

imagine

Breeze

TERMS & CONDITIONS



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

DEFINITIONS

1.1 "Acceptable Usage Policy" means the policy specifying actions deemed unacceptable usage under this Agreement, published on <http://www.imagine.ie/> (the "Website") as may be amended extended or replaced by imagine from time to time and which is hereby incorporated into this Agreement by reference;

"Agreement" means the Breeze terms and conditions, the Customer Authorisation Form and the Acceptable Usage Policy (each as may be amended, extended or replaced by imagine from time to time);

"Authorised Installer" shall mean a person or company appointed by imagine to install, adjust, maintain or repair the Equipment;

"Consumer" means consumer as defined in the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations, 2001 – i.e. A natural person who, as regards a distance contract, is acting for purposes which are outside that person's trade, business or profession;

"Customer Authorisation Form" means either the online form submitted by you to imagine requesting provision of the Equipment and the Service or if you order by telephone, a form completed by the imagine representative containing the details we require from you to enable us to provide you with the Service;

"Content" means any and all information, material and other content including but not limited to data, text, images, photographs, software, music video, sound, graphics, applications or database content supplied by you, us or any third party content provider which is contained in or forms part of the Service;

"Equipment" means the equipment and/or any other item to include all fittings, accessories and modifications thereto from time to time provided by imagine as an essential part of providing the Service under this Agreement;

"Intellectual Property Rights" means all intellectual property rights, including patents, registered designs, trade marks and service marks (whether registered or not) copyright, database rights, design rights and all similar property rights including these subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programmes, semi-conductor topographies, confidential information, business names, goodwill and the style and presentation of goods or services and any and all applications for protection of any of the above rights.

"imagine", "We" or "Us" shall mean imagine Group with an address at Communications House, Barrow Street, Dublin 4, Ireland;

"Minimum Subscription Period" means the period of no less than twelve (12) months commencing on date of installation of the Equipment;

"Party" means either the Subscriber and imagine including their assignees (together the "Parties");

“Premises” means the location at which the Subscriber receives the Services and where the Equipment is installed;

“Service” means an Internet Protocol (IP) based internet connectivity service provided by imagine, connecting the Subscriber to the Internet via imagine’s network, including any such additional services as may be subscribed to by the Subscriber;

“Subscriber” or **“you”** shall mean the party to whom imagine is providing the Service and the Equipment;

“Subscription” means the amount payable by the Subscriber to imagine for the provision of Service and the use of the Equipment together with any Value Added Tax and any other taxes (at applicable rates from time to time) and/or any amounts which are displayed on the Website or in stores selling the Equipment or which a customer service representative may inform to you;

“Subscription Period” means the entire term of this Agreement. This Agreement shall automatically continue in force and effect after the Minimum Subscription Period unless and until cancelled by either Party upon thirty (30) days’ prior written notice to the other Party.

“Bill Day” means the day of the month that your service is charged from and to.

2 THE SERVICE & THE EQUIPMENT

2.1 In consideration of the Subscription, imagine supplies the Service and the Equipment to the Subscriber, pursuant to this Agreement. imagine hereby grants the Subscriber the right to use the Equipment and the Service in accordance with the terms of this Agreement, and the Subscriber hereby accepts such use on the terms and conditions as set out in this Agreement.

2.2 imagine will make reasonable commercial efforts to maintain access to the Service and ensure that it is available for use by the Subscriber. However imagine cannot be held responsible for accidental non-availability for outages of services, or for unforeseen interruptions to the Service.

2.3 The Subscriber acknowledges that the basis of this Agreement is that:

2.3.1 The Subscriber shall at its own cost ensure that the Premises is suitable for the installation, use and accommodation of the Equipment;

2.3.2 If the Subscriber is not the owner of the Premises on which the Equipment will be installed, it is the Subscriber’s responsibility prior to the installation of the Equipment, to ensure they have received all requisite consents and authorisations from the owner of the Premises to install the Equipment at the Premises. imagine shall assume no liability whatsoever arising from the failure of the Subscriber to procure such consent. The Subscriber acknowledges and agrees that it shall fully and effectively indemnify and keep imagine indemnified for any costs incurred as a result of the Subscriber’s breach of this Clause 2.3.2;

2.3.3 In order to facilitate delivery of the Equipment, the Subscriber shall grant access to imagine or an Authorised Installer to the Premises to allow for installation (and subsequently for the repair and maintenance) of the Equipment. Should the Subscriber fail to grant access to the Premises, the Subscriber shall be responsible for all reasonable costs associated with the labour time lost, and imagine shall not be responsible for non provision of Services as a consequence; and

2.3.4 Subject to Clause 2.2, connection to the Service will be made available to you once the Equipment has been successfully installed.

