



## Master Terms

OneQode Pty Ltd

## OneQode Master Terms

OneQode Pty Ltd ACN 637 271 937 of 3/38 High Street, Kippa Ring QLD 4021.

(Service Provider, we, us, our)

### Background

- A. We own and operate a network of wireless infrastructure used to provide telecommunications and internet services to customers. Some of these solutions incorporate technology of other third parties, for which we hold the appropriate licenses.
- B. You wish to engage us to provide internet services on the terms and conditions contained in these OneQode Master Terms, and any associated Schedules or subordinate terms.

### Operative Provisions

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#### 1. CCC, Application and Term

##### 1.1 Application

These General Terms and the CCC are binding on you from the earlier of:

- (a) if you apply online, the date you submit the application form;
- (b) if you sign an application form, the date you sign the application form;
- (c) if you apply by telephone and we read the Appended Terms to you, the Appended Terms apply from the date you accept the Appended Terms and the remaining terms of our CCC commence on the Service Commencement Date;
- (d) if none of the above applies, the Service Commencement Date;

and applies to all Services we undertake for you. Subject to clauses 1.1(c) and 1.1(d), you agree to the terms and conditions contained in the CCC by making an Application.

##### 1.2 Term

This Agreement will continue for an initial period equal to the Contract Term, unless terminated earlier under the terms of this Agreement. After the initial Contract Term, the Agreement shall renew for periods equal to the Contract Term at the conclusion of the then current Contract Term, unless terminated in accordance with this Agreement.

##### 1.3 Compliance

In addition to our efforts to comply with all relevant legislation, we have implemented, and will continue to implement, policies, procedures and measures to comply with other codes and schemes, including (but not limited to) the following:

- (a) the Telecommunications Industry Ombudsman (**TIO**) Scheme; and
- (b) the Communications Alliance Telecommunications Consumer Protections Code (**TCP**).

## **1.4 TCP Key Commitments**

In accordance with our obligations under the TCP, we will use commercially reasonable endeavours to ensure that:

- (a) You will enjoy open, honest and fair dealings with us and have their privacy protected;
- (b) You will receive clear, accurate and relevant information on products and services from us; before, during and (where appropriate) after the point of sale;
- (c) You will have disputes resolved quickly and fairly by us;
- (d) Our promotion of products and services will be clear, accurate and not misleading;
- (e) Disadvantaged and vulnerable consumers will be assisted and protected by our policies and practices;
- (f) We will endeavour to provide you with an appropriate remedy under the TCP; and
- (g) We will use monitoring and reporting tools to ensure successful implementation of the TCP.

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## **2. Our Collective Customer Contact (CCC)**

### **2.1 CCC**

Our CCC is the collected documents which dictate the terms and conditions under which we supply the Services to you. They are general terms which relate to the Services. Hardware and Products we provide to you. You are bound at all times to comply with the CCC, as are we. Our CCC consists of any of the following documents which may be applicable from time to time:

- (a) your Application;
- (b) the Critical Information Summary (for each Service);
- (c) the Business Services Terms (applicable to Business Customers only);
- (d) the Wholesale Agreement (applicable to Wholesale Customers only);
- (e) these Master Terms;
- (f) our Billing Policy;
- (g) our Complaints Policy;
- (h) our Financial Hardship Policy;
- (i) our Fair Use Policy; and
- (j) any applicable Warranty Information Statement.

#### **(CCC Documents)**

### **2.2 Relationship and Precedence**

To the extent that any conflict exists, the various documents comprising the CCC will take precedence in the following order (from highest to lowest priority):

- (a) any variation to these Master Terms or any other CCC Documents; then

- (b) in order of commencement date from the most recent:
  - (i) the appendix or schedule to any Additional Contracts; and
  - (ii) the terms of any Additional Contracts; then
- (c) the terms, contracts and policies listed in clause 2.1, from 2.1(a) (highest precedence) to 2.1(j) (lowest precedence); then
- (d) any policy or procedure of ours we disclose to you (not forming part of an Additional Contract).

### **2.3 Relationship between the parties**

- (a) Nothing in this Agreement constitutes a partnership or contract of employment. It is the express intention of the parties to deny any such relationship.
- (b) You must not represent to any third party that:
  - (i) we provide preferential pricing or service to you over any other customer or client of ours;
  - (ii) you are approved or endorsed by us, act as our agent, or are affiliated with in any way other than as recipient of the Services;
  - (iii) any fault, downtime or suspension of the Services is our responsibility, unless we have verified in writing that the issue was caused by our actions.

### **2.4 Additional Contracts**

- (a) These terms are general terms governing our relationship with you, in relation to any Services we provide to you at your request.
- (b) The parties may enter into additional contracts from time to time, setting out the relevant services and additional terms including payment details and contract period (**Additional Contracts**). Each Additional Contract is subject to the terms of these OneQode Master Terms.
- (c) Each Additional Contract constitutes a separate agreement, and the expiry or termination of any Additional Contract does not automatically affect the validity of the Master Terms or CCC, or any other Additional Contracts then on foot.

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## **3. Application for Services**

### **3.1 Application**

You may make an application for supply of a Service by:

- (a) completing and submitting an online application form located on our Website;
- (b) asking our customer representative over a telephone call to complete the application form on your behalf and to read the Appended Terms to you;
- (c) completing a written application in the form supplied by us and submitting it to us by email, or in any other manner acceptable to us; or
- (d) any other means agreed by you and us to be an Application (provided that we agree in writing).

Each Service selected by you on your Application is described in more detail in the Service Description applicable to that Service.

### **3.2 Information and Details**

- (a) You must provide us with all information that we reasonably require for the purposes of this Agreement (including for the purposes of an investigation by us of a suspected misuse of the Service or breach of this CCC by you). We rely on the information you supply being accurate, truthful and correct.
- (b) You must promptly advise us of any changes that are relevant to your account or the Service including (but not limited to) changes to your account details (such as registered address or billing address) debit or credit card details (including expiry dates) or end users.

### **3.3 Consideration and Acceptance**

- (a) When you make an Application, we decide (in our absolute discretion) whether to accept your Application and to supply the Service to you based on any factors that we deem to be relevant, including:
  - (i) your eligibility for that Service;
  - (ii) its availability to you;
  - (iii) you meeting our credit requirements;
  - (iv) the information you provide to us; and
  - (v) your prior conduct or history in respect of any previous supply by us or any associated entities of any goods or services to you, including your compliance with the relevant terms and conditions under which those goods or services were supplied.

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## **4. Installation and Connection**

### **4.1 Attendance and Access**

In order to provide the Service to you, we may need to access the Premises. You agree to provide us with, or arrange for us if required, safe and prompt access to the Premises to:

- (a) install any equipment for a Service you have requested;
- (b) inspect, test, maintain, modify, repair or replace any equipment;
- (c) recover Hardware after the Service is cancelled; and
- (d) enforce our rights under clause 15.5.

### **4.2 Required Permissions**

- (a) If you do not own the Premises, you must obtain the owner's permission for us to access the Premises and install and maintain any equipment. You will notify us prior to the commencement of any work on the Premises if you are unable to obtain the owner's permission.

- (b) You indemnify us against (and must pay us for) any claim the owner of the Premises makes against us or against anyone working for us relating to entry on to the Premises or doing the things listed in clause 4.1 that occurs as a result of your failure to comply with this clause 4.2.

#### **4.3 Connecting the Service**

- (a) We will connect the Service in accordance with the relevant Service Description, or if no connection timeframe is specified, within a reasonable time.
- (b) There may be a time delay between us accepting your Application, and providing you with the Service. Unless the Customer Service Guarantee applies to your Service, we are not and will not be liable for any delays associated with connecting the Service, nor any inability by us to provide the Service to you. You will not be charged for a Service unless or until it is provisioned by us or our wholesale provider.
- (c) We determine the route and technical means to be used to provide the Service. We reserve the right to change the Infrastructure used to deliver the Service at any time, but will endeavour to ensure this does not significantly affect the performance of the Service or your use of the Service.

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## **5. The Services**

### **5.1 Services**

We will provide the Services as agreed in each CCC Document, subject to the Master Terms.

### **5.2 Use of the Services**

In your use of the Services, you (and any person who accesses the Services) must:

- (a) comply with our Fair Use Policy at all times;
- (b) observe all legal and regulatory requirements relevant to you; and
- (c) not use the services in any way which is not permitted by the CCC Documents or any other policies, terms or Agreements relevant to your use of the Services.

### **5.3 Performance**

Subject to the Consumer Guarantees and clause 10:

- (a) we aim to provide the Services:
  - (i) to all relevant Australian standards;
  - (ii) in accordance with industry best practice;
  - (iii) using reasonable endeavours to rectify any faults in the Services for which we are responsible; and
  - (iv) taking reasonable steps to investigate and restore Services where affected by causes beyond our control;
- (b) we do not guarantee continuous or fault-free Services, nor do we guarantee any of the aims in clause 5.3(a).

#### **5.4 Service limitations**

We will use our reasonable efforts to provide the Services, however other than as set out in this Agreement, to the fullest extent permitted at law:

- (a) we do not warrant or guarantee the Services will be uninterrupted or error free;
- (b) we do not take any responsibility for faults, delays, or interruptions to the Services caused by:
  - (i) misuse or user error;
  - (ii) your software or equipment;
  - (iii) the delays, action, or inaction of any third party;
  - (iv) the delays, action, operation, inaction, or failure of any third-party service, software, or equipment;
  - (v) the delay in any content provided or required to be provided by you; or
  - (vi) any Force Majeure Event; and
- (c) you are not responsible for faults in your software, equipment, or network;
- (d) we do not warrant or guarantee the Services for any fitness of purpose, performance, or compatibility other than as set out in this Agreement; and
- (e) we do not warrant or guarantee that use of the Services will bring you into compliance with any particular legislation or standard.

