



Mellow Marsh Software Ltd.

341 Stroud Avenue

Willenhall

West Midlands

WV12 4TL

Phone: +44 (0) 845 8682656 or

+44 (0) 7929 339104

E-mail: admin@mellowms.co.uk

Web: <http://www.mellowms.co.uk>

Policy

Date: 11 Feb. 07

Ref.: ADSL-TC

Mellow Marsh Software Broadband Terms and Conditions of Service

Definitions

In these Conditions:

- 1.1** "Mellow Marsh Software" or "we" means Mellow Marsh Software Ltd (Company No. 4221216)
- 1.2** "the Customer" or "you" means the party subscribing for and/or using the Service;
- 1.3** "the Service" or "the Services" means those broadband services described on the website <http://www.mellowms.co.uk>;
- 1.4** "Agreement" means an agreement for provision of the Service incorporating these Conditions;
- 1.5** "Content" shall mean applications, data, information, video, graphics, sound, music, photographs, software or other material which we provide as ancillary to the Service.

Supply of the Service

- 2.1 General** Mellow Marsh Software shall provide the Service to you in accordance with and subject to the provisions of these Conditions (and in particular subject to the conditions and limitations described in Clause 4).
- 2.2 Upgrades and other changes** We reserve the right to: upgrade, add to, or improve the Service (at no extra charge to you during the payment period during which this change occurs); make other amendment, variation or modification to the Service (subject to there being no material detriment suffered by you as a result).
- 2.3 Operational faults** We agree to use reasonable efforts to remedy any reported operational faults in relation to the Service as soon as reasonably possible, but cannot guarantee to maintain uninterrupted availability of the Service.
- 2.4 Additions** If you require any variations or additions to the Service, then these will need to be specifically agreed in writing between you and us (with additional fees to be paid as appropriate).
- 2.5 Regrades** You may request to regrade the Service once the installation is complete (a successful regrade will be subject to a positive line test result).
- 2.6 Inbound Migration** If you order a Service with a speed your line cannot support, your migration order will fail and you will need to re-order a Service with a lower speed and supply us with a new MAC code from your current service provider. Once you supply us with that new MAC number we will retry at the next best possible speed. If you Migrate to us with an Engineer Installed Service this will be modified to the Wires Only Service ordered at the time of subscribing. Any equipment that was originally installed by a BT Engineer will have to be returned to BT on their request. The Service Specific Front Plate will remain (if installed when the original service was provided) and you will only be able to use your ADSL service from this point, you will not require a microfilter either as these are inbuilt into the SSFP.

Duration

- 3.1 General** The Agreement for provision of the Service shall last for the period during which relevant fees are paid by you, subject to the rights of termination in Clause 16 and as otherwise set out in these Conditions. Fees shall be payable on either a monthly or annual basis and the Agreement shall operate on either a monthly or an annual basis dependent on the Service subscribed to.

3.2 Temporary suspension We shall have the right to temporarily suspend the Service for operational purposes (such as repairs, maintenance, or installation of upgrades), but will endeavour to provide as much notice as possible of any such suspension.

3.3 Extended period of suspension We shall not be responsible for any inconvenience, wasted expenditure, loss of goodwill or reputation, loss of opportunity or financial loss caused as a result of a suspension under Clause 3.2, but if such suspension continues for more than 14 days then you shall be entitled to terminate the Agreement by notice in writing to us.

3.4 Commencement In relation to Customers who are consumers or who otherwise possess a legal right to cancel this Agreement, we reserve the right not to provide or connect the Service or to supply any equipment necessary for the connection of the Service until after the expiry of any relevant statutory cancellation period.

Your use of the Service

4.1 Prohibited uses You agree that neither you nor any person using the Service with your permission shall use the Service: for any fraudulent, criminal or unlawful purpose; to send unsolicited advertising or promotional material (or to engage in any "spamming" activity); to transmit any virus, worm, trojan horse or other harmful material; for the purpose of intimidating, harassing or causing annoyance to any third party; for an unethical purpose or in an unethical manner; to hack, probe, denial of service attack or attempt to gain unauthorised access to any system.

4.2 No infringing or offensive use You further agree that neither you nor any person using the Service with your permission shall use the Service to send, receive, download, or place upon any website hosted by us any material which is obscene, offensive, defamatory, unlawful, or infringes the intellectual property or other rights of any third party.

4.3 Acceptable Use Policy You also agree to abide by the rules and guidelines set out in the Mellow Marsh Software Acceptable Use Policy (as available and amended from time to time).

