

## **Terms and Conditions**

### **1. Acceptance of Terms and Conditions**

1.1 This movie on demand service which is provided to you using your eir vision set top box ("TVOD Service") is operated and provided to you by both eircom Limited and FilmFlex Movies Limited.

References to "eir" are references to eircom Limited. eir is a company registered in Jersey , company number 116389 and its place of business at 1 Heuston South Quarter, St. John's Road, Dublin 08 A9RT, Ireland.

References to "FilmFlex" are references to FilmFlex Movies Limited. FilmFlex is a company registered in England and Wales, company number 5280342 and its registered address 1 Stephen Street, London, W1T 1AL, United Kingdom. FilmFlex's VAT number is 853329909. References to "we", "us" or "our" are references to both eir and FilmFlex.

In agreeing to these terms and conditions ("Terms and Conditions") you are entering into a legally binding agreement with both eir and FilmFlex.

1.2 These Terms and Conditions are deemed to incorporate the Privacy Policy (available at [www.eir.ie](http://www.eir.ie)) which you should read together with these Terms and Conditions.

1.3 Your use of this TVOD Service and your use or purchase of the products and services offered via this TVOD Service (together the "Services") are at all times subject to these Terms and Conditions. By accessing the Services you agree to be bound by the Terms and Conditions.

1.4 If you do not agree to any of the Terms and Conditions, then please do not use the Services.

### **2. Privacy**

2.1 The personal information you provide and we collect through, and in connection with your use of the Services will be used by us to provide you with the movies and any other services you have requested from eir. eir is the data controller of your personal information and FilmFlex will only request or process your personal information in accordance with eir's instructions. All personal information that is processed about you in this way is subject to the Privacy Policy.

### **3. Changes to Terms and Conditions**

3.1 eir reserves the right, from time to time, with or without notice to you, to change these Terms and Conditions at its sole discretion.

3.2 The latest version of these Terms and Conditions will be available at [www.eir.ie](http://www.eir.ie). It is important that you are familiar with the latest Terms and Conditions before you avail of the Services.

### **4. Registration - MINIMUM CRITERIA**

- 4.1 To use the TVOD Service and any of the Services, as a minimum (the "Minimum Criteria"):
- (a) you must subscribe to the eir vision service;
  - (b) you must live in the Republic of Ireland and access and use the Services from there. (c) you agree to provide us with personal details (including your name, email address, postal address and valid payment details), that are true, complete and current, and you agree to update us immediately (through your 'My eir Account') if at any time your personal details change;
  - (d) you will comply with the restrictions on your use of the Services as set out in these Terms and Conditions; and
  - (e) and you confirm that you and your use of the Services (including each order you place for rental through the TVOD Service) comply, and will continue to comply, with the Minimum Criteria.
- 4.2 eir and/or FilmFlex (as applicable) reserves the right to refuse any application to register or to use or access the Services, terminate accounts, remove or edit content where FilmFlex requests this, or cancel purchases or Services for any reason whatsoever. If eir or FilmFlex cancels a purchase due to no fault of your own, we will not charge you for this.
- 4.3 If you use the Services, you are responsible to us for maintaining the confidentiality of your account and password / PIN and for restricting access to your set top box to prevent unauthorised access to your account. You agree to accept responsibility for all activities and transactions that occur using your account or password. You should take all necessary steps to ensure that your password / PIN is kept confidential and secure and should inform us immediately if you have any reason to believe that your password / PIN has become known to anyone else, or if the password / PIN is being, or is likely to be, used in an unauthorised manner.

## **5. Registration**

- 5.1 Some of the content provided on the Services may not be suitable for anyone under 18 years of age. If children are using the Services, their parents or guardians should supervise this use. You understand that the trailers and the movies may contain material that is unsuitable for those under 18 years of age or other content you may consider offensive or otherwise objectionable. We are not liable to you for any content provided as part of the Services which you find offensive or objectionable or where you allow others to view this content using your account.
- 5.2 It is your responsibility to pay for all costs and expenses (including but not limited to, all telephone call or line charges or internet service provider access or subscription charges) that you may incur when using the Services.

