

Communication Services Terms and Conditions

1. ACCEPTANCE

Your registration of a communications service with Think IT Limited ("Think I.T.") and your access, connection and use of Think I.T.'s communication services ("Services") is subject to the following Terms and Conditions ("Terms") and all applicable laws. By accessing and using the Services you agree that you have read, understood and accepted these Terms and agree to be bound by them.

2. CHANGES

These Terms are subject to change from time to time without notice, the current version of the Terms will be available on our website www.thinkit.co.nz. Your continued use of Think I.T.'s Services following the posting of any changes to the Terms indicates your acceptance of those changes.

3. ACCOUNT, PASSWORD AND SECURITY

- 3.1. Upon registration of your account or at any other time as may be required, you may be issued a username(s) and password(s). You must keep your username(s) and password(s) confidential and to take all reasonable steps to prevent disclosure of your username(s) and password(s) to any person, other than members of your business or household who are considered authorised users. You are responsible for ensuring that all authorised users of the account also meet the responsibilities and obligations set out in the Terms.
- 3.2. You agree to indemnify Think I.T. for all claims, proceedings, damages, losses or expenses however incurred arising from the acts of any person accessing the Services using your username(s) and password(s). Disclosure or loss of your username or password that results in the incurring of charges or misuse of the Services is your responsibility and any such occurrence shall be immediately communicated to Think I.T.

4. CHARGES & PAYMENT

- 4.1. You are liable for all Services Charges ("Charges") resulting from use of the Services accessed through your username(s) and password(s) whether authorised by you or not.
- 4.2. You agree to pay the Charges as set out on Think I.T.'s application form. In particular, you agree as follows:
 - 4.2.1. Charges for the Services, or any other fixed Charges, will be due in advance for service plans, with additional charges beyond the service plan being charged after the relevant service has been provided.
 - 4.2.2. Payment must be made by direct debit on the 20th of the month and you will be required to complete a direct debit form and provide this to Think I.T. before the Services will be provided.

- 4.2.3. Charges are exclusive of all taxes including GST, duties and charges imposed or levied in connection with the supply of the Services.

- 4.2.4. Any part of the Services that you do not use as specified in your pricing plan within the relevant billing period cannot be accumulated, nor can you claim a refund for this.

4.3. OVERDUE ACCOUNTS:

- 4.3.1. If your account is overdue for a period of 1 month, your account will be suspended, and access will be denied. If your account is overdue for two months it will be closed and your details referred to our debt collection agency without notice to you.
- 4.3.2. Think I.T. may charge you a late payment fee and default interest of 3% per month on the amount outstanding from the due date until the date of payment if your account is overdue.
- 4.3.3. You will be liable for and agree to pay any costs incurred in recovery of outstanding amounts from you including debt collection agency costs, legal (on a solicitor own client basis) and any other costs arising from collection of the outstanding amount.
- 4.4. Think I.T. reserves the right, at its discretion, to vary or change the Charges from time to time. If Think I.T. make changes to the Charges Think I.T. will give you 30 days' notice. Your continued use of Think I.T.'s Services following the communication of any changes to the Charges indicates your acceptance of those revised Charges.
- 4.5. Think I.T. reserves the right at any time, at its discretion to require you to provide a bond and/or personal guarantee.

5. PERSONAL PROPERTIES SECURITY ACT 1999

- 5.1. Think I.T. retains title in any items provided to you until payment in full is received for that item.
- 5.2. You agree that these Terms constitute a security agreement which provides for a security interest in our favour in all of your present and after-acquired property provided by Think I.T. to you under these Terms and any proceeds of such property. In addition, references in these Terms to 'Equipment' and 'Software' means the goods and software described or referred to in the relevant records Think I.T. maintain (or any other relevant document Think I.T. may produce), on the basis that such record or other document is deemed to be assented to by you and to be included in and form part of these Terms.
- 5.3. On request by Think I.T., you will promptly do all things (including signing any other documents) and provide all information necessary to enable Think I.T. to perfect and maintain the perfection of any security interest you have granted under these Terms (including by registration of a financing statement). You waive your right to receive a copy of any verification statement in respect of any financing statement Think I.T. register and you agree to

indemnify us, upon demand, for all costs and expenses Think I.T. incur in registering and maintaining any financing statement.

