



## ***Terms and Conditions for Online SMS Services***

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### **1. Definitions**

1.1 In this Contract:

**"MT"** means Manx Telecom Ltd;

**"Charges"** means the charges for each of the Services as set out in MT's Price List;

**"Contract"** means the Customer Contract form signed by the Customer and MT which incorporates these terms and conditions;

**"Customer"** means a person at whose application MT agrees to provide the Service under this Contract and by whom the charges are accordingly payable;

**"GSM"** is the digital cellular system known as Global System for Mobile Communications (marketed as Pronto!);

**"Minimum Period of Service"** means 12 months (or such longer period as may be agreed in writing between the Customer and MT) beginning on the date on which Service is actually provided;

**"Service"** means Online SMS Access as indicated on the Customer Contract form and any such variation of an online SMS application provided now or in the future by MT and where, appropriate, all or part of these conditions will apply to such additional SMS services.

**"Zone"** means a geographical area as notified by MT to the Customer within the Isle of Man and United Kingdom in which MT agrees from time to time to provide Paging Service for the Customer;

**"MT's Price List"** means the list of prices of MT's goods and services in force from time to time that can be inspected at MT's Main Office.

**"MT's Main Office"** means Manx Telecom HQ, Cooil Road, Braddan, Isle of Man, IM99 1HX;

**"Reconnection Charge"** means MT's charge in force from time to time for reconnecting service if service has been disconnected for the non-payment of any charges.

1.2 All definitions, notes, terms and conditions which are either set out in MT's Price List published in accordance with paragraph 5 of this Contract or referred to in any part of this

Contract shall be incorporated by reference into this Contract. Copies can be inspected at MT's Main Office.

## 2. **Provision of Service**

### **Service**

- 2.1 MT shall provide to those Customers contracting for Online SMS Access Service, an Uniform Resource Locator (URL) or website address, for access of service and a username and password. Any maintenance, upgrade, repair or replacement will (subject to paragraph 6) be carried out by MT. Access to other online SMS services provided by MT will be via a username and password basis or other such secure login as considered appropriate by MT, the application may or may not form an integral part of MT's website and may or may not require a separate URL.
- 2.2 The Customer accepts that Service may not always be available during periods of suspension (e.g. following notification by MT under sub-paragraph 2.10) or whilst MT arranges for maintenance, upgrade or repair.
- 2.3 The Customer accepts that coverage of the Cellular network is not available in all parts of the Isle of Man or in all other countries and may be restricted to certain areas within those countries with access to the Cellular network.

### **General**

- 2.4 Service shall comprise such services and facilities, provided at such times, during such periods, in such circumstances and by such means, as MT from time to time considers appropriate.
- 2.5 If Service is to be provided by a date specified by the Customer or by MT, such date shall be treated as an estimate only and MT shall not be liable for failure to meet such a date.
- 2.6 Service is not fault free and the Customer shall be entitled only to the quality of Service provided by MT from time to time for its Customers generally.
- 2.7 MT may interrupt or suspend Service at any time in order to improve, modify or repair the Service but will use all reasonable endeavours to disrupt Service as little as possible and to notify Customers of known pending interruptions.
- 2.8 Service can be impaired by topographical, atmospheric or other conditions or circumstances beyond MT's control and the Customer will accept any consequent impairment of the quality or availability of Service.
- 2.9 MT reserves the right to apply a financial limit for SMS charges incurred by the Customer and to suspend access to the Service, in whole or part if this limit is exceeded.

## 3. **Duration of Contract**

After the expiry of the Minimum Period of Service, this Contract will continue until it is terminated in accordance with paragraph 7.

## 4. **General Powers of MT**

- 4.1 MT reserves the right:
- a to alter the number, or other name or code whatsoever allocated by MT from time to time for use in connection with Service;

