

## 1. Parties

This Agreement is between GCOMM and the Customer.

## 2. Application of Terms and Conditions

GCOMM will provide the Services specified in the Proposal together with any other services agreed between the parties (collectively referred to as the **Services**) in accordance with these terms and conditions.

## 3. Term

3.1 This Agreement commences on the Commencement Date.

3.2 Subject to clauses 4 and 5, either party may terminate this Agreement at the expiry of the Initial Term (or any subsequent Renewal Term if applicable) by giving at least 30 days notice to the other party.

3.3 Unless terminated at the expiry of the Initial Term (or any subsequent Renewal Term if applicable) under clause 3.2, this Agreement will be automatically extended for consecutive Renewal Terms but only if:

- (1) there is not any existing breach or non-observance by the Customer of any of the covenants and conditions contained in this Agreement; and
- (2) the Customer has at all times observed and performed the covenants and conditions contained in this Agreement.

## 4. Conditions Precedent

4.1 This Agreement is subject to the following conditions precedent being fulfilled within 1 month of the Commencement Date:

- (1) GCOMM carrying out credit reference checks of the Customer, and being satisfied with the creditworthiness of the Customer; and
- (2) GCOMM completing the Service Qualification Process, and being satisfied that it is technically feasible for the Customer's computer equipment to accommodate and utilise the Software in order to give effect to the Services.

4.2 Any condition precedent may be waived by GCOMM.

4.3 If any condition precedent is not satisfied or waived within the time specified in clause 4.1, then GCOMM may, without any incurring liability to the Customer, immediately terminate this Agreement by giving written notice to the Customer.

4.4 If GCOMM terminates this Agreement under clause 4.3, then:

- (1) subject to compliance with clause 15.6(1) and clause 15.8, this Agreement has no further force or effect;
- (2) the Customer will not be liable to pay any Monthly Fees or the Installation Charges to GCOMM under this Agreement; and
- (3) each party must return immediately to the party from which they were obtained, all documents provided by that other party under this Agreement.

## 5. Trial Period

5.1 The Customer may at any time during the Trial Period, and without any incurring liability to GCOMM for the Termination Fee, immediately terminate this Agreement by giving written notice to GCOMM.

5.2 If the Customer terminates this Agreement under clause 5.1, then:

- (1) subject to compliance with clause 15.6(1) and clause 15.8, this Agreement has no further force or effect;
- (2) the Customer will not be liable to pay any Monthly Fees or the Installation Charges to GCOMM under this Agreement; and
- (3) each party must return immediately to the party from which they were obtained, all documents provided by that other party under this Agreement.

5.3 If GCOMM does not receive notice of termination from the Customer within the Trial Period, the Customer will be deemed to have waived its right to terminate under this clause 5, and this Agreement will continue in full force and effect.

## 6. Provision of Equipment and Services

- 6.1 GCOMM will use all reasonable skill and care in the provision of the Services to the Customer, subject to the terms of this Agreement.
- 6.2 GCOMM will use all reasonable efforts to commence the provision of the Services to the Customer within 3 weeks after the date the Customer has signed the Proposal and returned a signed copy to GCOMM.
- 6.3 GCOMM may, with prior notice to the Customer, vary the technical specifications of the Equipment, Software and/or Services, provided that this does not materially impair the Services.
- 6.4 GCOMM does not make any independent representations or warranties with respect to the Equipment. Any third party warranties are the exclusive remedies of Customer with respect to such Equipment.
- 6.5 GCOMM may at any time suspend the provision of the Services, or any part thereof, for the purpose of carrying out, or implementing repair, maintenance or improvements to the Equipment, Software and/or the Services, or any part thereof. GCOMM will use its reasonable endeavours to provide 24 hours notice to the Customer prior to any such suspension, and to keep the period of suspension to a minimum.
- 6.6 GCOMM may also suspend the Services or any part thereof, or terminate the Agreement without liability on its part, if the provision of the Services or the relevant part of the Services is prohibited by law, statute, legislation, order, regulation or guidance issued by a court of law, governmental body or regulatory body.

