

General Terms and Conditions

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement, unless the contract otherwise requires:

Act means the Telecommunications Act 197 (Cth)

Agreement means these terms and conditions as varied from time to time

Application Form means the CMTG Service Application Form for the Service

Business Day means a business day in the city where the Service is provided.

Carrier Service Provider has the meaning given to that term in the Act.

Charges means the fees payable by the Customer to CMTG for Services provided under this Agreement or any other nonrecurring fee.

CMTG means C&M Hosting Solutions (ABN 71 972 449 575) or any of its related bodies corporate as defined in the Corporations Act 2001 (Cth)

CMTG Equipment means any equipment owned or used by CMTG in the provision of a Service

CMTG Infrastructure means the physical network infrastructure over which CMTG will provide the Service. This includes any CMTG Equipment and the CMTG Network.

CMTG Managed Service means a service for which CMTG has remote monitoring and diagnostic capabilities for all CMTG infrastructure used to provide the service including equipment installed on the customer's premises.

CMTG Network means any telecommunications network, equipment, or facilities, or cabling controlled or utilised by **CMTG**.

Commencement Date means, unless otherwise agreed, the day physical installation of the Service at the Premises is completed, so that it is able to provide the Service.

Confidential Information of a party means all information of a confidential nature relating to that party including anything which is indicated to be subject to an obligation of confidence which is disclosed by that party to the other party in relation to this Contract to supply service or comes to the knowledge or into the possession of the other party in connection with this Contract but does not include information:

- The party creates (whether jointly or alone) independently of the other party's Confidential Information;
- That is public knowledge (other than as a result of a breach of confidentiality by the party or any person to whom the party has disclosed the information); or
- Obtained without restriction as to the further disclosure from a source other than the other party through no breach of confidentiality by that source.

Connection Equipment has the meaning set out in clause 5.1

Customer means the customer described in the Application Form and any of its employees, sub-contractors, agents and representatives.

Customer Equipment has the meaning set out in clause 5.1

Customer Premises means the Service Delivery Point address described in the Application form

Day or day means any day not limited to a Business Day

Due Date 21 days from the date of the invoice, unless specified otherwise by CMTG.

Establishment Fee means the establishment fee payable by the Customer and set out in the Application Form.

Excluded Event means:

A breach of the Contract by the Customer;

- A Force Majeure Event;
- A negligent or fraudulent act or omission of the Customer
- Customer's personnel; or
- A failure of any of the Customer's Equipment.

Fault means any circumstance physically related to the Service which renders the Service unusable or significantly impaired.

Force Majeure Event means:

- Any act of god or act of nature, fire, flood, storm, explosion, sabotage, riot, act of war whether declared or not, requirement or restriction of governmental authorities, inability or delay in the grant of governmental or other approvals, consents, permits, licences or authorities or any other like event; or
- any strike, lockout, work stoppage or other industrial dispute of any kind; or
- any act or omissions of a third party which affects the provisions of the Services, including a failure to provide goods and services or access to premises; or
- any other similar circumstances beyond the reasonable control of the affected party.

General Terms and Conditions means the general terms and conditions contained in this document.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or other statutory entity including but not limited to the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman and any other governmental or statutory body or authority.

Initial Term means the application term specified in the Application Form.

Insolvency Event means:

- bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
- any step that is taken to enter into any scheme or arrangement between the Customer and its creditors;
- any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business;
- any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the Customer or to the whole or any part of the Customer's assets or business;
- the Customer suspends payment of its debts generally; or
- the Customer is or becomes unable to pay its debts when they are due it is or is presumed to be insolvent for the purposes of any provision of the *Corporations Act 2001* (Cth).

Intellectual Property Rights means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright) and includes the right to have Confidential Information kept confidential.

Interruption in the supply of goods or a service (including the Service) means a delay



in supplying, a failure to supply or an error, defect in the supply of, those goods or that service and **Interrupts** has a corresponding meaning.

Invoice Period means the period for which advanced payment of the Monthly Service Fee is required as set out in the Application Form or such other period as notified by CMTG from time to time.

Liability means any direct or consequential liabilities, claims, losses, costs, charges, damages, injury or expenses of any nature.

Monthly Service Fee means the monthly service fee specified in the Application Form.

Planned Outage Period means a period during which the Service may become unusable or impaired due to CMTG undertaking necessary work on its facilities, networks or systems for any reason, including arising out of or in connect with:

- a) Installation of infrastructure;
- b) Maintenance requirements (including Scheduled Maintenance Window); and
- c) Software or infrastructure upgrades.

Premises means locations at which CMTG provides the Service, and locations to which CMTG needs to have access to supply the Service including Site A and Site B.

Provider means a party that discloses its Confidential Information to another party.

Recipient means a party that receives or obtains Confidential Information of another party.

Related Body Corporate has the meaning given to that expression in the Corporations Act 2001 (Cth)

Representative means a director, officer employee or agent

Requested Delivery Date – means the Customer's preferred date for commencement of the Service as specified in the Application Form.

Scheduled Delivery Date means the date, as advised to the customer by CMTG, on which the Wholesale Network Provider has planned to make the Service available.

Scheduled Delivery Date means the date, as advised to the customer by CMTG, on which CMTG has planned to make the Service available.