#### **5.5 Out-of-Scope Services**

- (a) We may at our discretion, upon request by you, provide Out-of-Scope Services.
- (b) The same standards, warranties, inspection rights and indemnities apply to Out-of-Scope Services as apply to the Services.
- (c) We will charge the Out-of-Scope Fee for any Out-of-Scope Services we provide.
- (d) We may vary the Out-of-Scope Fees at any time. Any change will apply only to Out-of-Scope Services requested and performed after the effective date of the change.
- (e) Where not expressly provided for within this Agreement or a CCC Document, it shall be assumed that any request for Services you make will constitute an Out-of-Scope Service.
- (f) We may, at our discretion, provide Out-of-Scope Services to you without an Additional Contract, in which case we shall be entitled to charge Out-of-Scope Fees for any time and material expended on providing any such Services. We will however notify you beforehand if the service we are providing will constitute an Out-of-Scope Service.
- (g) We may elect to provide Out-of-Scope Services to you free of charge, but any such election will be confined to that particular instance and will not be applicable to any other Out-of-Scope Services. For clarity, our failure to charge you (or charge a reduced rate) for any part of Services will not create an expectation or entitlement to receiving any future Services (including Out-of-Scope Services) free of charge or at a reduced rate.

## **5.6 Changes to Services or Equipment**

- (a) Technology and business environments are constantly evolving and we may make adjustments to the Services to ensure we deliver Services which stay relevant and commercially current. We will give you reasonable notice of any substantial changes (at our discretion) and ensure that any altered services are of the same standards as the original.
- (b) If you request a variation to the Service and we, in our discretion, make that variation, then:
  - (i) different charges may apply to the varied Service in accordance with the Pricing Schedule; and
  - (ii) a Downgrade Fee may apply to the varied Service as notified to you by us and as set out in the relevant Service Description or in the Pricing Schedule.

## **5.7 Maintenance**

We may conduct maintenance on any of our Network, Hardware or Infrastructure. We will endeavour to conduct scheduled maintenance outside normal business hours but may not always be able to do so. We may also suspend the supply of the Service in accordance with clause 11. We may occasionally update the firmware in our network, including that on your supplied modem, to ensure the service performs at its optimal level.

## **5.8 Faults**

- (a) Before reporting a fault to us, you must take reasonable steps to ensure that the fault is not a fault in any of Your Equipment. We are not responsible for rectifying any fault in the Service where the fault is caused by you or Your Equipment and the fault does not arise or was not caused by us or the Hardware.
- (b) If you report a fault in the Service and ask us to come to the Premises to repair it and, once at the Premises, we determine (in our reasonable opinion) that the Service is not faulty or the fault is associated with Your Equipment rather than the Service, we may charge you an incorrect call-out fee (as specified in the Pricing Schedule) and, if you request us to repair Your Equipment, our reasonable charges for such repair.
- (c) We can charge you for repairing a fault if it is caused by something:
  - (i) you intentionally, recklessly or negligently do (or do not do);
  - (ii) someone else using the Service with your express or implied authority intentionally, recklessly or negligently does (or does not do); or
  - (iii) someone who you have not authorised to use the Service does, or does not do (but only if that person's unauthorised use of the Service occurs due to an intentional, reckless or negligent act or omission by you).

## **5.9 Right to sub-contract**

We may appoint employees or agents to provide all or part of the Services; and such entities are bound by the same obligations as us. It is our responsibility to ensure those entities comply with this Agreement.



### **5.10 Identifying data**

We reserve the right to:

- (a) attach labels to your data or index your data for identification purposes; and
- (b) remotely measure your usage of the Services to ensure billing accuracy and technical efficiency.

### **5.11 Third Party Software**

- (a) All Hardware and Product purchased or provided in conjunction with the Services is subject to the manufacturer or licensor's terms and conditions (and any other documentation) which cover those items.
- (b) Where any third-party agreement, terms or documentation applies, we will provide same with to you unless our licensing agreement with that third-party permits us to bind you to the required terms within our own CCC Document. It is a condition of our provision of Services which involve any third-party items that you agree (and continue to agree) with any and all terms which relate to the Services.
- (c) Where you believe you have a basis for a claim in relation to third-party Hardware or Products, your sole and exclusive remedy is to pursue that third-party for resolution in line with any terms and conditions to which you have agreed for those items.
- (d) You agree and warrant that you will not pursue, bring a claim or otherwise involve us in a claim which relates to third-party Hardware, Products or networks, except where our acts or omissions have indisputably contributed to that claim under the terms of this Agreement.

### **5.12 Testing and Optimisation**

- (a) You authorise us to scan or conduct any assurance testing of the security of the Network and/or your Service (including Hardware and any IP address ranges allocated to you in connection with the Service) for the purposes of helping you improve the security of the use of your Service, but we are not obligated to do so.
- (b) We reserve the right to prioritise applications and the use of those applications, in order to optimise Network performance. Network optimisation is determined by total Network usage, and is not based on your (or any other customer's) use of particular services or applications.
- (c) Applications will be prioritised at our discretion and based on whether the performance of the application is time-sensitive (i.e. the need for real-time usage of the application) and whether it requires a minimum throughput speed. Applications such as streaming video, voice, mail, web, virtual private networking (**VPN**), gaming, video on demand (VoD), Internet protocol television (IPTV) and other similar applications will therefore be prioritised at our discretion over non-time sensitive applications such as file transfer protocol (FTP) and file Downloading. For example, your VoIP service will be prioritised over any Downloading you do, thereby maintaining the quality of your VoIP service.

### 5.13 Interception Obligations

- (a) You acknowledge that to the extent permitted by law, we may intercept communications over the Service.
- (b) We (or our Suppliers) may (but are not obligated to) monitor your usage of the Service and communications sent over it for the purposes of ensuring:
  - (i) your compliance with our CCC;
  - (ii) compliance by us or our Suppliers with the law; or
  - (iii) compliance with any request or direction of a Regulatory Authority, a law enforcement authority or other authority.
- (c) We may be obligated to assist law enforcement or intelligence agencies under a number of legislative instruments, including the *Telecommunications (Interception and Access) Act 1979*. This may include (but not be limited to) providing logs, access codes, encryption keys, server-level access or surveillance assistance as required by law.
- (d) You acknowledge that except as expressly permitted, we cannot refuse a legitimate assistance or access request from a law enforcement or intelligence agency. By using the Services, you warrant that you understand and agree to us providing this assistance if and when required, and will hold us harmless from same.

### 5.14 Wireless Technology

- (a) Our Services primarily use wireless Hardware and technology to provide you with the Services. While this provides advantages over wired infrastructure, it also has downsides. Accordingly, you acknowledge that the Services may be affected by a number of factors, including (but not limited to) the following:
  - (i) electrostatic and radio interference;
  - (ii) inclement and cloudy weather, storms, cyclones, smoke, heat, fire, ice, snow and any other weather-related phenomena;
  - (iii) trees, vegetation and other foliage;
  - (iv) mountains, hills and rugged terrain;
  - (v) buildings, installations and insulation;
  - (vi) power failures and blackouts;
  - (vii) damage to Infrastructure; and
  - (viii) other unforeseen or unexpected events.
- (b) We will use our best endeavours to mitigate the above factors, but we can't guarantee that your Service won't be affected by them (or others) from time to time. By completing an Application and receiving the Services, you understand and acknowledge the susceptibility of the Service to these factors.

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## 6. Your Rights and Obligations

### 6.1 Instructions, Equipment and materials

- (a) You must supply clear instructions regarding the scope and specifications of the Services, and respond to any questions about the scope and specifications of the Services promptly and clearly.
- (b) You must respond in a timely manner if we bring an issue to your attention in relation to your software, equipment, data or network that affects the Services.
- (c) You must notify us if you make any changes to your software, hardware, network or data which are likely to affect the Services.
- (d) You must take reasonable measures to prevent any unauthorised person from accessing the Services, and you are responsible for any damage caused or fees incurred by any such person.

### 6.2 Warranties

- (a) You warrant and undertake that:
  - (i) you and your representatives (if applicable) have all necessary licences and legal right(s) to permit and authorise us to provide the Services;
  - (ii) providing the Services in accordance with your directions will not contravene applicable laws and regulations; and
  - (iii) you and all of your employees and contractors maintain prudent and comprehensive insurance policies.
- (b) You must provide adequate assurances of these warranties, including providing copies of any licences or insurance policies under clause 6.1 upon request.

### 6.3 Access Authority

Where we require access to your premises or any other location under your direction or control (for example, a location where you store the majority of your radio equipment) to perform the Services, or to exercise any other rights under this Agreement, you must provide or arrange such access and a safe working environment in compliance with all occupational health and safety laws.

### 6.4 Authorised Persons

- (a) You may nominate another person to have the authority to exercise any of your rights under this Agreement (**Authorised Person**). Anything that Authorised Person does in relation to your Service is deemed to be done by you.
- (b) You may nominate another person to have the authority to communicate with us about your Service, without giving that person the authority to exercise any of your rights under the CCC (**Contact Person**). If a Contact Person requests changes to your Service or otherwise attempts to exercise your rights under the CCC, we may request that you or an Authorised Person contact us directly.

