

SWIFT NETWORKS PTY LTD
GENERAL TERMS AND CONDITIONS

2.1 - Updated 17 August 2011

These terms and conditions apply to all contracts for Goods, Equipment, Content and Services relevant to the provision of entertainment and communication services by Swift Networks Pty Ltd (Company) ABN 96 125 828 453 to a Customer.

1. GENERAL PROVISIONS

1.1 Definitions and Interpretation

In this document:

ACMA means the Australian Communications and Media Authority.

Adjustment Note has the meaning given in the GST Act and includes any document or records treated by the Commissioner of Taxation as an adjustment note.

APRA means Australasian Performing Right Association.

Business Day means any day other than a Saturday, Sunday or a gazetted public holiday in Western Australia.

Commencement Date means the date upon which the Customer takes possession of Equipment, or the date on which the Company provides Services to the Customer and, if more than one date is applicable, whichever is the earlier date.

Content means the services and information provided in addition to Equipment under this Contract, including but not limited to internet, telephony and entertainment.

Contract means the contract between the Company and the Customer, consisting of:

- (a) Schedules;
- (b) Service Level Agreements (SLAs);
- (d) these Terms and Conditions; and
- (e) any other written document signed and agreed by the parties as forming part of the Contract.

End Date means the date after the completion of the contract term on which all Equipment is finally returned into the care and custody of the Company, including demobilisation by the Company of equipment provided as part of a managed service, as set out in the Schedules, or such other date as agreed between the parties. Return of Equipment for the purpose of replacement, repair or Customer convenience will not be deemed as the End Date.

Equipment means any equipment that is rented or otherwise provided as part of Managed Services, and more particularly described in, Schedules issued under the Contract, or any equipment which has been substituted in place of the equipment specified in the Schedules.

Good Functional Order means in the same condition and with the same functionality as when provided, with reasonable wear and tear.

Goods means any equipment that is being purchased by the Customer from the Company.

GST has the same meaning as in the GST Act and includes any replacement or subsequent similar tax.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.

Intellectual Property means any invention, patent or application for a patent, design (registered or unregistered), trademark (registered or unregistered), name, copyright, circuit layout, trade secret, know-how, proprietary information or other right in respect of any information, process, work, material or method.

Interest Rate means the Commonwealth Bank of Australia overdraft rate from time to time plus 6% per annum.

Law includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future and whether State, Federal, local or otherwise.

Managed Services means the provision of Equipment, Content and Services to the Customer, as set out in the Schedules and as varied in writing from time to time.

Managed Services Rate means the daily rate at which the Company agrees to provide the Equipment, Content and Services to the Customer, as set out in the Schedules and as varied in writing from time to time.

Services means all services provided by the Company to the Customer, including but not limited to, maintenance, support, management, technical services, design, commissioning, installation and administrative services.

Supply has the same meaning as in the GST Act.

Tax Invoice has the meaning given in the GST Act and includes any document or record treated by the Commissioner of Taxation as a tax invoice.

Taxable Supply has the same meaning as in the GST Act.

Term means the term of the Managed Services, the rental of the Equipment, provision of Services and Content as specified in the Schedules.

Interpretation

In this document and the Contract, unless the context otherwise requires:

headings or subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of this document or the Contract;

a reference to any agreement, Contract or document is to that agreement, Contract or document as amended, novated, supplemented or replaced from time to time;

words expressed in the singular include the plural and vice versa;

words expressed in one gender include the other gender;

a 'person' includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate;

references to parts, clauses, parties, schedules and annexures are references to parts and clauses of and parties, schedules and annexures to this document or the Contract;

a reference to a party to this document or the Contract includes that party's successors and permitted assigns and, in the case of a natural person, also includes that person's personal representatives and administrators;

a reference to any thing or any amount is a reference to the whole and each part of it. A reference to a group of persons is a reference to all of them collectively, to 2 or more them collectively and to each of them individually;

references to time are to time in Perth, Western Australia;

where a day, which is not a Business Day, is specified by or on which a thing must be done, that thing that must be done by or on the next succeeding Business Day;

a covenant or document made by, or for the benefit of, two or more persons binds, and is enforceable against, or may be exercised by (as the case may be), those persons jointly and each of them severally;

a reference to any Law contained in this document shall be deemed to include any amendment, re-enactment or consolidation of the Law.

1.2 Application of these Conditions

Contract Information, Specifications and Documentation

It is the Customer's responsibility to obtain, at the customer's cost, all approvals, licenses or permits necessary for the performance of the Contract.

All descriptive specifications, performance figures, drawings, data, dimensions and weights furnished by the Company or contained in catalogues, price lists or advertisements are by way of general description only of the Equipment and shall not form part of the Contract.

It is the Customer's responsibility to provide all information necessary to enable performance of the Contract and the Customer shall be responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.

1.3 Precedence of Contract documents

For the avoidance of doubt, the Contract is to be read subject to the following, in decreasing order of priority:

- Schedules
- This document
- Service Level Agreements (SLAs)

- Any other written document signed and agreed between the parties as forming part of the Contract.

