

Standard Agreement – General Terms

1. Contract

1.1 Standard Form of Agreement

We are permitted under the Telecommunications Act to provide Services on the terms and conditions of a “Standard Form of Agreement”. Our standard agreement is comprised of:

- (a) this document which sets out the standard terms and conditions on which we supply the Services to you (**General Terms**);
 - (b) the standard Service-specific terms which apply to each Service (**Service Schedules**);
 - (c) any additional information, including the Charges for each Service, which apply to each Service that you are acquiring and which may be set out in a Standard Order Form, Provisioning Order Form or Service Schedule (**Service and Charges Information**); and
 - (d) any other document or agreement that the parties agree in writing forms part of the Standard Agreement (**Variation**),
- (together, the **Contract**).

1.2 Formation of a Contract

A Contract is formed (comprising these General Terms, the Service Schedules, Service and Charges Information and any Variation) between us and you upon our acceptance of your signed Standard Order Form and one or more Provisioning Order Form(s) (**Order**) for the supply of the relevant Service(s).

To avoid doubt, a separate Contract is formed between us and you each time an Order is accepted by us.

1.3 Term of the Contract

The Contract shall commence on and from the date upon which it is formed pursuant to clause 1.2 and shall continue until it is terminated:

- (a) by you giving not less than 60 days’ prior written notice to us; or
 - (b) otherwise, by either party in accordance with the terms of the Contract,
- (**Term**).

1.4 Inconsistencies

To the extent of any inconsistency, the components of the Contract will be read in the following order of precedence:

- (a) any Variation;
- (b) the Order;
- (c) the applicable Service Schedule; and
- (d) these General Terms,

such that a provision in a document listed higher in the above list shall prevail, to the extent of any inconsistency, over a provision in a document listed lower in the above list.

1.5 You are constituted by more than one party

Where you are constituted by more than one party, you acknowledge and agree that each such party is jointly and individually responsible for all Charges and other obligations under the Contract.

1.6 Changes to parts of the Contract

- (a) Subject to clauses 1.6(b) and 1.6(c), we may make changes to the provisions of these General Terms or the Service Schedules from time to time (including in circumstances where one of our Suppliers changes the terms and conditions upon which it supplies any service, or its associated technology, to us).
- (b) If we intend to make a change, we will endeavour to notify you at least 30 days prior to making that change.
- (c) However, if we reasonably expect that any change will have a material detrimental impact on you (excluding situations set out in clause 1.6(d)), you may cancel the affected individual Service(s) by providing us with the notice required in clause 1.3(a) without incurring a Termination Charge, but you must pay us:
 - (1) any usage or network access Charges incurred up to the date of cancellation of the individual Service(s);
 - (2) any outstanding Charges for Works and Equipment and any additional charges in relation to the Service(s) to be cancelled;
 - (3) the proportion of any Charge waived or foregone by us (for example, if we agreed to waive a \$500 charge partially in consideration for you entering into a two year contract with us and you terminate that contract at the 12 month point, you will pay us \$250); and
 - (4) any amounts for Service(s) you request in order to transition to an alternative service provider.
- (d) Your right to cancellation under clause 1.6(c) does not apply if we make any change because:
 - (1) there is an increase in taxes or levies imposed by the law, or new taxes or levies imposed by the law come into place;
 - (2) there is a change to the costs of ancillary services (such as an increase in credit card or direct debit transactions fees imposed on us by third parties) as long as we provide you with a reasonable alternative at no additional charge. If we fail to offer you such a reasonable alternative, then you may cancel the affected Service(s) in accordance with clause 1.6(c);
 - (3) there is an increase in the charges imposed on us by third parties for international Carriage Services or content and premium services which we resell to you, provided:

- (A) we told you prior to or at the time of your Order being accepted by us that the prices were subject to change; and
- (B) we give you at least 90 days' notice if you have used an affected Service within 6 months prior to the date of the proposed change; or
- (4) we need to make changes:
 - (A) to comply with any law or an order or direction of any Government Agency;
 - (B) to address any issues of security in order to protect the integrity of the Service; or
 - (C) to address any technical issues in order to protect the integrity of the Service.

obligation to pay Charges as they become due and payable.

- (b) We may from time to time request that you increase the amount of any security provided if we form the reasonable opinion that there is a risk that you will not be able to comply with your obligations to pay any Charges to us.
- (c) We may apply the whole or any part of any security to satisfy any amount you are required to pay to us from time to time and that is overdue, without prejudice to any of our other rights under the Contract or at law. You acknowledge and agree that the security (including security deposits) can be applied in such manner. If we do apply the security, you must provide us with any further amount of security that we request from time to time and we may use it as provided for in this clause 2.4.
- (d) We shall return any remaining security (other than a security deposit) to you within 30 days of the last of:
 - (1) the last Contract terminating or expiring;
 - (2) you having paid in full to us all Charges and any other amounts owing to us under all Contracts; and
 - (3) you having fully complied with all your obligations upon termination of the last Contract (including the return of all Equipment to us required to be returned under the Contract).
- (e) In circumstances where you provide a security deposit to us, the following additional terms apply prior to us applying security deposits in the manner set out under clause 2.4(c), we will give you at least 5 Business Days' notice for you to satisfy any overdue amounts that we are required to pay to us.

2. Orders

2.1 Making an application for Service(s)

You must first offer to acquire one or more Service(s) by signing a Standard Order Form and one or more Provisioning Order Form(s) for the Service(s).

2.2 Your acknowledgement

We reserve the right to accept or reject an Order at our sole discretion. You acknowledge that, if we decide to accept an Order and enter into a Contract by commencing the provisioning of the Service(s), we do so having been induced by, and in reliance on, the representations and warranties set out in clause 10.

2.3 Credit Rating

- (a) We may request that you provide, within 7 days of a request by us any information we require to assess your Credit Rating.
- (b) You authorise us to:
 - (1) conduct checks and searches of your Credit Information to assess your Credit Rating from time to time;
 - (2) use any information that you provide to us (including any personal information, Credit Information or Confidential Information comprised in any of the foregoing information) to assess your Credit Rating and for credit management purposes; and
 - (3) to disclose such information, and any information we obtain through checks and searches of your Credit Information, to a credit reporting agency or any collection agent to assess your Credit Rating and for credit management purposes.

2.4 Security

- (a) Based on our credit assessment of you, we may as a condition of accepting any Order, request that you first supply security in a form, and on terms, acceptable to us (for example a security deposit, bank guarantee or general security agreement). Your provision of any security does not affect your obligations to us including your

3. Supply of Services

3.1 Commencement

- (a) We will commence supplying each Service, and you will be liable to pay the Charges for such Service, on the earlier of:
 - (1) the date you commence using the Service; or
 - (2) the date all Works required for the Service to be made available to you are completed by us.
- (b) You will be responsible for all reasonable costs incurred by us as a result of your delay or failure to accept delivery of the Service or any related Equipment.

3.2 Supply standards

We will supply each Service:

- (a) with reasonable care and skill; and
- (b) in accordance with all applicable laws directly related to the supply of the Service to you.

3.3 References to “AAPT Business Connect”

- (a) You acknowledge and agrees that:
 - (1) a Service may be supplied by; and
 - (2) where applicable, references in the Contract to “AAPT Business” are references to, Connect ANZ Pty Ltd, its permitted assigns and Affiliates and their respective agents or contractors.
- (b) If a Service is supplied by a person other than us, neither party is relieved of any of its obligations under the Contract except as expressly agreed between us and you in writing.

3.4 Delivery of Services to Site

We will deliver each Service up to, and you are responsible for all equipment, cabling, wiring and configuration beyond, the relevant boundary point at the Site. The relevant boundary point in respect of a Service is as set out in the applicable Service Schedule.

