

### Parties

The terms and conditions of this Standard Form of Agreement (Terms) apply between FaktorTel Pty Ltd (**We, Us**) and the Customer (**You**).

## 1 ABOUT THESE TERMS AND THIS STANDARD FORM OF AGREEMENT

1.1 This Standard Form of Agreement (Agreement) applies when:

- a) You are a Consumer;
- b) You purchase Voice, Telephony or ADSL Services;
- c) You purchase these Services:
  - Following an unsolicited approach by Us;
  - Online; or
  - In any other circumstance whereby You purchased the Services without otherwise speaking to Us beforehand.

1.2 These Terms are standard terms and conditions which apply to all Services provided by Us to You, where:

- a) Clause 1.1 above applies;
- b) You have not purchased the Services in conjunction with other products to which Clause 1.1 above would not apply; and
- c) You have not signed a Master Services Agreement.

1.3 These Terms will apply until the earlier of:

- a) the Terms are varied expressly in writing by Us and You, or
- b) We update, change or issue a new Standard Form of Agreement on our Website, and:
  - If You have an ongoing agreement: 30 days after We publish the update, change or new version; or
  - If You have a fixed term agreement: immediately after the expiration of the minimum initial term.

1.4 These Terms constitute a “Standard Form of Agreement” for the purposes of the Telecommunications Act. By law You and We must comply with these Terms unless You and We have reached a separate written agreement.

1.5 All references to terms, terms and conditions, or general terms, in this document, or any other document provided by Us, is a reference to these Terms, provided Clauses 1.1 and 1.2 apply.

1.6 The meaning of words printed in italics, or commencing with a capital letter, are indicated in the definitions section of this document.

1.7 These Terms should be read in conjunction with Your Service Order Form, the relevant Service Description, our Service price list, and any Annexures.

1.8 For each and every service engagement, both We and You must agree (including submitting an online

acceptance) a separate Service Order relating to each such engagement. A contract will be formed when You have submitted a Service Order and proceeded through the identification steps (including responding to activation links in emails or SMSs) and We have subsequently activated Your Service.

1.9 Each contract will comprise a Service Order and all attachments or annexures thereto and will incorporate this Agreement to the exclusion of any purchase order, quote, confirmation, terms and conditions of any other document issued or provided by You.

## 2 THE AGREEMENT

### About the Agreement

2.1 The Agreement consists of:

- a) Your Service Order Form
- b) These Terms
- c) The Service Description for the service listed in Your Service Order Form
- d) Any Annexures to Your Service Order Form

2.2 Your Agreement may be a fixed-length Agreement or an ongoing agreement.

### Priority and Inconsistency in the agreement.

2.3 Where there is any inconsistency between these Terms and any other part of the Agreement, the documents and Terms are to be interpreted and applied in the following order:

- a) An express written agreement between You and Us,
- b) Service Order
- c) Service Description/Schedule
- d) These Terms

2.4 Clause 18 – Our liability to You, prevails over all other terms.

2.5 No clause in these Terms shall be interpreted to exclude a written variation to these Terms which expressly supersedes any given clause.

### Start of the Agreement

2.6 The Agreement starts when We notify You that We have accepted Your Service Order form or when We commence preparing to supply the service to You, whichever is the earlier.

2.7 Your Service Order form constitutes an offer by You to purchase the service from Us. We may accept or reject Your service order form for any reason, whatsoever.

2.8 You are bound by the Agreement from when the Agreement starts as per Clause 2.6, and may only cancel the service in accordance with Clause 11, even though Billing may not have commenced.

2.9 Unless We state otherwise, Billing will commence when You are advised that Your service is ready for use.

### 3 SUPPLY OF THE SERVICE

#### Commencement of Supply

3.1 We will use reasonable endeavours to quickly commence supplying the service after You have proceeded through the identification steps (including responding to activation links in emails or SMSs) and We have subsequently activated Your Service.

#### Term – Length of Supply

3.2 The Term will commence when We activate Your account, and, subject to earlier termination in accordance with the terms of this Agreement, operate for the term set out in the Service Order applicable to that Contract.

#### Length of supply - Ongoing agreement

3.3 If the agreement is an ongoing agreement, the agreement shall continue, and We shall continue to supply the service to You, until such times as the service is cancelled pursuant to clause 11 or 12.

#### Length of Supply – Fixed Length Agreement

3.4 If the agreement is a fixed length agreement, the agreement shall continue for the minimum term and We shall continue to supply the service to You for that minimum term unless the service is cancelled pursuant to clause 11 or 12.

3.5 Following the last day of the minimum term a fixed-length agreement becomes an ongoing agreement unless You:

- Notify Us 30 days prior to the expiration of the minimum term, or
- notify Us that You want to Cancel the Service in accordance with clause 11, or
- We notify You that We wish to cancel the service pursuant to clause 12.

We will continue to supply the service to You in accordance with clause 3.4 above (Length of Supply – Ongoing Agreement).

3.6 If under any Contract that is for a fixed term, We continue to supply and You continue to receive Services beyond the expiry of the prescribed initial term, both parties must continue to comply with their obligations and, for so long as the parties make no objection, such Contract will be deemed to be extended for successive periods of 1 month, subject always to the right to terminate under clause 11.

### 4 USING THE SERVICE

#### Routing and Technical Delivery

4.1 We have absolute discretion in how We provide the service to You. We may decide the route and technical means that We use to provide Your service.

#### Reasonable Co-Operation to supply and maintain service

4.2 You must reasonably co-operate with Us and do all things We reasonably require You to do, as notified from time to time, in order to allow Us or an agent to supply or continue supplying the service to You, safely and efficiently. This may include:

- a) Providing additional information to Us within a reasonable timeframe upon request;
- b) Securing for Us or our agents, access to the premises to which the service is being delivered for the purpose of doing any other thing which is necessary for the delivery of the service, and subsequent maintenance or repairs.
- c) Taking delivery of any equipment, documents, invoices or other things relating to Your service or Your relationship with Us.

4.3 If You do not co-operate with Us to allow the service to be supplied or that supply to be maintained, We may be entitled to cancel or suspend the service pursuant to clauses 12 and 14.

4.4 In order to supply and maintain the service, We may access or keep any records that We deem necessary, including to comply with any laws.

#### Quality of Service

4.5 We will provide the service to You with reasonable care and skill.

4.6 Should unexpected faults hinder availability of the service We will use reasonable endeavours to resolve those faults and restore the availability of the service as soon as possible.

4.7 This section (Quality of Service) is not a promise, warranty or guarantee that services will be continuous or fault-free. Due to the nature of systems (including reliance on systems and services owned and operated by third-parties) circumstances causing faults and unavailability of Your service may be beyond our control. General Use

4.8 In Your use of the service, You must comply with:

- a) All laws,
- b) All directions by a regulator,
- c) All other documents or notices issued by authorisation under a law,
- d) Our reasonable directions in relation to the service or Your relationship with Us,
- e) The rules of third-parties whose content or services You access using the service,
- f) All authorisations, permits and licences required, if any, under applicable law to receive and utilise the Services.

#### Use for intended purpose

4.9 If Your agreement states that a service is provided for a particular purpose You must use the service for that purpose. You are not permitted to use the service in

the capacity of a Carrier or Carriage Service Provider without our express permission.

#### **Change of Circumstances**

4.10 You must notify Us about any changes to Your services, equipment, location, usage or circumstances that may affect our ability to provide the service to You. This includes if You move address, plan to substantially increase Your usage of the service or become a Carrier or Carriage Service Provider.

4.11 If You direct Us to alter or vary Your Services, or direct Us to carry out any work on Your services, We may provide You a separate offer to supply such additional or varied Services at a fee to be determined by Us. If You accept the fee as set out in the offer, We will supply the additional or varied Services at the agreed fees.

4.12 If, as a consequence of the supply of incorrect information by You, the cost to Us of performing the Services is increased, We reserve the right to charge extra fees, at the then prevailing rates, to cover such additional costs and expense.

#### **Unauthorised Use**

4.13 You are responsible for and liable for all use of Your service in all circumstances, even if that usage is unauthorised.

