

# STANDARD AGREEMENT FOR SUPPLY OF SERVICES



## PART A - STANDARD AGREEMENT FOR SUPPLY OF SERVICES

1. Under the Telecommunications Act 1997 (“**Act**”), Australia Internet Solutions Pty Ltd ABN 59076598582 (trading as “AINS Telecom or “AINS”) may, in relation to the supply of telecommunication services (“**Services**”) either:
  - (a) Contract on an individual basis with you where you acquire the Service; or
  - (b) Contract with you by way of a standard form of agreement, the terms and conditions of which will apply to all customers who acquire the Service, unless expressly excluded by a contract with an individual customer.
  
2. The Service is being supplied to you by way of a standard form of agreement (“**Standard Agreement**”).
  - (a) You warrant that:
    - i. the Service is for business or non-profit use (or other use which is not personal, domestic or household use), but not for resale, and has, or will have, an annual spend of \$30,000 or less and did not have a genuine and reasonable opportunity to negotiate the terms of the contract with us; and
    - ii. You are not a Carrier or Carriage Service Provider. You must notify us immediately if you are, become, or operate as a Carrier or Carriage Service Provider. We may cancel or suspend the Service immediately by notice to you if we reasonably believe that you are, become, or operate as a Carrier or Carriage Service Provider, we may enter into an agreement with you for the supply of wholesale services.
  - (b) The Standard Agreement for the supply of the Service, in order of priority, comprises of:
    - i. Any amendments in writing (“**Variation Agreements**”) signed by you:
      - (1) to change one or more term of this Standard Agreement; and/or
      - (2) to add one or more special term(s) to this Standard Agreement;
    - ii. Critical Information Summaries published on our website at [www.ains.com.au](http://www.ains.com.au);
    - iii. A description of the relevant Service, any Service specific terms and conditions and Service Levels, if any (“**Service Description**”);
    - iv. Part B, the general terms and conditions on which we will supply the Service to you (“**General Terms and Conditions**”). These are in addition to any Service specific terms and conditions contained in the Service Description;

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- v. The relevant Application Form or Order Form signed by you requesting the Service (“**Application for Service**”);
- vi. Appendices to in the above documents.

If any of the terms of one document is inconsistent with that of another document, then the document higher on the above list prevails over a lower document.

- 3. The Services the subject of any and all Applications for Service submitted by you to AINS will, unless otherwise agreed between us and you, be supplied by AINS in accordance with the terms and conditions of the Standard Agreement (as may be amended by us from time to time).
- 4. A defined term in the Service Description, the Application for Service or the Service Levels shall, unless expressly defined therein, have the meaning given to that term in the General Terms and Conditions.
- 5. The Standard Agreement for supply of Services commences when we accept your order and continues until you or we cancel the Service as permitted in Part C, Clause 5. We may vary the Standard Agreement at any time without notice. We will notify you of any non-detrimental changes by posting the change on our website. In relation to detrimental changes, you will be notified in accordance with section 480A of the Act.

## PART B - GENERAL TERMS AND CONDITIONS

Capitalised terms used in these General Terms and Conditions have the meanings set out in clause 19.

### 1. General Terms and Conditions

- 1.1 These are the general terms and conditions (“**General Terms and Conditions**”) on which we supply Services.
- 1.2 These General Terms and Conditions form part of the Standard Agreement.

### 2. Provision of Services

- 2.1 We agree to supply and you agree to acquire the Service on these General Terms and Conditions and any specific terms and conditions set out in the relevant Service Description.
- 2.2 You acknowledge that:
  - (a) we may provide the Service using a combination of:
    - (i) the AINS network and AINS owned facilities; and

- (ii) any extended access tails or network or facility supplied by an Other Supplier (including international terrestrial or satellite links) used to complete supply of the Service to you; and
  - (b) you have relied on your own judgement to evaluate the suitability of the Service for the purpose for which you require the Service.
- 2.3 We will use reasonable endeavours to meet your Requested Delivery Date for initial supply of the Service to you but we do not represent or warrant that we will deliver the Service by that date.
- 2.4 You acknowledge and agree that before commencing supply of the Service we may, as reasonably determined by us, need to modify or install equipment and make arrangements with Other Suppliers for the provision of the Service.
- 2.5 You may at any time request in writing a Variation to the Service but we will be under no obligation to vary the Service unless and until we accept such request. Such Variations will be charged at the rates notified to you by us at the time. We may also vary or update the Minimum Term which applies to the varied Service. Unless otherwise agreed in writing by the parties, the Minimum Term applicable to the varied Service will be amended to commence on the earlier of:
- (a) the date on which we first notify you that the varied Service is ready for use; and
  - (b) the date on which you first use the varied Service.
- 2.6 You must comply with any reasonable instructions given by us, and provide all information and assistance reasonably required by us, in order to enable us to comply with any request or direction of a government agency, emergency services organisation or other competent authority for reasons of health, safety or the quality of the Service.
- 2.7 If you re-supply the Services to an end user you agree that you will be responsible for receiving from and responding to, the end user directly in relation to fault reports and other complaints or enquiries about the Services. You are solely responsible for billing, invoicing and collecting payments from that end user in respect of the Services and you will be liable for the Services regardless of the extent to which you are able to recover charges from the end user.