Service means the service with the options and features requested in the Application Form and as specified in the Contract, and any related goods (including equipment) and ancillary services which CMTG supplies to the Customer in connection with that Service.

Service Delivery Point means the location at which CMTG will install the CMTG Equipment necessary to provide the Service Interface as specified in the Application Form.

Service Interface means the physical interface at the Service Delivery Point by which the Customer connects to the Service.

Supplier Network means any telecommunications network, equipment, or facilities, or cabling controlled by the Wholesale Network Provider or a third party supplier.

Term has the meaning given in clause 2.2.

Wholesale Network Provider means Vocus Pty Ltd (ABN 33 009 336 341), or TPG (ABN 15 068 383 737) or any of its related bodies corporate as defined in the Corporations Act 2001 (Cth) or another appointed Carrier Service Provider.

1.2 Interpretations

In this Agreement unless the context otherwise requires:

- a) the singular includes the plural and conversely;
- b) a gender includes all genders;
- c) a reference to a person includes a body corporate, an unincorporated body, enterprise, firm, trust, joint venture, syndicate or other entity and conversely;
- d) a reference to a clause or schedule is a reference to this agreement

- e) a reference to any party to this agreement or any other agreement or document includes the party's executors, administrators, successors and permitted assigns;
- f) a reference to any legislation or to any provision of any legislation includes any amendment, consolidation or replacement of it, and all regulations and statutory instruments issued under it;
- g) a reference to a party is a party to this agreement or any person who executes a deed of accession to this agreement;
- h) terms defined in the Corporations Act have the same meaning in this agreement, unless the context expresses otherwise;
- i) if any payment by a party under this agreement is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day.

2. CONTRACT

2.1 Contract will consist of the following documents:

- a) These General Terms and Conditions; and
- b) Application Form; and
- c) CMTG Internet Service Specific Terms and Conditions

2.2 If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause

3. Term

3.1 Subject to termination in accordance with clause 16:

- a) The Initial Term shall commence on the Commencement Date.
- b) Unless either party notifies the other party in writing no later than 30 days prior to the expiration of the Initial Term, this Contract continues on a monthly bases with either party may terminate on 30 days' notice ending on any day ("Extended Term").

3.2 For the avoidance of doubt, the Term of the Contract shall mean the Initial Term plus the Extended Term, if applicable.

4. CHARGES AND PAYMENT

Invoiced Charges

4.1 The Customer shall pay the fees by the Due Date as specified in the invoice throughout the Term.

Additional Charges

4.2 In addition to the fees and charges disclosed in the Application Form, the invoice or such other fee disclosure document provided by CMTG to the customer, additional charges may also be applicable including but not limited to the following.

- a) If CMTG is requested by the Customer to provide the Service at a different site to the Premises prior to the delivery of the Service, the Customer must pay CMTG's reasonable costs and fees arising from the change of site.
- b) If the information the Customer provided to CMTG to determine the infrastructure and installation required was incomplete or inaccurate;
- c) If an Excluded Event occurs CMTG may also charge the Customer the costs incurred to service, modify repair or replace the Service or any equipment, as a result of an Excluded Event;
- d) If CMTG reasonably determines that a Fault arises out of or in connection with any Customer Equipment or the Customer's facilities, networks and systems, then irrespective of whether there was a Fault or not, CMTG may require



the Customer to pay CMTG's reasonable costs and expenses in investigating the Fault, dealing with or remedying that Fault and such cost and expense shall be a debt due and payable by the Customer on demand to CMTG.

- e) Any other costs and charges agreed between the Customer and CMTG from time to time.
- f) Any additional equipment, cabling, labour or site works required as a result of the install will be at the customers/clients expense.
- g) If access to the site is not available at the requested or agreed installation time additional fees will apply

Overdue Payments

- 4.3** CMTG reserves the right to charge interest on any overdue amount payable to CMTG by the Customer under the Contract. Interest will be charged from the Due Date until payment is received at a rate of 7%. The Customer will be liable to pay to CMTG all expenses (including reasonable legal costs and expenses and the fees of CMTG debt recovery agents) incurred by CMTG in relation to recovering payments due under the contract.

5. INSTALLATION AND EQUIPMENT

Provision of Equipment

- 5.1** CMTG shall provide, or may contract a Wholesale Network Provider to provide, a Service Interface at a Service Delivery Point ("**Connection Equipment**") at the Premises enabling the Customer to transmit and receive data by the connection of appropriate equipment to be supplied by the Customer ("**Customer Equipment**").

Connection Equipment

- 5.2** Title in the Connection Equipment is not transferred to the Customer and at all times is retained by CMTG. The Customer holds the Connection Equipment as bailee for CMTG.
- 5.3** Risk in the Connection Equipment shall pass to the Customer on delivery of the Connection Equipment to the Customer.
- 5.4** The Customer is responsible for any damage to, or destruction or theft of the Connection Equipment, except to the extent it is caused by CMTG. The Customer must keep the Connection Equipment in good repair and condition, excluding fair wear and tear and shall not sell, assign or permit charge, lien, mortgage or encumbrance to be created in relation to it.
- 5.5** Unless otherwise agreed, the Customer must:
- a) allow CMTG or its agents, to service, modify, maintain, repair or replace the Connection Equipment; and
 - b) do all things reasonably required by CMTG to make clear the identity of the owner of the Connection Equipment.