#### **Authorised Use by Third Parties**

4.14 You must ensure that any person You authorise to use the service complies with the agreement as if they were You.

#### **Illegal Use**

4.15 You must not

- use the service to commit any offence, whatsoever;
- use the service to infringe on the rights of another person;
- use the service to publish, communicate or transmit defamatory, offensive, abusive, indecent, menacing or unwanted material.

4.16 You must not allow anybody else to use Your service in a way inconsistent with Clause 4.15 above.

#### **Network Integrity**

4.17 You must not use the service in a way that may interfere with the efficiency, security or integrity of our network.

4.18 You must reasonably ensure that no-one interferes with the operation of a service or any associated equipment or makes it unsafe.

#### **Failure to Comply**

4.19 If We believe that Your use of the service is inconsistent with clause 4.8, 4.9, 4.15, 4.16, 4.17 or 4.18 then We may request You cease the activity in

question, change the way You use the service or change the type of service You receive. If You do not comply with such a request immediately We may take any steps whatsoever to ensure Your compliance, or suspend or cancel the service pursuant to clause 14 or 12 respectively.

4.20 Nothing in this section will be construed as imposing an obligation on Us to monitor, detect and/or report fraudulent, illegal or unauthorised use of the Services.

4.21 If Your use of the Services is deemed by Us to be in excess of that which is normal for the Service which You have purchased, We may at our discretion require You to move onto another Service which is more suitable for Your requirements.

## **5 EQUIPMENT**

### **You are responsible for equipment**

5.1 Your use of any and all equipment in relation to the service should be consistent with;

- All laws,
- All directions by a regulator,
- All other documents or notices issued by authorisation under a law,
- Our reasonable directions in relation to the service or Your relationship with Us,
- All authorisations, permits and licences required under applicable law to use the equipment.

5.2 If We believe Your use of equipment is not consistent with clause 5.1 above then We may:

- Disconnect the equipment from the service,
- Suspend or cancel the service consistently with clause 14 or 12 respectively.

### **Electricity, Ventilation and Other Requirements**

5.3 You are responsible for arranging and paying for any electricity supply required for equipment needed to receive the service at the premises where the service is terminated.

5.4 You are responsible for ensuring that the operating requirements for any equipment needed to receive the service are met. Equipment may have certain requirements for location, ventilation, temperature control, humidity electricity supply, and other matters.

5.5 If these requirements are not met, the equipment may not work, and You may not be able to receive the service.

### **Customer Provided Equipment**

5.6 Customer Provided Equipment is Your property and can be used to receive the service.

5.7 If You connect customer provided equipment to the service, it must comply with the relevant technical standards and other relevant requirements, standards and legislation.

5.8 We may require You to disconnect customer provided equipment from the service if the customer provided equipment does not meet these standards or the customer provided equipment is having an adverse effect on our network.

## **6 FAULTS, ERRORS, SERVICE UNAVAILABILITY**

### **Network Maintenance**

6.1 We may conduct maintenance on our network and maintenance may be conducted on a supplier's network used to supply the service.

6.2 We will endeavour to schedule our Network maintenance outside normal business hours but may not be able to do so.

6.3 We have no control over network maintenance conducted on supplier's networks.

### **Monitoring and Fault reporting**

6.4 Before You report a fault to Us, You will take all reasonable measures to confirm that the fault is not caused by equipment that We are not responsible for.

### **Fault rectification**

6.5 We will repair faults within our network;

6.6 We will not be responsible for repairing any fault in the service where the fault arises in or is caused by:

- a) A Supplier's network,
- b) Equipment that We are not responsible for, such as equipment that is owned by You,
- c) Facilities outside our Network,
- d) Any network unit, facility, transit point, terminal or other thing that is outside our control.

6.7 If We are aware of a fault which occurs in or is caused by a Supplier's Network, We shall notify the supplier of the fault and request prompt rectification of that fault. We will not bear any further liability or responsibility beyond notifying the relevant network owner.

6.8 Where the fault arises in or is caused by equipment which is not our responsibility, such as Customer Provided Equipment, We are not responsible for the rectification of that fault.

### **Extended Unavailability**

6.9 If the fault within our network results in a significant loss of access for an extended period of time, You may be entitled to claim a credit. In some circumstances You may also be entitled to cancel the service.

## **7 FEES AND CHARGES**

### **You must pay Us**

7.1 Unless otherwise agreed, Your Service will be prepaid only, with all fees and charges are payable in advance. An Account Management Fee may apply to all post-paid Services.

7.2 The fees and charges which are specified in the Service Order Form or a relevant annex for Your service.

7.3 Other fees and charges payable under the agreement whether specified in the agreement (including Your Service Order Form or any Annex) or notified by Us from time to time (such as credit card payment fees appearing on Your invoice).

### **Types of fees and charges which You must pay**

7.4 Ongoing fees and charges for the service as specified for Your service in the Service price list. Examples include (but are not limited to):

- a) Usage fees
- b) Access fees

7.5 Administrative fees and charges as specified for Your service in the Service price list. Examples include (but are not limited to)

- a) Suspension fees
- b) Cancellation Fees
- c) Reconnection fees
- d) Setup fees
- e) Late payment fees

7.6 Administrative fees and charges which are incidental, variable and will be notified to You from time to time. Examples include (but are not limited to)

- a) Some types of Cancellation Fees
- b) Some types of Cancellation Charges
- c) Some types of reconnection fees
- d) Some types of setup fees

7.7 We require You to prepay Your fees for the Service. We may advise You when You are approaching the limit of Your prepaid balance, however it is Your responsibility to monitor Your balance and Your usage, and top-up Your account as required. Any unused proportion of Your prepayment will either be refunded to You in accordance with clause 8.12 or be rolled over into prepayment for the next billing period.

7.8 Taxes which are applicable to any service We offer.

- a) All prices, or any other amount payable, stated as payable to Us, will be inclusive of GST, unless otherwise indicated.
- b) If GST is payable by Us on any supply made under the Agreement, You will pay to Us an amount equal to the GST payable on the supply. That amount is to be paid at the same time the consideration for the supply is payable under the Agreement and will be paid in addition to the consideration.
- c) We shall provide You with a tax invoice in respect of the supply, or any other necessary document which provides You with the ability to claim an input tax credit.

### **Fee Indexation**

7.9 If upon:

- a) The expiry of the initial term of any Fixed Length Agreement, or

- b) The 12 months anniversary following the commencement of an Ongoing Agreement, or
  - c) Any successive 12 month anniversary of the commencement of an Ongoing Agreement,
- The fees payable for the Service may be increased by an amount equivalent to the increase in the CPI for the 12 month period preceding the price increase.

**You must pay for unauthorised use**

- 7.10 You must pay all fees and charges which are incurred for the service even if You did not authorise the use which gave rise to the fees and charges.

**Invoices are Payable in full**

- 7.11 Subject to clauses 9.2-9.17 – “Circumstances where You may withhold amounts due”, You must pay all fees and charges on any invoice in full. If following a dispute, We conclude that We have made an error or You are entitled to a refund under the agreement, We will reverse the transaction appropriately.

**Disputing fees and charges**

- 7.12 The provisions for billing disputes are contained in clause 9.

**Adjustments**

- 7.13 We may round charges or fees up or down to the nearest whole cent (0.5 cents is rounded up).
- 7.14 If You pay a bill in cash We may round charges or fees up or down to the nearest multiple of 5 cents.

**8 INVOICING AND PAYMENT****How often We invoice You**

- 8.1 Notwithstanding that You are required to maintain a prepaid balance in Your account, We will invoice You in arrears at the end of Your billing period once usage charges have been determined.
- 8.2 Unless specified otherwise in the Service Order, the Billing period for Your service is 1 month.
- 8.3 We may also issue an interim invoice to You at any time if there are any unpaid amounts which You owe Us.

