

FG Telecom General Terms

1. Definitions and interpretation

1.1 Defined terms

In these General Terms, unless the contrary intention appears, the following words have the following meanings indicated:

Affiliate in respect of an entity (the first entity), means another entity that Controls the first entity, that is Controlled by the first entity or that is under common Control with the first entity.

Agreement has the meaning given at clause 2.1.

Authorisations mean all licences, declarations, permits, accreditations and approvals of any type, including all licences required by a Regulator.

Authorised Representative means a list of persons who are authorised to place Service Orders on Your behalf, change or cancel Services, or otherwise act as Your agent in Your dealings with Us.

Business Day means a day that is not a Saturday, Sunday or a public holiday in the State or country in which the Service is provided.

Change Order means a document that varies the Service Order in a form substantially similar to Appendix 1 to these General Terms.

Charges means the charges (exclusive of any Taxes) in respect of a Service as set out in the relevant Service Order.

Claim means any claim, action, suit or demand.

Confidential Information of a party means all confidential information given or made available by that party to the other party including:

- (a) technology or intellectual property owned or licensed to the party;
- (b) industry information, plans, trade secrets, commercially sensitive information and confidential know-how; and
- (c) financial information.

Consequential Loss means any form of:

- (a) indirect, special, incidental or consequential loss;
- (b) loss of or damage to goodwill or reputation; or
- (c) loss or corruption of data, loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings and pure economic loss suffered or incurred by any person,

whether arising in contract or tort (including negligence) or under any statute.

Control means possessing a 50% or greater interest in an entity or the right to direct the management of that entity.

Customer Equipment means all of the equipment used by You in connection with the Services that is not provided by FG Telecom.

Customer Information means all information that FG Telecom obtains as a result of Your use of a Service and may include Your, Your Affiliates' and End Users' Personal Information.

Data Breach means the misuse, loss and unauthorised access, modification and disclosure of Personal Information.

FG Telecom means DGTek Pty Ltd (ABN: 61 600 896 115) trading as FG Telecom.

FG Telecom Equipment means any equipment supplied by FG Telecom or its Third Parties for use in connection with the Services.

Early Termination Charge means an amount equal to the monthly recurring Charges payable for the terminated Service multiplied by the number of months, or part thereof, between the date of termination and the end of the Service Term.

EEA means the European Economic Area.

End User means a person who acquires a service that is a resupplied version, or a derived version of the Service supplied to You by FG Telecom.

Fair Use Policy means the following policy located at [Fair Use Policy](#)

Force Majeure Event means a circumstance or event beyond the relevant party's reasonable control including but not limited to:

- (a) acts of god (including rainstorm or hail), accidents, national emergencies, insurrection, riot, hostile or warlike action in peace or war or sabotage;
- (b) strikes, lockouts, labour disputes, work stoppages, embargoes or any other labour difficulties (except where undertaken only by employees of that party);
- (c) action or inaction of any government, governmental or local authority or agency, civil or military authority or statutory authority (or any of their representatives);
- (d) malicious or negligent acts or omissions by a third party.

General Terms means these standard terms and conditions between FG Telecom and You which form part of the Agreement.

Intellectual Property means any intellectual or industrial property anywhere in the world including, but not limited to, any registered or unregistered copyright, patent, trade mark, design rights, trade secret or Confidential Information relating to the Services or any licence or other right to use, or to be the registered proprietor of, any of the above.

Insolvency Event means in respect of a party:

- (a) a receiver, manager, receiver and manager, trustee, administrator, controller or similar officer is appointed (and is not removed within 15 Business Days) in respect of the party or any asset of the party;
- (b) a liquidator or provisional liquidator is appointed in respect of the party;
- (c) any application is made to a court (and not withdrawn or refused within 15 Business Days) for an order, or an order is made, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up the party; or
 - (iii) proposing or implementing a scheme of arrangement in respect of the party;

- (a) a moratorium of any debts of the party or an official assignment or a composition or an arrangement (formal or informal) with the party's creditors or any similar proceeding or arrangement by which the assets of the party are subjected conditionally or unconditionally to the control of the party's creditors is ordered, declared or agreed to, or is applied for (and not withdrawn or refused within 15 Business Days);
- (b) the party becomes, or admits in writing that it is, or is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts as they fall due; or
- (c) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the party.

Interest Rate means the lower rate per annum of:

- (a) the sum of the cash rate published by the Reserve Bank of Australia from time to time and 3% per annum; or
- (b) the highest applicable rate permitted by the local courts.

Loss means any loss, cost, expense, liability or damage, howsoever caused, including reasonable legal costs.

Network means the telecommunications network operated by FG Telecom, its Affiliates or by third parties pursuant to arrangements with FG Telecom or its Affiliates, and includes any computer, network, terminal or device operated by FG Telecom.

Personal Information means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent or can be reasonably ascertained, from the information or opinion.

Privacy Laws means all data protection, privacy legislation, guidelines and industry standards from time-to-time in force in the jurisdictions in which the Services are provided.

