

Terms and Conditions

1. Definitions

In these Terms and Conditions:

"Authorised User" means any person nominated by the customer who is authorised to use the service.

"Charges" means those charges payable from time to time by the Customer to BitWave Networks for provision of the service including any reviewed Charges.

"Commencement of Service Date" means the date nominated for commencement of the service, by the Customer, on the Order Form.

"Customer" means the company, association, partnership, local, state or commonwealth authority or other entity, or private individual described in the Order Form.

"Order Form" means the document in which the customer applies for the service to be contracted from BitWave Networks.

"Initial Set-Up Fee" means the initial set-up fee or installation charge specified in the Order Form.

"Interest Rate" means the annual rate charged by BitWave Network's principal banker (as nominated by BitWave Networks from time to time) on current overdraft rates plus 2%.

"BitWave Networks" means BitWave Networks Pty Ltd (ACN 602 494 931).

"Rules" means the BitWave Networks Standard Rules as in force from time to time.

"Service" means the service or other services provided by BitWave Networks to the Customer as described in the Order Form including where applicable access to BitWave Network's network (including computer resources, disk storage and computer communication facilities) and the Internet, and any other services contracted between BitWave Networks and the Customer as specified in the Order Form.

"Terms and Conditions" means the Terms and Conditions as outlined below.

2. Agreement

2.1. The Agreement is bound by the Order Form, signed by the Customer and accepted by BitWave Networks, and these Terms and Conditions.

2.2. Where a minimum contract period is specified in the Order Form, the minimum contract period commences on the date the Service is connected.

2.3. Subject to these Terms and Conditions, the Agreement shall remain in force:

2.3.1. Where a minimum contract period is specified in the Order Form, the agreement shall be continued for that minimum period, and then continue until such time as it is terminated by either BitWave Networks or the Customer giving to the other thirty days written notice;

2.3.2. Where a minimum contract period is not specified in the Order Form, the agreement shall continue until such time as it is terminated by either BitWave Networks or the Customer giving to the other thirty days written notice.

2.4. BitWave Networks shall supply the Services to the Customer during the term of the Agreement unless suspended or terminated in accordance with the Agreement.

3. Credit Clauses

3.1. Important Notice To Applicant(s) For Credit (Section 18(E)(1) Privacy Act 1988) Notice of disclosure of your credit information to a credit-reporting agency. (Privacy Act 1988) BitWave Networks Pty Ltd may give information about you to a credit reporting agency, for the following purposes:

3.1.1. To obtain a consumer credit report about you, and/or

3.1.2. To allow the credit reporting agency to create or maintain a credit information file containing information about you. The information is limited to:

3.1.3. Identity particulars - your name, sex, address (and the previous two addresses) date of birth, name of employer, and drivers licence number.

3.1.4. Your application for credit or commercial credit - the fact that you have applied for credit and the amount.

3.1.5. The fact that BitWave Networks Pty Ltd is a current credit provider to you.

3.1.6. Loan repayments which are overdue by more than 60 days, and for which debt collection action has started.

3.1.7. Advice that your loan repayments are no longer overdue in respect of any default that has been listed.

3.1.8. Information that, in the opinion of BitWave Networks Pty Ltd you have committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with your credit obligations).

3.1.9. Dishonored cheques - cheques drawn by you for \$100 or more which have been dishonored more than once.

3.1.10. That credit provided to you by BitWave Networks Pty Ltd has been paid or otherwise discharged.

3.2. Period to which this understanding applies

3.2.1. This information may be given before, during or after the provision of credit to you.

3.3. Statement by applicant(s) for credit

3.3.1. Giving information to a Credit Reporting Agency (Section 18E(8)(c) Privacy Act 1988)

3.3.2. BitWave Networks Pty Ltd has informed me that it may give certain personal information about me to a credit-reporting agency.

3.3.3. Access to Commercial Credit Information (Section 18L(4) Privacy Act 1988)

3.3.4. I/we agree that BitWave Networks Pty Ltd may obtain information about me/us from a business, which provides information about the commercial credit worthiness of persons for the purpose of assessing my/our application for consumer credit.

