

**SERVICES DESCRIPTION:
Chargeable Print Media & Directory.im advertising**

1 BACKGROUND AND INTERPRETATION

- 1.1 These Terms, together with the Application for Advertising and all relevant Copy Layout Sets, constitute the contract under which We shall provide You with the Services (the “**Contract**”). Unless the context requires otherwise, any capitalised terms appearing in these Terms or in any Application for Advertising shall bear the meanings set out in clause 10 of these Terms.
- 1.2 References to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re- enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 References to a “**person**” shall be construed as including references to an individual, firm, company, corporation, partnership, association, unincorporated body of persons, trust, a state or any governmental authority or any other entity and to such person’s permitted successors.
- 1.4 Writing or written includes faxes and, if agreed between the parties, e-mail.
- 1.5 Reference to a “**clause**” is a reference to a clause of these Terms.
- 1.6 The plural of any term includes the singular and vice versa and one gender includes all genders.

2 DURATION

These Terms shall come into effect on the Commencement Date and shall continue for the Initial Period. Following the expiry of the Initial Period, these Terms shall remain in force for successive periods of 12 months until terminated by either party giving notice, in accordance with the provisions of the Contract, expiring on the last day of the Initial Period, or on any anniversary of the Commencement Date (as appropriate).

3 OUR OBLIGATIONS

- 3.1 We shall provide the Services to You with the reasonable skill and care expected of a competent provider of services similar in nature to the Services.
- 3.2 We will use our reasonable endeavours to include Your Promotional Materials in the appropriate sections and classifications, in accordance with the Copy Layout Sets, in each relevant Directory. Subject to clause 3.3, if We agree to include Your Promotional Materials in the Paper Directory it will be included in the next edition of the Paper Directory. If We agree to include Your Promotional Materials in the Internet Directory, it will be included in the Internet Directory as soon as reasonably practicable. Subject to the terms of the Contract, an exact replica of Your Promotional Materials will be published in each subsequent edition of the Paper Directory and Your Promotional Materials will continue to appear in the Internet Directory.

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- 3.3 Where You have instructed Us to prepare the Artwork, We will prepare the same for Your Advertisement. We will own all of the Intellectual Property Rights in all such Artwork. Proof copies of Your Advertisement will be sent to You for checking and if no objection is received by Us within 7 Working Days of the date of the proof copies of Your Advertisement or any earlier dates as notified by Us, Your Advertisement shall be deemed correct and shall be published in such form as detailed in the proof copies.
- 3.4 We will use our reasonable endeavours to distribute one copy of Our Paper Directory free of charge to each occupied premises within the distribution area as specified on Our rate card (the “**Distribution Area**”). We will also make available additional copies of the Paper Directory for purchase, if required.
- 3.5 Although We plan to issue a new edition of Our Paper Directory once every calendar year, We reserve the right to adjust the publication date(s) of the same and to amend the layout, sections and classifications, all such rights to be exercised solely at Our discretion.
- 3.6 The first letter (or letters) of the name stated on the Copy Layout Sets will generally denote the position of Your Promotional Material within the relevant classification. Whilst We will endeavour to comply with Your wishes, We cannot guarantee that Your Promotional Materials will appear on a particular page in the Paper Directory or in a specified position. We also reserve the right to use different styles or typefaces to those requested by You if they are not compatible with those that We use for the production of Our Directories.

4 YOUR OBLIGATIONS

- 4.1 You must make sure that Your Promotional Materials are legal, decent, honest and truthful and that they comply with all current legislation of the Isle of Man and all other relevant jurisdictions, the British Code of Advertising Practice, the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing and all other applicable codes and regulations. We may refuse to include Your Promotional Materials in our Directories and/or on any website, in the event that We deem such Promotional Materials to be offensive, indecent, contrary to applicable law or public policy or that they infringe the rights or privileges of any person. You warrant, undertake and represent that You are: (i) the owner of all Intellectual Property Rights which are incorporated into the Promotional Materials and hereby grant to Us a licence to use such Intellectual Property Rights as are incorporated in Your Promotional Material for the purpose of the provision of the Services to You; or (ii) that You have been authorised by the owner to grant such licence.
- 4.2 If You have signed the Application for Advertising on behalf of Your Client, You shall be solely responsible for Your and Your Client’s compliance with the Contract and You warrant and represent that Your Client has provided to You all necessary authorities and approvals to be bound by its terms.

