

## TERMS AND CONDITIONS

### INTRODUCTION:

Welcome to Nascomms Call enabled services. We start every new subscriber relationship with an acceptance of our terms and conditions set herein. The following spells out what you can expect from us, and what we expect from you. If you agree to what you read below, you should click "Accept" at the prompt when first accessing your dashboard login to acknowledge that you have read and agreed to these terms and conditions. We intend this to be the legal equivalent of your signature on a written contract, and equally binding.

The use of our service is conditional upon your acceptance and compliance with these terms and any other specific conditions, notices and disclaimers including the Privacy Policy, accordingly please read these Terms and conditions carefully.

**If you do not agree to the terms and conditions agreement, do not click accept and contact us immediately to terminate your account.**

By clicking on "I ACCEPT", you ("You", "you", "Your", "your") agree to be bound by the following terms and conditions between you and NASCOMMS Pty Ltd ABN: 94 615 142 964 (Nascomms) its registered business names and related entities ("We", "we", "Us", "us", "Our", "our"). This agreement governs your access to and use of the services ("Services", "services") offered and supplied by Nascomms to you. It supersedes any other written or oral representations, understanding or agreements.

We agree to supply and you agree to acquire the Services subject to these terms and conditions. By accepting the supply of the Services, You accept these terms and conditions which will continue to cover services supplied to you by us.

We reserve the right to refuse any application.

We reserve the right, at our discretion, to update or revise these terms and conditions by posting the new version on the Site and/or management console at any time. The notice to you will be in the form a prompt accept the new/revised terms and conditions. Your continued use of this Site or the Services provided by Nascomms after we post any changes to the website constitutes your agreement to those changes.

### 1. DEFINITIONS AND INTERPRETATION

1.1 Whenever used in this Agreement, the schedules thereto, or any ancillary document thereto, the following terms, unless the subject matter or context otherwise requires, shall have the following meanings:

1.1.1 "Agreement" means or refers to this Agreement as amended from time to time and any indenture, agreement or instrument supplemental or ancillary hereto or in implementation hereof;

1.1.2 "Business Day" means any day excluding Saturday, Sunday and any other day which in Queensland, Australia is a legal holiday or a day on which financial institutions are authorised by law or by local proclamation to close;

1.1.3 "Person" means any individual, company, corporation, partnership, firm, trust, sole proprietorship, government or entity howsoever designated or constituted; and

1.1.4 "Product" means or refers to Click Calling and or Call Tracking Services sold pursuant to this Agreement.

1.2 Words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders.



- 1.3 The division of this Agreement into articles and insertion of headings is for convenience and reference only and shall not affect the construction or interpretation of this Agreement.
- 1.4 All dollar amounts referred to in this Agreement are in lawful money of Australia.
- 1.5 The preamble hereto form an integral part of this Agreement.
- 1.6 **"Confidential Information"** means all spoken, written, electronically or digitally stored information belonging to or relating to us or Our Clients and includes without limitation:
- any kind of software, technical, financial or business information;
  - details of employees, suppliers, contractors, Yours or ours;
  - Intellectual Property, concepts, know-how and trade secrets; and material developed by us;
  - But excludes information in the public domain (other than by default under this Agreement), or information independently known to you.
- 1.7 **"Related Entity"** means an entity that is related to Nascomms in any of the ways specified in section 50 of the Corporations Act 2001. Third Party and Marketing entities employed by Nascomms in the sale and/or delivery of its products and services.
- 1.8 **"Service"** means the service requested by you in Your Application or by separate request, and described in the relevant Service Description and/or Pricing Schedule, and any related goods (which may or may not include equipment) and ancillary services provided to you by us in connection with that service.
- 1.9 **"Supplier"** means any supplier of goods or services (including interconnection services) which may be used directly or indirectly by us to supply the Service.
- 1.10 **"Supplier Networks"** means any telecommunications, data networks or third party services, supplied to Nascomms by a Supplier.

