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ASIAN PACIFIC TELECOMMUNICATIONS PTY LTD

STANDARD FORM OF AGREEMENT

General Terms

July 2015



ASIAN PACIFIC
TELECOMMUNICATIONS

Member of  ASIAN PACIFIC
CORPORATE SERVICES

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STANDARD FORM OF AGREEMENT

GENERAL TERMS OF SERVICE

1. ABOUT OUR TERMS OF SERVICE

1.1 How is this document relevant to you?

- (a) This document contains the Terms of Service on which Asian Pacific Telecommunications Pty Ltd ACN 091 353 374 (**we, us, our**) provides its Services to its customers (**you**).
- (b) We are permitted under the Telecommunications Legislation to supply our Services to you on the terms and conditions of a "Standard Form of Agreement". These Terms of Service are our "Standard Form of Agreement".
- (c) The Terms of Service are comprised of the following three sections:
 - (i) these general terms which set out the standard terms and conditions on which we supply our Services and products to you (**General Terms**);
 - (ii) the standard service-specific terms which apply to the specific Services which you are receiving and which may be set out in a service schedule or other document (**Standard Service Terms**); and
 - (iii) the additional information, including the charges for our Services, which we will set out in your Application and/or our Letter.
- (d) The General Terms, Standard Service Terms, your Application and any Variation begin with effect for a particular Service when we notify you that we accept your Application for a particular Service (together, this constitutes **Your Contract**).
- (e) The Services we provide to you are governed by Your Contract. To the extent of any inconsistency, the components of Your Contract will be read in the following order of precedence:
 - (i) your Application;
 - (ii) our Letter;
 - (iii) any Variation;
 - (iv) Standard Service Terms; and
 - (v) General Terms.
- (f) If a provision of Your Contract is void, voidable or unenforceable in the jurisdiction in which any Service is or is to be provided to you, it will be severed and the remainder of the provisions of Your Contract will not be affected.

1.2 Changes to our General Terms and Standard Service Terms

- (a) You understand that we may make changes to our General Terms and Standard Service Terms from time to time, including without limitation, in circumstances where one of our suppliers (from whom we acquire carriage services for resale to

you), changes a service or its associated technology or changes the terms and conditions which apply to the services they supply to us. If we make any change to either or both of our General Terms or Standard Service Terms, we will comply with this **clause 1.2**.

- (b) If we intend to make a change to either or both of our General Terms or Standard Service Terms and we reasonably expect that the change will adversely affect you, we will use reasonable endeavours to notify you at least 30 days prior to making that change. We may notify you:
 - (i) by mail (to any of the last address given by you to us, the address of the Premises and, if you are a corporation, your registered address or principal place of business last known to us);
 - (ii) by email (to the last email address given by you to us); or
 - (iii) a message on a bill we issue to you.

We will also provide notice of the change on our website.

- (c) If we reasonably believe that a change to either or both of our General Terms or Standard Service Terms will have a beneficial or neutral or a minor detrimental impact on you, we can make the change immediately without telling you.

1.3 Your rights if we change our General Terms or Standard Service Terms

- (a) If we make any change to either or both of our General Terms or Standard Service Terms that we reasonably expect will adversely affect you (excluding situations set out in **clause 1.4**), you may cancel the affected Service/s by complying with **clause 1.3(b)** without incurring early termination charges, but you must:
 - (i) pay us for any usage or network access charges incurred up to the date you cancelled the Service/s;
 - (ii) pay us for any outstanding installation fees and equipment fees for goods or Services that we have provided to you;
 - (iii) pay us the proportion of any fee or charge waived or foregone by us (for example, if we agree to waive a \$500 fee partially in consideration for you entering into a two year contract with us and you terminate that contract at the 12 month point, you must pay us \$250); and
 - (iv) pay us for any amounts for Services requested by you and that are necessary for you to transition to an alternative service provider.
- (b) If you want to cancel a Service under **clause 1.3(a)**, and Your Contract is, in our reasonable view, a Consumer Contract you must provide written notice to us to that effect within 42 days of the date of our notice of the proposed change. If Your Contract is not, in our reasonable view, a Consumer Contract you must provide a written notice to us that effect within 20 days of the date of our notice of the proposed change.

1.4 Exceptions to your rights to cancel under clause 1.3

- (a) Your rights to cancellation under **clause 1.3** do not apply if we need to change either or both of our General Terms or Standard Service Terms because:
 - (i) there is an increase in taxes or levies imposed by the law, or new taxes or levies imposed by the law come into place;

- (ii) there is a change to the costs of ancillary services (such as an increase in credit card or direct debit transactions fees imposed on us by third parties) as long as we have provided you with a reasonable alternative at no additional charge. If we do not offer you such a reasonable alternative, then you may cancel the affected Service/s in accordance with **clause 1.3**;
- (iii) there is an increase in the charges imposed on us by third parties for international carriage services or content and premium services which we resell to you from a third party, provided:
 - (A) we told you at the time we offered a Service to you that the prices were subject to change; and
 - (B) we give you notice within a reasonable period if you have used an affected Service within 6 months prior to the date of the proposed change; or
- (iv) we need to make changes:
 - (A) to comply with the law;
 - (B) to address any issues of security in order to protect the integrity of the Service; or
 - (C) to address any technical issues in order to protect the integrity of the Service.

1.5 Your rights if changes to our General Terms or Standard Service Terms do not have an adverse or have a beneficial or neutral impact on you

- (a) Your rights to notification under **clause 1.2** and cancellation under **clause 1.3** also do not apply if we make changes to our General Terms or Standard Service Terms that we reasonably believe will have a beneficial or neutral or a minor detrimental impact on you.
- (b) If, however, any such change has more than a minor detrimental impact on you because of your particular circumstances or pattern of usage of the Services, please contact us. We reserve the right to permit you, in our sole discretion, to cancel a Service without incurring certain excess charges additional to what you would have paid had the change not come into effect.

1.6 Where can you obtain a copy of our most recent General Terms, Standard Service Terms and details of pricing applicable to you?

You can get a copy of our most up-to-date General Terms and Standard Service Terms on our website at www.aptel.com.au or by contacting us at 03 9863 9863 to request an electronic or paper copy to be emailed or sent to you. We will promptly provide you with details of pricing applicable to you following receipt of your request.

1.7 Complaints and assistance

- (a) If you are not satisfied with any part of our Services, please contact us as follows:
 - Our customer assistance line is 03 9863 9863.
 - The contact number for the National Relay Service is 133 677.
 - The contact number for the Translating & Interpreting Service is 131 450.

- (b) If we are not able to resolve your concerns or resolve a dispute between you and us, you may have rights under the Telecommunications Industry Ombudsman (TIO) scheme.

2. BECOMING AN APTEL CUSTOMER

2.1 Making an application

If you want to become our customer, you must first complete and submit to us your Application (in the form supplied by us from time to time).

2.2 Your representations and warranties about your capacity to enter into Your Contract

You represent and warrant to us that:

- (a) if you are a company:
- (i) you have obtained all necessary consents and approvals to enter into Your Contract; and
 - (ii) the person who has signed the Application or any other document forming part of Your Contract is authorised by you to sign the document, and that we are not liable in any way if that person does not have that authority;
- (b) if you are a person who falls within **clause 2.2(a)(ii)** you agree to guarantee the performance of the company's obligations set out in Your Contract in the event that:
- (i) the company is unable or unwilling to comply with those obligations; or
 - (ii) we discover that Your Contract is not enforceable against the company because you did not have the appropriate authorisation referred to in **clause 2.2(a)(ii)**; and
- (c) if you are an individual that:
- (i) you are 18 years or more; and
 - (ii) you have full legal capacity to enter into Your Contract.

2.3 No reliance

You acknowledge and agree that:

- (a) you are obtaining the Services entirely as a result of your own enquiries;
- (b) you are not relying on any statement, representation or promise by us or on our behalf that is not expressly set out in Your Contract;
- (c) advice given by us or on our behalf is given in good faith, however we do not represent that we are experts in the purposes for which you require a Service. Accordingly, you agree to act on advice given by us or on our behalf at your own risk; and
- (d) we have not provided consultancy services to you, unless we have been specifically engaged by you to do so, and that any advice provided by us is incidental to the Service being provided by us to you and is not to be relied upon.

2.4 Accepting your Application

We will decide whether to accept your Application by considering a number of factors, including but not limited to:

- (a) your eligibility for a particular Service;
- (b) the availability of the Service to you;
- (c) whether you meet our credit requirements;
- (d) the accuracy of the information you give us; and
- (e) any past dealings which we may have had with you (including any past non-compliance by you with the terms and conditions relating to a previous supply by us to you) and any entities you have been associated with.

