference/non-protected basis. This means while the Airwave Internet system is not permitted to cause interference to other systems, it may not claim protection from interference from other systems operating in these bands. This may have implications for the quality of Service offered to Customers.

5.3 Airwave Internet and customers shall exchange Connection Details to enable provision of Airwave Internet's Internet Service.

5.4 Airwave Internet's customer care number is 087-9471657. Up-to-date Customer Care details shall be maintained on Airwave Internet's Web Site.

5.4.1 Critical Network issues and outages shall be reported via Airwave Internet's customer care channels as described in Clause 5. Airwave Internet shall take action to resolve all such issues as quickly as is reasonably possible to do so. The customer care channel shall be used as the mechanism to keep the Customer up to date on progress.

5.5 Where a Customer avails of a promotional offer and/or a joint offer with our partner(s), subject to eligibility and availability, alternative terms and conditions may apply.

5.6 Airwave Internet's "Terms & Conditions" and "Acceptable Usage Policy" shall be distributed using standard Notices practice as described in clause 4.

5.7 Airwave Internet provides a single Network Terminating Point (NTP) and a single IP Address. Installation involves placing a small Subscriber Module externally on the premises. An ethernet cable is used to connect same to the Customer Equipment. A single power socket is required beside the NTP to power an adapter which supplies power to the Subscriber Module.

5.8 Airwave Internet or its subcontractors reserves the right to charge an Installation Charge depending on level of difficulty of physical installation. 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 Airwave Internet prior to the installation visit.

## **6 Payment**

6.1 Airwave Internet's tariffs for the Service(s), as amended from time to time, also form part of the Agreement. We reserve the right to alter such tariffs and shall notify the Customer of such a change by notice in writing and/or via national newspapers and/or on the customer bill and/or on the Airwave Internet Web Site within a reasonable period in advance of the effective date. All quoted tariffs shall be exclusive of Value Added Tax (VAT).

6.2 The Customer shall be charged quarterly in advance for usage of the Airwave Internet Service. Applicable Value Added Tax shall be stated clearly in the bill.

6.3 All sums due to us shall be paid in full by direct debit mandate. Provision of the Service shall be conditional on the Customer making all necessary arrangements to pay for the Service by such means.

6.4 Should the Customer disagree with any charges shown on the Customer's bill, the Customer is requested to write or phone us within fourteen days of the bill date of a disputed bill. If the charges are incorrect, we shall amend and re-issue the bill with a new date for payment. Otherwise the full amount remains due.

6.5 Other than in a case of manifest error by Airwave Internet, all charges shall be calculated by

reference to the data recorded or logged by Airwave Internet. Airwave Internet's determination in respect thereof is final

## **7. Fair Usage Policy**

Airwave Internet monitors Customer usage to ensure equal and fair usage for all of Airwave Internet's Customer base. 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, Airwave Internet 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, Airwave Internet 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.

## **8. General Use of the Service**

8.1 The Customer undertakes not to use the Service or the Equipment:

8.1.1 for any improper, immoral or unlawful purpose, nor cause any nuisance by the use of the Service, nor allow others to use the Service for any of the foregoing purposes; or

8.1.2 for the transmission of any material which is, may be or is intended to be a hoax or is of a defamatory, offensive, abusive, obscene or menacing nature; or

8.1.3 for the infringement of intellectual property rights or trade secrets of another party; or

8.1.4 for the processing of automated personal data as defined in the Data Protection Act, 1988.

8.1.5 in a manner which in the opinion of Airwave Internet, in its absolute discretion, makes demands on the service or Airwave Internet's network or facility which are deemed of an abnormal or heavy nature when compared with the average use for the grade of service purchased from Airwave Internet.

8.2 The Customer shall ensure that all persons having access to the Service or the Equipment comply with the terms and conditions herein stated, and is responsible for any usage of any person having such access.

8.3 The Customer is bound to observe the confidentiality of the Connection Details and is therefore responsible for the security thereof.

8.4 The Customer shall observe the provisions of Airwave Internet's Acceptable Usage Policy as amended from time to time.

8.4.1 The Customer acknowledges the right of Airwave Internet to make such amendments as it thinks fit from time to time.

