

## 1. HOW THE AGREEMENT WORKS

### 1.1 Application of the Agreement

- (a) This is a Standard Form of Agreement as per Part 23 of the Telecommunications Act.
- (b) The Agreement applies to residential and small business customers that obtain services from us.
- (c) The terms of the Agreement apply whenever QuantumVoip is providing a service to you, except when the parties agree in writing that different terms will apply (such as in the Application which you completed in order to receive the Service and the Critical Information Summary relating to your required service may provide different terms). For example, you may be required to receive the service from us for a minimum or Fixed Term that is greater than a month to month period (**'Fixed Term'**). In such circumstances, your Application and any applicable Critical Information Summary will state the specific details of the term that applies and will override anything to the contrary in the Agreement.

### 1.2 What makes up the Agreement?

The Agreement with us includes the following documents, policies and information:

- (a) your Application;
- (b) the Critical Information Summary;
- (c) these terms and conditions;
- (d) the payment schedule;
- (e) the Direct Debit Service Agreement; and
- (f) our Fair Use Policy.

### 1.3 What to do if you need help or require additional information

If you need help or require additional information, contact us on 1300200743 to lodge support requests.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In the Agreement, the following definitions apply unless the context requires otherwise:

**ACMA** means the Australian Communications and Media Authority ([www.acma.gov.au](http://www.acma.gov.au));

**Agreement Term** has the meaning given to it in clause 3(a);

**Application** means an application made by you for the provision of services by us, either by:

- (a) a form (online or printed), approved by us; or
- (b) a telephone application with us;

**Approved Purposes** means:

- (a) giving directory assistance services;
- (b) giving operator services or operator assistance services;
- (c) publishing and maintaining public number directories;
- (d) providing location dependent carriage services;
- (e) complying with any obligations we may have to a Government Agency;
- (f) the operation of emergency call services or assisting emergency services under Part 8 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
- (g) aiding enforcement agencies or safeguarding national security under the Telecommunications Act, the *Telecommunications (Interception and Access) Act 1979* or any other applicable legal requirement;
- (h) verifying the accuracy of information provided by the data provider and held in the IPND against the information the data provider holds;
- (i) undertaking research of a kind specified in the Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017;
- (j) aiding the ACMA, or its nominee, to verify the accuracy and completeness of information held in the IPND; and
- (k) any other purposes where permitted or required by the Telecommunications Act or any other applicable laws;

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent state or territory legislation.

**Business day** means Monday to Friday, excluding days which are public holidays in the place where the Services are to be provided;

**Business hours** means 9.00 am to 5.00 pm Monday to Friday (AEST), excluding days which are public holidays in the place where the Services are to be provided;

**Broadband** means a high capacity communications pipeline capable of delivering a simultaneous range of services at speeds greater than conventional dial-up;

**Claim** means any claim, demand, legal proceeding or cause of action, however arising, including one that is based in contract or tort (including negligence), under common law,

equity or statute and whether involving a third party or a party to the Agreement or otherwise;

**Commercial Credit** has the meaning given in section 6 of the Privacy Act;

**Consequential Loss** means:

- (a) loss of profits;
- (b) loss of revenue;
- (c) loss of production;
- (d) loss or denial of opportunity;
- (e) loss of or damage to goodwill;
- (f) loss of business reputation, future reputation or publicity;
- (g) loss of use;
- (h) loss of interest;
- (i) losses arising from claims by third parties;
- (j) loss of or damage to credit rating;
- (k) loss of anticipated savings; and
- (l) loss of contract,
- (m) whether direct, indirect or consequential.

**Consumer Guarantee** means any right or statutory guarantee under Division 1 of Part 3-2 of the Australian Consumer Law.

**Credit Reporting Body** has the meaning given in section 6 of the Privacy Act;

**Critical Information Summary** or **CIS** means the document forming part of the agreement describing the Service and setting out specific terms and conditions for that service;

**CSG** has the meaning given in clause 15.3;

**Customer** means the current account holder for a residential or small business service supplied by QuantumVoip.

**Customer equipment** means any equipment or facility in your possession, ownership or control, other than service equipment;

**Direct Debit Service Agreement** means the terms and conditions under which we are authorised to debit funds from your bank (or other financial institution) account, a copy of which is accessible on our website;

**Due Date**, unless otherwise agreed, means 10 business days after an invoice is issued or if relevant, the date otherwise specified on an invoice as the due date;

**Early Termination Fee** means the fee payable (if any) in accordance with clause 4.10, calculated in accordance with your Application, the relevant Critical Information Summary and the Payment Schedule;

**Equipment** unless otherwise specified, means service equipment or purchased equipment;

**Facilities** has the meaning given in the Telecommunications Act;

**Fair Use Policy** means our policy which applies to your use of the Service, a copy of which is accessible on our website;

**Fee(s)** means a fee payable for a service as set out in the Application, the Payment Schedule or the relevant Critical Information Summary and any other amount payable by you in accordance with the terms of the Agreement;

**Fixed Term** has the meaning given in clause 1.1(c);

**Force Majeure Event** means:

- (a) an act of God;
- (b) war;
- (c) any act of terrorism;
- (d) civil disorder or military operations or revolution;
- (e) an epidemic, pandemic or serious viral outbreak;
- (f) any unlawful act against public order or authority;
- (g) a strike, embargo, lockout or other industrial dispute;
- (h) an act or omission of a Government Agency; or
- (i) or an act or omission of any third party (including any third party supplier) where the act or omission is caused by an event or circumstance outside that third party's reasonable control (including any of the things mentioned in this definition)
- (j) any other event (whether the same or different to the events set out in (a) to (i)(h) above) that is out of a party's reasonable control.

**Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes any self-regulatory organisation established under statute or any stock exchange, including a minister responsible for administering Part XIB or XIC of the *Competition and Consumer Act 2010* (Cth), the Telecommunications Act, the ACMA or the Australian Competition and Consumer Commission;

**GST** has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Interest** means 2% per annum above the average of the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by the Commonwealth Bank of Australia;

**Internet** means the world wide connection of computer networks which provides a number of services to users, including the transmission of electronic mail, provision of information on the world wide web and transfer of files;

**Internet access** means being able to access the Internet such that data can be transferred to and from the user's computer;

**Interruption** in the supply of a service, means a delay in supplying, a failure to supply or an error or defect in the supply of, that Service;

**IPND** means Integrated Public Number Database.

**Law** means:

- (a) legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions and practice notes of the Commonwealth, a State or Territory or any Government Agency;
- (b) certificates, licences, consents, permits, approvals, qualifications, registrations, standards and requirements of organisations having jurisdiction in connection with the supply of the Goods under the Agreement; and
- (c) all other laws from which legal rights and obligations may arise.;

**Payment Schedule** means [discuss with NK]

**Personal Information** means any information or document referred to in section 276(1) of the Telecommunications Act and any personal information within the meaning given in section 6 of the Privacy Act;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**Premises** means locations:

- (a) at which we supply the Service; and/or
- (b) to which we need to have access to supply the Service.

