

## COMMSCHOICE STANDARD MASTER SERVICES AGREEMENT

### BACKGROUND

- A. CommsChoice and its related bodies corporate are suppliers of telecommunications products and managed network services.
- B. The Customer wishes to purchase products and/or services from CommsChoice.
- C. This Master Services Agreement sets out the general terms and conditions that apply to the provision of products or services to the Customer, under a Service Order or Service Schedule.

**IT IS AGREED** as follows:

### **1. Definitions and Interpretation**

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#### **1.1 Definitions**

The following definitions apply unless the context requires otherwise:

**ACL** means the Australian Consumer Law.

**ACL Liability** means our liability in relation to our supply of the Services or Equipment under this Agreement under the ACL that cannot be excluded, restricted or limited by this Agreement.

**ACMA** means the Australian Communications and Media Authority.

**Agreement** means this document together with the Order Form and each applicable Service Schedule.

**Barring or Bar** means restricting the supply of:

- (a) all Services; or
- (b) (where possible) one or more Services so that you are unable to acquire those restricted Services.

**Business Hours** means 9am to 5pm on a day that is not a Saturday, a Sunday or a public holiday or bank holiday in Sydney, New South Wales.

**Charges** means the fees payable by you under this Agreement in accordance with clause 4, as specified in your Order Form or otherwise in this Agreement.

**Commschoice** means CommsChoice Group ACN 133 368 797

**CommsChoice Equipment** means any equipment owned or used by us in the provision of Services to which you have access, but excluding Purchased Equipment and Rented Equipment.

**CommsChoice Owned Equipment** means all Equipment but excluding any Purchased Equipment in which title has passed to you in accordance with clause 12.3(a).

**CommsChoice Software** means any software owned by a third party that we use or make available to you in connection with a Service but excludes the Software.

**Consequential Loss** means expenses incurred, loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of goodwill, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss, and any forms of special, indirect, punitive or exemplary loss or damages, and any penalties or fines imposed by a Regulator (even where such loss arises directly, naturally or in the usual course of things from any breach, action or inaction in question).

**Control** has the meaning given in the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Credit Reporting Body** has the meaning given in section 2 of the Privacy Act.

**Early Termination Fee** means the fee payable by you if you terminate a Service before its Minimum Term has expired, the calculation of which is set out in the relevant Service Schedule.

**End User** means any person or entity that uses the Services provided to you under this Agreement, whether or not authorised by you to do so.

**Equipment** means the CommsChoice Equipment, Purchased Equipment and Rented Equipment.

**Fair Use Policy** means the fair use policies available at [www.commschoice.com](http://www.commschoice.com).

**Fault** means any fault relating to Services or Equipment.

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

**Intellectual Property Rights** means all intellectual property rights, including the following rights:

- (c) patents, copyright, rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have Confidential Information kept confidential;
- (d) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (e) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist anywhere in the world (including Australia),

whether or not such rights are registered or capable of being registered.

**Insolvency Event** means:

- (a) bankruptcy proceedings are commenced against either party, or either party is declared bankrupt;
- (b) any step is taken to enter into a scheme of arrangement between either party and its creditors;
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of either party'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 either party or to the whole or any part of either party's assets or business;
- (e) if you are a partnership, the partnership is dissolved or an application is made to dissolve the partnership;
- (f) either party suspends payment of its debts generally; or

- (g) either party is or becomes unable to pay its debts when they are due or either party is or is presumed to be insolvent for the purposes of any provision of the Corporations Act.

**Interest Rate** means the business banking rate charged from time to time by Commonwealth Bank of Australia plus 2%.

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction, and includes the common law and equity as applicable from time to time and any applicable industry codes of conduct.

**Minimum Monthly Spend** means, in respect of a Service, the Minimum Monthly Spend (if any) specified in your Order Form and as varied from time to time in accordance with this Agreement.

**Minimum Term** means, in respect of a Service, the minimum contract period specified in your Order Form.

**Numbering Plan** means the ACMA Numbering Plan 2015 as amended from time to time.

**Order Form** means an order in our standard written format for the provision of Services or Equipment, which includes details of the Minimum Term and charges for the Services, and has been agreed by us in accordance with clause 2.2.

**Personal Information** has the meaning given in the Privacy Act.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Purchased Equipment** means the equipment specified in your Order Form as being purchased equipment.

**Rate Sheets** means our standard rate sheets for the Services as amended from time to time, copies of which are available on our website or by contacting our customer service team.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Rented Equipment** means the equipment specified in your Order Form as being rented equipment.

**Security Deposit** means an amount payable by you under clause 0 as security for all amounts due under this Agreement.

**Service** means each service (including the provision of Equipment or Software) specified in your Order Form that we will supply to you under, and subject to, this Agreement.

**Service Level** means a service level for a Service as specified in [a Service Schedule.]

**Service Number** is defined in clause 7.3(a).

**Service Rebate** means a rebate payable to you for a failure to meet applicable Service Levels, as specified in [a Service Schedule.]

**Service Schedule** means a schedule which can be found at [www.commschoice.com](http://www.commschoice.com) setting out the specifications, system requirements, performance capabilities [and Service Levels] of a Service, together with any special terms applicable to that Service.

**Site** means the site specified in your Order Form.

**Software** means any software we agree to provide to you as specified in your Order Form.

**Spend Limit** means a limit on the amount you may spend on a service determined in accordance with clause 6.

**Supplier** means any carrier, telecommunications service provider, internet service provider, software or equipment supplier or other service provider that provides facilities and services to us.

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth).

