

Standard Form of Agreement



Terms and Conditions

Please read these terms carefully as they may have important consequences for you.

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Part A: Definitions

In these terms and conditions, the following words have the meaning set out below unless the contrary intention clearly appears:

Acceptable Use Policy means AUSTSERVE IT's acceptable use policy (as modified from time to time) which may be found on <https://www.austserve.com.au/documents>

Accrued Charges means all charges and fees (including usage charges and access fees) incurred by the Customer up to the date on which the Customer notifies AUSTSERVE IT of the cancellation of a Service and any outstanding amounts that cover installation costs or Equipment Charges where AUSTSERVE IT owned equipment can be used by the Customer in connection with services provided by any third party.

ACMA means the Australian Communications and Media Authority.

Agreement means the agreement between AUSTSERVE IT and the Customer for provision of the Service which agreement is comprised in the Application and these terms and conditions.

Application means a Consumer Application, including the acceptance of an AUSTSERVE IT Order including the Standard Form of Agreement, on the AUSTSERVE IT Website or elsewhere.

Business Day means a day on which banks are open for general banking business in Queensland.

End User means any person:

- (a) to whom a Customer asks AUSTSERVE IT to supply the Service directly;
- (b) to whom a Customer (with AUSTSERVE IT's prior permission) re-supplies the Service or allows to distribute the Service;
- (c) who a Customer allows to use the Service; or
- (d) to whom a Customer supplies any goods or services which use or rely on the Service.

Cancellation Charge means an amount equal to the monthly recurring charge payable for the terminated Service multiplied by the number of months, or part thereof, between the date of termination and the end of the Minimum Term.

Cancellation Date means the date when the Customer notifies AUSTSERVE IT that the Customer wishes to cancel the Service.

CIS means the document titled Critical Information Summary relating to the Service.

Competition and Consumer Act means the Australian Competition and Consumer Act 2010 (Cth).

Consequential Loss means any liability which:

- (a) does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question; or
- (b) constitutes or arises from or in connection with loss of profit, loss of anticipated profit, loss of opportunity or anticipated savings, loss of revenue, loss of income, loss of production, loss of impairment of credit rating, loss of data, loss of management time, loss of business opportunities and loss of or damage to reputation or goodwill even if such loss arises naturally or in the usual course of things from the breach, action or inaction in question.

Consumer Application means the Customer's online application to AUSTSERVE IT for provision of the Service which sets out the Minimum Term, Service Description, Pricing Plan and details of any charge such as Equipment Charge, any fees such as access fees, administration fees, suspension fees, cancellation fees, late payment

fees, payment dishonour fees, reconnection fees or reactivation fees payable by the Customer and any refund or rebate to which a Customer may be entitled.

Consumer Customer means any Customer who is a person who acquires and uses the Service for personal, domestic or household use only and who completes an Application for a Residential Grade Service.

Customer means the person who submits an Application to AUSTSERVE IT and who acquires and uses the Service from AUSTSERVE IT.

Equipment Charge means any payment to AUSTSERVE IT for use of equipment.

AUSTSERVE IT means AUSTSERVE IT Pty Ltd ABN: 49 691 771 614 and is referred to as "us" or "we".

Fixed-Term Agreement means an Agreement (other than a month-to-month Agreement) that has a Minimum Term.

Insolvency Event means:

- (a) bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
- (b) any step is taken to enter into any scheme of arrangement between the Customer and the Customer's creditors;
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business;
- (d) 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 the Customer or to the whole or any part of the Customer's assets or business;
- (e) the Customer suspends payment of the Customer's debts generally; or
- (f) the Customer is, or becomes, unable to pay the Customer's debts when they are due, or the Customer is, or is presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001 (Cth).

Intellectual Property Rights means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs or copyright).

Intervening Event is an event outside a party's reasonable control which interferes with the operation of the Network AUSTSERVE IT uses to supply the Service and results in ongoing disruption to the Service. Such an event includes failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any regulator, any supplier or any of their Personnel).

Minimum Term means the period of time for which the Customer has agreed to receive the Service under a Fixed-Term Agreement. The Minimum Term begins on the Service Start Date and runs for the period of time stated on the Application, unless otherwise set out in the Agreement.

Loss means any loss, cost, liability or damage, including reasonable legal costs.

Network means any interconnected telecommunications equipment, facilities, or cabling.

Party means a party to the Agreement.

Personal Information means information about the Customer from which the Customer's identity is apparent or can reasonably be ascertained. Personal information includes the Customer's name, address and other details (including, for example, numbers called, time of call and location of call) and the Customer's personal or commercial credit rating.

Personnel of a person means that person's employees, agents, contractors or other representatives and, in the case of AUSTSERVE IT, includes the employees, agents, contractors or other representatives of any AUSTSERVE IT Group Company.

Porting means to change from having a service supplied by one carrier or carriage service provider to having the service supplied by another carrier or carriage service provider in the context of mobile voice for which the losing service provider or carrier and gaining service provider or carrier are participants of the mobile number porting facility.

Premises means locations:

- (a) at which AUSTSERVE IT supply the Service, and/or
- (b) to which AUSTSERVE IT needs to have access to supply the Service.

Pricing Plan means the terms and conditions and prices of the plan for the Service the Customer has selected in the Application.

Regulator means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, or any other relevant government or statutory body or authority.

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

Residential Grade Service means a service that does not carry a service level agreement, or a guarantee of uptime. (AUSTSERVE IT implies and express no warranties as to its suitability or availability for any purpose. AUSTSERVE IT does not recommend residential grade services for business needs, or mission critical purposes.)

Service means the service, with the features requested in the Application as described in the Service Description and CIS, and any related goods (including equipment) and ancillary services provided or to be provided by AUSTSERVE IT to the Customer in connection with that service.

Service Description means the part of the Agreement which describes the Service provided or to be provided by AUSTSERVE IT to the Customer.

Service Start Date for the Service means the date on which AUSTSERVE IT starts supplying that Service to the Customer as will be notified by AUSTSERVE IT to the Customer after acceptance of an Application.

Special Offer means a special promotion or offer made by AUSTSERVE IT in connection with the Service, including in relation to a particular Pricing Plan.

Standard Pricing Table means the prices displayed on the AUSTSERVE IT website and the My AUSTSERVE IT secure customer portal.

Supplier means any supplier of goods or services (including interconnection services) which are used directly or indirectly by AUSTSERVE IT to supply the Service to the Customer.

Tax means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate, duty or

impost imposed by any authority at any time but does not include any taxes on income or capital gains.

Telecommunications Legislation means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provision of the Competition and Consumer Act.

Unusually High Use means high usage of the Service on a short-term basis that is not consistent with a Customers' normal pattern of use, or a sustained high usage which exceeds the general average usage of customers on a similar Pricing Plan or who have accepted a similar Special Offer.

Part B: Standard form of Agreement 1.

Interpretation

- 1.1 The following words have the same meaning in the Agreement as they have in the Telecommunications Legislation:
 - (a) carriage service;
 - (b) carriage service provider;
 - (c) carrier; and
 - (d) content service
- 1.2 A term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.
- 1.3 The singular includes the plural and vice versa.
- 1.4 Different grammatical forms of the same word(s) have the same meaning.
- 1.5 A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- 1.6 A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.

2. Terms

- 2.1 The Agreement is made up of:
 - (a) your Application,
 - (b) these consumer terms,
 - (c) the Service Description,
 - (d) Critical Information Summary,
 - (e) the Standard Pricing Table;
 - (f) the PayTo Service Agreement, and
 - (g) the Acceptable Use Policy.
- 2.2 The Agreement commences when AUSTSERVE IT accepts the Application.
- 2.3 AUSTSERVE IT will commence providing Service to the Customer under the Agreement from the Service Start Date.
- 2.4 If the Agreement is not a Fixed-Term Agreement, AUSTSERVE IT will provide the Service to the Customer in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.
- 2.5 If the Agreement is a Fixed-Term Agreement, AUSTSERVE IT will provide the Service to the Customer in accordance with the Agreement for the Minimum Term or until the Service is cancelled in accordance with the Agreement, as the case may be.

