

## MASTER SERVICES AGREEMENT (February 2021)

This Master Services Agreement (this **MSA**) is made between:

<b>Name:</b>	The Summit Group (Australia) Pty Ltd
<b>ACB/ABN:</b>	127 605 065
<b>Address:</b>	Unit 2, 31-39 Norcal Road Nunawading VIC 3131

(Us, We, Our)

AND

The person/entity outlined in the Service Order received by Us on behalf of the person/entity (You, Your)

### 1. Application of MSA

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- 1.1. This MSA applies to all transactions between Us and You.
- 1.2. In the event of inconsistency between this MSA and any other agreement You may have with Us, this MSA shall prevail.
- 1.3. This MSA shall continue to apply to all transactions between You and Us, until such time that all of the Services provided by Us to You are terminated by either Party in accordance with this MSA.

### 2. Interpretation

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- 2.1. In the context of this MSA, the following terms have the following meanings:

<b>ACMA</b>	means the Australian Communications and Media Authority.
<b>Charges</b>	means any amounts We require You to pay in respect of the Services.
<b>Commencement Date</b>	means the date on which Your Order Form is accepted by Us and provision of Services is commenced.
<b>Confidential Information</b>	means all personal and corporate information

	<p>acquired by a Party (<b>Recipient</b>) from the other Party (<b>Donor</b>) relating to the Donor, including, but not limited to financial, management and marketing information, all research, plans or other documentation, and all other information imparted in discussions or obtained through inspections or by any other method from the Donor or the agents, advisers, consultants, employees or contractors of the Donor. Information already in the public domain is not confidential for the purposes of this MSA.</p>
<p><b>Credit Reporting Agencies</b></p>	<p>means credit bureau reporting services such as, but not limited to, Illion, Equifax, Experian and Dun &amp; Bradstreet.</p>
<p><b>Event of Default</b></p>	<p>means:</p> <ol style="list-style-type: none"> <li>1. if You default in the due and punctual payment of any monies due and owing to Us pursuant to this MSA, including, but not limited to a security deposit, late fees, dishonour fees, interest on unpaid accounts and monthly service fees;</li> <li>2. if default is made by You in the performance or observance of any of the terms of this MSA (whether or not that default is capable of remedy);</li> <li>3. an Insolvency Event; or</li> <li>4. You dealing with Your Personal Property (as defined in the Personal Property Securities Act 2009 (Cth)) in any way which would derogate from Our interest in the said Personal Property as security for amounts due from time to time under this MSA.</li> </ol>
<p><b>Force Majeure</b></p>	<p>means an act of war or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government agency, a failure of a supplier, public</p>

	utility or common carrier or computer disruption due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the party seeking relief.
<b>Insolvency Event</b>	means in relation to a Party: <ol style="list-style-type: none"> <li>1. if a receiver, receiver and manager, trustee, administrator, other controller (as defined in the <i>Corporations Act 2001</i> (Cth)) or similar official is appointed over any of the assets or undertaking of that Party;</li> <li>2. if the Party suspends payment of its debts generally;</li> <li>3. if the Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;</li> <li>4. without limiting the operation of the events referred above, the Party proposes or enters into some other form of insolvency or administration whether formal or informal; or</li> <li>5. if the Party, being an individual, becomes insolvent or bankrupt or commits an act of bankruptcy.</li> </ol>
<b>Intellectual Property</b>	means any copyright, patent, trademark or other form of intangible property right of a Party in relation to property of a Party.
<b>Intellectual Property Rights</b>	means any rights a Party may, at law, have in relation to Intellectual Property.
<b>Interest Rate</b>	means 4% above the rate set out in the <i>Penalty Interest Rates Act 1983</i> (Vic) as varied from time to time.
<b>MSA</b>	means this agreement and any Order Form attached thereto.
<b>Network</b>	means any and all of the following: <ol style="list-style-type: none"> <li>1. Our co-location facilities;</li> <li>2. Our transit services;</li> </ol>

	<p>3. Our equipment/hardware;</p> <p>4. Our network infrastructure, however comprised;</p> <p>5. Third parties' network infrastructure which We lawfully have the right to use;</p> <p>6. Our "telecommunications network" as defined under the <i>Telecommunications Act 1997</i> (Cth).</p>
<b>Order Form</b>	means Our order form, completed and signed by You, requesting that We provide Services to You.
<b>Parties</b>	means both of Us and You.
<b>Party</b>	means a Party to this MSA.
<b>Related Body Corporate</b>	has the same meaning as set out in the <i>Corporations Act 2001</i> (Cth), as amended from time to time.
<b>Schedule</b>	means any Order Form, schedule, appendix or attachment to this MSA, whether such Order Form, schedule, appendix or attachment is incorporated or attached to this MSA at the time of execution of this MSA, or added at a later date.
<b>Services</b>	means any Services supplied by Us to You.
<b>Term</b>	means the term during which We supply You with a Service, the length of such term to be calculated in accordance with the Schedules to this MSA.
<b>Third Party</b>	Any person or entity who is not a Party to this MSA.
<b>Third Party Service Provider</b>	means any Party who is not a Party to this MSA and provides Us with any type of Service.

### 3. Services

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- 3.1. We will provide the Services to You using Our Network on the terms and conditions of this MSA and any Schedules hereto.
  - 3.2. You will use the Services in accordance with this MSA and all applicable laws.
  - 3.3. During the Term, You may order Services or additional Service quantities at any time from Us by submitting an Order Form.
  - 3.4. An Order Form constitutes an irrevocable binding offer from You capable of acceptance by Us and upon acceptance, is binding on the Parties.
  - 3.5. If We accept the Order Form, We shall provide the relevant Service to You on the

terms of the Order Form and this MSA.

