

**GCOMM Pty Ltd ABN 16 074 440 841 (“GCOMM”)
Residential End User Agreement**

General Terms

1. Introduction

- 1.1 This Agreement sets out the terms and conditions under which GCOMM agrees to provide the Service to You.
- 1.2 This Agreement includes:
- (1) Your Service Order Form;
 - (2) the General Terms set out in this document and which apply to all Services;
 - (3) the Schedules; and
 - (4) any other terms and/or conditions in relation to the Service that You receive 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 You receive from GCOMM;
 - (2) Your Service Order Form;
 - (3) the Schedules; and
 - (4) the General Terms set out in this document.
- 1.4 The scope of the Service provided to You will be determined by the options You have selected on Your Service Order Form.

2. Definitions and interpretation

2.1 Definitions

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

- (1) **ACMA** means the Australian Communications and Media Authority;
- (2) **Acceptable Use Policy**, found at <http://www.gcomm.com.au/terms-and-conditions.html> means the current version of an acceptable use policy prescribing rules and guidelines in relation to the use of the Service as provided by GCOMM to You from time to time;

- (3) **Agreement** has the meaning set out in clause 1.2 and any attachment or annexure to this document;
- (4) **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;
- (5) **Carrier** has the same meaning as under the Telecommunications Act;
- (6) **Carriage Service Provider** has the same meaning as under the Telecommunications Act;
- (7) **Charges** means the amounts payable by You pursuant to the Pricing Plan and this Agreement for the supply of the Services;
- (8) **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;
- (9) **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;
- (10) **Contractor** means any contractor, sub-contractor, agent or nominee engaged or arranged by GCOMM to supply the Service;
- (11) **Direct Debit Request Form** means a direct debit request form prescribed by GCOMM from time to time;
- (12) **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;
- (13) **Equipment** means the equipment, such as handsets and routers, identified in the Service Order Form (other than any equipment identified therein as being sold to You) and the equipment and cabling, if any, referred to in clause 8.1;
- (14) **GCOMM Network** means the Network, equipment, facilities and cabling used by GCOMM to supply the Service;
- (15) **Identifiers** means a telephone number, customer service number, ISDN number range, IP address, email address or FNN;

- (16) **Insolvency Event** means:
- (a) bankruptcy proceedings are commenced against You, or You are declared bankrupt;
 - (b) any step is taken to enter into any scheme of arrangement between You and Your creditors;
 - (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Your 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 You or to the whole or any part of You;
 - (e) You suspend payment of Your debts generally; or
 - (f) You are or become unable to pay its debts when they are due or You are or are presumed to be insolvent for the purposes of any provision of the Corporations Act 2001 (Cth).
- (17) **Internet Service** means the service set out in the Residential Internet Service Schedule;
- (18) **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;
- (19) **IPND** means the Integrated Public Number Database being a database of information about customers of telecommunications services in Australia for use by Carriers and Carriage Service Providers;
- (20) **Minimum Fee** means in the case of an Agreement with an Initial Term, the recurring Charges payable monthly (or annually) as specified in the Pricing Plan multiplied by the number of months in the Initial Term minus all recurring payments of Charges payable monthly (or annually in advance) actually paid prior to termination of this Agreement;
- (21) **Network** means a system or series of systems that carries or is capable of carrying communications (including data);
- (22) **New Service** means any service other than the Services offered from the outset of this Agreement by GCOMM in accordance with this Agreement;

