



Satellite Service Agreement Terms and Conditions

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

“Access Networks” means the broadband satellite and other equipment and services to be provided and installed by NATCOM for the Customer to enable access to the Internet in accordance with the terms of this Agreement;

“Service” means the IPSTAR Broadband Satellite service supplied to Customer as ordered by Customer in the Order for Broadband Satellite;

“Equipment” means the network infrastructure, hardware, systems and software to be provided and installed by NATCOM to enable access to the Internet through the Access Networks;

“NATCOM” means National Communications Corporation Limited or any NATCOM approved third party service provider or contractor.

“Customer” means the Customer named or described in the Order for Broadband Satellite form prescribed by NATCOM and signed by or on behalf of the parties;

“Party” means NATCOM or the Customer as the context requires;

“Order for Broadband Satellite” means the Customer’s order for the Service and lists the Services to be delivered to the Customer;

“Effective Date” means the date the Order for Broadband Satellite is executed by the parties and on which it becomes effective;

“Commencement Date” means the date on which NATCOM installs and delivers the Service to Customer and the Service is available for use by the Customer;

“Term” means the Minimum Term specified in the Order for Broadband Satellite to be computed starting from the Commencement Date. The term may also be for as long as the Service is provided to and used by Customer.

1.2 For the purposes of this Agreement:

(a) reference to any party includes that party’s successors and/or permitted assigns;

(b) where more than one person comprises a party to this Agreement, references to and the obligations of that party are joint and several in relation to each of those persons;

(c) words importing the singular number include the plural and vice versa and words importing a gender include all other genders;

(d) an obligation not to do anything includes an obligation not to suffer, permit or cause any other person to do that thing.

2. SERVICES TERM

2.1 Initial term: The term for the Services pursuant to the Agreement commences on the Commencement Date, and continues in force during the Term unless otherwise determined in accordance with the provisions of this Agreement.

3. PRICES

3.1 Prices for products and services supplied by NATCOM are set out in the Order for Broadband Satellite.

3.2 GST: All prices quoted do not include GST unless otherwise stated. GST and any other taxes or duties in relation to the sale and delivery of the products and services will be added to the prices quoted and payable by the Customer.

4. ORDERS

4.1 Placement and Acceptance: All orders for Equipment and Services must be in writing. No order will be binding on NATCOM until accepted in writing by NATCOM or a person authorised on its behalf.

5. DELIVERY

5.1 Delivery Obligations: NATCOM will deliver the Equipment and Services to the Customer at the address contained in the Order for Satellite Broadband.

6. PAYMENT

6.1 Equipment & Installation: Any orders for equipment must be accompanied by a minimum Payment of 40% of the total of the equipment cost and estimated equipment installation cost. The remainder of the total Payment for equipment and installation must be made at the completion of the work ordered as invoiced to the Customer.

6.2 Services: NATCOM will invoice the Customer for all service costs described in the Order for Broadband Satellite. The Customer will pay to NATCOM the service costs monthly in advance with the first such payment being made on or before the date services commence. All service costs will be paid without deduction or set-off in the manner stipulated by NATCOM.

6.3 Invoicing: NATCOM will invoice the Customer from the date services commence each month for all services described in the Order for Broadband Satellite supplied to the Customer which are to be used during that month (with payment monthly in advance).

6.4 Non-Payment: Where any payment is not made by the due date, then without prejudice to any other rights or remedies NATCOM may charge interest on the overdue payment at the rate of 2% per month calculated on a daily basis from the date on which payment is due until payment is made and may recover from the Customer all costs, expenses or other sums reasonably incurred by NATCOM in exercising its rights in respect of the Customer's failure to pay.

6.5 Customer will be liable for all costs and charges whether or not a Service was used by Customer or by any person with or without Customer's authority, knowledge or consent.

7. NETWORK

7.1 Installation:

(a) Subject to the Customer complying with the terms of clause 9.1, NATCOM will deliver and install the Equipment at the Customer's address in accordance with a timetable agreed between the parties;

(b) Prior to the installation, Customer will back up data on Customer's relevant computers, obtain consent from the Owners of the relevant computers in respect of the installation, and inform NATCOM if any installation by them is likely to invalidate any support arrangements or other functions of Customer's computers;

(c) Customer agrees that NATCOM will not be liable for any loss or damage (including loss of data) suffered by Customer or any other person arising directly or indirectly from the Installation activities of NATCOM and Customer indemnifies NATCOM against any claim of this nature;

(d) Notwithstanding other terms of this Agreement, NATCOM reserves the right to refuse to install the Equipment as it deems appropriate and at its sole discretion;

7.2 The Equipment will be connected to the Customer's own internal hardware and systems and the provision of access to the Service may be subject to the installation and/or reconfiguration of additional hardware and/or systems;

7.3 Any improper use of the Equipment, incompatibility of hardware and software or other technical factors may affect, or cause the cessation of, or access to, the Service;

7.4 Demarcation Point: NATCOM will install the Equipment and Service with the demarcation point being the Indoor Unit (IDU) broadband satellite modem/router. Any equipment or connection after the IDU is the Customer's responsibility including any internal networking, routing or configuration.

