

# TRAFFIC ACCOUNTING SERVICES TERMS AND CONDITIONS

**MARLINK AS** (hereinafter called **Marlink**)  
**Lysaker Torg 45**  
**1366 Oslo, NORWAY**

**These Terms and Conditions apply to the Registration Form: Traffic Accounting Services and, together with the Registration Form: Traffic Accounting Services 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:

**“Accounting Authority”** means a billing intermediary between the Mobile Earth Station and Land Earth Station Operator that is recognized by ITU and authorized by respective governmental authorities.

**“Accounting Authority Identification Code”** means Marlink’s accounting authority identification code (AAIC) as specified on the *Registration Form: Traffic Accounting Services*.

**“Administration”** means any governmental department or service responsible for discharging the obligations undertaken in the Constitution and Convention of the International Telecommunication Union and in the Administrative Regulations (Radio Regulations).

**“Agreement”** means:

- (i) the *Registration Form: Traffic Accounting Services* signed by the Customer and Marlink; and
- (ii) the Terms and Conditions.

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

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

**“Handling Service”** means the services as described in Article 2.2 of the Terms and Conditions.

**“ITU”** means International Telecommunication Union.

**“ITU Publications”** means the ITU documents and manuals applicable to the use of Radio Communication Services.

**“ITU Rules”** means the Radio Regulations of the ITU.

**“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 Traffic Accounting Services.

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

**“Marlink”** means Marlink AS.

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

**“Minimum Period”** means the minimum period of duration of the Agreement as described in Clause 11.

**“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.

**“Radio Communication Services”** means a service involving the transmission, mission and/or reception of radio waves for specific telecommunication purposes.

**“Radio Operator”** means a certified person appointed by the Customer to operate the Radio Communication Services on board the Vessel, on behalf of the Customer.

**“Radio Station”** means a station in the maritime mobile service.

**“Recognized Operating Agency (ROA)”** means any individual, company, corporation or governmental agency authorized and governed by an ITU Member that operates an international telecommunication service to carry public correspondence.

**“Registration Form: Traffic Accounting Services”** means the form the Customer fill in, submits and signs to order Traffic Accounting Services from Marlink.

**“Services”** means Handling Services and Traffic Accounting Services.

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

**“Terms and Conditions”** means Marlink’s Traffic Accounting Services Terms and Conditions.

**“Traffic Accounting Services”** means:

- (i) calculating, verifying and obtaining payment of charges for Radio Communication Services from the Radio Station and
- (ii) remitting such payment to the Service Provider in accordance with the ITU Rules and Recommendation D.90 and the rules of the U.S. Federal Communications Commission.

**“Vessel”** means the Customer-designated ship/vessel specified in the *Registration Form: Traffic Accounting Services*.

Words in the singular include the plural and vice versa.

## 2. SCOPE OF SERVICE

2.1. Marlink will provide Traffic Accounting Services to the Customer on the terms and conditions of the Agreement.

2.2. Marlink will provide Handling Services to the Customer on the terms and conditions of the Agreement. Handling Services consist of the following:

2.2.1. Marlink will act as Accounting Authority under this Agreement, for the settlement with the Administrations concerned of charges due on radio and/or satellite messages sent by the Vessel.

2.2.2. Marlink will undertake for the Customer - subject to the approval of the competent authority - the settlement of accounts with Service Providers as well as the handling of queries.

2.3. If requested by the Customer in the *Registration Form: Traffic Accounting Services*, Marlink will supply the ITU Publications and updates thereto.

## 3. RELATIONSHIP OF MARLINK AND THE CUSTOMER

3.1. Nothing herein shall create or constitute a joint venture, partnership, employment relationship or franchise between Marlink and the Customer.

## 4. MARLINK’S RESPONSIBILITIES AND RIGHTS

4.1. Marlink’s responsibilities under this Agreement shall be as follows:

4.1.1. Marlink shall act, unless prevented by circumstances beyond its control, as the sole Accounting Authority, according to the ITU Rules, in clearing all Radio Communication Services from ship to shore of the Vessel.

4.1.2. Marlink will, if it detects fraud, inform the Customer and, if possible, take steps to reject the fraud.

4.1.3. Marlink shall bear no responsibility or liability whatsoever for the acts, omissions, or negligence of the Customer.

