



Terms and Conditions for Manx Telecom Internet Services

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1. INTERPRETATION

In this Contract the following expressions have the following meanings:

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| Approved Maintainer | anyone approved by the Customer and notified to MT as authorised to work on the Customer Equipment. |
| Authorised User | means anyone registered by the Customer as authorised to use the Service. |
| Contract | together (but in the following order of precedence) these Conditions, the Service Schedule, the Price List, the Customer Requirements Form and the Order Form, if any. |
| Customer | the person so named on the Order Form (if any) or as otherwise notified to MT. |
| Customer Equipment | the server and any other equipment belonging to or supplied by the Customer on the Site. |
| Customer Information | data, information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) published or otherwise made available on the Customer Website (directly or indirectly) by or on behalf of the Customer by using the Service. |
| Customer Requirements Form | the MT Customer Requirements Form (CRF) which identifies the Customer's contact details and service options. |
| Customer Website | the Website(s) established by or on behalf of the Customer using the Service. |
| Domain Name | a name registered with an Internet registration authority for use as part of the Customer's URL. |
| Group Company | includes, from time to time, each holding company of the relevant party and each subsidiary of any such company; and "holding company" and "subsidiary" shall have the meanings given thereto by Section 1 Companies Act 1974. |
| Helpdesk | the helpdesk facility provided by MT to handle enquiries and administration for the Service. |
| Internet | the global data network comprising interconnected networks using TCP/IP ("Transmission Control Protocol/Internet Protocol"). |
| Internet Standards | the protocols and standards defined in Internet RFC documents as published at http://www.rfc-editor.org and any future such protocols and standards as applicable. |
| Minimum Internet Commitment | the minimum amount of Internet bandwidth within the Site that has been allocated to the Customer for connecting to the Internet for the duration of the Contract. This Minimum Internet Commitment is identified in the Service Schedule. |
| Minimum Period | the first 12 months of the Service or any other Minimum Period agreed on the Customer Requirements Form, beginning on the Operational Service Date. |

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| Minimum Rack Commitment | the minimum number of racks within the Web Hosting Facility that has been allocated to the Customer for the housing of the Customer Equipment for the duration of the Contract. This minimum number of racks is identified in the Order Form or Customer Requirements Form. |
| MT | Manx Telecom Ltd. |
| MT Equipment | the rack cluster and any other equipment belonging to or supplied by MT on the Site for the provision of the Service. |
| MT Group Company | MT and any subsidiary or holding company of MT from time to time, or a subsidiary of that holding company, all as defined by Section 736 of the UK Companies Act 1985 as amended by the UK Companies Act 1989. |
| MT Software | any software provided by MT to enable the Customer to access or use the Service. |
| Operational Service Date | the earlier of the date when that part of the service subject to the Minimum Period is first made available to the Customer. |
| Order Form | the MT order form identifying the Service required by the Customer. |
| Price List | the MT Price List which identifies the charges for the Service which is current at the time of entering into this Contract and is published by MT from time to time and available from Manx Telecom Offices at Isle of Man Business Park, Cooil Road, Braddan, Isle of Man, IM99 1HX. |
| Service | the service described in the Service Schedule to this Contract. |
| Site | a place at which MT agrees to provide the Service. |
| Termination Date | the date on which this Contract is terminated pursuant to paragraphs 16 and 17. |
| Third Party Information | data, information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) not owned or generated by or on behalf of the Customer, published or otherwise made available on the Customer Website. |
| URL | a uniform resource locator, which is the full address for any page on the world-wide web. |

2. DURATION

The Contract begins on the date that the Order Form is signed by both parties and will continue until terminated in accordance with this Contract and the Customer agrees to use and pay for the Service for the Minimum Period.