## **6. Payment Details**

- 6.1 There are no charges for accessing or browsing the Services but, depending on the means by which you are accessing the Services (), the data consumed during such access or browsing and any streaming of Services may incur charge or form part of a data allowance.

- 6.2 The charges payable for chargeable Services are set out on the Service at the time of purchase (inclusive of VAT) and may vary between Services (e.g. movies). We may at any time, in our sole discretion, change the fees and charges, or add new fees and charges, in relation to any Services.
- 6.3 We take all reasonable care to ensure that the prices of the chargeable Services are correct at the time when the relevant pricing information was entered by us onto the Service. It is always possible however that, despite our reasonable care, some of the chargeable Services on the TVOD Service may be incorrectly priced. If you have any queries regarding the prices of the Services please contact us (and see the 'Contacting Us' section below for how to do this).
- 6.4 To order movies for rental you will be charged via your eir monthly bill.
- 6.5 You agree that once you have accepted our offer, subject to your statutory rights, you will not then be able to cancel your offer to use those Services and you will be charged for the relevant Services provided to you.

## **7. Terminating Your Account**

- 7.1 If you terminate your eir vision service or eir terminates your eir vision service, you will no longer be able to order movies for rental from the TVOD Service or redeem any promotional codes or offers.
- 7.2 eir and FilmFlex both reserve the right to suspend, restrict or terminate all or some of your access to the Services at any time without notice if we have reasonable grounds to believe that you have breached any of the restrictions or your obligations set out in these Terms and Conditions. This shall not limit our rights to take any other actions against you that we consider appropriate to defend our rights or those of any other person.
- 7.3 You agree that in using the Services you will not:
- (a) use the Services in any way that may lead to the encouragement, procurement or carrying out of any criminal activity or for any other unlawful purpose;
  - (b) use the Services in any way that interrupts, damages, impairs or renders the Services less effective;
  - (c) email, transmit or otherwise disseminate any content which is defamatory, obscene, in breach of copyright, vulgar or indecent or may have the effect of being harassing, threatening, abusive or hateful or that otherwise degrades or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability, or is otherwise inappropriate;
  - (d) advertise or promote third party or your own products or services including by way of the distribution of spam email;
  - (e) transfer files that contain viruses, trojans or other harmful programs; or
  - (f) access or attempt to access the accounts of other Users or to penetrate or attempt to penetrate the Service security measures.

## **8. All Movies Remain FilmFlex Property**

8.1 All movies, trailers, images and metadata forming part of the Services remain FilmFlex's property (or the property of its content suppliers) at all times and you will not copy or distribute any content on the Services in any way.

## **9. The TVOD Service**

### 9.1 Introduction

This section sets out further terms and conditions that apply to your use of the TVOD Service. eir and FilmFlex may determine in their sole discretion from time to time which set top box ("STB") is authorised for you to stream content to, and watch movies on.

### 9.2 Ways to Watch a Movie

When you choose to playback a movie for rental you must select whether you would like to either:

(a) view the movie by streaming it to your STB while connected to the internet; Remember, if you stream content from the Services over the internet you may be charged for the data you use. When you purchase a movie for rental, you will have a number of days within which to start watching the movie (usually thirty days) (known as an "Access Period"). Once you start watching the Movie within that Access Period, the movie may be viewed an unlimited number of times during a certain period (usually forty-eight hours) (known as a "Viewing Period"). This Viewing Period will begin from the first time the movie is played. Once this Viewing Period has elapsed, you will not be able to access the movie without paying an additional fee. If the Access Period has elapsed and you have not started to watch the movie, you will not be able to access the movie without paying an additional fee. eir and FilmFlex reserves the right to change the Access Period and Viewing Period between movies and it is your responsibility to check this information on the relevant part of the Services prior to ordering a movie for rental.

9.3 Your use of the Services will involve the use of connectivity services provided by eir and these connectivity services are all provided subject to any broadband contract you have with eir.

### 9.4 Equipment, Systems and Connectivity

Your ability to stream and watch movies will depend on you having an STB and connectivity. Before you order a movie for rental and watch a movie, you must ensure that you have all necessary equipment, systems and connectivity to stream and watch the movie properly. You acknowledge that the availability of the streaming of movies may be affected by external issues over which FilmFlex and eir have no control, including degradation, internet traffic congestion and any maintenance requirements of eir's broadband network.