4.2. Marlink’s rights under this Agreement shall be as follows:

4.2.1. In event of any breach of the Customer’s responsibilities in Clause 5 below, Marlink shall have the right to terminate the Agreement immediately and discontinue the provision of Services to the Customer.

4.2.2. Marlink shall have the right to payment and collection in accordance with Clause 6.

4.2.3. Marlink reserves the right to require security for payment in accordance with Clause 6.2.

4.2.4. Marlink reserves the right to modify the Terms and Conditions after expiration of the Minimum Period of this Agreement, provided, however, Marlink’s right to change the fees and charges shall be in accordance with Clause 6.1.6. hereof.

## 5. THE CUSTOMER’S RESPONSIBILITIES AND RIGHTS

5.1. The Customer’s responsibilities under this Agreement shall be as follows:

5.1.1. The Customer shall comply with the Agreement and with all applicable laws, rules and regulations governing its activities. It shall, as a Radio Station owner, certify that

# TRAFFIC ACCOUNTING SERVICES TERMS AND CONDITIONS

**MARLINK AS (hereinafter called Marlink)**  
**Lysaker Torg 45**  
**1366 Oslo, NORWAY**

- all applicable licensing requirements and other national laws of the country where the Vessel is registered have been adhered to.
- 5.1.2. The Customer assumes all responsibility whatsoever for the acts or negligence of itself and the Master. The Customer shall take all necessary steps to ensure that the Master complies with the Customer's responsibilities with respect to this Agreement.
- 5.1.3. The Radio Communication Services aboard the Vessel shall comply with the ITU Rules.
- 5.1.4. 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.
- 5.1.5. The Customer shall not enter into separate agreements with any third party for direct billing services or other similar arrangement for any portion of its Radio Communication Services.
- 5.1.6. The Customer shall pay Marlink for the Services in accordance with the provisions set forth in Clause 6.
- 5.1.7. 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. The Customer is responsible for payment of all communications charges incurred by the Vessel from the moment the Vessel has been disposed and until five (5) working days after Marlink has been notified in writing of the disposal, unless the Customer has provided Marlink notice of such disposal ten (10) working days in advance of the date of disposal.
- 5.2. The Customer's rights under this Agreement shall be as follows:
- 5.2.1. The Customer shall have the right to receive the Services according to the terms and conditions under this Agreement.
- ## 6. INVOICES AND PAYMENT
- 6.1. Fees and Charges
- 6.1.1. All charges set forth in the *Registration Form: Traffic Accounting Services* are exclusive of value added tax, and other taxes and duties. If any taxes are applicable, Marlink shall add the relevant tax amount to the Customer's invoice.
- 6.1.2. Annual Fee: The Customer shall pay the annual fee specified in the *Registration Form: Traffic Accounting Services*, which is to be paid annually and thirty (30) calendar days in advance of the date on which the Traffic Accounting Services commence. No refund of the annual service fee will be allowed for any reason whatsoever, including, but not limited to, suspension and/or termination of the Traffic Accounting Services or termination of this Agreement.
- 6.1.3. Handling charges: The Customer shall pay handling charges as specified in the *Registration Form: Traffic Accounting Services*, on all Handling Services supplied by Marlink to the Customer.
- 6.1.4. Invoice Attachment Fee: The Customer shall pay an Invoice Attachment Fee (as defined at Clause 6.2.1) as specified in the *Registration Form: Traffic Accounting Services*.
- 6.1.5. ITU Publications: The Customer shall pay a fee for the ITU Publications as specified in the *Registration Form: Traffic Accounting Services*.
- 6.1.6. Marlink may change the fees and charges set forth in the *Registration Form: Traffic Accounting Services* upon thirty (30) calendar days prior written notice to the Customer.
- 6.1.7. Any banking fees must be settled by the Customer.
- 6.2. Security. At the start of the Agreement or at any time during the term of the Agreement, Marlink may require from the Customer security for payment of invoices in such form and amount as Marlink, in its sole discretion, deems necessary and reasonable.
- 6.2.1 Security Deposit: The amount of any security deposit required from the Customer may be applied towards the payment of outstanding invoices to the extent that the Customer fails to remit payment when due, whether during the term of the Agreement or thereafter in accordance with Clause 12.5. At the conclusion of the 15-month period referenced in Clause 12.5.2, Marlink will remit the balance of the security deposit to the Customer, along with an accounting of all deductions taken against such amount (if any) during the time that it has been held by Marlink.
- 6.2.2 Other Forms of Security: To provide adequate assurance of payment under this Agreement, Marlink may require the Customer to provide a third party guarantee, bank guarantee, letter of credit, or credit facility. The Customer shall bear the expense of all costs to establish and maintain any guarantee or credit required hereunder.
- 6.3. Invoices and Payments
- 6.3.1 Marlink shall invoice the Customer all fees and charges due under this Agreement. Unless otherwise requested by the Customer, the invoice shall identify the amount due as a single total. The Customer shall have access to the detailed breakdown of charges via MarlinkOnline. The Customer may subscribe to receive a breakdown of charges as attachment to the invoice, by filling in "YES" under "Invoice details required" in the *Registration Form: Traffic Accounting Services*. Marlink shall charge the Customer the fee stated in the *Registration Form: Traffic Accounting Services* per invoice for such invoice attachment (the "Invoice Attachment Fee").
- 6.3.2 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 under the *Registration Form: Traffic Accounting Services*. The Customer shall pay all fees and charges specified in the *Registration Form: Traffic Accounting Services* to the bank account listed on the Customer's invoice.
- 6.3.3 The Customer shall be liable for payment of interest on any overdue outstanding balances at the rate of 1% per month.
- 6.3.4 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. Any claims received by Marlink later than thirty (30) calendar days after the invoice due date may be rejected by Marlink. Marlink will respond to the Customer within thirty (30) calendar days after receipt of the written notice of dispute, advising on the action being taken to resolve the dispute. Failure by Marlink to respond within thirty (30) calendar days from receipt shall not be a breach of Marlink's responsibilities under the Agreement. If Marlink accepts the claim from the Customer, Marlink shall issue a credit note to the Customer within sixty (60) calendar days from acceptance of the claim.
- ## 7. FORCE MAJEURE
- 7.1. Except for the Customer's obligations under Clause 6, 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,