Customer Equipment

- 5.6** The Customer may purchase equipment from CMTG for use in connection with the Service. Such equipment shall form part of the Customer Equipment for the purposes of the Contract. Title to that equipment passes to the Customer when the Customer pays for it in full in cleared funds. Risk in that equipment passes to the Customer on delivery of the equipment to its nominated location. CMTG will use reasonable efforts to transfer to the Customer any manufacturer's warranty in any such equipment from the time title passes to the Customer.
- 5.7** The Customer must ensure that all Customer Equipment and its use in connection with the Service, complies with all laws, directions by a Government Agency and any reasonable directions by CMTG, otherwise CMTG may disconnect that

Customer Equipment from the Service on giving reasonable notice or immediately in an emergency.

Scheduled Installation

- 5.8** CMTG will advise the Customer of the Scheduled Delivery Date for the Service, however CMTG shall not be liable for any Liability incurred by the Customer due to a failure to install on or before the Scheduled Delivery Date.

CMTG Network

- 5.9** The CMTG Network is and shall remain the property of CMTG irrespective of the manner in which any hardware or part of it is attached or secured to any land or buildings.

6. MAINTENANCE AND REPLACEMENT

- 6.1** CMTG may in its discretion and for so long as it determines, replace any part of the Connection Equipment or Service with similar equipment or Service as may for the time be available. Any replacement shall be subject to the Contract in the same way as if they comprised the original Connection Equipment or Service offered.

- 6.2** CMTG may interrupt the Service or Connection Equipment for the Planned Outage Period and will give advance notice to the Customer wherever possible.

7. PROVISIONS APPLICABLE TO THE SERVICE

Cooperation with CMTG

- 7.1** The Customer must cooperate with CMTG and its agents, and comply with its reasonable requests to allow CMTG to install equipment and establish and supply the Service to the Customer safely and efficiently. This includes meeting CMTG's reasonable requests, at no further cost to CMTG, to:
- a) provide any necessary forecasts and information to CMTG, on which CMTG will rely in establishing and supplying the Service to the Customer;
 - b) provide safe and prompt access to the Premises and the Customer's personnel, equipment, data and information for the purpose of inspection, repair, maintenance or adjustment of the Service and to inspect and audit all equipment and devices connected to the Service;
 - c) provide all necessary space and utility services (such as electricity, earthing and air conditioning) as reasonably required by CMTG for the installation, provision and proper operation of the CMTG Equipment and Customer Equipment and for the provisions of Service; If failure to provide necessary space and utility services during a reasonable timeframe prohibits CMTG from delivery of service on the scheduled commencement date, billing of monthly service fees will commence;
 - d) provide all necessary assistance to obtain all licenses, permits and other approvals required for the provision of the Service; and
 - e) provide all assistance and take all safety precautions as may be reasonably necessary or otherwise requested by CMTG to ensure safe and proper performance by CMTG of all work at the Premises.

Provision of Service

- 7.2** Subject to the Customer's compliance with the Contract, CMTG will use its best endeavours to provide the Service in accordance with the Contract.

Customer's use of service and equipment

- 7.3** Unless otherwise agreed in writing, the Customer shall not resell, hire, let or



make available the Service for use in any way, including allowing access thereto, to any other person other than a person at the Premises exclusively for purposes directly related to the Customer's business.

- 7.4** Subject to the terms of the Contract and unless otherwise agreed, the Customer must only use the Service for the communication of data between locations and sites for purposes directly related to its business.
- 7.5** The Customer must not use, or attempt to use, the Service:
- to breach any term of the Contract;
 - for any improper or unlawful purpose or allow others to do so;
 - in breach of any applicable Government Agency requirements, legislation and laws including but not limited to any privacy laws; copyright laws and telecommunications laws;
 - to expose CMTG to any liability;
 - in any way which damages, interferes with or interrupts the Service, the CMTG Network or a Supplier Network;
 - in any way which may damage any property or injure or kill any person; or
 - to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted.

Customer to Comply with CMTG Directions

- 7.6** The Customer acknowledges that:
- Where the Service is a carriage service, CMTG or the Wholesale Network Provider may be required to intercept communications over the Service as directed by an authorised entity; and
 - CMTG may monitor the Customer's usage of the Service and communications sent over it for the purposes of billing and network monitoring and management or as otherwise required by any law, legislation, or direction of any Government Agency
 - CMTG may ask the Customer to stop doing something which CMTG reasonably believes is contrary to clauses 7.4 or 7.5. The Customer must immediately comply with any such request. If the Customer does not, then CMTG may terminate or suspend the Contract or take any steps reasonably necessary to ensure compliance with clauses 7.4 and 7.5 or the request

General Obligations

- 7.7** The Customer must:
- where if relevant, provide and maintain its own network and network security;
 - comply with any operational procedures and technical specifications specified in any Service or other reasonable directions given by CMTG in relation to the Customer's obligations under this Agreement;
 - provide CMTG with all information, assistance and co-operation reasonably requested by CMTG in order to enable CMTG to meet its obligations under this Agreement or Service;
 - ensure that any equipment it connects to the CMTG network is adequately maintained and meets minimum technical standards necessary for its usual operation;

- not do, or omit to do, anything which could have a material adverse effect on the operation or maintenance of the Connection Equipment or the CMTG Network.

