

I.N.M.S. Ltd

COMPLAINTS HANDLING AND DISPUTE RESOLUTION PROCEDURES

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1 COMPLAINTS HANDLING PROCEDURE - INTRODUCTION

This complaint handling procedure (“**CHP**”) is designed to handle complaints made by one INMS subscriber (“**complainant**”) about another INMS subscriber (“**respondent**”) alleging breaches by the respondent of the INMS Business Rules for the Management of Portable Freephone & Local Rate Numbers (the “**Business Rules**”).

Where a complaint is escalated to the Board by a party to a complaint (in accordance with the Business Rules) the Board will appoint an Independent Complaints Investigator (ICI) to undertake the investigation of the complaint and will refer the complaint to that person. Charging arrangements are detailed below. The INMS Board will inform both parties to the complaint in writing of the date of commencement of the ICI’s investigation. The ICI will act as an expert and not as an arbitrator and any relevant legislation relating to the conduct of arbitrations is excluded.

The CHP seeks to encourage compliant behaviour by INMS subscribers.

2 COMPLAINTS HANDLING PROCEDURE - COSTS OF HANDLING COMPLAINTS

Funding of the CHP will uphold the principles of accessibility, fairness and cost certainty and ensure that INMS costs (which are passed onto industry) are kept to a minimum.

The charging arrangements are intended to provide accessibility for all parties who lodge complaints, while controlling the progression of vexatious or frivolous complaints.

So that the ICI's time can be most efficiently spent, the complainant and the respondent will be required to provide written submissions to INMS before the ICI commences considering the complaint, according to the following timetable:

- the complainant and the respondent will be required to provide their brief written submissions and any supporting documentation to INMS within fourteen (14) days of the dispute being escalated to the INMS Board;
- INMS will promptly provide copies of the complainant's written submissions and supporting documentation to the respondent, and vice versa;
- within fourteen (14) days of receiving that material from INMS, each party must submit to INMS any written submission it wishes to make in response to the other party's material.

The ICI will be contracted by INMS on the basis of an hourly rate. INMS will provide to the ICI the written materials referred to above.

The parties will pay their own costs. INMS will pay the costs of the first twenty-one (21) hours of the ICI's time, and any disbursements the ICI has incurred in that period (i.e. travelling or accommodation expenses), for each complaint.

If the respondent is found to be in breach of the INMS Business Rules, then the respondent will bear all the ICI's costs and disbursements, including those incurred during the first twenty-one (21) hours, and must promptly reimburse INMS for any such costs and disbursements paid to the ICI by INMS.

Where a complaint is found by the ICI to be vexatious or frivolous and the investigation ends within twenty-one (21) hours, the complainant will pay the costs and disbursements of the ICI's investigation, including those incurred during the first twenty-one (21) hours, and must promptly reimburse INMS for any such costs and disbursements paid to the ICI by INMS.

Where an investigation continues beyond twenty-one (21) hours and the respondent is not determined to be in breach of the INMS Business Rules by the ICI, the complainant will pay the costs of the ICI's investigation after the first twenty-one (21) hours, and any disbursements the ICI has incurred in that period.

Before an investigation proceeds beyond twenty-one (21) hours of the ICI's time the complainant and the respondent will be required promptly to put up bonds for the same amounts to INMS to cover in total a further twenty-one (21) hours of the ICI's time, and to cover any disbursements the ICI anticipates will be incurred by him or her in that period of time.

Before the ICI hands down his or her decision, INMS will be allowed to draw on the bonds put up by the complainant and the respondent equally, for the purpose of paying the ICI's costs and disbursements. If the bonds are exhausted before the ICI hands down his or her decision, the complainant and the respondent will be required promptly to put up additional, similar bonds, to cover the ICI's costs and disbursements until the ICI has made his or her decision and provided his or her written reasons.

