
Uecomm Standard Terms and Conditions for the Supply of Telecommunication Services – V3.1

1 Definitions

In this Agreement, unless the context otherwise requires:

Acceptable Use Policy means Uecomm's acceptable use policy as may be amended from time to time available at www.uecomm.com.au;

Agreed Coverage Periods means the applicable agreed coverage period set out in the Service Specifications;

Agreement means the:

- (a) Reference Schedule; and
- (b) these terms and conditions,

as amended by the parties from time to time; and

- (c) the Service Specifications.

Availability Targets means the applicable availability targets set out in the Service Specifications for the provision by Uecomm to the Customer of access to its network in accordance with this Agreement;

Availability Target Failure has the meaning given to it in clause 18.1(a)(2);

Business Day means a day on which banks are open for business in Melbourne, Victoria, excluding a Saturday, Sunday or public holiday;

Carriage Service Provider has the meaning given to it in section 7 of the *Telecommunications Act 1997* (Cth);

Carrier has the meaning given to it in section 7 of the *Telecommunications Act 1997* (Cth);

Commencement Date has the meaning given to that term in clause 2;

Committed Download Charge means the charges specified as committed download charges in the Reference Schedule;

Confidential Information means any information relating to a party's business, computer systems or affairs and includes, without limitation, any:

- (a) trade secrets, know-how, scientific and technical information;
- (b) product, customer, marketing or pricing information;
- (c) information in relation to this Agreement; and
- (d) any other information which a party notifies to the other is confidential,

which a party has disclosed (or will disclose) to the other;

Critical Fault means total loss of a non-redundant service element that renders an Individual Service unusable;

Customer means the person or entity identified as the customer in the Reference Schedule;

Customer Contract Representative means the person appointed by the Customer in accordance with clause 12.2 and named as the Customer's contract representative in the Reference Schedule (or as the Customer may notify to Uecomm from time to time);

Customer Data means data relating solely to the Customer provided by the Customer to Uecomm;

Customer Equipment means any equipment not supplied by Uecomm;

Customer Insolvency Event means an event where the Customer:

- (a) informs Uecomm or any of its creditors that it is insolvent or unable to pay its debts as they fall due or if Uecomm on reasonable grounds suspects that the Customer is insolvent or unable to pay its debts as they fall due;
- (b) enters into a composition or arrangement with its creditors or calls a meeting of creditors with a view to entering into a composition or arrangement;
- (c) has a mortgagee seek to exercise a right of possession or control over the whole or a part of its property;
- (d) takes or has instituted against it an action or proceedings whether voluntary or compulsory which has the object of or which may result in the winding-up of the Customer;
- (e) has a winding-up order made against it or passes a resolution for winding-up; or
- (f) is a party to the appointment of or has an official manager, administrator, receiver, provisional liquidator or liquidator appointed to the whole or any part of its property or undertaking;

Customer Sites means the sites owned, controlled or occupied by the Customer;

Dispute Meeting has the meaning given to it in clause 25.2;

End User means any person who utilises the Services or any part of the Services;

Excess Charges means any excess upload charges and excess download charges set out in the Reference Schedule;

Fault means a Critical Fault, a Major Fault or a Minor Fault;

Fault Report means an oral or written report by the Customer which sufficiently identifies:

- (a) whether the Fault results from any Customer Equipment, or the Customer's facilities, networks or systems;
- (b) the symptoms or cause (if known) of the Fault; and
- (c) the Customer's reasonable opinion of what the initial Fault classification should be;

Fault Restoration Target means the applicable fault restoration target set out in the Service Specifications;

Fault Ticket means a Fault to which a reference number has been assigned in accordance with clause 7.3;

Force Majeure Event means an event beyond the reasonable control of a party including the cutting or disconnection of Uecomm's fibre optic cable;

Governmental Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, government minister, officer, agent or entity including the Australian Communications and Media Authority;

GST means the goods and services tax prescribed under the GST Act or any replacement or similar tax;

GST Act means *A New Tax System (Goods and Services) Act 1999* (Cth);

Indirect Loss means indirect loss, damage cost or expense, and includes without limitation and whether caused directly or indirectly, loss or corruption of data, or loss of contract, opportunity, continuity of business, or profit;

Individual Service means each individual service making up the Services; for example, an individual circuit or link. The Services may include more than one Individual Service;

Information System has the meaning given to that term in the *Electronic Transactions (Victoria) Act 2000 (Vic)*;

Installation Charges means the charges for installation of the Services set out in the Reference Schedule;

Installation Delays has the meaning given to it in clause 18.1;

Intellectual Property means:

- (a) any copyright, patent, design, trade mark, plant variety right, eligible layout right or other similar right, whether registered or not;
- (b) any invention, discovery, trade secret, know-how, computer software and confidential or technical information;
- (c) any Confidential Information;
- (d) any other rights resulting from intellectual activity in any field; and
- (e) any grant of registration for or title to anything referred to in paragraphs (a) to (d) inclusive;

Law means:

- (a) those principles of law established by decisions of courts;
- (b) statutes, regulations, standards or by-laws of the Commonwealth, State law or a Governmental Agency; and
- (c) binding requirements and mandatory approvals (including any conditions) of the Commonwealth, State law or a Governmental Agency (including the Australian Communications and Media Authority);

Major Fault means, in relation to an Individual Service:

- (a) partial loss of a service element component, with traffic re-routed to a redundant link; or
- (b) reduction in link traffic carrying capacity (degradation), service still useable though impaired;

Minimum Period means the minimum period commencing on the Service Acceptance Date for which the Customer agrees to acquire the Services, as set out in the Reference Schedule;

Minor Fault means:

- (a) anomalies in transmission performance;
- (b) alarms which do not materially affect the Services; or
- (c) general technical queries on the Service;

Monthly Fee means:

- (a) up to and including the Minimum Period, the recurring monthly price or relevant tariff specified in the Reference Schedule; and
- (b) after the Minimum Period, Uecomm's then current published rates for the Services or as advised to the Customer by Uecomm from time to time;