- (23) **Personal information** means information or opinion about You from which Your identity is apparent or can reasonably be ascertained and includes name, address, service number, personal credit rating or credit information;
- (24) **Premises** means premises for the location of the Services;
- (25) **Pricing Plan** means GCOMM's current pricing plan for the relevant Service as amended in accordance with this Agreement;
- (26) **Privacy Policy** means the privacy policy of GCOMM as provided to You from time to time or made available at <http://www.gcomm.com.au/terms-and-conditions.html>;
- (27) **PSTN** means the Public Switched Telephone Network being the current analogue telephone network throughout Australia;
- (28) **Regulator** means any government or statutory body or authority including but not limited to the ACMA, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited and the Telecommunications Industry Ombudsman;
- (29) **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 3.4, the expiration of the then current term.
- (30) **Security Bond** means the security requested by GCOMM;
- (31) **Service** means the service chosen by You in the Service Order Form and as described in the applicable Service Schedule;
- (32) **Service Order Form** means a request for any Service, New Service or Equipment in the form prescribed by GCOMM;
- (33) **Service Schedule** means a Schedule to these General Terms containing supplementary terms and conditions applicable to the Service described in that schedule;
- (34) **Schedule** means any schedule to this Agreement including the Pricing Plans and the Service Schedules;
- (35) **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;
- (36) **Supplier** means a provider of telecommunications services and may include a Carrier or a Carriage Service Provider;

- (37) **Supplier Network** means any Network, equipment, facilities or cabling controlled by a telecommunications supplier other than GCOMM;
- (38) **Telecommunications Act** means Telecommunications Act 1997 (Cth);
- (39) **Telephony Service** means the services set out in the Residential Telephony Service Schedule;
- (40) **Term** means the Initial Term, if any, set forth on the Service Order Form and any continuation thereof in accordance with clauses 3.4 or 3.5 or, where there is no Initial Term specified in the Service Order Form, the term otherwise specified in clause 3; and
- (41) **You** means the customer named in the Service Order Form and **Your** has the corresponding meaning.

2.2 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.

3. Term

- 3.1 This Agreement commences on the date GCOMM begins supplying the Service or You access the Service.
- 3.2 For Agreements other than agreements with an Initial Term, this Agreement will continue until it is terminated in accordance with this Agreement or either party gives 20 Business Days written notice to terminate.
- 3.3 Agreements with an Initial Term commence in accordance with clause 3.1, and subject to earlier termination in accordance with this Agreement, continue until the end of the Initial Term.
- 3.4 Subject to earlier termination in accordance with this Agreement, an Agreement with an Initial Term automatically renews for the Renewal Term at the end of:
 - (1) the Initial Term; and
 - (2) any subsequent Renewal Term.unless either party gives to the other 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.
- 3.5 Where there has been no automatic renewal of this Agreement in accordance with clause 3.4, and You have continued to use the Service, this Agreement will continue until it is terminated in accordance with this Agreement or either party gives to the other 20 Business Days written notice to terminate.

4. Provision of Services

- 4.1 You may submit a Service Order Form requesting that GCOMM provide the Service in accordance with this Agreement.
- 4.2 GCOMM may refuse Your Service Order Form or accept Your Service Order Form subject to requiring You to provide a Security Bond. GCOMM's acceptance of Your Services Order will be notified to you by email or by telephone followed, in each case, by GCOMM providing the Service to You.

4.3 You acknowledge that GCOMM:

- (1) has no liability for charges incurred by You to another Supplier prior to the date GCOMM starts supplying the Service or You access the Service;
- (2) has the right to decide how the Service is provided, select the Suppliers, port the numbers or any Service to GCOMM's preferred Suppliers or to arrange least cost routing of traffic;
- (3) has the right to carry out any actions necessary or incidental to give effect to this clause (including signing and submitting on Your behalf any necessary authority forms or other details required to provide 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 You) without giving You any notice of such variation, provided that such variation has no material adverse impact on the reliability or performance of the Service.

4.4 You may be contacted by a Supplier in connection with installing a Service in the Premises.

5. Your Use of the Service

5.1 In using the Service, You must comply with all laws, all directions by a Regulator and any reasonable directions by GCOMM.

