



## ***Terms and Conditions for Private Service***

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### **1. Definitions and Application**

1.1 In this Contract unless the context otherwise requires:

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

**"MT's Licensed Area"** means the Isle of Man.

**"Connecting Point"** means a block terminal, a socket for a removable plug, a distribution frame, or any other device, supplied, installed and maintained by MT in the Customer's Premises to facilitate the connection of Equipment to Service;

**"the Contact Telephone Number"** means the telephone number and name of a person who is the Customer's contact point;

**"Contract"** means the contract between the Customer and MT for the provision of the service incorporating these Terms and Conditions;

**"Contractual Delivery Date"** means the date which MT is scheduled to complete provision of the Private Circuit or such later date as may be agreed in writing with the Customer;

**"the Customer"** means a person with whom MT makes this Contract including a person reasonably appearing to MT to act with that Customer's authority;

**"Equipment"** means equipment either owned by a person other than MT or let on hire by MT or any other person to the Customer and used or intended to be used with the Service;

**"failure of a Private Circuit"** means any failure of the Customer's Private Circuit causing continuous loss of the ability to convey messages, but does not include the loss of such conveyance arising as a result of MT's suspension of Service under any provision of this Contract;

**"the Hull Area"** means the area in which Kingston Communications (Hull) plc is licensed by virtue of its licence dated 30 November 1987 under the Telecommunications Act 1984 (UK) to run telecommunication systems from 1 January 1988;

**"Licence"** means any licence (including that licence as from time to time amended) granted or having effect as if granted under the Telecommunications Act 1984 (of Tynwald), or any replacement or re-enactment of any of them, or any similar licence;

**"Minimum Period of Service"** means a period of 12 months from the date of signing the Contract;

**"MT's Price List"** means Manx Telecom's price list in force from time to time copies of which are available at MT's Main Office;

**"Premises"** means the premises at which Service is or is to be provided under this Contract;

**"Private Circuit"** means a terrestrial telecommunication service provided between two or more specified points none of which is a point at which MT's system is connected to a telecommunication system run by another telecommunications provider in the Hull Area, the UK, the Channel Islands or the Republic of Ireland and which is wholly situate in MT's Licensed Area, other than by means of one of MT's public switched telecommunication systems.

**"MT normal working hours"** means Monday - Friday, 0800-1630.

**"Service"** means telecommunication service which MT provides either by means of a Private Circuit or by other means not using one of MT's public switched telecommunication systems together with, in either case, where applicable, any services and facilities provided by MT for the Customer in connection with Service and which are set out in MT's Price List;

**"Telecommunication Apparatus"** has the same meaning as in Paragraph 1(1) of the Telecommunications Code contained in Schedule 1 of the Telecommunications Act 1984; and words in the singular include the plural and vice versa.

**"MT's Main Office"** means MT's office at Manx Telecom HQ, Isle of Man Business Park, Cooil Road, Braddan.

1.2 "MT's Price List" contains definitions, notes, terms and conditions that form part of this Contract.

## 2. **Provision of Service**

2.1 MT agrees to provide the Customer with Service on the Terms and Conditions of this Contract that set out the entire Contract between MT and the Customer in relation to the Service.

2.2 For operational reasons MT may vary the technical specification of Service.

2.3 It is technically impracticable to provide Service free of faults and MT does not undertake to do so. MT does undertake certain obligations with regard to faults in Service; see paragraph 8 below.

2.4 Requests made to MT relating to the provision of Service are unless otherwise agreed to be made or confirmed in writing.

2.5 MT agrees to provide a Private Circuit by the Contractual Delivery Date. If the Customer requests a change to the specification of a Private Circuit before provision is complete, the date by which MT agrees to provide the Private Circuit to the new specification will become the Contractual Delivery Date.

2.6 Any other date proposed by MT for the provision of Service or a facility is to be treated as an estimate only and MT accepts no liability for failure to meet it.

2.7 Where, at the request of the Customer, any work to provide Service is done outside MT's normal working hours, the Customer will pay a charge for such work calculated at MT's applicable hourly rate.

