

JERSEY TELECOM COLOCATION SERVICE

TERMS AND CONDITIONS

These terms and conditions are important and should be read carefully. If you have any queries regarding the terms and conditions please telephone 0800 735 2345 or E-Mail businesssolutions@jerseytelecom.com

1. DEFINITIONS

In the Conditions (as defined below) the following terms shall have the following meanings unless expressly stated otherwise:

- 1.1. "Application Form" means the completed application or quote or proposal form for the Service as signed by the Customer and submitted to Jersey Telecom.
- 1.2. "Conditions" means these terms and conditions, the Application Form and Product Description and any variations thereto.
- 1.3. "Contract" means the agreement made between the Customer and Jersey Telecom for the provision of a Service which agreement is governed by the Conditions.
- 1.4. "Customer" means the person or persons named in the Application Form.
- 1.5. "Customer Equipment" means any apparatus used by the Customer to connect to or make use of the Service.
- 1.6. "GST" means Goods and Services Tax charged, where applicable, by Jersey Telecom to the Customer at a rate of 3% of the cost of Services supplied, pursuant to the Goods and Services Tax (Jersey) Law 2007 and/or the Goods and Services Tax (Jersey) Regulations 2007.
- 1.7. "Jersey Telecom" means Jersey Telecom Limited having its office at 1 The Forum, Grenville St., St Helier, Jersey, JE4 8PB, its successors or assigns as notified to the Customer from time to time.
- 1.8. "Jersey Telecom group" means any direct or indirect subsidiary for the time being of JT Group Limited.
- 1.9. "Minimum Contract Period" means a period of twenty four months from the commencement of the Contract or such other period as may be stated in the Application Form.
- 1.10. "NTU" means the Network Terminating Unit which is the equipment supplied, installed, maintained and owned by Jersey Telecom in the Premises allow connection of Customer Equipment to the Service.
- 1.11. "On-line" means accessible over the world wide web at Jersey Telecom's site at www.jerseytelecom.com or such other site as may be notified from time to time.
- 1.12. "Premises" means those premises or locations at which the Service is to be provided under the Contract.
- 1.13. "Product Description" means the description and any technical specification of the Service, together with any applicable Customer specific service level agreement, as available from Jersey Telecom's offices or On-line or as provided to the Customer.
- 1.14. "Service" means colocation or any other service selected by the Customer in the Application Form, where these Conditions are stated to apply.
- 1.15. "Service Charges" means the sums, including GST where applicable, charged to the Customer by Jersey Telecom for the provision and use of the Service.
- 1.16. "Telecommunications Apparatus" means any apparatus, equipment, rack, NTU or power distribution system that is supplied, installed, maintained and owned by Jersey Telecom for provision of the Service.
- 1.17. "Type Approved Equipment" means any apparatus which has been approved by the British Approvals Board for Telecommunications (BABT) or approved by Jersey Telecom for use in connection with the Service.

2. COMMENCEMENT AND DURATION

- 2.1. Unless otherwise expressly agreed in writing or provided for by law or regulation, the Contract shall have effect when the Application Form has been received and accepted by Jersey Telecom and / or the Service is provided to the Customer.
- 2.2. Subject to the provisions of sub-clauses 14.1 and 14.2 hereunder the Contract shall remain in force for the Minimum Contract Period and thereafter shall continue in force until terminated by either party in accordance with sub clause 14.3 below.
- 2.3. Save where termination is notified by the Customer to Jersey Telecom under sub-clause 14.2 below if the Customer terminates the Contract during the Minimum Contract Period the Customer shall pay a sum equal to the Service Charge and any extra charges which would have been payable to Jersey Telecom for the balance of the Minimum Contract Period.
- 2.4. Nothing in this clause shall prevent either party from terminating the Contract in accordance with clause 14 below.