After the ICI hands down his or her decision the complainant or the respondent (as the case may be, in accordance with the above paragraphs) must promptly pay all relevant cost and disbursement amounts to INMS and INMS may apply any remaining bond amount of that party in satisfaction of this obligation. INMS will then use those amounts to reimburse itself and the other party (insofar as that other party's bond amounts have been used to pay the ICI) and to pay any outstanding or further invoices of the ICI. Any remaining bond amounts of the party in whose favour the ICI found will be returned as soon as possible to that party. Any remaining bond amounts of the other party will be returned to that party once all invoices of the ICI have been paid (if that party has any responsibility to pay the amounts invoiced) and the CHP, including (where relevant) completion of all sanctions, has been concluded.

If a party fails or refuses to put up a bond when required, or otherwise withdraws from or fails or refuses to comply with the CHP (including, without limitation, where the complainant withdraws the complaint), then the complaint may be deemed by the Board to be resolved in favour of the other party and costs and disbursements will be payable as if the ICI had found in favour of that other party.

3 COMPLAINTS HANDLING PROCEDURE - INDEPENDENT COMPLAINTS INVESTIGATOR (ICI)

The ICI will have skills necessary to undertake the investigation in a competent manner and there will be an emphasis on speedy and cost-effective resolution of disputes.

The ICI will report to the INMS Board on a daily basis for the first twenty-one (21) hours of his or her investigation. These daily reports will be used by the Board to monitor the progress of the investigation for budgetary purposes. In the event that the investigation exceeds twenty-one (21) hours, the ICI will be required to report to the INMS Board on a weekly basis or more frequently if requested. It is anticipated that the ICI investigations will not always require twenty-one (21) hours of investigation. A determination may be made within a twenty-one (21) hour period.

Parties will be advised of the results of the investigation in writing either at its completion (including the withdrawal or resolution of the dispute) or as a progress report after the first twenty-one (21) hours.

The parties may reach agreement as to the resolution of the complaint at any time before the ICI makes his or her decision, but may only do so if the agreement includes written provisions as to who will pay the costs and disbursements of the ICI and INMS also agrees in writing to those provisions.

The ICI will have reasonable flexibility as to the process it will follow in each particular case subject to the following principles:

- the complainant and the respondent will have the right to make written submissions including to cross comment;
- the complainant and respondent will have the right to be heard;
- investigations will be thorough but not excessive in scope.

All INMS Subscribers will be required to cooperate with INMS and the ICI and upon the reasonable request of the ICI to provide requested information within a reasonable time in the event that they are subject to an investigation.

Where a respondent fails to provide the information requested by the ICI in the specified timeframe and has failed to provide a reasonable explanation, the ICI may in writing refer the matter back to the Board for consideration and appropriate action (which may include the Board deeming the complaint to be resolved in favour of the other party, in which case costs and disbursements will be payable as if the ICI had found in favour of that other party), and in that circumstance the ICI may suspend his or her investigation, as he or she considers appropriate, and notify the Board accordingly in writing.

Upon completion of his/her investigation, the ICI will make a determination as to whether a breach of the INMS Business Rules has occurred and any sanctions to be imposed as a consequence of the breach. The ICI will provide written reasons for the determination to both parties. The determination will be made by the ICI by reference to considerations of general justice and fairness, taking into account (without limitation) the wording of the Business Rules and other relevant documents and all applicable laws, regulations and the like.

In deciding what sanctions should be imposed on an offending party, the ICI will seek and may take into account information from the INMS Board about the previous conduct of the party concerned, specifically whether there have been breaches by that party under the INMS Business Rules.

4 COMPLAINTS HANDLING PROCEDURE - SANCTIONS

Depending on the seriousness of the breach and the previous conduct of the party, the ICI may apply a sanction. The ICI must consider applying the following sanctions when making a determination against a respondent who is determined to be in breach of an INMS Business Rule. No other sanctions can be applied by the ICI. The ICI will consider the seriousness of the breach and the respondent's past conduct with respect to the INMS Business Rules when making a determination. Before making a determination to issue a public censure notice, the ICI must first impose a caution notice and then a warning notice. In serious cases, the ICI will have the discretion to minimise the time before sanctions are escalated. Full disclosure of this intention will be provided to the respondent. The respondent must comply with all requirements contained in any sanction imposed by the ICI.