### 3. Service Levels

- 3.1 It is technically impractical to guarantee that the Service will be continuous or fault free. We will use reasonable endeavours to meet the Service Levels and will undertake to provide the Service using all the reasonable skill and care of a competent carriage service provider.
- 3.2 Subject to clause 3.3, if we fail to achieve the relevant Service Levels in any one month, you will be entitled to a rebate of the Recurring Charge for that month, calculated by reference to the percentage rate rebates specified in the relevant Service Level. We will notify you of any non-detrimental changes by posting the change on our website.

In relation to detrimental changes, you will be notified in accordance with section 480A of the Act.

- 3.3 You will not be entitled to a rebate pursuant to clause 3.2 where:
- (a) failure to achieve the Service Levels is caused directly or indirectly by, or arises from or in connection with:
    - (i) a Force Majeure Event;
    - (ii) a Planned Outage;
    - (iii) any act or omission of you or your contractors or other personnel;
    - (iv) variation in the Service caused by a technical features of the Service which may include without limitation packet loss;
    - (v) the exercise of our right to suspend the Service pursuant to clause 6.1;
  - (b) we fail to meet a Conditional Ready For Service Date; or
  - (c) where you have failed to claim any applicable credit and/or rebates from Us within 90 days of the qualifying service fault or rebate triggering event occurring.
- 3.4 Where you report faults with the Service, we will promptly perform, or arrange to be performed, appropriate tests to determine the location and cause of any fault. You must provide all necessary assistance to enable location and repair of any fault which is our responsibility or the responsibility of an Other Supplier whose network the AINS network is interconnected to.
- 3.5 Where we determine, acting reasonably, that there is a fault within the AINS network, we are responsible for correcting the fault.
- 3.6 We are not responsible for any fault which is within the network of any interconnected Other Supplier. We will notify that Other Supplier of the fault and request that the fault be corrected promptly but we will bear no further liability or responsibility.
- 3.7 Where we respond to a fault reported by you concerning the Service and we determine, acting reasonably, that:
- (a) the fault is caused by Your Equipment; or
  - (b) no fault in the Service is found to exist.

We may charge you additional charges calculated by reference to our current standard man-hour rate for time expended.

#### 4. Period of Agreement

- 4.1 This Standard Agreement commences on the day we accept your order and continues until you or we cancel the Service as in accordance with Clause 5 below.

4.2 The Minimum Term of each individual Service commences on the Service Completion Date. After expiration of the Minimum Term, this Agreement continues on a month to month basis unless otherwise determined in accordance with the terms of this Standard Agreement.

## 5. Termination

5.1 We may without liability terminate the supply of the Service or part of the Service to you with immediate effect from the date of service of a notice to you (or with effect from such later date as we may specify in such notice) if:

- (a) you default in the payment of any Charges by the due date and fail to remedy such default within 7 days of written notice from us;
- (b) subject to paragraph (a), you default in the performance or observance of any obligation under this Standard Agreement and, in the case of a breach capable of remedy, you fail to correct that breach within 14 days of written notice from us;
- (c) you are in breach of any licence, permit or authorisation relating to the connection of Your Equipment to the Service Delivery Point or the use of the Service and you fail to remedy such breach within 14 days of written notice from us;
- (d) we reasonably suspect fraud or misuse of the Service on your part; or
- (e) you are in breach of clauses 11.1 or 11.2.

5.2 Either party (“**Affected Party**”) may at any time without liability terminate this Agreement, with immediate effect from the date of service of a notice (or with effect from such later date as the Affected Party may nominate in such notice), if an Insolvency Event occurs with respect to the other party.

5.3 After the expiration of the Minimum Term, either party may terminate this Agreement by giving 45 days written notice to the other. AINS will endeavour to cancel the Service sooner if possible and as instructed by you.

5.4 You will remain liable for all Charges up to the date of termination.

5.5 You may terminate the Service at any time prior to expiry of the Minimum Term by:

- (a) giving to us 30 days written notice of your intention to terminate, provided that such notice does not take effect on any day other than the last day of a calendar month; and
- (b) paying to us an amount calculated by multiplying the Recurring Charge, payable by you under this Standard Agreement, by the remaining months (or part thereof) of the Minimum Term.

