

# GCOMM Internet Services Agreement

## Customer Terms

### 1. Introduction, Definitions and Interpretation

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

1.2 This Agreement includes:

- (1) The Service Order Form;
- (2) the Customer Terms set out in this document and which apply to all Services;
- (3) the Additional Services Addendum; and
- (4) any other terms and/or conditions in relation to the Service that the Customer receives from GCOMM, as amended by GCOMM in accordance with this Agreement

1.3 If there is any inconsistency between the documents listed in clause 1.2, the order of priority (to the extent of any inconsistency) will be:

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

1.4 The scope of the Service provided to the Customer will be determined by the options the Customer has selected on the Service Order Form.

1.5 In this Agreement a term defined in the Service Order Form has that meaning and:

- (1) **Acceptable Use Policy** means the acceptable use policy provided by GCOMM to the Customer from time to time and is available at <http://www.gcomm.com.au/terms-and-conditions.html>;
- (2) **Additional Services** means services agreed to be provided to the Customer by GCOMM pursuant to an Additional Services Addendum;
- (3) **Additional Services Addendum** means a document with that title executed by GCOMM and the Customer;
- (4) **Agreement** means the Customer Terms, the Service Order Form, any Additional Services Addendum and any schedule or annexure to this document;

- (5) **Basic Support Services** means the services set out in clause 4;
- (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;
- (7) **Cancellation Fee** means the Minimum Fees minus all Charges actually paid by the 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);
- (8) **Carrier** has the same meaning as under the Telecommunications Act;
- (9) **Carriage Service Provider** has the same meaning as under the Telecommunications Act;
- (10) **Charges** means the amounts payable by the Customer for the supply of the Services as set forth or referred to in the Service Order Form and may include third party charges;
- (11) **Confidential Information** means any private, secret, financial, technical, business or confidential information which is disclosed by either party pursuant to or in connection with this Agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such) and includes information comprised in or relating to any Intellectual Property Rights of the party;
- (12) **Consequential Loss** means:
  - (a) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment, loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages; and
  - (b) any penalties or fines imposed by a Regulator;
- (13) **Contractor** means any contractor, sub-contractor, agent or nominee engaged or arranged by GCOMM to supply the Service;
- (14) **Customer's Authorised Personnel** means the employees of the Customer agreed between the Customer and GCOMM from time to time;
- (15) **Customer Equipment** means any equipment not supplied by GCOMM;
- (16) **Direct Debit Request Form** means the form requesting direct debit or credit card payments as prescribed by GCOMM from time to time;

- (17) **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;
- (18) **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 the Customer) and the equipment and cabling, if any, referred to in clause 8.1;
- (19) **GCOMM Network** means the Network, equipment, facilities and cabling used by GCOMM to supply the Service;
- (20) **Initial Term** has the meaning set out in the Service Order Form;
- (21) **Insolvency Event** means:
- (a) bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
  - (b) any step is taken to enter into any scheme of arrangement between the Customer and its creditors;
  - (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business;
  - (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, an administrator or other like person to the Customer or to the whole or any part of the Customer;
  - (e) the Customer suspends payment of its debts generally; or
  - (f) the Customer is or becomes unable to pay its debts when they are due or the Customer is or is presumed to be insolvent for the purposes of any provision of the Corporations Act 2001 (Cth).
- (22) **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;
- (23) **Minimum Fees** means the Minimum Fees, if any, set forth on the Service Order Form against the particular Service
- (24) **Network** means a system or series of systems that carries or is capable of carrying communications (including data);

