

@SEMAIL Service TERMS AND CONDITIONS

MARLINK, SA. (hereinafter called Marlink)
Rue de Stallestraat 140
1180 Brussels, Belgium

These Terms and Conditions apply to the Registration Form: @seamail Service Subscription and, together with the Registration Form, as fully executed by the Parties, constitute the Agreement between the Parties.

1 DEFINITIONS

Unless the context otherwise requires, the following terms shall have the meanings set forth below:

“**Agreement**” means:

- (i) the Registration Form: @SEmail Service Subscription signed by the Customer and Marlink; and
- (ii) the Terms and Conditions.

“**Business Day**”: Means any day excluding Saturdays and Sundays and Belgian public holidays

“**Charges** “ ; means charged Costs incurred by the Customer in terms of Tariff in respect to Service(s). Charges shall be payable to Marlink in accordance with Tariff for, without limitation, action and re-activation Costs, periodical base and special fees and communication cost (billable airtime billed by Land Earth Station operator).

“**Customer**” means the legal entity ordering Services from Marlink as specified in the Registration Form.

“**Effective Date**” means the date that both Parties have signed the Registration Form.

“**Fees**”: means @SEmail subscription fee as set specified in the Registration Form “@SEmail Service Subscription.

“**Land Earth Station (LES)** “; means the ground segment service and switching facilities owned and operated by a LESO, and utilized by Marlink as necessary to fulfill the rebilling services.

“**Land Earth Station Operator**”: means an operator of a Land Earth Station, also herein after referred to as LESO.

“**Master**”: means the person with the authority of the Radio Communication Services on board each vessel.

“**Marlink**”: means Marlink SA.

“**Instructions**” or “**Operating instructions**” ; means instructions concerning the use of the Service, supplied by Marlink to the Customer from time-to-time in whatever form.

“**Mobile Earth Station (MES)**” means the mobile terminal notified to Marlink and which conforms to the criteria and performance standards approved by the space segment supplier for the Radio Communication Services and which has been type-approved and commissioned by the space segment supplier.

“**Party**” means Marlink or the Customer, individually, and

“**Parties**” means Marlink and the Customer.

“**Registration Form**”: means the @SEmail Service Subscription.

“**Services**” means the satellite or other radio communication services, @SEmail service, Traffic accounting services, airtime services, calling card services, or any other service that Marlink accepts to provide to the Customer under the terms of this or other Marlink Agreements.

“**Service Provider**” means the Administration/Recognized Operating Agency who provides the communication service to/from Radio Stations.

“**Software**”: means the computer programs, applications, and code developed, provided or sold by Marlink for use with a computer or M.E.S.

“**Tariff**”: means the then current publicly published costs of using a service issued by a public network operator.

“**Terms and Conditions**” means Marlink’s @SEmail Service Subscription Terms and Conditions.

“**Vessel**” means the Customer-designated ship/vessel specified in the Registration Form: @SEmail Service Subscription.

Headings are inserted for convenience only and shall not affect the interpretation.

Words in the singular include the plural and vice versa.

2. SCOPE OF SERVICE

- 2.1 Marlink will provide Services to the Customer on the terms and conditions of the Agreement.
- 2.2 Service will be provided to the Customer who subscribed.
- 2.3 The Service(s) shall be provided to only those MES terminals as mentioned on the Registration Form.
- 2.4 Marlink reserves the right to modify, at any time and without notice, the Service(s) as requested or imposed by any authority or circumstances reasonably justifying such modification.

3 MARLINK’S RESPONSIBILITIES AND RIGHTS

- 3.1 Marlink’s responsibilities under this Agreement shall be as follows:
 - 3.1.1 Marlink will provide the Customer with access to the @SEmail Service. Operating instructions will be provided by Marlink which have to be followed by recipients.
 - 3.1.2 Marlink shall bear no responsibility or liability whatsoever for the acts, omissions, or negligence of the Customer.
- 3.2 Marlink’s rights under this Agreement shall be as follows:
 - 3.2.1 In event of any breach of the Customer’s responsibilities in Clause 4 below, Marlink shall have the right to terminate the Agreement immediately and discontinue the provision of Services to the Customer.
 - 3.2.2 Marlink shall have the right to payment in accordance with Clause 5.
 - 3.2.3 Marlink reserves the right to require a deposit/guarantee/letter of credit, as described in Clause 5.1.4.
 - 3.2.4 Marlink reserves the right to modify the Terms and Conditions.
 - 3.2.5 Marlink reserves the right to change the Fees and charges set forth in the Registration form; @SEmail Service Subscription upon thirty (30) calendar days prior written notice to the customer.

