

# NETWORK SERVICES – SCHEDULE OF SERVICES

## Schedule 2

### 1. THIS SCHEDULE - INTERPRETATION

- 1.1 The terms of this Network Services – Schedule of Services (“Schedule 2”) apply together with, in addition to and form part of the Master Services Agreement.
- 1.2 This Schedule 2 relates to the provision, receipt and use of the Network Services.
- 1.3 The terms and expressions used in this Schedule 2 have the same meanings given to them in clause 37 of the Terms & Conditions of the Master Services Agreement.
- 1.4 Unless otherwise specified, a reference contained in this Schedule 2 to a clause will be a reference to a clause in this Schedule 2.

### 2. GENERAL

- 2.1 If the Company grants the Customer access to the Network Services, that access will be:
  - (a) set out in a Service Order Form;
  - (b) non-exclusive;
  - (c) will be provided and must be used in accordance with this Agreement.

### 3. NETWORK SERVICES

- 3.1 The Network Services are designed to provide to the Company's customers, cost effective physical connections to the Company's Network and Internet.
- 3.2 The Network Services may consist of various connection methods, connections speeds and Fee structures and will be agreed upon by the Company and the Customer and set out in the Service Order Forms.
- 3.3 The Company may use any technology it considers appropriate for the Network Services and such use will be subject to technical and commercial feasibility and availability.
- 3.4 The Company will notify the Customer when the provisioning and installation of Network Services has been completed for services requiring such provisioning and installation.

### 4. ACCEPTABLE USE POLICY

- 4.1 General – The Customer must comply, and ensure that the Customer's Representatives and all other end-users comply, with the Acceptable Use Policy set out in this clause 4 when receiving, accessing or using the Network Services.
- 4.2 Variations to Acceptable Use Policy – Any variations made to the Acceptable Use Policy will be notified to the Customer by the Company from time to time and the Company may make the updated Acceptable Use Policy available to the Customer on the

Company's website. Any use of the Company's Network, the Ethernet Services and/or the Internet by the Customer's Representatives after being notified of the variation to the Acceptable Use Policy will be deemed acceptance of the variations by the Customer.

#### 4.3 Obligations - The Customer:-

- (a) is fully responsible for its conduct, and the conduct of the Customer's Representatives, the Customers Equipment and end-users, whilst accessing and using the Network Services;
- (b) must, and must ensure that the Customer's Representatives, Customers Equipment and end-users, comply with:-
  - (i) the Acceptable Use Policy set out in this clause 4; and
  - (ii) all rules, regulations and acceptable usage policies notified by the Company to the Customer for each system or service from time to time; and
- (c) is fully liable for any breach of any part of this clause by any of the Customer's Representatives, the Customers Equipment or other end-users.

#### 4.4 In addition to any other rights of the Company, if any of the Customer's Representatives, Customers Equipment and Software or end-users:-

- (a) breach this clause 4;
- (b) act recklessly or irresponsibly in respect of the receipt or use of the Network Services (as determined by the Company acting reasonably); or
- (c) endanger the Company's Network, the Company's Equipment or any party or any other party's Equipment or network (as determined by the Company acting reasonably),

the Company may (at its sole discretion) suspend or terminate the Customer's access to the Services at any time without notice.

#### 4.5 Restrictions – The Customer's Representatives, the Customer's Equipment and end-users must not (and must not attempt to):

- (a) store, send or distribute material which is deemed obscene, or pornographic or unlawful under any Law or any material that could give rise civil or criminal proceedings;

- (b) store, send, distribute or access confidential information unless you have a lawful right to do so;
- (c) do anything, including store, send or distribute material, which defames, harasses, threatens, abuses, menaces, harms, damages, undermines, interrupts, interferes with, disturbs, offends, violates or gives rise to access without authorisation in respect of any the Services, persons, privacy, Equipment, Networks or any other systems (including denial of access ("DOS") attacks);
- (d) do anything, including store, send or distribute material, of an illegal or fraudulent nature, including activities prohibited under any Law;
- (e) use unreasonably excessive resources on the Network Services, including using excessive cpu cycles, which may cause strain to the Company's or any other person's Equipment, Network or systems;
- (f) do anything, including store, send or distribute material, which interferes with other users or restricts or inhibits any party from enjoying the Services or any service being provided to that party by any third party;
- (g) forge header information, email source address or other user information;
- (h) breach any Laws, codes, standards and content requirements of any Authority;
- (i) access, monitor or use any data, systems or networks, including another person's private information, without authority or attempt to probe, scan or test the vulnerability of any data, system or network;
- (j) compromise the security or integrity of any network or system;
- (k) place any viruses or other similar programs on any network, the Internet, systems, equipment or otherwise;
- (l) distribute unsolicited advertising or spamming or overload any network or system;
- (m) use another person's name, username or password or otherwise gain or attempt to gain access to the account or Equipment of any other party or an account which they are not authorised to access;
- (n) tamper with, hinder the operation of, or make unauthorised modifications to, any network or system;
- (o) use or otherwise access the Network Services unless and until the