3. VARIATION

- 3.1. Jersey Telecom may from time to time vary the Conditions and Product Description applicable to the Service and will as soon as practicable and in any event not less than one calendar month before any such variation is to take effect give written notice of all such variations On-line and / or at Jersey Telecom's office and will also notify the Customer in writing of any significantly material variations.
- 3.2. Notwithstanding the above, Jersey Telecom may vary all or any of the Service Charges by publishing any such variation at least one calendar month in advance in a schedule of tariffs to be displayed and / or available at Jersey Telecom's office and / or On-line. Such variation shall not apply to any element of the Service Charges that is stated as fixed for a stated period in the Application Form if the variation occurs during the stated period.
- 3.3. Other than as stated above any variations to the Contract shall be made in writing by Jersey Telecom and signed by a duly authorised officer of the same.
- 3.4. Save as herein expressly provided no servant or agent of Jersey Telecom shall have the authority to agree any variation or addition to the Contract. Any representation or warranty so made is of no force or effect unless made in accordance with this clause

4. THE SERVICE

- 4.1. The Service does not include the provision of Customer Equipment unless specified on the Application Form. If Customer Equipment is provided by Jersey Telecom as part of the Service then Jersey Telecom Equipment Rental or Equipment Purchase Terms and Conditions will apply to the Customer Equipment.
- 4.2. Where part or parts of the Service or the Premises are provided and / or supported by a telecommunications provider other than Jersey Telecom, Jersey Telecom shall not be responsible for those parts so provided.
- 4.3. Jersey Telecom reserves the right to vary the technical specification of the Service at any time, and where the Service is materially affected undertakes to notify the Customer of such variation within a reasonable time beforehand.
- 4.4. The whole of the Telecommunications Apparatus shall remain the property of Jersey Telecom and shall solely and exclusively be maintained and moved by Jersey Telecom.
- 4.5. Where by reason of a fault with the Telecommunications Apparatus the Service has failed to operate within its designed specification Jersey Telecom will, at no additional charge to the Service Charge, repair the same unless the fault has occurred as a result of damage other than by Jersey Telecom, its employees or agents.
- 4.6. Jersey Telecom reserves the right without cost or penalty to itself, to alter the Customer's network/IP addresses provided by Jersey Telecom or any other names, codes or numbers allocated from time to time by Jersey Telecom for use in connection with the Service giving, where practicable from a Jersey Telecom operational point of view, advance notice of each alteration to the Customer, but in any event notifying the Customer of each such alteration within a reasonable time thereafter. All addresses, names, codes or numbers remain the property of Jersey Telecom.
- 4.7. The Customer acknowledges and accepts that provision of the Service may involve the carriage of a high intensity light source or electric current which energies are dangerous and may cause permanent injury if not handled properly.
- 4.8. Where the Customer comprises more than one person Jersey Telecom reserves the right to provide information with respect to the Service provided to the Customer to any of the persons named in the Application Form.
- 4.9. Jersey Telecom is not responsible for the content of any material made available and / or accessible by use of the Service.
- 4.10. Jersey Telecom reserves the right to disclose the name, telephone and / or facsimile numbers and / or e-mail address of the Customer to any judicial, police or regulatory or governmental agency where required to do so.
- 4.11. The Customer acknowledges that Jersey Telecom is unable to exercise control over the content of data made available to, accessed by, transmitted by or published by the Customer and undertakes to use the Service only for lawful purposes.

5. SUSPENSION OF THE SERVICE

- 5.1. Jersey Telecom may (without prejudice to any other right or remedy) suspend limit or cancel the Service to the Customer without penalty and with immediate effect:

