

## Standard Form of Agreement

This document incorporates the standard terms and conditions incorporated into your agreement with Orion Satellite Systems of Level 2, 16 Victoria Avenue, Perth, Western Australia 6000, (Orion) a trading name of IPSTAR Australia Pty Ltd. (ACN 107 338 901) of 154 Pacific Highway, St Leonards, NSW 2065.

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### 1. About this Agreement

- a. Please read this Standard Form of Agreement carefully. It applies to:
  - I. Your use of the Services;
  - II. any Goods or any quotations for or offers to supply Goods; and/or
  - III. any Other Services, provided to You by Orion Satellite Systems (Orion) a trading name of IPSTAR Australia Pty Ltd. (ACN 107 338 901) (in this Agreement referred to as "Our", "We", "Us").
- b. This agreement is made under Section 478 of the *Telecommunications Act 1997*.

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### 3. Interpretation

**"Acceptable Use Policy"** means Our policy about the acceptable levels and methods of use of the Service, as published by Us from time to time.

- a. **"Agreement"** means Your agreement with Us for the provision of the Service, comprising Your Customer Order Confirmation and further including and incorporating:
  - i. The terms and conditions outlined in this Standard Form of Agreement, as amended from time to time;
  - ii. Our Acceptable Use Policy and Privacy Policy, as amended from time to time; and
  - iii. Such other policies and procedures as are published by Us and amended from time to time; and
  - iv. Any term or condition incorporated by statute.
- b. **"Business Customer"** means a customer who, in Our sole opinion, is not a Residential Customer.
- c. **"Cancellation Fee"** means the cancellation fee set out in the Plan Table.
- d. **"Communication Network Design"** means any facilitation, mapping, illustration, proposal or intellectual endeavour that supports the deployment of Communication Transmission Facilities.
- e. **"Communications Transmission Facilities"** means the equipment and facilities installed to the Premises on the network side of the wall plate through which the Service is supplied, excluding the Equipment and Software.
- f. **"Contract Term"** means the period noted on the Customer Order Confirmation starting on the Service Commencement Date.
- g. **"Cooling-Off Period"** means the period referred to in clause 4 (d).
- h. **"Customer Order Confirmation"** means a document transmitted by email that describes the Premises, Equipment, type of Service, the fees applicable to the Service and other information relating to the provision of a Service to You.
- i. **"Equipment"** includes modems, routers, network switches, antennas, transmitters, cabling from the antenna to a wall plate, and from the wall plate to a modem.
- j. **"Event of Force Majeure"** means war, military coup, riot or civil commotion, act of God, fire or explosion, flood or storm, landslide, lightning or earthquake, terrorist act, act of governmental or municipal authority, damage to or destruction of plant or equipment, strike or other industrial disturbance (other than a strike, stop-work meeting, lockout or boycott of or by Our employees, agents or sub-contractors) or any other cause which by the exercise of due diligence, We are unable to prevent or overcome.
- k. **"Maintenance Period"** means:
  - v. For new Equipment that We provide to You, 12 months from the date on which We deliver the Equipment to You; or
  - vi. For new Equipment that You order from Us after the commencement of the Agreement, 12 months from the date We provide the Equipment to You.
- l. **"Material Breach"** means a breach of this Agreement which includes, without limitation, your failure to make any payment on time and / or any breach due to your failure to comply with Your obligations under this Agreement or any of our Policies.
- m. **"Material Terms"** means the clauses in these Terms and Conditions bearing the annotation "**(MATERIAL TERM)**".
- n. **"Plan Table"** means our table of the fees, charges and features relating to the Service stated on Your Customer Order Confirmation.
- o. **"Policy"** means any policy published on our website by Us from time to time and notified to You, including, without limitation, the Acceptable Use Policy and Privacy Policy.