### 9.5 Restrictions

You acknowledge all intellectual property and other rights in the movies that you order to rent, stream, or watch are owned by FilmFlex or its content suppliers. To protect these rights, FilmFlex stream movies to you using technology that protects digital information and limits your ability to watch movies in accordance with certain usage rules established by FilmFlex or its content suppliers (whether in these Terms and Conditions or on the relevant pages of this TVOD Service). Please therefore be aware of the following restrictions and

accordingly, you promise to FilmFlex that:

- (a) you will not, and will not authorise, encourage or assist any other person to, use the Services or stream and watch movies and any other content available on the Services, for any purpose other than personal, private use only (and not for any direct or indirect commercial purpose) in accordance with these Terms and Conditions;
- (b) you will not, and will not authorise, encourage or assist any other person to, copy, reproduce, lend, rent, broadcast, distribute or transmit any movie;
- (c) you will not, and will not authorise, encourage or assist any other person to, circumvent, modify, remove, reverse-engineer, decompile, disassemble, alter or otherwise tamper with any security, encryption or other rights management technology or software that is part of any movie of the Services or part of the means by which we stream or download the movie to you;
- (d) you will not stream (or attempt to stream) movies using the Services from anywhere outside the Republic of Ireland or to use any technology to obscure or disguise your location. You acknowledge that we may use technologies to verify your location; and
- (e) you will not encourage or engage in activities that infringe intellectual property rights owned or controlled by either us or any third parties, including but not limited to, the unauthorised P2P file-sharing of movies, such as the unauthorised posting, streaming, making available, uploading, or other distribution of movies or alteration of any movies or content. You will not facilitate such activities through hosted TVOD services and services (including, but not limited to, the operation of eDonkey directory servers and/or BitTorrent trackers).

#### 9.6 Termination and Enforcement

You acknowledge that, in addition to any rights that we or content suppliers have, any breach of these Terms and Conditions will entitle us to terminate your use of the Services immediately and without notice. You specifically acknowledge that FilmFlex's content suppliers also have the right to directly enforce relevant provisions within these Terms and Conditions against you.

- 9.7 We reserve the right to change, suspend, or cease the Services, or any part of them at any time and without notice to you. In particular, FilmFlex reserves the right to remove any movie from its catalogue or to cease your streaming and watching of any movie if necessary to comply with its obligations to its content suppliers. You agree that FilmFlex will not be liable to you if it exercises those rights, except for a reasonable refund or credit, if appropriate, in respect of any movie you have ordered, purchased to watch and not received the benefit of the appropriate Viewing Period and/or Access Period by virtue of any change, suspension or cessation. For further information on the process for applying for a refund or credit in these circumstances please call eir Customer Services.

#### 10. **Prohibited Use of The Services**

- 10.1 You agree not to upload, post, email or otherwise send or transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, harm, damage, destroy or limit the functionality of any computer software or hardware or equipment linked directly or indirectly with the Services. You agree not to

interfere with the servers or networks underlying or connected to the Services or to violate any of the procedures, policies or regulations of networks connected to the Services.

10.2 You agree not to:

- (a) impersonate any other person while using the Services;
- (b) conduct yourself in an offensive manner while using the Services; or
- (c) use the Services for any illegal, immoral or harmful purpose.

## **11. Material on The Services**

11.1 Copyright

(a) We grant you a limited, revocable, non-exclusive, non-transferable licence to access and make personal use of the Services, and FilmFlex grants you a limited, revocable, non-exclusive, non-transferable licence to view the movies in accordance with these Terms and Conditions. The licences granted to you do not include, and these Terms and Conditions prohibit: transfer of any right, title or interest in the Services or its content; any resale or commercial use of the Services or its contents; any collection and use of any product listings (including creation or publication of your own database that features substantial parts of the Services without FilmFlex's express written consent), descriptions or prices; any derivative use of the Services or its contents; any downloading or copying of account information for the benefit of another merchant; or any use of data mining, robots, or similar data gathering and extraction tools (whether once or many times).

(b) The Services, any portion of the Services, or any content available on it may not be reproduced, duplicated, copied, sold, resold, visited or otherwise exploited for any commercial purpose without our express written consent.

