

Master Services Agreement

Parties

The terms and conditions of this Master Service Agreement apply between Clouddtalk Pty Ltd T/A Com2 Communications (We, Us) and the Customer (You).

1. ABOUT THESE TERMS AND THIS MASTER SERVICES AGREEMENT

1.1 The terms of this Master Services Agreement (Terms) shall apply to all Services We provide to You You sign any Order Form with Us, unless You and We agree to variations to the Master Services Agreement set out in the Order Form (Varied Terms).

1.2 The Varied Terms supersede the clauses contained in the Terms, and shall have priority over this Master Services Agreement in accordance with clause 3.1 to the extent of those variations.

1.3 References in these Terms to those Varied Terms are solely for the purposes of determining priority in accordance with clause 3.1. For the avoidance of doubt, other than clause 3.1, Terms and Varied Terms have the same meaning throughout the remainder of the Agreement.

1.4 All references to terms, terms and conditions, or general terms, in this document, or any other document provided by Us, is a reference to these Terms.

1.5 The meaning of words printed in italics, or commencing with a capital letter, are indicated in the definitions section of the Terms.

1.6 These Terms should be read in conjunction with your Order Form, the relevant Service Description (if applicable), and any Annexures.

1.7 For each and every service engagement, both We and You must agree and sign a separate Order Form relating to each such engagement. A contract will be formed when both We and You have signed a Order Form in relation to such a service engagement.

Each contract will comprise an Order Form and all its attachments or annexures and will incorporate this Agreement to the exclusion of any purchase order, quote, confirmation, terms and conditions of any other document issued or provided to or by You. If there are any special conditions which You require to be included as part of this Agreement, You must ensure these are negotiated as Varied Terms or an express written agreement, otherwise they shall not apply.

1.8 You acknowledge that We do not operate a Network and We do not own the Customer Premises Equipment. We have entered into an agreement with a provider and the terms of this Agreement reflect the terms upon which we obtain services from that provider.

2. THE AGREEMENT

About the Agreement

2.1 The Agreement consists of:

- Your Order Form
- These Terms
- The Service Description for the service listed in your Order Form (if applicable)
- Any Annexures to your Order Form

2.2 Your Agreement may be a fixed term Agreement or an ongoing agreement.

3. Priority and Inconsistency in the Agreement.

3.1 Where there is any inconsistency between these Terms and any other part of the Agreement, the documents and Terms are to be interpreted and applied in the following order:

- An express written agreement between You and Us,
- Order Form
- Service Description/Schedule (if applicable)
- Varied Terms
- These Terms

4. Start of the Agreement

4.1 Your Order Form constitutes an offer by You to purchase the Service from Us. We may accept or reject your Order Form for any reason, or We may refuse to enter into an Agreement to supply a service to You for any reason.

4.2 The Agreement starts when We notify You that We have accepted your service Order Form or the Commencement Date whichever is the earlier.

4.3 You are bound by the Agreement from when the Agreement starts under Clause 4.2, and You may only cancel the Service in accordance with this Agreement, even though Billing may not have commenced. You acknowledge that when You request to withdraw an Order after We have accepted the Order but before the Service is ready for use, that We will have incurred costs, including committing to fixed term contracts with Our suppliers, and payment of the Cancellation Charge compensates Us for these costs incurred.

4.4 Unless stated on the Order Form, Billing will commence from the date when You are advised that your service is ready for use.

5. SUPPLY OF THE SERVICE

Commencement of Supply

5.1 We will use reasonable endeavours to commence supplying the service to You by the Commencement Date (if one is advised to You) . We make no guarantee that We will be able to supply the service to You by the Commencement Date.

5.2 If the Order Form does not have a Commencement Date, We will use reasonable endeavours to commence supplying the service within a reasonable timeframe.

6. Representatives

6.1 You must appoint and notify Us in writing any representative You want to appoint under this Agreement. Unless We otherwise agree in writing, the Representative will be responsible for the day-to-day administration of this Agreement on behalf of You. If a Representative is not nominated, the Representative will be the person named as the contact person in any Order Form.

6.2 You must notify Us immediately if your Representative is or replaced, together with the contact details of a new Representative, or of any change to the Representative's contact details.

6.3 You will be responsible for the acts, omissions and defaults of the Representative. Any direction, instruction, notice, approval or other communication made or given to the Representative will be deemed to have been made or given to You.

7. Term

Length of supply - Ongoing agreement

7.17 If the Agreement is an ongoing agreement, the Agreement shall continue, and We shall continue to supply the service to You, until such times as the service is cancelled pursuant to this Agreement.

Length of Supply – Fixed Term Agreement

7.2 If this Agreement is a fixed term agreement, the Agreement shall continue for the minimum term and We shall continue to supply the service to You for that minimum term unless the service is cancelled.

7.3 Following the last day of the minimum term a fixed-length agreement becomes an ongoing agreement unless You notify Us that You want to Cancel the Service in accordance with clause 29 or We notify You that We wish to cancel the service. We will continue to supply the service to You in accordance with clause 7.1

8. USING THE SERVICE

Routing and Technical Delivery

8.1 We have absolute discretion in how We provide the service to You. We may decide the route and technical means that We use to provide your service.

9. Reasonable Co-Operation to supply and maintain service

9.1 You must reasonably co-operate with Us and do all things We reasonably require You to do, as notified from time to time, in order to allow Us or an agent to supply or continue supplying the service to You, safely and efficiently. This may include:

- Providing additional information to Us within a reasonable timeframe upon request;
- Securing for Us or our agents, access to the premises to which the service is being delivered for the purpose of installing Customer Premises Equipment , connecting wiring, or doing any other thing which is necessary for the delivery of the service.
- Allowing Us or our agents, access to your premises for the purpose of maintaining or repairing Customer Premises Equipment or wiring.
- Making yourself or an agent able to make decisions on your behalf available to Us at a time and place notified by Us.
- Taking delivery of any equipment, documents, invoices or other things relating to your service or your relationship with Us.

9.2 If You do not co-operate with Us to allow the service to be supplied or that supply to be maintained, We may be entitled to cancel or suspend the service.

9.3 In order to supply and maintain the service, We may access or keep any records that We deem necessary, including to comply with any laws.

10. The Quality of the Service

10.1 We will provide the service to You with reasonable care and skill.

10.2 If unexpected faults hinder availability of the service We will use reasonable endeavours to resolve those faults and restore the availability of the service as soon as possible.

10.3 This clause 10 is not a promise, warranty or guarantee that services will be continuous or fault-free. Due to the nature of systems (including reliance on systems and services owned and operated by third-parties) circumstances causing faults and unavailability of your service may be beyond our control. If under any Contract that is for a fixed term, We continue to supply

and You continue to receive Services beyond the expiry of the prescribed initial term, both parties must continue to comply with their obligations and, for so long as the parties make no objection, such Contract will be deemed to be extended for successive periods of 30 days, subject always to the right to terminate under clause 29.

11. General Use

11.1 In your use of the service, You must comply with:

- All laws;
- All directions by a regulator;
- All other documents or notices issued by authorisation under a law;
- Our reasonable directions in relation to the service or your relationship with Us;
- The rules of third-parties whose content or services You access using the service;
- All authorisations, permits and licences required under applicable law to receive and utilise the Services.

12. Use for intended purpose

12.1 If this Agreement states that a service is provided for a particular purpose You must use the service for that purpose. You are not permitted to use the service in the capacity of a Carrier or Carriage Service Provider without our express permission.

13. Change of Circumstances

13.1 You must notify Us about any changes to your services, equipment, location, usage or circumstances that may affect our ability to provide the service to You. This includes if You move address, plan to substantially increase your usage of the service or become a Carrier or Carriage Service Provider.

13.2 If You direct Us to alter or vary your Services, or direct Us to carry out any work on your services, We may provide You a separate offer to supply such additional or varied Services at a fee to be determined by Us. If You accept the fee as set out in the offer, We will supply the additional or varied Services at the agreed fees.

13.3 If, as a consequence of the supply of incorrect information by You, the cost to Us of performing the Services is increased, We reserve the right to charge extra fees, at the then prevailing rates, to cover such additional costs and expense.

14. Use

14.1 You are responsible for and liable for all use of your service in all circumstances, even if that usage is unauthorised.

14.2 You must ensure that any person You authorise to use the service complies with the Agreement as if they were You.

14.3 You must not

- use the service to commit any offence, whatsoever;
- use the service to infringe on the rights of another person;
- use the service to publish, communicate or transmit defamatory, offensive, abusive, indecent, menacing or unwanted material.

14.4 You must not allow anybody else to use your service in a way inconsistent with Clause 14.2.

15. Network Integrity

15.1 You must not use the service in a way that may interfere with the efficiency, security or integrity of Our network.

15.2 You must reasonably ensure that no-one interferes with the operation of a service or any Customer Premises Equipment or makes it unsafe.

16. Failure to Comply

16.1 If We believe that your use of the service is inconsistent with clause 11.1, 12.1, 14.2, 14.4, 15.1 or 15.2 then We may request You cease the activity in question, change the way You use the service or change the type of service You receive. If You do not comply with such a request immediately We may take any steps whatsoever to ensure your compliance, or suspend or cancel the service pursuant to clause 34 or 30 respectively.