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- 4.3 You must provide Us with all of the details that are required in connection with Your Promotional Materials before the Closing Date.
- 4.4 You must inform Us of any changes to your trade, profession or business (or that of Your Client, where applicable) that might make Your Promotional Materials misleading or incorrect.
- 4.5 You hereby confirm and acknowledge that You have obtained all necessary authorisations and approvals required to represent and bind the business, partnership and/or company for which the Promotional Materials give benefit via advertising. Further, You hereby accept liability personally or jointly and severally with each partner, as applicable, in the event that the Charges are not paid, in accordance with the terms of the Contract.
- 4.6 If, for any reason, Your business should be acquired by, merged with or reverted to a third party and You do not terminate the Contract, in accordance with clause 8, You agree that You shall assign all benefits and novate all liabilities to such third party and that the third party agrees to such assignment and novation, in accordance with the terms of the Contract. You shall indemnify Us against all costs, losses, damages and other liabilities incurred by Us, in the event that such third party does not comply with the terms of the Contract, for any reason.

5 CHARGES

- 5.1 You must pay Us the Charges for the Services provided during the Contract Period.
- 5.2 On the publication date of each subsequent edition of the Directories, We shall be entitled to increase the Charges by an amount equal to the greater of: (i) 5% of the Charges; or (ii) the increase in the Retail Price Index calculated from the Commencement Date to the annual anniversary of the Commencement Date. The current Charge plus the increase, as detailed in this clause 5.3, shall be the new Charge for the Services, and references in the Contract shall be construed accordingly.
- 5.3 We will write to You to notify You of the new Charges for the next and each subsequent edition of the relevant Directories:
- (a) if You pay the Charges in instalments, at least 45 days prior to Us taking the first instalment for that edition of the relevant Directory; otherwise
 - (b) at least 45 days prior to the Closing Date for that edition of the relevant Directories.

If You do not wish to pay the new Charges for the next or any subsequent edition of the relevant Directories, You must notify Us within 14 days of the date of such a letter and such notice shall be treated by Us as a request by You to terminate the Contract upon the next following Closing Date.

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- 5.4 The Charges shall be due for payment, in full, on the Commencement Date, or thereafter, on each anniversary of the Commencement Date. Subject to clause 5.3, You must pay all Charges within fourteen (14) days of the date of the relevant invoice, unless We have agreed to accept payment of the Charges by instalments, in which case You will pay in accordance with the terms of any credit agreement between Us and You, if applicable, or, otherwise, in accordance with the payment provisions in the Contract. If payment of any sum due to Us is not received by the due date, We may charge You interest at 2% per annum above the base rate of National Westminster Bank plc as current from time to time, until the payment of the Charges is made in full.
- 5.5 Where We have agreed to accept payment of the Charges in instalments, You shall enter into a Direct Debit Mandate to allow Us to collect payment of each instalment of the Charges from Your bank. You shall notify Us of any changes to Your information which may render the Direct Debit Mandate void, including, but not limited to, a change of business name and/or a change of bank. You shall enter into a new Direct Debit Mandate, where We reasonably request You to do so.
- 5.6 Without prejudice to any other rights and remedies We may have (including, without limitation, those rights and remedies pursuant to clauses 5.4 and 8), if You do not make payment to Us when due, We will write to You explaining that payment is overdue. If You do not settle all outstanding amounts within 7 days of the date of Our letter, We may: (i) remove Your Promotional Material from Our Directories or refuse to include Your Promotional Material in Our Directories (as appropriate); and/or (ii) terminate the Contract and charge You a Termination Payment.
- 5.7 Where any Charges or other monies properly due to Us from You under the Contract or any other agreements with Us are outstanding, We will be entitled to offset such payments against any payments due from Us to You under any other agreements between Us and You.
- 5.8 All Charges are exclusive of value added tax and any other applicable taxes which may be levied from time to time.