1.4 Installation and Commissioning

Any installation specified in the Schedule will only be done during normal business hours, and only if there is reasonable access and space. The Customer must obtain any permit, licence or approval necessary for the installation. The Company is not liable for any indirect or direct loss or damage caused by the installation.

Where installation or commissioning by the Company is required, the date of such work will be fixed after consultation with the Customer. However, if for any reason whatsoever, other than the neglect or default of the Company, it is not possible to proceed with the required work on the agreed date, then any additional costs incurred by the Company as a result of this delay may be charged to the Customer.

The Customer agrees to pay all costs associated with the installation, including but not limited to accommodation, transport and meals.

Where the installation involves the provision of ancillary services such as electricity, these shall be provided by and at the cost of the Customer in accordance with the Company's requirements.

Unless otherwise specified, prices on the Schedule for installation and/or commissioning are on the basis that the work may proceed continuously during normal working hours and that ready access to the site is provided by the Customer. Any work conducted by the Company outside of normal working hours will be charged at a separate rate, which shall be provided by the Company in writing. Where the work is unable to proceed continuously, then the daily rate will apply for all days or part thereof worked.

1.5 Staged rollout

If the installation is subject to a staged rollout, or is otherwise protracted, then the Managed Services Rate for the total number of rooms covered by the Contract will apply from the earlier of the date at which the last room is commissioned or 12 months after the first room is commissioned.

1.6 Dispute Resolution

Referral of certain disputes to an Expert

If any dispute or difference arises between the parties in respect of any matter referred to in the Contract, then either party may by notice in writing to the other specify the nature of the dispute or difference and call for its submission to an independent expert for determination.

Nomination of Expert

The Expert to be appointed shall be as agreed between the parties. If the parties do not reach agreement on the Expert within 7 Business Days after receipt of the notice referred to in this Clause, the Expert will be appointed by the President for the time being of the Law Society of Western Australia Inc. on the application of either party.

Expert to have appropriate experience

The Expert shall be required to have a reasonable commercial, technical and practical experience in the area of dispute. The Expert shall be required to undertake to keep matters coming to his or her knowledge by reason of his or her appointment and carrying out his or her determination confidential.

Powers of Expert

The Expert shall have the powers to:

- inform himself or herself independently as to facts and if necessary technical matters to which the dispute relates;
- receive written submissions, sworn and unsworn written statements, photocopy documents and to act upon the same; and
- take such measures as he or she thinks fit to expedite the completion of the dispute resolution including finding adversely to any party who fails to comply with a timetable reasonably set by the Expert.

Expert not an arbitrator

The Expert shall act as an expert and not as an arbitrator. The determination of the Expert shall be final and binding on the parties.

Procedures

Unless the parties otherwise agree, the Expert will accept submissions from the parties as to the subject matter of the dispute within 14 days of his or her appointment and will state his or her determination in writing within 14 days thereafter.

Costs of Expert

All costs of the Expert appointed pursuant to this clause shall be paid by the parties in equal shares.

1.7 Force Majeure

The Company shall not be liable for loss or damage arising from any delay in or failure to perform any of its obligations under the Contract and such delays or failures of performance shall likewise not be considered defaults hereunder if the delay or failure is due to causes beyond the Company's control.

Causes beyond the Company's control include, but are not limited to:

- any act, default or omission of any courier or other party engaged to transport the Equipment to the Customer;
- inadequate or incorrect markings or address on the Equipment;
- compliance with any laws, regulations, orders, Acts;
- priority requests of any Government or any department or agency thereof;
- acts of a civil or military authority;
- acts of God;
- perils of the air;
- weather conditions;
- mechanical delays;
- disruptions in air or ground transportation networks;
- quarantine;
- acts of the public enemy;

- war or insurrection;
- strikes or other labour disruptions;
- terrorism;
- riots or civil commotion
- defaults of the Company's suppliers or sub-contractors;
- acts of public authorities (including customs or health officials) with actual or apparent authority or shipments requiring extraordinary handling, documentation or routing.
- delays in transportation; and
- loss or damage to Goods in transit

If The Company is unable to perform or complete performance of the Contract wholly or in part due to causes beyond its control, the Company may unilaterally terminate the Contract or suspend it for up to 3 months by giving the Customer written notice.

Where the Company elects to terminate the Contract under clause 1.7, clause 1.14 shall apply save that the Customer will not be liable for charges described under clause 1.14 as 'all instalments and amounts to become due and which would otherwise have been payable at a later date pursuant to the Contract'.

The Company will not be liable for any loss, damage or liability including incidental, special, indirect or consequential damages as a result of any event or cause referred to in this clause.

1.8 Default

The Customer shall be in default of the Contract if:

- the Customer fails to make any payment due under the Contract;
- the Customer fails to comply with any other term of the Contract;
- the Customer is placed under any form of external administration (whether insolvency or otherwise) or does or suffers any act or event from which any form of external administration (whether insolvent or not) does or might follow;
- the Customer makes an assignment for the benefit of creditors, whether voluntary or involuntary;
- execution or distress against the Customer or the Customer's goods shall be levied;
- the Customer does cause to be done or permits or suffers any act or thing which in the reasonable opinion of the Company is likely to endanger the safety or condition of the Equipment;

1.9 Cancellation/Variation of Schedules and SLAs

A Schedule or SLA may only be cancelled or varied with the Company's written consent. Without limiting the Company's rights of consent, if the Customer wishes to cancel a Schedule or SLA, the Company is entitled to charge any reasonable costs incurred under the original Schedule or SLA to the Customer.