## 6.5 Client responsibilities

- (a) Unless expressly stated within a CCC Document, you are responsible for, and expressly agree that we are not responsible for:
  - (i) your security and the security of your users, including cyber, digital and physical (on premises) security; or
  - (ii) providing any backup and disaster recovery practices, including backup of your data and redundancy.
- (b) Unless expressly set out in writing, you are responsible for, and expressly agree that we are not responsible for:
  - (i) any performance outcomes from your use of the Services;
  - (ii) any aspect of your current operating systems, software or hardware;
  - (iii) any issues or defects arising in relation to your data, business processes, software, equipment or network;
  - (iv) any unauthorised use, except for any unauthorised use that has arisen as a result of our negligent or wrongful act or omission;
  - (v) any use of the Service by any person that you have expressly or impliedly allowed to use the Service;
  - (vi) if you vacate the Premises and do not either disconnect the Service or transfer legal responsibility for the Service in accordance with this Agreement, any use of the Service after you have vacated the Premises;
  - (vii) your sole reliance on the Services without any backups, redundancy or alternative solutions in the event of an emergency; and
  - (viii) any third party software or services, including any that integrate with the Services, unless such functionality is expressly agreed in the Scope of Services.
- (c) You must:
  - (i) notify any users who use or access any Services or Products of any relevant terms of this agreement and any associated supplemental agreements (including this CCC and Third Party Terms), and inform them that those terms are binding upon them; and
  - (ii) ensure that your employees, users, contractors and agents use any Hardware, Products or Services in accordance with the terms of the CCC and any other applicable terms, which may include (but not be limited to) implementing policies, procedures, monitoring software and training.
- (d) Except as we expressly permit under this Agreement or elsewhere, you must not:
  - (i) access all or any part of the Services, Infrastructure or Hardware in order to build a product or service which competes with us or the maker of that Hardware;
  - (ii) use the Services, Infrastructure or Products to provide services to third parties; ,

- (iii) take any action which imposes or may impose (in our judgement) an unreasonable or disproportionately large load on our, or our third-party providers', infrastructure;
- (iv) interfere or attempt to interfere with the proper working of the Services, Infrastructure or Products;
- (v) attempt to copy, modify, duplicate, create derivative works from, all or any portion of the Services, Infrastructure or Hardware (as applicable) in any form or by any means;
- (vi) connect to our Network using a username and password other than those provided for your specific connection;
- (vii) bypass, circumvent or attempt to bypass or circumvent any measures we may use to prevent or restrict access to the Services or Infrastructure;
- (viii) use the Services, Infrastructure or Hardware for Mission Critical or High-Risk Activity including (but not limited to) the operation of nuclear facilities, air traffic control, life support systems, or any other use where the failure of service could lead to death, personal injury, or environmental damage (unless expressly and separately permitted by us in writing);
- (ix) use any mechanism to exceed the amount of resources assigned to you (or conceal any such activities);
- (x) attempt to obtain, or assist third parties in obtaining, access to the Services or Infrastructure other than as provided under for in the CCC; or
- (xi) otherwise take any action in violation of any guidelines, policies or supplemental documentation which shall be applicable to the Services from time to time.

## **6.6 Data**

- (a) Unless otherwise agreed to in writing, you shall be responsible for the preservation of your data. Even where we do provide backup services, you must also take measures to safeguard and secure your data.
- (b) Unless otherwise agreed, you acknowledge and agree that we shall have no responsibility to preserve any data and no liability for any data which may be lost or unrecoverable.

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## **7. Product**

### **7.1 Product**

Where we agree to provide Products to you under a CCC Document, the following terms apply:

- (a) we do not warrant that the Product we provide under this Agreement is fit for any purpose not specified in the relevant CCC Document;
- (b) we do not offer any warranties in respect of the Product, other than those offered by the relevant manufacturers;

- (c) you bear all risk, charges and freight from the time the Product is dispatched from our offices or from our supplier (if applicable);
- (d) ownership of the Product passes only upon payment of all relevant invoices issued, and only to the extent permitted, under the CCC Document;
- (e) where the Product is not related to an Installation:
  - (i) we will arrange for the Product to be delivered to your address, or another address specified by you (**Delivery Address**). We are not responsible for unloading the Product at the Delivery Address. We may deliver the Product in instalments and these conditions apply to the delivery of each instalment;
  - (ii) you are responsible for ensuring that the Delivery Address is correct. If the Delivery Address is unattended or if we cannot complete delivery due to circumstances beyond our control then we may at our sole discretion store the Product at your risk and expense or take such other steps as we consider appropriate, including without limitation delivering the Product to other premises you occupy (which is then deemed the Delivery Address under this Agreement); and
  - (iii) you will be deemed to have accepted the Product upon delivery unless you otherwise notify us within 2 business days. Our records are prima facie evidence of delivery;
- (f) we are not responsible for any delays, frustrations, or interruptions to the delivery or deployment of the products caused by the delays, action or inaction of any third party, and we are not liable in any way for any loss of trade or profit occurring to you if delivery of the Product is delayed, frustrated, or interrupted;
- (g) we may, at our discretion delay ordering Product from our suppliers, or delay delivery or deployment to you, until we have received payment for the Product in full;
- (h) if the Product is not available at the time of invoicing but is expected to be available at a future date we will put the Product on back order;
- (i) we may revise the price of Product placed on back order by reasonable notice to you, as necessary to cater for:
  - (i) price increases imposed by our suppliers;
  - (ii) substituted equivalent Product where our suppliers are unable to supply the Product as set out in the CCC Document and you have approved the substitution; and
  - (iii) exchange rate fluctuations where Product is sourced from outside Australia.

## **7.2 Product release and indemnity**

You agree to release and hold harmless us and our Indemnified Officers against any Claim or Liability arising from or in relation to:

- (a) any loss or damage to persons or property (including data) caused by the inability to use the Product, or by use of the Product by you or anyone whom you allow to access the Product;

- (b) your acts or omissions, and those of your agents, contractors and employees, in connection with the Product;
- (c) any acts or omissions of anyone whom you allow to access the Product, whether intentionally or unintentionally;
- (d) any failure of you or your employees or directors to comply with any policy or reasonable direction in connection with the Product;

whether directly or indirectly arising in connection with the Product, even if we knew or should have known about the possibility of such loss or damage.

### **7.3 Termination consequences for Product**

If the Master Terms or the relevant CCC Document is terminated, then:

- (a) for Product we have not yet ordered, we will either:
  - (i) refund any Product Fees we have received from you for that Product; or
  - (ii) cancel any invoice we have issued for that Product;
- (b) for Product we have ordered but not yet delivered or deployed:
  - (i) where we are able to cancel the order for any Product with our suppliers, we will either:
    - (A) refund any Product Fees we have received from you for that Product, less any cancellation or restocking fees; or
    - (B) reduce any invoice we have issued for that Product by the amount recoverable from our suppliers. The reduced invoice will be immediately due and payable, and we will deliver the Product to the Delivery Address;
- (c) where we are not able to cancel the order for any Product, we will either:
  - (i) not refund any Product Fees we have received from you for that Product (subject to our obligations under the *Competition and Consumer Act 2010* (Cth)); or
  - (ii) issue you with an invoice for that Product which is immediately due and payable, and deliver the Product to the Delivery Address; and
- (d) for Product which has already been delivered, provided or deployed, we will not refund any Product Fees we have received from you for that Product (subject to our obligations under the *Competition and Consumer Act 2010* (Cth)).

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## **8. Payments**

### **8.1 Payments**

- (a) We will bill you and you will pay for the Services in accordance with our Billing Policy.
- (b) It is a condition of us supplying a Service to you that you:
  - (i) ensure we have current and valid credit card or direct debit details at all times, and

- (ii) authorise us to direct debit your nominated credit card or bank account for the purposes of paying your bill (if applicable).
- (c) If we do not receive payment from you by other means by the due date, you authorise us to debit your nominated credit card or bank account on the due date on your bill.
- (d) If you notify us that you wish to cancel a direct debit authorisation, we will process that request within 3 working days, however, if you do not provide us with a new direct debit authorisation within 3 working days after we process your direct debit authorisation cancellation, your account may be suspended until such time as you provide us with a new direct debit authorisation.

## **8.2 Pricing**

- (a) The charges for the Service are set out in our Pricing Schedule (or in the terms of an applicable Special Offer under clause 8.5) and any additional charges are set out in your Application.
- (b) You must pay all charges for the Service in accordance with the Service Description and the Pricing Schedule. Charges for the Service accrue from no later than the Service Commencement Date, or earlier if specified in your Application or the relevant Service Description.
- (c) We may charge you an additional amount to service, modify, repair, or replace the Service or any equipment you use in connection with the Service, as a result of:
  - (i) a breach of our CCC by you;
  - (ii) a negligent or fraudulent act or omission by you, a person with your express or implied authority, or by any of your employees, agents or contractors;
  - (iii) a failure of any of Your Equipment arising out of an act or omission by you, a person with your express or implied authority, or by any of your employees, agents or contractors; or
  - (iv) a failure or fluctuation in electrical power supply arising out of an act or omission by you, any person with your express or implied authority, or by any of your employees, agents or contractors, and we will provide you with details of the additional amount prior to commencing the service repair or replacement.
- (d) In order to provide some services to you (for example, international calls or premium services calls), we enter into arrangements with other Suppliers. You acknowledge that our charges to you for the Service may vary as a result of a variation of a Supplier's charges to us for these types of services, and that we may pass on any additional charges a Supplier charges to us for these types of services in accordance with clause 20.4.

## **8.3 Billing**

- (a) You are responsible for and must reimburse us for any transaction, processing, dishonour or charge-back fees issued by a financial institution or payment gateway in the course of making payment.



- (b) All fees are in Australian dollars, exclusive of GST. If any GST is imposed on a supply under this Agreement, you must pay the GST amount with and in addition to the Fees. We will itemise any applicable GST on each tax invoice.
- (c) Where we become liable for any penalties or interest as a result of the late payment of GST due to your failure to comply with your obligations under the CCC (including this clause 8) or your obligations under any applicable law, then you must pay to us an additional amount equal to any penalties or interest payable by us.
- (d) We may charge you for any other applicable:
  - (i) value added taxes relating to the supply of your Service; and
  - (ii) taxes (including utilities taxes), levies, fees or similar charged to us (including such taxes on-charged to us by Suppliers) on a per service basis.

#### **8.4 Legacy Services**

Our Service plans and pricing change from time to time. After any relevant Contract Term expires, we may (at our discretion) continue to provide a Service to you in accordance with the same Service plan and pricing that applied during the Contract Term, even if we no longer offer the Service on those terms to new customers (**Legacy Service**). Details of the terms of any Legacy Service we supply to you, including pricing, will be made available to you upon request.

#### **8.5 Promotional Offers**

- (a) From time to time we may make special offers (**Special Offers**) in connection with the Service. You may be advised of these Special Offers via a general advertisement or through a specific offer to you. The Special Offer may be subject to certain conditions, including:
  - (i) a variation by us of the price or the terms of supply (including any Contract Term); or
  - (ii) a requirement that you acquire all relevant Services for a minimum Contract Term and pay a Break Fee if you cancel the service before the end of that minimum Contract Term.
- (b) You may accept a Special Offer in the way notified by us (which may include completing and submitting an Application). If you validly accept a Special Offer, the terms of that Special Offer will prevail to the extent of any inconsistency over any CCC terms, and will apply until the expiry of the Special Offer as notified by us.
- (c) In all other respects, the terms and conditions of our CCC continue to apply. After the expiry of the Special Offer, the Special Offer pricing and terms will cease to be available and, unless we give you reasonable notice otherwise, the terms of our CCC will apply thereafter.