6 LIABILITIES

- 6.1 Nothing in the Contract shall limit either party's liability for fraud, death or personal injury resulting from its own negligence or that of its employees, sub-contractors or agents or any other matter for which liability cannot be restricted or excluded pursuant to the laws and regulations of the Isle of Man.
- 6.2 Except as expressly provided in the Contract, all conditions, warranties, terms, undertakings and obligations express or implied by statute (including, without limitation, those relating to satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to Us)), common law, custom, trade usage or otherwise and all liabilities in respect of the same (if any) are excluded to the maximum extent permitted by the laws of the Isle of Man.

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- 6.3 We exclude all liability to You in contract, tort (including negligence) or otherwise for any loss of business; loss of data; loss of profits; loss of goodwill; loss of anticipated savings (even when advised of such a possibility); loss of revenue or; any indirect or consequential losses, liabilities or costs.
- 6.4 You will indemnify Us against all third party claims that may be made against Us or Our personnel and all liability that We or they may incur in connection with the Services whether in contract, tort (including negligence) or otherwise, except to the extent that they are caused by Our negligence or that of Our personnel. This indemnity shall include (but shall not be limited to) defamation, passing off, mis-description, false trade descriptions, errors and omissions and infringement of any Intellectual Property Rights or confidentiality obligations.
- 6.5 If there is any error or omission in respect of Your Promotional Materials in any of Our Directories or Chargeable Printed Media arising as a result of Our actions or omissions, You should notify Us of such error or omission immediately upon You becoming aware of it and We shall use all reasonable endeavours to correct such error or omission prior to the Closing Date for any new edition of Our Paper Directory and within 5 Working Days of You notifying Us of such error or omission in respect of Our Internet Directory. In the event that the Closing Date has passed for the Paper Directory, We shall:
- (i) correct Your Promotional Materials for each subsequent edition of Our Paper Directory and may, at our sole discretion, refund a proportionate amount of the Charges paid for the publication of Your Promotional Materials in the current Paper Directory; and (ii) offer to You a discount of up to 50% of the Charges for the publication of Your Promotional Material in the next edition of the Paper Directory, taking all of the circumstances into consideration. Any refund and/or discount that We provide to You shall be Our entire liability to You for such error or omission and You agree that such amount is reasonable, in the circumstances.
- 6.6 Otherwise than as set out above, Our maximum aggregate liability to You arising out of, or in connection with, the Contract shall be limited in aggregate to £5,000 (five thousand pounds).

7 INFORMATION MANAGEMENT

- 7.1 We or Our agents or personnel may monitor or record telephone calls for training and quality control purposes from time to time. These recordings will not be made available to any third party or used for any other purpose.
- 7.2 By signing the Application for Advertising You agree to Us using any personal data We obtain from You for the purpose of providing the Services to You. This clause does not affect any of Your rights under the Data Protection Act or any subordinate legislation of the Isle of Man, which We shall observe when dealing with your personal data (such term having the meaning given by the Data Protection Act).

