



Terms and Conditions

Customer

If you have registered for our services either online or by completing an “Application Form” and are being charged for the services, you are a Customer and you need to review the terms and conditions set out below which will govern the contractual relationship between us. We may refer to you as a “Customer”.

These terms and conditions are binding on any use of the service and apply to the Customer from the time that Mako Networks provides you with access to the service.

Interpretation

“Agents” means any dealers, contractors or agents appointed by Mako Networks to perform any of Mako Networks’ obligations under this Agreement.

“Agreement” means these Terms and Conditions between you and us.

“Application form” means an application form signed by you setting out your details, or our online registration form you or your Agent provides to us to use our Services.

“Charges” means all services charges payable by you for the System or Services.

“Connection device” means the hardware device supplied by us and used by you for the connection to the Internet and for using our System or Services.

“Customer” means the Mako Networks customer who is liable for all Charges payable under the Agreement.

“Customer Services” means the Mako Networks Customer Services team, which is contactable via email at support@makonetworks.com.

“Default rate” is the rate of 1.5% per month or any other rate notified to you from time to time. It applies from the date payment by you is due to the date we receive your payment in full.

“Network Operator” is any entity with whom you and/or we have entered into a connection agreement or agreement (directly or indirectly) providing for the passing of customer generated or customer destined communications.

“System” or “Services” means the telecommunications network services, monitoring, maintenance and reporting on computer network and the traffic communicated through it and related products and services that are made available to you by us from time to time.

“Term” means, subject to any early termination under this Agreement the period specified in your application form or services licence or any revised agreement between us.

“we” or “us” means Mako Networks and any of its agents, and “our” has a corresponding meaning.

“you” means the Customer under this Agreement and “your” has a corresponding meaning.

1. Commencement and Term

This Agreement begins when your System is activated the first time. If your connection to our System is for a fixed Term:

(i) This Agreement will continue for the duration of that fixed Term. If you terminate this Agreement before the end of that fixed Term you may have to pay early termination charges. You may obtain details of any early termination charges by referring to your Application Form or by contacting Customer Services at support@makonetworks.com. On expiry of the Term you or we can terminate our Service on one month’s notice or any lesser period agreed between us.

(ii) If your connection to our network or Service does not have a fixed Term, this Agreement continues on a month-by-month basis until it is terminated in accordance with these terms and conditions. Unless we have agreed otherwise, no early termination charges are payable by you if you wish to discontinue a connection to our network or a service which is not for a fixed Term.

2. Services

While we will use our best endeavours to provide quality of Services, because of the nature of telecommunications it is impossible to provide a fault-free service and the quality of the Services depends partly on your network and equipment, partly on our network and partly on other telecommunications networks to which both yours and our network is connected or connects.

Services can be adversely affected by radio interference, weather, atmospheric conditions, network congestion, maintenance, outages on other networks and operational or technical difficulties which means that you may not receive some or all of the Services at certain times. Services can also change with network expansion or reconfiguration.

Because of changes and advancements in the telecommunications industry, the Services may be changed, modified, advanced or removed. We will endeavour to notify you before doing this or introducing new Services. If any of our new Services require new or upgraded equipment, you will be responsible for obtaining that new or upgraded equipment.

We may stop, modify or suspend any particular Service. If we do so we will endeavour to tell you in advance. We will also endeavour to tell you about any substitute Service that we are able to provide.

You agree to follow our instructions about the use of the Services and ensure that everyone who uses the System also meets your responsibilities when using it. You agree to keep us protected against any legal action taken against us and to meet any losses we may incur as a result of such uses of the System and Services. You are responsible if anyone else, whether authorised by you or not, uses or misuses our System or our Services.

You agree not to use your connection device or the System or Services for any abusive, illegal or fraudulent purpose.

We can require you at any time to stop using your System or Services if we believe that it could cause any interference or you may have used it to deliver inappropriate material across the Internet.

Using or agreeing to use the System or Services does not give you any rights in any part of the System or Services.

You agree that if you do not use our System or Services in accordance with these conditions we may restrict or suspend your use of the System or Services.

