



LINK INNOVATIONS PTY LTD

TERMS AND CONDITIONS OF BROADBAND SERVICE

1. Definitions

- 1.1 **'Access Period'** means the period commencing on the Commencement Date and ending on the expiry of the Agreement or the date the Agreement is otherwise brought to an end.
- 1.2 **'Agreement and Agreement Renewal'** means the Service Contract together with these Terms and Conditions of Broadband Service (as published on www.linkinnovations.com.au, and as may be varied from time to time), your nominated Broadband Service plan; and 'Our Agreement' refers to the same.
- 1.3 **'Broadband'** means a high speed (greater than 256Kbps) connection through a single access line.
- 1.4 **'Broadband Service'** means the connection service provided by Link.
- 1.5 **'Charges'** means the charges payable by the Customer to Link pursuant to an Agreement.
- 1.6 **'Commencement Date'** means the date stated in the Service Contract.
- 1.7 **'Commissioned Site Survey'** means a Site Survey that is requested by a Customer in respect of an area or region outside the Territory.
- 1.8 **'Confidential Information'** means all:
- (a) know-how, trade secrets, ideas, concepts, technical and operational information owned or used by Link;
 - (b) information concerning the affairs or property of Link, or any business, property or transaction in which Link may be or may have been concerned or interested;
 - (c) details of any customers or suppliers of Link;
 - (d) information about the terms and effect of this Agreement;
 - (e) information which by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to Link or any third party with whose consent or approval Link used that information; and
 - (f) information specifically stated or regarded as being confidential by Link.
- 1.9 **'Credit Application Form'** means Link's document to be completed by the Customer for creditworthiness checks.

- 1.10 **'Customer'** means any person who has entered into an Agreement with Link for the purpose of the provision of Broadband Service.
- 1.11 **'Customer Equipment'** means all equipment and facilities located on the Customer side of the Link Network termination point other than Link Equipment used in connection with the Service.
- 1.12 **'Defined Abuse'** means:
- (a) intentionally providing false information to Link;
 - (b) distributing or making available obscene, pornographic, illegal or Confidential Information or otherwise using the Internet in an unlawful manner;
 - (c) to infringe Intellectual Property Rights (such as using, copying or distributing data or software) without the permission of the owner;
 - (d) to interfere or otherwise disrupt the Service or any part of the Service, a computer system or anyone else's use of them (or attempting to do any of these things), including the distribution of viruses or deliberately attempting to overload the system;
 - (e) to access, monitor or use any data, systems, processes or networks without authority (for example hacking) or attempt to probe, scan or test the vulnerability of any data, system, process or network;
 - (f) the sending of unsolicited bulk e-mails or engaging in the practice known as "spamming";
 - (g) forging header information, email source addresses or user information;
 - (h) disobeying the rules of any newsgroup, chat rooms, forum or emailing list;
 - (i) engaging in any conduct or activity which may expose Link to liability;
 - (j) breaching anyone's privacy or accessing someone's personal information without their consent;
 - (k) the use or distribution of components designed to compromise system security, such as credit card generators, password guessers, crackers, packet sniffers, network probes and other such components;
 - (l) the deliberate or reckless disruption of Link's Service or disruption of a Customer's Internet access;
 - (m) using the Broadband Service, or allowing another person to use the Broadband Service, for any purpose or activity of an illegal, unlawful or fraudulent nature; or
 - (n) any other conduct or activity prescribed by Law or Government agency or body regulation from time to time.
 - (o) any other conduct or activity prescribed by Link from time to time or as set out in any usage policy in place or created by Link.
- 1.13 **'Early Termination Charge'** means the charge calculated in accordance with clause 13.4.

- 1.14 **'Event of Default'** has the same meaning ascribed to that term in clause 12.
- 1.15 **'Force Majeure Event'** means:
- (a) Fire, flood, earthquake, elements of nature or act of God;
 - (b) Riot, civil disorder, rebellion or revolution; or
 - (c) Other matters outside the reasonable control of the non-performing party, but in each case only if, and to the extent that, the non-performing party is without fault in respect of the default or delay and the default or delay could not have been prevented by taking steps specifically required under the Agreement.
- 1.16 **'GST'** has the same meaning as given by the GST Act.
- 1.17 **'GST Act'** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any such Act which amends, varies or replaces it.
- 1.18 **'Initial Payment'** means a once-off Charge on signing of a Service Contract representing prepayment of monthly fees for a certain number of months.
- 1.19 **'Insolvency Event'** means in relation to a Customer:
- (a) that Customer being unable to pay its debts as they fall due;
 - (b) that Customer becoming an externally administered body corporate within the meaning of the Corporations Act 2001 (Cth);
 - (c) that Customer convening a meeting of its creditors or proposing or entering into a scheme of arrangement or composition for the benefit of any of its creditors;
 - (d) an application being made to a court or a notice of intention to propose a resolution for the winding up of that Customer;
 - (e) that Customer becoming deregistered; or
 - (f) where the Customer is an individual, that Customer becoming bankrupt or otherwise insolvent.
- 1.20 **'Intellectual Property Rights'** means all copyright, trade mark, patent, design, Confidential Information, moral, trade secret, or any like rights to the foregoing, whether arising by common law or by statute, or any right to apply for registration under a statute in respect to such rights.
- 1.21 **'Internet'** means the worldwide connection of computer networks providing for the transmittal of electronic mail, on-line information, information retrieval and file transfer protocol.
- 1.22 **'Link'** means Link Innovations Pty Ltd (ABN 47 071 699 637) and its successors or assigns.
- 1.23 **'Link Equipment'** means equipment of Link located on your premises, including premises leased by you or co-location spaces licensed by you, or co-location spaces provided by Link, for the provision of a Service, other than Purchased Equipment.

