



## **STANDARD TERMS AND CONDITIONS** **SMART APPS SERVICE SUBSCRIPTION**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions:** In these Terms and Conditions:

**"Access Account"** means the access right provided by NexWave to the Customer to designated URL(s) which hosts the ASP Application(s) in order to give the Customer access to the Subscribed Services;

**"Agreement"** means these Terms and Conditions, the Quotation agreed to by the Customer and any other agreement or document agreed to by NexWave and the Customer in writing;

**"ASP"** means application service provider;

**"ASP Application"** means such Internet-based solution or software application developed, used or deployed by NexWave in an ASP model, from time to time, in its absolute discretion;

**"Charged Rate"** means the fixed subscription charge rate per month for the Services as set out in the Quotation;

**"Customer"** means the individual, firm, corporation, limited liability company, partnership, company, trust or other entity who contracts with NexWave for the Services under the terms and subject to the conditions contained in the Agreement, and includes its successors (by merger or otherwise) and permitted assigns. A Customer may purchase the Services for one or more Subscribers;

**"Equipment"** means equipment containing the Radio Modem, purchased or rented from NexWave or otherwise owned or used by the Customer in relation to the Services;

**"Equipment Software"** means the software application provided by NexWave on the Equipment to enable the Subscriber to access the Subscribed Services;

**"GPRS"** means General Packet Radio Service;

**"GSM"** means Global System for Mobile communications;

**"IDA"** means the Infocomm Development Authority of Singapore;

**"iDEN"** means the proprietary digital, time division multiple access, trunked, radiotelephone system offered under the registered trademark "iDEN";

**"Initial Term"** means the initial term of the Agreement set out in the Quotation or such other document as NexWave and the Customer may agree in writing;

**"Liability Cap"** shall have the meaning ascribed thereto in Clause 8.4 of these Terms and Conditions;

**"Quotation"** means NexWave's quotation to the Customer, setting out details of the Customer's requirements for the provision of the Services and the rates and fees payable for, and the date of commencement of, the Subscribed Services;

**"Radio Modem"** means a radio modem module capable of operating on the radio frequencies used by the Wireless Network;

**"Renewed Term"** shall have the meaning ascribed thereto in Clause 2 of these Terms and Conditions;



**“Services”** means the provision by NexWave of the ASP Application to the Customer on one or more Wireless Networks determined by NexWave in its absolute discretion, and other related-services and equipments (such as, the Equipment). For the avoidance of doubt, the Services shall not include any system, equipment or cable connected to the Wireless Network not belonging to, operated or leased by, NexWave, including, without limitation, the computer, the server and the Internet connection via telephone lines leased by the Customer or NexWave;

**“NexWave”** means Nexwave Telecoms Pte Ltd, whose registered office is at 5 Clementi Loop, ST Logistics Centre Level 2M, Singapore 129816;

**“Subscribed Services”** means the Services specifically set out in the Quotation and agreed to by the Customer;

**“Subscriber”** means the individual user of the Subscribed Services denoted by the Access Account assigned by NexWave to the Customer. In the case of a natural person, such user includes his or her executors, administrators, successors and permitted assigns, and in case of a company or firm, such user includes its successors (by merger or otherwise) and permitted assigns;

**“URL”** means uniform or universal resource locator; and

**“Wireless Network”** means the wireless communications network (which includes, but is not limited to, the iDEN, GSM and GPRS networks) in which electronic information is transmitted and received to and from subscribers.

- 1.2 **Interpretation:** The headings in these Terms and Conditions are for convenience only and shall not be used to construe or interpret these Terms and Conditions.

## 2. INITIAL TERM AND RENEWED TERM(S)

Unless otherwise expressly agreed by NexWave and the Customer in writing, upon the expiration of the Initial Term, the Agreement shall automatically be renewed for further periods equal to the Initial Term per renewal (the **“Renewed Term”**), unless earlier terminated by a party giving to the other at least one month's notice of termination, prior to the expiration of the Renewed Term in question.