2.5 Credit rating and financial security

- (a) You authorise us to conduct checks and searches of your Credit Information to assess your Credit Rating from time to time.
- (b) We may ask you, as a condition of us accepting your Application, to first supply financial security (for example a deposit or guarantee), but your provision of such security does not affect your obligations to us, including your obligation to pay charges as they become due and payable. We may from time to time request you to increase the amount of such security if we form the reasonable opinion that there is a risk that you will not be able to comply with your obligations to pay any charge owing to us.
- (c) We will retain the financial security for the Minimum Term, and we may apply the whole or any part of any financial security to satisfy any amount you are required to pay to us from time to time and that is overdue, without prejudice to any of our other rights in the General Terms and the Standard Service Terms, your Application or at law. If we do so you must provide us with any further amount of financial security we request from time to time and we may use it as provided for in this **clause 2.5**.
- (d) Providing you do not owe us any outstanding amounts and have returned all our goods to us in the same condition we provided it to you (fair wear and tear excepted), we will return any remaining financial security to you within 30 days from the date that we cease providing you with any Services.
- (e) We may from time to time set a credit limit for you (**Credit Limit**) and, if you exceed the Credit Limit at any time and from time to time during the term of Your Contract, we may suspend the provision of any Service to you until such time as you reduce the Credit Limit to at least 50% below the Credit Limit. You agree that we may from time to time and without notice to you vary the Credit Limit to an amount we determine in our discretion and you agree to comply with that variation. We will notify you of that variation as soon as it is practicable for us to do so.

2.6 Term of Your Contract

- (a) If we decide to accept your Application we may issue our Letter to you confirming the existence of and content of Your Contract.
- (b) Your Contract commences on the dates referred to in **clause 4(a)**.
- (c) Your Contract comes to an end when:

- (i) the Minimum Term is reached and you notify us that you wish to cancel a particular Service; or
 - (ii) cancellation or termination by you or by us in accordance with the provisions of Your Contract or any law which governs Your Contract.
- (d) If you have agreed to a Minimum Term, and that Minimum Term is reached and you do not notify us that you wish to cancel a particular Service in accordance with **clause 1.3**, then Your Contract for that Service will continue on the same terms except that there is no Minimum Term and you are only bound to continue with Your Contract for that Service on a month-to-month basis.

2.7 Changes in your details

- (a) You must notify us in writing of any change to your details (including without limitation and where applicable, your ACN/ABN, contact details and/or the details of the person specified as the relevant contact person for you in your Application).
- (b) Any notice that we give you under Your Contract will be effectively served if:
 - (i) we send the notice by mail to:
 - (A) an address listed in your Application (including the Premises) or such other address as notified by you as your current address from time to time (whether or not you are a corporation and if you are a corporation, whether or not that address is your registered address); or
 - (B) if you are a corporation:
 - (I) to your registered address; or
 - (II) to your principal place of business,as set out in a document provided to us by ASIC or its agent; or
 - (ii) we send the notice by email to an email address listed in your Application or as subsequently notified to us.
- (c) If you fail to notify us in accordance with **clause 2.7(a)**, and we send a notice to you to the contact details as listed in your Application (or the most recent contact details notified by you to us in accordance with **clause 2.7(a)**), and we act in accordance with that notice, you acknowledge and agree that:
 - (i) such act does not constitute a breach of Your Contract by us; and
 - (ii) we have no liability to you whatsoever (whether based in contract, tort (including negligence), statute or otherwise) for any loss, cost, liability or damage suffered or incurred by you arising directly or indirectly from such act.

3. YOUR RESPONSIBILITIES

3.1 Your responsibility for the Services

- (a) You must co-operate with us to allow us to provide the Services to you. This includes (without limitation) following our reasonable requests to provide our

personnel with safe and prompt access to the Premises and your personnel, equipment, data, information and sources of power, light and ventilation.

- (b) Subject to **clause 4(e)**, you are responsible for understanding how to access, use and operate the Services. We may for an additional charge train you on how to access, use and operate the Services. That additional charge will be based on our rates for Professional Services that are current at the time we undertake that training.
- (c) You are responsible for all charges and other obligations relating to the Services (whether or not you have authorised the use of the Services) and must pay us for any use of any Services that we provide to you by the due date set out on the invoice we issue to you.
- (d) If you and one or more others are the customer for a particular Service, each of you is jointly and individually responsible for all charges and other obligations relating to that Service.
- (e) You continue to be liable for all charges relating to any use of any Services we provide to you if you allow another person to occupy the Premises or use the Services. For avoidance of doubt, one of the circumstances where you will be taken to have allowed another person to use the Services is if you do not install appropriate security measures including, without limitation, implementing password protection and other safeguards to prevent unauthorised use of the Services and, as a consequence, an unauthorised person uses the Services.
- (f) If you vacate the Premises and do not either disconnect any Services we provide to you at those Premises or transfer legal responsibility for those Services to the new occupant of those Premises with our prior agreement (which may be given, withheld or be given subject to conditions at our sole discretion), you will be liable for any use of the Services by the new occupant or other third parties. You must pay us for the use of the Services even after you have vacated the Premises if you did not arrange for the Services to be discontinued or did not give us sufficient notice to discontinue the Services before you vacated the Premises.

3.2 Your use of the Services

- (a) In using the Service, you must comply with all laws, all directions by a regulator and all reasonable directions given by us from time to time.
- (b) If we provide a default password (and/or other security safeguard such as a default PIN number) as part of a Service that you are required to enter in order to access, use and/or operate the Service, it is your responsibility to change the password (and/or other security safeguard). We are not liable in any way if a third party enters the default password (and/or other security safeguard) and is able to access, use and/or operate the Service.
- (c) If a Service involves the access by you to data (whether your data or a third party's data), you are responsible for that access including setting appropriate passwords to enable you to access the data.
- (d) You must not use, or attempt to use, any Service:
 - (i) to breach any law or regulation or allow any person to do the same;
 - (ii) to infringe another person's rights or expose us or any of our suppliers to liability or do anything which could bring us or any of our suppliers into disrepute;

- (iii) in any way which damages, interferes with or interrupts the Service, or any Supplier Network used to supply the Service;
 - (iv) in any way which makes it unsafe or which may damage any property or injure or kill any person; or
 - (v) to transmit, receive, publish or communicate material which is illegal defamatory, offensive, abusive, indecent, menacing, threatening, harassing or unsolicited.
- (e) We may at any time restrict or prevent the right of any third party providing or using services through our telecommunications network.

3.3 Access to Premises

- (a) In order to provide Services to you, we may need access to the Premises. You agree to provide us with safe and prompt access to the Premises for the purposes of:
- (i) commissioning a Service;
 - (ii) installing any equipment for a Service you have requested;
 - (iii) inspecting, testing, maintaining, modifying, repairing or replacing any equipment for a Service you have requested;
 - (iv) recovering any equipment which we own after a Service we have provided to you is cancelled; and
 - (v) performing our other obligations to you in Your Contract.
- (b) We or our contractors will give you reasonable notice by email or other method that we determine of the approximate time and date when access to your premises is required.
- (c) If you do not own all of the Premises, you must obtain each owner's permission for us to access the Premises for the purposes specified in **clause 3.3** and that consent must be irrevocable and not lapse while Your Contract is on foot. You must notify us immediately when you receive that permission. You indemnify us against (and must pay us for) any claim the owner of the Premises makes against us relating to our entering the Premises for the purposes specified in **clause 3.3** on reliance on any representation made by you that you have obtained that permission. We are not required to first make payment in relation to any such claim before you are liable to pay us in respect of such claim under the indemnity contained in this **clause 3.3(c)**.

3.4 Reselling of Services

You must not resell or otherwise re-supply any Service to any person unless you obtain our prior written consent, such consent to be given or withheld at our sole discretion. If we do give our consent, we may do so subject to conditions.

3.5 Power supply and third party infrastructure

- (a) Our supply of Services to you may rely on an electricity supply. You acknowledge and agree that arranging and paying for any electricity supply at the Premises necessary to facilitate our supply of Services to you is your sole responsibility and failure of or interruption to any Service due to an irregular or interrupted or non-existent electricity supply does not constitute a breach of Your Contract by us.

- (b) Our supply of Services to you may also rely on:
- (i) the Supplier Network;
 - (ii) equipment, infrastructure and services provided by a third party whether or not that third party has an agreement or understanding with you including (without limitation) a third party who provides Carriage Services;
 - (iii) your infrastructure; and
 - (iv) your equipment,
- (Third Party Facilities).**
- (c) Without limiting any other clause of Your Contract, you acknowledge and agree that:
- (i) the effective delivery of a Service may be reliant on the effective operation of one or more Third Party Facilities. We will not be able to provide you with the Service if there is a defect or failure in one or more Third Party Facilities;
 - (ii) the effective delivery of a Service may be reliant on one or more Third Parties providing us with equipment or a service. We will not be able to provide you with the Service if one or more Third Party delays in providing, or does not provide, us with the equipment or service required to provide a Service to you;
 - (iii) due to reasons beyond our control a fault or defect in one or more Third Party Facilities may cause a failure or interruption to a Service (including, without limitation, the failure of you to receive an electronic communication such as a voicemail message or e-mail);
 - (iv) we are not responsible in any way for any loss or damage (including Consequential Loss) you may incur or suffer as a result of any defect, failure, delay or fault referred to in this **clause 3.5(c)**; and
 - (v) the occurrence of any defect, failure, delay or fault referred to in this **clause 3.5(c)** does not constitute a breach of Your Contract by us.
- (d) If you require us to undertake any remedial work to repair a Service that has failed or been interrupted by one or more Third Party Facilities we will charge you our rates for Professional Services that are current at the time we undertake that remedial work. Those rates will be paid by you even if, when we first commence that work, you or we thought the failure or interruption was caused by us but we subsequently discover that, in our reasonable opinion, the failure or interruption was caused by such a third party.