4.1 CAUTION NOTICE OF BREACH

The written Caution Notice to the respondent will include a requirement that one or more of the following actions be undertaken by the respondent:

- rectification of the breach;
- specific corrective actions, e.g. the respondent to withdraw any infringing advertising and/or publish appropriate corrective advertising;
- full compliance by the respondent with any relevant aspect of the INMS Business Rules.

The Caution Notice will nominate a timetable within which the action is required to be completed, with duration dependent upon the nature and complexity of the action. It will also seek confirmation from the respondent of receipt of the Notice and advice of any exceptional circumstances that exist to prevent the action being undertaken within the specified time period. If the ICI is satisfied that the exceptional circumstances will prevent the carrying out of the action, then the requirement for the respondent to comply with the Caution Notice will be suspended for so long as, and to the extent that, the exceptional circumstances prevent compliance.

4.2 WARNING NOTICE OF BREACH

The written Warning Notice to the respondent is a more severe version of the Caution Notice. It is appropriate for situations where the respondent has failed to undertake voluntarily the actions requested by the Caution Notice. The Warning Notice to the respondent will include an order that one or more of the following actions be undertaken by the respondent:

- rectification of the breach;
- specific corrective actions;

- full compliance by the respondent with any relevant aspect of the relevant INMS Business Rules;
- that the respondent have an audit conducted of its compliance procedures by an independent person, approved by INMS, to report on compliance and the respondent implement any recommendations of that person arising from the audit;
- that the respondent's staff undertake relevant education to address knowledge inadequacies that may have led to the Business Rule breach.

The Warning Notice will nominate a timetable within which the action is required to be completed, and the steps needed to be taken by the respondent to address the action required by the Warning Notice, with duration dependent upon the nature and complexity of the action. It will also seek confirmation from the respondent of receipt of the Notice and advice of any exceptional circumstances that exist to prevent the action being undertaken within the specified time period. If the ICI is satisfied that the exceptional circumstances will prevent the carrying out of the action, then the requirement for the respondent to comply with the Warning Notice will be suspended for so long as, and to the extent that, the exceptional circumstances prevent compliance.

4.3 PUBLIC CENSURE NOTICE

In the event that the participant refuses or fails to undertake satisfactorily the actions required by the Warning Notice, the respondent will be formally advised that a Public Censure Notice is to be prepared by the ICI for widespread publication by INMS. The respondent will be sent an advance copy of the intended Public Censure Notice, which will:

- identify the respondent by name;
- give details of the breach;
- list all requests/orders previously made of the respondent;
- report on whether an independent audit has been ordered and, if so, state the results of the audit;
- state that at the date of publication, the requirements of the Caution Notice and the orders of the Warning Notice of Breach have not been complied with;
- specify a final timetable by which any corrective action must be completed.

The respondent will also be advised that actual publication of the Public Censure Notice will not occur until a particular time period has elapsed from the date of the notification, e.g. twenty-one (21) days from the date the advance copy of the Public Censure Notice is sent.

This would allow the respondent to finally comply as ordered. If the ICI determines that compliance has occurred within the specified period, publication of the Public Censure Notice will not proceed.

If the Public Censure Notice is proceeded with, it will be published in the relevant industry's newsletter or magazine, and in the national newspapers, by INMS (at the ICI's direction). A brief report on the matter will also be forwarded by INMS (at the ICI's direction) for publication in Consumer bulletins. The respondent must reimburse INMS for all publication costs.

5 COMPLAINTS HANDLING PROCEDURE - OUTCOME AND APPEALS

The parties will be advised in writing via receipted mail of the ICI's determination and sanction imposed. The respondent will be requested to provide confirmation of receipt of the sanction notice and will be invited to advise the ICI of any exceptional circumstances preventing compliance with any rectification order of the ICI. If the ICI is satisfied that the exceptional circumstances will prevent compliance with the rectification order, then the requirement for the respondent to comply with the order will be suspended for so long as, and to the extent that, the exceptional circumstances prevent compliance.