5.6 You may Downgrade the Service at any time prior to expiry of the Minimum Term by:

- (a) giving to us giving to us 30 days written notice of your intention to Downgrade the relevant Service, provided that such notice does not take effect on any day other than the last day of a calendar month; and

- (b) paying to us the aggregate of:
  - (i) the reduced Recurring Charge, adjusted as a result of the Downgrade (as determined by us in accordance with our then current rates) for the period from the date of the Downgrade until the expiry of the Minimum Term; and
  - (ii) an amount calculated by multiplying that amount being the difference between:
    - (A) the Recurring Charge which you previously agreed to pay; and
    - (B) the reduced Recurring Charge referred to in clause 5.6(b)(i), by the remaining months, or part thereof, of the Minimum Term.

5.7 If we elect to exercise any right to terminate the Service prior to expiry of the Minimum Term pursuant to clause 5.1 or clause 5.2, you must pay to us, by way of liquidated damages, the fee referred to in clause 5.5(b), which the parties acknowledge is a genuine pre-estimate of the losses which we will suffer as a result of early termination of the Service.

5.8 On termination for any reason all Charges (including the fee referred to in clauses 5.5, 5.6 and 5.7) and all other amounts owing by you to us, shall become immediately due and payable.

5.9 Clauses 5.6, 5.7 and 5.8 do not otherwise limit your liability to us on termination.

5.10 Termination does not affect any accrued rights or liabilities of either party nor does it affect any provision that is expressly or by implication intended to operate after termination.

## 6. Suspension

6.1 Although we will endeavour to give you as much notice as reasonably practicable, we may, without liability, suspend the Service immediately (including without notice):

- (a) if we are required to comply with an order, instruction or request of a government agency, emergency services organisation or other competent authority;
- (b) if we are required to undertake emergency repair, maintenance or service of any part of the AINS network (or an interconnected Other Supplier is required to undertake such emergency work on its network);
- (c) if it is reasonably required to reduce or prevent fraud or interference within the AINS network; or
- (d) as an alternative to the exercise of our rights of termination under this Standard Agreement.

6.2 If we suspend the Service pursuant to clause 6.1(d) you acknowledge and agree that:

- (a) we may charge you a re-connection fee;
- (b) while the Service is suspended, we will continue to incur costs of supply associated with keeping that Service in a suspended state; and
- (c) except in the case of Usage Based Charges, all Charges in relation to the Service will continue to accrue while suspended and will be payable by you.

## 7. Billing

- 7.1 We will endeavour to invoice you monthly but reserve the right to bill at different intervals. We will provide you with a breakdown of the fees and Charges payable in each invoice. Our records and/or any relevant Other Supplier's records will be conclusive evidence of usage of the Service and the Charges payable by you. Notwithstanding this, you may dispute an invoice if you reasonably believe that you are not liable to pay the Charges because of an inaccuracy, omission or error in the invoice. For the avoidance of doubt, this does not affect your obligation to make payment in full by the due date. If the parties agree that the dispute is valid, your account will be credited the relevant amount.
- 7.2 We will invoice for, and you will be liable for all Charges in respect of the Service commencing on and from the Service Start Date.
- 7.3 Unless otherwise expressly stated in the Standard Agreement, we will bill you:
  - (a) in advance for Installation and Recurring Charges; and
  - (b) in arrears for Usage Based Charges.
- 7.4 Our Charges to you may pass on any charges an Other Supplier charges to us (including increases and special or one-off charges) without notice to you. You will pay us in accordance with clause 8.3 any charge which any Other Supplier renders to us for connection or initiation of any Service or for cancellation of any Service.
- 7.5 Processing and verification procedures (including delays in receipt of billing information) may mean that not all Charges during the period covered by a bill can be included in that bill. We may include those Charges in any subsequent bills.
- 7.6 We reserve the right to re-issue any bill if any error is subsequently discovered.
- 7.7 You are liable for all Charges whether or not you authorised the particular use of the Service by another person and you will continue to be liable for the Charges if you allow another person to occupy Your Premises or use the Service.
- 7.8 We will be entitled to set off in whole or in part any amounts due and payable by us to you, against the whole or a proportionate part of any amount due and payable by you to us under this Standard Agreement.

## 8. Charges and Payment

- 8.1 After expiry of the Minimum Term, the relevant Charges will continue on a monthly basis, subject to change upon 30 days prior written notice or publication of new rates.