Customer's Equipment is properly and securely configured in accordance with good practices and applicable standards; or

- (p) attempt any of the above acts or permit another person to do any of the above.

#### 4.6 Further Obligations - The Customer's Representatives and end-users must:-

- (a) act responsibly in their use of the Network Services and any other network or system;
- (b) maintain the security of the Customer's accounts, equipment, information and data when using the Network Services, including protection of account details, passwords and against unauthorised usage of the Services supplied to the Customer and any other service provided by any third party (the Company recommends that the Customer take appropriate security measures such as installation of a firewall and use of up to date anti-virus software);
- (c) ensure that they do not store on, transfer or cause to be transferred, reproduce or make available for distribution through or over the Network Services or any other network or system, any data where the storage, reproduction, transfer, or distribution of, that data is in contravention of the Copyright Act 1968 (Cth) or otherwise infringes any third party's intellectual property rights (such as by using, copying or distributing data or software without the permission of the owner);
- (d) monitor and control the content and information accessed via the Network Services including content and information which may be offensive, illegal, inappropriate or unsuitable;
- (e) avoid, and take reasonable steps to prevent, any offensive, illegal or obscene materials being accessed or stored on any system through their use of the Company's Network; and
- (f) ensure that any information distributed through the Network Services clearly identify material unsuitable for minors and refrain from contributing prohibited material, including, but not limited to, material deemed obscene under any applicable Law,

and the Company will not be responsible for doing so, or for ensuring that the Customer's Representatives and end-users do so, under any circumstances.

**5. CARRIER**

5.1 In the event that the Customer is granted Co-Location Space by the Company pursuant to this Agreement, then:-

- (a) Unless permission is granted by the Company in writing where the Co-Location Space is in a shared environment, for example, a Rack Unit in a shared Cabinet, the Customer must use the Company's Network and the Company's choice of Carriers from time to time; and
- (b) Where the Co-Location Space is not a shared environment, for example, a whole Cabinet, the Customer may:-
- (c) use the Company's Network and/or
- (d) use a third party Carrier provided that the Customer first obtains the Company's written consent (which will not be withheld unreasonably).

5.2 Regardless of whether or not the Carrier used by the Customer is the Company's Network or the Customer's own choice of Carrier, the Company is not under any circumstances liable for any acts or omissions of the Carrier in respect of the services which that Carrier supplies, or ought to supply, to the Customer.

**6. BACKUPS**

6.1 The Company may perform daily backups on all of its own Equipment for its own purposes. The Company will not perform backups on the Customer's Equipment. It is the Customer's responsibility to arrange or perform its own backups on its own Equipment.

6.2 The Company will not restore files which the Customer's Representatives or any other person has deleted or modified and the Company is not responsible for lost data, time, income or any other resource due to faulty backups or no backups being carried out.

**7. PROGRAMS**

7.1 The Company prohibits, and the Customer's Representatives must not use or attempt to use,:-

- (a) programs which run continuously in the background;
- (b) any chat or topsite programs;
- (c) IRC or IRC bots; and
- (d) Bit Torrent and other peer-to-peer programs/servers,

on any of the Company's Equipment.

**8. SERVICE LEVELS**

8.1 The only Service Levels that apply to the provision of Network Services is the uptime

of the connectivity of the Internet Connection as set out in the table below and clause 15 of the Terms & Conditions apply.