NBP to NBP means in respect of the Availability Targets, from the network boundary point to the network boundary point within the Uecomm core network as detailed in the Service Specifications;

No Fault has the meaning given to it in clause 7.7(b);

Notice of Dispute has the meaning given to it in clause 25.1;

Other Costs means any cost other than the Monthly Fee or Installation Charges as set out in the Reference Schedule or as Uecomm may advise the Customer from time to time;

Other Provider means a Carrier, a telecommunications Carriage Service Provider, an equipment supplier, a construction services provider or other service provider, other than Uecomm, as the case may be;

Other Provider Variation has the meaning given to it in clause 26.2(a)(4)(A);

Personal Information means information or an opinion whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Planned Outage Periods means the period during which Uecomm may carry out work on its facilities, networks or systems for any reason, including arising out of or in connection with:

- (a) installation of infrastructure;
- (b) maintenance requirements (including Scheduled Maintenance); and
- (c) software or infrastructure upgrades;

PV means the present value of the relevant amount calculated by applying a discount rate equal to 2% above the market yield for Commonwealth government bonds or the Australian bank bill swap reference rate (whichever is the lesser) with a tenure closest to the remainder of the Minimum Period published in the Australian financial press at the date of notification of early termination;

Reference Schedule means the document of the same name signed by the Customer and Uecomm, which refers to these terms and conditions and which forms part of this Agreement;

Regulatory Event means any legal or regulatory change which affects the rights or obligations of a party under this Agreement including, without limitation, the issue of a competition notice by the Australian Competition and Consumer Commission (**ACCC**), a change in the carrier licence condition of Uecomm and the declaration of a service by the ACCC;

Remedy Period means the period during which a Fault is being remedied by Uecomm;

Scheduled Maintenance means maintenance work carried out by Uecomm on its facilities, networks or systems which may occur between 12am Sunday to 6am Monday (inclusive) or at such other times as Uecomm may advise the Customer from time to time;

Senior Dispute Meeting has the meaning given to it in clause 25.4;

Senior Notice of Dispute has the meaning given to it in clause 25.3;

Senior Representative means a person holding the position of Chief Executive Officer, Chief Financial Officer or Director-Commercial or an equivalent person;

Service Acceptance Date means the date the Services are deemed to be accepted by the Customer under clause 5.2;

Service Access Line means the dedicated access line between any Customer Sites and Uecomm sites or between two or more Customer Sites, used in connection with the Services;

Service Fees and Charges means each of the fees, charges and costs relating to the provision of the Services as set out in the Reference Schedule or as those fees, charges and costs may be varied under this Agreement from time to time;

Service Level means the level of service selected by the Customer as specified in the Reference Schedule;

Service Specifications means the specifications concerning the Services referred to in the Reference Schedule or as provided to the Customer by Uecomm from time to time and as amended and updated and provided by Uecomm to the Customer from time to time;

Services mean the services described in the Reference Schedule to be provided in accordance with the Service Specifications and includes the provision by Uecomm of any Uecomm Equipment in accordance with this Agreement;

Total Contract Sum means the amount which equals the sum of (inclusive of GST):

- (a) the Total Monthly Fees for the Minimum Period;
- (b) the Installation Charges; and
- (c) Other Costs to the extent that they relate to the Minimum Period,

as specified in the Reference Schedule;

Total Monthly Fees for the Minimum Period means the amount which equals the Monthly Fee multiplied by the number of months in the Minimum Period, as specified in the Reference Schedule;

Uecomm means Uecomm Operations Pty Ltd (ABN 99 093 504 100);

Uecomm Contract Representative means the person appointed by Uecomm in accordance with clause 12.1 and named as the Uecomm contract representative in the Reference Schedule (or as Uecomm may notify the Customer from time to time);

Uecomm Equipment means any equipment including fibre optic cable belonging to or owned by Uecomm or supplied by Uecomm to the Customer;

Uecomm NOC means the Uecomm National Operations Centre;

Uecomm Representatives means each of the Uecomm Contract Representative and the Uecomm NOC; and

Year means a 12 month cycle that commences on the Commencement Date and re-commences on every 12 month anniversary of the Commencement Date during the term of this Agreement.

2 Term

This Agreement commences on the earlier of:

- (a) the date on which Uecomm executes the Reference Schedule to this Agreement; or
- (b) the date on which Uecomm commences providing the Services to the Customer,

(**Commencement Date**) and continues until terminated in accordance with clause 26.

3 Security

If required by Uecomm at the Commencement Date or at any other time during the term of this Agreement, the Customer must provide the security specified in the Reference Schedule or as otherwise satisfactory to Uecomm in connection with the Customer's performance of its obligations under this Agreement until Uecomm is satisfied that the Customer will not be liable to pay Uecomm any further amount arising out of or in connection with this Agreement or that such security is no longer required.

4 Services

4.1 Provision of Services by Uecomm

Uecomm must provide the Services in accordance with this Agreement from the Service Acceptance Date.

4.2 Payment for Services by Customer

The Customer must pay Uecomm for the Services in accordance with this Agreement.

4.3 Compliance with Acceptable Use Policy

The Customer must at all times comply with the Acceptable Use Policy.

4.4 Customer's responsibilities

Unless otherwise specified in the Reference Schedule, all Services are supplied on the basis that the Customer will be responsible for:

- (a) overall operational, design, installation, configuration and support of the Customer Equipment; and
- (b) ensuring that it has valid licence arrangements for off the shelf software incorporated into, or necessary for the provision of, the Services.

5 Service delivery

5.1 Customer acknowledgments

The Customer acknowledges that Uecomm may provide the Services using:

- (a) Uecomm's own facilities;
- (b) the services and facilities of any Other Provider; or
- (c) any combination of the services and facilities referred to in clauses 5.1(a) and (b).