4. OUR RESPONSIBILITIES

- (a) Following acceptance of your Application by us, we will provide the Services to you in accordance with any agreed start dates and other terms and conditions that apply to Your Contract for a particular Service.
- (b) We will provide the Services to you with reasonable care and skill, but we do not guarantee that the Services will be continuous or fault free.

- (c) We will make sure that all equipment which is owned by us and provided to you for use in connection with any Services complies with all laws and relevant technical standards issued by any Regulatory Authority.
- (d) We will deliver Services to you up to the Network Boundary Point at your Premises. You are responsible for all cabling and wiring beyond the Network Boundary Point at your Premises.
- (e) At or soon after the commencement of Your Contract we will provide you with what we consider to be reasonable training on how to access, use and operate a Service.

5. WORKS, EQUIPMENT AND PRODUCT SUPPLY (HARWARE & SOFTWARE)

5.1 Works

You acknowledge and agree that:

- (a) we (or the owner of the Supplier Network or any person authorised by the owner of the Supplier Network) may conduct works (including but not limited to installation, inspection, testing, maintenance, modification, repair, replacement and recovery) on the Supplier Network;
- (b) we do not always have control over the timing of those works and that we make no guarantee that scheduled works will be conducted outside of your normal business hours but where the timing of such works is within our direct control and we consider that the works do not need to be carried out at a particular time, we will use reasonable endeavours to ensure the works are not carried out between 9.00 am and 5.00 pm on a Business Day; and
- (c) those scheduled works may interrupt the supply of the Services and, if so, such interruption does not constitute a breach of Your Contract by us.

5.2 Equipment

- (a) We may provide or lease our equipment to you for the purposes of your use of the Services. We may at our discretion change the equipment we provide or lease to you during the term of Your Contract. If we do, we will notify you of this and make arrangements for the replacement and return of such equipment. You agree to comply with those arrangements, including any reasonable timeframe we notify you of for the return of equipment. You acknowledge and agree that such replacement and return does not give you any right to cancel a Service unless **clause 1.5(b)** applies.
- (b) Subject to **clauses 5.2(d)** and **5.2(f)**, title in our equipment is not transferred to you. You hold our equipment as bailee for us. Risk in our equipment passes to you on delivery to you. You are responsible for any damage to, or destruction or theft of, our equipment, except to the extent that it is directly and negligently caused by us. You must, at our election:
 - (i) for any damage or destruction to our equipment for which you are responsible, pay us the cost of repair or the cost of replacement equipment; and
 - (ii) for any theft of our equipment for which you are responsible, pay us the cost of replacement equipment.

- (c) You must keep our equipment free from any charge, lien, mortgage or encumbrance.
- (d) You must return our equipment if we request you to do so within 5 Business Days after receiving that request. In addition, you must return our equipment to us within 5 Business Days after the end of the Minimum Term or the end of Your Contract (whichever is the later). It is your responsibility to return such equipment to us, and at your cost unless and to the extent we otherwise direct. If our equipment is not returned to us, or is not returned to us in the same condition as we provided it to you (excepting fair wear and tear), you are deemed to have made an offer to purchase such equipment from us and we are deemed to have accepted that offer. The price for such equipment will be set out in a notice that we will issue to you (such price to be the current standard purchase price for equipment or comparable equipment as at the day it was due to be returned) and you must pay such amount to us within the time stated in that notice.
- (e) Unless otherwise agreed, you must:
 - (i) allow us to install, inspect, test, modify, repair or replace our equipment; and
 - (ii) do all things reasonably required by us to make clear the identity of the owner of our equipment.
- (f) You may provide, sell or lease equipment from us for use in connection with the Service. Title to that equipment passes to you when you pay for it in full in cleared funds, however, full functionality of the equipment does not confer to you upon title to the equipment being conferred to you. Risk in that equipment passes to you on delivery. We will use reasonable efforts to transfer to you any manufacturer's warranty in any such equipment, from the time title passes to you.
- (g) You must ensure that all equipment you use in connection with the Service that is not our equipment, and the way you use such equipment, complies with all applicable laws and relevant technical standards issued by any Regulatory Authority or us, as well as any reasonable directions issued by us in relation to such equipment. If you do not comply with this **clause 5.2(g)**, we may disconnect that equipment from the Service. We will try to give you reasonable notice before disconnection, but we may disconnect immediately in an emergency.
- (h) You must provide adequate and suitable space, power supply and dust-free environment free of excess humidity for all equipment used in connection with the Service and located on the Premises including but not limited to our equipment. If you are unsure about environmental requirements for equipment, please ask us.

5.3 Product Supply (Hardware & Software)

- (a) We may sell equipment to you for the purposes of your use of the Services, or simply as a product procurement and supply service. We shall supply specified goods;
 - (i) Where a written quotation has been provided, the agreed selling price is the price specified in the quotation,
 - (ii) In any other case, our selling price is the price specified in the price list as at the date of publishing. We may at any time change our price list to reflect, among other things, changes in exchange rates or the imposition of any duties, levies or other taxes and you are bound by those changes. We may charge a reasonable handling fee for all orders delivered to you.

- (iii) Any quotation provided by us is valid for a period of 14 days from the date of the quotation, unless stated otherwise.
- (iv) Once an order has been accepted by us it cannot be cancelled by you. The supply of goods is subject to availability. If we are unable to supply all of your order, these Terms and Conditions continue to apply to any part of the order supplied.
- (v) Payment shall be made by you to us before the delivery of goods (Cash on delivery (COD)), except where you have executed a credit application that has been accepted by us in writing. In that case, you agree to pay us the price in accordance with our invoice or credit application, without deduction, within the time period specified on the invoice or the credit application. The goods will remain our property until all funds are cleared.
- (vi) To the extent permitted by law:
 - (A) we will not recognise a claim for return of goods unless we receive the claim within 5 days of your receipt of the goods, unless we expressly allow otherwise; and
 - (B) goods procured to your instructions or specifications are non-returnable and opened goods are non-returnable.
- (vii) If we agree to a return of purchase we may charge a re-stocking fee which is calculated at 20% of the sale price of a particular item that has been accepted for return.
- (viii) Goods provided by us are subject to GST as specified in section 7.6
- (ix) Limitation of Liability concerning the supply of goods (Products) is as specified in clause 12.

5.4 PPSA

- (a) You acknowledge that, by virtue of Your Contract, we have a Security Interest in the Secured Goods for the purposes of the PPSA and to the extent applicable the PPSA applies.
- (b) You acknowledge and agree that we may do anything reasonably necessary, including but not limited to registering any Security Interest which we may have over the Secured Goods on the PPSR, in order to perfect the Security Interest and comply with the requirements of the PPSA.
- (c) You agree to do all things necessary to assist us to undertake the matters set out in **clause 5.3(b)** (including, without limitation, execute all relevant documents).
- (d) You and we agree that, pursuant to section 115 of the PPSA and to the extent permitted by the PPSA, the following provisions do not apply in relation to a Security Interest in the Secured Goods (words in this provision have the same meaning as in the PPSA):
 - (i) section 95 (notice of removal of accession), to the extent that it requires the secured party to give a notice to the grantor;
 - (ii) section 96 (when a person with an interest in the whole may retain an accession);

- (iii) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;
 - (iv) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (v) subsection 132(4) (statement of account if no disposal);
 - (vi) section 135 (notice of retention);
 - (vii) section 142 (redemption of collateral); and
 - (viii) section 143 (reinstatement of security agreement).
- (e) To the extent permitted by the PPSA, you waive the right to receive notice under section 157 of the PPSA of a verification statement in relation to any registration of a Security Interest on the PPSR.
- (f) Except if section 275(7) of the PPSA applies, you and we agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.

