

## **SMART Link NetFone Terms of Service**

### **1. ACCEPTANCE OF TERMS**

ACeS Philippines Cellular Satellite Corporation (APCSC) provides the SMART Link NetFone Services (defined below) to you subject to the following Terms of Service ("TOS"), which may be updated by APCSC from time to time without notice to you. You can review the most current version of the TOS at any time at: <http://smart.com.ph/SmartLink/services/netfone>. By accessing and using the SMART Link NetFone Services, you accept and agree to be bound by the terms and provision of the TOS. In addition, when using particular APCSC owned or operated VOIP Services, you and APCSC shall be subject to any posted guidelines or rules applicable to such VOIP Services, which may be posted and modified from time to time. All such guidelines or rules are hereby incorporated by reference into the TOS.

### **2. DESCRIPTION OF SMART LINK NETFONE SERVICES**

APCSC provides users with Voice over Internet Protocol or VoIP telephony service (the "SMART Link NetFone Services") which may be accessed through the SMART Link satellite facilities using a SMART Link Satellite MIN number and account load. You also understand and agree that the SMART Link NetFone Services may include advertisements and that these advertisements are necessary for APCSC to provide the SMART Link NetFone Services. You also understand and agree that the SMART Link NetFone Services may include certain communications from APCSC, such as service announcements and administrative messages, and that these communications are considered part of SMART Link NetFone Services membership and you will not be able to opt out of receiving them. Unless explicitly stated otherwise, any new features that augment or enhance the current SMART Link NetFone Services, including the release of new APCSC properties, shall be subject to the TOS. You understand and agree that the SMART Link NetFone Services is provided "AS-IS" and that APCSC assumes no responsibility for the timeliness, deletion, mis-delivery or failure to store any user communications or personalization settings. You are responsible for obtaining access to the SMART Link NetFone Services, and that access may involve third-party fees (such as Internet service provider or airtime charges). In addition, you must provide and are responsible for all equipment necessary to access the SMART Link NetFone Services.

You understand that the technical processing and transmission of the SMART Link NetFone Services, including your voice calls, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

### **3. YOUR REGISTRATION OBLIGATIONS**

In consideration of your use of the SMART Link NetFone Services, you represent that you are of legal age to form a binding contract and are not a person barred from receiving the SMART Link NetFone Services under the laws of the Philippines or other applicable jurisdiction. You also agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the SMART Link NetFone Services registration form (the "Registration Form") and (b) maintain and promptly update the Registration Form to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or APCSC has reasonable grounds to suspect that such information is untrue, inaccurate, not current or

incomplete, APCSC has the right to suspend or terminate your account and refuse any and all current or future use of the SMART Link NetFone Services (or any portion thereof).

#### **4. SMART LINK NETFONE SERVICES PRIVACY POLICY**

Registration Data and certain other information about you are subject to our applicable privacy policy. You understand that through your use of the SMART Link NetFone Services you consent to the collection and use (as set forth in the applicable privacy policy) of this information, including the transfer of this information to the Philippines and/or other countries for storage, processing and use by APCSC and its affiliates.

#### **5. MEMBER ACCOUNT, PASSWORD AND SECURITY**

You will receive a password upon completing the SMART Link NetFone Services registration process. You are responsible for maintaining the confidentiality of the password and account and are fully responsible for all activities that occur under your password or account. You agree to (a) immediately notify APCSC of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session. APCSC cannot and will not be liable for any loss or damage arising from your failure to comply with this Section 5.

#### **6. MEMBER CONDUCT**

You understand that all information, data, text, photographs, messages, or other materials ("Content"), are the sole responsibility of the person from whom such Content originated. This means that you, and not APCSC, are entirely responsible for all Content that you email, transmit or otherwise make available via the SMART Link NetFone Services. APCSC does not control the Content posted or sent via the SMART Link NetFone Services and, as such, does not guarantee the accuracy, integrity or quality of such Content. You understand that by using the SMART Link NetFone Services, you may be exposed to Content that is offensive, indecent or objectionable. Under no circumstances will APCSC be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, sent, transmitted or otherwise made available via the SMART Link NetFone Services.