3. PROVISION OF THE SERVICE

- 3.1 MT will provide the Customer with the Service on the terms of this Contract and with the reasonable skill and care of a competent telecommunications and Internet service provider.
- 3.2 MT will use reasonable endeavours to provide the Service by the date and time agreed with the Customer but all dates and times are estimates and MT has no liability for any failure to meet any date or time.
- 3.3 It is technically impracticable to provide a fault free Service and MT does not undertake to do so. MT will however repair any reported faults as soon as it reasonably can in accordance with the fault repair service detailed in the Service Schedule.
- 3.4 Occasionally MT may:
- (a) change the technical specification of the Service, provided that any change to the technical specification does not materially affect the performance of the Service;
 - (b) temporarily suspend the Service for operational reasons such as repair, maintenance or improvement of the Service or because of an emergency; but before doing so MT will endeavour to give 28 days notice and whenever practicable will agree with the Customer, when the Service will be suspended and MT will restore the Service as soon as it reasonably can after suspension.
 - (c) give the Customer instructions which it believes are necessary for reasons of health, safety or the quality of any telecommunications or Internet service provided by MT to the Customer or any other customer.
- 3.5 With the exception of the MT Software, the Customer is responsible for providing suitable computer hardware, software and telecommunications equipment and services necessary to access and use the Service. This Contract does not include the provision of telecommunications services or Internet access services necessary to connect to the Service, other than Internet access as defined in the Service Schedule.

4. CONNECTION OF CUSTOMER EQUIPMENT TO THE SERVICE

- 4.1 The Customer must ensure that all Customer Equipment is connected, used and dealt with in accordance with all applicable manufacturer's and distributor's instructions and in accordance with best IT industry safety standards.
- 4.2 The Customer must ensure that any Customer Equipment which is attached (directly or indirectly) to the Service is technically and physically compatible with the Service and approved for that purpose under any legislation.
- 4.3 The Customer must ensure that any activities carried out by the MT Remote Hands function is under strict and clear instructions by the Customer.

5. ACCESS AND SITE REGULATIONS

- 5.1 Access to the Site will be subject to MT's security procedures as notified to the Customer from time to time.
- 5.2 Access to the Site will be available 24 hours a day, 7 days a week.
- 5.3 All access to the Site must be booked with MT as far in advance as reasonably possible in the circumstances. Bookings are to be made by telephone to such number as MT may notify to the Customer from time to time.
- 5.4 The Customer will observe MT's site regulations, as previously advised in writing to the Customer. The Customer shall be responsible for ensuring that its employees and all Approved Maintainers also observe such regulations.

6. SECURITY

- 6.1 The Customer is responsible for the security and proper use of all User IDs, and passwords allocated by MT, and security checkwords which are used in connection with the Service (including changing such User IDs, passwords and security checkwords on a regular basis) and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people.
- 6.2 The Customer must immediately inform MT if there is any reason to believe that a User ID, or password allocated by MT, or checkword, has or is likely to become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way.
- 6.3 If a Customer forgets or loses a password or user ID allocated by MT, the Customer must contact MT and satisfy such security checks as MT may operate. The Customer may change a User ID or password allocated by MT either online or by contacting MT and satisfying such security checks as MT may operate.
- 6.4 MT reserves the right to suspend User ID and password access to the Service if at any time MT considers that there is or is likely to be a breach of security and will notify the Customer as soon as possible after it has done so.
- 6.5 MT reserves the right (at its sole discretion) to require the Customer to change any or all of the passwords allocated by MT and used by the Customer in connection with the Service.
- 6.6 The Customer must as soon as reasonably practicable, inform MT of any changes to the Customer's details, which the Customer supplied when ordering the Service.

7. USE OF THE SERVICE

- 7.1 The Customer shall be responsible for the creation, maintenance and design of all Customer Information.
- 7.2 The Customer warrants that the Information is accurate and will not include any information or material, any part of which, or the accessing of which would be a criminal offence or otherwise unlawful. In particular the Customer warrants that all necessary licences and consents (including but not limited to those from owners of copyrights or performing rights) have been obtained.
- 7.3 The Customer warrants that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities, relevant licences and any other codes of practice which apply to the Customer or MT and which relate to the provision of Information, provided that MT has given notice to the Customer of those which only apply to MT.
- 7.4 The Customer agrees not to use the Service:
- (a) fraudulently unlawfully or in connection with a criminal offence;
 - (b) to send, receive, upload, download, use or re-use any Information or material which is offensive, abusive, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights or laws whatsoever;
 - (c) in breach of instructions MT has given hereunder;
 - (d) to cause annoyance, inconvenience or needless anxiety;
 - (e) to send or provide unsolicited advertising or promotional material; or
 - (f) other than in accordance with the acceptable use policies of any connected networks and the Internet Standards.
 - (g) in breach of any applicable law, intellectual property right or legal obligation;

- (h) for any unauthorised accessing or facilitating unauthorised accessing to any data belonging to any third party;
- (i) in a manner which invades the privacy of others or is otherwise anti-social;
- (j) in a manner which breaches any law of any jurisdiction relating to banking, insurance, financial services, the issue and offering of securities and investments, the provision of credit or associated services or investment business;
- (k) in a manner which is defamatory of any person (in any jurisdiction).