16.2 Nothing in this Clause 16 will be construed as imposing an obligation on Us to monitor, detect and/or report fraudulent, illegal or unauthorised use of the Services.

16.3 If your use of the Services is deemed by Us to be in excess of that which is normal for the Service which You have purchased, We may at our discretion require You to move onto another Service which is more suitable for your requirements.

17. EQUIPMENT

You are responsible for equipment

17.1 Your use of any and all equipment in relation to the service should be consistent with;

- All laws;
- All directions by a regulator;
- All other documents or notices issued by authorisation under a law;

- Our reasonable directions in relation to the service or your relationship with Us; and
- All authorisations, permits and licences required under applicable law to use the equipment.

17.2 If We believe your use of equipment is not consistent with clause 17.1 then We may:

- Disconnect the equipment from the service; or
- Suspend or cancel the service.

18. Insurance

18.1 You must effect and maintain all necessary insurances for the loss or damage to any Customer Premises Equipment or Customer Provided Equipment, as well as liability insurance for the damage this equipment may cause.

19. Electricity, Ventilation and Other Requirements

19.1 You are responsible for arranging and paying for any electricity supply required for equipment needed to receive the service at the premises where the service is terminated.

19.2 You are responsible for ensuring that the operating requirements for any equipment needed to receive the service are met. Equipment may have certain requirements for location, ventilation, temperature control, humidity, electricity supply, and other matters.

19.3 If these requirements are not met, the equipment may not work, and You may not be able to receive the service.

20. Customer Premises Equipment

20.1 Customer Premises Equipment remains Our property (or the property of a party with whom We have a contract) although it is provided to You on Your premises in accordance with the Agreement for the sole purpose of receiving the service. As You are not renting, hiring, leasing, or otherwise paying for the use or eventual ownership of the Customer Premises Equipment, all right, title and interest in any Customer Premises Equipment provided or operated by Us will remain exclusively with Us (or the party with whom We have a contract) and You will not obtain any right, title or security interest (including any lien) in or over Customer Premises Equipment.

20.2 You are responsible for any Customer Premises Equipment from the time when You receive it until it is returned to a location nominated by Us, including the provision of clean power (eg have a UPS, etc).

20.3 You must not:

- grant any charge, lien or encumbrance over
- sell, attempt to sell, or transfer

- modify, service, repair, replace or reverse engineer
- destroy, disassemble or dispose of any Customer Premises Equipment.

20.4 Unless You and We agree otherwise, You must exclusively allow our personnel to service, modify, repair or replace any Customer Premises Equipment.

20.5 We may reasonably charge You for any lost, stolen or damaged Customer Premises Equipment that is beyond fair wear and tear and that is not caused by Us or our personnel.

20.6 In order to protect our Customer Premises Equipment, if We consider a security interest may arise, We may register our ownership interest (or the party with whom we have a contract may register their ownership interest and for the purposes of this clause 20, a reference to We or Us refers to both Us and the party with whom we have a contract) in the Customer Premises Equipment with the Personal Property Securities Register. We may require information from You in order to perfect the registration. If We register our interest in the Personal Property Securities Register We will not pass any charges and fees associated with the registration on to You.

20.7 Both You and We agree that neither party nor any receiver is obliged to give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

20.8 Both You and Us consent to the waiver of the requirement for notices and waive any rights to give and receive a notice under sections 95, 118, 121(4), 130, 135 and 157 of the PPSA.

20.9 To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by the secured party of any security interest in the Customer Premises Equipment, the parties agree that the following provisions of the PPSA are excluded:

- to the extent permitted by section 115(1) of the PPSA: sections 125, 132, 135, 142 and 143 of the PPSA; and
- to the extent permitted by section 115(7) of the PPSA: sections 129, 132, 133, 134, 135, 136 and 137 of the PPSA.

21. Customer Provided Equipment and Equipment Purchased from Us

21.1 Customer Provided Equipment is your property and can be used to receive the service.

21.2 You may purchase equipment from Us for use in connection with the service. This transaction may be invoiced separately or as part of your service, at our discretion.

21.3 You own and are responsible for any equipment You purchase from Us from the time the equipment is delivered to You.

21.4 You will be responsible for outstanding payment for equipment purchased from Us even if it has been lost, stolen or damaged after You have taken delivery of it.

21.5 If You connect Customer Provided Equipment to the service, it must comply with the relevant technical standards and other relevant requirements, standards and legislation.

21.6 We may require You to disconnect Customer Provided Equipment from the service if the Customer Provided Equipment does not meet the standards or the Customer Provided Equipment is having an adverse effect on our network

22. FAULTS, ERRORS, SERVICE UNAVAILABILITY

22.1 We or Our Suppliers may conduct maintenance on Our network and maintenance may be conducted on a supplier's network used to supply the service.

22.2 We will endeavour to schedule our Network maintenance outside normal business hours but may not be able to do so.

22.3 We have no control over network maintenance conducted on Supplier's networks.

22.4 We will utilise monitoring tools and notification systems to track the status of networks that the service may be provided upon. This is not a guarantee that We will be able to detect every fault.

22.5 We will provide a fault notification system for You to report faults to Us during ordinary business hours.

22.6 Before You report a fault to Us, You will take all reasonable measures to confirm that the fault is not caused by equipment that We are not responsible for.

22.7 We will repair faults within Our network or We will notify our Suppliers of any fault notified to us within our Suppliers network;

22.8 We will not be responsible for repairing any fault in the service where the fault arises in or is caused by:

- A Supplier's network;
- Equipment that We are not responsible for, such as equipment that is owned by You;
- Facilities outside our Network;
- Cabling or copper-based services beyond the main distribution frame; or
- Any network unit, facility, transit point, terminal or other thing that is outside our control.

22.9 If We are aware of a fault which occurs in or is caused by a Supplier's Network, We shall notify the supplier of the fault and request prompt rectification of that fault. We will not bear any further liability or responsibility beyond notifying the relevant network owner.

22.10 Where the fault arises in or is caused by equipment which is not our responsibility, such as Customer Provided Equipment, or due to a fault described in clause 22.8, We are not responsible for the rectification of that fault, and if You ask Us to investigate and/or rectify such a fault:

- We will notify You of our hourly rate and where possible We will provide You with an estimate of how long it will take to determine the problem. If You instruct Us to proceed with the investigation We will do so at a mutually determined time and charge You at the notified rate for the first hour or part thereof and a pro-rata rate for each subsequent hour for the total time of the investigation;
- If We have successfully investigated the fault, We may notify You of the fault's probable cause; and
- If You request Us to repair the equipment causing the fault, We will notify You of our hourly rate and where possible We will provide You with an estimate of how long it will take to rectify the problem. If You instruct Us to proceed with the repair We will do so at a mutually determined time and charge You at the notified rate for the first hour or part thereof and a pro-rata rate for each subsequent hour for the total time of the investigation. We will charge You for any parts used in the repair.

22.11 If We determine that a fault is due to an excluded event and We have investigated that fault at your request, We may charge You for any costs We incur in investigating and rectifying that fault.

23. FEES AND CHARGES

23.1 You must pay Us all fees and charges monthly in advance, unless:

- The Fees & Charges in any one month period are less than \$1,000, in which case We will allow You 7 days to pay;
- A Service Schedule states otherwise;
- We agree otherwise in the Order Form, or
- You open a credit account with Us.

23.2 The fees and charges include:

- the fees which are specified in the Order Form or a relevant annex for your service;
- other fees and charges payable under the Agreement whether specified in the Agreement (including your Order Form or any Annex) or notified by Us from time to time (such as credit card payment fees appearing on your invoice);

- ongoing fees and charges for the service as specified for your service in the Service price list, such as (but are not limited to):
 - Usage fees;
 - Access fees;
- administrative fees and charges as specified for your service in the Service price list, such as (but are not limited to)
 - Suspension fees;
 - Cancellation Fees;
 - Reconnection fees;
 - Setup fees; and
 - Late payment fees;
- administrative fees and charges which are incidental, variable and will be notified to You from time to time, such as (but are not limited to);
 - Credit card payment fees;
 - Some types of Cancellation Fees;
 - Some types of suspension of charges;
 - Some types of reconnection fees; and
 - Some types of setup fees.

23.3 We may require You, from time to time, to prepay all or some of your fees for a billing period. We will advise You at least 7 days in advance when We require prepayment. Any unused proportion of your prepayment will either be refunded to You or be rolled over into prepayment for the next billing period, if such prepayment is required.

23.4 You must pay all fees and charges which are incurred for the service even if You did not authorise the use which gave rise to the fees and charges.

23.5 You must pay all fees and charges on any invoice in full. If following a dispute, We conclude that We have made an error or You are entitled to a refund under the agreement, We will reverse the transaction appropriately.

23.6 We may round charges or fees up or down to the nearest whole cent (0.5 cents is rounded up).

23.7 If You pay a bill in cash We may round charges or fees up or down to the nearest multiple of 5 cents.

24. GST

24.1 In this Agreement, any expression used has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999.

24.2 All prices, or any other amount payable, stated as payable to Us, will be exclusive of GST, unless otherwise indicated.