5.2 Service provision

- (a) Uecomm must notify the Customer that Uecomm has finished provisioning and commenced delivery of the Services.
- (b) Within 2 Business Days of the earlier of:
 - (1) either receiving the notice referred to in clause 5.2(a);
 - (2) Uecomm commencing delivery of the Services; or
 - (3) the Customer using the Services,

the Customer may notify Uecomm whether the Customer has not received the Services in accordance with this Agreement, in which case the Customer must provide supporting information to Uecomm giving the reasons why the Services are not accepted.

- (c) If the Customer does not accept the Services under clause 5.2(b), then Uecomm will use its reasonable endeavours to rectify any fault caused by Uecomm for the non-acceptance of the Services by the Customer.
- (d) Uecomm will give notice to the Customer when it has rectified the fault referred to in clause 5.2(c), or that it believes there is no reasonable basis for the non-acceptance by the Customer, and:
 - (1) that notice will be treated as a notice under clause 5.2(a), and clauses 5.2(b) and 5.2(e) will apply; and
 - (2) if the Customer again notifies Uecomm that it does not accept the Services under clause 5.2(b), then the parties must refer the matter for dispute resolution under clause 25.
- (e) If the Customer does not give notice to Uecomm under clause 5.2(b), Uecomm is deemed to have delivered the Services and the Customer is deemed to have accepted them in accordance with this Agreement.

5.3 Use of Uecomm IP addresses

If the Services include use of one or more Uecomm IP addresses, then Uecomm grants the Customer a limited, revocable, non-transferable licence to use certain IP addresses allocated to Uecomm, as determined by Uecomm from time to time, during the term of this Agreement, for the sole purpose of receiving the Services.

5.4 Compliance with terms and conditions of Other Providers

If Uecomm provides the Services in accordance with clauses 5.1(b) or (c), the Customer must:

- (a) not do anything which would cause Uecomm to breach; and
- (b) do all things necessary to enable Uecomm to comply with, any applicable terms and conditions imposed on Uecomm by any Other Provider as notified to the Customer.

5.5 Service suspension

Uecomm may immediately suspend the provision of the Services without liability to the Customer, if:

- (a) subject to clause 5.5(i), the Customer breaches this Agreement and the Customer does not remedy such breach within 5 Business Days' notice by Uecomm to remedy that breach;
- (b) Uecomm is required to perform any Scheduled Maintenance in connection with Uecomm's facilities, network or systems;
- (c) there is a Planned Outage Period;
- (d) Uecomm is required by any Governmental Agency or emergency service organisation to suspend the Services;
- (e) a Service Access Line has been disconnected by any Other Provider;
- (f) any act or omission by the Customer or a third party to whom the Customer on-provides the Services is, in Uecomm's reasonable opinion, likely to:
 - (1) diminish the integrity, quality or functionality of:
 - (A) Uecomm's facilities, networks or systems;
 - (B) any Uecomm Equipment; or
 - (C) the Services; or
 - (2) cause Uecomm to suffer or incur financial harm;
- (g) there is an emergency of any kind which may require work to be carried out on Uecomm's or an Other Provider's facilities, networks or systems in which case Uecomm will use its best endeavours to keep the Customer informed of the status and duration of the emergency, its impact on the Services and when the emergency may or will cease;
- (h) a Force Majeure Event occurs and affects Uecomm's ability to provide the Services, for the period that the Force Majeure Event continues; or
- (i) the Customer breaches clause 4.3.

5.6 Support and maintenance services

- (a) If Uecomm supplies any software or system support as part of the Services, the Customer must install the latest version of relevant software as advised or provided by Uecomm from time to time.
- (b) Where Uecomm supplies standard product maintenance services from an Other Provider as part of the Services, the relevant Other Provider maintenance terms and conditions apply to the provision of those maintenance services.

6 Agreed Coverage Periods

6.1 Agreed Coverage Period

Uecomm will remedy Faults within the Agreed Coverage Periods in accordance with the Fault Restoration Target when:

- (a) the Customer reports the Fault to the Uecomm NOC;

- (b) the Uecomm NOC receives a Fault Report from the Customer;
- (c) the Uecomm NOC has issued a Fault Ticket in accordance with clause 7.3; and
- (d) the Fault has been classified in accordance with clause 7.4.

6.2 Calculating Compliance with Fault Restoration Targets

In determining whether Uecomm has remedied a Fault in accordance with the Fault Restoration Target, the relevant period for that determination is the period commencing at the time when a Fault Ticket is created in accordance with clause 7.3(a) and ending at the time when Uecomm notifies the Customer that the Fault has been remedied in accordance with clause 7.6.

7 Faults and Fault Tickets

7.1 Reporting Faults

- (a) The Customer may report a Fault to the Uecomm NOC at any time.
- (b) Faults may only be reported in accordance with this clause 7.

7.2 Fault Report

- (a) Prior to reporting a Fault, the Customer must investigate and ascertain for itself the cause of the Fault so as to enable it to prepare a Fault Report.
- (b) The Customer must provide a Fault Report to the Uecomm NOC when the Customer reports a Fault.
- (c) If reasonably required by Uecomm, the Customer must provide any further information in relation to the Fault, including what the Customer has done to satisfy clause 7.2(a).

7.3 Fault Tickets

- (a) Upon being notified of a Fault under clause 7.1 and receiving a Fault Report under clause 7.2, the Uecomm NOC will immediately assign a reference number to the Fault and will issue that reference number to the Customer.
- (b) The Customer must use and quote that reference number in relation to any dealings with Uecomm in respect of that Fault under this Agreement.

7.4 Classifying Faults

- (a) Faults will be classified and prioritised as either Critical Faults, Major Faults or Minor Faults by Uecomm.
- (b) The parties acknowledge that the initial classification under clause 7.4(a) may change during the Remedy Period if the parties agree.
- (c) If the Customer does not reasonably agree on the classification of any Faults under this clause 7.4 then they may request Uecomm to reclassify the Fault.

7.5 Minor Faults

The parties acknowledge that Minor Faults will be assessed and remedied when Uecomm deems necessary and will not give rise to rebates under clause 18.