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## **9. Intellectual Property**

### **9.1 Pre-existing IP**

Unless otherwise agreed, each party retains ownership of all Intellectual Property rights in material owned or created by that party independently of this Agreement, and no such Intellectual Property is assigned or transferred by way of this Agreement.

### **9.2 Third party material**

We may incorporate third party materials as necessary to provide the Services. Use of third party materials may be subject to creative commons, open source or third party licensing terms.

### **9.3 Ownership of Intellectual Property**

- (a) You do not own or have any legal interest in any of our Intellectual Property or in any telephone number, IP address, domain name, personal identification number or other locator or identifier issued by us to you.
- (b) The parties agree that all Intellectual Property rights in:
  - (i) the Services and any other material developed by us under this Agreement; and
  - (ii) any improvements, modifications or enhancements to the Services, Products or Infrastructure, and any other material developed by us in the course of providing the Services,

will vest in and are owned by us upon creation, even if based on your new feature request or user feedback.

### **9.4 Publicity Rights**

For the term of this Agreement, and subject to your ongoing right of revocation by 30 days' Written Notice, you grant us, and our contractors and agents, a non-exclusive licence to:

- (a) publish general case studies describing your use of the Services in general terms for academic and promotional purposes; and
- (b) display, link to, or promote your business (if applicable) as part of our portfolio.

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## **10. Indemnity and Limitation of Liability**

### **10.1 Client indemnity**

- (a) Subject to clause 10.2, you agree to release, indemnify, defend, and hold harmless us and our Indemnified Officers against any Claim or liability arising from or in relation to:
  - (i) your misuse of the Services or Products;
  - (ii) your reliance on the Services or Products for Mission Critical or High-Risk Activities, where such reliance has not been expressly set out and permitted in writing by us;

- (iii) any acts or omissions of anyone whom you allow to access the Services from time to time, whether deliberately or otherwise;
- (iv) any loss or damage to persons or property (including data) caused by your actions;
- (v) your breach of any law or infringement of any third party rights including Intellectual Property rights;
- (vi) your instructions causing us to be in breach of any law, regulation or infringement of any third party rights including Intellectual Property rights;
- (vii) our compliance with any Technical Assistance Notice, Technical Assistance Request or Technical Capability Notice issued under the *Telecommunications Act 1997* (Cth) or Computer Access Warrant under the *Surveillance Devices Act 2004* (Cth) or any other applicable or comparable instrument from time to time;
- (viii) your own negligence or malpractice, or reckless or intentional misconduct,
- (ix) your own failure to perform your obligations and responsibilities under this Agreement;
- (x) actions taken in relation to this Agreement in accordance with our obligations at law or any order issued by a court of law or relevant government authority;
- (xi) any breach of your warranties under this Agreement;
- (xii) any downtime, interruption, Product, Service, Infrastructure or Hardware failure, or Consequential Loss of any kind;
- (xiii) data loss;
- (xiv) third party products, hardware or software incorporated in our Infrastructure or Services, including any materials, software or code derived from open-source repositories and/or licensed under open-source licenses;
- (xv) our reasonable actions in denying anyone access to the Services; and
- (xvi) any cause independent of human control that occurred after the Services were supplied or Products delivered;

whether directly or indirectly arising in connection with the Services, even if we knew or should have known about the possibility of such Claim or liability.

- (b) You indemnify us for any reasonable legal expenses we incur as a result of your breach of this Agreement, including expenses for enforcing payment, on a solicitor and own-client basis.
- (c) If you and one or more others are the customer for a Service, the indemnities in this clause 10.1 apply to each of you jointly and severally.

## **10.2 Limitation of Liability**

- (a) We only accept liability to you as set out in this clause, or as required by consumer or other laws that cannot be excluded by contract.

- (b) If you are a consumer within the meaning of the Consumer Law, there are certain rights (such as the consumer guarantees implied by the Consumer Law) which cannot by law be excluded (**Non-Excludable Conditions**). This clause is subject to those Non-Excludable Conditions.
- (c) To the fullest extent allowable at law and subject to the Non-Excludable Conditions:
  - (i) we exclude all liability to you for any loss, including indirect, special, pure economic or Consequential Loss (whether arising under contract or tort), suffered or incurred directly or indirectly by you in connection with the CCC, the Services, Infrastructure and Products, howsoever arising;
  - (ii) indirect, special, pure economic or Consequential Loss (whether arising under contract or tort) are expressly excluded under this Agreement;
  - (iii) all Services are provided under this Agreement on an 'as is' basis and all warranties that may be implied by law or statute (other than those set out in this Agreement) are excluded;
  - (iv) we shall not be liable for any damages, claims, breaches, liability or alleged losses arising from our compliance with any Technical Assistance Notice, Technical Assistance Request or Technical Capability Notice issued under the *Telecommunications Act 1997* (Cth), Computer Access Warrant under the *Surveillance Devices Act 2004* (Cth) or any other lawful direction by an intelligence or law enforcement agency;
  - (v) our liability, and liability of our Indemnified Officers under this Agreement is limited to (at our election), in relation to Services:
    - (A) supplying the Services again; or
    - (B) payment of the cost of having the Services supplied again; or
    - (C) a refund of the amount you paid us for those Services;
  - (vi) our liability, and liability of our Indemnified Officers under this Agreement is limited to (at our election), in relation to Product:
    - (A) supplying the Product again;
    - (B) payment of the cost of having the Product supplied again;
    - (C) repairing the Product;
    - (D) payment of the cost of having the Product repaired; or
    - (E) a refund of the amount you paid us for the Product; and
- (d) Despite any other provision to the contrary, our total liability and the total liability of our Indemnified Officers in connection with this Agreement whether under contract or tort, will not in any circumstances exceed the maximum value equal to the total fees received by us from you under this Agreement for the 12 month period preceding your Claim.

### 10.3 Suppliers

- (a) We accept liability to you for the acts or omissions of our Suppliers only to the extent required by Consumer Law.

- (b) Other than as expressly required under Consumer Law, we do not accept and will have no liability to you or to any other person for the acts, omissions or defaults of any Supplier who is not acting as our agent in compliance with their engagement terms, or any person who provides goods or services directly to you for use in connection with a Service.

#### **10.4 Refunds and Rebates**

- (a) Subject to clause 10.4(c), in the case of Interruptions to the Service, we may offer you a refund or rebate for the period of the Interruption if a rebate/refund formula for Interruptions is specified in the Service Description for the Service.
- (b) In addition to your rights (if any) under clause 10.4(a), you may be entitled under Consumer Law to compensation for any reasonably foreseeable loss incurred if the Interruption is caused by our breach of a Consumer Guarantee.
- (c) The refund or rebate in clause 10.4(a) does not apply to Interruptions which occur because of:
  - (i) a cancellation, suspension or restriction to the supply of the Service in any of the circumstances listed in clause 11;
  - (ii) a fault or other event which may reasonably be attributed directly or indirectly to the Infrastructure or Hardware;
  - (iii) your acts or omissions; or
  - (iv) scheduled maintenance to our Network, a Supplier's Network, Infrastructure or Hardware for less than 1 hour.
- (d) To receive the rebate or compensation set out in clause 10.4(a), you must call us and inform us of the Interruption within 12 hours of the Interruption occurring.

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## **11. Suspension, Cancellation and Force Majeure**

### **11.1 Your Default and Consequences**

- (a) We may immediately suspend, cancel or restrict our Services under any or all CCC Documents at any time and/or give you a Notice of Default if:
  - (i) you fail to make any payment when due, or any payment is dishonoured or subject to chargeback, subject to clause 8;
  - (ii) you breach our Billing Policy;
  - (iii) you fail to provide clear and timely instructions;
  - (iv) you cause any malicious code or other damaging virus, malware or code to be uploaded to our servers or software;
  - (v) you use the Services, Hardware or any other Products for Mission Critical or High-Risk Activity without:
    - (A) notifying us;
    - (B) obtaining our written permission; and
    - (C) signing any and all additional documentation required for same.

- (vi) we reasonably suspect fraud or other illegal conduct by you or any other person in connection with the Service;
  - (vii) we reasonably believe a threat or risk exists to the security of the Service or the integrity of our Network or a Supplier's Network and that threat or risk is caused directly or indirectly by you;
  - (viii) you resell the Service or otherwise act as a Carriage Service Provider;
  - (ix) we reasonably consider you to be an unacceptably high credit risk;
  - (x) we are entitled to under another provision of our CCC;
  - (xi) an Insolvency Event occurs in relation to you, your business, or one of your Related Bodies Corporate;
  - (xii) you vacate the Premises or pass away;
  - (xiii) in the case of a partnership, on dissolution or on the filing of an application to dissolve the partnership, we reasonably believe that it is unlikely that we will receive or retain amounts due and payable by you under our CCC;
  - (xiv) you are a business customer and you cease or state that you intend to cease conducting your business in the manner in which your business was being conducted as at the Service Commencement Date.
  - (xv) we have reason to suspect illegal or unethical activity in relation to your data; or
  - (xvi) in our reasonable opinion your data, network, software or equipment may be causing damage to any person or property.
- (b) Suspension of Services under this clause does not affect your liability to make payment and will immediately end when the issue giving rise to the suspension is remedied.