2.4 In the event the Premises are not suitable for installation of the Equipment, it may be necessary to install additional Equipment to enable the Subscriber to avail of the Service. Any costs associated with the additional Equipment must be borne by the Subscriber in addition to the Subscription. The Subscriber will be advised of the costs (if any) for the additional Equipment in advance of the installation of the Equipment.

2.5 The Equipment is and shall remain the property of imagine and the Subscriber shall not be entitled to acquire any right, title or interest to the Equipment during or after termination of this Agreement. All risk of loss and damage in and to the Equipment shall, from the date of delivery to the Subscriber, vest with the Subscriber:

2.6 The Subscriber shall:

2.6.1 Promptly notify imagine in writing if the Equipment is to be moved to a premises not being the Premises. imagine provides no warranty or any form of guarantee as to the connectivity to the Services at such new premises, and assumes no liability whatsoever if it is unable to provide the Services at the new premises. If the Service is not available at the new premises, this Agreement shall terminate upon the date upon which imagine is given access to de-install the Equipment from the Premises. If such de-installation occurs prior to the expiry of the Minimum Subscription Period, the Subscriber shall be liable in full for the charges in respect of the remainder of the Minimum Subscription Period unless imagine decides otherwise;

2.6.2 In the event that the Subscriber wishes to move the equipment to a new location, the Subscriber shall be liable for installation charges to reinstall the service at the new premises and a new Minimum Subscription Period shall commence from the date of reinstallation of the new service;

2.6.3 Not make any alteration or modification to the Equipment without imagine's written consent; and

2.6.4 Keep the Equipment free from the claim of third parties and from attachment;

2.6.5 Shall not alienate, transfer or encumber the Equipment either in part or as a whole or allow any lien to arise in respect thereof;

2.6.6 Advise the owner of the Premises of imagine's ownership of the Equipment and prior to entering into this Agreement advise imagine of the name and address of the owner (and any subsequent owner) where the Equipment is installed whereupon imagine shall be entitled to notify such persons in writing of imagine's rights in the Equipment and shall be allowed to inspect the Equipment at all reasonable times.

2.7 The Subscriber shall take all reasonable care in the use of the Equipment and shall at its own cost and expense maintain the Equipment in proper working order and protect it from loss and damage.

2.8 imagine shall, at its own cost, remedy any damage to the Equipment caused by faulty workmanship or defects in the Equipment provided that the Equipment was installed by imagine or by an Authorised Installer approved by imagine.

2.9 If the Service provided to the Subscriber is of unacceptable quality (the quality of the Service to be determined by imagine) the Subscriber shall be entitled to terminate this Agreement and receive a full refund of the Subscription provided that the Service is cancelled and the Equipment is returned to imagine (in accordance with Clause 10.1) within twenty eight (28) days of the commencement of the Service.

3 PAYMENT OF CHARGES

3.1 The Subscriber shall pay the Subscription and Activation Fee to imagine in the amount stipulated in the Customer Authorisation Form or as advised by a customer service representative, monthly in advance.

3.2 The Subscription may increase or decrease at such times and rates as may be notified to you from time to time, subject to the restrictions during the Minimum Subscription Period, as detailed in Clause 6.6.

3.3 imagine shall be entitled and is hereby specifically authorised to, at its election, either immediately cancel this Agreement and/or suspend the supply of Services to the Subscriber and/or to recover the Equipment (as provided for in this Agreement), upon failure by the Subscriber to pay the Subscription or if the Subscriber is in breach of the terms of this Agreement.