5.2 You must not use or attempt to use the Service:

- (1) to break any law or to infringe another person's rights;
- (2) to expose GCOMM to liability;
- (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) send excessive unsolicited data to third parties; or
- (7) to knowingly transmit information which contains viruses or other harmful components or send email that may destroy or damage an email recipient's computer.

5.3 You acknowledge that GCOMM may be required to intercept communications over the Service and may also monitor Your 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 You acknowledge 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.
- 5.5 You must ensure that any equipment including cabling to be connected to the Service must be approved by the ACMA for connection to the PSTN or complies with any technical or interconnection standards made by ACMA unless such connection is made in accordance with:
- (1) a connection permit issued under the Telecommunications Act; or
 - (2) connection rules made under the Telecommunications Act where the party establishing, maintaining or permitting the connection (as the case may be) is subject to such connection rules.
- 5.6 You must ensure that any person who uses the Service does so in compliance with this Agreement.

6. Maintenance of Network

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

7. New Services

- 7.1 GCOMM may offer New Services to You. Any New Service will be governed by this Agreement and any applicable Service Schedule and Pricing Plan and by a Service Order Form covering the New Service.

8. Equipment

- 8.1 GCOMM may need to install equipment and cabling on Your Premises. You authorise 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 any such equipment or cabling on termination of the Service.

- 8.2 If You do not own the Premises where the Service is to be installed, You warrant that You have notified the owner of those Premises and obtained all necessary permissions to enable GCOMM to deliver the Service and perform its obligations under this Agreement.
- 8.3 You agree 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 You agree 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 You acknowledge that:
- (1) GCOMM is providing the Equipment to You for the purposes of the supply of the Service;
 - (2) You will have no right, title or interest in the Equipment, including any right to deal with the Equipment;
 - (3) You accept the risk in the Equipment from the time that GCOMM provides the Equipment to You; and
 - (4) GCOMM may, at any time and for any reason, retake possession of the Equipment.
- 8.8 You must not, and must not attempt, under any circumstances to sell, transfer, lease or otherwise deal with the Equipment.
- 8.9 You authorise GCOMM and/or GCOMM's Contractors or will ensure authorisation for GCOMM or GCOMM's Contractors to disconnect, install or make amendments to any autodiallers, key systems or PABX programming at the Premises for GCOMM to provide the Services.
- 8.10 While the Equipment is on the Premises, You must take reasonable care to keep the Equipment secure and safe from theft, vandalism and damage.
- 8.11 You acknowledge that except for any equipment supplied by GCOMM, GCOMM is not in any way whatsoever responsible for or liable for any equipment used with the Service, including Your equipment.

9. Intellectual Property Rights

- 9.1 You acknowledge that nothing in this Agreement is intended to give You 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 affiliates GCOMM Pty Ltd.
- 9.2 Unless otherwise agreed in writing, You have no rights in respect of any Intellectual Property Rights of GCOMM or its affiliates GCOMM Pty Ltd.

10. Charges

- 10.1 In consideration of providing the Service You must pay GCOMM the Charges in accordance with the applicable Pricing Plan for the Services You have selected including any Minimum Fee.

11. Billing and Payment

- 11.1 Unless otherwise agreed, GCOMM may bill You:
- (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 You purchase from GCOMM or for any Equipment specified in the Service Order Form that GCOMM provides to You, on or after delivery; and
 - (5) otherwise as notified by GCOMM from time to time.
- 11.2 GCOMM may bill You using a billing agent.
- 11.3 You will pay each bill by the due date specified in the bill or as notified by GCOMM from time to time.
- 11.4 If You fail to pay the Charges in accordance with this Agreement, GCOMM may:
- (1) set off any sums owing to it against any Security Bond;
 - (2) charge interest at a rate of 2% plus the National Australia Bank Indicator Base Rate;
 - (3) suspend Services in accordance with this Agreement;
 - (4) cancel Services in accordance with this Agreement; and/or
 - (5) terminate this Agreement.
- 11.5 You acknowledge that GCOMM will use its reasonable endeavours to include in Your bill all Charges for the Services in the applicable billing

period. You acknowledge that this may not always occur because GCOMM receives a bill for a Service that is supplied by another Supplier. You further acknowledge that GCOMM may include these unbilled charges in any later bill or bills.