Security

5.1 Passwords & security Your username and password details to authenticate onto our network will not be supplied to you at any point. This is the reason why we configure your equipment for you, or supply pre-configured equipment. If you suspect your equipment has been accessed and the username and or password discovered, you must notify us instantly to arrange a change of security details.

5.2 Responsibility for loss We accept no responsibility for any loss caused to you as a result of any breach of security or misuse of any password or username by any third party.

5.3 Emergency measures We reserve the right for security reasons to suspend connection to the Service and/or to change any nominated password or username (and we shall have no responsibility for any inconvenience, wasted expenditure, loss of opportunity, loss of goodwill or reputation or financial loss caused as a result).

Connection to the Service

6.1 Pre-requisites and equipment You acknowledge and agree that the following technical pre-requisites shall apply, including in particular the line requirements: a standard copper BT analogue single telephone line; an ADSL enabled exchange; successful completion of telephone line test and survey for ADSL suitability, and technical compatibility with ADSL requirements; (if applicable) appropriate installation of suitable equipment needed for the use of the Service; (in relation to consumers), for safety purposes, the equipment shall bear the European Consumer Equipment Standards "CE" mark; (in relation to business users), where Mellow Marsh Software so requires, its approval of the connection equipment to be used or intended to be used by the Customer; (for consumers) the expiry of any statutory cancellation period; the activation of the Service. It is your responsibility to ensure that you have the appropriate equipment to connect to and use the Service. We accept no responsibility if the Service cannot be accessed or used (temporarily or otherwise) as a result of inappropriate or defective equipment provided by you.

6.2 Dates Any date or period for connection of the Service specified by us shall be an estimate only and time shall not be of the essence in relation to such time or period.

6.3 Delays Mellow Marsh Software accepts no responsibility for any inconvenience, wasted expenditure, loss of goodwill or reputation, loss of opportunity, or financial loss caused or suffered by any delay in the connection of the Service (save that there shall be an appropriate refund in the amount of any periodic fee payable by the Customer for the use of the Service under this Agreement if there shall be any delay in the anticipated date of connection of the Service caused as a result of the fault of the Company).

Supply of Software

7.1 General We may provide you with software to enable you to access the Service or make enhanced use of the Service.

7.2 General You agree: not to copy or modify the Software (otherwise than as may be necessary to access the Service); and not to access the Service in an alternative way or in circumvention of any security measures contained in the Software (save where you have our written consent to do so).

7.3 Licence We grant to you for the duration of the Agreement a non-exclusive non-transferable licence to use the Software for the purposes of use of the Service. Such licence shall be subject to such terms as are brought to your attention prior to your use of the Software, and shall be suspended during any period of suspension of the Service.

7.4 Special provision of equipment Any equipment supplied by us to you shall be subject to a separate agreement between us and you, upon the basis of agreed terms and conditions for such supply (as may be set out on the Mellow Marsh Software website).

Content supplied by us

8.1 Use of Content Content may only be used by you for your own private use (or as otherwise expressly agreed in writing by us). Content is used by Customers at their own risk, and we accept no responsibility for any accuracy, completeness or adequacy in relation to the same.

8.2 Restrictions You further agree: to respect the intellectual property rights in relation to the Content; not to copy, store, transmit, distribute externally, or modify, adapt or alter the Content.

8.3 Other terms You agree that any use by you of Content shall be subject to any separate terms and conditions upon which the content is provided. These may be displayed online or elsewhere.

Internet and telecommunication costs

9.1 Internet availability We accept no responsibility for the functioning of the Internet or any other service, which is accessed by you through the use of the Service, and accept no responsibility for any transaction or other activity undertaken by you through the use of the Internet, or other service provided to you through the use of the Service.

9.2 Telecommunications costs We shall have no responsibility for the telecommunications or other costs incurred by you through the use of the internet or any other service which you may access through the use of the Service.

Equipment

10.1 General Where you order them in the course of signing up for the Service we may also provide you with additional equipment (e.g. modems, routers, microfilters) or services (e.g. domain name registration, extra IP addresses). When you order these the price for them will be added to the fees specified, and the terms in Clauses 10.2 and 10.3 will apply.

10.2 Equipment Will be supplied subject to the manufacturers terms and conditions.

10.3 Domain names Registration of any .uk domain name will be subject to the Nominet registration terms at www.nominet.org.uk/nominet-terms.html, and registration of any other top level domain name will be subject to the ICANN registration terms and Uniform Domain-Name Dispute-Resolution Policy at www.icann.org/udrp.

Fees Payable

11.1 General You agree to pay the fees for the use of the Service as specified.

11.2 Periodic fees Periodic user fees for the Service shall be payable computed from the date of entering into the Agreement.