Regulator means any foreign or domestic government or governmental, semi- governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency or entity.

Regulatory Fees means fees charged to FG Telecom by any Regulator.

Service means a service that FG Telecom has agreed to supply to You (either directly, or through the use of a Third Party) under this Agreement, as specified in a Service Order and described more fully in a Service Schedule.

Service Levels in respect of a Service, means the service levels set out in the Service Schedule for that Service.

Service Order means FG Telecom's standard order form, which sets out the Service(s) that You have requested and FG Telecom has agreed to provide.

Service Order Commencement Date means, unless otherwise specified in the relevant Service Order, the execution date of the Service Order.

Service Schedule means a schedule to these General Terms which can be found at fgtelecom.com.au or provided to You upon request that sets out, among other things, a description of the Service(s), any Service Levels and any other relevant information.

Service Term in respect of a Service, means the minimum term for provision of that Service as set out in the relevant Service Order.

Tax means all applicable VAT, GST, consumption tax, use, excise, access, bypass, franchise, regulatory or other similar taxes, fees, charges or surcharges that are imposed on or based on the provision, sale or use of the Services but excluding taxes based on its net income.

Telecommunications Act means all telecommunications legislation, guidelines and industry standards applicable to the provision of the Services and in force in the jurisdictions in which the Services are provided.

Third Party or **Third Parties** means a person other than FG Telecom (and their respective officers, employees, agents and subcontractors), and includes FG Telecom's suppliers, Network provider, vendors, and Affiliates (such as DGTek Pty Ltd).

Training means any training in connection with FG Telecom's Network as set out in a Service Order.

You or Your means an Authorised Representative of the enterprise customer described in the Service Order.

1.2 Interpretation

In this Agreement, headings are for ease of reference only and do not affect the meaning of this Agreement and unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) other grammatical forms of defined words or expressions have corresponding meanings;
- (c) a reference to a clause, paragraph, schedule, appendix or attachment is a reference to a clause or paragraph of, or schedule or appendix or attachment to, this Agreement and a reference to this Agreement includes any schedules and attachments;
- (d) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (e) a reference to 'dollar' or '\$' is a reference to the lawful currency of the country in which the Service is provided;
- (f) a reference to a specific time for the performance of an obligation is a reference to that time in the state, territory, country or other place where that obligation is to be performed;
- (g) a reference to a person includes its successors and permitted assigns;
- (h) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (i) mentioning anything after 'include', 'includes' or 'including' does not limit anything else that might be included.

2. Agreement

2.1 This Agreement

- (a) The Agreement between You and FG Telecom is a Standard Form of Agreement for the purposes of section 479 of the Telecommunications Act 1997 (Cth), and comprises:
 - (i) the Service Order;

- (ii) the relevant Service Schedule;
 - (iii) these General Terms and any addendums.
- (b) In the event of any inconsistency between the documents that form this Agreement, the order of priority is the Service Order, the relevant Service Schedule, any addendum and then these General Terms.

2.2 Ordering and acceptance procedures

- (a) You may request one or more Services at any time from FG Telecom by submitting one or more Service Orders to FG Telecom. By submitting a Service Order, You warrant that You are acquiring the Services entirely for business purposes and are authorised to be bound by, or bind the customer to the terms of this Agreement.
- (b) FG Telecom may accept or reject a Service Order at its discretion.
- (c) Each Service Order will be effective from the Service Order Commencement Date of the applicable Service Order.
- (d) **Variations to Service:** You or FG Telecom may request a variation to the Services under a Service Order by providing the other party with a written notice (including by an email) specifying the requested changes in the Services. Upon mutual agreement by both parties of the extent and nature of the changes, FG Telecom will provide You with a Change Order.

3. FG Telecom's Obligations

3.1 Services

In consideration for payment of the Charges, FG Telecom:

- (a) Will supply the Services to You in accordance with the terms of this Agreement and the relevant Service Order;
- (b) Unless otherwise advised by Us, will use reasonable endeavours to commence the provision of the Services by the Service Order Commencement Date (that is, time is not of the essence). FG Telecom will not be liable for any delay in installation including, but not limited to, delays caused or contributed by Third Parties or in obtaining access to any property or premises by building owners, agents, or existing telecommunication providers; and
- (c) **Third Parties:**
 - (i) May use or rely on a Third Party(s) to supply the Services (in whole or in part) to You; and unless otherwise specified in a Service Order, FG Telecom do not guarantee that the Service will be entirely using FG Telecom's network, nor will FG Telecom be held liable for any delays due to circumstances beyond our control; and
 - (ii) Where FG Telecom use any Third Parties in the provision of Services to You, You agree to be bound by the Third Party terms and conditions which will be made available to You. FG Telecom will not be liable to You for any loss and damage incurred by You in connection with these Third Party terms and conditions.