3.5 Replacement service

We may, by giving you 14 days prior notice, replace an existing Service with another service where the Charge for the new service is not greater than the Charge for the Service being replaced and the functionality of the new service is overall substantially the same as, or better, than the Service being replaced, as reasonably determined by us =.

3.6 Service Levels

If the Contract sets out Service Levels for a Service then we will use reasonable endeavours to supply that Service in accordance with those Service Levels. Our liability to you for a failure to meet a Service Level is as set out in the Contract, failing which, we will not be liable (whether in contract, tort (including negligence), statute or otherwise) for such failure. If the Contract sets out a remedy for such failure, that is your only remedy for the failure to meet the Service Levels.

3.7 Services not fault free

We:

- (a) do not represent, warrant or guarantee that any Service will be free of interruptions, delays, faults or errors; and
- (b) except as expressly provided in the Contract for the relevant Service, are not liable (whether in contract, tort (including negligence), statute or otherwise) to you or any other third party for any interruptions, delays, faults or errors in connection with the supply of a Service (in part or in full) for any reason whatsoever.

3.8 Service disruption

We may temporarily suspend or restrict any Service:

- (a) if we believe it is necessary to do so to comply with any law or an order or direction of any Government Agency;

- (b) if we cannot enter the Site because of your or a third party’s act or omission when we needed to do something in connection with the Service in order to supply the Service or make the Service or related Equipment safe;
- (c) to protect any person, Equipment or the Network or attend to any emergency;
- (d) during any scheduled maintenance or Works;
- (e) if you breach the terms of any applicable Acceptable Use Policy;
- (f) if the Service is used in an excessive or unusual way (though we are not obliged to suspend or restrict any Service in those circumstances and you remain liable to pay for any Charges incurred for any excessive or unusual usage); or
- (g) if you are in material breach of the Contract (including by non-payment of any Charge) and fail to comply with a written notice requiring you to remedy such breach by the date specified in that notice.

3.9 Authorisation

We are entitled to assume, acting reasonably, that any request in connection with a Service we receive from you, or any of your Personnel, or from the Site where the Service is being supplied or accessed, is authorised by you.

4. Works

4.1 Timing

We will use reasonable endeavours to carry out any Works in relation to a Service within the timeframe agreed with you.

4.2 Charges

The Charges for any Works are based on the information you have provided to us. If that information is inaccurate or any unforeseen event occurs which requires additional Works to be done by us, we may charge you an additional charge incurred in completing the Works, provided that, if reasonably practicable, we notify you of such additional charge before it is incurred.

5. Equipment

5.1 Property rights to Equipment and Network

Except as expressly provided in these General Terms, you acknowledge that acquiring a Service from us does not give you any ownership or other property rights in the Network or any Equipment.

5.2 Provision of Equipment generally

- (a) If required for the performance of a Service, we will either rent or sell Equipment to you, as specified in the Order.
- (b) You must pay us the applicable Charges (which, if the Equipment remains Retained Ownership Equipment, may include rental Charges) in respect of all Equipment.

5.3 General obligations relating to Equipment

- (a) You must:
- (1) ensure that all Equipment used or to be used in connection with a Service:
 - (A) is compatible with the Service; and
 - (B) complies with all applicable laws, regulations, codes and standards (including any technical standards of any Government Agency);
 - (2) obtain all necessary permits, licences and authorisations required for the installation and use of any Equipment in connection with a Service;
 - (3) follow all reasonable directions of ours or the manufacturer of any Equipment when connecting anything to any Equipment or the Network or otherwise operating any Equipment; and
 - (4) ensure all Equipment is installed to our or the manufacturer's specifications and never use any Equipment for purposes for which it is not designed.
- (b) If you fail to comply with any provision of clause 5.3 in respect of any Equipment, we may disconnect that Equipment from the Service. We will attempt to provide you with reasonable notice before any such disconnection, but may disconnect the Equipment immediately in an emergency.
- (c) To avoid doubt, this clause 5.3 applies to all Equipment whether supplied by us or you.

5.4 Delivery of Equipment and assumption of risk

- (a) We will deliver any Retained Ownership Equipment and/or Purchased Equipment to the Site or as otherwise agreed in writing between the parties.
- (b) All risk including risk for damage to, or destruction, loss or theft of, the Retained Ownership Equipment and/or Purchased Equipment passes to you from the date that the relevant Equipment is delivered to the Site or, if applicable, the date that you, your agent or contractor picks up or otherwise receives the relevant Equipment.
- (c) You are responsible for all damage to (save for fair wear and tear), or loss, destruction or theft of, the Retained Ownership Equipment and/or Purchased Equipment or to any part of the Network to which the relevant Equipment is connected, except to the extent that the damage, loss, destruction or theft is directly caused by our negligence. You must, on demand, reimburse us:
 - (1) for any damage to the Retained Ownership Equipment and/or Purchased Equipment or to any part of the Network to which the relevant Equipment is connected for which you are responsible, the cost of repair or the cost of the

replacement Equipment or that part of the Network; or

- (2) for any loss, destruction or theft of the Retained Ownership Equipment and/or Purchased Equipment or to any part of the Network to which the relevant Equipment is connected for which you are responsible, the cost of the replacement Equipment or that part of the Network,

together with any costs incurred by us in respect of the delivery and installation of the repaired or replaced Retained Ownership Equipment and/or Purchased Equipment or any part of the Network to which the relevant Equipment was connected.

5.5 Retained Ownership Equipment

- (a) Ownership of Retained Ownership Equipment remains with us or our Suppliers (as the case may be). You hold the Retained Ownership Equipment as the fiduciary, agent and bailee of us or our Suppliers (as the case may be).
- (b) We may, at our discretion, modify or replace Retained Ownership Equipment:
 - (1) during your normal business hours provided that there is no material adverse interruption to the applicable Service and the functionality of the Service is not substantially altered; or
 - (2) at such other times as may be agreed between the parties.
- (c) You agree to comply with our arrangements for the modification or replacement of such Retained Ownership Equipment including the return within a reasonable timeframe notified by us to you of the Retained Ownership Equipment to be modified or replaced.
- (d) For the protection of us, you and each of your Personnel, and so that the applicable Service is not disrupted, you agree to:
 - (1) maintain (with a reputable insurer acceptable to us) insurance for the repair or replacement of the Retained Ownership Equipment as a result of, or for the reimbursement to the value of, any damage to (save for fair wear and tear), or loss, destruction or theft of, the Retained Ownership Equipment; and provide us with a certificate of currency for that insurance upon our request;
 - (2) arrange for Retained Ownership Equipment to be installed in a suitable place;
 - (3) protect Retained Ownership Equipment from power fluctuations, abnormal environmental conditions, theft and any other risks and ensure that it is not damaged and remains in good condition (save for fair wear and tear);
 - (4) only locate and use Retained Ownership Equipment at the Site and not part with possession, except to return to us, that Retained Ownership Equipment;

- (5) not in any way, charge, mortgage, encumber, cause a lien to exist over or enter into any agreement or other dealing that might affect the ownership of any Retained Ownership Equipment and comply with all reasonable directions we give you to protect the ownership of Retained Ownership Equipment;
 - (6) not obscure or remove any identification marks on the Retained Ownership Equipment, unless we have expressly provided prior written approval to such conduct on a case-by-case basis;
 - (7) not imply or represent, or allow another person to imply or represent, that any person other than us or our Suppliers or successors in title (as the case may be) owns any Retained Ownership Equipment;
 - (8) only permit Retained Ownership Equipment to be repaired, serviced, moved or disconnected by us or our authorised agents or contractors unless we have expressly provided prior written approval to such conduct on a case-by-case basis;
 - (9) obtain our written approval on a case-by-case basis prior to connecting or changing a connection to Retained Ownership Equipment or the Network; and
 - (10) if you become aware of any malfunction in, loss of, or damage to, Retained Ownership Equipment or to any part of the Network to which Retained Ownership Equipment is connected, you must notify us immediately in writing.
- (e) You acknowledge and agrees that we may:
- (1) transfer to any third party title to any Retained Ownership Equipment which is our property;
 - (2) assign to the owner of Retained Ownership Equipment:
 - (A) the right to receive payment of any Charges associated with your use of that Retained Ownership Equipment; and
 - (B) the benefit of our rights under this clause 5.4; and
 - (3) require, by written notice to you, that you enter into, within a reasonable time, a contract in favour of us and the assignee which confirms the terms of an assignment made under this clause 5.5(e) and the assumption by the assignee of all of our obligations under this clause 5.4 from such time as the contract is entered into by you.

