

Terms and Conditions

These Terms and Condition are between Conekt Australia ABN 62 642 707 515 (we/us/our) and you (being the person and/or entity as described on the Purchase Order).

1 Terms and Conditions

- 1.1 We provide the Services to you subject to these Terms and Conditions and you agree to be bound by them.

2 Definitions

- 2.1 **"Acceptable Use Policy"** means our Acceptable Use Policy at: www.conekt.com.au/legal
- 2.2 **"Agreement"** means the Agreement entered into by the parties incorporating these Terms and Conditions.
- 2.3 **"Assets"** means your assets stored or kept at the Location.
- 2.4 **"Billing Dispute"** means a dispute relating to an issued charge and/or an invoice.
- 2.5 **"Business Day"** means a day on which banks (as defined in the *Banking Act 1959* (Cth)) are open for general banking business in New South Wales, excluding Saturdays and Sundays.
- 2.6 **"CDN"** refers to a Content Delivery Network.
- 2.7 **"Cloud Connect"** means Veeam offsite storage and backup files.
- 2.8 **"Co-Location"** means the running of a client's equipment in the facilities of our Third Party Provider.
- 2.9 **"Commencement Date"** refers to the date you accept these terms and conditions either by signing of the Agreement or Purchase Order of engaging us to perform the Services.
- 2.10 **"Confidential Information"** means the terms of this agreement and any information:
- 2.10.1 relating to the business and affairs of that party;
 - 2.10.2 relating to the customers, clients, employees, sub contractors or other persons doing
 - 2.10.3 business with that party;
 - 2.10.4 which is by its nature confidential;
 - 2.10.5 which is designated as confidential by that party; or
 - 2.10.6 which the other party knows or ought to know, is confidential, and includes all trade secrets, know how, financial information and other commercially available information of that party.
- 2.11 **"Corporations Act"** means the *Corporation Act 2001* (Cth).
- 2.12 **"Fees"** means the fees specified in the Agreement.
- 2.13 **"Force Majeure Event"** means any occurrence or omission outside a party's control and includes:
- 2.13.1 a physical natural disaster including fire, flood, lightning or earthquake;
 - 2.13.2 war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
 - 2.13.3 epidemic or quarantine restriction;
 - 2.13.4 ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;

- 2.13.5 confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
 - 2.13.6 law taking effect after the date of this agreement; and
 - 2.13.7 strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.
- 2.14 **"Gigabyte"** or **"GB"** means 1073741824 eight-bit bytes.
- 2.15 **"Insolvency Event"** means:
- 2.15.1 a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person;
 - 2.15.2 the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act 1966 (Cth) or a debt agreement under part IX Bankruptcy Act 1966 (Cth);
 - 2.15.3 the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act or is presumed to be insolvent under the Corporations Act;
 - 2.15.4 the person ceases to carry on business; or
 - 2.15.5 an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.
- 2.16 **"Interest"** means interest on any payment owing under this agreement calculated:
- 2.16.1 at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
 - 2.16.2 daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.
 - 2.16.3 Location means the location where your hardware or equipment is located or stored.
- 2.17 **"Privacy Policy"** means our Privacy Policy located at: www.conekt.com.au/legal
- 2.18 **"Related Body Corporate"** has the meaning given to that term by section 9 of the Corporations Act.
- 2.19 **"Services"** means any product(s) or service(s) you have signed up to use. This can include, but is not limited to, the provisioning of space on one of our servers, a connection to and from the internet for web, email and FTP functions, Virtual Private Servers and Cloud Infrastructure. These product(s) and service(s) are fully identified within the Agreement.
- 2.20 **"Telecommunications Act"** means the *Telecommunications Act 1997* (Cth).
- 2.21 **"Term"** means the term contemplated by clause 4.1 and 4.2.
- 2.22 **"Third Party Provider"** means any third-party provider that we engage to provide the Services from time to time on our behalf.

3 Acceptance

- 3.1 You accept these Terms and Conditions upon signing the Agreement.
- 3.2 You acknowledge that we supply the Services subject to the terms and conditions of our Service Level Agreement, Privacy Policy and Acceptable Use Policy.

