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## BlueSky Telecom Pty Ltd General Terms & Conditions

### 1. CONTRACT

- 1.1 The "**Contract**" will consist of the following documents:
- (a) the Executed Solution Proposal;
  - (b) the Solution Details;
  - (c) these General Terms and Conditions;
  - (d) the BlueSky Telecom Internet Service Specific Terms and Conditions (if applicable); and
  - (e) Service Level Agreement (if any).
- 1.2 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 1.1.

### 2. TERM

- 2.1 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 thirty (30) days prior to the expiration of the Initial Term, this Contract continues on a monthly basis which either party may terminate on thirty (30) days' notice ending on any day ("**Extended Term**").
- 2.2 For the avoidance of doubt, the Term of the Contract shall mean the Initial Term plus the Extended Term, if applicable.

### 3. CHARGES AND PAYMENT

#### Invoiced Charges

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

#### Additional Charges

- 3.2 In addition to the fees and charges disclosed in the Executed Solution Proposal, the invoice or such other fee disclosure document provided by BlueSky Telecom to the Customer, additional charges may also be applicable including but not limited to the following:
- (a) if BlueSky Telecom 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 BlueSky Telecom's reasonable costs and fees arising from the change of site.
  - (b) if the information the Customer provided to BlueSky Telecom to determine the infrastructure and installation required was incomplete or inaccurate;
  - (c) if an Excluded Event occurs, BlueSky Telecom 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 BlueSky Telecom 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 an actual Fault or not, BlueSky Telecom may require the Customer to pay BlueSky Telecom'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 BlueSky Telecom; or
  - (e) any other costs and charges agreed between the Customer and BlueSky Telecom from time to time.

#### Overdue Payments

- 3.3 BlueSky Telecom reserves the right to charge interest on any overdue amount payable to BlueSky Telecom by the Customer under the Contract. Interest will be charged from the Due Date until payment is received at a rate two percent (2%) above the Commonwealth Bank Corporate Overdraft Reference Rate or such other equivalent interest rate basis plus an additional two percent (2%) should the Commonwealth Bank Corporate Overdraft Reference Rate be no longer published. The Customer will be liable to pay to BlueSky Telecom all expenses (including reasonable legal costs and expenses and the fees of BlueSky Telecom's debt recovery agents) incurred by BlueSky Telecom in relation to recovering payments due under the Contract.



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- 3.4 BlueSky Telecom reserves the right to withdraw any discounts or Special Offers that the Customer receives from BlueSky Telecom in connection with the supply of the Service where payment is not received by the Due Date other than where a billing dispute has been raised in accordance with clause 7.

**Commission or referral fees payable**

- 3.5 The Customer acknowledges that BlueSky Telecom may pay commissions to any Channel Partner, or referral fees to any person, who introduced the Customer to BlueSky Telecom.

**4. INSTALLATION AND EQUIPMENT**

**Provision of Equipment**

- 4.1 BlueSky Telecom may provide a Service Interface at a Service Delivery Point ("**BlueSky Telecom 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**").

**BlueSky Telecom Equipment**

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

**Customer Equipment**

The Customer may purchase equipment from BlueSky Telecom 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. BlueSky Telecom 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.

- 4.6 The Customer acknowledges and accepts that BlueSky Telecom is entitled under the *Personal Properties Securities Act 2009* (Cth) to register its interest in any Hardware that BlueSky Telecom supplies to the Customer as a purchase money security interest and the Customer waives its rights to receive a copy of any such registration including the Notice of Verification Statement.
- 4.7 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 BlueSky Telecom, otherwise BlueSky Telecom may disconnect that Customer Equipment from the Service on giving reasonable notice or immediately in an emergency.

**Scheduled Installation**

- 4.8 BlueSky Telecom will advise the Customer of the Scheduled Delivery Date for the Service, having regard to the service delivery targets in the Service Specific Terms and Conditions as well as the Requested Delivery Date and shall use best endeavours to commence installation of the equipment on the Scheduled Delivery Date, however BlueSky Telecom shall not be liable for any Liability incurred by the Customer due to a failure to install on or before the Scheduled Delivery Date.

**BlueSky Telecom Network**

- 4.9 The BlueSky Telecom Network is and shall remain the property of BlueSky Telecom irrespective of the manner in which any Hardware or part of it is attached or secured to any land or buildings.