**Privacy Act** means the *Privacy Act 1988* (Cth);

**Purchased equipment** has the meaning given in **clause 0**;

**QuantumVoip** means Quantum Holdings Australian Pty Limited (ACN 645 026 286)

**QuantumVoip Network** means the infrastructure used and/or maintained by us or our third party suppliers to provide you with your service. The Quantumvoip Network does not include the computer networks that make up the Internet.

**Residential customers** means a customer who acquires a telecommunications product for the primary purpose of personal or domestic use and not for resale.

**Service** means the Service requested by you in your application and as described in it and any other documents forming the agreement, including any related goods and ancillary services provided to you by us in connection with that service;

**Service preparation costs fee** means the fee payable (if any) in accordance with clause 13.2, calculated in accordance with your application, the relevant Critical Information Summary and the payment schedule;

**Supplied Equipment** has the meaning given in clause 11;

**Shaping** means a reduction in the speed of a Broadband service;

**Small business customer** means a customer with a business ABN requiring standard plan services rather than quoted services;

**Spam** means unsolicited electronic messages as per the *Spam Act 2003* (Cth);

**Taxable Supply** has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth);

**Third party supplier** means a third party supplier from whom we acquire wholesale services that form all or part of the Service we provide to you;

**Website** means [www.quantumvoip.com.au](http://www.quantumvoip.com.au);

**we, our or us** means QuantumVoip.

**you or your** means the current account holder for the Service.

## 2.2 Interpretation

In the Agreement unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of the Agreement;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in the Agreement have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);

- (f) a reference to a thing (including any right) includes a part of that thing, but nothing in this clause 2.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, the Agreement and a reference to the Agreement includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including the Agreement) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (k) a reference to an agreement other than the Agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (m) a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;
- (n) a provision of the Agreement may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of the Agreement or the preparation or proposal of that provision;
- (o) a reference to a body, other than a party to the Agreement (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in the Agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (q) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (r) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;

- (s) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day; and
- (t) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

### 2.3 Business Day

If anything under the Agreement is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

## 3. WHAT IS THE TERM OF THE AGREEMENT?

- (a) The Agreement commences when QuantumVoip accepts your Application and continues until terminated in accordance with the Agreement (**Agreement Term**). The start date for the relevant Service will be set out in the Application.
- (b) QuantumVoip may refuse your Application at its sole discretion.

## 4. PROVIDING THE SERVICE

### 4.1 Service availability

Subject to the Australian Consumer Law, we will endeavour to provide, but cannot guarantee, a continuous service free of any Interruptions. You are aware that we may rely on third party suppliers for supplying the Service to you and that circumstances beyond our control may give rise to interruptions to the Service from time to time. Our liability to you for any Interruption to a service is limited in accordance with clause 15.2.

### 4.2 Maintenance and fault restoration

- (a) We may conduct maintenance on the QuantumVoip Network. We will we will do everything in reasonable power to conduct scheduled maintenance on the QuantumVoip Network outside Business Hours.
- (b) You must provide all reasonable assistance to enable us or our personnel, or where necessary our third party supplier or their personnel, to investigate and where applicable repair a fault including providing them with adequate and timely access to your premises.
- (c) You are responsible for ensuring permission is in place with the landlord of the property where the installation is to occur and accepts any costs associated with any installation works required after the boundary point.
- (d) You must report faults to us as soon as possible. We will repair faults within the QuantumVoip Network used to supply the Service.
- (e) Subject to your rights under the Australian Consumer Law, we are not obliged to restore any fault with a service to the extent that is caused by:



- (i) damage due to causes external to the facilities used by us and/or our third party suppliers to provide the Service;
- (ii) interference;
- (iii) a Force Majeure Event; or
- (iv) planned outages.

#### 4.3 Our third party suppliers

We may use third party suppliers to provide part or all of the Service to you. You agree not contact any of our third party suppliers for any reason in relation to the Service. You acknowledge that if you do contact one of our third party suppliers despite your promises under this clause, without our agreement, you will be liable for all costs imposed on us by our third party supplier in connection with you having contacted that third party supplier directly.

#### 4.4 Varying the Agreement

- (a) During the Agreement Term, we may need to vary the terms of the Agreement due to circumstances beyond our control. You acknowledge that we are therefore not always able to give you an ongoing supply of a service on the same terms and conditions that existed when we first started providing that service to you.
- (b) In addition to variations to the Agreement which we are required to make due to circumstances beyond our control, we may choose to make changes for our own purposes during the Agreement Term. Any changes we elect to make under this clause 4.4(b) will take effect for your service in accordance with clauses 4.5 and 4.6.

#### 4.5 If we vary the Agreement you have certain rights

- (a) Subject to clause 4.6:
  - (i) if we make any variations to the agreement which will be detrimental to you or are required by law we will give you notice of any changes we propose to make to the agreement (**Variation Notice**), at least 21 days before the effective date of those changes (**Variation Effective Date**);
  - (ii) if the variations in the Variation Notice will cause you more than a minor detriment (**Detriment Consequence**) then you may immediately cancel the affected service without incurring any early termination fee or penalty (provided that we can recover any outstanding Fees incurred up to the date on which the Agreement ends and any outstanding amounts that cover installation costs or equipment where such equipment can be used in connection with services provided by other suppliers), by giving us notice in writing to that effect within 60 days after the date of the Variation Notice (**Cancellation Notice**).

- (b) If the date on which you give us a Cancellation Notice in accordance with clause 4.5(a)(ii) occurs after the Variation Effective Date, the variation will not apply to you. We will issue a corrected invoice or adjustment note as appropriate and, if you have overpaid as a result of the variation to the agreement, credit your account with the overpayment or, if you have cancelled your service with us, refund the overpayment promptly after deduction of any other amounts that you owe us. On cancellation of the Service due to a Detriment Consequence, the charge for costs of equipment that we have provided to you and that you have not paid for will be owed by you as a lump sum and payable by the relevant Due Date.
- (c) If you do not give us a Cancellation Notice within the timeframe set out in clause 4.5(a)(ii) you are deemed to have accepted our variations from the Variation Effective Date and that the Agreement, as varied by those changes, will govern the relationship between the parties from that date.

#### 4.6 When notice is not required

- (a) There may be times where we are not able to give you at least 21 days' notice of our proposed variations under clause 4.5. Our obligation to give you such notice will not apply if:
  - (i) we are required to make urgent changes by law, for security reasons or technical reasons necessary to protect the integrity of the QuantumVoip Network;
  - (ii) there is an introduction of a new fee or an increase in an existing fee due to an additional tax or levy imposed by law (where it is fair and reasonable for us to pass that on to you);
  - (iii) there is an introduction of a new fee or an increase in existing fees, such as credit card transaction fees; and
  - (iv) there are increases in Fees due to increases imposed on us by other suppliers (including third party suppliers) for the following types of services and charges:
    - (A) international carriage services (including for voice and data) the current fees for which are available via our website; and
    - (B) content and premium services (including 1900 prefix services) which we resell to you from a third party, including where we collect fees from you on behalf of that third party.
- (b) Where we are reasonably able to do so, we will give you reasonable notice of the changes referred to in this 4.6(a).