3. Variation to Agreement

- 3.1 AUSTSERVE IT may vary any part of the Agreement if:
 - (a) the change will benefit or will not materially affect the service;
 - (b) with the Customer's consent if it is a material change; or
 - (c) without the Customer's consent if it is a material change, provided AUSTSERVE IT complies with the Telecommunications Legislation and provides you with reasonable notice of the change.
- 3.2 If AUSTSERVE IT varies an Agreement under clause 3.1:
 - (a) AUSTSERVE IT must if the variation materially affects the Customer and is not a change listed in clause 3.3:
 - (i) comply with the provisions of the Telecommunications Legislation; and
 - (ii) give the Customer thirty (30) days' notice in writing of the change before the change occurs;
 - (b) AUSTSERVE IT must if the variation affects the Customer and is a change of the type listed in clause 3.3, comply with any additional notice provisions in clause 3.3;
- 3.3 AUSTSERVE IT may vary a Fixed-Term Agreement even if the variation affects the Customer so long as it complies with the provisions of the Telecommunications Legislation, if the change is:
 - (a) required by law;
 - (b) necessary for security reasons or to prevent fraud;
 - (c) in relation to the cost of international services or Roaming. In this case, as AUSTSERVE IT's rates for international service or Roaming are subject to variation, AUSTSERVE IT can change the charges and does not need to advise the Customer beforehand;
 - (d) in relation to a fee or charge for a service ancillary to the supply of the Service provided that if the change affects the Customer, AUSTSERVE IT offers the Customer a right to cancel without incurring fees or charges other than Accrued Charges;
 - (e) to increase the price of a content or premium service (where the Supplier who supplies the content service or premium service to AUSTSERVE IT to allow supply of the Service increases the price they charge AUSTSERVE IT for the content service or premium service) provided that if the change affects the Customer, AUSTSERVE IT:
 - (i) gives the Customer reasonable notice of the increase in price if the Customer has used the content or premium service within the previous six (6) months; and
 - (ii) allows the Customer to elect to not use the content or premium service without attracting any additional charges;
 - (f) as a result of another carrier or service provider varying the agreement AUSTSERVE IT has with it in relation to a carriage service and as a result AUSTSERVE IT needs to make changes to the Agreement, provided that if the change affects the Customer, AUSTSERVE IT gives the Customer:
 - (i) reasonable notice in writing of the change; and
 - (ii) forty-two (42) days from the date of the notice in which the Customer may cancel the Service without incurring fees or charges other than Accrued Charges.

- 3.4 Unless expressly allowed in the Agreement, the Customer may not make changes to the Agreement without AUSTSERVE IT's prior written consent.
- 3.5 The Customer must ensure that any person the Customer allows to use the Service complies with the Agreement as if they were the Customer.
- 3.6 AUSTSERVE IT may give the Customer notice in writing of a changes to the Agreement by:
 - (a) delivering notice of the change to the Customer by mail;
 - (b) sending the notice to the Customer's email address (if the Customer has agreed to communication by email);
 - (c) by including a message or insert in an invoice sent to the Customer; or
 - (d) (in the case of a pre-paid Service) by posting the information on AUSTSERVE IT's website or in AUSTSERVE IT's retail outlets and informing the Customer through a recorded message, text message or in writing) of how to obtain the information.

4. Application for the supply of the Service

- 4.1 AUSTSERVE IT may refuse the Customer's Application at its sole discretion. Our decision on whether to accept your Application and supply Services to you is based on any factors we consider relevant, including:
 - (a) the availability of that Service to you;
 - (b) your eligibility for the Service;
 - (c) your credit history where you agree that AUSTSERVE IT may conduct a credit check on You at any time;
 - (d) the information you provide to us; and e) your prior conduct or history in respect of any previous Services provided by us to you.
- 4.2 You must provide us with accurate and honest information in your Application.

5. Privacy

- 5.1 AUSTSERVE IT may collect, use and disclose Personal Information about the Customer to decide whether to start, stop or limit supply to the Customer of personal credit, the Service or the products and services of other AUSTSERVE IT Group Companies.
- 5.2 AUSTSERVE IT may collect, use and disclose Personal Information about the Customer for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including invoicing and account management, business planning and product development, and to provide the Customer with information about promotions, as well as the products and services of AUSTSERVE IT Group Companies and other organisations.
- 5.3 AUSTSERVE IT may collect, use and disclose Personal Information about the Customer for the purposes in clauses 5.1 and 5.2 above to or from:
 - (a) a credit reporting agency or credit provider;
 - (b) another AUSTSERVE IT Group Company;
 - (c) third parties who are not related to AUSTSERVE IT, including AUSTSERVE IT's agents, dealers, contractors, franchisees and debt recovery or mercantile agents;

- (d) Suppliers who need access to the Customer's Personal Information to provide AUSTSERVE IT with services to allow supply of the Service; and
 - (e) joint venture partners of AUSTSERVE IT Group Companies.
- 5.4 AUSTSERVE IT may be permitted or required by applicable laws to collect, use or disclose Personal Information about the Customer, including to:
- (a) the operator of the Integrated Public Number Database, which is an industry wide database of all listed and unlisted public numbers in Australia;
 - (b) emergency services organisations; and
 - (c) law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.
- 5.5 Where AUSTSERVE IT will be or will under the Privacy Act 1988 (Cth) be considered to be a credit provider to the Customer in relation to the Agreement, the following provisions will apply:
- (a) AUSTSERVE IT may give information about the Customer to a credit reporting agency for the following purposes:
 - (i) to obtain a consumer credit report about the Customer; and/or
 - (ii) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
 - (b) The information in clause 5.5(a) is limited to:
 - (i) identity particulars such as the Customer's name, sex and address (and the previous two addresses);
 - (ii) date of birth, name of employer and driver's licence number;
 - (iii) the Customer's application for credit or commercial credit and the fact that the Customer has applied for credit and the amount;
 - (iv) the fact that AUSTSERVE IT is a current credit provider to the Customer;
 - (v) loan repayments which are overdue by more than sixty (60) days and for which debt collection action has started;
 - (vi) advice that the Customer's loan repayments are no longer overdue in respect of any default that has been listed;
 - (vii) information that, in the opinion of AUSTSERVE IT, the Customer has committed a serious credit infringement (ie. the Customer has acted fraudulently or shown an intention not to comply with the Customer's credit obligations); and
 - (viii) dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.
 - (c) The Customer agrees that:
 - (i) AUSTSERVE IT may obtain information about the Customer from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing the Customer's application for consumer credit;