3.4 Should a Subscriber's payment fail for any reason that is due to the Subscriber, imagine shall apply an administration charge of €6.05 (inclusive of VAT) for each and every event of failure.

3.5 Should it arise that a Subscriber's Service is disconnected by imagine following continued payment failures, or non-payment, a reconnection charge of €30.25 (inclusive of VAT) shall be levied and must be paid by the Subscriber prior to reconnection by imagine.

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

3.7 If the Service is not available as a result of damage to the Equipment by the Subscriber, whether inadvertently or intentionally, the Subscriber shall remain liable for the full Subscription amount during the period where the Service is not available to the Subscriber.

3.8 The Customer agrees that Imagine shall not be obliged to provide a paper copy of any bill. Customers will be issued a summary itemised bill on-line. If the customer opts for a paper bill a charge of €1.25 per month (inc VAT) shall apply.

4 UPGRADE

4.1 The Subscriber may, with the written approval of imagine, upgrade the Service on the basis that:

4.1.1 The Subscriber shall have given imagine at least 7 (seven) days prior written notice of its intention to upgrade; and

4.1.2 The Subscriber shall at the time of giving such notice, have complied with all the terms and conditions of this Agreement and shall continue to do so; and

4.1.3 The Subscriber shall sign all documentation necessary to give force and effect to such upgrade; and

4.1.4 The Subscriber shall accept all amendments, where necessary, to any charges (including the Subscription) stated in the Customer Authorisation Form due and payable to imagine as are then occasioned by the Subscriber exercising its upgrade option.

5 SUBSCRIBER'S RESPONSIBILITIES AND USE OF THE SERVICE

5.1 As a Subscriber, you acknowledge and agree that all use of the Service is subject to imagine's Acceptable Usage Policy and that you are responsible and liable for all electronic communications and Content sent and received through your use of the Service. When a Subscriber uses the Service for Internet access, they may only do so in accordance with imagine's Acceptable Usage Policy which can be accessed at <http://www.imagine.ie/pages/acceptable-use-policy.html> the terms of which are hereby incorporated by reference.

5.2 If Subscribers transact over the Internet, they may be asked by the merchant or imagine from whom they are making the purchase to supply certain information, including credit card or other payment mechanism information. Unless imagine is a party to such transaction, imagine disclaims any and all liability for any failure or duplication of such a transaction as a result of any cause whatsoever, including disruption of the Service for any cause whatsoever.

5.3 imagine is not responsible for Content or policies available on other sites linked to its site. Use of any links to other web pages, is at the Subscribers own risk.

5.4 The Service is provided on an "as is, as available" basis. Subscribers release imagine from and imagine shall have no liability or responsibility for any direct, indirect, incidental, or consequential damages suffered by any Subscriber in connection with their use of or inability to use the Service including, but not limited to, damages from loss of data resulting from delays, non-deliveries, mis-deliveries, or service interruptions, or due to inadvertent release or disclosure of Content or other information sent by them even if the same is caused by imagine's own negligence. imagine specifically disclaims any responsibility for the accuracy, suitability or quality of Content obtained through the Service.

5.5 Any network address assignments issued by imagine (i.e., Class C address Internet Protocol numbers) are the property of imagine and are considered to be licensed to the Subscribers. In the event the Service is discontinued for any reason and on termination or expiry of this Agreement, title to such IP addresses will revert to imagine immediately.

6 SUSPENSION AND TERMINATION

6.1 imagine may at any time, without notice to you, immediately terminate this Agreement, or suspend the Service, take possession of the Equipment, recover from the Subscriber payment of all such amounts due at the date of cancellation, retain all monies already paid by the Subscriber and claim as agreed pre-estimated liquidated damages all outstanding amounts which would have been due until expiry of this Agreement and to recover all costs from the Subscriber, including legal costs where;

6.1.1 The Subscriber is in breach of this Agreement;

6.1.2 The Subscriber fails to pay all or any part of the Subscription or any other charges when due;

6.1.3 The Subscriber 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;

6.1.4 The Subscriber is unable to pay its debts or in an event of bankruptcy, insolvency or other contractual incapacity of the Subscriber;

6.1.5 imagine cannot verify or authenticate any information submitted on the Customer Authorisation Form; or

6.1.6 For any reason imagine suspends or discontinues the Service, or is unable to supply the Service to you including where imagine is obliged to comply with an order, instruction or request of Government, ComReg,

an emergency service organisation or other competent authority.