SERVICE	PARAMETERS	SERVICE LEVEL REBATE
Internet Connection	99.9% Uptime	<p>Subject to Permitted Down Times and clause 16 of the Terms and Conditions, for each 0.1% of the time in a calendar month that the Service Level is not maintained, the Company will provide a service rebate.</p> <p>For example, for a 30 day month, if the Internet Connection is not operational for more than 43.2 minutes in that month (being 0.1% of the month), the Company will pay the Service Rebate calculated as per below.</p> <p>The Service Rebate will equal 2% of the Agreed Fees applicable to the relevant Supply for each 0.1% that the Internet Connection is not operational over and above 0.1% up to a total of 50% of the total monthly fee for that Supply only.</p>

**9. REGULATORY AUTHORITIES**

9.1 The ACMA and other Authorities may direct the Company to carry out certain actions including investigating and removing prohibited content and materials from the Company's Equipment and Network and preventing users from accessing certain Internet content.

9.2 The Customer must do all things necessary, and the Customer agrees that the Company may take any necessary steps required, to comply with any Law, relevant industry code of practice, direction of the ACMA or other Authority. The Company may take these steps in accordance with the ACMA, or other Authority's, directions at any time without notice to the Customer including providing subscriber information, assigned IP Addresses and numbers., account history and account use details.

9.3 The Company will co-operate fully with Commonwealth and State Police and other Authorities investigating unlawful behaviour

on or via the Network, the Ethernet Services, the Internet and any other systems by the Customer's Representatives and end-users and any other party.

- 9.4 The Company reserves the right to act in any manner it considers necessary where there are reasonable grounds for suspecting that illegal or unacceptable usage of the Network Services or other systems, is occurring.
- 9.5 The Company reserves the right to suspend the Customer's Representatives' access to the Company's Network and the Network Services and the Internet if their usage of the Network Service is subject to any investigation by any Authority.

## 10. FEES

- 10.1 The Fees for the provision of the Network Services and the Internet may comprise separate components for fixed charges (such as Agreed Fees and other predictable charges), Usage Charges and other charges.
- 10.2 The Customer will be charged Additional Fees where the Customer's Representatives exceed agreed usage levels or quotas.
- 10.3 The Customer acknowledges that the Fees payable by the Customer may vary from time to time during a term of supply as a result of variations to that supply pursuant to this Agreement.

## 11. ACKNOWLEDGMENTS

- 11.1 The Customer acknowledges and agrees that:-
- (a) the Company's Network and the Network Services are not necessarily a secure and confidential method of communication and the Customer's Representatives and end-users shall transmit material on or through them at their own risk;
  - (b) the Company does not in any way limit the Customer's Representatives' use of the Internet and the Customer is solely responsible for all costs and charges it incurs in relation to the use of the Internet regardless of whether or not use by the Customer's Representatives were authorised to use the Internet;
  - (c) the Company does not make any warranties about the Internet and the Company does not have any liability in respect of the Internet whatsoever;
  - (d) the Company does not and cannot in any way supervise, edit or control the nature, content and form of any material available to be accessed through use of the Company's Network and the Network Services and that the Company is not responsible in any way for the nature,

content and form of that material, access to that material or use of that material;

- (e) the Company is not liable under any circumstances for any damage or loss suffered by the Customer as a result of the Customer's Representatives use of the Network Services, including inaccuracy or loss of data, non-deliveries and service interruptions;
- (f) the Company will not be responsible for ensuring that any material sent or received by means of the Network Services is sent or received correctly;
- (g) notwithstanding clauses 11(d) and (f), and without limiting the Company's rights under the Terms & Conditions, the Company may at any time suspend, alter or block the Customer's access to the Internet if:-
  - (i) it considers the Customer's use to be:-
    - (A) in breach of this Agreement, any Law, any third party rights or any order, rule or regulation of any kind of any Authority; or
    - (B) threatening to the integrity, safety or security of the Company's Network or any of its customers; or
    - (C) required to do so by any Law or Authority;
- (h) to the extent permitted by law, the Company makes no representations or warranties as to the effectiveness or fitness for purpose of any access restrictions, the Company's Network security or the Customer's network security and the Customer has not right to make a claim against the Company or any third party concerning any such access restrictions and security; and
- (i) the Customer must not to disclose, and must ensure that the Customer's Representatives do not disclose, to any person, any identification or log-in information, whether in use or not, nor any other confidential information relating to the Services, other than to the duly authorised Customer's Representatives who require this information to properly perform their authorised duties.