## 2. ACCESS AND SERVICES

- 2.1 Your access to the various services available on this system depends on the level of service you purchase. You may change or discontinue your account according to the terms set out in this agreement. We reserve the right to modify, suspend, terminate or update services on our system at any time for any reason, including the right to require you to change your login identification code or password. We also reserve the right to delete data files associated with your account and/or other information you have on our system.
- 2.2 Call recordings and voicemails will be stored on our system for a minimum of 30days before being deleted from our storage. We have no record of and cannot retrieve deleted recordings once cleared from our system. It is your responsibility to listen, save and store recordings you require.
- 2.3 Voicemail to email, we make no guarantee that you will receive emails from your provider, or can listen to the voicemail sent as an attachment to your registered email address. You are responsible to have the necessary program on your computer/device to listen to the voicemail sent.

## 3. FEES AND PAYMENT

- 3.1 We will charge you a fee for using our services depending on the type of service you have selected. You should review the current price before signing up for any services. Payment will be via pre-paid invoicing and payments are to be made to Nascomms by EFT (Electronic Funds Transfer), unless otherwise approved by Nascomms.



3.1.1 If you cancel your services in accordance with the terms of the service you have applied for, you will remain liable for all charges accrued up to that time, including full monthly charges for the month for which you discontinued service. We reserve the right to change our fees at any time for any reason, but, whenever possible, we will give you at least one month's advance notice of such change.

3.2 Our services are offered on a pre-paid basis for all customers unless alternative arrangements in writing are in place. Cost per action (CPA) – Pay as you go (PAYG) Recurring monthly payments – 6 months initial term

## 4. **RECURRING and RECURRING MONTHLY SUBSCRIPTION**

4.1 Recurring monthly prepaid services require the monthly fee, to be paid in advance every month for a minimum of six consecutive months. Invoicing is based on calendar months and the fee begins on the date that Nascomms activates your Service (pro-rated for the remainder of the current calendar month) and ends on the last day of the calendar month when terminated. Each service has a minimum term of 12 full months and automatically continues as a month-to-month basis until you notify us in writing giving 30 days written notice that you wish to terminate the service. The service will be terminated at the end of the next calendar month with a minimum period 30 days.

4.1.1 Recurring prepaid or automatically debited services require the upfront fee and all costs associated with the conditions of the services, to be paid in advance every month or at agreed cost levels.

4.1.2 You agree to have funds available to cover all costs for Recurring prepaid or automatically debited services and products.

4.1.3 Recurring prepaid or automatically debited service accounts will be invoiced for any outstanding fees and charges in accordance with the Terms and Conditions of Nascomms INVOICED AND DIRECT DEBITED SERVICES (Section 5).

4.2 You are purchasing each new Service for six full monthly terms, meaning that if you wish to terminate the Service prior to the end of a six monthly term, you will be responsible for the full month's charges to the end of the then-current six month term, including without limitation unbilled charges all of which immediately become due and payable. Expiration of the term or termination of Service does not excuse the Customer from paying all unpaid, accrued charges due in relation to the Agreement.

4.2.1 Month-to-month Services are debited directly in advance, at set intervals or fee amounts as set out in the structure of the services provided.

4.3 Nascomms may terminate or suspend your Service at any time in its sole discretion, or in case of any other non-payment of account charges. Non-payment of our charges from for any reason leaves you fully liable to Nascomms for all charges before termination of the account plus any penalty fees incurred by Nascomms. A request for these charges to be paid by EFT to our bank account will be presented to you.

4.4 You agree that the records of call details are conclusive evidence of your use of the Services and your liability to pay for the Services according to the package selected including Time and Service charges to us.

4.5 You are responsible for all usage on your account and all the relevant costs relating to the provision of services to you.