- (ii) AUSTSERVE IT may obtain a consumer credit report containing information about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit;
 - (iii) AUSTSERVE IT may exchange information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (A) to assess an application by the Customer for credit;
 - (B) to notify other credit providers of a default by the Customer;
 - (C) to exchange information with other credit providers as to the status of the loan where the Customer is in default with other credit providers; and/or
 - (D) to assess the Customer's credit worthiness; and
 - (iv) such information exchanged may include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).
- 5.6 If the Customer wishes to only receive communications that are account-related or legally required, the Customer may request not to receive other communications by submitting a written request to AUSTSERVE IT.
- 5.7 If the Customer is an individual, the Customer is entitled to:
- (a) access to the Customer's Personal Information held by AUSTSERVE IT, unless AUSTSERVE IT is permitted or required by any applicable law to refuse such access; and
 - (b) correct any Personal Information held by AUSTSERVE IT
- 5.8 If the Customer does not provide part or all of the Personal Information requested by AUSTSERVE IT then AUSTSERVE IT may refuse to supply, or limit the supply to the Customer of, personal credit or the Service.
- 5.9 By providing the Customer's Personal Information to AUSTSERVE IT and obtaining the Service, the Customer acknowledges and consents to the collection, use and disclosure of the Customer's Personal Information as set out in this clause 5 and in accordance with AUSTSERVE IT's privacy policy a copy of which will be made available by AUSTSERVE IT on request or may be viewed on AUSTSERVE IT's website at the link:
<https://austserve.com.au/terms/AustserveITPrivacyPolicy.pdf>.
- 5.10 If the Customer has authorised AUSTSERVE IT to give or accept verbal instructions or other communication to or from the Customer in connection with the Service and the Customer has informed AUSTSERVE IT of a password to be used for AUSTSERVE IT's verification purposes when such verbal instructions or other communications is given or received, the Customer agrees:
- (a) to keep confidential such password;
 - (b) that AUSTSERVE IT may assume that any person who quotes the password is authorised by the Customer to accept or give verbal instructions or other communications from or to AUSTSERVE IT in connection with the Service on behalf of the Customer;
 - (c) that the Customer will not hold AUSTSERVE IT liable in any way if any information relating to the Customer's account or any of the Customer's Personal Information is inadvertently disclosed to any person not authorised by the Customer to receive such information who quotes such password to AUSTSERVE IT; and
 - (d) that all calls made to or from AUSTSERVE IT's customer service centre(s) may be recorded for customer training, improvement programs and verification purposes.
- 5.11 The reference to "Customer" in this clause 5 includes a reference to and is applicable to AUSTSERVE IT's collection, use and disclosure of the Personal Information of the director or other officer of the Customer who completes or signs an Application on the Customer's behalf as he/she hereby acknowledges.
- ## 6. Using the Service
- 6.1 The Customer must reasonably co-operate with AUSTSERVE IT to allow AUSTSERVE IT, or a Supplier, to establish and supply the Service to the Customer safely and efficiently.
- 6.2 AUSTSERVE IT will provide the Service to the Customer with reasonable care and skill. In the event of unexpected faults, AUSTSERVE IT will use reasonable endeavours to ensure that the Service is restored as soon as possible.
- 6.3 When using the Service, the Customer must comply with:
- (a) all laws;
 - (b) all directions by a regulator;
 - (c) all notices issued by authorisation of or under law;
 - (d) the Acceptable Use Policy; and
 - (e) reasonable directions by AUSTSERVE IT
- 6.4 The Customer must not use, or attempt to use, the Service:
- (a) to break any law or to infringe another person's rights;
 - (b) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised; (c) in any way that may expose AUSTSERVE IT to liability;
 - (d) in any way which or which may damage, interfere with or interrupt the Service, the AUSTSERVE IT Network or a Supplier's Network used to supply the Service;
 - (e) for non-personal use;
 - (f) for business or commercial use;
 - (g) for machine-to-machine use including but not limited to: medical alarms/fall detectors, GPS/tracking devices, alarm systems, IoT;
 - (h) to provide a wholesale service (including to transit, refile or aggregate domestic or international traffic) on the Network through which AUSTSERVE IT provides the Service;
 - (i) (including any SIM card) in connection with a device that switches or reroutes calls to or from the Network through which AUSTSERVE IT provides the Service or the Network of any Supplier;
 - (j) to generate mobile voice calls and SMS messages for the purpose of deriving terminating access payments; or

- (k) to generate voice and SMS traffic using SIM boxing or any automated traffic generation arrangement without the prior written consent of AUSTSERVE IT, which we may withhold in our absolute discretion.
- 6.5 AUSTSERVE IT may take steps to minimise the risk of fraudulent and other non-permitted use. Such use is commonly associated with extreme levels of voice calls and SMS. AUSTSERVE IT will not necessarily pre-publish full details of any such measures because doing so may render them ineffective, but such measures may involve requesting the Customer to contact the AUSTSERVE IT support team to confirm that an extreme call volume relates to personal use. The Customer must respond promptly to any such request, so AUSTSERVE IT can ensure there is no temporary impact on their Service.
- 6.6 AUSTSERVE IT may require the Customer to stop doing something which AUSTSERVE IT reasonably believes is in breach of clauses 6.3 or 6.4. The Customer must immediately comply with any such request failing which AUSTSERVE IT may take any steps reasonably necessary to ensure compliance with clauses 6.3 and 6.4.
- 6.7 The Customer acknowledges that, where the Service is a carriage service, AUSTSERVE IT, or any Supplier whose Network is used to supply the Service, may be required to intercept communications over the Service and may also monitor the Customer's usage of the Service and communications sent over it.
- 6.8 AUSTSERVE IT may (but is not obliged to) contact the Customer if AUSTSERVE IT becomes aware of an Unusually High Use of the Service by the Customer (including to verify any costs or charges which the Customer may have incurred). In such event, AUSTSERVE IT may ask the Customer to make a prepayment usage charge. AUSTSERVE IT is also entitled to suspend the Service under clause 13.1(a) for an Unusually High Use of the Service.
- 6.9 The Customer must comply with any rules imposed by any third party whose content or services the Customer access using the Service or whose Network the Customer's data traverses.
- 6.10 The Customer must provide us with all information we reasonably require under the SFOA (including for the purposes of investigating a possible breach of the SFOA or misuse of your Service).
- 6.11 The Customer acknowledges that, where permitted by law, we may intercept communications over the Service.
- 6.12 The Customer acknowledges that we (or our Suppliers) may (although we are not obliged to) monitor your use of the Service and communications sent over it for the purposes of ensuring your compliance with this SFOA, compliance by us or our Suppliers with the law, or compliance with any direction or request by any Regulatory Authority or law enforcement authority.
- 6.13 The Customer authorises us to (although we are not obliged to) scan and conduct testing of the security of the Network and your Service (including your equipment) for the purpose of improving security of the use of the Service.
- 6.14 The Customer acknowledges that any calls we make to you or you make to us may be monitored or recorded and you consent to such monitoring and recording. If you do not consent to having your calls monitored or recorded, you can email us or contact us via our Website.
- 6.15 The Customer must advise us within a reasonable time of any changes that are relevant to your account or the Service (for example changes to your address, or changes to your credit or direct debit details).

- 6.16 The Customer acknowledges that we are unable to offer Priority Assistance or Priority Assistance related services as part of the Services offered by us. If you require Priority Assistance, you will need to contact Telstra.

7. Equipment

- 7.1 The Customer must ensure that all equipment used in connection with the Service and the way the Customer uses that equipment complies with:
- (a) all laws
 - (b) all directions by a regulator;
 - (c) all notices issued by authorisation of or under law; and
 - (d) reasonable directions by AUSTSERVE IT, failing which, AUSTSERVE IT may disconnect the equipment from the Service upon giving the Customer reasonable notice or with no notice in the event of an emergency.

AUSTSERVE IT Equipment

- 7.2 In relation to equipment:
- (a) any AUSTSERVE IT owned equipment remains AUSTSERVE IT's property (**AUSTSERVE IT Equipment**);
 - (b) the Customer is responsible for any AUSTSERVE IT Equipment from the time when the Customer receives it;
 - (c) the Customer must not mortgage or grant a charge, lien or encumbrance over any AUSTSERVE IT Equipment; and
 - (d) the Customer must comply with our reasonable directions relating to AUSTSERVE IT Equipment;
 - (e) the Customer must use the AUSTSERVE IT Equipment in accordance with the manufacturer's specifications;
 - (f) the Customer must not part with possession of the AUSTSERVE IT Equipment, other than to return it to us;
 - (g) the Customer must allow us to inspect, test, service, modify, repair, remove or replace AUSTSERVE IT Equipment, or to recover it after the Service is cancelled;
 - (h) the Customer must ensure that AUSTSERVE IT Equipment is not altered, repaired, serviced, moved or disconnected except as approved by us; and
 - (i) the Customer must provide adequate and suitable space, power supply and environment for all AUSTSERVE IT Equipment located at the Premises.

Your Equipment

- 7.3 Equipment may be purchased by the Customer from us in connection with the Service. Subject to your rights under the Australian Consumer Law, the Customer will own the equipment once you have paid for it in full and you will be responsible for the equipment from when you receive it.
- 7.4 The Customer will be responsible for any outstanding payments for equipment you have purchased from us, even when that equipment is lost, stolen or damaged (unless caused by us).
- 7.5 You are responsible for:
- (a) the proper functioning and security of your equipment;

- (b) supplying, maintaining and repairing all equipment used in connection with the Service, other than **AUSTSERVE IT** Equipment, including telephone access lines, cables, telephone and computer equipment (including modem) and other access devices necessary for us to provide the Service to you.
- 7.6 You agree to comply with all reasonable directions by us in relation to your equipment, including:
- (a) allowing us to inspect your equipment; and
 - (b) allowing us to make any necessary modifications to your equipment to avoid any danger or interference it may cause to **AUSTSERVE IT** Equipment, our other equipment, the Service or our Network.