## 7. Provision of Basic Support Services

- (1) GCOMM will use its reasonable efforts to provide support for the Customer's enquiries relating to the Basic Support Services described in clause 7.4.
- 7.2 GCOMM will provide the Customer with access to a help desk. 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).
- 7.3 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: [noc@gcomm.com.au](mailto:noc@gcomm.com.au) or such other email address notified by GCOMM from time to time.
- 7.4 The Customer's Authorised Personnel may contact the help desk for assistance on any of the following relating to the Services:
  - (1) report minor faults, raise queries and receive assistance concerning the operation of the Services;
  - (2) raise technical issues; and
  - (3) amendments to services, provisioning, installation and changes to the Services,collectively called the **Basic Support Services**.
- 7.5 GCOMM will, in its absolute discretion, determine whether the assistance sought by the Customer falls within the description of Basic Support Services set out in clause 7.4. Where the help sought by the Customer does not form part of such Basic Support Services, the Customer agrees to pay GCOMM additional charges at the then applicable GCOMM engineering rates.
- 7.6 GCOMM's help desk will use its reasonable endeavours to provide assistance in relation to the Basic Support Services, but GCOMM is not under any obligation to fix the faults, issues or queries raised by the Customer.

## 8. Services

The Services comprise:

### (1) Business Offsite Backup Services:

#### (a) Data Backup Services

Data Backup Services will consist of the GCOMM or GCOMM Affiliate's data centre hosted Data Backup operating from Software installed on the Customer's Equipment. The Customer's data and supported operating systems will be in the form and configuration for automatic backup in accordance with any relevant Asigra or GCOMM specification documentation. The backup of data to the GCOMM or GCOMM Affiliate's data centre will be managed in accordance with the Service Summary for the Customer's Computer System; and

#### (b) Data Recovery Services

Data Recovery Services will consist of GCOMM retrieving the Customer's data on reasonable notice, and subject to the Customer complying with the technical specifications developed by GCOMM during the Service Qualification Process, including password and encryption protocols. Customer access to Stored Data will, at all times, be subject to availability, but a Site Disaster will always be given priority over testing or other non-Site Disaster usage requirements.

### (2) Other services

Such other services that may be agreed between GCOMM and the Customer (if any), and set out in the Proposal..

## 9. The Customer's Obligations

9.1 The Customer will not:

- (1) use the Services for any illegal or unlawful purpose or in a manner which constitutes a violation or infringement of the rights of any other party;
- (2) use the Services and/or the Equipment to store, reproduce, transmit, communicate or knowingly receive any material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy, trademarks or any other rights of any third party, or other than in conformance with any acceptable usage policies that GCOMM has agreed with connected network providers;
- (3) remove any sign, label or other marking on the Equipment identifying that GCOMM is the owner thereof; or
- (4) acquire any rights of ownership in the Equipment or the Software by virtue of the Agreement and shall not have, by operation of law or otherwise, any lien or other similar right over or in relation to the Equipment or any equipment at GCOMM's or GCOMM's affiliate's data centres.

9.2 The Customer is solely responsible for protecting the information on its computer, such as by installing anti-virus software, updating applications, password protecting its files, and not permitting direct third party access to its computer.

9.3 The Customer agrees that GCOMM may, in providing the Services, back-up files that are no longer usable due to corruption from viruses, software malfunctions or other causes. This might result in the Customer restoring files that are no longer usable.

9.4 The Customer will be solely responsible for securely storing, managing and deploying when required, any encryption keys or passwords which are generated to protect the Stored Data and which may be required from time to time to ensure continuity, upgrading and reconfiguration of the Equipment and/or Services, and in particular, but without limitation, the restoration of the Stored Data.

9.5 The Customer must allow persons authorised by GCOMM to enter the Customer's premises at all reasonable times, on prior reasonable notice to the Customer, for the purpose of maintaining, repairing, improving, upgrading, substituting or replacing the Software.

9.6 GCOMM will normally carry out installation work during the Customer's usual working hours but may, on reasonable notice, require Customer to provide access at other times. At Customer's request, GCOMM may agree, exceptionally, to work outside GCOMM's usual working hours.