6. ONGOING SUPPORT

6.1 Notification of any defect or fault

- (a) If you suspect there is a defect or fault in the Services, you may contact our help desk with the details of the defect or fault. Upon receiving those details, we will provide you with a reference number of your notification which you must keep in order to keep track of our response to your notification.
- (b) Upon receipt of your notification of a suspected defect or fault in the Services, we will within:
- (i) a reasonable time of receiving that notification; or
 - (ii) such other specific time that we have agreed with you as set out in your Letter and/or Variation,
- investigate the defect or fault in order to determine whether it is a defect or fault in our equipment or telecommunications network and which was caused by us.
- (c) If we determine acting reasonably that the suspected defect or fault in the Services was caused by us, we will within:
- (i) a reasonable time of making that determination; or
 - (ii) such other specific time that we have agreed with you as set out in your Letter and/or Variation,
- rectify the defect or fault at no cost to you.
- (d) We are deemed to have been notified by you of a suspected defect or fault in a Service at the time when we provide you with acknowledgement of receipt of your notification (excluding any automated notification):

7. CHARGES AND PAYMENT OPTIONS

7.1 Standard charges

- (a) You must pay the charges for the Services according to the rates set out in Your Contract.
- (b) Our records are sufficient proof of your usage of the Services, unless you otherwise prove to us, to our reasonable satisfaction, that they are incorrect.

7.2 Additional charges

- (a) You must pay any additional charges as per this **clause 7.2** or as set out in the Application or any applicable provisions of the Standard Service Terms.
- (b) We may charge you an additional amount:
 - (i) to service, modify, repair or replace the Service or any equipment, as a result of an Event not the Fault of Us;
 - (ii) for installation, if the information you provided to us to determine the installation required was incomplete or inaccurate;
 - (iii) for installation, maintenance or other services which you request us to provide outside the hours of 9am-5pm on a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria;
 - (iv) for installation, maintenance or other services which you request us to provide on a day that is a Saturday, Sunday or public holiday in Melbourne, Victoria; and
 - (v) for the installation, maintenance, modification and repair of any further Service you acquire from us or request us to provide to you.

The amount will be calculated in accordance with our charges for Professional Services that are current at the time we undertake that work.

- (c) If your financial institution fails to honour your payment, you must pay the amount owing directly to us, together with an additional amount we may notify to you representing our time, effort and expenses incurred in rectifying such failure, and any charges, transaction costs and/or administration costs we are liable to pay to a financial institution as a result of such failure. You acknowledge and agree that the additional amount payable by you is a reasonable and genuine pre-estimate of our loss or damages we incur or suffer by reason of your financial institution failing to honour your payment.
- (d) We may pass on to you any additional increases to fees, charges, transaction costs and/or administration costs imposed on us by third parties for ancillary services (for example, credit card transaction fees), new government taxes or levies, international or roaming services and premium or content services, provided we comply with any notification requirements for changes to these General Terms in accordance with **clause 1** of these General Terms or as otherwise required by any law which governs Your Contract.

7.3 Calculating and adjustment to charges

- (a) In calculating charges, we need only look at billing information generated or received by us or any third party suppliers we may use. We may round up any charge to the nearest cent.

- (b) If we are providing you with a particular Service that has a Minimum Term of 12 months or more then the charges for the Service will automatically be adjusted each year by an amount representing the most recent CPI. The adjustment will take effect on 1 January or 1 July of each year (whichever day is the closest to the start date of the Services).

7.4 Charges and changes to plans

- (a) Unless otherwise agreed in your Application, minimum monthly charges will apply as set out in the Application. The method of calculating a minimum total charge is set out in the Application.
- (b) If you are receiving bundled Services, the goods or Services which you must purchase to be eligible for a discount and the basis of calculating the discount is as set out in the your Application.
- (c) You may upgrade your plan for a particular Service to avoid excess usage charges by providing written notice to us, but any such upgrade will not take effect until our next billing cycle unless we have received your written notice within 3 Business Days before the end of the current billing cycle. You may not change your plan for that particular Service within 60 days of requesting such an upgrade.
- (d) You may not downgrade your plan for a particular Service if you have agreed to a Minimum Term. If we continue to provide a particular Service after the expiry of a Minimum Term, you may downgrade your Service by providing written notice to us, but any such downgrade will not take effect until our next billing cycle unless we have received your written notice within three Business Days before the end of the current billing cycle. You may not change your plan for that particular Service within 60 days of requesting such a downgrade.

7.5 Payment

- (a) Unless otherwise agreed to by us, you must pay your charges by direct debit or credit card.
- (b) Subject to **clause 8.2**, you must pay each amount invoiced in the way and by the due date specified in the invoice.

7.6 GST

Unless otherwise expressly stated, the charges stated for our goods and Services are exclusive of GST. You must pay us, in addition to the charges, an amount equal to any GST payable on the supply of the goods and Service/s. That additional amount is payable at the same time as the relevant charges is payable. We will issue a tax invoice to you for the supply of the goods and Service/s at or before that time.

8. INVOICES AND BILLING

8.1 Invoicing

- (a) Unless otherwise agreed by us, we may invoice you:
 - (i) for any equipment you purchase from us before, on or after delivery;
 - (ii) for any installation charges, before or after installation;
 - (iii) for variable charges, in arrears;

- (iv) for recurring or fixed charges, in advance; and
- (v) otherwise, as notified by us from time to time.
- (b) We will notify you of our billing period from time to time. We may also issue interim invoices for accrued charges.
- (c) We may invoice you using a third party billing agent.
- (d) We will try to include on your invoice all charges for the relevant billing period. This is not always possible (for example, because of an error or problem with our billing system). We may include these unbilled charges in any later invoice(s).
- (e) We may re-issue any invoice if any error is later discovered. If you have overpaid as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from us, we will refund the overpayment promptly after your request and after deduction of any other amounts due by you to us.
- (f) If you do not pay any amount invoiced by the due date (except any amount which is validly disputed), then we may charge you a late fee that is notified by us to you and which represents:
 - (i) interest calculated daily and on a compounded basis at a rate that is 2% higher than the interest rate set out in the *Penalty Interests Rate Act 1983* (Vic); and
 - (ii) an amount representing our time and effort in seeking payment of the overdue amount (including, without limitation, any legal or recovery fees we may incur to third parties in seeking assistance to obtain payment from you of the overdue amount).

You acknowledge and agree that the late fee is a reasonable and genuine pre-estimate of our loss or damages we incur or suffer by reason of you not paying to us the amount by the due date.

- (g) You may not withhold, deduct or set-off any amount from or against any payment due by you to us in any circumstances. We may withhold or deduct from or set-off against any amount which we must otherwise pay or credit to you any amount payable by you to us.

8.2 Billing disputes

- (a) You may dispute an amount invoiced by us but only if you do so in accordance with this **clause 8.2**.
- (b) To raise a valid billing dispute, you must:
 - (i) make a good faith request to us to investigate the specific charges or invoice, providing at the same time specific evidence which demonstrates that a particular charge or invoice is incorrect; and
 - (ii) make any such request to us within 12 months of the date of the relevant invoice.
- (c) You may only make a claim or commence proceedings alleging that any charge or invoice is incorrect, or you are entitled to a refund for overpayment, if you do so within 12 months of the date of invoice or overpayment.

- (d) If you raise a valid billing dispute, then we will conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute. Our records are sufficient proof of your usage of the Services, unless you otherwise prove to us, to our reasonable satisfaction, that they are incorrect. At the end of these investigations, you will pay any outstanding amount that has been shown to be correctly included in your bill (together with any fair and reasonable interest on that amount) within 30 days.

9. SERVICE STANDARDS

9.1 Customer Service Guarantee

- (a) To the extent that we provide you with a standard telephone service (as defined in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*) and specified enhanced call handling features, components of our service (for example, fault repair times and service connection times) must comply with the *Telecommunications (Customer Service Guarantee) Standard 2011*, unless:
- (i) you have otherwise waived your rights;
 - (ii) you are not eligible to receive the Customer Service Guarantee under the *Telecommunications (Customer Service Guarantee) Standard 2011* because we supply more than five telephone services to you; or
 - (iii) you fall within one of the other exemptions set out in the *Telecommunications (Customer Service Guarantee) Standard 2011*.
- (b) The Customer Service Guarantee sets out certain minimum performance standards in relation to service connection times, fault repair times and keeping appointments to provide you with services. It does not apply to any equipment you own (or which is owned by a third party) which is used in connection with our Services.
- (c) If you have rights under the Customer Service Guarantee and we do not meet the Customer Service Guarantee standards, you may be entitled to receive monetary compensation. However, there are circumstances where we may be exempt from meeting those requirements, including where you unreasonably refuse us access to the Premises or if you miss an appointment without giving us reasonable notice.

9.2 Service disruption

Without limiting anything else in these General Terms and the Standard Service Terms, we may temporarily suspend or restrict any Service without liability during any scheduled maintenance period.

10. APPROPRIATE USE POLICY

10.1 Background

- (a) This policy is designed to protect the quality and integrity of the APTel network and in doing so ensure all customers receive fair and equitable access.
- (b) We may depend on our Appropriate Use Policy (also known as a fair use policy) in circumstances where your usage that forms part of a plan or promotional offer is deemed to be 'unreasonable' or 'excessive' as defined by us.

- (c) We retain the right to vary the terms of the fair use policy at our discretion from time to time.
- (d) References to 'the policy' in this clause 10 are references to the fair use policy.

