

Schedule Terms and Conditions

These terms and conditions are for the provision of Internet-based services (the “**Service**”) and are incorporated by reference into the Quote to create the GCOMM Internet Services Agreement (the “**Agreement**”). The Agreement commences on the date it is executed by Customer, which occurs after execution by GCOMM using EchoSign (“**Effective Date**”).

1. Definitions and Interpretations

1.1 Defined terms.

In this Agreement:

Business Day means a day on which banks are open for business in Brisbane, other than a Saturday, Sunday or public holiday.

Acceptable Use Policy means the acceptable use policy provided by GCOMM to Customer from time to time and is available at <http://www.gcomm.com.au/terms-and-conditions.html>.

Additional Services means services agreed to be provided to Customer by GCOMM pursuant to an Additional Services Addendum.

Additional Services Addendum means a document with that title executed by GCOMM and Customer.

Agreement means Customer Terms, the Service Order Form, any Additional Services Addendum and any schedule or annexure to this document.

Basic Support Services means the services set out in clause 6.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

Cancellation Fee means the Minimum Fees minus all Fees actually paid by Customer monthly (or annually in advance) during the Initial Term prior to termination (where termination of this Agreement occurs during the Initial Term) or during the Renewal Term prior to termination (where termination of this Agreement occurs during the Renewal Term).

Carrier has the same meaning as under the Telecommunications Act.

Carriage Service Provider has the same meaning as under the Telecommunications Act.

Confidential Information means any information relating to the business or financial affairs of a party or any trade secret, technical knowledge, concepts, ideas, designs, programs, processes, procedures, innovations, databases, customer lists or information, sales plans or

marketing plans, research, software, records, intellectual property or other information concerning a party.

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

Consequential Loss means:

- (a) any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered this agreement, as the probable result of the relevant breach;
- (b) and includes loss of profit or revenue, loss of anticipated savings, loss of chance, loss of opportunity and loss of reputation.

Contractor means any contractor, sub-contractor, agent or nominee engaged or arranged by GCOMM to supply the Service.

Customer means the party defined in the Service Order Form.

Customer's Authorised Personnel means the employees of Customer agreed between Customer and GCOMM from time to time.

Customer Equipment means any equipment not supplied by GCOMM.

Customer Network means Network, equipment, facilities or cabling controlled by Customer.

Direct Debit Request Form means the form requesting direct debit or credit card payments as prescribed by GCOMM from time to time.

Dispute means a dispute arising out of or relating to this Agreement including without limitation a dispute as to breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any law.

Equipment means the equipment, such as routers and splitters, identified in the Service Order Form (other than any equipment identified therein as being sold to Customer) and the equipment and cabling, if any, referred to in clause 10.1.

Fees means the amounts payable by Customer for the Service as specified in the Quote or in additional Work Orders as changed under this Agreement and may include third party charges.

GCOMM Network means the Network, equipment, facilities and cabling used by GCOMM to supply the Service.

Initial Term means the term set out in the Service Order Form and if no term is specified, then 2 years from the Effective Date.

Insolvent means being an insolvent under administration, or insolvent (each as defined in the Corporations Act) or having a controller (as defined in the Corporations Act) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due, or having something with the same or a similar effect happen under the laws of any jurisdiction.

Intellectual Property Rights means all vested contingent and future intellectual property rights including but not limited to goodwill, reputation, rights in confidential information, copyright, trade marks, logos, service marks, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, know how, trade secrets, inventions, get up, database rights (whether registered or unregistered) or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.

Minimum Fees means the Minimum Fees, if any, set forth on the Service Order Form against the particular Service.

Network means a system or series of systems that carries or is capable of carrying communications

(including data).

New Service means any service other than the Service offered from the outset of this Agreement by GCOMM pursuant to this Agreement.

Personal information means information or opinion about Customer from which Customer's identity is apparent or can reasonably be ascertained and includes name, address, service number, personal or commercial credit rating or credit information.

Personnel includes directors, officers, employees, agents and contractors.

Premises means the Premises for the location of the Service.

Privacy Policy means the privacy policy of GCOMM as provided to Customer from time to time or made available at <http://www.gcomm.com.au/gcomm-privacy-policy>.

Regulator means any government or statutory body or authority including but not limited to the Australian Communications & Media Authority, the Australian Competition and Consumer Commission, the Australian

Communications Industry Forum Limited and the Telecommunications Industry Ombudsman.

Renewal Term means the period of 12 months commencing on: (a) the expiration of the Initial Term; or
(b) where the Agreement has automatically renewed pursuant to clause 3.3, the expiration of the then-current term.

Security means the security that GCOMM may request.

Service means the service requested by Customer as indicated in a Service Order Form and includes the Basic Support Services and Additional Services (if any).

Service Order Form means the order form for Services or New Services in the form prescribed by GCOMM and signed by Customer.

Start Date means the date from which GCOMM commences the supply of the Service to Customer.

Subsequent Legislation means after the Operative Date.

- (a) amendments to or repeals of any statute, ordinance, code, law or service provider rule;
- (b) a directive of a regulatory body; and
- (c) registration or determination of a new industry standard or industry code;

Supplier means a provider of telecommunications or Internet services and may include a Carrier or a Carriage Service Provider but excludes GCOMM.

Supplier Network means any Network, equipment, facilities or cabling controlled by a telecommunications supplier other than GCOMM.

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

Term means the Initial Term set forth in the Service Order Form and a Renewal Term or any continuation thereof pursuant to clauses 3.3. or 3.4.