8. FAULT REPORTING AND RECOVERY

- 8.1** Fault reporting and restoration
- The customer must report any fault in relation to the Service to the CMTG service desk as soon as reasonably practicable after it becomes aware of them.
 - CMTG must use its reasonable endeavours to rectify any fault as soon as reasonably practicable after it has been reported
- 8.2** Charges for restoration
- The Customer is liable for all costs incurred by CMTG in restoring the Service where the fault arises as a result of:
- any fault in any equipment, software or any network unit which does not form part of the Connection Equipment or the CMTG Network;
 - defects in Customer Equipment or its installation;
 - any act or omission of the Customer or any of its employees, consultants, contractors, agents or representatives.

9. BILLING & BILLING DISPUTES

- 9.1** On and from the Commencement Date CMTG will provide the Customer with an invoice providing a breakdown of the fees and charges for the Service and any other charges payable pursuant to the Contract in each Invoice Period.
- 9.2** For the avoidance of doubt, CMTG's records and/or any other relevant records will be conclusive evidence of usage of the Service and the fees and charges payable by the Customer.
- 9.3** Unless otherwise agreed CMTG will bill the Customer:
- in advance prior to installation for the Establishment Fee, all other once off charges, variable charges; and
 - in advance for the Invoice Period for the Monthly Service Fee and all other Recurring Charges and any other charges required by CMTG in advance before providing the Service.
- 9.4** Processing and verification procedures (including delays in receipt of billing information) may mean that not all fees and charges during the period covered by a bill can be included in that bill. CMTG may include those charges in any subsequent bills.
- 9.5** CMTG reserves the right to re-issue any bill if any error is subsequently discovered
- 9.6** The Customer is liable for all charges whether or not the Customer authorised the particular use of the Service by another person and the Customer will continue to be liable for the charges if the Customer allows another person to occupy the Customer Premises or use the Service.
- 9.7** The Customer may dispute an invoice if the Customer reasonably believes that the Customer is not liable to pay the charges because of an inaccuracy, omission or error in the invoice. Any dispute relating to the payment or accuracy of any invoice must be resolved pursuant to the Billing Disputes Procedure specified in clause 11.

10. CREDIT REFERENCE CHECK



- 10.1** The Customer acknowledge that the provision of the Services, Connection Equipment and any other obligation under the Contract by CMTG shall be subject to applicable laws, codes and regulations.
- 10.2** CMTG may conduct a credit check on the Customer prior to processing the application for Service. The Customer authorises CMTG to make all enquiries reasonably necessary to determine the Customer's creditworthiness including by conducting requests for information from banks, credit agencies and other financial institutions.
- 10.3** The Customer agrees that CMTG may disclose a credit report to any credit provider or debt collection agency for the purposes of:
- assessment of the Customer's creditworthiness;
 - the collection of payments that are overdue.

11. DISPUTES PROCEDURE

- 11.1** The parties shall co-operate to investigate promptly and resolve any dispute concerning the accuracy of any billing data, any amount payable and any other issue arising pursuant to the Contract.
- 11.2** In the event of a dispute as to fees and charges, the Customer shall notify CMTG of any dispute in writing no later than 21 days from the date of the relevant invoice, providing sufficient information to identify the invoice in question and the grounds of the dispute. Failure to make such a notification within the time frame shall be deemed to be a waiver of the Customer's rights to dispute the relevant invoice.
- 11.3** On receipt of a notice disputing fees under clause 11.2, the Representatives of both parties shall meet within five [5] Business Days and discuss and do all things reasonable required to expeditiously and amicably resolve the dispute.
- 11.4** In the event the parties are unable to resolve the dispute within ten [10] Business Days of the commencement of discussions under clause 11.3, each party shall internally escalate to an executive of the party. The executive shall within ten [10] Business Days attempt to resolve and settle the dispute. If the dispute remains unresolved, either party may, on giving written notice to the other party to such effect, commence legal proceedings in an appropriate court to resolve the matter.
- 11.5** During the existence of any dispute, the parties must continue to perform all of their obligations under the Contract, without prejudice to their position in respect of the dispute unless the parties agree otherwise and the Customer must continue to make payment of amounts of fees and charges or part thereof which are not the subject of a dispute.
- 11.6** Nothing in this clause prevents a party from seeking urgent interlocutory relief required in relation to the Contract.

12. COMPLIANCE WITH GOVERNMENT AGENCY REQUIREMENTS

- 12.1** In the event that CMTG is unable to provide the Service substantially in the form and of the type contemplated under the Contract due to any direction of a Government Agency, law, rule, regulation, statute or ordinance then CMTG shall provide notice to the Customer of that fact as expeditiously as possible and shall not be liable for any Liability incurred by the Customer as a result of CMTG's failure to provide the Service as contemplated pursuant to this clause 12.
- 12.2** Upon receipt by the Customer of a notice under clause 12.1, the Customer shall be at liberty to terminate the Service without penalty by notice to CMTG within 14 days of receipt of the Clause 12.1 Notice. If the Customer provides this notice to CMTG within the said 14 days then the Service shall be deemed to be terminated by the Customer.