4.6 You may view your call logs and reports by accessing your account with the user name and password provided, by visiting our website at [www.nascomms.com](http://www.nascomms.com)



- 4.7 You agree that if any debit to your nominated bank account is dishonoured, you will pay our principal bank's dishonour for each and every dishonoured transaction, plus a 10% service charge and any outstanding amounts immediately.
- 4.8 Any payment disputes must be made known to us on receipt of the invoice but no later than the due date, or a zero balance whichever comes first, by contacting us by email [accounts@nascomms.com](mailto:accounts@nascomms.com) or from the Nascomms Help Desk.

## 5. **INVOICED AND DIRECT DEBITED SERVICES**

- 5.1 You will be invoiced on the 7<sup>th</sup> of each month for payment by 30<sup>th</sup> of the same month for services in the following month account (in advance), we will email all Invoices to your nominated email address (main account holder, unless otherwise advised in writing) If you're account credits balance (call tracking time) becomes low during the month the system is structured to automatically top up a set amount of call time based on your account settings. You can contact Nascomms at any time to request or change your current top up settings. You are liable for all top up charges that are included on the next monthly invoice issued to you by Nascomms.
  - 5.1.1 You agree that Nascomms shall direct debited your account or credit card for setup costs, service and product costs, administration and banking charges that are purchased through Nascomms payment gateway.
- 5.2 You agree that the records of call details are conclusive evidence of your use of the Services and your liability to pay for the Services according to the package selected including Time and Service charges to us.
- 5.3 You are responsible for all usage on your account and all the relevant costs relating to the provision of services to you.
- 5.4 You may view your call logs and reports by accessing your account with the user name and password provided, by visiting our website at [www.nascomms.com](http://www.nascomms.com)
- 5.5 Where it is agreed to invoice for services you must pay every invoice by its due date. Failure to pay by the due date, may affect the discounted value if applied, may incur a late payment fee of up to \$25 or 10% of the invoiced amount, calculated per annum and charged per day, whichever is the greatest, and or may lead to the disruption of the services provided.
- 5.6 Nascomms reserves the right to immediately close or suspend unpaid accounts, including the loss of historical reporting and call recordings.
- 5.7 Nascomms reserves the right to charge a service fee for requesting invoices to be resent.
- 5.8 You agree that if any debit to your nominated bank account or credit card is dishonoured, you will pay our principal bank's dishonour for each and every dishonoured transaction, plus a 10% service charge and any outstanding amounts immediately.
- 5.9 Any payment disputes must be made known to us on receipt of the invoice but no later than the due date, or a zero balance whichever comes first, by contacting us by email [account@nascomms.com](mailto:account@nascomms.com) or from the Nascomms Help Desk.

## 6. **SYSTEM RULES**

- 6.1.1 You agree to be bound by certain rules that are important for the proper use of our services. Your failure to follow these rules, whether listed below in the contract or in bulletins posted at various points in the system, may result in interruption or even termination of your service.
- 6.1.2 You will not resell or re-supply any Services without Our prior written approval or license agreement and payment of fees which could apply.



- 6.1.3 You must use the Services only for the purpose of communications and analytic data collection for which they are designed by Nascomms.
- 6.1.4 You must maintain a positive balance at all times to be able to continue to use our services to you including time, reports etc. connected to your account.
- 6.1.5 You must update your details as stored with us regularly to allow for email notices and sales leads to be delivered through the system. If your information is not current we will not intercept your customer's failed communications nor guarantee delivery or notification to you.
- 6.1.6 You will be liable for any use or misuse of your Services as registered with us.

## **6.2 YOU WILL NOT USE, OR ALLOW THE USE OF THE SERVICES:**

- 6.2.1 To infringe another person's rights
- 6.2.2 To infringe Our rights
- 6.2.3 In a manner which could be interpreted by others as representing You as Us
- 6.2.4 In a manner that may expose Us to liability
- 6.2.5 In any way that may damage any property or injure or kill any person
- 6.2.6 To transmit, publish or communicate any defamatory, offensive, abusive, indecent or menacing material
- 6.2.7 To make any hoax call(s), including calls to an emergency service
- 6.2.8 To violate or infringe any duty of obligation owed to any person under law
- 6.2.9 To commit, or in relation to the commission of, an offence under any law of the Commonwealth or any of the States or Territories, or the laws of the country in which the service is provided to you.