**5. MAINTENANCE AND REPLACEMENT**

- 5.1 BlueSky Telecom may in its discretion and for so long as it determines, replace any part of the BlueSky Telecom 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 BlueSky Telecom Equipment or Service offered.



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- 5.2 BlueSky Telecom may interrupt the Service or BlueSky Telecom Equipment for the Planned Outage Period and will give advance notice to the Customer wherever possible.

## **6. PROVISIONS APPLICABLE TO THE SERVICE**

### **Cooperation With BlueSky Telecom**

- 6.1 The Customer must cooperate with BlueSky Telecom and comply with its reasonable requests to allow BlueSky Telecom to install equipment and establish and supply the Service to the Customer safely and efficiently. This includes meeting BlueSky Telecom's reasonable requests, at no further cost to BlueSky Telecom, to:
- (a) provide any necessary forecasts and information to BlueSky Telecom, on which BlueSky Telecom 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 BlueSky Telecom for the installation, provision and proper operation of the BlueSky Telecom Equipment and Customer Equipment and for the provisions of the Service; If failure to provide necessary space and utility services during a reasonable timeframe prohibits BlueSky Telecom 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 provide all assistance and take all safety precautions as may be reasonably necessary or otherwise requested by BlueSky Telecom to ensure safe and proper performance by BlueSky Telecom of all work at the Premises.

### **Provision of Service**

- 6.2 Subject to the Customer's compliance with the Contract, BlueSky Telecom will use its best endeavours to provide the Service in accordance with the Contract.

### **Customer's Use of Service and Equipment**

- 6.3 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.
- 6.4 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.
- 6.5 The Customer must not use, or attempt to use, the Service:
- (a) To breach any term of the Contract;
  - (b) For any improper or unlawful purpose or allow others to do so;
  - (c) In breach of any applicable Government Agency requirements, legislation and laws including but not limited to any privacy laws; copyright laws and telecommunications laws;
  - (d) To expose BlueSky Telecom to any Liability;
  - (e) In any way which damages, interferes with or Interrupts the Service, the BlueSky Telecom Network or a Supplier Network;
  - (f) In any way which may damage any property or injure or kill any person; or
  - (g) To transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted.

### **Customer to Comply with BlueSky Telecom's Directions**

- 6.6 The Customer acknowledges that:
- (a) where the Service is a carriage service, BlueSky Telecom may be required to intercept communications over the Service as directed by an authorised entity; and
  - (b) BlueSky Telecom 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.
- 6.7 BlueSky Telecom may ask the Customer to stop doing something which BlueSky Telecom reasonably believes is contrary to clauses 6.4 or 6.5. The Customer must immediately comply with any such request. If the Customer does not, then BlueSky Telecom may terminate or suspend the Contract or take any steps reasonably necessary to ensure compliance with clauses 6.4 and 6.5 or the request.



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## **Fault Reporting and Recovery**

- 6.8 The Customer must report any Faults in relation to the Services to BlueSky Telecom as soon as reasonably practicable after the Customer becomes aware of them. BlueSky Telecom will use reasonable efforts to rectify the Fault within a reasonable timeframe.
- 6.9 Before reporting a Fault pursuant to clause 6.8, the Customer should take all reasonable steps to ensure that the Fault is with the Service and not caused by the Customer's Equipment, software, content or services not supplied or provided by BlueSky Telecom.
- 6.10 BlueSky Telecom is not responsible for rectifying any Faults which arises or is caused by any third party software outside of BlueSky Telecom's reasonable control, but BlueSky Telecom will, if reasonable, request that the third party rectify the Fault.
- 6.11 The Customer is responsible for repairing Faults in relation to any Customer Equipment, software or communications services not supplied by BlueSky Telecom.
- 6.12 The Customer is liable for all costs incurred by BlueSky Telecom in restoring a service where the Fault arises as a result of:
- (a) any Fault in any equipment, software or any network unit which does not form part of BlueSky Telecom's Equipment;
  - (b) defects in Customer Equipment or its installation, arising out of the Customer's software applications, content or communication services not supplied or provided by BlueSky Telecom; or
  - (c) any act of omission of the Customer or any of its employees, consultants, contractors, agents or representatives.