- p. **"Premises"** means the location or building to which the Service will be provided and the Communication Transmission Facilities installed, and the land at that location or on which the building stands.
- q. **"Privacy Policy"** means our privacy policy as published by Us from time to time.
- r. **"Regulatory Event"** means:
  - i. A determination or notice issued by the Australian Competition and Consumer Commission; or
  - ii. A determination by any court; or
  - iii. A determination by Us, in Our opinion, on reasonable grounds and acting in good faith;that the supply of the Service, the terms of the Agreement or any action taken or required to be taken in accordance with the Agreement contravenes or may contravene any applicable law including, without limitation, the *Telecommunications Act 1997* (Cth) or the *Competition and Consumer Act 2010* (Cth).
- s. **"Residential Customer"** means a customer who, in Our opinion, takes up the Service predominantly to use for personal, household or domestic use or consumption.
- t. **"Retailer"** means a third party that has entered into a dealership agreement with Us in order to promote and sell the Service and other services.
- u. **"Service"** means the following:
  - i. The service agreed to be provided by Us under the Agreement, including but not limited to the following specific services:
    1. Access to the internet;
    2. Electronic mail services;
    3. The ability to upload and download files using file transfer protocols;
    4. VOIP telephony;
    5. Access to Telnet and HTTP services;
    6. Communications Network Design;
    7. Other services We may advise to You from time to time.
  - ii. The service agreed to be provided by Us to You under a specific program managed and funded by the Australian Government.
- v. **"Service Commencement Date"** means the date your service is commissioned or as otherwise agreed between You and Us in writing.
- w. **"Service Level Agreement"** means an ancillary agreement between You and Us as to the minimum level of service to be provided pursuant to this Agreement.
- x. **"Service Rebate"** means a rebate payable pursuant to a Service Level Agreement.
- y. **"Software"** means any software We supply to You for use in conjunction with the Service, including any upgrades and manuals.
- z. **"Standard Form of Agreement"** means this document entitled "Standard Form of Agreement".
- aa. **"Summary Standard Form of Agreement"** means any written summary produced by Us and provided to You of the terms and conditions of this Standard Form of Agreement.
- bb. **"Terms of Trading Agreement"** means Our credit application and agreement governing the issuing of credit to You by Us.
- cc. **"VOIP Telephony"** means an internet telephony service.

## 4. Provision of the Service

- a. We agree to provide You with the Service at the Premises and You agree to pay for Our provision of the Service, subject to the terms and conditions contained in the Agreement.
- b. The Agreement will commence on the earliest of the following dates:
  - i. On the Service Commencement Date;
  - ii. In the event that the Material Terms are read to You and You indicate your positive acceptance of them, the Material Terms will commence on that date with the balance of the Agreement commencing upon the date when We provide You with a written copy of the Customer Order Confirmation;
  - iii. In the event that the Material Terms are not read to You, on the date when We provide You with a Customer Order Confirmation.
- c. **(MATERIAL TERM)** The Service commences when We complete the commissioning of the Communication Transmission Facilities at the Premises (“**Service Commencement Date**”).
- d. Legislation enacted in your State or Territory may provide that you are to receive a period during which you can validly rescind an agreement for goods or services (a “**Cooling-Off Period**”). If You are entitled by law to a Cooling-Off Period:
  - iv. You may terminate the Agreement at any time within the Cooling-Off Period, by giving Us notice in accordance with the relevant legislation; and
  - v. We may choose not to provide the Service or the Equipment to You until the Cooling-Off Period has expired.
- e. Nothing in the Agreement or in these Terms and Conditions shall give You the right to a Cooling-Off period, if such a right is not otherwise provided by law.
- f. The Agreement will continue for the Contract Term and, if it not cancelled by You or Us prior to the end of the Contract Term or at the end of the Contract Term, the Agreement will automatically renew and continue for 12 months until it is terminated in accordance with the terms of this Agreement.
- g. You acknowledge the following in relation to Our provision of a Service to You:
  - i. We do not guarantee that information sent using any Service We provide to You will reach its intended destination (including electronic mail) inside or outside our network;
  - ii. We do not in any way supervise, edit or control the content and form of any information or data accessed through the Service;
  - iii. We disclaim all liability for any material viewed in connection with the Service that you find offensive, defamatory, or in any way unsuitable;
  - iv. Given the nature of telecommunications systems (including the Service's reliance on systems not owned or controlled by Us), We cannot promise that the Service will be continuous or fault free;
  - v. Any transmission speed indicated in this Agreement refers to maximum theoretical speeds achievable under ideal conditions and actual achieved speeds may substantially differ from the theoretical speeds; and
  - vi. At our discretion, we may prioritise the delivery of network traffic that is sensitive to latency in preference to traffic that is not.

## 5. Technical Support and Customer’s Rights

- a. Customers can lodge faults and complaints and seek customer support by telephoning Orion on 1300 880 663 six (6) days per week (Monday – Saturday) during normal operating hours Australia-wide, <https://www.orionsat.com.au/>. Should a customer be unsatisfied with the progress of a support call, the matter will be escalated in accordance with the Orion

#### Complaints Handling Policy.

- b. You may appoint an Authorised Representative to act on Your behalf in any dealings with Orion, if You so require, by providing a valid written authority (such as a power of attorney) signed by You to Orion. An Authorised Representative will have the power to act on Your behalf as if they are You or, if the Authorised Representative has more limited rights, the level of access that the Authorised Representative has to Your information.
- c. You may also appoint an Advocate, if You so require, by providing a valid written authority (such as a power of attorney) signed by You to Orion. Orion will presume that an Advocate is not authorised to establish or make changes to Your account or the Service, unless the Advocate is also Your Authorised Representative. An Advocate who is not Your Authorised Representative has no power to act on Your behalf and has no access to Your information without You being present and agreeing to such action.