7.5 Unless otherwise specified expressly in the Order for Broadband Satellite, the Service provided by NATCOM will not include (i) any service to reconfigure Customer's computer system, network, hardware or software; or (ii) any installation service of any hardware or software on Customer's computer systems.

8. SUPPORT

8.1 Faults: NATCOM does not guarantee that the Access Networks and Service will be fault-free but will use reasonable endeavours to correct any faults or errors with the Access Networks and Service notified to it by the Customer in accordance with the terms of this Agreement.

8.2 If a fault occurs due to weather conditions, force majeure or any reason beyond NATCOM's reasonable control, any cost associated with the repair of such fault is the Customer's responsibility.

9. THE CUSTOMER'S RESPONSIBILITIES

9.1 Specific Responsibilities. The Customer will:

(a) grant NATCOM full, free and safe access to the installation site and the Access Networks to deliver, install, test, maintain, repair, replace or upgrade the Equipment;

(b) provide NATCOM with such information and other assistance as NATCOM may reasonably require for the purposes of this Agreement;

(c) ensure that the Equipment is only serviced and maintained by NATCOM's approved staff or contractors;

(d) immediately notify NATCOM of any faults or defects with the Access Networks;

(e) follow NATCOM's reasonable directions about the use of the Service and any modifications which Customer may need to make to the Equipment to use the Service;

(f) comply with all of NATCOM's Acceptable Use Policy (AUP), as can be found at www.natcom.co.nz, relating to the Service, as may be changed by NATCOM from time to time.

10. RISK AND LIABILITY

10.1 Risk: The risk of any loss or damage to or deterioration of the Equipment passes to the Customer when the equipment is delivered and it is the Customer's obligation to ensure that the equipment is stored securely and appropriately. The Customer will be liable to pay for all Equipment supplied by NATCOM which is subsequently damaged, stolen, otherwise mis-appropriated or which suffers any loss prior to installation and use.

10.2 Title: Ownership of the Equipment will remain with NATCOM until NATCOM has received from the Customer payment in full for that Equipment.

10.3 Force Majeure: Neither party will be liable for any act, omission or failure to fulfil its obligations under this Agreement to the extent that such act, omission or failure arises from any cause beyond its reasonable control provided that the party unable to fulfil its obligations immediately notifies the other party in writing of the reasons for its failure to fulfil its obligations and the effect of such failure and uses all reasonable efforts to avoid or remove the cause and fulfil its obligations.

10.4 LIMITATION OF LIABILITY:

(a) NATCOM disclaims all conditions and warranties (statutory, express or implied), including, without limitation, the implied warranties as to: (i) the title, fitness for a particular purpose, merchantability, accuracy or standard of quality of a Service (or any part thereof); (ii) the results or data that may be obtained from the use of a Service; or (iii) that a Service will be uninterrupted, error free, virus free, reliable or secure.

(b) In no event will NATCOM be liable for any loss incurred by or any damage howsoever caused to Customer or any person arising out of or in connection with this Agreement or a Service provided or omitted to be provided under this Agreement, whether in contract, tort, equity, under statute or otherwise arising from the relationship between the Parties and, whether direct or indirect, consequential, special, or contingent, and whether foreseeable or not, including without limitation any financial loss or loss of business, profit, revenue, savings, data, contract, goodwill or use of any Equipment.

(c) The Customer agrees that this Agreement will not create any claim or cause of action for any third party, nor will NATCOM be responsible for any third party claims against the Customer. The Customer hereby indemnifies NATCOM against any claim brought by any third party against the Customer or NATCOM in relation to the provision and use of the Access Networks and Service.

(d) If Customer maintains that notwithstanding clause 10.4(b) and clause 10.4(c), that Customer has a valid claim against NATCOM arising out of this Agreement, it must be notified in writing to NATCOM within 12 months of the incident giving rise to such claim or Customer will be deemed to have waived its rights in respect of such claim.

(e) Nothing under this clause will limit or exclude NATCOM's liability which is not permitted to be limited or excluded under the laws of New Zealand.

(f) If, despite the other provisions of this Agreement NATCOM is found to be liable to Customer, the total liability of NATCOM in respect of a Service will not exceed the total charges paid by Customer to NATCOM for that Service for the immediately preceding 3 months prior to the incident (or in case of a series of incidents arising from a common cause immediately preceding the first of such incidents) giving rise to that claim.

(g) NATCOM's shareholders, directors, employees, agents, third party service providers and contractors will have the benefit of the rights, exclusions and limitations of the provisions in this clause as if such provisions were expressly for their benefit.