**Training** means the training specified in your Order Form.

**we, us** means CommsChoice Group Limited CAN 619 196 539.

**you, your** means the customer, as specified in your Order Form.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The following rules apply unless the context requires otherwise:
  - (i) the singular includes the plural and conversely;
  - (ii) a gender includes all genders;
  - (iii) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (iv) a reference to a person includes a natural person, corporation, trust, partnership, unincorporated body, association, governmental or local authority or agency or other entity;

- (v) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (vi) a reference to a clause, paragraph or schedule is a reference to a clause or paragraph of or a schedule to, this Agreement;
- (vii) a reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated, or replaced, except to the extent prohibited by this Agreement or that other agreement or document;
- (viii) a reference to legislation or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (ix) a reference to dollars and \$ is to Australian currency;
- (x) a reference to time is to Sydney, Australia time;
- (xi) the meaning of general words is not limited by specific examples introduced by **including, for example, such as** or similar expressions;
- (xii) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (xiii) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (xiv) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (xv) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the

event must occur on or by the next Business Day.

## **2. Service Schedules and Order Forms**

### **2.1 Service Schedule**

- (a) The current versions of our Service Schedules are available from our website.
- (b) If you agree to purchase Services under an Order Form, the relevant Service Schedules will apply and will be binding on you in relation to that Service. Each Service Schedule will continue in force for as long as we continue to supply the relevant Service to you.

### **2.2 Order Form**

- (a) You may request Services or Equipment from us at any time by completing and submitting an order to us in our standard form.
- (b) If you complete a written order form we may accept and rely on, and you will be bound by, a facsimile copy or an electronic copy (sent to us by email) of your order form as if it were an original.
- (c) No order form submitted to us under this clause 2.2 will be binding on us until it is accepted by us and we confirm your order [in writing].

### **2.3 Interactions between these terms and conditions, Service Schedule and Order Form**

In the event of any inconsistency between these terms and conditions, a Service Schedule and an Order Form in relation to a particular Service, the provisions of the earlier mentioned document in the list below will prevail to the extent of the inconsistency:

- (a) any special conditions in the Order Form;
- (b) the Service Schedule;
- (c) this Agreement.

## **3. Supply of Services**

### **3.1 Supply by us**

- (a) We will provide you with each of the Services specified in your Order Form [and any other Services we may agree in writing to provide to you from time to time], on the terms of this Agreement and each applicable Service Schedule.
- (b) We will commence providing you with Services on the later of:

- (i) the date specified for installation or commencement of the relevant Service on your Order Form; and
- (ii) the actual date on which the relevant Service is installed or commissioned under clause 3.6.

### **3.2 Service Levels**

- (c) We do not warrant that the Services will be uninterrupted or error free.
- (d) There may be Service Levels applicable to the Services. Any applicable Service Levels are specified in [your Order Form or the applicable Service Schedule].
- (e) We do not guarantee that Service Levels will be met. If the applicable Service Schedule specifies that Service Rebates will apply, those Service Rebates will be applied in accordance with the terms of that Service Schedule and are your sole and exclusive remedy in respect of the failure to meet the applicable Service Levels.

### **3.3 Use of Services**

You must only use the Services in accordance with the terms specified in this Agreement and all applicable Laws. You are liable for all use of the Services by End Users, whether or not you authorised the use of the Services by those End Users.

### **3.4 Additional Services**

If you require any additional Services, a new Order Form must be completed and accepted by each party in accordance with clause 2.2.

### **3.5 Functionality of Services**

Subject to our ACL Liability, you acknowledge that we do not warrant or represent the performance, accuracy, reliability or continued availability of the Services, or that the Services will be compatible with or will inter-operate with any particular computer system or item of equipment or software.

### **3.6 Installation and commissioning**

- (a) You must provide sufficient space and utilities at the Site for the installation and operation of the Equipment.
- (b) You must ensure that all necessary cabling is available, has been installed by a registered cabling provider and meets any applicable technical specifications determined by ACMA.
- (c) We will install or commission the Services and Equipment at the Site unless your Order

Form states that you will install or commission the Services and Equipment yourself.

- (d) You acknowledge that any installation or service start date specified on your Order Form is an estimate only and subject to our ACL Liability, we will have no liability to you for any failure to commence providing a Service by the estimated installation or service start date.

You are responsible for all costs of delivery and installation (as specified in the relevant Service Schedule or Order Form) and for preparing the Site for installation. Our costs of installation may vary from the quotation provided in your Order Form once we have physically inspected the Site.

- (e) If requested by us, you will execute an acknowledgement of delivery of Equipment in an acceptable form.
- (f) You must provide us or our Suppliers with reasonable access to the Site to install Equipment, in accordance with clause 7.2.

### 3.7 Third Party Services

- (a) The Charges to you may pass on any charges another Supplier charges to us in respect of the Services provided to you (including increases and special or one-off charges.)
- (b) If you use an override code to access services offered by another Supplier, you will be billed by that Supplier for charges you incur unless we have a separate arrangement in place for the Supplier to charge us directly, in which case we will pass on the charges to you in accordance with this clause 3.7.

## 4. Payment terms

### 4.1 Payment of Charges

- (a) We may invoice you for the Charges at the relevant rates as specified in your Order Form or notified to you from time to time in accordance with clause 26.5.
- (b) We will issue invoices to you monthly (or at any other frequency specified in your Order Form [or that we determine in our discretion]). We may vary invoice frequency at our discretion. We may issue interim invoices. We may bill you more often if you exceed your Spend Limit.
- (c) Our first invoice will be issued either in the month that we commence providing Services to you or, in our discretion, the following month.

- (d) Your invoice will be calculated with reference to data recorded by us and our Suppliers. Our records are sufficient evidence of amounts payable by you unless demonstrated to be incorrect.

- (e) Unless otherwise expressly stated in this Agreement, we will generally bill you in advance for periodic charges, connection and Service fees (where applicable) and in arrears for usage charges, although this may vary in certain cases.