3.2 Variation to Services

FG Telecom may from time to time:

- (a) vary a Service; and/or

- (b) modify, change, upgrade or enhance the Network or any other technology, software or equipment that FG Telecom uses to provide a Service,

provided that the Service continues to substantially comply with this Agreement.

3.3 Regulatory – general

- (a) FG Telecom must:
 - (i) to the extent within its control, obtain and maintain all Authorisations necessary to construct the Network and otherwise to provide each Service to You for the Service Term;
 - (ii) do all things necessary in respect of the Network, including the performance of FG Telecom's obligations as a telecommunications provider, which are required to be done under the Telecommunications Act or as otherwise required by law; and
 - (iii) provide all reasonable assistance and information reasonably requested by You in order for You to comply with Your obligations under this Agreement.
- (b) You acknowledge that FG Telecom may intercept, without any prior or subsequent notification to You, communications carried over the Service in order to meet any lawful request or direction of a law enforcement or other agency which has the power to require interception and You agree to provide all reasonable assistance to FG Telecom in respect of FG Telecom's obligation to intercept communications.

3.4 Service Levels

- (a) FG Telecom will use reasonable endeavours to provide the Services in accordance with the Service Levels; and
- (b) FG Telecom's liability for a failure to meet a Service Level will be as set out in the relevant Service Schedule and You acknowledge this is Your sole remedy in relation to a failure by FG Telecom to meet a Service Level, and You waive the right to any additional remedy.

3.5 Maintenance

- (a) FG Telecom (or its Third Parties) may perform scheduled and unscheduled maintenance or perform updates in relation to the Service from time to time. FG Telecom will use reasonable efforts to give You notice before undertaking any scheduled maintenance and to perform all scheduled maintenance at times likely to minimise interference to You.

4. Your Obligations

4.1 General obligations

- (a) You must:
 - (i) comply with all reasonable requests made by FG Telecom in relation to a Service or the Network;
 - (ii) relinquish a Service at such times as FG Telecom may reasonably require to permit FG Telecom or another person to carry out any tests and adjustments that may be necessary for that Service to be provided efficiently and for the Network to be maintained in efficient working order;
 - (iii) obtain and maintain all Authorisations required for You to enter into this Agreement, use the Services and to perform Your obligations under this Agreement;

- (iv) provide all assistance and information reasonably required by FG Telecom in order for FG Telecom to comply with its obligations under this Agreement;
 - (v) comply with all laws including the Telecommunications Act;
 - (vi) notify FG Telecom immediately on becoming aware of any unlawful use of a Service or the Network; and
 - (vii) comply with FG Telecom's Fair Use Policy;
 - (viii) use best endeavours to the extent reasonably within Your control to obtain and maintain all necessary approvals for FG Telecom to enter all premises or land required for the installation, delivery and maintenance of a Service. Where access to land or areas of the premises are not within Your control, FG Telecom may use its rights under Schedule 3 of the Telecommunications Act to obtain such access.;
 - (ix) not interfere with, damage or create hazards for:
 - (A) all or part of any Service;
 - (B) any of the facilities, including the Network, by which the Service is provided, or
 - (C) persons providing maintenance to those facilities; and
 - (x) not use or allow End Users to use a Service for any purpose that may:
 - (A) impair the privacy of any communications over the Service;
 - (B) infringe any person's rights, including intellectual property rights, or defame any person; or
 - (C) infringe a law, regulatory standard, or mandatory code or instrument, or constitute the commission of an offence, other than to comply with Your statutory obligations.
- (b) You must use best endeavours to ensure that Your use of the Services and any Customer Equipment used by You in connection with that use, will not:
- (i) interfere with any of the facilities comprising the Network or any Services or facilities or persons providing maintenance to the Network; or
 - (ii) impair privacy of any communications over those facilities, other than to comply with Your statutory obligations.
- (c) Where one or more of Your Services are supplied at a facility which requires the use of third-party cross-connects (such as datacentres), You are responsible for obtaining and maintaining those cross-connects at Your own cost.

4.2 Equipment

- (a) You are responsible for installing and maintaining any relevant Customer Equipment at Your own expense.
- (b) You must ensure that any Customer Equipment:
 - (i) has all necessary regulatory approvals;
 - (ii) is not prohibited by a Regulator;
 - (iii) complies with all applicable regulatory standards;

- (iv) is approved by FG Telecom; and
- (v) is capable of operating with the Services and does not damage or adversely affect the Network.
- (c) If the Customer Equipment causes interference with the Services or the Network, FG Telecom may require You to stop using and disconnect the Customer Equipment until the problem is fixed.
- (d) You authorise FG Telecom and any of its personnel to disconnect, install or make changes to any Customer Equipment at Your premises in order for FG Telecom to provide the Services.
- (e) You will use Your best endeavours to the extent reasonably within Your control to obtain and maintain all necessary approvals for FG Telecom to enter all premises or land required for the installation, delivery and maintenance of the FG Telecom Equipment.
- (f) Purchasing Equipment:
 - (i) Where You purchase Equipment from FG Telecom:
 - (A) the risk of loss and damage will transfer to You when the purchased Equipment leaves our warehouse facility or site;
 - (B) the title and ownership of the purchased Equipment will transfer to You on payment of all Charges in cleared funds.