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- 7.3 In the event that you sign the Application for Advertising and elect to pay the Charges in instalments, You agree to Us sending Your personal data to a third party for the purpose of carrying out any credit checks.
- 7.4 Unless You have ticked the boxes on the front of the Application for Advertising or inform Us hereafter, We may send to You information about Our products and services which We think may be of interest to You. You can withdraw your consent by writing to Our Customer Services Department at Our registered office, being Manx Telecom Trading Limited, Isle of Man Business Park, Cooil Road, Braddan, Isle of Man IM99 1HX or by sending an email to directoryteam@manxtelecom.com

8 CANCELLATION AND TERMINATION

- 8.1 You shall be entitled to terminate the Contract, during the Initial Period, by sending Us notice of termination within seven days of the date We send to You the proof copy of Your Advertisement. You acknowledge that We shall have incurred time and resource costs in the preparation of the proof copy of Your Advertisement. As such, termination pursuant to this clause 8.1 shall be subject to Your payment of a Termination Payment. Any request by You to terminate the Contract after the expiry of seven days from the date that We send to You the proof copy of Your Advertisement, shall be at our sole discretion and shall be conditional on full payment of the Charges for the Initial Period.
- 8.2 In respect of any successive 12 month period following the Initial Period, You shall be entitled to terminate the Contract prior to the commencement of the said 12 month period, without any charge, in accordance with clause 5.3. Any request by You to terminate the Contract otherwise than in accordance with clause 5.3 will be at our sole discretion and may be conditional on payment of a Termination Payment or the full payment of the Charges for the relevant 12 month period.
- 8.3 We shall have the right to terminate the Contract and levy all applicable Charges, if at any time prior to the date of publication of Our Directory You elect to supply Your Advertisement on a copy to follow basis and the copy is not supplied by the Closing Date.
- 8.4 We shall have the right to terminate the Contract, if at any time prior to the date of publication We have reason to believe that there is material risk of non-payment by You of any Charges. In such circumstances, We shall inform You of Our intent to terminate the Contract and give You a reasonable opportunity to pay such Charges in full and in advance of the date of publication of Our Directories, in order to avoid termination of the Contract.
- 8.5 We may immediately upon receipt of notice in writing (without prejudice to any other rights and remedies We may have) terminate (either in whole or in part) the Contract, if You are:
- (a) in material breach of any provisions of the Contract and (in the case of a breach capable of remedy) fail to remedy such breach within 30 days of written notice to do so; or

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(b) unable to pay Your debts as they fall due or threaten to suffer any resolution to wind up Your business or You enter into involuntary or compulsory liquidation or have a receiver or any analogous officer appointed over all or part of Your assets.

8.6 The expiry or termination of the Contract will be without prejudice to any other rights either party may be entitled to and will not affect any accrued rights or liabilities of either party.

9 GENERAL

9.1 We will not be liable to You for any loss or damage caused to or suffered by You as a direct or indirect result of the supply of Services being prevented, restricted, hindered or delayed by reason of any circumstance outside our control. If either party is prevented from performing its obligations for a continuous period of 3 months, either party may terminate the Contract by giving written notice.

9.2 The Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of the Contract including, but not limited to, any terms and conditions contained in Your purchase order or other terms that Your agreement to purchase the Service purports to incorporate. Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as set out in the Contract. Nothing will operate to limit or exclude any liability for fraud.

9.3 We may vary the Contract by notifying You in writing. If any such variation has a provable detrimental effect on You, You may terminate the Contract immediately on written notice. The Contract shall not be replaced by any other terms and conditions proposed by You and the provision of the Services by Us is only undertaken on the basis that the Contract applies.

9.4 Each provision of the Contract shall be severable and distinct from every other such provision and if at any time any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the laws of the Isle of Man or any other relevant jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the laws of the Isle of Man or any other relevant jurisdiction shall in any way be affected or impaired thereby.

9.5 We will use Our reasonable endeavours to meet any delivery time. However, such times will be regarded as estimates only and We will have no liability to You for Our failure to achieve any such delivery time.

9.6 Save for any permitted assignees, no person who is not a party to the Contract has any rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any terms of the Contract.

