

## TELEKOM INTERNET SERVICES GENERAL TERMS

Capitalised words in a clause of these General Terms have the meaning given in that clause or in the dictionary at the end of these General Terms. These General Terms are interpreted according to the rules of interpretation in the dictionary.

### 1 AGREEMENT TO SUPPLY THE SERVICE

1.1 Telekom will supply the Service on the terms and conditions of the standard form of agreement for the Service which comprises:

- (a) the Standard Pricing Table;
- (b) the Service Description; and
- (c) these General Terms.

If any of the terms of those documents is inconsistent with any other of those terms, then the documents and their terms will prevail in the order set out above, except that clauses 16 (Your Rights Against Telekom) and 17 (End Users etc) always prevail over all other terms in any of those documents.

1.2 You may request Telekom to supply the Service to you in a manner accepted by Telekom from time to time which may include using the relevant Telekom approved standard application form from time to time (“**Application**”). Your Application specifies the Service you have selected and may specify options and parameters you have selected for that Service.

1.3 If you acquire more than one service from Telekom, then each service will be provided under the terms and conditions of the standard form of agreement for that service.

### 2 YOUR USE OF THE SERVICE

2.1 Telekom must supply the Service from the Service Start Date.

2.2 You must reasonably co-operate with Telekom to allow Telekom to establish and supply the Service to you safely and efficiently. This includes following Telekom’ reasonable requests to provide:

- (a) any necessary forecasts to Telekom, on which Telekom will rely in establishing and supplying the Service to you; and
- (b) Telekom’ Personnel with safe and prompt access to the Premises and your Personnel, equipment, data and information.

2.3 In using the Service, you must comply with all laws, all directions by a Regulator and reasonable directions by Telekom.

2.4 You must not use, or attempt to use, the Service:

- (a) to break any law or to infringe another person's rights;
- (b) to expose Telekom to liability;
- (c) in any way which damages, interferes with or Interrupts the Service, or any telecommunications network, equipment, or facilities, or cabling controlled by Telekom ("**Telekom Network**") or a Supplier ("**Supplier Network**") to supply the Service, as those things are configured at the time;
- (d) in excess of any forecast provided to Telekom under clause 2.2(a), except where you are expressly permitted to do so in the Service Description; or
- (e) in any way which may damage any property or injure or kill any person.

2.5 You:

- (a) must not use, or attempt to use, the Service to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted; and
- (b) acknowledge that Telekom may be required to intercept communications over the Service and may also monitor your usage of the Service and communications sent over it.

2.6 Telekom may ask you to stop doing something which Telekom reasonably believes is contrary to clauses 2.4 or 2.5. You must immediately comply with any such request. If you do not, then Telekom may take any steps reasonably necessary to ensure compliance with clauses 2.4 or 2.5 or the request.

2.7 You acknowledge that Telekom makes no warranty in relation to the performance or characteristics of any software supplied in connection with the Service.

### 3 **EQUIPMENT**

3.1 Telekom or its Personnel may provide or lease to you, in connection with the Service, equipment or cabling which it, or they, own or lease ("**Telekom Owned Equipment**").

3.2 Title in the Telekom Owned Equipment is not transferred to you. You hold the Telekom Owned Equipment as bailee for Telekom or the relevant member of its Personnel. Risk in any Telekom Owned Equipment passes to you on delivery. You are responsible for any damage to, or destruction or theft of, the Telekom Owned Equipment, except to the extent it is caused by Telekom. You must keep the Telekom Owned Equipment free from any charge, lien, mortgage or encumbrance.

3.3 Unless otherwise agreed, you must:

- (a) allow Telekom' Personnel, and only Telekom' Personnel, to service, modify, repair or replace the Telekom Owned Equipment; and
  - (b) do all things reasonably required by Telekom to make clear the identity of the owner of the Telekom Owned Equipment.
- 3.4 You may purchase equipment from Telekom or any of its Personnel for use in connection with the Service. Title to that equipment passes to you when you pay for it in full in cleared funds. Risk in that equipment passes to you on delivery. Telekom will use reasonable efforts to transfer to you any manufacturer's warranty in any such equipment, from the time title passes to you.
- 3.5 You must ensure that all equipment you use in connection with the Service, and the way you use that equipment, complies with all laws, as well as directions by a Regulator and reasonable directions by Telekom. If you do not do so, Telekom may disconnect that equipment from the Service. Telekom will try to give you reasonable notice before disconnection, but may do so immediately in an emergency.
- 3.6 You must provide adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on the Premises.