## 6. Service Levels and Service Rebates (Applicable Service Types Only)

- a. Where a Service Level Agreement is explicitly included in Your Customer Order Confirmation, Clauses 5 b. to 5 i are applicable, and nototherwise.
- b. At Our discretion we will set minimum performance targets and provide rebates if the Service fails to meet these targets.
- c. Where a Service is unavailable due to scheduled maintenance this period is exempt from Service Rebates.
- d. Where a Service is unavailable due to events beyond our control this disruption period is exempt from Service Rebates. These include the following events:
  - i. Interruption of the Service due to any telecommunications company circuits or failure of any telecommunications company services;
  - ii. Interruption of the Service due to Your applications, your equipment, or your facilities;
  - iii. Where You cause an interruption of the Service due to Your acts or omissions, or any use of the Service authorised by You;
  - iv. Where the Service is interrupted due to forcemajeure;
  - v. Where We are requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts rectification of a fault or service difficulty;
  - vi. Where we are prevented from connecting a Service, or rectifying a fault because we are unable to obtain lawful access to land or a facility;
  - vii. Damage to our network, equipment or facilities caused by a third party;
  - viii. Planned or unplanned speed degradation (not service loss); and / or
  - ix. Freight delays caused by third parties.
- e. A Service Rebate is not redeemable for cash and in any month is capped at the relevant specified percentage of the charges for the individual service for that month. A claim for any Service Rebate must be submitted in writing within 10 working days of the event resolution.
- f. Once a claim is made We will confirm the eligibility of the claim and calculate the Service Rebate (if applicable) for the Service at the conclusion of the calendar month and credit your account the amount equal to the Service Rebate.
- g. Where a Service Rebate is payable under multiple Service descriptions for the same event, you will only be entitled to a single Service Rebate which is equal to the highest single

- Service Rebate entitlement that would be payable if each Service description were for separate events.
- h. You acknowledge that We do not warrant the availability or other characteristics of the Service or that any target provisioning, installation, response or rectification times will be met.
  - i. No service rebate is applicable if We suspend Your Service under Clause 14.a.
  - j. This clause is subject to clause 22 below.

## 7. Charges

- a. **(MATERIAL TERM)** Charges are payable for the Service, in accordance with the Plan Table as amended from time to time in accordance with these Terms and Conditions, for Your selected pricing plan.
- b. If You request Us to install Communication Transmission Facilities We will install the Communication Transmission Facilities and charge You a fee for doing so. This fee will include the cost of labour, travel to and from the Premises, the cost of materials used to complete the installation and the cost of freighting equipment to the Premise.
- c. If You install the Communication Transmission Facilities You will be charged a fee for freighting the equipment to Your designated delivery point.
- d. We may charge a fee to cover the costs of the installation of Communication Transmission Facilities, irrespective of whether a Service can be delivered to You,
- e. All monthly fees are payable in advance and any phone charges and additional megabyte charges are payable in arrears. Other fees and charges that are payable by You as set in the Plan Table are payable by the due date specified on the invoice. We process and issue invoices for the Service within forty-five (45) days of the end of each billing period.
- f. We reserve the right to charge interest on overdue invoices, and levy additional charges in the event that We incur costs relating to the recovery of unpaid debt
- g. We will send all invoices by email to Your nominated email address. We reserve the right to impose a processing fee for all hard copy invoices.
- h. At our absolute discretion We may extend credit to You subject to Our assessment of a completed credit application and Your acceptance of Our Terms of Trading Agreement. The exercise of this term is at Our complete discretion and We have no obligation to respond positively and will not provide reasons for refusal.
- i. We accept payment for all charges by credit card (Visa or MasterCard), electronic funds transfer or Direct Debit only.
- j. At our absolute discretion We may introduce new payment methods and the conditions upon which You can access these new payment methods.
- k. Where you elect to pay by electronic funds transfer or by cheque, You will be required to follow the instructions clearly outlined on Your monthly invoice.
- l. Where you elect to pay by electronic funds transfer or by cheque, We reserve the right to suspend Your service where payment of Your invoice has not been received in full by the start of the billing period.
- m. Where you elect to use a payment method that results in Us incurring a third party processing fee, we reserve the right to charge this processing fee to you in the following month's invoice.
- n. If You provide Us with Your credit card details for the purposes of paying for the Service, We may at Our absolute discretion, and you irrevocably authorize us to, do any or all of the following:

- i. Bill all fees and charges to Your credit card on a monthly basis from Your Service Commencement Date.
- ii. Disclose Your credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details.
- iii. Take steps to verify that there is sufficient credit on Your credit card account to meet likely fees.
- iv. Charge any Cancellation Fee payable under the Agreement or these Terms and Conditions to Your credit card on notice of termination.
- o. You are obliged to notify us if the credit card details provided to us are amended by your card provider.
- p. You can change Your selected pricing plan at any time. Any change to Your selected pricing plan will not affect Your Contract Term, but may incur a charge as advised by Us from time to time.
- q. The charges in the Plan Table may not include all taxes. You must pay Us any applicable taxes that We include as part of Your invoice for the Service, including (but not limited to) any Goods and Services Tax, stamp and other duties, fees, taxes and charges relating to Your purchase of any Equipment, the Agreement or the performance of the Agreement, and any other transaction arising out of the Agreement.
- r. GST may be imposed on a supply We make to You under the Agreement. Unless the consideration payable for the supply is expressed to include GST You must pay Us an additional amount to cover the GST. We will issue a Tax Invoice to You for any supply on which GST is imposed.
- s. In this clause and the Agreement generally, the terms "**GST**" and "**Tax Invoice**" have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 8. Your Obligations

- a. We will provide You with the Service and will use reasonable care and skill in doing so. In order for Us to provide You with the Service, You are required to do the following:
  - i. Ensure that all computers attached to or utilised with the Service meet the minimum requirements as advised by Us from time to time.
  - ii. Comply with Our Acceptable Use Policy, the terms of which are included in the Agreement, and ensure that any users comply with Our Acceptable Use Policy.
  - iii. Comply with all laws, all directions by a regulator, all notices issued by authorisation of or under law, and all reasonable directions by Us.
  - iv. Without derogation from the Acceptable Use Policy (which will prevail over the provisions of this Clause in the event of inconsistency), to use, attempt to use or allow others to use, the Service in a way that, in Our reasonable opinion:
    - 1. Interferes with Our efficient or proper operation of the Service, Our network or of any third party network used to supply the Service;
    - 2. Breaks any laws of the Australian Commonwealth, a State, and / or a Territory where the Service is available;
    - 3. Exposes Us to liability; and /or
    - 4. Causes the transmission, publication or communication of any material which could reasonably be considered defamatory, offensive, abusive, indecent, menacing or unsolicited.
  - v. Not use the output of any Communication Network Design service provided by Us for a purpose other than the originally intended purpose without providing notification to Us and payment of a fee agreed between You and Us.
  - vi. Not use any VOIP Telephony Service provided by Us as Your principal and / or sole telephony service for accessing 000 emergency services or other emergency services.

- vii. In accordance with Part 5 *Telecommunication (Consumer Protection and Service Standard) Act 1999*, and the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*, You accept that, due to the technical limitations of Your VOIP Telephony Service, We may not meet the standards applicable to Your Service.
  - viii. Not use, attempt to use or allow others to use, the Service in a way that, in Our reasonable opinion, significantly interferes with other customers' use or enjoyment of the Service or interferes with Our efficient or proper operation of the Service.
  - ix. Ensure that any equipment provided by You does not damage the Service or the Communication Transmission Facilities.
  - x. Ensure that all account information, passwords, data and Equipment is/are kept secure.
  - xi. Pay all fees and charges associated with Your use of the Service, in accordance with the agreement and these Terms and Conditions.
  - xii. Regularly check the default email address that We have allocated to You for messages about Your Service.
  - xiii. Receive Our newsletter.
- b. There are certain things that, despite Our best efforts, We cannot guarantee or provide in relation to the Service. As a result, You acknowledge each of the following:
- i. We will use reasonable care and skill in providing the Service and will provide the Service in accordance with the Agreement. However, given the nature of telecommunications systems (including the Service's reliance on systems and services not owned or controlled by Us), We cannot promise that the Service will be continuous, accessible at all times or fault-free.
  - ii. We may not be able to meet a request from You to provide detailed information about Your usage of Your Service (for example, information about what websites were visited using the Service and when they were visited).
  - iii. We do not have to monitor use of the Service, whether by You or by anyone else. If We do so, We can stop the monitoring at any time. We may monitor use of the Service to see whether You are complying with the Acceptable Use Policy or to investigate a breach (or suspected breach) of that policy. However, We are not under any obligation to enforce the Acceptable Use Policy or any other policy that applies to anyone using services that We provide to them.
  - iv. Where You provide and attach Your own wireless connection device to the Service, You are responsible for any loss whatsoever caused as a result of that use, including (but not limited to) any unauthorized interception or use of the Service.
  - v. We are not responsible for any loss caused by equipment provided by someone other than Us.