## **7. PERSONAL INFORMATION AND PRIVACY**

- 7.1 The Customer acknowledges and consents to the collection, use, storage and disclosure of the Customer's personal information by providing this personal information to BlueSky Telecom. For purposes relating to the supply of the Service to the Customer, this includes:
- (a) for billing and account management purposes, product and service development, managing the Customer's relationship with BlueSky Telecom and marketing BlueSky Telecom's Services to the Customer;
  - (b) disclosure to a Government Agency to assist in the investigation of crime or the enforcement of any laws;
  - (c) disclosure to BlueSky Telecom's related bodies corporate and suppliers, and any agent or contractor for the purposes of the supply of Services to the Customer; and
  - (d) disclosure to any third party as required by law; or otherwise in accordance with BlueSky Telecom's Privacy Policy which can be found at [www.blueskytelecom.com.au](http://www.blueskytelecom.com.au)

## **8. FAIR USE**

- 8.1 This clause 8 is designed to protect the quality and integrity of the Services and in doing so ensures that all Customers receive fair and equitable access to the Services.
- 8.2 Each Customer can only have one account. If a Customer is found to be using multiple accounts, then the user's actions may be investigated and dealt with by BlueSky Telecom in accordance with clause 8.5.
- 8.3 A Customer must not resell or commercially exploit any promotional deals in relation to the Services.
- 8.4 BlueSky Telecom may rely on this clause 8 in circumstances where a Customer's use of the Services is deemed to be unreasonable, excessive, fraudulent or to adversely affect BlueSky Telecom or other Customers' use and access to the Services.
- 8.5 BlueSky Telecom may collect and investigate whether the Customer is complying with this clause 8 and may formally contact the Customer and request that the Customer modify their use of the Services. If the Customer fails to modify their use of the Services, BlueSky Telecom may, at its sole discretion, change, suspend or terminate the Customer's use of the Services.

## **9. BILLING & BILLING DISPUTES**

- 9.1 On and from the Commencement Date BlueSky Telecom 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, BlueSky Telecom'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. Unless otherwise agreed BlueSky Telecom will bill the Customer:
- (a) in advance prior to installation for the Establishment Fee, all other once off charges, variable charges; and



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- (b) in advance for the Invoice Period for the Monthly Service Fee and all other Recurring Charges and any other charges required by BlueSky Telecom in advance before providing the Service.
  - 9.3 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. BlueSky Telecom may include those charges in any subsequent bills.
  - 9.4 BlueSky Telecom reserves the right to re-issue any bill if any error is subsequently discovered.
  - 9.5 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.
  - 9.6 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 0.

## **10. CREDITWORTHINESS**

- 10.1 The Customer acknowledges that the provision of the Services, BlueSky Telecom Equipment and any other obligation under the Contract by BlueSky Telecom shall be subject to BlueSky Telecom's Privacy Policy, the requirements of the *Privacy Act 1988 (Cth)*; *Telecommunications Act 1997 (Cth)*; *Telecommunications (Interception and Access) Act 1979*; *Spam Act 2003 (Cth)*; and any other applicable laws, codes and regulations.
- 10.2 For the purposes of processing the Application for Service, establishing the Customer's account and the ongoing credit management of the Customer's account BlueSky Telecom may need to disclose to a credit reporting agency personal information relating to the Customer which is in BlueSky Telecom's possession, including but not limited to, information referred to in clause 10.3 and the Customer hereby consents to such disclosure or use.
- 10.3 Pursuant to clause 10.1 the following represents a list of Customer information relating to the Customer which may be disclosed to a credit reporting agency:
  - (a) Customer name and address, ACN, ABN, business names, partnership details;
  - (b) details of the Customer's application for BlueSky Telecom Services and/or services supplied to the Customer;
  - (c) credit limits on the Customer's accounts;
  - (d) the amount of any payments which are overdue for at least forty-five (45) days;
  - (e) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
  - (f) court judgments or bankruptcy orders made against the Customer;
  - (g) that, in the opinion of BlueSky Telecom, the Customer has committed a serious credit infringement;
  - (h) that BlueSky Telecom has ceased to provide Services to the Customer in accordance with the terms of this Contract as a result of Customer default relating to payment/credit; and
  - (i) any additional and relevant information which BlueSky Telecom may wish to use or believes should be disclosed may be disclosed or used.
- 10.4 The Customer agrees that BlueSky Telecom may obtain from any person or body carrying on the business or undertaking involving the provision of information about the commercial creditworthiness of persons, any information concerning the Customer that concerns the Customer's commercial activities or commercial creditworthiness for the purposes of assessing the Customer's application for Services and the ongoing credit management (including collection of overdue amounts) of the Customer's account. BlueSky Telecom may, at its sole discretion, refuse to supply its Services to the Customer on the basis of BlueSky Telecom's credit assessment of the Customer, after consultation with the Customer to confirm the accuracy of the assessment.
- 10.5 The Customer agrees that BlueSky Telecom may disclose a credit report to any credit provider, debt collection agency or any other supplier for the purposes of:
  - (a) assessment of the Customer's creditworthiness; and
  - (b) the collection of payments that are overdue.
- 10.6 In addition if it should be required, the Customer agrees, within ten (10) Business Days of BlueSky Telecom's request to provide to BlueSky Telecom any information (including the Customer's financial accounts) which is reasonably necessary to assess the creditworthiness of the Customer.