9.7 The Customer will not, and will not permit any third party, to:

- (1) distribute or allow others to distribute copies of the Software or any part thereof to any third party;
- (2) tamper with, remove, reproduce, modify or copy the Software or any part thereof;
- (3) provide, rent, sell, lease or otherwise transfer the Software or any copy or part thereof or use it for the benefit of a third party; or
- (4) reverse assemble, reverse compile or reverse engineer the Software or any part thereof, or otherwise attempt to discover any Software source code or underlying proprietary information except as may be permitted by law and which rights cannot be excluded.

- 9.8 The Customer will nominate a suitably qualified person to undertake training by GCOMM for the operation of the Services.
- 9.9 The Customer will pay the Monthly Charges, Installation Charges and other charges in accordance with the Proposal.
- 9.10 The Customer will at all times maintain all registrations and comply with all applicable laws as may be necessary for its use of the Equipment and Services.

#### **10. Retention or Deletion of Backup Data**

- 10.1 The Software saves to a server operated by GCOMM or a GCOMM Affiliate, an encrypted copy of each file the Customer designates. The Software scans for changes or additions to these files and then periodically creates an encrypted copy of modified or newly designated file. The Customer will not be able to restore files that GCOMM has not completed copying, files that have been changed but not yet been backed up, or files or folders or disc drives that are not eligible for back up. Should the Stored Data be lost by GCOMM or a GCOMM Affiliate, GCOMM will undertake commercially reasonable efforts to create a replacement back-up from the files stored on the Customer's computer.
- 10.2 If this Agreement is terminated for any reason, GCOMM and the GCOMM Affiliates may, without notice, delete or deny the Customer access to any of the Stored Data that may remain in their possession or control.
- 10.3 The Customer agrees that if:
- (1) it marks a file to no longer be backed-up;
  - (2) it deletes a file from its computer;
  - (3) moves a file to a location on its computer that is not marked for back-up;
  - (4) it deletes a server that is not marked for back-up;
  - (5) its computer is unable to access GCOMM; or
  - (6) it terminates this Agreement for any reason,

that the files it has marked, deleted, moved or stored on a deleted, inaccessible, or unlicensed computer may not be available to the Customer should the Customer wish to restore them. Despite this, GCOMM will use its best endeavours to ensure that such files are available to the Customer in such an event.

- 10.4 The Customer agrees that GCOMM may retain (but will have no obligation to retain):
- (1) the Stored Data for a reasonable period after termination of this Agreement to carry out any continuing obligations it may have under this Agreement;
  - (2) the Customer's account information for a reasonable time after this Agreement has been terminated, subject at all times to the protection of any Confidential Information or personal information that is comprised in the Stored Data and the account information.

#### **11. Backup Scheduling**

GCOMM may, at its discretion, impose an additional charge on the Customer at the rate of 0.005 cents per megabyte of Back-Up Data that is transferred from the Customer's Equipment to GCOMM's network during the backup process, if the Customer has scheduled its backup to occur between the hours of 7.00am to 7.00pm on a Business Day.

#### **12. Site Disaster**

- 12.1 If, after the Customer notifying GCOMM of an actual site disaster requiring the Data Recovery Services to be invoked, GCOMM fails to provide the Customer with a full set of the Customer's Stored Data with GCOMM within 96 hours of the call notifying the problem being logged by GCOMM, the Customer may, within 30 days after such event occurs and by giving one month's written notice to GCOMM, terminate this Agreement with effect from the expiration of such notice. The Monthly Charges will cease during such notice period.
- 12.2 If the Customer terminates this Agreement under clause 12.1, the Customer will not be liable to pay GCOMM the Termination Fee.

#### **13. Charges and Payment**

- 13.1 The Monthly Fees and any Installation Charges shall be payable as stipulated in the Proposal. GCOMM will be entitled to increase such charges from the end of the Initial Term by giving written notice of the same to the Customer not less than 3 months prior to the end of the Initial Term.
- 13.2 The Installation Charges are payable within 14 days after receipt of an invoice after installation work has been completed.
- 13.3 The Monthly Fees will commence at the end of the Trial Period and are payable, in respect of each calendar month, 14 days after the receipt of the relevant invoice.