- (25) **New Service** means any service other than the Services offered from the outset of this Agreement by GCOMM in accordance with this Agreement;
- (26) **Personal information** means information or opinion about the Customer from which the Customer's identity is apparent or can reasonably be ascertained and includes name, address, service number, personal or commercial credit rating or credit information;
- (27) **Personnel** includes directors, officers, employees, agents and contractors;
- (28) **Premises** means the Premises for the location of the Services;
- (29) **Privacy Policy** means the privacy policy of GCOMM as provided to the Customer from time to time or made available at <http://www.gcomm.com.au/terms-and-conditions.html>;
- (30) **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;
- (31) **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 in accordance with clause 2.3, the expiration of the then current term;
- (32) **Security** means the security requested by GCOMM;
- (33) **Service** means the service requested by the Customer as indicated in a Service Order Form and includes the Basic Support Services and Additional Services (if any);
- (34) **Service Order Form** means the order form for Services or New Services in the form prescribed by GCOMM and signed by the Customer;
- (35) **Service Start Date** means the date from which GCOMM commences the supply of the Service to the Customer;
- (36) **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;
- (37) **Supplier** means a provider of telecommunications or internet services and may include a Carrier or a Carriage Service Provider but excludes GCOMM;

- (38) **Supplier Network** means any Network, equipment, facilities or cabling controlled by a telecommunications supplier other than GCOMM;
- (39) **Telecommunications Act** means *Telecommunications Act 1997 (Cth)*;
- (40) **Term** means the Initial Term set forth in the Service Order Form and any continuation thereof in accordance with clauses 2.3.or 2.4.

## 1.6 Interpretation

- (1) Reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) a party includes the party's executors, administrators, successors and permitted assigns;
  - (e) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
    - (i) that Statutory Provision as amended or re-enacted;
    - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
    - (iii) another regulation or other statutory instrument made or issued under that Statutory Provision; and
  - (f) money is to Australian dollars, unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) 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.
- (6) 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.

## 1.7 **Parties**

- (1) If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

## 2. **Term**

2.1 This Agreement commences on the date GCOMM begins supplying the Service or the Customer accesses the Service.

2.2 This Agreement commences in accordance with clause 2.1 and, subject to earlier termination in accordance with this Agreement, continues until the end of the Initial Term.

2.3 Subject to earlier termination in accordance with this Agreement, this Agreement automatically renews for the Renewal Term at the end of:

- (1) the Initial Term; and
- (2) any subsequent Renewal Term,

unless either party gives not less than 20 Business Days' written notice of its intention not to renew the Agreement prior to the end of the then current term.

2.4 Where there has been no automatic renewal in accordance with clause 2.3 and the Customer has continued to use the Service, this Agreement will continue until terminated in accordance with this Agreement or until either party gives to the other 20 Business Days written notice to terminate.

## 3. **Provision of Services**

3.1 The Customer must sign a Service Order Form requesting that GCOMM provide the Service in accordance with this Agreement.

3.2 GCOMM will supply the Service subject to accepting a Customer's Service Order Form. GCOMM may refuse the Customer Service Order Form or accept the Customer Service Order Form subject to requiring the Customer to provide a Security.

3.3 GCOMM's acceptance of the Customer's Services Order Form will be notified to the Customer by email or by telephone followed, in each case, by GCOMM providing the Service to the Customer.

3.4 GCOMM will use its reasonable endeavours to supply the Service from the Service Start Date.

- 3.5 The Customer acknowledges that GCOMM has no liability for charges incurred by the Customer to another Supplier prior to the applicable Service Start Date.
- 3.6 The Customer acknowledges that GCOMM:
- (1) 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;
  - (2) 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 Service);
  - (3) 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;
  - (4) may engage Contractors or other Suppliers to supply some or all of the Service; and
  - (5) vary the specifications of the Service (including the way in which GCOMM delivers the Service to the Customer) without giving the Customer any notice of such variation, provided that such variation has no material adverse impact on the reliability or performance of the Service.
- 3.7 GCOMM is not responsible for any fault which is within a Supplier Network.
- 3.8 The Customer may be contacted by a Supplier in connection with installing a Service in the Premises.
- 3.9 The Customer acknowledges that:
- (1) GCOMM does not guarantee a timeframe for restoration of the Customer's internet Service should it fail;
  - (2) GCOMM does not guarantee that the internet Service will be supplied uninterrupted or error free;
  - (3) GCOMM may not be able to meet a request from the Customer to provide the Customer with information about usage of The Customer's internet Service (such as information about websites accessed);
  - (4) GCOMM does not have to monitor use of the internet Service, whether by the 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 the Customer is complying with GCOMM's Acceptable Use Policy or to investigate either a breach or suspected breach of GCOMM's Acceptable Use Policy;

