



TLC IP NETWORKS TERMS AND CONDITIONS

1. SCOPE OF AGREEMENT

1.1 TLC IP Networks will provide and the Customer accepts the Services on the terms and conditions set out in this Agreement. For the avoidance of doubt, this Agreement is intended to apply to the provision of Services to the Customer only and may not be construed as conferring benefits on third persons.

1.2 TLC IP Networks will use all reasonable endeavours to meet the Service Levels for the Service. Subject to clause 10.5, if TLC IP Networks fails to achieve the relevant Service Levels in any one month, the Customer will be entitled to a rebate calculated in accordance with the relevant Service Level Agreement. Any rebate potentially available to the Customer is not redeemable for cash or cumulative, such that any rebate that is not claimed in whole or part for any one month cannot be accrued or carried forward in any way (either in whole or part) for any following or subsequent months).

1.3 In order to claim a rebate, the Customer must call TLC IP Networks Customer Support and provide the TLC IP Networks representative with details of the affected Service, details of the Service Level failure, and the date, time and duration of any outage. A trouble ticket will be created in the TLC IP Networks system and the Customer will be provided with a case reference number. The Customer must quote that case reference number for all future communications relating to the Customer's claim.

2. TERM

2.1 Each Service has a minimum term as detailed in the TLC IP Networks Services Workbook or General Conditions or such other document retained by TLC IP Networks and will start on The Commencement Date and continue not less than 12 months unless otherwise determined ("The Term"). On expiry of The Term, this Agreement will roll over month-to-month until terminated by either party upon 30 days prior written notice.

3. CHARGES & BILLING

3.1 The Customer will pay to TLC IP Networks the Charges in compliance with the payment terms in clause 4.

3.2 The Customer agrees and acknowledges that TLC IP Networks may pass on any increases or special/once-off Other Supplier charges incurred by TLC IP Networks without notice where such charges impact the cost of supply of the Services by TLC IP Networks to the Customer.

3.3 Subject to clause 3.2, at any time after expiry of the Minimum Term, TLC IP Networks may vary the Charges upon 30 days prior written notice.

3.4 Subject to the Customer's rights under the Billing Disputes Procedure, the Customer agrees that: (a) The Services set out in the relevant Invoice were supplied to the Customer; and (b) The Charges set out in the relevant Invoice are prima facie accurate and the Customer acknowledges and agrees that they are (absent manifest error) due and payable by the Customer.

3.5 TLC IP Networks will endeavour to invoice the Customer monthly but reserves the right to invoice the Customer at any time.

3.6 TLC IP Networks will bill the Customer, and the Customer will be liable for all Charges in respect of the Services, commencing on and from the Service Start Date, whether or not the Customer uses the Services from that date: (a) In arrears for Usage Based Charges; and (a) In advance for Installation Charges, Recurring Charges and all other Charges.

3.7 The Customer will be liable for all Charges whether or not it authorised the particular use of the Services by another person.

3.8 TLC IP Networks shall not be entitled to set off in whole or in part any amounts due and payable by TLC IP Networks to the Customer, against the whole or a proportionate part of any amount due and payable by the Customer to TLC IP Networks under this Agreement.

3.9 TLC IP Networks reserves the right to withdraw any discounts that the Customer receives from TLC IP Networks in connection with the supply of Services where payment is not received within the terms of clause 4.

4. PAYMENT

4.1 Subject to the Customer's right to withhold payment pursuant to the Billing Dispute Procedure, the Customer will make payment in respect of each Invoice: (a) By the Due Date; (aa) we may charge you daily interest from the Due Date until the date on which payment is received; and (ab) interest will be

capitalised monthly and will be payable at the rate which is 2% per annum above the overdraft reference rate quoted by our principal bankers on the first day of the applicable month.

4.2 TLC IP Networks is taken to have received a payment from the Customer: (a) Where it is made by electronic transfer, on the date of deposit shown in TLC IP Networks bank account statement; and (b) Where it is made by cheque, on the date TLC IP Networks receives the cheque or, if the cheque is dishonoured, on the date cleared funds are received by TLC IP Networks as well as all dishonour fees and charges.