- 11.6 GCOMM may provide You with an option to pay the Charges for the Services by credit card. If You choose to provide GCOMM with your credit card details for the purposes of paying the Charges, GCOMM may:
- (1) bill all Charges to Your 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 your 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 You hold sufficient credit on Your credit card to meet the likely Charges; and
 - (4) charge any cancellation fees (including any Minimum Fee) that might be payable under a Pricing Plan or pursuant to this Agreement following notice of termination.

12. Direct Debit

12.1 You acknowledge and warrant that:

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

12.2 If You wish to dispute a debit that has been made from Your nominated account, You 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.

12.3 If GCOMM determines that Your nominated account was incorrectly debited, then GCOMM will provide You with details of its findings and make any necessary adjustments.

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

12.5 You acknowledge 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.

13. Goods and services tax

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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 13.3.

14. Changes by GCOMM

14.1 Other than changes referred to in clause 14.2, or changes described in clauses 15 and 16, GCOMM may change the terms of this Agreement by giving You 20 Business Days notice prior to such change and allowing You to cancel Your Agreement by giving GCOMM 10 Business Days' written notice of termination within such 20 Business Days.

14.2 If GCOMM reasonably believes that a change in the terms of the Agreement is likely to benefit You (eg. a reduction in Charges) or be neutral GCOMM may make the change immediately and is not required to notify You beforehand.

15. Changes requiring notice

15.1 GCOMM may:

(1) make a change to the terms of this Agreement to implement tax imposed by law. This change may be a change to an existing Charge or a new Charge; or

(2) amend the Charges or other matters related to the Services,

provided that where such change will cause a detriment to You that GCOMM:

(a) notifies You individually at least 3 Business Days prior to implementing the change; or

(b) publishes a notice in a national newspaper at least 3 Business Days before implementing the change and provides You with individual notification within 16 weeks of the change being implemented.

15.2 GCOMM may increase the Charges related to Services or any part thereof that are acquired by GCOMM from third parties or incorporate material from third parties, where the increase is a result of an increase in costs from the third party.

16. Urgent changes

16.1 Where a change is required by law or is necessary to prevent fraud or for technical reasons and You would be affected by the change GCOMM will try to give You as much notice as possible of the change.

17. Credit Limits and Security Bond

17.1 In accordance with GCOMM's Assessment Policies GCOMM may set credit limits or require You at any time to pay a Security Bond.

17.2 GCOMM will return Your Security Bond to You upon termination of Your account (subject to You having paid all amounts owing under the Agreement).

17.3 For the avoidance of doubt and for the purposes of this Agreement, any Security Bond provided in accordance with this clause, is not subject to GST.

17.4 GCOMM may apply the whole or any part of any Security Bond to satisfy any amount You are required to pay GCOMM from time to time and that is overdue.

18. Personal Information

- 18.1 GCOMM may collect, use and disclose Personal Information about You to decide whether to supply the Service (or for purposes which would be reasonably expected of a telecommunications supplier).
- 18.2 GCOMM may collect, use and disclose Personal Information about You 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 Your Personal Information so as to provide GCOMM with services to allow supply of the Service to You.
- 18.3 You acknowledge that GCOMM may be required by law to collect, use or disclose Personal Information about You including for reasons relating to:
- (1) the manager of the IPND; and
 - (2) law enforcement agencies.
- 18.4 GCOMM may use, process or transfer Your Personal Information:
- (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 Your 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 You 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.
- 18.5 You acknowledge 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.

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

19. Confidentiality

19.1 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 contractors, sub-contractors, agents or subsidiaries and undertake that they will be bound to the same extent of confidentiality as this clause.