1.10 Premature Cancellation of Managed Services or Rental Arrangements

If the Customer returns the Equipment to the Company or terminates the Managed Services prior to the End Date specified in the Schedule without reaching agreement with the Company on an earlier End Date, the Customer will be immediately liable

to pay the Managed Services Rate and the Rental rate as applicable for the entire Term, or as otherwise agreed between the parties:

1.11 Enforcement and Termination on Default

Upon the occurrence of a default under the Contract, the Company may at its option (without prejudice to any other right or remedy of the Company herein contained or implied at general law) do one or more of the following:

- take action to enforce the performance of the Contract by the Customer and/or recover damages for breach thereof; or
- terminate the Contract.

1.12 Support on Expiry of Contract

The Company will negotiate with the Customer the terms under which support may be provided and this will be detailed in the SLA which forms part of the Contract.

1.13 Company's right to terminate Contract

The Company may by written notice to the Customer end the Contract immediately in any of the following circumstances:

- the Customer fails to perform any of its obligations under the Contract;
- the Customer dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business;
- anything happens that reasonably indicates that there is a significant risk that the Customer is or will become unable to pay debts as they fall due. This includes:
 - execution or distress being levied against any income or assets of the Customer;
 - a meeting of the Customer's creditors being called or held;
 - a step being taken to make the Customer bankrupt; and
 - the Customer entering into any type of arrangement with, or assignment for the benefit of, all or any class of its creditors, or being subject to a deed of company arrangement; or
 - a step is taken to have a receiver, receiver and manager, provisional liquidator, liquidator or administrator appointed to that person or any of its assets.

1.14 Company's rights if it terminates Contract

This clause applies where the Company terminates the Contract.

The Customer's rights under the Contract will terminate without prejudice to the rights and remedies of the Company and the Customer must immediately pay to the Company without the need for any demand;

- the sum of all amounts due and unpaid under the Contract; plus
- all instalments and amounts to become due and which would otherwise have been payable at a later date pursuant to the Contract.

The Company is entitled to enter the Customer's premises and repossess any Goods for which payment has not been received

in full, or Equipment that is in the Customer's possession or control.

Where Equipment has been installed for the Customer as part of Managed Services, the Customer will be invoiced for the reasonable cost of de-installation by the Company.

If all of the Equipment is not recovered by the Company the Customer agrees to pay the replacement cost as solely determined by the Company. Any Goods not recovered will be charged at the original invoiced cost.

1.15 Company's Other Rights and Remedies

The rights and remedies provided in clause 1.14 will not affect any other rights or remedies available at law or in equity to the Company.

1.16 Customer's right to terminate Contract

The Customer may by written notice to the Company end the Contract immediately if anything happens that reasonably indicates that there is a significant risk that the Customer is or will be unable to pay debts as they fall due. This includes:

- execution or distress being levied against any income or assets of the Customer;
- a meeting of the Customer's creditors being called or held;
- a step being taken to make the Customer bankrupt; and
- the Customer entering into any type of arrangement with, or assignment for the benefit of, all or any class of its creditors, or being subject to a deed of company arrangement; or
- a step is taken to have a receiver, receiver and manager, provisional liquidator, liquidator or administrator appointed to that person or any of its assets.

1.17 Termination of Contract by Customer

Should the Customer terminate the Contract under clause 1.16 the Customer must immediately pay to the Company without the need for any demand the sum of all amounts due and unpaid under the Contract.

The Company is entitled to enter the Customer's premises and repossess any Goods for which payment has not been received in full, or Equipment that is in the Customer's possession or control.

Where Equipment has been installed for the Customer as part of Managed Services, the Customer will be invoiced for the reasonable cost of de-installation by the Company.

If all of the Equipment is not recovered by the Company the Customer agrees to pay the replacement cost as solely determined by the Company. Any Goods not recovered will be charged at the original invoiced cost.

1.18 Customer's Rights and Remedies

The provisions in clause 1.14 will not affect any other rights or remedies available at law or in equity to the Customer.

1.19 Payment

Prices quoted in Australian currency (AUD) are estimates only. Costs incurred by the Company under the Contract in other

currencies will be converted to AUD at the rates which applied to Company, and these AUD amounts will be used as the basis for calculation of invoice cost, allowing also for mark-up.

Invoices issued by the Company shall be payable without discount by the Customer.

Unless otherwise agreed between the parties or specified otherwise herein, all freight and related transportation charges are payable by the Customer.

The Customer must not set off any money owed or alleged to be owed by the Company against money due to the Company.

The parties agree that pricing for the Managed Services Rate and any other amounts payable with respect to Equipment, Goods, Content and Services, as specified in a Schedule, shall be given exclusive of GST.

