

MARTLEY WEB MESH SERVICE AGREEMENT – TERMS AND CONDITIONS

Key Terms and Conditions: MWM – Application Form Rev3May2013

• Martley Web Mesh (MWM) is a not for profit Limited Company formed for the benefit of its members and the community for the participation in internet broadband and wireless local area network in Martley and the surrounding villages. Members are to benefit from the provision of an "always on" broadband internet connection, and the residents at large will benefit from a wider community service.

• Membership is open to anyone who accepts these terms and conditions, pays the necessary set-up charges and monthly fees and has a PC which meets the required minimum standard. The minimum period of membership is 12 months, payable monthly, 1 month in advance with 3 clear months notice to resign.

• The service includes the use of the broadband connection and the wireless network ("LAN").

• Whilst "always on" is the aim for the provision of broadband through the LAN, there will be indeterminate times when this is not possible and no guarantee is given for the quality of service. MWM do not guarantee to provide wireless LAN connectivity. There may be areas not able to be served by the wireless access points.

• Following payment of the set-up fee and connection to the service, the equipment used by the member to connect to the service becomes the sole responsibility of the member.

• No payment will be processed until the service has been set up and is available for use by the member.

• Monopolising bandwidth – bandwidth is a shared resource. There shall be no utilisation of the LAN or broadband facility which is detrimental to the bandwidth of either or both the LAN and broadband connection. Monopolisation may include, but is not limited to such activities as video and audio streaming, file-sharing forums and web cams.

• Web sites – members must not set up public access links to any facilities on the LAN such as web sites and download sites which will potentially cause bandwidth problems.

Full Terms and Conditions

1. Definitions

1.1 The "Member" means the user, "MWM" means Martley Web Mesh, "Services" means all services provided by MWM including but not limited to Internet access, electronic mail, web space and newsgroups. Subscribers are automatically members of MWM.

2. Supply

2.1 MWM agrees to provide the services to the Member to the extent described in the relevant Service Agreement, which shall be deemed and incorporated into these terms and conditions.

2.2 MWM reserves the right to alter or withdraw any service at any time, on giving current Members prior warning.

3. Exclusion of Warranties

3.1 Save as expressly set out herein, all conditions or warranties which may be implied or incorporated into these terms and conditions by law or otherwise are hereby expressly excluded to the extent permitted by law. In no circumstances whatsoever will MWM be liable for economic, indirect or consequential loss.

3.2 MWM's Services are provided on an "as is" and "as available" basis and we make no warranties or representations, whether express or implied, in relation to MWM or the Services, including but not limited to, implied warranties or conditions of completeness, accuracy, satisfactory quality, or any loss of data resulting from delays, non-deliveries, missed deliveries, or service interruptions.

3.3 In any event the liability of MWM to the Member in respect of an event or series of connected events arising out of or in connection with these terms and conditions whether in contract, tort (including negligence) or otherwise shall be limited to all sums payable in respect of the Services supplied.

3.4 Each provision of this Clause 3 excluding or limiting liability shall be construed separately, applying and surviving even if for any reason one or other of those provisions is held inapplicable or unenforceable in any circumstance they shall remain in force not withstanding the termination or expiry of these terms and conditions.

4. Price and Payment

4.1 The charges payable by the Member for the provision of the Services are set out within the offer of service. If for any reason MWM is unable to collect payment from the member as it becomes due under these terms and conditions or in the event of default on payment by the member this will constitute a material breach of these terms and conditions by the member. MWM shall have the right to require the Member to pay all sums due under these terms and conditions on demand.

4.2 All sums due to MWM under these terms and conditions are quoted exclusive of Value Added Tax as MWM is not currently registered for VAT. Should VAT or other applicable taxes become due in accordance with the relevant regulations in force at the time of making the supply these shall be paid by the Member.

4.3 MWM reserves the right to terminate the services to the Member forthwith in the event of any default of payment.

4.4 All subscriptions charges are due in advance.

5. Termination

5.1 The initial term shall commence when the Member is connected to, or starts using MWM's services. This agreement will continue and payments will be taken according to the service subscribed to until the member requests cancellation or if MWM

decides to terminate the agreement according to the terms below.

5.2 MWM (without prejudice to its other rights) may terminate this Agreement immediately if:

- a) the Member breaches any clause under these Terms and Conditions.
- b) MWM is obliged to comply with an order, instruction or request of Government, an emergency services organisation, or other administrative authority, to cease to provide any service provided to the Member.
- c) the member breaches MWM's Acceptable Use Policy, or
- d) the provision of any service to the Member would give rise to or cause disruption to the services offered by MWM to its members.