4.3 TLC IP Networks will allocate payments from the Customer in accordance with the advice of the Customer at the time of payment. Failing receipt of that advice, TLC IP Networks may, subject to the prior issue of an invoice, allocate that payment to any outstanding amount payable by the Customer to TLC IT.

5. BILLING DISPUTE

5.1 If the Customer has a billing dispute, it is to be submitted in writing to billing@tlcipnetworks.com.au

6. SUSPENSION & TERMINATION

6.1 TLC IP Networks may without any right of claim by the Customer against it for liability arising in contract and or tort (including negligence) terminate this Agreement and all or any Contract or suspend the supply of Service or the Services, with immediate effect from the date of delivery of a notice to the Customer (or with effect from such later date as TLC IP Networks may nominate in such notice), if:

(a) the Customer has not made payment by the Due Date.

(b) TLC IP Networks has reasonable grounds to believe that the Customer represents a credit risk in relation to the Service;

(c) an Other Supplier changes the terms on which they supply the Service to us

(d) (Including changes to functionality, nature or underlying technology of Service);

(e) a Competition Notice which affects the subject matter of this Agreement is issued, or TLC IP Networks reasonably believes that the ACCC is likely to issue such a Competition Notice, or a Regulator or court determines that any part of this Agreement contravenes the Telecommunications Acts or the Trade Practices Act; the holder of an encumbrance granted by the Customer

takes possession of the whole or a substantial part of the assets and undertaking of the Customer or it enters into a formal or informal compromise with its creditors;

(f) The Customer fails to comply with a statutory demand issued by TLC IP Networks under the Corporations Law;

(g) TLC IP Networks determines that the Customer is in breach of clause 4.1; or

6.2 Either party ("Affected Party") may without liability terminate this Agreement and all or any Contract, with immediate effect from the date of service of a notice (or with effect from such later date as the Affected Party may nominate in such notice), if:

(a) the other party ("First Party") breaches a material obligation under this Agreement, which materially impairs the Affected Party's ability to provide carriage services to its customers and the First Party fails to institute remedial action as required by a notice from the Affected Party within 10 Business Days of receipt of the such notice;

(b) An order is made or a resolution is passed for the winding up or dissolution (other than for solvent reconstruction or amalgamation) of the First Party;

(c) An Insolvency Administrator is appointed to the First Party or in respect of the whole or a substantial part of its assets and undertaking;

(d) The First Party is unable to pay its debts as and when they fall due and payable; or

(e) Force Majeure substantially adversely affects the ability of a party to perform its obligations (other than an obligation to pay money) under this Agreement continuously for a period of not less than 15 Business Days.

6.3 TLC IP Networks may without any right of claim by the Customer against it for liability arising in contract and or tort (including negligence) and with immediate effect suspend or terminate the Services under the relevant Contract:

(a) to perform necessary maintenance or other service work in connection with a Planned Outage; or

(b) to perform emergency maintenance work provided that the need for carrying out such work does not arise as a result of the gross negligence or unlawful acts or omissions of TLC IP Networks;

(c) In order to enable TLC IP Networks to comply with any law, protect any person, equipment, or TLC IP Networks network or to enable authorised persons to attend to any emergency;

6.4 If TLC IP Networks suspends the Services, the Customer acknowledges and agrees that:

(a) The Customer will pay TLC IP Networks costs of reconnecting the Service (if applicable);

(b) All outstanding Charges will become immediately due and payable; and

(c) except in the case of Usage Based Charges, all Charges in relation to the Services will continue to accrue while suspended and will be payable by the Customer.