- (5) GCOMM is not under any obligation to enforce its Acceptable Use Policy or any other policy that applies to any person using services provided by GCOMM; and
- (6) GCOMM is not responsible for any loss caused by equipment provided by a third party (i.e. someone other than GCOMM).

#### **4. Provision of Basic Support Services**

- 4.1 GCOMM will provide the Customer with access to a help desk.
- 4.2 The help desk 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 Services are to be performed).
- 4.3 The Customer can contact the help desk:
  - (1) via phone on: 1300 221 115 or such other telephone number notified by GCOMM from time to time; or
  - (2) via email to the address: [support@gcomm.com.au](mailto:support@gcomm.com.au) or such other email address notified by GCOMM from time to time.
- 4.4 The Customer's Authorised Personnel may contact the help desk for assistance on any of the following relating to the Service:
  - (1) report minor faults, raise queries and receive assistance concerning outages, inability to connect to the Service and network performance;
  - (2) raise technical issues; and
  - (3) amendments to services, provisioning, installations, adds moves and changes to the service;
- 4.5 GCOMM will, in its absolute discretion, determine whether the assistance sought by the Customer falls within the description of the Basic Support Services set out in clause 4.4 where the help sought by the Customer does not form part of such Basic Support Services the Customer shall pay GCOMM additional charges at the then applicable GCOMM engineering rates.
- 4.6 GCOMM's help desk will use its reasonable endeavours to provide assistance but GCOMM is not under any obligation to fix the faults, issues or queries raised.

#### **5. Customer's Use of the Service**

- 5.1 In using the Service, the Customer must comply with:
  - (1) all laws; and

- (2) all directions by a Regulator; and
- (3) the Acceptable Use Policy; and
- (4) any reasonable directions by GCOMM.

5.2 The Customer must not use or attempt to use the Service:

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

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

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

- (1) the prevention, minimisation and investigation of fraudulent use or misuse of the Services; or
- (2) theft of any Equipment; or
- (3) 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.

5.5 The 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.

5.6 The Customer must not contact any of GCOMM's Suppliers or Contractors with regards the Service. If the Customer has any questions

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

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

## **6. 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 the 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 the Customer's written notice, the Customer may terminate that Service with 60 days' written notice to GCOMM without incurring any Cancellation Fee.

## **7. 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 Services. GCOMM will use its reasonable endeavours to conduct scheduled maintenance on the GCOMM Network outside normal business hours (AEST).

## **8. Equipment and Customer Equipment**

- 8.1 GCOMM may need to install equipment and cabling on the Customer's Premises. The Customer authorises GCOMM and GCOMM's Contractors to:

- (1) enter the Premises for the purpose of performing the obligations of GCOMM under this Agreement;
- (2) install, disconnect, maintain, repair and replace any part of such equipment and cabling;
- (3) connect such equipment and cabling to any equipment in order to enable GCOMM to deliver the Service; and
- (4) enter the Premises and take all steps reasonably necessary to fulfil GCOMM's obligations to recover such Equipment on termination of the Service.

- 8.2 If the Customer does not own the Customer's Premises where the Service is to be installed, the 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 the Customer to confer on GCOMM all rights under this Agreement.