## **6.3 YOU AGREE:**

- 6.3.1 not to take any action that may, in our reasonable opinion, infringe our Intellectual Property Rights in any manner or form;
- 6.3.2 To comply with all reasonable industry policies, standards and codes.
- 6.3.3 You have not been granted permission to repackage, market, license, distribute, transfer, lend, rent or otherwise commercially exploit any part of the service, look and feel of design, software architecture and/or the methods of delivery and development, including the conversion or export into any other computer language or service;
- 6.3.4 to notify us immediately if you become aware of any unauthorized use by any person of the whole or any part of the Service provided to you by us under these terms and conditions;
- 6.3.5 You will not reverse engineer, reverse assemble or reverse compile or directly or indirectly allow or assist a third party to reverse engineer, reverse assemble or reverse compile any part of the technology, data sources, design and service delivery methods or otherwise attempt to discover any portion of the source code or trade secrets related to the service provided to you by us.
- 6.3.6 not to introduce into our system viruses, worms, Trojan horses or other harmful or malicious software;



6.3.7 To indemnify us for any loss, cost or damage we incur as a result of your failure to comply with your obligations in this clause.

## **7. SERVICE FEES AND CHARGES**

7.1.1 All prices include GST unless otherwise indicated. ( REFER ANNEXURE A FOR SECONDS PRICING BREAKDOWN)

7.1.1 The Service fees and charges are available via the Nascomms Dashboard viewable to Account Level Log In-service, or by separate written agreement with you.

7.1.2 If no fees are set out for the relevant service a written price and/or development service charge may apply.

7.1.3 Standard setup fees, usage fees and charges are subject to change without notice.

7.1.4 Where standard charges apply to services, the rates will be published on our website.

7.1.5 Contracted, Specialised or Development Services are charged according to the agreement in place or at a quoted hourly rate prior to commencement of work and supply of services.

7.1.6 Nascomms reserves the right to suspend the Service if you fail to make monthly advance payment due to card expiry or for any other reason. A re-activation fee may be charged at our discretion plus the normal monthly/recharge fee if the period of suspension is less than 14 days, after 30days the account cannot be re-activated and a new registration at the current standard rates will be required which will result in the loss of all discounts previously given, and historical data collected.

## **8. YOUR ACCOUNT AND CONTACT DETAILS**

8.1.1 You must keep your account details secure. You will be held liable and must pay for any use of your account whether authorised or not if you fail to advise us of any unauthorised knowledge of your details prior to the unauthorised use.

8.1.2 The account holder must be the authorised holder, or have the appropriate permission of the business and/or the owner of the telephone numbers registered in the main account and sub accounts within the system. The storing of or permitted use of the main account connection for third party information is not permitted. The misuse of the main account may attract standard charges for each third party connection. Nascomms will hold you responsible for the payment of any such charges.

## **9. SALE AND PURCHASE OF PRODUCTS**

NASCOMMS hereby agrees and undertakes to sell to the Purchaser, and the Purchaser agrees and undertakes to purchase from NASCOMMS, for the price and subject to the terms and conditions contained herein, the total requirements of Product needed by the Purchaser for its day-to-day activities during the term of this Agreement.

## **10. TERM OF AGREEMENT**

10.1 Subject to the provisions of sub-sections 6.0 to 6.9 hereinafter, this Agreement shall be in force for an initial term of two years commencing on the date of signature. This Agreement shall be automatically renewed for additional one year 1 year terms unless either party terminates it upon written notice given to the other party at least 60 calendar days prior to the end of the initial term or of any subsequent terms.