#### **4 MAINTENANCE**

- 4.1 Telekom may conduct maintenance on the Telekom Network. Telekom will try to conduct scheduled maintenance outside normal business hours (Honiara time) but may not always be able to do so.
- 4.2 Except to the extent the Service Description expressly provides otherwise, Telekom is not responsible for rectifying any fault in the Service where the fault arises in or is caused by a Supplier Network, your equipment or other equipment or facilities beyond the boundary of the Telekom Network (as defined in the Telecommunications Act).

#### **5 SERVICE CHARGES**

- 5.1 You must pay the charges for the Service set out in the Standard Pricing Table (or the terms of an applicable Special under clauses 5.3 and 5.4) and any additional charges set out in the Application and in accordance with any applicable provisions of the Service Description. Charges for the Service accrue from no later than the Service Start Date.
- 5.2 Telekom may charge you an additional amount:
  - (a) to service, modify, repair or replace the Service or any equipment, as a result of an Excluded Event; and
  - (b) for installation, if the information you provided to Telekom to determine the installation required was incomplete or inaccurate; and

- (c) for installation, maintenance or other services which you request Telekom to provide outside normal business hours (Sydney time).
- 5.3 From time to time Telekom may offer special promotions or offers ("**Specials**") in connection with the Service. A Special may apply to or involve more than one service, and it may be notified in a general advertisement or specifically provided to you. A Special may be subject to certain conditions, including where Telekom may:
- (a) offer to vary the price;
  - (b) offer to vary the terms of supply (including the Committed Term); or
  - (c) require you to acquire all relevant services for a minimum period and to pay a fee if you cancel supply prior to the expiry of that minimum period.
- 5.4 You may accept the Special by any means notified by Telekom (which may include completing and signing an Application that includes some or all of the terms of the Special). If you validly accept a Special, the terms of that Special will prevail to the extent of any inconsistency over those which would otherwise apply in the Agreement, and will apply for at least the duration of the Special notified by Telekom. In all other respects, the terms and conditions of the Agreement continue to apply. After the Special expires, Telekom may end the Special pricing and terms.
- 5.5 In calculating charges, Telekom need only look at billing information generated or received by Telekom or its Suppliers. Telekom may round up any charge to the nearest cent.

## **6 INVOICES AND PAYMENT**

- 6.1 Unless otherwise agreed, Telekom may invoice you:
- (a) for any equipment you purchase from Telekom or its Personnel, on or after delivery;
  - (b) for any installation charges, after installation;
  - (c) for variable charges, in arrears;
  - (d) for recurring or fixed charges, in advance; and
  - (e) otherwise, as notified by Telekom from time to time.
- 6.2 Subject to clause 7 (Billing Disputes), you will pay each amount invoiced in the way and by the due date specified in the invoice or which Telekom notifies you from time to time.
- 6.3 Telekom will try to include on your invoice all charges for the relevant billing period. This is not always possible; for example, because Telekom receives an invoice for your Service from another Supplier, or because of an error or

problem with the relevant Telekom billing system. Telekom may include these unbilled charges in any later invoice(s).

- 6.4 Telekom may re-issue any invoice if any error is later discovered. If you have overpaid as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from Telekom, Telekom will refund the overpayment promptly after your request and after deduction of any other amounts due by you to Telekom.
- 6.5 You must pay all charges incurred in respect of the Service and equipment whether or not the charges and the related use of the Service were authorised by you. This includes charges incurred in connection with your End Users' use of the Service.
- 6.6 If you do not pay any amount invoiced by the due date (except any amount which is validly disputed under clause 7), then Telekom may charge you a late fee of 2% per annum above Telekom' corporate overdraft rate from time to time calculated on the daily balance of the unpaid amount from the due date until the date of payment in full. This is an independent obligation which applies before and after judgment. You must also pay Telekom' expenses in recovering payment from you.
- 6.7 If you choose to pay by direct debit and your financial institution fails to honour your payment, you must pay the amount owing directly to Telekom and an additional administration fee may apply.
- 6.8 Subject to clause 8 (Taxes), you may not withhold, deduct or set-off any amount from or against any payment due by you to Telekom in any circumstances. Telekom may withhold or deduct from or set-off against any amount which Telekom must otherwise pay or credit to you any amount payable by you to Telekom or an Telekom Group Company.

## **7 BILLING DISPUTES**

- 7.1 You may dispute an amount invoiced by Telekom but only if you do so in accordance with this clause 7.
- 7.2 Except to the extent you raise a valid billing dispute in respect of an Telekom invoice, you agree that the invoice is valid and payable (and you must pay any undisputed amount included in the invoice in accordance with clause 6.4).
- 7.3 To raise a valid billing dispute, you must:
  - (a) make a good faith request to Telekom to investigate the specific charges or invoice, providing at the same time specific evidence which demonstrates that a particular charge or invoice is incorrect; and
  - (b) make any such request to Telekom within 12 months of the date of the relevant invoice.