4 THE CUSTOMER’S RESPONSIBILITIES AND RIGHTS

- 4.1 The Customer’s responsibilities under this Agreement shall be as follows:
 - 4.1.1 The Customer shall comply with the Agreement and with all applicable laws, rules and regulations governing its activities. It shall be the sole responsibility of the Customer to secure and maintain all governmental licenses, permits and approvals required in connection with the installation, operation, and/or use of the Customer’s Mobile Earth Stations in any jurisdiction. It shall also be the responsibility of the Customer to install and maintain and configure all Mobile Earth Stations such that they continue to meet the system requirements of both Marlink and the equipment manufacturer.
 - 4.1.2 The Customer assumes all responsibility whatsoever for the acts or negligence of itself and its Vessels and users of Mobile Earth Stations.
 - 4.1.3 If the Customer detects fraud, the Customer is obliged to take possible steps to reject the fraud and to notify Marlink in writing immediately, but in any case no later than thirty (30) calendar days after the invoice date.
 - 4.1.4 The Customer shall pay Marlink for the Services in accordance with the provisions set forth in Clause 5.
 - 4.1.5 The Customer shall notify Marlink immediately in writing of the disposal of any Vessel, including but not limited to any sale, loss or constructive total loss.
 - 4.1.6 The Customer shall use the Services provided for lawful purposes only.
- 4.2 The Customer’s rights under this Agreement shall be as follows:
 - 4.2.1 The Customer shall have the right to receive the Services according to the terms and conditions under this Agreement.

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5 INVOICES AND PAYMENT

- 5.1 Rates and fees
- 5.1.1. All rates and Fees are set forth in the Registration Form:
- 5.1.2. Marlink may change the rates and Fees set forth in the Registration Form: @seamail Service Subscription upon thirty (30) calendar days prior written notice to the Customer.
- 5.1.3. Any banking fees must be settled by the Customer.
- 5.1.4. Marlink reserves the right to require the Customer to pay a deposit amount as a reasonable estimate to ensure payment of Services provided for by this Agreement.
- 5.1.5. For the avoidance of doubt, it is the Customer's sole responsibility to ensure that all Mobile Earth Stations, other equipment, computers, and/or networks are properly configured for the service that Customer intends to utilize. Marlink shall not under any circumstances abate or refund charges arising from the fact that, or on the basis of Customer claims that, Mobile Earth Stations, other equipment, computers, and/or networks were not properly configured at the time charges were accrued.
- 5.2 Invoices and payments
- 5.2.1. Marlink shall invoice the Customer, on a monthly basis, all rates and fees due under this Agreement.
- 5.2.2. The Customer shall pay all invoices within thirty (30) calendar days from the date of the invoice. Payments shall contain a reference to the relevant invoice. Payments received by Marlink without the specified reference will be applied to the earliest outstanding amounts due.
- 5.2.3. The Customer shall be liable for payment of interest on any overdue outstanding balances at the rate of 1% per month.
- 5.2.4. Even if an invoice is disputed, the Customer must pay the invoice within the due date and must notify Marlink in writing of the dispute, together with the legal basis for such dispute, within thirty (30) calendar days after the invoice due date.

6. FORCE MAJEURE

- 6.1 Except for the Customer's obligations under Clause 4, neither Party will be liable to the other if it is unable to perform any obligation specified in the Agreement because of a matter beyond its reasonable control (a "Force Majeure Event") including, but not limited to:
- Acts of God (for example, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions), peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or by law), martial law, fire, explosion, power shortage, strike or other labor difficulty (whether or not involving Marlink employees), epidemic, quarantine, radiation or radioactive contamination; and
 - Action or inaction of any government or other competent authority (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order
- 6.2 Any form of static interference, maintenance of the communication network of any L.E.S.O.
- 6.3 The Party unable to perform its obligation under the Agreement as the result of a Force Majeure Event shall promptly notify the other Party thereof and shall use all

commercially reasonable efforts to avoid or remove such cause of non-performance. In the event that a Force Majeure Event continues for a period of at least thirty (30) consecutive calendar days, either Party shall have the right to terminate the Agreement.