- (f) We will endeavour to bill you within the next normal billing period for charges billed in arrears, but we reserve the right to bill you for those charges in later billing periods. In accordance with section 5.4.2(c) of the Communications Alliance Ltd C628:2015 Telecommunications Consumer Protections Code, we will not bill charges older than 160 days from the date the charge was incurred by you.

- (g) All charges are due and payable by the due date shown on the invoice (**Due Date**). Payment must be made by the Due Date in full by cheque, credit card, direct debit or any other method permitted by us.

- (h) You must pay all Charges invoiced to you without any set off, counter claim or deduction. We may set off any amount payable to you against any amount payable by you to us.

- (i) If your payment is dishonoured, cancelled or otherwise fails, we may charge you an additional processing fee of A\$16.50 which will be added to your next invoice.

- (j) If you do not pay to us any part of the charges by the Due Date, we may charge interest on the overdue amount from the due date for payment up to the date of actual payment at the Interest Rate;

- (k) If we reasonably incur costs in recovering overdue amounts from you, including mercantile agents' costs, disconnection of Services costs or costs incurred in commencing legal action, we may recover these amounts from you in addition to the overdue amounts.

### 4.2 Minimum Monthly Spend

If a Minimum Monthly Spend applies to a Service (as specified in your Order Form) and your usage and Service charges for any month are less than the applicable Minimum Monthly Spend, we will invoice you for, and you must pay in accordance with clause 4.1, the Minimum Monthly Spend in respect of that month.

### 4.3 Disputed Invoices

If the Customer disputes any part of an invoice submitted by CommsChoice, the Customer must:

- (a) notify CommsChoice in writing within 14 days of receipt of the invoice of the reasons for disputing the invoice; and
- (b) pay the undisputed amount on or before the due date for payment.

The parties must endeavour to resolve the disputed amount between themselves within 10 days of the notification being given by the Customer. If the parties do not resolve the dispute within 10 days of notification in writing by the Customer, the dispute resolution procedure set out in Clause 22.

### 4.4 Group invoicing

You acknowledge and agree that either us or our Related Bodies Corporate of us may issue an invoice to you under this Agreement. All invoices issued by us or our Related Bodies Corporate of us must be paid to the invoicing entity in accordance with clause 4.1.

### 4.5 Commission and referral fees payable

You acknowledge and accept that CommsChoice may pay commissions to any dealer or referral fees to any person who introduced you to CommsChoice.

### 4.6 Variation to Charges

We reserve the right to vary any Charges at any time in accordance with clause 26.5, including where our cost of supply increases as a result of additional Supplier costs, regulatory costs or taxes imposed by any governmental or regulatory body.

## 5. Security deposit

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### 5.1 Payment of Deposit

If the Customer fails to pay any amount due under this Agreement by the due date for payment, CommsChoice may by notice in writing require you to pay a Security Deposit.

### 5.2 Payment of Security Deposit

If required under clause 5.1, you must pay the Security Deposit to CommsChoice within 5 Business Days of the date of the notice. In addition to any other rights available to it under this Agreement, CommsChoice may terminate

or suspend a Service if you fail to pay the Security Deposit within the time required under this clause.

### 5.3 Use of Security Deposit

CommsChoice must hold the Security Deposit as security for the payment of any sums due under this Agreement. If you fail to pay any amount due on the due date for payment, CommsChoice may immediately deduct that amount from the Security Deposit is set-off of your payment obligation.

### 5.4 Reinstatement of Security Deposit

If CommsChoice deducts any monies from the Security Deposit under clause 5.1 you must pay CommsChoice on demand by way of additional security that amount to replace the amount of the Security Deposit used in accordance with clause 5.2.

### 5.5 Return of Security Deposit

CommsChoice must return any part of the Security Deposit which is unused to the Customer on termination of this agreement.

## 6. Spend Limits

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- (a) We may from time to time set a Spend Limit for the amount we will allow you to spend on one or more Services during a month. The Spend Limit is only a guideline for our credit management process. The action we take as part of our credit management process will depend on the amount by which you have exceeded your Spend Limit, and may include the following:
  - (i) verbally advising you of the total charges you have incurred;
  - (ii) advising you in writing (including by email) of the total charges you have incurred; and/or
  - (iii) issuing an interim invoice, payment of which must be received, to continue supply of the Services.
- (b) We may also monitor your use of the Services for excessive or unusual usage or your level of liability for charges for such usage, but do not promise to do so. You acknowledge and agree that in addition to our rights under clause 18, we can suspend, cancel or Bar your Services upon reasonable verbal or written notice to you (including by email) if we have reasonable grounds for believing that you represent a

credit risk in relation to the Service, including where:

- (i) a Service is being used in an excessive or unusual way or there is an unusually high volume or spend for that Service when compared with previous account activity for that Service;
  - (ii) you fail to respond to notices from us about unusually high volume or spend; or
  - (iii) you fail to pay an invoice that is due and payable in circumstances where your payment history indicates a series of late payments, dishonoured payments or failures to pay.
- (c) If we suspend, Bar or cancel a Service, you must still pay for any charges incurred for any excessive or unusual usage (regardless of how caused) and the provisions relating to liability and indemnity also remain unaffected.
- (d) If you wish to Bar access to premium rate Services from the Services we provide you, please contact us.
- (e) We will not be responsible for any equipment tampering or Service fraud except to the extent that such tampering or fraud is caused by us. Should you have any questions in relation to steps which may be taken to reduce the potential risk of fraud in relation to Services or telecommunications equipment, please contact us and we will endeavour to provide such information or direct you to an appropriate source of information.

