



## **TERMS AND CONDITIONS (25/08/2004)**

These are NINET's standard Terms and Conditions for the Supply of Goods and/or Services. Please read them carefully. They apply to all NINET subscribers or users. It is intended to ensure that, as a Customer, you know your rights and obligations when using NINET's services.

It is a condition of NINET'S Service that you comply with the Terms and Conditions. Please look out for any amendments to the Terms and Conditions that NINET ("we") might make from time to time. You will be notified of any changes to our Terms and Conditions. You are obliged to comply with the Terms and Conditions, as amended from time to time.

**NINET Limited ('NINET')**

## **STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES**

### **1. DEFINITIONS**

- (a) "Agreement" means the Terms and Conditions (as amended from time to time) and the details on the Application for NINET Internet Account.
- (b) "Allocated Internet Address" means the Internet Protocol Address or Addresses allocated by NINET to you the Customer, to enable you to connect to the NINET network in accordance with this Agreement.
- (c) "Customer" means any person or organisation with whom NINET enters into an Agreement in accordance with the Terms and Conditions. .
- (d) "Dial-Up Usage" means use of the Service over a dial-up telephone line.
- (e) "Internet" means the global data network comprising interconnected networks using TCP/IP to which NINET is connected and provides access to its Customers.
- (f) "ISP" means Internet Service Provider. An ISP is a company that has the equipment and the telecommunication line access required to provide individuals and/or companies access to the Internet and other related services.
- (g) "Leased Line" means use of the Service over a leased line network connection as provided by NINET.
- (h) "NINET" is the Administration of Norfolk Island, and its officers, employees, agents and affiliates.
- (i) "Network" means the network owned and operated by NINET for the purpose of connecting Customers to the Internet by means of fixed or dial-up connections.

- (j) "Password" means the alphanumeric characters chosen and used exclusively by you - at your own risk for the purpose of securing and maintaining the exclusivity of your access to NINET's Service.
- (k) "Service" means the services described in the current NINET literature together with such Value Added Services to be provided by NINET to you but in any event the provision of data network services using TCP/IP. Representations made by NINET employees will not form part of this Agreement unless confirmed in writing prior to purchase of the Service.
- (l) "TCP/IP" means Transmission Control Protocol / Internet Protocol representation made by NINET.
- (m) "Value Added Service" means the provision of a Service, other than simple connectivity, that may be detailed in current NINET literature.
- (n) "Wireless Usage" means use of the Service over a wireless network connection as provided by NINET.

**2. APPLICATION AND VARIATION OF THESE TERMS**

These Terms and Conditions are the standard Terms and Conditions upon which NINET provides Goods and/or Services to its Customers, as amended by NINET, from time to time. The Terms and Conditions (and any amendments to them) constitute the entire Agreement between us and you. NINET may amend these Terms and Conditions, the pricing structure for any Service or the Terms of the operation by publication of a general notice on a page of the Internet referred to on the Norfolk Telecom Home Page, and any use by you after publication of that notice will constitute your acceptance of the amendments.

**3. THE SERVICE**

Service connection shall be made as soon as reasonably possible. Any date indicated by NINET as a date for connection is an estimate only. NINET will not be liable for any losses or damages or other costs as a result of any delay in connection.

Representations made by NINET employees will not form part of this Agreement unless confirmed in writing prior to commencement of the Service.

**4. SERVICE RESTRICTIONS**

Any Customer who is operating or is deemed to be operating an ISP shall be restricted to those Service offerings from NINET, as set out in the application for Service contract.

**5. SERVICE EXPIRY**

Services that incur charges based solely on Customer usage, such as the Dial-Up Service, shall be deemed to have expired if there is no usage by the Customer for four consecutive months.

**6. RIGHT TO CHANGE USERNAME, INTERNET ADDRESS AND PASSWORD**

NINET shall have the right from time to time to change the Customer's User name, Internal Address and/or Password allocated by NINET to conduct or arrange essential network maintenance, enhancement modernisation or other work deemed necessary to the operation of the Internet.



**7. EQUIPMENT**

- (a) Leased Equipment from NINET shall at all times remain the property of NINET.
- (b) The Customer agrees to maintain, at the Customer's own expense, comprehensive general liability insurance for any Leased Equipment supplied by NINET for the duration of this Agreement.

**8. CHARGES**

The Customer must pay for all Goods and Services as agreed from time to time. In particular, the Customer must pay all Service time charges, Service data charges, minimum charges and other amounts incurred by the Customer or its designated Users or incurred as a result of any use of the Customer's Password (whether authorised or not) in accordance with the billing option selected. These charges include, but are not limited to, charges for any purchase made through any Service and any surcharges incurred while using any supplementary networks or services other than the Service. Time charges are charged to the next minute in minute increments.

Prepaid hours which are not used within a month will not be carried forward to the following month.

**9. CUSTOMER COSTS**

In addition to charges, the Customer must provide and pay for -

- (a) the installation and use of telephone lines and all other equipment needed to access the Service, at their own cost;
- (b) all government taxes, duties and levies (if any) imposed on the Customer or NINET in respect of any Goods or Services supplied.

**10. PAYMENT OF ACCOUNTS**

The Customer must pay all amounts billed in accordance with their nominated or allocated billing option. No credit terms are given to Direct Debit or Credit Card accounts. For Credit Card accounts, the Customer gives NINET authorisation to debit the customers credit card for all charges. Billing period is monthly, commencing on the date of customer registration. However billing periods for registration after the 28<sup>th</sup> of each month, will commence on the 1<sup>st</sup> of the next month.

**11. SECURITY DEPOSIT**

NINET may require a security deposit before providing the Service, or as a condition of continuing any Service. The security deposit maybe used to meet any costs, losses or liabilities incurred by NINET in the provision of the Service to the Customer.