- 13.4 All charges for the Services are exclusive of GST. If any supply made under or in connection with this Agreement is a taxable supply, the consideration that the recipient of that taxable supply must otherwise pay or provide for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply, subject to a valid tax invoice being delivered to the recipient. Words or expressions used in this clause and Agreement which have a particular meaning in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning, unless the context otherwise requires.
- 13.5 All late payments will bear interest at the rate of 2% per annum above the base overdraft indicator rate for the time being of the National Bank of Australia, which will be payable from the due date to the date of payment, as well as after any judgment for the same.
- 13.6 All payments by the Customer will be made in full without deduction or set-off on any account whatsoever.

#### **14. Suspension of Services for Failure to Pay Fees or Charges**

- 14.1 GCOMM may suspend the Services if the Customer:
- (1) fails to pay the Monthly Fees and/or the Installation Charges when due and where that default continues for 14 days or more; or
  - (2) defaults in payment of any other money payable under this Agreement and default continues for 14 days or more.
- 14.2 GCOMM will by written notice notify the Customer 48 hours in advance of the intended suspension (**Suspension Notification**).
- 14.3 If the Customer has not remedied the situation under clause 14.1 and 48 hours has elapsed since the Suspension Notification has been delivered, then GCOMM may suspend the Customer's Services until the relevant payment is received by GCOMM.

#### **15. Termination**

##### **15.1 Breach of Agreement**

If the Customer or GCOMM is in breach of this Agreement and such a breach is not remedied (other than as to the time for performance) within 14 days of receipt of written notice from the party which is not in default requiring such breach to be remedied, GCOMM or the Customer (as the case may be) will, without prejudice to its other rights, have the right to terminate this Agreement immediately and without liability on its part in respect of such termination, by written notice to the Customer or GCOMM (as the case may be).

##### **15.2 Insolvency event**

Either the Customer or GCOMM can terminate the Agreement immediately if:

- (1) the other party becomes insolvent or makes any arrangement or composition with or assignment for the benefit of creditors;
- (2) if any assets of the other party are the subject of any form of seizure;
- (3) the other party goes into liquidation, either voluntary or compulsory; or
- (4) if a receiver or administrator is appointed over any or all of its assets the other party.

##### **15.3 Termination of licence with Asigra**

GCOMM may terminate this Agreement immediately, without incurring any liability to the Customer, if:

- (1) the software licence agreement between GCOMM and Asigra in respect of ASIGRA Software ends for any reason; or
- (2) if Asigra ceases to supply ASIGRA Software to GCOMM such that GCOMM is unable to provide the Services to the Customer using an alternate supplier on terms reasonably acceptable to the Customer.

##### **15.4 Failure to achieve Service Levels**

- (1) If GCOMM fails to achieve the Service Levels in 2 consecutive calendar months, the Customer may terminate this Agreement by giving 30 days written notice to GCOMM. This notice must include evidence of GCOMM's failure to achieve the Service Levels.
- (2) If the Customer terminates the Agreement under clause 15.4(1), the Customer will be liable to pay GCOMM all Monthly Fees due up to the date of termination.

##### **15.5 Consequences of termination**

If GCOMM terminates the Agreement following a breach by the Customer of this Agreement, or if the Customer fails to give sufficient notice of termination in accordance with clause 15.1, the Customer will be liable to pay:

- (1) the Installation Charges;
- (2) all cancellation and other reasonable contractual charges incurred by GCOMM relating to the provision of telecommunications services which have been ordered by GCOMM for the purpose of the provision of the Services; and

- (3) the Termination Fee.

This clause will survive termination of this Agreement.

- 15.6 Upon the termination of the Agreement, without prejudice to any other rights GCOMM may have, the Customer will:
- (1) within 14 days of the date of termination, deliver up to GCOMM and/or at GCOMM's option immediately remove and/or destroy all components of GCOMM's Technology, the ASIGRA Technology, any Confidential Information of GCOMM, and any materials bearing ASIGRA's trade-marks, from any storage media or hard copies remaining in the Customer's control or possession;
  - (2) remit all fees payable for the Services due prior to the date of such termination;
  - (3) remit to GCOMM all such other costs and fees owing to GCOMM, including those related to the permanent or temporary winding down of any Services provided by GCOMM.
  - (4) This clause will survive termination of this Agreement.
- 15.7 The Customer acknowledges that its failure to comply with the terms of this clause will result in irreparable harm to GCOMM and, accordingly, in addition to any legal remedies available to GCOMM as a result of such failure to comply, GCOMM will have the right to seek specific performance of this clause 15 or other equitable relief (or the equivalent of any such relief known or designated by some other name or term) from any court of competent jurisdiction. The Customer will submit to the jurisdiction of any such court in an action seeking such relief.
- 15.8 The following clauses will also survive termination of this Agreement: 15.8, 16.1, 16.4, 17, 0, 19.2, 20.2 and 28.