## **7. Your obligations**

### **7.1 General obligations**

- (a) You must ensure that you comply at all times with all Laws applicable to the Services, Software and Equipment and their use.
- (b) You must, when using the Services, Software and Equipment, comply with any specifications, procedures or policies specified in the relevant Service Schedules or otherwise notified to you in writing in accordance with clause 26.5.
- (c) You must promptly provide us with all information and assistance we reasonably request from you in order to supply the Services and Equipment or otherwise comply with our obligations under this Agreement and any applicable Law.

- (d) You must not resupply the Services or Equipment to a third party without our prior written consent, which we may give or withhold in our absolute discretion.
- (e) If you change your address, phone number or other billing contact details, you must notify us within five Business Days.

### **7.2 Access**

- (a) If we request, you must provide us, a person approved by us, or our Supplier, with access to the Site from time to time during Business Hours, in connection with the provision, inspection and maintenance of the Services and Equipment.
- (b) If you do not own the Site, you must obtain the owner's permission for access in accordance with paragraph (a) and you warrant to us that you have such permission.
- (c) You indemnify us, our Suppliers and any contractor, agent or representative approved by us or our Suppliers, against any loss arising from your failure to obtain permission in accordance with paragraph (b).

If you do not provide access by the time we request, we may immediately limit, suspend or cancel the Services by giving you notice in writing.

- (d) We reserve the right to charge you for our attendance at the Site, at the rates set out in our Rate Sheets, should we, or our Suppliers, not be able to access the Site at the agreed appointed time.

### **7.3 Your acknowledgements**

You acknowledge that:

- (a) in relation to Service Numbers:
  - (i) the Government owns service numbers such as telephone numbers and mobile numbers (**Service Numbers**);
  - (ii) the Numbering Plan sets out rules for issuing, transferring and changing Service Numbers. You and we must comply with the Numbering Plan. Information about your rights of use of your Service Number may be obtained by calling us;
  - (iii) you do not own or have any legal interest or goodwill in any Service Number or PIN issued to you and you are entitled to continue to use any Service Number we issue to you except in circumstances where the Number

Plan allows us to recover the Service Number from you;

- (iv) you can transfer a Service Number or PIN to another person if you obtain our prior written consent; and
- (b) we, like other Suppliers, are required by Law to provide your name, address, Service Number and other public number customer details to a database known as the IPND. This applies to all customers, including unlisted customers. However, unlisted service information is marked and controlled in the IPND so that it is only provided for an approved purpose to those approved data users (such as directory information organisations, emergency service organisations or law enforcement agencies). You must contact us if you wish to have your IPND data altered in any way; and
- (c) we may be required by Law to monitor or intercept communications made using the Services.

## **8. Your use of the Services**

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### **8.1 Use of Services**

- (a) You must not use the Services:
  - (i) for any unlawful purpose (including to send any electronic messages in contravention of the *Spam Act 2003* (Cth));
  - (ii) in a manner that may menace or harass any person or intentionally or recklessly cause damage or injury to any person or property or incite hatred against any person;
  - (iii) in a manner that may expose us or you to the risk of any legal or administrative action including prosecution under any Law or which would bring either of us into disrepute;
  - (iv) to publish material that is or may be illegal or defamatory or which may promote others to engage in such acts;
  - (v) in a manner that may damage our, or our Suppliers', network or systems or cause the quality of the Services to be impaired;
  - (vi) in a manner that may infringe any person's privacy, intellectual property or other rights.
- (b) You agree to comply with the Fair Use Policy set out on our website and the Acceptable Use Policies and Fair Use Policies of any Suppliers relevant to the

provision of your Services (as specified in your Order Form.)

## **9. Transfer of your Services to us**

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- (a) If in providing the Services we need to change your arrangements with your current service provider, then we will do so in accordance with this clause 9.
- (b) You authorise us to sign on your behalf and in your name forms of authority to be provided to your current service provider to transfer your telecommunications services into our name.
- (c) You agree to give written instructions to your current service provider to transfer your telecommunications services from your name to ours if requested by us.
- (d) If your previous service provider credits us with any amount you had paid in relation to services provided to you before the date of transfer, we will credit that amount to your account.
- (e) If your previous service provider raises with us a charge relating to a service it provided to you before the commencement of your Services we will advise you accordingly and you must pay your previous service provider that amount.

## **10. Transfer of your Services from us to another Supplier**

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- (a) If you (or a service provider acting with your authority) ask us to transfer any of the Services to another service provider, then you remain liable to us for any Charges payable in relation to the supply of the Services up to the date on which we transfer those Services to another service provider.
- (b) The provision of Services will cease on the date on which we transfer those Services to another service provider.
- (c) We will issue a final invoice to you for Services which you transfer to another service provider in accordance with clause 4.1.
- (d) If your new service provider credits us with any amount for Services provided up to the date of transfer, we will credit that amount to your final invoice or pay it to you by cheque or electronic transfer.

## **11. Privacy**

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### **11.1 Privacy**

- (a) In the course of providing the Services we may collect Personal Information about you,



your employees, End Users and other individuals.

- (b) We will use and disclose any Personal Information we collect in the course of providing the Services or otherwise in connection with this Agreement in accordance with our privacy policy available at [www.commschoice.com](http://www.commschoice.com).
- (c) If you provide any Personal Information to us, you warrant to us that you have obtained any consents necessary:
  - a. to enable you to provide it to us; and
  - b. to enable us to use and disclose it as contemplated in paragraph (b).