2.8 If MT agrees any change in Service this Contract is to be treated as varied accordingly.

## 3. **Minimum period of Service**

The first minimum period of Service beginning on the day when Service is first made available is 12 months or the applicable period set out in MT's Price List but it does not prevent MT from exercising its rights to suspend Service, or either party from terminating this Contract or the provision of a service or facility under it. A further minimum period of 12 months or the applicable period set out in MT's Price List will thereafter apply in respect of each new facility added to the Service provided by MT to the Customer.

#### **4. Provision of Service by Special Means**

4.1 Where in order to meet the Customer's requirements:

4.1.1. MT considers it appropriate or necessary in the circumstances applying to provide Service, wholly or in part, by means of non-standard apparatus, apparatus constructed by non-standard or exceptionally expensive methods, or at substantially greater expense than it normally incurs, so as to render its standard tariffs inappropriate, or

4.1.2 at the Customer's request, Service is provided at greater expense by reason of the type of materials used, the length, or the manner of installation, than MT normally incurs, MT may determine in addition to any standard charge otherwise payable a supplementary rate of rental and or other charge in relation to the relevant application for Service. MT will inform the Customer by notice in writing of the proposed extra rate of rental and or other charge and the Customer may in a case where sub-paragraph 4.1.1 applies within 14 days of the date of MT's notice cancel the application by written notice. If sub-paragraph 4.1 applies to the provision of a Private Circuit, the Contractual Delivery Date will be the date agreed in writing by MT and the Customer.

4.2 A rate of rental or other charge determined under paragraph 4.1 may be in addition to or instead of any applicable standard rates of rental or other charges for Service.

4.3 MT may determine in an individual case where (having regard to the non-standard nature and or proposed special means of provision of the Service or facility in question, or the circumstances of the proposed provision, and or the interests of other customers or users of Service) it considers that it is necessary or appropriate that special Terms and Conditions will apply in addition to, or instead of, any Terms and Conditions of this Contract. MT will inform the Customer concerned by notice in writing of the special Terms and Conditions and the Customer may in a case where sub-paragraph 4.1.1 applies within 14 days of the date of MT's notice cancel the application by written notice. In any conflict between any Terms and Conditions determined in accordance with this sub-paragraph and this Contract as a whole, the special Terms and Conditions will prevail.

#### **5. MT's general powers**

MT may:

5.1 In an emergency, suspend Service temporarily in order to provide or safeguard service to a hospital or to the emergency, or other essential, services;

5.2 Temporarily suspend Service for the purpose of alteration of MT's Telecommunication Apparatus to permit the passage of vehicles with abnormal loads;

5.3 Temporarily suspend Service for the purpose of repair maintenance or improvement of any of MT's telecommunication systems and telecommunication apparatus; and

5.4 Give instructions about the use of Service which MT thinks reasonably to be necessary in the interests of safety, or of the quality of Service to MT's other customers; but before doing any of these things MT will give as much written or oral notice as is reasonably practicable in the circumstances, and MT will restore Service as soon as is reasonably practicable after temporary suspension.

**6. MT's responsibility for Service to a point in the Hull Area, the United Kingdom, the Channel Islands or the Republic of Ireland**

6.1 Where Service provided under this Contract connects a point in MT's Licensed Area and a point in the Hull Area, the United Kingdom, the Channel Islands or the Republic of Ireland the provisions of this Contract apply only to that part of Service which is provided by means of a telecommunication system which MT is authorised to run by a Licence and,

6.1.1 MT is not responsible in any way for any other part of Service;

6.1.2 MT may terminate or suspend Service summarily without prior notice to the Customer if the provision of any such other part of Service is terminated or suspended;

6.1.3 the Customer is responsible for making application to the telecommunications provider in the Hull Area, the United Kingdom, the Channel Islands or the Republic of Ireland as the case may be and for compliance with that body's terms and conditions and payment of its charges.