- 7.4 You may only make a claim or commence proceedings alleging that any charge or invoice is incorrect, or you are entitled to a refund for overpayment, if you do so within 12 months of the date of invoice or overpayment.
- 7.5 If you raise a valid billing dispute, then Telekom will conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute. At the end of these investigations, you will pay any outstanding amount (together with interest on that amount calculated in accordance with clause 6.8 from the original due date for payment). Telekom may invoice you a daily professional services charge to audit and validate any non-Telekom analysis of the disputed amount. You will pay any such professional services charge in accordance with clause 6 (Invoices and Payment).

## **8 TAXES**

- 8.1 Charges specified in the Agreement do not include any Taxes unless otherwise stated. Unless the relevant charges are stated to include Taxes, you must pay Telekom an additional amount equal to the Taxes on the charges, any non-monetary consideration or on the supply or any component of supply made or to be made in connection with the Service or the charges.

## **9 PRIVACY AND PERSONAL INFORMATION**

- 9.1 Telekom may collect, use and disclose Personal Information about you, to decide whether to start, stop or limit supply to you of:
- (a) personal or commercial credit;
  - (b) the Service.
- 9.2 Telekom may collect, use and disclose Personal Information about you for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including billing and account management, business planning and product development, and to provide you with information about promotions.
- 9.3 Telekom may collect, use and disclose Personal Information about you for the purposes in clauses 10.1 and 10.2 to or from:
- (a) a credit reporting agency or credit provider;
  - (b) another Company;
  - (c) third parties who are not related to Telekom, including Telekom' agents, dealers, contractors and franchisees;
  - (d) Suppliers who need access to the Personal Information to provide Telekom with services, to allow supply of the Service to you; and
  - (e) joint venture partners of Telekom.

- 9.4 Telekom may be permitted or required by applicable laws to collect, use or disclose Personal Information about you, including:
- (a) to the operator of the Integrated Public Number Database (IPND), which supplies information for telephone directories; and
  - (b) to law enforcement agencies for purposes relating to the enforcement of criminal and other laws.
- 9.5 If you are a natural person, you are entitled to gain access to your Personal Information held by Telekom, unless Telekom is permitted or required by any applicable law to refuse such access.
- 9.6 If you do not provide part or all of the Personal Information Telekom requests, then Telekom may refuse to supply, or limit the supply to you of:
- (a) personal or commercial credit;
  - (b) the Service.
- 9.7 By providing Personal Information to Telekom and obtaining the Service, you acknowledge and consent to the collection, use and disclosure of your Personal Information as set out in this clause 10 and in accordance with the Telekom privacy policy.

## **10 MODIFICATIONS**

- 10.1 You may request a modification (which does not include suspension or cancellation) to the Service or an Individual Service at any time by giving 30 days' notice to Telekom. Telekom may agree, in its absolute discretion, to make that modification.
- 10.2 If Telekom makes the modification then:
- (a) Telekom may notify you of the revised charges for the Service; and
  - (b) if the modification is a Downgrade, you must pay a Downgrade Charge if one is specified in the Service Description; and
  - (c) if the modification is not a Downgrade, you must pay the charges for making the modification notified to you by Telekom at the time.
- 10.3 You acknowledge that:
- (a) a Downgrade Charge is payable each and every time you Downgrade the Service or an Individual Service; and
  - (b) if you Downgrade the Service or an Individual Service in accordance with paragraph 10.1:

- (i) Telekom will suffer loss in connection with the cost of network components no longer required to supply the Service or Individual Service after the Downgrade; and
- (ii) the Downgrade Charge represents a genuine pre-estimate of the loss Telekom will suffer and is not a penalty.

## **11 YOUR RIGHT TO SUSPEND OR CANCEL**

11.1 You may ask Telekom to suspend the Service or one or more Individual Services by giving notice to Telekom. Telekom will try to do so within a reasonable period.

11.2 You may cancel the Service or one or more Individual Services without liability:

- (a) at any time after the Committed Term, by giving 30 days' notice to Telekom; and
- (b) at any time by giving Telekom notice if:
  - (i) all of the Individual Services making up the Service have been cancelled in accordance with the Agreement;
  - (ii) Telekom breaches a material term of the Agreement and that breach is not capable of remedy; or
  - (iii) Telekom breaches a material term of the Agreement and that breach is capable of remedy but Telekom does not remedy that breach within 30 days after you give Telekom notice requiring Telekom to do so.