You must advise us immediately if passwords used to operate our System are or need to be changed in order that we may reconfigure our System to ensure uninterrupted service.

If your connection device is stolen or you lose it, you must contact us immediately so that we can disable it. You will be responsible for all charges associated with the use of your connection device, whether to us or to any third parties involved in the transfer up to the time you advise us of its loss or theft and we have confirmed to you that it has been disabled.

3. Charges and Billing

We will send you a statement for your Charges as is necessary. You will provide us an email address on the Application Form or online registration form for this purpose. You must pay the total of any unpaid Charges on this statement by the date specified on the statement.

You may be charged interest on amounts not paid by the due date at the Default Rate and you will also have to pay any reasonable expenses (including solicitors and own client costs) we incur in collecting any money that you owe us or in exercising any of our other legal rights. You must advise us if you change address. If there is any mistake on your statement please let us know as soon as possible. If we agree there has been a mistake, we will correct it. Otherwise, you must pay your Charges by the due date without set-off or deduction.

We may request details of a credit card or a signed automatic bank authority for payment of recurring monthly charges. This must be supplied prior to activation of our Service. Failure to supply either one or the other may result in our suspending or not providing the Service.

We can use any credit balance or security deposit in any of your accounts with us or use any money we owe you to cover your outstanding Charges. We may charge a reasonable account administration fee in relation to accounts we regard as being dormant or for providing statements, or for dealing with unused credit balances. Subject to those rights, we will refund any unused credit or security deposits at the end of this Agreement. We will hold any security deposit in a non-interest bearing account.

We can, at our sole discretion, impose credit limits for your use of the Services and we will try to notify you as soon as possible after such limits are imposed. You must observe any credit limits we set from time to time. We may restrict your use of the Services without prior or further notice if you exceed the credit limits we have set. However, you will continue to be liable for all charges incurred in excess of any credit limit in place.

Every person or entity named as a customer on the application form must meet all the customer's responsibilities under this Agreement.

All Services are charged at the rate which is applicable when the Service commenced.

You are responsible for all Charges until we deactivate all or any of the Services provided. Please contact Customer Services immediately you lose or damage your connection device or if it is stolen so that it can be restricted or deactivated. Deactivating the connection device does not deactivate the Service.

4. Access to your Account, the Mako System and your Information

You may choose to allow access to your information to our Agents or third parties, including initial loading of your information and advice of subsequent information to those parties. Please contact Customer Services on support@makonetworks.com with any queries or instructions you have in relation to the level of access you wish them to have and to arrange any changes. You are responsible for keeping all access codes secure.

We will be entitled to allow anyone using your access codes to request information or act on your behalf. If you give us any instructions, we may need time to verify them before we can act upon them.

5. Credit References and Provision of Related Services

You authorise us to check your credit status with any credit reference agency as we see fit from time to time and to pass on credit information about you to any credit reference agency at any time. If you are not satisfied with the information about you which we receive from any credit reference agency, you must deal directly with the credit reference agency.

If you do not give us names of any credit referees when we ask for them, or we are dissatisfied with the information regarding your credit status, we can decline your application or terminate your connection to our System or Services.

We may ask for a security deposit and/or impose other conditions upon approving your application. These may include, but are not limited to, a mandatory payment method or credit limit.

6. Consumer Guarantees Act and Limitation of Liability

You may have the benefit of statutory guarantees under the Consumer Guarantees Act 1993. Unless you use, or hold yourself out as using, our System or Services for the purpose of business, nothing in these terms and conditions will limit or exclude your rights under that Act.

Where you do use, or hold yourself out as using, our System or Services for the purpose of a business, then the Consumer Guarantees Act statutory guarantees do not apply to our System or Services and we exclude any liability of any kind (including loss of profits or revenue, loss of use, lost business or missed opportunities, wasted expenditure or savings you might have had) arising from:

- your connection to any telecommunications network;

- the supply of, or failure, interruption or delay in the supply of any of the System or Services or any part of them or any negligence in this regard;
- the fitness of all or any of the System or Services for any particular use;
- the fitness of all or any of the System or Services for any particular purpose;
- any other matter which relates to this Agreement.