### 11.2 Credit reference check

- (a) You acknowledge that we may perform credit checks on you.
- (b) If you are a natural person, you:
  - (i) acknowledge that the Privacy Act allows us to give a Credit Reporting Body certain Personal Information about you. The information we disclose to a Credit Reporting Body includes:
    - (A) permitted information which will allow you to be identified;
    - (B) the fact that you have applied for credit and the amount for which you have applied;
    - (C) the fact that we are a current credit provider to you;
    - (D) repayments that are overdue and for which debt collection has started; and
    - (E) information that in our opinion you have committed a serious credit infringement;
  - (ii) agree to our obtaining from a Credit Reporting Body a credit report containing information about your personal credit worthiness for the purpose of assessing your application and for the purpose of assisting in collecting overdue payments;
  - (iii) agree to our obtaining information about your commercial activities or commercial creditworthiness from any business which provides information about the commercial credit worthiness of persons, your accountant or any other supplier to you;

- (iv) agree to our giving and obtaining from any credit provider named in your Order Form or in a credit report on you issued by a Credit Reporting Body, information about your credit arrangements for the purposes of:
  - (A) assessing your Order Form;
  - (B) notifying a default by you;
  - (C) allowing another credit provider to ascertain the status of your arrangements with us where you are in default with one or more other credit providers; and
  - (D) generally assessing your credit worthiness; and
- (v) understand that the information exchanged can include any information about your personal and/or commercial credit worthiness, credit standing, credit history or credit capacity which the Privacy Act allows credit providers to give to or receive from each other.

## 12. Equipment

### 12.1 Supply of Equipment

We will provide you with the Equipment nominated in your Order Form and any other CommsChoice Equipment which we determine is necessary for the provision of the Services, on the terms of this Agreement.

### 12.2 Use of Equipment

- (a) You must only use Equipment in accordance with:
  - (i) this Agreement;
  - (ii) all applicable Laws;
  - (iii) the Equipment's instructions for use; and
  - (iv) all applicable safety standards and industry codes notified to you.
- (b) You must keep all Equipment in good repair and condition (save for fair wear and tear).

### 12.3 Title

- (a) Purchased Equipment is and remains our property and you hold it as bailee for us until you have paid for it in full in cleared funds (including any residual amount payable at the end of the Minimum Term as specified in your Order Form) at which time title in the Purchased Equipment passes to you. If you damage or lose any Purchased Equipment

before you have paid for it in full, you will still be required to pay us for the full price of the Purchased Equipment.

- (b) Rented Equipment and CommsChoice Equipment is and remains our property at all times and you hold it as bailee for us until it is returned to us in accordance with clause 18.7.
- (c) Any Equipment specified in an Order Form which is not expressly stated to be Purchased Equipment, Rented Equipment or CommsChoice Equipment will be deemed to be Rented Equipment.
- (d) You must not do anything to give rise to an adverse claim to our rights in or ownership of the CommsChoice Owned Equipment. You must not sell, create any security interest or deal with the CommsChoice Owned Equipment in any way.

#### **12.4 Risk**

The Equipment is at your risk from the time of delivery to the Site.

#### **12.5 Insurance**

Unless otherwise agreed in writing, you must:

- (e) insure the CommsChoice Owned Equipment and keep it insured for its full insurable value under an all risks insurance policy;
- (f) take out and maintain an adequate level of public risk liability insurance in relation to the CommsChoice Owned Equipment and its use;
- (g) take out each insurance policy with a reputable insurer;
- (h) punctually pay all premiums on each insurance policy and not prejudice any policy;
- (i) if we request, provide us with adequate evidence of the insurance policies;
- (j) irrevocably authorise us to receive all money payable under the insurance policies, or payable by any person for damage to or loss of the CommsChoice Owned Equipment or any injury, death, damage or loss caused by the CommsChoice Owned Equipment or its use; and
- (k) appoint us as your attorney to:
  - (i) make, recover and/or compromise in your name any claim under such insurance or against any person; and

- (ii) appropriate any insurance money or other amount received at our option towards repair or replacement of the CommsChoice Owned Equipment or towards any money payable by you to us or to any third party.

#### **12.6 Warranties for Equipment**

- (a) In addition to any consumer guarantees that may apply under the ACL, the warranty period (if any) for each item of Purchased Equipment and Rented Equipment and installation (if installed by us) is detailed in your Order Form. Any warranty we provide you only covers the Purchased Equipment or Rented Equipment (as applicable) and not anything else, including things attached to the Purchased Equipment or Rented Equipment (as applicable) or the wiring already at the Site.
- (b) We do not warrant that any Rented Equipment or CommsChoice Equipment will be new when provided to you.
- (c) When title to any Purchased Equipment passes to you under clause 12.3(a) we will, to the extent we are lawfully able, assign to you any manufacturer's warranty applicable to that Purchased Equipment.

### **13. Fault reporting and recovery**

#### **13.1 Fault reporting and restoration**

- (a) We will provide a seven day a week lost and stolen equipment reporting service. If any Equipment is lost or stolen you must promptly notify us at [support@commschoice.com](mailto:support@commschoice.com).
- (b) Faults can be reported to our help desk during business hours. If you become aware of a Fault you must promptly report it to us.
- (c) Before reporting a Fault to us, you must take reasonable steps to determine that the Fault is with the Service and not due to your equipment or software or user error.
- (d) We are responsible for correcting Faults in the Services if those Faults are caused by us. We will endeavour to resolve Faults in accordance with any applicable Service Levels.
- (e) You must provide all necessary assistance to enable us to locate and repair any Fault which is our responsibility.
- (f) We are not responsible for any Fault which is caused by or within the network of a Supplier or any other third party. We will

notify that Supplier of the Fault and request that the Fault be corrected promptly.

### 13.2 Charges for restoration

The Customer is liable for all costs incurred by CommsChoice in restoring a service where the fault arises as a result of:

- (a) any fault in any equipment, software or any network unit which does not form part of the CommsChoice Equipment;
- (b) any fault with CommsChoice Equipment that is no longer covered by warranty;
- (c) defects in Customer Equipment or its installation, arising out of Customer Software Applications, Customer Content or communications services not supplied or provided by CommsChoice; or
- (d) any act or omission of the Customer or any of its employees, consultants, contractors, agents or representatives.