4.3 End Users

In the situation You are not the End User but provide services to End User, You are:

- (a) responsible for all aspects of Your provision of services to End Users, including dealing with End User fault reports or other complaints or enquiries and billing and collection;
- (b) responsible for complying with all applicable laws and regulatory obligations in supplying Your services and dealing with End Users;
- (c) not permitted to make any representation or provide any warranties or undertakings as to the Services or the Network or any other matter on behalf of FG Telecom to End Users, except as expressly authorised by FG Telecom; and
- (d) not granted any authority to act on FG Telecom's behalf in any capacity, or to incur any liability on FG Telecom's behalf.

4.4 Network and FG Telecom Equipment

FG Telecom's provision of a Service to You does not give You any ownership or other property rights in the Network or FG Telecom Equipment.

4.5 Intellectual Property

- (a) Any Intellectual Property owned by either party prior to entry into this Agreement, or developed independently of this Agreement by either party, will continue to be owned by that party.
- (b) FG Telecom either owns the Intellectual Property in the Service provided to You or, where FG Telecom uses any Intellectual Property belonging to a Third Party, FG Telecom has a licence to do so.

- (c) None of FG Telecom's Intellectual Property is transferred to You and, unless specifically authorised by this Agreement, You cannot and will not use or reproduce such Intellectual Property for any purpose outside of this Agreement.
- (d) All Intellectual Property in any improvements or changes to any Service devised or made by anyone during the term of this Agreement will belong to FG Telecom.

5. Charges and payment

5.1 Charges and payment

FG Telecom will invoice You: (i) in advance for the Charges at the start of each calendar month during the Service Term; and / or (ii) for a previous month where You have not been invoiced. You must pay the Charges in each invoice by the due date on the relevant invoice or, if no due date is specified, within 30 Business Days of the invoice date. Payments must be made by electronic transfer to an account nominated by FG Telecom.

5.2 Interest / Fees on unpaid amounts

Any amount payable by You under this Agreement (including interest) which is not paid when due (other than an amount withheld in accordance with clause 5.3(b)) will entitle FG Telecom to:

- (a) charge interest from (and including) the due date until (but excluding) the date of actual payment calculated on a daily basis at the Interest Rate. Interest is payable on demand;
- (b) impose a charge to cover its reasonable expenses and costs incurred in enforcing any failure or delay in the payment (including the cost of engaging a debt recovery agent); and
- (c) suspend provision of the Service in accordance with clause 10 below.

5.3 Disputed invoices

- (a) You acknowledge that FG Telecom's records of the Service supplied are prima facie evidence that the Service was supplied to You.
- (b) If You wish to dispute the whole or any part of an amount stated to be payable by You in an invoice provided under clause 5.1, You must, prior to the due date of the invoice, notify FG Telecom that a dispute has arisen.
- (c) You may withhold payment of any amount that You dispute in good faith under clause 5.3(a), until such dispute has been resolved, but must pay the balance of any amount which is not in dispute when due.
- (d) The due date for payment of any amount withheld by You under this clause 5.3 shall be the Business Day following the resolution of the dispute.
- (e) The provisions of clause 13.1 apply to disputed invoices.

5.4 Variation of Charges

- (a) FG Telecom may vary the Charges on 20 Business Days' notice to You
- (b) FG Telecom may re-issue an invoice at any time during the Service Term, if a billing or invoice error (howsoever caused) is discovered in the future.

- (c) **Fee Review.** FG Telecom may, no more than annually on or after the anniversary of the Commencement Date, review and by written notice increase the Charges payable for the Service supplied under this Agreement. Any increase for each Service may be for no more than the greater of 5% or CPI.

6. Taxes

6.1 Charges exclusive of Taxes

All charges for the Services are exclusive of applicable Taxes and Regulatory Fees. FG Telecom is entitled to add to the amount otherwise payable an additional amount for the applicable Taxes and Regulatory Fees.

6.2 No deductions for withholding Tax

If a party must deduct or withhold Tax from a payment to the other under this Agreement, it must:

- (a) make that deduction or withholding (or both);
- (b) pay the full amount deducted or withheld as required by the relevant law;
- (c) give the other party a receipt for each payment; and
- (d) increase its payment to the other party to an amount which will result in that other party receiving the full amount which would have been received if no deduction or withholding had been required.

7. Insurance

7.1 Public liability cover

Each party must effect and maintain, during the term of this Agreement, a valid and enforceable public and product liability insurance policy for an insured amount of at least \$20,000,000 per occurrence and in the aggregate for all Claims.

7.2 Workers' compensation cover

Each party must effect and maintain, during the term of this Agreement, a valid and enforceable workers' compensation insurance policy which provides cover for its employees and contractors and complies with each jurisdiction's legislated requirements.

