



Standard Form of Agreement

**General Terms for Business
Customers**

**KPCD PTY LTD trading as Kalgoorlie IT
ABN 716 440 39627**

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1 Standard Form of Agreement

1.1 Terms and Conditions

This Agreement is a Standard Form of Agreement formulated in accordance with Part 23 of the Telecommunications Act. Accordingly, the terms of this Agreement apply to our provision of a Service to you, except to the extent that we agree in writing that different terms will apply, in which case those different terms will apply to the extent of any inconsistency. If you obtain a service from us, you do so in accordance with the terms and conditions contained in the documents which comprise your Agreement with us.

1.2 Structure of your Agreement

Your Agreement with us comprises of the following documents, which to the extent of any inconsistency will be read in the following descending order of precedence:

- (a) any Special Conditions set out in a Service Contract but only as relevant to the specific Service Contract and not to other Service Contracts;
- (b) a Service Contract but only as relevant to the specific Service Contract and not to other Service Contracts;
- (c) a Service Description;
- (d) these General Terms;
- (e) KPCD protocols, rules and policies published on the KPCD website including but not limited to our Fair Use Policy.

2 Definitions and interpretation

2.1 Definitions

The following definitions apply unless the context requires otherwise:

ACMA means the Australian Communications and Media Authority (www.acma.gov.au);

Agreement means the agreement between you and us for the Service consisting of documents listed in **clause 1.2**;

Application means an application made by you for the provision of Services by us, which when accepted by us forms a Service Contract;

Approved Purposes means:

- (a) providing directory assistance services;

- (b) providing operator services or operator assistance services;
- (c) publishing and maintaining public number directories;
- (d) providing location dependent carriage services;
- (e) the operation of emergency call services or assisting emergency services under Part 8 of the Telecommunications (Consumer Protection and Service Standards) Act 1999;
- (f) assisting enforcement agencies or safeguarding national security under the Telecommunications Act, the Telecommunications (Interception and Access) Act 1979 or any other applicable legal requirement;
- (g) verifying the accuracy of information provided by the data provider and held in the Integrated Public Number Database (IPND) against the information the data provider holds;
- (h) undertaking research of a kind specified in the Telecommunications IPND – Permitted Research Purposes) Instrument 2007;
- (i) assisting the ACMA, or its nominee, to verify the accuracy and completeness of information held in the IPND; and
- (j) meeting our obligations to any Government Agency (for example, the Australian Tax Office);
- (k) any other purposes where permitted or required by the Telecommunications Act or any other applicable Law;

KPCD means KPCD Pty Ltd of 311 Hannan Street, Kalgoorlie WA 6430

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Business Hours means 9.00 am to 5.00 pm Monday to Friday (AWST), excluding days which are public holidays in the place where the Services are to be provided;

Broadband means a high capacity telecommunications service capable of delivering a simultaneous range of services;

Charge(s) means a fee payable for a Service and any other amount payable by you in accordance with the terms of our Agreement;

Claim includes any debt, cause of action, loss, liability, claim, proceeding, suit or demand of any nature however arising under or in connection with this Agreement or its subject matter and whether present or future, fixed or unascertained, actual or contingent, arising under contract (including under any indemnity), tort (including negligence), under statute or otherwise;

Consequential Loss means loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any increased operating costs suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute, any other form of consequential, special, indirect, punitive or exemplary loss or damages and any third party loss;

Consumer Guarantee means a guarantee described in the Australian Consumer Law;

CPI means the Consumer Price Index, All Groups Index Number published by the Australian Bureau of Statistics;

CSG means the *Telecommunications (Customer Service Guarantee) Standard 2000 No.2*, which sets time frames for provisioning and fault rectification for standard telephone services;

Customer Equipment means any equipment or facility in your possession, ownership or control, other than Service Equipment;

Degrade Fault means a Fault where a Service is adversely affected but still operational;

Due Date unless otherwise agreed, means the date specified on an invoice as the due date;

Early Termination Charge means the Charge payable (if any) in accordance with **Clause 7.10** and unless specified otherwise in a Service Contract is the total of any remaining Fixed Term Charges;

Encumbrance means a mortgage, lien, loan, fixed or floating charge, or any other interest granted to a third party;

Equipment unless otherwise specified, means Service Equipment or Purchased Equipment;

Facilities has the meaning given in the Telecommunications Act;

Fair Use Policy means our policy which applies to your use of the Service, a copy of which is accessible on our Website;

Fault means a fault, degradation or failure in a Service and includes an Interruption;

Fixed Term Service has the meaning given in **Clause 3.6**;

Fixed Term Charge means the Charge payable for a Fixed Term Service for the Initial term;

Force Majeure Event means an event that is beyond a Party's reasonable control, including acts of God or natural disasters, fire, lightning, explosions, flood, subsidence, insurrection, civil disorder or military operations, war, terrorism, government or quasi-government restraint, expropriation, prohibition, intervention, direction or embargo, strikes, lockouts or other industrial disputes of any kind, failure of supply, or an act or omission of any Government Agency or an act or omission of any third party (including any Third Party Supplier) where the act or omission is caused by an event or circumstance outside that third party's reasonable control (including any of the things mentioned in this definition);

Government Agency means any Commonwealth, State or local or foreign government, government authority or semi-government authority (including a judicial body) that has legal power to require another person to act or not act in a particular way or to authorise a particular act, including but not limited to the ACMA, the Telecommunications Industry Ombudsman or the Australian Competition and Consumer Commission;

GST has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Initial Term means the minimum period specified in a Service Contract and which commences on the RFS Date;

Interest means interest at the rate 2% above the per annum business overdraft rate charged by the Commonwealth Bank of Australia on the last day of each applicable month calculated daily and compounded monthly

Internet means the world wide connection of computer networks which provides a number of services to users, including the transmission of electronic mail, provision of information on the world wide web and transfer of files;

Interruption or Interrupted Fault means a Fault that causes a total outage in the supply of a Service;

Law means Commonwealth, State, or local legislation, judicial, administrative, or regulatory decrees or determinations, judgments, awards or orders, binding industry codes or standards and all common laws and equity;

Our Network means the infrastructure used and/or maintained by us or our Third Party Suppliers to provide you with your Service. Our Network does not include the computer networks that make up the Internet;

Party means a party to this Agreement;

Personal Information means any personal information within the meaning given in section 6 of the Privacy Act and section 187LA of the *Telecommunications (Interception and Access Act) 1979* ;

Personnel means, in respect of a Party, its employees, directors, agents, representatives and contractors;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Privacy Act means the *Privacy Act 1988* (Cth);

Purchased Equipment has the meaning given in **Clause 14**;

Review Date means 1 July of each year;

RFS Date means the earlier of the date that KPCD informs the Customer that a Service is operational and ready for service, when the Service is made available to the Customer, or when the Customer commences to use the Service;

Scheduled Maintenance means maintenance that KPCD considers is required to ensure that it achieves Service Levels;

Service means the service requested by you in your Application and as described in it and any other documents forming the Agreement, including any related goods and ancillary services provided to you by us in connection with that service;