5.6 Purchased Equipment

- (a) Title to Purchased Equipment does not pass to you until all applicable Charges have been paid in full. Until then, you retain Purchased Equipment as our fiduciary, agent and bailee and must protect the Purchased Equipment in the manner

required by clause 5.4 as if it were Retained Ownership Equipment.

- (b) Where any Charges for Purchased Equipment have not been paid in full by the due date, we may reclaim possession of the Purchased Equipment and you irrevocably authorise us to enter any premises to enable it to do so.
- (c) We will use reasonable endeavours to ensure that you receive the benefit of all manufacturer, supplier or other third party guarantees or warranties available in respect of all Purchased Equipment.

5.7 Availability

You acknowledge and agree that the availability of any Retained Ownership Equipment and/or Purchased Equipment is dependent on the availability of that Equipment from the manufacturer (or its distributor) and we are not liable to you or any other person for any delay or any failure to obtain any Equipment from a manufacturer (or its distributor).

6. Software

6.1 Supply of Software

Where we provide you with any Software to be used in connection with a Service:

- (a) we, or our licensor, remain the owner of the Software; and
- (b) you:
 - (1) must use the Software only in connection with the Service in respect of which it is provided;
 - (2) by using the Software, accept the terms of use required by the manufacturer of the relevant Software, and
 - (3) without our prior written consent, must not:
 - (A) assign or otherwise transfer to anyone else your right to use the Software;
 - (B) except as expressly authorised under the Contract or by law, change, merge, adapt or interfere with in any way or, except for backup purposes, copy, the Software; or
 - (4) except as expressly authorised under the Contract or by law, decompile, disassemble, reverse assemble, reverse compile, reverse engineer, translate or in any manner attempt to derive the source code of the Software; and
 - (5) must comply with any further requirements we reasonably direct in relation to the Software or its use or, where relevant, any requirements of any third party licensor of the Software.

6.2 Upgraded Software

- (a) We may, at any time, provide or install upgrades or new versions of the Software (**Upgraded Software**).
- (b) You must co-operate with us to the extent necessary to install the Upgraded Software.

6.3 Availability

You acknowledge and agree that the availability of Software (including any Upgraded Software) may be dependent on its availability from any licensor of the Software and we not liable to you or any other person for any delay or any failure to obtain any Software from its licensor.

7. Your obligations and responsibilities

7.1 General obligations

You must:

- (a) ensure that, for each Service, you meet, and continue to meet for the Term of the Contract all pre-requisites or conditions for supply of that Service specified in the Service Schedule for that Service;
- (b) use each Service for its intended purpose and without being a nuisance to anyone;
- (c) perform all tasks and provide all materials and Equipment required of you, and by the dates specified, in the Contract;
- (d) co-operate with us to allow us to provide each Service;
- (e) provide us with all information in your possession, custody or control that we reasonably require to perform each Service and ensure that all information you give to us is correct, current and complete;
- (f) examine each item of Equipment supplied by us to you before accepting it and satisfy yourself about that item of Equipment (including the validity of any manufacturer, supplier or other third party guarantees or warranties);
- (g) comply with all applicable laws, regulations, codes and standards (including any technical standards of a Government Agency) and comply with all our reasonable directions in relation to the use of each Service;
- (h) obtain our written approval prior to connecting or changing a connection made with each Service;
- (i) comply with all documentation, user manuals and specifications provided by us in respect of each Service;
- (j) take all reasonable steps, actions and precautions to stop internal and external threats and malicious software from attacking, being present on or adversely affecting the Network including ensuring that:
 - (1) all Equipment used in connection with each Service is protected by industry standard anti-virus and anti-malware software from a reputable supplier; and
 - (2) this software is kept up to date and receiving security and signature updates or has such software effectively applied to it at least weekly;

- (k) immediately report to us, in writing, any unauthorised use of a Service;
- (l) not:
 - (1) unreasonably delay any action, approval, direction, determination or decision which is required of you under the Contract or for us to perform any Service;
 - (2) engage in, or procure, assist or allow any of your Personnel or any other person to engage in, any fraudulent or unauthorised use of any Service. If you engage in any such use of the Service, you must report such use to us as soon as you become aware of such use;
 - (3) interfere with, or procure, assist or allow any of your Personnel or any other person to interfere with, the reasonable use of any Service by any of our other customers;
 - (4) resell or otherwise resupply the Service(s) to any third party; and
- (m) without limiting any of the foregoing, notify us of any fact, matter or thing which comes to its attention which is material to our performance of any Service.

7.2 Your responsibilities

- (a) You are solely responsible for:
 - (1) understanding how to access and use each Service;
 - (2) each of your Personnel who have access to, or use of, a Service;
 - (3) any access to, or use of, a Service by any other person who occupies the Site;
 - (4) all information and data carried over the Network as a result of your or your Personnel's use of a Service;
 - (5) any use of a Service which is fraudulent or not authorised by you, including unauthorised use of the Service using your Equipment;
 - (6) changing any default password (or any other security safeguard such as a default PIN number) provided to you by us as part of a Service for the access to or use of a Service. You release us from all liability in connection with any Loss suffered or incurred by you as a result of any third party accessing or using a Service as result of using the default password or other security safeguard;
 - (7) implementing and maintaining the security of your network and Equipment. You are liable for all Charges resulting from any use of the Services by any person, whether or not authorised by you, resulting from a virus, trojan, worm or other malicious computer code, denial of service attacks, a hacking incident (including a SIM, PABX, IP PBX or SIP Gateway device hack), or other means of exploiting a weakness

in your network, Equipment or security measures; and

- (8) any use of a Service by any new occupant of the Site or any other person, after you have vacated the Site. It is your responsibility to either cancel or disconnect each Service at that Site or transfer the legal responsibility for those Services to a new occupant with our prior written consent (which may be given, withheld or be given subject to conditions at our sole discretion). You are liable for all Charges resulting from such use if you did not arrange for the Services to be discontinued or did not provide us with sufficient notice to discontinue the Service prior to vacating the Site.

(b) You acknowledge and agree that:

- (1) We are not liable (whether in contract, tort or otherwise) whatsoever for any Loss suffered or incurred by you; and
- (2) you must indemnify us, and keep us indemnified, from and against, any and all Loss suffered or incurred by us,

as a result, whether directly or indirectly, of any fact, matter or circumstance that is within your responsibility under this clause 7.2.

7.3 Acceptable use

You must comply, and must ensure that each of your end users complies, with any applicable Acceptable Use Policy connected with a Service.

7.4 Regulatory compliance

You acknowledge and agree that:

- (a) if we acquire products or services from any Supplier including a carrier (as defined under the Telecommunications Act) in connection with the supply of a Service, you will comply with all reasonable directions given by us as are necessary for us to comply with our obligations under any agreement with that Supplier;
- (b) we or our Supplier may:
- (1) at any time, restrict or prevent the right of any third party providing or using telecommunications services through the Network;
- (2) be required by law, to retain metadata, information and other content in relation to your use of the Service, intercept your communications and pass on details of your use of the Services (including any retained metadata, information and content) to a Government Agency, a law enforcement authority or other authority;
- (3) monitor your usage of the Services including where requested, or directed, to do so by a Government Agency, a law enforcement authority or other authority; and

- (4) investigate any alleged misuse of a Service by you including where requested, or directed, to do so by a Government Agency, a law enforcement authority or other authority.