- 10.2 Notwithstanding the provisions of sub-section 6.0, this Agreement shall be automatically terminated in the event that the parties hereto fail to agree in writing, at the latest on the thirtieth day preceding the beginning of any subsequent term, on the price for the Products to be sold hereunder during such subsequent term as provided for in section 10.0 hereinabove.
- 10.3 Notwithstanding the provisions of sub-section 6.0 and in addition to Section 6.9, either party shall be entitled to terminate this Agreement prior to its expiry date upon the occurrence of any default or omission of the other party to fulfill any of its obligations under this Agreement or any terms and conditions of this Agreement, on the 1st calendar day following the sending of a written notice to such defaulting party indicating any such default or omission, unless such defaulting party has remedied said default or omission, within the said 7 days. The termination of this Agreement as aforesaid shall cause a termination of same for all parties to this Agreement even if one party is not in default under this Agreement.
- 10.4 Notwithstanding the provisions of sub-section 6.0 and in addition to sub-sections 6.9, either party shall be entitled to terminate this Agreement at any time, upon simple notice to that effect, in the event:
- 10.4.1 that the other party commits an act of bankruptcy, within the meaning given to that expression in the Bankruptcy Act, is declared bankrupt, becomes insolvent or makes an assignment of all its property for the general benefit of its creditors; or
- 10.4.2 that the other party proceeds with its dissolution or liquidation or is the object of any procedure for its dissolution and/or liquidation; or
- 10.4.3 that the other party sells a substantial part of its assets to a third party, unless such sale is made in favor of a related person under the laws of Australia; or
- 10.4.4 that shares representing more than 50 % of the voting rights of the issued and outstanding share capital of the other party are sold, in one or many transactions, to a third party, unless such sale or sales are made in favor of a related person under the laws of Australia; or
- 10.4.5 That the other party amalgamates with one or more corporations, unless all the corporations involved in the amalgamations are related persons within the meaning under the laws of Australia.
- 10.5 Each party shall, within 7 calendar days following the expiration or termination of this Agreement, as the case may be, pay to the other party any unpaid portion, including any accrued interest, of the purchase price of all Products purchased by it and delivered by the other party on or before the date of expiration or termination.
- 10.6 Any party may, at its sole discretion, refuse to execute any order of any party remaining unexecuted at the date of expiration or termination of this Agreement or in case of default of any party to fulfill any of its obligations under this Agreement.
- 10.7 All obligations or liabilities of the parties accrued on the date of expiration or termination of this Agreement shall survive such expiration or termination.

## **11. TERMINATION**

- 11.1 We may terminate or suspend supply of services under these terms and conditions agreement immediately without prior notice to you if:
- 11.2 You are in breach of any term of this Agreement and the breach is not remedied within 7 days of the receipt of written notice from us to your registered email and/or mailing address.
- 11.2.1 We consider the breach of these terms and conditions are an infringement of our rights as set out in these terms and conditions agreements,

11.3 Or under the law we are required by law to do so.

11.3.1 If you terminate your service, you will remain liable for all charges and all other amounts that are outstanding, and any other amounts that are incurred under this Agreement for whatever reason.

11.3.2 If you terminate your prepaid or direct debited service, you acknowledge that no refund is available for any unused balance on prepaid or direct debited accounts.

11.3.3 Prepaid and direct debited accounts are not transferable.

### **13. PRIVACY CONSIDERATIONS**

**13.1** Your communications on this system are, in most cases, viewed only by you and anyone to whom you have given authority to access your information.

13.2 However, as system operators, we may need to review or monitor your account from time to time for maintenance, service to you or technical upgrades. Therefore, you should not expect to have complete right to privacy in any data collected in your account.

**13.3.1** Neither party will disclose to any third party without the prior written consent of the other party any Confidential Information received from the other party. This restriction does not apply to information which is or becomes generally available to the public (other than as a result of a breach of an obligation under this clause), or is required by law to be disclosed.

**13.3.2** Each party will only use the Confidential Information of the other party for the sole purpose of performing its obligations under this Agreement.