You agree to not use the SMART Link NetFone Services to:

- a. upload, post, email, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- b. harm minors in any way;
- c. impersonate any person or entity, including, but not limited to, an APCSC official, forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity;

- d. forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the SMART Link NetFone Services;
- e. upload, post, email, transmit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- f. upload, post, email, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
- g. upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation, except in those areas (such as shopping) that are designated for such purpose;
- h. upload, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- i. disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the SMART Link e-mail Services are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
- j. interfere with or disrupt the SMART Link NetFone Services or servers or networks connected to the SMART Link NetFone Services, or disobey any requirements, procedures, policies or regulations of networks connected to the SMART Link e-mail Services, including using any device, software or routine to bypass our robot exclusion headers;
- k. intentionally or unintentionally violate any applicable local, state, national or international law, and any regulations having the force of law;
- l. "stalk" or otherwise harass another; and/or
- m. collect or store personal data about other users in connection with the prohibited conduct and activities set forth in paragraphs a through l above.

You acknowledge that APCSC may or may not pre-screen Content, but that APCSC and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or remove any Content that is available via the SMART Link NetFone Services. Without limiting the foregoing, APCSC and its designees shall have the right to remove any Content that violates the TOS or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. In this regard, you acknowledge that you may not rely on any Content created by APCSC or submitted to APCSC and in all other parts of the SMART Link NetFone Services.

You acknowledge, consent and agree that APCSC may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce the TOS; (iii) respond to claims that any Content violates the rights of third parties; (iv) respond to your requests for customer service; or (v) protect the rights, property or personal safety of APCSC, its users and the public.

You understand that the SMART Link NetFone Services and software embodied within the SMART Link NetFone Services may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by APCSC and/or content providers who provide content to the SMART Link NetFone Services. You may not attempt to override or circumvent any of the usage rules embedded into the SMART Link NetFone Services. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on the SMART Link NetFone Services, in whole or in part, is strictly prohibited.

## **7. INDEMNITY**

You agree to indemnify and hold APCSC and its subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you transmit, modify or otherwise make available through the SMART Link NetFone Services, your use of the SMART Link NetFone Services, your connection to the SMART Link NetFone Services, your violation of the TOS, or your violation of any rights of another.

## **8. NO COMMERCIAL REUSE OF SMART LINK NETFONE SERVICES**

You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion or use of, or access to, the SMART Link NetFone Services (including Content, advertisements and Software).

## **9. GENERAL PRACTICES REGARDING USE AND STORAGE**

You acknowledge that APCSC may establish general practices and limits concerning use of the SMART Link NetFone Services. You acknowledge that APCSC reserves the right to log off accounts that are inactive for an extended period of time. You further acknowledge that APCSC reserves the right to modify these general practices and limits from time to time.

## **10. SPECIAL ADMONITIONS FOR INTERNATIONAL USE AND EXPORT AND IMPORT COMPLIANCE**

Recognizing THE GLOBAL NATURE OF THE Internet, you agree to comply with all local rules regarding online conduct and acceptable Content. Use of the SMART Link NetFone Services and transfer, posting and uploading of software, technology, and other technical data via the SMART Link NetFone Services may be subject to the export and import laws of the Philippines and other countries. You agree to comply with all applicable export and import laws and regulations. In particular, you: (a) represent that you are not a party identified on any government export exclusion list, including but not limited to the Philippines Denied Persons, Entity, and Specially Designated Nationals Lists, nor will you transfer software, technology, and other technical data via the SMART Link NetFone Services to parties identified on such lists; (b) agree not to use the SMART Link NetFone Services for military, nuclear, missile, chemical or biological weaponry end uses in violation of Philippine or other applicable export or import laws.

## **11. MODIFICATIONS TO SMART LINK NETFONE SERVICES**

APCSC reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the SMART Link NetFone Services (or any part thereof) with or without notice. You agree that APCSC shall not be liable to you or to any third party for any modification, suspension or discontinuance of the SMART Link NetFone Services (or any part thereof).

## **12. TERMINATION**

You may terminate your APCSC account and access to the SMART Link NetFone Services by submitting such termination request to APCSC.