- 1.24 **'Link Network'** means a telecommunications network of Link.
- 1.25 **'Personal Information'** means any information particular to the individual Customer that identifies the Customer or matters associated with the Customer.
- 1.26 **'Point(s) of Presence (POP's)'** means the central location in an area where Link distributes connectivity services from.
- 1.27 **'Purchased Equipment'** means the items of equipment, if any, purchased by the Customer from Link.
- 1.28 **'Quotation'** means Link's document quoting the Customer details of price and Service.
- 1.29 **'Quotation Acceptance Form'** means the last page of Link's Quotation signed by the Customer as acceptance of that quotation.
- 1.30 **'Renewal Period'** means a renewable period of 12 months, or other period as agreed, commencing the day after the expiry of the initial period.
- 1.31 **'Safe Harbour Scheme'** is contained in the Copyright Act 1968 as amended and means a limitation of liability for damages for copyright infringement arising out of the Customer's illegal transmission of copyright content.
- 1.32 **'Service(s)'** means Broadband connectivity provided by Link.
- 1.33 **'Service Contract'** means the Agreement between the Customer and Link for the provision of Services.
- 1.34 **'Service Level Agreement (SLA)'** means a Service Level Agreement that exceeds industry standards by providing the Customer with superior service.
- 1.35 **'Site'** means any part of a building or structure (movable or immovable).
- 1.36 **'Site Access'** means Link's ability to attend Customers' premises 24 hours a day 7 days a week to perform network maintenance. Also provides the means of access to authorised staff.
- 1.37 **'Site Survey'** means a survey of a Site to determine whether the Site is or contains a suitable location for access or connectivity to the Service or for the installation or serviceability of Link Equipment.
- 1.38 **'Storage Facility'** means any facility provided by Link which allows you to store information, including (but not limited to) your email inbox and web space.
- 1.39 **'Support'** means the provision by Link of services for the purpose of trouble-shooting of connectivity faults and modification of Services.
- 1.40 **'User', 'You', 'Your' and 'Yours'** means the Customer or refers to any person or device that connects to Link for the purpose of gaining Broadband Service including the Customer.
- 1.41 **'Username'** means the unique form of identification allocated to Customers for connection to Link's Service.

- 1.42 **'Territory'** means the area or areas in which Link has Points of Presence to provide the Services.
- 1.43 **'We,' 'Us' and 'Our'** means or refers to Link.
- 1.44 **'World Wide Web'** means a method of representing and obtaining graphical data and linking data items used by Internet users.

2. Registration, Privacy and Credit Information

- 2.1 Any person seeking to connect to Link for the purpose of gaining Broadband Service must complete a Credit Application Form. The Customer is not authorised to use the Broadband Service unless the Credit Application has been accepted by Link.
- 2.2 Use of the Broadband Service is deemed to be unconditional acceptance of our Agreement by the Customer.
- 2.3 Link is committed to the National Privacy Principles in the Commonwealth Privacy Act 1988 as well as any other applicable laws and codes affecting your personal and credit information. Our staff is trained to respect your privacy in accordance with our standards, policies and procedures.
- 2.4 During the application process you will be asked for Personal Information and you acknowledge and agree that:
- (a) It is necessary for Link to collect Personal Information about you from yourselves and others to process your application;
 - (b) The Personal Information collected may be disclosed to and used by Link, other credit providers and a credit reporting agency for any purposes that are reasonable and necessary;
 - (c) Link may provide the Personal Information collected to any parties (such as referees, employers etc) named in the application to the extent that they deem it necessary to assist in assessing and processing the application;
 - (d) Link may use the Personal Information collected to effectively manage and administer all products and Services provided to you including charging, billing and collecting debts;
 - (e) Link may use the Personal Information collected to ensure their internal business operations are running smoothly which may include fulfilling legal requirements and conducting confidential systems maintenance and testing;
 - (f) Link may use the Personal Information collected to identify your individual needs to provide you with a better and more personalised Service and to keep you up to date with the ways in which our Services to you could be improved;
 - (g) Link may disclose the Personal Information to third parties that it engages to assist in the provision of its Services to you including, but not limited to, printing services, outsourced service providers, IT contractors, mailing houses and our professional advisers;

- (h) Link may disclose the Personal Information to government and regulatory authorities and other organisations, as required or authorised by law;
- (i) You understand that you can gain access to, and correct if necessary, the Personal Information that Link has collected by contacting Link;
- (j) You agree that Link may retain the Personal Information collected and at its discretion provide to you from time to time, information about Link and its products and services. This information may be provided by telephone, mail or electronic media; and
- (k) You understand that if you do not wish to receive the information specified in clause 2.4.10, you can cancel this clause by deleting and initialling it. You understand that you can cancel this clause at any time by advising Link in writing that you do not require this information.

2.5 Access to Commercial Credit Information (Section 18L(4) Privacy Act 1988):

You agree that Link may obtain information about you from a business which provides information about the commercial credit worthiness or commercial activities of persons for the purposes of assessing any application for commercial credit.

2.6 Access to Consumer Credit Information (Section 18K(1)(b) Privacy Act 1988):

You agree that Link may obtain a consumer credit report containing information about you from a credit reporting agency for the purposes of assessing any application for consumer credit.