#### 4. Our billing and payment cycle

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- 4.1. We will invoice You 1 month in advance for Services.
- 4.2. You must pay for the Services in advance of use, on or before the payment date set out in Our invoice/s, as issued from time to time.
- 4.3. For the avoidance of doubt, our billing and payment cycle operates as follows:

<b>For Services 1 January – 31 January</b>	<b>For Services 1 Feb – 28 Feb</b>	<b>For Services 1 March – 31 March</b>	<b>For Services 1 April – 30 April</b>	<b>For Services 1 May – 31 May</b>
We invoice You for the January Services on 1 December	We invoice You for the February Services on 1 January	We invoice You for the March Services on 1 February	We invoice You for the April Services on 1 March	We invoice You for the May Services on 1 April
You pay Us in advance for January's Services by 31 December	You pay Us in advance for February's Services by 31 January	You pay Us in advance for March's Services by 28 February	You pay Us in advance for April's Services by 31 March	You pay Us in advance for May's Services by 30 April

- 4.4. We may select the billing date for the month, and this is subject to change at any time in Our sole discretion.

#### 5. Our Charges

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##### 5.1. Charges

- 5.1.1. The charges applicable in relation to the Services provided by Us to You are as specified in each Order Form (as amended from time to time).

##### 5.2. Revised Charges

- 5.2.1. If, at any time during the term of this MSA, there is an increase in the cost of providing the Services to You, We may review and modify the Charges and advise You by notice in writing (the **Revised Charges**).
- 5.2.2. The Revised Charges will become the Charges effective from the date that is 7 days after the date of such notice.
- 5.2.3. If We vary the Charges under this Clause, We may require from You an

additional type or amount of security or prepayment, as applicable, to cover the Revised Charges.

- 5.2.4. You hereby agree to provide any additional form or amount of security or prepayment required by Us under Clause 5.2.3 within 7 days of the Revised Charges becoming effective.
- 5.2.5. In the event that You fail to provide an additional form or amount of security or prepayment in accordance with Clause 5.2.4, We may terminate one or more of Your Services immediately without notice.
- 5.2.6. We will not be liable for any loss, damage or inconvenience caused to You as a result of Us exercising the power set out in Clause 5.2.5.

## **6. Payment for Services**

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### **6.1. Payment**

- 6.1.1. You must pay all amounts owing by You under this MSA by an automated payment method (Direct Debit, Visa, Mastercard or American Express) without set-off, counterclaim or deduction.
- 6.1.2. Payments by an automated payment method will be deducted from your account on the Debit Date shown on the invoice issued to You.
- 6.1.3. We are taken to have received a payment from You on the date of deposit as shown in Our bank account statement.
- 6.1.4. Payments made by cheque or direct deposit to Our account will be subject to a \$15 administration fee. Failure to pay the administration fee at the same time as the payment of Our invoice shall result in Interest accruing on the administration fee until paid.
- 6.1.5. Where a credit card debit, or direct bank account debit is rejected by Your bank or Our bank, a dishonour fee of \$55.00 shall apply and be added to Your next invoice with Us. Failure to pay the dishonour fee at the same time as next invoice issued by Us, shall result in Interest accruing on the dishonour fee until paid.
- 6.1.6. In the event that You incur additional fees or interest in accordance with Clauses 6.1.4 or 6.1.5, these charges shall be applied to Your account with Us and any payments received from You will applied in this order:
  - 6.1.6.1. First, to payment of any administration fees;
  - 6.1.6.2. Secondly, to any dishonour fees;
  - 6.1.6.3. Thirdly, to any interest charges; and
  - 6.1.6.4. Finally, to any other Charges, including Your monthly Service

fees.

## **6.2. Time for Payment**

- 6.2.1. You must pay all Charges set out in Our invoice within the period prescribed by Us.
- 6.2.2. If You fail to pay Us the Charges (and any other amounts payable to Us under any other agreement with Us) within this period, You will pay interest on the outstanding amount, at the Interest Rate, which shall accrue daily from the due date for payment until the date payment in full is received by Us.
- 6.2.3. You will be liable to pay Us all expenses (including legal costs and expenses, out of pocket costs and the fees of Our debt recovery agents) incurred by Us in relation to recovering payments due under this MSA or any other agreement You have with Us.
- 6.2.4. In the first month of Services being provided to You, We will issue a pro-rata invoice, reflecting the number of days of Service supplied to You during that first month. Thereafter, We will invoice You monthly in advance in accordance with this MSA.
- 6.2.5. For the avoidance of doubt We may:
  - 6.2.5.1. invoice You in whatever medium We choose (always acting reasonably); and
  - 6.2.5.2. choose to provide invoices to You in email form. In such circumstances You must provide Us on request with a current email address for this purpose and keep Us informed of any changes to such email address.

## **6.3. Security for payment**

- 6.3.1. We may, at Our discretion, at any time prior to, or during the course of this MSA and provision of a Service, request that You provide a cash deposit or credit card as security for payment of any Charges, or as security for the provision of equipment/hardware We have provided to You that is under contract or subject to a credit or instalment plan.
- 6.3.2. You irrevocably authorise Us to make such deductions from Your cash deposit or credit card from time to time as We see fit to meet any Charges which have not been paid by You in accordance with the terms of this MSA.
- 6.3.3. We may, at Our discretion during the course of this MSA and provision of a Service require that You increase Your cash deposit or credit card authority held by Us as security for payment of any Charges, to such amount as

determined by Us.

- 6.3.4. Any deposit requested by Us under this Clause shall be paid by You to Us, within 7 days of such request.

#### **6.4. Default in payment**

- 6.4.1. You agree, acknowledge and irrevocably consent to Us registering any failure by You to pay Our Charges in respect of any Service, or any late payment of such Charges, as a default of credit/payment with Credit Reporting Agencies.
- 6.4.2. You agree and acknowledge that the exercise of Our rights under Clause 6.4.1 may affect Your credit rating and financial position. You release and indemnify Us for any claim against Us in this regard, including any claim for direct or indirect damage or loss to You or any third parties.