- 12.3** In the event that the Customer does not provide a termination notice to CMTG under clause 12.2 then the Service shall revert to a CMTG Managed Service in accordance with the terms of this Contract, except as provided for in writing by CMTG.

13. NATURE OF THE CONTRACT

- 13.1** The Contract contains the entire agreement between CMTG and the Customer and supersedes all prior communications and negotiations between the parties
- 13.2** Unless otherwise specified in the Contract, no amendment or variation of the Contract is valid or binding on a party unless made in writing and signed by the Customer and CMTG.

14. INDEMNITY

- 14.1** The Customer shall indemnify CMTG from and against any liability which may be incurred or suffered by CMTG arising from any one or more of the following:
- the breach by the Customer of a material term or any of the Customer's obligations under the contract;
 - any negligent act of omission or wilful misconduct by the Customer arising from the use of the Service, Connection Equipment, Customer Equipment or otherwise arising out of the Customer's obligations under the Contract;
 - the use or provisioning of the Service or the Connection Equipment or the Customer Equipment; and
 - any claims or demands made upon CMTG by reason of any loss, injury or damage which may be suffered by any person from the provisioning or use of the Service or the Connection Equipment.

15. LIABILITY AND WARRANTIES

- 15.1** Except as expressly provided in the Contract, any terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the subject matter of the Contract are excluded to the maximum extent allowed by the law.
- 15.2** Where CMTG is not permitted to exclude its liability for any loss or damage in connection with CMTG's breach of a Consumer Guarantee (as defined under the Australian Consumer Law), but are permitted to limit its liability for such a breach, then, unless the Customer is able to establish that it is not fair and reasonable for CMTG to do so, CMTG's liability to the Customer is limited to:
- In the case of goods:
 - replacement of the goods;
 - supply of equivalent goods;
 - repair of the goods;
 - payment of the cost of replacing the goods;
 - payment of the cost of acquiring equivalent goods; or
 - payment of the cost of having the goods repaired; and
 - In the case of services;
 - resupply of the services; or
 - payment of the cost of the resupply of the services.
 - The limitations of liability in clause 15.2 do not apply to a breach of any Consumer Guarantee relating to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.
 - The Customer acknowledges it has not relied on any representation or warranty made by CMTG which has not been stated



expressly in the Contract or upon any descriptions or illustrations or specifications contained in any document including any catalogues or material published by CMTG.

- e) Except as required by law or regulation or as set out in this Contract, CMTG expressly excludes all liability for all warranties, conditions, non-fraudulent representations, express or implied concerning the Service, including but not limited to those relating to the availability, performance, quality or fitness for purpose of the Service.
- f) Under no circumstances will CMTG be liable to the Customer for loss of profits, loss of contracts, loss of use of the Service or any Interruption or for any indirect economic or consequential loss whatsoever, whether arising from negligence, breach of contract, failure of the Service or otherwise.
- g) The provisions of this clause 15 survive the termination of the Service.

16. TERMINATION AND SUSPENSION

Termination by CMTG

- 16.1 CMTG may, without liability, terminate the Contract or provisioning of the Service at any time prior to the Commencement Date, if CMTG reasonably determines that it is not technically or operatively feasible or commercially viable to supply the Service to the Customer.
- 16.2 CMTG may, without liability, at its option either terminate or suspend the Contract by giving notice to the Customer if:
 - a) the customer breaches its obligations under the Contract and such breach is not capable of remedy or the Customer does not remedy that breach within 30 days after CMTG gives it notice requiring it to do so;
 - b) if the Customer does not obtain the consent of the owner of the Premises to the supply of the Service.
 - c) the Customer fails to make payment for the Services by the Due Date and such amounts remain unpaid for 10 Business Days after receiving notice from CMTG of such non-payment.
 - d) CMTG reasonably suspects fraud or other misuse by the Customer or any person in connection with the Customer with the Service and the Customer has not responded to CMTG's notice to the Customer of any such event;
 - e) the Customer suffers an Insolvency Event;
 - f) CMTG is entitled to terminate or cancel any other service supplied to the Customer, or is entitled to (or does) terminate any other agreement with the Customer;
 - g) CMTG is required to do so under any law or to comply with an order, instruction or request of a Government Agency, an emergency services organisation or any other competent authority; or
 - h) a supplier terminates its agreement with CMTG, or ceases to supply services to CMTG, and CMTG is not able to provide the Service using services supplied to CMTG by an alternate supplier on terms reasonably acceptable to CMTG.
- 16.3 If the Service is terminated before the end of the Term pursuant to clause 16.2 (other than clause 16.2(h)) the Customer must pay to CMTG an amount calculated by multiplying the Monthly Service Fee by the remaining months (or part thereof) of the Term and any outstanding charges including Establishment Fee or part thereof.