## **11.2 Suspension without Default**

- (a) Without limiting any other provision of this CCC, we may immediately suspend, cancel or restrict the supply of the Service to you if:
- (i) there is an emergency;
  - (ii) a Supplier terminates its agreement with us, or ceases to supply services to us, and we are not able to provide the Service using services of an alternate Supplier on terms reasonably acceptable to us;
  - (iii) doing so is necessary to maintain, repair or restore any part of our Network or a Supplier's Network used to supply the Service, or for other operational reasons;
  - (iv) we are required by law or in order to comply with an order, direction or request of a Regulatory Authority or an emergency services organisation;
  - (v) the ACCC issues us with a competition notice (as that term is used in the Competition and Consumer Act 2010) in respect of the Service or we reasonably anticipate that it may do so;

- (vi) providing the Service to you may be illegal or we reasonably anticipate that it may become illegal;
  - (vii) a Force Majeure Event prevents us from supplying the Service in accordance with our CCC for more than 14 days; or
  - (viii) we reasonably believe that there is a threat or risk to the security of the Service or the integrity of our Network or a Supplier's Network and that threat or risk is not caused directly or indirectly by you.
- (b) In the event that we decide to suspend, cancel or restrict the supply of a Service to you under clause 11.2(a), we will endeavour to provide you with as much notice as is reasonably possible in the circumstances.
  - (c) If we suspend the Service under clauses 11.1 or 11.2(a), we may later cancel the Service for the same or a different reason (subject to the relevant provisions of our CCC)

### **11.3 Force Majeure**

If a party is affected by a Force Majeure Event, they must immediately notify the other party of the circumstances. The parties' obligations under this Agreement are suspended for the duration of and to the extent that they are affected by the Force Majeure Event. However, either party may end this Agreement if the Force Majeure Event continues for more than 21 days.

### **11.4 Consequences of Suspension**

If we reconnect a Service that has been cancelled, you may have to pay us a reconnection fee. You will not be required to pay a reconnection fee if the Service was cancelled or suspended pursuant to clauses 11.2, 13.3(a)(iii) or 13.3(a)(iv) or due to our fault or negligence.

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## **12. Mission Critical and High-Risk Activities**

### **12.1 Reliance Not Permitted for Standard Services**

- (a) The Services, including any Products and Hardware we provide under this Agreement or any associated CCC Documents are not intended for any use which may constitute a Mission Critical or High-Risk Activity in their 'standard' form.
- (b) If you intend to use any Service or Product we provide to you for Mission Critical or High-Risk Activities, you must notify us prior to using them for any such purpose.
- (c) If you wish to use our Services or Products for Mission Critical or High-Risk Activities, we reserve the right to:
  - (i) require that you sign additional agreements and/or documentation;
  - (ii) require that you upgrade your Hardware and/or software which you use for communications;
  - (iii) require that you purchase additional Hardware and/or software;
  - (iv) require that you put in place redundancies and backup measures in case of a failure within our communications solutions;

- (v) require that you provide your staff with additional training;
- (vi) issue further documentation, policies and procedures in your organisation wherever critical communications solutions will be implanted;
- (vii) increase our fees and charges; and
- (viii) do any other act or thing we consider necessary in light of the particular Mission Critical or High-Risk Activity(s).

## **12.2 No Liability For Breach**

- (a) You agree and acknowledge that the requirements of the above clause 12.1 are reasonable considering the difference in standard communications usage and usage for Mission Critical or High-Risk Activities.
- (b) Where you fail to adhere with the terms of clause 12.1, including failing to strictly adhere to any directions or recommendations we give in relation to Mission Critical or High-Risk Activities, you agree to indemnify and hold us completely harmless regarding same. We will not accept any liability for use of our Hardware, Infrastructure, Network or Services for Mission Critical or High-Risk Activities where you have not obtained our express permission for same.

## **12.3 Requirement Extends to Third Parties**

Where any of your associated bodies corporate or third parties (and their agents, employees or assigns) have access to Hardware or Services and could use either for Mission Critical or High-Risk Activities, you agree to:

- (a) notify us regarding same prior to any use for such a purpose;
- (b) obtain any consents, agreements and warranties requested by us at our complete discretion; and
- (c) do all acts and things necessary to ensure that those associated or third parties comply with the requirements of this agreement, any CCC Documents and any other subordinate terms, policies or procedures to which you agree with us from time to time.

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# **13. Termination**

## **13.1 Termination for default**

- (a) We may end any CCC Document immediately by Written Notice if the you fail to remedy a Notice of Default in relation to that CCC Document.
- (b) We may end the CCC immediately by Written Notice if you:
  - (i) fail to remedy a Notice of Default;
  - (ii) fail to make payment 7 days after an Extension Date under our Billing Policy;
  - (iii) experiences an Insolvency Event; or
  - (iv) is guilty of dishonesty, serious misconduct or serious neglect of duty.



### **13.2 Our Termination Rights**

- (a) We may, without liability, cancel the Service:
  - (i) if there is no Contract Term specified in your Application or the Service Description, at any time by giving 30 days' notice to you;
  - (ii) if a Contract Term is specified in your Application or the Service Description, at any time after the end of the Contract Term by giving 30 days' notice to you; or
  - (iii) if we reasonably determine that it is not technically, commercially or operationally feasible to supply the Service to you, at any time prior to the Service Commencement Date by giving you notice.
- (b) Subject to your rights under the Consumer Guarantees, we may cancel the Service if you materially substantiate that the Service has not met or is not meeting your prior expressed expectations or needs and, acting reasonably, we agree that we are not able to provide a Service that meets your prior expressed expectations or needs.

### **13.3 Your Termination Rights**

- (a) Except as provided otherwise in the Service Description for your Service, you may cancel the Service without liability, by giving us notice:
  - (i) at any time, if there is no Contract Term specified in the Service Description or your Application;
  - (ii) if a Contract Term is specified in the Service Description or your Application, at any time after the end of the Contract Term;
  - (iii) if:
    - (A) we have breached a material term of our CCC and that breach is not capable of remedy; or
    - (B) we have breached a material term of our CCC and that breach is capable of remedy but we failed to remedy that breach within 14 days after you first gave us notice requiring us to do so, or
  - (iv) of at least 14 days where there has been a prolonged Interruption to the Service lasting for more than 10 days, or more than 3 reported Interruptions in a 12 month period. This clause does not apply to Interruptions which occur because of:
    - (A) a cancellation, suspension or restriction to the supply of the Service in any of the circumstances listed in clause 11.1;
    - (B) a cancellation, suspension or restriction to the supply of the Service in any of the circumstances listed at clause 11.2(a);
    - (C) a fault or other event which may reasonably be attributed directly or indirectly to Your Equipment; or
    - (D) your acts or omissions.

- (b) You may cancel the Service for any reason before the end of the Contract Term by giving notice to us but you may be required to pay a Break Fee in accordance with clause 14.1.
- (c) You may ask us to suspend the Service by giving notice to us. We will try to do so within a reasonable period if it is a Service for which suspension is an option. Any charges applicable during a suspension under this clause 13.3(c) are set out in the Service Description for that Service. We can reasonably limit the length of time that a Service can be suspended by you.

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## **14. Consequences of Termination**

### **14.1 Costs, Effect and Break Fees**

- (a) If the Service is cancelled in accordance with our CCC (other than in accordance with clauses 13.2(a)(iii), 13.2(b), 11.2 or 13.3(a)(iii) and 13.3(a)(iv)):
  - (i) before the Service Commencement Date, we can charge you any costs reasonably incurred by us in preparing to provide it to you; and
  - (ii) during the Contract Term, you must pay to us the Break Fee.
- (b) If the Service is cancelled you still have to pay all charges incurred before cancellation.
- (c) On cancellation of the Service:
  - (i) if the circumstances listed at clauses 11.1(a), 13.3(a)(i) or 13.3(a)(ii) apply, you will, at your cost, immediately stop using and return to us, or allow us to remove, any of the Hardware. You must pay all outstanding amounts in a lump sum for any Products which you have not fully paid for at the date of cancellation;
  - (ii) if the circumstances listed at clauses 11.2, 13.3(a)(iii) and 13.3(a)(iv) apply, you will immediately stop using and return to us, or allow us to remove, any of the Hardware. We will refund any amounts already paid by you for any Products that you have purchased but not fully paid for at the date of cancellation, if those Products cannot be used with other telecommunications providers' services. Where the Products can be used with other telecommunications providers' services, no refund is applicable and you must pay all outstanding amounts in a lump sum. We will not credit you with any refund until after you have returned the Products to us and we have assessed that the returned Products has not been damaged by more than fair wear and tear.

### **14.2 Supply and End of Use**

Where we have supplied you with equipment on the condition that you acquire the Service for the full Contract Term then:

- (a) if we supplied the Products free of charge, you must:
  - (i) return the Products to us; or
  - (ii) retain the Products and pay for it in full; or

- (b) if we supplied the Products at a discount, you must:
  - (i) return the Products to us and we will reimburse you the purchase price paid by you, or
  - (ii) retain the Products and pay us an amount equivalent to the discount we gave you;
- (c) you will, at our request and your cost, return to us all other Hardware of ours on the Premises or in your possession or control;
- (d) unless our CCC expressly states otherwise, each person's accrued rights and obligations are not affected; and
- (e) you must immediately stop using the Service.

### **14.3 Additional Rights**

- (a) If the Master Terms end for any reason, then in addition to any other rights we may have:
  - (i) we may issue an invoice for Products or work not previously invoiced, whether for Services or any other services or charges contemplated by this Agreement;
  - (ii) you must pay all of our outstanding invoices whether or not due, including any invoice issued under clause 14.3(a)(i);
  - (iii) we retain a lien over all Products until all outstanding invoices have been paid in full, including any invoice issued under clause 14.3(a)(i).
- (b) If a CCC Document is terminated before the end of any applicable contract period for any reason, and we were not in default of that CCC Document, then in addition to the rights specified in clauses 14.3(a) and any other rights we may have, all fees for the balance of the contract period (if any) of that CCC Document (calculated using the fees applicable as at the date of termination), excluding any costs we can reasonably mitigate, become immediately due and payable. The parties agree that this is not a penalty, but represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from early termination in light of our sunk infrastructure, effort, support, training and implementation costs and ongoing commitments.
- (c) If we terminate a CCC Document under clause 13.1(a), then we may terminate by Written Notice to you any other CCC Document, whether or not that other CCC Document was in any way connected to or affected by termination of the previous services.

### **14.4 Remaining Credit**

Subject to this clause 14 and our Billing Policy, in the event that there is credit remaining on your account at the time of cancellation, you will receive the credit via your listed credit card without being charged the Handling Fee. We reserve the right to charge any associated merchant fees, as they are a reflection of the costs incurred by us to prepare the refund for you. If a cheque or other method of refund is required, a Handling Fee is payable.

#### **14.5 Pursuit of Other Rights**

A party not in default may pursue any other rights or remedies available at law against a defaulting party, subject to clause 10.