## 3. TERMINATION

### 3.1 Termination With Cause:

3.1.1 NexWave may terminate the Agreement immediately by written notice to the Customer:

- (a) if, in the reasonable opinion of NexWave, the Customer has breached any of the terms of the Agreement (including a failure by the Customer to pay any amounts due and payable under the Agreement within the prescribed time period) and/or the Customer has provided to NexWave, any information which is incorrect, incomplete or misleading;
- (b) if, in the reasonable opinion of NexWave, the Customer has or is likely to use, or have otherwise attempted to use, the Services in contravention of any law or to cause any annoyance, embarrassment, harassment, disturbance or nuisance of any kind whatsoever and to whomsoever;
- (c) if, the Customer is a corporation, an order is made or an effective resolution is passed to wind up the Customer or a provisional liquidator of the Customer is appointed or an application is made for the winding up of the Customer (otherwise than for the purposes of a reconstruction or amalgamation) or the Customer shall have a receiver or similar officer appointed in respect of a material part of its assets, or it makes a voluntary



arrangement with its creditors or becomes subject to an order of judicial management, or if the Customer is an individual, dies or shall have a receiving and/or adjudicating order made against him or her or has made a composition and/or arrangement with or for the benefit of his or her creditors;

- (d) if, in the opinion of any relevant regulatory authority (including, without limitation, the IDA) or law enforcement body, it is not in the public's interest for NexWave to continue to provide the Services to the Customer for any reason whatsoever; or
- (e) in the event of any failure, interruption, disruption or congestion of or in the ASP Application, the Wireless Services or the Services.

3.1.2 The Customer may terminate the Agreement immediately by written notice to the NexWave:

- (a) if, NexWave has materially breached any of the terms of the Agreement and, in the case of a breach capable of remedy, fails to cure such breach within 60 days' after receipt of a written notice from the other Party giving particulars of the breach and requiring it to be remedied; or
- (b) if, an order is made or an effective resolution is passed to wind up NexWave or a provisional liquidator of NexWave is appointed or an application is made for the winding up of NexWave (otherwise than for the purposes of a reconstruction or amalgamation) or NexWave shall have a receiver or similar officer appointed in respect of a material part of its assets, or it makes a voluntary arrangement with its creditors or becomes subject to an order of judicial management.

### 3.2 Termination Without Cause:

3.2.1 NexWave may terminate the Agreement at any time without cause, by giving the Customer 14 days' written notice of such termination.

3.2.2 The Customer may not terminate the Agreement prior to the expiration of the Initial Term. Thereafter, during any Renewed Term, the Customer may terminate the Agreement, by giving NexWave 30 days' written notice of such termination. For the avoidance of doubt, and without prejudice to the generality of the foregoing, the Customer may not terminate the Agreement prior to the expiration of the Initial Term, in the event that the Equipment (whether or not purchased or rented from NexWave) is faulty, damaged or is misplaced for any reason whatsoever.

### 3.3 Action to be taken on Termination: **In the event of termination of this Agreement for any reason whatsoever:**

3.3.1 **the Access Account, including the username and password, allocated to Customer for the purpose of the Subscribed Services shall be revoked immediately and the Customer and/or the Subscriber(s) shall not have any further right to use that Access Account, including the username and password, and the Subscribed Services;**

3.3.2 the Customer shall promptly return (and shall cause the Subscriber(s) to promptly return) all the Equipment rented from NexWave, if any;

3.3.3 the Customer shall, without prejudice to the provisions in Clause 4.1 of these Terms and Conditions, pay all amounts due and payable under the Agreement to NexWave, up to and including the date of termination; and

3.3.4 the Customer shall remove the Equipment Software on the Equipment.



This Clause 3.3, and the obligations created hereunder, shall survive the termination of the Agreement.

- 3.4 **Suspension of Services:** Upon the occurrence of any of the events set out in Clause 3.1.1 of these Terms and Conditions, NexWave may, in addition and without prejudice to its rights of termination pursuant to Clause 3.1.1 of these Terms and Conditions and all other rights or remedies available to it under the Agreement and under applicable law, elect, in its sole discretion, to (a) suspend the provision of the Services in the first instance for such period or periods as it deems fit, and (b) retain all payments made and recover in full all amounts due and payable hereunder, interest payable thereon and all damages sustained by NexWave. Without prejudice to the foregoing, in the event of a failure by the Customer to pay any amounts due and payable under the Agreement within the prescribed time, and if NexWave elects to suspend the provision of the Services, upon subsequent payment by the Customer of the relevant amounts due to NexWave (including any interests thereon), NexWave may if it deems fit (and subject to such terms as it deems appropriate), reconnect the Services at the expense of the Customer, in which event, the Agreement and the Services thereby affected shall continue as if the same has not been terminated.