**What appears on Your invoice**

- 8.4 We will endeavour to include all Your payable fees and charges arising during the billing period on the invoice for that billing period.
- 8.5 Fees and charges that arise during a billing period that are not included on the invoice for that billing period, may be included on the invoice for the subsequent billing period or We may issue an interim invoice.
- 8.6 In the event that You receive more than one service from Us it is at our discretion to issue separate invoices for each service or to combine each service into a single invoice.
- 8.7 Fees and charges appearing on Your Invoice will be itemised, as appropriate.

**What happens if You do not maintain a prepaid balance on a prepaid service or exceed your credit limit**

- 8.8 Your Service will not work, and You will not be able to make or receive calls.
- 8.9 We will use best endeavours to continue to provide access to emergency services numbers (eg 000), however You must be aware that We cannot guarantee this access at all times whilst Your service is suspended.

**How payments are made**

- 8.10 All payments must be made by direct debit against a valid credit card.
- 8.11 Payment by credit card will not attract any fees or surcharges.

**Money We owe You (including overpayments and refunds)**

- 8.12 In the event that We owe You money (for example because You overpaid Us or You are recovering a deposit):
- a) Your credit card will be credited with the amount We owe You; or
  - b) If You no longer obtain a service from Us, We will pay the money into a bank account nominated by You or in another manner mutually agreed from time to time, if that money is not a Service Rebate.

**9 INVOICE DISPUTES****You may dispute an invoice**

- 9.1 You may dispute invoices We issue You if You, in good faith, believe that they are incorrect.
- 9.2 To lodge a valid dispute You need to contact Us and advise that You wish to lodge a dispute, and provide the information contained in section 9.5 below within 3 months of the issue date the invoice.
- 9.3 Upon receiving a validly made dispute, We will investigate the dispute claim and inform You of the progress of the investigation within 14 days.
- 9.4 If You do not validly dispute an invoice within 3 months of its issue, the invoice will be deemed to be correct.

**Dispute notices**

- 9.5 You should include the following information when lodging a dispute:
- a) The invoice number of the invoice on which the disputed fees and charges appear,
  - b) The total amounts of the fees or charges which are being disputed,
  - c) Whether You intend to withhold payment for those amounts,
  - d) Why the fees or charges which are being disputed were incurred, according to the invoice,
  - e) The reason that the fees or charges are being disputed,

- f) Any evidence which may demonstrate why the fees are incorrect.

**When a dispute concludes**

- 9.6 A dispute is concluded when;
- a) We notify You that We have made a final determination on the dispute,  
Or;
- b) If after 30 days We have not found and You have not supplied any evidence supporting Your claim, and We have notified You that this time limit has expired and a default final determination has been made.

**Our final determination on a dispute**

- 9.7 If We investigate a dispute claim We will reach a final determination on the matter and notify You in writing. The notice of final determination will include:
- a) A summary of Your claim,  
b) Whether or not We deem the invoice to be correct,  
c) The reasons We have reached our decision.
- 9.8 If our final determination is that the invoice is correct
- a) You must pay Us any amounts You have withheld under clauses 9.2 - 9.17 within five days of the date on which We reached our decision and notified You of the decision.
- 9.9 If our final determination is that the invoice is incorrect
- d) We must refund the value of the disputed charges or fees to You in accordance with clause 8.12 – Money We owe You, within five days of the date on which We advised our decision.
- 9.10 If no substantiating evidence has been found or supplied within 30 days, We will make a default final determination that the invoice is correct.
- 9.11 If You do not agree with our determination, You can lodge a Complaint with Us, or request an external review from agencies such as the Telecommunications Industry Ombudsman.

**Validity of our records**

- 9.12 Unless they can be shown to be incorrect our records are sufficient proof that a charge is payable.

**Circumstances where You may withhold amounts due**

- 9.13 Where Your dispute is lodged 7 days or more prior to the due date of the invoice to which the dispute relates, You may withhold such amounts as are directly and specifically related to the dispute from Your payment.
- 9.14 Where You have given Us direct debit authority We will return incorrectly debited amounts to You upon the conclusion of the investigation.
- 9.15 For the avoidance of doubt, You must pay Us any amount listed on any invoice which is not directly disputed even if You dispute other fees or charges which appear on the same invoice.

- 9.16 Where Your dispute is lodged within 7 days of the due date of the invoice to which the dispute relates, You must pay the invoice in full, including fees which You dispute, by the due date.

- 9.17 Other than where You may withhold amounts due as outlined above, all sums payable under this Agreement are payable in full without deduction, withholding, set-off or counterclaim for any reason whatsoever, howsoever arising, other than as may be required by law.

**Our investigation**

- 9.18 In investigating We will check logs and administrative records We keep for Your account for the relevant billing period.
- 9.19 Our investigation will not require Us to take any inquisitorial action beyond this.
- 9.20 We need not, under any circumstances, review the processes or systems which We use in collecting and compiling records relevant to the dispute.
- 9.21 You may request that We review specific kinds of information which We keep.
- 9.22 We must take into account any evidence You may forward Us supporting Your claim.

**10 SERVICE LEVEL AGREEMENTS**

- 10.1 No service level guarantee is offered in respect of the service, however in the event of a fault We will use reasonable endeavours to address the fault within a reasonable period.

**11 YOUR RIGHTS TO CANCEL THE SERVICE**

**You may cancel the Service at will**

- 11.1 If You have an ongoing agreement You may cancel Your service at will;
- a) by giving Us at least 30 days written notice that You intend to cancel Your service
- 11.2 if You have a fixed length agreement You may cancel Your service at will;
- a) by giving Us at least 30 days written notice that You intend to cancel Your service; and  
b) paying Us the Cancellation Charge.
- 11.3 If You have an ongoing agreement or a fixed length agreement but We have not:
- a) commenced supplying the service to You, or  
b) entered into any agreement with another supplier in relation to Your service,  
then You may cancel Your service at will by:
- a) notifying Us as soon as practicable not to commence supplying the service; and  
b) paying Us the Cancellation Charge.
- 11.4 If We offer You an opportunity to cancel the service and You validly accept that opportunity and any conditions of that opportunity.

**You may cancel the Service if We are in material breach of this agreement**

- 11.5 If We breach a material term of this agreement and it cannot be remedied; and
- You have given Us Notice of the breach; then
  - You may cancel the service immediately.
- 11.6 If We breach a material term of this agreement and it can be remedied; and
- You have notified Us of the breach; and
  - We have not remedied the breach 30 days after receiving Your notification; then
  - You may cancel the service immediately.
- 11.7 For the purposes of this clauses 11.1 to 11.7;
- An outage or unavailability of the Service does not constitute a material breach,
  - Frequent and unreasonable outages or unavailability of the Service may be indicative of a Material Breach,

**You may cancel the service due to Adverse Events or Force Majeure**

- 11.8 You may immediately cancel the service by giving as much notice as is reasonably possible to Us if a Force Majeure event adversely affects either You or Us (in relation to the service) for more than 60 days.

**You may cancel the service in other circumstances**

- 11.9 You may cancel the service immediately by giving Us as much notice as possible if;
- We are the subject of an insolvency event; or
  - The law requires You to do so; or
  - The provision of the service becomes illegal; or
  - Unless otherwise specified in the agreement, the service is suspended for more than 14 days, for a reason other than a force majeure event or other event beyond our reasonable control.

**12 OUR RIGHT TO CANCEL THE SERVICE**

**We may cancel the service at will**

- 12.1 If You have an ongoing agreement We may cancel Your service at will;
- By giving You at least 30 days written notice that We intend to cancel Your Service; or
  - By giving You notice and transferring You to a reasonably similar alternative service; or
  - If We offer You an opportunity to cancel the service and You validly accept that opportunity and any conditions of that opportunity.
- 12.2 If You have a fixed length agreement We may cancel Your service at any time;
- By giving You at least 30 days written notice that We intend to cancel Your service; and taking reasonable steps to appropriately offset the effect the Cancellation has on You. (For example by providing a refund); or
  - By giving You notice and transferring You to a reasonably similar alternative service for the

remainder of Your fixed length agreement; and taking steps to offset any detrimental material differences between the cancelled service and the service We transferred You to, to the extent that such differences exist ; or

- If We offer You an opportunity to cancel the service and You validly accept that opportunity and any conditions of that opportunity.