- b in an emergency, temporarily to suspend Service to the Customer wholly or in part for the purpose of the provision of temporary emergency telecommunication services; and
  - c to give such instructions concerning the use of Service as MT decides from time to time in the interests of safety, quality of service, other Customers or the Service as a whole and the Customer agrees to comply with such instructions.
- 4.2 MT shall take such steps, as it considers appropriate to bring the instructions referred to in sub-paragraph 4.1 (c) to the notice of the Customer.
5. **Charges for Service**
- 5.1 Charges for Service shall be calculated by reference to MT's Price List that applies from time to time. SMS charges shall be calculated by reference to the details of the SMS recorded by or on behalf of MT. Charging will occur when an SMS is delivered.
- 5.2 The aggregate amounts of applicable charges for all SMS of any class or combination of classes may be included as a single item in the Customer's bill.
- 5.3 The Customer shall pay the following charges where they are applicable to the Service provided by MT:
- a all connection charges, initial charges and single payment charges;
  - b all charges for SMS, including charges for services and facilities in relation to those SMS made by means of the Service, or obtained by the use of any name, code or number allocated by MT to the Customer;
  - c all applicable charges for service and facilities rendered at the request of the Customer, of a person using the Customer's Online SMS Service or any name, code or number allocated by MT to the Customer or of any other person appearing to MT to be acting on his behalf.
- 5.4 The Customer must pay all charges and rental within 14 days of receipt of the bill. In the event any charges are not paid by the due date, interest shall accrue on a daily basis at the annual rate of 4% plus the annual base lending rate of Barclays Bank from time to time in force, calculated from the date payment was due until the date of actual payment.
- 5.5 All charges of whatever nature shall be such as MT shall determine from time to time and MT may alter any charges in accordance with sub-paragraph 5.6.
- 5.6 When MT makes a change to the charges MT will publish details (including the operative date) in MT's Price List as soon as possible and in any event not less than 14 days before the change is due to take effect.
- 5.7 Unless otherwise stated in MT's Price List, all charges are exclusive of value added tax, an amount for which, where applicable, will be added to the Customer's bill.
- 5.8 MT may, from time to time, either before or after providing Service, require payment within such time as MT may direct, of a deposit or such amount as MT thinks fit, by way of security for the payment of any charges payable or to become payable by the Customer. It may retain the deposit until the discharge of all liability for charges incurred and may from time to time appropriate a deposit or any part of it in or towards payment of any such charges which the Customer is liable to pay.

- 5.9 In addition to, or instead of, requiring the Customer to pay a deposit, MT may require payment in advance before Service is provided of an amount not exceeding the charges for twelve month's Service and the connection charge for the Service. The amount paid in advance shall be allowed to the Customer against charges that subsequently become due.
- 5.10 MT will add to a deposit or part of a deposit which is re-paid an amount equal to interest on such a deposit at the rate published in MT's Main Office for the period in question.
- 5.11 In any proceedings between MT and the Customer a certificate from MT that a specified sum is due to MT from the Customer for Service provided under this Contract, shall, in the absence of manifest error, be conclusive evidence of that fact.
- 5.12 MT reserves the right to suspend or terminate the service forthwith in the event that the Customer fails to make payment of any monies on any account by the due date.

## 6. Responsibilities

### **Online SMS Access Service including, where appropriate, any such online SMS service or services provided by MT**

- 6.1 MT shall protect client information using the same standard of care that it applies to safeguard its own confidential information and that the information shall be stored in such a way as to prevent any unauthorised disclosure thereof. MT will not disclose or use any information submitted by clients to the website for any purpose other than that for which the client is using the service for.
- 6.2 Online SMS Access Service users must comply with all applicable laws, regulations and network operator requirements. Acquisition of mobile numbers must comply with the Data Protection Act and include an option for end customer to unsubscribe. Any complaint from a customer or other network operator would be regarded in a very serious light and the responsible Online SMS Access Service user could be suspended without a refund of rental. Online SMS Access Service users are therefore advised to include their own contact details in their contracts and messages to ensure that complaints are directed at them and not at the network operator. MT may remove numbers from its database should complaints be received.
- 6.3 To protect the integrity of the system, Online SMS Access Service users may not send unlawful, obscene, abusive, harassing or threatening messages. Spamming (unsolicited marketing) is not allowed. Messages sent are stored and can be audited at any time. Users indemnify MT against any losses suffered in the event that they don't comply to the above.
- 6.4 MT will do its best to ensure successful delivery of all messages. Successful delivery depends on additional parties such as ISP's, telcos and network operators, hence Online SMS Access Service cannot guarantee delivery.
- 6.5 The Customer remains liable for any charges incurred as a result of unauthorised use of the Service, until the Service has been suspended by MT as a result of notification by the user. On receipt of telephone notification, MT will suspend Service as soon as reasonably practicable.
- 6.6 The Customer shall not use, or permit any other person to use, the Service;
- a for an unlawful purpose or for sending to any person any message or communication which is offensive or abusive or of an indecent, obscene or menacing character;