JERSEY TELECOM COLOCATION SERVICE

TERMS AND CONDITIONS

- 5.1.1. Jersey Telecom will endeavour to notify the Customer of any such breach prior to the suspension, limitation or cancellation of the Service, however, a failure by Jersey Telecom to so notify the Customer shall in no way prejudice Jersey Telecom's rights to suspend, limit or cancel the Service and the Customer remains at all times responsible for ensuring that it is, and remains, in all respects compliant with these Terms and Conditions.
- 5.1.2. during any technical failure, or maintenance of the Service or where it is unable to provide the Service for reasons beyond its control or otherwise for reasons not its fault provided that Jersey Telecom will use its reasonable endeavours to procure resumption of the Service as soon as reasonably practical.
- 5.2. In the case of suspension, limitation or cancellation under 5.1.1 only, without prejudice to the terms of any applicable service level agreement) the Customer shall remain liable for all charges due hereunder throughout the period of suspension limitation or cancellation, unless Jersey Telecom at its sole discretion determines otherwise.
- 6. CHARGES AND PAYMENT**
- 6.1. The Service Charges shall comprise any installation charge for the Service, whether initial or after suspension, and rental charge (payable in advance) for the Service where such charges depend on the relevant service options selected in the Application Form.
- 6.2. In addition to charging GST in respect of the supply of Services, Jersey Telecom will, where applicable, charge the Customer GST in respect of the supply of other goods and/or services under this Contract and the Customer will pay that amount in addition to the charges for those other goods and/or services.
- 6.3. Where more than one person is named as a Customer liability for the Service Charges and/or any additional sums relating to the Service shall be joint and several.
- 6.4. Where the Customer requests work to be carried out which is not included in the Service Charges Jersey Telecom may charge additional sums. Jersey Telecom will, for example, make extra charges where:
- 6.4.1. it repairs any Customer Equipment where such repair is not covered by any other agreement between Jersey Telecom and the Customer;
- 6.4.2. it responds to a fault report and no fault is found to exist;
- 6.4.3. repair of a fault reported by the Customer is made more difficult or costly by breach of the Customer's obligations under the Contract;
- 6.4.4. it corrects any defect or fault caused by the Customer or anyone using the Service;
- 6.4.5. it repairs Telecommunications Apparatus located at the Premises that is damaged by the Customer, its employees or agents.
- 6.5. Service Charges and/or any additional sums are payable in full on demand or as otherwise agreed between the Customer and Jersey Telecom. If payment is agreed in writing to be made by instalments and if the Customer fails to pay any instalment on its due date then Jersey Telecom shall be entitled to demand immediate payment of the unpaid balance (including all arrears).
- 6.6. Jersey Telecom reserves the right to charge interest on any balances which remain unpaid for more than 30 days from the due date at 3% above the short term base lending rate from time to time prevailing in England.
- 7. OBLIGATIONS OF THE CUSTOMER**
- 7.1. The Customer shall:
- 7.1.1. only use, make use of, cause, allow or permit to be used the Service in accordance with the specification contained in the Application Form, Product Description and any instructions provided by Jersey Telecom and shall only use the Service for the purpose for which it was designed;
- 7.1.2. enter into an appropriate contract with any other telecommunications provider that provides part or parts of the Service;
- 7.1.3. comply with Jersey Telecom's reasonable requests for assistance in order to diagnose existing or potential faults;
- 7.1.4. allow Jersey Telecom full and convenient access to the Telecommunications Apparatus, NTU and associated wiring at all reasonable times in order to rectify any fault with the Service as reported to it by the Customer;
- 7.1.5. only use Type Approved Equipment for the purpose of utilising the Service and allow Jersey Telecom full and convenient access at all reasonable times to inspect any equipment used in connection with the Service to ensure that it is Type Approved Equipment and that it conforms with necessary standards, codes or licensing requirements;