6.2 imagine shall terminate the Agreement if the period of suspension lasts more than ninety (90) days.

6.3 If the Subscriber is a Consumer, the Subscriber will have a "cooling off period" of 10 (ten) working days from the date the order is placed by the Subscriber to cancel this Agreement. The Subscriber must send such cancellation notice in writing to imagine requesting cancellation of the Services within the cooling off period.

6.4 On expiry of the Minimum Subscription Period, the Agreement may be terminated by either Party, giving the other party thirty (30) days' prior written notice. However, if your next bill day occurs during the 30 days notice period you will be billed for the additional month.

6.5 If the Subscriber terminates this Agreement before the end of the Minimum Subscription Period other than in the circumstances outlined in Clause 6.3 and Clause 6.6, the Subscriber must immediately pay the balance of the Subscription due for the remainder of the Minimum Subscription Period.

6.6 If, during the Minimum Subscription Period, imagine, following seven (7) days notice to the Subscriber, either increases the Subscription by a total of more than ten per cent (10%) or makes material changes to the Services, the Subscriber may terminate this Agreement by giving at least thirty (30) days notice in writing. If no notice of such intention to terminate is received within thirty (30) days, the Subscriber will be deemed to have accepted the increase in charges and/or the changes to the Service.

6.7 imagine provides the Services under a license granted by ComReg. imagine may terminate this Agreement with immediate effect by giving written notice if the license is revoked or otherwise terminated for any reason whatsoever.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 All trademarks, logos and taglines identifying imagine or its affiliates, and all software, graphics, images, content, button icons, service names, business names, domain names, copyright and related rights, database rights and rights in get up (the "Material") are solely imagine's property or that of its operating companies or others.

7.2 imagine's Material may not be used by the Subscriber for any purpose whatsoever unless the intended use of the Material is approved in advance by imagine in writing.

7.3 imagine reserves the right to seek all remedies available at law, in equity or under international copyright laws for violation of this Agreement or for breach of any third party's Intellectual Property Rights, including the right to block access to a particular Internet address or web site.

7.4 The Subscriber understands that they may be held liable both under civil and criminal law for infringements of the Intellectual Property Rights of others. Subscribers may be held liable for all actual damages and profits, legal fees, costs, or the court may award statutory damages or fines or imprisonment for breach of a third party's Intellectual Property Rights.

8 INSURANCE

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

8.2 If the Equipment or any part thereof is lost, stolen or damaged, irrespective of the cause, then the Subscriber shall immediately notify imagine in writing within five (5) days of the happening or of the Subscriber becoming aware of any such event whichever is the earlier.

9 INDEMNITY AND LIMITS OF LIABILITY

9.1 The Subscriber hereby indemnifies and holds imagine harmless from and against any and all losses, expenses (including all reasonable legal fees) injury, damage, costs, demands, liabilities fines, penalties and claims of whatsoever nature and howsoever arising from or in connection with this Agreement, including without limitation in connection with the use of with the Equipment, or the Services and whether or not such claims are caused by any act or omission of the Subscriber or any third party.

9.2 Liability is neither restricted nor excluded for:

9.2.1 Death or personal injury resulting from any negligent act or omission by imagine or the acts or omissions of imagine representatives or contractors while acting on its behalf; or

9.2.2 Direct physical damage to the Subscriber's personal property or to the Premises to an amount not exceeding one thousand euro (€1,000) in respect of any one event or series or connected events where

such damage arises from imagine's own negligence, or the negligence of its employees, representatives or contractors while acting in the course of employment by imagine; or

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

9.3 imagine will not be liable under or in connection with this Agreement for any unforeseen, consequential or indirect loss or damage, loss of profits, loss of business or revenue, loss of contracts or anticipated savings, wasted expense, financial loss, lost or destroyed data, liability to third parties or for damage or compensation for loss of use of the Services.

