

## IMPORTANT CUSTOMER INFORMATION : YOUR RIGHTS AND OBLIGATIONS

*These terms and conditions are a Standard Form of Agreement formulated for the purposes of Section 479 of the Telecommunications ACT 1997*

We, [Neptune Communications](#) (ABN 36 390 521 642), will provide you, our Customer, with Services in accordance with these terms and conditions, the applicable charges notified to you from time to time and the [Neptune Communications](#) Full Service Application (the "Application") (collectively, the "Agreement").

### 1. PROVISION OF SERVICES

1.1 Services: We will provide you with the telecommunications services nominated, or assumed to be nominated, by you on the Application and other services we may agree to provide to you from time to time ("Services") on the terms of this Agreement. If you fail to nominate telecommunication services on the Application, you acknowledge that we will assume you wish to select [Neptune Communications](#) as your default carrier for local, national and international long distance calls and calls to mobile services. Services will only be provided if you are either a residential customer, a small to medium business customer or a corporate customer.

1.2 Provision of Services: We will provide you with the Services for all your local, national and international long distance calls and calls to mobile services (as applicable) unless you dial another override code for local, long distance, international calls or calls to mobile services (as applicable) on a call by call basis. We will provide the Services using our facilities and services or those of other carriers, telecommunications service providers or equipment suppliers ("Supplier").

1.3 Variations: Without notice to you we may change a Supplier or its products or vary our charges from time to time. We may otherwise vary these terms on 30 days written notice to you.

### 2. CHARGES FOR SERVICES

2.1 Invoicing: We will bill you monthly for the Services in accordance with our current charges as notified to you from time to time. We may vary invoice frequency at our discretion.

2.2 Method of Billing: Unless otherwise expressly stated in this Agreement, we will generally bill you in advance for periodic charges, connection and service fees (where applicable) and in arrears for usage charges, although this may vary in certain cases. We will endeavor to bill you within the next normal billing period for charges billed in arrears, but we reserve the right to bill you for those charges in later billing periods. As per 8.2.2 of ACIF CS42 - Industry Code - Billing, we will not bill charges older than 190 days from the date the charge was incurred by the customer.

2.3 Time for Payment: All charges must be paid by the due date shown on the invoice.

2.4 When available, we may debit amounts directly from your nominated bank or credit card account as they become owing where you have chosen that method of payment. In any event, if you have provided your bank account or credit card details, where amounts remain outstanding after 30 days we may debit those amounts from your nominated bank or credit card account without further notice unless we have received written notice from you of a bona fide dispute of those amounts. If a direct debit fails or is rejected, we reserve the right to pass on any charges that we may incur due to the failure or rejection.

2.5 Our charges to you; we may pass on any charges another Supplier charges to us (including increases and special or one-off charges) without notice to you.

2.6 Other Charges: You will pay us in accordance with clause 2.5 any charge which any other Supplier or other person renders to us:

(a) if you approach that other Supplier or person directly, or otherwise than through us; or

(b) for connection or initiation of any Service or for cancellation of any Service.

2.7 Going green. Neptune Communications is involved in the world wide concern of environmental impact and the foot print we leave. It is our discretion to reduce the amount of bill paper printed and mailed out to our customer by sending the bill via email. For the customer who still prefer to receive a paper bill, there will be a \$3 charge for this.

2.8 Billing from other Suppliers: If you use an override code to access services offered by another Supplier, you will be billed by that Supplier for charges you incur unless we have a separate arrangement in place for the Supplier to charge us directly, in which case we will pass on the charges to you in accordance with clause 2.5.

2.9 Interest: We reserve the right to charge interest on any part of the charges not paid to us by the due date. Interest, calculated daily, will be charged from the due date until payment at a rate of 5% above our prime lenders overdraft rate published on the first working day of each calendar month.

2.10 Suspension: We reserve the right to suspend provision of Services to you, where charges owing to us or any amount owing under this clause remain outstanding after 30 days, unless we have received written notice from you of a bona fide dispute of those charges. If we suspend or terminate the Services for unpaid charges or any other reason, subsequent reconnection may incur a reconnection fee.

2.11 Barring: We reserve the right to bar provision of Services to you, where charges remain outstanding past the due date as stated on your invoice, your unbilled calls exceed your credit limit with us, or we become aware of unusual calling patterns.

2.12 Unclaimed amounts: In the event that your account is terminated and monies are owed to you by us, we will notify you of these amounts. In the event you do not claim those monies within 3 months of being notified we will retain the money and you agree that you will have no further claim in relation to those monies.

2.13 Costs incurred in Recovery of Overdue Amounts: If we incur costs in recovering overdue amounts from you, including (without limitation) mercantile agents' costs, disconnection of services costs, costs incurred in commencing legal action such as service fees and search fees, we reserve the right to recover all these amounts from you in addition to the overdue amounts.