Termination by Customer

- 16.4 The Customer may after the Commencement Date, terminate the Contract, without liability if
 - a) it does so pursuant to clause 12.2;
 - b) if the service has been suspended for more than 14 consecutive days through no fault of the Customer other than in the case of a force majeure event
 - c) CMTG commits a serious breach of the Contract, and has not remedied that breach within 30 days of becoming aware of the breach.
- 16.5 Except as provided in clause 16.4 the Customer may terminate the Contract:
 - a) before the Commencement Date and the Customer must pay to CMTG all infrastructure and installation costs incurred by CMTG in connection with preparation for the provision of the Service; or
 - b) after the Commencement Date but before the end of the Term by giving 30 days written notice to CMTG and must pay CMTG an amount calculated by multiplying the Monthly Service Fee by the remaining months (or part thereof) of the Term and any outstanding charges including Establishment Fee or part thereof. Such right of termination is without prejudice to any other rights which the party not in breach may have.

Termination by Either Party

- 16.6 Either party ("**Affected Party**") may, without liability, terminate the Contract with immediate effect from the date of service of a notice (or with effect from a later date as the Affected Party may nominate in a notice) if any Force Majeure Event prevents the supply of the Service for more than 30 consecutive days.

Suspension by CMTG

- 16.7 In addition to CMTG's rights under clause 16.2, CMTG may, upon reasonable notice, without liability and with immediate effect suspend the Service for as long as CMTG, acting reasonably, considers necessary:
 - a) if doing so is necessary to allow CMTG or a third party supplier to repair, maintain or service any part of the CMTG Network or Supplier Network used to supply the Service;
 - b) Problems are experienced interconnecting the CMTG Network with any Supplier Network;
 - c) If CMTG believes it is necessary to do so to comply with any law, to protect any person, equipment or CMTG's network, or to enable authorised persons to attend to any emergency.
- 16.8 If the Service is suspended as a result of the Customer's breach of the Contract or otherwise in accordance with clauses 16.2 or 16.7, then the Customer:
 - a) will have to pay any recurring charges arising during suspension, such as the Monthly Service Fee; and
 - b) a reactivation charge if reactivation or reinstatement of the Service is necessary after it has been suspended.

Following Termination

- 16.9 Upon termination of the Service for any reason CMTG, its agents or employees shall have reasonable access to the Premises for the purpose of disconnecting, dismantling and removing the Service and Connection Equipment, and the Customer shall render all reasonable assistance to CMTG to enable it to do so.
- 16.10 CMTG shall upon removal of the Service and Connection Equipment make good



to a reasonable standard, fair wear and tear accepted, any damage caused during the removal of the Service, but without any obligation to repaint or redecorate. This clause shall not apply if removal of the Service by CMTG occurs as a result of any breach of the terms of this Contract by the Customer.

16.11 Termination of the Contract shall be without prejudice to the right to CMTG to receive any amounts which may have become due for payment prior to such termination but which have not been paid.

16.12 On Termination of the Contract for any reason:

- a) each party must, on request by the other party, immediately return or destroy the other party's Confidential Information, except to the extent that it is required by law to retain the other party's Confidential Information;
- b) CMTG may immediately stop supplying to the Customer the Service;
- c) unless otherwise permitted by CMTG in writing the Customer must immediately stop using the Service and Connection Equipment;
- d) unless the Contract expressly states otherwise, each person's accrued rights and obligations are not affected; and
- e) the clauses of the Contract which are by their nature intended to survive cancellation of the Service will do so, which for the purposes of these General Conditions, include clauses 5.2, 5.4, 5.9, 14, 15, 16.11, 18 and 23

17 INTELLECTUAL PROPERTY

17.1 All Intellectual Property Rights which are owned by either party as at the date of this Contract will at all times remain owned by that party exclusively

17.2 Except as expressly provided, nothing in this Contract confers on the Customer any right or interest in, or license to use, any of CMTG's or any third party's Intellectual Property Rights.

Internet Protocols

17.3 Where CMTG allots any internet protocol numbers to the Customer in connection with the Service, the Customer may only use such internet protocol numbers in connection with that Service. If the Customer or CMTG suspends or discontinues the use or supply of a Service for whatever reason, the Customer's right to use such internet protocol numbers will cease and CMTG may reallocate such numbers as it see fit.

18 CONFIDENTIALITY

18.1 CMTG and the Customer each agree to keep confidential the other's Confidential Information and to not use the Confidential Information for any other purpose than that for which it was disclosed or which may cause the Provider loss.

18.2 The Provider retains all property rights in the confidential information

18.3 The Recipient may disclose Confidential Information (to the extent reasonably necessary) to its Representatives for the sole purpose of assisting the Recipient for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including billing and account management, business planning and product development.

18.4 The obligations of confidentiality in this clause 18 do not apply to the extent disclosure is required by law or the rules of a stock exchange, a direction by Government Agency, or disclosure to professional advisors in connection with the supply of the Service.

18.5 The Recipient acknowledges that a breach of this clause 17 may cause the Provider irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in

addition to other remedies that may available, the Provider may seek injunctive relief against such a breach or threatened or suspected breach.

18.6 The Recipient's obligations with respect to the Confidential Information survive termination and bind the Recipient until the relevant Confidential Information has become part of the public domain other than in breach of an obligation of confidentiality.

19 ASSIGNMENT

19.1 The customer shall not sub-let, assign, dispose of or otherwise deal with its internet in or under the Contract without the prior written consent of CMTG and if any such consent shall be on terms acceptable to CMTG.