10.2 Telephone Calls

This section of the policy relates to the APTel Hosted VoIP Telephony and related services.

(a) Business Telephony Services

When we supply you a Service that is a business service, you must use the service in accordance with the policy and as follows:

- (i) On average, 95% of timed calls made from your service last no more than an hour.
- (ii) We can collect information and investigate whether you are complying with the policy. If we find that you aren't, and you do not comply within 30 days of us telling you, we may change or suspend your Service.
- (iii) The policy is not intended to release APTel from any obligation it has under any applicable legislation.

(b) General Telephone Services

- (i) It is important to us that our customers can access our services. Because of this, you must follow the policy when you use any of our special offers giving you calls or data usage for free or at rates lower than the standard rates for such calls or data usage as set out in these terms and conditions.
- (ii) The special offers include Options, Loyalty Programs and other business special offers and discounts.
- (iii) The policy is intended to ensure that our customers do not use our Services in an excessive, unreasonable or fraudulent manner or in connection with equipment that has not been approved by us.
- (iv) Such usage may impact the reliable operation of our network and/or the quality or reliability of our services. Generally, legitimate use of our services for their intended retail purposes for which they are supplied to you will not breach the policy.
- (v) We can rely on the policy where we reasonably consider that you have used our Services in a way that is excessive or unreasonable (as set out below) or in the situations set out below under "Commercial use".

(c) Commercial use

- (i) The Services we make available are intended for 'standard small and medium sized businesses' operating within Australia.
- (ii) Customers who use our services in their capacity as carriers or carriage service providers (or as suppliers of carriers or carriage service providers) must acquire services for such purposes under wholesale terms and conditions. The following clauses are intended to ensure that this occurs.
 - (A) You must not resell or commercially exploit any of our services.

- (B) You must not re-route call traffic in order to disguise the originating party or for the purposes of resale.
- (C) You may not use our services in your capacity as a carrier or carriage service provider or as a party supplying services to a carrier or carriage service provider.
- (D) You can only use equipment that we provide you with handsets or other devices that have been approved by us for use on our networks.
- (E) We can rely on the policy if we reasonably think that you have breached any of the previous clauses.

(d) Unlimited/Included Call Plans

The policy applies to APTel's Hosted VoIP based plans and SIP Trunking plans and specifically to:

- (i) APTel Managed (hosted) Voice Services
- (ii) APTel Basic Telephone Service
- (iii) APTel Local Rate and Free Call numbers
- (iv) APTel Console Service
- (v) APTel SIP Trunk Services
- (vi) The call types included and the use permitted within call plans associated with afore listed services; and
- (vii) A fixed charge for part or all of a call.

Unlimited/Included Call Plans include Unlimited/Included Standard Calls, as defined by APTel, originated by you whilst using an approved IP Phone end point or SIP trunk service as supplied by APTel. Unlimited/Included Standard Calls include calls to included destinations originated within a 'standard small to medium sized business' environment operating from within Australia.

(e) Hosted Voice 'Standard' plan

Included destinations for the 'Standard' Unlimited/Included Call Plan include all Australian landline phone numbers excluding Norfolk Island, Christmas Island, Cocos (Keeling) Island and Lord Howe Island, inter APTel network phone dialling and 1800 services.

(f) Hosted Voice "Business" plan

Included destinations for the "Business" Unlimited/Included Call Plan includes all Australian landline phone numbers excluding Norfolk Island, Christmas Island, Cocos (Keeling) Island and Lord Howe Island, inter APTel network phone dialling and 1800 services.

(g) Approved Equipment

Approved IP Phone end point includes:

- (i) Cisco IP Phones (Models 6911, 6912, 794x, 796x, 7937G conference unit, 7925 Wi-Fi, 7926 Wi-Fi, 894x, 896x, 9971)

- (ii) Polycom IP Phones (Models VVX300, VVX400, VVX500, VVX600, VVX1500, Soundstation IP 5000, 6000 & 7000 conference unit)
- (iii) Cisco Linksys (models SPA941, SPA942, SPA525G)

Approved IP Phone models will change or be updated from time to time at the discretion of APTel.

(h) Call Types Not Included

Unlimited/Included Call Plans do not include calls to 1300 / 13 numbers, calls to operator or directory assistance numbers, or calls to International, Mobile or Satellite numbers.

(i) Excessive Use

- (i) Call Plans that include Unlimited/Included Standard Calls and are designed for use by 'standard small to medium sized businesses' operating within Australia.
- (ii) A 'standard small to medium sized business' is defined as a business that engages in normal trading activities, during standard business hours applicable to businesses located within their geographic region.
- (iii) APTel have completed an analysis of the call patterns of standard small to medium sized businesses operating within Australia and use this data as a guide to whether your use under an Unlimited/Included Call Plan is Excessive.

We may contact you by phone or email, using the contact details you have provided prior to commencing charges for excessive use.

(j) Unreasonable Use

Without restricting what is meant by 'unreasonable' APTel will supply the service for the purpose of you making and receiving calls or faxes on our network.

APTel consider unreasonable use of the service:

- (i) if you use a device that reroutes calls to/from our network or the network of another supplier;
- (ii) if you operate a telephone based marketing business or call centre, unless otherwise negotiated at the time of contract signing. (Note APTel offer customized call plans for service centres, call centres and telemarketing operations);
- (iii) your usage of the service affects other customers' access to the network;
- (iv) you set up switch devices which overcome the subscription and/or pricing charges, potentially keeping a session open for hours and limiting the ability for other customers to access the service; or
- (v) you are re-supplying or reselling any service on our network, without prior and written consent to do so from an appropriate APTel authority.

(k) Call Patterns

- (i) Certain activity and certain call patterns may indicate that your use of the service is not that of a 'standard small to medium sized business'. Use of

the service outside of what is typical of a 'standard small to medium sized business' is regarded as unreasonable use. You agree that APTel may use its sole discretion to determine whether your use of the service is unreasonable.

- (ii) In contrast to the above sub-clauses we may in our absolute discretion give our consent to this type of behaviour, subject to conditions and in writing.

(l) **Equitable Access**

We further consider your use of the service to be unreasonable if you reduce or limit the ability of other customers to access our network as you:

- (i) engage in the bridging of conference calls;
- (ii) use the APTel service to link two or more communication devices together for the purposes of providing a permanent or semi-permanent circuit;
- (iii) use the APTel service for any other purpose than the predominant function of person-to-person voice and video call communication.

(m) **What we can do**

If we reasonably believe that you are in breach of this policy, without reducing or restricting our rights under our Terms and Conditions, where we consider your use unreasonable we may:

- (i) suspend your access to that offer, or
- (ii) suspend or cancel your Services:

If we believe on reasonable grounds that you are in breach of this policy, you must pay us the standard applicable retail rate calculated from the date of the breach. If you have already paid us for such Services, you must pay us the difference between the standard applicable retail rate and the amount you have paid to us.

10.3 Internet Appropriate Use Policy

This part of the policy sets out the rules which apply to the use of our internet services, including your responsibilities, and permitted and prohibited uses of those services. Compliance with the policy ensures you may continue to enjoy and allow others to enjoy optimum use of our Internet Services.

(a) **Policy Application**

- (i) This part of the policy set out in clause 10.3 applies to all customers who acquire Internet Services from us.
- (ii) Your obligation to comply with the policy includes your obligation to ensure any person who you allow to use your Internet Service also complies with the policy.
- (iii) Your failure to comply with the policy (including by any person who you allow to use your Internet Service) may lead to the bandwidth "Throttling" of your internet service, or suspension or termination of your Internet Service.

(b) **Responsible Usage**

- (i) You are responsible for your actions on our telecommunications network ("Network") and systems you access through your Internet Service. If you act recklessly or irresponsibly in using your Internet Service or your actions endanger any person or the integrity or security of our Network, systems or equipment, your access may be restricted (throttled) , suspended or terminated, without prior notice.
- (ii) In particular, you agree that you will not use, attempt to use or allow your Internet Service to be used to:
 - (A) store, send or distribute any content or material which is restricted, prohibited or otherwise unlawful under any applicable Commonwealth, State or Territory law, or which is likely to be offensive or obscene to a reasonable person;
 - (B) store, send or distribute confidential information, copyright material or other content which is subject to third party intellectual property rights, unless you have a lawful right to do so;
 - (C) do anything, including store, send or distribute material which defames, harasses, threatens, abuses, menaces, offends, violates the privacy of, or incites violence or hatred against, any person or class of persons, or which could give rise to civil or criminal proceedings;
 - (D) do any other act or thing which is illegal, fraudulent or otherwise prohibited under any applicable Commonwealth, State or Territory law or which is in breach of any code, standard or content requirement of any other competent authority;
 - (E) do anything, including store, send or distribute material, which interferes with other users or restricts or hinders any person from accessing, using or enjoying the Internet, our Services, Network or systems;
 - (F) forge header information, email source address or other user information;
 - (G) access, monitor or use any data, systems or networks, including another person's private information, without authority or attempt to probe, scan or test the vulnerability of any data, system or network;
 - (H) compromise the security or integrity of any network or system including our Network;
 - (I) access, download, store, send or distribute any viruses or other harmful programs or material;
 - (J) send or distribute unsolicited advertising, bulk electronic messages or otherwise breach your spam obligations set out in Schedule 4 – Hosted (Cloud) Services, or overload any network or system including our Network and systems;
 - (K) use another person's name, username or password or otherwise attempt to gain access to the account of any other Customer;
 - (L) tamper with, hinder the operation of or make unauthorised modifications to any network or system; or

- (M) authorise, aid, abet, encourage or incite any other person to do or attempt to do any of the above acts.
- (c) Excessive Use

You must use your Internet Service in accordance with any download or capacity limits stated in the specific plan that you subscribe to for the use of that Service. We may limit (throttle), suspend or terminate your Internet Service if you unreasonably exceed such limits or excessively use the capacity or resources of our Network in a manner which may hinder or prevent us from providing services to other customers or which may pose a threat to the integrity of our Network or systems.