## 16. Ownership of Intellectual Property

- 16.1 The Customer acknowledges and agrees that all proprietary right, title and interest in and to GCOMM Technology and the ASIGRA Technology and the ASIGRA Software, including all intellectual property rights therein, are owned by GCOMM and ASIGRA or its licensors, respectively. The Customer will have no right to sublicense or modify any GCOMM Technology or ASIGRA Technology.
- 16.2 During the term of the Agreement, GCOMM grants the Customer a non-exclusive, non-transferable license to use the Software solely for the purpose of using the Services, and for no other purpose. This licence will automatically end on termination of this Agreement.
- 16.3 The Customer acknowledges that, pursuant to this Agreement, it is given a non-exclusive, non-transferable, royalty-free right to use, during the term of the End-User License Agreement, any ASIGRA Technology incorporated in ASIGRA Software solely for the purpose of using the Service and not for providing services to any third party.
- 16.4 The Customer further acknowledges and agrees that:
- (1) it is expressly prohibited from translating, adapting, modifying, decompiling, reverse engineering, creating derivative works from, disassembling, unlocking, copying or recreating any component of the GCOMM Technology or the ASIGRA Technology under the terms of this Agreement or the End-User License Agreement;
  - (2) GCOMM and/or ASIGRA, respectively, shall have all right, title, interest in and to all copies, derivative works, translations, adaptations or modifications of the GCOMM Technology or the ASIGRA Technology, howsoever made by the Customer; and
  - (3) any proceeds derived from the activities described above, whether or not made by the Customer in compliance with this Agreement or the End-User License Agreement, will accrue to GCOMM or ASIGRA as appropriate.

## 17. Confidentiality

- 17.1 Each party undertakes that it will not at any time disclose to any person any Confidential Information, except as permitted by this clause 17. Each party may disclose the other party's Confidential Information:
- (1) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party must ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 17; and
  - (2) as may be required by law, court order or any governmental or regulatory authority.
- 17.2 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

**18. Indemnity**

The Customer indemnifies GCOMM against:

- (1) all losses incurred by GCOMM;
- (2) all liabilities incurred by GCOMM; and
- (3) all costs actually payable by GCOMM to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by GCOMM in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal),

arising directly or indirectly as a result of or in connection with the installation of the Equipment, the Customer's use of the Software, the provision of the Services, or any breach or non-performance of any of the obligations of the Customer under this Agreement.

**19. Representations and Warranties**

19.1 GCOMM warrants to the Customer that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Proposal.

19.2 GCOMM does not warrant that the provision of the Services will be uninterrupted or error free, and apart from the warranty in clause 19.1, the Software and the Services are provided to the Customer on an "as is" basis, and all warranties, conditions and other terms implied by statute or by common law are excluded to the extent permitted by law. Despite any other provision of this Agreement, in no circumstances will GCOMM be liable to the Customer under or in connection with this Agreement for:

- (1) any loss or corruption of the Stored Data (whether temporary or permanent);
- (2) any loss or corruption of the Backup Data (whether temporary or permanent);
- (3) indirect, special, consequential or incidental damages, including, without limitation, loss of profits or revenue, loss of goodwill, business interruption, loss of anticipated savings, loss of data, cost of capital, however caused, even if such damages were foreseeable and the parties have been advised of the possibility of such damages; or
- (4) the inability to restore the Stored Data or Backup Data due to the loss of the Customer's encryption keys.

**20. Third Party Products**

20.1 The Customer will be solely responsible for the evaluation, selection, installation, implementation, compatibility, use and performance of and results obtained from any hardware, systems software, utility software, security software, telecommunication equipment or software, and applications software used in connection with the Services, unless (and only to the extent) otherwise expressly agreed in this Agreement.