8.4.2 The Customer agrees to review the Acceptable Usage Policy on Airwave Internet's Web Site, on a regular basis and will accordingly accept responsibility for keeping up-to-date with all such changes.

8.5 The Customer shall ensure that all hardware, software, and equipment provided by the Customer for accessing the Service is maintained and kept in good working order.

8.6 The Customer shall comply and is bound by all conditions of the licence under which the Equipment is provided.

8.7 The Customer shall comply with all reasonable instructions given to the Customer by Airwave Internet in relation to the use of the Services.

8.8 The Customer shall inform Airwave Internet of change of name, address, email address, telephone number and all other details enabling provision of Service.

8.9 The Customer shall indemnify and hold Airwave Internet harmless against all liabilities, claims, damages, losses, expenses and proceedings howsoever arising from or in any way connected with the use of the Service or the Equipment.

## **9. Liability**

9.1 Airwave Internet shall use all reasonable endeavours to ensure that the Service is available for use by the Customer in accordance with the standards then prevailing and which relate to the Service as set out in Airwave Internet's service literature, but shall not be liable for any delay, failure, interruption, or deterioration therein, howsoever arising.

9.2 Airwave Internet shall have no liability to the Customer for any unauthorised access to the Customer's Equipment or computer system. Airwave Internet Service provides an "always-on" connection to the Internet. Airwave Internet strongly recommends that all Customers take the

necessary steps to protect the Customer's Equipment and computer system from unauthorized access or attack.

9.3 The Customer accepts that Airwave Internet has neither control over the content of, nor is responsible for, information that is transmitted and made available on the Internet and that the security of the Internet as a communication medium, or as a medium for purchasing or payment cannot be guaranteed.

9.4 Airwave Internet shall not be liable for any loss or damage of any kind caused by the failure of the Service or Equipment due to the incompatibility with the Service of hardware, software, and/or equipment supplied by the Customer.

9.5 Airwave Internet shall not be liable to the Customer or any third party in contract, tort or otherwise for any financial loss whatsoever or for any indirect or consequential loss howsoever arising in relation to the use of the Service or the Equipment or any failure or error or default by us in the provision thereof, or otherwise in connection with this Agreement. Without prejudice to the generality of the foregoing, any and all liability arising under the Sale of Goods and Supply of Services Act 1980 is excluded to the fullest extent permitted by law.

9.6 Airwave Internet shall have no liability under this Agreement for the acts and omissions of other telecommunication operators and/or Internet Service Providers.

9.7 Airwave Internet shall not be liable for claims arising out of a breach in the security or privacy of messages transmitted using the Service provided by Airwave Internet unless the breach results from a wilful act or omission of Airwave Internet or its employees.

9.8 This Clause 9 shall continue to apply notwithstanding termination of this Agreement.

## **10. Termination**

10.1 Airwave Internet may terminate the Agreement upon 60 days written notice to the customer and any such termination shall be effective on the expiry of such notice period, such notice to expire on or after the end of the Minimum Period.

10.2 Notwithstanding such termination any Customer of the Airwave Internet Service who seeks to terminate shall be liable to pay for one billing period following such termination.

10.3 Without prejudice to its rights under this Agreement Airwave Internet shall have the right to terminate this agreement forthwith by ten days written notice in the event that the Customer is in material default of any of the Customer's obligations under this Agreement.

10.4 Airwave Internet shall have the right forthwith to terminate the Agreement for due reason, including, but not limited to:

10.4.1 if the Customer is in breach of any of the provisions of Clauses 5, 6, 7 or 8 above

10.4.2 if the Customer is in breach of any term of the Agreement or any information supplied by the Customer to Airwave Internet is false or misleading; or

10.4.3 if Airwave Internet are obliged to comply with an order, instruction or request of Government, the Director of Telecommunications Regulation, an emergency service organisation or other competent authority; or

10.4.4 if the Customer is suspected of involvement with fraud or acts which are of defamatory, offensive, abusive, obscene, menacing, unsuitable or unlawful character in connection with use of the Service.