24.3 If GST is payable by Us on any supply made under the Agreement, You will pay to Us an amount equal to the GST payable on the supply. That amount is to be paid at the same time the consideration for the supply is payable

under the Agreement and will be paid in addition to the consideration.

24.4 We shall provide You with a tax invoice in respect of the supply, or any other necessary document which provides You with the ability to claim an input tax credit.

25. Fee Indexation

25.1 If upon:

- The expiry of the initial term of any Fixed term Agreement;
- The 12 months anniversary following the commencement of an Ongoing Agreement; or
- Any successive 12 month anniversary of the commencement of an Ongoing Agreement

the fees payable for the Service will be increased by an amount equivalent to the increase in the CPI for the 12 month period preceding the price increase.

26. INVOICING AND PAYMENT

How often We invoice You

26.1 We will invoice You either in advance or arrears at the beginning of Billing periods.

26.2 Unless specified otherwise in the Order Form, the Billing period for your service is 1 month.

26.3 We may also issue an interim invoice to You at any time if there are any unpaid amounts which You owe Us.

26.4 We will endeavour to include all your payable fees and charges arising during the billing period on the invoice for that billing period.

26.5 Fees and charges that arise during a billing period that are not included on the invoice for that billing period, may be included on the invoice for the subsequent billing period or We may issue an interim invoice.

26.6 If You receive more than one service from Us it is at our discretion to issue separate invoices for each service or to combine each service into a single invoice.

26.7 Your invoice will include information on how You may pay your invoice.

26.8 Your invoice may include a due date by which You must pay the amounts on the invoice.

26.9 Fees and charges appearing on your Invoice will be itemised, as appropriate.

When You must pay your invoice

26.10 Subject to any dispute You must pay your invoice in full by the due date noted on your invoice. A failure to do so may result in suspension or Cancellation.

26.11 If You do not pay your invoice by the due date:

- We may charge You a late fee at the rate specified in the Service Price List for the relevant service;
- We may charge You interest on the overdue amount, at an annual rate of 10% above the prevailing base rate of our principal banker, which will accrue on a daily basis from the date payment becomes overdue;
- We may suspend your service until your account with Us returns to good standing. We may charge You a suspension fee to cover administrative costs associated with suspending your service;
- We may cancel your service . We may charge You a Cancellation Charge to cover, amongst other things, the administrative costs associated with cancelling your service. If You wish to continue to receive the service You may have to pay a reconnection fee to cover administrative costs associated with reconnecting the service.
- We may engage a mercantile agent to recover the money You owe Us. We may charge You a recovery fee to cover the cost of engaging a mercantile agent;
- We may institute legal proceedings against You to recover the money You owe Us. If We institute legal proceedings (including under part 5.4 of the Corporations Act 2001), We may seek to recover our reasonable legal costs, reasonably incurred;
- If You have not paid any invoice in full by the due date, after a period of 60 days we may register a credit default with any credit rating agency; and
- We may on-sell any unpaid amounts to a third party. If We do this, any outstanding amounts will be payable to the relevant third party.

26.12 You grant to Us a lien over any of your equipment in our possession, for any outstanding charges owed to Us. If these amounts remain unpaid for a period of 60 days, You authorise Us to sell any or all of the equipment to recover a portion of the outstanding charges, including costs for storing and selling the equipment, as well as other costs associated with your failure to pay the outstanding charges. You agree the exercise of this lien is not our sole remedy for recovering the outstanding charges.

26.13 We offer multiple ways to pay your bill, and these are advised to You from time to time on your invoice.

26.14 Some forms of payment (such as Credit Card) may attract an additional fee, which will be advised by Us from time to time. In using that form of payment You agree to pay that charge.

26.15 You must notify Us of the invoice number which your payment should be applied against. If You do not include an invoice number with your payment, We will apply your payment in satisfaction of whichever outstanding amount We see fit.

26.16 If We owe You money (for example because You overpaid Us or You are recovering a deposit):

- Your account will be credited with the amount We owe You; or
- If You no longer obtain a service from Us, We will pay the money into a bank account nominated by You or in another manner mutually agreed from time to time, if that money is not a Service Rebate.

26.17 Unless the Order Form provides otherwise, We may offer You 7 days credit in which to pay your invoice. If We do, We must be satisfied at all times with your credit rating. You must provide Us upon request, any information We require for the purpose of assessing your credit rating.

26.18 We are not obliged to begin providing Services to you until we have satisfied ourselves that you will be able to pay the Charges.

26.19 Prior to commencing to supply the Services, or if we have already commenced providing Services to You and We then receive an unsatisfactory credit check or consider You to be a credit risk, we may stop providing any Services until You:

- Pre-pay amounts in respect of your service;
- Lodge a deposit as security for payment;
- Establish an automatic direct debit drawn on your bank account;
- Provide a valid credit card, with a sufficient available credit limit as security for payment;
- Provide a personal guarantee or directors guarantee, in a form acceptable to Us; and/or
- Put in place another credit or security arrangement which is satisfactory to Us.

27 INVOICE DISPUTES

27.1 You may dispute invoices We issue You if You, in good faith, believe that they are incorrect.

27.2 To lodge a valid dispute You must send to Us a written dispute notice, formed in accordance with this Agreement within 3 months of the issue date the invoice.

27.3 Upon receiving a validly made dispute notice, We will investigate the dispute claim and inform You of the progress of the investigation within 14 days.

27.4 If You do not validly dispute an invoice within 3 months of its issue, the invoice will be deemed to be correct.

27.5 You must include the following information in a written dispute notice:

- The invoice number of the invoice on which the disputed fees and charges appear,
- The total amounts of the fees or charges which are being disputed,
- Whether You intend to withhold payment for those amounts,
- Why the fees or charges which are being disputed were incurred, according to the invoice,
- The reason that the fees or charges are being disputed,
- Any evidence which may demonstrate why the fees are incorrect.

27.6 A dispute is concluded when;

- We notify You that We have made a final determination on the dispute; or
- If after 30 days We have not found and You have not supplied any evidence supporting your claim, and We have notified You that this time limit has expired and a default final determination has been made.

27.7 If We investigate a dispute claim We will reach a final determination on the matter and notify You in writing. The notice of final determination will include:

- A summary of your claim;
- Whether or not We deem the invoice to be correct; or
- The reasons We have reached our decision.

27.8 If our final determination is that the invoice is correct You must pay Us any amounts You have withheld under this clause 27 within five days of the date on which We reached our decision and notified You of the decision.

27.9 If our final determination is that the invoice is incorrect, We must refund the value of the disputed charges or fees to You in accordance with clause 26.16, within five days of the date on which We advised our decision.

If no substantiating evidence has been found or supplied within 30 days, We will make a default final determination that the invoice is correct.

27.11 Unless they can be shown to be incorrect our records are sufficient proof that a charge is payable.

27.12 Where your dispute is lodged 7 days or more prior to the due date of the invoice to which the dispute relates, You may withhold such amounts as are directly and specifically related to the dispute from your payment.

27.13 Where You have given Us direct debit authority We will return incorrectly debited amounts to You upon the conclusion of the investigation.

27.14 For the avoidance of doubt, You must pay Us any amount listed on any invoice which is not directly disputed even if You dispute other fees or charges which appear on the same invoice.

27.15 Where your dispute is lodged within 7 days of the due date of the invoice to which the dispute relates, You must pay the invoice in full, including fees which You dispute, by the due date.

27.16 Other than where You may withhold amounts due as stated in clause 27.12, all sums payable under this Agreement are payable in full without deduction, withholding, set-off or counterclaim for any reason whatsoever, howsoever arising, other than as may be required by law.

27.17 In investigating We will check logs and administrative records We keep for your account for the relevant billing period. Our investigation will not require Us to take any inquisitorial action beyond this. We need not, under any circumstances, review the processes or systems which We use in collecting and compiling records relevant to the dispute. You may request that We review specific kinds of information which We keep. We must take into account any evidence You may forward Us supporting your claim.

28. SERVICE AVAILABILITY TARGETS

28.1 Any applicable Service Availability Target will be listed in your Order Form.

28.2 If We fail to meet a Service Availability Target, You are entitled to a service rebate in accordance with the terms of the relevant Service Availability Target.

28.3 Service Rebates will be credited to your account.

28.4 Our failure to meet a Service Availability Target;

- Is not in itself a material breach of the Agreement by Us; and
- Does not grant You any right to cancel the Agreement immediately.

28.5 A Service Rebate is a genuine and reasonable pre-estimate of the loss that You may suffer as a result of our failure to maintain the Service levels in accordance with the Service Availability Target.

28.6 Subject to any applicable laws to the contrary which cannot be excluded, our obligation to issue Service Rebates to You is the full extent of our liability and your sole and exclusive remedy in respect of any failure by Us to meet our obligations under a Service Availability Target.