## 9. Installation of Communication Transmission Facilities

- a. Where You have requested Us to undertake an installation We will install the Communication Transmission Facilities at the Premises. Where We specify a date to You for installation, We will try to keep to the specified date. However, if We cannot keep the specified date, We will tell You and will complete the installation as close to that date as reasonably possible.
- b. You confirm that You will give Us safe access to the Premises when We come to install, maintain or remove the Communication Transmission Facilities.
- c. To ensure that We have proper permission to enter Your Premises We ask You to warrant either that You are the owner of the Premises; or that You have obtained permission from the owner (including anybody corporate) for Us to enter the Premises and install, maintain

- or remove the Communication Transmission Facilities.
- d. If You ask Us to install the Communication Transmission Facilities in a particular way and We tell You that We do not recommend that method of installation, We are not responsible for any loss that results from acting in accordance with Your instructions.
  - e. We may require the services of a third party to help to install the Communication Transmission Facilities at the Premises (such as, for example, a qualified plumber or electrician) or for a third party network operator to disconnect their telecommunications services or cables on the Premises. If We do require this, We will advise You beforehand and will require You to arrange and pay for the work to be completed before We proceed with Our installation.
  - f. The terms of this clause survive termination of the Agreement for any reason whatsoever.

## 10. Ownership and Use of the Equipment

- a. To facilitate the supply of the Service to You, We may choose to provide Equipment to You during the term of the Agreement. If We do so, property in and ownership of the Equipment remains at all times in Us, subject to the following.
- b. Should We agree that You are to receive ownership of the Equipment:
  - i. The Equipment remains Our property until payment of the equipment invoice at which time ownership of the Equipment will pass to You.
  - ii. Notwithstanding the above, risk in the Equipment will immediately pass to You when the Equipment is collected from Our warehouse.
- c. You confirm that, unless and until ownership of the Equipment passes to You under clause (b) above, You will not:
  - i. Sell or otherwise encumber the Equipment.
  - ii. Damage the Equipment.
  - iii. Give a third party possession or use of the Equipment without Our prior consent.

## 11. Maintenance of the Service

- a. We will use all reasonable efforts to rectify any technical fault or problem with the Service as soon as possible.
- b. Notwithstanding the above, You acknowledge that:
  - i. We do not provide technical support services for configuring Your local area network to connect it to Your Service.
  - ii. We do not provide assistance with local area network-related difficulties.
  - iii. We will only provide support for connecting Your Service to a single network interface card on a single computer.
- c. If We attend the Premises in response to a technical support request by You and find that there is no fault in the Service or that there is a fault in the Service attributable to an act or neglect on Your part, We may charge You a Service Fee.

## 12. Maintenance of the Equipment

- a. In the event that You receive Equipment from Us:
  - i. We will service and maintain that Equipment and will keep it free from any defects in workmanship and materials associated with normal use, during the Maintenance Period, subject to the availability of suitable parts, components, materials and labour, subject to clause 22 below.

- ii. If the Equipment fails to operate within the Maintenance Period for any reason, We may at Our sole discretion repair, refurbish or replace all or part of the Equipment (subject to availability of suitable parts, components, materials and labour). Replacement parts may be new or refurbished. If We give You a replacement part, You must return the replaced part to Us.
- b. From time to time We may need to remotely upgrade the Equipment. During a firmware upgrade, You may experience a short service interruption.
- c. We are only responsible for servicing and maintaining the Equipment under (a) above if:
  - i. You notify Us of the defect during the Maintenance Period;
  - ii. You follow Our published procedures for requesting maintenance services;
  - iii. You have been supplied with either the relevant Equipment by Us (including the new or refurbished Equipment) or new Equipment by an authorised dealer;
  - iv. You have used and maintained the Equipment in accordance with both Our and the relevant manufacturer's instructions and have not modified it in any way; and
  - v. The Equipment has only been used for the Service.
- d. Notwithstanding anything in the above, and subject to (e), We are not responsible for servicing and maintaining the Equipment if the Equipment is defective or fails to operate as a result of:
  - i. Any abuse, misuse, neglect, mishandling or misapplication of the Equipment;
  - ii. Any damage caused by You or a third party;
  - iii. Any improper maintenance or service; or any unusual hazards affecting the Equipment (including, but not limited to, exposure to excessive humidity, heat, cold, dust, food, liquids, magnetic or electromagnetic interference, or incorrect power voltage);
  - iv. Electrical supply problems or failure to provide a suitable environment for the Equipment; or
  - v. Any natural disaster (including, but not limited to, floods, lightning and fire), acts of terrorism, or any other cause beyond Our reasonable control.
- e. The rights conferred on You under this clause:
  - i. Cease to apply if the Agreement is terminated for any reason before the end of the Maintenance Period; and
  - ii. Are in addition to any non-excludable rights, conditions or warranties implied by law, including those under the *Competition and Consumer Act 2010* (Cth).
- f. The terms of this clause survive termination of the Agreement for any reason whatsoever.