6.5 The Customer is entitled to terminate this Contract at any time prior to expiry of The Term by paying to TLC IP Networks an amount calculated by multiplying the Recurring Charge payable by the Customer under this or another Contract, by the remaining months (or part thereof) of The Term. The parties hereby expressly covenant and agree that TLC IP Networks has the exclusive right to claim any such amount as liquidated damages (and not as a penalty) in relation to the cost of either non-performed work under this Contract due to the breach and or unfulfilled obligations of the Customer or Service that otherwise would have been provided had the Contract continued for The Term.

6.6 On termination of this Agreement and/or any Contract for any reason, all Charges payable under the terminated Contract(s) shall become immediately due and payable.

6.7 Termination of this Agreement or a Contract under clause 2.1 is without prejudice to the rights and obligations of the parties which accrued prior to the date of termination.

6.8 Termination of this Agreement and/or any Contract shall be without prejudice to the continued effectiveness of all provisions in this Agreement which, by their nature, survive termination.

7. CUSTOMER OBLIGATIONS

7.1 The Customer must comply with any reasonable instructions of TLC IP Networks, and provide all information and assistance reasonably required by TLC IP Networks, in order to enable TLC IP Networks to:

(a) Comply with its obligations under this Agreement and each Contract;

(b) Comply with any obligations under any law;

(c) Comply with any request or direction of a Regulator;

(d) Comply with any request or direction of a government agency, emergency service organisation or other competent authority for reasons of health, safety or the quality of the Services; and

(e) Comply with all applicable national, state and local disaster and emergency management plans.

7.2 The Customer agrees to: Grant TLC IP Networks full and free access to its network information and records to the extent reasonably required for the purposes of remedying Service faults in an emergency;

(b) Comply with all applicable laws; and

(c) Comply with all applicable national, state and local disaster and emergency management plans.

8. TAXES

8.1 Subject to clause 8.2, the Charges set out in this Agreement are inclusive of all state and commonwealth taxes, with the exception of GST (and any applicable stamp or transaction duty on this Agreement).

8.2 Where TLC IP Networks becomes liable to pay stamp or transaction duty on this Agreement, the Customer must pay to TLC IP Networks the Charges plus an amount equal to the stamp or transaction duty payable by TLC IT.

8.3 In addition to each of the Charges, at the time of invoicing, TLC IP Networks may charge the Customer (and the Customer shall pay) an additional amount equal to the amount of GST payable in connection with any supply made by TLC IP Networks to which the Charge relates. Where GST is charged, TLC IP Networks will provide a tax invoice, which will enable the Customer, where permitted, to claim a credit or refund of GST. The Customer shall pay any GST included on an Invoice in accordance with clause 4. Should the GST amount recovered by us from the Customer in connection with any supply made differ to the GST liability either due to an amendment in the GST law or an adjustment to the consideration under this agreement, we will provide an adjustment note.

8.4 Where TLC IP Networks becomes liable to any penalties or interest as a result of the late payment of GST or any stamp or transaction duty, due to the Customer's failure to comply with the terms of this Agreement or the

Customer's obligations under the GST law, then the Customer must pay an additional amount equal to those penalties and interest to TLC IP Networks.

9. OFFENCES, INDEMNITIES and RELEASE

9.1 The Customer will not use, and must use best endeavours to ensure that others do not use, the Services:

(i) to distribute material that is defamatory, offensive, abusive, obscene, menacing, threatening, harassing, or illegal under any law at any place where transmissions are sent from, viewed or received or in any way contrary to the Internet Usage Policy of TLC IP Networks;

(ii) To copy or distribute material where it has no right to do so (for example, someone else's copyrighted works or confidential information);

(iii) To commit a crime or in the course of committing a crime;

(iv) For an unlawful purpose;

(v) To do any act that may damage the network or systems or cause the quality of the Service to be impaired;

(vi) To engage in any activities in such a manner as to expose TLC IP Networks or Supplier to liability; or

(vii) To do any act that may damage the network or systems or cause the quality of the Services to be impaired; or

(viii) In a manner that does not comply with the terms of any legislation or licence applicable to the Customer or that does not comply with any instructions given by TLC IP Networks under clause 7.1.