7.5 If the Customer or anyone else, with or without the Customer's knowledge or approval, uses:

- (a) the Service in contravention of paragraphs 7.1 to 7.4; or
- (b) the server capacity or the MT Software made available to it in any way which, in MT's opinion, is, or is likely to be, detrimental to the provision of the Service to the Customer or any other customer and fails to take corrective action within a reasonable period of receiving written notice from MT,

MT may treat the contravention as a material breach of this Contract which cannot be remedied for the purposes of paragraph 17.

7.6 The Customer agrees to indemnify MT (and its officers, employees and agents) on demand from and against all and any actions, claims, proceedings, suits, damages, liabilities, losses, injuries, costs and expenses whatsoever (including without limitation legal costs and expenses arising or incurred by MT (or any of its officers, employees or agents) as a result of the use by the Customer of the service or the breach by the Customer of any obligation contained herein.

7.7 The Customer is responsible for the acts and omissions of all Authorised Users in connection with the Service and is liable for any failure by any Authorised User to perform or observe the terms and conditions of this Contract.

7.8 The Internet is independent of the Service and MT and use of the Internet is solely at the Customer's risk and subject to all applicable laws. MT has no responsibility for any information, software, services or other materials obtained by the Customer using the Internet.

7.9 The Customer must ensure that a contact name, telephone number and electronic mail address are included in clear and legible form on its web site for receipt of any enquiries or complaints that may arise in relation to Information, Third Party Information or other material published on the web site. MT reserves the right to disclose to any person with an enquiry or complaint the contact name, telephone number and electronic mail address if such person cannot locate these details on the Customer's web site.

8. DOMAIN NAME

8.1 The Customer warrants that it is the owner of, or that it is duly authorised by the owner of, any trademark or name that it wishes to use as its Domain Name and use as part of a URL. In addition, the Customer must not use a Domain Name or URL which infringes the rights of any person in a corresponding trademark or name.

8.2 Where MT offers to undertake Domain Name and URL registration on behalf of the Customer, the Customer will reimburse MT for any registration fees and rental fees paid by MT to the Internet registration authorities.

8.3 MT reserves the right to require the Customer to select a replacement Domain Name or URL and may either refuse to provide or may suspend Service if, in MT's opinion, there are reasonable grounds for MT to

believe that the Domain Name or URL is, or is likely to be, offensive, abusive, defamatory or obscene or in breach of the provisions of paragraph 8.1.

- 8.4 Where IP addresses are allocated to the Customer these are for use in connection only with the Service and all rights in those IP addresses, including the right to change such IP addresses, belong to MT. The Customer cannot sell them or agree to transfer them to anyone else and must not try to do so. If this Contract is terminated for whatever reason the IP addresses will revert to MT.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 Intellectual property rights in any software or documentation supplied by MT to the Customer remain the property of MT or its licensors. MT grants the Customer a non-exclusive, non-transferable licence to use the MT Software.
- 9.2 The Customer will not, without MT's prior written consent, copy or (except as permitted by law) decompile or modify the MT Software, nor copy the manuals or documentation.
- 9.3 The Customer will sign any agreement reasonably required by the owner of the copyright in the MT Software to protect the owner's interest in that software and will not create any new software based in any way on MT Software. The Customer agrees not to transfer or assign the right to use the software or any interest therein nor attempt or purport to do so.
- 9.4 MT may offer updates or modifications to the MT Software or documentation. Any applicable charges for such updates or modifications will be notified to the Customer at the time MT offers such updates or modifications.
- 9.5 The Customer acknowledges that the deployment of servers dedicated by MT for the Customer's use, does not constitute a grant to the Customer of any right, title or interest in such server(s) or in any MT Software or other applications of any kind provided by MT and which are resident on the server(s).
- 9.6 The Customer agrees to comply with the terms of any agreements reasonably required by the owner of intellectual property rights in any such software or documentation relating to the protection of those rights. Subject to the terms of this Contract, MT grants the Customer the non-exclusive right to use such software or documentation in connection with the Service.