Interest shall be payable by the Customer on any overdue invoice calculated on the daily balance owing from the day following the date upon which payment should have been made, and calculated at the Interest Rate.

Where payment is made by credit card, a surcharge will apply equal in amount to the cost of the transaction to the Company.

If delivery of applicable Goods is made in instalments, each instalment shall be separately invoiced and paid for when due without regard to other deliveries.

Without limiting any other provision in the Contract, failure by the Customer to pay any instalment, or any other amount when due, will entitle the Company to withhold or delay delivery of any remaining Equipment or Goods ordered.

The Customer acknowledges that under certain circumstances, there may be a variation between the Schedule pricing and the invoice cost. Circumstances under which additional costs may arise include, but are not limited to:

- An increase in rates from any party that supplies Content to the Company
- deliveries made more than 3 months from the date of the Schedule, howsoever caused; or
- delays in delivery, installation or commissioning not due to neglect or default of Company.

Managed Services Rates will be increased every 12-months from the Commencement Date by an amount equivalent to the CPI WA (All Groups) for the 12-month period ending prior.

Where additional cost occurs, the Customer will be charged only the actual costs incurred by the Company plus mark up of 17.5%, and the Customer agrees to pay such costs in addition to the Schedule pricing.

The Customer shall pay the Managed Services Rate where applicable in monthly instalments in arrears. The Managed Services Rate is payable from the Commencement Date for the Term, subject to clause 1.5.

The Company reserves its right to vary the frequency and timing of the issue of invoices during the Term and may at any time advise the Customer that it:

- requires immediate payment of the Managed Services Rate payable during the Term; or

- requires the Managed Services Rate to be paid in monthly instalments in advance.

1.20 GST

Recovery of GST

If GST is or will be imposed on a Supply made by a party under or in connection with the Contract (including costs required to be reimbursed or indemnified under the Contract), the supplier may, to the extent that the consideration otherwise provided for that Supply under the Contract is not stated to already include an amount in respect of GST on the Supply:

- increase the consideration otherwise provided for that supply under the Contract by the amount of that GST; or
- otherwise recover from the recipient the amount of that GST.

Invoices required

The recovery of any amount in respect of GST by the supplier under the Contract on a Supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient. Subject to any other provision of the Contract, the recipient of a Supply must pay any amount in respect of GST within 7 days of the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.

Reimbursements

Despite clause 1.20, if a party is entitled under the Contract to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with the Contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party entitled to be reimbursed or indemnified.

Value of Taxable Supplies

Where the consideration for a Taxable Supply under the Contract is not, or is not expressed, as an amount of money, the party making the Supply shall provide the recipient with a Tax Invoice for that Supply based on the GST inclusive market value of the consideration as determined in good faith by the party making the Supply.

If the recipient disputes the GST inclusive market value of the Supply determined by the party making the Supply under clause 1.20, the recipient may refer the matter for determination by the Expert.

1.21 Invoice

Without affecting the obligations of the parties under the Contract, the Contract is not a document notifying an obligation to make payment and is not an invoice under the GST Act.

1.22 Notices

Form and Delivery

A notice, consent, information or request that must or may be given or made to a party under the Contract is only given or made if it is:

- delivered or posted to that party at the address stated in the Schedule;
- faxed to that party at the fax number stated in the Schedule (or at such other address or fax number as may have been notified by that party to the other party, from time to time); or
- emailed to that Party to the email address stated in the Schedule.

Execution of Emails

In the case of email notices, the sending party must ensure that each email is either signed by means of an electronically produced signature of a person authorised by that party to send the email or states that is being sent by a person authorised to send the email on behalf of that party.

Receipt and Effect

A notice, consent, information or request is to be treated as given or made at the following time:

- If it is delivered, when it is left at the relevant address.
- If it is sent by post, 3 Business Days after it is posted.
- If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- If it is sent by email, as soon as it enters the recipient's information system (as shown in a confirmation of delivery report from the sender's information system).

If notice is made or given after the normal business hours of the receiving party, it is to be treated as having been made or given at 9.00 am the next Business Day.

1.23 Variation

The Contract can only be varied by the parties in writing, signed by all of the parties.

1.24 Waiver

The fact that a party fails to do, or delays in doing, something that party is entitled to do under the Contract does not amount to a waiver of that party's right to do it. A waiver by a party is only effective if it is in writing.

A written waiver by a party is only effective in relation to a particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

1.25 Entire Agreement

A Contract formed as described herein will constitute the entire agreement between the contracting parties with respect to the scope described in the Schedules, SLAs and any other documents that form part of such Contract. All prior agreements, discussions, representations, warranties and covenants in relation to the described activities are merged herein. There are no warranties, representations, covenants or agreements, expressed or implied, and related to the described activities, between the parties except those expressly set forth in the Contract. Any amendments or modifications of the Contract shall be in writing and executed by the contracting parties.

1.26 Assignment

Neither party shall, without the prior written approval of the other, assign the Contract or any payment or any other right, obligation, benefit or interest thereunder.

1.27 Severability

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Contract, but the rest of the Contract is not affected.