- 8.3 The 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.
- 8.4 The 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.
- 8.5 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 8.1) must be returned to GCOMM upon the termination of this Agreement.
- 8.6 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.
- 8.7 The 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 the Customer's Premises for GCOMM to provide the Services.
- 8.8 The 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 the Customers Equipment.
- 8.9 The Customer acknowledges that:
- (1) GCOMM is providing the Equipment to the Customer for the purposes of the supply of the Service;
  - (2) the Customer will have no right, title or interest in the Equipment, including any right to deal with the Equipment;
  - (3) the Customer accepts the risk in the Equipment from the time that GCOMM provides the Equipment to the Customer; and
  - (4) GCOMM may, at any time and for any reason, retain possession of the Equipment.
- 8.10 The Customer must not, and must not attempt, under any circumstances to sell, transfer, lease or otherwise deal with the Equipment.
- 8.11 While the Equipment is on the Customer's Premises, the Customer must take reasonable care to keep the Equipment secure and safe from theft, vandalism and damage.
- 8.12 The Customer must ensure that any Customer Equipment used in connection with the Service:
- (1) has all necessary regulatory approvals;
  - (2) complies with all applicable regulatory standards; and

(3) is capable of operating with the Service.

8.13 GCOMM may require the Customer to immediately cease using and disconnect the Customer Equipment or if the Customer fails to do so, GCOMM may disconnect the Customer Equipment from the Service if:

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

## **9. Transfer of service**

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

- (1) authorises GCOMM to notify the Customer's other service Supplier and sign on the Customer's behalf any authorisation required to transfer the Customer's service to GCOMM;
- (2) if requested by GCOMM, will give written instructions to the Customer's other Supplier to transfer the service from the Customer's name to GCOMM; and
- (3) must immediately pay the other Supplier all amounts owing on the transferred services.

## **10. Intellectual Property Rights**

10.1 The Customer acknowledges that nothing in this Agreement is intended to give the 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 or its affiliate GCOMM Home Pty Ltd.

10.2 Unless otherwise agreed in writing, the Customer has no rights in respect of any Intellectual Property Rights of GCOMM or its affiliate GCOMM Home Pty Ltd.

## **11. Charges**

- 11.1 In consideration of providing the Services the Customer must pay GCOMM the Charges for the Services and must pay any Cancellation Fee.

## **12. Invoices and Payment**

- 12.1 Unless otherwise agreed, GCOMM may invoice the Customer:
- (1) for any installation charges, after installation;
  - (2) for variable charges, in arrears;
  - (3) for recurring or fixed charges, in advance;
  - (4) for any Equipment the Customer purchases from, or leases from, GCOMM, on or after delivery; and
  - (5) otherwise as notified by GCOMM from time to time.
- 12.2 Subject to clause 13, the Customer will pay each invoice by the due date specified in the invoice or as notified by GCOMM from time to time.
- 12.3 If the Customer fails to pay the Charges in accordance with this Agreement, GCOMM may:
- (1) set off any sums owing to it against any Security;
  - (2) charge interest at a rate of 2% plus the National Australia Bank overdraft indicator base rate or such other comparable rate chosen by GCOMM;
  - (3) suspend Services in accordance with this Agreement;
  - (4) cancel Services in accordance with this Agreement; and/or
  - (5) terminate this Agreement.
- 12.4 The Customer acknowledges that GCOMM will use its reasonable endeavours to include in the Customer's invoice all Charges for the Services 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. The Customer further acknowledges that GCOMM may include these unbilled Charges in any later invoice or invoices.
- 12.5 GCOMM may provide the Customer with an option to pay the Charges for the Services by credit card. If the Customer chooses to provide GCOMM with the Customers' credit card details for the purposes of paying the Charges, GCOMM may:
- (1) bill all Charges to the 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;

- (2) disclose the Customers credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details;
- (3) take steps to verify that the Customer hold sufficient credit on the Customers' credit card to meet the likely Charges; and
- (4) charge any Cancellation Fee payable pursuant to this Agreement.

### **13. Direct Debit**

13.1 The Customer acknowledges and warrants that:

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

13.2 If a Customer wishes to dispute a debit that has been made from the Customer's nominated account, the 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.

13.3 If GCOMM determines that the Customer's nominated account was incorrectly debited, then GCOMM will provide the Customer with details of its findings and make any necessary adjustments.