You agree that APCSC may, without prior notice, immediately terminate, limit your access to or suspend your account, any associated email address, and access to the SMART Link NetFone Services. Cause for such termination, limitation of access or suspension shall include, but not be limited to, (a) breaches or violations of the TOS or other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) discontinuance or material modification to the SMART Link NetFone Services (or any part thereof), (d) unexpected technical or security issues or problems, (e) extended periods of inactivity, (f) engagement by you in fraudulent or illegal activities, and/or (g) nonpayment of any fees owed by you in connection with the SMART Link NetFone Services or the SMART Link Satellite Services. Further, you agree that all terminations, limitations of access and suspensions for cause shall be made in APCSC's sole discretion and that APCSC shall not be liable to you or any third party for any termination of your account, any associated email address, or access to the SMART Link NetFone Services.

Termination of your SMART Link e-mail account includes any or all of the following: (a) removal of access to all or part of the offerings within the SMART Link NetFone Services, (b) deletion of your password and all related information, files and content associated with or inside your account (or any part thereof), and (c) barring of further use of all or part of the SMART Link NetFone Services.

## **13. DEALINGS WITH ADVERTISERS**

Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the SMART Link NetFone Services, including payment and delivery of related goods or e-mail, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser. You agree that APCSC shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the SMART Link NetFone Services.

## **14. LINKS**

The SMART Link NetFone Services may provide, or third parties may provide, links to other World Wide Web Sites or resources. You acknowledge and agree that APCSC is not responsible for the availability of such external sites or resources, and does not endorse and it not responsible or liable for any Content, advertising, products or other materials on or available from such sites or resources. You further acknowledge and agree that APCSC shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection

with use of or reliance on any such Content, goods or services available on or through any such site or resource.

## **15. APCSC'S PROPRIETARY RIGHTS**

You acknowledge and agree that the SMART Link NetFone Services and any necessary software used in connection with the SMART Link NetFone Services ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that Content contained in advertisements or information presented to you through the SMART Link NetFone Services or by advertisers is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly permitted by applicable law or as authorized by APCSC or the applicable licensor (such as an advertiser), you agree not to modify, rent, lease, loan, sell, distribute, transmit, broadcast, publicly perform or create derivative works based on the SMART Link NetFone Services, such Content or the Software, in whole or in part.

APCSC grants you a personal, non-transferable and non-exclusive right and license to use the object code of its Software on a single computer; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work from, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. You agree not to modify the Software in any manner or form, nor to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the SMART Link NetFone Services. You agree not to access the SMART Link NetFone Services by any means other than through the interface that is provided by APCSC for use in accessing the SMART Link NetFone Services.

## **16. DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- a. YOUR USE OF THE SMART LINK NETFONE SERVICES AND SOFTWARE ARE AT YOUR SOLE RISK. THE SMART LINK NETFONE SERVICES AND SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. APCSC AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- b. APCSC AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT (i) THE SMART LINK NETFONE SERVICES OR SOFTWARE WILL MEET YOUR REQUIREMENTS; (ii) THE SMART LINK NETFONE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SMART LINK NETFONE SERVICES OR SOFTWARE WILL BE ACCURATE OR RELIABLE; (iv) THE QUALITY OF ANY PRODUCTS, E-MAIL, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SMART LINK NETFONE SERVICES OR SOFTWARE WILL MEET YOUR EXPECTATIONS; AND (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.
- c. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SMART LINK NETFONE SERVICES OR SOFTWARE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR AND HEREBY WAIVE ANY AND ALL CLAIMS AND CAUSES OF

ACTION WITH RESPECT TO ANY DAMAGE TO YOUR COMPUTER SYSTEM, INTERNET ACCESS, DOWNLOAD OR DISPLAY DEVICE, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

- d. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM SMART LINK OR THROUGH OR FROM THE SMART LINK NETFONE SERVICES OR SOFTWARE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.

## **17. LIMITATION OF LIABILITY**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT APCSC AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF SMART LINK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE SMART LINK NETFONE SERVICES (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SMART LINK NETFONE SERVICE OR (e) ANY OTHER MATTER RELATING TO THE SMART LINK NETFONE SERVICE.