Work Order means an order describing work that is required as part of the Services or the provisioning of the Services.

1.2 Interpretations.

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely.
- (c) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (d) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (e) If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly. A party which is a trustee is bound both personally and in its capacity as a trustee.

2. Introduction

2.1 This Agreement sets out the terms and conditions under which GCOMM agrees to provide the Service to Customer. This Agreement includes:

- (a) The Service Order Form;
- (b) Customer Terms set out in this document and which apply to all Services;
- (c) the Additional Services Addendum; and
- (d) any other terms and/or conditions in relation to the Service that Customer receives from GCOMM, as amended by GCOMM pursuant to this Agreement.

2.2 If there is any inconsistency between the documents listed in clause 2.1, the order of priority (to the

extent of any inconsistency) will be:

- (a) any other terms and/or conditions in relation to the Service that Customer receives from GCOMM;
- (b) the Service Order Form;
- (c) the Additional Services Addendum ; and
- (d) Customer Terms set out in this document.

2.3 The options selected in the Service Order Form determine what Services are provided by GCOMM.

3. Term

- 3.1 This Agreement commences on the date GCOMM begins supplying the Service or Customer accesses the Service.
- 3.2 This Agreement commences pursuant to clause 3.1 and, subject to earlier termination pursuant to this Agreement, continues until the end of the Initial Term.
- 3.3 Subject to earlier termination pursuant to this Agreement, this Agreement automatically renews for the Renewal Term at the end of the Initial Term and any subsequent Renewal Term UNLESS either party gives not less than 20 Business Days' prior written notice of termination.
- 3.4 If a notice under clause 3.3 is given but Customer continues to use the Service, then this Agreement continues until either party gives to the other 20 Business Days written notice to terminate.

4. Conditions Precedent

- 4.1 The following are conditions precedent to this Agreement that must be satisfied prior to start date of the Services:
- (a) Customer has provided credit references to GCOMM and GCOMM has determined that Customer is creditworthy; and
 - (b) GCOMM has determined that it is feasible for Customer's computer and telecommunications equipment to utilise the Service.
 - (c) These conditions precedent may be waived by GCOMM. If the conditions are not waived or satisfied, then GCOMM may terminate this Agreement by notice to Customer and each party agrees to return to the other party any equipment it has received from the other party and Customer agrees to immediately remove the Software from its computer systems.

5. Provision of Services

- 5.1 Customer must sign a Service Order Form requesting that GCOMM provide the Service pursuant to this Agreement.
- 5.2 GCOMM will supply the Service subject to accepting a Customer's Service Order Form. GCOMM may refuse Customer Service Order Form or accept the Service Order Form or only accept the Service Order Form subject to the Customer providing Security.
- 5.3 GCOMM will use its reasonable endeavours to supply the Service from the Start Date.
- 5.4 GCOMM may refuse the Customer Service Order Form if during installation of the Service, there has been material changes to the presumptions upon which the Service Order Form was accepted.
- 5.5 GCOMM:
- (a) has the right to decide how the Service is provided, select the Suppliers, port any Service to GCOMM's preferred Suppliers or to arrange least cost routing of traffic;
 - (b) has the right to carry out any actions necessary or incidental to give effect to this clause (including signing and submitting on the Customer's behalf any necessary authority forms or other details required to provide the Services);
 - (c) may vary the terms of this Agreement if required in order to be consistent with any agreement between GCOMM and a Supplier provided such variation does not have a material adverse effect on the Service;
 - (d) may engage Contractors or other Suppliers to supply some or all of the Service; and
 - (e) vary the specifications of the Service (including the way in which GCOMM delivers the Service) without giving Customer any notice of such variation, provided that such variation has no material adverse impact on the reliability or performance of the Service.
- 5.6 Notwithstanding the foregoing, GCOMM agrees that it will not vary the terms of this Agreement or vary the specification of the Service under this clause 5 unless it is required to do so by changes made by a Supplier of Internet services that impact on GCOMM's ability to provide the Service under this Agreement. If a change to the Agreement or a change to the Service under this clause has a material adverse effect on the Service (as determined by GCOMM acting reasonably), then such effect on the Agreement or the Service is a breach of a material term under clause 24.1(d).
- 5.7 GCOMM is not responsible for any fault which is within a Supplier Network.
- 5.8 Customer may be contacted by a Supplier in connection with installing a Service in the Premises.
- 5.9 GCOMM:
- (a) does not guarantee a timeframe for restoration of Customer's Internet Service should it fail;
 - (b) does not guarantee that the Internet Service will be supplied uninterrupted or error free;
 - (c) may not be able to meet a request from Customer to provide Customer with information about usage of Customer's Internet Service (such as information about websites accessed);

- (d) does not have to monitor use of the Internet Service, whether by Customer or any other person. If, however, GCOMM does monitor use of the Internet Service, GCOMM can cease the monitoring at any time. GCOMM may monitor use of the Internet Service to determine whether Customer is complying with GCOMM's Acceptable Use Policy or to investigate either a breach or suspected breach of GCOMM's Acceptable Use Policy; and
- (e) is not responsible for any loss caused by equipment provided by a third party (i.e. someone other than GCOMM).

6. Provision of Basic Support Services

- 6.1 GCOMM will provide Customer with access to a help desk, which will be available during the hours of 8.00am to 5.00pm, Monday to Friday only (excluding public holidays in the State or Territory in which the Service is to be performed). Further details about the help desk are available on GCOMM's website at www.gcomm.com.au.