**We will not ordinarily charge You a Cancellation Fee or Cancellation Charge if We cancel the service**

- 12.3 Unless provided otherwise in any opportunity that We offer You to cancel the service, If We cancel the service pursuant to this section 12 We will not charge You a Cancellation Fee or Cancellation Charge.

**We may cancel the Service if You are in material breach of this agreement**

- 12.4 If You breach a material term of this agreement that is not related to paying Your charges and it cannot be remedied; and
- We have notified You of the breach; then
  - We may cancel the service immediately.

- 12.5 If You breach a material term of this agreement that is not related to paying Your charges and it can be remedied:

- We may cancel the service immediately; if
- We have notified You of the breach; and
- You have not remedied the breach 30 days after receiving our notification.

- 12.6 For these clauses 12.4 to 12.6, a material term includes:

- Failing to reasonably cooperate with Us to supply the service,
- Using or behaving in relation to the service in a way that contravenes Clause 4.8 – General Use ; Clause 4.9 – Intended Purposes , Clause 4.15-4.16 – Illegal Use or Clauses 4.17-4.18 – Network Integrity,
- Using equipment in relation to the service in a way that contravenes Clause 5.1– You are responsible for equipment,
- Using the service in a way that contravenes any relevant service description.

**We may cancel the service due to Your finances**

- 12.7 Unless otherwise set out in the agreement, We may cancel the service after providing 14 days’ notice to You if:

- Any amount You owe Us in respect of the service is unpaid after the due date of the relevant invoice; and remains unpaid after the expiry of the 14 days’ notice period above, and
- That amount is not validly withheld under clauses 9.13-9.17 – Circumstances where You may withhold amounts due.

**We may cancel the service due to Force Majeure**

- 12.8 We may cancel the service by giving as much notice as is reasonably possible to You if a Force Majeure event

- adversely affects either You or Us (whether in relation to the service or otherwise) for more than 60 days.
- 12.9 Clause 12.8 does not affect our right to suspend services during Force Majeure events under clause 14.7.
- We may cancel the service in other circumstances**
- 12.10 We may cancel the service immediately if;
- We reasonably suspect that You or Your agents have acted fraudulently in relation to the service (including administrative and billing matters associated with the service),
  - You die, or Your organisation is dissolved, deregistered, wound up or otherwise ceases to exist as an entity capable of purchasing and receiving services,
  - We are the subject of an insolvency event,
  - Unless otherwise specified in the agreement, the service is suspended for more than 30 days for a reason which is unrelated to a Force Majeure event or other events beyond Your reasonable control,
  - You are in breach of an applicable law, licence, permit, authorisation or directive of any competent authority relating to the use of the Services,
  - We become aware or are advised by any regulatory authority that applicable or relevant laws, rules, regulations or authorities, or any decision of a court or government authority, prohibits the provision of the Service,
  - Any application for a consent or permit required for the provision of the Service is rejected or is cancelled, lapses or is otherwise terminated and no further replacement, consent or permit can reasonably be obtained, or
  - We are otherwise entitled to do so under the agreement.
- 12.11 If We cancel the service pursuant to this clause, although in most cases We will give You as much notice as is reasonably practicable, We reserve the right to cancel the service without any notice to You.
- 13 WHAT HAPPENS WHEN THE SERVICE IS CANCELLED**
- When the service is cancelled**
- 13.1 The service is cancelled from the latter of either;
- the day that the relevant notification period (as set out in the agreement) expires; or
  - the day that You and We both agree that the service is cancelled; or
  - the day We cease supplying the service to You, after the relevant notification period (as set out in the agreement) expires.
- The agreement terminates**
- 13.2 The agreement terminates completely when the service is cancelled, except for clauses that are specifically expressed to or impliedly must survive termination.
- The service will cease to be provided**
- 13.3 We will no longer provide and You will no longer be entitled to receive any element of the service.
- 13.4 We may permanently and irretrievably erase all records and databases that We keep in relation to the service, except for records which We keep for administrative and accounting purposes and are required to keep by law.
- 13.5 We may take steps to disconnect any equipment used in relation to the service.
- 13.6 The Cancellation of the service may result in loss of data. We accept no responsibility for data loss, howsoever caused, and We may disconnect services regardless of whether You have taken steps to back up Your data.
- You will be liable for outstanding charges.**
- 13.7 You will be liable for any and all charges or fees, howsoever incurred, up to and including the date when We ceased supplying the service. These outstanding fees and charges will be included on Your final invoice.
- 13.8 If Your service was supplied for a billing period or part of a billing period before We ceased to supply the service Your final invoice will include charges pro-rated for the billing period or part of the billing period during which You received the service.
- 13.9 You grant to Us a lien over any of Your equipment in our possession, for any outstanding charges owed to Us. If these amounts remain unpaid for a period of 60 days, You authorise Us to sell any or all of the equipment to recover a portion of the outstanding charges, including costs for storing and selling the equipment, as well as other costs associated with Your failure to pay the outstanding charges. You agree the exercise of this lien is not our sole remedy for recovering the outstanding charges.
- We may charge You Cancellation Charges**
- 13.10 If You have a fixed length agreement, We may charge You a Cancellation Charge in accordance with the product schedule if the agreement is cancelled in circumstances reasonably attributable to You before the minimum date.
- 13.11 If You cancel the service before We have commenced supplying the service to You We may charge You for reasonable costs We incurred as a result of taking steps to provide the service to You.
- 13.12 We will not charge You a Cancellation Charge if You cancel Your service due to reasons listed in clauses 11.5-11.9 or any other circumstance where the



Cancellation is not in circumstances reasonably attributable to You.

**Money that We owe You when Your service is cancelled**

13.13 Subject to this agreement, We will refund money We owe You (for example overpayments on Your account, prepaid amounts or other credit on Your account that has not arisen due to a service rebate) in accordance with clause 8.12 – Money We Owe You.

13.14 You authorise Us to withhold from Your refund any amounts that You owe Us and offset any amounts that We owe You against amounts that You owe Us.

13.15 If You have authorised direct debit payments to pay for the service, You authorise Us to debit any undisputed outstanding charges, including Cancellation or incidental charges as provided in the relevant direct debit authorisation.

**Use of the service after Cancellation**

13.16 If You are still able to use the service after the service is cancelled, You continue to be liable for any charges arising from Your use of the service.

13.17 This clause 13.17 – use of the service after Cancellation survives termination of the agreement.

**Obligation to cooperate**

13.18 You must reasonably co-operate with Us and do all things We reasonably require You to do, in order to allow Us or an agent to cancel the service and recover our property safely and efficiently. This may include but is not limited to:

- a) Providing additional information to Us within a reasonable timeframe upon request,
- b) Securing for Us, our suppliers or other agents, access to the premises to which the service is being delivered for the purpose of doing any other thing which is necessary for the cessation of the service,
- c) Making yourself or an agent able to make decisions on Your behalf available to Us at a time and place notified by Us,
- d) Returning, without delay or encumbrance, of any equipment, documents, or other things belonging to Us which You have possession of due to Your service or Your relationship with Us.

**14 SUSPENSION OF THE SERVICE**

**We may suspend the service prior to cancelling the service**

14.1 Notices of suspension and Cancellation may be served simultaneously.

14.2 If We suspend the service or give notice of our intent to do so this shall not in any way prejudice any right We may have to cancel the service.

14.3 If We give notice of our intent to cancel the service this shall not in any way prejudice any right We may have to suspend the service.

**We may provisionally suspend or restrict the service;**

14.4 If You breach a material term of the agreement, including;

- a) Failing to reasonably cooperate with Us to supply the service;
- b) Using or behaving in relation to the service in a way that contravenes Clause 4.8 – General Use ; Clause 4.9 – Intended Purposes , Clause 4.15-4.16 – Illegal Use or Clauses 4.17-4.18 – Network Integrity,
- c) Using equipment in relation to the service in a way that contravenes Clause 5.1– You are responsible for equipment,
- d) Using the service in a way that contravenes any relevant service description;

Until such times as the breach is remedied or the service is cancelled.