11.3 You may cancel the Service or one or more Individual Services before the end of the Committed Term by giving 30 days' notice to Telekom but you may be required to pay a Cancellation Fee in accordance with clause 15.1.

## **12 TELEKOM' RIGHT TO SUSPEND OR CANCEL**

12.1 Telekom may, without liability, cancel the Service or one or more Individual Services:

- (a) at any time after the Committed Term by giving 30 days' notice to you; or
- (b) at any time prior to the Service Start Date, if Telekom reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Service or an Individual Service to you.

12.2 Telekom may, without liability, immediately cancel the Service or one or more Individual Services or suspend or Downgrade the Service or one or more Individual Services at any time if:

- (a) there is an emergency;
- (b) doing so is necessary to allow Telekom or a Supplier to repair, maintain or service any part of the Telekom Network or a Supplier Network used to supply the Service or the Individual Service;
- (c) you breach clause 2 (Use of the Service) or your obligations relating to the use of the Service set out in the Service Description, otherwise misuse either the Service or an Individual Service or breach clause 3.5;
- (d) you fail to provide financial security required under the Agreement;
- (e) Telekom reasonably suspects fraud by you or any other person in connection with either the Service or an Individual Service;
- (f) Telekom reasonably believes there has been an unusually high use of either the Service or an Individual Service, or if you significantly change any traffic profile or forecast given to Telekom;
- (g) any amount owing to Telekom is not paid by its due date (as specified in the relevant invoice or notified by Telekom), Telekom gives you notice requiring payment of that amount (which Telekom may not give in respect of an amount which is validly disputed in accordance with clause 7 (Billing Disputes) until after Telekom has completed the investigations referred to in clause 7.5) and you fail to pay that amount in full within five Business Days after Telekom gives you that notice;
- (h) you breach a material term of the Agreement (other than a breach which separately gives rise to rights under this clause 13.2) and that breach is not capable of remedy;
- (i) you breach a material term of the Agreement (other than a breach which separately gives rise to rights under this clause 13.2) and that breach is capable of remedy you do not remedy that breach within 30 days after Telekom gives you notice requiring you to do so;
- (j) Telekom is entitled to (or does) suspend, terminate or cancel any other service supplied to you, or is entitled to (or does) terminate any other agreement with you;
- (k) Telekom is required to do so to comply with an order, instruction or request of a Regulator, an emergency services organisation or any other competent authority;
- (l) problems are experienced interconnecting the Telekom Network with any Supplier Network;
- (m) a Supplier terminates its agreement with Telekom, or ceases to supply services to Telekom, and Telekom is not able to provide either the Service or an Individual Service using services supplied to Telekom by an alternate Supplier on terms reasonably acceptable to Telekom;

- (n) you suffer an Insolvency Event;
- (o) you die or, if you are a partnership, the partnership is dissolved or an application is made to dissolve the partnership; or
- (p) Telekom is otherwise entitled to do so under this Agreement.

12.3 Telekom may also cancel the Service or one or more Individual Services if:

- (a) the Service or that Individual Service is suspended for more than 14 days; or
- (b) any Intervening Event prevents the supply of the Service or that Individual Service in accordance with the Agreement for more than 14 days.

12.4 Telekom may exercise its rights under clause 13.2 immediately by giving notice to you. However:

- (a) in an emergency Telekom may be precluded from giving notice; and
- (b) if Telekom intends to exercise its rights under clause 13.2 as a result of circumstances referred to in paragraphs (b), (k), (l), (m) or (n) of that clause, then Telekom will usually try to give you reasonable notice before cancelling the Service or one or more Individual Services or suspending the Service or one or more Individual Services.

12.5 If Telekom suspends the Service or an Individual Service under this clause 13, then Telekom may later cancel the Service or that Individual Service for the same or a different reason.

### **13 CONSEQUENCES OF SUSPENSION**

13.1 If the Service or an Individual Service is suspended in accordance with the Agreement, then you will not be liable to pay usage based charges for the Service or the Individual Service while it is suspended but otherwise you must pay all charges arising before, during and after suspension in accordance with the Agreement.

13.2 If you ask Telekom to do so, Telekom will stop the suspension of the Service or Individual Service as soon as reasonably possible after the reason for that suspension has stopped.

13.3 If Telekom reactivates or reinstates the Service or an Individual Service after it has been suspended, you may have to pay Telekom a reactivation charge.