28.7 Unless the relevant Service Availability Target expressly and specifically modifies this clause, We will be taken to have met a Service Availability Target even if Services Targets are not met, where Service Targets are

not met because of reasons substantially attributable to the following:

- Circumstances or events caused or substantially contributed to by You or your agent, including removing or disconnecting any equipment, or conditions present on your premises (dust, vermin, water, lightening, etc);
- Equipment that We are not responsible for (including Customer Provided Equipment) that You use in connection with the service;
- Circumstances or events which are substantially or entirely beyond our reasonable control (eg; Failures by upstream providers, DDoS attacks);
- Necessary scheduled or unscheduled maintenance;
- You have failed to comply with this Agreement, another agreement with an Com2 Communications Group Company or our reasonable directions in relation to the service; or
- Any other reason specified in your Service Availability Target.

28.8 You may not claim a Service Rebate as cash, even if You no longer receive a service from Us, and a Service Rebate is not money We owe You.

28.9 A Service Rebate cannot exceed the total amount of the fees You incur for your service during the billing period when the event giving rise to the Service Rebate is alleged to have occurred.

28.10 Unless specified otherwise in your Order Form, if You believe that We have breached a relevant Service Availability Target, You must notify Us in writing that You intend to claim a service rebate, stating:

- A description of the event that You believe breached the Service Availability Target;
- The date and time where that event occurred; and
- Any other information such as helpdesk ticket numbers which helps Us confirm that a breach of the Service Availability Target occurred.

28.11 Unless specified otherwise in your Order Form, if You do not notify Us that You wish to claim a Service Rebate within 30 days of the event which allegedly breaches the Service Availability Target then You have waived your right to receive a service rebate.

29. YOUR RIGHTS TO CANCEL THE SERVICE

29.1 If You have an ongoing agreement You may cancel your service at will by giving Us at least 30 days written notice that You intend to cancel your service

29.2 if You have a fixed term agreement You may cancel your service at will;

- by giving Us at least 30 days written notice that You intend to cancel your service; and
- paying Us the Cancellation Charge.

29.3 If You have an ongoing agreement or a fixed term agreement but We have not:

- commenced supplying the service to You, or
- entered into any agreement with another supplier in relation to your service,

then You may cancel your service at will by:

- notifying Us as soon as practicable not to commence supplying the service; and
- paying Us the Cancellation Charge.

29.4 If We breach a material term of this Agreement and it cannot be remedied; and You have given Us Notice of the breach; then You may cancel the service immediately.

29.5 If We breach a material term of this Agreement and it can be remedied; and You have notified Us of the breach; and We have not remedied the breach 30 days after receiving your notification; You may cancel the service immediately.

29.6 For the purposes of this clause 29;

- A Breach of a Service Availability Target does not constitute a material breach,
- Frequent and unreasonable breaches of a Service Availability Target may be indicative of a Material Breach;
- Where the service is unavailable and We have provided no notice to You that the service will become unavailable or that unavailability is not authorised under this Agreement; the unavailability will be considered to be breach remediable by restoring the availability of the services or taking steps to offset material detriment cause by the unavailability of the services.

29.7 You may immediately cancel the service by giving as much notice as is reasonably possible to Us if a Force Majeure event adversely affects either You or Us (in relation to the service) for more than 60 days.

29.8 You may cancel the service immediately by giving Us as much notice as possible if;

- We are the subject of an Insolvency Event;
- the law requires You to do so;
- the provision of the service becomes illegal; or
- unless otherwise specified in the Agreement, the service is suspended for more than 14 days, for a reason other than a Force Majeure Event or other event beyond our reasonable control.

30. OUR RIGHT TO CANCEL THE SERVICE

30.1 If You have an ongoing agreement We may cancel your service at will;

- by giving You at least 30 days written notice that We intend to cancel your Service;
- by giving You notice and transferring You to a reasonably similar alternative service; or
- if We offer You an opportunity to cancel the service and You validly accept that opportunity and any conditions of that opportunity.

30.2 If You have a fixed term agreement We may cancel your service at any time;

- by giving You at least 30 days written notice that We intend to cancel Your service; and taking reasonable steps to appropriately offset the effect the Cancellation has on You. (For example by providing a refund);
- by giving You notice and transferring You to a reasonably similar alternative service for the remainder of your fixed term agreement; and taking steps to offset any detrimental material differences between the cancelled service and the service We transferred You to, to the extent that such differences exist ;
- if We offer You an opportunity to cancel the service and You validly accept that opportunity and any conditions of that opportunity.

30.3 Unless provided otherwise in any opportunity that We offer You to cancel the service, If We cancel the service pursuant to clauses 30.1 or 30.2 We will not charge You a Cancellation Fee or Cancellation Charge.

If You breach a material term of this Agreement that is not related to paying your charges and it cannot be remedied; and We have notified You of the breach, We may cancel the service immediately.

30.5 If You breach a material term of this Agreement that is not related to paying your charges and it can be remedied We may cancel the service immediately, if We have notified You of the breach; and You have not remedied the breach 30 days after receiving our notification.

30.6 For these clauses 30.4-30.6, a material term includes but is not limited to:

- Failing to reasonably cooperate with Us to supply the service;
- Using or behaving in relation to the service in a way that contravenes Clause 11; Clause 12, Clauses 14.3, 14.4, 15.1 and 15.2;
- Using equipment in relation to the service in a way that contravenes Clause 17.1; and
- Using the service in a way that contravenes any relevant service description.

30.7 Unless otherwise set out in the Agreement, We may cancel the service after providing 14 days' notice to You if:

- Any amount You owe Us in respect of the service is unpaid after the due date of the relevant invoice; and remains unpaid after the expiry of the 14 days' notice period; and
- That amount is not validly withheld.

30.8 We may cancel the service at any time if We reasonably consider You to be a credit risk; because

- We reasonably believe that We are unlikely to receive payment for any amounts You owe Us;
- We reasonably believe that You are likely to suffer an Insolvency Event;
- You suffer an Insolvency Event; or
- You have unpaid and overdue amounts owing to Us or any other Com2 Communications Group Company, and:
 - In the case of unpaid and overdue amounts owing to Us, they are not validly withheld or in the case of unpaid and overdue amounts owing to any other Com2 Communications Group Company, in accordance with Your agreement with that company; and
 - You have been given notice that those amounts are overdue.

30.9 We may cancel the service by giving as much notice as is reasonably possible to You if a Force Majeure event adversely affects either You or Us (whether in relation to the service or otherwise) for more than 60 days, but this clause 30.9 does not affect our right to suspend services during Force Majeure events.

30.10 We may cancel the service immediately if:

- We reasonably suspect that You or your agents have acted fraudulently in relation to the service (including administrative and billing matters associated with the service);
- You die, or your organisation is dissolved, deregistered, wound up or otherwise ceases to exist as an entity capable of purchasing and receiving services;
- We are the subject of an Insolvency Event;
- Unless otherwise specified in the Agreement, the service is suspended for more than 30 days for a reason which is unrelated to a Force Majeure event or other events beyond your reasonable control;
- You are in breach of an applicable law, licence, permit, authorisation or directive of any competent authority relating to the use of the Services;
- We become aware or are advised by any regulatory authority that applicable or relevant laws, rules, regulations or authorities, or any

decision of a court or government authority, prohibits the provision of the Service;

- Any application for a consent or permit required for the provision of the Service is rejected or is cancelled, lapses or is otherwise terminated and no further replacement, consent or permit can reasonably be obtained;
- Cancellation, termination or expiration of any head lease or licence governing the site from which the Services are provided, or where the equipment and or facilities are located; or
- We are otherwise entitled to do so under the Agreement.

30.11 If We cancel the service pursuant to this clause 30, although in most cases We will give You as much notice as is reasonably practicable, We reserve the right to cancel the service without any notice to You.

30.12 Subject to this Agreement, We will refund money We owe You (for example overpayments on your account, prepaid amounts or other credit on your account that has not arisen due to a Service Rebate).

30.13 You authorise Us to withhold from your refund any amounts that You owe Us and offset any amounts that We owe You against amounts that You owe Us.

30.14 If You have authorised direct debit payments to pay for the service, You authorise Us to debit any undisputed outstanding charges, including Cancellation or incidental charges as provided in the relevant direct debit authorisation.

30.15 If You are still able to use the service after the service is cancelled, You continue to be liable for any charges arising from your use of the service.

This clause 30.15 survives termination of the Agreement.

30.16 You must reasonably co-operate with Us and do all things We reasonably require You to do, in order to allow Us or an agent to cancel the service and recover our property safely and efficiently. This may include but is not limited to:

- Providing additional information to Us within a reasonable timeframe upon request;
- Securing for Us, our suppliers or other agents, access to the premises to which the service is being delivered for the purpose of recovering Customer Premises Equipment, disconnecting wiring, or doing any other thing which is necessary for the cessation of the service;
- Making yourself or an agent able to make decisions on your behalf available to Us at a time and place notified by Us; and
- Returning, without delay or encumbrance, of any equipment, documents, or other things belonging to Us which You have possession of due to your service or your relationship with Us.

31. WHAT HAPPENS WHEN THE SERVICE IS CANCELLED

31.1 The service is cancelled from the latter of either;

- the day that the relevant notification period (as set out in the Agreement) expires;
- the day that You and We both agree that the service is cancelled;
- the day We cease supplying the service to You, after the relevant notification period (as set out in the Agreement) expires.