14.5 If You fail to pay undisputed amounts of any invoice in full by the relevant due date; until such times as You have paid the undisputed amounts in full.

14.6 If We reasonably consider You to be a credit risk and require a security deposit; until such times as We receive the deposit.

14.7 In some circumstances We may provisionally suspend or restrict Your service by giving You as much notice as reasonably possible (including notice reasonably soon after We have suspended or restricted Your service). Suspension or restriction in these circumstances will remain in place until the circumstances giving rise to the suspension or restriction have satisfactorily passed and We believe they are unlikely to return. We may suspend or restrict Your services under this clause 14.7 where;

- a) We believe it is reasonably required to prevent fraud, illegality, propagation of spam or malicious software, or interference with any other network, howsoever caused;
- b) Problems are experienced interconnecting our network with any other network;
- c) We cannot enter our or Your premises to do something in connection with the service that We need to do in order to supply the service or make the service or related equipment safe, including enabling any authorised persons to attend to an emergency;
- d) You vacate the premises to which the service is connected;
- e) We believe it is reasonably required to prevent or mitigate interference, howsoever caused, with our network or our ability to provide other services;

- f) Providing the service becomes illegal or We believe on reasonable grounds that it will become illegal;
- g) We are required to comply with an order, instruction request or notice of a regulator, emergency services organisation or other competent authority; or
- h) A force majeure event affects our ability whether directly or indirectly to provide the service.

### **Maintenance and Repair Work**

- 14.8 We may suspend or restrict Your service without notice in the event that We or our suppliers believe it is necessary or desirable to conduct maintenance and repair work on any part of the network, facilities or equipment which are relevant, whether directly or indirectly, to supplying Your service.
- 14.9 We will endeavour to give You as much notice as is reasonably possible when suspensions will occur due to maintenance and repairs, however this may not always be possible. We will endeavour to schedule maintenance when it is least inconvenient to our customers.
- 14.10 We are not responsible for scheduling maintenance and repairs conducted by suppliers. We will endeavour to give You as much notice as is reasonably possible where suspensions are caused by our suppliers' maintenance, however this may not always be possible,

### **Use for Intended Purpose**

- 14.11 If We believe that You are in violation of clause 4.8 – Use for intended purpose, We may require You to switch to a more suitable service. If You do not agree to switch, We may suspend or restrict Your usage of the service.
- 14.12 If You currently are or become a Carrier or a Carriage Service Provider, You must notify Us as soon as possible of the change or intent to change. If We reasonably suspect that You are using our service as a carrier or carriage service provider and have not disclosed this to Us We may require You to switch to a more suitable service. If You do not agree to switch, We may suspend or restrict Your usage of the service.

## **15 WHAT HAPPENS WHEN THE SERVICE IS SUSPENDED**

### **The service will be restricted**

- 15.1 During a suspension, Your access to the service may be restricted, constrained or limited.

### **You must pay access fees**

- 15.2 During a suspension, You must continue to pay access fees, although You may subsequently be entitled to a refund.

- 15.3 If the service is suspended due to circumstances reasonably attributable to You, You may have to pay Us a suspension fee, which is a genuine and reasonable estimate of the administration costs We incurred.

### **You may be entitled to a refund**

- 15.4 If the service is suspended due to circumstances not reasonably attributable to You or Customer Provided Equipment which You are responsible for maintaining, You will be entitled to a refund of access fees paid to Us during the period of the suspension.

### **How to lift a suspension**

- 15.5 Suspensions may be lifted automatically or they may require You to take some action and notify Us that You have taken that action.
- 15.6 When We notify You of the suspension, We will specify if You must contact Us to lift the suspension or if the suspension will be lifted automatically.

## **16 AUTHORITY OF EMPLOYEES AND AGENTS**

- 16.1 Other than by an express authorisation or approval provided by You, We cannot rely on the authority of any of Your employees or agents who tell Us they have authority to act on Your behalf in relation to a matter.

## **17 YOUR LIABILITY TO US**

- 17.1 You, or Your agents, or any person who makes use of the service (whether authorised or unauthorised) are liable to Us for breach of contract or negligence under the principles applied by the courts.
- 17.2 If We claim any loss or damage against You, any contribution We or our agents or any person authorised by Us have made to the loss or damage which is the subject of claim shall proportionally reduce the extent of Your liability by up to a maximum of 100%.

### **We are not liable to Your end users**

- 17.3 In contract, tort (including negligence), statute or otherwise. If an end user makes a claim against Us in relation to:
- a) The use (or attempted use) of the service; or
  - b) Equipment used in connection with the service;
  - c) Other services or products which rely upon the service;
  - d) Any other matter arising out of the relationship between You and Us,

You hereby indemnify Us against, and must pay Us for any loss or damage We suffer in connection with any and all claims, including our own costs incurred (which are to include a genuine and reasonable estimate of our own administration and professional costs), howsoever arising, which may be made against Us in respect of the matters listed in this clause above.

17.4 We are not liable to third-parties for any claims in relation to Your use of the service. You hereby indemnify Us against, and must pay Us for any reasonably foreseeable loss or damage, including our own costs incurred (which are to include a genuine and reasonable estimate of our own administration and professional costs), arising out of or in connection with any and all claims which third-parties may make against Us in respect of Your use of the service.

17.5 You, Your agents and any other party making use of the service are jointly and severally liable for any loss or damage, howsoever caused, arising out of or in connection with the service.

17.6 This section 17 shall survive termination.

## **18 OUR LIABILITY TO YOU**

### **We have legal responsibilities and obligations**

18.1 We have statutory responsibilities and obligations under:

- a) The Telecommunications Act,
- b) The Competition and Consumer Act including Schedule 2, the Australian Consumer Law, and
- c) Other applicable laws, regulations and codes.

18.2 Nothing in the agreement removes or limits any rights that cannot be excluded or modified under existing laws or regulations.

### **The Australian Consumer Law**

18.3 We will comply with the Australian Consumer Law as in effect from time to time.

18.4 Under the Australian Consumer Law, if You agree to purchase goods or services from Us which cost less than \$40,000 or are normally acquired for personal, domestic or household use and You do not re-supply those goods or services Consumer Guarantees apply to those goods or services.

We guarantee that

- a) The goods are of acceptable quality (unless We specifically draw your attention to the reasons why goods are not of acceptable quality.
- b) Any express warranties will be honoured.
- c) You are buying goods that have clear title, that do not have undisclosed securities and with an undisturbed right to possession.
- d) You are buying goods that are fit for any disclosed purpose.
- e) You are buying goods that match the description, sample or demonstration model.
- f) Any services which We supply are provided with due care and skill, are fit for any specified purpose (as are any products resulting from the services) and are provided within a reasonable time if no time is fixed for the supply of services.

These guarantees cannot be excluded and if We fail to meet a consumer guarantee in respect of any goods or

services We provide, You may have rights against Us. Depending on the circumstances, these may include;

- Repair of the good or service,
- Replacement or resupply of the goods or service,
- Refund of all or part of the money paid in respect of the good or service,
- Recovery of reasonably foreseeable loss or damage suffered.

You may not be entitled to a refund or replacement under the Australian Consumer Law if;

- The goods are not rejected within a reasonable period,
- You have lost the goods,
- You have disposed of or destroyed the goods,
- The goods have been damaged after delivery.

### **Our liability for breaches of consumer guarantees**

18.5 Our liability (if any) for breach of Your statutory rights as a consumer in connection with those goods or services is limited to (at our option),

- a) In respect of goods; Repairing or Replacing those goods, or paying the cost of having those goods repaired or replaced, and
- b) In respect of services; resupplying the services, or paying the cost of having those services resupplied.

### **Our liability in respect of matters not covered by the Australian Consumer Law**

18.6 Other than Your statutory rights which cannot be excluded, We expressly exclude all liabilities, rights, remedies, conditions, warranties and other terms that may be implied by custom, statute or common law, to the extent that is permitted by the law.