**7 The Customer's responsibility for Telecommunication Apparatus**

The Customer is responsible for the safe custody of MT's Telecommunication Apparatus placed within the boundary of the Customer's Premises and for its proper use; if any part of MT's Telecommunication Apparatus is lost, destroyed or damaged (except for fair wear and tear) the Customer must pay MT's charge for its replacement and or repair and the Customer agrees to indemnify on demand MT in respect of any such loss, destruction or damage. The Customer must not interfere with it nor permit anybody else (except someone authorised by MT) to do so.

**8 Fault Repair**

8.1 The Customer must report a fault in Service by telephoning the number specified in the Customer's order form or such other number as MT may from time to time provide to the Customer. The Customer will at the time of report provide MT with a Contact Telephone Number to enable MT to advise on the progress being made to clear the fault.

8.2 If the Customer reports a fault in Service MT will respond by carrying out one or more of the following actions:

8.2.1 providing advice by telephone, including advice, where appropriate, as to tests and checks to be carried out by the Customer;

8.2.2 where possible, carrying out diagnostic checks from MT premises; or

8.2.3 visiting the Customer's Premises or a point in MT's network only if MT's action under sub-paragraph 8.2.1 and 8.2.2 does not result in the fault being diagnosed or cleared and where such a visit is considered necessary by MT. The parameters of the above are defined by the level of service provided to the Customer with service or the level of service the Customer has agreed with MT will be provided with service.

8.3 MT will take all proper steps as soon as reasonably practical to correct the fault.

8.4 If MT does work to correct a reported fault in service and finds there is none, MT may charge the Customer for the work.

8.5 If MT agrees to attend to a reported fault in service outside the normal working hours appropriate to the level of service MT is otherwise contracted to provide for the Customer, the Customer must pay a charge calculated at MT's applicable hourly rate.

8.6 Should a fault occur on a digital private circuit, excluding all ISDN lines, MT agrees to respond to the fault within 4 hours on a 24 hour basis, including Public & Bank Holidays.

## 9. **Connection of Equipment**

Customer's Equipment to be connected for use with Service will be connected by means of Connecting Points except where MT otherwise permits for operational reasons. The Equipment must not be used with a Service except in accordance with MT's appropriate Terms and Conditions for the Attachment of Customer's Equipment to MT's Telecommunication Systems in force from time to time, which form part of this Contract. The Customer can see or obtain copies at MT's Main Office. In addition, the Customer must not allow any other person to do any of the things forbidden by this paragraph.

## 10. **Removal of Connecting Points**

10.1 If the Customer applies for the removal of a Connecting Point to another position within the same Premises of the Customer, MT may, depending on the nature of the work involved either:

10.1.1 require the Customer to give notice to terminate the Service provided by means of the Connecting Point in question and to make fresh application for Service; or

10.1.2 accept the Customer's application, and the Customer will pay MT's charge calculated at MT's applicable hourly rate.

10.2 If the Customer cancels an application before the removal has been completed, the Customer will pay in respect of abortive work done by MT, the charge calculated at MT's applicable hourly rate.

## 11. **Electricity**

The Customer must provide at the Customer's expense a suitable mains electricity supply at points and with the connections specified by MT, to enable MT to provide Service.

## 12. **Mis-use**

12.1 The Customer must not use or permit anyone else to use Service:

12.1.1 to send a message or communication which is offensive, abusive, indecent, obscene or menacing; or

12.1.2 to cause annoyance, inconvenience or needless anxiety; or

12.1.3 in breach of instructions MT has given under sub-paragraph 5.4.

12.2 If MT suspends Service for contravention of sub-paragraph 12.1 it shall be entitled to refuse to restore Service until it receives an acceptable assurance from the Customer that there will be no further contravention.

## 13. **Limitation on use of Service**

13.1 Neither the Customer nor any other person is permitted to use Service otherwise than in compliance with the provisions of any Licence applicable to the Customer or, as the case may be, that other person in connection with the use of Service.

13.2 Any use of Service by any person other than the Customer in breach of paragraph 13.1 will be deemed to be a breach by the Customer of this Contract and MT will be entitled to exercise its rights in respect of such breach under this Contract accordingly.