- 6.2 Customer's Authorised Personnel may contact the help desk for assistance on any of the following relating to the Service:
- (a) report minor faults, raise queries and receive assistance concerning outages, inability to connect to the Service and network performance;
 - (b) raise technical issues; and
 - (c) amendments to services, provisioning, installations, adds moves and changes to the service;

6.3 GCOMM will, in its absolute discretion, determine whether the assistance sought by Customer falls within the description of the Basic Support Services set out in clause 6.2 where the help sought by Customer does not form part of such Basic Support Services, Customer will pay GCOMM for such additional fees at GCOMM's standard rates.

6.4 GCOMM's help desk will use its reasonable endeavours to fix all verifiable and reproducible faults in the Service that are reported to it by Customer. However, GCOMM cannot guarantee that all faults, issues and queries raised by the Customer will be resolved.

7. Customer's Use of the Service

7.1 In using the Service, Customer must comply with:

- (a) all laws; and
- (b) all directions by a Regulator; and
- (c) the Acceptable Use Policy; and
- (d) any reasonable directions by GCOMM.

7.2 Customer must not use or attempt to use the Service:

- (a) to break any law or applicable code of conduct or to infringe another person's rights;
- (b) to expose GCOMM to liability or bring GCOMM into disrepute;
- (c) in any way which damages, interferes with or interrupts the Service or the GCOMM Network or a Supplier Network;
- (d) in any way which may damage any property or injure or kill any person;
- (e) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted;
- (f) to knowingly transmit information which contains viruses or other harmful components or send email that may destroy or damage an email recipient's computer;
- (g) send excessive unsolicited data to third parties; or
- (h) to engage in any activities in such a manner as to expose GCOMM or a Supplier to liability.

7.3 Customer acknowledges that GCOMM may be required to intercept communications over the Service and may also monitor Customer's usage of the Service and communications sent over it for the purposes of complying with its obligation under any law or at the direction of a Regulator.

7.4 The parties agree to exchange information and co-operate in relation to:

- (a) the prevention, minimisation and investigation of fraudulent use or misuse of the Service; or
- (b) theft of any Equipment; or
- (c) network or telecommunications fraud.

A party is not obliged to exchange information or co-operate if, in its reasonable opinion, the other party does not comply with or does not have sufficient procedures to comply with, privacy laws.

7.5 Customer acknowledges that GCOMM makes no warranty in relation to the performance or characteristics of any software or other matter or thing supplied in connection with the Service.

7.6 Customer must not contact any of GCOMM's Suppliers or Contractors with regards the Service. If

Customer has any questions or complaints about the Service, including reporting faults, Customer must only contact GCOMM.

- 7.7 Customer must ensure that any Personnel who use the Service do so in compliance with this Agreement.

8. Modification of Service

GCOMM reserves the right to modify or substitute any Service. If the resulting change to the Service has a material adverse effect on the functionality of that Service, Customer may notify GCOMM in writing within 20 Business Days of the change clearly substantiating the existence and nature of the material adverse effect. If GCOMM determines that there is a material adverse effect and fails to correct it within 15 Business Days following receipt of Customer's written notice, Customer may terminate that Service with 30 days' written notice to GCOMM without incurring any Cancellation Fee.

9. Maintenance of Network

GCOMM, a Supplier or another may conduct maintenance on the GCOMM Network or the Supplier's Network and this will affect the performance of the Service. GCOMM will use its reasonable endeavours to conduct scheduled maintenance on the GCOMM Network outside normal business hours (AEST).

10. Equipment and Customer Equipment

- 10.1 GCOMM may need to install equipment and cabling on Customer's Premises. Customer authorises GCOMM and GCOMM's Contractors to:
- (a) enter the Premises for the purpose of performing the obligations of GCOMM under this Agreement;
 - (b) install, disconnect, maintain, repair and replace any part of such equipment and cabling;
 - (c) connect such equipment and cabling to any equipment in order to enable GCOMM to deliver the Service; and
 - (d) enter the Premises and take all steps reasonably necessary to fulfil GCOMM's obligations to recover such Equipment on termination of the Service.
- 10.2 If Customer does not own Customer's Premises where the Service is to be installed, Customer warrants that they have notified the owner of those Customer's Premises and obtained all necessary permissions to enable GCOMM to deliver the Service and for Customer to confer on GCOMM all rights under this Agreement.
- 10.3 Customer agrees to provide GCOMM or GCOMM's Contractors with safe, sufficient and timely access to the Premises to perform the obligations of GCOMM under this Agreement.
- 10.4 Customer agrees to indemnify GCOMM against any damage, expense, loss or liability, including Consequential Loss, that GCOMM incurs arising out of GCOMM or GCOMM's Contractors entering the Premises to perform the obligations of GCOMM under this Agreement.
- 10.5 All Equipment remains the property of GCOMM (or its nominee) and, in the case of Equipment (other than the equipment and cabling referred to in clause 10.1) must be returned to GCOMM upon the termination of this Agreement.
- 10.6 The Equipment must only be used to access the Service provided under this Agreement at the Premises to which GCOMM (or its nominee) installs the Equipment.
- 10.7 Customer authorises GCOMM and/or GCOMM's Contractors or will ensure authorisation for GCOMM or GCOMM's Contractors to disconnect, install or make amendments to any routers, telephone lines, equipment or cabling at Customer's Premises for GCOMM to provide the Service.
- 10.8 Customer acknowledges that except for any equipment (being equipment supplied by GCOMM), GCOMM is not in any way whatsoever responsible for or liable for any equipment used with the Service, including Customers Equipment.
- 10.9 Customer acknowledges that:
- (a) GCOMM is providing the Equipment to Customer for the purposes of the supply of the Service;
 - (b) Customer will have no right, title or interest in the Equipment, including any right to deal with the Equipment;
 - (c) Customer accepts the risk in the Equipment from the time that GCOMM provides the Equipment to Customer; and
 - (d) GCOMM may, at any time and for any reason, retain possession of the Equipment.
- 10.10 Customer must not, and must not attempt, under any circumstances to sell, transfer, lease or otherwise deal with the Equipment.
- 10.11 While the Equipment is on Customer's Premises, Customer must take reasonable care to keep the Equipment secure and safe from theft, vandalism and damage.
- 10.12 Customer must ensure that any Customer Equipment used in connection with the Service:
- (a) has all necessary regulatory approvals;
 - (b) complies with all applicable regulatory standards; and
 - (c) is capable of operating with the Service.
- 10.13 GCOMM may require Customer to immediately cease using and disconnect Customer Equipment or if Customer fails to do so, GCOMM may disconnect Customer Equipment from the