7.6 Closure of Fault Tickets

- (a) When Uecomm has remedied the Fault, it will notify the Customer that the Fault Ticket is closed.
- (b) If the Customer disputes that either the Fault has been remedied, or that it was remedied within the Agreed Coverage Period, then the Customer may refer its dispute to the Uecomm Contract Representative for resolution.

- (c) If the dispute is not resolved within 48 hours of the dispute being referred to the Uecomm Contract Representative, then either party may require that the dispute be resolved in accordance with the dispute resolution procedure in clause 25.

7.7 Payment of costs and expenses

If Uecomm determines that:

- (a) a Fault arises out of or in connection with any Customer Equipment or the Customer's facilities, networks or systems; or
- (b) there is or was no Fault (**No Fault**),

then Uecomm may require the Customer to pay Uecomm's reasonable costs and expenses (based on Uecomm's standard rates) in dealing with or remedying that Fault, or dealing with or attempting to remedy that No Fault, and such cost and expense shall be a debt due and payable by the Customer on demand to Uecomm.

8 Information updates and reports

8.1 Information updates

During the Remedy Period, where it is reasonably possible to do so, Uecomm will provide updates in respect of the progress of any Fault resolution to the Customer where such information is reasonably available to Uecomm.

8.2 Uecomm NOC reports

If reasonably requested, Uecomm will provide the Customer with a summary report of Uecomm's dealing or remedy of a Fault as soon as reasonably possible from the date of the Customer's request.

9 Maintenance

9.1 Planned Outage Periods

- (a) Uecomm will give reasonable notice, and will use its best endeavours to give the Customer at least 14 days notice, of any Planned Outage Periods and the length of any Planned Outage Periods.
- (b) If the Customer disputes any such notice, the Customer may refer its dispute to the Uecomm Contract Representative for resolution.
- (c) If the dispute is not resolved within 48 hours of the dispute being referred to the Uecomm Contract Representative, then either party may require that the dispute be resolved in accordance with the dispute resolution procedure contained in clause 25.

9.2 Deemed Faults

If the length of any Planned Outage Period exceeds the length of the outage period notified by Uecomm under clause 9.1, then in respect of that excess period only:

- (a) it will be deemed to be a Fault which the Customer has reported to the Uecomm NOC;
- (b) a Fault Report will be deemed to have been received by the Uecomm NOC;
- (c) it will be deemed to be a Critical Fault; and
- (d) the Uecomm NOC will promptly issue a Fault Ticket to the Customer.

10 Uecomm Equipment and Customer Equipment

10.1 Property in Uecomm Equipment

If Uecomm provides any Uecomm Equipment to the Customer in connection with the Services (other than where Uecomm sells it to the Customer), then the Customer:

- (a) must not do anything with the Uecomm Equipment which may be contrary to Uecomm's rights of ownership in respect of it;
- (b) must not part with possession of, nor create any security interest of any kind over, any Uecomm Equipment without Uecomm's prior written consent;
- (c) must comply with all Uecomm's reasonable directions in respect of any Uecomm Equipment;
- (d) must not allow any Uecomm Equipment to be altered, repaired, serviced or moved other than by personnel approved by Uecomm;
- (e) is responsible for any risk of loss or damage associated with Uecomm Equipment located or installed on any Customer Sites; and
- (f) acknowledges that despite any law to the contrary or an affixation of the Uecomm Equipment to the Customer Sites, the Uecomm Equipment is and remains the property of Uecomm.

10.2 Change, replacement or modification of Uecomm Equipment

Uecomm may at any time change, replace, modify, maintain or retrieve any Uecomm Equipment located or installed on the Customer Sites and where necessary will comply with clause 9.1.

10.3 Interference caused by Customer Equipment

If any Customer Equipment causes any interference of any kind with any Uecomm Equipment, Uecomm's facilities, network or systems then, if Uecomm requires, the Customer must stop using or operating or disconnect the Customer Equipment until the interference or the cause of the interference (as applicable) is remedied.

11 Customer Sites

11.1 Access to Customer Sites

The Customer must not delay Uecomm and must provide or procure such access to the Customer Sites and reasonable assistance as Uecomm may require to enable Uecomm to:

- (a) provide the Services or an Individual Service;
- (b) locate and remedy any Fault; or
- (c) in respect of any Uecomm Equipment the subject of clause 10, deliver, install, change, repair, replace, modify, maintain or retrieve the Uecomm Equipment (as applicable).

11.2 Environment at Customer Sites

The Customer must:

- (a) provide a suitable environment (to Uecomm's reasonable satisfaction) at the Customer Sites for the proper installation and operation of any Uecomm Equipment; and
- (b) ensure that a suitable power supply (to Uecomm's reasonable satisfaction) is available at all times to enable the proper operation of any Uecomm Equipment located or installed on the Customer Sites.

11.3 Failure to comply with clauses 11.1 or 11.2

If the Customer delays the installation of any Individual Service for a period exceeding 30 days or does not provide such access and reasonable assistance as required pursuant to clause 11.1 or 11.2 Uecomm may:

- (a) terminate the entire Agreement or the Individual Services affected in accordance with clause 26.2;
- (b) terminate the Individual Services affected without liability to the Customer and continue the Agreement with respect to the remaining Services, in which case the Customer must pay to Uecomm any costs and expenses incurred or suffered by Uecomm in connection with installing or preparing to install or provide the Services (including any equipment costs and committed services costs incurred with Other Providers); or
- (c) not provide the Services or the Individual Services affected to the extent of the delay or that access, a suitable environment or suitable power supply is not provided, in which case:
 - (1) Uecomm's failure to provide the Services is not considered a breach of this Agreement; and
 - (2) the Customer is not entitled to any adjustment of the Service Fees and Charges.

12 Party representatives

12.1 Uecomm Representatives

- (a) Promptly after the Commencement Date, Uecomm must appoint the Uecomm Contract Representative.
- (b) The Uecomm Contract Representative is authorised to act on Uecomm's behalf for the purposes specified in clause 12.1(c) in connection with this Agreement.
- (c) The Customer must direct all communications in respect of this Agreement:
 - (1) in the case of any communications regarding technical matters, to the Uecomm NOC; and
 - (2) in the case of all other matters, to the Uecomm Contract Representative.