Service Cancellation Charge means the fee payable (if any) in accordance with **Clause 15.2**, which is based upon costs incurred by KPCD in preparing to provide a Service to you;

Service Contract means a contract between KPCD and the

Customer for the provision of Services, formed by KPCD's acceptance of an Application for a Service from the Customer, and includes details of the Initial Term and Charges;

Service Description means the document forming part of the Agreement describing the Service and setting out specific terms and conditions for that Service;

Service Equipment has the meaning given in **Clause 13**;

Service Level means the standard of service set out in the Service Level Agreement (if applicable);

Service Level Agreement or **SLA** is the document forming part of our Agreement with you that sets out the level of service that we will provide to you and any rebates that apply if we fail to meet our commitments;

Shaping means a reduction in the speed of a Broadband service

Special Conditions means any additional terms and conditions, or variations to the terms and conditions, which are agreed between the Parties, as set out in a Service Contract

Taxable Supply has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

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

Term is defined in **clause 3**;

Third Party Supplier means a third party supplier from whom we acquire wholesale services that form all or part of the Service we provide to you;

Website means www.KPCD.com.au;

we, our or **us** means KPCD;

you or **your** means the current account holder for the Service.

2.2 Interpretation

In the Agreement unless the contrary intention appears:

- (a) a reference to a person includes a reference to a corporation, an association, joint venture, an unincorporated body, partnership, government or local authority or agency or other entity;
- (b) a reference to a document or instrument includes the document or instrument as novated, altered,

supplemented or replaced from time to time;

- (c) the singular includes the plural and vice versa;
- (d) a reference to any gender includes a reference to all other genders;
- (e) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (g) an agreement, representation or warranty made in favour of two or more persons is made for the benefit of them jointly and for each of them severally;
- (h) a reference to a recital, clause, paragraph, schedule or annexure is to a recital, clause or paragraph of, or schedule or annexure to, these General Terms, and a reference to these General Terms includes any schedule or annexure;
- (i) a reference to dollars and \$ is to Australian currency;
- (j) headings are inserted for convenience only and do not affect the interpretation of the Agreement; and
- (k) specifying anything in the Agreement after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

3 Provision of the Service

3.1 Service Availability

Subject to your rights under the Australian Consumer Law, we aim to provide, but cannot guarantee, a continuous Service free of any Interruptions. You are aware that we may be reliant on Third Party Suppliers for supplying the Service to you and that circumstances beyond our control may cause Faults in the Service from time to time. Our liability to you for any Fault in a Service is limited in accordance with **Clause 16** and the terms of any applicable Service Level Agreement.

3.2 Maintenance and Fault Restoration

Subject to your rights under the Australian Consumer Law and to the maximum extent permitted by law, we are not obliged to restore any fault with a Service that is caused as a result of:

- (a) damage due to causes external to the facilities used by us and/or our Third Party Suppliers to provide the Service;
- (b) interference;
- (c) a Force Majeure Event; or
- (d) planned outages, including Scheduled Maintenance.

3.3 Training

Training will be provided on an as needed basis for certain product/service types that require end user training. Training will be completed using a "Train the Trainer" method meaning that we will train a single person within the customer organisation, who will be responsible for passing on the relevant training to the rest of the organisation.

3.4 Technical Support

- (a) We will provide technical support services as described on our website at www.kpcd.com.au/services
- (b) We are not responsible for, and will not provide support for, any fault caused by:
 - (i) any Customer Equipment unless it is supplied to you by us;
 - (ii) the interaction of the Service with third party software packages used by you;
 - (iii) the inability to gain wireless connectivity from your wireless access point/router to your computer; or
 - (iv) services provided by any third party supplier or carrier (other than our Third Party Suppliers).

3.5 Commencement and Term

- (a) Our Agreement commences when we accept (at our sole discretion) your Application and continues until terminated in accordance with our Agreement. Our acceptance of your Application forms a Service Contract. All Service Contracts are subject to the terms of the Agreement.

- (b) When you request us to supply the Service to you, we decide whether to accept your Application and to supply the Service to you based on a variety of factors including:
 - (i) your eligibility for the Service;
 - (ii) its availability to you;
 - (iii) you meeting our credit requirements; and
 - (iv) your prior conduct or history with respect to any previous supply by us or a reseller of any goods or service to you.
- (c) Unless terminated in accordance with the Agreement, a Service Contract remains in force for the Initial Term. Upon expiry of the Initial Term a Service Contract continues on a month to month basis until terminated by either party giving the other party at least 30 days written notice of termination. Any Special Conditions do not apply after expiry of the Initial Term unless otherwise agreed in writing.

3.6 Application

These General Terms do not apply to the extent that we have agreed on different terms with you. In particular, a Service Contract may provide different terms. For example, you may be required to receive the Service from us for a minimum or fixed term that is greater than a month to month period (**Fixed Term Service**). In such cases, all terms of the General Terms that are not inconsistent with different terms in the Service Contract will apply to the provision of the Service.

3.7 Third Party Suppliers

You agree that we may use Third Party Suppliers for the provision of the Service to you. You will not contact any of our Third Party Suppliers for any reason in relation to the Service. You acknowledge that if you do contact one of our Third Party Suppliers, you will be liable for all costs imposed on us by our Third Party Supplier in connection with you having contacted that Third Party Supplier directly.

3.8 Changing our Agreement

- (a) During the term of our Agreement, we may need to change the terms of our Agreement due to circumstances beyond our control, including changes in Law, urgent changes required for security reasons, changes by one of

our Third Party Suppliers of the terms on which they supply services to us or to the functionality or nature of a Service or its underlying technology. We are therefore not always able to provide you with ongoing supply of a Service on the same terms and conditions that existed when we first commenced providing that Service to you.

- (b) In addition to changes which we are required to make due to circumstances beyond our control, we may elect to make changes for our own purposes during the term of our Agreement.

3.9 Exceptions

You acknowledge and agree that our obligation to give you 21 days' notice of our proposed changes and to afford you a right to terminate our Agreement in accordance with **Clause 3.8** will not apply in relation to:

- (a) urgent changes we are required to make by Law, for security reasons or technical reasons necessary to protect the integrity of Our Network;
- (b) the introduction of a new Charge or an increase in an existing Charge due to an additional tax or levy imposed by Law (where it is fair and reasonable for us to pass that on to you);
- (c) the introduction of a new Charge or an increase in existing administrative Charges for ancillary services such as credit card transaction fees (provided we have offered you a reasonable alternative at the same or lesser cost to the original Charge); and
- (d) increases in Charges due to increases imposed on us by other suppliers (including Third Party Suppliers) for the following types of services and charges:
 - (i) international carriage services (including for voice and data) the current Charges for which are available via our Website; and
 - (ii) content and premium services (including 1900 prefix services) which we resell to you from a third party, including where we collect fees from you on behalf of that third party.

Where practicable to do so, we will give you reasonable notice of the changes

referred to in this **Clause 3.9** in accordance with the notice provisions of **Clause 20.1**.