13.4 The Customer must ensure that sufficient cleared funds are available in the Customer's nominated account on the debit date. If there are insufficient funds and the Customer's financial institution dishonours the direct debit payment, then the Customer will be liable for any charges and tax on those charges incurred by GCOMM.

13.5 The 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.

### **14. Goods and services tax**

14.1 In this clause:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
- (2) words used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;

- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
  - (4) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- 14.2 Unless GST is expressly included, the consideration expressed to be payable under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.
- 14.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.
- 14.4 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.
- 14.5 If a payment to a party under this Agreement is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 14.3.

## **15. Disputed Invoices**

- 15.1 If the Customer wishes to dispute any invoice the Customer will within 10 days of the date of the invoice notify GCOMM of the nature of the dispute.
- 15.2 If GCOMM does not receive notification of the dispute from the Customer within a 14 day period, the Customer will be deemed to have accepted the Charges by the invoice due date.
- 15.3 If the dispute is determined by GCOMM (in its reasonable opinion) all withheld Charges will become due and payable in accordance with the notification by GCOMM of its investigations with regards to the raised billing dispute.

## **16. Credit Management and Security**

- 16.1 GCOMM may at any time review the Customer's creditworthiness by requesting information from a credit reporting agency. The Customer consents to GCOMM providing any Personal Information required by the nominated credit reporting agency.

- 16.2 The Customer agrees that it will cooperate with any creditworthiness review required by GCOMM including providing such information and authorisations required by GCOMM.
- 16.3 From time to time GCOMM may require the Customer to provide a Security.
- 16.4 GCOMM may apply the whole or any part of any Security to satisfy any amount the Customer is required to pay GCOMM from time to time and that is overdue.
- 16.5 In accordance with GCOMM's assessment policies, GCOMM may set credit limits or require the Customer at any time to pay a Security.
- 16.6 GCOMM will return the Customer's Security to the Customer upon termination of the Customer's account (subject to the Customer having paid all amounts owing under the Agreement).
- 16.7 For the avoidance of doubt and for the purposes of this Agreement, any Security provided in accordance with this clause, is not subject to GST.

**17. Personal Information**

- 17.1 GCOMM may collect, use and disclose Personal Information about the Customer to decide whether to supply the Service (or for purposes which would be reasonably expected of an internet access and internet service supplier).
- 17.2 GCOMM may collect, use and disclose Personal Information about the Customer or the supply of the Service to or from:
  - (1) a credit reporting agency;
  - (2) a credit provider;
  - (3) third parties who are not related to GCOMM, including Contractors and distributors; and
  - (4) Suppliers who need access to the Customer's Personal Information so as to provide GCOMM with services to allow supply of the Service to the Customer.
- 17.3 The Customer acknowledges that GCOMM may be required by law to collect, use or disclose Personal Information about the Customer including for reasons relating to law enforcement agencies.
- 17.4 GCOMM may use, process or transfer Personal Information of the Customer:
  - (1) in connection with provisioning of the Service;
  - (2) to incorporate Personal Information into databases controlled by GCOMM with the administration, provisioning, billing and verification of the 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;

(3) to communicate to the Customer about products and services of GCOMM or its partners by means of:

- (a) voice;
- (b) letter;
- (c) facsimile; or
- (d) email,

from time to time.

17.5 The Customer acknowledges the GCOMM Privacy Policy as amended from time to time and is available at <http://www.gcomm.com.au/terms-and-conditions.html> and is applicable to the Services provided under this Agreement.

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

## **18. Confidentiality**

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

- (1) use their best endeavours to keep all Confidential Information confidential and accordingly not disclose any Confidential Information to any other person;
- (2) not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement; and
- (3) 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.

18.2 The provisions of clause 18.1 will not apply to:

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

18.3 The 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. The 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.

## **19. Force Majeure**

19.1 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.