### **14 CONSEQUENCES OF CANCELLATION**

14.1 If the Service or an Individual Service is cancelled in accordance with the Agreement (other than in accordance with clause 12.2):

- (a) before the Service Start Date, then you must pay to Telekom all infrastructure and installation costs incurred by Telekom in connection with preparation for the provision of the Service or the Individual Service; and
  - (b) during the Committed Term, then you must pay to Telekom the Cancellation Fee.
- 14.2 If an Individual Service is cancelled in accordance with the Agreement, then Telekom may notify you of the revised charges for the Service.
- 14.3 You acknowledge and agree that if the Service or an Individual Service is cancelled in accordance with the Agreement:
- (a) Telekom will suffer loss in connection with the cost of network components no longer required to supply the Service or the Individual Service after the cancellation;
  - (b) the Cancellation Fee represents a genuine pre-estimate of the loss Telekom will suffer and is not a penalty;
  - (c) you must continue to pay all charges relating to the Service or Individual Service until the Service or Individual Service is deactivated or Telekom ceases supplying it; and
  - (d) Telekom may invoice you for all charges for the Service or Individual Service that have not been previously invoiced and you must pay to Telekom all amounts specified in that invoice, and all other unpaid amounts relating to that Service or Individual Service, within 10 Business Days of the date of that invoice.
- 14.4 On cancellation of the Service for any reason:
- (a) each person must, on request by the other person, immediately return or destroy the other person's Confidential Information, except to the extent that it is required by law to retain the other person's Confidential Information;
  - (b) Telekom may immediately stop supplying to you the Service and all Individual Services;
  - (c) unless otherwise permitted by Telekom in writing, you must immediately stop using the Service (including all Individual Services) acquired under the Agreement and the Telekom Owned Equipment;
  - (d) you will, at your cost, immediately return to Telekom or permit Telekom to remove any Telekom Owned Equipment, equipment you have purchased but not fully paid for, or other Telekom material on the Premises or in your possession or control;
  - (e) unless the Agreement expressly states otherwise, each person's accrued rights and obligations are not affected; and

- (f) the parts of the Agreement which are by their nature intended to survive cancellation of the Service will do so. These include clause 3 (Equipment), clause 6 (Invoices and Payment), clause 7 (Billing Disputes), clause 8 (Taxes), clause 9 (Financial Security), clause 10 (Privacy and Personal Information), this clause 15 (Consequences of Cancellation), clause 16 (Your Rights Against Telekom), clause 17 (End Users etc), clause 18 (Intellectual Property), clause 19 (Confidentiality), clause 22 (Assignment and Subcontracting) and clause 23 (General) and any other provision of the Agreement to the extent necessary to give effect to them.

## **15 YOUR RIGHTS AGAINST TELEKOM**

- 15.1 Telekom accepts liability to you in connection with the supply or Interruption of any Individual Services, the Service and the Agreement, but only to the extent provided in this clause 16. Telekom excludes any liability it might otherwise have to you in connection with the Agreement, the Service or any Individual Service to the extent that such liability is not expressly accepted by Telekom under this clause 16.
- 15.2 Telekom accepts liability to you under applicable laws, where not to do so would be illegal, or would make any part of this clause 16 void or unenforceable. Otherwise, Telekom excludes all conditions and warranties implied into the Agreement and limits its liability for any non-excludable conditions and warranties, where permitted by law to do so, to (at Telekom' option) repairing or replacing the relevant goods, resupplying the relevant or equivalent services or, in either case, paying you the cost of doing so.
- 15.3 Telekom accepts liability to you for Interruptions to Individual Services and the Service (including Interruptions caused by Telekom' negligence) to the extent the Interruptions are not caused or contributed to by Excluded Events, but only:
  - (a) by crediting to you a service rebate, where one is specified in the Service Description and validly claimed by you in accordance with the Agreement; or
  - (b) if there is no service rebate so specified, by (at Telekom' election) repairing or replacing the relevant goods or resupplying any relevant or equivalent services which are capable of being resupplied, or in either case paying you the cost of doing so.

If Telekom credits you with a service rebate, this is your sole remedy for Telekom' acts or omissions (including negligence) leading up to the credit.

## **16 END USERS ETC**

- 16.1 Telekom excludes any liability to your End Users (whether based in contract, tort (including negligence), statute or otherwise). You indemnify and will keep indemnified Telekom against any Loss suffered or incurred by Telekom in connection with an End-User claim (whether based in contract, tort (including

- negligence), statute or otherwise) against Telekom in connection with the supply or Interruption of any goods or services (including the Service and any Individual Services).
- 16.2 Telekom excludes any liability for claims which may be made against Suppliers (whether based in contract, tort (including negligence), statute or otherwise). You indemnify and will keep indemnified Telekom against any Loss suffered or incurred by Telekom in connection with a claim (whether based in contract, tort (including negligence), statute or otherwise) against a Supplier by you or an End User in connection with the supply or Interruption of any goods or services (including the Service and any Individual Services).
- 16.3 You must ensure that your End Users (if you have any) comply with the Agreement as if they were you.