11.3 Increases We shall have the right to increase any periodic fees by at least 28 days advance notice to you prior to the relevant renewal date.

11.4 VAT Unless otherwise stated all fees shall be exclusive of value added tax, which (where due) shall also be payable by you. All fees shall be paid in pounds sterling.

Payment

12.1 Date for payment The fees (and any relevant VAT) shall be payable on the date of entering into the Agreement.

12.2 No waiver for Customer delay The periodic fee payable under this Agreement shall be payable as from the date of our acceptance of your order, even though you have not as of yet obtained appropriate equipment to connect to and use the Service.

12.3 Rebate due to our delay We may in our discretion rebate part of the periodic fees to you in relation to an internet connection Service, if (due to our fault) connection of such Service does not occur within 10 working days from the date of entering into the Agreement

Liability

13.1 Death, personal injury & other matters Nothing in these Conditions shall exclude or limit our liability for death or personal injury caused by our negligence or exclude or limit our liability for fraudulent misrepresentation, and nothing in this Clause shall affect the statutory rights of consumers which cannot be limited.

13.2 General loss Subject to Clause 13.1 and to clause 13.3, Mellow Marsh Softwares liability under the Agreement shall be limited so far as permitted by law to the amounts paid or payable by you under the Agreement.

13.3 Loss of or damage to property In respect of damage to tangible property caused by negligence (and in respect of any other matters to the extent that Clause 13.2 is not effective) Mellow Marsh Softwares liability for any breach of contract, statutory duty, or other obligation on its part shall, subject to Clause 13.1, not exceed one million pounds (£1,000,000).

13.4 Consequential loss To the extent permitted by law, Mellow Marsh Software shall not be liable under the Agreement for: any indirect or consequential loss; any loss of profits or revenue; any loss of goodwill, reputation or opportunity; any loss of or corruption of data.

13.5 Higher limitation The limitations in this Clause are based upon Mellow Marsh Softwares available insurance cover and other relevant matters. If you wish Mellow Marsh Software to accept legal responsibility for a higher amount this can be effected by specific agreement of the parties, upon your paying agreed additional fees for the higher liability.

Removal Rights

14.1 Rights of removal We shall be entitled to remove any material posted by you to any computer under our control which in our reasonable opinion is likely to infringe the intellectual property or other rights of any third party or which is otherwise unlawful.

14.2 Vetting You acknowledge that we shall be under no responsibility or obligation to validate or vet (for usability, legality, content or correctness) any material communicated by you or hosted by us through the use of the Service.

14.3 Indemnity You agree to indemnify us (and any officer, consultant, agent or employee of ours) in respect of any third party claims made against us (or any such officer, consultant, agent or employee) resulting from any use or misuse of the Service by you (or by any employee, agent, consultant or officer of yours, or any other party using the Service with your permission). The indemnity shall extend to any legal, professional and other costs incurred in defending any such claim, and any monies paid to the claimant by way of settlement of any such claim.

Access to premises

15.1 Access If we reasonably so require, you shall provide access to the premises from where the Service is being accessed. Access may be required for (but not limited to), for the purposes of the connection of the Service, repairs, maintenance, upgrades, or to investigate any actual or potential breach of this Agreement.

15.2 Access not available If an engineer is booked to investigate a fault but no access is available then fees will be due for the engineer call out.

15.3 End User Equipment If an engineer is booked to investigate a fault and no fault is found on the line then fees will be due for the engineer call out.

Termination

16.1 Termination on notice Either Mellow Marsh Software or the Customer may terminate the Agreement at any time by service of notice in writing upon the other party, such notice to take effect at the end of the current payment period. Upon termination of the Agreement under this Clause, we shall refund to you an appropriate portion of any periodic fees paid by you for the use of the Service. Where a Customer has paid for a full year in-advance and is on a Monthly contract and terminates before the paid year has completed then the refund will apply for those full months of paid Service not received.

16.3 Termination for breach We shall be entitled to terminate the Agreement without the need to give any notice in writing to you upon the occurrence of any one or more of the following events: breach by you of any provision under the Agreement; non payment of any fees due from you to us under the Agreement.

16.4 Insolvency We shall be entitled to terminate the Agreement without the need to give any notice in writing to you upon the occurrence of any insolvency action or procedure being commenced or implemented in relation to you.

16.5 Termination due to BT telephone line contract We shall be entitled to terminate the Agreement without the need to give any notice in writing to you upon the occurrence of any change of your BT contract details of the underlying telephone line upon which the service is provided including: change of ownership, name, address, location, or service on the BT contract; stop of the telephone line for any reason by either you or BT.