#### 4. LIQUIDATED DAMAGES

- 4.1 **Liquidated Damages:** Notwithstanding any provisions in the Agreement, in the event of termination of the Agreement prior to the expiration of the Initial Term:

- 4.1.1 by NexWave, for cause pursuant to Clauses 3.1.1(a), (b) and (c) of these Terms and Conditions; or
- 4.1.2 by the Customer, for any reason other than for cause pursuant to Clauses 3.1.2(a) and (b) of these Terms and Conditions,

the Customer shall forthwith (and, in any event, not later than 14 days of the date of termination) pay to NexWave the aggregate of all amounts payable by the Customer to NexWave under the Agreement (whether or not due), up to and including the date of expiration of the Initial Term. In the event of late payment of any such amounts, NexWave reserves the right to charge interest at a rate of 1.5 per cent. per month. Such interest will accrue daily from the due date until the actual receipt of payment by NexWave.

- 4.2 **Obligation Absolute and Unconditional:** The Customer acknowledges and agrees that the liquidated damages payable under Clause 4.1 of these Terms and Conditions are genuine estimates of the damages NexWave shall incur in the event of termination of the Agreement prior to the expiration of the Initial Term. The obligation of the Customer to pay the amounts payable under Clause 4.1 of these Terms and Conditions (and the payment thereof) shall be absolute and unconditional, and shall not be subject to any defense, claim, counterclaim, offset, recoupment or reduction of any kind whatsoever.

#### 5. PAYMENT

- 5.1 **Payment.** In consideration of the provision of the Subscribed Services, the Customer shall pay to NexWave such amounts as are stipulated in the Quotation. Without prejudice to the foregoing, and unless otherwise provided in the Quotation, the Customer shall pay to NexWave, the following fees and charges:

- 5.1.1 subscription charges in respect of the number units of registered in relation to the Subscribed Services, payable monthly in advance;
- 5.1.2 registration charges, payable upon the Customer's acceptance the Quotation; and



- 5.1.3 usage charges of S\$10.00 per megabyte, for server storage space incurred by traffic transmission (inclusive of tracking reports, data and messaging) in excess of the limits set out in the Quotation, payable monthly in arrears.
- 5.2 **Payment Period:** Unless otherwise expressly provided in the Quotation or agreed to by the Parties in writing, payment of any sums due to NexWave under the Agreement shall be made within 14 days from the date of the relevant invoice.
- 5.3 **Interest:** NexWave reserves the right to charge interest on any amounts that becomes overdue at a rate of 1.5 per cent. per month. Such interest will accrue daily from the due date until the actual receipt of payment by NexWave.
- 5.4 **Invoice Dispute:** If the Customer wishes, in good faith, to dispute an invoice, the Customer must notify NexWave of its dispute (the "**Notification**") within 14 days of the Customer's receipt of the relevant invoice, otherwise the Customer will be taken to have accepted and confirmed that the invoice and the amounts reflected thereon are correct and accurate. The Notification must specify the amount in dispute, the reasons for the dispute and be accompanied by any supporting documentary evidence. Notwithstanding any dispute of an invoice, the Customer shall pay the undisputed portion of the amounts reflected in the invoice in accordance with the terms of the Agreement. NexWave shall conduct a review of the dispute and will provide the Customer with a written response within 30 days of receipt of the Notification. The Parties agree that such written response shall be final and binding on each Party. If the dispute is found in NexWave's favour, the Customer shall pay the disputed amounts within 14 days of the date of NexWave's written response.
6. **CHANGES**
- 6.1 **Changes to the Services:** NexWave reserves the right, in its absolute discretion and at any time during the term of the Agreement, to make changes to the Services (including, without limitation, the ASP Application, the Wireless Network, the Equipment Software and the Equipment) as it considers appropriate to develop, modify or upgrade the Services (including, without limitation, the ASP Application, the Wireless Network, the Equipment Software and the Equipment) or any functions thereof, or for any other purpose whatsoever.
- 6.2 **Variations, Changes or Modifications:** NexWave reserves the right, in its absolute discretion and without the prior approval of the Customer, to vary, change or modify these Terms and Conditions, by written notice to the Customer, and any such variation, change or modification will be binding on the Customer, 30 days after the date of the notice.
7. **CUSTOMER SUPPORT**
- NexWave will provide the Customer with reasonable technical assistance and information to enable the Customer to use the Subscribed Services. This will include ensuring that suitably qualified personnel and/or authorised agents are available by telephone or electronic mail between the hours of 8.30 a.m. and 5.15 p.m. Mondays to Fridays (excluding Saturdays, Sundays and public holidays) to provide technical assistance and information on the use of the Subscribed Services. In the event that NexWave's personnel and/or authorised agents are called to the Customer's premises in connection with the provision of such technical assistance and information, NexWave reserves the right to impose charges for such visit.
8. **SERVICES**
- 8.1 **Operation and Maintenance:** NexWave will use its reasonable endeavours to operate and maintain the Services and to provide the Customer with access to the Subscribed Services.
- 8.2 **No Guarantee or Warranty:** The Customer hereby acknowledges and agrees that:



- 8.2.1 NexWave cannot guarantee or warrant to the Customer that the provision of the Subscribed Services will be fault free; and
- 8.2.2 the availability of the Subscribed Services depends on there being no defects, malfunctions, bugs or faults in the Wireless Network, the ASP Application, the Equipment Software and/or the Equipment.

NexWave will however use its reasonable endeavours to remedy or procure the remedy of any defects, malfunctions, bugs or faults in the Subscribed Services as soon as reasonably possible after becoming aware of the same.

- 8.3 **No Liability or Indemnity for Losses or Damages:** NexWave shall not be liable to and shall not indemnify the Customer, the Subscriber(s) or any third party for any losses or damages sustained or incurred by any of them as a result of or in connection with any defects, malfunctions, bugs or faults in the Subscribed Services resulting (directly or indirectly) from or in connection with any defects, malfunctions, bugs or faults in the Wireless Network, the ASP Application, the Equipment Software and/or the Equipment. The Customer expressly waives and releases (to the fullest extent permitted by applicable law) any and all claims, rights or causes of action it may have against NexWave relating to or in connection with such defects, malfunctions, bugs or faults.

- 8.4 **Limitation of Liability:** Notwithstanding the foregoing, in the event that NexWave is held to be liable to the Customer under the Agreement for any losses and damages sustained or incurred by the Customer relating to or in connection with a defect, malfunction, bug or fault in the Subscribed Services (including any defect, malfunction, bug or fault in the Wireless Network, the ASP Application, the Equipment Software and/or the Equipment), the Customer agrees that the total aggregate liability of NexWave shall not, in aggregate, exceed one time the Charged Rate of the Subscribed Services (the "**Liability Cap**"). The Customer agrees that any losses or damages hereunder shall not include any indirect, consequential or punitive losses or damages and the Customer shall use its reasonable efforts to mitigate the amount of any such losses or damages. The Customer further agrees that, notwithstanding any other provisions of the Agreement that may be construed to the contrary, the maximum aggregate liability of NexWave under the Agreement shall not at any time exceed the Liability Cap.

- 8.5 **No Obligation:** Except as otherwise expressly provided for in the Agreement, and to the extent to which it cannot lawfully be excluded, restricted or modified, NexWave shall not be bound by or subject to any condition, warranty or obligation nor incur any liability of any kind in connection with the Agreement or in connection with or in any way directly or indirectly related to the provision of the Services.

## 9. REGISTRATION AND DISCONNECTION

- 9.1 **Registration:** As soon as is reasonably practicable following the acceptance by the Customer of the Quotation, NexWave shall assign an Access Account to the Customer and install the Equipment Software on the Equipment.
- 9.2 **Disconnection:** In order to ensure the quality of the Services, NexWave reserves the right to disconnect from the Services at any time, any equipment or associated software or application that causes or is likely to cause the Services to malfunction or otherwise affects or is likely to affect the performance of the Services.