**13.3.3** This clause does not prevent us from disclosing the existence of this Agreement to third parties for the purposes of marketing to customers and potential customers.

**13.4** You agree to keep confidential Our Confidential Information.

**13.5** You must not use or disclose Our Confidential Information for any purpose, other than:

**13.6** to the extent necessary to perform obligations or exercise rights under this Agreement;

**13.7** to the extent disclosure is required by law or a direction by a

**13.8** Regulatory Authority;

**13.9** Or to professional advisors in connection with this Agreement.

**13.9.1** You will not use our confidential information obtained through the normal use of the service provided to you by us to reconstruct, duplicate, copy, redistribute the service to a third party.

**13.9.2** You will not develop or contract to develop applications using the service provided to you by us without written permission and/or license from Nascomms and payment of any fees associated with that permission.

**13.9.3** You acknowledge that all confidential information, patents, trademarks, images, scripts, software provided to you by us remains the property of Nascomms and/or third party registered owners, and have been provided to you solely to provide the service(s) covered under these terms and conditions.

**13.9.4** You acknowledge that no permission is given to copy, duplicate or download any content of the websites of Nascomms without written permission or by invitation issued on the website by making such a download available.



**13.9.5** You agree not to hack or disrupt the service or to make any use of the Service that is inconsistent with its intended purpose or to attempt to do so.

## **14. PROPRIETARY RIGHTS**

**14.1.1** By posting messages, uploading files, inputting data, or engaging in any form of communication on our system, all users of the system are therefore deemed to have disclaimed or waived all copyright ownership rights in their messages or files, even if they contain copyright notices. You shall have absolutely no recourse against us as the system provider for any alleged or actual infringement of any proprietary rights to which you may claim ownership.

**14.1.2** Your use of our system affords you access to many of the features of our system, but some aspects of our system remains within our exclusive proprietary control. We or our suppliers own the intellectual property rights to any and all protectable components of our system, including but not limited to the computer software, the related documentation, the end-user interfaces, the name of our system, many of the individual features, and the collective works on our system. You may not reproduce any sequence from our system, either electronically or in print, without our permission. In addition; you may not copy, modify, adapt, reproduce, translate, distribute, reverse engineer, decompile or disassemble any aspect of the system that we or our suppliers own.

**14.1.3** You acknowledge that the source code and technical delivery of our services is a proprietary product, and is subject to copyright and other Intellectual Property Rights and Patents®. All rights are reserved in the title and interests in the services provided, except as otherwise specifically granted under these terms and conditions, you obtain no right, title or interest in or to the services provided or the method in which they are provided. Except as expressly permitted by law you will not decompile or reverse engineer any part of the services provided to you by us.

**14.1.4** The copyright in the material contained on this site, including the trademarks, intellectual property, design, textual material, source code scripts and navigational structure, database architecture, service API's and Webservice, and scripts used to deliver our services belong to Nascomms.

**14.1.5** No material may be reproduced or redistributed on the web or offline other than is permitted with the service purchased, without our prior written permission and payment of any fees which are applied.

**14.1.6** We assume no responsibility for the content or services provided by any third party sites we link to from this site.

## **15. MAINTENANCE**

**15.1.1** You acknowledge and agree that we:

**15.1.2** may from time to time conduct maintenance on and of the network and infrastructure through which the Services are provided;

**15.1.3** will try to conduct such maintenance outside Business Hours, but it may not always be possible for Us to do so;

**15.1.4** Will not be responsible for rectifying any fault in the Service where the fault arises in or is caused by another Suppliers network or your own equipment or programming.

## **16. FAULT REPORTING**

**16.1.1** We will provide a fault reporting service from our website within your account management.

**16.1.2** To report a fault, please use the support contact within your account management or; email us at [techsupport@nascomms.com](mailto:techsupport@nascomms.com) and include your name, account details and the fault details, or click on the free call link to our support staff (business hours may apply).