#### **6.5. Security on termination**

- 6.5.1. Upon You or Us terminating this MSA in accordance with the provisions herein available to either Party, the balance of any deposit paid pursuant to this MSA, minus any final charges We may make in accordance with this MSA, shall be refunded to You within 30 days.

#### **6.6. Disputed invoices**

- 6.6.1. In the event of a billing dispute, You must lodge a written billing dispute by email to Our accounts team, ([accounts@summitinternet.com.au](mailto:accounts@summitinternet.com.au)), within 7 days of the date of the invoice to which the dispute relates.
- 6.6.2. You must only initiate a billing dispute in good faith and must pay the invoice containing the Charges that are being disputed in full in accordance with this MSA and the terms of each invoice.
- 6.6.3. Nothing in this Clause 6 limits Our rights to commence proceedings at any time to recover amounts owed by You to Us or Our right to suspend or terminate Services in accordance with Our rights under this MSA.

### **7. Service Levels**

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- 7.1. The Service levels for each of the Services are set out in the applicable Schedule to this MSA.
- 7.2. Failure to achieve the Service level targets does not automatically entitle You to a rebate or refund.
- 7.3. Failure to achieve the Service levels for any Service shall be recompensed on the terms set out in the applicable Schedule.



- 7.4. Each Service obtained by You from Us is a separate Service subject to the terms of this MSA and the terms of the Order Form. Failure to supply a Service (in part or in full) by Us or meet performance targets in relation to specific Service does not constitute a failure or breach of this MSA or of all Services provided to You.

## **8. Legal Interception**

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- 8.1. The Parties acknowledge their respective obligations under the *Telecommunications Act 1997* (Cth) and the *Telecommunications (Interception and Access) Act 1979* (Cth) and shall perform such obligations at all times as required by law.
- 8.2. You acknowledge that to the extent permitted by law, We may intercept communications over the Service without Your consent.
- 8.3. You acknowledge that without prior notice to You, We may filter both email delivery for spam to accounts hosted by Us, and email transmitted for spam from accounts hosted by Us. Due to the nature of spam filtering software, We cannot guarantee that all spam, either incoming or outgoing, will be filtered and that all non-spam will not be filtered. You will need to monitor filtered email regularly.

## **9. Service Updates**

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- 9.1. Notwithstanding anything to the contrary contained in this MSA, We may in Our sole discretion, giving 7 days' notice to You, vary any Service provided to You in the following circumstances:
- 9.1.1. If, in Our reasonable opinion, such a variation or addition is required as a result of a change made by a Third Party Service Provider, in such case, We may do so without reference to You;
- 9.1.2. if, in Our reasonable opinion, the Service needs to be varied or added to in any way from time to time, in such case, We may do so at Our discretion without reference to You, provided the variation does not result in any material deterioration in the quality of the Service.

## **10. Your Responsibilities**

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- 10.1. You must ensure that You comply with the terms and conditions of this MSA.
- 10.2. You must ensure that You comply with all relevant legal and regulatory requirements that may apply to You in relation to this MSA, the Services or any other matters relating to the MSA or the Services.
- 10.3. You must implement and maintain network security at Your site.

- 10.4. You must ensure that any equipment connected to the Service is ACMA approved.
- 10.5. During the Term You will:
  - 10.5.1. adhere to Our operational procedures and technical specifications and any other reasonable directions given by Us in relation to Your obligations under this MSA from time to time;
  - 10.5.2. not do, or permit to be done, any act which damages Our reputation;
  - 10.5.3. not make any representation or give any warranty in relation to the Services that is inconsistent with any written materials supplied by Us;
  - 10.5.4. provide Us with all information, assistance and co-operation reasonably requested by Us;
  - 10.5.5. provide Us with full, free and safe access to Your relevant premises if it is required for Us to repair or restore the Services or Our Network or in order for Us exercise Our rights under this MSA.
- 10.6. You acknowledge and agree that You are responsible for implementing and maintaining the security of Your network and equipment. You are liable to pay all charges (including Charges made by Us or Third Parties) in connection with use of a Service resulting from a breach of Your security.
- 10.7. In order to provide the Service to You, We may need to access to the premises at which the Services are to be connected. You agree to provide Us with, or arrange for Us if required, safe and prompt access to the Premises to:
  - 10.7.1. install any equipment for a Service You have requested;
  - 10.7.2. inspect, test, maintain, modify, repair or replace any equipment; and
  - 10.7.3. recover Our equipment after the Service is cancelled.
- 10.8. We decide the route and technical means to be used to provide the Service. We reserve the right to change the infrastructure used to deliver the Service at any time, so long as this does not adversely affect the performance of the Service or Your use of the Service.
- 10.9. You acknowledge that to the extent permitted by law, We may intercept communications over the Service.
- 10.10. You agree that You are responsible for:
  - 10.10.1. supplying, maintaining and repairing all equipment used in connection with the Service, other than Our equipment, including telephone access lines, fibre optic cables, telephone and computer equipment (including modem) and other access device(s) necessary for Us to provide the Service to You;
  - 10.10.2. compliance with all laws and relevant technical standards issued by a Regulatory Authority in relation to Your equipment; and

10.10.3. the proper functioning and security of Your equipment,  
10.10.4. and You agree to comply with all reasonable directions given by Us in relation to Your Equipment, including:

10.10.4.1. allowing Us to inspect Your equipment; and

10.10.4.2. making any necessary changes or modifications to Your equipment to avoid any danger or interference it may cause to Our equipment or the Service.

10.11. Without limiting any of Our rights, if You do not comply with any of Your obligations under Clause 10, We may disconnect Your equipment from the Service or require You to do so. We will try to give You reasonable notice before disconnection, but may immediately disconnect Your Service in an emergency.

## **11. Our Acceptable Use Policy**

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11.1. You will comply with Our Acceptable Use Policy (the **AUP**). You confirm that You have read and understood the AUP prior to signing this MSA.

11.2. You acknowledge that We may at any time amend the AUP or cancel the AUP and introduce a replacement AUP. We will provide You with 7 days notice of any change to Our AUP and such amendment, cancellation and replacement shall be binding on You on and from the 5 days after notice has been given.