12.2 Customer Contract Representative

- (a) Promptly after the Commencement Date, the Customer must appoint the Customer Contract Representative.
- (b) The Customer Contract Representative is authorised to act on the Customer's behalf for all purposes in connection with this Agreement.
- (c) Any direction, notice or instruction given by the Customer Contract Representative to Uecomm is a notice, direction or instruction given by the Customer.
- (d) An act or omission of the Customer Contract Representative is an act or omission of the Customer.
- (e) The Customer must promptly notify Uecomm of any changes to the Customer Contract Representative.

13 Representations and warranties

13.1 Uecomm representations

Uecomm represents and warrants to the Customer that:

- (a) it has full power and authority to execute this Agreement and perform its obligations under this Agreement;
- (b) this Agreement has been duly executed by it; and
- (c) the obligations undertaken by it under this Agreement are enforceable against it in accordance with their terms.

13.2 Customer representations

The Customer represents and warrants to Uecomm that:

- (a) it has full power and authority to execute this Agreement and perform its obligations under this Agreement;
- (b) it has made its own enquiries and has informed itself of the Services and the obligations under this Agreement;
- (c) this Agreement has been duly executed by it;
- (d) subject to clause 13.1, it has not entered into this Agreement on reliance on any representation, warranty, promise or statement made by Uecomm or any person on Uecomm's behalf;
- (e) the obligations undertaken by it under this Agreement are enforceable against it in accordance with their terms; and
- (f) it will only use the Services:
 - (1) in accordance with any applicable Law; and
 - (2) in a manner which, in Uecomm's reasonable opinion, is not likely to:
 - (A) diminish the integrity, quality or functionality of:
 - (i) Uecomm's facilities, network or systems;
 - (ii) any Uecomm Equipment; or
 - (iii) the Services; or
 - (B) cause Uecomm to suffer or incur financial harm.

13.3 Continuity

The representations and warranties given in clauses 13.1 and 13.2 are continuing representations and warranties.

14 Uecomm liability

14.1 Limited liability

- (a) Notwithstanding any other provision of this Agreement, but subject to clause 14.1(b), Uecomm's liability to the Customer for each claim (including claims in tort (including negligence), under statute or otherwise) arising out of or in respect of this Agreement is limited to and shall not exceed:
 - (1) the aggregate of the previous 3 Monthly Fees that had become payable by the Customer to Uecomm immediately prior to the date on which the event giving rise to the relevant claim occurred; or
 - (2) where the event giving rise to the claim occurs prior to 3 Monthly Fees becoming payable by the Customer to Uecomm, the aggregate of the Monthly Fees that had become payable by the Customer to Uecomm since the Commencement Date, adjusted pro rata for any part months.
- (b) Uecomm's total liability arising out of or in respect of this Agreement (including claims in tort (including negligence), under statute or otherwise) in respect of claims that occur in any Year shall not exceed 50% of the total Monthly Fees for that Year (**Annual Limit**).
- (c) The Customer agrees that, in any Year, if the Customer suffers or incurs any damage, loss, liability, cost, charge, expense, outgoing or payment (whether direct, indirect or consequential) in excess of the Annual Limit, the Customer:
 - (1) is not entitled to claim that excess in that Year or at any other time; and

(2) hereby releases Uecomm from any liability in respect of that excess.

(d) To the extent permitted by law, Uecomm excludes all implied conditions and warranties and limits its liability for non-excludable conditions and warranties to, at Uecomm's sole discretion, repairing or replacing any relevant goods, resupplying the relevant or equivalent Services or, in either case, paying the Customer the cost of doing so.

14.2 Acts or omissions by the Customer or third parties

Uecomm is not liable to the Customer for any failure to provide the Services in accordance with this Agreement if that failure results directly or indirectly from:

- (a) any act or omission by the Customer, its officers, employees or agents, End Users or any third party; or
- (b) a Force Majeure Event.

14.3 Indirect or consequential losses

Neither party is liable to the other for any Indirect Loss arising out of or in connection with this Agreement except to the extent expressly stated otherwise in this Agreement.

15 Customer indemnity

The Customer indemnifies Uecomm for any damage, loss, liability, cost, charge, expense, outgoing or payment suffered or incurred by Uecomm (including legal costs incurred on a full indemnity basis) arising out of or in connection with any act or omission of:

- (a) the Customer, its officers, employees and agents;
- (b) any third party under the control of the Customer; or
- (c) any End Users who utilise the Services,

where any such act or omission arises out of or is in connection with this Agreement or the provision of the Services, unless it is directly attributable to any negligent act or omission of Uecomm.

16 Billing, payment, late payment

16.1 Service Fees and Charges

From the Commencement Date, the Customer must pay Uecomm the Service Fees and Charges in accordance with this clause 16.

16.2 Invoicing for Service Fees and Charges

Depending on the type of Service being provided, Uecomm may invoice the Customer in advance and/or in arrears for the Service Fees and Charges.

16.3 Staggered Invoices

If the Services are provisioned in a staggered fashion, Uecomm may invoice the Customer for the Service Fees and Charges for Individual Services on a pro rata basis prior to the Service Acceptance Date for all the Services.

16.4 Payment of invoices by Customer

The Customer must pay all Uecomm invoices issued by Uecomm within 30 days of the date of the invoice.

16.5 Late payment

- (a) If the Customer fails to make payment of any sum due under this Agreement by the date that sum became due and payable, then the Customer must pay to Uecomm:
 - (1) the amount due; and
 - (2) interest on the amount due at a rate equal to 3% above the Commonwealth Bank Corporate Overdraft Reference Rate (or such other comparable rate chosen

by Uecomm) from the date that the amount due became due and payable to the date that the amount due, including any interest on that amount, is paid.

- (b) The Customer must pay any costs and expenses incurred or suffered by Uecomm in connection with Uecomm taking any action against the Customer to recover the payment of any amount which is overdue (including legal costs incurred on a full indemnity basis).