20.2 GCOMM does not make any independent representations or warranties with respect to products provided by third parties. Any third party warranties are the exclusive remedies of the Customer with respect to such products.

**21. No Waiver**

The failure by either party to exercise or enforce any right conferred by this Agreement will not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of any such right on any later occasion.

**22. Assignment**

22.1 The Customer is not entitled to assign or novate its rights and/or obligations under this Agreement without GCOMM's written consent.

22.2 GCOMM may assign or novate its rights and obligations under this Agreement to any company which is a member of the same group as GCOMM. A company will be in the same group as GCOMM if it is a subsidiary of GCOMM, a holding company of GCOMM, or a subsidiary of any such holding company.

22.3 Additionally, the Customer acknowledges that GCOMM will be permitted to assign this Agreement to any successor in title or other entity into, by or with which the business or assets of GCOMM to which this Agreement relates may be merged, acquired, consolidated or reorganized, or any entity which may purchase all or substantially all of such business or assets, or to ASIGRA or another authorised distributor of ASIGRA in the event that GCOMM ceases to be an authorised distributor of ASIGRA. This Agreement will be binding upon and will ensure to the benefit of the parties hereto, and their respective successors and permitted assigns.

**23. No partnership**

This Agreement does not create or evidence a partnership or joint venture.

**24. Severability**

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

**25. Waiver**

25.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

- 25.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 25.3 A waiver is not effective unless it is in writing.
- 25.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## 26. Notices

- 26.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
- 26.2 In addition to any other method of service provided by law, the Notice may be:
- (1) sent by prepaid post to; or
  - (2) delivered at;  
the address or electronic address of the addressee set out in this Agreement or subsequently notified.
- 26.3 If the Notice is sent or delivered in a manner provided by clause 26.2, it must be treated as given to and received by the party to which it is addressed:
- (1) if sent by post, on the 2<sup>nd</sup> Business Day (at the address to which it is posted) after posting;
  - (2) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

## 27. Entire Understanding

This Agreement:

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

## 28. Governing Law and Jurisdiction

- 28.1 The law of Queensland governs this Agreement.
- 28.2 The parties submit to the exclusive jurisdiction of the courts of Queensland and of the Commonwealth of Australia and agree that any lawsuit must be heard in those courts.

## 29. Definitions and Interpretation

In these terms and conditions:

- (1) **Agreement** means the Proposal, the Terms and Conditions and any schedule or annexure to them;
- (2) **ASIGRA** means ASIGRA Inc., the owner of the ASIGRA Technology and the ASIGRA Software;
- (3) **ASIGRA Software** means the DS-Client software and the DS-User software distributed by GCOMM and licensed directly by ASIGRA to the Customer by means of the End-User License Agreement;
- (4) **ASIGRA Technology** means any concepts, inventions, systems, processes, techniques, trade-secrets, trade-marks, patents, copyrights, methodologies, know-how, data, tools, templates, technology (including but not limited to the ASIGRA Software in executable code and source code forms), documentation or any other information, data or materials, and any expressions of the foregoing, developed by, owned by, or licensed to, ASIGRA and made available to Customer under the End-User License Agreement and this Agreement;
- (5) **Back-Up Data** means the Customer's data and information which has been provided or made available to GCOMM to store by way of back-up using the Software under this Agreement;
- (6) **Backup Scheduling** means the time of day that the Customer schedules for the purpose of allowing GCOMM to store Back-Up Data from the Customer's Equipment to GCOMM's network;
- (7) **Basic Support Services** has the meaning given in clause 7.4;
- (8) **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;
- (9) **Business Offsite Backup Services** means the services described in clause 8 and Item 1 of the Schedule;
- (10) **Commencement Date** means the date on which this Agreement has been signed by the Customer as noted in the Proposal on page 1;
- (11) **Confidential Information** means all information not publicly known, used in or otherwise relating to a party's business, customers or financial or other affairs, including, without limitation, information relating to (a) the marketing of goods or services including, without limitation, existing and future customer names and lists and other details of existing and future customers, (b) future products, business development or planning, commercial relationships and negotiations; (c) information relating to the Services and the GCOMM Technology; (d)

information received from third parties that a party is obligated to treat as confidential (including any ASIGRA Technology and ASIGRA Software); (e) all information which is marked as confidential or proprietary, whether such information is disclosed orally, in writing or otherwise before or after the Commencement Date; and (f) this Agreement;

