



INTRODUCTION

The attached document contains clauses to be used in every contract under which personal data (data from which a living individual can be identified e.g. customer or employee data) will be passed from or disclosed by Manx Telecom Trading Limited (MT), or any company within the group to another person or organisation or will be collected on behalf of MT. The document is split into 3 sections and the clause(s) you should use will depend upon the circumstances in each case.

The attached clauses should not be incorporated into any contract where personal data is to be transferred to or accessed by a third party. Where such a transfer or access is envisaged you should seek advice and assistance.

The attached document may contain square brackets with blank spaces for you to complete or with optional wording. These should be completed and/or removed as required and in accordance with the Guidance Notes below.

If you need advice about security or DPA/GDPR compliance you should seek Legal advice.

If you need advice on drafting DPA/GDPR clauses you should contact Legal or MT Internal Security.

GUIDANCE NOTES

Before you use the attached document, you should consider the following:

1	Security checks. Before entering into the contract, you should check that the other party can offer adequate security for the personal data. MT should ensure that a security checklist has been completed for the supplier. If you have any doubts you should seek advice.
2	Other party's contracts. Data protection or GDPR specific clauses in the other party's contracts should ideally be replaced with the attached clauses (suitably adapted) or if there are no data protection provisions in the contract, the attached clauses should be inserted (suitably adapted).
3	Transfer of personal data outside the EEA. The attached clauses are to be used only where transfers of personal data are within the EEA. If the personal data will be transferred outside the EEA, you should seek Legal advice.
4	Sensitive data – also referred to as 'special categories of data'. If the other party will have access to sensitive personal data (i.e. data relating to racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, data concerning a natural person's sex life or sexual orientation or the commission/allegation of any offence or sentence) the attached clauses may not be sufficiently extensive. You should seek advice in this situation.
5	Data not belonging to Manx Telecom. If the personal data to be supplied under the contract is that of another company that other company may need to be a party to the contract or have the right to enforce the data protection provisions. You should seek advice in this situation.



If you need to change any of the following provisions, you **must** seek advice

clause	description / comments
All	Do not alter the wording of any clause without seeking advice
All	The attached clauses should not be incorporated into any contract where personal data is to be transferred to or accessed by a third party for its use for its own purposes. There are unlikely to be many such contracts entered into by MT. Where such a transfer or access is envisaged you should seek Legal advice and assistance.
X.2.10	The Data Protection Act 2018/GDPR as applied to the Isle of Man provide that MT is responsible for compliance with the GDPR irrespective of the fact that it may delegate some of its activities to its processors. MT is therefore fully liable for the acts and omissions of its processors in respect of any processing activities they carry out on personal data on behalf of MT. Processors now have liability for processing under GDPR and must adhere to the similar standards for processing as a controller. Appropriate processing clauses and agreements should be put in place. You should refer any issues this causes to Legal.

One of the following clauses should be added as appropriate where an agency is appointed to carry out direct marketing or market research for MT:

clause	description / comments
B	If the other party is not carrying out direct marketing or market research by telephone for MT, this provision is not necessary.
C	If the other party is not carrying out direct marketing or market research by mail for MT, this provision is not necessary.



A. STANDARD CLAUSE FOR USE IN ANY CONTRACT

UNDER WHICH PERSONAL DATA THAT MT PROCESSES AS A CONTROLLER MAY BE TRANSFERRED OR DISCLOSED TO THE OTHER PARTY

X. DATA PROTECTION

X.1 For the purpose of this Clause [X] the following terms shall have the following definitions:

‘Applied GDPR’ shall mean the GDPR as applied to the Isle of Man contained in the Data Protection (Application of GDPR) Order 2018;

‘Controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Manx law, the controller or the specific criteria for its nomination may be provided for by Union or Manx law;

‘Data’ shall mean any data held by MT which is transferred or disclosed by or on behalf of MT under this Agreement and any data which is obtained or collected on behalf of MT under this Agreement;

‘the Legislation’ shall mean the Isle of Man Data Protection Act 2018, the Data Protection (Application of GDPR) Order 2018 and the GDPR and LED Implementing Regulations 2018 as amended from time to time and any other orders and regulations made thereunder;

‘Personal Data’ shall mean any information relating to an identified or identifiable natural person (‘Data Subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

‘Personal Data Breach’ shall mean a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed; and

‘Processing’ shall mean any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction and ‘Process’ and ‘Processed’ shall be construed accordingly.

X.2 Both parties will comply with all applicable requirements of the Legislation. This clause [X] is in addition to, and does not relieve, remove or replace, a party's obligations under the Legislation.

X.3 The parties acknowledge that for the purposes of the Legislation, MT is the Controller and the Supplier is the Processor. Or whereby defined MT maybe a Joint Controller. [Schedule [NUMBER] sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.]