- 8.2 Where a minimum Usage Based Charge is provided for in the Application for Service, that amount will apply even if you have incurred lower Usage Based Charges or no Usage Based Charges in that calendar month.
- 8.3 You must pay all fees and Charges within the terms specified on the invoice.
- 8.4 We reserve the right to charge interest on any part of the Charges or any applicable Tax not paid to us by the due date. Interest will be charged from the due date until payment at a rate equal to 3% above the Commonwealth Bank Corporate Overdraft Reference Rate or such other comparable rate chosen by us most recently published before that date. You will be liable to pay to us all expenses (including reasonable legal costs and expenses and the fees of our debt recovery agents) incurred by us in relation to recovering payments due under this Standard Agreement.
- 8.5 We reserve the right to withdraw any discounts that you receive from us in connection with the supply of the Service where payment is not received within the terms of Clause 8.3.
- 8.6 The Charges for the Service do not include any amount on account of Tax. If any Tax is payable by us in relation to, or on any supply under or in connection with, this Standard Agreement, we will increase the Charges or charge you an additional amount on account of the Tax. These will be your responsibility and will be itemised on your bill or an adjustment note.
- 8.7 Where we become liable to any penalties or interest as a result of the late payment of any Tax (whether the Tax is included in an amount of consideration expressed in this Standard Agreement or not), due to your failure to comply with the terms of this Standard Agreement (including this clause) or your obligations under any applicable law, then an additional amount equal to those penalties and interest will be payable to us.
- 8.8 You acknowledge and agree that we may at our discretion pay commissions to any of our agents, representatives or retailers who introduce you to us.

## 9. Personal Information

- 9.1 You authorise us to collect, use and disclose Personal Information about you for the primary purpose of the supply or proposed supply to you of the Service. If you do not provide all the Personal Information we request from you, we may be unable to supply the Service to you or we may be restricted in the way we supply that Service to you.
- 9.2 You also authorise us to collect, use and disclose Personal Information about you for related (or secondary) purposes including:
- (a) assessing creditworthiness as set out in clause 10;
  - (b) all purposes associated with the provision of telecommunications services to you, including billing and account management;
  - (c) to provide you with information about products and services which we, or any of our partners or affiliates, may provide to you;



- (d) implementing this Standard Agreement;
- (e) business planning and product development; and
- (f) complying with legal requirements.

9.3 You authorise us to disclose Personal Information about you to:

- (a) any Other Supplier who need access to the Personal Information to provide us with goods or services, enabling us to supply you with the Service (including the investigation and resolution of disputes or complaints concerning the provision of the Service); or
- (b) any Related Body Corporate of ours, or any of our partners or affiliates.

9.4 You acknowledge that in certain circumstances, we may be permitted or required by applicable laws to use or disclose Personal Information about you. Such uses or disclosures may include:

- (a) disclosures to law enforcement agencies for purposes relating to the enforcement of criminal and other laws;
- (b) uses or disclosures in accordance with court orders or if required or authorised by law;
- (c) uses or disclosures to lessen or prevent serious threats to an individual's life, health or safety or to public health or safety; or
- (d) uses to assist in internal investigations conducted by us into suspected fraud, misuse of the Service or other unlawful activities.

9.5 We will provide you with access to any of your Personal Information held by us, at your request. We reserve the right to charge a reasonable fee for the provision of this information. We agree to correct or amend any of your Personal Information held by us which is inaccurate or out of date, at your written request.

9.6 We will handle your Personal Information in accordance with the requirements of relevant laws and industry standards.

9.7 Subject to compliance with this clause 9, we may, at any time in our absolute discretion:

- (a) intercept the Service or the data being transmitted over the Service, for the purpose of complying with our obligations at law; and
- (b) monitor use of the Service.

## 10. Credit Information

10.1 For the purposes of assessing and processing your Application for Service, establishing your account and the ongoing credit management of your account, you authorise us to use and disclose your Personal Information to a credit reporting agency, including the following information:

- (a) personal identifying details, including your name, current and previous addresses, date of birth, employer and driver's licence number;

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- (b) details of your Application for Service and/or other services supplied to you;
- (c) the fact that you have applied for credit and the amount;
- (d) the fact that we are a credit provider to you and any credit limits on your accounts;
- (e) the amount of any payments which are overdue for at least 60 days;
- (f) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
- (g) cheques or credit card payments which have been dishonoured;
- (h) court judgments or bankruptcy orders made against you;
- (i) that, in our opinion, you have committed a serious credit infringement; and
- (j) that we have ceased to provide the Service to you.