## 5. OUR FEES

### 5.1 Fees

- (a) You must pay all Fees arising out of the use of the Service that we provide to you.
- (b) If a Service is used to access the facilities or services of another supplier, amounts charged by that other supplier are, unless the Agreement specifies otherwise, your responsibility, and you will indemnify us on demand in for any such charges. If we are charged those amounts we may include them in our Fees.
- (c) We may offer you a "Special Offer" from time to time. In such event, we will notify you of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising you. A Special Offer may be an offer to vary the Payment Schedule or these terms and conditions for the Service and it may be subject to certain conditions. If you validly accept a Special Offer, the terms of the Special Offer will prevail only to the extent they are inconsistent with the terms of the Agreement. On the expiry or termination of the Special Offer, these terms and conditions will apply in full.

## 5.2 GST

- (a) Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning given to them in that Act.
- (b) Unless expressly stated otherwise, all amounts payable by you under or in connection with the Agreement are inclusive of GST. If GST is payable on a taxable supply made to you, the amount payable by you for that taxable supply will be the amount expressed in the Agreement or the relevant document connected with the agreement.

## 5.3 Invoicing

- (a) We will provide an invoice for the Service on the date that your connection becomes active and each month thereafter.
- (b) If you have a Direct Debit Service Agreement in place for any Service, your credit card or bank account will be debited on the due date.
- (c) If monthly Fees apply we will bill these in advance and any applicable usage or excess usage charges will be billed in arrears.
- (d) We will charge you for any applicable connection fees and additional hardware, where possible, on your first invoice.
- (e) We may invoice you for the Service. If the Services is described as exclusive of GST we will add any applicable GST. We may vary invoice frequency upon giving you reasonable notice.
- (f) You will be charged for all portions of your use of the Service. You are not permitted to transfer, or obtain a refund for any unused allocations.

- (g) We may reissue an invoice if we subsequently discover any error in the amount shown as owing on the invoice.
- (h) We may issue an interim invoice if:
  - (i) you relocate an existing service;
  - (ii) you change your existing plan;
  - (iii) you request a new service to be connected;
  - (iv) you request to be invoiced for any 'unbilled' charges;
  - (v) we believe, on reasonable grounds, that you may be a credit risk; or
  - (vi) as otherwise agreed with you.
- (i) We will refund or credit any overpayment due to a variation in the Fees or cancellation of a service. If we have undercharged you, you must pay for any underpayment.

#### 5.4 Time for payment

You must pay all Fees in full by the Due Date. We may charge Interest on any unpaid amount from the Due Date until the date we receive payment in full.

#### 5.5 Calculation of Fees

Fees are calculated by reference to the data that we have recorded and logged on our systems.

#### 5.6 Methods of payment

- (a) You must pay for Services by credit card standing authorisation or under your Direct Debit Services Agreement.
- (b) We may charge you for any fees that we are required to pay your bank arising out of the Fees payable by you to us.
- (c) If your preferred payment method is initially declined, we may continue to attempt to take payment for up to 10 Business Days after the initial Due Date.

#### 5.7 Our right to suspend for non-payment

We may:

- (a) disconnect your service if you fail to pay the Fees or any other amount you owe us for a period of 21 days after the applicable due date (unless we have received written notice from you of a legitimate dispute of those Fees or other amount before to the Due Date and the dispute remains unresolved); and

- (b) suspend the Service if you fail to pay the outstanding amount in full within 5 Business Days after we give you a notice demanding payment of the Fees or other amounts that you owe us.

#### 5.8 Dishonoured direct debit transaction or credit card authorisation

In addition to any other rights that we have under the Agreement in relation to late payment, if an invoice is paid by direct debit or credit card authorisation and the payment is declined by the bank, may pass on to you, any bank fee that we incur as a result of the declined or dishonoured transaction.

#### 5.9 Debt recovery services

We may use debt recovery services to recover any outstanding Fees or amounts payable to us. You may be liable for any charges and collection costs, such as legal costs.

#### 5.10 Early termination fee

You may cancel the Service at any time in accordance with clause 13.113.1(a). However, if your Application states that you have signed up for a Fixed Term and you cancel the Service before the expiry of the Fixed Term, you will be liable to pay an early termination fee (as set out in the Critical Information Summary).

#### 5.11 Refunds and credits

- (a) You acknowledge and agree that the set-up fee we charge you for your service commences on the start date for that Service and is non-refundable unless we are unable to provision the Service you have requested.
- (b) If your account for the Service is terminated and monies are owed to you by us (for example, for the unexpired portion of any Fee paid in advance by you), you agree that we may deduct any outstanding Fees on final settlement of your account and state on your final invoice (as applicable) the amount credited to you or the amount you must pay to us.
- (c) You may elect to claim a refund for any amount credited on your final invoice or apply the credited amount to another service we may supply to you by notifying us within 90 days after you receive our final invoice.

#### 5.12 We may ask for a prepayment

- (a) If we have reasonable grounds to believe that you may be a credit risk, we may request that you pay in advance the estimated cost of using the Service for an invoice period.
- (b) We may decline your Application or cancel, suspend or disconnect the Service if you do not provide the prepayment in advance when requested to do so in accordance with clause 5.12(a).
- (c) If we cancel or disconnect all of the Services, we will return to you that portion of the prepayment that is not required to meet any outstanding Fees.

5.13 If you dispute our invoices

- (a) Subject to clause 5.13(b), if you dispute an invoice or claim a refund for overpayment of any Fees under the Agreement you should do so within 5 months of the date of the invoice to which the disputed amount or alleged overpayment relates.
- (b) Nothing in 5.13(a) limits your right to issue proceedings in relation to a disputed invoice or alleged overpayment.

5.14 Your obligations if we cancel, suspend or disconnect your service for non-payment

If we cancel, suspend or disconnect the Service for non-payment, you will still be required to pay us all Fees and any other amounts you owe us, and you will remain liable for other liabilities which are incurred before the date of cancellation, suspension or disconnection of the relevant service.

5.15 No Set off

Unless we agree otherwise in writing, you must you must pay all amounts owed under the Agreement without any set off, counterclaim or deduction.

**6. TRANSFER OF YOUR SERVICE**

6.1 Transfer

If you ask us to transfer any Service to another supplier, you are still required to pay us, by the applicable due date, any amount payable in relation to the supply of that Service up to the date on which we transfer those Services to another supplier.

6.2 Termination of services on transfer

The provision of Services ends on the date on which we transfer your services to another supplier.

6.3 Invoicing

We will endeavour to invoice you for Fees incurred in relation to Services that you transfer to another supplier within the next normal billing period. If, after that time, we become aware of other Fees or amounts (including Fees payable to any other supplier) for those Services up to the date of transfer, or we resolve any dispute so that any liability relating to those services is quantified and payable by you, then you will pay us all such amounts within 7 days after you receive our invoice for them.

**7. PERSONAL INFORMATION**

7.1 Consent to collection and use

You:

- (a) consent to us obtaining, using and disclosing your personal information for any of the purposes specified in this clause 7; and

- (b) acknowledge that we may not be able to provide you with the Services, or may limit the Services or credit we provide you, if you:
  - (i) choose not to provide all or part of the personal information we request (which will include date of birth); or
  - (ii) provide us with false personal information.