18.7 We may be liable to You for

- a) Repair or replacement of Your tangible property if damage is directly caused to it by fault, negligence or fraud by Us or our personnel during installation, repair or maintenance,
- b) Subject to clause 18.5 and the agreement, Interruptions in the service resulting from the negligence of Us or our personnel,
- c) Death or personal injury directly caused by negligence or breach of contract by Us or our personnel.

18.8 If You claim any loss or damage against Us, any contribution You or Your agents or any other person have made to that loss or damage shall proportionally reduce the extent of our liability by up to a maximum of 100%.

### **Our liability for interruptions and delays**

18.9 As no service level agreement applies to Your service, liability in respect of interruptions or delays is limited to an amount equal to the charges billed in respect of

the interrupted service pro-rated for the period of the interruption or delay.

- 18.10 In no event will our liability exceed the total amount of charges You incur for the interrupted service during the billing period in which the interruption or delay occurred.

### **Our liability for matters beyond our control**

- 18.11 We will not under any circumstances be responsible for any loss or damage arising from circumstances beyond our reasonable control.

### **Our liability in respect of certain types of loss.**

- 18.12 We will not under any circumstances be liable to You or any third party for;
- any loss of profit or revenue ;
  - any loss of potential profit or revenue;
  - any loss of business opportunities;
  - any loss of goodwill;
  - any loss of productivity or production;
  - any loss of data ;
  - any loss caused by additional labour costs
  - any loss caused by additional costs incurred in mitigating any circumstance

Which flows from our negligence, failure to comply with this agreement or any other action or omission on our behalf.

- 18.13 This section 18 shall survive termination.

## **19 WARRANTIES**

### **Our warranty to You**

- 19.1 We represent and warrant to You on a continuing basis that:
- We have full corporate power and have taken all necessary action to enter into this Agreement, and perform the Services contemplated by this Agreement;
  - Upon execution of this Agreement, its obligations will be valid, binding and enforceable;
  - We do not enter into this Agreement as trustee of any trust; and
  - We hold all licences, permits, consents and authorisations required under any law in relation to the provision of the Services and will continue to do so at all times during the term of this Agreement.

### **Your warranty to Us**

- 19.2 You represent and warrant to Us on a continuing basis that:
- You have full power and have taken all necessary action to enter into this Agreement, and fulfil the obligations contemplated by this Agreement, including incursion and payment of all fees and charges;
  - Upon execution of this Agreement, its obligations will be valid, binding and enforceable;

- Unless otherwise disclosed, You do not enter into this Agreement as trustee of any trust;
- You hold all licences, permits, consents and authorisations, if any, required under any law in relation to the receipt of the Services and will continue to do so at all times during the term of this Agreement;
- You accept all responsibility for the selection of the Services to meet Your requirements, and that We do not warrant that the Services will be suitable for such requirements, nor that any Services will be uninterrupted or error-free;
- You accept all responsibility for ensuring that regular copies of all of Your data are made and backed up, and that it is not our responsibility to back up Your data.

## **20 COMPLAINTS**

- 20.1 If You have any complaints regarding the service We provide to You, You may complain to Us. You should refer to Our complaints handling process available on our website for more details.
- 20.2 We will handle, investigate and attempt to resolve the complaint to Your satisfaction.
- 20.3 We will use our best endeavours to reasonably resolve complaints, however, if We are unable to resolve the complaint to Your satisfaction You can request external review from agencies such as the Telecommunications Industry Ombudsman.

## **21 CHANGING THE AGREEMENT - FIXED LENGTH AGREEMENTS**

### **We may not change certain terms of a fixed length agreement**

- 21.1 Subject to this clause 21, We cannot change fees during the term of a fixed length agreement unless, either;
- The change is the result of a change in the price from a supplier for an input which is required for Your service;
  - The change is required by law, pursuant to clause 21.11;
  - The change is in relation to a fee or charge that accounts for a tax imposed by law, pursuant to clause 21.9;
  - The change is in relation to a solely administrative fee, pursuant to clause 21.10;
  - The change is in relation to a type of fee or type of charge which is expressly identified as variable in the fixed-length agreement, including as expressed in clauses 21.9-21.11 or Your service description; or
  - You agree to the change.
- 21.2 If We change the fees of a fixed length agreement under one of the exemptions specified in clause 21.1, We may only change fees in accordance with the procedures of this clause 21.

**We may change certain terms of a fixed length agreement**

- 21.3 We may change any term of the agreement not precluded by clause 21.1 if;
- You agree to the change; or
  - We make the change in accordance with the relevant elements of this clause 21.

**If We expect the change to have a neutral or positive effect on You**

- 21.4 We may immediately and without notice to You make changes to the agreement where We reasonably expect a change to our agreement will have;
- a positive effect on You; or
  - a neutral effect on You.

- 21.5 If You can demonstrate that the change has neither a neutral or positive effect on You and has more than a minor detrimental impact on You, and is not a change of the type specified in clauses 21.9-21.11, then We will offer You the chance to cancel that service on fair terms.

**If We expect the change to have a minor detrimental impact on You**

- 21.6 We may, subject to clause 21.7, make changes to the agreement where We reasonably expect a change to our agreement will;
- have a detrimental impact on You; and
  - We believe that detriment is no more than minor.

- 21.7 If We change our agreement in accordance with clause 21.6, We will:
- Endeavour to individually notify You of the change prior to the change taking effect, although at times this may not be possible; and
  - Individually notify You in writing of the change within 90 days of the change taking effect.

- 21.8 If You can demonstrate that the change has more than a minor detrimental impact on You, and is not a change of the type specified in clauses 21.9-21.11, then We will offer You the chance to cancel that service on fair terms.

**We may make changes on the following grounds;**

- 21.9 We may, make changes to the agreement, including increasing or introducing new charges, to take account of taxes imposed by law. If We make such changes We will;
- Endeavour to individually notify You of the change prior to the change taking effect, although at times this may not be possible; and
  - Individually notify You in writing of the change within 90 days of the change taking effect.
- 21.10 We may increase existing charges or introduce new charges for administration facilities (eg; credit card payments). If We make such changes and You are an affected customer We will;

- Individually notify You of the change prior to Your incurring any such fees; and
- Offer You a reasonable alternative administrative facility with no additional charges; or
- If We are unable to offer You a reasonable alternative administrative facility, and the service is conditional upon access to such a facility, offer You an opportunity to cancel that service on fair terms.

- 21.11 We may make any changes which are required by law or are necessary for security reasons, fraud prevention or for technical reasons. If You will be affected by the change We will:
- Endeavour to individually notify You of the change three days prior to the change taking effect, although at times this may not be possible; and
  - Individually notify You with as much warning as We reasonably can or as soon as possible after the change has occurred.

**Changes not described above**

- 21.12 If We seek to make a change which affects You but that is not covered by clauses 21.1-21.11, We may make the change by:
- Individually notifying You at least thirty days prior to the change taking effect; and
  - Offering You an opportunity to cancel the agreement for the affected service on fair terms within thirty days from the date of our notice.

**22 CHANGING THE AGREEMENT – ONGOING AGREEMENTS**

**We may change all terms of an ongoing agreement**

- 22.1 We may change any term of the agreement if:
- We get Your consent; or
  - We make the change in accordance with the relevant elements of this clause 22.

**If We expect the change to have a neutral or positive effect on You**

- 22.2 We may immediately and without notice to You make changes to the agreement where We reasonably expect a change to our agreement will have;
- a positive effect on You; or
  - a neutral effect on You.

**If We expect the change to have a minor detrimental impact on You**

- 22.3 We may, subject to clause 22.4, make changes to the agreement where We reasonably expect a change to our agreement will;
- have a detrimental impact on You; and
  - We believe that detriment is no more minor.

- 22.4 If We change our agreement in accordance with clause 22.3, We will:
- Endeavour to individually notify You of the change prior to the change taking effect, although at times this may not be possible; and

- b) Individually notify You in writing of the change within 90 days of the change taking effect.