- 3.3 You acknowledge having read the above documents and warrant that you understand the nature and effect of those documents and agree to be bound by them.

4 Term

- 4.1 You commit to the term for Services as set out in the Agreement and thereafter on a month to month basis in perpetuity subject to written cancellation by you or your commitment to a further term.
- 4.2 If you terminate the Services at any time prior to the expiration of the Term you will be liable to us for the remaining fees payable to us as if you had completed the Term and any holding over period of that Term.

5 Server Use

- 5.1 You acknowledge that:
- 5.1.1 we provide access to servers subject to terms and conditions of a Third Party Provider that has the right to refuse service and/or access to its servers to anyone;
 - 5.1.2 we do not allow any of the following content to be stored or accessed on our Third Party Provider's servers or within any other owned equipment connected to their network:
 - i) Illegal material, including copyrighted works, commercial audio, video, or music files, and any material of any type in violation of any Federal, State or Local law or regulation anywhere in the world.
 - ii) Adult material, including pornography, erotic images, or otherwise lewd or obscene content of any type. What constitutes "adult material" is entirely at the discretion of the Third Party Provider.
 - iii) Bittorrent.
 - iv) Warez, including pirated software, ROMS, emulators, phreaking, hacking, password cracking, IP spoofing, etc., and encrypting of any of the above. Also includes any sites which provide "links to" or "how to" information about such material.
- 5.2 You will comply, and will ensure that you comply, with our Acceptable Use Policy. You confirm that you have read and understood the Acceptable Use Policy prior to signing this Agreement
- 5.3 You acknowledge that we may at any time amend the Acceptable Use Policy or cancel the Acceptable Use Policy and introduce a replacement Acceptable Use Policy and such amendment, cancellation or replacement shall be binding on you on and from the date that it is published on our web site.

6 Availability of Services

- 6.1 We will endeavour to provide continuous availability of all Services to you, we will not be liable for any service interruptions or downtime.
- 6.2 Scheduled maintenance will be performed at times which is deemed suitable by us which has the least noticeable impact on you, and should it require the Services to be offline for greater than thirty (30) minutes, We will post details of the scheduled maintenance at least two (2) days prior. You are required to raise any conflicts you may have with a scheduled maintenance window within one (1) day of the notification being sent.
- 6.3 Unscheduled maintenance will be performed as required and should the Services be offline for greater than thirty (30) minutes we will post details of the maintenance and any updates until it has been completed.
- 6.4 In some cases, we will utilise the services of other providers, such as when overseas services are required. We have no direct control over all services provided by other providers and hence will not be liable for any service interruptions or downtime. Third Party Provider will ensure that any such downtime

is communicated to you.

7 Charges

- 7.1 The charges payable by you for the Services are payable in accordance with this clause 7 and as set out as in the Agreement or as otherwise agreed in writing between the parties from time to time.
- 7.2 We are entitled to charge a \$25 fee for accounts not set up on direct debit.

8 Data Charges:

- 8.1 Traffic Charges are calculated in accordance with either of the following two options:
- 8.1.1 Flat Rate, where the monthly Traffic Charges are fixed and do not vary in relation to traffic usage;
or
- 8.1.2 Usage Based, where the Traffic Charges are calculated at the rates set out in the Agreement and, in respect of each month during the term of this Agreement, shall be the greater of:
- (i) the amount specified in the Agreement as the Minimum Monthly Fee payable; or
 - (ii) the total amount calculated at the rate per Gigabyte specified in the Agreement, for inbound traffic (i.e. traffic sent from the Servers network to Your network); and
 - (iii) the total amount calculated at the rate per Gigabyte specified in the Agreement, for outbound traffic (i.e. traffic sent from your network to the internet).
- 8.1.3 determine the volume of traffic calculated by the number of Gigabytes and our calculations shall be final and binding on the parties.

9 Power Charges

- 9.1 In the case where you have servers co-located within the facilities of our Third Party Provider, you have been allocated a certain amount of power for each piece of equipment, as outlined in the Agreement.
- 9.2 If your equipment exceeds the amount allocated, you will be asked to purchase additional power capacity to meet the requirements of your server. This will be billed at the same rate as specified in the Agreement.