10.2 Subject to our obligations under the *Privacy Act 1988* and the Act, we may give the information referred to in clause 10.1 to a credit reporting agency to obtain a consumer credit or commercial credit report about you or to allow the credit reporting agency to create or maintain a credit information file about you. You agree that we may disclose a credit report about you to any credit provider, debt collecting agency or any Other Supplier for the purposes of assessing your creditworthiness or to collect overdue payments.

10.3 You authorise us to seek from, or give to:

- (a) other credit providers;
- (b) other Carriers or carriage service providers;
- (c) credit reporting agencies;
- (d) Other Suppliers; or
- (e) any other person or body carrying on the business or undertaking involving the provision of information about commercial credit-worthiness, information about your commercial activities, your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act 1988* or for purposes permitted under that Act.

10.4 You authorise us to obtain and use your Personal Information for the purposes of:

- (a) assessing and processing your Application for Service;
- (b) assessing any application by you for credit or commercial credit to be provided by us; and
- (c) establishing your account and the ongoing credit management of your account, including collecting payments that are overdue in respect of any credit or commercial credit provided by us.

10.5 We may:

- (a) refuse an application for;
- (b) monitor the usage of;
- (c) restrict your access to;
- (d) suspend; or
- (e) cancel, the Service on the basis of our credit assessment of you, after consultation with you to confirm the accuracy of the assessment.

## 11. Customer Use & Indemnity

11.1 You must not use or permit any use of the Service:

- (a) to transmit any defamatory, abusive, menacing, threatening, harassing or illegal material or any unsolicited material of an offensive, obscene or indecent nature or otherwise contrary to law or an applicable code of conduct;
- (b) in any manner which constitutes a violation or infringement of any duty or obligation in contract, tort or otherwise, to any third party; or
- (c) in, or in relation to, the commission of an offence against any applicable law.

11.2 You must not, and must use reasonable endeavours to ensure that other persons do not interfere with, or attempt to interfere with, the operation of:

- (a) the Service;
- (b) the AINS network;
- (c) the network of an Other Supplier that is interconnected to the AINS network;  
or
- (d) any AINS Equipment or facilities associated with the Service.

11.3 You will indemnify us against all costs, losses, damages, actions, proceedings, claims, liabilities and expenses (including all reasonable legal costs, fees and expenses) incurred or suffered by us as a result of:

- (a) any personal injury to, or death of, any person or any loss of, or damage to, any personal property (including without limitation the Equipment) caused by or arising from your breach of this Standard Agreement or your acts or omissions (or those of any person for whom you are responsible); or
- (b) a breach by you of clauses 11.1, 11.2 or 12.1;
- (c) your acts or omissions (or those of any person for whom you are responsible) relating to the use, or attempted use, of the Service or otherwise arising in connection with our supply of (or delay in supply or failure to supply) the Service; and
- (d) a claim by an end user arising out of or in connection with the supply or cessation of supply of the Services.

- 11.4 If AINS uses the services of another Carrier in providing the Services, the Customer will indemnify AINS for all Loss suffered by AINS as a result of a claim by the Customer or a third party against such Carrier (excluding claims for death, personal injury or physical damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services. Loss means costs, loss, damage, liability or expenses (including all reasonable legal costs, fees and expenses).
- 11.5 If we grant you access to AINS's Customer Service Online Centre for the purposes of requesting a new Service, a Variation to a Service or access to information concerning your account, you must ensure that:
- (a) your username and password are kept safe and secure, and are only used by you;
  - (b) you do not disclose your username or password to any other person and take all reasonable steps to ensure that no third party obtains your username or password; and
  - (c) If your username or password is lost or stolen or you are aware or ought to be aware or suspect that another person knows or has used your username and password, you immediately change your password.
- 11.6 You acknowledge and agree that:
- (a) we will use such measures as we consider reasonable to assist in ensuring the security of the Customer Service Online Centre. However, we cannot guarantee that any data transmission over the Internet is totally secure;
  - (b) you are solely responsible for your own anti-virus and security measures while using the Internet to access the Customer Service Online Centre;
  - (c) we exclude any and all liability for any loss or damage suffered by you as a result of any unauthorised access to your account over the Internet or as a result of your acts, omissions or negligence;
  - (d) the information contained in the Customer Service Online Centre will be updated periodically and will change from time to time; and
  - (e) we will not be liable for any inaccuracy, incompleteness or alteration of any information contained in the Customer Service Online Centre.

## 12. Your Equipment & Access

- 12.1 You must ensure that any of Your Equipment:
- (a) has all necessary regulatory approvals;
  - (b) is not prohibited by the ACA;
  - (c) complies with all applicable regulatory standards;
  - (d) is approved by us; and
  - (e) is capable of operating with the Service.