4 Faults

- 4.1 If a Fault occurs the Customer must attempt to diagnose its cause prior to contacting KPCD to determine that the Fault is not caused by Customer Equipment, the Customer's software, electrical supply, content or services that are not supplied by KPCD. The Customer is responsible for rectifying Faults relating to Customer Equipment, the Customer's software, electrical supply, content or services that are not supplied by KPCD and for any costs incurred by KPCD in relation to Faults that arise for such a reason.
- 4.2 After its initial diagnosis, the Customer should report a Fault to KPCD's business support service as soon as possible. KPCD will endeavour to rectify Faults in accordance with any applicable SLA or if a SLA does not apply within a reasonable time.
- 4.3 KPCD is not responsible for repairing Faults that are outside its reasonable control, including Faults relating to software developed or licensed by any third party that is used by KPCD or the Customer in relation to the Service.
- 4.4 The Customer is liable for any costs that KPCD incurs in rectifying a Fault that arises as a result of:
 - (a) an act or omission of the Customer or its Personnel; or
 - (b) defects or failures in networks, equipment, facilities or software that is not KPCD Equipment or is otherwise outside its control.

5 Maintenance

- 5.1 Maintenance may be performed by KPCD, its Suppliers, or its third party software suppliers or licensors when required.
- 5.2 KPCD will provide reasonable notice of Scheduled Maintenance and where possible undertake Scheduled Maintenance at a time that will minimise disruption to the Customer's use of the Services. If unscheduled or urgent maintenance is required, it may not be possible for KPCD to provide notice or to

schedule the maintenance at a time that is convenient to the Customer.

- 5.3 KPCD may suspend the Service if necessary because of an emergency, to comply with a Law, or to protect persons, KPCD Equipment or Facilities or Network, Supplier equipment or networks.

6 Credit assessment and security

6.1 Credit Assessment

KPCD may conduct a credit assessment of the Customer. The Customer authorises KPCD to make all enquiries necessary to determine the Customer's creditworthiness and will provide KPCD with all reasonable assistance necessary for the credit assessment.

6.2 Security

- (a) KPCD may require the Customer to provide security or vary the amount of security currently provided, which at KPCD's discretion may be a bank guarantee, a letter of credit, a parent or related company guarantee, a fixed or floating charge or a security bond held by KPCD. The security may not exceed KPCD's reasonable estimate of the Customer's Charges for a three month period and any Equipment supplied to the Customer but not paid for. If KPCD reasonably requests new or varied security, the Customer must provide the security in a form acceptable to KPCD within one week.
- (b) Unless agreed by KPCD, the Customer must maintain the security until the Agreement is terminated and all outstanding Charges have been paid to KPCD.
- (c) KPCD may exercise its rights under any security to recover Charges that are unpaid by the Customer or to recover any loss that KPCD suffers as a result of the Customer's breach of this Agreement. If KPCD exercises its rights under any security, the Customer must ensure that the security remains in place and in the case of a bank guarantee or security bond that it is replaced or replenished within one week so that the amount guaranteed or held is equal to the

amount guaranteed or held before KPCD exercised its rights.

- (d) Within one month of termination of the Agreement and all outstanding Charges being paid to KPCD, KPCD must release any remaining security to the Customer.

7 Charges for the Service

7.1 Charges

- (a) You are liable to pay all Charges arising out of the use of the Service that we provide to you, whether that use was by you or any other person with or without your consent.
- (b) If a Service is used to access the facilities or services of another supplier, amounts charged by that other supplier are, unless our Agreement specifies otherwise, your responsibility, and you will indemnify us in relation to any such charges. If we are charged those amounts we may include them in the Charges.
- (c) Unless a Service Contract or Service Schedule states otherwise, on each Review Date following the RFS Date, KPCD may increase the Charges by the greater of 3% or CPI;

7.2 GST

Unless expressly stated otherwise, all Charges for the Services are exclusive of GST. You will pay to us at the same time when any part of the charges for the Service is payable, an amount equal to any GST payable on supply of the Service. We will issue a tax invoice to you for any supply on which GST is imposed. If any additional tariffs become payable by us in relation to or in connection with this Agreement we will charge you and you will pay an additional amount equal to the amount of the tariff payable.

7.3 Invoicing

- (a) We will provide an invoice for the Service on the date that your connection becomes active and each month thereafter.
- (b) We reserve the right to invoice you for any Charges for equipment or installation of equipment in advance and not to proceed with supply or installation of the equipment until payment has been made.

- (c) If you have a direct debit in place for any Service, your credit card or bank account will be debited on the Due Date.
- (d) Monthly Charges (if applicable) are billed in advance and any applicable usage or excess usage charges are billed in arrears.
- (e) Any applicable connection Charges and additional hardware not billed in advance will be billed on your first invoice.
- (f) We will invoice you for the Service, plus any applicable GST. We may vary invoice frequency upon giving you reasonable notice. All portions of your use of the Service are charged for and unused allocations are not transferable or refundable. We reserve the right to reissue an invoice if any error in the amount shown as owing on the invoice is subsequently discovered.
- (g) We may issue an interim bill in the following circumstances:
 - (i) you change your existing plan;
 - (ii) you request a new Service to be connected or new equipment to be supplied;
 - (iii) you relocate an existing Service;
 - (iv) you request to be invoiced for any 'unbilled' charges;
 - (v) we have reasonable grounds to believe that you may be a credit risk; or
 - (vi) as otherwise agreed with you.
- (h) We will refund or credit any overpayment due to a variation in the Charges or cancellation of a Service. If we have undercharged you, you will be liable for any underpayment.

7.4 Calculation of Charges

Charges are calculated by reference to data recorded or logged by us. Records held by us will be conclusive evidence of the usage of your Service and charges payable by you.

7.5 Time for Payment

All Charges must be paid in full by the Due Date. We reserve the right to charge Interest on any unpaid amount from the Due Date until the date of payment in full.

7.6 Methods of Payment

- (a) Payment must be made by credit cardstanding authorisation, direct debit or electronic funds transfer.
- (b) We reserve the right to charge you for any fees that we incur from, or must pay to, your bank. If there is any payment discrepancy or disagreement about bank charges applied, you should contact us before your bank and we will try to resolve the issue. If you contact your bank and we incur a bank fee as a result, we reserve the right to pass this fee on to you.

7.7 Suspension for Non-Payment

We reserve the right to:

- (a) physically disconnect the Service if Charges or any other amount payable by you remains unpaid 14 days after the applicable Due Date (unless we have received written notice from you of a genuine dispute of those Charges prior to the Due Date, that dispute remains unresolved and all undisputed Charges have been paid by the Due Date); and
- (b) suspend and/or terminate the Service if you fail to pay outstanding Charges in full within 5 business days after we give you a notice demanding payment of the Charges, which, for the avoidance of doubt, will include any administrative fees.

7.8 Dishonoured Direct Debit Transaction or Credit Card Authorisation

In addition to any other rights that we have under the Agreement in relation to late payment, if an invoice is paid by direct debit or credit card authorisation and the payment is declined by the bank, we reserve the right to pass any bank fee that we incur as a result of the declined or dishonoured transaction on to you.