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## **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 BlueSky Telecom of any dispute in writing no later than twenty one (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 reasonably 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 or commencing legal proceedings in an appropriate court to resolve a matter subject of a dispute.

## **12. COMPLIANCE WITH GOVERNMENT AGENCY REQUIREMENTS**

- 12.1 In the event that BlueSky Telecom 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 BlueSky Telecom 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 BlueSky Telecom'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 BlueSky Telecom within fourteen (14) days of receipt of the Clause 12.1 Notice. If the Customer provides this notice to BlueSky Telecom within the said fourteen (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 BlueSky Telecom under clause 12.2 then the Service shall revert to an BlueSky Telecom Managed Service in accordance with the terms of this Contract, except as provided for in writing by BlueSky Telecom.

## **13. NATURE OF THE CONTRACT**

- 13.1 The Contract contains the entire agreement between BlueSky Telecom 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 BlueSky Telecom.

## **14. INDEMNITY**

- 14.1 The Customer shall indemnify BlueSky Telecom from and against any Liability which may be incurred or suffered by BlueSky Telecom arising from any one or more of the following:
- (a) the breach by the Customer of a material term or any of the Customer's obligations under the Contract;
  - (b) any negligent act or omission or willful misconduct by the Customer arising from the use of the Service, BlueSky Telecom Equipment, Customer Equipment or otherwise arising out of the Customer's obligations under the Contract;
  - (c) the Customer's use of the Services to complete international calls from within Australia to outside of Australia;
  - (d) the use or provisioning of the Service or the BlueSky Telecom Equipment or the Customer Equipment;
  - (e) any claims or demands made upon BlueSky Telecom 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 BlueSky Telecom Equipment; and
  - (f) any event referred to in clause 6.12.



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## 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 BlueSky Telecom is not permitted to exclude its liability for any loss or damage in connection with BlueSky Telecom'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 BlueSky Telecom to do so, BlueSky Telecom's liability to the Customer is limited to:
- (a) 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
- (b) in the case of Services:
- resupply of the services; or
  - payment of the cost of the resupply of the services.
- 15.3 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.
- 15.4 The Customer acknowledges it has not relied on any representation or warranty made by BlueSky Telecom 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 BlueSky Telecom.
- 15.5 Except as required by law or regulation or as set out in this Contract, BlueSky Telecom 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.
- 15.6 Under no circumstances will BlueSky Telecom 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.
- 15.7 Pursuant to clauses 15.5 and 15.6, BlueSky Telecom will also not be liable or responsible to the Customer in any way for any problems or issues that arise as a result of the Customer using the Services to complete international calls from within Australia to outside of Australia and/or for any Communications Fraud issues that arise.
- 15.8 The provisions of this clause 0 survive the termination of the Service.