16.6 Payment of any disputed invoices

- (a) If the Customer disputes any Uecomm invoice, the Customer must:
 - (1) first pay that part of the invoice not in dispute in accordance with clause 16.4; and
 - (2) subject to clause 16.6(b), the Customer may subsequently refer any disputed amount to be resolved under clause 25.
- (b) If the Customer does not refer any disputed invoiced amount to be resolved under clause 25 within 30 days of receiving the relevant invoice:
 - (1) the Customer will be deemed to have accepted the invoiced amount;
 - (2) the Customer must pay the disputed amount to Uecomm with 5 days of the end of the period referred to in clause 16.6(b);
 - (3) Uecomm will not be liable (insofar as it is possible to exclude such liability) for any such disputed invoice amount by the Customer; and
 - (4) the Customer will be absolutely barred from disputing all or part of the invoiced amount.

17 Price Review

After the Minimum Period, Uecomm may vary the Service Fees and Charges by notice to the Customer at any time to reflect variations to Uecomm's standard fees and charges.

18 Service Fees and Charges rebates

18.1 Entitlement to rebates

- (a) The Customer is entitled to a Service Fees and Charges rebate:
 - (1) as set out in the Service Specifications for any Uecomm caused delays to the installation times agreed with the Customer in respect of the providing of the Services or an Individual Service (**Installation Delays**); and
 - (2) as set out in the Service Specifications, for any failure or failures by Uecomm to meet the Availability Target in respect of an Individual Service where:
 - (A) that failure or failures results from any Fault or Faults; and
 - (B) Uecomm has not remedied that Fault or Faults in accordance with clause 6 (**Availability Target Failure**).
- (b) Uecomm is not liable for, and the Customer is not entitled to, any Service Fee and Charges rebate under clause 18 for any Installation Delay or Availability Target Failure where:
 - (1) that delay or failure results directly or indirectly from:
 - (A) a Force Majeure Event;
 - (B) a Planned Outage Period;

- (C) any Customer Equipment;
 - (D) a fault (of any kind) in the Customer's, an Other Provider's or a third party's, facilities, networks or systems;
 - (E) any act or omission by the Customer or its End User;
 - (F) any emergency referred to in clause 5.5(g); or
- (2) the Customer is not up to date with any payments due to Uecomm.

18.2 Rebate for Installation Delays

For any Installation Delays, the Customer must claim the relevant rebate prior to or at the time when its first Monthly Fee is due and payable under clause 16.

18.3 Rebate for Availability Target Failures

For any Availability Target Failure, the Customer must claim the relevant rebate from the Monthly Fee within 3 months of the Availability Target Failure occurring.

18.4 Rebate Remedy

Any rebate provided to the Customer under this clause shall be the Customer's sole remedy for Uecomm's acts or omissions (including negligence) leading up to the rebate entitlement.

19 Taxes and GST

19.1 Taxes generally

The Customer acknowledges that Uecomm may increase the charges payable by the Customer under clause 16.1 to reflect any increase in Uecomm's costs of performing Uecomm's obligations under this Agreement as a result of changes in the Laws in relation to the imposition of or collection of tax, revenue, levy, duty, impost (including GST but not including income tax) on or after the Commencement Date.

19.2 GST

- (a) If GST is or will be imposed on a supply made under or in connection with this Agreement, the supplier may, to the extent that the consideration otherwise provided for the supply under this Agreement is not stated to include an amount in respect of GST on the supply:
 - (1) increase the consideration otherwise provided for the supply under this Agreement by the amount of that GST; or
 - (2) otherwise recover from the recipient the amount of that GST.
- (b) The recovery of any amount in respect of GST by the supplier under this Agreement is subject to the issuing of the relevant tax invoice or adjustment note to the recipient.
- (c) In this clause, "recipient", "supplier", "supply" and "tax invoice" have the meaning given to those terms in the GST Act.

20 Regulatory Events and compliance with laws

20.1 Regulatory Events

- (a) If at any time a Regulatory Event occurs or is likely to occur which adversely affects or may adversely affect the rights of a party or the ability of a party to perform its obligations under this Agreement, that party may request that the parties enter good faith negotiations, as soon as practicable, to amend or vary this Agreement to the extent necessary or appropriate to address that party's reasonable concerns regarding such Regulatory Event.

- (b) For the avoidance of doubt, Uecomm may seek to renegotiate the Service Fees and Charges to address the changed cost to Uecomm of providing the Services pursuant to this Agreement arising from the Regulatory Event.
- (c) If the parties are unable to reach agreement under clause 20.1(a) in what either party considers to be a reasonable period of time, the matter will be dealt with under clause 25.

20.2 Compliance with the law

Each party must comply with any applicable Law to the extent that it is relevant to that party's performance of this Agreement, including those relating to any Customer Equipment or Uecomm Equipment.

21 Intellectual Property

Each party:

- (a) acknowledges that it owns or is licensed to use its Intellectual Property subsisting in or required to be used in performing this Agreement; and
- (b) grants a royalty free, non-exclusive, non transferable licence to the other party in relation to its Intellectual Property which the other party may require, or which may be necessary, to enable the other party to perform that party's obligations under this Agreement for the term of this Agreement.

22 Order and priority

If there is any inconsistency between the Reference Schedule and these terms and conditions, the following order of priority prevails to the extent of the inconsistency:

- (a) these terms and conditions;
- (b) the Reference Schedule; then
- (c) the Service Specifications.

23 Confidentiality

23.1 Non disclosure

Subject to clause 23.2, a party must not disclose the other party's Confidential Information without that other party's prior written consent.

23.2 Permitted disclosure

A party may disclose Confidential Information of the other party which:

- (a) at the time of disclosure is in the public domain, but not as result of a breach of clause 23.1;
- (b) is required to be disclosed for the purpose of performing its obligations under this Agreement; or
- (c) is required by Law to be disclosed.

23.3 Deed of confidentiality

To the extent that either party requires further disclosure of Confidential Information to be made to its subcontractors or suppliers to enable it to perform its obligations under this Agreement, that party must procure confidentiality undertakings (on terms satisfactory to the other party) from its subcontractors or suppliers in relation to that disclosure.