7.5 Access

- (a) We may require access to the Site from time to time. You agree to provide us, our agents and contractors with safe and prompt access to the Site and your employees and contractors, Equipment, data, information and sources of power, light and ventilation for the purposes of performing our obligations, or exercising our rights, under the Contract, (together the **Access Tasks**).
- (b) We will provide reasonable written notice of the approximate time and date when access to the Site is required.
- (c) If you do not own the Site or any part of the Site, you represent and warrant that you have obtained, or will obtain by the date upon which we first require access to the Site, each owner's permission for us to access the Site for the purposes of the Access Tasks and that the permission will not lapse, during the Term of the Contract. You must indemnify us and keep us indemnified from and against any claim, action or demand that the owner of the Site makes against us relating to us entering the Site for the purposes of the Access Tasks in reliance on the representations and warranties made by you in this clause 7.5(c).

7.6 Third Party Facilities

- (a) The supply of a Service may rely on:
- (1) Supplier Networks;
- (2) Equipment, infrastructure and services provided by a third party (whether or not that third party has an agreement or understanding with you) including a third party who provides Carriage Services;
- (3) your network and infrastructure; and
- (4) your Equipment,
(Third Party Facilities).
- (b) Without limiting any other provision of the Contract, you acknowledge and agrees that:
- (1) due to reasons beyond our control, a defect or failure in one or more Third Party Facilities may cause a delay, failure or interruption to a Service;
- (2) we are not liable to you in any way for any Loss (including Consequential Loss) that you may incur or suffer as a result of any such delay, failure or interruption; and
- (3) if you require us to undertake any remedial work to repair a Service affected by such a delay, failure or interruption, we may charge you, and you must pay, an additional charge for

the remedial work that we undertake. An additional charge will be payable by you even if we commence such remedial work and only discover, after commencing such remedial work, that the delay, failure or interruption to a Service was caused by a defect or failure in Third Party Facilities.

7.7 End users

You must use all reasonable endeavours to ensure that all end users of each Service comply with this clause 7 as if any reference to you were a reference to each "end user".

8. Ongoing support

8.1 Support

We shall only be obliged to provide support to rectify any defect or fault in a Service to the extent expressly set out in the Service Schedule relevant to that Service.

8.2 Exclusions to ongoing support

We have no obligation to you to rectify any defect or fault in a Service caused or contributed to by:

- (a) any defect or fault in Equipment, software or any network infrastructure on your side of the boundary point for the relevant Service;
- (b) any defect or fault in a Service which is caused, or contributed to, by:
 - (1) the acts or omissions of you or your Personnel;
 - (2) faults or defects that arise in telecommunication services provided to you by a third party supplier (even if such telecommunication services are connected, with our consent, to a Service); or
 - (3) failure by you or any third party to appropriately maintain any Equipment or cabling relevant to the supply of the Service;
- (c) electromagnetic interference with any Service;
- (d) any Force Majeure Event; or
- (e) scheduled maintenance.

8.3 Notice of scheduled maintenance

Unless stated otherwise in a Contract, we will endeavour to:

- (a) give you at least 3 days' notice of any scheduled maintenance that is likely to affect any Service; and
- (b) not carry out any scheduled maintenance during your business hours unless otherwise agreed with you.

9. Charges, invoicing and payment

9.1 Charges

- (a) The standard Charges for the Works, Services and Equipment are:
 - (1) as stated in the applicable Order; or

- (2) where not so stated, as notified by us to you from time to time as applicable to each Work, Service or Equipment.

- (b) The Charges shall also include:

- (1) all additional charges;
- (2) all Termination Charges; and
- (3) any other Charge specified as payable by you under the Contract.

9.2 Additional charges

- (a) Without limiting any other provision of the Contract, we may charge you, and you must pay, an additional charge:
 - (1) to service, modify, repair or replace a Service or any Equipment as a result of any defect or failure for which we are not expressly responsible under the Contract; and
 - (2) for commissioning or installation of any Service or Equipment, if the information provided to us by you for the purposes of such commissioning or installation is incomplete or inaccurate.

9.3 Calculating and adjusting Charges

- (a) We may round up any Charge to the nearest cent.
- (b) If the Order or any other provision of the Contract provides that:
 - (1) a Minimum Period applies to a Service and we continue to provide the Service after the end of the Minimum Period, we may adjust the Charges by giving not less than 1 month's notice to you; and
 - (2) you receive any discount on Charges relating to bundled Services, the discount shall only apply for the period whilst those bundled Services are supplied to you. If you cancel any Service forming part of the bundled Services, we may, at our discretion, charge you the standard, undiscounted Charges for each remaining Service on and from the date that you cancelled a Service forming part of the bundled Services.
- (c) If the parties have agreed to a Variation, the Charges will be adjusted in accordance with any changes to the Charges agreed in that Variation.
- (d) We may vary any Charge if, and to the extent that:
 - (1) there is an increase in Taxes imposed by law or new Taxes imposed by law come into place;
 - (2) there is a change to the costs of ancillary services (such as an increase in credit card or direct debit transactions fees imposed on us by third parties) as long as we have provided you with a reasonable alternative at no additional charge;
 - (3) there is an increase in the charges imposed on us by our Suppliers; or

- (4) a Charge must be increased by law, regulation, code or standard (including any determination or declaration of a Government Agency).

9.4 Termination Charges

- (a) You will be liable to pay a Charge (**Termination Charge**) if a Service is cancelled (other than as a result of termination of the Contract by you in accordance with clauses 1.6(c) and 16.1(a)).
- (b) Except as expressly provided to the contrary in any Service Schedule for that Service, the Termination Charge for each Service shall be the sum of:
 - (1) the unrecovered proportion of the costs we have incurred in provisioning the Service (including where those costs have been amortised on a straight line basis over any Minimum Period);
 - (2) any costs that we will incur in connection with the cancellation of that Service to the extent that we are unable to avoid such costs after taking reasonable steps to do so;
 - (3) an amount equal to 30% of your average of the greater of the actual monthly Charges or Minimum Monthly Commitment (if any) for that Service for the 3 months immediately preceding the month of cancellation, multiplied by the number of months, or part thereof, between the date of cancellation and the end of the Minimum Period (if applicable); and
 - (4) reimbursement to us of any rebates, credits, technology funds, refunds or discounts, including volume rebates, loyalty discounts and service credits on the full amount of our standard Charges, provided to you or any of your end users in connection with the Service.
- (c) You agree that the Termination Charge is a reasonable and genuine estimate of our likely financial loss if a Service is cancelled.

9.5 GST

- (a) Unless expressly stated otherwise, all Charges for supplies made, or to be made, under the Contract are exclusive of GST.
- (b) If any supply by us under, or in connection with, the Contract constitutes a taxable supply for the purposes of the GST Law, you must pay us an amount equal to the GST payable on that supply in addition to, and at the same time as, the amount payable for that supply.
- (c) Where you are required under a Contract to pay or reimburse an expense or outgoing incurred by us, the amount to be paid or reimbursed by you will be the sum of:
 - (1) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which we, or to which the representative member for the relevant GST group, is entitled; and

- (2) if the payment or reimbursement is subject to GST, an amount equal to that GST.