## **12. Fault Management**

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12.1. We may conduct maintenance on any of Our Network, Our equipment, or facilities from time to time. We will try to conduct scheduled maintenance outside normal business hours, but may not always be able to do so. We may also suspend the supply of a Service for this purpose. We may also occasionally update the firmware in Our Network, including that on Your supplied hardware/device, to ensure the Service performs at its optimal level.

12.2. Before reporting a fault to Us, You must take reasonable steps to ensure that the fault is not a fault in any of Your equipment. We are not responsible for rectifying any fault in the Service where the fault is caused by You or Your equipment and the fault does not arise or was not caused by Us or Our equipment.

12.3. During the Term You must report any faults in writing by email to Our Support Team, ([support@summitinternet.com.au](mailto:support@summitinternet.com.au)) or by Telephone (1300049749 or +61388200296). You acknowledge and agree that We will only respond to faults reported in accordance with these procedures.

- 12.4. If You report a fault in the Service and ask Us to come to Your premises to repair it and, once at the premises, We determine (in Our reasonable opinion) that the Service is not faulty or the fault is associated with Your equipment rather than the Service, We may charge You an incorrect call-out fee (as specified in a Schedule) and, if You request Us to repair Your equipment, Our reasonable charges for such repair.
- 12.5. We can charge You for repairing a fault if it is caused by something:
- 12.5.1. You intentionally, recklessly or negligently do (or do not do);
  - 12.5.2. someone else using the Service with Your express or implied authority intentionally, recklessly or negligently does (or does not do); or
  - 12.5.3. someone who You have not authorised to use the Service does, or does not do (but only if that person's unauthorised use of the Service occurs due to an intentional, reckless or negligent act or omission by You).
- 12.6. We reserve the right to charge You at Our then commercial rates for fault restoration Services if We respond to a request from You and We are able to demonstrate that the failure to provide the Service to You was not due to a matter for which We are responsible.
- 12.7. Our fault restoration obligations do not extend to faults caused as a result of:
- 12.7.1. any fault in equipment, software or any network unit which does not form part of the network owned by Us or any of Our Related Bodies Corporate;
  - 12.7.2. damage due to causes external to the facilities used by Us to provide the Service;
  - 12.7.3. interference;
  - 12.7.4. Force Majeure; or
  - 12.7.5. planned outages.

### **13. Acknowledgments**

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- 13.1. You acknowledge that:
- 13.1.1. the internet is not necessarily a secure and confidential method of communication and You transmit material on Our Services and the internet at Your own risk;
  - 13.1.2. We do not and cannot in any way supervise, edit or control the nature, content and form of any material available to be accessed through use of

the Services and that We are not responsible in any way for the nature, content and form of that material, access to that material or use of that material;

- 13.1.3. Will not be responsible for ensuring that any material sent or received by means of the Services is sent or received correctly;
- 13.1.4. neither Us nor a Third Party Service Provider exercises any control over the content accessible through the internet;
- 13.1.5. to the extent permitted by law, We make no representations or warranties as to the effectiveness or fitness for purpose of Our Network security or Your network security. You shall make no claim against Us concerning Our Network security or Your network security;
- 13.1.6. We will not be responsible for any damage that You suffer arising from using:
  - 13.1.6.1. the Service (including, but not limited to, loss of data, delays, non-deliveries, or mis-deliveries); and
  - 13.1.6.2. any content accessed through the Service (including, but not limited to, inaccurate, incomplete or out of date information).
- 13.1.7. You acknowledge that the data retention laws of Australia as amended from time to time shall apply to the Services provided by Us.

## **14. Suspension of a Service**

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- 14.1. Without limiting Our rights, We may suspend the supply of one or more Services with notice (which may be written or verbal) to You if:
  - 14.1.1. It is an emergency;
  - 14.1.2. Directed or required under any applicable law; or
  - 14.1.3. You fail to pay any amount due and payable in accordance with this MSA.
- 14.2. Without limiting Clause 14.1, We may suspend one or more Services by providing 7 days written notice if an Event of Default or a breach of this MSA occurs.
- 14.3. Any suspension of a Service will not prejudice any equitable or legal right of action or remedy which may have accrued or manifested to either Party prior to or after termination of this MSA.

## **15. Term and Termination**

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### **15.1. Term of the MSA**

- 15.1.1. This MSA will commence on the Commencement Date and, unless terminated earlier in accordance with this MSA or the Order Form, will

terminate automatically on termination of all individual Services.

## 15.2. General

15.2.1. Upon termination of this MSA for any reason, each Party shall remain liable for those obligations that accrued prior to the date of termination and obligations that are expressed to survive termination.

## 15.3. Termination by You

15.3.1. You may terminate an individual Service by notice in writing to Us by email to Our accounts team, ([accounts@summitinternet.com.au](mailto:accounts@summitinternet.com.au)) or via our Customer Portal if We materially breach this MSA in relation to that individual Service, and fail to remedy the breach within 14 days of receipt of written notice from You requiring the breach to be remedied.

15.3.2. You are not permitted to terminate all Services being supplied under this MSA to You on account of Us breaching the MSA in relation to an individual Service.

15.3.3. After the Term of the Service has expired, We will continue to provide You with the Service on a month-by-month basis, until You terminate the Service in writing to Us by email to Our accounts team, ([accounts@summitinternet.com.au](mailto:accounts@summitinternet.com.au)) or via our Customer Portal.

15.3.4. You may terminate a Service in accordance with Clause 15.3.3 by giving Us 30 days written notice by email to Our accounts team, ([accounts@summitinternet.com.au](mailto:accounts@summitinternet.com.au)) or via our Customer Portal. We will arrange for the Service to be terminated at the end of the next billing cycle after 30 days' notice has expired.