9.2 The Customer will indemnify and release TLC IP Networks against: all direct, indirect and consequential loss arising from or relating to a claim against it arising out of the death of or personal injury to the employees, agents, representatives, contractors, substitutes or permitted assigns of TLC IP Networks, to the extent that such damage or loss is caused by a negligent act, default or omission, or an act or omission intended to cause death or personal injury, by the Customer or any of its employees, agents, representatives, contractors, substitutes or permitted assigns;

(b) all direct, indirect and consequential loss arising from or relating to any damage to or loss of any equipment, network or other tangible property of TLC IP Networks or any third party to the extent that such Loss is caused by a negligent act, default or omission, or an act or omission intended to cause

loss, by the Customer or any of its employees, agents, representatives, contractors, substitutes or permitted assigns;

(c) all direct, indirect or consequential loss arising directly from or in connection with a claim by a third party against TLC IP Networks to the extent that the claim relates to any negligent or wilful act or omission of the Customer or any of its employees, agents, representatives, contractors, substitutes or permitted assigns in relation to this Agreement; and

(d) All Loss arising from the Customer's breach of clause 9.1.

(e) For an unlawful purpose;

(f) To do any act that may damage the network or systems or cause the quality of the Service to be impaired.

(g) To engage in any activities in such a manner as to expose TLC IP Networks or its Suppliers to liability; or

9.3 If TLC IP Networks uses the services of another Carrier in providing the Services, the Customer will indemnify and release TLC IP Networks for all and any loss suffered by TLC IP Networks, including direct, indirect or consequential arising out of contract or tort (including negligence) as a result of a claim by the Customer or a third party against such Carrier (including claims for death, personal injury or physical damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services.

9.4 The Customer will indemnify and release TLC IP Networks for all direct, indirect and consequential loss suffered by TLC IP Networks as a result of a third party claim against TLC IP Networks (excluding claims for death, personal injury or damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services.

9.5 Subject to clause 10.4, without limiting any other term of this Agreement, the Customer will indemnify and release TLC IP Networks from any and all direct, indirect and consequential loss to the extent that such Loss liability is caused by a negligent act or omission by the Customer or any of its agents, representatives, contractors, employees or assigns.

10. LIMITATION OF LIABILITY

10.1 To the extent permitted by law, the supply of Services under this Agreement will be governed exclusively by the terms of this Agreement (including any Schedules or collateral agreements) and all other terms, conditions, warranties, undertakings, inducements or representations whether

express, implied, statutory or otherwise relating in any way to the supply of Services under this Agreement are excluded.

10.2 Where any Act of Parliament implies in this Agreement any term, and that Act of Parliament voids or prohibits provisions under a contract which exclude or modify the operation of such term, the term is deemed to be included in this Agreement.

10.3 To the extent permitted by law, TLC IP Networks liability for breach of any condition or warranty implied by law which cannot lawfully be excluded, whether in contract, negligence (or any other tort), under any statute or otherwise, is limited to one of the following remedies at TLC IP Networks discretion:

(a) If the breach relates to services, the resupply of the Services or the payment of the cost of resupplying the Services; or

(b) If the breach relates to goods, the repair or replacement of the goods or the payment of the cost of such repair or replacement.

(c) Notwithstanding clause 10.3 of this Agreement, the liability of TLC IP Networks for breach of this agreement, or in tort or for any other common law or statutory cause of action is, in respect of each Occurrence, limited to one million dollars (\$1 million). In this clause, "Occurrence" means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be. This clause 10.3(c) shall apply to the fullest extent permitted by law despite anything else in this Agreement.

10.4 Except as otherwise expressly provided in this Agreement and to the extent permitted by law, TLC IP Networks has no liability to the Customer in connection with this Agreement for or in respect of any direct, indirect, consequential loss, loss of profits of any kind, loss or corruption of data, interruption to business, loss of revenue and economic loss of any kind, whether in contract, negligence or any other tort under any statute or otherwise.