Delivery of Equipment

- 7.7 The Customer must make all arrangements necessary to take delivery of the equipment when it has been sent by us. If the Customer is unable to take delivery of the equipment as arranged, then we may charge a reasonable fee for re-delivery.
- 7.8 Delivery of equipment to a third party nominated by the Customer is deemed to be delivery to you.
- 7.9 If equipment the Customer has ordered and paid for arrives damaged or of unacceptable quality, then you may have rights under the Australian Consumer Law or other consumer laws to have the product repaired or replaced, or to a refund of the price paid.
- 7.10 AUSTSERVE IT will not be liable for any loss or damage whatsoever due to failure by us to deliver any equipment promptly, or at all, where that failure is due to circumstances beyond our control.
- 7.11 The Customer must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on the Premises.
- 7.12 Unless otherwise agreed between the parties, the Customer must allow AUSTSERVE IT's Personnel (and no other person) to service, modify, repair or replace any AUSTSERVE IT Equipment.
- 7.13 The Customer is responsible for any lost, stolen or damaged AUSTSERVE IT Equipment, except where caused by AUSTSERVE IT or AUSTSERVE IT's Personnel.
- 7.14 The Customer will be responsible for any outstanding payments for equipment that the Customer has purchased from AUSTSERVE IT, even when that equipment is lost, stolen or damaged.

8. Network maintenance, fault reporting and rectifications

- 8.1 AUSTSERVE IT may conduct maintenance on the AUSTSERVE IT Network and maintenance may be conducted on a Supplier's Network used to supply the Service. AUSTSERVE IT will endeavour to conduct scheduled maintenance on the AUSTSERVE IT Network outside normal business hours.
- 8.2 AUSTSERVE IT will provide a fault reporting service for the Customer to report faults. Before the Customer reports a fault to AUSTSERVE IT, the Customer must take all reasonable steps to ensure that the fault is not caused by any equipment that is not AUSTSERVE IT owned equipment.
- 8.3 The Customer must provide all reasonable assistance to enable AUSTSERVE IT or AUSTSERVE IT personnel, or where necessary a supplier or supplier's personnel, to investigate and where applicable repair a fault including providing them with adequate and timely access to the

Premises. For residential and business customers this is up to the Network Boundary Point (NBP) or Main Distribution Frame (MDF) whichever is relevant of the premises.

- 8.4 The Customer is responsible for ensuring permission is in place with the landlord of the property where the installation is to occur and accepts any costs associated with any installation works required after the boundary point.
- 8.5 AUSTSERVE IT will repair faults within the AUSTSERVE IT Network used to supply the Service. This means, AUSTSERVE IT will repair faults within the core Network and any AUSTSERVE IT supplied equipment only. Unless the Service Description expressly provides otherwise, AUSTSERVE IT is not responsible for repairing any fault in the Service where the fault arises in or is caused by:
- (a) a Supplier's Network [this means the Network and components that exist between the point of interconnect with the AUSTSERVE IT core Network and the Suppliers' Network and the point of service delivery or demarcation at the customer's premise];
 - (b) equipment that is not AUSTSERVE IT Equipment [this means any equipment required to use the service that is not owned by AUSTSERVE IT]; or
 - (c) Facilities outside the AUSTSERVE IT Network [this means any facility in a Network not owned or operated by AUSTSERVE IT, including Customer premise Network equipment or facilities on the Customer side of the services delivery or demarcation at the Customer's Premises].
- 8.6 Where a fault arises in or is caused by equipment that is not AUSTSERVE IT Equipment, AUSTSERVE IT is not responsible for the repair of that fault. Nevertheless:
- (a) if the Customer asks AUSTSERVE IT to investigate a fault or asks AUSTSERVE IT to request a Supplier to investigate a fault, AUSTSERVE IT will give the Customer an estimate of the probable cost of such investigation and obtain the Customer's agreement to bear those costs before undertaking or arranging an investigation and using reasonable endeavours to identify and inform the Customer of the probable cause of the fault; and
 - (b) if the Customer requests AUSTSERVE IT to repair the fault and AUSTSERVE IT agrees, AUSTSERVE IT will give the Customer an estimate of the probable cost of repairing the fault and obtain the Customer's agreement to bear those costs before carrying out the repair.
- 8.7 If AUSTSERVE IT investigates a fault and determines that the fault is attributable to a breach of the Agreement by the Customer, a negligent or fraudulent act or omission by the Customer or any of the Customer's Personnel or a failure of any of the Customer's equipment and/or premises, the Customer must pay the costs incurred by AUSTSERVE IT in investigating.
- 8.8 Where a fault arises from or was caused by a Supplier's Network and we are aware of the fault we will notify the Supplier of the fault and request it be repaired promptly, but we will not bear any further liability or responsibility.
- 8.9 You may report the details of any suspected fault to us, by [contacting](#) our live chat team [here](#).
- 8.10 When reporting a fault, the Customer must provide us with contact details, including your name, your contact points, the site contact (if applicable), contacts at both ends of the Service (if applicable) and details of the fault systems.

- 8.11 Before reporting a fault to AUSTSERVE IT, the Customer must take reasonable steps to ensure that the fault is not a fault in any of the Customer's equipment or any equipment not provided by AUSTSERVE IT. AUSTSERVE IT is not responsible for rectifying any fault in the Service where the fault was caused by the Customer or the Customer's equipment.
- 8.12 If the Customer reports a fault in the Service and asks us to register a fault to repair it, AUSTSERVE IT will first run through a check-list of common faults. By registering a fault for repair the Customer acknowledges that you have carried out the actions as outlined in this check-list.
- 8.13 If AUSTSERVE IT determines that:
- (a) the Service is not faulty;
 - (b) the fault is associated with the Customer's equipment; or
 - (c) a fault was found because an item in the check-list was not carried out;
- AUSTSERVE IT may charge you an incorrect call-out fee and any other reasonable contractor, NBN or other fees incurred for the repair or investigation.
- 8.14 If the Customer asks us to investigate and/or repair a fault that arises from or is caused by equipment that we are not responsible for (that is equipment owned by you or not provided by us for you to use in connection with the Service), we will provide you with an estimate of the cost to investigate and/or repair the fault. If you request us to investigate or repair such a fault, and we agree to do so, we will charge you for the cost of the investigation and/or repair.
- 8.15 We may charge you reasonable costs for repairing a fault if the fault was caused by:
- (a) the Customer's intentional, reckless or negligent act or omission;
 - (b) an intentional, reckless or negligent act or omission by someone else using the Service with the Customer's express or implied authority; or
 - (c) an intentional, reckless or negligent act or omission by someone else using the Service without your authority (only where that unauthorised use of the Service arises from your intentional, reckless or negligent act or omission).
- ## 9. Fees and charges
- 9.1 All charges for the Service are set out in our Pricing Schedule on the Website and in your Application including the CIS. All prices shown on the Website and in the Pricing Schedule are inclusive of Goods and Services Tax (GST).
- 9.2 You must pay all charges for the Service in accordance with the Service Description, CIS and Pricing Schedule.
- 9.3 The Customer must pay:
- (a) the fees and charges for the Service, which are set out in the Agreement or in any applicable Special Offer; and
 - (b) any additional fees and charges noted in the Agreement (including in the Application) or notified by AUSTSERVE IT in accordance with the Agreement from time to time.
- 9.4 The Customer must pay all fees and charges which are incurred for the Service even if the Customer did not authorise its use.
- 9.5 The Customer must pay the fees and charges for the Service even if the Service is unavailable or the Customer is unable to access the Service.
- 9.6 However, the Customer may be entitled to a refund or a rebate as stated in the Agreement or under the law if the Customer suffers a significant Loss of access to, or use of, the Service and the Loss was not as a result of circumstances reasonably attributable to the Customer or equipment that is owned by the Customer or is not provided by AUSTSERVE IT for the Customer to use in connection with the Service.
- 9.7 In addition to the fees and charges the Customer incurs in the normal use of the Service (including an access fee, where applicable), AUSTSERVE IT may charge the Customer administration fees and other similar charges including suspension fees, cancellation fees, late payment fees, payment dishonour fees or reconnection or reactivation fees as set out in the Agreement.
- 9.8 AUSTSERVE IT will calculate fees based on billing information generated or received by AUSTSERVE IT which will be prima facie evidence of the Customer's use of the Service and the fees and charges incurred.
- 9.9 If the Customer uses the services of a third party, the Customer will be billed at the third party's applicable rates and charges. Where AUSTSERVE IT invoices the Customer for the Customer's use of the services of a third party, it will be in AUSTSERVE IT's capacity as that third party's billing agent only.
- 9.10 AUSTSERVE IT may offer the Customer a Special Offer from time to time. In such event, AUSTSERVE IT will notify the Customer of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising the Customer.
- 9.11 A Special Offer may be an offer to vary the Pricing Plan or the terms of supply (including the Minimum Term) for the Service and it may be subject to certain conditions. If the Customer validly accepts a Special Offer, the terms of the Special Offer will prevail to the extent of any inconsistency with the terms of the Agreement.
- 9.12 Upon the expiry or termination of the Special Offer, the full terms and conditions of the Agreement will apply.
- 9.13 Some fees and charges for the Service are subject to variation such as charges relating to:
- (a) international services or roaming; and
 - (b) content or premium services
- 9.14 The Customer should inform AUSTSERVE IT before using the Service from outside Australia.
- ### Overdue accounts
- 9.15 Where an account becomes in arrears AUSTSERVE IT will initiate actions to secure payment of delinquent accounts. If you do not pay the arrears within 5 Business Days of us giving you notice requiring payment, we may suspend or restrict your Service without further notice.
- 9.16 Debt recovery services may be used to recover any amount outstanding beyond this initial action. . You will be liable for all reasonable expenses and costs incurred in recovering payment from you.