2.7 Exchange of Credit Worthiness Information (Section 18N, Privacy Act 1988):

- (a) You agree that Link may exchange information with credit providers named in a credit report issued by a credit reporting agency for the following purposes:
 - (i) To assess an application by you for credit;
 - (ii) To notify other credit providers of a default by you;
 - (iii) To exchange information with other credit providers as to the status of this loan where you are in default with other credit providers; and
 - (iv) To assess your credit worthiness.
- (b) You understand that this information can include any information about your credit worthiness, credit standing, credit history, credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

3. Provision of Service

- 3.1 Link, in accordance with our Agreement, shall provide the Customer with the Broadband Service by such means as Link determines.
- 3.2 Link shall use all reasonable endeavours to provide the Broadband Service on a continuous basis during the term of our Agreement. During peak periods, network capacity may be limited and access is not guaranteed.

- 3.3 Link will not be liable for any loss or damage suffered by you by disruption or interruption to the provision of the Service. Where this limitation of Link's liability is held to be invalid, Link's liability will be restricted to the re-supply of the Service.
- 3.4 Link will inform the Customer if the Service is unavailable for access by the Customer due to maintenance or any other foreseeable factor.
- 3.5 Link shall provide the Customer with all identification and log-in information required for connection to the Internet. This information will be unique to each Customer.
- 3.6 All identification and log-in information remains the property of Link and may not be modified or altered in any way by the Customer.
- 3.7 Link reserves the right to modify your Username at our sole discretion.
- 3.8 Where a Customer's use of a Storage Facility exceeds specified limits, Link may remove any of the stored information without notice to bring the Storage Facility back within allowable limits. The information removed may include information in your email mailbox or in your personal web space.
- 3.9 Link may delete email sent to or from you where:
- (a) individual messages are greater than the specified limit;
 - (b) messages remain on the Link's servers for more than 90 days; and
 - (c) messages contain objectionable material (as in Defined Abuse) as detected by the system.
- 3.10 Link will take all reasonable steps to investigate allegations of Defined Abuse. If a Customer is found to have engaged in Defined Abuse then Link may:
- (a) provide your information to any third parties affected by your conduct;
 - (b) notify the relevant authorities if applicable;
 - (c) charge you **\$150** per hour for time spent investigating the Defined Abuse allegation;
 - (d) terminate your Broadband Service without further notice;
 - (e) remove any Storage Facilities utilised by you; and
 - (f) terminate our Agreement without further notice.

4. Customer Obligations

- 4.1 The Customer must provide its own facilities for Broadband Service unless agreed otherwise.
- 4.2 The Customer will cooperate with Link and do everything reasonable to help Link to provide to you a Service at a location. The kinds of assistance Link may require from you include:

- (a) Ensuring that it is possible and safe for us to get necessary Site Access to a location, including for an emergency;
 - (b) Ensuring that relevant people are available and give us timely instructions;
 - (c) Ensuring that Customer Equipment is ready for commissioning of services;
 - (d) At your own expense and following our reasonable instructions, making any modifications to Customer Equipment reasonably necessary to enable us to provide the Service;
 - (e) Obtaining and maintaining any authorisation, permission, licence, waiver, registration or consent from any person necessary for you to request to enable us to provide the Service;
 - (f) Informing Link of the location of Link Equipment; and
 - (g) Working together with Link to establish procedures to reduce fraud, or the opportunity for fraud, in relation to the Service.
- 4.3 The Customer agrees to supply Link or our nominated agent any information reasonably requested by us relating to you and your business:
- (a) For credit management purposes;
 - (b) To enable Link to monitor and help reduce the incidence of fraud;
 - (c) To assist Link in complying with its regulatory obligations and its obligations to report on compliance with those obligations;
 - (d) To assess whether or not you have complied, are complying and will be able to continue to comply with all obligations imposed on you under these terms and conditions; and
 - (e) For other purposes reasonably required by Link from time to time and agreed by you.
- 4.4 The Customer is responsible for maintaining the secrecy and confidentiality of the Username and all identification and log-in information required by the Customer to access the Service. The Customer must exercise due care in choosing passwords. Passwords should be changed regularly and should never be recorded on your computer.
- 4.5 The Customer agrees not to disclose to any other person, corporation, entity or organisation the Username or any identification or log-in information, whether in use or not, nor any other information relating to the Service or Link.
- 4.6 The Customer is liable for all Charges resulting from use of the Service accessed through the Customer's identification or log-in information, whether authorised by the Customer or not.
- 4.7 The Customer must not maintain or permit multiple concurrent connections to the Internet at any given time.
- 4.8 The Customer shall maintain an up to date and secure computer system with appropriate anti-virus and firewall measures.
- 4.9 The Customer is responsible for preparing and maintaining sufficient back-up files and data storage capacity for all Customer data including electronic messages.
- 4.10 The Customer warrants that in accessing and using the Service it will only use software that it is legally entitled to use. Where Link has supplied software, the Customer agrees to abide by any associated copyright and licensing restrictions including, but not limited to, the number of computers the software is to be

installed on, sublicensing of the software and assignment of your rights and obligations to the software.