8. No reliance on warranties and representations

8.1 Each party acknowledges that:

- (a) it has relied on its own enquiries in respect of all matters relating to this Agreement and has not relied on any representation, warranty, condition or statement made by or on behalf of the other party other than as set out in this Agreement; and
- (b) any conditions or warranties which may otherwise be implied by law into this Agreement are expressly excluded to the extent permitted by law,

and each party releases the other party from all Claims and liability (whether or not known) which it may have or claim to have, or but for this release, it might have had against the other party arising out of any representation, warranty, covenant or provision not set out or referred to in this Agreement.

9. Liability

9.1 No indirect loss

Unless expressly stated to the contrary in this Agreement, neither party is liable to the other for any Consequential Loss however caused in connection with or related to this Agreement or otherwise in respect of the Services.

9.2 No warranty

FG Telecom excludes all conditions and warranties implied into this Agreement and limits its liability for any non-excludable conditions and warranties, where permitted to do so by law, to (at FG Telecom's option):

- (a) repairing or replacing the relevant goods;
- (b) resupplying the relevant or equivalent services; or
- (c) in either case, paying You the cost of doing so.

9.3 Limitation of FG Telecom's liability

Except where to do so would contravene any statute or cause any part of this Agreement to be void or unenforceable, FG Telecom:

- (a) excludes liability for any and all Loss suffered or incurred by You in connection with a Force Majeure Event; and
- (b) limits its maximum, aggregate liability for Loss for all Claims in connection with a Service to an amount equal to twelve (12) months Charges paid by You preceding the Claim.

9.4 Limitation of Your liability

Except where to do so would contravene any statute or cause any part of this Agreement to be void or unenforceable, You:

- (a) exclude liability for any and all Loss suffered or incurred by FG Telecom in connection with a Force Majeure Event; and
- (b) limit Your maximum, aggregate liability for Loss for all Claims in connection with a Service (except under, or in respect of Your liability for Loss in connection with Your indemnity obligations under clause 9.5 or 9.6 or Your obligation to pay an Early Termination Charge under clause 10.3(b)) to an amount calculated by multiplying the amount FG Telecom charges You each month for that Service by 12.

9.5 Indemnity for FG Telecom

- (a) Subject to clause 10.3(b), You indemnify FG Telecom from and against any Loss suffered or incurred by FG Telecom in connection with a Claim, including in connection with the termination of any Service, by an End User.
- (b) You will not be liable to FG Telecom under clause 9.5(a) to the extent that the Loss that gives rise to the Claim referred to in clause 9.5(a) could not lawfully have been excluded or reduced (regardless of whether such liability actually was excluded or reduced) by the party from whom the End User acquired the service.

- (c) You are responsible for the content of any transmission using the Service and You indemnify FG Telecom from and against any Loss suffered or incurred by FG Telecom in connection with a Claim relating to any content, data or other signal transmitted using the Service (including any transmission made by an End User), subject to FG Telecom:
- (i) notifying You of the Claim (or threatened Claim) promptly upon becoming aware of it;
 - (ii) allowing You sole control of the defence of the Claim, including the right to settle the Claim;
 - (iii) not settling the Claim without Your prior written consent; and
 - (iv) giving You reasonable assistance in relation to Your defence of the Claim.
- This clause 9.5 does not apply to any transmission made by FG Telecom or its employees or subcontractors (for example, when testing the Service).
- (d) Your liability to indemnify FG Telecom under this clause 9.5 shall be reduced proportionately to the extent that any act or omission of FG Telecom contributed to the Loss.

9.6 Mutual Indemnities

- (a) Each party (the **Indemnifying Party**) indemnifies the other party and its officers, employees, agents and contractors (the **Indemnified Party**) against any Loss incurred or sustained by any of those Indemnified in connection with a Claim for:
- (i) a breach of clause 12;
 - (ii) personal injury to or death of any person;
 - (iii) damage to any real or tangible property of any person; or
 - (iv) any infringement or alleged infringement of any person's Intellectual Property rights, arising out of a negligent or wilful act or omission of the Indemnifying Party or any of its officers, employees, agents or contractors.
- (b) The Indemnifying Party's liability to indemnify the Indemnified Party under clause 9.6(a) shall be reduced proportionately to the extent that any act or omission of the Indemnified Party contributed to the Loss.

9.7 Mitigation

FG Telecom (in the case of clause 9.5) and the Indemnified Party (in the case of clause 9.6) must take all reasonable steps to minimise the Loss it has suffered or is likely to suffer as a result of the event giving rise to an indemnity under that clause.

10. Term and Termination

10.1 Term

- (a) This Agreement begins on the execution date and continues until terminated by prior written notice to the other party.
- (b) Subject to the termination provisions in this Agreement, a Service Order commences on the Service Order Commencement Date and remains in force for the Service Term.

- (c) On the expiration of the Service Term, the Service Order will continue on a month-to-month basis until terminated by either party giving the other not less than 20 Business Days' written notice of termination.