(c) You may not frame or use framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of FilmFlex, eir and their affiliates without express written consent. You may not use any meta tags or any other hidden text utilising FilmFlex or eir's or their affiliates' names or trademarks without their express written consent. Any unauthorised use automatically terminates the relevant permissions or licences granted by FilmFlex and eir under these Terms and Conditions.

(d) You or any third party may not link to the Services, nor frame any part of them, without our express written permission. We are not responsible for, shall not be liable for, and do not approve or endorse in any way whatsoever, the content of any other sites, including, without limitation, any other sites through which you may have gained access to the Services or to which you may gain access from the Services ("Other Sites"). Your access to, and reliance on, any content on any Other Sites is at your own risk.

(e) All content included on the Services, such as, without limitation, text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, trailers and software, is the property of FilmFlex and/or eir, their licensors or content suppliers (as applicable) and is protected by English and international copyright and other laws and related rights (including but not limited to database right laws and moral rights). The compilation of all content on the Services is the exclusive property of FilmFlex, eir and their affiliates and is protected by Irish, English and international copyright and other laws and related rights (including but not limited to database right laws and moral rights). All software in connection with the Services is the property of FilmFlex, eir, their affiliates or our software

suppliers and is protected by Irish, English and international copyright and other laws and related rights (including but not limited to database right laws and moral rights).

(f) You may not systematically extract and/or re-utilise parts of the contents of the Service without our express written consent.

#### 11.2 Trade marks

FilmFlex, the FilmFlex logo and all other FilmFlex products or service marks are trademarks of FilmFlex. All other trademarks, logos, images, product and company names displayed or referred to on the Services (including all of those relating to eir) are the property of their respective owners (including eir and its licensors). Nothing on the Services grants you any licence or right to use, alter or remove such material.

### 12. General Terms and Conditions

#### 12.1 Promotion Codes

Any promotion code or offer provided on the Services cannot be used in conjunction with any other promotion code or offer, past or present.

#### 12.2 Promises by You

(a) You agree to indemnify and hold FilmFlex and eir, our subsidiaries and affiliates, and each of our directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable legal fees, arising out of or in connection with your breach of these Terms and Conditions or any applicable laws or the rights of any third party in connection with your use of the Services.

(b) You agree to compensate and defend fully FilmFlex and eir against any claims or legal proceedings brought against us by any other person as a result of your breach of these Terms and Conditions or your breach of any applicable law or rights of any third party.

(c) If we take legal action against you for any breach of these Terms and Conditions and a court makes an award in our favour, you will be responsible for all costs allowable by the courts.

#### 12.3 Liability

(a) Nothing in this clause 12.3 (Liability) or otherwise in these Terms and Conditions shall exclude or in any way limit FilmFlex's or eir's liability for:

- i. fraud or fraudulent misrepresentation;
- ii. death or personal injury caused by its negligence;
- iii. any breach of the obligations implied by the Sales of Goods and Supply of Services Act 1980 and which cannot be disappplied; or
- iv. liability to the extent the same may not be excluded or limited as a matter of law.

Nothing in these Terms and Conditions is intended to affect your statutory rights.

(b) Subject to clause 12.3(a):

(i) The Services and its contents are provided on an "as is" and on an "as available" basis and we make no representations or warranties of any kind with respect to it, including as to the accuracy, completeness or currency of the Services or its content.

(ii) We assume no liability or responsibility for any errors or omissions in the content of the Services or any failures, for streaming of content to the extent caused by a Fault or any

circumstances beyond our reasonable control.

(iii) We disclaim and exclude all representations (except where we, our employees or agents have made fraudulent representations) and warranties, including warranties of merchantability and non-infringement.

(iv) To the extent that it is not foreseeable, we disclaim and exclude all liability or responsibility for introduction of viruses to, or loss of data from the STBs.