2.14 Dishonoured cheques: [Neptune Communications](#) reserves the right to terminate the Agreement without notice to you in the event:

(a) you have not paid amounts owing to us in accordance with this clause; and

(b) a cheque provided by you in payment of that invoice is dishonoured without a valid explanation being provided by you.

We will also charge you a dishonour fee if a cheque used to pay a bill is dishonoured.

2.15 Security Bond: We may require you to lodge a security bond as a condition of us providing Services to you. You authorise us to deduct from that bond any amounts remaining owing to us 30 days after the date of an invoice. If you have paid all of our invoices on time for 12 consecutive months, we may either refund the bond or credit it to your account. The amount of the security bond will be no greater than the credit limit described in clause 2.14.

2.16 Credit Limit: We may from time to time set a credit limit for the provision of the Services to you. You will be notified of this credit limit and any variation thereof.

2.17 GST: Unless expressly stated otherwise, the charges payable for the Services under this Agreement are inclusive of GST. Where the charges are expressed to be exclusive of GST, the Customer must pay to [Neptune Communications](#) in addition to the charges for the Services, an amount equal to any GST payable on the supply of the Services. That additional amount is payable

at the same time as any part of the charges for the Services is payable. Neptune Communications will issue a tax invoice to the Customer for the supply of those Services at or before that time.

### 3 PERIOD OF AGREEMENT

3.1 Commencement of Agreement: This Agreement starts when you sign the Application, complete a voice recording, or when you first access our Services after receipt of these terms and conditions and continues until terminated.

3.2 Commencement of Services: The provision of Services commences when your accounts are transferred from your current Supplier to us and upon completion of installation of any necessary equipment and any other arrangements with another Supplier for the provision of the Services have been completed.

3.3 If the Agreement is a non-fixed length agreement we will provide the service to you in accordance with the Agreement until the Service is cancelled in accordance with Clause 9.1 or 9.2 below.

3.4 (a) For fixed-length agreements, this contract will continue

(i) For the fixed term of the contract; or

(ii) Until it is terminated in accordance with Clause 9.1 or 9.2.

(b) If the Agreement is a fixed-length agreement and neither you nor we cancel the service at the end of the fixed term the agreement becomes a non-fixed length agreement and we will continue to supply the Service to you on a month to month basis in accordance with the Agreement. If you do not wish to continue to use the Service on a month to month basis after the end of the fixed term of your Agreement you must inform us, in accordance with clause 9.1 below, by giving us 30 days notice in writing, before the end of the minimum term, that you wish to cancel the service at the end of the fixed term.

(c) Neptune Communications Pty Ltd will not be able to automatically renew the Agreement for the same duration as the initial Contract period for a fixed term contract without your written consent.

### 4 TRANSFER OF SERVICES TO US

4.1 Changing your current arrangements: If in providing the Services, we need to change your arrangements with your current Supplier, then we will do so in accordance with this clause.

4.2 Transfer to us: By signing this Agreement you:

(a) authorise us to sign on your behalf and in your name forms of authority to your current Supplier to transfer your accounts into our name; and

(b) authorise your current Supplier of telecommunications services to transfer to us all telecommunications services relating to the telephone numbers transferred to us; and

(c) will remain responsible for all amounts owing to your current Supplier of telecommunications services for any services they supply, or have supplied, to you.

4.3 Credits: If your current Supplier credits us with any amount concerning services provided before the date of transfer, we will credit that amount to your account.

4.4 Charges for Transferred Services: If your current Supplier raises a proper charge relating to a service it provided to you before the commencement of Services under clause 3.2, we will advise you accordingly, and you must pay your current Supplier that amount. If you dispute the amount claimed, you must notify us in writing.

4.5 Indemnity: We will not accept any liability for any amounts owing by you to your current Supplier for services which your current Supplier provided to you prior to the commencement of Services under clause 3.2. You must indemnify us against any claims made by your current Supplier to us in relation to any such amounts.

### 5 TRANSFER OF SERVICES FROM US TO ANOTHER SUPPLIER

5.1 Transfer: If in the future you ask us to transfer any of the Services to another Supplier, then you remain responsible to us for amounts payable prior to the transfer, and you will immediately pay us that amount on receipt of our invoice.

5.2 If after the transfer you elect to use any of our Services by the use of an override code, you agree to pay us for any charges incurred for those Services.

5.3 Termination of Services: The provision of Services ceases when we transfer those accounts to another Supplier.

5.4 Billing: We will endeavour to bill you for those Services within the next normal billing period but we reserve the right to issue subsequent invoices in relation to unbilled fees and charges.

