

TERMS AND CONDITIONS

1. INTRODUCTION

1.1 This agreement applies to your use of the services that we supply to you and replaces any previous agreements between you and us. Additional terms may apply in relation to offers of specified services or for promotions.

1.2 In this agreement we refer to you, the customer, as “you” or “your” and Zintel Communications Limited as “us”, “we”, “our” or “Zintel”.

2. SUPPLY OF SERVICES

2.1 We, or a carrier or network operator nominated by us, will supply the services that you subscribe for on the basis of the terms set out in this agreement. In the course of supply we will:

(a) use reasonable endeavours to ensure that services are supplied reliably and consistently (but we do not guarantee that the services will operate uninterrupted without any faults);

(b) if faults do occur, use reasonable endeavours to ensure that they are remedied as quickly as reasonably possible.

2.2 We are not responsible for any losses suffered by you as a result of:

(a) any interruption of services caused by an event outside of our reasonable control, including any restrictions on the service by a carrier; or

(b) suspension of services for breach of any of the terms of this agreement;

(c) your use of the services other than in accordance with this agreement.

2.3 You acknowledge that we may suspend or restrict your access to the services at any time when we consider it necessary to protect our own network or that of any third party or we believe that you have breached any of our terms and conditions.

2.4 Charges for services will continue to be payable during a suspension. If services are suspended because of your breach we may charge you a reconnection fee of \$50.

3. YOUR RESPONSIBILITIES

3.1 You are responsible for paying for the services by the due date, ensuring that all uses of the service are lawful and do not interfere with the use of the services by any other person, complying with this agreement and any of our instructions relating use of the services and keeping us informed of any changes to your contact details.

3.2 If you request that we provide the services to third parties not directly related to you, you will remain principally liable for all charges incurred by such third parties in using the services. You may not resell or provide the use of the services to any third parties other than pursuant to this clause.

3.3 During the term of this agreement, you agree to use Zintel as your exclusive provider in respect of all services that you have subscribed to (as set out in the application form) or will subscribe to with us pursuant to this agreement.

3.4 You agree to keep us indemnified against all claims, actions, losses and expenses of any nature which we may suffer or incur or for which we may become liable in respect of or arising out of this agreement or the use of the services by you.

3.5 You acknowledge that you are exclusively liable for any termination fees or unpaid amounts due under any agreement between you and any third party service provider whether payable prior to or following commencement of this agreement.

4. INVOICES AND PAYMENT

4.1 Charges payable for the services and notice periods for variations are set out on the applicable service application form(s).

4.2 An invoice for the charges will be sent to you on a monthly basis. You must pay the full amount stated on each invoice by the 20th day of the month following the date of the invoice, without any deduction or set-off.

4.3 If you do not pay an invoice by the due date, we may charge you interest on the unpaid balance at a rate of 1.5% per month and/or suspend or restrict your services. If your services are suspended due to non-payment, we may charge you a reconnection fee of \$50.

4.4 Where you do not meet your responsibilities to us, we may require you to pay any expenses that we may reasonably incur in enforcing or exercising our legal rights in relation to those responsibilities.

4.5 If you believe that a mistake has been made in an invoice, you must notify us in writing at least 10 business days prior to the due date for payment of such invoice. We will investigate your query and advise you promptly as to whether an adjustment is required.

5. INTELLECTUAL PROPERTY

5.1 Except as expressly provided in this agreement, we retain rights to all intellectual property supplied to you in connection with this agreement.

6. CONFIDENTIAL INFORMATION

6.1 You may not use or disclose to any third party any information received from us that is confidential (including, for example, pricing information and the specific terms of this agreement) except where required by law or the terms of this agreement or specifically authorised by us in writing.

6.2 During the term of this agreement your use of the services will generate certain information. We will also retain your contact details, credit information and any related personal details that you supply or that we obtain independently. You acknowledge that we or third parties authorised by us may gather and disclose such information for purposes connected with the supply of the services to you (e.g. credit checks, informing you of new service offers/changes, use in publicly available publications and databases etc).

6.3 You may at any time make a written request to see any personal information that we hold or to ask us to correct any mistakes in that information.

7. TERMINATION OF AGREEMENT

7.1 Notwithstanding any other clause, either you or we may terminate this agreement with immediate effect in whole or in part if the other party

(a) commits a material breach of this agreement that is not remedied within 30 days of notice by the non-breaching party specifying the default;

(b) enters into a compromise with its creditors, is declared bankrupt, goes into liquidation or a receiver or equivalent is appointed in respect of part or all of its assets.

7.2 Where there is no fixed term period or the relevant fixed term period has expired, either you or we may terminate all or part of this agreement by giving 30 days notice in writing to that effect.

7.3 Early termination fees may apply where you terminate all or part of this agreement prior to expiry of a fixed term period (if any). You acknowledge that such fees represent a genuine pre-estimate of the losses that will be caused to us if all or part of this agreement is terminated before the expiration of its term. You agree that such fees are not penalties.

8. EXCLUSION AND LIMITATION OF LIABILITY

8.1 We will not be liable to you under the law of tort (including negligence), contract or otherwise for any loss of profits or savings or for any indirect or consequential loss or damage, arising out of or in connection with the performance or non-performance of any of our obligations under this agreement.

8.2 In any case, our liability to you arising out of any claim for damages for any reason will under no circumstances exceed in aggregate the total amount of the sums actually paid by you for the services supplied during the preceding 3 month period.

8.3 The parties acknowledge that the services are provided for a business purpose and accordingly the provisions of the Consumer Guarantees Act 1993 are specifically excluded.

9. APPLICATION OF FURTHER TERMS

9.1 Offers of certain services and promotions will be subject to specific terms and conditions (“special terms”) additional to those set out in this agreement. The written special terms shall apply in addition to the terms of this agreement. In the case of any inconsistency between this agreement and such special terms, in respect of the relevant offer or services only, the special terms shall prevail.

10. AMENDMENTS

10.1 We may change the terms of this agreement by giving you notice (“variation notice”) to that effect by sending you notice in writing or by email, by publishing changes on our website or by putting a notice in major daily newspapers. The changes contained in a variation notice will take effect 30 days from the date that the variation notice is given.

10.2 Except as otherwise expressly provided in this agreement any change to or variation of this agreement must be agreed to between the parties in writing.

11. GENERAL TERMS

11.1 This agreement together with the special terms amounts to the whole of the arrangement between you and us relating to your use of the services. This agreement replaces any prior related agreements and understandings between you and us.

11.2 If any part of this agreement is held to be invalid, illegal or unenforceable, that part will be severed and the remainder of this agreement will remain in full force and have full effect.

11.3 We may subcontract to any carrier or other third party all or part of our obligations under this agreement.

11.4 Third parties may take the benefits of rights expressed to be for their benefit in accordance with the Contracts (Privity) Act 1982.

11.5 This agreement is governed by New Zealand law and any legal action against us must be taken in a Court in New Zealand.

11.6 You may not assign any rights under this agreement except with our prior written consent. We may assign our rights under this agreement without seeking your prior consent.

11.7 We will send relevant invoices and notices, if and as required under this agreement to the preferred contact address last notified to us by you. You will be deemed to have received a notice sent by any method two days after we send it.