31.2 The Agreement terminates completely when the service is cancelled, except for clauses that are specifically expressed to or impliedly must survive termination.

31.3 Termination does not affect any accrued rights or remedies of a party.

31.4 On cancellation:

- We may permanently and irretrievably erase all records and databases that We keep in relation to the service, except for records which We keep for administrative and accounting purposes and are required to keep by law; and
- We may take steps to disconnect any equipment used in relation to the service.

The cancellation of the service may result in loss of data. We accept no responsibility for data loss, howsoever caused, and We will disconnect services regardless of whether You have taken steps to back up your data.

31.5 You will be liable for any and all charges or fees, howsoever incurred, up to and including the date when We ceased supplying the service. These outstanding fees and charges will be included on your final invoice.

If your service was supplied for a billing period or part of a billing period before We ceased to supply the service your final invoice will include charges pro-rated for the billing period or part of the billing period during which You received the service.

31.6 If You have a fixed term agreement, We may charge You a Cancellation Charge in accordance with the product schedule if the Agreement is cancelled in circumstances reasonably attributable to You before the minimum date.

31.7 If You cancel the service before We have commenced supplying the service to You We may charge You for reasonable costs We incurred as a result of taking steps to provide the service to You.

31.8 We will not charge You a Cancellation Charge if You cancel your service due to reasons listed in clauses 29.4-29.8 or any other circumstance where the Cancellation is not in circumstances reasonably attributable to You.

32. Return of equipment and other property to Us

32.1 If You have possession of any Customer Premises Equipment or any other property belonging to Us on cancellation or termination of this Agreement, including but not limited to keys, access cards, proprietary configuration information, You must, at our option either;

- Return the property to a location nominated by Us as soon as is reasonably possible;
- Allow Us, our suppliers or other agents, reasonable access to the facility where the property is situated for the purposes of uninstalling and collecting the property; or
- Verifiably destroy the property to our satisfaction.

32.2 You are responsible for ensuring the safe and timely delivery of the property to Us, or where relevant, the verifiable destruction of the property.

32.3 You are responsible for all costs associated with delivery, collection or destruction of the property.

32.4 We will assess the quality of the property upon taking delivery. Subject to clause 20.5, We may charge You for damage and amend the charges to your final invoice or issue a separate invoice within 30 days of having received the goods.

32.5 If We have not received the property within 7 days of the service being cancelled We may charge You for the replacement cost of the property and associated administrative costs.

33. Return of equipment and other property to You

33.1 If We have possession of your property or Customer Provided Equipment on cancellation or termination of this Agreement, unless otherwise specified, once the service is cancelled We will;

- Uninstall or disconnect the equipment or property from any of our facilities; and
- Store the equipment either within the facility or at our head office for a period of 7 days, after which, if You have not collected it, We will treat it as abandoned and deal with it as We see fit.

33.2 We will notify You that We have uninstalled your equipment and placed it in storage at the relevant location.

33.3 Subject to any security interest granted, You must arrange for your equipment or property to be collected from the location where it is being stored, within 7 days, during ordinary business hours, and at your expense You must notify Us of the arrangements You have made to reclaim your equipment or property.

33.4 Subject to any security interest, We will reasonably cooperate with You to allow You to take possession of your equipment or property.

34. SUSPENSION OF THE SERVICE

34.1 Notices of suspension and Cancellation may be served simultaneously.

34.2 If We suspend the service or give notice of our intent to do so this shall not in any way prejudice any right We may have to cancel the service.

34.3 If We give notice of our intent to cancel the service this shall not in any way prejudice any right We may have to suspend the service.

34.4 If You breach a material term of the Agreement, including but not limited to;

- Failing to reasonably cooperate with Us to supply the service;
- Using or behaving in relation to the service in a way that contravenes Clauses 11,12, 14.3, 14.4, 15.1 and 15.2;
- Using equipment in relation to the service in a way that contravenes Clause 17.1; or
- Using the service in a way that contravenes any relevant service description;

Until such times as the breach is remedied or the service is cancelled.

34.5 In some circumstances We may provisionally suspend or restrict your service by giving You as much notice as reasonably possible (including notice reasonably soon after We have suspended or restricted your service). Suspension or restriction in these circumstances will remain in place until the circumstances giving rise to the suspension or restriction have satisfactorily passed and We believe they are unlikely to return. We may suspend or restrict your services under this clause 34.5 where;

- We believe it is reasonably required to prevent fraud, illegality, propagation of spam or malicious software, or interference with any other network, howsoever caused;
- Problems are experienced interconnecting our network with any other network;
- We cannot enter Our or Your premises to do something in connection with the service that We need to do in order to supply the service or make the service or related equipment safe, including enabling any authorised persons to attend to an emergency;
- You vacate the premises to which the service is connected;
- We believe it is reasonably required to prevent or mitigate interference, howsoever caused, with our network or our ability to provide other services;
- Providing the service becomes illegal or We believe on reasonable grounds that it will become illegal;

- We are required to comply with an order, instruction request or notice of a regulator, emergency services organisation or other competent authority; or
- A Force Majeure Event affects our ability whether directly or indirectly to provide the service.

34.6 We may suspend or restrict Your service without notice in the event that We or Our suppliers believe it is necessary or desirable to conduct maintenance and repair work on any part of the network, facilities or equipment which are relevant, whether directly or indirectly, to supplying your service.

34.7 We will endeavour to give You as much notice as is reasonably possible when suspensions will occur due to maintenance and repairs, however this may not always be possible. We will endeavour to schedule maintenance when it is least inconvenient to Our customers.

34.8 We are not responsible for scheduling maintenance and repairs conducted by suppliers. We will endeavour to give You as much notice as is reasonably possible where suspensions are caused by Our suppliers' maintenance, however this may not always be possible,

34.9 If We believe that You are in breach of clause 12.1, We may require You to switch to a more suitable service. If You do not agree to switch, We may suspend or restrict your usage of the service.

34.10 If You currently are or become a Carrier or a Carriage Service Provider, You must notify Us as soon as possible of the change or intent to change. If We reasonably suspect that You are using our service as a carrier or carriage service provider and have not disclosed this to Us We may require You to switch to a more suitable service. If You do not agree to switch, We may suspend or restrict your usage of the service.

34.11 Unless otherwise set out in the Agreement, We may suspend the service after providing 14 days' notice to You if:

- Any amount You owe Us in respect of the service is unpaid after the due date of the relevant invoice; and remains unpaid after the expiry of the 14 days' notice period, and
- That amount is not validly withheld.

34.12 We may suspend the service at any time if We reasonably consider You to be a credit risk; because

- We reasonably believe that We are unlikely to receive payment for any amounts You owe Us;
- We reasonably believe that You are likely to suffer an Insolvency Event; or
- You have unpaid and overdue amounts owing to Us or any other Com2 Communications Group Company, and:

- In the case of unpaid and overdue amounts owing to Us, they are not validly withheld; or in the case of unpaid and overdue amounts owing to any other Com2 Communications Group Company, in accordance with Your agreement with that company; and
- You have been given notice that those amounts are overdue.

34.13 Your service shall remain suspended until such time as:

- If You fail to pay undisputed amounts of any invoice in full by the relevant due date; until such time as You have paid the undisputed amounts in full, and
- If We consider an ongoing credit risk exists, until such time as:
 - You put in place, or increase, to our satisfaction, a credit security arrangement, and
 - You pay all undisputed amounts owing on any unpaid and overdue invoices owing to Us and any Com2 Communications Group Company.

35. WHAT HAPPENS WHEN THE SERVICE IS SUSPENDED

35.1 During a suspension, your access to the service may be restricted, constrained or limited.

35.2 During a suspension, You must continue to pay access fees, although You may be entitled to a refund.

35.3 If the service is suspended due to circumstances reasonably attributable to You, You may have to pay Us a suspension fee, which is a genuine and reasonable estimate of the administration costs We incurred.

35.4 If the service is suspended due to circumstances not reasonably attributable to You or Customer Provided Equipment which You are responsible for maintaining, You will be entitled to a refund of access fees paid to Us during the period of the suspension.

35.5 Suspensions may be lifted automatically or they may require You to take some action and notify Us that You have taken that action.

35.6 When We notify You of the suspension, We will specify if You must contact Us to lift the suspension or if the suspension will be lifted automatically.

36. AUTHORITY OF EMPLOYEES AND AGENTS

36.1 From time to time We need your consent to do certain things. We can reasonably rely on the authority of any of your employees or agents who tell Us they have authority to act on your behalf in relation to the matter.

37. YOUR LIABILITY TO US

37.1 You, or your agents, or any person who makes use of the service (whether authorised or unauthorised) are liable to Us for breach of contract or negligence.

37.2 If We claim any loss or damage against You, any contribution We or our agents or any person authorised by Us have made to the loss or damage which is the subject of claim shall proportionally reduce the extent of your liability by up to a maximum of 100%.