19.2 CMTG shall be entitled to novate, assign or sub-contract its interest in and obligations under the Contract or any part thereof to any third party upon written notice to the Customer. CMTG shall have no further obligations to the Customer in respect of any matter relating to such novation or assignment on and from the date of the notice provided to the Customer pursuant to this clause 19.2.

20 RELATED BODIES CORPORATE

20.1 CMTG may provide the Service through the use of any of CMTG's Related Bodies Corporate.

20.2 The Customer acknowledges and agrees that any debt owed under this Contract is a debt owed to CMTG and that CMTG may take any necessary action in relation to any such debt notwithstanding that the right or obligation giving rise to the debt was satisfied by CMTG's Related Bodies Corporate.

21 NOTICES

21.1 Notices for the purpose of the Contract shall be in writing. A notice given to a party at that party's address set out on the face or at such other address as may be substituted by written notice from such party to the other shall:

- a) in the case of prepaid post, be presumed to be given 5 days after the date of posting;
- b) be presumed to be delivered at the time of delivery if delivered during normal business hours;
- c) be presumed to be given upon receipt by the sender of a satisfactory transmission confirmation report indicating due transmission without error in the case of facsimile transmission;
- d) be presumed to be given upon the sender's computer system indicating transmission in the case of an email transmission.

22 WAIVERS

22.1 No waiver of indulgence by any party to the Contract shall be binding upon the parties unless in writing.

23 GOVERNING LAW

23.1 This Contract shall be governed by the law of Western Australia and the parties agree to submit to the jurisdiction of the Courts of Western Australia.

24 GOODS AND SERVICES TAX

24.1 In this clause the expressions "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", and "tax invoice" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

24.2 All prices or other sums payable for consideration to be provided and which



are expressly state in this Contract are exclusive of GST unless otherwise indicated.

- 24.3** If GST is payable by the supplier on any supply made under the Contract the recipient will pay to the supplier an amount equal to the GST payable on the supply. Subject to the supply of a tax invoice that amount will be paid at the same time the consideration for the supply is payable under the agreement and will be paid in addition to the consideration. The supplier shall provide the recipient with a tax invoice in respect of the supply.

25 COUNTERPARTS

- 25.1** This Contract may be exclude in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

CMTG Internet Service Specific Terms and Conditions

In addition to the CMTG General Terms and Conditions the following CMTG Internet Service (Service) Specific Terms and Conditions also apply.

1. DEFINITIONS

1.1 Terms that are capitalised in these Service Specific Terms and Conditions have the same meaning as in the CMTG General Terms and Conditions for the Service

1.2 In this Service Description, unless the context otherwise requires:

Internet Access means connection to the global networks known as the "internet" using software protocol supported by the ISP to connect the Customer Equipment to the ISP's network. This includes access to email and the World Wide Web, but not necessarily other services.

ISP means the internet service provider referred to in the Application for Service

Metered Internet Service means a service that is purchased with a defined monthly data allowance (GB). Data usage is calculated as the greater of the inbound or outbound usage.

Registration Agreement means the terms and conditions for the relevant registration, published at www.melbourneit.com.au/policies/.

Registration Documents means the Registration Documents published in the Registration documents section of <http://www.auda.org.au/policy>

Service Delivery Point (SDP) means the location at which the Wholesale Network Provider will install the Connection Equipment necessary to provide the Service Interface as specified in the Application Form.

Service Levels means the service levels as set out in CMTG's standard Service Level Agreement

Service Level Agreement means CMTG's standard service level agreement issued by CMTG from time to time. Service Type means the type of service as set out in the Application Form.

2. GENERAL

2.1 The Service is available within the coverage area of CMTG or the Wholesale Network Provider's network. The Service may be provided to sites outside the existing coverage area and/or where infrastructure expansion is required is technically and commercially viable.

2.2 CMTG or the Wholesale Network Provider, reserves the right to refuse to connect any cabling at the Premises to the Service unless:

A registered cabling service provider installed the cabling at the Premises;

- a) The Customer's premise cabling meets the minimum technical requirements as determined by ACMA; and
- b) The Customer has obtained all the necessary consents from the owner of the Premises.

2.3 Any equipment connected to the Service must comply with all applicable ACMA and other standards.

2.4 The Service is presented at the Service Delivery Point (SDP). Service interfaces currently supported are:

Interface	Interface Bandwidth	Specification	Max Distance of Customer Equipment from SDP
10BaseT	10 Mbps	IEEE 802.3 (UTP RJ45)	100m
100BaseT	100Mbps	IEEE 802.3 (UTP RJ45)	100m
1000BaseSX	1000Mbps	IEEE802.3 (SMOF SC Connector)	Depends on optics

2.5 The interface bandwidth must be equal or greater than the bandwidth of the Service or Services provided via the interface.

2.6 The Customer agrees to terminate the Service with a Layer 3 device (switch, router or firewall). The device must be available at the time of commissioning the Service.

2.7 The Customer is responsible for taking all reasonable steps to ensure that any faults reported to CMTG are within the Service before reporting the fault.