10.2 Termination by FG Telecom

- (a) FG Telecom may terminate a Service with immediate effect by giving notice to You if You:
 - (i) Breach a material provision of this Agreement, including failing to pay an amount when due under this Agreement, and do not, within 20 Business Days of being requested to do so by notice from FG Telecom, remedy that breach or failure.
 - (ii) Suffer an Insolvency Event, and Your financiers do not, within 5 Business Days of being requested to do so by written notice, cause Your obligations to continue to be performed.
- (b) If FG Telecom terminates a Service pursuant to this clause 10.2 before the end of the Service Term, then without limiting FG Telecom's other legal rights and remedies, You will be required to pay the Early Termination Charge.

10.3 Termination by You

- (a) You may terminate a Service by providing FG Telecom with prior written notice if FG Telecom breaches a material provision of this Agreement and does not, within thirty (30) Business Days, remedy that breach.
- (b) Subject to clause 10.3(a), if the Service(s) are terminated by You before the end of the Service Term, then without limiting FG Telecom's legal rights and remedies, You will be required to pay FG Telecom the Early Termination Charge within 10 Business Days.
- (c) The relevant Service(s) will remain active and payable until You have paid FG Telecom the Early Termination Charge.

10.4 Suspension

- (a) FG Telecom may, without liability to You, immediately cease supplying a Service if:
 - (i) You have materially breached a provision of this Agreement, and You have not remedied it within 5 Business Days of being requested to do so;
 - (ii) You use or allow End Users to use a Service in breach of clause 4.1(a)(ix);
 - (iii) FG Telecom reasonably believes it is necessary to do so:
 - (A) for FG Telecom to comply with any law, regulatory standard, or mandatory code or instrument; or
 - (B) to prevent You contravening any law, regulatory standard or mandatory code or instrument, infringing another person's rights, defaming another person, or impairing the privacy of communications over a Service other than to comply with Your statutory obligations; or
 - (iv) to protect any person, equipment, facility or the normal operation or integrity of the Network, other parts of FG Telecom's network, or all or part of any Service.
- (b) Without limiting FG Telecom's rights under clause 10.5, FG Telecom will use reasonable endeavours to provide You with at least 5 Business Days prior notice of a proposed suspension, however, such notice may not always be reasonably practicable given the urgent nature of the matters referred to in clause 10.5 (**Proposed Suspension**).

- (c) FG Telecom will, as soon as practicable, recommence the supply of a suspended Service after You have rectified the matter leading to the suspension.
- (d) Where a Service was suspended under clause 10.6(a)(i) to 10.6(a)(iv), You agree to pay the costs of suspending and recommencing supply of the Service.

10.5 Without prejudice

Termination of a Service will be without prejudice to any accrued rights or remedies of either party.

11. Force Majeure

11.1 Suspected Force Majeure Event

If either party reasonably suspects that a Force Majeure Event may arise and prevent or hinder the performance of that party's contractual obligation, it must notify the other party immediately. The parties must then work together in good faith to resolve the issues, with the aim of avoiding the occurrence of the Force Majeure Event.

11.2 Occurrence of a Force Majeure Event

- (a) If a Force Majeure Event prevents or hinders performance of a party's contractual obligations (**Affected Party**), then the Affected Party must notify the other party within 10 Business Days of becoming aware of the Force Majeure Event, giving full details of:
 - (i) the Force Majeure Event;
 - (ii) the obligations that are affected and the extent to which the Affected Party is reasonably unable to perform those obligations;
 - (iii) the expected duration of any delay arising directly out of the Force Majeure Event; and
 - (iv) where possible, a proposal for avoiding the impact of the Force Majeure Event.
- (b) To the extent possible, the Affected Party must use its best endeavours to rectify or alleviate the effect of the Force Majeure Event.
- (c) For the duration of any Force Majeure Event, the parties will use and will continue to use their best endeavours to minimise the impact of any Force Majeure Event.
- (d) Upon the cessation of the delay or failure resulting from the Force Majeure Event the Affected Party must promptly notify the other party of the cessation.
- (e) Any obligations outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the Force Majeure Event has ended, except to the extent that such fulfilment is no longer possible or is not required by the party to whom the obligations are owed.

12. Confidentiality

12.1 Confidential Information

Each party agrees in relation to the Confidential Information of the other party:

- (a) to keep confidential the Confidential Information;

- (b) to use the Confidential Information solely for the purposes of the performance of its obligations and the exercise of its rights under this Agreement; and
- (c) to disclose the Confidential Information only to those of its employees, advisors, related entities and shareholders who have a need to know (and only to the extent each has a need to know) and who are aware and agree that the Confidential Information must be kept confidential.