If the removal of a clause or part of a clause materially alters the commercial allocation of benefit and risk (or management of risk) under the Contract, the parties agree to negotiate in good faith to amend or modify the terms of the Contract as may be necessary or desirable having regard to the original terms of the bargain and the prevailing circumstances.

1.28 Construction

No rule of construction will apply to the disadvantage of a party because that party was responsible for drafting this document or any of the provisions of this document or the Contract;

1.29 Further Cooperation

Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to the Contract.

1.30 Relationship of the Parties

The Contract does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the parties. No party is liable for an act or omission of another party, except to the extent set out in the Contract.

1.31 Governing Law and Jurisdiction

The Contract is governed by the Law of the State of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.

1.32 Execution of Separate Documents

The Contract is properly executed if each party executes the Contract or an identical document. In the latter case, the Contract takes effect when the last of the identical documents is executed.

1.33 Duty

The Customer must pay:

- all duty payable under the Duties Act 2008 (WA) in respect of the subject matter that the Contract effects or records; and
- any penalty or interest payable in respect of any duty to the extent that the Customer is responsible for such penalty or interest.

1.34 Costs

Each part must pay all costs relating to the negotiation and execution of the Contract.

2. PROVISION OF EQUIPMENT, CONTENT & SERVICES

2.1 Term

The Company agrees to provide Managed Services, to the Customer, who agrees to accept these Managed Services for the Term, which shall commence from the date the last contracted room is commissioned or 12 months after the first room is commissioned, whichever is earlier, until the earlier of:

- the End Date; or
- termination of the Contract in accordance with the terms of this document.

The rights of the Company under the Contract, and the obligations of the Customer under the Contract shall continue until the expiration of the Term in accordance with the Schedules, and in particular the liability of the Customer to pay the agreed Managed Services Rate shall continue, unless otherwise agreed between the parties.

2.2 Title to the Equipment

The parties acknowledge that nothing in the Contract confers any transfer of title of ownership in the Equipment to the Customer.

The Customer acknowledges it is a bailee of the Equipment only.

2.3 Advertising Content

The Company reserves the right to include advertising as part of the provided Content. The Customer accepts that the nature of any such included advertising will be determined solely by the Company, and that any revenue generated by the inclusion of advertising will be entirely payable to the Company with no benefit payable to or offset against charges to the Customer.

2.4 Intellectual Property

All Intellectual Property, and associated proprietary information, related to the Contract that is owned by the Company prior to, or is created under or arises out of the Contract will vest in Company as soon as the use, preparation, production or creation thereof commences.

To the extent that the above does not vest ownership of any Intellectual Property in Company, Customer assigns all right, title and interest in such Intellectual Property to Company.

Company grants to Customer a royalty free, non-exclusive, non-transferable licence to use the Intellectual Property for the sole purpose of performing its obligations under the Contract. The licence will endure until the termination or expiration of this Contract.

Customer will release and indemnify Company in respect of any claim based on any breach or alleged breach of any Intellectual Property in connection with the Contract.

2.5 Provided Content and Services

Subject to clause 1.19, limits and charges for provided Content and Services will be agreed between the Company and the Customer and detailed in a schedule which forms part of the Contract. Both aggregate and individual usage limits for Content and Services will be specified in the SLA.

Use of Content and Services in excess of the specified limits will be chargeable at rates specified in the SLA.

Any revenue generated from usage of Content and Services in excess of the agreed levels in the SLA will be entirely payable to the Company with no benefit payable to or offset against charges to the Customer.

Availability and charges for Content is subject to change by any party that supplies Content to the Company

2.6 Availability of Equipment

The Company agrees that it will provide Equipment, Services and Content to the Customer, commencing on the Commencement Date, provided the Equipment, Services and Content is available to it. While the Company will make every effort to ensure the Equipment, Services and Content are available, it will not be liable for failure to supply the Equipment, Services and Content and the Company shall have the right to terminate the Contract at any time prior to the delivery of the Equipment, Services and Content on the grounds of inability to supply the Equipment, Services and Content.

If the Company is unable to make the Equipment, Services and Content available on the Commencement Date, the Customer shall not be entitled to any damages whatsoever.

Where the company elects to terminate the Contract under this clause, clause 1.14 shall apply save that the Customer will not be liable for charges described under 1.14 as 'all instalments and amounts to become due and which would otherwise have been payable at a later date pursuant to the Contract'.

2.7 Customer's obligations and responsibility

The Customer must at all times during the Term:

- Actively support encryption of the Content and do everything possible to protect the copyright of the content owner.
- Provide and keep updated a list of personnel that are to work with the Content to the Company, for approval of the nominated personnel by Company. Subject to approval by Company, these personnel will be known as Authorised Personnel.
- Ensure that soft copies of Content are secure and only available to Authorised Personnel.
- Ensure that Authorised Personnel receive required training from Company in the handling of Content and Equipment.
- Keep the room in which the Managed Services Equipment, Software and any copies of Content is stored locked and allow access only to Authorised Personnel.
- Provide sufficient floor space, permanent electrical power and air conditioning to keep equipment between 22 and 24 Degrees Celsius at all times, in a

telecommunications equipment room that is free from ingress points for liquid, chemicals, hazardous vapour, electrical surge (including lightning) and environmental conditions etc