Service if:

- (a) there are faults with Customer Equipment causing interference with the Service;
- (b) Customer fails to comply with this clause; or
- (c) GCOMM reasonably considers that Customer Equipment may:
 - (i) cause death or personal injury;
 - (ii) cause damage to GCOMM property or the property of a third party; or
 - (iii) materially impair the operation of the GCOMM Network or a Supplier Network.

11. Transfer of service

If GCOMM is requested by Customer to transfer to GCOMM a Customer's service provided by another Supplier, Customer:

- (a) authorises GCOMM to notify Customer's other service Supplier and sign on Customer's behalf any authorisation required to transfer Customer's service to GCOMM;
- (b) if requested by GCOMM, will give written instructions to Customer's other Supplier to

transfer the service from Customer's name to GCOMM; and

- (c) must immediately pay the other Supplier all amounts owing on the transferred services.

12. Intellectual Property Rights

- 12.1 Customer acknowledges that nothing in this Agreement is intended to give Customer any Intellectual Property Rights in, or other rights in respect of, any trade marks, copyright, business names, logos, trading styles, processes, methodologies or other intellectual property of GCOMM.
- 12.2 Unless otherwise agreed in writing, Customer has no rights in respect of any Intellectual Property Rights of GCOMM.

13. Invoicing

- 13.1 GCOMM will invoice Customer the relevant Fees in accordance with the Quote and any additional Work Orders and subject to any changes in the Fees under this Agreement.
- 13.2 On installation of a new Service, GCOMM will invoice Customer for the remainder of the month from the start date to the end of the calendar month and for the next calendar month in advance.
- 13.3 For a modification to an existing Service, GCOMM will invoice Customer for the remainder of the month from the start date to the end of the calendar month (less a credit for the remainder of the month for the prior Service) and for the next calendar month in advance..
- 13.4 GCOMM will invoice Customer for usage Fees that are based on the actual usage for a calendar month

14. Invoices and Payment

- 14.1 Unless otherwise agreed, GCOMM may invoice Customer:
- (a) for any installation Fees, after installation;
 - (b) for variable Fees, in arrears;
 - (c) for recurring or fixed Fees, in advance;
 - (d) for any Equipment Customer purchases from, or leases from, GCOMM, on or after delivery; and
 - (e) otherwise as notified by GCOMM from time to time.
- 14.2 Subject to clause 17, Customer will pay each invoice by the due date specified in the invoice or as notified by GCOMM from time to time.
- 14.3 If Customer fails to pay the Fees pursuant to this Agreement, GCOMM may:
- (a) set off any sums owing to it against any Security that Customer may have provided;
 - (b) charge interest at a rate of 2% plus the National Australia Bank overdraft indicator base rate or such other comparable rate chosen by GCOMM;
 - (c) suspend Services pursuant to this Agreement;
 - (d) cancel Services pursuant to this Agreement; and/or
 - (e) terminate this Agreement.
- 14.4 Customer acknowledges that GCOMM will use its reasonable endeavours to include in Customer's invoice all Fees for the Service in the applicable billing period. Customer acknowledges that this may not always occur because GCOMM receives an invoice for a Service that is supplied by another Supplier. Customer further acknowledges that GCOMM may include these unbilled Fees in any later invoice or invoices.
- 14.5 GCOMM may provide Customer with an option to pay the Fees for the Service by credit card. If Customer chooses to provide GCOMM with Customers' credit card details for the purposes of paying the Fees, GCOMM may:

- (a) bill all Fees to Customers' credit card including all credit card transaction surcharges charges to GCOMM by the credit card company as a result of payment being made by credit card;
- (b) disclose Customers credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details;
- (c) take steps to verify that Customer hold sufficient credit on Customers' credit card to meet the likely Fees; and
- (d) charge any Cancellation Fee payable pursuant to this Agreement.

15. Direct Debit

15.1 Customer acknowledges and warrants that:

- (a) the information in the Direct Debit Request Form is correct and the nominated account will accept direct debits;
- (b) it will notify GCOMM in writing if Customer wishes to change any direct debit payments.

15.2 If a Customer wishes to dispute a debit that has been made from Customer's nominated account, Customer must immediately contact GCOMM with the nature of the dispute. On receipt of such notification GCOMM will use reasonable endeavours to respond within 5 Business Days.