12.2 Exceptions

The obligations of confidentiality under this Agreement do not extend to information which (whether before or after this Agreement comes into force):

- (a) is disclosed to a party under this Agreement, but at the time of disclosure is rightly known to that party and not subject to an obligation of confidentiality on that party;
- (b) at the time of disclosure is within the public domain or after disclosure comes into the public domain other than by a breach or breaches of any obligation under clause 12.1; or
- (c) is required by law or the rules of any securities exchange to be disclosed and the party required to make the disclosure ensures that information is disclosed only to the extent required.

12.3 Existing confidentiality obligations

The obligations of confidentiality under this Agreement are in addition to, and not in substitution for the confidentiality obligations of the parties under any specific non-disclosure agreements between the parties relating to the subject-matter of this Agreement.

12.4 Customer Information

- (a) Each party agrees to handle Personal Information obtained from the other party in accordance with the Privacy Laws.
- (b) Where You appoint FG Telecom as a processor of Personal Data and transfer Personal Data to FG Telecom from the EEA, the parties will enter into an addendum to this Agreement as provided for in clause 3.2.
- (c) Save with Your consent, FG Telecom will not use Customer Information for any purpose other than the purposes permitted under applicable law. Without limitation, these purposes include:
 - (i) planning requirements in relation to Network operations or Network maintenance for any Service;
 - (ii) facilitating interconnection and inter-operability between telecommunications providers for the provision of any Service;
 - (iii) providing assistance to law enforcement, judicial or other government agencies;
 - (iv) compliance with any requirement imposed by a Regulator; and
 - (v) managing bad debt and preventing fraud related to the provision of any Service.
- (d) By entering into this Agreement, You expressly consent to the use of Customer Information for the purposes of: administering, billing, providing and provisioning for any Service; Network and Service enhancement, security and risk management; to respond to any emergency which threatens life or property; or otherwise in accordance with FG Telecom's [Privacy Policy](#).

- (e) You may give Your consent to the use of Customer Information for other purposes by any form of writing or by Your acceptance of any relevant terms and conditions which refer to such consent. You may withdraw Your consent to the use of Customer Information by giving us written notice.

12.5 Data Breach

- (a) If a party becomes aware of a Data Breach, that party will immediately inform the other party and disclose to it all information relating to the Data Breach.
- (b) After notification of a Data Breach, You will provide all reasonable assistance to FG Telecom to:
 - (i) remedy the Data Breach and prevent further Data Breaches;
 - (ii) determine whether the Data Breach is an “eligible data breach” for the purposes of the Privacy Laws; and
 - (iii) in the event the parties agree that there has been an eligible data breach, prepare any statements and/or notifications within the applicable timeframes required under the Privacy Laws.
- (c) FG Telecom will provide You with any notices it prepares under clause 12.5(b)(iii) for final approval, which must not be unreasonably withheld or delayed. Each party will not publicly use or mention the other’s name without that party’s prior written approval.

12.6 Publicity

You consent to FG Telecom listing You as a customer of FG Telecom and use Your logo (in accordance with Your reasonable guidelines provided by You to FG Telecom) in any press release, marketing, sales or securities exchange reporting materials. Any other reference to You by FG Telecom requires Your prior written consent.

13. Dispute resolution

13.1 No arbitration or court proceedings

If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), a party must comply with this clause 13 before commencing legal proceedings (except proceedings for interlocutory relief).

13.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

13.3 Parties to resolve Dispute

- (a) During the 10 Business Days after a notice is given under clause 13.2 (or longer period if the parties to the Dispute agree in writing) (**Period**), each party to the Dispute must use its reasonable efforts to resolve the Dispute or to agree that the Dispute will be submitted to mediation.
- (b) If the parties cannot resolve the Dispute or agree to mediation within that Period, or if there is a submission to mediation, but there is no resolution within 20 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 20 Business Days, either party may commence legal proceedings.

14. Relationship between parties

This Agreement does not create a relationship of employment, agency or partnership between the parties.

15. Sub-contracting

FG Telecom may perform its obligations under this Agreement by procuring a third party to perform them. FG Telecom will inform You of the identity of the principal sub-contractors it retains in connection with the performance of this Agreement. Arrangements which FG Telecom may have with a third party will not limit FG Telecom's liability to You for performance of FG Telecom's obligations under this Agreement.

16. Assignment

- (a) Subject to clause 16(b), neither party (**Assignor**) may assign or otherwise deal with (or purport to do so) any right or obligation under this Agreement to a third party (**Assignee**), including without limitation to an Affiliate without the prior written consent of the other party, with such consent not to be unreasonably withheld or delayed.
- (b) FG Telecom may assign, novate or transfer any of its rights or obligations under this Agreement to any of its Affiliates without Your consent or to a purchaser of the whole or any part of the FG Telecom business.

17. Waiver

The failure of a party at any time to require performance of any obligation under this Agreement is not a waiver of that party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under this Agreement.

18. Governing law and jurisdiction

18.1 Governing law

This Agreement and any Dispute arising out of or in connection with it or its subject matter or formation (including non-contractual Disputes) shall be governed by and construed in accordance with the laws of Victoria, Australia.