9.6 Invoicing and payment

- (a) You must make payment of all amounts invoiced by us by the due date stated in the relevant invoice.
- (b) All payments of invoices by you must be:
 - (1) by cheque, electronic funds transfer or any other means specified on the invoice; and
 - (2) without any set-off or deduction by you.
- (c) The payment of any amount by you is not made until the amount is received by us in immediately available, clear funds.
- (d) Your obligation to make payments of an invoice is not affected by:
 - (1) you being unable to use the whole or any part of a Service, the Network or an item of Equipment to which the invoice relates; or
 - (2) any Equipment required to use a Service to which the invoice relates being damaged, not being in your possession or not working at any given time.
- (e) If you do not pay an invoice in full by its due date, we may charge you:
 - (1) interest on the unpaid amount calculated at the Default Rate from the due date until the date of payment (including interest) is made in full; and
 - (2) an amount representing our costs and expenses in seeking payment of the overdue amount (including any legal or debt recovery expenses incurred by us and paid to third parties to obtain payment of the overdue amount).

9.7 Dishonouring of payments

If your financial institution fails to honour any payment by you, you must pay the amount owing directly to us, together with an additional amount notified by us relating to time, effort and expenses (including any charges we are liable to pay to any financial institution as a result of such failure) incurred by us in rectifying such failure.

9.8 Reissuing of invoices

- (a) We may reissue an invoice if any error in the invoice is later discovered.
- (b) If you have overpaid any Charges as a result of such an error, your account will be credited with the overpayment or, if you have stopped acquiring any Service from us, we will refund the overpayment promptly on your request but after deduction of any other amounts due by you.
- (c) Subject to clause 9.8(d), if you have underpaid any Charges as a result of the error, you will be required to pay the correct amount to us after the invoice is reissued in accordance with the timeframes specified in clause 9.6(a).

- (d) To the extent that the TCP Code applies to you, we will not invoice Charges older than 160 days from the date on which the Charges were incurred by you.

9.9 Disputing invoices

- (a) You may dispute any amount of a Charge invoiced by us but only if:
 - (1) you request in writing that we investigate the Charge disputed within 9 months of the date of the invoice in which the Charge is invoiced;
 - (2) you provide, at the same time, specific evidence which demonstrates that the particular Charge is incorrect; and
 - (3) you pay the relevant invoice relating to the Charge in full.
- (b) If you validly dispute any amount, we will conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute. Our records are sufficient proof of the your usage of the Services, unless you otherwise provides proof, to our reasonable satisfaction, that they are incorrect.
- (c) At the end of our investigations:
 - (1) if any disputed amount has been shown to be, or the parties agree was, correctly invoiced, we will refund or credit the disputed amount within 30 days of the amount being shown or agreed to be correct; or
 - (2) if any disputed amount has not been shown to be, and the parties do not otherwise agree was, correctly invoiced, the procedure under clause 15 must be followed.

9.10 Time

Time is of the essence in respect of all amounts payable under the Contract.

10. Warranties

10.1 Warranties as to capacity

Each party represents and warrants to the other that, as at the date the Contract is formed:

- (a) no Insolvency Event affects that party and that party is not aware of any circumstances likely to cause it to become subject to an Insolvency Event;
- (b) that party's execution, delivery and performance of that Contract has been properly authorised by it and its obligations under that Contract are valid, binding and are enforceable against it in accordance with its terms;
- (c) the execution and delivery of that Contract or the transactions contemplated by it do not conflict with or result in any breach of that party's constituent documents, any applicable law to that party or any obligation or undertaking to which that party is bound; and

- (d) it does not enter into that Contract as trustee of any trust or settlement.

10.2 Your specific warranties as to capacity

You represent and warrants to us that, as at the date the Contract is formed:

- (a) the signatory to the Contract agrees to guarantee the performance of your obligations set out the Contract in the event that the Contract is not enforceable against you because the signatory did not have the appropriate authorisation referred to in clause 10.1(b);
- (b) it has had the opportunity to obtain independent professional advice in relation to the legal, taxation, accounting and financial consequences of the Contract, and has not relied on us in relation to any of those matters; and
- (c) it does not rely on any representation, warranty or undertaking made by us (or any other person) in connection with the Contract that is not expressly set out in that Contract and acknowledges that we have been induced to enter into that Contract on that basis.

10.3 Warranties about information

You represent and warrant to us on a continuing basis that:

- (a) all information in the Order is true, accurate, complete and is not misleading or deceptive or likely to mislead or deceive; and
- (b) where you have provided us with information about any of your Personnel, each of the Personnel has consented to you disclosing the information to us and for us to use, or disclose, the information to provide the Services and exercise any rights and perform any obligations in respect of the Services.

11. Confidentiality

11.1 Obligation of confidence

Subject to clause 11.2, each party must:

- (a) keep confidential the Confidential Information of the other party and must ensure that it does not disclose or permit the disclosure of that Confidential Information to any person; and
- (b) take all steps and do all things that are reasonably necessary or prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.

11.2 Permitted disclosure

- (a) A party may disclose the Confidential Information of the other party:
 - (1) to its Affiliates, employees, agents, advisers or financiers (each a **Recipient**) if, and only if:
 - (A) the Recipient reasonably needs to know that Confidential Information in order for that party to comply with its obligations under the Contract;

(B) that party has informed the Recipient of the obligations of confidentiality under the Contract; and

(C) the Recipient has accepted the obligation to treat the Confidential Information as confidential in the same manner and to the same extent as required of that party;

- (2) with the consent of the other party;
 - (3) in connection with legal or other proceedings relating to the Contract; or
 - (4) if compelled by law or by a Government Agency, court, tribunal or stock exchange.
- (b) Notwithstanding clause 11.2(a), we may:
- (1) disclose your Confidential Information to any Supplier where it is necessary to enable the Supplier to provide any service to us in connection with a Service;
 - (2) use or disclose your Confidential Information where expressly permitted under any other provision of the Contract;
 - (3) use or disclose your Confidential Information to make contact with, or to deal directly with, your end users and other Personnel in connection with the Services and the invoicing of those Services;
 - (4) refer to you as a customer of ours in press releases, marketing, sales or financial material or reports; and
 - (5) transmit information about your location in emergency situations.

11.3 Terms of documents

For the purposes of this clause 11, the terms of the Contract will be considered our Confidential Information.

11.4 Survival

The rights and obligations of each party pursuant to this clause 11 survive the expiry or termination of the Contract.

12. Personal Information

12.1 Collection

During the Term, we or our Suppliers may collect information from you (**Personal Information**).

12.2 Use

You agree that each of our members may:

- (a) hold the Personal Information and share it with its employees, contractors and agents, but only to the extent necessary to enable us to perform the Services, send you invoices, check your Credit Rating, check that your responsibilities are being met or otherwise to administer and enforce the Contract;
- (b) share with our Suppliers any information needed to provide certain Services to you using the Supplier Network or to enable you to send or

receive messages of any kind through the Supplier Network;

- (c) use any information about you for statistical purposes, so long as you are not identified; and
- (d) use any information about you for the purposes set out in:
 - (1) our privacy policy; or
 - (2) the privacy policies of any Supplier notified in writing to you from time to time.

12.3 Provision of certain information

A member of ours may be required by law to provide your name, address, service numbers and other public number details to a database known as the Integrated Public Number Database (**IPND**). This obligation applies to all customers, including those who request an unlisted number. However, unlisted service information is marked and controlled in the IPND so that it is only used for an approved purpose to those approved data users such as directory information organisations or law enforcement agencies. You must contact us if you wish to have any of the information supplied to IPND altered in any way.

12.4 You must comply

You must comply with your obligations under the Privacy Act and the Telecommunications Act. If you are a small business operator under the Privacy Act, you must choose to be treated as an organisation under section 6EA of the Privacy Act during the Term of the Contract and otherwise comply with the obligations under the Privacy Act as if you were an organisation under the Privacy Act.