37.3 In contract, tort (including negligence), statute or otherwise. If an end user makes a claim against Us in relation to:

- The use (or attempted use) of the service;
- Equipment used in connection with the service;
- Other services or products which rely upon the service;
- Any other matter arising out of the relationship between You and Us,

You hereby indemnify Us against, and must pay Us for any loss or damage We suffer in connection with any and all claims, including our own costs incurred (which are to include a genuine and reasonable estimate of our own administration and professional costs), howsoever arising, which may be made against Us in respect of the matters listed in this clause above.

37.4 We are not liable to third-parties for any claims in relation to your use of the service. You hereby indemnify Us against, and must pay Us for any reasonably foreseeable loss or damage, including our own costs incurred (which are to include a genuine and reasonable estimate of our own administration and professional costs), arising out of or in connection with any and all claims which third-parties may make against Us in respect of your use of the service.

37.5 You, your agents and any other party making use of the service are jointly and severally liable for any loss or damage, howsoever caused, arising out of or in connection with the service.

37.6 This clause 37 shall survive termination.

38 OUR LIABILITY TO YOU

38.1 We may have statutory responsibilities and obligations under:

- The Telecommunications Act,
- The Competition and Consumer Act including Schedule 2, the Australian Consumer Law, and
- Other applicable laws, regulations and codes.

38.2 Nothing in this Agreement removes or limits any rights that cannot be excluded or modified under existing laws or regulations.

38.3 We will comply with the Australian Consumer Law as in effect from time to time, if under the Agreement We supply goods or services with a price of less than \$40,000 or which are ordinarily acquired for domestic, personal or household use.

38.4 Our liability (if any) for breach of your statutory rights as a consumer in connection with those goods or services is limited to (at our option),

- In respect of goods; repairing or replacing those goods, or paying the cost of having those goods repaired or replaced, and
- In respect of services; resupplying the services, or paying the cost of having those services resupplied.

38.5 Other than your statutory rights which cannot be excluded, We expressly exclude all liabilities, rights, remedies, conditions, warranties and other terms that may be implied by custom, statute or common law, to the extent that is permitted by the law.

38.6 We may be liable to You for

- Repair or replacement of your tangible property if damage is directly caused to it by fault, negligence or fraud by Us or our personnel during installation, repair or maintenance;
- Subject to any Service Availability Target, clause 38.5 and the Agreement, Interruptions in the service resulting from a fault or negligence of Us or our personnel; or
- Death or personal injury directly caused by negligence or breach of contract by Us or our personnel.

38.7 If You claim any loss or damage against Us, any contribution You or your agents or any other person made to that loss or damage shall proportionally reduce the extent of our liability by up to a maximum of 100%.

38.8 If your service is interrupted or delayed We accept liability to You but our liability is limited as specified in any applicable Service Availability Target. If no Service Availability Target applies to your service, liability in respect of interruptions or delays is limited to an amount equal to the charges billed in respect of the interrupted service pro-rated for the period of the interruption or delay.

38.9 In no event will our liability exceed the total amount of charges You incur for the interrupted service during the billing period in which the interruption or delay occurred.

38.10 We will not under any circumstances be responsible for any loss or damage arising from circumstances beyond our reasonable control.

38.11 We will not under any circumstances be liable to You or any third party for:

- any loss of profit or revenue;
- any loss of potential profit or revenue;
- any loss of business opportunities;
- any loss of goodwill;
- any loss of productivity or production;
- any loss of data;
- any loss caused by additional labour costs; or
- any loss caused by additional costs incurred in mitigating any circumstance

which flows from our negligence, failure to comply with this agreement or any other action or omission on our behalf.

38.12 This clause 38 shall survive termination.

39 WARRANTIES

39.1 We represent and warrant to You on a continuing basis that:

- We have full corporate power and have taken all necessary action to enter into this Agreement, and perform the Services contemplated by this Agreement;
- Upon execution of this Agreement, its obligations will be valid, binding and enforceable; and
- We hold all licences, permits, consents and authorisations required under any law in relation to the provision of the Services and will continue to do so at all times during the term of this Agreement.

39.2 You represent and warrant to Us on a continuing basis that:

- You have full power and have taken all necessary action to enter into this Agreement, and fulfil the obligations contemplated by this Agreement, including incursion and payment of all fees and charges;
- Upon execution of this Agreement, its obligations will be valid, binding and enforceable;
- Unless otherwise disclosed, You do not enter into this Agreement as trustee of any trust;
- You hold all licences, permits, consents and authorisations required under any law in relation to the receipt of the Services and will continue to do so at all times during the term of this Agreement;
- You accept all responsibility for the selection of the Services to meet your requirements, and that We do not warrant that the Services will be suitable for such requirements, nor that any Services will be uninterrupted or error-free;
- You accept all responsibility for ensuring that regular copies of all of your data are made and backed up, and that it is not our responsibility to back up your data.

40. COMPLAINTS

40.1 If You have any complaints regarding the service We provide to You, You may complain to Us.

40.2 We will handle, investigate and attempt to resolve the complaint to your satisfaction.

40.3 We will use our best endeavours to reasonably resolve complaints, however, if We are unable to resolve the complaint to your satisfaction You may be able to request external review from agencies such as the Telecommunications Industry Ombudsman.

41. CHANGING THE AGREEMENT - FIXED TERM AGREEMENTS

41.1 Subject to this clause 41, We cannot change fees during the term of a fixed term agreement unless, either;

- The change is the result of a change in the price from a supplier for an input which is required for your service;
- The change is required by law;
- The change is in relation to a fee or charge that accounts for a tax imposed by law;
- The change is in relation to a solely administrative fee;
- The change is in relation to a type of fee or type of charge which is expressly identified as variable in the fixed- term agreement or your service description; or
- You agree to the change.

41.2 If We change the fees of a fixed term agreement under one of the exemptions specified in clause 41.1, We may only change fees in accordance with the procedures of this clause 41.

41.3 We may immediately and without notice to You make changes to the Agreement where We reasonably expect a change to our agreement will have;

- a positive effect on You; or
- a neutral effect on You.

but, If You can demonstrate that the change has neither a neutral or positive effect on You and has more than a minor detrimental impact on You, and is not a change of the type specified in clauses 41.6 to 41.8, then We will offer You the chance to cancel that service on fair terms.

41.4 We may, subject to clause 41.5, make changes to the Agreement where We reasonably expect a change to the Agreement will;

- have a detrimental impact on You; and
- We believe that detriment is no more than minor.

41.5 If We change the Agreement in accordance with clause 41.4, We will:

- Endeavour to notify You of the change prior to the change taking effect, although at times this may not be possible; and
- notify You in writing of the change within 90 days of the change taking effect.

but, If You can demonstrate that the change has more than a minor detrimental impact on You, and is not a change of the type specified in clauses 41.6 to 41.8, then We will offer You the chance to cancel that service on fair terms.

41.6 We may, make changes to the Agreement, including increasing or introducing new charges, to take account of taxes imposed by law. If We make such changes We will;

- Endeavour to notify You of the change prior to the change taking effect, although at times this may not be possible; and
- Individually notify You in writing of the change within 90 days of the change taking effect.

41.7 We may increase existing charges or introduce new charges for administration facilities (eg; credit card payments). If We make such changes and You are an affected customer We will;

- notify You of the change prior to your incurring any such fees; and
- Offer You a reasonable alternative administrative facility with no additional charges; or
- If We are unable to offer You a reasonable alternative administrative facility, and the service is conditional upon access to such a facility, offer You an opportunity to cancel that service on fair terms.

41.8 We may make any changes which are required by law or are necessary for security reasons, fraud prevention or for technical reasons. If You will be affected by the change We will:

- Endeavour to notify You of the change three days prior to the change taking effect, although at times this may not be possible; and
- notify You with as much warning as We reasonably can or as soon as possible after the change has occurred.

41.9 If We seek to make a change which affects You but that is not covered by clauses 41.1 to 41.8, We may make the change by:

- notifying You at least thirty days prior to the change taking effect; and
- Offering You an opportunity to cancel the Agreement for the affected service on fair terms within thirty days from the date of our notice.

42. CHANGING THE AGREEMENT – ONGOING AGREEMENTS

42.1 We may change any term of the Agreement if:

- We get your consent; or
- We make the change in accordance with the relevant elements of this clause 42.

42.2 We may immediately and without notice to You make changes to the Agreement where We reasonably expect a change to the Agreement will have;

- a positive effect on You; or
- a neutral effect on You.

42.3 We may, subject to clause 42.4, make changes to the Agreement where We reasonably expect a change to the Agreement will;

- have a detrimental impact on You; and
- We believe that detriment is no more than minor.

42.4 If We change the Agreement in accordance with clause 42.3, We will:

- Endeavour to notify You of the change prior to the change taking effect, although at times this may not be possible; and
- notify You in writing of the change within 90 days of the change taking effect.

42.5 We may make changes to the Agreement including increasing or introducing new charges to take account of taxes imposed by law. If We make such changes We will;

- Endeavour to notify You of the change prior to the change taking effect, although at times this may not be possible; and
- notify You in writing of the change within 90 days of the change taking effect.