7.9 Debt Recovery Services

We may use debt recovery services to recover any outstanding Charges (including any administrative fees). You may be liable for any charges and collection costs, such as legal costs.

7.10 Early Termination Charge

- (a) You may cancel the Service at anytime in accordance with **Clause 15.1(a)**. However, if your Application or Service Contract records that you have agreed to receive the Service from us for a

Fixed Term and you cancel the Service before the expiry of the Fixed Term, you will be liable to pay an Early Termination Charge.

- (b) If we cancel or terminate a Service because of your breach of this Agreement and your Application or Service Contract records that you have agreed to receive the Service from us for a Fixed Term and the cancellation or termination is before the expiry of the Fixed Term, you will be liable to pay an Early Termination Charge.

7.11 Refunds and Credits

- (a) Any Charges relating to setting up or connecting your Service such as Charges relating to the installation of equipment or that may be payable by us to third parties are non-refundable unless we are unable to provision the service you have requested us to provide.
- (b) If your account for the Service is terminated and monies are owed to you by us (for example, for the unexpired portion of any Charge paid in advance by you), you agree that we may deduct any outstanding Charges on final settlement of your account and state on your final invoice (as applicable) the amount credited to you or the amount you must pay to us.
- (c) You may elect to claim a refund for any amount credited on your final invoice or apply the credited amount to another service we may supply to you by notifying us within 90 days of your receipt of the final invoice.

7.12 Prepayment

- (a) If, at the time of your Application, we have reasonable grounds to believe that you may be a credit risk, we may request that you pay in advance the estimated cost of using the Service for up to three months.
- (b) We may decline your Application or cancel, suspend or disconnect the Service if you do not provide the prepayment in advance when requested to do so in accordance with **paragraph (a)**.
- (c) If we cancel or disconnect all of the Services, we will return to you that portion of the prepayment that is not required to meet any outstanding Charges.

7.13 Disputed Invoices

- (a) If you dispute an invoice or claim a refund for overpayment of any Charges under our Agreement you should do so within 5 months of the date of the invoice to which the disputed amount or alleged overpayment relates.
- (b) Nothing in this **Clause 7.13** limits your right to issue proceedings in relation to a disputed invoice or alleged overpayment.

7.14 Cancellation, Suspension or Disconnection for non-payment

If we cancel, suspend or disconnect the Service for non-payment, you remain liable for all Charges and other liabilities incurred before the date of cancellation, suspension or disconnection of the relevant Service including any applicable Early Termination Charges.

7.15 Set Off

Unless we agree in writing, you must pay the Charges without any set off, counterclaim or deduction.

8 Transfer of your Service from us to another Supplier

8.1 Transfer

If you ask us to transfer any of the Services to another supplier, you remain liable to us for any amount payable in relation to the supply of the Services up to the date on which we transfer those Services to another supplier. You will pay us that amount by the applicable Due Date.

8.2 Termination of Services on Transfer

The provision of Services ceases on the date on which we transfer your Services to another supplier.

8.3 Invoicing

We will endeavour to invoice you for Charges incurred in relation to Services that you transfer to another supplier within the next normal billing period. If, after that time, we become aware of other Charges or amounts (including fees payable to any other supplier) for those Services up to the date of transfer, or we resolve any dispute so that any liability relating to those Services is quantified and payable by you, then you will pay us all such amounts within 7 days of your receipt of our invoice for them.

8.4 Indemnity

We will not accept liability for any amounts owing by you to a supplier or other person. You must indemnify us against any Claim made by a supplier or other person against us in relation to any such amounts.

9 Personal Information

We will only collect, use and disclose Personal Information that is reasonably necessary to provide the Service, comply with our obligations and rights under the Law or this Agreement, or to conduct any credit checks or credit action. You may at any time contact us to access and if required correct any stored Personal Information. Any complaints about our use of Personal Information should be addressed to us in the first instance. Any complaints that cannot be resolved by us may be referred to the Office of the Australian Information Commissioner.

10 Confidentiality

10.1 Confidential Information

We retain all rights (including intellectual property) in any information we provide to you relating to the Equipment, the Services or to the provision of the Services which, by its nature or the circumstances of its disclosure to a recipient, is or could reasonably be expected to be regarded as confidential (**Confidential Information**).

10.2 Protecting Confidentiality

You will not disclose Confidential Information to any third party and will not allow any written or electronically recorded Confidential Information to be copied or disclosed to a third party without our consent (unless you are required to do so by Law or the information has entered the public domain other than through a breach of confidence). You may also disclose Confidential Information to your professional advisers on condition that they also agree to keep the information confidential.

10.3 Obligations on Termination

On termination of the Services for any reason, on our request you will return or destroy any Confidential Information in your possession.

10.4 Restrictions on Use

You will not use information that you acquire from us for any purpose unauthorised in writing by us or in any manner that may cause us loss, whether

by way of damage to our reputation, financial loss or otherwise.

11 Your obligations

11.1 Compliance

You are responsible for the use of your Service and you will not use your Service other than in accordance with our Agreement, Laws, and obligations applicable to the Services and their use.

11.2 Obligations

- (a) In providing the Services to you, you agree that we, or a Third Party Supplier, may take any steps deemed necessary in regards to the Approved Purposes or in order to comply with the Law, industry codes of practice or under direction from a relevant regulatory authority or court order, including:
 - (i) intercepting communications made using a Service; and
 - (ii) monitoring and retaining data accessed or transmitted via the Service.
- (b) You must not do or allow to be done, in relation to a Service, any of the following:
 - (i) engage in denial-of-service attacks, or allow a computer under your authority to be used as part of one;
 - (ii) obtain or attempt to obtain unauthorised access to or control of any other computer or network;
 - (iii) scan ports on other computers or otherwise probe them for means of access or vulnerabilities;
 - (iv) spread (either deliberately or through want of reasonable care) any virus, Trojan horse or other harmful action;
 - (v) breach any Law regulating content, intellectual property or conduct on the Internet or email;
 - (vi) contravene the Privacy Act, the National Privacy Principles, or any guidelines made under them; or
 - (vii) send spam.
- (c) If we or a Third Party Supplier provide you with any software, you will only use it in accordance with its licence

terms as notified to you from time to time.

- (d) Except to the extent that we have specifically agreed otherwise or the type of Service being provided to you suggests otherwise, you agree not to resell the Service, nor to establish, maintain or permit multiple concurrent connections to the Service, nor to connect the Service to a local area network, except if the Service is designated by us as one which supports use of a local area network.
- (e) Except to the extent that we have specifically agreed otherwise, you are solely responsible at your own expense for providing and maintaining all Customer Equipment necessary for the Service and for maintaining any Equipment.
- (f) To the extent permitted by Law, you acknowledge and agree that:
 - (i) continuity and speed of access to the Internet depend on a wide range of factors, many of which are beyond our control;
 - (ii) we have no control over the accuracy or appropriateness of any information on the Internet;
 - (iii) we are not responsible for any software or data available on the Internet;
 - (iv) if we provide to you technical or other support or advice in relation to any matter which is outside our direct responsibility under this Agreement, we do so only in an attempt to assist you and without incurring any liability other than any which cannot Lawfully be excluded.