5.3 Without prejudice to its rights of termination at any time under Clause 5.2, MWM shall have the right to suspend the provision of any Services without notice if MWM has the right to terminate this Agreement.

5.4 MWM shall be able to terminate this agreement for any reason on giving the Member a minimum of 1 month's notice at any time.

5.5 The Member may terminate this agreement having given written 90 days notice letter.

5.6 In the event of termination, whether initiated by the Member or MWM no refunds will be given on monthly subscription charges. Unused portions of annual subscriptions may be refunded at the sole discretion of MWM.

5.7 In the event of termination the Member shall immediately cease to make use of MWM's Services.

6. Improper Use

6.1 A breach of our Acceptable Use Policy will constitute a material breach of these terms and conditions and shall entitle MWM to terminate the agreement pursuant to Clause 5.2.

6.2 The Member shall not (or authorise or permit any other party to) use MWM's Services for the transmission of any material which is in violation of any law or regulation or which is defamatory, menacing, and obscene, in breach of third party intellectual property rights (including copyright) or in breach of trade secrets. Any breach of this Clause will be deemed to be a material breach of this agreement and shall entitle MWM to terminate the agreement pursuant to Clause 5.2 and for this purpose it shall be irrelevant whether the Member is aware of the content or illegality of any material so transmitted or not.

6.3 Notwithstanding and in addition to Clause 5.2 MWM may suspend the Service without notice with immediate effect if in MWM's reasonable opinion the Member is in breach of these Terms and Conditions or acted inconsistently with the spirit of these terms and conditions.

6.4 The Member acknowledges that MWM is unable to exercise control over the content of the information passing over the MWM connection and/or the MWM network and/or the Services, and MWM hereby excludes all liability of any kind for the transmission or reception of infringing information of whatever nature.

6.5 The Member hereby agrees to indemnify and holds MWM harmless from any claim brought by a third party resulting from the use of the MWM connection and/or the MWM network, Services including but not limited to infringement of any intellectual property right of any kind, legislation or regulation. The Member shall defend and pay all costs, damages, awards, fees (including reasonable legal fees) and judgements finally awarded against MWM arising from such claims, and shall provide MWM with notice of such claims, full authority to defend, compromise or settle such claims and, at the Member's sole expense. Such actions will be taken in consultation with the Member.

7. Suspension of Services

7.1 MWM may without terminating this agreement suspend provision of any Services in whole or in part until further notice with immediate effect if: a) MWM has reason to terminate this agreement in accordance with Clause 5; b) MWM is obliged to comply with an order, instruction or request of Government, an emergency services organisation, or other administrative authority, or c) MWM needs to carry out work relating to upgrading or maintenance of the MWM network but providing that MWM has given the Member a reasonable period of notice practicable in the circumstances.

7.2 If MWM exercises its right of suspension in respect of an event referred to in Clause 7.1, this will not exclude its right to terminate this agreement later in respect of that or any other event, nor will it prevent MWM from claiming damages from the Member resulting from such event if the Member is in breach of these terms and conditions.

8. Data Protection

8.1 MWM reserves the right to put the names and other information from the registration form relating to the Members into a computerised directory for internal use, unless specific written instructions are received from the Member.

8.2 MWM reserves the right to provide information concerning your account and activities whilst using MWM's services if we are requested to do so by the police or a regulatory or government authority in investigating illegal activities.

8.3 MWM may disclose your personal information to selected third parties for the purposes of installing equipment.

8.4 You must notify MWM immediately of any change of details that you have provided.

9. Acceptable Use of Bandwidth

9.1 There shall be no utilisation of the wireless network or broadband facility which is detrimental to the bandwidth of either or both the network and broadband connection. If access is determined as monopolising bandwidth; it shall first be brought to the notice of the offender by a MWM representative, and where repetition occurs, brought to the notice of the Committee to determine further action. Monopolisation may include, but is not limited to such activities as video & audio streaming, file sharing forums and web cams. The system is intended primarily for download of information and shall not be used for activities which require significant uploading, such as web-hosting, video conferencing or file sharing.

10. Security

10.1 The member is responsible for maintaining the confidentiality of their username(s), password and other network access details and may not release them to any third party. The member is fully responsible for all activities which occur using their network access details. Other users of the Member's network access shall be bound by these terms and conditions as if they were the Member.

The member agrees to immediately notify MWM of any unauthorised use of his/her network access or any other breach of security of which the Member becomes aware. The member will not knowingly publish, or cause to be published, any information about any part of the system, but should refer any external enquiries to the website www.martley.org.uk or to info@martley.org. Members will not pass on any personal details of any other users of the network.