11. FORCE MAJEURE

Neither party will be liable for failing to meet its responsibilities under Your Contract because of a Force Majeure Event except for:

- (a) any obligation you owe to pay charges for Services which you have received; and
- (b) if we have procured from a third party customised services for you as part of the Service, you must reimburse to us the amount of any associated charges that we pay to that third party regardless of whether or not you have received those services.

12. LIABILITY

12.1 Terms implied by law not excluded

- (a) There may be non-excludable statutory guarantees, implied conditions and warranties under consumer protection laws that may apply to the Services that we supply to you and that cannot be excluded.
- (b) Nothing in Your Contract removes or limits any of the statutory guarantees, conditions and warranties which are implied by consumer protection legislation and which are not permitted to be excluded.
- (c) If Your Contract is considered to be a consumer contract for the purposes of the Competition and Consumer Act, you are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (d) However, to the extent that our liability can be limited under any applicable legislation, then we limit our liability to you, at our sole discretion, to:
- (i) in the case of a breach relating to the supply of Services: resupplying the Service or payment of or reimbursement for the cost of having the Services resupplied; and
- (ii) in the case of a breach relating to the supply of equipment: the replacement of the equipment, the repair of the equipment, the supply of equivalent equipment or the payment of the cost of repairing or replacing the equipment or supplying equivalent equipment.

12.2 Our liability to you

- (a) We do not accept liability for any loss, cost, liability, damage or Consequential Loss incurred by you which arises in connection with your use of the Services while conducting a business and subject to **clause 12.1(a)**, you agree that we do not have and will not have any such liability.
- (b) Our liability for any loss, cost, liability or damage suffered or incurred by you under or in connection with our provision of Services to you (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that your acts or omissions or any Third Party Facilities and used in connection with our Services by you, or the acts, omissions or equipment of a third person, caused or contributed to that loss, cost, liability or damage.
- (c) Our liability to you will be reduced to the extent that you have not taken reasonable steps to mitigate or avoid losses, costs, liabilities or damages flowing from the event giving rise to our liability to you.
- (d) We accept liability to you for any loss (excluding Consequential Loss) arising from damage to your property or equipment to the extent it is directly caused or contributed to by a negligent act or omission of ours in connection with our delivery of the Services.
- (e) We exclude all liability to you for any Consequential Loss suffered or incurred by you in connection with the supply of the Services or any equipment we provide to you (whether based in contract, tort (including negligence), statute or otherwise).
- (f) To the extent permitted by law, we exclude any liability for claims (whether based in contract, tort (including negligence), statute or otherwise) which may be made by you against suppliers through whom we may directly or indirectly provide Services to you. You indemnify us and hold us harmless from and against any loss, cost, liability or damages suffered or incurred by you in connection with any such claim made by you.
- (g) Our total liability to you for any loss, cost, liability or damages you suffer or incur, and for which we are liable under Your Contract (whether based in contract, tort (including negligence), statute or otherwise) is limited to a maximum amount of \$50 per incident or series of connected incidents giving rise to liability and to an aggregate cap of the amount of charges paid by you to us in the 12 month period prior to the incident giving rise to our liability under Your Contract.

12.3 Your liability to us

- (a) You must pay us for any loss, damage, cost or liability including reasonable legal costs (but excluding any Consequential Loss) we suffer or incur arising out of or in connection with your breach of Your Contract or your negligent acts or omissions and which relate to:
 - (i) the use (or attempted use) of the Service; or
 - (ii) equipment used in connection with the Service.

You assume liability for, and indemnify and hold us harmless from and against, any claim by a third party arising from your use of the Services (including, without limitation, claims for breaches of intellectual property rights and as a consequence of your use of the Service being contrary to the law).

13. CANCELLATION OR SUSPENSION

13.1 Your right to cancel a Service

- (a) You may cancel your Service without liability at any time if we commit a material breach of Your Contract for that Service and:
- (i) you have notified us in writing of that breach and we have failed to remedy it within 30 days after you give us notice requiring us to do so; or
 - (ii) you have notified us in writing of that breach and the breach is something which in our view cannot be remedied.

We will not charge you an early termination fee if you cancel your Service because we have committed a material breach of Your Contract for that Service. However, if a Service is cancelled under this **clause 13.1(a)** then:

- (iii) you will be responsible for the payment of the charges for the Service that are outstanding up to and including the date of cancellation;
 - (iv) if we have charged in advance for the Service, your account will be credited with any charges for Services that would have been provided on and from the day immediately following the date of cancellation;
 - (v) if we have procured from a third party customised services for you as part of the Service, you must reimburse to us the amount of any associated charges that we pay to that third party, even if they are ongoing, for such time as we are required to pay those associated charges to that third party; and
 - (vi) if you have purchased any equipment from us that you have not paid for in full, you will be responsible for the payment of the purchase price for the equipment.
- (b) You may cancel a particular Service by providing us with 30 days' written notice and, if you do cancel:
- (i) you will be responsible for the payment of the charges for the Service that are outstanding up to and including the date of cancellation;
 - (ii) if we have charged in advance for the Service, your account will be credited with any charges for Services that would have been provided on and from the day immediately following the date of cancellation;
 - (iii) if we have procured from a third party customised services for you as part of the Service, you must reimburse to us the amount of any associated charges that we pay to that third party, even if they are ongoing, for such time as we are required to pay those associated charges to that third party;
 - (iv) if you have purchased any equipment from us that you have not paid for in full, you will be responsible for the payment of the purchase price for the equipment;
 - (v) you will be responsible for the payment of any cancellation fees payable by you to us under Your Contract. We may offset those cancellation fees from any amount we may credit to your account under **clause 13.1(b)(ii)**, and you will be responsible for any shortfall if the amount credited to your account is more than the amount of any cancellation fees payable by you; and

- (vi) we may also notify you of an additional amount payable by you to us that represents our time and effort in cancelling the Service. You acknowledge and agree that the additional amount is a reasonable and genuine pre-estimate of our loss or damages we incur or suffer by reason of you cancelling the Service.
- (c) If you validly suspend or cancel your Service under **clause 13.1**, we may charge you a reconnection fee as set out in any further application for Service (providing we decide to resume a contractual relationship with you for that Service).

13.2 Our right to cancel or suspend

- (a) We may, without liability, cancel a Service and any related Service:
 - (i) if no Minimum Term applies to the Service, at any time if we give you at least 30 days' notice;
 - (ii) if a Minimum Term applies to the Service, at any time after the expiry of the Minimum Term if we give at least 30 days' notice to you;
 - (iii) at any time before we start providing services to you, if we reasonably determine that it is not technically or operationally feasible or commercially viable to supply the Service to you, by giving notice to you; or
 - (iv) if we can longer provide you with the Service.
- (b) We may, without liability, immediately suspend or cancel a Service and any related Service at any time by giving notice to you if:
 - (i) you breach any of your obligations relating to the use of the Service or otherwise misuse the Service (including but not limited to any use of the Services for illegal or unlawful purposes);
 - (ii) we reasonably suspect fraud by you or any other person in connection with the Service or that any Service is being used in connection with any illegal activity or contrary to law;
 - (iii) we believe it is necessary to do so to:
 - (A) comply with any law or an order or request of any relevant Regulatory Authority or person responsible for the enforcement of law;
 - (B) protect any person, equipment or to attend to any emergency; or
 - (C) protect or minimise the potential for loss of or damage to data or goods regardless of who they belong to;
 - (iv) except in respect of any amount that has been validly disputed under **clause 8.2**, any amount owing to us is not paid by its due date (as specified in the relevant invoice or notified by us) or within 30 days of the date the invoice was issued (whichever is the later);
 - (v) we cannot enter the Premises because of your or a third party's act or omission when we need to do something in connection with the Service in order to supply the Service or make the Service or related equipment safe;
 - (vi) you vacate the Premises;