- Allow only Authorised Personnel to be involved in handling and updates of Content.
- Use and maintain the Equipment in a proper and skilful manner in accordance with the relevant industry practices, and ensure that Equipment is kept in Good Functional Order and condition.
- Comply with all statutory or other requirements relating to the Equipment, Content and Services and the use, registration and licensing of the Equipment, Content and Services and obtain and keep current all necessary licences, permits, certificates and registrations relating to the Equipment, Content and Services.
- Assume complete responsibility for control of the Equipment, Content and Services in accordance with the terms of Copyright Act (1968) and Copyright Amendment Act (2006) and Regulations and any other Act of Parliament or government regulation regulating the use of the Equipment, including those of the ACMA and the APRA;
- At the time of delivery of the Equipment, perform appropriate checks to ensure that the Equipment is fit for the purpose for which it was intended and that there is no physical damage to the Equipment.
- Permit and facilitate the Company to inspect the Equipment upon reasonable request, including by remote access as required by Company;
- Not purport to lease or hire or sub-let, sell or otherwise dispose of the Equipment or Content without the prior written consent of the Company;
- At all times exercise due care towards the Equipment and take such steps as are reasonably necessary to prevent damage to, destruction of, or loss of the Equipment;

2.8 Insurance of Equipment

The Customer shall ensure, at its cost, that the Equipment is covered by insurance for the period from the Commencement Date to the End Date, and where necessary take out additional insurance so as to comply with its obligation under this clause. Wherever possible, the Customer shall ensure that the Company and/or the Equipment is noted on the applicable policy of insurance as an insured party in respect of the Equipment. The insurance shall cover loss or damage to the Equipment resulting from any cause whatsoever for not less than the replacement value of the Equipment. The insurance shall contain a cross liabilities clause and provide for the waiver by the insurer of all rights of subrogation against the Company. The Customer shall produce evidence of such insurance where requested by the Company.

Any insurance taken out by the Customer in respect of the Equipment does not affect the Customer's liability to the Company in respect of loss and damage to the Equipment.

2.9 Damage and Loss of Equipment

The Customer shall be fully liable and responsible for the Equipment until it has been returned to the Company at the end of the Term.

The Customer is responsible for, and shall indemnify the Company against, any loss or damage to the Equipment, howsoever caused, from the Commencement Date to the End Date. Without limiting the generality of this obligation, the Customer is responsible for any loss or damage to the Equipment caused by:

- ingress by liquid, chemicals, hazardous vapour;
- electrical surge (including lightning) and environmental conditions;
- loss or theft; and
- intentional, reckless or negligent acts of any person.

Notwithstanding the above, but subject to clauses 2.10 to 2.14, nothing in this clause shall make the Customer liable to the Company for loss or damage to Equipment that is due to some act or omission on the part of the Company, or due to some fault or defect with the Equipment itself which was beyond the Customer's control.

2.10 Procedure in the event of damage to Equipment

If any Equipment is damaged during the Term, the Customer must immediately advise the Company either by telephone, facsimile or email of the full details of:

- the damage; and
- the way in which the damage was incurred.

If the damage is advised by telephone, the details must be confirmed in writing within 48 hours of advising the Company.

The Customer must immediately at the request of the Company, arrange for any damaged rental equipment to be returned to the Company, at the Customer's expense. The Company will arrange, at its discretion, for damaged rental equipment to be repaired or replaced as soon as practicable in the circumstances. Any equipment that is provided as part of Managed Services will be repaired by the Company on site, or as otherwise determined by the Company.

Where the Company elects to undertake repair or replacement pursuant to this clause, the cost of that repair or replacement shall be borne by the Customer unless the damage to the Equipment was due to some act or omission on the part of the Company, or some fault or defect with the Equipment itself which was beyond the Customer's control. In any event, the cost of returning Equipment to the Customer following repair or replacement will be at the Company's expense.

2.11 Procedure In the Event of Theft of Equipment

If any of the Equipment is believed to be stolen, prior to its return to the Company, the Customer must immediately report the suspected theft to the relevant police authority and promptly provide a copy of the report to the Company.

The Customer will be liable for the replacement cost of such Equipment as determined solely by the Company.

2.12 Repairs to Equipment

Repairs to damaged Equipment are charged at discounted rates. The minimum repair cost will cover repairs worth up to 75% of the value of the equipment. Replacement costs for any items which are deemed by the Company to be uneconomical to repair will include a 20% discount off the current pricing for that item.

2.13 Managed Services Rate Payments when Equipment is Damaged or Stolen

The Customer must continue to pay the Managed Services Rate in accordance with the Contract for any Equipment that is damaged or stolen, even though such Equipment may not be in its possession or in working order. The Managed Services Rate payable will continue until satisfactory repair or replacement of the Equipment, even if expiration of the Term occurs during this time.

If the Company determines that the fault and repair or replacement would have otherwise been covered by warranty or if the fault was caused by an act or omission by the Company, the Customer does not have to pay the Managed Services Rate in accordance with the Contract until the satisfactory repair or replacement of the Equipment.