- 6.4 Notwithstanding the foregoing, a Party may not assert the occurrence of a Force Majeure Event in any instance in which, prior to the execution of the Registration Form: @seamail Service Subscription, the Party knew of the occurrence or potential occurrence of such event, and the Party failed to notify the other Party of such occurrence or potential occurrence.

For purposes of this Clause 7, the Parties acknowledge an existing potential for an act of terrorism but further acknowledge and agree that an actual occurrence of an act of terrorism shall not preclude the assertion of a Force Majeure Event hereunder.

7. LIMITATION OF LIABILITY AND INDEMNIFICATION

- 7.1 Marlink shall not be liable to the Customer or any third party for any loss or damage sustained by reason of any act or omission of the Customer. The Customer shall indemnify and save Marlink harmless from all such liability, and shall protect and defend Marlink against any claims, action, damage, or expense alleging such liability, and shall pay all expenses and satisfy all judgments, which may be incurred by or rendered against Marlink in connection therewith.
- 7.2 Marlink shall not be liable to the Customer for any direct damages incurred by the Customer in connection with, or arising out of Marlink's provision of Services under this Agreement except to the extent that such damages are the direct result of Marlink's gross negligence or willful misconduct in the performance of its obligations hereunder.
- 7.3 In no event shall Marlink be liable to the Customer or any third party for any indirect, special, punitive, incidental, or consequential damages or loss (including loss of revenue, profits, goodwill, or anticipated savings) arising out of or under this Agreement, whether under contract, warranty, or tort, nor for any damages to data, information or other content transmitted in the course of execution and performance under this Agreement.
- 7.4 Marlink shall not be responsible for malfunctions or interruptions in the supply of the Services to be provided under this Agreement to the extent that any such malfunction or interruption is caused by:
- i. The actions of the Customer; or
 - ii. The actions of a third party; or
 - iii. The occurrence of a Force Majeure Event.
- 7.5 The provision of the Services is dependent upon the availability of the telecommunication network of the LESO's and the terrestrial networks, over which Marlink has no control. Therefore, Marlink shall not be liable for any damages resulting from (temporary) limitations of the telecommunication network of the LESO's and the terrestrial networks or any other unavailability, delay, outage, interruption, disruption, degradation, failure or break down of this network nor for any damages resulting from the incorrect or disturbed transfer of data through the telecommunication network.
- 7.6 Marlink shall not be liable for any charges due to incorrect settings of communication devices.

8 COMMENCEMENT AND DURATION OF SERVICE

This Agreement shall come into force on the Effective Date and shall continue on a yearly basis until it is terminated pursuant to the provisions of Clause 9, "Termination."

9 TERMINATION

- 9.1 In the event that a Vessel is disposed of in whatever way, the Agreement shall be considered terminated with regard to the disposed Vessel as from the date of disposal of the Vessel,

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provided, however, Customer shall notify Marlink in writing ten (10) working days prior to any disposal of a Vessel.

9.2 Termination for Convenience

Either Party may terminate the Agreement by providing the other Party with written notice no less than thirty (30) calendar days prior to the effective date of such termination.

9.3 Termination for Cause

In addition to its rights to terminate the Agreement pursuant to the provisions of Clause 3.2.1 Marlink shall have the right to terminate the Agreement upon thirty (30) calendar days written notice to the Customer upon the occurrence of any one of the events specified below ("Events of Default") unless the Customer shall have cured the Event of Default within the cure period (if any) as indicated. If the Customer fails to cure a default within the specific cure period, Marlink shall have the right to terminate the Agreement at any time following such period. In lieu of a termination hereunder, Marlink may at its sole discretion suspend the Services for all or any of the Vessels and Mobile Earth Station. If the conditions of Clause 9.3.4 apply, such suspension may have immediate effect.