**We may make changes on the following grounds;**

- 22.5 We may make changes to the agreement including increasing or introducing new charges to take account of taxes imposed by law. If We make such changes We will;
  - a) Endeavour to individually notify You of the change prior to the change taking effect, although at times this may not be possible; and
  - b) Individually notify You in writing of the change within 90 days of the change taking effect.
- 22.6 We may increase existing charges or introduce new charges for administration facilities (eg; credit card payments). If We make such changes and You are an affected customer We will;
  - a) Individually notify You of the change prior to Your incurring any such fees; and
  - b) Offer You a reasonable alternative administrative facility with no additional charges; or
  - c) If We are unable to offer You a reasonable alternative administrative facility, and the service is conditional upon access to such a facility, offer You an opportunity to cancel that service on fair terms.
- 22.7 We may make any changes which are required by law or are necessary for security reasons, fraud prevention or for technical reasons. If You will be affected by the change We will:
  - a) Endeavour to individually notify You of the change prior to the change taking effect, although at times this may not be possible; and
  - b) Individually notify You with as much warning as We reasonably can or as soon as possible after the change has taken effect.

**Changes not described above**

- 22.8 If We seek to make a change which affects You but that is not covered by clauses 22.1-22.7, We may make the change by:
  - a) Individually notifying You at least thirty days prior to the change taking effect.

## **23 ASSIGNMENT BY US**

- 23.1 We may assign, novate, transfer or sub-licence any of our rights under this agreement to any person.
- 23.2 We may perform any of our obligations under the agreement by arranging for them to be performed by another person, including a supplier or another FaktorTel group company.
- 23.3 In the event that We sell or transfer any part of our business We may novate full right, title and interest in this agreement to the purchaser or transferee by giving 30 days written notice to You.

## **24 ASSIGNMENT BY YOU**

- 24.1 You may assign Your rights under the agreement only with our prior written consent.
- 24.2 You may transfer Your obligations under this agreement if the Service is available where the transferee wishes to receive it.
- 24.3 The person to whom You transfer the obligations must meet proof of identification and eligibility criteria for the service.

## **25 JURISDICTION**

- 25.1 This Agreement is governed by the laws of Queensland and both You and We irrevocably submit to the non-exclusive jurisdiction of the Queensland courts and courts of appeal from them. You nor We will not object to the exercise of jurisdiction by those courts on any basis.

## **26 EXERCISE OF RIGHTS AND WAIVER OF RIGHTS**

- 26.1 If We do not exercise a right that We are entitled to exercise, this does not mean that We have waived our entitlement to that right. We may subsequently exercise that right if the circumstances permitting that right to be exercised exist.
- 26.2 If You do not exercise a right that You are entitled to exercise, this does not mean that You have waived Your entitlement to that right. You may subsequently exercise that right if the circumstances permitting that right to be exercise exist.

## **27 INTELLECTUAL PROPERTY**

**We own intellectual property**

- 27.1 We own all material developed by Us or our personnel or at our direction, including intellectual property rights.
- 27.2 We may permit You to use all or some material or other material, appropriately licensed by Us as part of the service. Any such permission is subject to any reasonable conditions We may attach from time to time.
- 27.3 Any permission which is granted to use material under this clause ceases when the service is cancelled and the agreement terminates.
- 27.4 You must not infringe any person's intellectual property rights in using the service. If You do so We may cancel the service under clause 12 or suspend the service under clause 14.
- 27.5 You agree, at our request, to take all actions and execute all documents as may in our reasonable opinion be necessary to enable Us to obtain, defend or enforce our rights in the intellectual property, and You must not do or fail to do any act which would or might prejudice our rights under this clause.

**28 CONFIDENTIALITY**

28.1 Both parties acknowledge that in the course of performing their obligations under this Agreement, they will receive information which is proprietary and confidential to the other party. Both parties agree not to use confidential information of the other party except in the proper performance of their obligations, and not to disclose the confidential information to any person or entity other than their own employees or agents directly involved in the performance of the Services.

28.2 Where it is necessary to disclose the confidential information to external agents or contractors, these are to be bound by a separate written undertaking to protect the confidentiality of such Confidential Information, on the same terms as this Agreement.

**Further permitted use and disclosure**

28.3 Notwithstanding clauses 28.1 and 28.2 above, both parties may use or disclose Confidential Information to the extent necessary to:

- a) Comply with any law, binding directive of a regulator or a court order;
- b) Comply with the listing rules of any stock exchange on which its securities are listed; or
- c) Obtain professional advice in relation to matters arising under or in connection with this document.

**Equitable remedies**

28.4 Both parties acknowledge that a breach of the confidentiality obligations set out in this clause may cause the other irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to a claim for damages and any other remedies available at law or in equity, one party may seek specific performance or injunctive relief against any breach or threatened breach by the other party.

**Obligations to continue after agreement ends**

28.5 All obligations of confidence set out in this clause continue in full force and effect after the expiry or termination of this Agreement.

**29 PRIVACY**

29.1 In electing to receive the service from Us You consent to Us collecting, using and disclosing Your personal information to give effect to this agreement. We will only use Your personal information in accordance with the Services, and the Privacy Act.

29.2 We will require anyone to whom We disclose Your personal information, to comply with the Privacy Act; and they in turn to require their employees,

representatives and subcontractors to comply with the Privacy Act.

29.3 You acknowledge that if We supply a carriage service, We, as well as any supplier whose network is used in delivery of the service may be required, by law, to monitor Your usage, and intercept communications sent over the service.

29.4 You acknowledge that We may collect information about the usage of the service for billing purposes.

**30 NOTICES**

30.1 Any notice, consent, application or request that must or may be given or made under this Agreement is only given or made according to the following:

**Us Giving notices to You**

- 30.2 It is in writing and sent in one of the following ways:
- a) Delivered or posted to that party at its address set out in a Service Order.
  - b) Faxed to that party at its fax number set out in a Service Order.
  - c) Emailed to that party at an email address set out in a Service Order.

**You Giving notices to Us**

30.3 It is in writing and sent to:  
GPO Box 1807, Brisbane QLD 4000.

**Change of address or fax number**

30.4 Either party must give the other at least three (3) business days' notice of any change of its address, fax number or email address, for it to be a valid address or fax number under this agreement.

**Time notice is given**

- 30.5 Any notice, consent, application or request is to be treated as given or made at the following time:
- a) if it is delivered, when it is left at the relevant address,
  - b) if it is sent by post, two (2) business days after it is posted,
  - c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number,
  - d) if it is sent by email, as soon as the sender receives from the sender's email server a report of an error free transmission to the receiver's server.

30.6 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

### 31 WE MAY PAY COMMISSIONS

31.1 We may pay a commission to any of our personnel, agents or third parties in connection with the agreement.

### 32 SEVERABILITY

**If a clause can be read in two ways, the legal interpretation shall prevail**

32.1 If a clause or part of a clause of the agreement can be read in a way which is illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, then the clause is to be read in the way that makes it legal, enforceable and valid.

**If a clause can be read in two ways, both of which are legal and valid**

32.2 If a clause can be read in two ways, both of which would be legal but which are manifestly at odds with each other. In the absence of compelling evidence as to the true intention of the clause, the clause should be construed against the interests of the party seeking to rely on the clause in dispute.

**If a clause can only be read as being illegal, unenforceable or invalid**

32.3 if a clause or a part of a clause of the agreement is illegal, unenforceable or invalid that clause, or part of a clause, shall be severed from the agreement without affecting in anyway the legality, enforceability and validity of any other part of the agreement.

### 33 INTERPRETATION

In this Agreement, unless the context requires another meaning:

33.1 Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

33.2 A reference:

- a) to the singular includes the plural and vice versa;
- b) to a document is a reference to that document as amended, consolidated, supplemented, novated or replaced;
- c) to a party means a party to this Agreement;
- d) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Agreement;
- e) to a person (including a party) includes:
- f) an individual, company, other body corporate, association, partnership, firm, joint venture, trustee or Government Agency; and
- g) the person's successors, permitted assigns, substitutes, executors and administrators;
- h) to a law:
- i) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange;

- j) is a reference to that law as amended, consolidated, supplemented or replaced; and
- k) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law;
- l) to proceedings includes litigation, arbitration and investigation;
- m) the word "including" or "includes" means "including, but not limited to", or "includes, without limitation".