7. Provision of Hardware and additional Services

If you have acquired a connection device or other accessories such as switches or cabling, from us, or from one of our Agents, all claims in relation to those products are covered by the warranty, if any, offered by the relevant manufacturer. We do not make any warranty as to the accuracy, completeness or currency of any content or material which you may access or have provided to you, using the System or Services. Where any Services are provided by a third party, we accept no responsibility or liability for their quality or the nature of their content.

8. Privacy

Mako Networks' use of your personal information is governed by this Agreement and the Mako Networks Privacy Statement, which can be accessed at www.makonetworks.com. You agree that we can collect information about you. You may ask to see personal information we have about you and ask us to correct any information that is not correct. You agree that we and our Agents may hold personal information about you, including information about your use of the Services we provide and the services provided by third parties.

To provide, maintain and improve the System and Services, we can monitor your network and store information from it.

Some personal information can be shared with other Network Operators so we can send and receive internet traffic and to monitor or investigate fraud. We may also provide your personal information to public sector agencies in order for them to investigate an offence. We may also need to give personal details to emergency services.

Subject to any rights you have under the Privacy Act 1993, we will not be liable to you, or anyone else, for:

- the content or lack of confidentiality of any Services you use;
- any disclosure that we must make by law or are requested to make by a public sector agency.

9. Suspending Services

You may discontinue your connection to our network or give up any Service at any time by notifying Customer Services at support@makonetworks.com or giving us or our Agents at least one calendar month's written notice. In this event, your connection to the System or the particular Service will be disconnected one calendar month after receiving your notice and this shall be the date of disconnection. If you request us to, or we elect to, disconnect your connection to the Services, you must pay us in full for:

- any early termination charges (if they apply);
- all Charges incurred until the date of disconnection; and
- any outstanding Charges and other moneys payable by you for the Services. We can suspend or restrict use of any or all of the Services or disconnect your connection without telling you if:
- you do not pay any outstanding monies owed to us by the due date;
- you exceed any credit limit in place;

- you become (or are likely to become) insolvent, bankrupt or when you are or might be a poor credit risk;
 - a receiver, manager and receiver, an administrator appointed under a voluntary administration, or statutory manager is appointed over any or all of your assets;
 - a resolution for liquidation is proposed or passed or proceedings to liquidate you are filed or presented;
 - you die or, in the case of a partnership, it is or is intended to be dissolved;
 - you do not remain connected to the System or Services for more than 30 days;
 - you do not keep to the terms and conditions in this Agreement;
 - you use the System or Services for abusive, offensive, malicious or nuisance communications (including the transmission of spam);
 - you use any of the System or Services in an offensive way;
 - you are abusive or offensive to us, our dealers or Agents, or any other person;
 - we suspect you of using the connection device or the Services for any illegal or fraudulent activity;
- all of the Services are permanently or temporarily (for any reason) unavailable to you. If we suspend or restrict use of any or all of the Services in terms of the above, all Charges for any Services will be payable by you in accordance with this Agreement.

10. Transferring Responsibilities

We may transfer to someone else the whole of this Agreement and/or any interest in the System or Services.

Your interests in this Agreement are personal to you and you may not transfer or on-sell the Agreement or any benefit or obligation under it to any person without our prior consent. If you are a company and your effective management or control is changed in any way, we may treat this as a transfer of this Agreement entitling us to end it.

You must pay any costs in respect of recording any transfer to which we consent (including our costs for checking the creditworthiness of the transferee). Mako Networks normal credit criteria will apply to any proposed transferee.

11. Ending this Agreement

Notwithstanding any other clause in this Agreement, we can deactivate your connection to our System or Services:

- if any of your licences to operate our network is ended or suspended; or
- for any other reason we believe that it is appropriate to do so;

and in either case you will only have to pay any outstanding Charges incurred up to and including the time of disconnection.

12. Rights and Responsibilities that Continue

Ending this Agreement does not affect any of the rights or responsibilities which are intended to continue or to come into existence after this Agreement ends including (without limitation) any obligation you may have to:

- pay any outstanding charges;

- pay any early termination charges; and
- return any equipment you have on loan from us or any of our Agents.