15.3.5. For the avoidance of doubt, termination on the basis of Clause 15.3.3 shall operate as follows:

<b>You write to us between 1 January - 31 January to terminate Your Service</b>	<b>You write to us between 1 February - 28 February to terminate Your Service</b>	<b>You write to us between 1 March - 31 March to terminate Your Service</b>
Service continues until 28 February	Service continues until 31 March	Service continues until 30 April
You must pay Us for the Service until 28 February	You must pay Us for the Service until 31 March	You must pay Us for the Service until 30 April
Service is terminated at 11:59pm on 28 February	Service is terminated at 11:59pm on 31 March	Service is terminated at 11:59pm on 30 April

## **15.4. Termination or suspension by Us**

### 15.4.1. If:

- 15.4.1.1. You commit an Event of Default;
- 15.4.1.2. You fail to provide to Us any payment method or deposit required under Clause 6.3, within the period specified;
- 15.4.1.3. We believe it is necessary to do so:
  - 15.4.1.3.1. to comply with any law;
  - 15.4.1.3.2. to comply with any order;
  - 15.4.1.3.3. to comply with a request of any government or regulatory body;
  - 15.4.1.3.4. to protect any person, equipment or the Our Network;  
or
  - 15.4.1.3.5. to attend to any emergency;
- 15.4.1.4. We reasonably suspect fraud or other illegal conduct by You or any other person in connection with the Service;
- 15.4.1.5. We reasonably believe a threat or risk exists to the security of the Service or the integrity of Our Network or a Supplier's Network, and that threat or risk is caused directly or indirectly by You;
- 15.4.1.6. You resell the Service or otherwise act as a carriage Service provider;
- 15.4.1.7. We reasonably consider You to be an unacceptably high credit risk;
- 15.4.1.8. We are unable to supply, or continue to supply, You with the Services due to the cancellation, suspension or termination of any agreement with Our suppliers, for whatever reason;
- 15.4.1.9. We are unable to supply, or continue to supply, You with the Services for whatever reason (for example, due to geographical coverage, capacity or technical capability limitations); or
- 15.4.1.10. a Force Majeure Event prevents either Party from performing all or substantially all of its obligations under this MSA (other than an obligation to pay money),

then We may, in Our absolute discretion, and without prejudice to Our other rights and remedies:

- 15.4.1.11. immediately cease, limit or suspend the supply of any Service, temporarily, or permanently, without giving You prior notice; and

15.4.1.12. immediately terminate this MSA (including all Schedules), all individual Services and all orders for Service by notice in writing to You.

15.4.2. We may, but are not obliged to, arrange for the suspension of a Service without notice to You in circumstances where We reasonably suspect that there has been unauthorised use of the Service (including but not limited to, as a result of a hacking incident or fraudulent or illegal use).

## **16. Termination Costs**

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16.1. The termination of any Service provided by Us to You, prior to the expiry of the applicable Term, shall result in an Early Termination Charge (**ETC**) becoming due and payable in accordance with this Clause 16.

16.2. The ETC shall be calculated as:

16.2.1. In the first instance, the amount listed on the Order form or Schedule; or

16.2.2. At Our absolute discretion, 75% of the balance of the Charges applicable to the Service which would have been payable to Us if that Service had continued for the full Term plus any Scheduled Installation Charge; or

16.2.3. At Our absolute discretion, any amount that We remain liable to pay a third party in respect of the Service which We have been unable to resell or resupply to Our other customers.

16.3. The ETC shall be paid by You within 14 days' notice of termination:

16.3.1. Being given by Us to You in writing, in exercise of Our rights under this MSA and any other agreements between Us and You; or

16.3.2. Being given by You to Us in writing, in exercise of Your rights under this MSA and any other agreements between Us and You,

whichever is applicable.

16.4. In addition, all unpaid sums owing by You to Us will immediately become due and payable to Us, and should any amounts owing not be paid within 14 days of the date of termination, You will be liable to reimburse Us for all reasonable legal costs and disbursements incurred by Us in the recovery of such amounts.

16.5. Without prejudice to any other rights under this MSA or at law, if We terminate this MSA in accordance with Clause 15.4 or this MSA prematurely ends because You are in breach of Your obligations under this MSA, it is a condition precedent that Our rights in respect of Your breaches and unfulfilled obligations under this MSA at that time continue, notwithstanding termination of this MSA or any other applicable



agreement with Us.

- 16.6. On termination of this MSA or any individual Service, each Party must immediately discontinue any use of the other Party's Confidential Information (and must return or destroy such Confidential Information if directed to do so by the other Party).
- 16.7. On termination of this MSA or any individual Service which We have provided You hardware in order to deliver that Service, all such hardware must be returned by You to Us, in saleable condition, within 14 days of termination of the MSA or Service, as relevant. Failure to return such hardware in saleable condition with 14 days of termination of the MSA or Service, shall result in the addition of fees to Your account for the replacement cost of such hardware and such fees shall be enforced and recovered from You in accordance with this MSA.

## **17. Our Amendment of this MSA**

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- 17.1. We may amend any part of this MSA, including the Schedules, at any time without Your consent where such amendment:
  - 17.1.1. does not have a material adverse impact upon Your rights under this MSA (in Our reasonable opinion); or
  - 17.1.2. relates to a change to a Service required by Us.
- 17.2. We will provide notice of the change on Our website.
- 17.3. Subject to Clause 17.4, if We make any change to Our MSA that is, in Our opinion, likely to have a detrimental impact on You that is not minor, You may cancel the affected Services by giving notice to Us within 42 days after the date We provide notice of the change to the MSA on Our website. You will not incur any break fee, ETC or other charges as a result of a cancellation in accordance with this Clause, other than:
  - 17.3.1. usage based charges or other variable charges incurred up to the date of cancellation; and
  - 17.3.2. installation and upfront fees charged by Us, reduced pro-rata to the period of the Term remaining at date of cancellation; and
  - 17.3.3. cost of equipment We have provided to You that You have not paid for.
- 17.4. We do not need to give You notice of Our proposed changes or give You a right to cancel the Service under Clause 17.3 in relation to:
  - 17.4.1. urgent changes We are required to make:
    - 17.4.1.1. by law;
    - 17.4.1.2. for security reasons; or