## 14. **Charges for Service**

- 14.1 The Customer must pay 14 days after the receipt of the bill the charges for Service which appear, or are calculated according to the rates which appear, or are otherwise mentioned, in MT's Price List in force at the relevant date. When MT makes a change to those charges or rates 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 to take effect unless the charge is payable only by the Customer in which case MT will give the Customer not less than 14 days notice of the change.
- 14.2 Unless this Contract provides otherwise the Customer is responsible for all charges set out from time to time in MT's Price List for Service provided for the Customer; in particular, for connection charges and charges for all facilities provided at the Customer's request in relation to Service.
- 14.3 Unless MT's Price List provides otherwise, all charges for Service are exclusive of value added tax for which, if it is applicable, an amount will be added to the Customer's bill. MT may charge daily interest on late payments at an annual rate equal to 4% per annum above the base-lending rate of Barclays Bank plc from time to time.

## 15. **Rental**

- 15.1 Rental for Service will commence on the Contractual Delivery Date, unless:
- 15.1.1 MT notifies the Customer of a later date for the commencement of Service when rental will be payable from the date notified; or
- 15.1.2 the Customer uses Service before the Contractual Delivery Date when rental will be payable from the date the Customer first uses Service.
- 15.2 Except for temporary Service, the Customer must pay rental in accordance with MT's billing cycle. If MT begins, or ceases, Service on a day which is not the first or last day of the period by reference to which MT charges rental MT will apportion rental on a daily basis for the incomplete period. Rental is normally payable in advance but MT may on occasion bill the Customer in arrears.

## 16. **Deposits and payments in advance**

- 16.1 MT may ask the Customer for a payment in advance not exceeding the connection charge, and rental for the minimum period of Service for the Service requested, before Service is provided.
- 16.2 MT may at any time ask the Customer for a deposit, not exceeding a sum equal to one year's rental as security for payment of future bills. MT can hold the deposit until payment of all monies due, though MT may use all or part of the deposit in payment of any charges due.
- 16.3 MT will add to a deposit or part of a deposit, which is repaid interest at the rate whether, expressed as a percentage or a formula published in MT's Main Office for the period in question.

## 17. **Cancellation**

- 17.1 Before Service or a particular facility is provided this Contract or the provision of the facility may be cancelled by written notice by:
- 17.1.1 the Customer, but MT may make a charge for abortive work done and or money spent to meet the Customer's requirements or
- 17.1.2 MT, if paragraph 27 of this Contract applies or the Customer has not fulfilled an obligation to MT in respect of any contract for the provision of Telephone Service, Telex Service or Service.

## 18. **Default**

- 18.1 If the Customer:

- 18.1.1 does not pay any charge within 28 days of it falling due or breaks this Contract in any other way; or
- 18.1.2 does not pay any charge for any Telephone Service, Telex Service or Service within 28 days of it falling due to MT under another contract with MT; or
- 18.1.3 commits any act of bankruptcy or is declared bankrupt or compounds with his creditors; or any of his assets is seized or distress is levied against him or a petition for a receiving order in bankruptcy is presented or made against him; or a petition for an administration order is presented against it or a resolution is proposed or a petition to wind it up is presented or a receiver or administrative receiver is appointed in respect of it or anything analogous to any of the foregoing occurs in any jurisdiction in respect of it, MT can (without losing or reducing any other right or remedy) suspend Service (including partially) temporarily without notice, though the Customer remains liable to pay rental during the suspension, or terminate this Contract by written notice. If MT suspends Service because the Customer does not pay any charge, then any further suspension within a period of 12 months following restoration of Service may take place 14 days after a failure to pay instead of after 28 days.
- 18.2 On termination under paragraph 18.1 as well as other sums payable up to the end of the Contract, the Customer must pay MT the rental or other charges which would have been payable for the remainder of the appropriate minimum period of Service at the rate in force at termination but MT will make due allowance for any rental the Customer has paid in advance for a period ending after the termination date or the end of the minimum period of Service whichever is later, and make a repayment where appropriate.
- 18.3 The Customer continues to be liable to pay all charges that are due for Service during any period in which the Customer does not comply with this Contract.
- 18.4 If MT waives a breach of contract by the Customer, that waiver is limited to the particular breach. MT's delay in acting upon a breach is not to be regarded in itself as a waiver.