15.3 If GCOMM determines that Customer's nominated account was incorrectly debited, then GCOMM will

provide Customer with details of its findings and make any necessary adjustments.

- 15.4 Customer must ensure that sufficient cleared funds are available in Customer's nominated account on the debit date. If there are insufficient funds and Customer's financial institution dishonours the direct debit payment, then Customer will be liable for any charges and tax on those charges incurred by GCOMM.
- 15.5 Customer acknowledges that if the debit date is on a weekend or public holiday in Queensland, then GCOMM will process the payment on the next Business Day.

16. GST

- 16.1 Unless expressly included, the consideration for any supply under, or in connection with, this Agreement does not include GST.
- 16.2 To the extent that any supply made under, or in connection with, this Agreement is a taxable supply, the recipient of that supply must pay an amount equal to the amount of GST imposed in respect of the supply under the GST Act.
- 16.3 The supplier must provide to the recipient a GST tax invoice as required by the GST Act.
- 16.4 GST is only applicable to Australian registered companies.

17. Disputed Invoices

- 17.1 If Customer wishes to dispute any invoice Customer will within 10 days of the date of the invoice notify GCOMM of the nature of the dispute.
- 17.2 If GCOMM does not receive notification of the dispute from Customer within a 14 day period, Customer will be deemed to have accepted the Fees by the invoice due date.
- 17.3 If GCOMM investigates the dispute and determines (in its reasonable opinion) whether the disputed Fees are valid or invalid, then all valid Fees are due and payable once Customer receives notice from GCOMM of the conclusion of its investigations.

18. Credit Management and Security

- 18.1 GCOMM may at any time review Customer's creditworthiness by requesting information from a credit reporting agency. Customer consents to GCOMM providing any Personal Information required by the nominated credit reporting agency.
- 18.2 Customer agrees that it will cooperate with any creditworthiness review required by GCOMM including providing such information and authorisations required by GCOMM.
- 18.3 From time to time GCOMM may require Customer to provide a Security.
- 18.4 GCOMM may apply the whole or any part of any Security to satisfy any amount Customer is required to pay GCOMM from to time and that is overdue.
- 18.5 Pursuant to GCOMM's assessment policies, GCOMM may set credit limits or require Customer at any time to pay a Security.
- 18.6 GCOMM will return Customer's Security to Customer upon termination of Customer's account (subject to Customer having paid all amounts owing under the Agreement).
- 18.7 For the avoidance of doubt and for the purposes of this Agreement, any Security provided pursuant to this clause is not subject to GST.

19. Personal Information

- 19.1 GCOMM may collect, use and disclose Personal Information about Customer to decide whether to supply the Service (or for purposes which would be reasonably expected of an Internet access and Internet service supplier).
- 19.2 GCOMM may collect, use and disclose Personal Information about Customer or the supply of the Service to or from:
- (a) a credit reporting agency;
 - (b) a credit provider;

- (c) third parties who are not related to GCOMM, including Contractors and distributors; and
- (d) Suppliers who need access to Customer's Personal Information so as to provide GCOMM with services to allow supply of the Service to Customer.

19.3 Customer acknowledges that GCOMM may be required by law to collect, use or disclose Personal Information about Customer including for reasons relating to law enforcement agencies.

19.4 GCOMM may use, process or transfer Personal Information of Customer:

- (a) in connection with provisioning of the Service;
- (b) to incorporate Personal Information into databases controlled by GCOMM with the administration, provisioning, billing and verification of Customer's identity and solvency, maintenance support and product development, fraud detection and prevention, sales revenue and customer analysis and reporting and market and customer use analysis;
- (i) to communicate to Customer about products and services of GCOMM or its partners by means of voice, letter, facsimile; or email, from time to time.

19.5 Customer acknowledges the GCOMM Privacy Policy as amended from time to time and is

available at <http://www.gcomm.com.au/gcomm-privacy-policy> ; and is applicable to the Service provided under this Agreement.

19.6 If any conflict between this clause and GCOMM's Privacy Policy, the Privacy Policy will prevail.

20. Confidentiality

20.1 During the Term of this Agreement and after its termination, the parties will:

- (a) use their best endeavours to keep all Confidential Information confidential and accordingly not disclose any Confidential Information to any other person;
- (b) not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement; and
- (c) be responsible for the activities of any properly appointed sub-contractors or subsidiaries and undertake that they will be bound to the same extent of confidentiality as this clause.

20.2 The provisions of clause 20.1 will not apply to:

- (a) any information in the public domain otherwise than by breach of this Agreement;
- (b) information that was known by a party on a non-confidential basis prior to disclosure of it by the disclosing party;
- (c) information obtained without restriction from a third party; and
- (d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority.

20.3 Customer acknowledges that the contents of the Agreement and any pricing or product information provided by GCOMM (including in any proposal), constitutes commercially sensitive and Confidential Information, except to the extent to that it is published on a publicly available portion of the website. Customer agrees not to disclose that information to any third party without GCOMM's prior written consent, unless legally compelled to do so and then only after providing notice to GCOMM of the making of that order.

21. Force Majeure

21.1 Neither party will have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement (excluding any obligation to pay), which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 10 Business Days, either party may terminate this Agreement by written notice to the other party.