2.8 CMTG will use all reasonable endeavours to support the Service in accordance with the Service Level of clause 10.

2.9 CMTG or the Wholesale Network Provider may vary the Service if reasonably required for technical, operation and commercial reasons.

3. INTERNET SERVICES

3.1 The target packet loss for this Service will be determined by the Service Type specified in the Application form. The target packet loss is less than 0.1%, 0.3% and 0.5% for Enterprise, Corporate and Business Plans.

3.2 Where the Service Type selected is Corporate or Business, the Customer acknowledges that the Service is not designed for high volumes of consistent profile (incoming or outgoing) or dedicated bandwidth.

3.3 Where a Customer's traffic profile on the Corporate or Business service frequently exceeds average utilisation specifications, the Customer's Service may be reduced in speed to the effective minimum throughput speed until such time as the cause of excessive utilisation has been remedied or an alternative plan purchase.

4. METERED INTERNET SERVICES

4.1 Where the Service is a Metered Internet Service, the Customer acknowledges that they are not



purchasing dedicated bandwidth and as such there is no throughput guarantee on internet traffic.

5. ADDITIONAL FEATURES

5.1 CMTG may, at CMTG's absolute discretion and without obligation to do so, provide the following features:

- a) Domain name server (DNS) and registration functions; or
- b) Internet Protocol (IP) addresses

5.2 The supply of DNS and or IP addresses is subject to clause 17.3, 17.4, 17.5 and 17.6 in the General Terms and Conditions

6. DISCLAIMERS AND LIABILITY

6.1 The Customer acknowledges and agrees that:

- a) The Customer is responsible for providing for any security or privacy that the Customer requires for the Customer's computer networks and any data stored on those networks or accessed through the Service;
- b) CMTG may access and store certain content accessible through use of the internet (known as caching) for fast and easy access by customers. That content is updated on a regular basis but there may be delays in that updating and therefore content accessed through the Service may not be the most up to date version;
- c) CMTG does not exercise any control over the content accessible through the internet;
- d) to the extent permitted by law, CMTG does not give any warranties, express or implied, in respect of the Service or have any other liability to the Customer or the Customer's End users in respect of the Service;
- e) CMTG is not responsible for an damaged that the Customer may suffer arising from using:
 - ◆ the Service (including loss of data, delays, non-deliveries, or mis-deliveries);
 - ◆ any content accessed through the Service (including inaccurate, incomplete or out of date information); or
 - ◆ inaccurate, incomplete or out of data information.

7. USE AND INDEMNITY

7.1 The Customer will not use or allow others to use the Service:

- a) to distribute material that is defamatory, abusive, menacing, threatening, harassing or illegal under any law at any place where transmissions are sent from, viewed or received;
- b) to install transmit or distribute any unsolicited mail, advertising material or any other material of an offensive, obscene or indecent nature or otherwise contrary to law or an applicable code of conduct;
- c) to copy or distribute material where it has no right to do so (for example, someone else's copyrighted works or confidential information);
- d) to commit a crime or in the course of committing a crime or for an unlawful purpose;
- e) to engage in any activities in such a manger as to expose CMTG, the Wholesale Network Provide or another supplier to liability;
- f) to do any act that may damage the network of systems or cause the quality of the Service to be impaired;

- g) to attack or breach the security of or deny service to computers not belonging to the Customer or engaging in any activity that is reasonable likely to resulting damage to persons other than the Customer or computer other than those belonging to the Customer;
- h) for the distribution of viruses or other similar programs whether in or outside the Service or whether to any computer or equipment whatsoever;
- i) to breach the copyright in any software or other material made available to the customer through the provisions of the Service whether with or without appropriate permission; or
- j) in a manner that does not comply with any instructions given by CMTG under clause 5 of the General Terms and Conditions

7.2 The Customer will indemnify CMTG against all costs, losses, damaged, liabilities and expenses (including all reasonable legal costs, fees and expenses) incurred or suffered by CMTG as a result of use of the Service in breach of clause 7.1

8. AVAILABILITY

8.1 The Customer acknowledges that, although CMTG and the Wholesale Network Provider endeavours to maintain the general accessibility of the Service, the continued target availability of the Service cannot be guaranteed and the Customer acknowledges that the Service may become temporarily unavailable for use due to technical failure, network congestion, periodic maintenance, disrupted telecommunications services or other causes.

9. SOFTWARE AND EQUIPMENT

9.1 The Customer acknowledges that any Equipment supplied by CMTG is used by the Customer at the Customer's own risk. CMTG shall make every effort to provide advice in good faith to the Customer and the Customer acknowledges that should the Customer act on that advice the Customer does so at the Customer's own risk and CMTG is not liable for any losses suffered by the Customer relying upon that advice.

9.2 The Customer acknowledges that the Customer is solely responsible for the service and maintenance of the Customer Equipment and the Customer acknowledges that the internet contains viruses and other computer programs that may destroy or corrupt data on the Customer Equipment and that CMTG and the Wholesale Network Provider cannot protect the Customer against all computer viruses or other security problems.

10. RESPONSIBLE USAGE

10.1 The Customer must use the Service in a responsible manner, taking into account the effects the use of the Service may have on other users and the CMTG Network.

10.2 Breach of clause 10.1 may be deemed grounds for termination under clause 16.2 of the General Terms and Conditions