## 7.2 Use of personal information

- (a) You authorise us to collect and use personal information (including details of your account and information relating to the use of your service) which you give us in connection with the Services we provide you. You also authorise us to disclose your personal information to our third party suppliers, our agents, debt collectors, Credit Reporting Bodies and our contractors and use that information for the purpose of managing your account or as otherwise necessary to fulfil our obligations under the Agreement.
- (b) In particular, you acknowledge and agree that we will use your personal information for the following purposes:
  - (i) to identify you and to assess your Application;
  - (ii) to supply the Services and equipment to you (including to investigate and resolve disputes relating to any services and equipment we provide you);
  - (iii) to issue you with invoices and to collect Fees and any other amounts you owe to us under or in connection with the Agreement;
  - (iv) to prevent fraud or any other unlawful activity; and
  - (v) for all other purposes reasonably necessary to provide the Services to you.
- (c) You consent to us disclosing your personal information:
  - (i) to other suppliers for the purpose of enabling us to provide the Services and equipment to you;
  - (ii) to Credit Reporting Bodies for the purposes referred to in clauses 7.3 and 7.4;
  - (iii) to anyone to whom we are permitted to assign or transfer the Agreement in accordance with clause 18.2;
  - (iv) to government agencies, law enforcement authorities and other persons as required by law;
  - (v) to any other person, where you have given us your consent to do so.

- (d) We are required by law to provide details about you, such as your name, address, telephone service number and other public number customer details to the manager of the Integrated Public Number Database (**IPND**) for the Approved Purposes. Unless you specify otherwise in your application:
  - (i) your telephone service number for a fixed or landline service will be recorded as a 'listed number'; and
  - (ii) your telephone service number for a mobile service will be recorded as an 'unlisted number'.
- (e) You must immediately notify us of any change to your IPND data and you may request changes to the listing status of your service.

### 7.3 Consent to credit check

- (a) You acknowledge and agree that we may disclose your personal information (in our possession, whether collected by us from you or obtained from a third party) to a credit reporting agency for the purposes of providing the Services to you.
- (b) For the purposes of clause 7.3(a), **personal information** means:
  - (i) particulars of your identity, such as your name, gender, address (and previous two addresses), date of birth, the name of your employer and your driver's licence number;
  - (ii) your application for commercial credit (including the amount requested);
  - (iii) the fact that we are a current credit provider to you;
  - (iv) information that, in our opinion, you have committed a serious credit infringement, including:
    - (A) by conduct which is fraudulent or shows an intention not to comply with your credit obligations;
    - (B) an undisputed account is overdue by more than 60 days, where we have started debt collection action against you;
    - (C) cheques drawn by you or debits from your bank account or credit card have been dishonoured more than once; and
  - (v) advice that accounts are no longer overdue in respect of any default that has been listed.
- (c) The information specified in clause 7.3(b) may be given to a credit reporting agency before, during or after we give you credit.

### 7.4 Use of credit report

You acknowledge and agree that:



- (a) a credit report which contains personal information about you may be given to us by any credit reporting agency for the purpose of either helping us to assess your creditworthiness or in collecting payments that are overdue;
- (b) we may disclose a credit report or other report relating to you and any personal information derived from that report, to any other credit provider for any of the following purposes:
  - (i) for us to assess or for the other credit provider to assess your creditworthiness;
  - (ii) for us to or the other credit provider to collect payments that are overdue under the agreement; or
  - (iii) for the exchange of information between us and the other credit provider for the purposes referred to in clauses 7.4(b)(i) and 7.4(b)(ii).
- (c) the information which may be exchanged under clause 7.4(b) may include anything about your credit worthiness, credit standing, credit history or credit capacity that credit providers are permitted to exchange under the Privacy Act; and
- (d) an insurer may obtain a credit report about you for the purpose of assessing whether to provide trade insurance to us in connection with commercial credit.

#### 7.5 Access to information

You may request access to any personal information that we hold about you. If you make this request, we will give you access to most personal information that we have about you (once we have verified your request is in good faith). In some cases that will not be possible, in which case, we will explain our reasons to you.

#### 7.6 Compliance

To the extent that you provide us with personal information that you have collected or accessed for the purposes of receiving the Services, you must comply with all Laws, including the Privacy Act. You must keep adequate records in respect of personal information that you collect, store, use and disclose under the Agreement so that we can determine whether you are complying with your privacy obligations under the Agreement and under Law. You must also give us access to such records at our request.

#### 7.7 Indemnity

You warrant that any personal information that you provide to us is complete and accurate and agree to indemnify us against any Claim, made against us or incurred by us, which relates to your failure to comply with your obligations under this clause 7. This clause survives the termination or expiration of the Agreement.

### 8. **CONFIDENTIALITY**

#### 8.1 Confidential information

We retain all rights (including intellectual property) in any information we provide to you relating to the equipment, the Services or to the provision of the Services which, by its nature or the circumstances of its disclosure to a recipient, is or could reasonably be expected to be regarded as confidential (**confidential information**).

## 8.2 Protecting confidentiality

- (a) Other than as permitted under clause 8.2(b) you must not:
  - (i) use the confidential information for any purpose that we do not authorise in writing, nor in any manner that may cause us loss, whether by way of damage to our reputation, financial loss or otherwise;
  - (ii) disclose confidential information to any third party nor allow any written or electronically recorded confidential information to be copied or disclosed to a third party without our consent.
- (b) You may disclose the confidential information:
  - (i) which is required to be disclosed by Law, provided that you have given us prior notice where practicable; and
  - (ii) to your professional advisers, provided that the recipients of such Confidential Information are subject to obligations of confidentiality.

## 9. YOUR OBLIGATIONS AND WARRANTIES

### 9.1 Compliance

You must not use your service other than in accordance with the Agreement including our Fair Use Policy, laws, and obligations applicable to the Services and their use.

### 9.2 Obligations

- (a) We, or our third party suppliers, may take any steps deemed necessary in order to comply with the Law or a direction from a relevant Government Authority, including:
  - (i) intercepting communications made using a service; and
  - (ii) monitoring and retaining data accessed or transmitted by you while using the Service.
- (b) You must not do or allow to be done any of the following:
  - (i) breach any Law, including laws prohibiting spam;
  - (ii) obtain or attempt to obtain unauthorised access to or control of any other computer or network;
  - (iii) scan ports on other computers or otherwise probing them for means of access or vulnerabilities;

- (iv) spread (either deliberately or through lack of reasonable care) any virus, trojan horse or other harmful action; or
  - (v) use any software provided to you by us or a third party supplying in breach of your licence terms.
- (c) Unless and to the extent that we have otherwise specifically agreed, you must not resell the Service, nor to establish, maintain or permit multiple concurrent connections to the Service, nor connect the Service to a local area network, except if the Service is designated by us as one which supports use of a local area network.
- (d) Unless and to the extent that we have otherwise specifically agreed, you are required at your own expense to provide and maintain the modem and all other customer equipment and equipment necessary for the Service.
- (e) You acknowledge and agree (to the extent permitted by law) that:
- (i) we have no control over the accuracy or appropriateness of any information on the internet;
  - (ii) we are not responsible for any software or data available on the internet;
  - (iii) continuity and speed of access to the internet depend on a wide range of factors, many of which are beyond our control;
  - (iv) if we give you technical or other support or advice regarding any matter which is outside our direct responsibility under the Agreement, we do so only in an attempt to assist you and without incurring any liability other than any which cannot lawfully be excluded.