(h) Customer acknowledges that if they are obtaining the Equipment and Services for the purposes of a business then the Consumer Guarantees Act 1993 does not apply to the provision of Equipment or Services.

10.5 Reliance: In performing its obligations under this Agreement, NATCOM will be entitled to rely upon any instructions, authorisations, approvals or other information provided to it by Customer.

11. RETURNS

11.1 Cancellation of Orders and Credits: Orders, once accepted may not be cancelled and any equipment may not be returned to NATCOM for credit.

11.2 Faulty or Defective Equipment: NATCOM will replace any Equipment which NATCOM determines in its absolute discretion are faulty or defective and unable to be used due to any act or omission by NATCOM or its employees or the manufacturers of the Equipment, and which are returned to NATCOM and in accordance with any existing warranty on the Equipment. Customer will pay any costs for onsite support related to any equipment warranty claims or replacements.

12. TERMINATION

12.1 NATCOM may terminate this Agreement by giving written notice to Customer (but without prejudice to any other rights or remedies available) in the following circumstances if:

(a) Customer breaches any of the provisions of this Agreement and fails to remedy such breach (where capable of being remedied) within 30 days after having been given written notice to do so, or if the breach is a material breach incapable of being remedied; or

(b) Customer fails to pay NATCOM a charge by its Payment Due Date and the outstanding payments are not in dispute;

(c) Customer is unable to pay its debts as they become due, commits an act of insolvency or bankruptcy, becomes bankrupt, goes or is put into liquidation (other than solely for amalgamation or reconstruction), enters into a composition or other arrangement with its creditors or if a receiver, receiver and manager, statutory manager or administrator is appointed over any part of the Customer's assets;

12.2 At the expiry or earlier termination of this Agreement:

(a) NATCOM will be entitled to remove all components it owns in respect of the Access Networks and Service;

(b) Customer will return to NATCOM any documentation or other information or data relating to the Access Networks and Service;

(c) Customer will continue to comply with any provisions of this Agreement that are intended to survive expiry or termination, including, without limitation clause 13; and

(d) If this Agreement is terminated for any reason before the expiry of the Minimum Term, all unpaid charges corresponding to the remainder of the Minimum Term will immediately become due and payable to NATCOM.

13. CONFIDENTIALITY

13.1 Confidentiality: Each party will treat the existence of this Agreement and all information made available by the other party in connection with this Agreement as strictly private and confidential and will ensure that all employees and agents of that party do the same.

13.2 Notwithstanding any other provision in this Agreement, NATCOM may disclose the terms of this Agreement to its affiliated or related companies, solicitors, auditors, insurers and accountants.

14. SUSPENSION OF SERVICES

14.1 NATCOM may suspend, disconnect or discontinue any Service in whole or in part at any time without notice and without compensation if in NATCOM's reasonable opinion:

- (a) It is necessary to safeguard the provision of a Service or the integrity of any Network;
- (b) Any Network or Equipment fails or requires modification or maintenance;
- (c) There is or has been unauthorised, unlawful or fraudulent use of any Service or Customer's use of any Service or Equipment is causing or may potentially cause damage or interference to any Software, Network or Equipment or the contravention of any statutory requirement;
- (d) It is necessary to comply with a direction, order or request of any government authority or other competent authority;
- (e) Customer does not comply with any of the terms of this Agreement; and
- (f) NATCOM may charge for reconnection or resumption of a Service and require revised terms following suspension, disconnection or discontinuance.

15. MISCELLANEOUS

15.1 Assignment - Consent Required: The Customer will not assign or transfer its rights or obligations under this Agreement without the prior written consent of NATCOM which will not be unreasonably withheld or delayed.

15.2 Optional Assignment: NATCOM may assign or transfer its rights or obligations under this Agreement in whole or in part at any time without notice.

15.3 Variation of Terms: NATCOM may vary the terms of this Agreement at any time. Such variation will become effective immediately and continued use of the Service by Customer after the effective date of variation will constitute acceptance of the variation by Customer. NATCOM will inform Customer of any change by providing relevant information on its website. NATCOM's latest service terms & conditions are available at www.natcom.co.nz. Except as otherwise provided, this Agreement may not be varied, except by agreement in writing between the parties.

15.4 Credit Check: NATCOM may, at any time, perform a credit reference check and/or a trade reference check with respect to Customer's circumstances or status, whether financial or otherwise.

16. ENTIRE AGREEMENT

16.1 Entire Agreement: The parties acknowledge that this Agreement entered into between the parties constitutes the entire contract between the parties and replaces all prior agreements, representations and understandings with respect to the subject matter of this Agreement.

17. GOVERNING LAW

17.1 New Zealand Law Applies: The parties agree that this Agreement shall be governed by the laws of New Zealand and that the parties will submit to the exclusive jurisdiction of the New Zealand Courts.