Once the damaged or stolen Equipment is repaired or replaced, the Managed Services Rate will continue to be payable in accordance with the Contract.

2.14 Defect in Equipment

If rental equipment does not work satisfactorily, or is physically damaged, then the Customer shall immediately advise the Company of that fact, and return the rental equipment to the Company at the Customer's expense. Any defects in equipment provided as part of managed services will be repaired on site by the Company where possible.

The Customer shall not permit any person not authorised by the Company to repair or interfere with the Equipment. If any repair is made necessary as a result of the actions or omissions of the Customer, then the cost of such repair shall be borne by the Customer.

If any Equipment is defective and such condition does not exist as a result of any act or omission by the Customer, then the Company shall, as soon as practicable and at its own cost:

- exchange the defective Equipment for similar equipment or new equipment shall be provided in substitution; and
- on the same terms as the original Contract (including without limitation, the Customer's obligation to pay the Managed Services Rate in accordance with the Contract),

provided however that the Company may elect to terminate the Contract at its discretion.

The Customer shall not be entitled to any compensation from the Company for any loss or damage however arising as a result of such termination.

2.15 Renewal of Managed Services

Managed Services under the Contract shall automatically renew for a further period of 12 months, and the Term shall extend by

this further period, except where the Customer gives 3 months' notice in writing prior to the expiration of the original Term of their intention not to renew such services. Renewal of the Managed Services will be subject to an increase in the Managed Services Rate in line with the annual WA All Groups Consumer Price Index published closest and prior to expiration of the original Term.

2.16 Return of Equipment

The Customer acknowledges that upon expiration of the Term in accordance with the Contract, the Customer will immediately return the rental equipment to the Company in Good Functional Order and condition as determined by the Company in its sole discretion. Equipment provided as part of Managed Services will be demobilised by the Company, and the costs and method of demobilisation will be detailed in the SLAs under the Contract.

If the period of retention of the Equipment or any part of it by the Customer continues beyond the Term, either with or without the consent of the Company, then the rights of the Company under this Contract, and the obligations of the Customer under this Contract shall continue until the Equipment is returned, and in particular the liability of the Customer to pay the Managed Services Rate shall continue at the rate which was applicable during the Term.

In the event of a failure to return the Equipment, the Company may retake and hold possession of the Equipment without any notice to the Customer and may enter upon any premises where the Equipment or any part of it may be found to recover the Equipment using such force as may be reasonably necessary to do so, and repossess the Equipment without prejudice to any other remedy which the Company has under the Contract.

Any costs incurred by the Company in the collection of the Equipment as a result of the default of the Customer shall be due and payable by the Customer to the Company immediately upon notice.

2.17 Liability and Indemnity

If the Customer consists of more than one person or corporation then the liability of the Customer under this Contract shall be joint and several.

The Company shall not be liable for any loss or damage suffered by the Customer or any other person or corporation as a result of the Managed Services, which shall include but shall not be limited to failure of the Equipment (whatever the cause), power failure, or disruption or discontinuance of any communication service or any other service.

The Customer indemnifies and shall keep indemnified the Company, its employees, officers or agents against any liability, damage or loss to the Customer or any other person or corporation arising directly or indirectly out of or resulting from or caused by:

- the use, operation or failure of the Managed Services (whatever the cause);
- any act, omission or negligence of the Customer, its contractors, employees or officers;
- failure by the Customer or the Company to comply with any statute or legislation;

- delay, non-delivery, mis-delivery or failure to deliver the Managed Services caused by events beyond the Company's control;
- the Company having to seize or store the Equipment because of a breach of the Contract;
- any claim against the Company by the Customer or a third party arising from the use of the Managed Services by the Customer including, without limitation, claims arising from any alleged defect in the Equipment or claims arising from death or injury to any person in any way related to the Equipment;
- a claim for patent, trademark or copyright infringement, for strict liability or for any other reason being made against the Company or Customer in connection with the Managed Services.

Each indemnity is a continuing obligation, separate and independent from the Customer's other obligations under the Contract and continues after the expiration of the Term. It is not necessary for the Company to incur expense or make payment before the Company enforces a right of indemnity.

3. SALE OF GOODS

3.1 Title to Goods

The Goods remain the Company's property until full payment for the Goods is made by the Customer. Until then, the Customer is bailee of the Goods. The Customer must:

- keep them in its possession and control;
- keep them in good repair and condition, excluding fair wear and tear;
- keep them stored separately and marked so that the Goods are clearly and easily identifiable as the Company's property and inform the Company of the location of the Goods, if requested;
- not sell, assign or let them or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them; and
- maintain and allow the Company to inspect records which identify any unpaid Goods owned by the Company.

The Customer must insure the Goods against all risks with a reputable insurer that is acceptable to the Company, from the time the risk in the Goods passes to the Customer until the time the title in the Goods passes to the Customer.

If the Customer does not pay for any Goods on the due date for payment, the Customer authorises the Company, its employees and agents to enter the Customer's premises (and any premises under the control of the Customer or an agent of the Customer if the Goods are located on those premises) and to retake possession of the Goods without liability for trespass or damage. The Company may at its option keep or resell Goods retaken from the Customer. The Company is also entitled to suspend any other delivery to the Customer. The Customer's obligations to the Company continue where these actions are taken by the Company.