- 16.1.4 You agree to provide all necessary assistance to enable us to locate and repair a reported fault.
- 16.1.5 We are responsible for correcting faults that are present in Our Network, but not for:
  - 16.1.5 any fault which is within a Supplier Network of an interconnected Supplier, although We will notify that Supplier of the fault and request that it be corrected promptly; or
- 16.1.6 Any fault which is caused by your equipment, your internet service provider or the Premises, but will, where possible, advise you of that fault and its probable cause and location.
- 16.1.7 Any fault which is caused by misrepresentation or alteration by you or your developers or service provider of the code script provided by us for the supply of your Service.
- 16.1.8 Any fault which is caused by the replacement with or without authority of the images which form part of the script provided by us for the supply of your Service.
- 16.1.9 Any fault caused by your attempt to access our service with developments that have not been provided to you by us.
- 16.1.10 Any fault caused by the publishing of a number which has not been tested prior to publishing.
- 16.1.11 Any fault caused by the incorrect publishing of a number in any form.

## 17. ACCESS TO EMERGENCY SERVICES

- 17.1. You acknowledge and agree that the Ad tracking call enabled Services are not intended to be used in the same way as a Standard Telephone and **cannot** be used to access emergency 000 calls. We are under no liability whatsoever because you are unable to access Emergency services from the service at any time.

## 18. RELIANCE ON OTHER NETWORKS

- 18.1.1 You acknowledge and agree that:
- 18.1.2 The Service may rely upon the operation of Supplier Networks operated by Carriers and services provided by other Service Providers (such as your internet provider).
- 18.1.3 We are unable to guarantee the operation of and the use of the service through Supplier Networks or other carriers and carriage and/or service provider's services.
- 18.1.4 Any failure of a Service caused by another network or service is beyond our control, and We will not be responsible, or liable to You, for such failures.

## 19. LIMITATION OF LIABILITY

- 19.1.1 You agree to indemnify, defend and hold harmless us and our employees, officers, agents, and directors against any and all losses, costs, expenses and damages, including but not limited to attorneys' fees, resulting from your own negligence or malpractice, or reckless or intentional misconduct, or failure to perform your obligations and responsibilities covered under these terms and conditions.
- 19.1.2 We will not be liable for any of the following whether caused through our own negligence, or the negligence of our employees, agents, independent contractors or suppliers, or through any other cause:

- 19.1.3 Errors in the information you provide;
- 19.1.4 Errors or omissions in the site, or linked sites;
- 19.1.5 Delays to, interruptions of or cessation of the services;
- 19.1.6 Any circumstances affecting our performance or provision of the services which are caused by factors beyond our reasonable control.
- 19.1.7 We will not be liable under any circumstances for any loss of profits or any damages of any kind recognised by law (even if it has been advised of the possibility of such loss of profits or damages) which are the consequence of you using or acquiring, or your inability to use or acquire any services.
- 19.1.8 We will not be liable where we are prevented, hindered or delayed from providing the services for whatever reason.
- 19.1.9 Where any act of parliament implies in this agreement any condition or warranty, our liability for any breach of such condition, or warranty shall be limited, at our option, to either:
  - 19.1.10 The supplying of the standard services again; or
  - 19.1.11 The payment of the cost of having the standard services supplied again.
- 19.1.12 No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.
- 19.1.13 You must bear the risk of any liability relating to your use of our system. We cannot be held accountable for wrongful action by or to subscribers. ACCORDINGLY, YOUR USE OF THE SERVICES/SYSTEM IS ENTIRELY AT YOUR SOLE RISK. WE WILL NOT BE RESPONSIBLE TO YOU OR ANY THIRD PARTIES FOR ANY DIRECT OR INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR LOSSES YOU MAY INCUR IN CONNECTION WITH OUR SERVICES/SYSTEM, YOUR USE THEREOF OR ANY OF THE DATA OR OTHER MATERIALS TRANSMITTED THROUGH OR RESIDING ON OUR SYSTEM, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, EVEN IF WE HAVE ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

## **20. INDEMNITY**

- 20.1.1 You shall defend and indemnify us and hold us harmless from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs and expenses (including reasonable attorneys' fees), relating to any acts by you or materials or information transmitted by you in connection with our system, leading wholly or partially to claims against us or our services/system by other subscribers or third parties, regardless of the type of claim or the nature of the cause of action.