## **17 INTELLECTUAL PROPERTY**

- 17.1 Telekom owns all material (including Intellectual Property Rights) developed by it, or its Personnel, or at its or their direction.
- 17.2 Telekom may permit you to use this material, or other material licensed by Telekom, as part of the Service. This permission is subject to any conditions which Telekom may impose from time to time and will cease when the Service is cancelled.

## **18 CONFIDENTIALITY**

- 18.1 Telekom and you each agree to keep confidential the other's Confidential Information.
- 18.2 Subject to clause 19.3, Telekom and you will not use or disclose the other's Confidential Information for any purpose, other than to the extent necessary to perform its obligations or exercise its rights under the Agreement.
- 18.3 For clarity, Telekom may refer to you as a customer of Telekom in Telekom press releases, or in Telekom marketing sales or financial material or reports.
- 18.4 The obligations of confidentiality in this clause 19 do not apply to the extent disclosure is require by law or the listing rules of a stock exchange, a direction by government authority or a Regulator, or disclosure to professional advisors in connection with the Agreement.

## **19 INTERVENING EVENTS**

- 19.1 If an Intervening Event occurs which affects you or any of your Personnel or Telekom or any of its Personnel and prevents you or Telekom (as the case may be) ("**Affected Person**") from performing any of its obligations (other than an obligation to pay money) under this Agreement, then the Affected Person will not be liable for failing to perform that obligation.
- 19.2 The Affected Person must notify the other person promptly of the Intervening Event and use its best efforts to resume performance in accordance with the

Agreement as soon as reasonably possible. The other person's obligations continue during the Intervening Event.

## **20 PUBLIC ADDRESSING IDENTIFIERS**

- 20.1 The Service may use one or more identifiers such as a telephone number, IP address or domain name ("**Public Addressing Identifiers**").
- 20.2 You must comply with the requirements of any Regulator or other body which administers Public Addressing Identifiers.
- 20.3 You acknowledge and agree that:
- (a) Telekom does not control the allocation of Public Addressing Identifiers;
  - (b) Telekom is not liable to you if Telekom is required to change any Public Addressing Identifier as a result of any direction given by a Regulator or other body which administers Public Addressing Identifiers; and
  - (c) on cancellation of the Service or any relevant Individual Service, your right to use any related Public Addressing Identifier may cease.

## **21 ASSIGNMENT AND SUBCONTRACTING**

- 21.1 To the extent they are assignable, you may assign your rights under the Agreement so long as you have Telekom' prior written consent.
- 21.2 To the extent they are assignable, Telekom may at any time assign some or all of its rights under the Agreement to any person. Telekom may also transfer some or all of its obligations under the Agreement to any Telekom Group Company that is able to perform those obligations and, if that Telekom Group Company undertakes to perform those obligations, Telekom will be released from any further performance with effect from the date of transfer.
- 21.3 Telekom may perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a Supplier or another Telekom Group Company.

## **22 GENERAL**

- 22.1 You and Telekom must give notice under the Agreement to the other in writing except:
- (a) where the Service Description for the Service specifies otherwise;
  - (b) for the purposes of clause 13.2(g), for which Telekom can give notice in any form of notification that payment of an amount is required (including by e.mail or facsimile or in a statement or invoice); and
  - (c) for variations by Telekom, for which notice can be given in accordance with the *Telecommunications Act*.

- 22.2 Unless you are a natural person you must nominate at least two authorised operational contacts and provide any relevant details in relation to them required by Telekom. You may change your authorised operational contacts by giving notice to Telekom providing all relevant details. The authorised operational contacts will:
- (a) have access to Telekom' support and maintenance staff for the Service, report faults and make requests for maintenance or support; and
  - (b) be entitled to notify Telekom of the persons to be added or removed as End Users.
- Telekom need not respond to requests from anyone other than authorised operational contacts and will not be liable for any consequences arising from compliance or non-compliance with any requests made by persons who are not authorised operational contacts.
- 22.3 If Telekom has a right arising out of a breach by you of the Agreement and Telekom does not exercise that right, Telekom does not waive:
- (a) that right unless it does so in writing signed by Telekom; or
  - (b) its right to insist on performance of that or any other obligation at any other time.
- 22.4 If a provision of the Agreement is void, voidable or unenforceable, it will be severed and the remainder of the Agreement will not be affected.
- 22.5 Each person must pay its own costs and expenses in respect of the Agreement and any agreement or document contemplated by the Agreement or required to give effect to it.
- 22.6 You must pay any stamp duty (including fines) assessed on the Agreement and any agreement or document contemplated by the Agreement or required to give effect to it.
- 22.7 Telekom may pay commission to any Telekom Personnel in connection with the Agreement.
- 22.8 You acknowledge that:
- (a) nothing in the Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between you and Telekom; and
  - (b) you have no right to bind Telekom in contract or otherwise.
- 22.9 The Agreement is governed by the laws applicable in the Solomon Islands and you and Telekom submit to the non-exclusive jurisdiction of the courts of that nation.