10 Access Charges:

- 10.1 Outside of the free monthly visits (if any) as specified in the Agreement, you will be charged at the rate outlined in the Agreement for access to your equipment. Additional charges may occur for out of standard business hours.

11 Limitation of Liability

- 11.1 We shall not be liable to you for harm caused by or related to your Service or inability to utilise the Service unless caused by our gross negligence or wilful misconduct.
- 11.2 We shall not be liable to you for lost profits, direct or indirect, special or incidental, consequential or punitive, or damages of any kind whether or not they were known or should have been known.
- 11.3 Notwithstanding anything else in this agreement, the maximum aggregate liability of us, any of our employees, agents or affiliates, under any theory of law shall not exceed a

payment in excess of the amount paid by you for the Service in question for the six months prior to the occurrence of the event(s) giving rise to the claim.

12 Client General Warranties and Undertakings

- 12.1 You warrant that you will keep any passwords or sensitive information used with the Service in a secure location.
- 12.2 You warrant that you hold and will continue to hold the copyright for data stored on our Third Party Provider's servers, or that you are licensed and will continue to be licensed to use that data.
- 12.3 You warrant that at the time of entering into this agreement you are not relying on any representation made by us which has not been expressly stated in this agreement, or on any descriptions or specifications contained in any other document produced by us.
- 12.4 You warrant that all due care has been taken to ensure data integrity on our Third Party Provider's servers. This includes an undertaking that you will conduct computer virus scanning and other tests as necessary to ensure that the data uploaded by you onto or downloaded by you from the server does not contain any computer virus and will not in any way, corrupt the data or systems of any person.
- 12.5 You agree that you are solely responsible for dealing with anyone who accesses your data, and that you will not refer complaints or inquiries in relation to such access to us.

13 General Warranties and Undertakings

- 13.1 We accept liability for the supply of the Service to you to the extent provided in this agreement.
- 13.2 We do not warrant that:
 - 13.2.1 the Services provided within this agreement will be uninterrupted or error free;
 - 13.2.2 the Services will meet your requirements, other than as expressly set out in this agreement;
 - 13.2.3 the Services will not be subjected to external hacking attempts, viruses, worms, denial of service attacks, or other persons gaining unauthorised access to the Service or our internal Third Party Provider systems.
- 13.3 We do not make or give any express or implied warranties including, without limitation, the warranties of merchantability or fitness for a particular purpose, or arising from a course of dealing, usage or trade practice, with respect to any goods or services provided under or incidental to this agreement.
- 13.4 No oral or written information or advice given by our representatives or employees, to you, shall create a warranty or in any way increase the scope of the express warranties hereby given, and you should not rely on any such information or advice.
- 13.5 In no event will we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

14 Fees and Credit Management

- 14.1 In relation to fees for Services:
 - 14.1.1 Fees for Services ordered by you shall begin on the date specified on the Agreement and shall be prorated to include all days until the first day of the next month, and the chosen billing cycle in advance. This may be monthly, quarterly, semi-annually, annually or biennially as determined by us.
 - 14.1.2 The first day of the month will serve as the anniversary date for all future billings including one time fees, upgrades, additional services, cancellations and service credits, unless the Services only allows annually or biennially billing cycles (eg. domain name registrations, etc).

- 14.1.3 Fees are due in advance of the billing cycle and will be invoiced to you seven (7) days prior to the due date. If a credit card is stored on file, it will be charged three (3) days prior to the due date, to allow sufficient time for any potential issues (such as insufficient funds, expired cards, etc) to be rectified before the due date.
- 14.1.4 All fees are due within the period specified on the invoice and as outlined in the relevant specific schedule.
- 14.1.5 The Company reserves the right to report a Customer's delinquent account to a credit reporting agency should payment remain outstanding for more than 60 days. In addition the Company may refer the outstanding account for debt collection or issue legal proceedings to recover any outstanding invoices. Should an account be referred for debt collection the Customer acknowledges and agrees to pay debt collection charges to be calculated at not less than 20% plus GST and will be incurred on the day the Company refers the matter to their nominated debt collection agency. The Customer shall also be liable for interest and all legal recovery costs associated with such action on a solicitor and own Customer or indemnity cost basis.
- 14.2 In relation to fees for DaaS:
- 14.2.1 Fees for services will be incurred on a monthly basis, beginning at the time of your first instance provisioning.
- 14.2.2 The first day of the month will serve as the anniversary date for all future billings, including one time fees, upgrades, additional services, cancellations and service credits.
- 14.2.3 Fees are payable in arrears, with the billing cycle beginning on the first day of the month, and ending on the last day of the month. Fees will be processed via Direct Debit at the time of invoice generation (1st day of the month, for the previous month). If your account has insufficient funds you will be liable default payment fees and are expected to make alternate payment arrangements to pay the balance outstanding per the invoice sent to you.
- 14.2.4 If you do not make alternate arrangements to settle your account within 3 days of the balance becoming due (date of invoice issue), we reserve the right to disable your account and suspend any currently running services.