3.3.5. Access to Consumer Credit Information (Section 18K(1)(b), Privacy Act 1988)

3.3.6. I/we agree that BitWave Networks Pty Ltd may obtain a consumer credit report containing information about me from a credit-reporting agency for the purpose of assessing my/our application for commercial credit.

3.3.7. Exchange of Credit Worthiness Information (Section 18N, Privacy Act 1988)

3.3.8. I/we agree that BitWave Networks Pty Ltd may exchange information with those credit providers named in this application or named in a consumer credit report issued by a credit reporting agency for the following purposes;

3.3.8.1. to assess an application by me/us for credit

3.3.8.2. to notify other credit providers of a default by me/us

3.3.8.3. to exchange information with other credit providers as to the status of this loan where I am in default with other credit providers

3.3.8.4. to assess my/our credit worthiness.

3.3.9. I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

3.3.10. Agreement to a credit provider being given a consumer credit report by a credit reporting agency to assess a guarantor (Section 18K 1(c) Privacy Act 1988)

3.3.11. I/we agree the BitWave Networks Pty Ltd may obtain from a credit-reporting agency a consumer credit report containing information about me/us for the purpose of assessing whether to accept me/us as a guarantor for credit applied for by, or provided to, the borrower(s) [named in agreement]. I/we agree that this agreement commences from the date of this agreement and continues until the credit covered by the borrower(s) application ceases.

3.3.12. Agreement to a credit provider disclosing a report including a consumer credit report to potential or existing guarantor (Section 18K (1) Privacy Act 1988)

3.3.13. I/we agree that BitWave Networks Pty Ltd may give to a person who is currently a guarantor, or whom I/we indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of [name of prospective guarantor] deciding whether to act as a guarantor, or to keep [name of existing guarantor] informed about the guarantee.

3.3.14. I/we understand that the information disclosed can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act, and includes a credit report.

4. Provision of the Service

4.1. The Customer shall pay to BitWave Networks any invoiced amounts rendered including installation and/or initial set-up fees and ongoing charges in respect to the provision of the Service as follows:

4.2. The Customer shall pay the Charges by way of cash or cheque or such other method of payment as shall be agreed.

4.3. The Charges for the Service are payable by the Customer in the manner described in the Order Form.

4.4. After the initial term, the Charges may be reviewed by BitWave Networks from time to time and such Charges, once reviewed, shall be the Charges payable by the Customer to BitWave Networks for the provision of the Service for the period commencing 30 days after notification of the reviewed Charges.

4.5. The Customer is responsible for and will pay any charges generated as a result of any use of the Service accessed through the Customer's identification or log-in whether used by or authorised by the Customer or an authorised User or not.

4.6. The Customer shall pay interest on overdue amounts at the Interest Rate, calculated daily and payable monthly.

4.7. The initial set-up fee is non-refundable.

4.8. If the Customer terminates the Agreement within the minimum contract period specified in the Order Form, BitWave Networks reserves the right to charge the Customer the full amount of any minimum monthly fees and/or flat rate charges specified in the Order Form for the balance of the minimum contract period.

4.9. BitWave Networks may pay a commission to any partner or agent who introduces the Customer to BitWave Networks.

5. Conditions of Connection

5.1. The Customer must provide appropriate telecommunications software and hardware for Connection to BitWave Network's network.

5.2. The Customer is responsible for payment of any costs associated with the data communications line (telephone line or similar link) used for Connection to BitWave Network's network.

5.3. If payment of any Charges is overdue for 14 days or more BitWave Networks may suspend provision of the Service. BitWave Networks reserves the right to charge the Customer a fee for reconnection of the service.

5.4. BitWave Networks may charge any reasonable expenses in connection with recovery of late payments including the costs of engaging a mercantile recovery agent.

5.5. BitWave Networks shall provide certain equipment necessary to access and utilize the Service to the Customer, including antenna, wiring, and BitWave Networks radio receiver (the "Customer Premise Equipment" or "CPE"). This equipment remains the property of BitWave Networks.