5.5 Dispute: If we become aware of other proper charges (including fees payable to any other Supplier) for those Services up to the date of transfer, or we resolve any dispute so that any liability of ours relating to those Services is quantified, then you will immediately pay us all such amounts on receipt of our invoice.

5.6 Credits: We will credit you with any amount credited to us by another Supplier for those Services provided up to the date of transfer.

### 6 PERSONAL INFORMATION

6.1 We may collect personal information about you ("your personal information")

6.2 You acknowledge and agree that:

(a) we may collect your personal information from you or (subject to the requirements of Part IIIA of the Privacy Act) from a credit provider or credit reporting agency. If we do not collect your personal information we may not be able to provide the Services to you

(b) we may use your personal information:

(i) to assess any application by you for credit or commercial credit to be provided by us;

(ii) to collect payments that are overdue in respect of any credit or commercial credit provided by us;

(iii) to provide the Services to you (including the investigation or resolution of disputes relating to any Services provided to you) and to provide credit or commercial credit to you in respect of the Services;

(iv) as otherwise authorised or required by law.

(c) at any time, we may disclose your personal information to a credit reporting agency:

(i) to obtain a consumer credit or a commercial credit report about you;

(ii) to allow the credit reporting agency to create or maintain a credit information file containing information about you.

The information we disclose to a credit reporting agency will be limited to identity particulars about you, the fact that you have applied for credit and the amount, the fact that we are a current credit provider to you, loan repayments that are more than 60 days overdue and for which debt collection action has started, information that in our opinion you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations), and cheques drawn by you for \$100 or more which have been dishonoured more than once

(d) we may also disclose your personal information to:

(i) other credit providers named in a consumer credit report we obtain from a credit reporting agency about you for the purposes of:

(A) assessing any application by you for credit or commercial credit or your credit worthiness;

(B) notifying other credit providers of a default by you; and

(C) exchanging information with other credit providers as to the status of any credit or commercial credit provided by us where you are in default with those other credit providers;

(ii) other Suppliers for the purpose of enabling us to provide the Services to you (including the investigation and resolution of disputes or complaints concerning the provision of the Services);

(iii) government agencies or individuals appointed by a government (including the Telecommunications Industry Ombudsman and Australian Communications and Media Authority) responsible for the investigation and resolution of disputes or complaints concerning your use of the Services for the purpose of enabling investigation and resolution of those disputes or complaints;

(iv) government agencies or individuals appointed by a government (including the Telecommunications Industry Ombudsman and Australian Communications Authority) responsible for the investigation and resolution of disputes or complaints concerning your use of the Services for the purpose of enabling investigation and resolution of those disputes or complaints;

(v) other entities with whom we have established or will establish an affinity program to enable you to participate in the affinity program;

(vi) other entities who provide services to us related to the provision of the Services to you (including SMS, a mail house and resellers (or contractors engaged by resellers) to enable them to provide those services to us or administer payment arrangements in connection with those services.

6.3 If required by law, we will provide you with access to your personal information that we have in our possession upon request.

6.4 If you change your address or other billing contact details, you must notify us within 14 days.

## 7 YOUR COMPLIANCE

7.1 Compliance: You will ensure that you comply at all times with all laws and obligations, including licence conditions, applicable to the Services and their use.

7.2 You will not use the Service to transmit or publish any material which is defamatory of any person, or any material in breach of copyright or any obligations of confidentiality, or otherwise in breach of any law, and you will indemnify us for any loss or expense we suffer as a result of you doing so.

## 8 EQUIPMENT SUPPLIED TO YOU

8.1 Maintenance: You are responsible for maintaining any equipment supplied by us or a Supplier. You indemnify us or the Supplier against any loss or damage to the equipment unless it is due to fair wear and tear.

8.2 Interference: You will ensure that any equipment supplied to you, facilities and connections used in providing the Services, are not altered, maintained, repaired or connected to or disconnected from any power source or line except by a person approved by us.

8.3 Access: We, or a person approved by us, may require access to your premises from time to time in connection with the provision and maintenance of equipment or Services. If you do not own the premises, you must obtain the owner's permission for access and warrant to us that you have such permission. You indemnify us, or any serviceman approved by us, against a claim by the owner of the premises in relation to such entry on the premises. If you do not provide access as we reasonably request, we may limit, suspend or cancel the Services.

8.4 Return: On the termination of this Agreement for any reason, you must return any equipment to us or the relevant Supplier, or make it available for collection, in accordance with our instructions. If you fail to return the equipment or make it available for collection:

(a) if the equipment is ours, we may recover the value of the equipment, and the cost of recovering the equipment, from you as a debt due; or

(b) if the equipment is a Supplier's, you must indemnify us against any claims made by the Supplier in relation to the equipment

## 9 TERMINATION

9.1 Termination: Either of us may terminate the Agreement (whether it is a non-fixed length agreement or a fixed-length agreement) by giving 30 days written notice to the other at any time. The notice to cancel the service will be effective on the date on which we receive that request.