- 4.11 The Customer acknowledges that Link is protected by the Safe Harbour Scheme for purposes of the Customer's illegal transmission of copyright content.
- 4.12 The Customer shall comply with all reasonable directions by Link regarding the Service and the use of the Service.
- 4.13 Link has no responsibility to provide training in the use of the Service pursuant to the Agreement. Training may be provided or procured for an additional fee.
- 4.14 Throughout the duration of the Agreement, the Customer will not engage in Defined Abuse.
- 4.15 The Customer acknowledges that Link does not and cannot in any way supervise, edit or control the content and form of any information or data accessed through the Service and Link shall not be held responsible in any way for any content or information accessed via the Service.
- 4.16 Notwithstanding clause 4.15, Link may, to the extent permitted by law, monitor material transferred by the Customer through the Internet. This information may be provided to third parties without notice to the Customer.
- 4.17 Link disclaims all or any liability for any material on the Internet that the Customer finds offensive, upsetting, defamatory or personally offensive.
- 4.18 The Customer must not resell or purport to resell the Service.
- 4.19 The Customer must not interfere with Link's Equipment. If such interference occurs and an outage is caused, the Customer is liable for all Charges relating to reconnection and an SLA will be invalidated.
- 4.20 A Customer must not connect a sub-network to the Broadband Service unless Link expressly allows otherwise in writing. This includes, without limitation, the hosting of FTP, SMTP, HTTP and Proxy Services.
- 4.21 The Customer is responsible for ensuring that the telephone number that the Customer is dialling to connect to the Broadband Service, if applicable, is a local call. These telephone costs, and any other costs associated with connecting the Customer to the Broadband Service, such as modems, software and hardware, are the responsibility of the Customer.
- 4.22 Regulatory compliance issues - The Customer must comply with all reasonable requests for assistance that we make of you to help us to comply with our current and future regulatory obligations, including, in particular requests relating to the provision of information to:
 - (a) the police and other law enforcement agencies;
 - (b) for directory purposes;
 - (c) emergency services;
 - (d) to telecommunications users from time to time regarding alterations in numbering plans, industry codes and other industry developments.

5. Customer Support

- 5.1 Link will provide telephone Support free of charge during business hours 9.00 am to 5.30 pm Monday to Friday Eastern Standard Time excluding public holidays.
- 5.2 Out of business hours Support may be charged to customers if Link investigates a fault and determines that the fault is attributable to:
 - (a) equipment on the customer's side of the service delivery point
 - (b) equipment on the network of a third party
 - (c) an act of the customer or a third party
 - (d) the customer not having entered into a support contract for Support performed out of business hours.
- 5.3 Customers with Service Level Agreements (SLA) will receive the Support contracted for under their SLA.
- 5.4 On-site Support requires Site Access, the availability of which may dictate Link's response time.

6. Equipment

6.1 Link Equipment

We will supply to you Link Equipment. You are responsible for the Link Equipment and must compensate Link for any loss or damage to it (unless we cause such loss or damage). If you become aware of any loss of, damage to, claim over, or malfunction of the Link Equipment, you must notify us immediately. Link may, at any time and at Link's cost, modify or replace Link Equipment provided there is no material adverse impact on our provision to you of the Service. In respect of Link Equipment, you must:

- (a) provide an adequate power supply and a suitable physical environment in accordance with Link's reasonable directions;
- (b) only permit Link Equipment to be repaired, serviced, moved or disconnected by Link unless otherwise permitted by Link in writing;
- (c) not remove or obscure any identification marks on Link Equipment;
- (d) comply with all reasonable instructions given by Link to protect the proper ownership of the Link Equipment;
- (e) not do anything or allow anything to be done which might affect ownership of the Link Equipment;
- (f) pack and return any Link Equipment to Link on the termination of a Service in respect of which Link Equipment has been provided.

6.2 Customer Owned Equipment

You are responsible for the installation of Customer Equipment and connections to the Link Network necessary for us to provide the Service unless otherwise agreed in writing. You must ensure that Customer Equipment does not have a detrimental effect, as determined by Link, on the Link Network and accords with all relevant laws.

We may, without liability, immediately disconnect all or any of the Customer Equipment and you will provide Link with Site Access to the location where Customer Equipment is located to permit Link to disconnect Customer Equipment if:

- (a) you do not fulfil any of your obligations under the Agreement; or
- (b) Link reasonably considers the Customer Equipment:
 - i) is not ACMA approved;
 - ii) may cause death or personal injury;
 - iii) may cause damage to the property of Link or another person; or
 - iv) may materially impair the operation of the Link Network.

6.3 Purchased Equipment

We will supply any Purchased Equipment at the location set out in the Agreement or as otherwise agreed by the parties in writing. You must, on delivery or, on any other date agreed by the parties in writing, pay the price set out in the Agreement for the equipment and the installation of the equipment.

Title to and legal and beneficial interest in the Purchased Equipment remains with Link until Link has received in full and cleared funds the purchase price and the installation charges for that Purchased Equipment.

Regardless of ownership, risk for damage to or loss of the Purchased Equipment passes to the Customer on delivery of the Purchased Equipment to the location set out in the Agreement or as otherwise agreed. Link will use reasonable commercial efforts to assign to you all supplier warranties provided in respect of the Purchased Equipment but otherwise gives no warranties regarding it.

6.4 Change of Location of POP

Upon giving no less than two calendar months' prior written notice, or notice as soon as practicable in the event of an emergency, we reserve the right to change the location of a POP, or the access device by which you obtain access to the Link Network. You agree to work with us in good faith to minimise any disruption of the Service.

7. Site Survey

7.1 A Customer must engage Link to conduct and complete a Site Survey in respect to any Site it desires to connect to the Service.

7.2 Upon receiving a request for a Site Survey Link will advise the Customer of the estimated delivery date of the Site Survey and the fee or cost of the Site Survey (if any) payable by the Customer in respect to the Site Survey. If the Site is located at the Customer's premises, the Customer must provide a safe environment for the Site Survey. Link will use reasonable endeavours to meet the estimated delivery date (provided the fee (if any) for the Site Survey is paid by the Customer) but shall not be liable to the Customer, despite such endeavours, if there is any delay in delivery.