15 Fees for upgrades to Services

- 15.1 Upgrades ordered by you on the billing anniversary date will be billed for a full cycle and will continue each cycle on the anniversary date, unless the Services only allows annually or biennially billing cycles (eg. domain name registrations, etc).
- 15.2 Upgrades ordered by you after the billing anniversary date will be prorated to the next anniversary date at the full monthly costs. Future fees will appear as the new plan from your existing anniversary billing date.
- 15.3 Fees for upgrades will be payable within seven (7) days of the upgrade taking place. If a credit card is stored on file, it will be charged three (3) days prior to the due date, to allow sufficient time for any potential issues (such as insufficient funds, expired cards, etc) to be rectified before the due date.
- 15.4 Additional fees may be payable for upgrades where manual work is required by us to process the upgrade request (eg. single hosting to reseller hosting, intercontinental transfers, inter-server transfers, etc).

16 Fees for downgrades to Services

- 16.1 You may only downgrade your Services without penalty in circumstances where you have not entered into a fixed term Agreement with us or if your have entered into a fixed term Agreement which has expired you have given us at least 28 days written notice of your intention to downgrade.
- 16.2 In relation to fees for downgrades to Services:
- 16.2.1 Downgrades will be processed when the request is received by us from you, unless otherwise specified in the request.

- 16.2.2 A credit will be issued to your account for the difference of any pro-rated pre-paid amount minus the cost of the new plan pro-rated on the chosen cycle.
- 16.2.3 A \$15.00 administration fee may be charged for a downgrade request at our sole discretion. Additional fees may be payable for downgrades where manual work is required by to process the downgrade request (eg. intercontinental transfers, inter-server transfers, etc).
- 16.3 Any fees paid for the setup or establishment of any Services will be automatically deemed as non-refundable.
- 16.4 Fees for one-off Services including, but not limited to, dedicated IP address, SSL certificates and data blocks, are due within seven (7) of the invoice being issued and are non-refundable.
- 16.5 All published prices are inclusive of any government taxes and charges, unless otherwise noted.
- 16.6 The speed of provisioning new Services is reliant upon you having paid any and all outstanding fees in full.
- 16.7 Failure to pay any fees may result in the account being referred to an external collection agency, which may include interest (calculated daily) and collection costs.
- 16.8 Accounts that are more than three (3) days past the due date will automatically attract an overdue fee of \$10.00 which will be payable on top of the invoice amount.
- 16.9 Accounts that are more than seven (7) days past the due date will be automatically suspended, and a reconnection fee of \$300.00 on top of any outstanding fees may apply to have the service restored.
- 16.10 Accounts which are not paid in full within fourteen (14) days of the due date will be deleted from our servers.