## **21. DISCLAIMERS OF WARRANTY**

- 21.1.1 THE SYSTEM IS PROVIDED "AS IS" AND WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE, NON-INFRINGEMENT OR ANY OTHER WARRANTY, CONDITION, GUARANTY, OR REPRESENTATION, WHETHER ORAL, IN WRITING OR IN ELECTRONIC FORM, INCLUDING BUT NOT LIMITED TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED THEREIN OR PROVIDED BY THE SERVICE.

- 21.1.2 We will use all reasonable endeavours to provide the services in accordance with any relevant industry standards and acceptable service levels.

- 21.1.3** We offer no warranties, guarantees or representations express or implied, including but not limited to:
- 21.1.4** That the services are or will be free of errors, defects or interruptions, or that it will be available at all times.
- 21.1.5** The Fitness for purpose, title and non-infringement, except for any implied condition or warranty, the exclusion of which would contravene any statute or cause this clause to be void.
- 21.1.6** About the accuracy, reliability or timeliness or otherwise, of the quality or availability of the services; or
- 21.1.7** About the quality or availability of the telephone service and broadband services used by you, that is not provided by us.
- 21.1.8** force majeure events such as (but not limited to) acts of god; strikes; fire; war; riot;
- 21.1.9** government actions;
- 21.1.10** any other cause that is beyond our control, including without limitation a failure of or defect in any Device, the failure of an incoming or outgoing communication, the inability of communications to be connected or completed or degradation of voice quality.
- 21.1.11** Marketing undertaken by you in any form using services provided by us.

## **22. SEVERABILITY**

- 22.1** If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

## **23. CHOICE OF LAW**

- 23.1** You agree that this Agreement shall for all purposes be governed by and construed in accordance with the laws of the State of Queensland, Australia, and that any action arising out of this Agreement shall be litigated and enforced under the laws of the State of Queensland, Australia. In addition, you agree to submit to the jurisdiction of the courts of the State of Queensland, Australia and that any legal action pursued by you shall be within the exclusive jurisdiction of the courts of the State of Queensland, Australia.

## **24. ACKNOWLEDGMENT**

- 24.1** This Agreement represents the entire understanding between you and us regarding your use of our services and supersedes any prior agreements between you and Nascomms and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. No amendment to this Agreement shall be binding upon Nascomms unless and until posted in accordance with the terms in this document. IF YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS AGREEMENT, please click the "Agree" box on the registration form or sign the hard copy agreement provided. If you do not agree to the terms of the Terms and Conditions, please do not tick the acceptance box and immediately log off the registration page.

- 25.** This Agreement (or any part thereof) shall not be assignable by one party except with the written consent of the other, except that either party may assign this Agreement to a related person within the meaning under the laws of AUSTRALIA, provided that such related person shall agree not to assign this Agreement except as permitted under this sub-section. It is further

agreed that NASCOMMS may assign this Agreement to any joint venture to which the purchaser is a party.

## Annexure A – Per Second Pricing

### Example 1:

Local number to local number  
5 minute duration

#### Usage:

Call 1 - 300 seconds  
Call 2 – 300 seconds  
Total – 600 seconds

### Example 2:

Local number to mobile number  
5 minute duration

#### Usage:

Call 1 - 300 seconds  
Call 2 –  $300 \times 3 = 900$  seconds  
Total – 1200 seconds

### Example 3:

Mobile number to mobile number  
5 minute duration

#### Usage:

Call 1 -  $300 \times 3 = 900$  seconds  
Call 2 –  $300 \times 3 = 900$  seconds  
Total – 1800 seconds