- (vii) you breach the terms of any of our Acceptable Use Policies or if we reasonably consider that your use of a Service is excessive or unusual under those Acceptable Use Policies (though if we do suspend or restrict a Service, you continue to be liable to pay for any charges incurred by you for any excessive or unusual usage);
 - (viii) you breach a material term of Your Contract for a Service and:
 - (A) we have notified you in writing of that breach and you have failed to remedy it within 30 days after we give you notice requiring you to do so; or
 - (B) we have notified you in writing of that breach and the breach is something which, in our reasonable opinion, cannot be remedied;
 - (ix) a supplier through whom we directly or indirectly supply Services to you terminates their agreement with us, or ceases to supply services to us, and we are not able to provide the Service using an alternate supplier on terms reasonably acceptable to us;
 - (x) you suffer an Insolvency Event or appear reasonably likely to do so;
 - (xi) we reasonably consider that you no longer meet our Credit Rating requirements or we otherwise reasonably consider that you are likely to be unable to pay the charges for the Service;
 - (xii) you die or, if you are a partnership, the partnership is dissolved or an application is made to dissolve the partnership;
 - (xiii) if we are otherwise entitled to do so under another term of Your Contract or at law; or
 - (xiv) we are required to do so by law.
- (c) We may also suspend or cancel a Service if any Force Majeure Event prevents the supply of the Service for more than 14 days.
- (d) If we validly suspend or cancel your Service under **clause 13.2**, we may charge you a reconnection fee as set out in any further application for Service (providing we decide to resume a contractual relationship with you for that Service).

13.3 Consequences of suspension or cancellation

- (a) Subject to **clause 13.1**, if the Service is suspended or cancelled in accordance with these General Terms before the date we start providing services to you, then:
 - (i) you must pay to us all installation costs incurred by us in connection with preparation for the provision of the Service; and
 - (ii) if we have procured from a third party customised services for you as part of the Service, you must reimburse to us the amount of any associated charges that we pay to that third party, even if they are ongoing, for such time as we are required to pay those associated charges to that third party
- (b) You acknowledge and agree that if the Service is cancelled for any reason:
 - (i) we will suffer loss in connection with the cost of network components we ordered or installed in order to provide the Service to you and which will not be used to supply any service to any other client of ours after the cancellation;

- (ii) we may charge you all fees incurred by you (including without limitation any early termination fees and fees for any equipment or any Services we have provided to you, the whole cost of which have not yet been paid by you at the time we cease to provide the relevant Services to you);
 - (iii) early termination fees that we may charge you represent a genuine pre-estimate of the loss and damage we will suffer and incur;
 - (iv) you must, subject to **clause 13.1**, at your cost immediately return to us or permit us to remove any equipment owned by us, equipment you have purchased but not fully paid for, or other material of ours on the Premises or in your possession or control; and
 - (v) unless otherwise expressly agreed, each person's accrued rights and obligations are not affected.
- (c) You must continue to pay all charges relating to the Service if:
- (i) we continue to supply the Service or the Service remains activated; or
 - (ii) you continue to use the Service; or
 - (iii) both **clauses 13.3(c)(i)** and **13.3(c)(ii)** apply.
- (d) We may invoice you for all charges for the Service that have not been previously invoiced and you must pay to us all amounts specified in that invoice, and all other unpaid amounts relating to that Service, within 10 Business Days of the date of that invoice.

13.4 Refund of unused usage charges

- (a) If the Service is suspended in accordance with these General Terms, then you will not be liable to pay usage based charges for the Service while it is suspended or cancelled but otherwise you must pay all charges arising before, during and after suspension.
- (b) Subject to **clauses 13.1** and **13.4(c)**, you have a right to a pro-rata refund for any charges incurred and paid by you and where you have not had access to the relevant Service due to a suspension unless:
 - (i) you requested the suspension;
 - (ii) you have materially breached Your Contract;
 - (iii) the suspension was due to a system or network outage for an insignificant period and was not caused or contributed to by you; or
 - (iv) we reasonably believe that you are or are likely to be unable to pay the charges for a particular service.
- (c) We may deduct from any pro-rata refund referred to in **clause 13.4(b)** an amount equal to any outstanding amounts that you owe to us (for example, usage charges you incurred before we ceased supply of a Service to you or early termination fees, if applicable).

13.5 Existing Data upon Cancellation or Suspension

If your Service is cancelled or suspended in accordance with this **clause 13**, we cannot guarantee you that we will be able to:

- (a) return any of your data that is stored by us on our network;
- (b) differentiate and separate your data from the other data stored on our network; and
- (c) remove your data from our network.

13.6 Suspension includes restriction and modification

Whenever we are entitled to suspend a Service, we may instead of, prior to or after suspension, restrict or modify that Service (for example, instead of disconnecting a phone line, allowing only incoming but no outgoing calls) and references to 'suspend' and 'suspension' in this document must be read accordingly.

13.7 Reinstatement following suspension

If we have suspended a Service, prior to us reactivating that Service, you must pay us:

- (a) \$10 plus GST in respect of each affected end point where the Service was suspended but not disconnected; and
- (b) \$25 plus GST in respect of each affected end point where the Service was disconnected.

We do not guarantee that where a Service has been disconnected, the same Public Addressing Identifier will be allocated or available to be allocated to a reinstated Service and you agree that we have no liability if you are allocated a different Public Addressing Identifier for the reinstated Service compared to the Public Addressing Identifier previously allocated to you for that or a substantially similar Service.

14. INTERCEPTION

You acknowledge that we (or another carriage service provider who may indirectly provide you with the Services) may be required by law to intercept your communications, pass on details of your use of the Services, including any retained content in our possession or effective control and we may monitor your usage of the Services, including where we are requested or directed to do so by a Regulatory Authority, a law enforcement authority or other authority.

15. CONFIDENTIAL INFORMATION

- (a) We and you each agree to keep confidential the other's Confidential Information.
- (b) Subject to **clause 15(c)**, we and you will not use or disclose the other's Confidential Information for any purpose, other than to the extent necessary to perform obligations or exercise rights under Your Contract.
- (c) We may:
 - (i) refer to you as a customer of ours in our press releases, or in our marketing sales or financial material or reports;
 - (ii) disclose your Confidential Information to our Related Corporations; and
 - (iii) transmit information about your location in emergency situations.

- (d) The obligations of confidentiality in this **clause 15** do not apply to the extent disclosure is required by law or the listing rules of a stock exchange, a direction by Regulatory Authority, or disclosure to professional advisors.

16. PERSONAL INFORMATION

- (a) Our collection, use, disclosure and storage of any of your Personal Information is governed by our Privacy Policy and all applicable privacy and other laws.
- (b) We are required by law to provide your name, address, service numbers and other public number details to a database known as the Integrated Public Number database (**IPND**). This obligation applies to all our customers, including those customers who request an unlisted number. However, unlisted service information is marked and controlled in the IPND so that it is only used for an approved purpose to those approved data users such as directory information organisations or for the assistance of emergency service organisations or law enforcement agencies. You must contact us if you wish to have any of the information we supply to the IPND altered in any way.

17. YOUR ENTITLEMENT TO PUBLIC ADDRESSING IDENTIFIERS AND NUMBER PORTING

- (a) The *Telecommunications Number Plan 1997* (Cth) sets out rules for issuing, transferring and changing telephone numbers. You and we must comply with the Telecommunications Number Plan.
- (b) You are entitled to continue to use any telephone number we issue to you, except in circumstances where the Telecommunications Number Plan allows us to recover the number from you.
- (c) The Services may use identifiers such as a telephone number, an IP address or domain name (**Public Addressing Identifiers**). You must comply with the requirements of any Regulatory Authority or other body which administers Public Addressing Identifiers.
- (d) You acknowledge and agree that:
- (i) you do not own or have any legal interest or goodwill in any Public Addressing Identifier issued to you;
 - (ii) we do not control the allocation of Public Addressing Identifiers;
 - (iii) we are not liable to you if we are required to change, withdraw, suspend or re-assign any Public Addressing Identifier as a result of any direction given by a Regulatory Authority, one of our suppliers or other body which administers Public Addressing Identifiers; and
 - (iv) on cancellation of the Service, your right to use a Public Addressing Identifier may cease.
- (e) We are responsible for selecting and assigning a phone number for a Service unless you port your phone number from your previous supplier service.
- (f) If you are a customer who is connected to a network other than ours and you wish to acquire a Service you may be able to port your existing phone number, subject always to availability and technical and commercial considerations. You must

specify this request in your Application. Your previous supplier service may charge you for porting and there may be other costs and charges such as early termination fees payable to your previous supplier service. You indemnify us against all such costs, fees and charges. During the process of porting your phone number from another supplier network there may be a brief period when the Service is interrupted.