10. Payments

- 10.1 AUSTSERVE IT will invoice the Customer on a regular basis (either in advance or in arrears), as set out in the Service Description. For residential grade services, AUSTSERVE IT will send a copy of an payment receipt electronically, and the Customer must retrieve their payment receipt from the AUSTSERVE IT App.
- 10.2 AUSTSERVE IT is dependent on Wholesale Suppliers' usage records, which are displayed in the AUSTSERVE IT App.
- 10.3 If AUSTSERVE IT receive usage records in time from the wholesale supplier, AUSTSERVE IT will make all reasonable efforts to notify the Customer of the applicable usage records within the relevant billing period. In circumstances where this may not be possible, and for reasons outside the direct control of AUSTSERVE IT, AUSTSERVE IT will make all reasonable efforts to include these applicable usage charges as soon as it is able to after the relevant billing period.
- 10.4 Where usage records are provided by the wholesale supplier to AUSTSERVE IT outside the relevant billing period, AUSTSERVE IT will incorporate these and associated charges on a subsequent or later invoice. This is called back billing. AUSTSERVE IT will not backbill for usage that has occurred 160 days or more previously, if AUSTSERVE IT has not already advised the Customer of the charges.
- 10.5 Where usage records are delayed and back billing occurs, if any plan allowances or inclusions are exceeded in the previous billing periods, any applicable excess or additional charges will be applied to and payable by the Customer on the subsequent invoices.
- 10.6 If the Customer's payment is not honoured for any reason, AUSTSERVE IT may charge the Customer a fee.
- 10.7 Subject to clause 11.4, the Customer must pay the entire amount invoiced by the due date specified in the payment notification, invoice or as otherwise notified by AUSTSERVE IT.
- 10.8 If the Customer does not pay the invoice by the date the payment is due, AUSTSERVE IT may:
 - (a) charge the Customer a late fee which is payable until all outstanding amounts are paid;
 - (b) require the Customer to provide reasonable security to AUSTSERVE IT to secure the payment of future amounts due under the Agreement;
 - (c) suspend or cancel the Service, in accordance with clauses 12 or 13 as relevant or the relevant Service Description. If AUSTSERVE IT suspends or cancels the Service, AUSTSERVE IT may charge the Customer a suspension fee, cancellation fee and/or reconnection or reactivation fee as set out in the Agreement. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;
 - (d) engage a mercantile agent to recover the money the Customer owes AUSTSERVE IT and charge the Customer a recovery fee;
 - (e) institute legal proceedings against the Customer to recover the money the Customer owes AUSTSERVE IT and recover from the Customer its legal costs; and/or
 - (f) on-sell any unpaid amounts to a third party.
- 10.9 If the Customer has overpaid as a result of an invoicing error, the Customer's account will be credited with the amount overpaid or AUSTSERVE IT will use reasonable endeavours to notify the Customer and refund the over

payment.

- 10.10 Unless otherwise indicated, the fees and charges set out in the Agreement include any amount on account of Tax. Where the fees and charges do not include an amount on account of Tax and Tax is payable by AUSTSERVE IT in relation to, or on any supply under or in connection with the Agreement, AUSTSERVE IT will increase the Tax exclusive fees and charges by an additional amount on account of the Tax. The Customer must pay the additional amount at the same time the Customer pays the fees and charges.
- 10.11 If the Customer requires a copy of any invoice sent by AUSTSERVE IT in relation to the Service after cancellation of the Service or termination of the Agreement and a copy of such invoice remains retrievable from AUSTSERVE IT's records, the Customer must pay AUSTSERVE IT's reasonable administration fee for such retrieval.
- 10.12 If the Customer acquires ongoing Services from us, a regular payment receipt will be delivered to you by email. We may charge you a processing fee if you request us to deliver your invoices by post.
- 10.13 The first month's service charges, any applicable set-up fees, and any equipment charges must be paid in full before the Service Commencement Date, and are nonrefundable unless we are unable to provide the Service.
- 10.14 AUSTSERVE IT may bill you for:
 - (a) recurring or fixed charges, in advance;
 - (b) variable charges in arrears (for example excess data);
 - (c) installation or set-up fees, prior to installing your service;
 - (d) any equipment you purchase or rent from us;
 - (e) any other charges in accordance with the SFOA, including the relevant Service Description and Pricing Schedule.
- 10.15 The Customer must pay the charges without any set-off, counter claim or deduction.
- 10.16 AUSTSERVE IT reserves the right to re-issue any charges where any error is subsequently discovered.
- 10.17 Monthly charges for the Customer's payment receipt will be calculated by reference to data recorded or logged by us or our Suppliers. Records held by AUSTSERVE IT and our Suppliers will be conclusive evidence of the Usage of the Service and the charges payable by you.
- 10.18 The Customer authorises us to debit your credit/debit card or bank account (via PayTo Agreement) for all valid charges when they become due, including excess data or time.
- 10.19 The Customer is responsible for any transaction fees imposed by third parties (for example your bank) in relation to your payment.
- 10.20 Where AUSTSERVE IT becomes liable to pay any penalties or interest due to late payment of GST due to the Customer's failure to comply with the SFOA or your obligations under any applicable law, then we may charge you an additional amount equal to any penalties or interest payable by us.
- 10.21 AUSTSERVE IT may charge the Customer for any other applicable value added taxes relating to the supply of the

Service, and any other applicable taxes, levies, or fees (including where these are on- charged to us by Suppliers) charged to AUSTSERVE IT on a per Service basis.

- 10.22 Where an account becomes in arrears AUSTSERVE IT will initiate actions to secure payment of delinquent accounts. If a payment fails, your service may be suspended until payment of arrears is made. If the account remains unpaid, AUSTSERVE IT reserves the right to cancel the service and send the account for debt collection.
- 10.23 Debt recovery services will be used to recover any amount outstanding beyond this initial action. The Customer will also be liable for all reasonable expenses and costs incurred in recovering payment from you (including financial institution charges, collection agent fees, solicitors costs, and court costs).
- 10.24 If the Customer's nominated method is not automated by us (credit/ debit card or PayTo agreement) you must notify us by email or telephone when you have made payment for your account. Please include the transaction date and receipt number so we can mark your account as paid as soon as our bank records are updated. Failure to do so may result in an overdue account.

11. Complaints and disputes

- 11.1 If the Customer has any complaints in connection with the Service the Customer may complain in writing to AUSTSERVE IT or otherwise by contacting AUSTSERVE IT.
- 11.2 AUSTSERVE IT will handle all complaints in accordance with the complaint handling procedure which is available on the AUSTSERVE IT website. A copy of the complaint handling policy can be provided on request.
- 11.3 AUSTSERVE IT will use its best endeavours to resolve all complaints. However, if AUSTSERVE IT is not able to resolve a complaint to the Customer's satisfaction, the Customer may take other action, such as informing the Telecommunications Industry Ombudsman.
- 11.4 Where a Customer's complaint is about a fee or charge for the use of the Service, AUSTSERVE IT may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute remain due and payable.