23.4 Customer's assistance

- (a) Before disclosing any Confidential Information in accordance with clause 23.2, the disclosing party must provide to the other party:

- (1) sufficient notice to enable it to seek a protective order or other remedy; and
 - (2) all assistance and co-operation which it considers necessary to prevent that disclosure of the Confidential Information.
- (b) Nothing in this clause 23.4 requires the disclosing party to breach any applicable Laws.

23.5 Return of Confidential Information

A party must return any Confidential Information to the other party on demand.

23.6 Customer Consent

The Customer consents to Uecomm publicly disclosing the:

- (a) identity of the Customer; and
- (b) type of Services provided to the Customer.

23.7 Protection of communications

- (a) The Customer:
 - (1) acknowledges that Uecomm as a telecommunications carrier under the Telecommunications Act 1997 (Cth) has specific obligations under Parts 13, 14 and 15 of that Act with respect to protection of communications, matters of Australian national interest and co-operating with law enforcement and national security agencies; and
 - (2) agrees that those obligations may, on occasions, override Uecomm's contractual obligations to the Customer.
- (b) When requested by Uecomm, the Customer must provide reasonable assistance to and co-operate with Uecomm in the discharge of Uecomm's obligations under Parts 13, 14 and 15 of the Telecommunications Act 1997.

24 Assignment and subcontracting

- (a) Uecomm may assign its interests in, or subcontract its obligations under, this Agreement.
- (b) The Customer must not assign its interests in this Agreement without Uecomm's prior written consent.
- (c) Any approval by Uecomm under clause 24(b) does not relieve the Customer from its obligations under this Agreement and the Customer is liable for the acts and omissions of any of its assignees.

25 Disputes or differences

25.1 Notice of dispute

If a dispute or difference arises between the parties under or in connection with this Agreement, either party may deliver to the other party a notice of dispute, which notice shall identify and provide reasonable details of the dispute or difference (**Notice of Dispute**).

25.2 Negotiation

Within 5 Business Days of the delivery of the Notice of Dispute, the Uecomm Contract Representative and the Customer Contract Representative must meet or hold discussions and use their reasonable endeavours, acting in good faith, to resolve the dispute or difference, or else to agree a process for the resolution of the dispute or difference, which may include mediation or expert determination (**Dispute Meeting**).

25.3 Senior notice of dispute

If the dispute or difference is not resolved within 10 Business Days of the date of the Dispute Meeting, either party must refer the dispute or difference to the Senior Representatives of the parties (**Senior Notice of Dispute**).

25.4 Senior negotiation

Within 5 Business Days of the date of the Senior Notice of Dispute, the Senior Representatives of the parties must meet or hold discussions and use reasonable endeavours acting in good faith to resolve the dispute or difference (**Senior Dispute Meeting**).

25.5 Final resolution

If the dispute or difference is not resolved, or a process for the resolution of the dispute or difference has not been agreed, within 5 Business Days of the date of the Senior Dispute Meeting, either party may refer the dispute to mediation by the Australian Commercial Disputes Centre for resolution in accordance with its guidelines for commercial mediation. Those guidelines are deemed to be incorporated into this Agreement.

25.6 Continuity

Subject to clause 5.5, notwithstanding any dispute or difference, the parties must continue to perform their obligations under this Agreement.

25.7 Injunctive or urgent relief

Nothing in this clause 25 prejudices Uecomm's right to institute proceedings to enforce any payment due under this Agreement or either party's right to seek injunctive or urgent declaratory relief in respect of a dispute or difference under this clause 25 or any other matter arising under this Agreement.

26 Termination

26.1 Termination for convenience

- (a) Subject to clause 26.1(b), either party may terminate this Agreement or any Individual Service by giving no less than 30 days notice to the other party.
- (b) Uecomm may not terminate this Agreement or any Individual Service under clause 26.1(a) prior to the end of the Minimum Period.
- (c) If the Customer issues a notice of termination under clause 26.1(a) with a date of termination to occur:
 - (1) after the Commencement Date but prior to the end of the Minimum Period, the Customer must pay to Uecomm:
 - (A) the PV of the outstanding proportion of the Total Contract Sum which the Customer would have been required to pay had the Customer not terminated this Agreement or the Individual Service; and
 - (B) any amounts owing by the Customer to Uecomm under this Agreement or otherwise as at the date of termination; or
 - (2) after the Minimum Period, the Customer must pay to Uecomm the full Monthly Fee plus the Committed Download Charge and Excess Charges (if any) for the month in which the date of termination occurs and any amounts owing by the Customer to Uecomm under this Agreement or otherwise as at the date of termination.
- (d) If the Customer terminates an Individual Service under clause 26.1(a), the outstanding proportion of the Total Contract Sum which the Customer would have been required to pay will be based on Uecomm's standard fees and charges applicable to

the Individual Service at the Service Acceptance Date for that Individual Service.