10. CONFIDENTIALITY

- 10.1 The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under this Contract and will not disclose that information to any person (other than their employees or professional advisers, or the employees of a Group Company of either party who need to know the information) without the written consent of the other party.
- 10.2 This paragraph 10 will not apply to:
- (a) any information which has been published other than through a breach of this Contract;
 - (b) information lawfully in the possession of the recipient before the disclosure under this Contract took place;
 - (c) information obtained from a third party who is free to disclose it; and
 - (d) information which a party is requested to disclose and if it did not could be required by law to do so.
- 10.3 The restrictions in this paragraph shall survive the termination or expiry of this Contract.

11. CHARGES AND DEPOSITS

- 11.1 The charges for the Service will be calculated in accordance with the Price List and these charges shall not be increased during the Minimum Period. Charging will begin on the Operational Service Date and will be issued in advance on a quarterly basis. Charges for use of the Service will be calculated in accordance with the details recorded by, or on behalf of, MT. Value Added Tax will be added to MT's invoices as appropriate.
- 11.2 The Customer will pay the charges within 28 days of the date of MT's invoice. MT may charge daily interest on late payments at a rate equal to 4 % per annum above the base-lending rate of HSBC Bank plc.
- 11.3 The Customer acknowledges that the Customer may be subject to MT's credit vetting procedures and that MT may, at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.
- 11.4 If the Customer exceeds its contracted rate of traffic as detailed in the Service Schedule in any billing period, the Customer agrees to pay additional traffic charges as specified in the Price List. Such charges will be billed quarterly in arrears.
- 11.5 The Customer shall indemnify MT on demand against and in respect of all and any taxes and duties of any kind and of any jurisdiction for which MT may be liable or held to be liable by reference to or in connection with the Customer's use of the Service.

12. LIMITATION OF LIABILITY

- 12.1 MT's liability in respect of the Service, shall be as stated in this paragraph 12 and the Service Schedule.
- 12.2 MT accepts unlimited liability for death or personal injury resulting from its negligence and paragraphs 12.3 and 12.4 do not apply to such liability.
- 12.3 MT is not liable to the Customer, either in contract, tort (including negligence) or otherwise for direct or indirect loss of profits, business or anticipated savings, nor for any indirect or consequential loss or damage or for any destruction of data howsoever arising.
- 12.4 MT's liability hereunder whether in contract, tort (including negligence) or otherwise in relation to this Contract is limited to £250,000 for any one incident or series of related incidents and to £500,000 for all incidents in any period of 12 months.
- 12.5 The Customer accepts that MT is under no obligation to edit, review or modify the Customer Information or Third Party Information and that MT does not examine the use to which customers put the Service. However, MT reserves the right to suspend access to any Customer Information or Third Party Information following notice to the Customer if MT reasonably believes that there may be a breach of this Contract, law or third party right.
- 12.6 MT excludes all liability of any kind in respect of any material on the Internet which can be accessed using the Service and is not responsible in any way for any goods (including software) or services provided by third parties advertised, sold or otherwise made available by means of the Service or on the Internet.
- 12.7 MT shall not be liable hereunder either in contract, tort (including negligence) or otherwise for the acts or omissions of other providers of telecommunications or Internet services (including domain name registration authorities) or for faults in or failures of their equipment.
- 12.8 Each provision of this Contract, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

13. MATTERS BEYOND EITHER PARTIES' REASONABLE CONTROL

- 13.1 If MT is unable to perform any obligation under this Contract because of a matter beyond its reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving its employees), or acts of local or central Government or other competent authorities, or events beyond the reasonable control of its suppliers, it will have no liability to the other for that failure to perform.
- 13.2 If any of the events detailed in paragraphs 13.1 continue for more than 1 month either party may serve notice on the other terminating this Contract.

14. CANCELLATION

The Customer may cancel the Service at any time before the Operational Service Date. If the Customer cancels the Service the Customer may be required to pay MT for any work done or money spent in getting ready to provide the Service. MT will take reasonable steps to mitigate the amount of such costs.