12. Cancelling the Service

- 12.1 The Customer may cancel the Service including prior to the Service Start Date at any time by:
- (a) giving AUSTSERVE IT notice; or
 - (b) giving AUSTSERVE IT notice, if AUSTSERVE IT breaches a material term of the Agreement and AUSTSERVE IT either:
 - (i) cannot remedy that breach; or
 - (ii) fails to remedy that breach within thirty (30) days after the Customer gives AUSTSERVE IT notice requiring AUSTSERVE IT to do so.
- 12.2 If a Consumer Customer acquires the Service from AUSTSERVE IT through a sales method regulated by door-to-door sales legislation in the Customer's state or territory, the Consumer Customer may cancel the Service before the end of the cooling-off period set out in the relevant legislation.

- 12.3 If the Agreement is a Fixed-Term Agreement, a Customer may also cancel the Service pursuant to clause 3.
- 12.4 If the Agreement is a non-Fixed Term Agreement, AUSTSERVE IT may cancel the Service at any time by giving the Customer at least thirty (30) days' notice.
- 12.5 AUSTSERVE IT may cancel the Service at any time, without liability and at AUSTSERVE IT's reasonable discretion, if: (a) there is an emergency;
- (a) AUSTSERVE IT reasonably suspects fraud or other illegal activity by the Customer or any other person in connection with the Service;
 - (b) any amount owing to AUSTSERVE IT in respect of the Service is not paid by its due date and the Customer fails to pay that amount in full within ten (10) Business Days after AUSTSERVE IT gives the Customer a notice requiring payment of that amount, unless otherwise set out in the Agreement;
 - (c) AUSTSERVE IT reasonably considers the Customer a credit risk because the Customer has not paid amounts owing to AUSTSERVE IT or any AUSTSERVE IT Group Company in respect of any service by its due date and the Customer fails to pay that amount in full within the period stated in any notice given to the Customer requiring payment of that amount;
 - (d) the Customer breaches a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and the Customer either cannot remedy that breach or fails to remedy that breach within thirty (30) days after AUSTSERVE IT gives the Customer notice requiring the Customer to do so;
 - (e) AUSTSERVE IT is required to do so to comply with an order, instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law;
 - (f) the Customer suffers an Insolvency Event and AUSTSERVE IT reasonably believes AUSTSERVE IT is unlikely to receive payment for amounts due;
 - (g) the Customer dies or if the Customer is a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and AUSTSERVE IT reasonably believes AUSTSERVE IT is unlikely to receive payment for amounts due;
 - (h) the Service is suspended for more than fourteen (14) days, unless otherwise set out in the Agreement;
 - (i) AUSTSERVE IT reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Service to the Customer;
 - (j) any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days;
 - (k) AUSTSERVE IT is otherwise entitled to do so under the Agreement or Acceptable Use Policy;
 - (l) AUSTSERVE IT reasonably believes you have provided AUSTSERVE IT with false or misleading information;
 - (m) AUSTSERVE IT reasonably suspects fraud or other illegal conduct by you or any other person in connection with the Service;

- (n) AUSTSERVE IT reasonably believes a threat to the security of the Service or our Network (or a Supplier's Network) exists and that threat is caused directly or indirectly by you;
 - (o) it is necessary to comply with AUSTSERVE IT's legal obligations;
 - (p) AUSTSERVE IT discovers or reasonably believe that you are a minor (if applicable);
 - (q) an authority such as the ACMA or enforcement agency instructs AUSTSERVE IT to do so;
 - (r) the Customer vacates the premises in which you are provided the Service without notifying AUSTSERVE IT beforehand;
 - (s) the Customer, being a natural person, die;
 - (t) the Customer abuses, threaten, attempt to or causes harm to, equipment or Network infrastructure of AUSTSERVE IT or any of the service networks;
 - (u) the Customer's behaviour towards AUSTSERVE IT or AUSTSERVE IT's representatives has been verbally or physically abusive, threatening or inappropriate, or amounts to bullying or harassment;
 - (v) the Customer has made multiple complaints without a reasonable basis for doing so and you continue to make such complaints after AUSTSERVE IT has asked you to stop;
 - (w) AUSTSERVE IT reasonably believes the Customer is an unacceptably high credit risk;
 - (x) an Insolvency Event occurs, or AUSTSERVE IT reasonably believes an Insolvency Event is about to occur, in relation to you, your business, or a Related Body Corporate;
 - (y) the Customer being a partnership, dissolves, threaten or resolve to dissolve or are in jeopardy of dissolving;
 - (z) AUSTSERVE IT reasonably believes there has been an Excessive Use of the Service;
 - (aa) the Customer ceases or threaten to cease conducting business in the manner you were conducting business at the Service Commencement Date; or
 - (bb) the Customer resells the Service or otherwise act as a Carriage Service Provider.
- 12.6 AUSTSERVE IT may cancel the Service under clause 12.5 as soon as AUSTSERVE IT gives the Customer notice, unless otherwise set out in the Agreement. However, AUSTSERVE IT may cancel the Service immediately if there is an emergency.
- 12.7 If the Customer elects to have an equivalent service to the Service supplied by another carrier, carriage service provider or service provider (including, by churning or Porting) and that carrier, carriage service provider or service provider informs AUSTSERVE IT that the Customer has elected to have the Service supplied by them or have churned or Ported to them, the Service will be deemed to have been cancelled by the Customer immediately. This will be without prejudice to AUSTSERVE IT's rights under the Agreement with respect to the Service.
- 12.8 If the Service is cancelled:
- (a) the Customer is liable for any charges incurred
- (including the cancellation fee and outstanding Equipment Charges, if any, as set out in the Agreement) up to, and including, the Cancellation Date;
 - (b) the Customer authorises AUSTSERVE IT to apply any over payment on the Customer's account and/or money that the Customer has paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the cancellation fee and outstanding Equipment Charges, if any, as set out in the Agreement);
 - (c) subject to clause 12.8(b) and unless otherwise set out in the Service Description, AUSTSERVE IT will refund any over payment on the Customer's account;
 - (d) if the Customer is required under the Service Description to pay for the Service by direct debit payment (either from the Customer's nominated bank or credit card account), the Customer authorises AUSTSERVE IT to debit any undisputed outstanding charges (including any cancellation fee and outstanding Equipment Charges, if any, as set out in the Agreement) from the Customer's nominated bank or credit card account;
- 12.9 No cancellation fee will be payable by the Customer:
- (a) if the Agreement is not a Fixed-Term Agreement; or
 - (b) if the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the Minimum Term.
- 12.10 If the Service supplied in accordance with a Fixed Term Agreement is cancelled as a result of circumstances reasonably attributable to the Customer (including if the Customer changes the location of the Premises, or elects to churn or Port the Service to another carriage service provider):
- (a) before the Service Start Date, the Customer must pay AUSTSERVE IT all infrastructure and installation costs incurred by AUSTSERVE IT in connection with preparations for supplying the Service to the Customer;
 - (b) during the Minimum Term, the Customer must pay AUSTSERVE IT a Cancellation Charge or such higher amount as may be provided in the Service Description;
 - (c) the Customer must pay AUSTSERVE IT all costs incurred to rectify the Customer's breach of the Agreement.
- 12.11 If the Customer is able to use the Service after the Cancellation Date, the Customer is liable for any charges incurred by the Customer for that use, in addition to any other charges under this clause 12.
- Cancellation by You**
- 12.12 Except as otherwise provided in the Service Description for your Service, the Customer may cancel the Service, without liability, by giving AUSTSERVE IT 30 days' notice:
- (a) at any time, where there is no Minimum Term specified in the Service Schedule or your Application;
 - (b) if a Minimum Term is specified in the Service Description or your Application, at any time after the end of the Minimum Term;
 - (c) at any time, if AUSTSERVE IT has breached a material term of the SFOA and the breach is not capable of remedy;

- (d) if AUSTSERVE IT have breached a material term of the SFOA which is capable of remedy and such breach is not remedied within 30 days of you notifying us to remedy that breach;
- (e) You may cancel the Service for any reason before the end of the Minimum Term by giving notice to AUSTSERVE IT, but you will be liable to pay an Cancellation Charge in accordance with clause 12.13(a).