5.6. The Customer is responsible for any and all losses, or damages to the CPE following installation. The Customer agrees that the CPE shall remain at all times at the Customer's premises at the time of installation. Under no circumstances shall The Customer remove, uninstall, modify, or change the location of any of the CPE, or attempt any of the foregoing actions.

6. Conditions of Service

6.1. The Customer shall adhere to the Rules in force from time to time.
6.2. BitWave Networks may monitor or keep any records that it deems necessary referable to the Customer's use of the Service.
6.3. The Customer shall not use the Service nor shall the customer permit the Service to be used:
6.3.1. in such a manner as may reasonably be expected by BitWave Networks to impair the use of the Service by other customers of BitWave Networks; or
6.3.2. for any activities of an illegal or fraudulent nature, including activities prohibited under the Telecommunications Act 1997 (Cth), the Copyright Act 1968 (Cth), the Privacy Act 1988 (Cth) or under other applicable Australian State and Commonwealth laws.

7. Network Security

7.1. The Customer shall be responsible for implementing and maintaining network security at the Customer's site.
7.2. BitWave Networks will at the Customer's request endeavor to implement access restrictions to the Customer's network via the Connection and in accordance with any Customer's specifications approved by BitWave Networks.
7.3. The Customer acknowledges that to the extent permitted by law BitWave Networks does not make any representations or warranties concerning the fitness for purpose or effectiveness of any access restrictions or BitWave Network's network security or the Customer's network security.
7.4. The Customer acknowledges that BitWave Network's network is not a secure and confidential method of communication and shall transmit data on BitWave Network's network at its own risk.
7.5. Without being in any way liable so to do BitWave Networks shall endeavor to ensure that all data transmitted on BitWave Network's network is transmitted to the person to whom it is addressed.

8. Limitation of Liability

8.1. To the maximum extent permitted by law:
8.1.1. The use of the Service by the Customer (which includes the contents thereof and any storage or use of information) is at the Customer's sole risk.
8.1.2. BitWave Networks and its information providers, licensors, licensees, employees or agents do not:
8.1.2.1. Warrant that the Service will be uninterrupted or error free; or
8.1.2.2. Make any warranty as to the results obtained from the use of the Service.
8.1.3. The Service is provided on an "as is" basis and to the extent permitted by law without warranties of any kind, either expressed or implied including but not limited to warranties of title or implied warranties of merchantability or fitness for a particular purpose or use.
8.1.4. Neither BitWave Networks nor its information providers, licensors, licensees, employees, and agents nor anyone else involved in creating, producing or delivering the Service shall be liable for any direct, indirect, incidental, special or consequential damages arising out of use of the Service or inability to use the Service or out of any breach of any warranty.
8.2. Where legislation implies in the Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in the Agreement. However, the liability of BitWave Networks for any breach of such conditions or warranty shall be limited, at the option of BitWave Networks, to one or more of the following:
8.2.1. if the breach relates to goods:
8.2.1.1. the replacement of the goods or the supply of equivalent goods; or
8.2.1.2. the repair of such goods; or
8.2.1.3. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
8.2.1.4. the payment of the cost of having the goods repaired; and
8.2.2. if the breach relates to services:
8.2.2.1. the supplying of the services again; or
8.2.2.2. the payment of the cost of having the services supplied again.
8.3. The Customer acknowledges that any electronic material ("material") accessed by the Customer through the BitWave Networks network is varied, and that BitWave Networks will not be liable for or responsible to the Customer or any other person for the nature and content of that material, the Customer's access to that material or the Customer's use of that material.
8.4. The Customer hereby indemnifies and shall keep indemnified BitWave Networks and its information providers, licensors, licensees, employees or agents in respect of any loss or damage, action, claim, suit, or proceeding suffered by or brought against BitWave Networks and its information providers, licensors, licensees, employees or agents by any person:
8.4.1. in relation to or concerning any use of the BitWave Networks network or the Service by the Customer or an Authorised User; or

8.4.2. as a result of the transmission of any illegal and/or fraudulent or offensive material by the Customer or an Authorised User; or
8.4.3. as a result of any breach of the Agreement by the Customer or an Authorised User; or
8.4.4. as a result of any wilful, unlawful or negligent act or omission of the Customer or an Authorised User.
8.5. The provisions of this Clause will survive any termination of the Agreement.