- 17.4.1.3. for technical reasons necessary to protect the integrity of Our Network;
  - 17.4.2. the introduction of a new charge or an increase in an existing charge:
    - 17.4.2.1. due to an additional tax or levy imposed by law; or
    - 17.4.2.2. for ancillary Services such as credit card transaction fees and direct debit charges (provided We have offered You a reasonable alternative at the same or lesser cost to the original charge);
  - 17.4.3. increases in charges due to increases imposed on Us by other Suppliers for the following types of Services and charges:
    - 17.4.3.1. international carriage Services (including for voice and data Services) the current rates for which are available on Our Website;
    - 17.4.3.2. 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;
    - 17.4.3.3. for calls made to satellite Services; and
    - 17.4.3.4. a change to or removal of any special feature of Your Service that is not expressly referred to in the relevant Service description and is no longer available or supported.
  - 17.4.4. Where practicable to do so, We will give You reasonable notice of the changes referred to in this Clause.
  - 17.4.5. If We reasonably consider that a change to any term of Our MSA is likely to benefit You or have a neutral impact on You, We can make the change immediately and do not need to tell You before making the change.
- 17.5. Each Party represents and warrants to the other Party that:
  - 17.5.1. it has full power and all necessary rights to enter into this MSA and to perform its obligations according to the terms of this MSA; and
  - 17.5.2. none of the following has occurred nor is subsisting or threatened:
    - 17.5.2.1. the appointment of an administrator or Trustee to the Party;
    - 17.5.2.2. any step taken for the bankruptcy, winding up, dissolution, or administration of the Party or the Party entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
    - 17.5.2.3. the Party being (or taken to be under applicable legislation) unable to pay its debts, other than as the result of a failure to pay

- or a debt or claim the subject of a good faith dispute;
  - 17.5.2.4. the Party stopping or suspending, or threatening to stop or suspend, payment of all or a class of its debts; or
  - 17.5.2.5. the appointment of a trustee, receiver, receiver and manager, administrator, receiver or similar officer to any of the assets and undertakings of the Party.
- 17.6. Where You are acting in the capacity as trustee of a trust, You warrant, both as trustee of the trust and in Your own right, as follows:
- 17.6.1. the trust has been validly created and in existence as at the date of this MSA;
  - 17.6.2. the Trustee is empowered by the trust deed:
    - 17.6.2.1. to enter into and perform this MSA and to carry on the transactions contemplated by this MSA; and
    - 17.6.2.2. to carry on its business as now conducted or contemplated and to own its assets (including any asset purported to be charged or mortgaged by it),
    - 17.6.2.3. in its capacity as trustee of the trust. There is no restriction on or condition of its doing so;
  - 17.6.3. all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the trust deed for it to enter into and perform this MSA;
  - 17.6.4. You are the sole trustee of the trust;
  - 17.6.5. no property of the trust has been re-settled or set aside or transferred to any other trust;
  - 17.6.6. the trust has not been terminated, nor has any event for the vesting of the assets of the trust occurred;
  - 17.6.7. the trustee's right of indemnity out of, and lien over, the assets of the trust has not been limited in any way and the trustee has no liability which may be set off against that right of indemnity;
  - 17.6.8. the trust deed complies with all applicable laws; and
  - 17.6.9. the trustee has complied with its obligations and duties under the trust Deed and at law and no one has alleged that it has not complied.

## **18. Liability and Indemnity**

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- 18.1. You indemnify Us and Our Related Bodies Corporate, and will keep Us and Our Related Bodies Corporate fully indemnified, from and against any losses, damages,

costs and expenses (including legal costs assessed on a solicitor client basis, disbursements and out of pocket costs) which We and Our Related Bodies Corporate may suffer or incur arising out of or in connection with an action or claim brought by You or a Third Party against Us or Our Related Bodies Corporate which relates to or arises out of Your use of the Services including, without limitation, as a result of:

18.1.1. the transmission of any illegal, fraudulent or offensive material by You;

18.1.2. any breach of this MSA by You; or

18.1.3. any wilful, unlawful or negligent act or omission by You.

18.2. We shall not be liable for consequential loss or damage which may arise in respect of the Services or for loss of data, loss of, or claim for, revenue, profits, actual or potential business opportunities or anticipated savings or profit, whether direct, indirect, economic, consequential howsoever arising by way of act or omission in contract or in tort, including where Our negligence is involved or We are vicariously liable, unless such liability cannot be excluded under the Australian Consumer Law. You hereby agree to release and indemnify Us to that extent.

18.3. We do not warrant that the Services will be free of interruptions, delays, faults or errors. We will not be responsible for any loss or damage to You that may result from any interruptions, delays, faults or errors in the supply of the Services.

18.4. All terms, conditions and warranties that may be implied into this MSA, statutory and otherwise, relating to the provision of the Services by Us are excluded to the fullest extent permitted by law.

18.5. Our liability for breach of any term, condition or warranty, or under any remedy implied by law, which cannot be lawfully excluded, will be:

18.5.1. limited (if permitted by law), at Our option, to the repair or re-supply of Services or the payment of the cost of having the Services re-supplied; and

18.5.2. reduced to the extent that such liability is caused by Your negligent acts or omissions or a breach by You of the terms of this MSA or any other agreement with Us.

18.6. Without limiting Clause 18.5, the aggregate liability of Us and Our Related Bodies Corporate for all direct, indirect and consequential losses, damages, costs, expenses, actions and claims arising out of, or otherwise in connection with, this MSA, whether based on an action or claim in contract, equity, negligence, intended conduct, tort or otherwise, is limited to the total fees paid by You for the affected Service in the 3 months preceding the relevant cause of action occurring or, if there are more than one causes of action, the last cause of action accruing.