11.3 Level Playing Field Laws

- (a) Parts 7 & 8 of the Telecommunications Act prohibit KPCD supplying high speed broadband services to residential customers and business customers with less than 15 employees unless the business is a carrier or carriage service provider or KPCD is reselling a service that it acquires on a wholesale basis from another carrier.
- (b) If the Service includes a high speed broadband service that KPCD is not acquiring on a wholesale basis from another carrier,

the Customer warrants to KPCD that unless it is a carrier or carriage service provider as defined by the Telecommunications Act, that it has and will continue to have at least 15 employees that are not casual employees and indemnifies KPCD for any liability that KPCD incurs because of a breach of this warranty.

- (c) If at any time the Customer does not have at least 15 employees, the Customer must inform KPCD and KPCD will attempt to arrange for the relevant Service to be provided by an alternative supplier, or shifted on to a wholesale service, or may terminate the service.
- (d) If a service is terminated pursuant to clause 11.3(c) the Customer may be liable for Early Termination Charges.

11.4 Internet Security

You acknowledge and accept that any access to the Internet involves security risks and that new threats to Internet security are continually evolving. You accept responsibility for maintaining your own security and acknowledge that we have recommended that you should at least:

- (a) maintain and protect your Personal Information, user identity, email address and password (keeping the password secure, including not disclosing it, avoiding the use of dictionary words, names or dates, changing it regularly, not keeping it in writing or storing it on a computer);
- (b) use and keep current anti-virus and firewall software;
- (c) restrict access to Equipment;
- (d) not accept or open emails or files from unknown sources;
- (e) protect users from unsuitable Internet content;
- (f) keep up to date on Internet security issues;
- (g) avoid unexpected data Charges or Shaping by regularly monitoring your data usage.

11.5 Information

You warrant that the information supplied by you in relation to our Agreement is true and correct. You will promptly inform us of any changes to this information.

11.6 Assistance

For the duration of our Agreement, you will provide us free of charge with all assistance, information, access, facilities and services reasonably required by us to enable us to perform our obligations under our Agreement, including use of Customer Equipment if required.

12 Use of Services

12.1 Interference

If inadequate capacity in the Customer Equipment or Equipment or your use of the Service interferes, or in our opinion threatens to interfere, with the efficiency of any network used in the supply of the Services, you must follow our directions or the directions of the relevant network operator on how to end or avoid that interference.

12.2 Use of Services

You must:

- (a) ensure the Services are used solely for their intended purpose;
- (b) notify us immediately of any security breach (suspected or otherwise) regarding the Service or your confidential password or customer login; and
- (c) not permit any other person to resell or purport to resell any Service.

12.3 Technical Regulation

You must not connect or maintain a connection to a facility used in connection with the supply of Services to you or other parties that does not comply with technical codes, standards or regulations made under the Telecommunications Act, any declaration or other requirement of the ACMA or any code, standard or guideline published by the Australian Communications Alliance Ltd.

12.4 Illegal Use

You must not use or allow another person to use a Service to transmit, receive or publish any material that is defamatory towards any person, or in breach of copyright, any obligations of confidentiality or otherwise in breach of any Law. If you breach this clause, we may suspend or cancel the Service in accordance with **Clause 15.4(f)**. You will indemnify us against any Claim that we suffer as a result of your use of the Service to commit an offence or otherwise breach this **Clause 12.4**.

13 Equipment we supply to you

13.1 Title

If we, or our Third Party Supplier, provides a facility or any item of equipment (**Service Equipment**) to you for use in relation to the Services (but we do not sell that Service Equipment to you):

- (a) risk in the Service Equipment passes to you on delivery;
- (b) that Service Equipment always remains our property unless, in our sole discretion, we deem that title has passed to you;
- (c) you must keep the Service Equipment in good repair, free from any Encumbrance and must not register any interest in the Service Equipment under the PPSA. You agree that we or our Third Party Supplier may register an interest in the Service Equipment under the PPSA without complying with any provision of the PPSA or *Personal Property Securities regulations 2010* (Cth) that may be contracted out of;
- (d) you must pay any rental Charges for the Service Equipment, if applicable;
- (e) at a time nominated by us, you will allow us to and, where applicable, will ensure that the landlord allows us to, remove the Service Equipment from the premises where it is installed upon expiry or termination of the supply of the Services;
- (f) you will not part with possession of the Service Equipment except to us;
- (g) if we are unable to recover the Service Equipment, we may recover the value of it as a debt due by you, including offsetting the value of the Service Equipment against any monies owed to you by us;
- (h) you indemnify us against any loss or damage to the Service Equipment, unless that loss or damage arises from fair wear and tear; and
- (i) you must:
 - (i) not remove or obscure any identification marks on the Service Equipment;
 - (ii) comply with our reasonable instructions to protect our ownership of the Service Equipment; and

- (iii) not do anything which might detrimentally affect our ownership of the Service Equipment.

13.2 Changes to Service Equipment

We may, in our sole discretion and at any time, replace any of our Service Equipment. If we have agreed to provide a Service to you for a Fixed Term, replacement of Service Equipment will be subject to our obligations under **Clauses 3.8 and 3.9**.

13.3 Access

- (a) You will allow us access to the Service Equipment during Business Hours (or at such other times as we arrange with you), and this right of access will not end until all Service Equipment is returned to us, even if the Services have been cancelled.
- (b) We (or a Third Party Supplier) may need access to your premises from time to time in connection with the provision and maintenance of the Service Equipment or a Service. If you do not provide such access as we, or a relevant Third Party Supplier, reasonably require, we may limit, suspend, cancel or disconnect your Service.
- (c) If you want us to provide a Service and that Service requires the installation of any facility, equipment or cabling on your premises whether by us or a Third Party Supplier, you must allow us or any relevant Third Party Supplier to:
 - (i) have access to your premises at a time nominated by us to install the facility, equipment or cabling; and
 - (ii) install the facility, equipment or cabling on your premises.
- (d) If you do not own the premises referred to in **paragraph (c)**, you must have the owner's permission and you warrant to us that you do have that permission.
- (e) If we need access to your premises you must provide us with safe and prompt access and indemnify us against any Claim by the owner or occupier of the premises in relation to our entry onto the premises.

13.4 Maintenance of Service Equipment

We may suspend Services for a reasonable period of time to perform maintenance on the Service Equipment, provided that in each case, we will use our reasonable endeavours to:

- (a) give you reasonable notice (bearing in mind the urgency and nature of the work) of any interruption to the Services; and
- (b) minimise any interruption to the Services.

13.5 Maintenance of Customer Equipment

If any of your facilities or Customer Equipment are used in the provision of the Services to you, you are responsible for the maintenance of your facilities and Customer Equipment unless we otherwise agree in writing.