- (12) **Customer** means the Customer specified in the Proposal ;
- (13) **Data Backup Services** has the meaning in clause 8(1)(a);
- (14) **Data Recovery Services** has the meaning in clause 8(1)(b);
- (15) **Equipment** means the computer equipment (if any), racking (if any) and associated equipment (if any) used in connection with the provision of the Services and located on the Customer's premises;
- (16) **End-User License Agreement** means the Clickwrap license agreement between the Customer and ASIGRA that the Customer must execute in order to license the ASIGRA Software;
- (17) **GB** means 1,073,741,824 bytes of digitally stored information;
- (18) **GCOMM Affiliate** means persons or entities who have provided products, licenses, or services to GCOMM and persons or entities with which GCOMM has entered into an agreement to sublicense or to provide GCOMM services to users;
- (19) **GCOMM Technology** means any concepts, inventions, systems, processes, techniques, trade-secrets, trademarks, patents, copyrights, methodologies, know-how, data, tools, templates, technology (including software in executable code and source code), documentation or any other information, data or materials, and any expressions of the foregoing, independently developed by and owned by GCOMM prior to the provision of the Services under this Agreement or created at the request of the Customer as customisations under this Agreement or any other agreement;
- (20) **GST** means GST as defined in the GST Act;
- (21) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (as amended);
- (22) **Initial Term** means the period specified in the Proposal;
- (23) **Installation Charges** means the set up charges for establishing the Services and the cost of installing the telecommunications link provided by third parties specified in the Proposal;
- (24) **Mb** means 1,048,576 bytes of digitally stored information;
- (25) **Monthly Fees** means the monthly fees as specified in the Proposal;
- (26) **Proposal** means the order form to which these Terms and Conditions refer to ;
- (27) **Renewal Term** means the period of 1 year commencing from the end of the Initial Term;
- (28) **Services** means such of the Data Backup Services and Data Recovery Services as GCOMM may agree to supply to the Customer, as specified in this Agreement, including, without limitation, the provision of people, infrastructure resources, support and access to and the use of the Software, applications, hardware (including without limitation the Equipment), data centre resources and interconnection to other third party networks and any other services provided by GCOMM in connection with the CloudLuxe Backup service;
- (29) **Service Levels** means the services levels described in Item 2 of the Schedule;
- (30) **Service Qualification Process** means the process by which GCOMM will determine whether it is technically feasible for the Customer's computer equipment to accommodate and utilise the Software in order to give effect to the Services;
- (31) **Site Disaster** means the Customer's Information Technology capability has been affected to such a degree as to make it non-operable;
- (32) **Software** means all and any GCOMM software and the ASIGRA Software installed on the Equipment;
- (33) **Stored Data** means the amount of Customer data being stored on the GCOMM or GCOMM's Affiliate CloudLuxe Backup vault after delta processing, compression, encryption and elimination of common files;
- (34) **Termination Fee** means the balance of the Monthly Fees under the Initial Term that have not been invoiced as yet;
- (35) **Trial Period** means the period that is 14 Business Days from the date that GCOMM installs the Software on the Customer's Equipment.

**SCHEDULE**

Item 1      **Services**      *Business Offsite Backup Services*

Item 2      **Service Levels**

<b>Service</b>	<b>Description</b>	<b>Target</b>	<b>Comments</b>
<i>Daily Backup Notification</i>	<i>Notification of whether the Daily backup has been successful or there has been errors</i>	95.00%	
<i>Successful Daily Backups</i>	<i>Once an error notification has been sent, a successful remedy has been applied within 7 Business Days provided it does not relate to a fault within the Customer's network</i>	95.00%	
<i>Backup and Restoration Availability</i>	<i>Once the Backup Data has been stored, the Customer has the ability to access the data for restoration purposes provided the failure to be able to restore does not relate to a fault within the Customer's network</i>	99.00%	