- 7.1.6. use Customer Equipment in accordance with the manufacturer's and / or Jersey Telecom's recommendations;
- 7.1.7. keep any login code and / or password assigned by Jersey Telecom or otherwise for use of the Service secure and not disclose the same to any unauthorised person;
- 7.1.8. immediately notify Jersey Telecom should the Customer know or suspect that:
- 7.1.9. a login code and / or password has been obtained by any unauthorised person; or
- 7.1.10. unauthorised access to Customer Equipment, either physical or otherwise is being or has been made.
- 7.1.11. be responsible for all and any charges of any nature that may be incurred by Jersey Telecom as a result of any use, authorised or not, of the login code and / or password;
- 7.1.12. be responsible for all damage or loss caused to Jersey Telecom or third parties by misuse of, misoperation of, or fault with the Service or the Customer Equipment whether consequential, direct, indirect, foreseeable or unforeseeable other than due to the acts or omissions of Jersey Telecom its employees, agents and / or subcontractors and, at its own cost, to insure all Customer Equipment located at the Premises in respect of such damage or loss and all other usual or ordinary risks and to maintain such insurance without interruption until the removal of such Customer Equipment from the Premises;
- 7.1.13. take all appropriate measures to safeguard the security of data sent by means of the Service;
- 7.1.14. promptly advise Jersey Telecom in writing of any change of billing address, contact address or contact number;
- 7.1.15. service and / or maintain the Customer Equipment in accordance with the manufacturer's and / or Jersey Telecom's recommendations;
- 7.1.16. obtain any licence applicable to or required by the Customer prior to using the Service.
- 7.2. The Customer **shall not** by themselves or otherwise:
- 7.2.1. tamper with, move, modify, or interfere with the Telecommunications Apparatus, NTU or any associated wiring, without the written consent of Jersey Telecom;
- 7.2.2. use the Service in breach of any terms of any licence applicable to the Customer;
- 7.2.3. use the Service for purposes or to send, transmit, publish, display, advertise or make available material, information, messages or communications which infringe/s copyright or any other intellectual property right held in any country are/is offensive, abusive, obscene, pornographic, threatening, annoying, defamatory, incite/s hatred, panic or anxiety, breach/es confidence, are/is otherwise unlawful or infringe/s any third party's legal rights of whatever nature under the laws of any jurisdiction;
- 7.2.4. use the Premises for storage of equipment or materials other than where necessary for use of the Service.
- 7.2.5. use the Service for any purpose which may result in the illegal access to or collection of data whilst in transit, illegal access to computers or networks, spamming, flooding or other such broadcasts together with any other activity which may adversely affect Jersey Telecom or any third party.
- 8. HEALTH AND SAFETY**
- 8.1. The Customer, their agents, employees, contractors or invitees shall not enter the Premises unless familiar with the applicable parts of the current Jersey Telecom Health and Safety Code of Practice and have complied with any requirements imposed by Jersey Telecom prior to entry.
- 8.2. The Customer shall take all reasonable and proper precautions to protect the health and safety of Jersey Telecom personnel while at the Premises provided with the Service.
- 8.3. The Customer shall take all necessary steps to warn all persons at the Premises of the dangers associated with the provision of the Service and shall take proper and sufficient care in training personnel in the handling of the Telecommunications Apparatus and Customer Equipment where such handling by the Customer their agents, employees, contractors or invitees is necessary.
- 9. ASSIGNMENT**
- 9.1. The Customer may not assign the Contract without Jersey Telecom's permission, such permission not to be unreasonably withheld.
- 9.2. Jersey Telecom reserves the right to assign all or part of the Contract to any person and / or to sub-contract any of its obligations hereunder upon giving 28 days notice to the Customer.
- 10. EXCLUSION AND LIMITATION OF LIABILITY**