## 19. **Termination of Service by notice**

At any time after Service has been provided this Contract or the provision of any service or facility under it can be ended:

- 19.1 by one month's notice by MT; or
- 19.2 by the customer giving 7 days notice after the minimum period of service has expired, unless this Contract provides otherwise

If MT gives notice, the Customer must pay rental up to the expiry date of the notice. If the Customer gives notice, the Customer must pay rental until 7 days after the date MT receives the notice or until expiry of the notice, whichever is later, except that the Customer must pay rental or other charges for the remainder of any minimum period of Service at the rate in force at termination unless the Customer has given notice because of an increase in the rate of rental. The Customer's notice does not avoid any other liability for Service already provided. Whoever gives the notice, MT will repay or credit the appropriate proportion of any rental paid in advance (unless it is for part of the minimum period of Service or further minimum period in respect of any facility added to Service) for a period ending after the Customer's liability for rental ceases.

## 20. **Permission to enter property**

The Customer agrees to allow anyone accredited by MT, on production of official evidence of identity and authority, reasonable access to the Customer's Premises at all reasonable times for the purposes of this Contract, and the Customer must obtain any other permission, which are needed. MT will comply with the Customer's reasonable requirements as to safety of people on the Customer's Premises.

## 21. **Arbitration**

Any dispute arising under this Contract which does not involve a complicated issue of law, an issue of quantification or of mitigation of loss or a sum exceeding £5000, may be referred by either party to arbitration by the Chartered Institute of Arbitrators under procedures agreed between MT and the Institute, details of which appear in MT's Code of Practice for Consumers.

## 22. **MT's Liability**

- 22.1 MT does not exclude or restrict liability for death or personal injury caused by MT's negligence.
- 22.2 In performing any obligation under this Contract, MT's duty is only to exercise the reasonable care and skill of a competent telecommunication service provider.
- 22.3 MT is not liable in contract, tort or otherwise (including liability for negligence and breach of statutory duty) for loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatever.
- 22.4 Subject to Clause 22.1 MT's liability in contract, tort or otherwise (including liability for negligence and breach of statutory duty) under or in connection with this Contract is limited to £1m for any event or related series of events and £2m for all events in any period of 12 months.
- 22.5 Each provision of this paragraph 22 operates separately in itself and survives independently of the others.

## 23. **Indemnity**

The Customer agrees to indemnify MT forthwith on demands against any legal proceedings, claims or losses, liabilities, costs and damages that MT may incur or that may arise from the Customer's use of Service which are brought or threatened against MT by another person arising otherwise than by reason of MT's default.

## 24. **Variation of Terms and Conditions, Entire Agreement, Assignment**

- 24.1 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.
- 24.2 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.

## 25. **Assignment**

The Customer must not assign all or any of its rights or obligations under this contract in whole or in part. MT may assign or sub-contract all or any of its rights and/or obligations hereunder to a third party without the Customers consent.

## 26. **Notice**

A notice given under this Contract, except under paragraph 5, (including a bill sent by MT to the Customer) must be in writing and may be delivered by hand or sent by telex or fax or prepaid post to the addressee at the following addresses:

- 26.1 To MT: the address of MT's main office shown on MT's order form which led to the making of this Contract or on the Customer's last bill or any alternative address which MT may specify at any time.
- 26.2 To the Customer: the address to which from time to time the Customer asks MT to send bills, the address of the Premises, or in the case of a limited company its registered office.

27. **Force Majeure**

MT is not liable for any breach of this Contract where the breach is caused by Act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, MT's compliance with any statutory obligation or an obligation under a statute, 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 MT is not responsible (including in particular other telecommunications providers) or any other cause whether similar or dissimilar outside MT's reasonable control.

28. **Law**

This Contract shall be governed by and construed in accordance with Isle of Man law and the parties hereby irrevocably submit to the jurisdiction of the Isle of Man High Court.