## **20. GCOMM's Right to Suspend or Cancel a Service**

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

- (1) there is an emergency;
- (2) it is necessary to allow GCOMM or a Supplier to:
  - (a) repair;
  - (b) maintain; or
  - (c) service any part of the GCOMM Network or a Supplier Network used to supply the Service;
- (3) the Customer breaches clause 5.1 or clause 5.2;
- (4) the Customer has failed to provide the Security requested by GCOMM;
- (5) GCOMM reasonably suspects fraud by the Customer or any other person in connection with the Service;
- (6) GCOMM or its affiliate GCOMM Home Pty Ltd is required to do so to comply with a Regulator or a direction by a competent authority;
- (7) problems are experienced interconnecting the GCOMM Network with any Supplier Network;
- (8) 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;
- (9) the Customer is subject to an Insolvency Event;

- (10) has reasonable grounds to believe that the Customer will not or is unable to make any payment which is due or is to fall due to GCOMM;
- (11) has reasonable grounds to believe that the volume of traffic from the 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 the Customer's traffic is delivered by GCOMM to another carrier for termination and ultimately returned to GCOMM); or
- (12) GCOMM is otherwise entitled to do so under this Agreement.

## **21. Withdrawal of Service**

- (1) GCOMM may, without liability, cease to supply a Service, or a part of a Service, to the Customer by giving the Customer not less than 20 Business Day's written notice of cessation.
- (2) If such cessation will have a material adverse effect on the business of the Customer, the Customer may notify GCOMM in writing within 10 Business Days of receipt of GCOMM's notice of cessation clearly substantiating the existence and nature of that material adverse effect. If GCOMM determines that there is a material adverse effect and fails within 10 Business Days following receipt of the Customer's notice to give notice to the Customer agreeing to correct such material adverse effect the Customer may terminate this Agreement by giving GCOMM written notice of termination within 20 Business Days of the cessation being implemented.

## **22. Liability**

- 22.1 All statutory or implied conditions or warranties are excluded to the extent permitted by law.
- 22.2 To the extent permitted by law GCOMM will not be liable to the Customer whether under contract or tort (including negligence) or otherwise for direct or indirect or Consequential Loss, damage, cost or expense of any kind whatsoever and howsoever caused arising out of this Agreement, including but not limited to interest, third party claims or punitive damage.
- 22.3 If GCOMM breaches any condition or warranty implied by law which cannot lawfully be excluded, to the extent permitted by law the liability of GCOMM is limited, at its option, to:
  - (1) in the case of services, the resupply of, or payment of the cost of resupplying, the service; and
  - (2) in the case of goods:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

22.4 Without limiting the exclusions or limitations of liability in this clause the Customer acknowledges that:

- (1) GCOMM does not warrant that GCOMM will be able to supply the Service continuous or fault free;
- (2) it is technically impossible for GCOMM to provide the Service free of faults or error;
- (3) GCOMM is not liable to the 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
- (4) GCOMM does not warrant the quality of the Service.

22.5 Notwithstanding any other provision of this Agreement the Customer is liable to GCOMM (including GCOMM's Personnel) for and the Customer indemnifies GCOMM and its Personnel against any loss, damage, liability, costs, proceedings, charges and expenses (including all legal costs) and including Consequential Loss that GCOMM incurs, or suffers, whether as a result of a third party claim against GCOMM, or in any other way, arising out of:

- (1) the use or attempted use of the Service (including fraudulent use) by any person (including the Customer) of the Service or equipment connected to the Service;
- (2) any information, data or material produced, stored, transmitted or downloaded by the Customer or any person using the Service;
- (3) any breach by the Customer of this Agreement;
- (4) any negligent act or omission or an act or omission by the Customer or the Customer's Personnel:
  - (a) in relation to this Agreement; or
  - (b) intended to cause death or personal injury; and
- (5) any breach of a person's rights or defamation of a person (or allegation of such a breach or defamation) involving use of the Service.