13. Non-solicitation

- (a) During the Restraint Period, a party must not, except with the prior written consent of the other party:
 - (1) solicit or entice any person who is employed or contracted by the other party for the purposes of hiring, employing or otherwise engaging that person; and
 - (2) hire, employ or otherwise engage any person who is employed or contracted by the other party.
- (b) A party must promptly notify the other party in writing if a person who is employed or contracted by the other party seeks to be hired, employed or otherwise engaged by the first-named party at any time prior to the expiration of the Restraint Period.

14. Liability

14.1 Exclusions of representations, guarantees or warranties

Subject always to clause 14.2, to the maximum extent permitted by law, we make no representation nor gives any guarantee or warranty (including of merchantability, acceptable quality, fitness for any

particular purpose or fitness for disclosed result) in connection with any Service.

14.2 Liability under consumer protection laws not excluded

- (a) There may be non-excludable statutory guarantees, implied conditions, and warranties or liabilities that we have to you under the Competition and Consumer Act and other consumer protection laws that may apply to the Services and that cannot be excluded (**Non-Excludable Conditions or Liabilities**).
- (b) Nothing in the Contract removes or limits any of the Non-Excludable Conditions or Liabilities.
- (c) However, to the extent that our liability can be limited under the Competition and Consumer Act and other consumer protection laws that may apply to the Services, we limit our liability to you, at our sole discretion, to:
 - (1) in the case of a breach relating to the supply of a Service: resupplying the Service or payment of or reimbursement for the cost of having the Service resupplied; and
 - (2) in the case of a breach relating to the supply of Equipment: the replacement of the Equipment, the repair of the Equipment, the supply of equivalent Equipment or the payment of the cost of repairing or replacing the Equipment or supplying equivalent Equipment,

and you acknowledge that this limitation of liability is fair and reasonable in all the circumstances.

14.3 Exclusions and limitations of liability

- (a) We exclude all liability to you for any Consequential Loss suffered or incurred by you under, or in connection with, the Contract (whether based in contract, tort (including negligence), statute or otherwise).
- (b) Our total liability to you for any and all Loss you suffer or incur, and for which we are liable under, or in connection with, the Contract is equal to the sum of all Charges paid or payable by you under the Contract in the 12 month period immediately preceding the event(s) or circumstance(s) which gave rise to that liability.
- (c) The exclusions and limitations of liability in this clause 14.3 do not apply to any Loss arising from death or personal injury or loss of, or damage to, real or tangible property or Equipment to the extent it is directly caused or contributed to by a negligent act or omission of ours or our employees, agents or contractors in connection with the supply of the Services.

14.4 Contribution and mitigation

- (a) Our liability for any Loss suffered or incurred by you under, or in connection with, the Contract (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that:

- (1) the acts or omissions of you or your Personnel;
- (2) the use of any Third Party Facilities; or
- (3) the acts, omissions or equipment of a third person, caused or contributed to that Loss.

- (b) Our liability to you will be reduced to the extent that you have not taken reasonable steps to mitigate or avoid the Loss flowing from the event giving rise to our liability to you.

14.5 Your indemnities

- (a) You must indemnify, and keep indemnified, us and our Personnel, from and against any Loss (including reasonable legal costs) that any of those indemnified may suffer or incur arising out of or in connection with your breach of the Contract or arising out of or in connection with wilful misconduct or unlawful, fraudulent or negligent acts or omissions by your employees, agents, contractors or Affiliates) and which relate to:
 - (1) the access to, and use of, the Service; and
 - (2) any Equipment used in connection with the Service.
- (b) You must indemnify, and keep indemnified, us and our employees, agents, contractors and Affiliates from and against any claim by a third party arising from the use by you or your Personnel (including any claims for infringement of intellectual property rights).

15. Complaints and Dispute resolution

15.1 Complaints

- (a) Where you wish to lodge a complaint in relation to a Service, you must do so in accordance with our complaint handling process as notified to you from time to time.
- (b) Where a complaint remains unresolved between the parties after our complaint handling process (**Dispute**), the Dispute must be resolved:
 - (1) through an external dispute resolution process under the Telecommunications Industry Ombudsman (TIO) scheme, if this option is available and elected by you; or
 - (2) in all other circumstances, in accordance with the procedure set out in this clauses 15.2, 15.3 and 15.4 .

15.2 Dispute resolution process

- (a) Either party may refer, by written notice to the other party, the Dispute to each party's Representative for resolution. If the Representatives cannot resolve the dispute within 14 days of the notice of dispute being given, either party may escalate the dispute to the respective group managers.

- (b) If the dispute is not resolved within 14 days of such escalation, either party may refer the dispute to mediation in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules. During any such mediation, both parties may be legally represented.

15.3 Neither party to commence legal proceedings

- (a) Subject to clause 15.2(b), no party may commence legal proceedings in relation to any Dispute without first following the procedure set out in this clause 15.
- (b) Notwithstanding any other provision of the Contract, nothing in this clause 15 prevents either party from seeking urgent interlocutory relief.

15.4 Continuing performance of obligations during dispute

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under the Contract.

16. Termination

16.1 Termination by you

Without limiting any other provision of the Contract, you may terminate:

- (a) the whole of the Contract with immediate effect by notice in writing to us if:
 - (1) we breach any material obligation under the Contract which:
 - (A) if capable of being remedied, is not remedied within 30 days after receipt of a written notice from you requiring it be so remedied; or
 - (B) is incapable of remedy; or
 - (2) if an Insolvency Event occurs in respect of us;
- (b) that part of the Contract relating to a particular Service in the manner contemplated by clause 1.4.

16.2 Termination by us

Without limiting any other provision of the Contract, we may terminate:

- (a) the whole of the Contract with immediate effect by notice in writing to you if:
 - (1) we reasonably determine that you no longer meet our credit requirements or that you are no longer creditworthy;
 - (2) you fail to provide us with security, or increased or replacement security, in accordance with clause 2.3;
 - (3) you breach any material obligation under the Contract (or any other Contract between the parties, as the case may be) which:
 - (A) if capable of being remedied, is not remedied within 30 days after receipt of a

written notice from us requiring it be so remedied; or

- (B) is incapable of remedy;
 - (4) you vacate the Site;
 - (5) we are required to do so by law; or
 - (6) if an Insolvency Event occurs in respect of you;
- (b) that part of the Contract relating to a particular Service, with immediate effect by notice in writing to you if:
 - (1) you fail, at any time, to satisfy any pre-requisite for the supply of the Service;
 - (2) prior to providing the Service to you, we reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Service to you;
 - (3) we can no longer provide the Service (including due to any geographical coverage, capacity or technical limitation) or we cease to offer the Service generally;
 - (4) we are required to do so by law; or
 - (c) that part of the Contract relating to a particular Service in the manner contemplated by clause 1.3.

16.3 Consequences of expiration or termination

- (a) If all of the Contract expires or is terminated, all Services under that Contract are cancelled on and from the date that the Contract so expires or terminates.
- (b) If only part of the Contract is terminated relating to a particular Service only that Service is cancelled on and from the date that part of the Contract so terminates.
- (c) If all or part of the Contract expires or is terminated:
 - (1) you must pay us all amounts due under the Contract in respect of all Services cancelled within 30 days of the date that the Contract so expires or terminates;
 - (2) each party must:
 - (A) as directed by the other party, return to the other party (or in the case of documents or data, destroy), all originals and copies of the other party's written materials, documentation, data and Confidential Information (including all materials derived therefrom) and all Equipment or other tangible items owned by the other party which relate to the Services cancelled; and
 - (B) if applicable, co-operate with the other party to facilitate our continued performance of our obligations in relation to any Services which are not cancelled; and
 - (3) the rights and obligations of the parties under the Contract cease or, if only part of the Contract is terminated, only those rights and

obligations of the parties under the Contract relating to the Services cancelled cease, except for:

- (A) any accrued rights and obligations that have arisen prior to the date of termination; and
 - (B) any rights and obligations which are expressed, or by their nature are intended, to continue after termination, including those referred to in this clause 16.3 and clauses 2.4(d), 3.7(b), 7.2(b), 9.1(b)(2), 9.4 to 9.8 inclusive, 11, 13, 14 and 17.
- (d) If, within thirty (30) days of the date that the whole or part of the Contract expires or is terminated, you fail to return to us any item it is required to return, you agree that we, as your agent, may enter any premises where we believe that item may be located, during normal business hours, to recover that item. Provided we act with reasonable care, you must reimburse us for any costs we incur in exercising our rights under this clause 16.3(d).
- (e) If a Service is terminated in accordance with this clause 16, we cannot guarantee you that we will be able to return any of your data that is stored by us on the Network, differentiate and separate your data from the other data stored on the Network or remove your data from the Network.