42.6 We may increase existing charges or introduce new charges for administration facilities (eg; credit card payments). If We make such changes and You are an affected customer We will;

- notify You of the change prior to your incurring any such fees; and
- Offer You a reasonable alternative administrative facility with no additional charges; or
- If We are unable to offer You a reasonable alternative administrative facility, and the service is conditional upon access to such a facility, offer You an opportunity to cancel that service on fair terms.

42.7 We may make any changes which are required by law or are necessary for security reasons, fraud prevention or for technical reasons. If You will be affected by the change We will:

- Endeavour to notify You of the change prior to the change taking effect, although at times this may not be possible; and
- notify You with as much warning as We reasonably can or as soon as possible after the change has taken effect.

42.8 If We seek to make a change which affects You but that is not covered by clauses 42.1 to 42.7, We may make the change by notifying You at least thirty days prior to the change taking effect.

43. ASSIGNMENT BY US

43.1 We may assign, novate, transfer or sub-licence any of our rights under this Agreement to any person.

43.2 We may perform any of our obligations under the Agreement by arranging for them to be performed by another person, including a supplier or another Com2 Communications group company.

43.3 If We sell or transfer any part of our business We may novate full right, title and interest in this Agreement to the purchaser or transferee by giving 30 days written notice to You.

44. ASSIGNMENT BY YOU

44.1 You may assign your rights under the Agreement only with our prior written consent.

44.2 You may transfer your obligations under this Agreement if:

- The service is available where the transferee wishes to receive it, and
- The person to whom You transfer the obligations meets proof of identification, eligibility criteria for the service and credit rating requirements.

45. JURISDICTION

45.1 This Agreement is governed by the laws of Queensland and both You and We irrevocably submit to the non-exclusive jurisdiction of the Queensland courts and courts of appeal from them. You nor We will not object to the exercise of jurisdiction by those courts on any basis.

46. EXERCISE OF RIGHTS AND WAIVER OF RIGHTS

46.1 If We do not exercise a right that We are entitled to exercise, this does not mean that We have waived our entitlement to that right. We may subsequently exercise that right if the circumstances permitting that right to be exercised exist.

46.2 If You do not exercise a right that You are entitled to exercise, this does not mean that You have waived your entitlement to that right. You may subsequently exercise

that right if the circumstances permitting that right to be exercised exist.

47. INTELLECTUAL PROPERTY

We own intellectual property

47.1 We own all material developed by Us or our personnel or at our direction, including intellectual property rights.

47.2 We may permit You to use all or some material or other material, appropriately licensed by Us as part of the service. Any such permission is subject to any reasonable conditions We may attach from time to time.

47.3 Any permission which is granted to use material under this clause ceases when the service is cancelled and the Agreement terminates.

47.4 You must not infringe any person's intellectual property rights in using the service. If You do so We may cancel the service under clause 30 or suspend the service under clause 34.

47.5 You agree, at our request, to take all actions and execute all documents as may in our reasonable opinion be necessary to enable Us to obtain, defend or enforce our rights in the intellectual property, and You must not do or fail to do any act which would or might prejudice our rights under this clause.

48. CONFIDENTIALITY

48.1 Both parties acknowledge that in the course of performing their obligations under this Agreement, they will receive information which is proprietary and confidential to the other party. Both parties agree not to use confidential information of the other party except in the proper performance of their obligations, and not to disclose the confidential information to any person or entity other than their own employees or agents directly involved in the performance of the Services.

48.2 Where it is necessary to disclose the confidential information to external agents or contractors, these are to be bound by a separate written undertaking to protect the confidentiality of such Confidential Information, on the same terms as this Agreement.

48.3 Notwithstanding clauses 48.1 to 48.2, both parties may use or disclose Confidential Information to the extent necessary to:

- Comply with any law, binding directive of a regulator or a court order;
- Comply with the listing rules of any stock exchange on which its securities are listed; or

- Obtain professional advice in relation to matters arising under or in connection with this document.

48.4 Both parties acknowledge that a breach of the confidentiality obligations set out in this clause may cause the other irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to a claim for damages and any other remedies available at law or in equity, one party may seek specific performance or injunctive relief against any breach or threatened breach by the other party.

48.5 All obligations of confidence set out in this clause continue in full force and effect after the expiry or termination of this Agreement.

49. PRIVACY

49.1 In electing to receive the service from Us You consent to Us collecting, using and disclosing your personal information to give effect to this Agreement. We will only use your personal information in accordance with the Services, and the Privacy Act.

49.2 We will require anyone to whom We disclose your personal information, to comply with the Privacy Act; and they in turn to require their employees, representatives and subcontractors to comply with the Privacy Act.

49.3 You acknowledge that if We supply a carriage service, We, as well as any supplier whose network is used in delivery of the service may be required, by law, to monitor your usage, and intercept communications sent over the service.

49.4 You acknowledge that We may collect information about the usage of the service for billing purposes.

49.5 You acknowledge that as the provision of a secure site is a service We offer to our customers, We may deploy security cameras within our premises, and You may be recorded when on our premises. In deploying security cameras and recording and reviewing footage, We will do so in accordance with the Privacy Act.

49.6 You must promptly inform Us in writing of any complaint You receive concerning the use, disclosure, storage, transfer or handling of Personal Information, and We will comply with any reasonable direction by You in relation to a complaint concerning the use, disclosure, storage, transfer or handling of your Personal Information.

50. NOTICES

50.1 Any notice, consent, application or request that must or may be given or made under this Agreement is only given or made according to the following if It is in writing and sent in one of the following ways:

- Delivered or posted to that party at its address set out in a Order Form;

- Faxed to that party at its fax number set out in a Order Form; or
- Emailed to that party at an email address set out in a Order Form.

50.2 Either party must give the other at least three (3) business days' notice of any change of its address, fax number or email address, for it to be a valid address or fax number under this agreement.

50.3 Any notice, consent, application or request is to be treated as given or made at the following time:

- if it is delivered, when it is left at the relevant address;
- if it is sent by post, two (2) business days after it is posted;
- if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; and
- if it is sent by email, as soon as the sender receives from the sender's email server a report of an error free transmission to the receiver's server.

50.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

51. WE MAY PAY COMMISSIONS

51.1 We may pay a commission to any of our personnel, agents or third parties in connection with the Agreement.

52. GUARANTEE

52.1 In consideration of our having at the request of the Guarantor agreed to enter into this Agreement with You and to provide goods and services from time to time, each Guarantor agrees with us as follows:

- the Guarantor guarantees to us the payment by You for all goods and/or services that we have supplied or which we supply from time to time even if the Guarantor does not have any notice of any neglect or omission by You to pay for the goods or services according to the terms of this Agreement;
- this guarantee is a continuing guarantee to Us for the whole of Your indebtedness or liability to Us for goods and services supplied or to be supplied upon any other account;
- We are at liberty without discharging the Guarantor from liability to grant time or other indulgence to You in respect of goods or services supplied by Us and to accept payment in any

means and to treat the Guarantor in all respects as though he/she was jointly liable with You as debtors to Us instead of merely surety for You and, in order to give full effect to the provisions of this guarantee, the Guarantor waives all rights inconsistent with such provisions and which we/she might otherwise as surety be entitled to claim and enforce;

- We may at any time or times in Our absolute discretion and without giving any notice whatsoever to the Guarantor refuse further credit or supply of goods or services to You and may grant to You or to any drawers, acceptors or endorsers of bills of exchange, promissory notes or other securities received by Us from You or on which You may be liable to Us any time or other indulgence and compound with it or them respectively without discharging or impairing the Guarantors liability under this guarantee;
- each Guarantor executing the guarantee agrees that the liability of the Guarantor is not contingent upon the execution of the Order Form or the guarantee by any other Guarantor;
- the guarantee is not determined by the death or bankruptcy of the Guarantor but is binding upon his/her executors, administrators and assigns;
- all dividends, compositions and payments received by the Guarantor from You whether in liquidation or otherwise should be taken and applied by the Guarantor as payments in gross and any rights to be subjugated to the Guarantor shall not arise until We have received full payment for the whole of Your indebtedness and liability to Us.

53. SEVERABILITY

53.1 If a clause can be read in two ways, the legal interpretation shall prevail

53.1 If a clause or part of a clause of the Agreement can be read in a way which is illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, then the clause is to be read in the way that makes it legal, enforceable and valid.

53.2 If a clause can be read in two ways, both of which would be legal but which are manifestly at odds with each other. In the absence of compelling evidence as to the true intention of the clause, the clause should be construed against the interests of the party seeking to rely on the clause in dispute.

53.3 if a clause or a part of a clause of the Agreement is illegal, unenforceable or invalid that clause, or part of a clause, shall be severed from the Agreement without affecting in anyway the legality, enforceability and validity of any other part of the Agreement.

54. MISCELLANEOUS

54.1 Except as otherwise set out in this Agreement, each party must pay its own costs in relation to preparing, negotiating and executing this Agreement and any document related to this Agreement.

54.2 This Agreement together with any relevant Order Form and Service Schedule contains everything You and Us have agreed in relation to the matters it deals with and supersedes any prior agreement, understanding or arrangement between You and Us, whether oral or in writing. No representation, undertaking or promise will be taken to have been given or implied from anything said or written in negotiations between You and Us prior to this Agreement except as expressly stated in this Agreement. Neither You or Us can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this document was executed, except as permitted by law.