X.4 Without prejudice to the generality of clause [X].2, MT will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

X.5 Without prejudice to the generality of clause [X].2, where Personal Data is Processed by the Supplier, its agents, subcontractors or employees under or in connection with this Agreement, the Supplier shall and shall procure that its agents, subcontractors and employees shall: -

X.5.1 process the personal data only on written instructions from MT, only for the purposes of performing this Agreement and only in accordance with instructions contained in this Agreement, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union law (as applied to the Island



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by or under the authority of an Act of Tynwald) or Manx law to which the Supplier is subject; in such a case, the Supplier shall inform MT of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. The Supplier shall not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised in writing by MT;

- X.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by MT, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- X.5.3 ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- X.5.3 not Process or transfer any Personal Data outside of the European Economic Area unless the prior written consent of MT has been obtained and the following conditions are fulfilled:
- (i) MT or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by MT with respect to the processing of the Personal Data;
 - (vi) as applicable with our Standard Contract Clauses and or any Binding Corporate Rules
- X.5.4 assist MT, [at MT's cost,] in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators. On becoming aware of a request by a Data Subject, the Supplier shall inform MT of the details of the request and pass on the request of the Data Subject to MT without undue delay and in any event within 2 working days. The Supplier shall not do or permit anything to be done which might cause MT in any way to be in breach of the Legislation;
- X.5.5 notify MT without undue delay and in any event within 24 hours on becoming aware of a Personal Data Breach. The Supplier shall take reasonable steps at the request of MT (but at the Supplier's own expense) to rectify the situation;
- X.5.6 [save as agreed with MT for the purposes of an orderly termination of services] cease Processing the Personal Data immediately upon the termination or expiry of this Agreement or, if sooner, of the contractual activity to which it relates and as soon as possible thereafter at the written direction of MT, delete or return Personal Data and copies thereof to MT unless required by Union law (as applied to the Island by or under the authority of an Act of Tynwald) or Manx law to store the Personal Data. The Supplier shall confirm in writing that this Clause X.5.6 has been complied with in full;
- X.5.7 maintain complete and accurate records and information to demonstrate its compliance with this clause [X] and allow for audits by MT or MT's designated auditor. The Supplier shall upon request from MT inform MT of the measures it has taken to comply with Clause X.5.2 and take such other measures as MT may require to ensure that it does so comply;



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- X.5.8 appoint and identify to MT a named individual within the Supplier's organisation to act as a point of contact for any enquiries from MT; and
- X.5.9 defend, hold harmless and indemnify MT against all loss, liability, damages, costs (including legal costs), fees, claims and expenses which MT may incur or suffer by reason of any breach of this Clause [X] by the Supplier or any breach of the Legislation by MT which is attributable to or caused, directly or indirectly, by the Supplier, its agents, subcontractors or employees.
- X.6 The Supplier warrants that it and its agents, subcontractors and employees have the necessary legal authority in any country or territory where any Processing of Personal Data will take place under this Agreement in order to carry out the Processing and undertakes to comply with any data protection laws applicable in such country.
- X.7 The Supplier shall permit MT at any time upon seven days' written notice to have escorted access to the appropriate parts of the Supplier's premises, systems and equipment to enable MT to inspect the same and to inspect procedures, data files and documentation for the purposes of monitoring compliance with this Clause [X]. Such inspection shall not relieve the Supplier of any of its obligations under this Clause [X].
- X.8 The Supplier shall not and shall procure that its agents and subcontractors shall not subcontract to any third party (including any associated company of the Supplier) any Processing of Personal Data on behalf of MT unless all of the following have first been complied with: -
 - X.8.1 the Supplier and/or agent and/or subcontractor (as applicable) has supplied to MT such information as MT may require to ascertain that the proposed subcontractor has the ability to comply with the provisions of the principles relating to processing of Personal Data contained in Chapter II of the Applied GDPR and has provided to MT such further or other undertakings and assurances as MT may reasonably require; and
 - X.8.2 the Supplier and/or agent and/or subcontractor (as applicable) has obtained the prior written consent of MT; and
 - X.8.3 the proposed subcontractor has undertaken to MT in a written contract to be bound by the terms of this Clause X.
- X.9 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Legislation and the principles relating to processing of Personal Data contained in Chapter II of the Applied GDPR, it shall immediately notify MT and it shall provide MT with full co-operation and assistance in relation to any such complaint, notice or communication.



THE SCHEDULE

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. PROCESSING BY THE PROVIDER

1.1 SCOPE

1.2 NATURE

1.3 PURPOSE OF PROCESSING

1.4 DURATION OF THE PROCESSING

2. TYPES OF PERSONAL DATA

3. CATEGORIES OF DATA SUBJECT



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B.

**ADDITIONAL CLAUSE/SUB-CLAUSE FOR
DIRECT MARKETING/MARKET RESEARCH
CONTRACTS: TELEPHONE or FAX**

The Supplier will ensure that any telephone numbers disclosed to the Supplier by or on behalf of MT are checked against the then current list of telephone numbers registered with the, Corporate Telephone Preference Service, Telephone Preference Service and or the Fax Preference Service for their own purposes when the numbers are disclosed (and against each subsequent list published by the Telephone Preference Service while the telephone numbers remain in the possession of the Supplier. The Supplier will follow the same procedure in respect of any telephone numbers obtained by the Supplier from other sources for the purpose of this Agreement. The Supplier will delete from its telephone number database all numbers which appear on any of the said lists and ensure that no telephone calls are made by or on behalf of the Supplier pursuant to this Agreement to any number which appears on any of the said lists.



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C.

**ADDITIONAL CLAUSE/SUB-CLAUSE FOR
DIRECT MARKETING/MARKET RESEARCH
CONTRACTS: MAILING**

The Supplier will ensure that any names and addresses disclosed to the Supplier by or on behalf of MT are checked against the then current list of names and addresses registered with the Mailing Preference Service when the names and addresses are disclosed and against each subsequent list published by the Mailing Preference Service while the names and addresses remain in the possession of the Supplier. The Supplier will follow the same procedure in respect of any names and addresses obtained by the Supplier from other sources for the purpose of this Agreement. The Supplier will delete from its database all names and addresses which appear on any of the said lists and ensure that no mailings are sent by or on behalf of the Supplier pursuant to this Agreement to any name and address which appears on any of the said lists.