- 18.7. We and Our Related Bodies Corporate have no liability to You for:
- 18.7.1. the acts or omissions of any Third Party, including the suppliers which have been engaged by Us for the purpose of supplying or maintaining a Service supplied to You under this MSA;
  - 18.7.2. faults or defects in Services which are caused by Your own conduct;
  - 18.7.3. faults or defects that arise in telecommunication services provided to You other than under this MSA (even if they are connected with Our consent to Services which We have supplied under this MSA);
  - 18.7.4. any loss of revenue or profits, loss of data, loss of bargain and damage to reputation or for any form of indirect or consequential loss, whether in respect of breach of contract, equity, negligence, intended conduct, tort or otherwise, arising out of, or in connection with, the provision of the Services or this MSA;
  - 18.7.5. faults or defects in the Services that arise due to equipment or cabling owned or leased by You or otherwise in Your control; or
  - 18.7.6. faults or defects in the Services that arise due to failure by You or any Third Party (other than a contractor or agent engaged by Us) to appropriately maintain any equipment or cabling relevant to the supply of the Services.

## **19. Intellectual Property Rights**

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- 19.1. Acquiring Services from Us does not give You any ownership or other property rights in or to Our Network or Us.
- 19.2. Any Intellectual Property Rights owned by either Party prior to the Commencement Date, or developed independently of this MSA by either Party, will continue to be owned by that Party, as the case may be.
- 19.3. We either own the Intellectual Property Rights in the Service(s) provided to You, or where We use any Intellectual Property Rights belonging to anyone else, We have a licence to do so.
- 19.4. You acknowledge that none of Our Intellectual Property Rights are transferred to You. You further acknowledge that unless specifically authorised by this MSA, You cannot, and will not, use or reproduce such Intellectual Property Rights.
- 19.5. All Intellectual Property Rights in any improvements or changes to any Service devised or made by anyone during the time We are providing the Service to You, belong to Us.

## **20. Dispute Resolution**

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- 20.1. In the event that a dispute arises between You and Us, such dispute shall be resolved in accordance with our Complaints Process (as varied from time to time), which is available on Our website.

## **21. Related Bodies Corporate**

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- 21.1. We may provide the Services to You through the use of any of Our Related Bodies Corporate and invoice You via Our Related Bodies Corporate.
- 21.2. You acknowledge that any debt You owe under this MSA is a debt owed to Us and that We may take any necessary action in relation to any such debt, notwithstanding that the right or obligation giving rise to that debt has been satisfied by a Related Body Corporate of Us or that the invoice for that debt has been provided to You by a Related Body Corporate of Us.

## **22. Notice Provisions**

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- 22.1. Any notice, consent or other communications given or made to a Party under the Agreement must be in writing and delivered or sent by email, pre-paid ordinary post or facsimile transmission to the address or facsimile number of the Party as last or reasonably known to either Party.
- 22.2. Proof of posting by pre-paid or ordinary post shall be deemed receipt within 6 days after posting.
- 22.3. Proof of dispatch by facsimile is proof of receipt upon production of a facsimile report by the machine from which the facsimile is sent.
- 22.4. Proof of delivery by email is proof of receipt upon production of a delivery confirmation report appearing on the sender's computer except where the sender's computer indicates delivery has not been effected in which case delivery shall be deemed not to have been effected.

## **23. Australian Consumer Law**

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- 23.1. Notwithstanding anything contained in this MSA, or any other document or agreement between Us and You, We acknowledge that this MSA and relationship between Us and You is subject to the *Competition and Consumer Act 2010* (Cth).
- 23.2. The provisions of this MSA, where in conflict with the *Competition and Consumer Act 2010* (Cth) shall be read down to the extent required by operation of the provisions of

*Competition and Consumer Act 2010 (Cth).*

- 23.3. Our goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law and We do not purport to exclude or attempt to exclude such guarantees.
- 23.4. The goods supplied by Us to You are subject to a manufacturer's guarantee. Under the manufacturer's guarantee, You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The manufacturer is best situated to assess and remedy any defect in goods supplied by Us and We will use Our best endeavours to assist You to liaise with the manufacturer in enforcing Your consumer rights and any applicable guarantees, in addition to any guarantees or rights You may have directly with Us.
- 23.5. In relation to Our obligations to You, You are entitled to a replacement or refund for a major failure if the goods supplied by Us fail to be of acceptable quality. You are also entitled to have those goods repaired or replaced if those goods fail to be of acceptable quality and failure does not amount to a major failure.
- 23.6. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage as a result of a major failure.
- 23.7. Our Services and Equipment shall be rendered with all adequate due care and skill, as required by the *Competition and Consumer Act 2010 (Cth)* and shall be fit for the purposes disclosed by You to Us and delivered within a reasonable time.
- 23.8. Our statutory obligations do not extend to the following situations:
- 23.8.1. where goods become of an unacceptable quality due to Your actions or failure to take actions; or
- 23.8.2. where You have failed to disclose the purpose for which the goods are to be used, or have misrepresented the purpose for which the goods are to be used.
- 23.8.3. Where goods purchased through Us are subject to a manufacturer's extended warranty, We, to the greatest extent possible, exclude all statutory obligations of Us in relation to the period which the initial manufacturer's warranty/guarantee is extended by the extended guarantee given by the manufacturer.
- 23.9. Where the problem with goods or Services provided by or through Us is not major, We will at Our discretion repair, replace or refund the product or fix the problem with the Service.