13. Network Operators and Other Suppliers

We have certain obligations towards other Network Operators and our suppliers. Those persons (and their officers, employees, contractors and agents) will not be liable to you or anyone else for any claims, costs, damages, losses or other liabilities of any kind whatsoever from the Services we provide or from your use of those Services and our network, including (without limitation) your access to use of any Network Operator's networks. This paragraph creates an obligation that other Network Operators and/or the suppliers can enforce, whether as a defence or otherwise.

14. Notices and Variations of Charges and Terms

We will send you notices and other documentation to the last known address, fax number or email address you have given us. We may elect to send you a text message or leave a voice message on your mobile phone number you have given us directing you to contact our Customer Services or visit our website.

We reserve the right to increase/decrease or remove any of our charges and/or benefits from time to time and/or introduce new charges from time to time. If we increase our charges or introduce new charges, we will give you not less than 14 days prior notice.

We may amend or replace these terms and conditions from time to time.

The amended or replaced terms and conditions will then apply to the Services. We will tell you about this by posting the amended or replaced terms and conditions on our website. Please check this regularly. You will be bound by the amended or replaced terms and conditions even if you are unaware of the amendments or replaced terms and conditions. If you are in any doubt as to the current terms and conditions that apply to the Services please visit our website www.makonetworks.com. Please ask Customer Services on support@makonetworks.com at any time for a free copy of our current terms and conditions.

15. Administration Charges

Where you require us to provide you with technical support, or administration services (including, as applicable, but not limited to configuration assistance, system diagnostics, service suspension, supply of duplicate accounting information, supply of archived information), we may charge you for the costs we incur in carrying out these services. If you require prior notification of our current charges please contact Customer Services.

16. Insurance

It is your responsibility to insure any hardware associated with the System or Service for its replacement value (including cover against charges for data transfer if it is lost or stolen). You will be required to pay for all Charges up to the time you notify us of the loss or theft and your connection device is deactivated. If you are uninsured and/or choose not to replace any hardware, you will be liable for the Charges.

17. New Zealand Law

This Agreement is governed by the laws of New Zealand and you submit to the jurisdiction of the New Zealand courts.

18. Waiver

If we fail or delay to exercise any right or power under this Agreement, this will not be a waiver of that right or power. Any failure or delay will not prevent us from exercising that right or power in the future.

19. Disputes

If you have any dispute with us or our Services, please refer that dispute, initially, to Customer Services. If Customer Services are unable to resolve your concerns the matter will be escalated to the Customer Operations Support Manager or equivalent.

20. Force Majeure

We will not be liable for any delay or failure of the System or Services or for any loss or damage from such delay or failure to the extent that it was caused, in whole or part, by an act of God, war, terrorism, civil disobedience, riots, strike, industrial stoppage or unrest, fire, volcanic eruption, earthquake, shortage of suitable labour, materials, equipment or energy or any other event beyond our control.

21. Agents of Mako Networks

We shall be entitled to subcontract or delegate the performance of any of our rights or obligations under this Agreement but any such subcontracting or delegation will not relieve us from liability for performance of any such obligation. Without limiting this, we may appoint an agent to provide billing services (including credit checking and control), and customer services.

Invoices issued by our Agent will be binding on you and payment of those invoices in full to our Agent will be a valid discharge of your liability to pay those invoices under this Agreement.

Any connection device supplied to you by our Agent has been supplied by our Agent acting in its own right and not as Agent of Mako Networks. Mako Networks accepts no responsibility for any matters relating to any non-system hardware supplied by our Agent;

Our Agents can enforce those obligations expressed to be for their benefit in accordance with the Contracts (Privity) Act 1982.

We shall be entitled to discontinue the use of any Agent at any time and resume directly any of our rights or obligations directly with you by giving 30 days notice. In the event of such notice being given you will be directed to contact Customer Services to ensure seamless operations of the System and Services. All monies payable from the date of issuance of our advice will be need to paid directly to us.