## 14. Confidentiality

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### 14.1 Use and disclosure

You:

- (a) may use our Confidential Information only for the purposes of this agreement; and
- (b) must keep confidential all Confidential Information except:
  - (i) for disclosures permitted under this clause 0; and
  - (ii) to the extent (if any) you are required to disclose any Confidential Information by Law or in accordance with the rules of an applicable stock exchange.

### 14.2 Use and disclosure of Confidential Information

You may disclose Confidential Information to persons who:

- (a) have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know); and
- (b) before disclosure:
  - (i) in the case of your officers and employees, have been directed to keep confidential all Confidential Information; and
  - (ii) in the case of other persons, have agreed in writing to comply with substantially the same obligations in

respect of Confidential Information as those imposed on you under this Agreement,

(each a **Direction**).

### 14.3 Your obligations

You must:

- (a) ensure that each person to whom you disclose Confidential Information under clause 14.2(b) complies with your Direction; and
- (b) notify us of, and take all steps to prevent or stop, any suspected or actual breach of a Direction.

### 14.4 Disclosure required by Law

If you are required by Law to disclose any Confidential Information to a third person (including government) you must:

- (a) before doing so:
  - (i) notify us in writing; and
  - (ii) give us a reasonable opportunity to take any steps that we consider necessary to protect the confidentiality of that information; and
- (b) notify the third person that the information is confidential to the Disclosing Party.

### 14.5 Return of Confidential Information

On the termination of this Agreement for any reason, you must return the Confidential Information and all copies of it to us. If you have destroyed these, or any of them, then you will give us a written declaration to that effect upon our demand.

## 15. Intellectual Property Rights

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### 15.1 Ownership of Intellectual Property Rights

Unless otherwise specified in this Agreement, we (or our third party licensors) own exclusively all Intellectual Property Rights in material, including software, that we design, create, modify, supply or licence to you, even if it was created or modified for or suggested by you.

### 15.2 Licensed Intellectual Property Rights

- (a) To the extent necessary for you to receive the benefit of a Service, we grant you a non-exclusive, non-transferable, non-sublicenseable licence to use our materials during the term of this Agreement.

- (b) To the extent any of your materials become combined with our materials you grant us a perpetual, royalty-free, irrevocable, non-exclusive licence to copy, use, adapt and distribute and sub-license those materials in the course of our ongoing business.

## **16. Third Party Intellectual Property Rights**

- (a) In providing a Service, we may supply you with materials (including software) licensed by third parties.
- (b) If we supply you with materials (including software) licensed by third parties, you must comply with the terms of the relevant third party licences and you indemnify us against any loss, damage, claim, liability or demand we incur due to your breach of those third party licences.

## **17. Maintenance and Suspension**

### **17.1 Maintenance**

We may perform scheduled and unscheduled maintenance in relation to the Services from time to time. Details of how and when scheduled maintenance will be performed for each Service are set out in the relevant Service Schedule.

### **17.2 Suspension of Services**

We may, without liability, suspend the provision of any Service:

- (c) for a reasonable period for operational, legal or safety reasons (including to perform emergency maintenance);
- (d) if there is an emergency;
- (e) our Suppliers suspend the Service or any service we use to provide the Service;
- (f) services we use to provide the Services become unavailable;
- (g) we reasonably believe that there has been unusually high use of a Service;
- (h) we reasonably suspect fraud in connection with the Service;
- (i) we are required to do so by Law, an emergency services organisation, a law enforcement agency, a telecommunications regulator or other applicable authority; or
- (j) otherwise in accordance with clauses 18.3 and 18.4.

## **18. Term and Termination**

### **18.1 Term**

- (a) This Agreement commences on the earlier of the date on which:
  - a. you submit an Order Form in accordance with clause 2.2; or
  - b. you first access the Services after receipt of these terms and conditions,
 and continues until terminated in accordance with this clause 18.
- (b) The provision of Services commences:
  - (i) if you are transferring from another service provider, when your accounts are transferred from your current service provider to us and any other arrangements with another Supplier for the provision of the Services have been completed; or
  - (ii) if you are not transferring from another service provider, when the Service is commissioned by us.
- (c) If the Order Form does not specify a Minimum Term for a Service, we will provide the Service to you in accordance with the Agreement until the Service is cancelled in accordance with this clause 18.
- (d) If the Order Form does specify a Minimum Term for a Service, we will provide the Service to you in accordance with the Agreement for the Minimum Term and then on a month to month basis until it is terminated:
  - (i) by either you or us giving 30 days' notice in writing; or
  - (ii) otherwise in accordance with clause 18.

### **18.2 Your termination rights**

You may terminate these terms and conditions, an individual Service Schedule or Order Form (as the case may be) by notice in writing to CommsChoice, if:

- (a) In respect of an Order Form, you give CommsChoice prior written notice before the RFS Date to terminate that Order Form and pay to CommsChoice all infrastructure, equipment and installation costs incurred by CommsChoice in connection with preparation for the provision of the Service including, without limitation, costs payable to CommsChoice' suppliers;

- (b) CommsChoice has committed a material breach of these terms and conditions, the Service Schedule or Order Form (as the case may be) and either:
- (i) the breach is not remedied within 14 days of the date written notice of the breach is given to CommsChoice; or
  - (ii) the breach is not capable of remedy; or
- (c) CommsChoice suffers an Insolvency Event.