## 16. TERMINATION AND SUSPENSION

### Termination by BlueSky Telecom

- 16.1 BlueSky Telecom may, without liability, terminate the Contract or provisioning of the Service at any time prior to the Commencement Date, if BlueSky Telecom reasonably determines that it is not technically or operatively feasible or commercially viable to supply the Service to the Customer.
- 16.2 BlueSky Telecom 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 BlueSky Telecom 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 BlueSky Telecom of such non-payment;
- (d) BlueSky Telecom 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 BlueSky Telecom's notice to the Customer of any such event;
- (e) The Customer suffers an Insolvency Event;
- (f) BlueSky Telecom or an BlueSky Telecom group company 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;



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- (g) BlueSky Telecom 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 BlueSky Telecom, or ceases to supply services to BlueSky Telecom, and BlueSky Telecom is not able to provide the Service using services supplied to BlueSky Telecom by an alternate supplier on terms reasonably acceptable to BlueSky Telecom.
- 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 BlueSky Telecom an amount calculated by multiplying the Monthly Service Fee by the remaining months (or part thereof) of the Term and any outstanding fees, costs and charges including, but not limited to, the 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 fourteen (14) consecutive days through no fault of the Customer other than in the case of a force majeure event.
- c) BlueSky Telecom commits a serious breach of the Contract, and has not remedied that breach within thirty (30) days of the Customer 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 BlueSky Telecom all infrastructure and installation costs incurred by BlueSky Telecom 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 thirty (30) days written notice to BlueSky Telecom and must pay BlueSky Telecom an amount calculated by multiplying the Monthly Service Fee by the remaining months of (or part thereof) of the Term and any outstanding fees, costs and charges including, but not limited to, the 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 thirty (30) consecutive days.

#### **Suspension by BlueSky Telecom**

- 16.7 In addition to BlueSky Telecom's rights under clause 16.2, BlueSky Telecom may, upon reasonable notice, without liability and with immediate effect suspend the Service for as long as BlueSky Telecom, acting reasonably, considers necessary:
- (a) if doing so is necessary to allow BlueSky Telecom or a third party supplier to repair, maintain or service any part of the BlueSky Telecom Network or Supplier Network used to supply the Service;
- (b) problems are experienced interconnecting the BlueSky Telecom Network with any Supplier Network;
- (c) if BlueSky Telecom believes it is necessary to do so to comply with any law, to protect any person, equipment or BlueSky Telecom's network, or to enable authorised persons to attend to any emergency.
- 16.8 the Service is suspended as a result of the Customer's breach of the Contract or otherwise in accordance with clauses 16.2 or **Error! Reference source not found.**, 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**

- Upon termination of the Service for any reason BlueSky Telecom, its agents or employees shall have reasonable access to the Premises for the purpose of disconnecting, dismantling and removing the Service and BlueSky Telecom Equipment, and the Customer shall render all reasonable assistance to BlueSky Telecom to enable it to do so.
- 16.9 BlueSky Telecom shall upon removal of the Service and BlueSky Telecom Equipment make good to a reasonable standard, fair wear and tear excepted, 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 BlueSky Telecom occurs as a result of any breach of the terms of this Contract by the Customer.
- 16.10 Termination of the Contract shall be without prejudice to the right of BlueSky Telecom to receive any amounts which may have become due for payment prior to such termination but which have not been paid.
- 16.11 On termination of the Contract for any reason:





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- (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) BlueSky Telecom may immediately stop supplying to the Customer the Service;
  - (c) unless otherwise permitted by BlueSky Telecom in writing the Customer must immediately stop using the Service and the BlueSky Telecom Equipment;
  - (d) unless the Contract expressly states otherwise, each persons' 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 4.2, 4.4, 4.9, 10.1, 14, 0, 16.10, 17, 19 and 25.

## **17. CUSTOMER'S ACKNOWLEDGEMENT**

- 17.1 Federal legislation relating to the National Broadband Network imposes significant penalties on carriers that extend fixed networks to provide broadband services to residential and small business customers. The penalties exceed \$2,000,000 and limit a carrier's ongoing ability to operate its business. A '**small business**' is defined as a self-employed person carrying on a business (such as a sole trader) or a business that employs less than fifteen (15) people not including casual employees unless employed on a regular and systematic basis.
- 17.2 BlueSky Telecom is unable to provide BlueSky Telecom Fibre Services to residential and small business customers who are situated outside the BlueSky Telecom Fibre Services Network Footprint. Accordingly, the Customer:
  - (a) warrants that it is not a residential or small business customer;
  - (b) agrees that BlueSky Telecom may suspend or terminate the BlueSky Telecom Fibre Service immediately, without notice and without liability to the Customer if it has reason to believe that the Customer is a residential or small business customer;
  - (c) agrees to inform BlueSky Telecom immediately if its situation may or does change and it becomes or may become a residential or small business customer; and
  - (d) indemnifies BlueSky Telecom for any loss, claim, or damage that BlueSky Telecom suffers or incurs in connection with a breach by the Customer of the warranty in paragraph 17.2(a) regardless of any fault or negligence on the part of BlueSky Telecom.