- (g) The porting of your phone number will be conducted in accordance with all regulatory requirements and applicable industry codes. In order to port your phone number from a previous supplier service you must complete and sign a porting authority form which we can provide to you on request. You warrant to us that all information supplied by you in the port authority form is complete and correct. You indemnify us for any loss or damage we may suffer or incur by reason of the porting of your phone number (including, without limitation, if we are unable to successfully port your phone number from a previous supplier service). We do not guarantee that we will be able to port your phone number from a previous supplier service, and we will not be in breach of Your Contract if we are unable to port your phone number.
- (h) You must tell us in your Application if you want us to port a phone number we allocate to you to a new supplier service once we cease to provide a Service to you. However, any porting of your phone number by us to a new supplier service will be subject always to availability and technical and commercial considerations. We may charge you additional costs and charges associated with our porting of the phone number we allocated to you to a new supplier service. In limited circumstances, we may not be able to port your phone number as requested. In these circumstances, we will provide you with another Service.
- (i) You acknowledge and agree that, if we allocate more than one phone number to you and you tell us in your Application that you want us to port the phone numbers to a new supplier service once we cease to provide a Service to you, we may allocate to you a batch of 100 phone numbers and you will be required to pay the appropriate charge for those phone numbers.

18. OTHER

- (a) We may subcontract any of our obligations under Your Contract to any person.
- (b) To the extent they are assignable or able to be novated, we may at any time assign and/or novate some or all of our rights or obligations under Your Contract to any person. We may also transfer some or all of its obligations under Your Contract to any Related Corporation that is able to perform those obligations and, if that Related Corporation undertakes to perform those obligations, we will be released from any further performance with effect from the date of transfer. We will notify you of any such assignment within a reasonable time of the effective date of such assignment.
- (c) You may not assign and/or novate your rights or obligations under Your Contract without our prior written consent, such consent to be given at our absolute discretion.
- (d) If we have a right under Your Contract and we do not exercise that right, we do not waive that right.
- (e) The parts of Your Contract which are by their nature intended to survive cancellation of the Service or the termination or expiry of Your Contract will do so.

- (f) If any term, or part of a term, of Your Contract is void or unenforceable, that term, or part, is taken to be removed from Your Contract and not to form part of it. The remaining terms continue to have full effect.
- (g) Your Contract contains the entire agreement between the parties and supersedes all prior agreements and understandings between the parties in relation to the subject matter of Your Contract.
- (h) You agree that you must:
 - (i) neither seek to entice any of our employees away from our employment nor cause nor encourage nor permit any other person or entity to do so;
 - (ii) immediately notify us if you become aware of any person or entity attempting to entice any of our employees away from our employment and provide us with reasonably specific details of the employee concerned;
 - (iii) pay us an amount equal to one quarter of the relevant employee's then current salary plus GST if you breach clause 18(h)(i) and you agree that:
 - (A) the method of calculation of that amount is reasonable;
 - (B) the calculation will produce a reasonable pre-estimate of the loss we will suffer in replacing that employee;
 - (C) the calculated amount will be a sum for which you are solely liable and responsible and which we may recover from you as a liquidated debt; and
 - (iv) this clause 18(h) is a material term of Your Contract.
- (i) Your Contract is governed by the laws of the Commonwealth of Australia and the laws of Victoria, Australia. You and we agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.
- (j) Notwithstanding **clause 18(i)**, this Contract will be governed by the laws of the Commonwealth of Australia and the laws of the Northern Territory, Australia in the event that any Service or action outlined in this Contract is not legally permissible in the State of Victoria. In these circumstances, you and we agree to submit to the non-exclusive jurisdiction of the courts of the Northern Territory, Australia.
- (k) Any notices we send to you under Your Contract will be deemed effective if served in accordance with the methods set out in Your Contract (whether the notice relates to a change in the terms and conditions of Your Contract or another matter under Your Contract).

19. DEFINED TERMS

Acceptable Use Policies means any policies governing your use of our Services that we may notify you of from time to time and copies of which are available to you on our website at <http://www.aptel.com.au/termsandconditions>, and as stated in section 10 in this Standard Form of Agreement.

Application means the request by you to us for us to provide you with a Service and may comprise multiple documents in various media.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia.

Carriage Service has the meaning given in the Telecommunications Act.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time and includes regulations and statutory instruments made under that act from time to time.

Confidential Information of a person means all information of that person (Owner) of a confidential nature, which another person (Recipient) first becomes aware, whether before or after the date of the original Application, either through disclosure by the Owner to the Recipient or otherwise through the Recipient's involvement with the Owner. Confidential Information does not include information:

- (a) the Recipient creates (whether alone or jointly with any person) independently of the Owner's Confidential Information;
- (b) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom it has disclosed the information); or
- (c) obtained without restriction as to further disclosure from a source other than the Owner through no breach of confidentiality by that source.

Consequential Loss means:

- (a) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages; and
- (b) any penalties imposed by a Regulatory Authority.

Consumer Contract has the meaning given to that term in the *Telecommunications Consumer Protection Code C628: 2007* as amended or replaced from time to time.

CPI means the consumer price index published from time to time by the Australian Bureau of Statistics for all groups (national).

Credit Information means:

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

Credit Rating means information about your credit worthiness, credit standing, credit history or credit capacity that credit providers are entitled to give to each other under the *Privacy Act 1988* (Cth).

Customer Service Guarantee means any performance standards issued under Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

Event not the Fault of Us means:

- (a) a breach of Your Contract by you;
- (b) a Force Majeure Event;
- (c) a negligent or fraudulent act or omission of you or any third party;
- (d) a failure of any of your equipment not caused by us;
- (e) a failure, irregularity or interruption referred to in **clause 3.5**.

Force Majeure Event means any event outside a person's reasonable control, and includes failure or fluctuation in any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or regulation (including the Telecommunications Legislation), an act or omission of any third party or any failure of any equipment owned or operated by any third party, or a failure, irregularity or interruption referred to in clause 3.5.

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

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

Insolvency Event means:

- (a) whenever a bankruptcy notice is issued in relation to you, bankruptcy proceedings are commenced against you, or you are declared bankrupt;
- (b) whenever any step is taken to enter into any scheme of arrangement between you and your creditors;
- (c) whenever any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of your assets or business;
- (d) whenever any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to you or to the whole or any part of your assets or business;
- (e) whenever you suspend payment of your debts generally; or
- (f) whenever you are or become unable to pay your debts when they are due or you are or are presumed to be insolvent for the purposes of any provision of the *Corporations Act 2001* (Cth).

Letter means our letter we may send to you in response to your Application that confirms the existence of and content of Your Contract.

Minimum Term means the minimum term for a particular Service, as stated and agreed to by you in your Application. For the avoidance of doubt, if no period is specified in the Application as a minimum term, no minimum term applies.

Network Boundary Point means the last point in your telecommunications network from which a particular Service is made available to you.

Our Equipment includes equipment and cabling used in connection with the Service, and which we or our personnel own or lease.

Personal Information means information or opinion about you from which your identity is apparent or can reasonably be ascertained.

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

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Premises means locations at which we supply the Service, and locations to which we need to have access to supply the Service.

Privacy Policy means the form of our privacy policy from time to time which can be viewed at <http://www.aptel.com.au/privacypolicy>

Professional Services means the professional services provided to us pursuant to the relevant Standard Service Terms.

Regulatory Authority means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, Communications Alliance, the Telecommunications Industry Ombudsman or any other government or statutory body or authority.

Related Corporation means a body corporate that is related to that entity in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth).

Secured Goods means all the equipment sold by us to you under Your Contract and, for avoidance of doubt, includes any proceeds in, or arising from, such goods.

Security Interest means an interest in personal property provided for by a transaction that, in substance, secures payment of money or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property), and also includes a transaction which the PPSA treats as a security interest whether or not the transaction concerned, in substance, secures payment or performance of an obligation.

Service means the service(s) which you have subscribed to (as set out in your Application and as further described in the Standard Service Terms) and includes any goods or equipment provided in connection with that service.

Supplier Network means any telecommunications network, equipment, or facilities, or cabling controlled by us or a third party supplier who we use to directly or indirectly supply the Services.

Telecommunications Act means the *Telecommunications Act 1997* (Cth), as amended or replaced and includes regulations and statutory instruments made under those acts from time to time.

Telecommunications Legislation means the Telecommunications Act, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth), the *Telecommunications (Standard Form of Agreement Information) Determination 2003* and all telecommunications related provisions of the Competition and Consumer Act, each as amended or replaced from time to time and includes regulations and statutory instruments made under those acts.

Third Party Facilities has the meaning given to that term in **clause 3.5(b)**.

Throttling (Bandwidth Throttling) is the intentional slowing of internet service by an internet service provider. It is a reactive measure employed in communication networks in an attempt to regulate network traffic and minimize bandwidth congestion. Bandwidth throttling can occur at different locations on the network. Throttling can be used to actively limit a user's upload and download rates on programs such as video streaming, Bit Torrent protocols and other file sharing applications, as well as even out the usage of the total bandwidth supplied across all users on the network.

Variation means any agreed arrangement between us which varies any of the General Terms, the Standard Service Terms and your Application.

Your Contract has the meaning given to that term in **clause 1.1(d)**.