### 18.3 Our termination rights

- (a) We may terminate this Agreement or suspend, limit or cancel the provision of any Services by notice in writing to you if:
- (iii) you fail to pay any amount due under this Agreement by the due date, we give you notice requiring payment of that amount (which we may not give in respect of an amount which is genuinely disputed until we have investigated the dispute) and you fail to pay that amount in full within [14] days of the date of the notice;
  - (iv) you breach any material provision of this Agreement;
  - (v) you suffer an Insolvency Event;
  - (vi) you undergo a change of Control without our prior written consent;
  - (vii) any Equipment or Service does not function because we are unable to enter the Site in order to update or rectify such Equipment or Service;
  - (viii) you cease receiving any service that we rely upon in providing the Service through no fault of ours or our Suppliers;
  - (ix) you are in breach of a licence, permit or authorisation relating to the use of your telecommunications equipment, the Equipment or the Services;
  - (x) you do not provide security as required by us by the date required by us;
  - (xi) we reasonably suspect you of fraud or attempted fraud;
  - (xii) you vacate the premises to which we had been supplying Services to you;

- (xiii) the Services cannot be provided at your new address or phone number through no fault of ours or our Supplier;
- (xiv) we reasonably believe that your usage of the Services is unusually high (as referred to in clause 6);
- (xv) we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy;
- (xvi) we are permitted or required to do so by law;
- (xvii) you are in breach of the Fair Use Policy or any Supplier's Acceptable Use Policy or Fair Use Policy applicable to the Services;
- (xviii) any of our or our Suppliers' cease providing services to us which we use to provide the Services;
- (xix) any of the Equipment is lost, stolen or substantially destroyed (unless the loss or damage is caused by us);
- (xx) the physical infrastructure and site conditions for your Services do not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study; or
- (xxi) (where you are a natural person) you die.

- (b) Where there is no Minimum Term in place, we may, without liability, suspend, limit or terminate the provision of any Service for convenience, by giving you 30 days' notice in writing.

### 18.4 Failure to pay

If you fail to pay any amount due under this Agreement by the due date, we may (without limiting any of our other rights under this Agreement):

- (a) suspend the provision of the Services;
- (b) charge you interest on the overdue amount up to the date of payment at the Interest Rate; and/or
- (c) refer the debt owing to us to an external collection agent or commence legal action to recover any unpaid debt due to us.

### 18.5 Suspended Services

If we suspend, limit or cancel the Services for unpaid charges or for any other reason, subsequent reconnection may incur a reconnection fee, except where the suspension, limitation or cancellation resulted from our or a Supplier's negligence or breach of this Agreement.

## 18.6 Actions on termination

(a) On termination of this Agreement, you must:

- (i) pay all Charges incurred by you under this Agreement up to the time of termination which will become immediately due and owing upon termination;
- (ii) pay all outstanding amounts for any Equipment which you have not fully paid for as at the date of termination;
- (iii) pay the applicable Early Termination Fee (if any) to us.

(b) If there is credit remaining on your account at the time of termination, we will, at our option, deduct the credit from any amount you owe us under paragraph (a) or pay you the credit or if the credit exceeds any amount you owe us, we will refund you the difference by cheque or electronic funds transfer.

## 18.7 Return of CommsChoice Owned Equipment

On termination of this Agreement, you must:

- (a) if we request and at our option, either immediately return all CommsChoice Owned Equipment (at your cost) or make such Equipment available for our, or our Suppliers, collection; and
- (b) either pay any reasonable costs incurred by us in repossessing the CommsChoice Owned Equipment and any reasonable costs of making repairs that we think necessary or if we are unable to repossess such Equipment, pay an amount equivalent to our then current installation and supply fees for that Equipment as specified in the Rate Sheets and any costs reasonably incurred by us in attempting to repossess such Equipment.

## 19. Force Majeure

We are not liable for:

- (a) any delay in installing any Services or Equipment;
- (b) any delay in correcting any Fault in any Services or Equipment;

- (c) failure or incorrect operation of any Services or Equipment;
- (d) Service outages; or
- (e) any other delay or default in complying with this Agreement,

if it is caused directly or indirectly by any event beyond our reasonable control. Events beyond our reasonable control include failures of third parties, Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of a telecommunications service provided by a third party.

## 20. Limitation of liability

### 20.1 No implied terms

To the maximum extent permitted by Law including the ACL and except as expressly set out in this Agreement, all terms, conditions, warranties, guarantees, undertakings, inducements and representations, whether express or implied or conferred by legislation, the common law, equity, trade, custom or usage or otherwise, are expressly excluded.

### 20.2 No indirect loss

To the maximum extent permitted by Law including the ACL, we will not be liable to you (including in negligence) for any Consequential Loss arising out of or in connection with this Agreement.

### 20.3 Exclusion of liability

To the maximum extent permitted by Law including the ACL, we, have no liability to you or to any other person for:

- (a) acts or defaults of any Supplier or other person;
- (b) faults or defects in any facility or equipment (including the Equipment, CommsChoice Software and Software) we supply to you or the Services, which are caused by or contributed to by your, or a third party's, conduct or misuse; or
- (c) faults or defects that arise in services not provided under this Agreement (even if they are connected, with our consent, to Services provided under this Agreement), which are due to incompatibility with the Services, CommsChoice Software, Software and

Equipment, or any other equipment that we or our Suppliers provide to you.

Suppliers', network, equipment or other property;

## 20.4 Resupply of Services

Subject to clauses 20.2, 20.3 and our ACL Liability, our liability (including in negligence), and that of our Related Bodies Corporate, for any loss or damage arising out of or otherwise in connection with this Agreement or the provision of the Services or Equipment, including for any breach of any term, condition, warranty or under any remedy implied by Law (which cannot be excluded), will be limited at our option to any one or more of the following:

- (a) if the supply relates to goods:
  - (i) the repair or replacement of the goods or supply of equivalent goods; or
  - (ii) the payment of the cost of having the goods repaired or replaced or acquiring equivalent goods; and
- (b) if the supply relates to services:
  - (i) the resupply of those or equivalent services; or
  - (ii) the payment of the cost of having those services resupplied.