10.2 You acknowledge that it is your sole responsibility to ensure the security and integrity of any of your equipment attached to the broadband services, including and not limited to you providing yourself with adequate protection by using an appropriate firewall and you acknowledge that MWM does not provide any specific advice to you in this regard.

11. Installation of Equipment

11.1 Once your application has been accepted MWM will, or will arrange for a third party installer to contact you to arrange

installation of the equipment on a mutually convenient date. PLEASE NOTE that MWM Ltd, its owners and staff can not be held responsible for any damage to your premises or injury to residents arising from the installations of equipment howsoever caused. MWM Ltd installations are carried out at the property owner's risk.

11.2 You must ensure that any installer is able to access the location on the date agreed for installation of the equipment. 11.3 The installation of the equipment may require certain wayleaves, consents or permissions. It is your responsibility to ensure that these have been obtained prior to equipment being installed.

11.4 The installation service that is provided assumes that, other than the equipment, no additional cabling, brackets or equipment is required nor any works required which are beyond the scope usually required in a normal installation. If additional cabling, brackets, equipment or work (including by way of example, any lightning protection equipment you may advise you wish to have this installed) is required then you will be charged an additional sum to reflect this. The third party installer or MWM will advise you of such charges before the equipment is installed.

Relay Point - Node

12.1 If MWM agree that you are to be a relay point/node, you accept that MWM may install the relay equipment both internally and externally at the location, such installations to be in accordance with this agreement as MWM sees fit.

12.2 The relay equipment remains the property of MWM and MWM may need to alter/repair it from time to time at its discretion. In order to do this MWM requires reasonable access to your premises and shall endeavour to arrange a mutually convenient date and time with you in advance and you agree to give MWM or any contractor of MWM permission to enter the location.

12.3 You agree to

- a) take reasonable care of the relay equipment,
- b) not alter the position of the relay equipment,
- c) notify MWM immediately of any loss or damage to any part of the relay equipment,
- d) pay for any electricity consumed by the relay equipment,
- e) maintain a continuous supply of electricity to the relay equipment and
- f) return the relay equipment to MWM (or allow MWM to collect the relay equipment) in a reasonable condition on termination or expiry of this agreement.

Equipment

13.1 Any equipment supplied by MWM comes with a manufacturers warranty against faults arising in the first 12 months following installation due to defective materials or workmanship. The warranty does not cover any of the following: accidental or deliberate damage to the equipment, defects due to interference with or maintenance of the equipment by faults arising out of misuse or your failure to comply with the manufacturers' instructions and/or any instructions which MWM have supplied and or notified to you; cosmetic damage which does not affect the functionality of the equipment and damage caused which is outside of the reasonable control of MWM or its suppliers. This shall not apply if payment for equipment is overdue.

13.2 MWM's sole liability during the warranty period referred to in clause 13.1 is to repair or replace (at its sole discretion) the faulty component part of the equipment.

General

14.1 Other than in respect of the Member's obligation to make payments neither party shall be liable in respect of any breach of this contract due to any cause beyond its reasonable control including but not limited to acts of God, flood, lightning or fire, industrial action, act or omission of Government or other competent authority, riot, war or act or omission of another party for whom that party is not responsible.

14.2 MWM shall have the right by notice to the Member to modify these terms and conditions at any time, subject to the Articles of Association of the company. It is the Member's responsibility to check these terms and conditions for changes on a regular basis.

14.3 These terms and conditions are governed by and shall be construed in accordance with the laws of England and the Member hereby submits to the exclusive jurisdiction of the English Courts.

14.4 These terms and conditions represent the entire agreement between the parties.

14.5 The Member shall not assign or purport to assign or otherwise deal with any of its rights and obligations hereunder, except if expressly agreed in writing with MWM.

14.6 MWM shall have the right to assign, sub-contract or otherwise deal with all or any of its rights and obligations under these terms and conditions to any third party.

14.7 The Member, by creating an account with MWM, hereby acknowledges that he/she has read and accepted the terms hereof.

14.8 Any notice given by MWM to the member under these terms and conditions will be given either by email or by a message on the MWM website <http://www.martley.org.uk/>

14.9 The Member may not sub-let, share or sell-on any services provided by MWM unless expressly agreed in writing by the Directors of MWM.

14.10 You have the right to cancel this agreement within 7 days of commencement by giving notice in writing to MWM. You will not be reimbursed for any installation, membership, or cost of any equipment if you cancel after it has been installed.