## **18. SPECIAL ADMONITION FOR SMART LINK NETFONE SERVICES RELATING TO FINANCIAL MATTERS**

If you intend to create or join any service, receive or request any news, messages, alerts or other information from the SMART Link NetFone Services concerning companies, stock quotes, investments or securities, please read the above Sections 16 and 17 again. They go doubly for you. In addition, for this type of information particularly, the phrase "Let the investor beware" is apt. The SMART Link NetFone Services is intended for information purposes only, and no Content included in the SMART Link NetFone Services is intended for trading or investing purposes. APCSC and its licensors shall not be responsible or liable for the accuracy, usefulness or availability of any information transmitted or made available via the SMART Link NetFone Services, and shall not be responsible or liable for any trading or investment decisions based on such information.

## **19. NO THIRD-PARTY BENEFICIARIES**

You agree that, except as otherwise expressly provided in this TOS, there shall be no third-party beneficiaries to this agreement.

## **20. NOTICE**

APCSC may provide you with notices, including those regarding changes to the TOS, including but not limited to email postings on the SMART Link NetFone Services, or other reasonable means now known or hereafter developed. Such notices may not be received if you violate this TOS by accessing the SMART Link NetFone Services in an unauthorized manner. Your agreement to this TOS

constitutes your agreement that you are deemed to have received any and all notices that would have been delivered had you accessed the SMART Link NetFone Services in an authorized manner.

## **21. TRADEMARK INFORMATION**

You agree that all of APCSC's trademarks, trade names, service marks and other APCSC ad logos and brand features, and product and service names are trademarks and the property of APCSC (the "SMART Link Marks"). Without APCSC's prior permission, you agree not to display or use in any manner the SMART Link Marks.

## **22. NOTICE AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT OR INTELLECTUAL PROPERTY INFRINGEMENT**

APCSC respects the intellectual property of others, and we ask our users to do the same. APCSC may, in appropriate circumstances and at its discretion, disable and/or terminate the accounts of users who may be repeat infringers. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide APCSC the following information:

- a. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- b. A description of the copyrighted work or other intellectual property that you claim has been infringed;
- c. A description of where the material that you claim is infringing is located on the site;
- d. Your address, telephone number, and e-mail address;
- e. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- f. A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

APCSC's Agent for Notice of claims of copyright or other intellectual property infringement can be reached as follows:

By mail:

Felimon R. Llavore  
Senior Manager  
Technical Operations  
17/F SMART Tower,  
6799 Ayala Ave., Makati City  
By Phone: (+632) 5112287  
By Fax: (+632) 5113222  
By e-mail: frllavore@smart.com.ph

## **23. GENERAL INFORMATION**

Entire Agreement. The TOS constitutes the entire agreement between you and APCSC and governs your use of the SMART Link NetFone Services, superseding any prior version of this TOS between you and APCSC with respect to the SMART Link NetFone Services. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other SMART Link NetFone Services, affiliate e-mail, third-party content or third-party software.

Choice of Law and Forum. You and APCSC each agree that the TOS and the relationship between the parties shall be governed by the laws of the Republic of the Philippines without regard to its conflict of law provisions and that any and all claims, causes of action or disputes (regardless of theory) arising out of or relating to the TOS, or the relationship between you and APCSC, shall be brought exclusively in the courts located in Makati City, Philippines. You and APCSC agree to submit to the personal jurisdiction of the courts located within Makati City, Philippines, and agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.

Waiver and Severability of Terms. The failure of APCSC to exercise or enforce any right or provision of the TOS shall not constitute a waiver of such right or provision. If any provision of the TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOS remain in full force and effect.

No Right of Survivorship and Non-Transferability. You agree that your SMART Link Netfone Service account is non-transferable and any rights within your account terminate upon your death. Upon receipt of a copy of a death certificate, your account may be terminated and all contents therein permanently deleted.

Statute of Limitations. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the SMART Link NetFone Services or the TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred.

The section titles in the TOS are for convenience only and have no legal or contractual effect.

## **24. VIOLATIONS**

Please report any violations of the TOS to our Customer Service Hotline through [smartlink@smart.com.ph](mailto:smartlink@smart.com.ph).