JERSEY TELECOM COLOCATION SERVICE

TERMS AND CONDITIONS

- 10.1. The following provisions set out Jersey Telecom's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer in respect of any breach of contract, misrepresentation, tortious act or omission including negligence or otherwise arising under or in connection with the provision of the Service. **The Customer's attention is in particular drawn to these provisions.**
- 10.2. Jersey Telecom does not exclude or restrict liability for death or personal injury resulting from its own negligence.
- 10.3. Jersey Telecom does not exclude or restrict liability for loss or damage suffered by the Customer resulting from its own fraud or wilful default. Subject always to the specific exclusions of liability set out in 10.5.1, 10.5.2 and 10.5.3 (which shall apply in all cases), Jersey Telecom does not exclude or restrict liability for loss or damage suffered by the customer resulting from its own gross negligence.
- 10.4. Unless otherwise expressly agreed in writing by the parties (in a service level agreement or otherwise), Jersey Telecom shall not be liable to the Customer or to any other person for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the provision of the Service except as provided in 10.2 and 10.3 above. Whilst Jersey Telecom will use its reasonable endeavours to maintain the quality of the Service and to ensure that the Service is available at all times it makes no representation or warranty in relation thereto.
- 10.5. Without prejudice to the generality of 10.2, 10.3 or 10.4, Jersey Telecom shall not be liable to the Customer or to any other person for:
- 10.5.1. any loss of profits, business revenue, goodwill or anticipated savings, or any type of special, indirect or consequential loss (including but not limited to loss or damage to data, equipment or property even if in the care, custody or control of Jersey Telecom) whether direct, indirect, foreseeable or unforeseeable;
- 10.5.2. any use of the Service by or activities of the Customer, in particular but not limited to any acts which under the laws of any jurisdiction infringe any third party's intellectual property rights (including the use of any domain name) infringe obscenity laws, constitute threats, are in any way defamatory or are illegal or give rise to any liability in any way.
- 10.6. Jersey Telecom is not responsible for maintaining any insurance cover of any nature to cover any loss by the Customer or any other party arising from the provision or unavailability of the Service or otherwise and any such insurance cover shall be the responsibility of the Customer.
- 10.7. If any exclusion or limitation of liability contained in this clause is invalid and Jersey Telecom becomes liable for any loss or damage, the Customer (acknowledging that Jersey Telecom is not able to evaluate any potential loss to the Customer) agrees that Jersey Telecom's liability shall in any event be limited to the Service Charges payable by the Customer for the Minimum Contract Period for any one event or series of events.
- 10.8. Each provision of this clause shall operate independently of each other provision of this clause.
- 10.9. The Customer agrees to indemnify Jersey Telecom and hold Jersey Telecom harmless in respect of all costs, damages, awards and expenses and professional fees of any kind (without limit) arising from or in connection with any claim brought against Jersey Telecom by any third party located in any jurisdiction arising from any use of the Service provided to the Customer (by either the Customer or any other party) constituting any unlawful act or otherwise giving rise to any liability. The Customer shall immediately notify Jersey Telecom in writing of any such claims of which it becomes aware. The Customer further agrees to offer all reasonable assistance to Jersey Telecom in defending such claims at the sole expense of the Customer.

11. FORCE MAJEURE

Jersey Telecom shall not be liable in respect of any breach of the Contract due to any cause beyond its reasonable control including (but without limitation): act of God, pandemic, inclement weather, lightning, flood or fire; industrial action or lockouts; the act or omission of Government, highway authorities, or any other competent authority; war or armed conflict, military operations, vandalism or riot; the act or omission of any other party (including any other party that provides any part of the Service or upon which Jersey Telecom relies in order to provide any part of the Service) and national and / or civil emergencies.

12. ENTIRE AGREEMENT

The Conditions supersede all prior oral or written communications regarding the Service and contain the whole agreement between the parties relating to the Service, unless specifically otherwise agreed in writing.

13. NOTICES

- 13.1. Any notice or other communication required to be given or served for the purposes of the Contract except where otherwise provided shall be in writing and shall be deemed to have been duly given and served if sent by post, facsimile or delivered by hand. Notices shall be deemed received 48 hours after posting or transmitting.
- 13.2. The Customer's address for correspondence shall be the contact address as specified in the Application Form or an address notified to Jersey Telecom by the Customer in writing as an address to which bills may be sent or the Customer's usual or last known place of abode or business or if the Customer is a limited company its registered office.
- 13.3. Jersey Telecom's address for correspondence shall be P.O. Box 53, 1 The Forum, Grenville Street, St Helier, Jersey JE4 8PB.
- 13.4. Jersey Telecom's facsimile number for notice by facsimile (with confirmation by post or delivery) shall be 01534 882883.