### 13. Variation to Services

- a. We may at our discretion vary the Services we make available and / or the cost and features of an existing Service.
- b. Unless these changes impact on Your Agreement with Us, We have no obligation to notify you of any Service variations. You acknowledge that it is:
  - i. Your sole responsibility to notify Us if You wish to change any aspect of Your Service;
  - ii. in the absence of You notifying Us, We are under no obligation to vary the Service and Your Service will remain unchanged.

### 14. Amendment

- a. You acknowledge and agree that, save and except as provided in (b) below, the terms of the Agreement and these Terms and Conditions are subject to amendment at any time by the following.
- b. We will give You thirty (30) days' prior notice of the amendment, in writing to the address You have provided to Us, unless:
  - i. We are required to make the amendment immediately, so as to ensure Our compliance with legislative changes; or
  - ii. We reasonably believe that the amendment will benefit You, will have no impact on You, or has neutral impact on You.
- c. If We elect to make an amendment and that amendment means that You are materially worse off, You may terminate the Agreement by giving Us notice of termination in writing prior to the date upon which the amendment is to take effect.
- d. If We elect to make an amendment after the expiration of Your Contract Term and You do not wish to accept the amendment, You may cancel the Agreement by giving Us notice of termination in writing prior to the date upon which the amendment is to take effect.
- e. If You choose to cancel the Agreement pursuant to (c) or (d) above:
  - i. The cancellation will take effect as at the date of commencement of the relevant change.
  - ii. You will not have to pay the Cancellation Fee.
  - iii. We will refund You any unused portion of Your monthly charges.
- f. The most current version of the Standard Form of Agreement can be downloaded from <https://www.orionsat.com.au/sfoa/>

## 15. Service Suspension

- a. We reserve the right to suspend immediately and without notice (and without prejudice to our rights of termination under Clause 15) your access to the Services if we:
  - i. reasonably consider that you have Materially Breached this Agreement;
  - ii. reasonably consider that you have Materially Breached our Acceptable Use Policy;
  - iii. receive allegations (which we believe to be genuine) which indicate you have Materially Breached our Acceptation Use Policy; and/or
  - iv. reasonably suspect that your use of the Service breaches the law of the Commonwealth, a State or Territory.
- b. If we suspend your access to the Service under Clause 14 (a), we may reactivate your access to the Services if We subsequently become satisfied that You are not in breach of any provision of this Agreement.
- c. Notwithstanding Service suspension under this clause, you will remain liable for costs and any third party costs incurred by Us as a result of the suspension to the Services under Clause 14 (a).
- d. You are not entitled to a credit or refund for loss of access during any suspension period in accordance with Clause 14 (a) or in the event that this Agreement is terminated in accordance with Clause 14 (e).
- e. Without limiting the generality of any other Clause in the Agreement, we may terminate this Agreement immediately by notice in writing if we have suspended your Service under Clause 14 (a) or Clause 14 (f), and we have not reactivated your Service within seven (7) days of this suspension.
- f. We may be required to suspend the Service to enable the performance of maintenance

and/or repair works of an urgent nature. We will endeavour to give You notice of such suspension, and will also endeavour to make the said suspension as short a period as is reasonably possible.

## 16. Termination

- a. You may terminate the Agreement after the expiry of Your Contract Term by providing 30 days' notice of your intention to terminate the Agreement. You are not entitled to a credit or refund for any Services not used up to the date that the service is terminated.
- b. Should You terminate the Agreement following the expiry of any Cooling-Off Period and prior to the end of the Contract Term, You are required to pay any applicable Cancellation Fee if that Cancellation Fee is not otherwise waived by Us or by these Terms and Conditions.
- c. Should a Regulatory Event occur, You may terminate the Agreement immediately and no Cancellation Fee will be payable by You.
- d. We may terminate the Agreement in the following circumstances:
  - i. When You are in breach of the Agreement, We have notified You in writing of the said breach and You have failed to remedy the breach within thirty (30) days of Our notice. We may, at Our absolute discretion, suspend the Service following such notification and prior to rectification of that breach or termination of the Agreement. Should We proceed to terminate the Service pursuant to this clause during Your Contract Term, a Cancellation Fee will be payable to Us.
  - ii. Where we are unable to meet the service standards for VOIP Telephony under Part 5 *Telecommunication (Consumer Protection and Service Standard) Act 1999*, and the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*.
  - iii. At any time for any reason, upon the provision of thirty (30) days' notice in writing.
- e. If a Material Breach is a serious breach and/or is something that cannot be remedied, We may immediately terminate Your Service without prior notice to You and, should We proceed to terminate the Service pursuant to this clause during Your Contract Term, a Cancellation Fee will be payable to Us.
- f. Any charges incurred prior to termination will immediately become due and payable upon termination.
- g. Upon termination of the Agreement for any reason whatsoever, You must immediately return Our property to Us.
- h. Should We terminate the Agreement and, at Your request, We later agree to provide You with the Service again, You may be required to pay a reconnection fee as stipulated from time to time.