Consequence of Suspension and Cancellation

- 12.13 If the Service is suspended or cancelled in accordance with our SFOA (other than under clause 12.1(b), 12.3, 13.1(b) or 13.1(d)):
- (a) during a Minimum Term, the Customer must pay us a Cancellation Charge;
 - (b) before the Service Commencement Date, AUSTSERVE IT may charge you any costs reasonably incurred by AUSTSERVE IT in preparing to provide the Service to you.
- 12.14 Where the Service is cancelled the Customer must pay us all charges incurred prior to cancellation.
- 12.15 If AUSTSERVE IT reconnects a Service that has been cancelled or suspended, AUSTSERVE IT may require the Customer to pay a reconnection fee. AUSTSERVE IT will not require payment of a reconnection fee where the Service was cancelled or suspended under clauses 12.1(b), 12.3, 13.1(b) or 13.1(b), 13.1(d).
- 12.16 When the Customer's Service is cancelled:
- (a) the Customer must immediately cease using the Service;
 - (b) the Customer must return to us all other material of ours, including any software, on the Premises or in your possession or control;
 - (c) each party's accrued rights and obligations are not affected (unless otherwise stated in the SFOA);
 - (d) AUSTSERVE IT may delete all of your data from any storage media (it is your responsibility to back-up any of your data);
 - (e) all parts of our SFOA which are intended to survive cancellation will continue unaffected, including clauses 3.1, 3.2, 8, 12, 14 and the Service Description.
 - (f) the Customer must pay any outstanding amount for any purchased equipment which you have not fully paid for at the date of cancellation;
 - (g) under clauses 12.1(b), 12.3, 13.1(c) or 13.1(d), and where the equipment may be used with another telecommunications provider, the Customer must pay any outstanding amount for any purchased equipment which you have not fully paid for;
 - (h) under clauses 12.1(b), 12.3, 13.1(c) or 13.1(d), where the equipment cannot be used with another telecommunications provider, the Customer must return any equipment you have purchased but not fully paid for to us, and on return of equipment in an acceptable condition, we will refund any amounts you have already paid;
 - (i) where AUSTSERVE IT supplied equipment on the condition that the Customer acquires the Service for the full Minimum Term then:
 - (i) where we supplied equipment free of charge the Customer must either return the equipment to us, or retain the equipment and pay us for it in full; or

- (ii) where AUSTSERVE IT supplied equipment at a discount you must either return the equipment to us (and AUSTSERVE IT will refund the amount paid) or retain the equipment and pay us an amount equivalent to the discount.

13. Suspending the Service

- 13.1 AUSTSERVE IT may suspend the Service at any time, without liability:
- (a) in any of the circumstances described in clauses 12.5(a) to (h) and (l) to (cc);
 - (b) if it is necessary to allow AUSTSERVE IT or a Supplier to repair, maintain or service any part of the AUSTSERVE IT Network or a Supplier's Network used to supply the Service;
 - (c) if AUSTSERVE IT reasonably believes there has been an Unusually High Use of the Service; or
 - (d) If problems are experienced interconnecting the AUSTSERVE IT Network with any Supplier's Network used to supply the Service.
- 13.2 AUSTSERVE IT may suspend the Service under clause 13.1 as soon as AUSTSERVE IT gives the Customer notice, unless otherwise set out in the Agreement. However, AUSTSERVE IT may suspend the Service immediately if there is an emergency.
- 13.3 AUSTSERVE IT may suspend the Service if any amount owing to AUSTSERVE IT is not paid by its due date, AUSTSERVE IT gives the Customer notice requiring payment of that amount (which AUSTSERVE IT may not give in respect of any amount which is validly disputed in accordance with clause 11 (Complaints and disputes) until after AUSTSERVE IT has completed investigations referred to in clause 11.4) and the Customer fails to pay the amount in full within five Business Days after AUSTSERVE IT gives the Customer that notice.
- 13.4 If AUSTSERVE IT suspends the Service, AUSTSERVE IT may later cancel the Service for the same or a different reason.
- 13.5 If the Service is suspended, the Customer will have to pay access fees for the Service while it is suspended.
- 13.6 If the Service is suspended and the suspension was not as a result of circumstances attributable to the Customer or non AUSTSERVE IT owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period of suspension as stated in the Agreement or under the law.
- 13.7 If the Service is suspended as a result of circumstances attributable to the Customer, the Customer may have to pay AUSTSERVE IT a suspension fee.
- 13.8 If the Service is suspended, the Customer may be required to pay the Service Charges for the Service while it is suspended.
- 13.9 If the Customer wishes to reactivate the Service at any time after suspension, the Customer may make a request to AUSTSERVE IT provided that if the Service is suspended as a result of circumstances attributable to the Customer and AUSTSERVE IT reactivates the Service, the Customer may have to pay AUSTSERVE IT a reconnection or reactivation fee or such higher amount as may be set out in the Service Description.

14. Liability

- 14.1 The Customer is liable to AUSTSERVE IT for any breach of the Agreement that causes foreseeable Loss to AUSTSERVE IT.
- 14.2 Except as otherwise expressly provided in the Agreement (including under clause 14.3), the Customer is not liable to AUSTSERVE IT for any Consequential Losses AUSTSERVE IT suffers or for any costs, expenses, Loss or charges that AUSTSERVE IT incurs which are not a direct result of something the Customer has done.
- 14.3 AUSTSERVE IT is not in any way liable to any End User (whether in contract or tort (including negligence), under any legislation or otherwise). A Customer must indemnify and keep AUSTSERVE IT fully indemnified against any Loss or damage incurred in connection with any claim against AUSTSERVE IT by a End User in relation to:
- (a) the use (or attempted use) of the Service; or
 - (b) the equipment used in connection with the Service.
- 14.4 AUSTSERVE IT has responsibilities and obligations under the law, including under:
- (a) the Telecommunications Legislation;
 - (b) the Competition and Consumer Act; and
 - (c) applicable laws, regulations and codes.
- Nothing in the Agreement removes or limits any rights that the Customer has under existing laws or regulations.
- 14.5 AUSTSERVE IT may be liable to the Customer for:
- (a) interruptions in the Customer's use of the Service as a result of a fault or negligence of AUSTSERVE IT or AUSTSERVE IT's Personnel, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable Loss incurred as stated in the Agreement and where required by law;
 - (b) If a Customer applies for a Residential Grade Service, which is supplied on the basis it is solely for personal, domestic or household use and the Customer uses it for any business purposes, AUSTSERVE IT is not liable for any business-related Losses;
 - (c) death or personal injury caused by AUSTSERVE IT or AUSTSERVE IT's Personnel;
 - (d) any damage to the Customer's property which has been caused by the fault, negligence or fraud by AUSTSERVE IT or AUSTSERVE IT's personnel during installation, repair or maintenance; or
 - (e) breach of terms that are implied by the Competition and Consumer Act and other laws into contracts for the supply of goods and services. If any condition or warranty is implied into the Agreement under the Competition and Consumer Act or other laws, then AUSTSERVE IT's liability (if any) for breach of that condition or warranty in connection with any goods or services AUSTSERVE IT supplies under the Agreement is (in relation to a Customer) limited to re-supply, repairing or replacing the goods or services, where those goods or services are not of a kind ordinarily acquired for personal, domestic or household use and where it is reasonable and fair to do so.
- 14.6 Other than as provided in clauses 14.4 and 14.5, AUSTSERVE IT is not liable to the Customer under this Agreement.
- 14.7 If the Customer has contributed to any Loss or damage the Customer is claiming against AUSTSERVE IT, AUSTSERVE

IT's liability is reduced to the extent of the Customer's contribution.

- 14.8 AUSTSERVE IT is not liable to the Customer for any Consequential Losses the Customer suffers or for any costs, expenses, Losses or charges that the Customer incurs which are not a direct result of something AUSTSERVE IT has done.
- 14.9 In relation to the Customer, to the extent permitted by law, AUSTSERVE IT's total liability for Loss is limited in aggregate for any claim or series of connected claims to the total Charges the Customer paid for the Service for the 12 months immediately before the event to the extent that the exclusions or limitations in clauses 14.4 to 14.7 do not apply.

Internet Content

- 14.10 AUSTSERVE IT is not liable for any defamatory, offensive or illegal conduct or material found in using AUSTSERVE IT's Services, including such conduct or material transmitted by any means by any other person.