If the Customer disposes of any of the Goods while they remain the property of the Company, the Customer holds the proceeds

on trust for the Company up to the amount it owes the Company in respect of those Goods, and must immediately pay that amount to the Company. The Customer must not assign the right to any such proceeds or enter into any other arrangement that could result in the Customer not receiving those proceeds.

Despite the retention of these rights, the Company may elect to recover the price of the Goods from the Customer rather than reclaim them.

3.2 Carriage of Goods and Risk

Except as otherwise agreed between the parties, the Company shall use its own carrier, at its own risk, to deliver the Goods to the Customer.

The risk in the Goods passes to the Customer upon delivery of the Goods to the Customer or upon transfer where applicable of the Goods to the Customer's nominated carrier.

3.3 Delivery

All delivery dates are estimates only and the Company may amend the dates specified in the Schedule when circumstances reasonably require. The Company will use best endeavours to inform the Customer as soon as practicable of any amendment to the delivery schedule.

The Company reserves the right to make deliveries in instalments and the Schedule shall be severable to any such instalment.

Delay in delivery or any other default in relation to a delivery instalment shall not relieve the Customer of its obligation to accept and pay for remaining delivery instalments nor shall any delay give rise to any liability on the part of the Company.

Without limiting any other provision in the Contract, failure by the Customer to pay any instalment, or any other amount when due, will entitle the Company to withhold or delay delivery of any remaining Goods ordered.

No delivery may be deferred or re-routed without the Company's written consent.

3.4 Warranties and Liability

Goods Manufactured by the Company

The Company warrants that all Goods of its own manufacture will be free from defects in material and workmanship (other than fair wear and tear) for:

- the period specified for the particular Goods; or
- if not otherwise specified, for a period of 12 months

Goods not Manufactured by the Company

Goods that are not manufactured by the Company are excluded from any warranties given under this section and the Company shall extend to the Customer any manufacturer or supplier warranty to the extent that the Company is able to successfully claim under the warranty.

3.5 Limitation of Liability

All other warranties or representations in relation to the Goods, whether statutory or otherwise and whether express or implied or oral or written as to the state, quality or fitness of the products or

equipment are hereby expressly excluded to the maximum extent allowed by the law.

In respect of non-conforming or defective Goods, the liability of the Company for a breach of any condition or warranty implied by law is limited to any of the following at the option of the Company in its sole discretion

- Refunding the payment for such Goods;
- Replacing the Goods or supplying equivalent Goods;
- Repairing the Goods; or
- Otherwise correcting the non-conformance of any Goods

Written notice of any non-conformance or defect must be received by the Company within the applicable warranty period. Should the Customer not provide written notice within the applicable period, the Company liability to the Customer will lapse.

Except as expressly stated above, the Company shall not be liable in contract or otherwise for any loss, damage, expense or injury of any sort whatsoever, consequential, indirect or otherwise, arising out of or in connection with the installation, use or failure of the Goods or any defect in them or from any other cause.

3.6 Return of Goods

The Customer may claim the right to reject any Goods which are defective or otherwise do not conform with any express terms of a Schedule, by:

- delivering the defective or non-conforming Goods to the Company's nominated premises subject to the conditions below; and
- notifying the Company of the claim, providing full particulars of the claim in writing, within 7 days of receipt of the defective or non-conforming Goods.

The Company may dispute any such claim.

The Customer must not return any non-conforming or defective Goods to the Company unless it has complied with clause 3.1 and has done all things necessary to permit the Company to examine the Goods to its satisfaction prior to their return.

All travel, transport, accommodation and other reasonable expenses incurred by the Company in dealing with the non-conforming or defective Goods shall be payable by the Customer.

Goods that are not in their original condition or that the Company determines have been subjected to operating or environmental conditions in excess of maximum limits established therefore or otherwise have been subjected to misuse, improper installation, repair, alteration, or accidental damage, whether or not caused by the Customer will not be eligible for rejection or return under the terms of this clause.

3.7 Company Indemnified if Goods used Improperly

The Customer will keep the Company indemnified against any loss, damage or liability arising from use of the Goods by the Customer that is not in accordance with the Company's instructions or any manufacturer's manual or instructions with respect to the Goods.

3.8 Miscellaneous

The Customer agrees that the Goods or any portion of the Goods or any other subject matter of the contract shall not, in any form, be resold or otherwise diverted to any ultimate destination contrary to the law of Australia.

The Customer hereby acknowledges that the Company has all proprietary rights in all documents, designs, plans and the like supplied by the Company to the Customer in relation to the sale of the Goods.

The Customer agrees that it shall not, without the prior written consent of the Company, copy, use or disclose to any third party any documents, price lists, designs, plans or the like or any technical data in relation to the Goods obtained from the Company except for the purposes of using the Goods sold by the Company to the Customer.

3.9 Description of Goods

The description of the Goods specified in the Schedule is given for identification only and does not create a contract of sale by description.