9.2 Immediate Termination: We may terminate this Agreement immediately:

(a) you have breached this Agreement;

(b) a provisional liquidator, liquidator, receiver or receiver and manager or any other administrator of your business or assets is appointed or if you enter into any composition with your creditors; or

(c) you change your address or billing contract details without notifying us in accordance with clause 6.4

9.3 You remain liable for all charges payable under the Agreement in respect of Services up to the time of termination.

9.4 If the Customer is an individual, in the event of the Customer's death, Neptune Communications reserves the right to terminate this Agreement without notice as soon as Neptune Communications becomes aware of the Customer's death. All outstanding charges under this Agreement must be paid by the Customer's estate.

## 10 LIMITATION OF LIABILITY

10.1 Performance: Because the performance of some Services may be affected by your levels of use, the levels of use of other users and of facilities related to providing the Services, we do not warrant that Services will be free of blockages, delays or faults of this kind and we will not be responsible for any loss or damage which may result.

10.2 Warranties: Except as provided in clause 10.1 and as required by law, and subject to clause 10.3, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise, relating to the provision by us of the Services are excluded, and we will not be under any other liability in respect of any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of the Services.

10.3 Limitation of Liability: Our liability for any breach of any term, condition, warranty or under any remedy implied by law (which cannot be excluded), will be limited at our option to the repair or re-supply of equipment or Services or the payment of the cost of having the equipment or Services re-supplied.

10.4 No Liability: We have no liability to you or to any other person for:-

(a) acts or defaults of other Suppliers;

(b) faults or defects in Services which are caused to any material extent by your own conduct or misuse; or

(c) faults or defects that arise in telecommunication services not provided under this Agreement (even if they are connected, with our consent, to Services which we have arranged under this Agreement) which are due to incompatibility with the Services.

## 11 CONFIDENTIALITY

11.1 We retain all intellectual property rights in any information relating to the Services, the design or operation of our network and other technical information relating to the provision of the Services ("Confidential Information").

11.2 You will keep the Confidential Information confidential, and will not allow any written or electronically recorded material to be copied.

11.3 On the termination of this Agreement for any reason, you will return all Confidential Information to us. If you have destroyed these, or any of them, then you will give us a written declaration accordingly.

11.4 You will keep confidential the manner in which we arrange Services under this Agreement, including our charges and discounts, and other financial information.

11.5 You will not use information which you acquire from us for any purpose unauthorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

## **12 FORCE MAJEURE**

12.1 Subject to clause 14.7, we are not liable for:

- (a) any delay in installing any Service,
- (b) any delay in correcting any fault in any Service,
- (c) failure or incorrect operation of any Service, or
- (d) any other delay or default in performance under this Agreement,

if it is caused by any event reasonably beyond our control, including but not limited to war, accident, act of God, industrial action, embargo, delay or failure or default by any other Supplier.

## **13 ASSIGNMENT**

13.1 You will not assign, charge or otherwise deal with your rights under this Agreement except with our prior written consent.

13.2 We may, on 30 days' written notice, assign all our rights and obligations under this Agreement.

## **14 GENERAL**

14.1 Information: We may give to and receive from other Supplier's information about your account, including particulars of calls and call charges.

14.2 Governing law: Agreement is governed by the laws of New South Wales.

14.3 Entire Agreement: This Agreement contains the whole understanding between us to the exclusion of any prior or collateral Agreement or understanding of any kind relating to the Services.

14.4 No reliance: You acknowledge that you enter into this Agreement entirely as a result of your own enquiries and that you do not rely on any statement, representation or promise by us or on our behalf not expressly set out in this Agreement.

14.5 Release: You accordingly release us and each of our officers, agents and advisers from all claims, suits and demands of every kind (including negligence) arising from the relationship of the parties concerning this Agreement before it was signed, and from the negotiations leading to it.

14.6 Waiver: The failure by either party to exercise any right or remedy under this Agreement in a timely manner does not constitute acceptance of the matter which gave rise to the right or remedy, nor that party's waiver of such right or remedy.

14.7 Customer Service Guarantee: To the extent applicable, the Customer Service Guarantee applies to the provision of Services under this Agreement.

14.8 Standard Form of Agreement: These terms and conditions have been formulated under section 479 of the Telecommunications Act and filed with the Australian Communications Authority and will be referred to as the [Neptune Communications Standard Form of Agreement](#).