54.3 This Agreement is properly executed if each party executes either this Agreement or an identical document. In the latter case, this Agreement takes effect when the separately executed Agreements are exchanged between the parties.

54.4 Each Order Form is properly executed if each party executed either the same document or an identical document. In the latter case, the document takes effect when the separately executed documents are exchanged between the parties.

54.5 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

54.6 No variation of this Agreement, any Contract, Service Schedule or Order Form will be of any force or effect unless it is in writing and signed by both parties.

54.7 The Agreement shall endure to the benefit of and be binding upon the successors, assigns, heirs, executors and administrators of the parties.

55. INTERPRETATION

55.1 In this Agreement, unless the context requires another meaning. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

55.2 A reference:

- to the singular includes the plural and vice versa;
- to a document is a reference to that document as amended, consolidated, supplemented, novated or replaced;
- to a party means a party to this Agreement;
- to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Agreement;

- to a person (including a party) includes:
 - an individual, company, other body corporate, association, partnership, firm, joint venture, trustee or Government Agency; and
 - the person's successors, permitted assigns, substitutes, executors and administrators;
 - to a law:
 - includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange;
 - is a reference to that law as amended, consolidated, supplemented or replaced; and
 - includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law;
- to proceedings includes litigation, arbitration and investigation;
- the word "including" or "includes" means "including, but not limited to", or "includes, without limitation".

56. DEFINITIONS

556.1 Capitalised words have the following meaning:

Agent; means a person acting on our or your behalf in relation to the service. Our agents may at times include suppliers or contractors outside Com2 Communications group companies.

Agreement; means an entire agreement between You and Us, constituted as specified in clause 2.1, regarding the provision of a service

Annexures; means, documents annexed to this agreement which may have the effect of modifying a clause or term of the service price list, general terms or service description.

Australian Consumer Law; means Schedule 2 of the Competition and Consumer Act

Billing period; means 1 month, unless specified otherwise in an Annex or Service Description

Cancellation fee; means a fee specified in the Service Price List which becomes payable immediately if the service is cancelled in certain circumstances.

Cancellation Charge; means all remaining months of a fixed term contract; plus an administration fee determined by Us which represents a genuine and reasonable estimate of the cost incurred and time spent in processing and administering your cancellation; less the costs that would have been incurred in performing the remainder of the contract that We are reasonably able to mitigate,

reduce or eliminate; less a discount for the value of the early receipt of the remainder of the contract price.

Carriage Service Provider; has the same meaning as "Carriage Service Provider" as defined in the Telecommunications Act.

Carrier; has the same meaning as "carrier" as defined in the Telecommunications Act.

Com2 Communications Group Companies; means Clouddtalk Pty Ltd T/A Com2 Communications, and all related parties as per the Corporations Law.

Commencement Date means the date for commencement of the Services stated in the Order Form.

Competition and Consumer Act; means Competition and Consumer Act 2010 (Cth).

Customer Premises Equipment; means any equipment which We own but must install on your premises in order for You to receive and make use of the service.

Customer Provided Equipment; means any equipment You own which You use in connection with the service or to receive the service in place of Customer Premises Equipment. In some cases We may sell You equipment which will be subsequently used to receive the Service, this will be considered Customer Provided Equipment.

Dispute Notice; means a notice in writing formed in accordance with section 9 which notifies Us that You are disputing certain fees and charges.

Equipment; includes but is not limited to routers, masts, antennas, towers, rack-mount chassis, servers and similar things.

Excluded Event; means an event caused by a breach of the agreement by You, a negligent omission by You or your agents, a fraudulent act by You or your agents, a failure of Customer Provided Equipment.

Fair terms; means notifying You at least 20 days before the changes occur and offering You the right to cancel the service, without paying a Cancellation fee, within 40 days of our notice.

Fault Notification System; means a series of contact points to receive reports of faults

Fixed-length Agreement; means an agreement which has a specified minimum term during which We agree to supply the service to You and You agree to acquire the service from Us.

Force Majeure event; means an extraordinary event beyond the control or reasonable contemplation of all parties, including but not limited to; Flooding, Cyclone, Storm, Earthquake, Volcanic Eruption, any other natural

disaster, Fire, Explosion, Civil Unrest, Civil War, Riot, Invasion, insurgency, act of terror, blockade, embargo, Marshal Law, Usurped Power, Confiscation, Nationalisation, Hostilities (regardless of declaration of War) , Strike Action, labour dispute, lockout, Crime (including extra-ordinary acts of cybercrime or state-sponsored acts adversely affecting cyber security), extended power outage, or other adverse, emergency or extraordinary event.

General Terms; means this document.

Insolvency Event; means:

- an application is made to a court of competent jurisdiction for an order that the relevant party be wound up, declared bankrupt or a provisional liquidator be appointed where such an application is not withdrawn, struck out or dismissed within 14 days of being made. OR a liquidator is appointed to the relevant party. OR

- a decision is taken to appoint an administrator to the relevant party or a controller in respect of any of the party's assets. OR

- the relevant party enters into or proposes to enter into an arrangement or composition with or assignment for the benefit of creditors except as part of a reconstruction or amalgamation while solvent. OR

- anyone on behalf of the relevant party proposes a reorganisation, moratorium, deed of company arrangement or other administration arrangement which involves these, or the winding up and dissolution of the relevant party. OR

- the relevant party states that it is or is or is presumed to be under any applicable law, insolvent. OR1

- the relevant party becomes insolvent under administration as defined in section 9 of the Corporations Act 2001 (Cth) or action is taken which could result in that event. OR

- the relevant party fails to comply with a statutory demand as a result of section 459F(1) of the Corporations Act 2001 (Cth). OR

- anything having a substantially similar effect to any of the dealings above happens to the relevant party under the law of any jurisdiction.

Minimum Term; means a set period of time for which You and We agree that the contract should remain in effect and that cannot be terminated without paying a termination fee.

Minor Detrimental Impact; means an impact which while it is detrimental does not substantially alter the agreement, and includes impacts from changes in the service which while placing You in a slightly less advantageous position

do not have any significant impacts; examples might include a small increase in fees associated with the service, or withdrawing a minor feature of the service.

Network; has the same meaning as "telecommunications network" as defined in the telecommunications act.

Neutral Effect; means an impact which does not result in either detriment or benefit to You, for example, if We change the way in which We provide helpdesk services, if We change the name of the service We provide to You, or if We provide a service of an equivalent speed and at the same price but using different technology.

Ongoing agreement; means an agreement with no specified term which automatically renews on a monthly basis until You notify Us that You wish to cancel it.

Order Form; means the document entitled "Order Form" or "Service Connection Request" which when completed and returned to Us constitutes an offer by You to Us to purchase a service of the type listed in the order form from Us. Details on the Order Form include the nature of the service being ordered, the address to which the service is to be delivered, any special notes on the service as well as your billing and contact details.

Ordinary Business Hours; means between 8:30AM and 5:00PM, Monday to Friday in Brisbane, Queensland.

Com2 Communications Group Company; means Cloudtalk Pty Ltd T/A Com2 Communications or any related party as per the Corporations Law.

Positive Impact; means impacts from changes in the service which place You in a more advantageous position than the original agreement; examples might include if We decrease the notice period You must give Us before Cancellation or decreases in fees associated with the service, or the inclusion of a new feature in the service or a decrease in the cost of a service.

PPS Register means the Personal Property Securities Register established under section 147 of the PPSA.

PPSA means the Personal Property Securities Act 2009 (Cth).

Regulator; means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman or any other competent authority, government body or statutory body with powers to regulate our conduct.

Service Availability Target; means the section entitled "Service Availability Target" as part of a Service Description which specifies the target levels of service which We will uphold as part of the agreement and what will occur if We fail to meet those levels.

Service Description; means, the document entitled “Service Description” or “Service Schedule” which describes the nature of a service being purchased and any specific terms which apply to services of that type.

Service price list; means, the document entitled “Service price list” which shows the prices, rates and charges associated with the service.

Service Rebate; means a rebate paid to You in accordance with clause 10 for an amount in accordance with an applicable Service Availability Target.

Service Start Date; means the date when We commence supplying the service to You.

Service; means, the service described in the service description, and specified in the Service Order Form and any related goods or services which We supply to You in connection with the service.

Suppliers mean parties with whom we have a contract to acquire goods or services some or all of which may be the subject of this Agreement.

Target Service Start Date; means the date, if specified in the agreement or notified to You, by which We will attempt to commence supplying the service to You

Tax; includes any value-added, goods or services, excise, sales, withholding or environmental tax, charge, rate, duty, impost or tariff but does not include taxes levied on income or capital gains.

Telecommunications Act; means the Telecommunications Act 1997 (Cth) and its regulations.

We; means Cloudtalk Pty Ltd T/A Com2 Communications, or any related party as per the Corporations Law, or its agents. (Us, Our and other similar language is to be construed accordingly).

You; means the person who fills out the service order form, or the entity or person on whose behalf the person who fills in the Service Order Form was acting, and includes all related parties as per the Corporations Law. (Your, Yours and other similar language is to be construed accordingly).