26.2 Immediate termination by Uecomm

- (a) At any time, Uecomm may immediately terminate this Agreement or an Individual Service by notice without any liability to the Customer, if:
- (1) the Customer breaches this Agreement and in Uecomm's opinion, the breach:
 - (A) cannot be remedied; or
 - (B) can be remedied, but is not remedied by the Customer within 5 Business Days (or any other reasonable period specified by Uecomm to the Customer) after the date Uecomm notifies the Customer requiring it to be remedied;
 - (2) a Customer Insolvency Event occurs;
 - (3) where the Customer is a partnership, the partnership is dissolved or an application is made for its dissolution; or
 - (4) Uecomm provides or intends to provide the Services to the Customer in accordance with either clause 5.1(b) or 5.1(c) and:
 - (A) the Other Provider varies the terms and conditions, including terms relating to price, upon which it provides its services or facilities to Uecomm, or is incapable of providing its services or facilities to Uecomm (**Other Provider Variation**);
 - (B) that Other Provider Variation or any act or omission of the Other Provider either materially affects Uecomm's ability to provide, or the cost of Uecomm providing, the Services to the Customer; and
 - (C) the parties are unable to agree a corresponding variation to this Agreement so that the Other Provider Variation no longer has the effect referred to in clause 26.2(a)(4)(B).
- (b) If Uecomm terminates this Agreement in accordance with clause 26.2(a)(1), (2) or (3) and the date of termination occurs:
- (1) after the Commencement Date but prior to the end of the Minimum Period, the Customer must pay to Uecomm:
 - (A) the PV of the outstanding proportion of the Total Contract Sum which the Customer would have been required to pay had Uecomm not terminated this Agreement or the Individual Service; and
 - (B) any amounts owing by the Customer to Uecomm under this Agreement or otherwise as at the date of termination; or
 - (2) after the Minimum Period, the Customer must pay to Uecomm the full Monthly Fee plus the Committed Download Charges and Excess Charges (if any) for the month in which the date of termination occurs and any amounts owing by the Customer to Uecomm under this Agreement or otherwise as at the date of termination.
- (c) If Uecomm terminates an Individual Service under clause 26.2(a), the outstanding proportion of the Total Contract Sum which the Customer would have been required to pay will be based on Uecomm's standard fees and charges applicable to

the Individual Service at the Service Acceptance Date for that Individual Service.

26.3 Termination for Force Majeure

If a Force Majeure Event continues to prevent the provision of the Services for a period of more than 3 months, either party may terminate this Agreement by giving 10 Business Days notice to the other.

26.4 Termination for suspension

If Uecomm suspends the Services in accordance with clause 5.5 for more than 1 month:

- (a) Uecomm may terminate this Agreement immediately by notice to the Customer; and
- (b) the Customer may (other than in the case of clause 5.5(a), 5.5(f) or 5.5(i)) terminate this Agreement immediately by notice to Uecomm.

26.5 After termination

- (a) If this Agreement is terminated or expires:
 - (1) the Customer must:
 - (A) at its own cost, immediately return to Uecomm all Confidential Information and equipment, reports or any other information (including any copies made) reasonably required by Uecomm; and
 - (B) provide such access to the Customer Sites as may be required by Uecomm to enable Uecomm to uninstall any Uecomm Equipment; and
 - (2) it does not affect any rights or remedies either party may have against the other arising out of or in connection with this Agreement prior to termination.
- (b) In the case of termination by:
 - (1) the Customer under clause 26.1(c)(1); or
 - (2) Uecomm under clauses 26.2, or 26.4 (where suspension of the Services was pursuant to clause 5.5(a), 5.5(f) or 5.5(i)),

the Customer must pay to Uecomm any costs and expenses incurred or suffered by Uecomm in connection with providing the Services and Uecomm uninstalling the Uecomm Equipment in accordance with clause 26.5(a)(1)(B).

- (c) The following clauses survive the expiry or termination of this agreement: clauses 3, 10.1(f), 14, 15, 16.5, 16.6, 21, 23 and 26.5.

27 General

27.1 Co-operation

- (a) Each party must cooperate with the other party to enable it to perform its obligations under this Agreement.
- (b) The Customer must coordinate and perform its obligations under this Agreement to ensure that it does not interfere with any work or services to be performed by Uecomm, Uecomm's operations or day to day business or any of Uecomm's other contractors or suppliers.

27.2 Set Off

Uecomm may set off from any money due to the Customer under this Agreement any money which is payable by the Customer to Uecomm.

27.3 Costs and expenses

- (a) Each party must pay its own legal costs and expenses in preparing, negotiating and completing this Agreement.
- (b) The Customer must pay any registration and stamping costs arising out of or in connection with this Agreement.

27.4 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval (**Notice**), to or by a party to this Agreement:

- (1) must be in legible writing and in English addressed to the recipient's address as follows:
 - (A) if to the Customer, the postal address, electronic mail address or facsimile number set out for the Customer in the Reference Schedule;
 - (B) if to Uecomm, the postal address, electronic mail address or facsimile number as set out for Uecomm in the Reference Schedule,

or as specified to the sender by the other party by notice from time to time;

- (2) must be signed by the Customer Contract Representative or the Uecomm Contract Representative or the Uecomm NOC (as applicable);
- (3) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee;
 - (B) if by post, 3 Business Days from and including the date of postage;
 - (C) if by facsimile transmission, whether or not legibly received, when received by the addressee or when the senders facsimile machine records a successful transmission; or
 - (D) if sent by electronic mail, an hour after the time the sender's Information System recorded that the electronic mail left the sender's Information System unless, within 8 hours after the transmission (being counted as hours from 9.00am to 5.00pm on a Business Day), the sender is informed (by automatic notice or otherwise) that the electronic mail has not been received by the recipient,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (recipient's time) it is regarded as received at 9.00am on the following Business Day; and

- (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) In this clause 27.4, a reference to an addressee includes a reference to an addressee's agents or employees.

27.5 Governing law and jurisdiction

- (a) This Agreement, and all matters arising out of or in relation to it (including without limitation, its enforceability), are governed by the laws of Victoria.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.

27.6 Prohibition and enforceability

If a provision in this Agreement is wholly or partly void, illegal or unenforceable, the provision or the part of it that is void, illegal or unenforceable must, to that extent, be treated as deleted from this Agreement. This will not affect the validity or enforceability of the remaining provisions.

27.7 Waivers

- (a) A party waives a right under this Agreement only if it does so in writing.
- (b) A party does not waive a right simply because in relation to exercising the right it fails, delays or only exercises part of that right.

27.8 Variation

A variation of any provision of this Agreement must be in writing and signed by the parties.

27.9 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this Agreement.

27.10 Entire agreement

This Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

27.11 Execution

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute 1 instrument.
- (c) A party may execute this Agreement by signing any counterpart.
- (d) The parties agree that counterparts may be exchanged by electronic mail.
- (e) Each party consents to the other party executing this Agreement by affixing their electronic signature.

27.12 To the extent not excluded by law

The rights, duties and remedies granted or imposed under this Agreement operate to the extent not excluded by law.