## **24. ACMA Consumer Service Guarantee**

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- 24.1. Notwithstanding anything contained in this MSA, or any other document or agreement between Us and You, We acknowledge that the agreement and relationship between Us and You is subject to the *Telecommunications (Customer Service Guarantee) Standard 2011 (Cth)*.
- 24.2. The provisions in this MSA and any other agreement with Us where in conflict with the *Telecommunications (Customer Service Guarantee) Standard 2011 (Cth)* shall be read down to the extent required by operation of the provisions of the *Telecommunications (Customer Service Guarantee) Standard 2011 (Cth)*.
- 24.3. Information about Your rights and entitlements, and information about Our obligations pursuant to the *Telecommunications (Customer Service Guarantee) Standard 2011 (Cth)* is available via the ACMA website. Your rights and entitlements under the *Telecommunications (Customer Service Guarantee) Standard 2011 (Cth)* may vary from time to time, as may our obligations thereunder. A link to ACMA's factsheet in this regard is available on Our website for your convenience.
- 24.4. You agree and acknowledge that, to the greatest possible extent, you waive and forego any rights you may have under the ACMA Customer Service Guarantee, as varied from time to time.

## **25. Personal Properties Security Register**

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- 25.1. Goods supplied to You by Us in relation to any Service provided by Us to You remain the exclusive property of Us and shall not vest in You or Your ownership until such time that either the full Term has expired, the ETC has been paid, or otherwise, by written agreement between the Parties on such terms as agreeable to Us. You hereby charge such goods in Our favour and consent to the registration of a Purchase Money Security Interest being lodged by Us over You, limited to the said goods, until such time that those goods are paid for in full.
- 25.2. To secure payment of all monies for which You are or may become liable to pay to Us:
- 25.2.1. Under this MSA;
- 25.2.2. Under any other agreement or arrangement between the Parties;
- 25.2.3. To secure Our rights in relation to any deposit or security You may or must pay to Us in respect of goods and Services;
- 25.2.4. To secure Our rights to payment of any ETC, whether such ETC has been raised or not,



You hereby charge, as legal, and beneficial owner, all of Your interest in all of Your Personal Property both presently owned by You and that which You may hereafter acquire.

- 25.3. If We (acting reasonably) determine that transactions arising between Us and You contains or is likely to contain a Security Interest for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA**), You agree to provide any information which We (acting reasonably) request and consider necessary for the purposes of:
- 25.3.1. ensuring that the Security Interest is enforceable and perfected; or
  - 25.3.2. enabling Us to apply for any registration, complete any financing ordainment or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by Us; or
  - 25.3.3. enabling Us to exercise rights in connection with the Security Interest.
- 25.4. The Parties acknowledge and agree that:
- 25.4.1. We will be responsible for registering any financing statement in respect of a Security Interest but will give notice of such registration to You upon registration being completed;
  - 25.4.2. upon full payment of all Charges being received by Us and termination of the MSA taking place, We will lodge a financing change statement discharging the Security Interest.
- 25.5. Each Party shall bear their own costs in relation to the registration of any applicable Security Interest or financing statement.
- 25.6. The Parties agree that neither Party is required to disclose any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies.
- 25.7. The Parties agree that the following provisions of the PPSA are excluded to the extent that they apply to the collateral and to the extent that they may be excluded by law for the purposes of section 115(1) of the PPSA:
- 25.7.1. section 125 (obligation to dispose of or retain collateral);
  - 25.7.2. section 130 (notice of disposal), to the extent that it requires Us to give a notice to the Customer);
  - 25.7.3. section 132(3)(d) (contents of statement of account after disposal); and
  - 25.7.4. section 132(4) (statement of account if no disposal).
- 25.8. In this Clause 25, the following terms have the meanings given to them in the PPSA:
- 25.8.1. Financing statement;
  - 25.8.2. Security interest;
  - 25.8.3. Personal Property.

## **26. Miscellaneous**

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### **26.1. Waiver**

- 26.1.1. The waiver by either Party of any breach of this MSA shall not allow the other Party to repeat or continue any such breach nor operate as a waiver of any subsequent breach.
- 26.1.2. The failure of either Party to exercise any right which it may have in the event of a breach of this MSA shall not be deemed to be an abandonment or waiver.

### **26.2. Entire Agreement**

- 26.2.1. The terms and conditions herein, in the attached Schedule, in any Order Form or other written agreement with Us set forth the entire agreement and understanding between the Parties and merges all prior discussions between You and Us, and neither shall be bound by any conditions, warranties or representations with respect to the subject of this MSA and the Services, other than as expressly provided otherwise.

### **26.3. Force Majeure**

- 26.3.1. The non-performance or delay in performance by a Party of any obligation under this MSA is excused during the time and to the extent that such performance is prevented by a Force Majeure event, provided that the Party affected by the Force Majeure event uses its best endeavours to perform as soon as possible its obligations under this MSA.
- 26.3.2. If a Force Majeure Event continues for more than 30 days in relation to a Service, either Party may terminate that Service immediately, by notice in writing to the other Party.
- 26.3.3. If a Force Majeure Event continues for more than 30 days in relation to all Services provided to You, either Party may terminate those Services and this MSA immediately, by notice in writing to the other Party.

### **26.4. Governing Law**

- 26.4.1. This MSA shall be subject to the law of the State of Victoria.

### **26.5. Reading down and severance**

- 26.5.1. If any provision of this MSA is found to be void or unenforceable, that provision may be severed and the remainder of the MSA must be interpreted as if the severed provision had never existed.

### **26.6. Non merger**

- 26.6.1. All obligations of the Parties which expressly preserve or by their nature

survive the expiration or termination of this MSA, shall continue in full force and effect, notwithstanding such expiration or termination.

## **27. GST**

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- 27.1. Any consideration to be paid or provided for a supply made under or in connection with this MSA, unless specifically described in the MSA as “GST Inclusive”, does not include an amount on account of GST (**GST Exclusive Consideration**).
- 27.2. If any supply made or to be made by a Party (**Supplier**) under or in connection with this MSA is a taxable supply, the Supplier may, in addition to the GST Exclusive Consideration, recover from the recipient of that supply (**Recipient**) an amount on account of GST to be calculated by multiplying the GST exclusive consideration for the supply by the GST rate prevailing at the time that the supply is made.
- 27.3. Any additional amount on account of GST recoverable from the Recipient under Clause 27.2, is payable on provision by the Supplier of a tax invoice.
- 27.4. In this Clause 27, words or expressions that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them by that Act.