- 5.4. Where used in this clause, the following words and phrases (and grammatical variations of them) have the meanings given to them in, or by virtue of, Personal Property Securities Act 1999: 'after acquired property', 'financing statement', 'goods', 'perfection', 'personal property', 'proceeds', 'security agreement', 'security interest', and 'verification statement'.

6. TELEPHONE NUMBERS AND NUMBER PORTABILITY

- 6.1. Think I.T. or other telecommunications service providers may allocate telephone numbers to you to enable you to use the Services. Allocation of telephone numbers do not confer any ownership rights in those telephone numbers and you may not transfer those numbers to anyone else.
- 6.2. If it is necessary for Think I.T. or another telecommunications service provider to do so for operational or other reasons, Think I.T. reserve the right to change or require the change of any telephone number allocated to you. In such an event, Think I.T. will give you as much notice as is reasonably possible of our intention to do so.
- 6.3. You may port the phone number to another telecommunications service provider. If you wish to do so, you must contact the telecommunications service provider to whom you wish to port and you will be responsible for completing the porting requirements of that telecommunications service provider. Think I.T. will comply with our obligations under the terms for local and mobile number portability in relation to the porting of the phone number to the other telecommunications service provider. You will be responsible for all costs associated with porting the phone number (including any applicable early termination charges owed to Think I.T.).
- 6.4. Think I.T. may be required by law, under contracts with other network operators or for other reasons to change the phone number(s). Think I.T. will do our best to give you notice of any change required. Think I.T. will not be liable for any costs which you, or anyone else, may incur as a result of such change.
- 6.5. If you or Think I.T. disconnect your connection(s) to the Services, and you have not ported or otherwise transferred the phone number(s) prior to disconnection, Think I.T. may reallocate the phone number(s) to another customer.

7. DIRECTORY ASSISTANCE AND LISTING

- 7.1. Where applicable, Think I.T. may include your personal information in any telephone or similar directory or directory enquiry service provided or operated by Think I.T. or by a third party subject to any objection or preference you may have indicated to us. Think I.T. will give you an opportunity to express any objection or preference.
- 7.2. Any arrangement you make to be listed will be a matter between you and that directory listing service only.

8. COVERAGE AND SERVICE

- 8.1. Think I.T. will make genuine and commercially reasonable efforts to make the services you have subscribed to available to you 24 hours a day and, if the system malfunctions, to restore those services as soon as reasonably possible. However, as Think I.T. do not own or control all the facilities and communication lines necessary for access, nor do Think I.T. control your use of the Services, Think I.T. cannot guarantee that the Services will be available at any particular time, be uninterrupted or be error free. If, in spite of our efforts, Think I.T. cannot provide or restore the Services (even if the failure is the fault of Think I.T.) Think I.T. is not liable to you.
- 8.2. Think I.T. may shut down, without prior notice, all or part of the Services for the purpose of maintenance, or improving the reliability of supply or for any other reasons.
- 8.3. Once you have established an account with us, Think I.T. agrees to make all reasonable efforts to begin providing you with the Services within a reasonable time frame.
- 8.4. A network service provider connected to the services may suspend or terminate its connection to the service and the services may suspend or terminate their connection to another network or service provider, you agree that any such suspension or termination referred to above will not constitute a breach by Think I.T. of these Terms by Think I.T. and that Think I.T. will not be held liable.

9. CONDITIONS OF USE

- 9.1. You agree that you will promptly provide Think I.T. with all the information that Think I.T. may reasonably require in order to provide the Services and that all information is correct and complete.
- 9.2. You agree Think I.T. may suspend or terminate your services at its sole discretion if Think I.T. believe:
- 9.2.1. you are using the service in a way that is breaking any laws;
- 9.2.2. you are using the service in such a way that could interfere with or damage our network or that of any other operator.

10. HARDWARE

- 10.1. It may be necessary for Think I.T. to install and maintain telecommunications and other electronic or related equipment (including PABXs, antenna, transmission equipment, routers, switches, power supplies and software), which Think I.T. may or may not own, that Think I.T. provide to you in connection with the provision of Services ("Our Equipment") and/or related to/required for the Services ("Software") at your premises to provide you the Services. You agree to give Think I.T. access to your premises at all reasonable times and with reasonable notice (subject to compliance with your reasonable security requirements and where applicable, health and safety requirements) to install, inspect, remove, replace and maintain Our Equipment and/or software.