## 17. Liability

- a. If You are a Residential Customer:
  - i. We accept Our liability to You if We breach the Agreement or act negligently under the principles applied by the common law, except as set out in (ii) and (iii) below.
  - ii. As You have taken up the Service predominately for personal, domestic or household use, We do not accept liability for any business related losses that result from the use of the Service. However, We will accept that liability if it cannot be excluded under any legislation.
  - iii. We are not liable for any loss to the extent that it is caused by You, for example, through Your negligence or breach of the Agreement.

- b. If You are a Business Customer:
  - i. Given the nature of telecommunications systems (including the Service's reliance on systems not owned or controlled by Us) We cannot promise that the Service will be continuous or fault free. Accordingly, We limit Our liability to You for losses resulting from any interruption or delay to Your Service to an amount equal to the service charges billed for the affected Service for the period of the interruption or delay.
  - ii. Other than for the liability We accept under this clause, We exclude all other liability whether to You or a third party for breach of contract, negligence or breach of any other law.
  - iii. For any liability that cannot lawfully be excluded as it is under this clause, Our liability is limited to re-supplying or paying the cost of re-supplying services and repairing, replacing or paying the cost of repairing or replacing goods, subject to clause 22 below.
  - iv. Notwithstanding anything else in this clause, Our liability will be reduced to the extent that loss or damage is caused by You, Your employees, agents or contractors.
  - v. We will not be responsible for any loss or damage arising from circumstances outside Our reasonable control.
- c. Where You permit a third party to use or access the Service, You agree to indemnify Us for any liabilities that may arise from their use of the Service.
- d. You are liable to Us if You breach the Agreement or act negligently under the principles applied by statute or common law. However, You are not liable for any loss We suffer to the extent that it is caused by Us, for example, through Our negligence or breach of the Agreement.
- e. We will not be liable for any failure to carry out any obligation under the Agreement if that failure is due to an Event of Force Majeure.
- f. The terms of this clause survive termination of the Agreement for any reason whatsoever.

## 18. Transfer, Agency

- a. You may not transfer, re-sell or attempt to re-sell the Service or your rights and obligations under the Agreement without Our prior consent in writing.
- b. From time to time, another party may provide some aspect of the Service to You. In this regard, we may transfer or novate any of Our rights or obligations under the Agreement to a reputable, creditworthy third party who agrees to be bound by Our obligations under the Agreement. We will notify You if this occurs.
- c. When the Service is acquired through a Retailer, you acknowledge and confirm that:
  - i. The Retailer acts as Our agent; and that
  - ii. The Service is provided by Us and not by the Retailer.

## 19. Information

- a. Information concerning You will be held in a database. The database will contain Your name, address, telephone numbers, credit card details, billing details, information relating to the provision and use of the Service, and information provided by You in connection with the Agreement or the Service.
- b. This information may be used:
  - i. To enable Us to perform Our obligations to You under the Agreement, including to provide the Service;

- ii. To enable Us to ensure that You perform Your obligations under the Agreement;
  - iii. By any entity related to Us and any service provider, for planning, research, or if required by any law, or if required by the rules of any stock exchange and, except for promotional material as set out in (e) below, if You give Us Your express consent, for the promotion and marketing (whether targeted, direct or indirect) of Our products and services or the products or services of any service provider and any entity related to Us.
- c. In addition to Our other rights under this clause, We may give Credit Information about You to a credit reporting agency to:
  - i. Obtain a consumer credit report about You; or
  - ii. Allow the credit reporting agency to create or maintain a credit information file containing information about You.
- d. In addition to Our other rights under this clause, We may, in accordance with the *Privacy Act 1988* (Cth):
  - i. Obtain and use information concerning Your commercial activities and commercial credit worthiness from a credit reporting agency or other business that reports on commercial credit worthiness to assess Your application for the Service (if the application is for consumer credit) or the collect overdue payments;
  - ii. Obtain or use a consumer credit report about You from a credit reporting agency to assess Your application for the Service (if it is for commercial credit) or collect overdue payments; and
  - iii. Disclose information about You to other credit providers or obtain and use information from other credit providers for the purposes of assessing Your application for the Service, Your ongoing credit worthiness or the status of any account held by You with Us or with any other credit provider.
- e. We may send Our newsletter to You via email. It will contain information relating to the Service and may also contain information about Us and/or new products and services offered by Us that may be of interest or benefit to You. It will not contain any advertising, marketing or promotional material for third party suppliers. As it is one of the principal means by which We tell You about Service-related matters, You cannot opt out of receiving material and We will not include a functional unsubscribe message with the email.
- f. For the purpose of contracting aspects of Our business operations to third parties, We may provide information We hold about You to a third party where it is necessary for the third party to have this information to perform a business function on behalf of us.
- g. You consent to the collection, use and disclosure of information as set out in this clause.
- h. The terms of this clause survive termination of the Agreement for any reason whatsoever.