# TRAFFIC ACCOUNTING SERVICES TERMS AND CONDITIONS

**MARLINK AS (hereinafter called Marlink)**  
**Lysaker Torg 45**  
**1366 Oslo, NORWAY**

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

- 7.2. 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.
- 7.3. 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: Traffic Accounting Services*
- (i) the Party knew of the occurrence or potential occurrence of such event, and
  - (ii) 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.

## 8. LIMITATION OF LIABILITY AND INDEMNIFICATION

### 8.1. Customer:

If this Agreement is entered into on behalf of the owner of the Vessel by an Agent (other than the employee or director of the Vessel owner), the Vessel owner and the Agent shall be jointly and severally liable for the payments or deposits provided for in Clauses 2, 5 and 6.

### 8.2. Marlink:

- I 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.
- II 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.
- III 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.
- IV Marlink shall not be responsible for malfunctions or interruptions in the supply of the Traffic Accounting Services and Handling 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,
  - (ii) the actions of a third party, or
  - (iii) the occurrence of a Force Majeure Event.Notwithstanding any other provisions in this Agreement, Marlink's total aggregate liability under this Agreement is limited to US\$ 5,000.

## 9. CONFIDENTIALITY

Th Any information received by either Party in connection with Agreement shall be treated as confidential for a period of five (5) years. Neither Party may, unless previously approved in writing by the other Party, issue press releases, announce or make any advertisements regarding the content of this Agreement.

## 10. PUBLICITY

10.1. Neither Party shall release any publicity or advertising material for the promotion of its own service which contains any reference to the other Party without the prior written consent of such Party except as required by law or the requirements of any relevant stock exchange. Such consent will not be unreasonably withheld.

## 11. COMMENCEMENT AND DURATION OF SERVICE

11.1. This Agreement shall come into force on the Effective Date and shall continue for a Minimum Period of twelve (12) months and continue thereafter for an indefinite period of time unless and until it is terminated pursuant to the provisions of Clause 12, "Termination."