#### **14.6 Deletion of Data**

Once this agreement has been terminated or cancelled for any reason, we may delete all of your data from any storage media. You are solely responsible for backing up your data.

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### **15. Hardware**

#### **15.1 Ownership**

To provide you with Services, we may loan or rent Hardware to you, which we may also install at your premises. All Hardware:

- (a) is owned or used under license by us;
- (b) may be installed at your premises and leased by you as part of the Services;
- (c) forms part of the Infrastructure, and may be utilised and dealt with by us howsoever we see fit while it is installed, including (but not limited to):
  - (i) transmitting data to other parts of our Infrastructure;
  - (ii) accessing the Hardware remotely to monitor, tune or perform configuration;
  - (iii) replacing the Hardware with Hardware which provides the same or improved functionality, or has additional functionality required for our Network and Infrastructure (at our expense, unless it is performed at your request or as part of repair or rectification works);

and any other way which we deem reasonably necessary for the continued operation and improvement of our Network.

#### **15.2 PPSR**

You consent to our doing all things necessary to enable us to register any security interest we may have in the Hardware on the Personal Properties Securities Register and to comply with all requirements of the *Personal Properties Securities Act 2009* (Cth).

#### **15.3 Use and Restrictions**

You acknowledge and agree that:

- (a) ownership or title in Hardware is not transferred to you even after the expiry of any contract period;
- (b) you are responsible for the Hardware from the time it is delivered to you and must pay us for any loss or damage to the Hardware, except to the extent that it is caused by us or by fair wear and tear;
- (c) you must comply with our reasonable directions relating to our rights of ownership of the Hardware;

- (d) if you must interact directly with Hardware, you must only use the Hardware in accordance with the manufacturer's specifications and our reasonable written directions (where you do not have these, you will contact us to obtain same);
- (e) you must not part with possession of the Hardware except to us;
- (f) you must not grant a Security Interest over Hardware;
- (g) you must allow us to inspect, test, service, modify, repair, remove or replace the Hardware, or to recover it after the Service is cancelled;
- (h) you must ensure that the Hardware is not altered, repaired, serviced, moved or disconnected except by service personnel approved by us;
- (i) you must ensure that you have all necessary consents and approvals (including landlord approval where applicable) necessary or desirable for us to deliver, install and maintain Hardware at the Premises; and
- (j) you must provide adequate and suitable space, power supply and environment for all Hardware located on the Premises.

#### **15.4 Removal or Other Actions**

You must not remove, tamper, change or otherwise deal with the Hardware at the Premises in any way whatsoever without our express written permission. If you breach this clause, you agree that we may, at our discretion:

- (a) require you to pay for replacement Hardware;
- (b) require you to pay for any Out-of-Scope Services which are required to ensure the Hardware is installed and operating correctly; and
- (c) levy any additional Fees we deem necessary to reasonably compensate us for any associated costs incurred by your unauthorised dealing with the Hardware.

#### **15.5 Disconnection**

- (a) Without limiting any of our rights under clause 11, if you do not comply with any of your obligations under this Agreement, we may disconnect the Hardware from the Service or require you to do so.
- (b) In case of an emergency, we may disconnect your Service but where possible, will try to give you reasonable notice before disconnection.

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### **16. Non solicitation**

- (a) During the term of this Agreement and the Restraint Period following termination of this Agreement for any reason, you must not solicit, entice, hire or interfere with:
  - (i) any of our employees or contractors; or
  - (ii) any of our customers, or cause them to decrease their dealings with us, either directly or through an intermediary entity or entities.
- (b) If you are a business, you must implement reasonable internal policies to ensure that you comply with this clause 16.

- (c) If you breach this clause 16, you must pay us an amount equal to 50% of the employee's or contractor's new annual remuneration package (if applicable). The parties agree that this is not a penalty, but represents a reasonable estimate of fair compensation for the costs to us of recruiting, hiring and training a suitable replacement for the employee or contractor. This clause 16(c) does not prevent us from seeking other relief, such as interlocutory relief or damages.

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## **17. Security**

### **17.1 General Security Obligations**

You shall use proper security measures in connection with your use of the Services (including any Products and Hardware). This shall include (but not be limited to) the following:

- (a) setting strong passwords and access control mechanisms;
- (b) safeguarding access to all hardware and Products from unauthorised use and/or tampering;
- (c) safeguarding access to all logins and passwords (preferably with an industry-grade two-factor or hardware authentication system);
- (d) verifying the trustworthiness of persons with access to the Services, Products and Hardware;
- (e) implementing appropriate policies and procedures to safeguard access to the Services, Products and Hardware within your organisation;
- (f) undertaking adequate security training with all Authorised Users; and
- (g) implementing any relevant procedures recommended by the Department of Industry, Innovation and Science (see - <https://www.business.gov.au/Risk-management/Cyber-Security>) and the Australian Cyber Security Centre (see - <https://www.acsc.gov.au/> and <https://cyber.gov.au>) from time to time.

### **17.2 Notifiable Data Breaches**

You shall notify us within 48 hours if you learn of any security breaches relating to the Services. If the breach(es) could constitute a Notifiable Data Breach under Part IIIC of the Privacy Act, you shall notify us within 3 hours of the breach (suspected or confirmed) coming to your attention. You shall aid us fully in any subsequent investigation or legal action taken as a result of the breach.

### **17.3 Malicious Code and Security**

- (a) It is your responsibility to protect your systems and the areas of the Services which are under your control from Malicious Code.
- (b) You are responsible for the security of any and all internet connections used to access the Services, and the security of any device on which the Services are accessed.

- (c) While we will take reasonable measures to secure the Services and Infrastructure on which the Services run from cyber-attacks and Malicious Code, new attack vectors and exploits are created or used by malicious actors every day. By using the Services, you acknowledge that we cannot be expected to anticipate these new vectors but can only employ industry-standard measures to mitigate the risks. Where we are actively employing measures to combat cyber-crime and an exploit or data loss occurs, you agree to hold us completely harmless for any consequences of same.

#### **17.4 Insurance**

If you are a business, you must obtain and maintain electronic and computer crime insurance to the appropriate level assessed by a reputable insurance company.

#### **17.5 Specific Release and Indemnity**

You release and indemnify us for any claim, action or liability resulting from your failure to comply with this clause 17. You acknowledge that while we may secure the Services, Network and Infrastructure, we are unable to protect you from a failure to properly secure yourself and/or your business, educate your Authorised Users or practice good digital hygiene.

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## **18. Privacy**

### **18.1 Privacy Policy**

- (a) You agree and consent to our handling of Personal Information in accordance with our Privacy Policy.
- (b) We may change the Privacy Policy at any time by without giving notice to you.
- (c) You acknowledge and agree that you must inform any of your employees, contractors and any other relevant individuals, where reasonably necessary:
  - (i) of our Privacy Policy;
  - (ii) that their Personal Information will be disclosed to us.
- (d) We reserve the right to immediately terminate this Agreement if you are in breach of this clause 18.1.

### **18.2 Privacy Obligations – OneQode**

If Personal Information is disclosed to us in the course of this Agreement, we agree that we will not:

- (a) sell the Personal Information to any third party in a form which has not been sufficiently de-identified so that it no longer represents information by which the associated end user could be personally identified by the third party; or
- (b) distribute or disclose identifiable Personal Information to any third party other than:
  - (i) to our personnel and/or related bodies corporate; or
  - (ii) service providers who require the information in the provision of providing those services to the party;

who will only use the Personal Information for the purposes contemplated by this Agreement.

### **18.3 Privacy Obligations – User**

If Personal Information is disclosed to you in the course of this Agreement, you agree that you will not:

- (a) sell the Personal Information to any third party in any form; or
- (b) distribute or disclose Personal Information to any third party other than:
  - (i) to your personnel and/or related bodies corporate; or
  - (ii) service providers who require the information in the provision of providing those services to the party;

who will only use the Personal Information for the purposes contemplated by this Agreement.

### **18.4 No Warranty**

- (a) We make no warranties or guarantees that the manner in which we manage Personal Information is compliant with any foreign privacy laws and it is your sole and absolute responsibility to ensure you are compliant with any foreign privacy laws in your use of the Software.
- (b) In the event that you request changes to the Services in order to achieve compliance, you acknowledge and agree that you will be liable for all work performed by us.

### **18.5 The Privacy Act**

For the purposes of this clause, the term '*disclose*' is to have the same meaning as defined in the *Privacy Act 1988* (Cth).

### **18.6 Support Centre**

You acknowledge that any calls we make to you or you make to us may be monitored or recorded and you consent to us monitoring or recording such calls. If you do not consent to having your calls monitored or recorded, you can email or communicate with us by other means as indicated on our Website.

### **18.7 Failure to Supply**

If you choose not to provide all or part of the Personal Information we request, we may not be able to provide you with the Services requested by you, or we may refuse to provide, or limit the provision to you of, any Service or personal or commercial credit requested by you.

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## **19. Dispute Resolution**

### **19.1 Mediation**

- (a) If a dispute arises between the parties in relation to this Agreement, either party may give the other party Written Notice that they intend to arrange mediation.



- (b) The parties must refer the dispute to an independent mediator within 21 days of the written notice.
- (c) If the parties cannot agree on a suitable mediator, either party may contact the Law Society in the jurisdiction defined in clause 23.6 and request that they provide a mediator.
- (d) The costs of the mediation must be paid by the parties in equal shares.

## **19.2 Legal Proceedings**

No party may commence court proceedings unless the dispute remains unresolved after 28 days from the date of the written notice provided under clause 19.1(a), save for proceedings in which relate to an urgent protection of a right, such as injunctive relief.

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## **20. Amendments to CCC**

### **20.1 Amendments generally**

In this fast moving industry, we may need to change the CCC from time to time. This may be done without your agreement. Subject to clause 20.4, if we make any change which will constitute a demonstrable detriment to you, we will notify you at least 30 days before the proposed change takes effect by:

- (a) email (to the last email address that you have given to us and provided you have agreed for us to tell you about changes to our CCC by email); and/or
- (b) a message on your next bill.