10.5 Unless expressly provided otherwise in this Agreement, the Customer's sole remedy for TLC IP Networks failure to meet the Service Levels is the Customer's entitlement to rebates as specified in the relevant Service Schedule or collateral agreement.

11. EQUIPMENT Covers only equipment supplied by TLC IT.

11.1 The Customer will provide a suitable physical environment at the Customer Premises for the storage and operation of the Equipment including supplying an adequate power supply for the operation of the Equipment.

11.2 The Customer will ensure that TLC IP Networks is provided with such access to the Equipment and Customer Premises during normal business hours as TLC IP Networks may request and at such other times as the Customer and TLC IP Networks mutually agree. This right of access shall amount to an exclusive licence to enter the Premises and will not end until all the Equipment is returned to TLC IT, even if this Agreement has terminated. After termination of this Agreement, the Customer must allow TLC IP Networks to retake possession of the Equipment. The Customer must ensure that TLC IP Networks personnel are provided with a safe working environment while at the Customer Premises. TLC IP Networks will ensure that its personnel comply with the Customer's reasonable directions while on the Customer Premises.

11.3 Except as expressly provided by this Agreement:

(a) The Equipment always remains the property of TLC IP Networks;

(b) the Customer will ensure that, it has all necessary consents and approvals (Including landlord approval where applicable) necessary or desirable for TLC IP Networks to deliver, install and maintain the Equipment at the Customer Premises; and

(c) the Customer will not part with possession of the Equipment except to TLC IP Networks and will comply with all reasonable directions of TLC IP Networks relating to its rights of ownership of the Equipment

11.4 TLC IP Networks may at any time and from time to time change, modify or service the Equipment.

11.5 The Customer will ensure that the Equipment will not be altered repaired, serviced or moved except by service personnel approved by TLC IT. The Customer must take good care of the Equipment while it is in the Customer's possession. The Customer will be liable to TLC IP Networks for all loss of or damage to the Equipment while at the Customer Premises, normal wear and tear excepted.

11.6 Any lost or damaged equipment will be charged to the customer at Recommended Retail Pricing.

12. INTELLECTUAL PROPERTY

12.1 TLC IP Networks must not use the Customer's Intellectual Property without the Customer's prior written consent.

12.2 The Customer acknowledges that TLC IP Networks' Intellectual Property and all goodwill associated therewith is, and shall remain, the sole property of

TLC IP Networks and no rights are conferred upon the Customer with respect to TLC IP Networks Intellectual Property except as specifically set forth herein.

12.3 The Customer must not use TLC IP Networks Intellectual Property without prior written consent.

12.4 Immediately upon the expiry or earlier termination of this Agreement, the Customer must return to TLC IP Networks all TLC IP Networks Intellectual Property and TLC IP Networks owned material (including data) which was provided to the Customer in the supply of the Services.

13. FORCE MAJEURE

13.1 If a party is unable to perform an obligation (other than an obligation to pay money) under this Agreement ("First Party") by reason of Force Majeure, that obligation is suspended for the duration of the Force Majeure provided that the First Party:

(a) Gives the other party ("Affected Party") prompt notice of the details of the Force Majeure and an estimate of the extent and duration of its inability to perform; and

(b) Takes all reasonable steps to remove that Force Majeure as quickly as possible. 13.2 Within 5 Business Days after receipt of a notice given under clause 13.1, the parties must meet to discuss in good faith a mutually satisfactory resolution to the Force Majeure suspension.

13.3 The requirement that a Force Majeure be removed with all possible diligence does not require the settlement of labour disputes or other claims on terms which, in the reasonable opinion of the party affected, are unreasonable.

14. CONFIDENTIALITY

14.1 The Provider retains all property rights in the Confidential Information.

14.2 The Recipient must:

(a) Take reasonable steps to enforce the confidentiality obligations imposed by this Agreement including diligently prosecuting at its cost, any breach or threatened or suspected breach of such confidentiality obligations by a person to whom the Recipient has disclosed the Confidential Information; and

(b) co-operate, and provide the Provider with all reasonable assistance, in any action which the Provider may take to protect the confidentiality of the Confidential Information.