9.4 imagine shall not be liable for failure to comply with its obligations under this Agreement if it is hindered from doing so for some reason outside of its reasonable control. Matters outside of its reasonable control may include but not be limited to lightning, flood or severe weather conditions, fire or explosion, civil disorder, terrorist activity, war, actions of local or national government or industrial disputes, performance of leased or rented telecommunications services or network or other operators, and the Internet.

9.5 Nothing in this Agreement is intended to limit any rights you may have as a consumer under common law or other statutory rights, which may not be excluded.

10 PROCEDURE ON TERMINATION

10.1 Upon the termination or expiry of this Agreement, the Subscriber shall immediately allow imagine to recover the Equipment, together with all documents as are in the Subscriber's possession relating to the Equipment from the Subscriber. Alternatively, where nominated by imagine to do so, the Subscriber shall be obliged, at its own risk and expense, to immediately return the Equipment to imagine to the address to be nominated by imagine.

10.2 The Subscriber shall ensure that the Equipment is returned to imagine in good working order, fair wear and tear notwithstanding.

11 ASSIGNMENT

11.1 The Subscriber shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of imagine. imagine shall be entitled to assign, novate or transfer to any third party at its absolute discretion all or any of its rights under this Agreement, including its rights of ownership in the Equipment, without the consent of the Subscriber, to any third party.

12 JURISDICTION

12.1 This Agreement shall in all respects be governed and construed in accordance with the laws of the Republic of Ireland and all disputes; actions and other matters in connection therewith shall be determined in accordance with such laws. The Courts of Ireland shall have jurisdiction to deal with any proceedings in respect of this Agreement.

13 PERSONAL DATA

13.1 imagine respects and protects its Subscribers right to privacy in accordance with the Data Protection Acts 1988 and 2003. Any personal data obtained by imagine through an application for the Service may be used by imagine for the purposes of performing its obligations under this Agreement and for risk assessment, market research, marketing, debt recovery and credit checking purposes, accurate billing and administration of the Service. The Subscriber shall be deemed to have given consent for the use of their information for such purposes. For full details of how imagine uses the information it collects, and under what circumstances we disclose information to third parties, please read the imagine Privacy Statement which is hereby incorporated into and forms part of this Agreement. The Privacy Statement is available on our website at <http://www.imagine.ie> or on request from our customer service department.

14 GENERAL TERMS

14.1 None of the provisions of this Agreement shall be interpreted as to deprive you of any rights you may have as a consumer under mandatory Irish law.

14.2 Each of the Parties chooses, for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from this Agreement, their respective addresses as set forth on the Customer Authorisation Form.

14.3 Any prices, quotations and descriptions made or referred to on the imagine website are subject to availability, do not constitute an offer and may be withdrawn or revised at any time prior to our express acceptance of your order.

14.4 This Agreement contains the entire agreement between the Parties and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein. No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to this Agreement or their duly authorised representatives.

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

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

14.7 In this Agreement the singular shall include the plural and visa versa, one gender shall include the other genders, lower case letters shall refer to capital letters and visa versa and headings used in this Agreement are for reference purposes only and shall not be taken into account in construing the contents of this Agreement.

14.8 If any provision of this Agreement is prohibited by law or found to be unlawful, void or otherwise unenforceable, such provision shall, to the extent required by applicable law, be severed from this Agreement. The remaining provisions of this Agreement shall not as far as possible be changed or modified and all other terms and conditions not so severed shall continue in full force and effect.

14.9 imagine reserves the right to revise the terms of this Agreement at anytime. imagine shall indicate on its website the date of the last revision of the terms of this Agreement. Such changes will take immediate effect when they are posted on this website, or upon such date as may be reasonably notified.

14.10 imagine recommends that the Subscriber prints off a copy of these terms and conditions and privacy statement for your own records. The parties agree that the fact that this Agreement may be stored or exchanged in electronic form shall not affect its validity.

14.11 The Subscriber acknowledges that it has read, understood and agrees to be bound by the terms of this Agreement. The Subscriber further acknowledges that this Agreement was fully completed and the particulars set forth therein are true and correct.

15 CONTACT DETAILS

15.1 If you wish to contact us, our contact details are set out on the Website at www.imagine.ie