22.6 The Customer indemnifies GCOMM and GCOMM's Personnel against any loss, damage, costs, proceedings, charges and expenses (including all legal costs and any Consequential Loss) (**Loss**) arising from or relating

to any damage to or loss of any equipment, network or other tangible property of GCOMM or any third party to the extent that such Loss is a result of an intention to cause such Loss or is a result of a negligent act or omission by the Customer or any of the Customer's Personnel.

22.7 The Customer warrants that any documentation submitted by the Customer to GCOMM to enable GCOMM to supply the Service to the Customer, including any forms relating to transfer of services or numbers from other Suppliers, are true and accurate.

22.8 The Customer agrees to indemnify GCOMM and hold GCOMM harmless in relation to all person(s) claiming through the Customer for any loss or damage arising from suspension or disconnection of the Customer's Service.

### **23. Termination**

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

- (1) the other party is subject of an Insolvency Event;
- (2) that party has suspended or has a right to suspend this Agreement under clause 20;
- (3) the other party has breached a material term of this Agreement and the breach is not capable of being remedied; or
- (4) 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.

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

- (1) the Customer has failed to pay any money owing under this Agreement in accordance with this Agreement; or
- (2) the Customer fails to provide or maintain any Security required under this Agreement.

23.3 GCOMM may terminate this Agreement in whole or in part by giving the Customer not less than 3 months' written notice.

#### **23.4 Consequences of Termination**

On termination of this Agreement for any reason all Charges and other amounts, including any Cancellation Fees, owing by the Customer for the Services will become immediately due and payable. Cancellation Fees will be payable by the Customer where termination is effective during the

Initial Term or the Renewal Term except where termination is by GCOMM pursuant to clause 23.3 or by the Customer pursuant to clauses 6, 21.2, or 23.1.

## **24. Carrier and Carriage Service Providers**

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

## **25. Complaints**

- 25.1 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.
- 25.2 Complaints should be made in writing and addressed to:
- GCOMM Pty Ltd  
PO BOX 609, Surfer's Paradise Qld 4217
- 25.3 Should the Customer be dissatisfied with GCOMM's response, the 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 the Customer's state or territory.

## **26. Dispute Resolution**

### **26.1 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 the Customer's failure to pay Charges or other payments.

### **26.2 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 26.2 (**Notice of Dispute**).

### **26.3 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.

#### 26.4 **Arbitration**

- (1) If the Dispute is not resolved within fourteen (14) 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.
- (2) If the parties have not agreed upon the arbitrator within seven (7) 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.
- (3) After accepting the appointment and during the arbitration the arbitrator may:
  - (a) require the parties to lodge security or further security towards the arbitrator’s fees and expenses;
  - (b) apply any security towards those fees and expenses; and
  - (c) 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.

#### 26.5 **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.

#### 27. **Urgent changes**

- 27.1 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 the Customer would be affected by the change GCOMM shall proceed with the change but will try to give the Customer as much notice as possible of the change.

#### 28. **Changes requiring notice**

- 28.1 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 3.6 (3), 3.6 (5), 6 and 21.1 and without prejudice to its rights under clause 27.1, GCOMM may make additions or amendments to the terms of this Agreement as follows:

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

- (2) If GCOMM reasonably believes that a change in the terms of the Agreement is likely to benefit the Customer or be neutral to the Customer, GCOMM may make the change immediately and is not required to notify the Customer beforehand;
- (3) 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 the Customer 20 Business Days notice of such changes;
- (4) 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 the Customer by giving the Customer 20 Business Days advanced written notice thereof.

## **29. General**

### **Jurisdiction**

29.1 The Agreement is governed by the law in force in Queensland.

29.2 Each party submits to the non-exclusive jurisdiction of the courts of Queensland for any dispute concerning this Agreement.

### **Entire Agreement**

29.3 This Agreement constitutes the entire agreement of the parties about its subject matter. A party may not rely on any representations or warranties about the subject matter of this Agreement except as expressly provided in this Agreement.