13.6 Interference

You will ensure that the Service Equipment, and any other Customer Equipment, facilities or connections used in providing Services, are not altered, maintained, repaired or connected to, or disconnected from, any power source or line except by service personnel approved by us.

13.7 Electricity

You will make available and be responsible for payment of, an adequate power supply for the operation of any Equipment or

Customer Equipment used in the provision of Services. If provision of the Service is dependent on the supply of electricity we do not guarantee the supply of the Service where the supply of electricity is either disrupted or discontinued.

13.8 Insurance

On our request, you must insure any Service Equipment for an amount and on terms reasonably required by us.

14 Equipment you acquire from us

14.1 Title

If we sell you a facility or any item of equipment (**Purchased Equipment**):

- (a) that Purchased Equipment remains our property until we receive full payment from you or we otherwise deem in our sole discretion that title has passed to you (prior to the receipt of full payment);
- (b) until we receive full payment from you, you hold the Purchased

Equipment as bailee for KPCD and will not part with possession of the Purchased Equipment except to us;

- (c) if you do part with the Purchased Equipment before making full payment to us, we may recover the value of it as a debt due, including offsetting the value of the Purchased Equipment against any monies owed to you by us;
- (d) until full payment of the Purchased Equipment is received, you indemnify us against any loss or damage to it;
- (e) until we receive full payment for the Purchased Equipment, you must not remove or obscure any identification marks on it, and must comply with our reasonable instructions to protect our ownership and not do anything which might detrimentally affect our ownership of the Purchased Equipment; and
- (f) if it is able to do so, KPCD assigns any manufacturer's warranty in Purchased Equipment to the Customer. To the extent legally permissible (and subject to any applicable Consumer Guarantees), KPCD does not provide any further warranty in regards to Purchased Equipment.

14.2 Risk

Risk of loss or damage to the Purchased Equipment will pass to you upon delivery.

14.3 Installation

Subject to agreement between us and you as to which Services and/or Purchased Equipment we install, we will install such Services and/or Purchased Equipment at a site nominated by you. We may charge you our current Charges for installing the Purchased Equipment and/or a Service. We will use reasonable endeavours to install the Purchased Equipment and/or a Service on or around the installation date requested by you.

14.4 Returns and Refunds

Subject to any rights you have in respect of our breach of a Consumer Guarantee:

- (a) we do not provide refunds for unwanted Purchased Equipment. If you require a different model and the Purchased Equipment is unused, we allow 14 business days from the date you received the Purchased

Equipment to return it to us at your own cost for replacement with a different model. Your account will be credited with the purchase price and you will be required to pay any additional amounts for the replacement model.

- (b) No credit will be applicable on any Purchased Equipment returned after the 7 business day period referred to in **paragraph (a)**.

15 Suspension and cancellation of Services

15.1 Your rights to cancel or terminate

- (a) You may cancel a Service by giving us 30 days' notice. If you cancel a Service during an applicable Fixed Term for that Service, you may be liable to pay an Early Termination Charge in accordance with **Clause 7.10**.
- (b) You may otherwise cancel a Service at any time by giving us notice if:
 - (i) you are entitled to do so in accordance with Clause 17.2;
 - (ii) we are in material breach of our Agreement, which is capable of being remedied, but which we have failed to remedy within 30 days after you give us notice to remedy the breach; or
 - (iii) we are in material breach of our Agreement and it is something which cannot be remedied, including where there have been prolonged or repeated Interruptions to the Service that have resulted in an Interruption to the Service of at least 14 days. This clause does not apply to Interruptions which occur because of:
 - (A) a cancellation, suspension or restriction to the supply of the Service in any of the circumstances listed in **Clause 15.4**;
 - (B) a system or network outage for an insignificant period;
 - (C) Scheduled Maintenance;
 - (D) a fault or other event which may reasonably be attributed directly or indirectly to your Equipment; or
 - (E) your acts or omissions.

- (c) If you cancel a Service for any of the reasons set out in **paragraph (b)**:

- (i) you will not be liable to pay an Early Termination Charge (provided that we can recover any outstanding Charges incurred up to the date on which our Agreement ends and any outstanding amounts that cover installation costs or Equipment); and
- (ii) you will be entitled to a refund of the unexpired portion of any amounts you have paid in advance for the Service in accordance with **Clause 7.11**.

15.2 Preparation Costs

If you request a Service from us and cancel that request before we provide the Service, you may be liable to pay us a Service Cancellation Charge for our costs incurred in preparing to provide the Service.

15.3 Our Suspension and Cancellation Rights

We may suspend, limit or cancel a Service:

- (a) if you notify us in accordance with Clause 15.1;
- (b) to the extent necessary for us to comply with an order, instruction or request of a Government Agency, an emergency services organisation or any other competent authority (whether such an order, instruction or request is received or reasonably anticipated by us);
- (c) if we are required to do so by Law;
- (d) if there is an emergency;
- (e) if the Network is being modernised or upgraded;
- (f) if a third party (including any Third Party Supplier) withdraws or suspends a service which means we cannot provide your Service;
- (g) during any technical failure, modification or maintenance involved in the Service provided that we will use reasonable endeavours to procure the resumption of the Services as soon as practicable;
- (h) if there are reasonable grounds for believing a threat or risk exists to the security or integrity of Our Network or that provision of the Service may

cause death, personal injury or damage to property;

- (i) if we reasonably determine that such action is necessary to repair, maintain or restore any part of Our Network;
- (j) if the provision of the Services by us does or may contravene any Law or we have reasonable grounds to believe that it may in the immediate future contravene any Law;
- (k) a Force Majeure Event prevents us from supplying the Service in accordance with the Agreement for 30 days; or
- (l) if your Service has not been used or accessed for a continuous period of 24 months.

15.4 Other Suspension or Cancellation Events

We may suspend, limit or cancel a Service by giving you reasonable notice if:

- (a) you vacate the premises to which we have been supplying a Service to you;
- (b) we are unable to enter the premises during Business Hours or another time agreed by us to inspect, repair or maintain any Equipment or cabling connected with a Service provided to you;
- (c) we have the right to do so in accordance with **Clause 7.7** for your failure to pay Charges or other amounts;
- (d) you do not provide prepayment as required by us in accordance with **Clause 7.12**, a security bond as required by **Clause 6.2**, or **Clause 15.6(b)**;
- (e) we have reasonable grounds to suspect fraud or other illegal conduct by you in applying for the Service;
- (f) we have reasonable grounds to suspect fraud or other illegal conduct by you or any person using your Service;
- (g) you fail to comply with our Fair Use Policy (if applicable to your Service);
- (h) you fail to rectify any defect or inadequacy in any Customer Equipment or cabling not owned or maintained by us within 30 days of being requested to do so by us;
- (i) your use of the Services interferes with the efficiency of Our Network or a Third Party Supplier's network and

you fail to rectify the situation within 24 hours of being requested to do so by us;

- (j) you do, or allow to be done, anything which in our reasonable opinion may have the effect of jeopardising the operation of any Service;
- (k) you become a carrier or carriage service provider within the meaning of the Telecommunications Act;
- (l) you become bankrupt, insolvent or have a receiver, manager, administrator or liquidator appointed over you or any of your assets;
- (m) we have reasonable grounds for believing you are a credit risk, including the following grounds:
 - (i) your usage of the Service is unusually high when compared to previous account activity and you fail to respond to notices from us about that usage (but you acknowledge that we are not obliged to monitor usage of a Service, or to suspend, limit or cancel a Service if there is unusual usage, and you remain liable to us for usage of that Service);
 - (ii) you fail to pay an invoice by the Due Date and have a payment history indicating late payments, dishonoured payments or failures to pay, or you fail to pay or replenish a security bond as required by **Clause 15.6(b)**; or
 - (iii) we become aware of public notices of your pending bankruptcy, winding up or other insolvency events, or
- (n) you are in material breach of any of the terms or conditions of our Agreement, including these General Terms.