14. TERMINATION

- 14.1. The Contract may be terminated immediately by Jersey Telecom if the Customer;
- 14.1.1. fails to satisfy Jersey Telecom with regard to any credit check undertaken in respect of the Customer;
- 14.1.2. fails to pay when due any sum payable under the Contract or any other agreement or contract made between the Customer and Jersey Telecom;
- 14.1.3. becomes bankrupt within the meaning of Article 8 of the Interpretation (Jersey) Law 1954 or otherwise commits any act indicative of insolvency under the law of any jurisdiction or enters into any composition with its creditors in Jersey or elsewhere;
- 14.1.4. fails to observe or perform the Conditions of the Contract or the conditions of any other agreement or contract made between the Customer and Jersey Telecom and fails to remedy such breach as soon as possible and in any event within 28 days after the date that Jersey Telecom serves written notice on the Customer in relation to such breach;
- 14.1.5. uses the Service provided in accordance with the Contract in a manner which is unsafe or which has not been approved by Jersey Telecom in accordance with the Conditions or otherwise within its statutory powers;
- 14.1.6. makes improper use, within the meaning of Article 51 of the Telecommunications (Jersey) Law 2002, or any amendment or supervening law thereto, of the Service provided in accordance with the Conditions;
- 14.1.7. does or allows to be done anything which in Jersey Telecom's opinion will or may have the effect of jeopardising the operation of the telecommunications system provided by Jersey Telecom to any of its customers;
- 14.1.8. connects equipment to the Service other than Type Approved Equipment.
- 14.2. The Contract may be terminated by the Customer if:
- 14.2.1. Jersey Telecom unreasonably exercises its rights of variation, assignment or suspension under the Contract, by the Customer giving written notice to Jersey Telecom within 14 days of the notice of variation, assignment or suspension;
- 14.2.2. Jersey Telecom exercises its rights of variation of the technical specification of the Service such that performance of the same is materially degraded, such termination to be on 14 days written notice without further obligation;
- 14.2.3. Jersey Telecom fails to observe or perform its obligations under the Contract and fails to remedy such breach as soon as possible and in any event within 28 days after the date that the Customer serves written notice on Jersey Telecom in relation to such breach, by giving written notice to Jersey Telecom of such termination; or
- 14.2.4. the Service is suspended for a continuous period of 7 days or longer.
- 14.3. Subject to sub clauses 2.2, 14.1 and 14.2 either party may terminate the Contract provided always that the party wishing to terminate the contract gives to the other party written notice of its intention to do so; in the case of the Customer of at least one calendar month and in the case of Jersey Telecom at least six calendar months prior to the effective date of the purported termination of the Contract and such termination shall not affect any rights of either party to enforce any term hereof which right has accrued prior to the effective date of termination.

15. SEVERANCE

JERSEY TELECOM COLOCATION SERVICE

TERMS AND CONDITIONS

If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provisions in question shall not be affected.

16. GOVERNING LAW

The Contract shall be governed by and construed and interpreted in accordance with the law of the Island of Jersey and the parties hereby submit to the exclusive jurisdiction of the Royal Court of Jersey.

17. DATA PROTECTION

17.1. Jersey Telecom will not without the Customer's written consent disclose information provided to it by the Customer for the purposes of the Agreement to anyone other than (i) members of the Jersey Telecom group or (ii) subject to the relevant Data Protection legislation, third party sub-contractors or agents engaged by Jersey Telecom, such disclosure being made in either case in order for it to be able to provide the Customer with the Service.

17.2. Jersey Telecom adheres to strict data protection policies in accordance with the Data Protection (Jersey) Law 2005, details of which policies are included in the Consumer Code of Practice which can be found On-line at www.jerseytelecom.com.

17.3. Jersey Telecom reserves the right to disclose the name, address, telephone and/or facsimile numbers and/or email addresses of the Customer to any judicial, law enforcement, regulatory or governmental body or agency where required by applicable law or by the Order of a court or other body of competent jurisdiction to do so.