Contributory Loss

- 14.11 AUSTSERVE IT's liability for any loss, cost, liability or damage suffered by you under or in connection with the Service is reduced to the extent that your acts, omissions or equipment (or a third party's acts, omissions or equipment) caused or contributed to that loss, cost, liability or damage.

Third Party Acts and Omissions

- 14.12 AUSTSERVE IT is not liable to the Customer or any other person for the acts or omissions of any third party, including any Supplier, except to the extent that liability cannot be excluded.

Service Interruption

- 14.13 Where the Customer's Service is subject to an interruption you may be entitled to a refund or rebate for the period of the interruption if set out in the Service Description. The Service Description will set out a formula for calculating the relevant refund or rebate.
- 14.14 The Customer will not be entitled to any refund or rebate under clause 14.13 where interruption occurs because of:
- (a) a cancellation, suspension or restriction to your Service;
 - (b) a fault or other event which may reasonably be attributed directly or indirectly to the Customer's equipment;
 - (c) the Customer's acts or omissions;
 - (d) scheduled maintenance (lasting less than 10 hours) to our Network, a Supplier's Network, AUSTSERVE IT's equipment or equipment supplied by AUSTSERVE IT to the Customer;
 - (e) an outage caused by a natural disaster, or severe thunderstorm or weather; or
 - (f) an outage caused by third parties, such as a vehicle accident or vandalism.
- 14.15 Except for the liability expressly accepted under this clause (and any liability we have under the Australian Consumer Law and Consumer Guarantees that cannot be excluded), AUSTSERVE IT excludes all other liability to you (whether based in contract, tort (including negligence), statute or otherwise) for suspending, cancelling or restricting the Service in accordance with this SFOA.
- 14.16 To receive any rebate or refund under clause 14.13, the Customer must contact AUSTSERVE IT and inform us of the Interruption.

Intervening Event

- 14.17 Subject to the Customer's non-excludable rights under the Australian Consumer Law, AUSTSERVE IT is not liable for:
- (a) an Intervening Event;
 - (b) any delay in installing any Service to the extent that the delay is caused or contributing by a Third Party or an Intervening Event; or
 - (c) any delay in correcting any fault in any Service to the extent that the delay is caused by an Intervening Event;
 - (d) any failure or incorrect operation of any Service that results from an Intervening Event; or
 - (e) any other delay or default in performance under this SFOA, that is caused by an Intervening Event.

Your Liability to AUSTSERVE IT

- 14.18 Where the Customer is two or more persons your liability will be joint and several and each of you is jointly and individually responsible for all charges and obligations in relation to the Service.
- 14.19 The Customer indemnifies AUSTSERVE IT from and against all actions, claims, suits, demands, liabilities, loss, damage, costs and expenses arising out of, or in any way connected with, your (or any person acting with your express or implied authority):
- (a) use of the Service, or equipment used in connection with the Service, in any manner contrary to the terms of the SFOA; or
 - (b) negligent acts or omissions.
- 14.20 The Customer indemnifies AUSTSERVE IT from and against all actions, claims, suits, demands, liabilities, loss, damage, costs and expenses arising out of or in any way connected with the suspension or cancellation of your Service (unless the suspension or cancellation arose under clause 12.3), including those arising from a claim against AUSTSERVE IT by any third party that relates to the suspension or cancellation of your Service.

15. Assignment and transfer

- 15.1 AUSTSERVE IT may:
- (a) assign some or all of its rights under the Agreement to any person;
 - (b) transfer some or all of its obligations under the Agreement to any AUSTSERVE IT Group Company that is able to perform those obligations; and/or
 - (c) perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a Supplier or another AUSTSERVE IT Group Company provided AUSTSERVE IT remains responsible for the performance of the obligations, and the Customer irrevocably authorises AUSTSERVE IT to execute on behalf of the Customer all such documents that may be required to be executed by the Customer to effect such assignment or transfer.

16. General

- 16.1 The Agreement is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which the Customer normally resides and the Parties submit to the exclusive jurisdiction of the courts of the Commonwealth and its states and territories.
- 16.2 AUSTSERVE IT owns all material (including Intellectual Property Rights) developed by AUSTSERVE IT or AUSTSERVE IT's Personnel, at AUSTSERVE IT's direction.

- 16.3 AUSTSERVE IT may permit the Customer to use this material, or other material licensed by AUSTSERVE IT, as part of the Service. This permission is subject to any conditions which AUSTSERVE IT may impose from time to time and will cease when the Service is cancelled.
- 16.4 The Customer must not infringe any person's Intellectual Property Rights (such as by using, copying or distributing data or software without the permission of the owner) in using the Service. If the Customer breaches this clause, AUSTSERVE IT may suspend or cancel the Service without notice.
- 16.5 If the Customer has been provided with a service equivalent to the Service by another carrier, carriage service provider or service provider and has elected to have that service replaced by the Service under the Agreement (including, by churning or Porting), the Customer authorises AUSTSERVE IT to:
- (a) inform that carrier, carriage service provider or service provider that the Customer has elected to have the Service supplied by AUSTSERVE IT or have churned or Ported to AUSTSERVE IT; and
 - (b) to take such action (including give such notices and sign such documents) on behalf of the Customer as may be necessary or appropriate to effect the transfer or churning or Porting transaction.
- 16.6 If an Intervening Event occurs which affects a Party (the said Party) from performing any of the said Party's obligations under the Agreement (other than an obligation to pay money), then the said Party will not be liable for failing to perform that obligation provided:
- (a) the said Party must notify the other Party of the Intervening Event and use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible; and
 - (b) the said Party's obligations continue during the Intervening Event unless it is not able to perform its obligations due to the other Party being unable to perform its obligations due to the Intervening Event.
- 16.7 The Customer represents that the Customer is not a carrier or carriage service provider. If the Customer is or becomes a carrier or carriage service provider, AUSTSERVE IT may immediately cancel the Service by giving the Customer notice.
- 16.8 If the Customer breaches the Agreement and AUSTSERVE IT does not exercise a right that AUSTSERVE IT has because of the Customer's breach, AUSTSERVE IT does not waive:
- (a) that right unless AUSTSERVE IT gives the Customer notice in writing confirming that AUSTSERVE IT has waived that right; or
 - (b) AUSTSERVE IT's right to insist that the Customer perform any obligation the Customer has under the Agreement.
- 16.9 AUSTSERVE IT may pay a commission to any of AUSTSERVE IT's Personnel in connection with the Agreement.
- 16.10 Each Party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from the other Party to effectively carry out and give full effect to the Agreement and the rights and obligations of the Parties under it.

- 16.11 While AUSTSERVE IT makes reasonable efforts to ensure the information on our Website is correct and up to date, AUSTSERVE IT does not warrant the accuracy of that information.
- 16.12 AUSTSERVE IT's staff may provide the Customer with advice in good faith to assist your use of the Service. However, AUSTSERVE IT do not represent that our staff are experts in your particular computer hardware or software. Subject to your non-excludable rights under the ACL (which AUSTSERVE IT does not exclude), the Customer acknowledges that any action you take on advice given by any of our staff is taken at your own risk.
- 16.13 Further information and advice about your rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission, or the relevant Department of Consumer Affairs in your state or territory.
- 16.14 Any notice or demand given pursuant to this Agreement must be in writing and be delivered, posted, or emailed:
- (a) to the Customer at the Customer's email address or address indicated on the Application or the Customer's latest email address or address notified to AUSTSERVE IT in writing; and
 - (b) to AUSTSERVE IT at AUSTSERVE IT's latest address, email and number indicated on AUSTSERVE IT's website at <http://www.austserve.com.au>.

Any such notice will be deemed to be received:

- (a) in the case of delivery, at the time of delivery;
 - (b) if served by post, at the expiration of forty-eight (48) hours from time of posting (if sent to a local address) or ten (10) days from the time of posting (if sent to an overseas address), notwithstanding that it may subsequently be returned through the post office;
 - (c) in the case of an email, on production of an email header indicating delivery without error
- 16.15 The Agreement sets out the entire agreement and understanding between the Parties in relation to the Service and no Party has entered into the Agreement in reliance upon any representation, warranty or undertaking of any Party which is not set out or referred to in the Agreement.
- 16.16 In the event of any inconsistency between a provision in these terms and conditions and another part of the Agreement, then unless otherwise stated, these terms and conditions prevail to the extent of the inconsistency.