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

### **20.2 Cancellations for Amendments**

Subject to clause 20.4, if we make any change to our CCC that is likely to have a detrimental impact on you that is not minor, you may cancel the affected Services by giving notice to us within 45 days after the date we give you notice under clause 20.1. You will not incur any Break Fee or other charges as a result of a cancellation in accordance with this clause 20.2, except for:

- (a) usage based charges or other variable charges incurred up to the date of cancellation; and
- (b) installation fees and costs of equipment we have provided to you that you have not paid for (as long as the equipment can be used in connection with services supplied by another provider).

### **20.3 Payments**

If you give a cancellation notice to us within the notice period required by clause 20.2, the proposed change will not apply to you. We will issue a corrected invoice or adjustment note as appropriate and, if you have overpaid as a result of the change to our CCC, credit your account with the overpayment or, if you have cancelled your Service with us, refund the overpayment promptly after deduction of any other amounts due by you in accordance with our CCC.

## 20.4 Exceptions

We do not need to give you 30 days' notice of our proposed changes or give you a right to cancel the Service under clause 20.2 in relation to:

- (a) urgent changes we are required to make:
  - (i) by law;
  - (ii) for security reasons; or
  - (iii) for technical reasons necessary to protect the integrity of our network;
- (b) the introduction of a new charge or an increase in an existing charge:
  - (i) due to an additional tax or levy imposed by law; or
  - (ii) for ancillary services such as credit card transaction fees and direct debit charges (provided we have offered you a reasonable alternative at the same or lesser cost to the original charge);
- (c) increases in charges due to increases imposed on us by other Suppliers for the following types of Services and charges:
  - (i) international carriage services (including for voice and data services) the current rates for which are available on our Website;
  - (ii) content and premium services which we resell to you from a third party, including where we collect fees from you on behalf of that third party; and
  - (iii) for calls made to satellite services; and
  - (iv) a change to or removal of any special feature of your Service that is not expressly referred to in the relevant service description. Where practicable to do so, we will give you reasonable notice of the changes referred to in this clause 20.4 by one of the methods of giving notice listed in clause 20.1.

## 20.5 Minor Changes

- (a) If we reasonably consider that a change to any term of our CCC is likely to benefit you or have a neutral impact on you, we can make the change immediately and do not need to tell you before making the change. However we will notify you within a reasonable time after making the change by providing notice of the change on our Website or by one of the other methods of giving notice listed in clause 20.1.
- (b) If a change to the CCC made under clause 20.5(a) has more than a minor detrimental impact on you (for example, because of your particular circumstances or pattern of usage of the Service) we will permit you to cancel the Service in accordance with clause 20.2 and 20.3.

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## 21. Contract Upgrades and Downgrades

Our fixed term customers agree to use the Services for a set period of time called the Contract Term. However, we permit our customers on fixed contracts to continually take advantage of the best plans available. As a consequence, you may change up and down between plans at any time without breaking your Contract Term if you are a fixed-term customer.

If you upgrade your plan we will absorb the administration costs. However a downgrade of equal or lesser value will incur a Downgrade Fee.

If you break your contract before the Contract Term you will be required to pay a Break Fee.

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## **22. Telephone Numbers and PAIs**

### **22.1 Telephone Numbers**

The Telecommunications Number Plan 1997 (Cth) sets out rules for issuing, transferring and changing telephone numbers. You and we must comply with the Telecommunications Number Plan.

### **22.2 PAIs**

- (a) In addition to telephone numbers, the Service may use other identifiers such as an IP address or domain name (**Public Addressing Identifiers**). You must comply with the requirements of any Regulatory Authority or other body which administers Public Addressing Identifiers.
- (b) You are entitled to continue to use any telephone number we issue to you, except in circumstances where the Telecommunications Number Plan allows us to recover the number from you.
- (c) You acknowledge and agree that:
  - (i) we do not control the allocation of Public Addressing Identifiers;
  - (ii) we are not liable to you if we are required to change, withdraw, suspend or re-assign any Public Addressing Identifier as a result of any direction given by a Regulatory Authority or other body which administers Public Addressing Identifiers; and
  - (iii) on cancellation of the Service, your right to use a Public Addressing Identifier may cease.

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## **23. General**

### **23.1 Assignment**

- (a) You may only assign, novate, or transfer any of your rights under this Agreement with our written consent.
- (b) We may in our absolute discretion assign, novate, or transfer all or any of our rights under this Agreement to any person or entity without notice.
- (c) We may transfer some or all of our obligations under this CCC to:
  - (i) another associated entity; or
  - (ii) a purchaser of our business, on condition that the transferee agrees to provide the Service to you on materially the same terms and conditions of our CCC.
- (d) Upon assignment or novation, the parties' obligations and benefits under this Agreement are binding on and will benefit their respective representatives, successors and assigns.

### **23.2 Notices**

Any communication under or in connection with this Agreement:

- (a) must be in writing;
- (b) where it is delivered or sent by email to the representative of the other party, must be sent in accordance with clause 23.2(c) and
- (c) If a notice is sent or delivered in the manner provided in 23.2(b) it must be treated as given to or received by the addressee in the case of delivery by email, when the message has been delivered to the email address of the addressee, but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.
- (d) Any and all correspondence, including notices, delivered under this agreement shall, in the absence of any provisions to the contrary (or unless otherwise agreed) be governed by the *Electronic Transactions (Queensland) Act 2001* (Qld).

### **23.3 Costs**

All stamp duty, government charges and legal fees incidental to this Agreement, specifically including all legal fees incurred in enforcing this Agreement on a solicitor own client basis, are the responsibility of and payable by you.

### **23.4 Enduring clause**

The parties' rights and obligations under clauses 6, 7.2, 7.3, 8, 9, 10, 12.2, 14, 15, 16, 17.2, 18, 19 and 23.6 will survive the termination of this Agreement.

### **23.5 Relationship between the parties**

Nothing in this Agreement constitutes an agency, partnership or contract of employment, or as a guarantee of future employment or engagement. It is the express intention of the parties to deny any such relationships.

### **23.6 Jurisdiction**

Our CCC is governed by the laws of the Commonwealth of Australia and the laws of the state or territory:

- (a) in which you ordinarily reside; or
- (b) of your main business location, if you are a business customer, (as stated in your Application) (**Your Jurisdiction**). You and we agree to submit to the exclusive jurisdiction of the courts of the Commonwealth of Australia and Your Jurisdiction, and any courts of appeal from these courts.

### **23.7 Severability**

If any provision of this Agreement is ruled by a court to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision or part provision of this Agreement.

### **23.8 References**

Subject to our Privacy Policy as published from time to time, we may include your name and trademarks in a list of subscribers, online content or promotional materials. You also agree that we may verbally communicate your status as a customer of ours from time to time.

### **23.9 Waiver**

Any delay or failure to enforce any rights in relation to a breach by the other party will not be construed as a waiver of those rights.

### **23.10 Entire Agreement**

This Agreement contains the entire agreement between the parties and supersedes all previous negotiations or agreements in relation to the subject matter of this Agreement.

### **23.11 Authorised Persons**

- (a) You may nominate another person to have the authority to exercise any of your rights under the CCC (Authorised Person). Anything that Authorised Person does in relation to your Service is deemed to be done by you.
- (b) You may nominate another person to have the authority to communicate with us about your Service, without giving that person the authority to exercise any of your rights under the CCC (Contact Person). If a Contact Person requests changes to your Service or otherwise attempts to exercise your rights under the CCC, we may request that you or an Authorised Person contact us directly.

### **23.12 Authority**

If you have a business Service, you agree that if we need your consent to undertake certain actions then, provided we act in good faith, we may rely upon the authority of any of your employees, who tell us that they are authorised to provide that consent on your behalf. For residential Services, you must inform us if you want another person to have authority to access or make changes to your Service or account. We will not let another person access your account unless we have received your authority to do so.

### **23.13 No Reliance**

You acknowledge that:

- (a) advice from our staff is given in good faith and with the best of intention, however we do not represent that our staff are experts in the operation of your computer hardware or software. Subject to your rights under Consumer Law and the general law relating to misleading or deceptive conduct (which we do not exclude), you undertake to act on any advice given by any of our staff members at your own risk;
- (b) we make reasonable efforts to ensure that the information on our Website is correct and up to date. However, we do not warrant the accuracy of that material.

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## **24. Definitions and Interpretation**

### **24.1 Definitions**

In this Agreement:

**Agreement** means the agreement between the parties, comprising the documents as set out in clause 1.1.

**Appended Terms** means, in the context of clause 1 only, the terms and conditions which we read out to you over the telephone.

**Application** has the meaning given to it in clause 1.1.

**Approved Purposes** means:

- (a) providing directory assistance services;
- (b) providing operator services or operator assistance services;
- (c) publishing and maintaining public number directories;
- (d) providing location dependent carriage services;
- (e) the operation of emergency call services or assisting emergency services under Part 8 of the Telecommunications (Consumer Protection and Service Standards) Act 1997;
- (f) assisting enforcement agencies or safeguarding national security under Parts 14 and 15 of the Telecommunications Act 1997 or any other applicable legal requirement;
- (g) verifying the accuracy of information provided by the data provider and held in the Integrated Public Number Database against the information the data provider holds;
- (h) undertaking research of a kind specified in the Telecommunications IPND – Permitted Research Purposes Instrument 2007;
- (i) assisting the Australian Communications and Media Authority (**ACMA**), or its nominee, to verify the accuracy and completeness of information held in the IPND; and
- (j) any other purposes where permitted by the Telecommunications Act 1997, and any other applicable laws.

**Authorised Users** means, if you are a business, any employees, contractors or third parties who you provide or otherwise facilitate access to the Services.

**Billing Policy** means the billing policy for the relevant OneQCode Entity provided in the Pricing Schedule.

**Break Fee** means the relevant cancellation fee or termination charge (if any) calculated in accordance with the Application, Billing Policy, Pricing Schedule, a Service Description or any appendix to the Service Description.

**Business Day** means a day (other than a Saturday or Sunday) upon which banks are ordinarily open for business in Brisbane, Queensland, Australia.

**Business Services Terms** means the document of that name available on request from us to some business customers who receive certain business Services that contains service level targets (including an availability guarantee) in the relevant Service Description provided for such Services.