14.3 The Recipient may only disclose Confidential Information (to the extent reasonably necessary):

(a) To its legal advisers in relation to its rights under this Agreement;

(b) To its Representatives: i. for the sole purpose of assisting the Recipient to meet its obligations under this Agreement and to effect the transactions contemplated by this Agreement on a need to know basis only; and ii. upon the Representative undertaking to keep strictly confidential any information disclosed.

(c) Where such disclosure is:

i. Required by law; or

ii. required by the rules of any stock exchange where the Recipient's securities are listed or quoted;), the Recipient must before doing so:

(ai) notify TLC IP Networks in writing within 5 working days of request for disclosure; and

(bi) provide TLC IP Networks reasonable opportunity to take any steps it may deem appropriate to protect the Confidential Information; Then

(ci) Notify the receiving person that the information is Confidential and Privileged Information by marking it with the words "Confidential and Privileged Information"; and

(di) not provide the information unless the receiving person agrees to keep the information confidential and is bound to do so to the extent that the Recipient normally binds any person to maintain the confidentiality of the Recipient's own confidential information in the same circumstances.

(ei) If the Recipient is required to make a disclosure as described in subparagraph (c) the Recipient will disclose only the Confidential Information required to comply with the applicable law or order.

(d) In connection with legal proceedings between the parties relating to the confidentiality provisions of this Agreement. For the avoidance of doubt, unless otherwise provided for in this Agreement, the Confidential Information may not be disclosed in connection with any dispute or legal proceedings not related to this Agreement.

14.4 Where the Recipient becomes aware of any actual, suspected or threatened unauthorised disclosure or use of the Confidential Information it will promptly notify the Provider.

15. PERMISSIONS

15.1 Permission will be sought in writing and not unreasonably withheld to provide us requested information relevant to our assessment of your credit rating.

15.2 Permission will be sought in writing prior to and not reasonably withheld for us to disclose information or documents about your personal particulars and affairs (including credit worthiness, credit history and credit capacity and any unlisted telephone number and address) from or to credit providers and credit reporting agencies and all purposes permitted by the Privacy Act 1988 (Cth); law enforcement agencies; debt collection agencies; a Carrier or our dealers for purposes connected with supply the Services, billing for the Services or collecting amounts invoiced for the Services.

15.3 You permit us to set a limit on the credit we extend to you in relation to your use of the Services ("credit limit") if applicable. We will advise you of any credit limit we set. We may revise the credit limit from time to time by notice to you if we consider there has been any change in your capacity to pay.

15.4 You permit us to collect, store, use and disclose your Personal Information (as defined in the Privacy Act 1988 (Cth) (including promotional or other services we offer).

16. GENERAL

16.1 Assignment: You may not assign, novate, mortgage, charge, sublicense or otherwise deal with your rights, or subcontract or otherwise delegate any of your obligations under this Agreement without our prior written consent (such consent not to be unreasonably withheld). We may assign novate or otherwise delegate all or any of our rights and obligations under this Agreement to a Related Body Corporate or other person. For the avoidance of doubt, a Change in Control of a party is a deemed assignment under this clause.

16.2 Entire Agreement: This Agreement constitutes the entire Agreement of the parties about its subject matter and any previous Agreements, understandings, negotiations and representations on that subject matter cease to have any effect.

16.3 Jurisdiction: This Agreement is governed by the laws from time to time in force in New South Wales or Victoria and the parties unconditionally submit to the non-exclusive jurisdiction of the Courts in that state or any Superior Court of the Commonwealth of Australia for determining any dispute concerning this Agreement. TLC IP Networks shall reserve the right to choose the convenient forum.

16.3A Prevailing terms: The terms of this agreement shall prevail to the extent of any inconsistency between them and any collateral agreement.

16.4 TLC IP Networks reserves the sole right to vary, alter or amend the Terms and Conditions of this Agreement in its absolute discretion without notice.

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