### **Variation**

29.4 Except as otherwise expressly stated, this Agreement cannot be varied unless the variation is in writing and executed by both parties.

### **Subsequent Legislation**

29.5 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.

29.6 Where, by performing its obligations under this Agreement, a party would or is likely to be in breach of Subsequent Legislation, such party may suspend the performance of its obligations under this Agreement to the extent necessary to ensure that it is not and will not be in breach of such Subsequent Legislation.

### **Severing Clauses**

29.7 If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction, the remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

### **Assignment**

29.8 A party may only assign or transfer its rights and obligations under this Agreement with the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

### **Waiver**

29.9 No waiver of any breach of, or failure to enforce, any obligation of a party or term of this Agreement is valid unless it is in writing and signed by an authorised officer on behalf of the party granting the waiver.

### **Exercise of Rights, Powers and Remedies**

29.10 A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise, or their delay in exercising, a right, power or remedy does not prevent its exercise.

### **Survival**

29.11 Termination or expiry of this Agreement for any reason does not:

- (1) affect any rights or obligations of the parties which by their nature survive termination, or expiry, including, but not limited to, clauses 1, 3.7, 3.9, 8, 10, 11, 12, 13.4, 14, 15, 17, 18, 19, 21, 22, 23.4, 24, 25, 26 and 29; and
- (2) waive any breach of this Agreement, and is without prejudice to and does not limit any rights, remedies, liabilities or obligations of either party which have accrued up to the date of termination or expiry, including the right of indemnity.

### **Remedies cumulative**

29.12 The rights, powers and remedies provided in this agreement are cumulative with and not exclusive or limiting of the rights, powers or remedies provided by law or equity independently of this Agreement.

### **Amendments to Service by Customer**

29.13 The Customer may request an amendment to the Service at any time by giving 30 Business Days' notice to GCOMM. On receipt of a request for an amendment GCOMM may, in its absolute discretion, make that amendment.

29.14 If GCOMM makes a requested amendment to the Service then GCOMM may notify the Customer of any revised Charges for the Service..

### **Indemnities**

29.15 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.

29.16 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

### **Relationship of Parties**

29.17 This Agreement does not constitute a contractual partnership between the parties.

29.18 Neither party will:

- (1) describe itself as agent or representative of the other except as expressly authorised by this Agreement;
- (2) hold itself out, or permit any person to hold it out, as being authorised to bind the other in any way nor do any act which might reasonably create the impression that it is so authorised except as expressly authorised by this Agreement; or
- (3) pledge the credit of the other in any way.

### **Counterparts**

29.19 This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

### **Notices**

29.20 All notices must be in writing.

29.21 Notices will be deemed to have been duly given:

- (1) when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- (2) when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
- (3) on the fifth Business Day following mailing, if mailed by national ordinary mail, postage pre-paid; or
- (4) on the tenth Business Day following mailing, if mailed by airmail, postage pre-paid

in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party

## Business Internet Services Agreement

### Additional Services Addendum– 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:
  - 5.1 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. GCOMM will undertake a root cause analysis to determine the problem of the fault:
  - Proactively when the Customer subscribes to GCOMM's Netview service
  - Reactively when the Customer logs a job with the GCOMM help desk

9. 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.
10. 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:
  - 10.1 will use reasonable endeavours to inform the Customer of the fault but will bear no further responsibility or liability;
  - 10.2 may charge the Customer for any costs incurred by GCOMM in investigating the fault; and
  - 10.3 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.
11. 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:
  - 11.1 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
  - 11.2 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.
12. The targets specified in the response and resolution table below apply to faults in the Service that the Customer reports.
13. 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 or an email 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	Online fault log: 1 Hour Telephone fault report: 1 hour

Severity	Definition	Response Time (measured from the time a telephone call or an email is logged by the GCOMM help desk during business hours)
	Internet Services that results in substantial performance degradation and/or inability to use a major feature of the Internet Services.	
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

14. 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.