

## **Telecom Cook Islands Ltd (TCI) t/a BLUESKY COOK ISLANDS INTERNET SERVICE AGREEMENT TERMS AND CONDITIONS**

By signing this agreement, You have agreed to the terms and conditions set out below. Read them carefully. These terms and conditions are in addition to the terms and conditions of your existing contracts with Bluesky in respect of the telecommunications network. Unless noted otherwise, these terms and conditions apply both to dial-up internet access and to dedicated internet access services.

### **Definitions and Interpretation**

(a) "Dedicated internet access Service" means a permanent connection to the internet with services billed by volume for the purposes of enabling You to have full-time access to the Internet (subject to interruption only as contemplated by these and other applicable terms and conditions of Bluesky). (b) "Dial-up internet access service" means the computing and communication service provided by Bluesky known as the "Internet Service" which will function primarily as an Internet service provider affording such features and facilities and such data transmission and reception protocols as Bluesky may from time to time determine, in its absolute discretion, as appropriate;

### **2. Your vulnerability in using the Internet**

Although TCI t/a Bluesky provides access to the Internet and to other computers, it exercises no control over the nature of the data accessed, its suitability, its effect on Your equipment or the security of Your data; TCI t/a Bluesky accepts no liability whatsoever in respect of loss, damage or injury in respect of these matters and so they are matters entirely for You. TCI t/a Bluesky strongly recommends that You take steps to protect your hardware, software and any young users of your equipment, in your use of the Service. To the full extent permitted by law You access and use all data at Your own risk.

### **3. Use of Email Services**

You agree that Bluesky may establish limits concerning use of any services (including Communication Services and email services) offered on its service, including without limitation, the maximum number of days that e-mail messages will be retained by the service, the maximum number of e-mail messages that may be sent from or received by an account on the service, the maximum size of an e-mail message that may be sent from or received by an account on the service, the maximum disk

space that will be allotted on Bluesky's servers on your behalf, and the maximum number of times and duration you may access the service in a given period of time. Current service limits in place are a maximum message size of 10MBs, messages of a higher size will be rejected from passing through the Bluesky mail servers.

4. Our concern to ensure responsible use by You of our Service.

(a) Bluesky's telecommunications network may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copy- right, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates the export control laws of any country. (b) Violations of the security of the Bluesky system or network or of any other system of network area breach of this Agreement and, in some circumstances, of Cook Islands law. Bluesky will investigate incidents involving violations and reserves the right to prosecute You for breaches of the law. Examples of security violations include (but are not limited to) unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network, unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network, interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks and the forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting. (c) Sending unsolicited mail messages, including, without limitation, commercial advertising and informational announcements, is explicitly prohibited. You shall not use another site's mail server to relay mail without the express permission of the site. Your posting the same or similar message to one or more newsgroups (the transmission of unsolicited electronic mail, also known as "SPAM") is prohibited.

5. Bluesky, as an internet service provider, provides both dial-up internet service and dedicated internet access service for the benefit of end-users of the Internet. In provisioning these services, Bluesky may assign You a static IP address. Under no circumstances can You reassign, resell, or misrepresent the use of this IP address. Under no circumstances shall you utilise the IP address to enable You or any other person to give the impression that You or they are a full Internet Service Provider. Nothing in this

agreement shall prohibit the use of the IP address in connection with any internet café or similar physical establishment which provides online access to customers attending those premises for casual email services or casual access to the internet generally.

6. You breach this Agreement even if the terms and conditions of this clause are breached by You indirectly, or by a third party using Your equipment or on Your behalf, or if You or any such person does anything which Bluesky reasonably believes is an attempt to do anything in breach of this clause.

## 7. Obligations and Liability of Bluesky

(a) Bluesky will use its best endeavours to provide the Service to You on 24hours daily and will (subject to the terms of this contract) provide the Service with due care and skill. You acknowledge that the Service is not fault free and relies on factors outside the control of Bluesky and that Bluesky is unable to assure the content, context or confidentiality of any communications made using the Service. Bluesky is not able to provide support for software downloaded from the Internet or otherwise not supplied by Bluesky.

8. Except as provided by this clause 7, under no circumstances will Bluesky, or its employees, be liable in contract, tort, or otherwise, to compensate You for any, loss, injury or damage arising directly or indirectly from.

(a) Any act, omission, error, default or delay on Bluesky or its employees, or  
(b) Any act, omission, error, default or delay in respect of the provision of the Service, or  
(c) Any failure of the Service, or  
(d) Any failure of anything provided as part of, or in association with the Service, whether the loss, injury or damage is the direct or indirect result of negligence or otherwise.

9. In any event, under no circumstances, will Bluesky or its employees, be liable to You in contract, tort, (including negligence) or otherwise for loss (whether direct or indirect) or lost profits, business or anticipated savings or for any indirect or consequential loss whatever in excess of the maximum liability under this contract which shall be a sum which is either, an amount equal to one month's basic charge for the Service or \$100 whichever is the lower.