18.2 Submission to jurisdiction

Each party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

19. Notice

19.1 Method of service

A notice, consent or communication under this Agreement is only effective if it is:

- (a) in writing in English;
- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
 - (i) delivered by hand to the recipient's address as specified in the Service Order, as varied by any notice;
 - (ii) sent to the recipient's address by professional courier if that address is overseas; or
 - (iii) sent by email to the recipient's email address as specified in Service Order where the sender receives an email receipt or written confirmation of receipt or does not receive an automated message that the email was not delivered within four hours of being sent, from the recipient to the sender.

A party may from time to time by notice to the other party vary its address for service of notices under this clause.

19.2 Time of service

A notice given in accordance with clause 19.1 is taken to be received (at the local time in the place of receipt):

- (a) if hand delivered, on delivery during business hours of the recipient;
- (b) if sent by professional courier to an address within the same country, 3 Business Days after the date of sending;
- (c) if sent by professional courier to an address within another country, 7 Business Days after the date of sending;
- (d) if delivered by email, that day if delivered by 5:00 pm on a Business Day; or the next Business Day, in any other case.

20. Amendment

FG Telecom may amend the terms of this Agreement at any time by giving You 20 Business Days' written notice (**Notice Period**) but only if such amendments do not materially reduce Your rights or increase Your obligations (excludes amendments required or suggested by a law or a Regulator or a pass through of amendments made by an essential third-party supplier to FG Telecom to provide the Services).

21. Entire agreement

This Agreement including its schedules and any appendices, annexures or attachments:

- (a) constitutes the entire agreement between the parties as to its subject matter; and

- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party, whether orally or in writing.

22. Severability

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

23. Survival

- (a) Termination of this Agreement will be without prejudice to any other rights or obligations which may have accrued under this Agreement on or before termination; and
- (b) The following provisions survive the termination and expiry of this Agreement:
 - (i) Insurance (clause 7), Indemnities and Liabilities (clause 9), Confidentiality (clause 12), Dispute Resolution (clause 13), and this clause 23; and
 - (ii) any other provisions that are expressed to or which by their nature survive termination or expiry.

FG Telecom Service Schedule - Dark Fibre, Ethernet and IP.

1. Description

- 1.1 Our services are a licence to use a specified number of optical fibres, between end-points specified in a Service Order. Our services may be:
- (a) **Fully Diverse** – where two or more services use physically separate infrastructure with sufficient spatial separation that there are no single points of failure between them; or
 - (b) **Non-diverse** – any services which are not specified in the Service Order as being Fully Diverse.
- 1.2 The exact route that the services take through our network is at our discretion, and may be changed from time to time, except that where Services are specified as being Fully Diverse we will ensure that the above definition is met.

2. Minimum Term

The Minimum Term for Dark Fibre, Ethernet and IP services is three years, unless we otherwise agree. Refer to order form for contract term.

3. Equipment

You must provide and configure, at your own cost, equipment capable of using the Dark Fibre services. FG Telecom will provide and configure equipment capable of using ethernet and IP services between the customer and our core switch/router.

4. Technical specifications

[As provided by us separately].

5. Service Levels and Rebates

Availability Service Level

- 5.1 Service Levels are measured per calendar month.
- 5.2 For the purpose of calculating the Availability Service Level:
- (a) a Service is considered to be **Down** if it is unusable or its performance is severely degraded because of a failure to meet the technical specifications above, otherwise the service is **Up**;
 - (b) an **Outage** commences when you notify us that a Service is Down, and ends when the Service becomes Up;
 - (c) an **Excused Outage** is any failure of the Service caused by:
 - (i) an Unexpected Event;
 - (ii) any act or omission by you or your agents, employees or contractors;
 - (iii) your equipment, including the failure or misconfiguration of your equipment; or
 - (iv) a scheduled outage or other suspension of the Service permitted by this Agreement.
 - (d) the Service Availability Index for a Service (**SAI**) is calculated as follows:

$$SAI = \frac{TT - OT}{TT - EOT}$$

Where:

- (i) **TT** is the total time in minutes during that calendar month;
- (ii) **OT** is the duration in minutes of all Outages on the Service during that month; and

(iii) **EOT** is the duration in minutes of any Excused Outage.

5.3 Our target Service Availability Indexes are:

- (a) For Fully Diverse services – 100%.
- (b) For Non-diverse services – 99.95%.

5.4 Rebates are not payable for Fully Diverse services unless the Outage affects multiple Services, such that all Services to a particular location are down.

If a Service Level is not met, the Rebate level is determined based on the amount of time by which the Service fails to meet the Service Levels:

OT in excess of the SAI	Rebate
Less than or equal to one hour	10% of the monthly charges for that Service
More than one hour but less than or equal to four hours	15% of the monthly charges for that Service
More than four hours	30% of the monthly charges for that Service

Appendix 1
Change Order Template

Effective Date of Change Order	
Service Order Number	
Revised Service Term	
Service Changes	
Revised Fees	
Misc.	