- 12.2 We may require you to immediately cease using and disconnect Your Equipment or, if you fail to do so, we may disconnect Your Equipment from the Service, if:
- (a) there are faults with Your Equipment causing interference with the Service;
  - (b) you do not fulfil your obligations under this clause 12 or clause 8; or
  - (c) we reasonably consider that Your Equipment may:
    - (i) cause death or personal injury;
    - (ii) cause damage to our property or the property of a third party; or
    - (iii) materially impair the operation of the AINS network or the network of an Other Supplier that is interconnected to the AINS network.
- 12.3 You must use your best endeavours to do everything to assist us to provide the Service, including but not limited to:
- (a) notifying or obtaining any necessary permission from or co-operation of a Carrier or other person for the connection or maintenance of AINS Equipment or for the connection to your side of the Service Delivery Point; and
  - (b) allowing us (or where relevant, the lessor or licensor of the AINS Equipment to us) safe access to the AINS Equipment, Your Equipment and any of Your Premises at which a Service is to be provided during normal business hours and at such other times as the parties mutually agree.
- 12.4 You must ensure that the access so provided is safe and in compliance with relevant health and safety regulations and requirement. We will ensure that our personnel comply with your reasonable directions while on Your Premises.

### 13. AINS Equipment

- 13.1 Except as expressly provided by this Standard Agreement:
- (a) you will bear the risk of loss or damage to any AINS Equipment used or located on Your Premises or whilst in your possession or control;
  - (b) the AINS Equipment always remains our property (or where relevant the lessor or licensors of the AINS Equipment to us);
  - (c) you will ensure that, you have all necessary consents and approvals (including landlord approval where applicable) necessary or desirable for us to deliver, install and maintain the AINS Equipment at the Access Site;
  - (d) you will not part with possession of the AINS Equipment except to us and will comply with all our reasonable directions relating to our rights of ownership of the AINS Equipment;
  - (e) you will provide a suitable physical environment at Your Premises for the storage and operation of the AINS Equipment including supplying an adequate power supply for the operation of the AINS Equipment;
  - (f) you must ensure that the AINS Equipment will not be altered, repaired, serviced, moved or disconnected except by service personnel approved by us;

- (g) you must take good care of the AINS Equipment while it is in your possession or control and must notify us immediately if you become aware of any damage to or malfunction of the AINS Equipment;
- (h) you will be liable to us for all loss of, or damage to, the AINS Equipment while at Your Premises or whilst in your possession or control, apart from fair wear and tear; and
- (i) you will only use the AINS Equipment in accordance with the manufacturer's specifications or our written directions.

13.2 We may at any time change, modify, replace or service the AINS Equipment provided that the performance of the Service is not materially adversely affected.

13.3 We may charge you for any repair, maintenance or replacement of the AINS Equipment due to events other than normal wear and tear, including but not limited to:

- (a) Force Majeure Events;
- (b) failure to use that AINS Equipment in accordance with this Standard Agreement;
- (c) any act of wilful damage or interference by a party other than us, our employees or agents;
- (d) negligent use or misuse of that AINS Equipment by a party other than us, our employees or agents;
- (e) any failure or fluctuation of the electrical power supply to that AINS Equipment, or any external electromagnetic interference or any failure of air-conditioning and humidity control for that equipment; or
- (f) the performance of maintenance services by a party other than us or service personnel approved by us.

## 14 Carrier Services

14.1 If we use the services of an Other Supplier in providing the Service, you agree to comply with any reasonable direction given by us necessary to avoid causing any breach by us of the relevant Other Supplier's terms and conditions of supply applicable to that service.

## 15 Liability

15.1 Except as expressly provided to the contrary in this Standard Agreement and to the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Service supplied under this Standard Agreement or our obligations under this Standard Agreement are excluded.

15.2 Where any Act of Parliament implies in this Standard Agreement any term, and that Act of Parliament voids or prohibits provisions under a contract which exclude or

modify the operation of such term, the term is deemed to be included in this Standard Agreement.

- 15.3 To the extent permitted by law, our liability for breach of an express term or implied term of this Standard Agreement in contract, negligence or any other tort under any statute or otherwise, is limited to one of the following remedies at our discretion:
- (a) if the breach relates to services, the resupply of the Service or the payment of the cost of resupplying the Service; or
  - (b) if the breach relates to goods, the replacement of the goods or the supply of equivalent goods, the payment of the cost of such replacement, the repair of such goods or the cost of such repair.
- 15.4 To the extent permitted by law, either you or AINS agrees to exclude liability to the other party for any consequential loss, indirect loss, loss of profits of any kind, loss or corruption of data, interruption to business, loss of revenue and economic loss of any kind, whether in contract, negligence or any other tort under any statute or otherwise.
- 15.5 To the extent permitted by law, the rebate provided under clause 3.2, will be your sole remedy in respect of any event giving rise to our failure to achieve any Service Level and we exclude any other liability to you in connection with this Standard Agreement in respect of our failure to achieve any Service Levels, whether in contract, negligence or any other tort, under any statute or otherwise.
- 15.6 To the extent permitted by law, our aggregate liability to you in connection with this Standard Agreement in respect of all claims, whether in contract, negligence or any other tort, under any statute or otherwise, will not exceed the amount paid to us by you during the Minimum Term.