- b for the persistent sending of SMS without a reasonable cause or sending SMS for the purpose of causing annoyance, inconvenience, or needless anxiety to any person; or
  - c otherwise than according to instructions given by MT from time to time in accordance with sub-paragraph 4.1 (c).
- 6.7 If, as a result of use of the Service in contravention of paragraph 6 MT treats such use as a breach of sub-paragraph 7.1 by the Customer and exercises its rights under paragraph 7 accordingly, MT may refuse to restore the Service until such assurance as it deems sufficient is received that there will be no further such contravention.
- 6.8 The Customers must promptly advise MT, but in any event within 7 days, in writing of any change of address or bank details.
- 6.9 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.
- 6.10 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.

## 7. Termination

- 7.1 If the Customer:
- a fails to pay when due any sum payable under this Contract, including any sum required by way of deposit;
  - b is the subject of a bankruptcy order or commits an act of bankruptcy or is declared bankrupt or becomes in the opinion of MT insolvent or makes any composition or arrangement with or assignment for the benefit of creditors or suffers execution, distress or any form of seizure to be levied or effected on or against the Customer's premises, assets or effects or being a Company goes into liquidation whether voluntary or compulsory, or has a receiver or Administrator appointed over any of its assets or has a petition presented a resolution passed for its winding up or for the appointment of a receiver or administrator or anything analogous to any of the same occurs in any jurisdiction; or
  - c fails to observe or perform any of the provisions of this Contract or provides inadequate or misleading information to MT; then, MT may (without prejudice to any other right or remedy)
    - (i) without notice, temporarily suspend Service without prejudice to the liability of the Customer to pay charges for any period of suspension; or
    - (ii) summarily terminate this Contract by written notice to the Customer.
- 7.2 Where this Contract is terminated under sub-paragraph 7.1, the Customer shall pay in addition to other sums payable up to the date of termination, a sum equal to one month's charges or to the charges which would have been payable for the Service in respect of the period from that date to the end of the Minimum Period of Service at the rate in force at the date of termination, whichever is the greater, after due

allowance to the Customer for the appropriate proportion of any sum paid in advance for a period ending after that date.

- 7.3 Where Service is restored after temporary suspension (except suspension at the Customer's request) under any provision of this Contract, no connection charge shall be payable if the Service is restored without alteration to the means of provision of the Service but the Customer shall pay MT a re-connection charge provided that MT may in its absolute discretion remit the charges on restoration of the Service if the Service was temporarily suspended for the reasons stated in subparagraph 7.1 and MT is satisfied that the sum in question was not received within a reasonable time after demand for payment because of some wrongful act, neglect or default of MT.
- 7.4 If the Customer fails to comply with any provision of this Contract, liability shall nevertheless continue for all charges due and to become due for the Service provided during any period of such failure.
- 7.5 Any waiver by MT of a breach by the Customer of any provision of this Contract shall be limited to the particular breach and shall not operate in any way in respect of any future breach by the Customer and no delay on the part of MT to act upon a breach shall be deemed a waiver of that breach.
- 7.6 After the expiration of the Minimum Period of Service this contract or the provision of any Service, or facility under it may be terminated:
- a by MT by at least 14 days written notice to the Customer and the liability of the Customer to pay for the Service shall cease on the expiration of the notice without prejudice to any accrued liability; or
  - b subject to sub-paragraphs 7.7, 7.8 and 7.9, by the Customer by at least 14 days' written notice to MT and the Customer's liability to pay for the Service shall cease on expiration of 14 days from the date on which MT receives the notice or on expiration of the notice period, whichever is the later without prejudice to any accrued liability of the Customer.
- 7.7 If the Customer terminates this Contract during the Minimum Period of Service, the charges for the Minimum Period of Service or the period ending on the effective date of termination, whichever is the later, become payable forthwith.
- 7.8 Termination shall be without prejudice to any accrued liability of the Customer. MT must repay or credit the Customer with the appropriate proportion of any charges for any period ending after its liability to pay charges ceases.
- 7.9 This paragraph shall not relieve the Customer from liability to pay accrued charges for any period during which MT, after giving or receiving notice under sub-paragraph 7.1, continues at the request of the Customer to provide Service.
- 7.10 MT shall be entitled to levy a reasonable disconnection charge in relation to any disconnection of the service to the Customer.
- 7.11 Any reconnection subsequently made shall be at the sole discretion of MT.
8. **Limitation of Liability**
- 8.1 For the avoidance of doubt, MT has no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise beyond that of a duty to exercise reasonable skill and care.
- 8.2 Subject to Clause 8.3 in any event MT has no liability whatever whether in contract, tort (including negligence or breach of statutory duty) or otherwise for the acts or