## 20. Polices

- a. You agree that you will comply with Our Policies in respect of any Service you acquire from Us, including without limitation our Acceptable Use Policy and our Privacy Policy.

## 21. Complaint Handling

- a. If You have a complaint regarding Your Service, You agree to use Our customer complaint handling procedures located at <https://www.orionsat.com.au/sfoa/>
- b. If a complaint cannot be resolved, You may either contact the Office of Fair Trading in a State or Territory, or the Telecommunication Industry Ombudsman.

## 22. Customer Service Guarantee

- a. For services delivered within Australia, it is a condition precedent of the Agreement that:
  - i. If we request that You do so, You agree to partially waive your protection and rights under Part 5 of the *Telecommunication (Consumer Protection and Service Standards) Act 1999* (Cth) (“**the Act**”); and that
  - ii. You will immediately provide the said waiver in a manner as set out in Part 5 of the *Telecommunications (Customer Service Guarantee) Standard 2011* (“**the Standard**”) when called upon by Us to do so.
- b. You are entitled to waive your protection and rights under Part 5 of the Act pursuant to, and in the manner set out in, Part 5 of the Standard.
- c. You understand and agree that:
  - i. In return for the provision of a waiver as aforesaid, We can provide you with significantly lower cost service and technical support on the basis that We are not required to meet the standards set out in the Customer Service Guarantee.
  - ii. The waiver is given by You freely and voluntarily in light of (i) above.
- d. For the avoidance of doubt, the protection and rights You are waiving under the Act and Standard pursuant to (a) above are the following:
  - i. Damages for breach of performance standards, as per section 116 of the Act;
  - ii. Time for payment if damages for breach if performance standards, as per section 117A of the Act;
  - iii. Right of contribution, as per section 118A of the Act;
  - iv. Guaranteed maximum connection periods, as per the Standard;
  - v. Guaranteed maximum rectification period, as per the Standard;
  - vi. Information to be given to Customers, as per the Standard; and
  - vii. Making and Changing Appointments, as per the Standard

## 23. Australian Consumer Law

- a. In this clause and this Agreement generally:
  - i. “**Consumer**” has the meaning given to that term in s 3 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
  - ii. “**Warranty**” means, in relation to a Consumer only:
    - 1. Any Service Rebate applicable pursuant to clause 5;
    - 2. Any entitlement to maintenance during a Maintenance Period pursuant to clause 11.a.i; and
    - 3. Any agreement to re-supply a Service pursuant to clause 16.b.iii.
  - iii. The period of applicability of each Warranty (being, for the avoidance of doubt, the period during which a claim is able to be submitted under that Warranty) is as set out in the relevant clause referred to in (1) above or, where no such period is stated therein, a period of one (1) year after occurrence of the circumstance to which the Warranty is directed.
- b. Each Warranty is supplied by Level 2, 16 Victoria Avenue, Perth, Western Australia 6000 telephone number 1300 798 007.
- c. Each Warranty may be claimed by the claim procedure located at [www.orionsat.com.au/sfoa](http://www.orionsat.com.au/sfoa)
- d. You are responsible for any expense related with a Warranty claim.

- e. The benefits provided to You under each Warranty are in addition to other rights and remedies available to You under the Australian Consumer Law.
- f. "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

## 24. General Terms

- a. Neither party waives any of its rights under the Agreement merely because it does not exercise them, or there is a delay in exercising them.
- b. If any provision of this Agreement is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid provision are and continue to be valid and enforceable in accordance with their terms,
- c. The Agreement is governed by the laws of NSW, and the parties hereby voluntarily accept the jurisdiction of the Courts of that jurisdiction and agree that any litigation under or relating to this Agreement will be conducted in that jurisdiction.
- d. Any notice under the Agreement may be sent by one or more of the following:
  - i. By email to the email address provided to Us by You, and will be deemed to be received by You upon confirmation of receipt from the relevant email server for Your email account; and/or
  - ii. By prepaid regular post, and will be deemed to have been received by You when that notice would have been delivered in the ordinary course of post.