## 16. Confidentiality

- 16.1 We retain all rights in the Confidential Information.
- 16.2 You will:
- (a) keep all Confidential Information confidential;
  - (b) not disclose or allow any Confidential Information or the terms of this Standard Agreement or Application for Service (including pricing) to be disclosed to any third party without our prior written consent; and
  - (c) return all Confidential Information (including all copies) to us within 7 days of request by us.
- 16.3 You will not use Confidential Information or the terms of this Standard Agreement, which you acquire from us for any purpose other than use of the Service or as otherwise expressly permitted by us and, in particular, will not use Confidential Information in any way which may cause us loss, whether by way of damage to our reputation, financial loss, or otherwise.

## 17. Force Majeure

- 17.1 We are not liable for any failure to perform, or for any delay in performing any of our obligations under this Standard Agreement where the failure or delay is occasioned by:
- (a) strike or other industrial action;
  - (b) any act or omission by you or any third party, including failures or delays by Other Suppliers;
  - (c) legislative or governmental prohibitions, restrictions, or delays in the granting of approvals, consents, permits, licences or authorities;
  - (d) fire, flood, war or cable cut; or
  - (e) any other event beyond our reasonable control.

18. General

- 18.1 This Standard Agreement is governed by and construed in accordance with the laws Victoria. The parties submit to the jurisdiction of the Courts of Victoria and any court hearing appeals from those Courts.
- 18.2 This Standard Agreement contains the whole understanding of the parties to the exclusion of any prior agreement, representation or understanding relating to the Service.
- 18.3 You may not assign, mortgage, charge, sublicense or otherwise deal with your rights, or subcontract or otherwise delegate any of your obligations under this Standard Agreement without our prior written consent. We may assign or otherwise delegate all or any of our rights and obligations under this Standard Agreement to a Related Body Corporate or other person.
- 18.4 A notice, approval or consent, to be issued under this Standard Agreement must be in writing and in the absence of evidence to the contrary will be taken to be received:
- (a) if left at the address of the addressee, at the time it was left;
  - (b) if sent by ordinary post, on the third day after posting;
  - (c) if sent by express post, on the next day; and
  - (d) if sent by facsimile, at the time recorded on a transmission report from the machine from which the facsimile was sent.
- 18.5 Any waiver of a breach of any obligation by you relates only to the particular breach and not to any other or subsequent breach, and will not prejudice our rights to take subsequent action. A waiver under this clause will only be valid if it is in writing and signed by the party against whom such waiver is claimed.
- 18.6 If a provision of this Standard Agreement is void or voidable or unenforceable or the invalid part severed, the remainder of this Standard Agreement will not be affected.
- 18.7 Subject to section 480A of the Act, we may at any time vary any part of this Standard Agreement.



19. Definitions & Interpretations

19.1 In this Standard Agreement, unless the context otherwise requires:

**ACA** means the Australian Communications Authority or any successor.

**ACCC** means the Australian Competition & Consumer Commission or any successor.

**Access Site** means the site address nominated in the Application for Service.

**Act** means the *Telecommunications Act 1997* as amended from time to time.

**Application for Service** means the application document requesting the Service and setting out the information required by AINS to provision the relevant Service.

**Business Day** means any day other than a Saturday, Sunday or public holiday in Victoria

**Carrier** means a carrier as defined in the Act.

**Charges** means the charges payable under this Standard Agreement for provision of the Service including all Installation Charges, Recurring Charges and Usage Based Charges, and any other charges set out in the Application for Service.

**Commencement Date** means the date the Application for Service is signed by you.

**Conditional Ready for Service Date** means a Ready for Service Date which will not entitle you to any Service Level rebate if we fail to meet such date.

**Confidential Information** means all information and all other knowledge relating to us, our products or Services which comes into your possession from any source, or information which is treated by us as confidential regardless of its form, or which is designated by its nature as confidential, but excluding information that is in the public domain.

**Downgrade** means any Variation in respect of the Service which results in a reduction in the total Charges payable for the Service.