17. General

17.1 Entire agreement

The Contract:

- (a) constitutes the entire understanding between the parties; and
 - (b) in good faith supersedes all previous agreements, understandings, commitments, representations and warranties, whether written or verbal,
- in relation to its subject matter.

17.2 Force majeure

If, by reason of a Force Majeure Event, we are prevented, hindered or delayed in the performance of any of our obligations under a Contract, we will not be liable to you for not performing, or for the manner of our performance of, such obligation to the extent to which, and for the period of time during which, we are so prevented, hindered or delayed.

17.3 Consents and approvals

Unless a Contract expressly provides otherwise, a party may conditionally or unconditionally give or withhold any consent or approval to be given under the Contract and is not obliged to give its reasons for doing so.

17.4 Enforceability

If, at any time, any provision of the Contract is held to be invalid, illegal or unenforceable then, to the extent permitted by law, it must be read down to the extent necessary to be valid and, if it cannot be so read

down, it will be severed. The validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

17.5 Assignment

You must not assign any of your rights or otherwise deal with, or transfer, any of your obligations under the Contract, without our prior written consent.

17.6 No waiver

No failure or delay on the part of either party in exercising any power or right, and no grant of any indulgence or forbearance by that party, under a Contract will prejudice any of the rights or powers of that party under the Contract or be construed as a waiver of any warranty or obligation on the part of the other party under the Contract.

17.7 Changes in your details and notices

- (a) You must notify us in writing of any change to your details (including your ABN, contact details and/or the details of your Representative).
- (b) Any notice that we give to you under the Contract will be effectively served if:
 - (1) the notice is sent by hand or mail to:
 - (A) unless we have been notified by you that the address no longer applies, any address listed in the Order (including any Site);
 - (B) any address notified by you to us as your current address from time to time (whether or not the address is your registered address); or
 - (C) if you are a corporation, your registered address or principal place of business as registered with the Australian Securities and Investments Commission; or
 - (2) the notice is sent by email to an email address listed in the Order or as subsequently notified to us.
- (c) Notice is deemed to be received by a person:
 - (1) when delivered by hand;
 - (2) if sent by mail, 2 Business Days after posting; or
 - (3) if sent by email, 1 hour after sending unless the sender receives a report or notice indicating the email has not been delivered within that 1 hour period.

However, if the notice is deemed to be received on a day which is not a Business Day or after 5.00 pm at the addressee's location, it is deemed to be received at 9.00 am on the next Business Day.

17.8 Commission or rebates

We may pay commission or rebates in connection with the Contract.

17.9 Representatives

- (a) Each party appoints its Representative as its agent to (non-exclusively) to:

- (1) exercise powers;
 - (2) perform duties; and
 - (3) carry out the overall supervision and co-ordination of the obligations, of that party under the Contract.
- (b) Each party's Representative is entitled to act entirely in the interests of the party who appointed them.
 - (c) A party may at any time, by written notice to the other party, replace the person then acting as the party's Representative.
 - (d) If a party's Representative knows of a matter, that knowledge is taken to also be within the knowledge of that party.

17.10 Intellectual Property Rights

- (a) Any Intellectual Property Rights owned by either party prior to entry into a Contract, or developed independently of any Contract by either party, will continue to be owned by that party.
- (b) None of our Intellectual Property Rights are transferred to you and, unless specifically authorised by a Contract, you cannot and will not use or reproduce such Intellectual Property Rights for any purpose unconnected with the Contract.
- (c) The rights and obligations of each party pursuant to this clause 17.10 survive the expiry or termination of a Contract.

17.11 PPSA

- (a) You acknowledge that, by virtue of the Contract, we have a Security Interest in the Secured Goods for the purposes of the PPSA.
- (b) You consent to us registering on the PPSR (in any manner we consider appropriate) any Security Interest which we may have in the Secured Goods and you agree to provide all assistance reasonably required to facilitate this (including executing any further documents).
- (c) Pursuant to section 115 of the PPSA and to the maximum extent permitted by the PPSA, you agree that the following provisions of the PPSA will not apply to any Security Interest in the Secured Goods:
 - (1) section 95 (notice of removal of accession), to the extent that it requires us to give notice to you;
 - (2) section 96 (when a person with an interest in the whole may retain an accession);
 - (3) section 125 (obligation to dispose of or retain collateral);
 - (4) section 130 (notice of disposal), to the extent that it requires us to give notice to you;
 - (5) paragraph 132 (3)(d) (contents of statement of account after disposal);

- (6) subsection 132 (4) (statement of account if no disposal);
- (7) section 142 (redemption of collateral); and
- (8) section 143 (reinstatement of security agreement).

- (d) Despite clause 17.7(c), notices or documents required or permitted to be given a party for the purposes of the PPSA must be given in accordance with the PPSA.
- (e) You waive the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

17.12 Relationship

We are an independent contractor to you. No partnership, employment, agency or joint venture relationship is created or evidenced by the Contract.

17.13 Governing law

This Contract is governed by and construed in accordance with the laws of New South Wales. The courts of New South Wales (to whose non-exclusive jurisdiction the parties irrevocably submit) have jurisdiction to settle any disputes that may arise out of or in connection with this Contract.

18. Definitions and Interpretations

18.1 Definitions

Acceptable Use Policy in relation to a Service, means the policy so described in the applicable Service Schedule for that Service or as otherwise available on our website from time to time.

Access Tasks has the meaning given to that term in clause 7.5.

Affiliate means, in respect of a party:

- (a) the party's related bodies corporate (as that term is defined in the Corporations Act) or any other bodies corporate associated with the party (including any body corporate one of whose directors is also a director of the party); and
- (b) without limiting paragraph (a) of this definition, if you are a franchisee, your franchisor and each of the franchisor's related bodies corporate.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney, Australia.

Carriage Service has the meaning given in the Telecommunications Act.

Change in Control means, in relation to a party, that an event occurs such that the ability to control the board or the management and policies of the party passes to a person or persons who did not have that ability immediately before that event.

Charges means any charges or fees (which, except where otherwise stated, are exclusive of any Taxes or withholdings) applicable to any Works, Service or Equipment.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth).

Confidential Information of a party, means all information in whatever form (including verbal information, or information recorded on paper or by electronic means) relating to that party which that party indicates, or which by its nature, is confidential but excludes information which:

- (a) is already in the possession of that party; or
- (b) becomes known or generally available to the public, except as a result of a breach of any obligation of confidence under the Contract (in which case, it remains Confidential Information); or
- (c) that party independently develops.

Consequential Loss means any Loss that is suffered or incurred by a party as a result of a fact, matter or circumstance which does not arise naturally (that is, according to the usual course of things) from the fact, matter or circumstance giving rise to the Loss and expressly includes loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss even if any of that Loss arises naturally (according to the usual course of things) from the fact, matter or circumstance giving rise to the Loss and any penalties imposed by a Government Agency.

Contract means the agreement between us and you for the supply of one or more Services which comprises the parts set out in clause 1.1.