22. GCOMM's Right to Suspend or Cancel a Service

22.1 GCOMM may, without liability, immediately cancel or suspend a Service if:

- (a) there is an emergency;
- (b) it is necessary to allow GCOMM or a Supplier to repair, maintain; or service any part of the GCOMM Network or a Supplier Network used to supply the Service;
- (c) Customer breaches clause 7.1 or clause 7.2;
- (d) Customer has failed to provide the Security requested by GCOMM;
- (e) GCOMM reasonably suspects fraud by Customer or any other person in connection with the Service;
- (f) GCOMM is required to do so to comply with a Regulator or a direction by a competent authority;
- (g) problems are experienced interconnecting the GCOMM Network with any Supplier Network or Customer Network;
- (h) a Supplier terminates its agreement with GCOMM, or ceases to supply Services to GCOMM and GCOMM is unable to provide Service using an alternate Supplier on terms reasonably acceptable to GCOMM;

- (i) Customer is Insolvent;
- (j) has reasonable grounds to believe that Customer will not or is unable to make any payment which is due or is to fall due to GCOMM;
- (k) has reasonable grounds to believe that the volume of traffic from Customer (or traffic distribution patterns to individual cities and countries) results in a lower than industry- standard completion rate, severely abnormal or disproportionate distribution of traffic by city, or other similar abnormality which adversely affects the GCOMM Network (including but not limited to a looping situation in which Customer's traffic is delivered by GCOMM to another carrier for termination and ultimately returned to GCOMM); or
- (l) GCOMM is otherwise entitled to do so under this Agreement.

23. Limitation of Liability

23.1 Implied Terms. To the extent permitted by law but subject to clause 23.4 all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this Agreement, are excluded.

23.2 Limitation of Liability. Each party will have unlimited recourse against the other party for the

following types of actual, direct damages arising under, or related to, this Agreement:

- (a) damages resulting from personal injury, death or tangible property damage caused by the other party or its personnel;
- (b) damages, and related legal costs and reasonable attorneys' fees, for which the other party has agreed to provide indemnification under this Agreement; or
- (c) damages resulting from a breach of a party's confidentiality obligations under this Agreement.

All other damages arising under, or related to, this Agreement (regardless of the type of damages, and whether for breach of contract, breach of warranty, tort or otherwise) will be limited to the amount of fees received by GCOMM to which the damages relate for the previous 12 months (except any claim by GCOMM for payments owed by Customer will be limited to the amount owed).

23.3 Exclusion of Loss. Notwithstanding any other provision of this Agreement, neither party will be liable to the other party for Consequential Loss.

23.4 Australian Consumer Law. Under the Australian Consumer Law included in the *Competition and Consumer Act 2010* (Cth) ("**ACL**"), consumers have certain rights which cannot be excluded, including guarantees as to the fitness for purpose of goods or services. Nothing in this Agreement will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified. This Agreement must be read subject to these statutory provisions. Subject to any consumer rights under the ACL and to the extent permitted by law, GCOMM limits its liability in respect of any claim under those provisions, at the option of GCOMM, to supplying the services again; or paying the cost of having the services supplied again.

23.5 Acknowledgements. Without limiting the exclusions or limitations of liability in this clause Customer acknowledges that:

- (a) GCOMM does not warrant that GCOMM will be able to supply the Service continuous or fault free;
- (b) it is technically impossible for GCOMM to provide the Service free of faults or error;
- (c) GCOMM is not liable to Customer for any failure to provide part or all of the Service, including but not limited, due to any Network failure, any Network congestion or any call drop out; and
- (d) GCOMM does not warrant the quality of the Service.

23.6 Customer Indemnity. Notwithstanding any other provision of this Agreement, Customer agrees to indemnify GCOMM (including GCOMM's Personnel) against any loss, damage, liability, costs, proceedings, charges and expenses (including all reasonable legal costs) incurred by GCOMM arising from a third party claim against GCOMM due to the gross negligence or wilful misconduct of Customer, its related bodies corporate or its Personnel, in connection with the Service or this Agreement in respect of any loss of life, personal injury or disability, loss of or damage to tangible property, or any other loss whatsoever.

23.7 GCOMM Indemnity. Notwithstanding any other provision of this Agreement, GCOMM agrees to indemnify Customer (including Customer's Personnel) against any loss, damage, liability, costs, proceedings, charges and expenses (including all reasonable legal costs) incurred by Customer arising from a third party claim against Customer due to the gross negligence or wilful misconduct of GCOMM, its related bodies corporate or its Personnel, in connection with the Service or this Agreement in respect of any loss of life, personal injury or disability, loss of or damage to tangible property, or any other loss whatsoever.

24. Termination

24.1 A party may by written notice to the other party terminate this Agreement immediately if:

- (a) the other party is Insolvent;

- (b) that party has suspended or has a right to suspend this Agreement under clause 22;
- (c) the other party has breached a material term of this Agreement and the breach is not capable of being remedied; or
- (d) the other party has breached a material term of this Agreement, the breach is capable of remedy and the other party has failed to remedy the breach within 10 Business Days of being notified of the breach.

24.2 GCOMM may, by written notice to Customer, suspend or terminate this Agreement if:

- (a) Customer has failed to pay any money owing under this Agreement pursuant to this Agreement; or
- (b) Customer fails to provide or maintain any Security required under this Agreement.

24.3 Consequences of Termination

On termination of this Agreement for any reason all Fees and other amounts, including any Cancellation Fees, owing by Customer for the Service will become immediately due and payable. Cancellation Fees will be payable by Customer where termination is effective during the Initial Term or the Renewal Term except where termination is by Customer pursuant to clauses 8, or 24.1.