16.6 Termination due to Outbound Migration An Outbound Migration constitutes a termination of the Agreement and will be initiated once a MAC Code has been presented to another Service Provider and shall occur on the date provided by the gaining Service Provider.

The full 12 months balance will become due on Services with an Annual Contract and must be settled in full either via cheque or debit/credit card prior to a MAC code being issued.

16.7 Other events We shall be entitled to terminate the Agreement without the need to give any notice in writing to you upon the occurrence of any one or more of the following events: if we in our opinion believe that termination of the Service is necessary to protect our goodwill or reputation and/or of our services or products (or necessary to protect the service provided by us to other users); if we in our opinion believe that you are in breach of the provisions of Clause 3 or Clause 4 of these Conditions; the receipt by us of any complaint, letter before action, or proceedings by any third party in relation to the manner of your use of the Service, or the content of any material published by you through the use of the Service.

Consequences of Termination

17.1 General The Service shall cease to be provided as from the point in time of termination of this Agreement.

17.2 Return or removal of items Immediately on termination you shall: return to us all equipment, manuals, software, CD-ROM, other storage media, property, documents or information provided by us on loan or hire to enable you to access the Service (and for this purpose shall provide access to us or our representatives or agents to any premises where any such items may be located); remove or arrange for the removal from any computer in your possession custody power or control, of any software provided by us for the use of the Service.

17.3 Notification of termination If we terminate the Agreement under Clauses 16.3, 16.4 or 16.5 above: we shall endeavour as soon as reasonably practicable to give notice of such termination by email to you; we shall not be liable to refund any fees paid or payable by you, and any claims, rights of action, and rights of indemnity we have shall continue to subsist.

17.4 Prior rights Termination of the Agreement shall not affect any rights or claims available to the parties under the Agreement, and in particular any fees due to us from you shall continue to be payable (subject to time apportioned rebate of periodic fees under Clause 16.1), and any indemnity provided to us by you shall continue in operation.

Suspension of Service

18.1 Right to suspend In addition to the right of termination in Clause 16, we shall have the right to suspend the Service without notice on the occurrence of any of the events specific in Clause 16.3, 16.4 or 16.5.

18.2 Consequences of suspension If we exercise the right to suspend the Service in Clause 18.1: we will provide you with notice in writing as soon as reasonably practicable after suspending the service under Clause 18.1; the Agreement shall continue to subsist during the period of suspension, and we shall not be liable to repay any fees paid or payable by you during the period of suspension; we may following such suspension subsequently terminate this Agreement under Clause 16 of the Agreement.

18.3 Notice of re-commencement We will provide notice in writing to you if we shall (in our absolute discretion) decide to end any suspension of the Service.

Miscellaneous

19.1 Headings The headings to the clauses of these Conditions, and headings to other parts are included for ease of reference only and shall not affect the interpretation of these Conditions.

19.2 Assignment You shall not without our prior consent (which consent we may withhold at our absolute discretion) assign, transfer, or sublicense the Agreement or any of the benefits to be provided by us under this Agreement, or permit any third party to use the Service.

19.3 Notices All notices to be given under the Agreement must be in writing in English. Notices to Mellow Marsh Software may be served upon our postal address. Notices to Mellow Marsh Software shall not be effective unless physically received by us. Notices upon the Customer may be served upon your last known home, business, or e-mail address as known to us. Notices to you shall be deemed to have been received by you when the relevant notice ought to have been received by you in ordinary course through the use of the relevant means of transmission

19.4 Force Majeure We shall have no liability if we are unable to provide or connect the Service or if the continuation of the Service is interrupted or withdrawn due to any cause beyond our reasonable control, including (but not limited to) actions of third parties, civil unrest, industrial action, fire, inclement weather, and national emergency.

19.5 Variation of Agreement We shall be entitled to vary this Agreement upon the giving of 28 days notice in writing to you.

19.6 Waiver Any failure or delay by us in exercising any of our rights under the Agreement, will not constitute a waiver of that right, or prevent the future exercise of such right.

19.7 Third party rights Save in respect of Clause 14.3, the parties do not intend any term of this Agreement to be enforceable by any third party pursuant to the provisions of the Contracts (Rights of Third Parties) Act 1999

19.8 Severability If any Clause or part of these Conditions is found to be unlawful or unenforceable in whole or in part, then that provision shall be deemed to be severable from the remaining provisions and shall not affect their validity or enforceability

19.9 Governing law The Agreement will be governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.