### 9.3 Internet security

You acknowledge and agree that:

- (a) any access to the internet involves security risks and that new threats to Internet security are continually evolving; and
- (b) you must maintain your own security and acknowledge that we have recommended that you should at a minimum:
  - (i) use and keep current anti-virus software and firewall;
  - (ii) protect your user identity, email address and password;
  - (iii) appropriately restrict access to equipment;
  - (iv) not accept emails or files if they are from an unknown source;
  - (v) protect users from unsuitable internet content;
  - (vi) ensure that you keep up to date on Internet security issues; and

- (vii) avoid unexpected data fees or shaping by regularly monitoring how much data you use.

#### 9.4 Warranties and acknowledgements

You warrant and acknowledge that:

- (a) you do not own or have any legal interest in any of our intellectual property or in any telephone number, IP address, domain name, personal identification number or other locator or identifier issued by us to you; and
- (b) the information supplied by you in relation to the Agreement is true and correct. You will promptly inform us of any changes to this information; and
- (c) you have the power to enter into the Agreement and has obtained all necessary consents and approvals do to so.

#### 10. **USE OF SERVICES**

You must:

- (a) reasonably co-operate with us to allow us, or our third party suppliers, to establish and supply the Service to you safely and efficiently. In particular, if your equipment has inadequate capacity in or your use of the Service interferes, or in our opinion threatens to interfere, with the efficiency of any network used in the supply of the Services, you must follow our directions or the directions of the relevant network operator on how to end or avoid that interference;
- (b) not connect or maintain a connection to a facility used in connection with the supply of Services to you or other parties that does not comply with technical codes, standards or regulations made under the Telecommunications Act, any declaration or other requirement of the ACMA or any code, standard or guideline published by Communications Alliance Ltd;
- (c) ensure the Services are used solely for their intended purpose;
- (d) notify us immediately of any security breach (suspected or otherwise) regarding the Service or your confidential password or customer login; and
- (e) not permit any other person to resell or purport to resell any service.
- (f) comply with:
  - (i) all Laws;
  - (ii) all directions by a Government Agency including ;
  - (iii) all notices issued by authorisation of or under Law;
  - (iv) our Fair Use Policy; and
  - (v) our reasonable directions.

- (g) not use, or attempt to use, the Service:
  - (i) to break any law or to infringe another person's rights;
  - (ii) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised;
  - (iii) in any way that may expose us to liability; or
  - (iv) in any way which or which may damage, interfere with or interrupt the Service, the QuantumVoip Network or a third party supplier's network used to supply the Service.
  - (v) indemnify us against any claim that we suffer as a result of your use of the Service to commit an offence or otherwise breach this clause 9.4.

## 11. **EQUIPMENT WE OR OUR THIRD PARTY SUPPLIERS SUPPLY TO YOU**

### 11.1 Supplied Equipment

In relation to equipment that we, or our third party supplier, provides a you (**Supplied Equipment**) for use in the provision of the Services (but we do not sell to you):

- (a) the Supplied Equipment remains or our third party supplier's property (as applicable) unless the Supplied Equipment is sold to you;
- (b) risk in the Supplied Equipment passes to you on delivery, at which time you are responsible for you are responsible for any Supplied Equipment from the time when you receive it, including where the Supplied Equipment is lost, stolen or damaged (except where caused by us or our personnel);
- (c) on our request, you must have any Supplied Equipment insured for an amount and on terms reasonably required by us;
- (d) you must not mortgage or grant a charge, lien or encumbrance over any Supplied Equipment and you must not register any interest in the Supplied Equipment under the PPSA and agree that we or our third party supplier may register an interest in the Supplied Equipment under the PPSA;
- (e) you will allow us to and, where applicable, will ensure that the landlord allows us to, remove the Supplied Equipment from the Premises on the expiration or termination of the supply of the Services;
- (f) you will not part with possession of the Supplied Equipment except to us;
- (g) if we are unable to recover the Supplied Equipment, we may recover the value of it as a debt due by you, including offsetting the value of the Supplied Equipment against any monies owed to you by us;
- (h) you indemnify us against any loss or damage to the Supplied Equipment, unless that loss or damage arises from fair wear and tear; and

- (i) you must:
  - (i) not remove or obscure any identification marks on the Supplied Equipment;
  - (ii) comply with our reasonable instructions to protect our ownership of the Supplied Equipment; and
  - (iii) not do anything which might detrimentally affect our ownership of the Supplied Equipment.

## 11.2 Changes to Supplied Equipment

We may, in our sole discretion and at any time, replace any of our Supplied Equipment. If we have agreed to provide a service to you for a Fixed Term, replacement of Supplied Equipment will be subject to our obligations under clauses 4.4 and 4.5.

## 11.3 Access

- (a) You will allow us access to the Supplied Equipment during business hours (or at such other times as we arrange with you), and this right of access will not end until all Supplied Equipment is returned to us, even if the Services have been cancelled.
- (b) We (or a third party supplier) may need access to the Premises from time to time in connection with the provision and maintenance of the Supplied Equipment or a service. If you do not provide such access as we, or a relevant third party supplier, reasonably require, we may limit, suspend, cancel or disconnect your service.
- (c) If you want us to provide a service and that service requires the installation of any facility, equipment or cabling on your premises whether by us or a third party supplier, you must allow us or any relevant third party supplier to:
  - (i) have access to the Premises to install the facility, equipment or cabling; and
  - (ii) install the facility, equipment or cabling on the Premises.
- (d) If you do not own the Premises, you must have the owner's permission and you warrant to us that you do have that permission.
- (e) If we need access to the Premises you must provide us with safe access and indemnify us against any claim by the owner or occupier of the Premises in relation to our entry onto the Premises.

## 11.4 Equipment maintenance

- (a) We may suspend Services for a reasonable period of time to perform maintenance on the Supplied Equipment, provided that in each case, we will use our reasonable endeavours to:

- (i) give you reasonable notice (bearing in mind the urgency and nature of the work) of any interruption to the Services; and
  - (ii) minimise any interruption to the Services.
- (b) If we use any of your facilities or customer equipment to provide the Services to you, you are responsible for the maintenance of your facilities and customer equipment unless we otherwise agree in writing.
- (c) You will ensure that the Supplied Equipment, and any other customer equipment, facilities or connections used in providing services, are not altered, maintained, repaired or connected to, or disconnected from, any power source or line except by service personnel approved by us.

#### 11.5 Power and Electricity

You will make available and be responsible for payment of, an adequate power supply for the operation of any equipment or customer equipment used in the provision of services. If provision of the Service is dependent on the supply of electricity we do not guarantee the supply of the Service where the supply of electricity is either disrupted or discontinued.