25. Carrier and Carriage Service Providers

Customer represents that it is not a Carrier or Carriage Service Provider. If during the term of this Agreement Customer is or becomes a Carrier or Carriage Service Provider, then GCOMM may immediately cancel the Service by notice to Customer. Customer may not resell the Service in any way.

26. Complaints

26.1 GCOMM aims to resolve our Customers' issues or queries quickly and professionally. Any complaints from our Customers are prioritised and acted upon according to Australian Communications Industry Forum and Telecommunications Industry Ombudsman guidelines.

26.2 Complaints should be made in writing and addressed to:

GCOMM Pty Ltd PO BOX 609
Surfer's Paradise Qld 4217

26.3 Should Customer be dissatisfied with GCOMM's response, Customer may be entitled to raise certain matters directly with the Telecommunications Industry Ombudsman or with either the Department of Fair Trading or the Department of Consumer Affairs in Customer's state or territory.

27. Dispute Resolution

27.1 Dispute

A party may not commence any court or arbitration proceedings relating to a Dispute unless it complies with this clause except where the party seeks urgent injunctive, declaratory or other interlocutory relief or where the Dispute relates to Customer's failure to pay Fees or other payments.

27.2 Notice of Dispute

If a Dispute arises in connection with this Agreement, a party to the Dispute must give to the other party or parties to the Dispute, notice specifying the Dispute and requiring its resolution under this clause 27.2 (**Notice of Dispute**).

27.3 Resolution

The chief executive officers (or their representatives) of each party must confer within 3 Business Days after the Notice of Dispute is received to try to resolve the Dispute.

27.4 Arbitration

- (a) If the Dispute is not resolved within 10 Business Days after the Notice of Dispute is given to the other party ("**First Period**"), the Dispute is by this clause submitted to arbitration. The arbitration must be conducted in Queensland by a single arbitrator.
- (b) If the parties have not agreed upon the arbitrator within 5 Business Days after the First Period, the arbitrator is the person appointed by the President of The Institute of Arbitrators and Mediators Australia, Queensland Chapter ("**President**") or the President's nominee, acting on the request of any party to the Dispute.
- (c) After accepting the appointment and during the arbitration the arbitrator may:
 - (i) require the parties to lodge security or further security towards the arbitrator's fees and expenses;
 - (ii) apply any security towards those fees and expenses; and
 - (iii) act as an expert;

but the arbitrator may not direct a party to the Dispute to provide security for the costs of the arbitration to be incurred by any other party.

27.5 Termination

If the Dispute is not resolved within 42 days after the Notice of Dispute is given under this clause then any party which has complied with the provisions of this clause may in writing terminate any dispute resolution process undertaken pursuant to this clause and may then commence Court proceedings in relation to the Dispute.

28. Urgent changes

Where a change to this Agreement is required by law or is necessary in GCOMM's opinion to prevent fraud or for technical reasons and Customer would be affected by the change GCOMM shall proceed with the change but will try to give Customer as much notice as possible of the change.

29. Changes requiring notice

29.1 In addition to its rights to vary the terms of this Agreement or cease to supply or modify Services or provide substitute Services pursuant to clauses 5.5(c), 5.5(e), 8 and 22.1 and without prejudice to its rights under clause 28, GCOMM may make additions or amendments to the terms of this Agreement as follows:

- (a) GCOMM may amend the Fees by giving Customer 20 Business Days advance notice;

- (b) If GCOMM reasonably believes that a change in the terms of the Agreement is likely to benefit Customer or be neutral to Customer, GCOMM may make the change immediately and is not required to notify Customer beforehand;
- (c) GCOMM may make changes to this Agreement in order to implement changes in the law, whether in relation to taxation or otherwise, since the Effective Date and shall to the extent practical give Customer 20 Business Day's notice of such changes;
- (d) GCOMM may make such other changes to this Agreement that do not in GCOMM's opinion have a material adverse effect on the rights of Customer by giving Customer 20 Business Days advanced written notice thereof.

30. General

30.1 Notices. Notices given under this Agreement:

- (a) must be in writing addressed to the intended recipient at the address last notified by the intended recipient to the sender;
- (b) must be signed by a person duly authorised by the sender; and
- (c) will be taken to be served when delivered, received or left at the intended recipient's address, but if delivery or receipt occurs on a day on which business is not generally carried on in the place to which the notice is sent, or later than 5pm on that date at that place, it will be taken to have been served at the commencement of business on the next day on which business is generally carried on in that place.

30.2 **Entire Agreement.** This Agreement and this Agreement constitute the entire agreement between the parties with respect to their subject matter and supersede all prior and all contemporaneous agreements, understandings, marketing materials and communications, whether written or oral. Any contrary or additional terms, conditions or representations attached to or made part of any purchase order or similar document, or contained in presentations or slideshows, emails or letters, or otherwise communicated between the parties, will be invalid and non-binding on the parties.

30.3 **Nature of engagement,** GCOMM is engaged by Customer as an independent contractor. Nothing in this Agreement creates a relationship between the parties of employer and employee, principal and agent, partnership or joint venture.

30.4 **Amendment.** This document may be amended only by another document signed by each of the parties.

30.5 **Subsequent Legislation.** If the rights or obligations of either party under this Agreement are or may be affected by Subsequent Legislation the parties will meet as soon as practicable and negotiate in good faith such amendments to this Agreement necessary or appropriate to ensure that this Agreement does not and will not require either party to breach the Subsequent Legislation. If the parties cannot agree such amendments within a reasonable period, either party may terminate this Agreement as it applies to any Service affected by the Subsequent Legislation by giving 5 Business Days notice to the other party.