7.3 If a Customer seeks a Site Survey outside the Territory, the Customer may request Link to undertake a Commissioned Site Survey, and the following provisions shall apply:

- (a) Link at its sole and absolute discretion may agree or refuse to undertake the Commissioned Site Survey; and

- (b) If Link elects to carry out the Commissioned Site Survey it will advise the Customer of the estimated cost payable to carry out the Commissioned Site Survey; and
- (c) If agreement is reached on the cost of the Commissioned Site Survey, Link will advise the Customer of the estimated delivery date of the Commissioned Site Survey. Link will use reasonable endeavours (provided the fee for the Commissioned Site Survey is paid by the Customer) to meet the estimated delivery date but shall not be liable to the Customer, despite such endeavours, if there is any delay in delivery; and
- (d) If the Commissioned Site Survey establishes the Site is suitable for serviceability or access to the Broadband Service, Link may impose such rules or conditions pertaining to such access given that it is outside the designated Territory; and
- (e) Link will provide the Customer with an invoice specifying the actual cost of the Commissioned Site Survey once undertaken and the Customer must pay the costs (less any amount already paid pursuant to the estimate given) and if the actual cost is less than the estimate, Link will at its discretion refund the balance or credit the balance against any monies payable by the Customer under the Agreement; and
- (f) In some cases successful Site Surveys and successful Commissioned Site Surveys may still not guarantee a Service due to unforeseen circumstances.

7.4 The Customer accepts that Link reserves the right to vary the Territory, but Link agrees to provide the Customer with at least 30 days notice of any such variation, with all such notifications to be made via Link's website.

8. Installation of Link Equipment

- 8.1 Upon the successful completion of a Site Survey of a particular Site being undertaken, Link shall at the request of the Customer make arrangements for the installation of Link Equipment at the Site nominated by the Customer and agreed to by Link.
- 8.2 Link will use all reasonable endeavours to install the Link Equipment on or around the agreed installation date, but will not be liable for any loss or damage in failing to do so.
- 8.3 The Customer is liable for all costs involved in and associated with the installation of any Link Equipment at the Customer's premises. Wherever possible, Link will advise the Customer of the estimated cost of installing the Link Equipment prior to undertaking the installation. Where this is not possible or practicable, the Customer agrees to pay the reasonable costs of Link incurred in the installation of the Link Equipment.
- 8.4 All efforts will be made by Link to consult with the Customer in relation to the positioning of the Link Equipment, however Link and/or any agent or technicians or supplier engaged by Link will make the final decision on the positioning of the Link Equipment. The Customer must provide a safe environment for the installation, maintenance and removal of any Link Equipment.
- 8.5 The Customer must provide Link with evidence that the Customer is the owner of the premises or Site where the installation of the Link Equipment is to take place

and where the Customer is not the owner of the premises or Site, the Customer must provide Link with written evidence from the Customer that the owner or landlord of the premises or Site has consented to the work and installation being carried out by Link. The Customer indemnifies Link against any loss or damage Link incurs and/or indemnifies Link against any claim Link may suffer in the event the lawful consent of the owner of the Site had not been obtained in order to install the Link Equipment.

- 8.6 Link at all times retains full right, title and interest to and in the Link Equipment installed.
- 8.7 The Customer must not, and must ensure that any other person does not, interfere with the Link Equipment installed without the express written consent of Link. The Customer indemnifies Link against any loss or damage suffered by Link caused by unlawful interference with the Link Equipment by Customer or by anyone acting on their behalf or under their direction.
- 8.8 Where the Link Equipment is affixed, attached or secured to land or premises, the Link Equipment shall be deemed not to be a fixture and may be removed by Link at any time in accordance with the or any other Agreement.
- 8.9 The Customer acknowledges that Link Equipment installed at a Site may require maintenance from time to time and that the costs of such maintenance may be payable by the Customer depending on the nature of the maintenance required.
- 8.10 The Customer agrees to keep all Link Equipment in the same condition as at the date of installation (except for fair wear and tear), not sell the Link Equipment or any part thereof, not give possession of Link Equipment to any other person and not attempt to give any interest in such Link Equipment as security for any purpose.
- 8.11 If Link reasonably believes that there are circumstances which exist or which are likely to exist where its interests in the Link Equipment may be adversely affected, then Link is at liberty to take or request that all Link Equipment immediately be returned to its possession and shall subsequently be entitled to terminate the Agreement and if there is any delay in the return of the Link Equipment (whether or not it is caused by the Customer) then Link may charge reasonable fees for the non-return of the Link Equipment at the discretion of Link through its normal billing procedure.

9. Access Period

- 9.1 The Service shall be provided by Link to the Customer from the Commencement Date for the Access Period.
- 9.2 Our Agreement may be renewed for the Renewal Period, subject to approval by Link.
- 9.3 Renewal of our Agreement for the Renewal Period may involve an adjustment to the Charges as a condition of Link providing its consent to renewal.

10. Prices, Charges and Billing

- 10.1 In circumstances where a Customer has multiple sites or where there is a high degree of complexity to deliver the Service, the Customer may be liable for an Initial Payment on terms to be agreed by the parties to a Service Contract.

Such Initial Payments will be taken into account when billing the Customer for each site installation, and will represent a number of monthly fee free months as per the basis for the Initial Payment calculation.