omissions of other providers of telecommunications services or for faults in or failures of the Service.

- 8.3 MT does not exclude or restrict liability for death or personal injury resulting from its own negligence or from the breach of its obligation to exercise reasonable skill and care or liability arising by virtue of Part 1 of the Consumer Protection Act 1991.
- 8.4 Subject to Clause 8.3 in any event MT's liability in contract, tort (including negligence and breach of statutory duty) or otherwise arising by reason of or in connection with this Contract or howsoever otherwise shall be limited to £1,000,000 for any one incident or series of related incidents and £2,000,000 for any series of incidents related or unrelated in any period of 12 months.
- 8.5 In any event in no circumstances shall MT be liable in contract, tort (including negligence and breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business, revenue or anticipated savings or for any indirect or consequential loss, wasted expense, financial loss, data being lost or harmed or damage whatever.
- 8.6 Where the Customer does not take the Service in the course of a business (or hold himself out as doing so), this paragraph 8 does not affect the Customer's statutory rights.
- 8.7 Each provision of this paragraph 8 is to be construed as a separate limitation applying and surviving even if for any reason one or other of the said provisions is inapplicable or held unreasonable in any circumstances and shall remain in force notwithstanding termination of this Contract.
- 8.8 The Customer shall forthwith on demand indemnify MT against all claims losses, liabilities, costs and damages that MT may incur that anyone other than the Customer threatens or makes against MT because of the way the Service is used or because the Service is faulty or cannot be used arising otherwise than by reason of default on the part of MT.

**9. Force Majeure**

MT is not liable for any breach of this Contract where the breach was caused by Act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority, regulatory authority or other competent authority. MT's compliance with any statutory obligation or an obligation under a statute, international treaties and other international agreements, industrial disputes of any kind (whether or not involving MT's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts or omissions of persons for whom we are not responsible (including in particular other telecommunication service providers and foreign GSM operators) or any other cause whether similar or dissimilar outside our reasonable control.

**10. Variation of Terms and Conditions, Entire Agreement, Assignment**

- 10.1 MT can 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.

- 10.2 You are not allowed to transfer or assign all or any of your rights and obligations under this Agreement to anyone else without our written permission. We may assign or sub-contract our rights and/or duties in whole or in part without your consent.

## 11. Law and Arbitration

- 11.1 This Contract shall be governed by Isle of Man law and the Customer hereby submits to the jurisdiction of the Isle of Man High Court.
- 11.2 Any dispute arising under this Contract which does not involve a complicated issue of law or a sum exceeding £5000 (or such sum as may be set from time to time by the Institute) may be referred to arbitration by either party under the procedures previously agreed between MT and the Chartered Institute of Arbitrators.

## 12. General

- 12.1 These terms and conditions shall apply to the Contract to the exclusion of any other oral or written statement or agreement whatever its legal character.
- 12.2 The Customer shall not, without the written consent of MT, assign, dispose of or part with the Service. MT may assign or sub-contract all or any of its rights and obligations hereunder to any third party without the consent of the Customer.
- 12.3 Any consent of MT referred to in this Contract shall be revocable at the discretion of MT.
- 12.4 Any notice to be served on either of the parties by the other under this Contract shall be in writing and delivered by hand or sent by telex or fax or by prepaid ordinary post to the addressee at the following address (or such other address as the addressee shall have for the time being notified to the party giving notice):  
MT: Manx Telecom Limited, Manx Telecom HQ, Cooil Road, Braddan, Isle of Man, IM99 1HX;  
The Customer:  
The address stated in the Customer's Contract form as the Customer's address or if the Customer is a limited company, to its registered office.