## **18. INTELLECTUAL PROPERTY**

- 18.1 BlueSky Telecom owns all material (including the Intellectual Property Rights) developed by it, or its personnel, or at its or their discretion.
- 18.2 BlueSky Telecom may permit the Customer to use this material, or other material licensed by BlueSky Telecom, as part of the Service. This permission is subject to any conditions which BlueSky Telecom may impose from time to time and will cease when the Service is cancelled.

## **19. CONFIDENTIALITY**

- 19.1 BlueSky Telecom 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.
- 19.2 The Provider retains all property rights in the Confidential Information.
- 19.3 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.
- 19.4 The obligations of confidentiality in this clause 19 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.
- 19.5 The Recipient acknowledges that a breach of this clause 19 may cause the Provider irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, the Provider may seek injunctive relief against such a breach or threatened or suspected breach.
- 19.6 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.



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## 20. ASSIGNMENT AND NOVATION

- 20.1 The Customer shall not sub-let, assign, dispose of or otherwise deal with its interest in or under the Contract without the prior written consent of BlueSky Telecom and if any such consent shall be on terms acceptable to BlueSky Telecom.
- 20.2 BlueSky Telecom 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. BlueSky Telecom 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 20.2.
- 20.3 BlueSky Telecom and the Customer shall be entitled to novate the Customer's interests and obligations under the Contract or any part thereof to a new third party customer by mutual written agreement from BlueSky Telecom and the Customer. BlueSky Telecom 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 novation on which the new customer assumes the interests and obligations of the Customer under the Contract pursuant to this clause 20.3.

## 21. RELATED BODIES CORPORATE

- 21.1 BlueSky Telecom may provide the Service through the use of any of BlueSky Telecom's Related Bodies Corporate.
- 21.2 The Customer acknowledges and agrees that any debt owed under this Contract is a debt owed to BlueSky Telecom and that BlueSky Telecom 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 BlueSky Telecom's Related Bodies Corporate.

## 22. PARTY AS TRUSTEE

- 22.1 If the Customer enters into the Contract in the capacity of trustee of any trust, under any trust deed, deed of settlement or other instrument, then this clause 22 applies and the Customer also enters into the Contract in its personal capacity.
- 22.2 The Customer represents and warrants that:
- It is the only trustee of the trust and no action has been taken or is proposed to remove it as trustee of the trust;
  - it has power under the trust deed and under its constitution to enter into and execute the Contract and perform the obligations imposed under the Contract as trustee; and
  - the Customer is not, and has not been, in default under the trust deed.
- 22.3 No change of trustee of the trust (including any appointment of an additional trustee) can occur without the prior written consent of BlueSky Telecom, which consent must not be unreasonably withheld or delayed.

## 23. NOTICES

- 23.1 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:
- in the case of prepaid post, be presumed to be given five (5) days after the date of posting;
  - be presumed to be delivered at the time of delivery if delivered during normal business hours;
  - 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.
  - be presumed to be given upon the sender's computer system indicating transmission in the case of an email transmission.

## 24. WAIVERS

- 24.1 No waiver or indulgence by any party to the Contract shall be binding upon the parties unless in writing.

## 25. GOVERNING LAW

- 25.1 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.

## 26. GOODS & SERVICES TAX

- 26.1 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* (Cth).



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- 26.2 All prices or other sums payable or consideration to be provided and which are expressly stated in this Contract are exclusive of GST unless otherwise indicated.
- 26.3 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.
- 26.4 Where the recipient is required to pay for or reimburse an expense or outgoing of the supplier, the amount to be paid by the recipient is the amount of the expense or outgoing less any input tax credit in respect of such expense or outgoing that the supplier is entitled to.
- 26.5 Any invoice or claim provided by the supplier under the Contract will be or be accompanied by a tax invoice or other approved document providing the recipient with the ability to claim an input tax credit.

## 27. COUNTERPARTS

- 27.1 This Contract may be executed 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.

## 28. SEVERABILITY

- 28.1 If any part of this Contract is legally unenforceable, the Contract does not include it and the remainder of the Contract continues in full force.