(c) Subject to clause 12.3(a), in no event shall we, our shareholders, directors, officers, or employees be liable (jointly or severally), to you or any third party for any indirect consequential losses (where consequential loss means loss arising as a side effect of the main loss) and which are not a reasonably foreseeable consequence of such main loss or damage (which means that they could not be contemplated by you or us at the time of entering into these Terms and Conditions) whatsoever including but not limited to:

(i) loss of income or revenue;

(ii) loss of business;

(iii) loss of profits or contracts;

(iv) loss of anticipated savings; or

(v) loss of data,

arising out of or in connection with the use of the Services.

(d) Subject to clauses 12.3(a) to (c) our maximum joint liability to you, (whether in contract, tort, (including negligence), breach of statutory duty or otherwise), arising out of or in connection directly or indirectly with your use of the Services shall not exceed in aggregate the greater of €1 (one Euro) or the total amount paid by you to us in respect of the Services.

If any applicable authority holds any portion of this clause 12.3 to be unenforceable, then liability will be limited to the fullest possible extent permitted by applicable law.

#### 12.4 Miscellaneous

(a) Your use of the Services is governed by these Terms and Conditions which shall be construed and enforced in accordance with the laws of Ireland. Disputes arising from or in connection with your use of the Services shall be subject to the exclusive jurisdiction of the courts of Ireland.

(b) The Services are only intended to be accessed from the Republic of Ireland.

(c) You agree that we may assign any or all of our rights and/or novate, transfer, sub-contract or delegate any or all of our obligations under these Terms and Conditions to any third party provided this does not affect your rights under these Terms and Conditions. These Terms and Conditions are personal to you and are agreed to by you for your own benefit and not for the benefit of any other third party. FilmFlex accounts and your other rights and/or obligations under these Terms and Conditions are not transferable and therefore cannot be sold or traded. Further, you may not assign, novate, transfer, sub-contract or otherwise dispose of any or all of your rights and/or obligations under these Terms and Conditions.

(d) If we delay exercising or fail to exercise or enforce any right available to us under these Terms and Conditions, such delay or failure does not constitute a waiver of that right or any other rights under these Terms and Conditions. A waiver by us of any default shall not



constitute a waiver of any subsequent default. No waiver by us shall be effective unless it is expressly stated to be a waiver and is communicated to you.

(e) We will not be liable to you for any lack of performance, or the unavailability or failure, of the Services, or for any failure or delay by us to comply with these Terms and Conditions, where such lack, unavailability or failure arises from any cause beyond our reasonable control ("Force Majeure Event").

A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

- (i) strikes, lock-outs or other industrial action;
- (ii) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
- (iii) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
- (iv) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- (v) impossibility of the use of public or private telecommunications networks; or
- (vi) the acts, decrees, legislation, regulations or restrictions of any government or government body.

(f) These Terms and Conditions (including the Privacy Policy and any other terms and conditions or document expressly referred to in these Terms and Conditions or usage rules incorporated into these Terms and Conditions) constitute the whole agreement between you and us relating to their subject matter and supersede any prior agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter. Subject to clause 12.3(a), we have no liability to you for a representation or statement not set out in these Terms and Conditions.

(g) In these Terms and Conditions, unless the context requires otherwise: i) any phrase introduced by the words "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words; and ii) references to the singular include the plural and to the masculine include the feminine, and in each case vice versa.

(h) These Terms and Conditions are not intended to give rights to anyone except you and us apart from where the Terms and Conditions expressly state that FilmFlex's content suppliers have rights. However, (subject to (c) above) we may rescind, waive, assign, release or vary any or all of the provisions in these Terms and Conditions in any way without your consent or the consent of any third party but will notify you in accordance with these Terms and Conditions.

(i) When you visit the Services or send e-mails to us, you are communicating with us electronically. We may communicate electronically with you by e-mail or SMS. For contractual purposes, you consent to receive communications from us electronically and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in

writing.

(j) If any of the provisions set out in these Terms and Conditions is deemed invalid, void, or for any reason unenforceable, that provision will be deemed severable and will not affect the validity and enforceability of any remaining provision.

### **13. Contacting Us**

- 13.1 If you have a technical, billing, content related or general query regarding your use of the Services, please refer to [www.eir.ie/eirvision](http://www.eir.ie/eirvision)
- 13.2 All correspondence to FilmFlex or eir, including any other queries you may have regarding your use of the Services or the Terms and Conditions, should be sent to the relevant address set out in clause 1.