17 Suspension and Termination of Services

- 17.1 We may suspend or terminate Services if:
 - 17.1.1 You are found to be in breach of these terms and conditions;
 - 17.1.2 You are found to be in breach of the Acceptable Use Policy;
 - 17.1.3 You have become insolvent or bankrupt;
 - 17.1.4 You have outstanding fees that are more than seven (7) days past the due date;
 - 17.1.5 You have outstanding fees that are more than fourteen (14) days past the due date;
- 17.2 From time to time we may be required to suspend or disconnect Services without notice, or deny access to the Service during a technical failure, modification or maintenance. If your Service is suspended for excessive resource usage in a shared environment you will be given three (3) formal written opportunities to rectify the issue before permanent suspension is applied.
- 17.3 We may decide at our sole discretion to advise you that your service will be terminated by giving thirty (30) days written notice. In this circumstance, we will refund any prepaid fees for Services on the account.
- 17.4 If your account is closed for any reason, you must pay all outstanding charges by the due dates.
- 17.5 We are under no obligation to provide you with a copy of the data stored on our servers if we have suspended or terminated access to the Service for any breach of terms 17.1 and 17.2. In these circumstances, a copy of the data may be provided to you for an additional fee.
- 17.6 You acknowledge that it is reasonable in all the circumstances that we retain a lien over your Assets in the event that this Agreement terminates and, on such termination, any moneys remain owing to us under this Agreement. In that event, we may retain the Assets until all moneys owing have been paid.
- 17.7 All Assets must be collected from us within seven (7) days after the termination of your service to avoid a holding fee of up to the current average rack unit retail price.

18 Cancellation

- 18.1 You can request cancellation of any Services with us for any reason by submitting a secure cancellation request.
- 18.2 You agree to immediately pay any and all outstanding fees upon cancellation of the Services.
- 18.3 We reserve the right to deny access to services or release data to you until the final balance has been paid.
- 18.4 Cancellation requests must be received by us 28 days before the package renewal date. If cancellation is not received before this time, package renewal costs generated for the next period of time will remain outstanding.

19 Data Management

- 19.1 We acknowledge and agree that we must attend to backups during the term of any Services with us and use our best endeavours to ensure the integrity and success of any backup.

20 Changes

- 20.1 We may update these terms and conditions at any time without notice and you hereby provide your irrevocable consent to us updating these terms and conditions at any time, which will become binding on you.

21 Infrastructure as a Service (IaaS)

- 21.1 You acknowledge that IaaS is powered by VMware vCloud and is the virtual delivery of server operating systems and resources in the form of hardware, network and storage services.
- 21.2 Under the provision of IaaS, you will be allocated a monthly data traffic quota. Inbound and outbound internet traffic contribute towards this predetermined quota.
- 21.3 You acknowledge that you are responsible for all configuration and maintenance of firewalls, although firewalls will be provided as a standard protocol within the Service.
- 21.4 We do not guarantee latency, or available bandwidth from any resources to the internet or other end points where a non-dedicated link is used.
- 21.5 You hold the responsibility of ensuring that the IaaS is secure, safe and protected from any vulnerabilities. If we believe that your service is compromised and there is potential for a security breach, we may suspend the Service at our own discretion.
- 21.6 You will be allocated one or more IP addresses. Our Third Party Provider takes ownership over these IP addresses and they become their property. The IP addresses cannot be transferred outside of the network however, if you provide your own IP addresses to use within your IaaS, they will remain your property.

22 Cloud Connect

- 22.1 You acknowledge that Cloud Connect is a Veeam compatible off-site backup and storage service.
- 22.2 In order for you to be compatible with Cloud Connect, you must already possess a compatible and licenced version of Veeam on premise.
- 22.3 You acknowledge that when using Cloud Connect you will be allocated two quota's in order to implement the service:
 - 22.3.1 The number of Virtual Machines to backup; and
 - 22.3.2 Your virtual machine total disk storage in Cloud Connect measured in GB.

- 22.4 You acknowledge that you hold full responsibility over passwords and access tokens. Should your service become compromised we reserve the right to suspend or terminate the Service if no actions have been taken by you to resolve the issue in a reasonable timeframe.

23 VoIP

- 23.1 VoIP provides comprehensive voice services.
- 23.2 Call charges are made from initial call answering and ends upon call termination. Charges apply for phone conversation, answering machine, incorrect number, unavailable service announcement and disconnected service.
- 23.3 You are responsible for all freight charges.
- 23.4 We have the right to conduct a rate review as required, and implement any rate changes immediately.
- 23.5 You hold full responsibility over your passwords. Should the service become compromised we reserve the right to suspend or terminate the service if no actions have been taken by you to resolve the issue in a reasonable timeframe.
- 23.6 We are not liable for any malicious activity, unlawful distribution of protected information or unprecedented security breaches of your VoIP service.
- 23.7 You hold responsibility for all usage charges. It is your responsibility to ensure all security is up-to-date. We will advise of security precautions, you must implement and monitor these precautions and ensure any unauthorized use is prevented.
- 23.8 We are not responsible for the maintenance or upgrading of hardware and your side software unless previously specified.