22.10 Telekom may vary the Agreement, including the charges, at any time by varying the standard form of agreement referred to in clause 1.1 in accordance with the provisions of the Telecommunications Act relating to standard forms of agreement. Otherwise the Agreement may only be varied either:

- (a) by you completing, signing and providing to Telekom a further standard application form requesting a variation to the Service or an Individual Service and Telekom accepting that request in a way provided in the form;
- (b) by you making a further application in the same manner as the original Application requesting a variation to the Service or an Individual Service and Telekom accepting that request; or
- (c) otherwise, in writing signed by you and Telekom.

### **23 AGREEMENT AS TO TERMS**

23.1 If for any reason the terms and conditions of the standard form of agreement for the Service are found not to apply to any supply of the Service by Telekom, you and Telekom agree that the supply and acquisition of the Service is made under an agreement between them which:

- (a) will be taken to have come into effect:
  - (i) if the Application was made using the relevant standard application form approved by Telekom and that form does not provide otherwise, when you complete and sign the Application and provide it to Telekom; or
  - (ii) otherwise, when Telekom accepts the Application (which Telekom will be taken to have done if it supplies the Service);
- (b) consists of the terms and conditions of the standard form of agreement for the Service in force at the time of any relevant supply, except that where there is a reference in the terms and conditions of that standard form of agreement to cancellation of the Service, that reference includes, and will effect, termination of that agreement; and
- (c) can be varied, including by Telekom varying the terms and conditions of the relevant standard form of agreement, in accordance with clause 25.

## DICTIONARY TO GENERAL TERMS

### A. Definitions

In the Agreement:

**Agreement** means:

- (a) the terms and conditions of the standard form of agreement for the Service; or
- (b) if **clause 25** applies, the agreement referred to in that clause.

**Application** has the meaning set out in **clause 1.2**.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open generally for business in Honiara.

**Cancellation Fee** means the relevant cancellation fee or termination charge (if any) calculated in accordance with the Service Description or any appendix to the Service Description.

**Committed Term** means the period from the Service Start Date specified as the "Committed Term" in the Application or, if no period is specified in the Application or the Agreement or is otherwise agreed, then there will be no period of Committed Term after the Service Start Date.

**Confidential Information** of a person means all information of that person ("**Owner**") of a confidential nature, which another person ("**Recipient**") first becomes aware, whether before or after the date of the original Application, either through disclosure by the Owner to the Recipient or otherwise through the Recipient's involvement with the Owner. Confidential Information does not include information:

- (a) the Recipient creates (whether alone or jointly with any person) independently of the Owner's Confidential Information;
- (b) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom it has disclosed the information); or
- (c) obtained without restriction as to further disclosure from a source other than the Owner through no breach of confidentiality by that source.

For Telekom, "Owner" and "Recipient" includes Telekom and each Telekom Group Company.

**Credit Information** means:

- (a) personal identifying details, including your name and current and previous addresses, date of birth, employer, and driver's licence number;

- (b) the fact that Telekom is a credit provider to you and any credit limit on your account;
- (c) information about any payments which are overdue for at least 60 days, when recovery steps have been taken by Telekom;
- (d) where an overdue payment has been previously reported, advice that payment is no longer overdue;
- (e) information about any payments including cheques, credit cards and direct debits which have been dishonoured;
- (f) court judgments or bankruptcy orders made against you;
- (g) the fact that, in the opinion of Telekom, you have committed a serious credit infringement; and
- (h) the fact that (and timing of) Telekom has ceased providing the Service to you.

**Downgrade** means any modification to the Service or an Individual Service which reduces the capacity, use or utility of that Service or Individual Service.

**Downgrade Charge** means the relevant downgrade charge (if any) calculated in accordance with the Service Description or any appendix to the Service Description.