9. Termination

9.1. BitWave Networks may terminate the Agreement without notice upon the occasion of misuse or abuse of the Service by the Customer. What constitutes misuse or abuse of the Service is determined by BitWave Networks at its absolute discretion.
9.2. The Agreement may be terminated forthwith at the option of BitWave Networks:
9.2.1. if a Receiver, Receiver and Manager, Manager, Official Manager, Administrator, Provisional Liquidator, Liquidator or Trustee in Bankruptcy is appointed to all or any substantial part of the assets and undertakings of the Customer; or
9.2.2. if either party commits a material breach of its obligations made under the Agreement and fails or is unable to remedy that breach within 14 days after receiving notice from the other party requiring remedy of that breach.
9.3. Upon the termination of the Agreement by either party BitWave Networks will cease to provide Services to the Customer. The Agreement will thereafter be at an end but without prejudice to any accrued rights of either the Customer or BitWave Networks under the Agreement.

10. Force Majeure

10.1. Neither party shall be liable for any delay or failure to perform its obligations other than the Customer's obligations to pay the Charges pursuant to the Agreement if such delay or failure is due to Force Majeure.
10.2. If a delay or failure of a party to perform its obligations is caused or reasonably anticipated by BitWave Networks due to Force Majeure, the performance of that Party's obligations may be suspended by BitWave Networks.
10.3. If a delay or failure by a party to perform its obligations due to Force Majeure exceeds thirty (30) days, either party may immediately terminate the Agreement on providing notice in writing to the other party.
10.4. If the Agreement is terminated pursuant to this clause, BitWave Networks shall refund any Charges previously paid by the Customer pursuant to the Agreement for goods or services not provided by BitWave Networks to the Customer.
10.5. In the Agreement "Force Majeure" means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under the Agreement. Such circumstances shall include but shall not be limited to fire, storm, flood, earthquake, accident, war, labour dispute, materials or labour shortage other than the party's own staff or staff under its control, law or regulation or act or omission of any third person (including without limitation Telstra Corporation Limited or any provider or related body corporate.

11. Miscellaneous

11.1. The Agreement shall be governed by the laws in force in the State of New South Wales and each party hereto submits to the exclusive jurisdiction of the Courts of that State.
11.2. The Agreement shall endure to the benefit of and be binding upon the successors, assigns, heirs, executors and administrators of the parties.
11.3. These Terms and Conditions and the other documents comprising the Agreement constitute the full and entire understanding between the parties with regard to the Agreement. Neither the Agreement nor any term of it may be amended or any term waived except in writing signed by the parties.
11.4. The Customer agrees that BitWave Networks may obtain access to, use and disclose information about the Customer, pursuant to the Privacy Act 1988 (Cth).
11.5. Goods and Services Tax (GST) – BitWave Networks reserves the right to increase or decrease the charge for the Service to allow for the impact of a GST, consumption tax or similar tax imposed by any government from the date such tax is imposed, but is not obliged to do so.
11.6. All billing disputes must be lodged within 7 days of receipt of invoice.
11.7. The Customer shall pay interest on any overdue amounts at the Interest Rate, calculated on daily balances from the due date and payable monthly.
11.8. Ownership of equipment supplied by BitWave Networks to the Customer or the Customer's representative does not pass to the Customer until payment has been made in full.

12. Notices

All notices shall be in writing and shall be sent by hand delivery, post, facsimile or electronic mail to the parties at their addresses in the Order Form or to such other address as any party may specify to the other. A notice shall be regarded as having been given
12.1. when delivered if sent by hand; or
12.2. the business day three days following posting if sent by post; or
12.3. the business day following the date of transmission if sent by facsimile; or
12.4. the business day following the date of transmission if sent by electronic mail.