15. TERMINATION OF THIS CONTRACT BY NOTICE

- 15.1 At any time after Service has been provided this Contract or the provision of any service or facility under it can be ended by 90 days notice by MT; or the customer giving 28 days notice.
- 15.2 If the Customer terminates this Contract or the Service during its Minimum Period the Customer must pay MT the charges due, if any, for the remaining part of the Minimum Period.
- 15.3 If MT gives notice under paragraph 15.1; MT will repay or credit the appropriate proportion of any charges paid in advance following expiry of the notice period.

16. BREACHES OF THIS CONTRACT

- 16.1 Either party may terminate this Contract or the provision of Service (in whole or in part) under it without notice if the other:
- (a) commits a material breach of this Contract, which is capable of remedy, and fails to remedy the breach within a reasonable time of a written notice to do so; or
 - (b) commits a material breach of this Contract which cannot be remedied; or
 - (c) is repeatedly in breach of this Contract; or
 - (d) is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if it goes into either voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over its assets, or if the equivalent of any such events under the laws of any of the relevant jurisdictions occurs to the other party.
- 16.2 If any of the events detailed in paragraph 16.1 occur because of the Customer, MT may suspend the Service (in whole or in part) without prejudice to its right to terminate this Contract. Where the Service is suspended under this paragraph the Customer must pay the charges for the Service until this Contract is terminated.
- 16.3 If this Contract is terminated by MT during the Minimum Period because of an event specified in paragraph 16.1, the Customer must pay MT the charges for the Service until the Contract is terminated and must also pay any charges due for the remaining part of any Minimum Periods.

- 16.4 If either party delays in acting upon a breach of this Contract that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Contract that waiver is limited to that particular breach.
- 16.5 Each party's rights under this paragraph 16 do not prejudice any other rights of MT, including any claim for payment of arrears or for damages for breach of this Contract.

17 EXPORT CONTROL

- 17.1 The Service may comprise software, services, technical information, training materials or other technical data which, because of their origin or otherwise are subject to the United States of America export control regulations or the laws or regulations of another country. In such case, provision of the Service will be conditional on obtaining and maintaining all necessary consents. The Customer agrees to provide MT with reasonable assistance to obtain such consents.
- 17.2 The Customer agrees to comply with any applicable export or re-export laws and regulations of any country, including obtaining written authority from the US Government if the Customer intends at any time to re-export any items of US origin to any proscribed destination.
- 17.3 For US government personnel using the Service in the United Kingdom, US government-restricted rights will apply.

18. CHANGES TO THIS CONTRACT

MT may from time to time change the Terms and Conditions of this Contract other than the charges payable under it by a document referring expressly to this paragraph and signed by a duly authorised employee of MT. MT will publish details of any changes (including the operative date) in its main office as soon as possible and in any event not less than 2 weeks before any change is to take effect, except that if the change is made to a provision of this Contract limiting or excluding MT's liability for breaches of duty to the Customer (in contract or tort) MT will give the Customer not less than 2 weeks notice of the change. Subject thereto this contract, these Terms and Conditions and any document referred to herein constitute the entire agreement between us and shall not be varied save by agreement in writing.

19. ASSIGNMENT

The Customer may not assign or transfer any of its rights or obligations under this Contract, without the written consent of MT; MT may assign its rights or obligations (or both) to a MT Group Company or otherwise without consent.

20. ENTIRE AGREEMENT

- 20.1 This Contract contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.
- 20.2 The parties acknowledge and agree that:
- (a) they have not been induced to enter into this Contract by any representation, warranty or other assurance not expressly incorporated into it; and
 - (b) in connection with this Contract their only rights and remedies in relation to any representation, warranty or other assurance are for breach of this Contract and that all other rights and remedies are excluded, except in the case of fraud.

21. NOTICES

Notices given under this Contract must be in writing and delivered by hand, or sent by prepaid post as follows:

- (a) to MT at any address that MT notifies to the Customer;
- (b) to the Customer at the address to which the Customer asks MT to send bills, the address of the Customer's premises, or if the Customer is a limited company its registered office.

22. LAW

This Contract is governed by and shall be construed in accordance with Isle of Man law and the parties submit to the non-exclusive jurisdiction of the Isle of Man High Court.