19.2 The provisions of clause 19.1 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.

19.3 You acknowledge 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. You agree 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.

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

20.1 GCOMM may, without liability, cancel a Service at any time by giving 30 days' notice to You.

20.2 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) You have breached clause 5.1 or clause 5.2;
- (4) You have failed to provide the Security Bond requested by GCOMM;
- (5) GCOMM reasonably suspects fraud by You or any other person in connection with the Service;
- (6) GCOMM or its affiliate GCOMM 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) You have suffered an Insolvency Event;
- (10) GCOMM has reasonable grounds to believe that You will not or are unable to make any payment which is due or is to fall due to GCOMM; or
- (11) GCOMM is otherwise entitled to do so under this Agreement.

21. Withdrawal of Service

GCOMM may cease to supply a Service, or a part of a Service, to You by giving You not less than 30 days' written notice of withdrawal.

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 You 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 You acknowledge 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 You 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 You agree to indemnify GCOMM against any damage, expense, loss or liability that GCOMM incurs, including any Consequential Loss, arising out of:

- (1) the use or attempted use of the Service (including fraudulent use) by any person (including You) of the Service or equipment connected to the Service;
- (2) any information, data or material produced, stored, transmitted or downloaded by You or any person using the Service; and
- (3) any breach by You of this Agreement.

22.6 You agree to indemnify GCOMM and hold GCOMM not liable to any person(s) claiming through You for any loss or damage arising from suspension or disconnection of Your 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 You, suspend or terminate this Agreement if You have failed to pay any money owing under this Agreement in accordance with this Agreement.

23.3 GCOMM may terminate this Agreement in whole or in part by giving You 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 Minimum Fees, owing by You for the Services will become immediately due and payable. Minimum Fees will be payable by You where termination becomes effective during the Initial Term except where termination is by GCOMM pursuant to clause 23.3 or by You pursuant to clauses 14.1 or 23.1.

24. **Carrier and Carriage Service Providers**

24.1 You represent that You are not a Carrier or Carriage Service Provider. If during the term of this Agreement You are or become a Carrier or Carriage Service Provider, then GCOMM may immediately cancel the Service by notice to You. You 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 Limited
PO BOX 609
SURFERS PARADISE Qld 4217

25.3 Should You be dissatisfied with GCOMM's response, You 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 Your state or territory.

26. Miscellaneous

Jurisdiction

- 26.1 The Agreement is governed by the law in force in the state or territory in which You reside or primarily use the Service.
- 26.2 Each party submits to the exclusive jurisdiction of the courts of the Commonwealth and its states and territories.

Entire Agreement

- 26.3 This Agreement constitutes the whole understanding between You and GCOMM to the exclusion of any prior or collateral agreement or understanding of any kind relating to the subject matter of this Agreement.
- 26.4 If the whole or any part of a provision of this Agreement is void, unenforceable or illegal then it is severed and the rest of this Agreement remains in force.

Assignment

- 26.5 GCOMM may:
 - (1) assign its rights; or
 - (2) novate its rights and obligations,under this Agreement without Your consent.
- 26.6 You may not assign Your rights under this Agreement without GCOMM's prior written consent.

Waiver

- 26.7 GCOMM's failure to exercise, a delay in exercising or the partial exercise of its rights under the Agreement does not operate as a waiver of those rights in the future.

Survival

- 26.8 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 clauses 9, 10, 18, 21 and 26; 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.

Force Majeure

26.9 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.

Notices

26.10 GCOMM will notify You individually by:

- (1) mail sent to the address nominated in the Service Order Form; or
- (2) email (if agreed to within Your Service Order Form).

26.11 Unless otherwise stated You must notify us by:

- (1) mail addressed to:
GCOMM Pty Limited
PO BOX 609
SURFERS PARADISE, Qld 4217; or
- (2) by facsimile to:
1300 221116