24 Indemnification

- 24.1 You agree that you shall, indemnify, save and hold us harmless from any and all demands, liabilities, losses, costs and claims, including legal costs (on an indemnity basis or solicitor/client basis, whichever is higher) claimed or asserted against us, our agents, account holders, officers and employees, that may arise or result from any service provided or omitted, performed or agreed to be performed.
- 24.2 You agree to defend, indemnify and hold us harmless against liabilities arising out of;
- 24.2.1 any injury to person or property caused by any products sold or otherwise distributed in connection with our Third Party Provider's servers;
 - 24.2.2 any material supplied by you infringing or allegedly infringing on the proprietary rights of a third party;
 - 24.2.3 copyright infringement;
 - 24.2.4 any defective products sold from our Third Party Provider's server and any defamatory or allegedly defamatory material on our Third Party Provider servers.
 - 24.2.5 the negligence or intentional acts or omissions of any of you or your officers, agents, employees or contractors;
 - 24.2.6 your use of the Services;
 - 24.2.7 any breach of the Acceptable Use Policy;
 - 24.2.8 the transmission of or the presence of any illegal, fraudulent or offensive material by you;
 - 24.2.9 any breach of this Agreement by you; or
 - 24.2.10 any wilful, unlawful or negligent act or omission of you

25 Access to Location

- 25.1 You will use your best endeavours to give us as much notice as we require of a request to enter the Location.
- 25.2 In the case of failure of any of your Equipment requiring urgent repairs necessitating unscheduled access to the Location, You must notify us as soon as practicable and make arrangements for access to the Location.
- 25.3 Third Party Provider may charge fees for access to the Location outside of the agreed complimentary monthly visits, as specified in the relevant Agreement.
- 25.4 You agree to comply with our security regulations and other local site operating policies and procedures as advised by us to you from time to time.
- 25.5 You and your agents, employees and contractors must not interfere with or modify any equipment at the Location other than your Equipment.
- 25.6 You and your agents, employees and contractors must not cross-connect any of you Equipment with any other equipment at the Location without our prior written consent (which is subject to your agreement to pay additional Charges for such cross-connect Services) and the third party owner of such other equipment.
- 25.7 You will be liable for any damage to other equipment by you, your agents, employees or contractors.
- 25.8 Unless you have Secure Access Status (which is personal to the Key Holder and cannot be assigned or delegated without our consent.) You must be accompanied by an authorised Third Party Provider staff member when accessing the Location, and may be denied access to the Location unless accompanied by such authorised Third Party Provider staff member.

26 General Obligations

- 26.1 During the Term you will:
 - 26.1.1 provide, monitor and maintain your own network and network security on any directly attached or accessing network to the Service including VPN and internet access points;
 - 26.1.2 adhere to our and the Third Party Provider's operational procedures and technical specifications (where applicable) and any other reasonable directions given by us in relation to Your obligations under this Agreement from time to time;
 - 26.1.3 not do, or permit to be done, any act which damages the reputation of us;
 - 26.1.4 provide us with all information, assistance and cooperation reasonably requested by us in order to enable us to meet our obligations under this Agreement including, without limitation, all information, assistance or cooperation required in relation to the resolution of any dispute between us or any of our Related Bodies Corporate and any supplier or any other third party in relation to the Services;
 - 26.1.5 ensure that all equipment that you connect to our Third Party Provider Network is appropriate, adequately maintained and meets minimum technical standards determined by the Australian Communications Authority

27 Acknowledgements

- 27.1 You acknowledge that our Third Party Provider network is not necessarily a secure and confidential method of communications and you shall transmit data on our Third Party Provider network at your own risk.
- 27.2 You acknowledge that neither us or our Third Party Provider does not and cannot in any way supervise, edit or control the nature, content and form of any material available to be accessed through use of the Services and that we are not responsible in any way for the nature, content and form of that material, access to that material or use of that material.