**End User** means any person:

- (a) to whom you ask Telekom to supply the Service or an Individual Service directly;
- (b) to whom you resupply the Service or an Individual Service, or allow to distribute the Service or an Individual Service;
- (c) who you allow to use the Service or an Individual Service; or
- (d) to whom you supply any goods or services which use or rely on the Service or an Individual Service.

**Excluded Event** means:

- (a) a breach of the Agreement by you,
- (b) an Intervening Event;
- (d) a negligent or fraudulent act or omission of you or any of your Personnel; or
- (e) a failure of any of your equipment.

**General Terms** means this document.

**Individual Service** means each individual service making up the Service; for example, an individual circuit or connection. For clarity, there may be more than one Individual Service making up the Service.

**Insolvency Event** means:

- (a) bankruptcy proceedings are commenced against you, or you are declared bankrupt;
- (b) any step is taken to enter into any scheme of arrangement between you and your creditors;
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of your assets or business;
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to you or to the whole or any part of your assets or business;
- (e) you suspend payment of your debts generally.

**Intellectual Property Rights** means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright) and includes the right to have Confidential Information kept confidential.

**Interruption** in the supply of goods or a service (including the Service and each Individual Service) means a delay in supplying, a failure to supply or an error or defect in the supply of, those goods or that service.

**Intervening Event** affecting a person means any event outside that person's reasonable control, and includes failure or fluctuation in any electrical power supply, failure of airconditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any Regulator, any Supplier or any of their Personnel).

**Loss** means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/client basis and includes Consequential Loss, unless otherwise stated.

**Telekom** means Solomon Telekom Company Limited.

**Telekom Owned Equipment** has the meaning set out in clause 3.1.

**Telekom Network** has the meaning set out in clause 2.4(c).

**Personal Information** means:

- (a) information or opinion about you from which your identity is apparent or can reasonably be ascertained; and
- (b) includes including your name, address, service number and other details, and your personal or commercial Credit Information or Credit Rating.

**Personnel** of a person means that person's employees, agents, contractors or other representatives and, in the case of Telekom, includes the employees, agents, contractors or other representatives of any Telekom Group Company.

**Premises** means locations at which Telekom supplies the Service, and locations to which Telekom needs to have access to supply the Service.

**Regulator** means the relevant government or statutory body or authority.

**Service** means the service with the options and features requested in the Application as described in the Service Description, and any related goods (including equipment) and ancillary services which Telekom supplies to you in connection with that service. If more than one Service Option is selected in your Application, then a separate Service will be provided for each selected Service Option.

**Service Delivery Point** means the point at which a Service is made available for connection to your equipment or cabling.

**Service Description** means the part of the Agreement entitled "Service Description" which is the Telekom standard service description describing the Service.

**Service Option** means certain features and characteristics of the Service which may be selected by you and which are described as a 'Service Option' (together with any additional terms on which the Service Option is supplied) in the Service Description or any appendix to the Service Description.

**Service Start Date** for the Service or an Individual Service means the date on which Telekom starts supplying that Service or Individual Service to you, or is deemed to do so.

**Special** has the meaning set out in clause 5.3.

**Standard Pricing Table** means the Telekom standard rate plan, pricing and charges list for the Service.

**Supplier** means any supplier of goods or services (including interconnection services) which are used directly or indirectly by Telekom to supply the Service.

**Supplier Network** has the meaning set out in clause 2.4(c).

**suspend** means suspend, reduce, restrict or limit supply.

**Tax** means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority.

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth), as amended or replaced from time to time.

**Telecommunications Legislation** means the Telecommunications Act, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth)

and Part XIB, Part XIC and related provisions of the Trade Practices Act, each as amended or replaced from time to time.

**you** means the person who makes the Application and where two or more persons have applied, means those persons severally and every two or more of them jointly (and **your** will be construed accordingly).

## **B. Interpretation**

- (a) Undefined words and expressions have the same meaning as in the Telecommunications Legislation.
- (b) The expressions "Telekom", "you" or "your" will include their respective successors and permitted assigns and novatees.
- (c) A reference to a person includes a reference to a person, firm, corporation or other legal entity.
- (d) A term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.
- (e) The singular includes the plural and vice versa.
- (f) Different grammatical forms of the same word have the corresponding meaning.
- (g) A reference to a clause is to a clause in these General Terms, unless otherwise stated.
- (h) Examples or words of inclusion are illustrative only and do not limit the generality of the relevant subject.
- (i) A "reasonable" notice period means a period which is reasonable in the circumstances taking into account technical, operational and commercial issues. For clarity, "reasonable" notice regarding an event may include notice after the event, or no notice at all.