#### 11.6 Return of Supplied Equipment

On the termination of supply of the Services for any reason you will immediately return all Supplied Equipment to us, or make it available for collection by us. If you do not return the Supplied Equipment, you must pay to us, on demand, the full retail price of the Supplied Equipment (including the cost of acquiring or renewing any necessary software licences).

### 12. **SUPPLIED EQUIPMENT PURCHASED FROM QUANTUMVOIP**

#### 12.1 Purchased equipment

If we sell to you a facility or any item of equipment (**purchased equipment**) either for use in the provision of the Services to you or otherwise, then:

- (a) legal title and property in that purchased equipment remains vested in us until we receive full payment from you or we otherwise deem in our sole discretion that title has passed to you (prior to the receipt of full payment);
- (b) until we receive full payment from you of the purchased equipment:
  - (i) you will not part with possession of the purchased equipment except to us and if you do part with the purchased equipment in breach of this clause we may recover the value of it as a debt due, including offsetting the value of the purchased equipment against any monies owed to you by us;
  - (ii) you indemnify us against any loss or damage to it, unless that loss or damage arises from fair wear and tear; and

- (iii) you must not remove or obscure any identification marks on it, and must comply with our reasonable instructions to protect our ownership and not do anything which might detrimentally affect our ownership of the purchased equipment.
  - (iv) you must not sell the purchased equipment;
  - (v) in addition to any rights we may have under Chapter 4 of the PPSA, we may, at any time where you have breached your obligations under the Agreement, demand the return of the Purchased Equipment and shall be entitled without notice to you and without liability to you, to enter any premises where we suspect the Purchased Equipment may be located in order to search for and remove the Purchased Equipment without committing a trespass, even though they may be attached or annexed to other goods or land, and for this purpose you irrevocably license us to enter such Premises, undertake that you will procure any necessary authority to enter from any relevant person and also indemnify us from and against all loss suffered or incurred by us as a result of exercising our rights under this 12.1(b)(v). If there is any inconsistency between our rights under this clause 12.1(b)(v) and its rights under Chapter 4 of the PPSA, this clause 12.1(b)(v) prevails.
  - (vi) you acknowledges and warrants that we have a security interest (for the purposes of the PPSA) in the Purchased Equipment and any proceeds described in clause 12.1(b)(v) and you must do anything reasonably required by us to ensure that such security interest is enforceable, perfected and otherwise effective and has the priority required by us which, unless we agrees in writing otherwise, is first priority; and
  - (vii) the security interest arising under this clause 12.1(b)(v) attaches to the Purchased Equipment when you obtain possession of the Purchased Equipment and the parties confirm that they have not agreed that such security interest attaches at any later time.
- (c) You must, at your own cost, insure and keep insured the Purchased Equipment against such risks as a prudent owner of the Purchased Equipment would insure at their full cost price, with a reputable insurance company.

## 12.2 Installation

Subject to agreement between us and you as to which services and/or purchased equipment we install, we will install such services and/or purchased equipment at a Premises nominated by you. We may charge you our current Fees for installing the purchased equipment and/or a service. We will use reasonable endeavours to install the purchased equipment and/or a service on or around the installation date requested by you.

## 12.3 Returns and refunds

Subject to any rights you have under the Australian Consumer Law we do not refund unwanted purchased equipment because you have changed your mind, unless we are required to do so under the Australian Consumer Law.



### 13. CANCELLATION OF SERVICES BY YOU

#### 13.1 Your rights to cancel or terminate

- (a) You may cancel a service by giving us 30 days' notice in accordance with the appropriate process as outlined on our website. If you cancel a service during an applicable Fixed Term for that service, you may be liable to pay an early termination fee in accordance with clause 5.10.
- (b) You may otherwise cancel a service at any time by giving us notice if:
  - (i) you may do so in accordance with clause 4.5;
  - (ii) you may do so in accordance with clause 16.2;
  - (iii) we are in material breach of the Agreement, which is capable of being remedied, but which we have failed to remedy within 30 days after you telling us of that breach; or
  - (iv) we are in material breach of the Agreement and it is something which cannot be remedied, including where there have been prolonged or repeated Interruptions to the Service. This clause does not apply to interruptions which occur because of:
    - (A) a cancellation, suspension or restriction to the supply of the Service due to a Customer Event;
    - (B) a system or network outage for an insignificant period;
    - (C) scheduled maintenance of the QuantumVoip Network or of Supplied Equipment in accordance with clauses 4.2 or 11.4;
    - (D) a fault or other event which may reasonably be attributed directly or indirectly to your equipment; or
    - (E) your acts or omissions.
- (c) If you cancel a service for any of the reasons set out in clause 13.1(b):
  - (i) you will not be liable to pay an early termination fee (provided that we can recover any outstanding Fees incurred up to the date on which the Agreement ends and any outstanding amounts that cover installation costs or equipment where such equipment can be used in connection with services provided by other suppliers); and
  - (ii) you will be entitled to a refund of the unexpired portion of any amounts you have paid in advance for the Service in accordance with clause 5.11.

#### 13.2 Preparation costs

If you request a service from us and cancel that request before we provide the Service, you may be liable to pay us a service preparation costs fee for our costs incurred in preparing to provide the Service. Any cancellation fees imposed by a third-party supplier will be passed directly on to you.

#### 14. **OUR RIGHT TO SUSPEND OR CANCEL A SERVICE**

##### 14.1 QuantumVoip or External Events

We may suspend, limit or cancel a service if:

- (a) if you notify us in accordance with clause 13.1;
- (b) there is an emergency;
- (c) to the extent necessary for us to comply with an order, instruction or request of a regulator, Government Agency, an emergency services organisation or any other competent authority (whether such an order, instruction or request is received or reasonably anticipated by us);
- (d) if we are required to do so by law;
- (e) if the network is being modernised or upgraded;
- (f) if a third party (including any third party supplier) withdraws or suspends a service which means we cannot provide your service;
- (g) during any technical failure, modification or maintenance involved in the Service provided that we will use reasonable endeavours to procure the resumption of the Services as soon as practicable;
- (h) if there are reasonable grounds for believing a threat or risk exists to the security or integrity of the QuantumVoip Network or that provision of the Service may cause death, personal injury or damage to property;
- (i) if we reasonably determine that such action is necessary to repair, maintain or restore any part of the QuantumVoip Network;
- (j) if the provision of the Services by us does or may contravene any law or we have reasonable grounds to believe that it may in the immediate future contravene any law;
- (k) a Force Majeure Event prevents us from supplying the Service in accordance with the agreement for 30 days; or
- (l) if your service has not been used or accessed for a continuous period of 24 months;

(Each of the events listed above referred to as an QuantumVoip **or External Event**)

##### 14.2 Customer Event

We may also suspend, limit or cancel a service if:

- (a) we reasonably suspects fraud or other illegal activity by you or any other person in connection with the Service;
- (b) we have the right to do so in accordance with clause 5.7 for your failure to pay Fees or other amounts;
- (c) you breach a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and you either cannot remedy that breach or you fail to remedy that breach within thirty (30) days after we give you notice requiring you to do so;
- (d) if you are a partnership, the partnership is dissolved or an application is made to dissolve the partnership, and we reasonably believe we are unlikely to receive payment for amounts due under the agreement;
- (e) we are otherwise entitled to do so under the Agreement or under the Fair Use Policy;
- (f) you vacate the premises to which we have been supplying a service to you;
- (g) we are unable to enter the premises to inspect, repair or maintain any equipment or cabling connected with a service provided to you;
- (h) you do not provide prepayment as required by us in accordance with clause 5.12;
- (i) you fail to rectify any defect or inadequacy in any customer equipment or cabling not owned or maintained by us within 30 days after we give you notice requesting that you do so;
- (j) your use of the Services interferes with the efficiency of the QuantumVoip Network or a third party supplier's network and you fail to rectify the situation within 24 hours after we give you notice requesting that you do so;
- (k) if you do, or allow to be done, anything which in our reasonable opinion may have the effect of jeopardising the operation of any service;
- (l) you become a carrier or carriage service provider within the meaning of the Telecommunications Act;
- (m) you become bankrupt, insolvent or have a receiver, manager, administrator or liquidator appointed over you or any of your assets;
- (n) we have reasonable grounds for believing you are a credit risk, including the following grounds:
  - (i) your usage of the Service is unusually high when compared to previous account activity and you fail to respond to notices from us about that usage (but you acknowledge that we are not obliged to monitor usage of a service, or to suspend, limit or cancel a service if there is unusual usage, and you remain liable to us for usage of that service);

- (ii) you fail to pay an invoice by the due date and have a payment history indicating late payments, dishonoured payments or failures to pay, or you fail to pay or replenish a security bond as required by clause 14.4(b); or
- (iii) we become aware of public notices of your pending bankruptcy, winding up or other insolvency events,
- (iv) if you abuse or harass our staff or our contractors in the conduct of their duties, or if you threaten to harm, attempt to harm or cause actual harm to QuantumVoip staff, our contractors or property.

(Each of the events listed above referred to as a **Customer Event**)

#### 14.3 Cancellation for convenience

We reserve the right to cancel any service:

- (a) if there is no Fixed Term specified in your application, at any time by giving you 30 days' notice;
- (b) if a Fixed Term is specified in your application,
  - (i) at any time after the end of the Fixed Term by giving you 30 days' notice; or
  - (ii) during the Fixed Term, if we have your consent; or
  - (iii) during the Fixed Term, if we offer to migrate you to a reasonably comparable alternative service for the remainder of the Fixed Term and take reasonable steps to offset any more than minor detrimental effects of the migration caused by differences between the cancelled service and the alternative service we offer;
- (c) if we reasonably determine that it is not technically or operationally feasible to supply the Service to you, at any time prior to the Service commencement date specified in clause 3(a) by giving you notice.

#### 14.4 Consequences of cancellation, suspension or termination

- (a) Subject to our rights to be paid an Early Termination Fee under clause 13.1(a), if we cancel or suspend the Service if we cancel or suspend the Agreement for a QuantumVoip or External Event, we will not charge you any disconnection or reconnection fee. If your account is terminated as a result of a QuantumVoip or External Event, you will be entitled to a refund of the unexpired portion of any amounts you have paid in advance in accordance with clause 5.11.
- (b) Without limiting any of our rights under the agreement or at law, if we cancel or suspend the Service for a Customer Event, you will be liable to pay a disconnection fee and, if we agree to reconnect the Service, a reconnection fee in addition to your liability to pay all other Fees incurred up to the time of cancellation of the Service. We also reserve the right in these circumstances to

require before reconnection of the Service that you pay a security bond that will be based upon the value of any equipment in your possession that you have not fully paid for and our reasonable estimate of the amount necessary to secure our exposure. We may utilise your security bond to recover any amounts payable by you to us or to compensate ourselves for any loss, liability or expense suffered or incurred by us as result of any breach of the agreement by you. If we utilise any of the security bond you must replenish the security bond within 7 days after we give you notice requesting that you do so. You are not eligible to earn or accrue interest on the security bond. Unused portions of the security bond will be reimbursed to you within a reasonable time after termination of all services that you have with us.

- (c) If we advise you that we are cancelling your service in accordance with clause 14.3, you will not be liable to pay a disconnection fee, but will be liable to pay all other Fees incurred up to the time we cancel your service.
- (d) If we suspend a service in accordance with the agreement as a result of a Customer Event, you will have to pay all charges arising in respect of the Service during the suspension (excluding usage based charges).
- (e) On termination of a service for any reason, you must immediately:
  - (i) stop using the Service and any equipment owned by us or any third party supplier; and
  - (ii) allow us to remove any equipment owned by us or any third party supplier or any purchased equipment that you have not paid for in full; and
  - (iii) return any confidential information and all copies of it to us or as we otherwise reasonably direct. If you have destroyed all copies, or any of them, you will give us a written declaration to that effect upon demand.
- (f) You remain liable for all Fees payable in respect of services provided to you up to the time of cancellation, suspension or termination.
- (g) Once the agreement has been terminated or cancelled for any reason, we may delete all of your data from any storage media. You are solely responsible for backing up your data.

#### 14.5 Expiration of a Fixed Term or other period

If we have agreed to provide a service to you for a Fixed Term or any other agreed period and that Fixed Term or other period expires and neither you nor we cancel the Service, we will continue to supply the Service to you on a month-to-month basis.

#### 14.6 Connection fees

We may charge you a fee for the reconnection of any service, except where the disconnection was caused by our error or our failure to perform our obligations under

the agreement or was the result of a QuantumVoip or External Events or under clause 14.3.

## 15. LIABILITY

### 15.1 Our liability for property damage, personal injury and death

We are liable to you for:

- (a) any loss, destruction or damage to your tangible property during installation, repair or maintenance of equipment; and
- (b) personal injury (including illness and disability) or death, which is caused by our fault, negligence or fraud.

### 15.2 Our liability for Interruptions to the Service

- (a) Subject to clause 15.2(b) and 15.4(a) we accept liability to you for interruptions to the Service longer than 48 hours from the time of reporting, to the extent of providing you with a pro-rata refund of service charges payable for the duration of the interruption.
- (b) The refund in clause 15.2(a) does not apply:
  - (i) to Interruptions which arise out of:
    - (A) a system or network outage for an insignificant period;
    - (B) scheduled maintenance to the QuantumVoip Network, a third party supplier's network, our equipment or purchased equipment;
    - (C) a cancellation, suspension or restriction to the supply of the Service in accordance with clause 14.2;
    - (D) a Force Majeure event;
    - (E) a fault in your equipment, power supply or Premises;
    - (F) where we have been unable to gain prompt access to the Premises; or
  - (ii) if you are separately entitled to receive compensation in respect of the same Interruption in accordance with clauses 15.3 or 15.4.

### 15.3 Our liability under the Customer Service Guarantee

- (a) This clause 15.3 applies subject to any waiver of your entitlements under the Customer Service Guarantee Standard (the **CSG**) that you have provided to us. It may be a condition of some services that you waive your entitlements under the CSG.