15.5 Cancellation for convenience

We reserve the right to cancel any Service:

- (a) if there is no Fixed Term specified in your Application, at any time by giving you 30 days' notice;
- (b) if a Fixed Term is specified in your Application,
 - (i) at any time after the end of the Fixed Term by giving you 30 days' notice; or

- (ii) during the Fixed Term, if we have your consent; or
- (iii) during the Fixed Term, if we offer to migrate you to a reasonably comparable alternative service for the remainder of the Fixed Term and take reasonable steps to offset any more than minor detrimental effects of the migration caused by differences between the cancelled service and the alternative service we offer;
- (c) if we reasonably determine that it is not technically or operationally feasible to supply the Service to you, at any time prior to the Service commencement date specified in **Clause 3.4** by giving you notice.

15.6 Consequences of Cancellation, Suspension or Termination

- (a) Subject to our rights under **Clause 15.1(a)**, if we cancel or suspend the Service for any of the reasons listed in **Clause 15.3**, we will not charge you any disconnection or reconnection fee. If your account is terminated as a result of any of these events, you will be entitled to a refund of the unexpired portion of any amounts you have paid in advance in accordance with **Clause 7.11**.
- (b) Without limiting any of our rights under the Agreement or at Law, if we cancel or suspend the Service for any of the reasons listed in **Clause 15.4**, you will be liable to pay a disconnection fee, any applicable Early Termination Charge and, if we agree to reconnect the Service, a reconnection fee in addition to your liability to pay all other Charges incurred up to the time of cancellation of the Service. We also reserve the right in these circumstances to require before reconnection of the Service that you pay a security bond that will be based upon the value of any equipment in your possession that you have not fully paid for and our reasonable estimate of the amount necessary to protect our interests. We may utilise your security bond to recover or pay any amounts payable by you to us or to compensate ourselves for any loss, liability or expense suffered or incurred by us as a result of any breach of the Agreement by you. If we utilise any of

the security bond you must replenish the security bond within 7 days of our request. Unused portions of the security bond will be reimbursed to you within a reasonable time after termination of all Services that you have with us.

- (c) If we advise you that we are cancelling your Service in accordance with **Clause 15.5**, you will not be liable to pay a disconnection fee or Early Termination Charge, but will be liable to pay all other Charges incurred up to the time we cancel your Service.
- (d) If we suspend a Service in accordance with the Agreement as a result of a breach of the Agreement by you, you will have to pay all charges arising in respect of the Service during the suspension (excluding usage based charges).
- (e) On termination of a Service for any reason, you must immediately:
 - (i) stop using the Service and any Equipment owned by us or any Third Party Supplier; and
 - (ii) at a time nominated by us, allow us to remove any Equipment owned by us or any Third Party Supplier or any Purchased Equipment that you have not paid for in full.
- (f) You remain liable for all Charges payable in respect of Services provided to you up to the time of cancellation, suspension or termination.
- (g) Once the Agreement has been terminated or cancelled for any reason, we may delete all of your data from any storage media. You are solely responsible for backing up your data.

15.7 Expiration of a Fixed Term or Other Period

If we have agreed to provide a Service to you for a Fixed Term or any other agreed period and that Fixed Term or other period expires and neither you nor we cancel the Service, we will continue to supply the Service to you on a month-to-month basis.

15.8 Reconnection Charges

We may apply a Charge for the reconnection of any Service, except where the disconnection was caused by our error

or our failure to perform our obligations under the Agreement or was the result of any of the events specified in **Clause 15.3**.

16 Liability and indemnity

16.1 Your liability to us

You are liable to us for:

- (a) all charges for the use of yourService; and
- (b) any damage to Service Equipment, which is not the result of fair wear and tear or the result of our fault or our negligence.

16.2 Non-excludable rights

You may have rights under the Telecommunications Act, the Australian Consumer Law and other Laws which apply to the Service. Nothing in the Agreement (including the other provisions of this **clause 16**) limits or removes these rights where it would be unlawful to do so.

16.3 Consumer Guarantees

Where a Consumer Guarantee applies to the Services or goods we supply to you, subject to section 64A(3) of the Australian Consumer Law we limit our liability for failure to comply with the Consumer Guarantee to:

- (a) in regard to Services: supplying the Services again or paying you the cost of having the Services supplied again;
- (b) in regards to goods: replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.

16.4 Implied terms

We exclude all conditions and warranties which might otherwise be implied into the Agreement, regardless of their source. Our liability for non-excludable conditions and warranties is limited (where it can be limited) to the remedies set out in **Clause 16.3**.

16.5 Application of Consumer Guarantees

The limitations of liability in clause 16.3:

- (a) apply if the Service and/or goods we supply to you is not of a kind ordinarily acquired for personal, domestic or household use or consumption;
- (b) apply if it is reasonable for us to limit our liability, as contemplated by

section 64A of the Australian Consumer Law; and

- (c) do not apply to a breach of the Consumer Guarantees relating to clear title, undisclosed securities and undisturbed possession under sections 51 to 53 of the Australian Consumer Law.

16.6 Exclusion of Consequential Loss

We are not liable to you for Consequential Loss.

16.7 Service Levels

- (a) Where a Service Level Agreement applies to a Service, to the extent permitted by law, our total liability to you in relation a failure of the Service is limited to any rebates under the Service Level Agreement.
- (b) Rebates for a failure to achieve aService Level apply only for Interrupted Faults and not for Degrade Faults.
- (c) The Customer must apply in writing for any applicable rebate under an SLA within 60 days of the end of the month in which a failure to achieve a Service Level occurred and if it does not do so, the rebate is forfeited.
- (d) Service Level rebates will only beprovided as a credit on the Customer's KPCD account and the Customer is not entitled to a cash payment.
- (e) The Customer agrees that the performance and availability of the Service is not warranted beyond the SLA and that KPCD doesnot represent that the Service will be compatible with particular computer systems, software, data formats, equipment, or operating systems unless provided to the Customer by KPCD or expressly statedin the Agreement.

16.8 Limits to our liability

To the extent permitted by Law, our total liability to you in any 12 month period in respect of all claims in arising out of or connection with all Services supplied to you will not in any circumstances exceed the lesser of:

- (a) the total amount paid or payable by you to us in the preceding 12 month period; or
- (b) \$1 million.