**12. CREDIT CHECKS - PRIVACY CONSENT**

The Customer consents to NINET obtaining from a credit reporting agency a Customer's personal information (as well as information concerning commercial credit worthiness and activities) to enable NINET to access an applicant's credit worthiness or for the purpose of overdue payments collection.

**13. PUBLICATION AT CUSTOMER'S RISK**

The Customer accepts full responsibility for all information and material issued or published by the Customer over any Service, and indemnifies NINET against any liability in relation thereto. In particular, the Customer undertakes not to publish or issue any information which is illegal. The Customer also acknowledges that NINET does not vet screen or is otherwise taken approved or approve any information or material available through any Service and NINET is not liable for any such information. To the full extent permitted by law the Customer accesses and uses such information and material at his or her own risk.

**14. USAGE**

The Customer hereby agrees to:

- (a) Refrain from transferring any illegal material to or from other users of the Service and the other privately owned and operated services to which NINET may from time to time provide access.
- (b) Refrain from sending menacing, offensive, abusive or annoying messages whilst using the Service via NINET or any other ISP.
- (c) Not disclose their Password to any third party and to take reasonable steps to keep their Password confidential and inaccessible to third parties.
- (d) Keep NINET informed of any change to the Customer's Address and other such information as may affect the payment of charges due.
- (e) Use only the Allocated Internet Address to connect to the NINET network.
- (f) Immediately cease to use and return to NINET the Allocated Internet Address on termination of this Agreement.
- (g) Not to use or permit others to use the Service in an unlawful manner or in contradiction of published legislation and regulations governing the Internet.
- (h) To include the above restrictions in all the Customer's on-selling conditions using NINET's Service and not to resell a bandwidth greater than that purchased and contracted from NINET unless linked to the Internet through another provider (dual homed) when the restriction will apply at the aggregated data rate.

**15. PROVISION OF SERVICE**

NINET does not warrant and the Customer acknowledges that the Service provided to the Customer is not fault free and relies on factors outside the control of NINET. The Service is provided to the Customer at such times and by such means as NINET elects from time to time.

**16. CHANGES TO THE SERVICE.**

If any Network Operator discontinues the provision of telecommunications services to NINET or alters the telecommunications services or any part thereof provided to NINET, by modification, expansion, improvement, maintenance or repair, NINET shall be entitled to discontinue, alter, modify, expand, improve, maintain, repair, suspend, disconnect or otherwise change the Services as necessary.

**17. EXCLUSION OF LIABILITY**

Except as provided in clause 12 NINET is not liable to the Customer or any other person for -

- (a) any cost, loss or liability (including loss of profit or other consequential damage) arising from NINET's supply or failure or delay in supplying any Goods or Services;
- (b) the content, context or confidentiality of any communications made using any Service. NINET is not able to provide support for software not supplied by NINET, this includes software downloaded from the Internet.

**18. LIMITATION OF LIABILITY**

Except as provided below all terms, warranties, undertakings, inducements and representations relating to the provision of any Goods and Services are excluded and NINET will not be liable for any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) in respect of any Goods and Services. However, NINET's liability for any breach of such implied term or warranty will be limited at NINET's option in anyway permitted by the legislation including where so permitted:

- If the breach relates to Goods:

- the replacement of the Goods; or
- the repair of such Goods; or
- the payment of the costs of replacing the Goods; or
- the payment of the costs of repairing the Goods;

- If the breach relates to the Services:

- the supplying of those Services again; or
- the payment of the costs of having those Services supplied again.

**19. BREACHES**

The Customer shall indemnify NINET against any loss (including any loss of profit) incurred by NINET as a result of any breach by the Customer of the terms of any Agreement with NINET including losses occurred during the period between the date of actual termination (including termination for a breach of clause 14) and the date upon which the Customer was entitled to terminate this Agreement in accordance with its Terms.

**20. TERMINATION**

NINET may immediately terminate this Agreement or the provision of any Goods or Services if: -

- (a) The Customer breaches any Term of this Agreement (including terms relating to payment or use);
- (b) NINET forms the opinion in good faith that the Customer is or may be insolvent. All deposits paid to NINET will be non-refundable if, at any time, the Customer terminates this Agreement. All outstanding charges become immediately payable to NINET and in no circumstances shall the Customer be entitled to any refund of payments made under this Agreement.
- (c) NINET deems the Service to be expired.

Termination shall also include the termination of any features or other services included with the Service.

**21. SUSPENSION OF SERVICE**

NINET may, from time to time and without notice, suspend any Service or disconnect or deny the Customer access to any Service:-

- (a) during any technical failure, modification or maintenance involved in the Service provided that NINET will use reasonable endeavours to procure the resumption of the Services as reasonably practicable; or
- (b) if the Customer fails to comply with any Agreement (including failure to pay charges due) until the breach (if capable of remedy) is remedied, or does, or allows to be done, anything which in NINET's opinion may have the affect of jeopardising the operation of any Service.

Notwithstanding any suspension of any Service under this clause the Customer shall remain liable for all charges due throughout the period of suspension.

**22. INFORMATION RECEIVED**

Except as otherwise expressly permitted in writing, no person may reproduce, redistribute, retransmit, publish or otherwise transfer or commercially exploit any information which is received through the Service in anyway which is competitive to the Service.

**23. ASSIGNMENT**

The Customer must not assign its rights under this agreement with NINET without the prior written consent of NINET (which may not be unreasonably withheld).

**24. GOVERNING LAW**

This Agreement is governed by the laws of Norfolk Island and the parties submit to the jurisdiction of the Courts of Norfolk Island.