- 10.2. Ownership of Our Equipment or any replacement for Our Equipment or replacement component of Our Equipment remains with Think I.T. at all times.
- 10.3. You agree:
- 10.3.1. not to damage or interfere with Our Equipment or software in any way;
- 10.3.2. to provide a safe and secure operating environment for Our Equipment;
- 10.3.3. to take reasonable precautions to protect Our Equipment and Software from theft or other loss or damage;
- 10.3.4. to follow our reasonable directions when using Our Equipment and/or Software;
- 10.3.5. to take reasonable precautions to protect Our Equipment and software from electromagnetic interference, electrical interference or power fluctuations;
- 10.3.6. to pay our charges for provisioning, repairing or replacing any part of Our Equipment that is lost or damaged while located on your premises;
- 10.3.7. to obtain and maintain insurance to a value determined by Think I.T. with a reputable insurance company against loss or damage to Our Equipment and Software while it is under your control or on your premises. You will ensure that our interest is noted on the insurance policy.
- 10.4. You authorise Think I.T. to disconnect any equipment that may be connected by other telecommunications service providers and to reconfigure existing equipment to enable the Services to be provided.
- 10.5. Think I.T. may remove Our Equipment and Software from your premises upon termination of Think I.T.'s Services or earlier if Our Equipment is no longer required for the provision of Services or if you damage or interfere with it. You agree that Think I.T. may enter into premises where Our Equipment is located at any time for the purpose of repossessing Our Equipment and you will indemnify us, upon demand, for all costs and expenses Think I.T. incur in arising from such enforcement action. Think I.T. will not be liable for any damage resulting from the repossession of our equipment.
- 10.6. YOUR EQUIPMENT**
- 10.6.1. You will ensure that all of your equipment that is connected to the telecommunications network and/or to Our Equipment is telepermitted and is installed in accordance with our specifications.
- 10.6.2. You agree to follow our reasonable instructions about modifications that you may need to make to your equipment so that you can use the Services.
- 10.6.3. Notwithstanding anything else in these Terms, if your equipment causes a fault in the operation of Services then you will, if Think I.T. ask you to, pay Think I.T. the reasonable costs of restoring that Services.
- 11. PHONE SUPPORT**
- 11.1. Think I.T. agrees to provide phone support to assist you with technical problems associated with your use of the Services. The hours of availability and the telephone number for phone support are advertised on our website.

- 11.2. You acknowledge that our phone support service is limited to providing assistance relating to the performance and functionality of the Services. The phone support service does not cover problems relating to your computer, hardware, communication equipment or modem, your software (except for software or modems provided by Think I.T. subject to any terms and conditions these may have), your phone line connection or any other part of the internet not forming part of our network.

12. NO LIABILITY

- 12.1. Your use of the Services is at your own risk. You agree that Think I.T. is not liable for any damage or harm arising out of your use of the Services. You also agree that all warranties, conditions and representations in respect of the Services (expressed or implied) are excluded to the fullest extent permitted by law.
- 12.2. Think I.T. its employees or agents, or any other party involved in providing the Services is not liable for any direct, incidental, consequential, indirect or punitive damages arising out of your access to, or use of, the Services. If for any reason Think I.T. is liable to you for any reason its total liability is limited to the amount charged for the Services per month.
- 12.3. These Terms apply to both business and private use of the Services. If you are acquiring the Services for the purposes of a business (as defined in the Consumer Guarantees Act 1993) then the Consumer Guarantees Act 1993 does not apply.
- 12.4. If you breach any term of these Terms, and Think I.T. incur costs as result, then you must pay those costs if Think I.T. require you to do so.

13. SUSPENSION

- 13.1. Think I.T. may suspend your Services at any time if you breach these Terms, including where you have failed to pay any undisputed amount by the relevant payment date.
- 13.2. Think I.T. may require you to pay a reconnection charge as a condition of lifting any suspension imposed under this clause.