Without limiting the above liability cap, our liability for your loss under or in connection with the Agreement or the Service is reduced to the extent that your acts or omissions including a failure to take reasonable steps to avoid or minimise loss or your equipment (or the acts, omissions or equipment of a third person, including a supplier) cause or contribute to that loss.

16.9 Your indemnity to us

You are liable and will indemnify us against all loss arising from or in relation to:

- (a) a claim against us arising out of the death of or personal injury to our personnel or representatives, to the extent that such damage or loss is caused by an act or omission by you or any of your personnel or representatives;
- (b) any damage to or loss of any equipment, network or other tangible property of ours or any third party to the extent that such loss is caused by an act or omission by you or any of your personnel or representatives;
- (c) a claim by a third party against us to the extent that the claim relates to any act or omission of you or any of your personnel or representatives in relation to this contract;
- (d) all loss (including consequential and indirect loss or damage) arising from any breach by you or your personnel or representatives of **Clause 12**;
- (e) if we use a Third Party Supplier in providing the Services, you will indemnify us for all loss suffered by us as a result of a claim by you or a third party against the Third Party Supplier (excluding claims for death, personal injury or physical damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services;
- (f) you will indemnify us for all loss suffered by us as a result of a third party claim against us (excluding claims for death, personal injury or damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services.

Without limiting any other term of this contract, you will release us from any and all loss to the extent that such loss or liability is caused by a negligent act or omission of you or

any of your personnel or representatives.

16.10 Cancellation of a Service

Cancellation of a Service or termination or expiry of the Agreement does not affect the provisions of the Agreement concerning limitation of liability and indemnity.

17 Force majeure

17.1 No Liability

Subject to our obligations under the CSG and any non-excludable rights you have under the Australian Consumer Law, we are not liable for, and will not be deemed to be in breach of the Agreement in the event of:

- (a) any delay in installing a Service;
- (b) any delay in correcting any fault in a Service;
- (c) failure to provide a Service or incorrect operation of any Service;
- (d) Service outages; or
- (e) any breach of the Agreement by us, if it is caused directly or indirectly by a Force Majeure Event.

17.2 Termination for Force Majeure

If any delay, Interruption or failure to deliver a Service because of a Force Majeure Event continues for more than 30 days after the commencement of the delay, Interruption or failure to deliver, then either party may terminate the affected Service(s) by notice in writing to the other party.

18 Telephone numbers and public addressing identifiers

- (a) The Telecommunications Number Plan 1997 (Cth) sets out rules for issuing, transferring and changing telephone numbers. You and we must comply with the Telecommunications Number Plan.
- (b) In addition to telephone numbers, the Service may use other identifiers such as an IP address or domain name (Public Addressing Identifiers). You must comply with the requirements of any Regulatory Authority or other body which administers Public Addressing Identifiers.
- (c) You are entitled to continue to use any telephone number we issue to you, except in circumstances where the Telecommunications Number Plan

allows us to recover the number from you.

- (l) You acknowledge and agree that:
 - (i) we do not control the allocation of Public Addressing Identifiers;
 - (ii) we are not liable to you if we are required to change, withdraw, suspend or re-assign any Public Addressing Identifier as a result of any direction given by a Regulatory Authority or other body which administers Public Addressing Identifiers; and
 - (iii) on cancellation of the Service, your right to use a Public Addressing Identifier may cease.

19 Assignment

19.1 Your Right to Assign

You may assign your rights and obligations under this Agreement (where those rights are assignable) so long as you have our prior written consent.

19.2 Our Right to Assign or Transfer

- (a) You agree that at any time we may assign or novate our rights and obligations under this Agreement:
 - (i) to a related body corporate (being a company in our corporate group);
 - (ii) a Third Party Supplier; or
 - (iii) a purchaser of our business;(a Transferee)
and that the Transferee will assume our liabilities and obligations under this Agreement.
- (b) We, or the Transferee, will notify you if a transfer occurs in accordance with Clause 19.2(a). We and you agree that, with effect from the date of the Notice, this Agreement is cancelled and a new agreement is created on the same terms as this Agreement except that:
 - (iv) the Transferee replaces us in any capacity under this Agreement as if the Transferee was an original party to this Agreement instead of us; and
 - (v) the Transferee has no obligations or liability under this Agreement before the date of the Notice.
- (c) In addition to our other rights in this Clause 19, we may assign, transfer or

deal with our rights and obligations under this Agreement on terms to which you consent.

20 General

20.1 Notice

- (a) Any notice given under this Agreement must be in writing and must be signed by the Party giving the notice or any authorised representative of that Party. Communications sent by email are taken to be signed by the named sender.
- (b) Unless and until a Party provides notice of a different address, email address or facsimile number to the other Party to this Agreement, its address for service of notices shall be those set out in the Service Contract.
- (c) Unless a later time is specified in a notice, the notice takes effect from the time it is received. Unless available evidence shows an earlier date is applicable, a notice is taken to be received:
 - (i) if delivered by hand, when so delivered;
 - (ii) if sent by pre-paid post, on the sixth clear Business Day after the date of posting a regular letter or registered letter, on the fourth clear Business Day after the date of posting a priority letter, or on the second clear Business Day after the date of posting an express letter;
 - (iii) if sent by email when the sender receives an automated message confirming delivery, or four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered; or that the recipient is "out of the office" or equivalent; or
 - (iv) if sent by facsimile, upon the receipt by the sender of a transmission report from the despatching facsimile machine which confirms that all of the pages comprised in the notice have been successfully sent to the receiving Party's facsimile number.

20.2 Disputes

We will seek to resolve any dispute by agreement or consultation with you and request that you contact us on 08 9000 2727 in the first instance. If a dispute remains unresolved and you are a smallbusiness customer, you may have rightsunder the Telecommunications Industry Ombudsman (TIO) scheme. For furtherinformation go to www.tio.com.au or callthe TIO on 1800 062 058 or (TTY) 1800 675 692.

20.3 Intellectual Property

You do not own or have any legal interestin any of our intellectual property or in anytelephone number, IP address, domain name, personal identification number or other locator or identifier issued by us to you.

20.4 Authority

You agree that if we need your consent to undertake certain actions then, provided we act in good faith, we may rely upon the authority of any of your employees who tellus that they are authorised to provide that consent on your behalf.

20.5 Governing Law

This Agreement is governed by the laws ofthe Western Australia. You and we submit to the exclusive jurisdiction of the courts of the Western Australia.

20.6 Subcontractors

We may subcontract any of our obligationsunder this Agreement.

20.7 No Waiver

No failure to exercise, or any delay in exercising, any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting the waiver unless made in writing.

20.8 Survival

Any provision of the Agreement which by its nature is intended to survive terminationor expiry of the Agreement (including without limitation any exclusion or limitationof liability or indemnity in the Agreement) will survive termination or expiry of the Agreement for any reason.

20.9 Severability of Provisions

Any provision of the Agreement that isprohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of the Agreement nor affect the validity or enforceability of that provision in any otherjurisdiction.