10.4.5 if for technical or physical reasons it is not possible to provide the Service

## **11. Force Majeure**

In the event of Force Majeure, neither party shall be held in breach of its obligations hereunder (except in relation to obligations to make payments) nor be liable to the other party for any loss or damage which may be suffered by the other party due to any cause beyond its reasonable control including, without limitation, any act of God, failure, interruption of power supplies, flood, drought, lightning or fire, strike, lockout, trade dispute or labour disturbance, acts or omissions of Government, highway authorities or other circumstances beyond the control of the parties.

## **12. Resolution of Customer Disputes**

12.1 Non-payment of bills:

12.1.1 Within fourteen days of the bill date of a disputed bill, Airwave Internet must receive from the Customer an itemised statement in writing which identifies the disputed charges and reasonably explains the basis of the dispute. Failure to comply with this

requirement shall mean the bill is deemed to be correct and all amounts are due and owing to Airwave Internet.

12.1.2 Airwave Internet shall review the Customer's statement, and shall issue a written initial determination within ten days after its receipt of the Customer's statement to set forth Airwave Internet's proposed resolution of the dispute.

12.1.3 If the Customer is not satisfied with Airwave Internet's proposed resolution, the Customer must advise Airwave Internet in writing within ten days after the Customer's receipt of Airwave Internet's initial determination of the specific reasons for the dissatisfaction, and provide any additional information which the Customer deems pertinent or relevant to the dispute.

12.1.4 Within ten days after Airwave Internet's receipt of additional information, Airwave Internet shall make its final determination and resolution based upon all documentation or information available to Airwave Internet.

12.1.5 If the Customer continues to withhold any disputed amount determined to be owed to Airwave Internet, the Customer's account shall be deemed to be past due, and subject to termination as described in Clause 10.

12.2 Airwave Internet shall respond to all general Customer queries within a reasonable period .

### 12.3 Customer Disputes

12.3.1 If any dispute or difference of any kind whatsoever (except for non-payment of sums due) arises between the Parties to this Agreement in relation to any thing or matter hereunder, the Parties will use their reasonable endeavours to settle the dispute as soon as possible in accordance with the following procedure:

12.3.1.1 the Customer shall communicate their dispute in writing (together with any supporting documentation) to Airwave Internet's Customer Services representative within fourteen days of the occurrence of the event giving rise to the dispute; and

12.3.1.2 where the dispute is not settled by Airwave Internet's Customer Services representative within fourteen days, the matter shall be referred to Airwave Internet's Customer Services Director who will endeavour to resolve the dispute between the Parties within a further period of twenty one days.

12.3.2 If the dispute between the Parties is not settled by Airwave Internet's Customer Services Director within twenty one days then the matter shall be referred to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators - Irish Branch and shall be an arbitration conducted in Ireland in the English language and governed by the Arbitration Acts, 1954 to 1998.

## 13. Use of Information

13.1 In accordance with the provisions of the Data Protection Act 1988, any information obtained by Airwave Internet or through the use of the Service (subject to the right of the Customer to request otherwise on the Airwave Internet Contract Form) may be used by Airwave Internet to provide the Customer with additional information relating to existing, improved or new products and services, including information relating to special offers, promotions or competitions of Airwave Internet, its associated and affiliated companies and/or third parties which we think that the Customer may find of Interest.

13.2 In accordance with the Data Protection Act 1988 any information obtained by Airwave Internet through an application for the use of Airwave Internet's Service may be accessed and used by Airwave Internet and its Affiliates for the purposes of accurate billing and efficient operation. The Customer shall be deemed to have given consent for the use of their information for such purposes. The use of such information for purposes other than billing and operation shall be subject to the Customer's consent as given on the Airwave Internet Contract Form.

13.3 Any information so obtained may be disclosed by Airwave Internet to any person where this is necessary for the provision of the Service or to any person who assumes the rights of Airwave Internet under this Agreement and to any credit reference agency or bureau.

## 14. Miscellaneous

14.1 If any provisions of the Agreement are held to be unenforceable, illegal or void in whole or in part the remaining portions of the Agreement shall remain in full force and effect.

14.2 This Agreement shall be governed by and construed in accordance with Irish law and the parties hereby submit to the exclusive jurisdiction of the Irish Courts.