9.3.1 The Customer breaches any of its responsibilities under Clause 4.

9.3.2 The Customer fails to make payment of any sum due and owing to Marlink and such failure continues for a period of fourteen (14) calendar days from the date of Marlink's written notice of the failure to the Customer; or

9.3.3 The Customer has performed its responsibilities under this Agreement in a manner that, at Marlink's sole discretion, will have an adverse effect on the reputation of Marlink as a quality supplier of the Services; or

9.3.4 The Customer

- (i) files a voluntary petition in bankruptcy or is adjudicated as bankrupt or insolvent, or files a petition or answer seeking reorganization, liquidation or similar relief for itself under any applicable statute, law or regulation, or
- (ii) has been appointed a trustee, receiver or liquidator for a substantial part of its properties, or
- (iii) makes a general assignment for the benefit of creditors, or
- (iv) admits in writing its inability to pay its debts generally as they become due

9.3.5 An involuntary petition is filed against the Customer seeking a reorganization, liquidation or similar relief under any applicable statute, law or regulation, and either

- (i) such petition is not dismissed or suspended after sixty (60) calendar days (whether or not consecutive), or
- (ii) an order for relief in respect of such petition is entered; or, if any trustee, receiver or liquidator has been appointed for the Customer and such appointment is not dismissed or suspended after sixty (60) calendar days (whether or not consecutive).

9.4 Termination for Force Majeure Event

The Agreement may be terminated upon the occurrence of a Force Majeure Event in accordance with the provisions of Clause 7 above.

9.5 Obligations upon expiration or termination of the Agreement

9.5.1 Upon expiration or termination of this Agreement, Marlink shall not be obligated to provide Services hereunder. Termination or expiration of this Agreement in accordance with its terms shall not release the Parties from any liability which, at the time of termination or expiration, has already accrued or which thereafter may accrue in respect of any act or omission of a Party prior to such termination or expiration, or from any obligation which is expressly stated in the Agreement to survive termination or expiration.

9.5.2 The Customer shall be obligated for all rates accrued as of the date of termination or expiration, or such later date

in accordance with Clause 12.1, and all charges shall be due and payable within thirty (30) calendar days thereof, unless earlier due pursuant to the terms of this Agreement.

9.5.3 The termination of this Agreement for whatever reason shall be without prejudice to any rights or liabilities, which have accrued to the other Party under the Agreement.

10 WAIVER

10.1 A Party's waiver, expressed or implied, of any of its rights hereunder or of the other Party's failure to perform or breach of its obligations herein shall not constitute or be deemed a waiver of any other right it may have or of any other failure or breach by the other Party.

11 GOVERNING LAW AND DISPUTES

11.1 The Agreement shall be governed and construed in accordance with the laws of Belgium.

11.2 Any dispute which may arise out of the Agreement, and which cannot be resolved in discussion or negotiation between the Parties within sixty (60) calendar days after the date that the dispute has arisen, shall be adjudicated in the state or federal courts of Brussels, Belgium, unless the Parties agree on arbitration. Party hereby submits to the personal jurisdiction of such courts for the enforcement of this Agreement.

11.3 Notwithstanding the prior paragraph, Marlink is entitled to initiate legal proceedings within any other jurisdiction in which proceedings may lawfully be taken against the Customer or the guarantor (if applicable), as well as within the jurisdiction in which arrest of the Vessel has been granted.

12 MODIFICATIONS AND AMENDMENTS

12.1 All modifications and/or amendment to the Agreement must be implemented in writing and signed by both Parties. Upon signature by both Parties, such modification shall constitute a part of this Agreement. Notwithstanding the foregoing, any modification of charges provided by Marlink pursuant to Clause 3.2.5 shall be effective thirty (30) calendar days from the date of the written notice to the Customer and immediately constitute a part of this Agreement.

13 ASSIGNMENT

13.1 The Customer shall not have the right to assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Marlink.

13.2 Marlink may, without Customer's consent, assign or transfer its rights or obligations under the Agreement to an affiliate, subsidiary, sister or parent company of Marlink, or to a third party together with the business comprised by the provision of Services.

14 REPRESENTATIONS

Each Party to this Agreement hereby represents and warrants to the other that it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation; that it has all requisite authority and approvals to enter into and perform its obligations under the Agreement.

-END OF TEXT