30.6 **Indemnities.** Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement for whatever reason. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement

30.7 **Assignment.** Except to a Related Body Corporate (as defined in the Corporations Act), neither party may assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld.

30.8 **Force Majeure.** Neither party will be liable for any failure or delay in performing an obligation under this Agreement (excluding payments) that is due to causes beyond its reasonable control, such as natural catastrophes, government acts or omissions, laws or regulations, labor strikes or difficulties, transportation, stoppages or slowdowns or the

inability to procure parts or materials. These causes will not excuse Customer from paying accrued amounts due to GCOMM through any available lawful means acceptable to GCOMM. If any of these causes continue to prevent or delay performance for more than 90 days, the party not experiencing the delay may terminate this Agreement, effective immediately, upon notice to the other party.

- 30.9 **Severance.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability, but will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- 30.10 **No Waiver.** No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that right, power or remedy.
- 30.11 **Governing Law.** This Agreement is governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of courts of Queensland and courts entitled to hear appeals from those courts.
- 30.12 **Counterparts.** To facilitate execution, this Agreement may be executed in two identical counterparts and the signature of each party will appear on each counterpart. The parties may also execute the Agreement using the EchoSign contract execution facility and each party warrants and represents that the online execution of this Agreement through EchoSign is a valid signature of a duly authorised official who has the power to bind that party.

Addendum

Additional Services -- Enhanced Support Services

1. The Customer has submitted a Service Order Form to GCOMM and GCOMM has accepted that Service Order Form and will provide Internet Services to the Customer in accordance with that Service Order Form.
2. Where the Service Order Form indicates a Customer is to receive Additional Services the terms set out in this Additional Services Addendum apply to the provision of the Enhanced Support Services. Any capitalised terms not defined in this Additional Services Addendum have the meaning given to them in the Service Order Form or the Customer Terms (whichever is applicable). If there is any inconsistency between the terms of this Additional Services Addendum, the Service Order Form or the Customer Terms, then the terms of this Additional Services Addendum will prevail to the extent of the inconsistency unless expressly stated otherwise.
3. Interpretation:
 - (1) **Enhanced Support Services** means those services described in this Additional Services Addendum; and
 - (2) **Service Delivery Point** means the point of interconnect between the Customer Premises and the GCOMM Network.
4. Subject to the Customers' compliance with the Agreement, GCOMM will provide the Enhanced Support Services to the Customer 24 x 7 x 365 excluding public holidays.
5. All requests by the Customer for the Enhanced Support Services can be by: Telephone on 1300 221115
6. GCOMM will use reasonable efforts to provide remote diagnostic fault analysis to pro-actively

monitor and repair faults before such faults become service affecting.

7. GCOMM will provide remote access to enable its field staff to access real time network alarm data via mobile devices, including laptops and mobile phones, as appropriate.
8. Before reporting a fault to GCOMM, the Customer must take all reasonable steps to ensure that the fault is not a fault in any equipment located on the Customers' side of the Service Delivery Point, including any of the Customers' Equipment.
9. Where GCOMM determines that the fault is in the Customers' Equipment or any equipment on the Customers side of the Service Delivery Point, then GCOMM:
 - 9.1 will use reasonable endeavours to inform the Customer of the fault but will bear no further responsibility or liability;
 - 9.2 may charge the Customer for any costs incurred by GCOMM in investigating the fault; and
 - 9.3 if the Customer requests GCOMM to repair the fault, then GCOMM may charge the Customer for such repair as notified by GCOMM at the time of the request.
10. If GCOMM investigates a fault and determines that the fault is attributable to any equipment on GCOMM's side of the Service Delivery Point then:
 - 10.1 where GCOMM determines that the fault is in equipment within the GCOMM Network, then GCOMM will be responsible for rectifying the fault in accordance with this Additional Services Addendum; and
 - 10.2 where GCOMM determines that the fault is in equipment within a Supplier Network, then GCOMM will inform the Supplier of the fault and request its rectification.
11. The targets specified in the response and resolution table below apply to faults in the Service that the Customer reports.
12. GCOMM will use reasonable endeavours to comply with the response times set out in the following table:

Response Table

Severity	Definition	Response Time (measured from the time a telephone call is logged by the GCOMM help desk during business hours)
Level 1	Complete failure of Internet Service	Online fault log: Not Applicable - Unless the Customer has other means of accessing the Online reporting tool whereby fault will be responded to within 30min Telephone fault report: 30 minutes

Level 2	A major incident arising from the failure of a key feature of the Internet Services that results in substantial performance degradation and/or inability to use a major feature of the Internet Services.	Online fault log: 1 Hour Telephone fault report: 1 hour
Level 3	A minor incident where non-essential key features of the Internet Service are impacted or there is degradation of the performance of those non-essential key features. This might include a recurring incident if left unattended may escalate to a Level 2 or Level 1.	Online fault log: 4 hours Telephone fault report: 4 hours
Level 4	A low priority incident allocated to a request or issue that only requires information and has no immediate impact on the Internet Service.	Online fault log: 24 – 48 hours Telephone fault report: 24 - 48 hours

13. The Customer must provide all necessary assistance to enable location and rectification of any fault regardless of whether that fault is the responsibility of GCOMM or another Supplier.