## 12. TERMINATION

- 12.1. 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, provided, however, Customer shall notify Marlink in writing ten (10) working days prior to any disposal of a Vessel. If Customer fails timely to notify Marlink of the sale, Marlink shall be entitled to charge the Customer for all Radio Communication Services incurred by such Vessel through the date that is five (5) working days after Marlink has received notification in writing of the disposal. In all events, the Customer shall inform Marlink in writing of the disposal of the Vessel as soon as possible.
- 12.2. Termination for Convenience  
Either Party may terminate the Agreement after the Minimum Period by providing the other Party with written notice no less than thirty (30) calendar days prior to the effective date of such termination.
- 12.3. Termination for Cause  
In addition to its rights to terminate the Agreement pursuant to the provisions of Clause 4.2.1, 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. Notwithstanding the foregoing, if the conditions of Clause 12.3.4 apply, such termination may have immediate effect.
- 12.3.1. The Customer breaches any of its responsibilities under Clause 5.
  - 12.3.2. 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
  - 12.3.3. 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
  - 12.3.4. 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

# TRAFFIC ACCOUNTING SERVICES TERMS AND CONDITIONS

**MARLINK AS (hereinafter called Marlink)**  
**Lysaker Torg 45**  
**1366 Oslo, NORWAY**

of

- (iii) 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

12.3.5. 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).

12.4. 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.

12.5. Obligations upon expiration or termination of the Agreement

12.5.1. 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.

12.5.2. The Customer shall be obligated for all fees and charges accrued as of the date of termination or expiration, or such later date in accordance with Clause 12.1. The Customer acknowledges that the fees and charges for Traffic Accounting Services provided prior to the effective date of termination or expiration of this Agreement may continue to be reported and invoiced for a period of up to fifteen (15) months from the effective date of such termination or expiration and that, notwithstanding the termination or expiration of this Agreement, the Customer shall remain obligated to pay such fees and charges. Invoicing and payment of amounts due hereunder shall be in accordance with Clause 6, above.

12.5.3. 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.

## 13. WAIVER

13.1. 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.

## 14. GOVERNING LAW AND DISPUTES

14.1. The Agreement shall be governed and construed in accordance with the laws of Norway without regard to its conflict of laws rules.

14.2. Any dispute which may arise out of the Agreement, and which cannot be settled in discussion or negotiation between the Parties within sixty (60) calendar days after the date that the dispute has arisen, shall be settled by the competent court in the Netherlands, unless the Parties agree on arbitration. The legal venue shall be the Court of Oslo. In accordance therewith, each Party hereby submits to the personal

jurisdiction of such courts for the enforcement of this Agreement.

14.3. 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.

14.4. To the extent that the implementation, provision, use, and/or restoration of Services provided under this Agreement by Marlink is regulated by the laws of Norway and/or international organizations, the Parties agree to comply with the rules and regulations of any such agency or international organizations.

## 15. MODIFICATIONS AND AMENDMENTS

15.1. 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 6.1.6 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.

## 16. ASSIGNMENT

16.1. 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.

16.2. Marlink may, without Customer's consent, assign or transfer its rights or obligations under the Agreement to another company within the Vizada group of companies, which is a subsidiary, sister or parent company of Marlink, or to a third party together with the business comprised by the provision of Services.

## 17. REPRESENTATIONS

17.1. 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; and that all requisite corporate action has been taken for the execution, delivery, and performance of the Agreement.

## 18. DOCUMENT RANK

18.1. Should interpretation and application of the provisions of this Agreement reveal incongruities between the *Registration Form: Traffic Accounting Services* on the one hand and the Terms and Conditions on the other hand, the order of precedence shall be as follows:

- (i) the Terms and Conditions; and
- (ii) the *Registration Form: Traffic Accounting Services*.

## 19. HEADINGS

19.1. The headings used in the Agreement are solely for the purpose of reference and shall have no substantive meaning in construing, interpreting or applying the provisions of this Agreement.

## 20. NOTIFICATIONS

20.1. Any notice required to be served hereunder shall be duly served if sent in writing to either party addressed to its address as set out

- (i) for Marlink, in the Terms and Conditions, and
- (ii) for Customer, in the *Registration Form: Traffic Accounting Services*.