- 10.2 The Customer is liable for payment of monthly fees from the date when a Site is connected to the Link Network up to the end of the Agreement term.
- 10.3 Link will issue a tax invoice in respect of each Charge payable and such invoices will be paid by the Customer within the trading terms specified in the Agreement. The invoicing billing cycle is calculated from midnight on the 26th day of billable month to 11:59pm on the 25th day of the billable month.
- 10.4 Link's billing cycle is subject to change with 30 days written notice given by Link.
- 10.5 All payments of the Charges payable under the Agreement are to be paid monthly in advance. Set-up and establishment fee, hardware and software purchases and installations are payable when a Site is connected to the Link Network.
- 10.6 Payment of the Charges payable under the Agreement will be made either by direct deposit into an account nominated by Link, by cheque or credit card facility.
- 10.7 Unless a dispute has been lodged, in the event the Charges payable under the Agreement or otherwise is or are not paid within Link's trading terms then interest is computed and becomes payable on the outstanding balance at the rate of 2% above the corporate reference rate of the National Australia Bank This interest will be calculated daily and compounded every 30 days.
- 10.8 Internet access will be charged one (1) month in advance. Any additional charges incurred or accrued during the month will be charged in the next month period.
- 10.9 In addition to paying the Charges and any other amount payable or in connection with the Agreement (which is exclusive of GST), the customer will pay to Link an amount equal to any GST payable from any supply by Link in respect of which the Charges or any other amount is payable under our Agreement.
- 10.10 If you dispute the validity of any Charges in an invoice:
 - (a) You must notify us in writing of the reasons for the dispute before the due date of that invoice.
 - (b) You must pay the full amount of the undisputed portion of the Charges in the invoice by the due date of that invoice.
 - (c) We will endeavour to have your dispute resolved within 90 days of receiving your notice of dispute but, if that is not possible as a result of the complexity or circumstances of your dispute, it may take longer.
 - (d) Where a dispute resolution is that the disputed amount is payable to us, you shall pay such amounts, together with interest at the rate of 2% above the corporate reference rate of the National Australia Bank, within 5 business

days of receiving notice of our dispute resolution. This interest will be calculated daily and compounded every 30 days.

(e) If you disagree with the determination of the dispute, you will be entitled to engage the dispute resolution set out in clause 25 below.

10.11 If you fail to pay, when due, any amount, we will be entitled to:

(a) immediately and without notice suspend provision of the Service to you in accordance with clause 13 below and the Agreement;

(b) charge interest on the overdue amount, both before and after judgement, at the rate of 2% above the corporate reference rate of the National Australia Bank. This interest will be calculated daily and compounded every 30 days.

10.12 The Customer indemnifies Link and will pay all costs and expenses incurred in recovering from you any overdue amount, including any legal costs.

10.13 Where a Customer has nominated that payments are to be made by credit card then a credit card authorisation provided by Link must be completed.

10.14 Where a Customer has nominated that payments are to be made by direct debit from a nominated bank account they must complete a direct debit form as provided by Link. The Customer must ensure that there are sufficient funds in the nominated bank account on the due date for payment. Any dishonoured payments will incur a **\$45.00** administration fee.

11. Agreement Renewal

11.1 Link requires all Customers to be under a current Agreement.

11.2 A Customer whose Agreement has expired or will expire shortly, may be offered a new Agreement for a new Renewal Period with Service levels, etc to be agreed. These terms and conditions will continue to apply.

11.3 During a time when Link continues to provide the Service after a Customer's Agreement has expired, prior to signing a new Agreement, there will be an automatic Agreement Renewal for 12 months and these terms and conditions will continue to apply.

12. Event of Default

A Customer commits an Event of Default if:

12.1 a Customer fails to pay any money due to Link under the Agreement and such failure subsists for a period of 14 days;

12.2 Link reasonably suspects that you have suspended payment of your debts generally;

12.3 Link reasonably suspects fraud in respect of, or misuse of, the Service by you;

12.4 a Customer defaults in any of its obligations or duties under the Agreement and fails to remedy the default within 10 business days of a request being made by Link;

- 12.5 a Customer is the subject of an Insolvency Event;
- 12.6 being an individual, dies or becomes incapable of managing his or her own affairs or is guilty of committing a criminal offence;
- 12.7 there is any material change in the control of the Customer which occurs without the prior written consent of Link which will not be unreasonably withheld and:
 - (a) which in Link's reasonable opinion, has or may have a material adverse effect on your creditworthiness; or
 - (b) if the third party acquiring the relevant interest or control is reasonably deemed by Link to be a competitor of Link.
- 12.8 any action is initiated by any competent authority with a view to striking the name of a Customer off any register of companies;
- 12.9 where a Customer's shares are at any time listed on any stock exchange, the listing is suspended or revoked and such suspension or revocation remains in force for a period greater than 14 days;
- 12.10 any distress or execution is levied or enforced against any of the assets against a Customer for an amount exceeding \$100,000.00;
- 12.11 any licenses, authorities or permits required to be held by a Customer to discharge its obligations under the Agreement cease to be held;
- 12.12 any representation of warranty made by a Customer to Link is found to be incorrect in any material respect;
- 12.13 a Customer's access to the Service is suspended by Link for a continuous period of more than 30 days or an aggregate period of more than 45 days in any 12 month period.

13. Suspension & Termination

- 13.1 Link may immediately or upon notice suspend the Customer's access to the Service if:
 - (a) in the reasonable opinion of Link the Customer materially breaches or there is a threatened material breach of any term or condition of the Agreement (for the avoidance of doubt and without limiting the generality of this clause, conduct on the part of the Customer construed as engaging in Defined Abuse is considered a material breach of a term or condition of the Agreement); or
 - (b) the Customer does not pay any money payable to Link under the Agreement within Link's trading terms; or
 - (c) if Link is required to comply with any law or direction from a government agency or body; or
 - (d) on any other basis prescribed in Link's terms and conditions.
- 13.2 Link may immediately, by giving notice to you, terminate the Agreement if:

- (a) following a suspension of the Service in 13.1, you fail forthwith to rectify the breach giving rise to the suspension; or
 - (b) we suspend a Service on 3 separate occasions for the same or substantially similar breaches of the Agreement.
- 13.3 Link may terminate the Agreement by written notice immediately upon the Customer committing an Event of Default.
- 13.4 Subject to clause 13.5, despite suspension or termination of the Agreement, the Customer agrees it will remain liable to Link for all monies otherwise payable under the contracted term of the Agreement had the suspension or termination not occurred (Early Termination Charge). The Customer agrees that such liability is a fair and reasonable payment to Link by way of liquidated damages of the loss and damage Link would suffer by reason of the suspension or termination.
- 13.5 Clause 13.4 does not apply to a termination caused by a breach on the part of Link.
- 13.6 The Customer may terminate the Agreement upon giving Link 30 days written notice, but shall pay Link by way of liquidated damages for the termination the total aggregate value of the Charges Link would have derived, but for the termination, on the unexpired term of the Agreement (Early Termination Charge).
- 13.7 On termination of the Agreement:
 - (a) your right to use the relevant Services cease;
 - (b) you must immediately pay to Link, without deduction or set off, all outstanding Charges, the Early Termination Charge and any amounts payable to Link under the Agreement at the date of termination.
- 13.8 Termination of the Agreement does not affect the accrued rights or liabilities of either party nor does it affect the provisions which expressly or by implication are intended to operate after termination, including, without limitation, clause 6.1 (Link Equipment); clause 15 (Indemnity); and clause 19 (Confidentiality).
- 13.9 Any term of the Agreement which expressly or by implication is intended to survive termination, shall survive termination.

14. Force Majeure

Neither party will be liable to the other party for any failure to perform or delay in performance of any obligation under an Agreement caused by a Force Majeure Event, other than the obligation to pay money. Each party will provide notice of the date of commencement of a Force Majeure Event and the date of cessation of a Force Majeure Event.

15. Indemnity

- 15.1 The Customer indemnifies Link from and against all claims which may be brought against, suffered or incurred by Link:
 - (a) By reason of any breach by the Customer, its directors or staff of its duties and obligations under or in connection with the Agreement;

- (b) By reason of any fraud or act of deceit by the Customer its staff or directors in connection with an Agreement;
 - (c) By reason of the occurrence of any Event of Default, suspension or termination; or
 - (d) By reason of the contravention by the Customer of its obligations under any law relevant to its obligations under the Agreement.
- 15.2 The indemnities given by the Customer in this clause and elsewhere in the Agreement will continue in full force and effect and will survive notwithstanding the suspension, termination or expiration of the Agreement.
- 15.3 Link:
- (a) excludes all conditions and warranties implied into the Agreement to the extent permitted by law; and
 - (b) limits its liability for any breach of any such condition or warranty of the Agreement that cannot be excluded at law to the greater of, at Link's option:
 - (i) repairing or replacing those goods; or
 - (ii) paying the cost of having those goods repaired or replaced; and
 - (iii) if the breach relates to Services:
 - (A) resupplying those or equivalent Services; or
 - (B) paying the cost of having the Services resupplied.
- 15.4 To the maximum extent permitted by law and subject to clauses 15.3, 15.5 and 15.6, Link is only liable for:
- (a) personal injury, including sickness, death or disability, of your employees directly resulting from Link's negligent acts or omissions arising under or in connection with the Agreement;
 - (b) if the loss or damage arises out of or is related to a failure by Link to meet service levels set out in an SLA, the compensation or other remedy specified in the Agreement; and
 - (c) in respect of any other liability which may arise out of or in connection with the Agreement, whether based on contract, tort (including negligence) statutory duty or otherwise, an amount which is:
 - (i) 50% of the Charges received by Link for the Service for the 12 months preceding the event giving rise to the liability for each event or series of connected events; and
 - (ii) In the aggregate, the amount of Charges received by Link under the Agreement.
- 15.5 Link's liability under the Agreement is diminished to the extent that your acts or omissions, or those of a third party, contribute to or cause the loss or liability.
- 15.6 Link excludes any liability to you for any indirect, special or consequential loss, costs, or damage, including but not limited to loss of profits, loss of revenue, loss of data, loss of bargain, damage to reputation and expectation loss, arising out of

an Agreement, including, but not limited to, Link's supply of, delay in supply or failure to supply a Service, whether arising as a result of any act, omission or negligence of Link or otherwise.

- 15.7 You indemnify Link on demand against any claim or liability arising from your acts or omissions, or the acts or omissions of a third party acting on your behalf or engaged by you in any capacity, relating to the use of the Services.

16. Disclaimer

- 16.1 The Customer acknowledges and accepts that:
- (a) Link does not exercise any control over content accessible by the Customer through use of the Broadband Service or any other Service;
 - (b) Link is not responsible for any damage the Customer may suffer arising from using:
 - i) the Service (or any part thereof), including any loss of data, delays, non-deliveries, mis-deliveries or service interruptions, whether or not caused by Link's negligent acts or omissions;
 - ii) any content accessed through the Service (including inaccurate, incomplete or out of date information).
 - (c) Link is not liable for any charges levied against the Customer by any telecommunications carrier or any content provider; and
 - (d) Link is not able to provide support for software not supplied by Link, including software downloaded over the Internet.
- 16.2 Except for any warranties or conditions on the Service Link is required to give by law, Link makes no statement, warranty or promise about the quality or suitability of the Service (or any part thereof).
- 16.3 Any terms, conditions or warranties implied into the Agreement by the Trade Practices Act 1974 (Cth) are, to the extent allowed by law, excluded, and in respect to those implied conditions or warranties which may not be excluded, restricted or modified by agreement, it is agreed, that to the extent of any liability Link may have in respect to such implied conditions or warranties, such liability is (at the option of Link) limited to:
- (a) For goods, replacing or repairing those goods or paying the cost of repair or replacement; or
 - (b) For Services, supplying the Service again or paying the cost of having the Service supplied again.
- 16.4 Except to the extent clause 15.6 applies, Link expressly excludes all liability to the Customer or any other person in respect to any claim (whether direct, indirect or consequential) arising out of the Agreement or the supply of the Service by Link, including any inaccuracy or omission in the Service or as a result of any act, omission or negligence on the part of Link or its directors, employees or agents.