**end user** means any person or entity to whom you supply the Service or allow to use the Service.

**Force Majeure Event** means any event specified in clause 18.1.

**GST** and **GST Law** have the same meaning as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time.

**Insolvency Event** means, in respect of a party:

- (a) the party is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt;

- (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party;
- (c) the party enters into an arrangement with its creditors;
- (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution;
- (e) the party suspends payment of its debts to the other party or a third party; or
- (f) anything analogous or having a substantially similar effect to any of the events described in (a) through (e) above, occurs under the law of any applicable jurisdiction.

**Installation Charge** means a once-off charge for labour, equipment, connection and associated cabling for initial installation of the Service set out in the Application for Service.

**Minimum Term** means the minimum contract term (if any) specified in the Application for Service, which commences on the Service Start Date and if no Minimum Term is specified in the Application for Service then 30 days.

**Other Supplier** means a Carrier, a telecommunications carriage service provider or an equipment supplier other than us, as the case may be.

**Personal Information** means information or opinion about you from which your identity is apparent or can reasonably be ascertained.

**Credit information**, which is the Personal Information described in clause 10, is a specific type of Personal Information.

**Planned Outage** means a period of time, as reasonably determined by us, that we may interrupt our supply of the Service to you for routine maintenance, upgrading or other similar activities, after giving you reasonable prior notice.

**AINS Equipment** means equipment provided to you, or installed by us at, or located on, Your Premises for provision of the Service.

**Ready for Service Date** means the date that we expect to supply the Service, which may or may not be the same as your Requested Delivery Date.

**Recurring Charge** means a monthly recurring charge set out in the Application for Service.

**Related Body Corporate** has the meaning given by section 50 of the *Corporations Act 2001*.

**Requested Delivery Date** means your preferred date for installation of new Service specified in the Application for Service or your preferred date from when you wish for a Variation of the Service to be operational.

**Service** means the relevant telecommunication service identified in the Application for Service.

**Service Delivery Point** means:

- (a) the port;
- (b) fibre termination panel; or
- (c) electrical interface, at the Access Site as we determine necessary for interconnection to the AINS network.

**Service Description** means the description of the relevant Service and any Service specific terms and conditions set out in Part C of this Standard Agreement.

**Service Levels** means the relevant service levels (if any) that apply to the Service

**Service Start Date** means the earlier of:

- (a) the date on which we first notify you that the Service is ready for use; and
- (b) the date on which you first use the Service.

**Standard Agreement** means a standard form of agreement formulated for the purpose of section 479 of the Act, comprising in their order of precedence:

- (a) the Service Description;
- (b) these General Terms and Conditions;
- (c) the Application for Service;
- (d) the Service Levels;
- (e) any Variation Agreements; and
- (f) any Appendices referred to in the above documents.

**Tax** means any tax (including GST), withholding tax, charge, rate, duty impost or other levy imposed by any authority (other than income or capital gains tax).

**Usage Based Charge** means a monthly usage charge for utilisation of minutes or capacity including any minimum usage charge set out in the Application for Service.

**Variation** means any change, addition, increase or reduction in respect of the Service including a relocation or increase in bandwidth, and **Vary** has a corresponding meaning.

**we, us, our, AINS** means Australia Internet Solutions Pty Ltd ABN 59 076 598 582.

**you, your, yourself, customer** means the person or entity nominated as the customer in the Application for Service and that party's successors and permitted assigns.

**Your Equipment** means all equipment and facilities supplied by you and used in connection with the Service.

**Your Premises** means the Access Site and any other premises occupied by you or your end user, to which we may require access in order to install, maintain or remove Equipment or the Service.

- 19.2 In this Standard Agreement, unless the context requires another meaning:
- (a) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (b) headings are for convenience only and do not affect interpretation;
  - (c) a reference:
    - (i) to the word "*including*" or "*includes*" means "*including, but not limited to*" or "*includes, without limitation*";
    - (ii) to the singular includes the plural and vice versa;
    - (iii) to a gender includes all genders;
    - (iv) to a document (including this Standard Agreement) is a reference to that document (including any Schedules) as amended, consolidated, supplemented, novated or replaced;
    - (v) to a party means a party to this Standard Agreement;
    - (vi) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Standard Agreement;
    - (vii) to a person (including a party) includes:
      - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency; and
      - (B) the person's successors, permitted assigns, substitutes, executors and administrators;
    - (viii) to a law:
      - (A) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange; and
      - (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
      - (C) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law;
    - (ix) to proceedings includes litigation, arbitration and investigation;
    - (x) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
    - (xi) to time is to Sydney time; and
    - (xii) to your acts or omissions, includes the acts or omissions of your employees, agents and contractors.