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- 9.7 Save as permitted by clauses 4.6 or 9.8, neither party may assign the Contract without the other's prior written consent, such consent not to be unreasonably withheld or delayed.
- 9.8 We may assign the Contract to another member of the Manx Telecom group.
- 9.9 Any notice under or in connection with the Contract shall unless otherwise agreed be in writing and may be delivered by hand or sent by first class post or by facsimile (confirmed by post) to the Company Secretary at the address of the party concerned set out in the Contract or any other address notified from time to time. Such notices shall be deemed to have been given or made on the second Working Day after posting if sent by first class post, upon delivery if delivered by hand and if sent by fax on the next Working Day after the date of transmission provided the sender's facsimile machine produces a report showing successful transmission to the correct facsimile.
- 9.10 The Contract shall be governed by the laws of the Isle of Man and the parties irrevocably submit to the exclusive jurisdiction of the courts of the Isle of Man.

10 DEFINITIONS

- "Advertisement"** means a chargeable advertisement in the Directories, that We have agreed to accept and publish and You have agreed to pay for in accordance with the provisions of the Contract;
- "Application for Advertising"** means each application for advertising signed by You and formally accepted by Us in writing;
- "Artwork"** means the advertisement creation including content & images which will be published in the printed directory
- "Charges"** means all charges that You have agreed to pay for the Services, as set out in the Application for Advertising, as may be varied from time to time in accordance with the provisions of the Contract;
- "Chargeable Print Media"** means paid for Advertising in Our Directories or on Our Kiosks
- "Client"** if applicable, means the person, firm or company for whom You, an advertising agency, have agreed to place an order for Services;
- "Closing Date"** means with respect to any edition of the Paper Directory, the last date for acceptance of any Entry or Advertisement in that edition of the Paper Directory by Us, as advised to You;

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“Commencement Date”	means the date upon which We enter into the Contract with You, which We will confirm to You in writing following our receipt of Your Application for Advertising;
“Contract”	these Terms, together with the Application for Advertising and all relevant Copy Layout Sets;
“Contract Period”	means the term and duration of the Contract, as further detailed in clause 2 of these Terms;
“Copy Layout Sets”	means the form detailing the content required for the advertisement;
“Data Protection Act”	means the Data Protection Act 2002 of the Isle of Man;
“Direct Debit Mandate”	means authorisation by You for Us to collect payment of the Charges by instalments directly from Your bank;
“Directories”	means the Paper Directory and/or the Internet Directory in which We have agreed to publish Promotional Materials and references to “Directory” means any of them;
“Distribution Area”	has the meaning given to it in clause 3.4;
“Entry”	means a listing of Your name, address and telephone number in standard typeface in certain of the Directories;
“Initial Period”	means the 12 month period from and inclusive of the Commencement Date;
“Intellectual Property Rights”	means all legal and/or equitable interests in, or relating to any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, rights in databases, inventions, confidential information, know-how and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered;
“Internet Directory”	means Our online Directory located at www.directory.im and replicated on www.manx.net and www.isleofman.com
“Kiosk (s)”	means Public Telephone kiosks owned and operated by Us

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“Paper Directory”	means Our phone book and business directory;
“Promotional Materials”	means collectively Entries, Advertisements, websites and any electronic link from Our Internet Directory to Your web site as the case may be;
“Services”	means the display of Your Entries and Promotional Materials in Our Directories together with any other services (such as the provision of Artwork services) as specified within the Contract;
“Termination Payment”	means 25% of the total Charges payable for the publication of the Promotional Materials in any Directory or the relevant Charge for the Promotional Materials being terminated;
“Terms”	means these terms and conditions for advertising in the Directories;
“We” “Us” or “Our”	means Manx Telecom Trading Limited (company number 005629V) whose registered office is Isle of Man Business Park, Cooil Road, Braddan, Isle of Man IM99 1HX;
“Working Day”	means any day which is not a Saturday or a Sunday or a public holiday or bank holiday recognised in the Isle of Man; and
“You” or “Your”	means the person, firm or company entering into the Contract with Us.

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