17. Notices

- 17.1 A notice or other communication required or permitted to be given by one party to another must be in writing and:
- a) delivered personally;
 - b) sent by pre-paid mail to the address of the addressee specified in this Agreement; or
 - c) sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee.
- 17.2 A notice or other communication is taken to have been given (unless otherwise proved):
- a) if mailed, on the second business day after posting; or
 - b) If sent by facsimile before 4 pm on a business day at the place of receipt, on the day it is sent and otherwise on the next business day at the place of receipt.
- 17.3 A party may change its address for service by giving notice of that change in writing to the other parties.

18. Assignment

Link may assign or dispose of its rights under the Agreement at any time. The Customer may not assign or deal with its rights or obligations under the Agreement without the prior written consent of Link. Link may withhold its consent for such an assignment at its absolute discretion and without assigning a reason.

19. Intellectual Property & Confidentiality

- 19.1 The Customer must not use in any advertising or promotional material in relation to its business or under the Agreement (unless otherwise permitted or stated under the Agreement) the name of Link or any Intellectual Property of Link without the prior written consent of Link. If consent is provided (which may be withheld at Link's absolute discretion), the Customer agrees not to alter, change or otherwise interfere with Link's Intellectual Property Rights.
- 19.2 The Customer acknowledges and agrees that Link is and will at all times remain the owner of all its Intellectual Property Rights and all goodwill and other rights and interests arising from any use of any of Link's Intellectual Property Rights belong to and vest in Link.
- 19.3 Whenever requested to do so by Link, or upon termination of the Agreement, the Customer must immediately discontinue the display or use of any of Link's names, logos, related decorations or insignia and will not use any of them or any other name, trade mark, logo or decoration bearing any resemblance to them which may be likely to cause confusion or to mislead any person.
- 19.4 The Customer must not at any time make public or disclose to any person any Confidential Information of Link except as required by the Customer in the ordinary

course of business or to fulfil its obligations under the Agreement. Particularly, the Customer must:

- a) treat Confidential Information as secret and confidential;
 - b) not use Confidential Information for any purpose other than the performance of its obligations under the Agreement (without the prior written consent of Link);
 - c) restrict the disclosure of Confidential Information to:
 - i) those of its employees and other professional service providers who require Confidential Information to enable the Customer to perform its obligations under an Agreement; and
 - ii) any person to whom the Customer is required to disclose the Confidential Information by law, and provided that the Customer has given at least 7 business days written notice to Link of this requirement and its intention to disclose the Confidential Information;
 - d) maintain proper and secure custody of the Confidential Information;
 - e) use its best endeavours to prevent the use or disclosure of Confidential Information by third parties which have lawfully received or accessed that information through the Customer;
 - f) notify Link of any actual or suspected breach of confidence or security of Confidential Information of which the Customer becomes aware;
 - g) as soon as is practicable after the termination of the Agreement deliver to Link all the Confidential Information which is in its possession or control and is in a physical form;
 - h) as soon as is practicable after a request by Link, destroy all Confidential Information (in the case of computer software or other computer data, by erasing it from the magnetic or other media on which it is stored such that it cannot be recovered or in anyway reconstructed or reconstituted) instead of delivering it to Link and must notify Link in writing that the Confidential Information has been destroyed;
 - i) ensure that all its employees, professional service providers or anyone else to whom Confidential Information is disclosed is aware of the confidential nature of the Confidential Information and ensure that its employees hold that information in confidence on the terms of this clause and otherwise comply with the Customer's obligation to Link under this clause with respect to handling and dealing with the Confidential Information including return and destruction.
- 19.5 The Customer acknowledges that the Confidential Information received from Link and all Intellectual Property Rights in such information will remain the sole and exclusive property of Link.
- 19.6 The Customer agrees to indemnify and keep indemnified Link and agrees to hold Link harmless from and against any claim suffered or sustained by any breach of the Customer of clauses 19.3 and 19.4 and any breach of confidence by the Customer's employees.

20. Waiver or Variation

- 20.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 20.2 The exercise of a power or right does not preclude:
- a) its future exercise; or
 - b) the exercise of any other power or right.
- 20.3 The variation or waiver of a provision of the Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

21. Governing Law & Jurisdiction

- 21.1 The Agreement is governed by the laws of New South Wales.
- 21.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and any appellate courts therefrom.

22. Severability

Should any part of our Agreement be or become invalid, that part shall be severed from our Agreement. Such invalidity shall not affect the validity if the remaining provisions of our Agreement.

23. Entire Agreement

Our Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the whole agreement between the parties relating to the provision of Internet access. No addition to or modification of any provision of our Agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

24. Conflict or Inconsistency

It is agreed that to the extent of any conflict or inconsistency between the terms and provisions of our Agreement and the terms and provisions of any other document, terms and conditions or agreement referred to herein, the terms and provisions of our Agreement, to the extent of any conflict or inconsistency shall prevail.

25. Dispute Resolution

Any dispute or difference arising in connection with our Agreement shall be submitted to arbitration in accordance with, and subject to, the Rules for the Conduct of Commercial Arbitration of the Institute of Arbitrators and Mediators, Australia. During such arbitration, both parties may be presented by a duly qualified legal practitioner. Each party will pay its own costs.