## 29. DEFINITIONS

**"BlueSky Telecom"** means BlueSky Telecom Pty Ltd (ABN 631 6344 3463),

**"BlueSky Telecom Equipment"** means any and all BlueSky Telecom equipment that is required to provide the Service .

**"BlueSky Telecom Fibre Services"** means any of the Services that are delivered solely on BlueSky Telecom owned infrastructure (i.e. there is no third party carrier component).

**"BlueSky Telecom Infrastructure"** means the physical network infrastructure over which BlueSky Telecom will provide the Service. This includes any BlueSky Telecom Equipment and the BlueSky Telecom Network.

**"BlueSky Telecom Managed Service"** means a service for which BlueSky Telecom has remote monitoring and diagnostic capabilities for all BlueSky Telecom infrastructure used to provide the service including equipment installed on the customers premises.

**"BlueSky Telecom Network"** means any telecommunications network, equipment, or facilities, or cabling controlled or utilised by BlueSky Telecom.

**"Executed Solution Proposal"** means the BlueSky Telecom Service Executed Solution Proposal for the Service.

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

**"Commencement Date"** means, unless otherwise agreed, the day BlueSky Telecom completes physical installation of the Service at the Premises so that it is able to provide the Service.

**"Communications Fraud"** means the use of telecommunications products or services (such as the Services) with the intention of manipulating the products or services or illegally acquiring money from, or failing to pay, a telecommunication company (such as BlueSky Telecom) or its Customers.

**"Confidential Information"** 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:

- (a) the party creates (whether jointly or alone) independently of the other party's Confidential Information;
- (b) 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
- (c) obtained without restriction as to the further disclosure from a source other than the other party through no breach of confidentiality by that source.

**"Customer"** means the customer described in the Executed Solution Proposal and any of its employees, sub-contractors, agents and representatives.

**"Customer Equipment"** has the meaning set out in clause 4.1.

**"Due Date"** means twenty one (21) days from the date of the Invoice, unless specified otherwise by BlueSky Telecom.



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**"Establishment Fee"** means the establishment fee repayable by the Customer and set out in the Executed Solution Proposal.

**"Excluded Event"** means:

- (a) a breach of the Contract by the Customer;
- (b) a Force Majeure Event;
- (c) a negligent or fraudulent act or omission of the Customer Customer's personnel; or
- (d) 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:

- (a) 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
- (b) 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
- (c) 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.

**"Hardware"** means any BlueSky Telecom hardware including, but not limited to, routers, switches, modems, telephones and video conference equipment.

**"Initial Term"** means the term specified in the Executed Solution Proposal.

**"Insolvency Event"** means:

- (a) bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
- (b) any step that is taken to enter into any scheme or arrangement between the Customer and its creditors;
- (c) 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;
- (d) 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;
- (e) the Customer suspends payment of its debts generally; or
- (f) the Customer is or becomes unable to pay its debts when they are due or 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 Executed Solution Proposal or such other period as notified by BlueSky Telecom 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 Executed Solution Proposal.

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



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- (a) installation of infrastructure;
  - (b) maintenance requirements (including Scheduled Maintenance Window); and
  - (c) software or infrastructure upgrades.

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

**"Privacy Policy"** means BlueSky Telecom's privacy policy as it may be varied from time to time.

**"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 Executed Solution Proposal.

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

**"Scheduled Maintenance Window"** means the period set out in the Contract or at such other times as BlueSky Telecom may advise the Customer from time to time during which BlueSky Telecom will endeavour to conduct all service disrupting planned maintenance work on its facilities, networks or systems.

**"Service"** means the service with the options and features requested in the Executed Solution Proposal and as specified in the Contract, and any related goods (including equipment) and ancillary services which BlueSky Telecom supplies to the Customer in connection with that Service.

**"Service Delivery Point"** means the location at which BlueSky Telecom will install the BlueSky Telecom Equipment necessary to provide the Service Interface as specified in the Executed Solution Proposal.

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

**"Special Offers"** means Promotional offers that BlueSky Telecom may make from time to time, including, but not limited to, free usage, discounts, or bonus months. Special Offers do not apply during any Extended Term.

**"Supplier Network"** means any telecommunications network, equipment, or facilities, or cabling controlled by a third party supplier.

**"Term"** has the meaning given in clause 2.2.