### 34 MISCELLANEOUS

34.1 This Agreement together with any relevant Service Order and Service Schedule contains everything You and Us have agreed in relation to the matters it deals with and supersedes any prior agreement, understanding or arrangement between You and Us, whether oral or in writing. No representation, undertaking or promise will be taken to have been given or implied from anything said or written in negotiations between You and Us prior to this Agreement except as expressly stated in this Agreement. Neither You or Us can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this document was executed, except as permitted by law.

34.2 This Agreement is properly executed if each party executes either this Agreement or an identical document. In the latter case, this Agreement takes effect when the separately executed Agreements are exchanged between the parties.

34.3 No variation of this Agreement, any Contract, Service Schedule or Service Order will be of any force or effect unless it is in writing and signed by both parties.

### 35 DEFINITIONS

*Agent*; means a person acting on our or Your behalf in relation to the service. Our agents may at times include suppliers or contractors outside FaktorTel group companies.

*Agreement*; means an entire agreement between You and Us, constituted as specified in clause 2.1, regarding the provision of a service

*Annexures*; means, documents annexed to this agreement which may have the effect of modifying a clause or term of the service price list, general terms or service description.

*Australian Consumer Law*; means Schedule 2 of the Competition and Consumer Act

*Billing period*; means 1 month, unless specified otherwise in an Annex or Service Description



*Cancellation fee*; means a fee specified in the Service Price List which becomes payable immediately if the service is cancelled in certain circumstances.

*Cancellation Charge*; means all remaining months of a fixed term contract; plus an administration fee determined by Us which represents a genuine and reasonable estimate of the cost incurred and time spent in processing and administering Your cancellation; less the costs that would have been incurred in performing the remainder of the contract that We are reasonably able to mitigate, reduce or eliminate; less a discount for the value of the early receipt of the remainder of the contract price.

*Carriage Service Provider*; has the same meaning as “Carriage Service Provider” as defined in the Telecommunications Act.

*Carrier*; has the same meaning as “carrier” as defined in the Telecommunications Act

*Competition and Consumer Act*; means Competition and Consumer Act 2010 (Cth)

*Customer Premises Equipment*; means any equipment which We own but must install on Your premises in order for You to receive and make use of the service.

*Customer Provided Equipment*; means any equipment You own which You use in connection with the service or to receive the service in place of customer premises equipment. In some cases We may sell You equipment which will be subsequently used to receive the service, this will be considered Customer Provided Equipment.

*Dispute Notice*; means a notice formed in accordance with clause 9.2 which notifies Us that You are disputing certain fees and charges.

*Equipment*; includes but is not limited to routers, masts, antennas, towers, rack-mount chassis, servers and similar things.

*Excluded Event*; means an event caused by a breach of the agreement by You, a negligent omission by You or Your agents, a fraudulent act by You or Your agents, a failure of Customer Provided Equipment.

*Fair terms*; means notifying You at least 20 days before the changes occur and offering You the right to cancel the service, without paying a Cancellation fee, within 40 days of our notice.

*Fixed-length Agreement*; means an agreement which has a specified minimum term during which We agree to supply the service to You and You agree to acquire the service from Us.

*Force Majeure event*; means an extraordinary event beyond the control or reasonable contemplation of all parties, including but not limited to; Flooding, Cyclone, Storm, Earthquake, Volcanic Eruption, any other

natural disaster, Fire, Explosion, Civil Unrest, Civil War, Riot, Invasion, insurgency, act of terror, blockade, embargo, Marshal Law, Usurped Power, Confiscation, Nationalisation, Hostilities (regardless of declaration of War) , Strike Action, labour dispute, lockout, Crime (including extra-ordinary acts of cybercrime or state-sponsored acts adversely affecting cyber security), extended power outage, or other adverse, emergency or extraordinary event.

*General Terms*; means this document

*FaktorTel Group Companies*; means FaktorTel Pty Ltd, and all related parties as per the Corporations Law.

*Insolvency Event*; means an application is made to a court of competent jurisdiction for an order that the relevant party be wound up, declared bankrupt or a provisional liquidator be appointed where such an application is not withdrawn, struck out or dismissed within 14 days of being made. OR a liquidator is appointed to the relevant party. OR a decision is taken to appoint an administrator to the relevant party or a controller in respect of any of the party’s assets. OR the relevant party enters into or proposes to enter into an arrangement or composition with or assignment for the benefit of creditors except as part of a reconstruction or amalgamation while solvent. OR anyone on behalf of the relevant party proposes a reorganisation, moratorium, deed of company arrangement or other administration arrangement which involves these, or the winding up and dissolution of the relevant party. OR the relevant party states that it is or is or is presumed to be under any applicable law, insolvent. OR the relevant party becomes insolvent under administration as defined in section 9 of the Corporations Act 2001 (Cth) or action is taken which could result in that event. OR the relevant party fails to comply with a statutory demand as a result of section 459F(1) of the Corporations Act 2001 (Cth). OR anything having a substantially similar effect to any of the dealings above happens to the relevant party under the law of any jurisdiction.

*Minimum Term*; means a set period of time for which You and We agree that the contract should remain in effect and that cannot be terminated without paying a termination fee.

*Minor Detrimental Impact*; means an impact which while it is detrimental does not substantially alter the agreement, and includes impacts from changes in the service which while placing You in a slightly less advantageous position do not have any significant impacts; examples might include a small increase in fees associated with the service, or withdrawing a minor feature of the service.

*Network*; has the same meaning as “telecommunications network” as defined in the telecommunications act.

*Neutral Effect*; means an impact which does not result in either detriment or benefit to You, for example, if We change the way in which We provide helpdesk services, if We change the name of the service We provide to You, or if We provide a service of an equivalent speed and at the same price but using different technology.

*Ongoing agreement*; means an agreement with no specified term which automatically renews on a monthly basis until You notify Us that You wish to cancel it.

*Ordinary Business Hours*; means between 8:30AM and 5:00PM, Monday to Friday in Brisbane, Queensland.

*Positive Impact*; means impacts from changes in the service which place You in a more advantageous position than the original agreement; examples might include if We decrease the notice period You must give Us before Cancellation or decreases in fees associated with the service, or the inclusion of a new feature in the service or a decrease in the cost of a service.

*Regulator*; means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman or any other competent authority, government body or statutory body with powers to regulate our conduct.

*Service Description*; means, the document entitled “Service Description”, “Service Schedule” or “Critical Information Summary” which describes the nature of a service being purchased and any specific terms which apply to services of that type.

*Service Level Agreement*; means the section entitled “service level agreement” as part of a Service Description which specifies the minimum levels of service which We will uphold as part of the agreement and what will occur if We fail to meet those levels.

*Service Order Form*; means the document entitled “Service Order Form” or an online “Place an Order”

process which when completed and returned to Us constitutes an offer by You to Us to purchase a service of the type listed in the order form from Us. Details on the Service Order Form include the nature of the service being ordered, the address to which the service is to be delivered, any special notes on the service as well as Your billing and contact details.

*Service price list*; means, the document entitled “Service price list” which shows the prices, rates and charges associated with the service.

*Service Rebate*; means a rebate paid to You in accordance with clause 10 for an amount in accordance with an applicable Service Level Agreement.

*Service Start Date*; means the date when We commence supplying the service to You

*Service*; means, the service described in the service description, and specified in the Service Order Form and any related goods or services which We supply to You in connection with the service

*Target Service Start Date*; means the date, if specified in the agreement or notified to You, by which We will attempt to commence supplying the service to You

*Tax*; includes any value-added, goods or services, excise, sales, withholding or environmental tax, charge, rate, duty, impost or tariff but does not include taxes levied on income or capital gains.

*Telecommunications Act*; means the Telecommunications Act 1997 (cth) and its regulations.

*We*; means the FaktorTel Group Company specified as being the supplier of the service in the relevant service description or its agents. (Us, Our and other similar language is to be construed accordingly)

*You*; means the person who fills out the service order form, or the entity or person on whose behalf the person who fills in the Service Order Form was acting. (Your, yours and other similar language is to be construed accordingly).

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