## 10. CUSTOMER'S OBLIGATIONS

- 10.1 **Customer's Obligations:** The Customer shall, throughout the duration of the Agreement:
  - 10.1.1 comply with its payment obligations set out in the Agreement and shall continue to comply with such payment obligations throughout any period of interruption, loss, unavailability of the Subscribed Services or temporary disconnection for any cause or reason whatsoever;





- 10.1.2 ensure that the Subscribed Services are used in the proper manner as prescribed by NexWave;
- 10.1.3 not to make any adjustments, modifications and/or alterations to the Services without NexWave's written approval, and at NexWave's request, to make such adjustments, modifications and/or alterations to the Services as NexWave may reasonably require;
- 10.1.4 ensure that the Subscribed Services are not used for any unlawful or illegal purposes or in any manner which violates or infringes applicable laws or any rights of any person;
- 10.1.5 upon NexWave's request, provide, at its own expense, the main power supply, Wireless Network, Equipment and Internet connection for the Services in accordance with NexWave's requirements; and
- 10.1.6 permit NexWave's staff and/or authorised agents at all reasonable times to enter the Customer's premises or other place under his control for the purposes of installing, inspecting, examining and/or testing the Services and/or taking such other actions therein as NexWave may deem fit in order for NexWave to provide the Services.

## **11. FORCE MAJEURE**

NexWave shall not be liable under the Agreement where failure by NexWave to comply or delay by NexWave in complying with the terms of the Agreement is due to causes or events beyond NexWave's reasonable control. The Customer hereby acknowledges and agrees that any defect, malfunction, bug or fault in the Subscribed Services resulting (directly or indirectly) from or in connection with any defect, malfunction, bug or fault in the Wireless Network, the ASP Application, the Equipment Software and/or the Equipment shall be an event beyond NexWave's reasonable control.

## **12. ENTIRE AGREEMENT**

The Agreement constitutes the whole agreement between the Parties relating to its subjects matter and supersedes any previous agreement or arrangements between the Parties in respect of the subject matter hereof (whether oral or written).

## **13. GOVERNING LAW AND JURISDICTION**

The Agreement shall be governed and construed in accordance with the laws of the Republic of Singapore, and the Parties submit to the non-exclusive jurisdiction of the Singapore Courts.

## **14. RIGHT OF THIRD PARTIES**

A person who is not a Party shall have no right under the Contracts (Right of Third Parties) Act, Chapter 53B of Singapore to enforce any of the terms of this Agreement.

## **15. MISCELLANEOUS**

- 15.1 **Statutory Provisions:** The Agreement is subject to such terms and conditions as may be imposed by the IDA and to the provisions of the Telecommunication Authority of Singapore Act, Chapter 323 of Singapore, including any amendment, modification or re-enactment thereof, any regulations made thereunder and the terms and conditions of the licences granted to NexWave by IDA under the said Act.
- 15.2 **Notices:** All notices, demands or other communications required or permitted to be given or made under or in connection with the Agreement shall be deemed duly delivered if, to the Customer, it is sent to its last known address or fax number as contained in NexWave's records



- (or to such other address or fax number as the Customer may from time to time notify NexWave in writing), and if, to NexWave, it is sent to its address or fax number reflected in the Quotation (or to such other address or fax number as NexWave may from time to time notify the Customer in writing). Any such notice, demand or other communication shall be deemed to have been duly delivered:
- 15.2.1 in the case of hand delivery, on the day of delivery;
  - 15.2.2 in the case of prepaid post, within 3 days of such posting;
  - 15.2.3 in the case of registered mail or courier, upon written acknowledgement of receipt; or
  - 15.2.4 in the case of facsimile transmission, upon confirmation of receipt of such facsimile transmission.
- 15.3 **Confidentiality:** The Customer shall not disclose any information of a confidential nature about NexWave or its business or in relation to the Agreement, without NexWave's prior written consent. The Customer's obligations under this Clause 15.3 shall survive the expiration or termination of the Agreement.
- 15.4 **Invalidity:** If any term or provision in the Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of the Agreement but the enforceability of the remainder of the Agreement shall not be affected.
- 15.5 **Non-Waiver:** No failure to exercise and no delay in exercising on the part of NexWave of any right, power, privilege under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or any other right, power or privilege.
- 15.6 **Prevalence:** In the event of any inconsistency or conflict between these Terms and Conditions and the terms and conditions contained in the Quotation, the terms and conditions contained in the Quotation shall as between the Parties prevail.
- 15.7 **Successors and Assigns:** The Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
- 15.8 **No Assignment:** The Customer may not assign the Agreement or any of its rights, obligations or interests hereunder, without the prior written approval of NexWave. Any attempted assignment in violation of this provision shall be null and void. NexWave reserves the right to assign the Agreement or any of its rights, obligations or interests hereunder to any third party at any time, without the prior written approval of the Customer.

[ Reference: SmartApps-T&C\_050101-NexWave ]