The respondent will have twenty-one (21) days from the date of receiving the ICI's determination within which to lodge an appeal with the INMS Chairman for referral to an Independent Appeals Body (IAB). If an appeal is to be considered by an IAB, no further sanctions will be applied until the appeal is heard and a decision on the appeal made by the IAB.

The INMS Board will notify the other party if an appeal is lodged. The INMS Board will nominate an IAB to which appeals can be referred and will notify the parties of that appointment. The INMS Board will appoint an IAB according to the following criteria:

- the IAB will consist of three persons;
- knowledge and experience of telecommunications industry;
- knowledge of specific subject areas of INMS Business Rules; and
- knowledge and understanding of the telecommunications legislative framework.

Decisions of the IAB will be made by majority vote, with each person having one vote each.

The IAB will stand in the shoes of the ICI and will consider the matter anew, but may take into account the ICI's decision and the reasons for that decision given by the ICI. All procedures and provisions of the CHP which apply in relation to the dealing with complaints by the ICI apply similarly to the dealing with the complaint by the IAB, except that:

- all of the IAB's costs and disbursements will be borne by the parties as determined by the IAB;
- if the IAB makes a different decision to the ICI, the IAB's decision will be substituted for that of the ICI and the IAB may order that appropriate re-adjustments be made between the parties in relation to payment of the costs and disbursements of the ICI; and

- both parties will be required to put up bonds in equal amounts set by INMS, at the time or times set by INMS, to cover the IAB's time and disbursements (with appropriate adjustments to be made once the IAB makes his or her decision).

The IAB can make a decision on the complaint and may impose sanctions in the same way that the ICI can. However, no appeal may be made from decisions of the IAB.

The IAB will act as an expert and not as an arbitrator and any relevant legislation relating to the conduct of arbitrations is excluded.

The complainant and the respondent will abide by the decision of the IAB.

6 DISPUTE RESOLUTION PROCEDURE

INTRODUCTION

This dispute resolution procedure (“**DRP**”) is designed to resolve any dispute, including (without limitation) a dispute concerning the application or interpretation of the Business Rules, between INMS and an INMS subscriber (the “**Parties**”) arising in connection with an SD Contract between the Parties (a “**Dispute**”). The Parties must follow the **DRP** unless they agree in writing on a different mechanism for resolving the Dispute.

The **DRP** is intended to provide a cost effective and quick procedure for resolving Disputes. Neither Party will have recourse to litigation in respect of the subject matter of a Dispute until the **DRP** has been exhausted except that the **DRP** does not prevent either Party from making application to a court for urgent interim or provisional relief.

INITIAL CONFERENCE

Within fourteen (14) days after a party receives a notice from the other party notifying the existence of a Dispute (“**Start Date**”), the Parties will confer at least once to attempt to resolve the Dispute. At every such conference the Parties must each be represented by a person having authority to resolve the Dispute. All aspects of every such conference, except the fact of its occurrence, will be kept confidential by the Parties.

MEDIATION

If the Dispute has not been resolved within fourteen (14) days after the Start Date (or such further period as the Parties may agree in writing), either Party may refer the Dispute to mediation administered by the Australian Commercial Disputes Centre (“**ACDC**”). The **DRP** is exhausted if neither Party refers the Dispute to mediation in accordance with this paragraph within the required time.

Any such mediation will be conducted in accordance with ACDC Mediation Guidelines (which set out the procedures to be adopted, the process of selection of the mediator and the costs involved). The Parties each agree to comply with and abide by the ACDC Mediation Guidelines as they exist at the time that the Dispute is referred to mediation.

The **DRP** is exhausted upon completion of the mediation.

EXCHANGE OF INFORMATION

The Parties acknowledge that, unless otherwise stated, the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this **DRP** is on a “without prejudice” basis to attempt to settle a Dispute. No Party may use any information or documents obtained through this **DRP** for any purpose other than an attempt in good faith to settle a Dispute.