10. No action, regardless of form, arising out of the contract may be brought by You against Bluesky more than one year after the cause of action has accrued.

11. Bluesky may from time to time without

notice suspend any service or disconnect or deny You access to the Service during any technical failure, modification or maintenance involved in the Service provided that Bluesky will use reasonable endeavours to procure the resumption for the Service as soon as reasonably practicable. Bluesky may elect to terminate the Service at any time and in that event may terminate this contract upon the giving to you of not less than 24 hrs notice in writing.

## 12. Minimum Term and Extension

You agree to purchase the Plan for the Term. If the Plan is terminated by you before the end of the Term, you agree to pay a Cancellation Fee. You will also be required to pay an Equipment Recovery Fee if, when the Agreement is terminated, the equipment if rented belongs to Bluesky. The Term will automatically extend for a further period equivalent to the length of the Term unless you contact Bluesky before the Term ends to ask for the extension to be cancelled.

## 13. Payments

You shall make the payments prescribed in the schedule to Bluesky no later than twenty (20) days after receipt of an account from Bluesky. Failure to make payments on the due date shall entitle Bluesky, in addition to its other remedies, to charge interest on any outstanding moneys at 2% per month compounded monthly (28.8% per annum) until all outstanding moneys are paid. Payments shall be made for all use of the Service utilising your password or other access code, whether that use is authorised by You or not. Treat your password or access code as confidential information at all times.

## 14. Default by You

If You fail to pay any charge when due or if You commit any other breach of this contract and that breach is not corrected within 7 days after written notice of such failure or breach is given to You, Bluesky shall be entitled to do any or all of the following:

(a) Terminate this contract and immediately disconnect the Service, without the need of any further legal process; and retain any moneys paid by You to Bluesky as liquidated damages, or  
(b) Require immediate payment of any or all outstanding charges; and  
(c) Recover any equipment supplied by Bluesky in connection with the Service. In the event that such equipment is not recovered,

you will be charged for the cost of the equipment supplied.

## 15. Termination by Bluesky

Upon termination by Bluesky the whole outstanding balance of the total charges payable by You shall immediately become due and payable to Bluesky. All remedies in this clause 4 shall be without prejudice to any other rights Bluesky may have under this contract or applicable law or under any other contract with You.

## 17. Breach of Contract

17. In addition to the other terms of this contract the following circumstances shall be regarded as breaches by You of its terms; (a) You have made an assignment for the benefit of Your creditors, or (b) You become unable to pay your debts as they fall due or go into receivership or liquidation, or (c) You or any user of Your equipment uses the Service for any illegal purpose. (d) Except as otherwise expressly permitted in writing, You or any user of your equipment reproduces, redistributes, retransmits, publishes or otherwise transfers or commercially exploits any information received through the Service in any way which is either in breach of any applicable copyright or which is competitive to the Service (and for the avoidance of doubt You acknowledge and agree that "Oyster" is the trade name of the Service and that all rights in that name and its use in connection with the provision of a service to computer users are the exclusive property of Bluesky).

## 18. Assignment and dealings with contract and Service

18.1 You may not assign the contract or any benefit or obligation of this contract except with the prior written consent of Bluesky, which consent shall not be unreasonably withheld.

18.2 Bluesky may without notice assign the contract or any benefit or obligation of this contract to any person, but as between You and Bluesky any such assignment shall not prevent Bluesky exercising any right or claiming any benefit, protection, or indemnity under this contract

## 19. Termination by You

19.1 You may terminate this contract and this contract shall be terminated by Bluesky within 24 hours of Bluesky receiving from You written

notice requesting termination.

19.2 Upon termination by You after commencement of installation work by Bluesky in respect of the Service, Bluesky may at its absolute discretion require You to pay a termination charge to recover its expenses (charged at its usual rates for the provision of installation work)

## 20. The Contract

20.1 This written contract constitutes the entire contract between the parties. No oral or written representation, inducement, statement or promise made by or on behalf of either party and not contained herein shall be relied upon or binding.

20.2 Bluesky may modify the terms as applying to this Contract, the pricing structure for the Service or the terms of the operation by written notice to you or, its discretion, by general notice on a page of the Internet referred to as the Oyster Home Page, and any use after that publication will constitute an acceptance of that modification.

20.3 All clauses of this Contract shall survive termination of this contract and may be sued on accordingly, and no termination shall affect the rights, whether accrued or not, of either party.

## 21. Other

### Usage

Usage alerts are designed to help you keep tabs on your data usage, but ultimately it is your responsibility to monitor how much data you have used. Some viruses can lead to unexpected use of data and this in turn can use up your monthly data allowance. This unwanted usage could lead to you reaching your monthly data allowance faster than you thought. You are entirely responsible for all data usage that occurs under your account, whether or not the usage is caused by a virus. Remember it is your responsibility to make sure you have sufficient security to meet your needs.

### Alerts