## 20.5 Liability of Suppliers

To the maximum extent permitted by Law including the ACL, our Suppliers have no liability to you in connection with this Agreement.

## 21. Indemnity

### 21.1 Your Indemnity

You indemnify us and will keep us, and our Related Bodies Corporate, indemnified against any loss, cost, expense, damage or other liability (including legal costs on a solicitor/client basis) (**Loss**) arising out of:

- (a) your breach of this Agreement;
- (b) any claim or demand against us (including for negligence) by any person other than you, which arises from or is connected with your use of the Services or Equipment;
- (c) any claim or demand (including for negligence) which you or any other person makes against any of our Suppliers which arises from or is connected with your use of the Services or Equipment;
- (d) any damage which you or your employees, agents or contractors cause to our, or our

- (e) the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by you; or
- (f) any breach of a person's rights or defamation of a person (or allegation of such breach or defamation) involving your use of the Services or any Equipment,

provided that you will not be liable to us for any Loss under this indemnity to the extent that the Loss was caused or contributed to by our or our Related Bodies Corporate's negligence or breach of this Agreement.

## 22. GST and other taxes

### 22.1 GST

Unless expressly stated otherwise, all Charges and other amounts payable (and all quotes given) under or in accordance with the terms of this Agreement (including charges for Services, repair fees, late payment charges, Early Termination Fee, reconnection fees and installation costs) are exclusive of GST and you must pay to us in addition to the Charges an amount equal to any GST payable on the relevant supply. That additional amount is payable at the same time as the Charges. We will issue a tax invoice in accordance with clause 4.1 identifying the Charges and applicable GST.

### 22.2 Other taxes

Without limiting clause 22.1 and unless expressly stated otherwise, Charges for the Services are exclusive of all government taxes, duties (including stamp duty), imposts or levies, which will be your responsibility and will be itemised on your invoice.

## 23. Disputes

### 23.1 Dispute resolution prior to litigation

The parties must exhaust the provisions of this clause 23 before initiating any legal proceedings in court.

### 23.2 Senior representative resolution

The parties must use their best endeavours and act in good faith to resolve any dispute arising in connection with this Agreement by negotiation between a senior manager of each of them.

### 23.3 CEO Resolution

If senior managers of the parties have not resolved any dispute within 20 Business Days of notification of

the dispute, the dispute must be escalated to the CEO of each party for resolution.

#### **23.4 Litigation**

If the CEOs of the parties fail to resolve the dispute within a further 20 Business Days of notification of the dispute, either party may take such additional action as it deems necessary to resolve the dispute, including initiating legal proceedings.

#### **24. Related Bodies Corporate and subcontracting**

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- (a) We may, in our sole discretion subcontract, or use any of our Related Bodies Corporate to provide, any part of the Services.
- (b) Despite our use of any subcontractors or Related Bodies Corporate to provide the Services, we will remain responsible for providing the Services in accordance with this Agreement.

#### **25. Assignment**

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- (a) You must not assign, transfer, purport to novate or otherwise deal with any of your rights or obligations under this Agreement, except with our prior written consent (which we will not unreasonably withhold).
- (b) We may assign, transfer, novate, sell or otherwise deal with our rights under this Agreement and/or in relation to the Equipment without your consent. We must notify you within a reasonable period of time if we exercise our rights under this paragraph (b).

#### **26. General**

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##### **26.1 Notices**

All notices must be:

- (a) in writing;
- (b) signed by the party giving the notice (or an authorised representative of that party); and
- (c) sent by email or prepaid express post to the party's address for service, which is the party's business address or contact email address as specified in the Order Form.

##### **26.2 Effect**

A notice given under clause 26.1 will be taken to be duly given or made:

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by post, three Business Days after the date of posting (if

posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);

- (c) in the case of email, on the first to occur of:

- (iii) receipt by the sender of an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address stated in the details page;

- (iv) the time that the notice enters an information system which is under the control of the recipient; and

- (v) the time that the notice is first opened or read by the intended addressee,

however, if the sender receives an out of office reply that states the recipient is out of the office until a later date, the notice will only be taken to be given on that later date,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day in the place to which the notice is sent or at later than 5.00pm (local time), it will be taken to have been duly given or made at the start of business on the next Business Day in that place.

##### **26.3 Governing law and jurisdiction**

This Agreement is governed by the laws of New South Wales, Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

##### **26.4 Further assurance**

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

##### **26.5 Variation**

Except to the extent expressly provided in this Agreement, this Agreement may not be amended or varied except in writing signed by both parties.

##### **26.6 Attorneys**

Each individual executing this Agreement (including an Order Form) on behalf of a party warrants that he or she has full and proper authority to do so.

##### **26.7 Entire agreement**

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all



previous agreements or understandings between the parties in connection with its subject matter.

#### **26.8 Survival**

- (a) Any indemnity or any obligation of confidence under this Agreement is independent of, and survives termination of, this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement, including clauses 0, 15, 15, 18.6, 20, 21, 23 and 26.
- (b) Termination of this Agreement does not affect any accrued rights or remedies of either party.

#### **26.9 Severance**

A provision or part of a provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions or parts of the provisions of this Agreement continue in force.

#### **26.10 No merger**

Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that we may have against you or any other person at any time.

#### **26.11 Consents and approvals**

- (a) Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.
- (b) You warrant that you have and will maintain all power and authority (including any necessary consents or licences) necessary to enter into this Agreement and obtain and utilise the Services and Equipment.

#### **26.12 Relationship**

Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.