- 27.3 You acknowledge that we will not be responsible for ensuring that any material sent or received by means of the Services is sent or received correctly.
- 27.4 You acknowledge that, to the extent permitted by law, we make no representations or warranties as to the effectiveness or fitness for purpose of any access restrictions, our Third Party Provider' network security or your network security. You shall make no claim against us concerning any access restrictions, our Third Party Provider's network security or your network security.
- 27.5 You agree not to disclose to any other person any identification or log-in information, whether in use or not, nor any other confidential information relating to the Services, other than to your employees, agents and contractors who require this information to properly perform their function.
- 27.6 You acknowledge that we may assign or novate our rights and obligations under this agreement and any other services agreement we may enter into with you at any time without notice and you hereby irrevocably consent to any such assignment or novation.

28 Fault Reporting

28.1 Procedures:

- 28.1.1 During the Term you must report any faults in relation to the Services in writing to us. You acknowledge and agree that we will only respond to faults reported in accordance with these procedures.
- 28.1.2 We reserve the right to charge you at our then commercial rates for fault restoration services if we respond to a request from you and we are able to demonstrate that:
- i) the failure to provide the Service to you was not due to a matter for which we are responsible; and
 - ii) the fact that we are not responsible for that matter would have been disclosed upon reasonable investigation by you.

28.2 Fault Restoration Exclusions:

- 28.2.1 Our fault restoration obligations do not extend to faults caused as a result of:
- 28.2.2 any fault in equipment, software or any network unit which does not form part of the network owned by our Third Party Provider or any of our Related Bodies Corporate;
- 28.2.3 damage due to causes external to the facilities used by our Third Party Provider to provide the Service;
- 28.2.4 interference;
- 28.2.5 Force Majeure; or
- 28.2.6 planned outages.

29 Compliance

29.1 Privacy Obligations:

- 29.1.1 You must comply with your obligations under the Privacy Act.
- 29.1.2 You shall also comply with any reasonable direction of us with respect to the collection, use, disclosure, storage and disposal of personal information.

29.2 Compliance:

- 29.2.1 Each party shall comply with all relevant local, State and Commonwealth laws and regulations and any registered industry based codes of practice.
- 29.2.2 Each party shall comply with the provisions of the Telecommunications Act and the Interception Act. In particular, you acknowledge that we may be required to disclose information to comply with Part 13 of the Telecommunications Act. In such a case we will use our reasonable endeavours to advise you of the information provided to the enforcement agency.
- 29.2.3 Each party must provide the assistance the other party reasonably requires to comply with relevant local, State and Commonwealth laws and regulations and any registered industry based codes of practice.

30 Taxes and Disputed Invoices

30.1 Taxes:

- 30.1.1 All prices quoted for supplies made and/or to be made under this Agreement are in Australian dollars and are exclusive of GST.
- 30.1.2 If GST is applicable to any supply made by Third Party Provider under this Agreement, Third Party Provider is entitled to add to the amount otherwise payable an additional amount for the applicable GST.
- 30.1.3 You hereby agree to pay us such GST charge in the same manner and at the same time as the payment for the relevant supply.
- 30.1.4 We will issue tax invoices to you for the purposes of GST.
- 30.1.5 If required by applicable law, we will give you an adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with, this Agreement within 30 days after the date we become aware of the adjustment event.
- 30.1.6 For the purposes of this clause 25, "GST" means the Goods and Services Tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

30.2 Disputed invoices:

- 30.2.1 In the event of a Billing Dispute, you may, by written notice provided to us in accordance with clause 30.3, invoke the dispute resolution mechanism in this clause 30.2.
- 30.2.2 A Billing Dispute must be initiated only in good faith.
- 30.2.3 You must pay all undisputed amounts in the invoice containing the Charge that is being disputed in full in accordance with this Agreement.
- 30.2.4 We are not obliged to accept a notice of a Billing Dispute in relation to an invoice unless you have complied with the above clause.
- 30.2.5 Subject to all of the requirements of this clause being met, we will investigate a Billing Dispute within 20 Business Days of receipt by us of a Billing Dispute Notice in accordance with clause 30.3, and will report to you on our findings as soon as possible after completing such investigation.
- 30.2.6 Where you are required to pay a previously disputed Charge that you withheld, you shall pay interest at the Interest Rate on any such amount. Interest shall accrue daily from the date on which each relevant amount was first withheld by you until the date it is paid in full to us.