14. TERMINATION

- 14.1. Think I.T. may stop providing any Services or terminate the Services at any time by giving you thirty (30) days prior written notice. Think I.T. may end Services at any time with immediate effect if Think I.T. are withdrawing it from general availability or replacing it with a new service.
- 14.2. You may terminate any Services at any time by giving Think I.T. not less than sixty (60) days prior written notice. Early termination may result in charges being payable as further detailed in *15 Consequences of Termination*.
- 14.3. Think I.T. may terminate your Services immediately where:
- 14.3.1. you commit a material breach of these Terms which is un-rectifiable;

- 14.3.2. you commit a material breach which is not rectified within thirty (30) days of written notice of that breach having been given to you by Think I.T.;
- 14.3.3. a receiver or manager over any or all of your assets is appointed;
- 14.3.4. you or your director(s) or principal(s) go into liquidation, bankruptcy or receivership (or it appears that any of these events is likely to happen); or
- 14.3.5. you are removed from the Companies Register.

15. CONSEQUENCES OF TERMINATION

- 15.1. When Services are terminated:
 - 15.1.1. you will be disconnected from the Services;
 - 15.1.2. each party must immediately return to the other any information, equipment or any other item which is in its possession and which belongs to the other party; and Think I.T. may access your premises to remove Our Equipment. If Think I.T. are unable to gain access or you are unable to return the equipment to Think I.T., Think I.T. may invoice you and you agree to pay the standard replacement charge for the equipment in question.
- 15.2. You acknowledge that:
 - 15.2.1. the Charges for some Services are set based on the Term which you have agreed for the Services; and if you give up any Services or Think I.T. terminate all or part of your Services prior to the expiry of the Term, Think I.T. may charge you (in which case you will be liable to pay) the monthly charges, as specified for the Services, for the period from the date of termination to the expiry of the Term, as compensation to Think I.T. for the revenue which Think I.T. would otherwise have expected to receive from you in respect of that Services over the Term;
 - 15.2.2. you will repay to Think I.T. any credit, equipment subsidy or installation subsidy Think I.T. have given against your account, and
 - 15.2.3. any credit remaining on the account will expire and cannot be used to set off any Charges or early termination charges.
- 15.3. Termination is without prejudice to any other rights or obligations either party may have under these Terms.

16. FORCE MAJEURE

- 16.1. Think I.T. shall not be liable for any failure or delay in performing its obligations under these Terms if such failure or delay arises directly or indirectly from a cause reasonably unforeseeable or beyond Think I.T.'s control, including without limitation, acts of God, strikes; government restraint, prohibition, intervention or direction.

17. ASSIGNMENT

- 17.1. Your rights and obligations under these Terms cannot be assigned, sold, transferred or otherwise disposed of in any way by you without Think I.T.'s prior written consent. Think I.T. may assign its rights and obligations pursuant to these Terms at any time.

18. SUB-CONTRACTING

- 18.1. Think I.T. may subcontract the performance of the Services or any part of the Services to any person and at any time without your consent.

19. NO WAIVER

- 19.1. If either party delays or fails to enforce any of its rights or remedies under these Terms, this will not constitute a waiver by that party of that or any other right or remedy available to it.

20. CONFIDENTIALITY

- 20.1. You agree that the Internet is a medium which lacks consistent security and confidentiality and that Think I.T. have the right to check your use of the Services. Think I.T. will make reasonable commercial efforts to protect your confidentiality. However, you should assume that your use of our Service is not confidential nor secure. If Think I.T. consider in our discretion that your use of our Service is defamatory, contrary to accepted community standards or illegal you acknowledge that Think I.T. have the right to disclose those activities to any person, including law enforcement agencies.
- 20.2. Without limitation to the foregoing Think I.T. can check your use of the Services to ensure that your use is not breaching the Terms or for assessing any charges which may be payable by you.

21. USE OF PERSONAL INFORMATION

- 21.1. When you complete your application for our Service you authorise Think I.T. and our agents, to collect information about you. Think I.T. will use this information for statistical analysis and to provide the Service to you.
- 21.2. You authorise Think I.T. and our agents, to supply and disclose personal information as to your credit-worthiness and for Think I.T. to forward information to an agent for collection of any amounts overdue.
- 21.3. Under the provisions of the Privacy Act 1993 you may request access to and correction of your personal information. Requests must be in writing. Think I.T. may charge a fee for the reasonable costs incurred in responding to these requests but Think I.T. will disclose the costs to you before those costs are incurred. Any requests should be directed to Think I.T. Ltd, PO Box 58-682, Botany, Manukau City 2163

22. GOVERNING LAW

- 22.1. These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the Courts of New Zealand in respect of any dispute or proceeding arising out of the Terms.