Corporations Act means the *Corporations Act 2001* (Cth).

Credit Information means:

- (a) personal identifying details, including the name and current and previous addresses, date of birth, employer, and driver's licence number;
- (b) the fact that we are a credit provider to you;
- (c) information about any payments which are overdue for at least 60 days, when recovery steps have been taken by us;
- (d) where an overdue payment has been previously reported, advice that payment is no longer overdue;
- (e) information about any payments including cheques, credit cards and direct debits which have been dishonoured;
- (f) court judgments or bankruptcy orders made against you;
- (g) the fact that, in our opinion, you have committed a serious credit infringement; and
- (h) the fact that (and timing of) we have ceased providing a Service to you.

Credit Rating means information about your credit worthiness, credit standing, credit history or credit

capacity that credit providers are entitled to give to each other under the Privacy Act.

Default Rate means the rate which is the sum of 2% and:

- (a) Westpac Bank's 90 day bank bill rate; or
- (b) if there is no such reference rate, Westpac Bank's rate for overdraft facilities in excess of \$100,000 available to prime commercial customers,

on the date of the default, expressed as a percentage per annum.

Equipment means hardware or other equipment together with any related parts, handbooks, instructions, manuals, drawings and other non-consumable items.

Force Majeure Event means a circumstance beyond our reasonable control, including acts or omissions of third party network operators or service providers, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes or lockouts.

General Terms means the terms and conditions of this document.

Government Agency means any governmental, semi-governmental, administrative, fiscal, statutory, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity having operation or jurisdiction within Australia or anywhere else in the world.

GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event in relation to a person, means the happening of any one or more of the following events:

- (a) the person being unable to pay its debts as and when they fall due;
- (b) a receiver, receiver and manager, administrator, liquidator, trustee for creditors or trustee in bankruptcy or analogous person being appointed over the person's undertaking or assets or any of them;
- (c) if the person is a natural person, an application and filing for bankruptcy being made in respect of the person; or
- (d) if the person is a corporation:
 - (1) an application for winding up or other process seeking orders which, if granted, would render the person an externally-administered body corporate being filed and not being withdrawn within 20 Business Days;
 - (2) the person being or becoming the subject or an order, or a resolution being passed, for the person's winding up or dissolution; or

- (3) the person entering into, or resolving to enter into, a deed of company arrangement, or an arrangement, composition or compromise with, or assignment for the benefit, of its creditors generally or any class of creditors, or proceedings being commenced to sanction such a deed of company arrangement, or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

Intellectual Property Rights means all industrial and intellectual property rights of any kind which may subsist in Australia or anywhere else in the world, including:

- (a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and domain names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) of this definition; and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) or (b) of this definition, whether or not such rights are registered or capable of being registered.

Loss includes all loss, damage or liability (including liability to a third party) of any kind.

Minimum Period means, in relation to a Service, the minimum period over which we will supply, and you will be liable to pay for, the Service.

Network means the network used by us to perform a Service from time to time as further described in the applicable Service Schedule for the Service.

Non-excludable Conditions or Liabilities has the meaning given to that term in clause 14.2(a).

Order means a duly completed document in a form approved by us from time to time providing all relevant details in relation to a Service, which may include a purchase order.

Personal Information means information or opinion about a person from which the person's identity is apparent or can reasonably be ascertained.

Personnel means, in respect of a party, the employees, agents, contractors and Affiliates of the party and the employees, agents and contractors of the party's Affiliates and includes, in your case, your end users of the Services.

PPSA means the *Personal Property Securities Act* 2009 (Cth) and any regulations made pursuant to it.

PPSR means the register established under the PPSA.

Privacy Act means the *Privacy Act 1988* (Cth) and all regulations made under it.

Purchased Equipment means any Equipment which you purchase from us under or in connection with the Contract.

Recipient has the meaning given to that term in clause 11.2(a)(1).

Representative means the individual identified by a party as its representative in the applicable Order, as may be replaced by that party under clause 17.9(c).

Restraint Period means:

- (a) the duration of the Contract; and
- (b) thereafter, for the period of 12 months commencing on the expiry or termination of the Contract.

Retained Ownership Equipment means any Equipment that we, or any of our Suppliers, provides to you as part of a Service, but expressly excluding any Purchased Equipment.

Secured Goods means all Purchased Equipment sold by us to you and, for the avoidance of doubt, includes any proceeds in, or arising from, such Purchased Equipment.

Security Interest has the meaning given in the PPSA.

Service means an individual service ordered by you in an Order and which we agree to supply to you.

Service Levels means, in relation to a Service, the service levels (if any) applicable to that Service as may be specified in a Service Schedule.

Service Schedule has the meaning given to that term in clause 1.1(b).

Site means, in relation to a Service, each physical location at which you require a Service to be supplied as specified in the applicable Order.

Software means any computer programs, whether incorporated in Equipment or delivered independently, and any firmware embedded in Equipment, supplied by us for your use in connection with a Service.

Supplier means a third party supplier that we use to directly or indirectly supply the Services to you and expressly includes, any third party who provides Carriage Services for resale by us to you.

Supplier Network means any telecommunications network, equipment, facilities or cabling of a Supplier.

Tax means any tax, rate, levy, impost or duty (other than a tax on the net overall income of any person) and any interest, penalty, fine or expense relating to any of them.

TCP Code means the C628:2015 Telecommunications Consumer Protections Code as registered pursuant to section 117 of the Telecommunications Act, as amended or replaced from time to time.

Telecommunications Act means the *Telecommunications Act* 1997 (Cth).

Term has the meaning given to that term in clause 1.4.

Termination Charge has the meaning given to that term in clause 9.4.

Third Party Facilities has the meaning given to that term in clause 7.6(a).

Variation has the meaning given to that term in clause 1.1(d).

We, us or our means, subject always to clause 3.3, Connect ANZ Pty Ltd (ACN 159 788 888).

Works in relation to a Service, means any design, installation, commission or other works required to enable the performance of that Service.

You or your means the party, other than us, named in on the Order for the supply of the relevant Service(s).

18.2 Interpretation

In these General Terms, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words that are gender neutral or gender specific include each gender;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (1) a person includes a firm, unincorporated association, corporation and a Government Agency;
 - (2) a person includes the person's legal personal representatives, successors and assigns and persons substituted by novation;
 - (3) 'law' includes:
 - (A) statutes, regulations or by-laws of the Commonwealth, a State, a territory or a Government Agency; and
 - (B) rules, proclamations, ordinances, orders, decrees, requirements or approvals (including conditions) of foreign, state, territorial or local jurisdiction or a Government Agency that have the force of law;
 - (4) any legislation includes that legislation as amended or replaced from time to time and any regulations, by-laws or other subordinate legislation made under that legislation;
 - (5) a right includes a benefit, interest, remedy, discretion, authority or power;
 - (6) an obligation of more than one person binds them all jointly and severally;
 - (7) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;

- (8) provisions or terms of these General Terms or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
- (9) time is AEST – Australian Eastern Standard Time;
- (10) month is a reference to a calendar month;
- (11) '\$' or 'dollars' is a reference to Australian currency;
- (12) 'costs' includes charges, expenses and legal costs (on full indemnity basis);
- (13) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes electronic transmissions;
- (14) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (15) the General Terms or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (16) a clause or paragraph is a reference to a clause or paragraph, as the case may be, of these General Terms; and
- (g) if the date on or by which any act must be done under these General Terms is not a Business Day, the act must be done on or by the next Business Day;
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and
- (i) a term or expression:
 - (1) given a meaning in the Corporations Act that is not otherwise defined in these General Terms, has the same meaning in these General Terms as in the Corporations Act; and
 - (2) given a meaning in the GST Law, that is not otherwise defined in these General Terms or in the Corporations Act, has the same meaning in these General Terms as in the GST Law.