30.3 Notification of Disputed Invoices:

- 30.3.1 You must notify us of any Billing Dispute within 30 days of the date of receipt of the invoice to which the dispute relates (in relation to which time is of the essence) by submitting a completed Billing Dispute Notice to us by email.

30.3.2 You must provide any further details reasonably requested by us in relation to the Billing Dispute.

30.4 Failure to notify us

30.4.1 In the event that you do not:

- i) notify us of a Billing Dispute within the time period specified in clause 30.3.1; or
- ii) provide the requested additional information to us within 14 days of receipt of our request for further information under clause 30.3.2; or
- iii) pay all amounts (excluding any disputed amounts, subject to Your compliance with clause 30.2) in the invoice to which the Billing Dispute relates by the due date,
- iv) then all amounts in the invoice to which the Billing Dispute relates will be deemed to be agreed and accepted by you and acknowledged as a debt due and payable in accordance with the terms of this agreement.

31 Guarantee

- 31.1 In consideration of us agreeing to enter into this Agreement at your request and the request of the Guarantor, the Guarantor hereby guarantees to us the due and punctual performance by you of your monetary and other obligations under this Agreement (the "Guaranteed Obligations").
- 31.2 As a separate and independent obligation the Guarantor agrees to indemnify us against all losses, costs, liabilities or damage which we may suffer or sustain as a result of the non-payment of any moneys or the non-performance of any obligations under this Agreement by you whenever and as often as such event occurs.
- 31.3 The obligations of the Guarantor under this guarantee and indemnity are principal obligations imposed upon the Guarantor as principal debtor. Accordingly the Guarantor:
- 31.3.1 acknowledges that we have the right to make a claim or demand against the Guarantor pursuant to this guarantee and indemnity without having first taken any proceedings against you or any other person.
- 31.3.2 This guarantee and indemnity is not to be considered as wholly or partly discharged unless and until all of the Guaranteed Obligations have been satisfied in full.
- 31.4 This guarantee and indemnity is not impaired or discharged by:
- 31.4.1 any variation (with or without the consent of the Guarantor) whenever made to this Agreement;
- 31.4.2 any breach, willful or otherwise, of any obligation of you under this Agreement with or without your consent or knowledge, or that of the Guarantor or us;
- 31.4.3 the granting of time, credit, forbearance, indulgence or concession to you or to any other Guarantor;
- 31.4.4 any compromise, abandonment, waiver, release, variation or redemption or compounding by us of any of our rights under this Agreement or against any other Guarantor;
- 31.4.5 the unenforceability in whole or in part of this guarantee;
- 31.4.6 and indemnity against any other Guarantor or that any other Guarantor has not executed the Agreement;
- 31.4.7 the fact that all or any part of the moneys owing by you may not or may cease to be recoverable from you or any other person liable for any reason (other than the same has been fully paid or satisfied);
- 31.4.8 the liquidation, death, insolvency or bankruptcy (as the case may be) of you or any Guarantor; the avoidance for any reason by statute or otherwise of any payment by or on behalf of you or any Guarantor;
- 31.4.9 the transfer or assignment of the benefit of this Agreement to any person or corporation;
- 31.4.10 you being under any legal disability;
- 31.4.11 the fact that we might have entered into this Agreement as agent for an undisclosed principal;
- 31.4.12 an obligation under this Agreement being unenforceable for any reason; or
- 31.4.13 any other matter or thing which but for this provision could or might operate to abrogate the effect of provisions of this guarantee and indemnity.
- 31.5 If there are two or more Guarantors then the obligations under this guarantee and indemnity binds them jointly and each of them severally. A reference to Guarantor means all Guarantors, any 2 or more and each of them.
- 31.6 Each Guarantor represents and warrants to us that it is to the Guarantor's commercial benefit that it enters into this Guarantee and Indemnity.

32 Governing Law

32.1 You agree to abide by all local, state and federal laws pursuant to the Services delivered by us in Australia.

32.2 You agree that these terms and conditions are governed by the laws of NSW, Australia.