- (b) To the extent that we provide you with a standard telephone service (as defined in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*) and specified enhanced call handling features, our service must comply with the CSG. The CSG sets out minimum performance standards in relation to service connection times, fault repair times and keeping appointments to provide you with a Service. The CSG does not apply to customer equipment or to customers that have more than five telephone services. We will connect services not covered by the CSG within a reasonable time.
- (c) If we do not meet the CSG performance standards, you may be entitled to receive monetary compensation as specified in the CSG. However, there are circumstances in which we may be exempt from meeting those requirements, including if you have agreed to a CSG waiver under the terms of the relevant Critical Information Summary in accordance with Part 5 of the *Telecommunications (Customer Service Guarantee) Standard 2011*, where you unreasonably refuse us access to your premises or if you miss an appointment without giving us reasonable notice. For more information about the CSG, go to the ACMA website at [www.acma.gov.au](http://www.acma.gov.au).

#### 15.4 Our liability for breach of Consumer Guarantees and/or other non-excludable rights

- (a) Nothing in the Agreement is intended to have the effect of excluding:
  - (i) any Consumer Guarantees; or
  - (ii) any other applicable Law that cannot be excluded, restricted or modified by agreement of the parties,(collectively **Non-Excludable Rights**).
- (b) Where we are not permitted to exclude our liability for our breach of a Non-Excludable Right but are permitted to limit our liability for such a breach, unless you are able to establish that it is not fair and reasonable for us to do so, our liability to you is limited to:
  - (i) if the breach relates to equipment, the repair or replacement of the equipment, the supply of equivalent equipment or the payment of the cost of repairing or replacing the equipment or supplying equivalent equipment; or
  - (ii) if the breach relates to a service, resupplying the Service or payment of the cost of having the Service resupplied.
- (c) The limitations of liability in clause 15.4(b) do not apply to:
  - (i) a breach of the consumer guarantees relating to clear title, undisclosed securities and undisturbed possession under sections 51 to 53 of Schedule 2 to the *Competition and Consumer Act 2010* (Cth); or
  - (ii) a breach of any consumer guarantee relating to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

## 15.5 Exclusion of liability for Consequential Loss

- (a) To the extent permitted by law, you, we and our third party suppliers have no liability to each other for any for Consequential Loss (other than loss resulting from our breach of a Non-Excludable Right).
- (b) To the extent permitted by law, we and our third party suppliers have no liability to you or any other person for
  - (i) any loss or damage suffered by you in connection with the agreement or the Service to the extent that your acts or omissions or any customer equipment cause or contribute to that loss or damage;
  - (ii) any loss to the extent that it results from your failure to take reasonable steps to avoid or minimise your loss; and
  - (iii) acts, omissions or defaults of any third party or any person who provides goods or services directly to you for use in connection with a service.

## 16. **FORCE MAJEURE**

### 16.1 No liability

Subject to our obligations under the CSG as described in clause 15.3 and any Non-Excludable Rights you may have, we are not liable for, and will not be deemed to be in breach of the agreement for any of the following occur as a direct or indirect result of a Force Majeure Event:

- (a) any delay or hindrance in, or failure to, install a service;
- (b) any delay or hindrance in, or failure to, to correct any fault in a service;
- (c) failure to provide a service or the incorrect operation of any service;
- (d) service outages; or
- (e) any default by us under the Agreement.

### 16.2 Termination for Force Majeure

If any delay, hindrance, Interruption or failure to deliver under clause 16.1 continues for more than 30 days after the commencement of the delay, hindrance, Interruption or failure to deliver, then either party may terminate the affected service(s) by notice in writing to the other party.

## 17. **TELEPHONE NUMBERS AND PUBLIC ADDRESSING IDENTIFIERS**

- (a) The *Telecommunications Numbering Plan 2015* (Cth) sets out rules for issuing, transferring and changing telephone numbers. You and we must comply with the Telecommunications Number Plan.



- (b) In addition to telephone numbers, the Service may use other identifiers such as an IP address or domain name (**Public Addressing Identifiers**). You must comply with the requirements of any regulatory authority or other body that administers Public Addressing Identifiers.
- (c) You may continue to use any telephone number we issue to you, except in circumstances where the Telecommunications Number Plan allows us to recover the number from you.
- (d) We are not liable to you if we are required to change, withdraw, suspend or re-assign any Public Addressing Identifier as a result of any direction given by a Regulatory Authority or other body which administers Public Addressing Identifiers. We do not control the allocation of Public Addressing Identifiers.
- (e) You acknowledge and agree that on cancellation of the Service, your right to use a Public Addressing Identifier may cease.

## 18. ASSIGNMENT

### 18.1 Your right to assign

- (a) You may assign your rights under the Agreement (where those rights are assignable) so long as you have our prior written consent.
- (b) You may transfer your obligations under the Agreement if:
  - (i) the person to whom you are transferring the obligations:
    - (A) provides satisfactory proof of identification,
    - (B) meets the eligibility criteria for the Service,

### 18.2 You consent to our right to assign and to novate the agreement

- (a) You agree that we may at any time assign the rights under, and novate the benefits and obligations of, the Agreement (**Novation**):
  - (i) to a related body corporate (being a company in our corporate group);
  - (ii) a third party supplier; or
  - (iii) a purchaser of our business; (a **Transferee**)

and that the Transferee will assume our liabilities and obligations under the Agreement in accordance with clause 18.2(b).

- (b) We, or the transferee, will notify you if a Novation occurs in accordance with clause 18.2(a). We and you agree that, with effect from the date of the notice, the Agreement is cancelled and a new agreement is created on the same terms as the Agreement except that:

- (i) the Transferee replaces us in any capacity under the Agreement as if the Transferee was an original party to the Agreement instead of us; and
  - (ii) the Transferee has no obligations or liability under the Agreement before the date of the notice.
- (c) In addition to our other rights in this clause 18.2, we may assign, transfer or deal with our rights and obligations under the Agreement on terms to which you consent (and you agree not to unreasonably withhold your consent in such circumstances).

## 19. NOTICES

We may satisfy any obligation to give you notice by:

- (a) delivering the information to you in person;
- (b) sending the information by pre-paid post to the address listed in our records for you;
- (c) transmitting the information to the email address listed in our records for you. By applying for the Service, you consent to notices being sent to your email address. It is your responsibility to check your emails and to inform us of the most appropriate email address for receipt of notices or if you do not wish to receive notices via email.

### 19.2 GENERAL

#### 19.3 Governing law

- (a) The Agreement is governed by the laws of the Victoria.
- (b) You and we submit to the exclusive jurisdiction of the courts of the Victoria.

#### 19.4 Subcontractors

We may subcontract any of our obligations under the Agreement.

#### 19.5 No waiver

- (a) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.
- (b) A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- (c) A waiver given by a party in accordance with clause 19.5(a):
  - (i) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and

- (ii) does not preclude that party from enforcing or exercising any other right, remedy or power under the Agreement nor is it to be construed as a waiver of any other obligation or breach.

#### 19.6 Survival

Any provision of the agreement which by its nature is intended to survive termination or expiry of the agreement (including without limitation any exclusion or limitation of liability or indemnity in the agreement) will survive termination or expiry of the agreement for any reason.

#### 19.7 Severability

If a provision in the Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from the Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of the Agreement.

#### 19.8 Further assurances

Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to the Agreement and the transactions contemplated by it.