**Carriage Service Provider** has the meaning given by section 87 of the Telecommunications Act 1997.

**CCC** has the meaning given to it in clause 2.1.

**Claim** means any claim notice, demand, investigation, action, proceeding, litigation, or judgment however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence) or statute and whether involving a party to this Agreement or third party.

**Confidential Information** means all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation:

- (a) any kind of technical, financial or business information;
- (b) details of employees, suppliers, or customers;
- (c) material developed under this Agreement; and
- (d) Intellectual Property, concepts, know-how and trade secrets;

but excludes information in the public domain (other than by default under this Agreement) or information independently known to the other party.

**Consequential Loss** includes, without limitation:

- (a) data loss;
- (b) reputational loss;
- (c) loss of opportunity, loss of anticipated profits or savings, expenses incurred through default or breach, wasted overheads, loss of contract, loss of business, loss of production, loss of use, loss of goodwill, and all other pure economic loss;
- (d) disappointment, distress, stress, and inconvenience; and
- (e) any penalties or fines imposed by a Regulatory Authority, in connection with or arising under this CCC, whether based in contract, tort (including negligence) or otherwise.

**Consumer Guarantee** has the meaning given in Division 1 of Part 3-2 of the Consumer Law

**Consumer Law** means the Australian Consumer Law, which is Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Contract Term** means the minimum contract term specified in your Application, which commences on the Service Commencement Date, or, if no contract term is specified in the Application or our CCC, then there will be no minimum contract term.

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

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

**Downgrade** means a variation to the Service which reduces the capacity, use or utility of that Service and results in a reduction in the charges payable for the Service.

**Downgrade Fee** means the relevant Downgrade charge (if any) specified in the Pricing Schedule or Billing Policy.

**Downloading** means data that is inbound (i.e. incoming to your internet connection).

**Entity** or **Entities** have the meaning given to them in the *Corporations Act 2001* (Cth).

**Fair Use Policy** means the document forming part of this CCC that describes our policy on excessive, unreasonable, prohibited or otherwise unacceptable use of the Service.

**Fees** means the total fees for any Products or Services purchased by you, as set out in the applicable CCC Document.

**Force Majeure Event** means an unforeseen event beyond the control of the affected party, including a failure or fluctuation in any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, cable cut, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, failure to earth a connection, hacking, denial of service attack, state-sponsored or significant cyber warfare, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission, failure or delay of any third party or any failure of any equipment owned or operated by any third party (including any Regulatory Authority or Supplier).

**Indemnified Officers** means, in relation to a party, its directors, employees, contractors, agents and representatives.

**Infrastructure** means Hardware, facilities, equipment, cabling, access points, antennae, towers or any other equipment we use to operate our Network and provide the Services.

**Insolvency Event** in relation to a party means any of the following:

- (a) the party enters into a scheme of arrangement with its creditors;
- (b) the party is wound up or dissolved, or an administrator, liquidator or receiver is appointed;
- (c) the party is placed under official management, commits an act of bankruptcy or is charged with a criminal offence; or
- (d) judgment is entered against the party for more than \$20,000.00, which remains unsatisfied or unappealed for more than 21 days.

**Installation** means the installation of Hardware, Infrastructure and or Products in and around your Premises in order to provide you with the Services.

**Internet** means collections of world-wide networking communications protocols, equipment and services colloquially known by that name.

**Interruption** means a material delay in supplying, a failure to supply for a significant period or a major error or defect in the supply of, those goods or that service.

**Handling Fee** means a Fee for processing of any transaction by us or a third party service.

**Hardware** means any equipment we install at your premises, which form part of our Infrastructure.

**Intellectual Property** means all intellectual property rights, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registrable or not), eligible circuit layout rights, domain name licences, know-how, trade secrets, code, software, repositories, specifications, formula, technical know-how, documentation and includes the right to register any intellectual property rights.



**Liability** means any liability (whether actual or prospective), loss, damage, cost or expense of any description, including legal fees on a solicitor and own client basis.

**Malicious Code** means any code, program, script, software, file, thing or device which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including viruses, exploits, malware, logic bombs, denial of service attacks, flood or mail bombs, back-doors and other similar things or devices.

**Mission Critical or High-Risk Activity** means any use which, if any of Services, Products or Hardware were to fail, could result in death, serious injury or significant financial loss to any party, and includes (but is not limited to) communications for:

- (a) emergency services;
- (b) military and police services;
- (c) critical communications infrastructure;
- (d) financial settlements and high-speed trading; and
- (e) any thing else that could reasonably be considered as vital infrastructure or requiring constant, reliable connection and/or a dedicated backup service.

**Network** means a telecommunications network, including the Infrastructure.

**Notifiable Data Breach** has the meaning given to it by the Privacy Act.

**OneQode Entity** means OneQode Pty Ltd or its Related Bodies Corporate.

**Out-of-Scope Fee** means the Fee charged for the Out-of-Scope Services, as advised in a CCC Document or otherwise in writing by us.

**Out-of-Scope Services** means all services outside the Scope of Services of a CCC Document.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Portal** means the management portal we give you access to for the purposes of managing the Services we provide to you, including any billing and contact details.

**PPSA** means:

- (a) Personal Property Securities Act 2009 (Cth) and any regulations made at any time under it;
- (b) any amendment to either of the above, made at any time. PPSA Security Interest means a security interest within the meaning of the PPSA.

**Premises** means the property, dwelling or other premises which you have instructed us to provide the Services to.

**Pricing Schedule** means the document of that name which appears on our Website.

**Privacy Act** means the Privacy Act 1988 (Cth) and the National Privacy Principles found in Schedule 2 of the Privacy Act as amended from time to time.

**Privacy Policy** means the Privacy Policy available on our Website as amended from time to time.

**Product** means any physical or digital goods, such as Software, computer systems, specific configurations or code, that you request, order or purchase under this Agreement and/or as part of the Services.

**Product Fees** means the fees for Product that you request, order, or purchase under this Agreement or a relevant CCC Document.

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

**Related Bodies Corporate** has meaning given to that term in the Corporations Act.

**Restraint Period** means the duration of this Agreement, and the longest enforceable period following termination, of:

- (a) 12 months;
- (b) 6 months;
- (c) 3 months; or
- (d) 1 month.

**Schedule** means any schedule attached to this Agreement.

Security Interest means:

- (a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention agreement, preferential right, trust arrangement or other arrangement (including, without limitation, any set-off or flawed-asset arrangement) having the same or equivalent commercial effect as a grant of a security;
- (b) to the extent not included within paragraph (a), a PPSA Security Interest; or
- (c) an agreement to create or give any arrangement referred to in paragraph (a) or (b) of this definition.

**Service Commencement Date** means the date on which the Service is ready for use.

**Service Description** means the document forming part of this CCC describing the Service and setting out specific terms and conditions for the Service.

**Services** means each service that you request, order or purchase under this Agreement, the details of which shall be set out in the relevant CCC Document, including access to the Network through the Infrastructure for the provision of Internet.

**Software** means the software applications, programs, deployed code, portals and managed storage provided by the us as part of the Services or purchased by you in connection with the Services.

**Supplier** means any supplier of goods or services (including interconnection services) that may be used directly or indirectly by us to supply the Service.

**Supplier's Network** means the Network of a Supplier.

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

**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 provisions of the *Competition and Consumer Act 2010* (Cth), each as amended or replaced from time to time.

**Third Party Terms** means any terms and conditions imposed upon Software, Hardware or other products developed, owned and/or licensed by a third party which are used in conjunction with the provision of the Services or provided under a CCC Document.

**VoIP** means Voice over Internet Protocol.

**Warranty Information Statement** means a warrant statement which is associated with a particular Product.

**Website** means the relevant OneQode Entity website, which unless otherwise advised, is <https://oneqode.com.au> .

**Wholesale Agreement** means the contact or contract(s) which a Wholesale Customer signs with their customers.

**Wholesale Customer** means a customer of our who is using our Network and Infrastructure to offer internet services to their own customers as a Carriage Service Provider.

**Written Notice** means providing information by:

- (a) delivering it to the other party in person;
- (b) transmitting it to the other party's email address as listed in the Schedule (or as last notified by that party). A notice that is emailed will be deemed received at the time it was sent, unless the sender receives a failed delivery notification and will be otherwise governed by the *Electronic Transactions (Queensland) Act 2001* (Qld);
- (c) including it on or in an invoice, including an invoice made available to the other party in electronic format via a website.

**Your Equipment** means all equipment used in connection with the Service, other than the Hardware supplied by us.

## 24.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) where applicable, all terms used in this document have the same meaning as defined in the Schedule to this Agreement;
- (b) headings and tables of contents are inserted for ease of reference only and have no legal effect;
- (c) the singular includes the plural and vice versa;
- (d) where a word or phrase is given a specific meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (e) a reference to a clause number is a reference to its sub-clauses;

- (f) a reference to a party to this Agreement includes the party's successors and permitted assigns;
- (g) a reference to a person includes a firm, a body corporate, an unincorporated association or an authority and vice versa;
- (h) a reference to one gender includes all other genders;
- (i) a reference to this Agreement or another document includes any variation, novation, replacement or supplement to any of them from time to time;
- (j) a reference to a part, clause, annexure, exhibit, appendix or schedule is a reference to a part of, clause of, an annexure, exhibit, appendix or schedule to this Agreement and a reference to this Agreement includes any annexure, exhibit, appendix and schedule;
- (k) a reference to a right or obligation of two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (l) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;
- (m) a reference to conduct includes any omission, representation, statement or undertaking, whether or not in writing;
- (n) specifying anything in this Agreement after the words including, includes or for example or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document;
- (p) a reference to any thing (including any amount) is a reference to the whole or each part of it and a reference to a group of persons is a reference to any one or more of them;
- (q) all references to accounting and financial terms have the meaning commonly given to them in accordance with the accounting principles generally accepted in Australia;
- (r) if something comes within the meaning of Confidential Information in this Agreement and Intellectual Property in this Agreement, and there is any conflict in this Agreement regarding its provisions concerning Intellectual Property and Confidential Information, the provisions concerning Intellectual Property prevail; and
- (s) nothing in this Agreement excludes, restricts or modifies or has the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010* (Cth)) and which by law cannot be excluded, restricted or modified.