



Standard form of Agreement Comcity Technology Pty Ltd

ACN 094 017 937

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Core terms

1. Purpose¹

1.1. This document sets out the basic terms on which Comcity Technology Pty Ltd provides services² to customers. They apply to every telecommunications service (and ancillary goods and services) Comcity Technology Pty Ltd supplies, and are called 'core terms'.

1.2. The core terms are part of our "standard form of agreement" under section 479 of the *Telecommunications Act 1997*.

1.3. Extra terms or alternate terms may also apply in certain cases. These terms indicate when extra or alternate terms will apply.³

2. Parties

"We" or "Comcity" means Comcity Technology Pty Ltd, and "you" or "customer" means anyone that we supply a service to.

3. Information accessibility

You can contact us to obtain further information on the following numbers:

3.1. 1300 787 767 customer support;

3.2. 133 677 national relay service; or

3.3. if you can not speak English you can contact us by calling the Translating & Interpreting Service on 13 14 50; otherwise you can view our website at www.comcity.com.au or email us at salesteam@comcity.com.au

4. Important terms

4.1. Although all of the terms in our Standard Form of Agreement are important and should be read, some of the most important terms are:

4.1.1. clauses 6, 7, 8 and 11 which deal with services, categories of services and the additional terms that apply to services;

4.1.2. clause 9 which deals with how the applicable industry codes may apply to you and your rights;

4.1.3. clause 10 which deals with our pricing and how we can change pricing;

4.1.4. clause 12 which deals with an explanation as to how your customer contract is made up and what all of the relevant terms are;

¹ This document uses headings and footnotes to assist the reader. Headings and footnotes do not form part of the terms, and do not change the effect of the document.

² Note that "services" includes both goods and services.

³ Our customer contract is a modular document, consisting of these core terms plus other terms that relate to particular services.

- 4.1.5. clause 14 which deals with changes to customer contracts;
- 4.1.6. clause 15 which deals with how you can locate the official version (being the latest version) of our Standard Form of Agreement;
- 4.1.7. clause 21 which deals with how we charge and bill you;
- 4.1.8. clause 22 which deals with payment terms and some of the consequences of late payment;

- 4.1.9. clauses 26 and 27 which deal with contract terms and in particular minimum terms and fixed/repeating terms;
- 4.1.10. clause 31 which deals with the regulation of Spam and our rights to suspend or terminate a service;
- 4.1.11. clause 34 which deals with how we can suspend services to you;
- 4.1.12. clause 35 which deals with how we can terminate your customer contract;
- 4.1.13. clause 36 which deals with how our liability is limited;
- 4.1.14. clause 37 which details the indemnities you give us;
- 4.1.15. clauses 48 and 49 deal with how we can give you notices; and
- 4.1.16. clause 54 which details how we can obtain a credit check about you.

5. Application

- 5.1. Our standard form of agreement is in force from midnight at the start of 1 March 2009.
- 5.2. If there was an existing fixed term contract to supply services to you when our standard form of agreement came into force:
 - 5.2.1. the existing contract continues until the end of the fixed term; and
 - 5.2.2. after that, our standard form of agreement applies.
- 5.3. If we enter a contract with you after 1 March 2009 that states that our standard form of agreement does not apply, then it does not apply to that contract.
- 5.4. Otherwise, our standard form of agreement applies to all services that we supply while it is in force.

6. About services and categories

- 6.1. A "service" means any goods or service that we offer or supply.⁴ Each service may be briefly identified by its "service description".
- 6.2. A "category" is a group of similar services that we designate as a category.⁵
- 6.3. We may assign a service to more than one category.⁶

⁴ e.g. a 1.5Mbps DSL internet access service is a "service".

⁵ e.g. DSL internet access services or managed services are both "categories".

⁶ e.g. a managed DSL service may fall under our DSL category and our managed services category.

7. Category terms

- 7.1. We may publish extra terms that apply to a category of services ("category terms").
- 7.2. Category terms are set out in another document.
- 7.3. Category terms only apply to the services in the category they relate to.
- 7.4. Category terms are also part of our standard form of agreement.

8. Service terms

- 8.1. We may also publish extra terms that apply to a particular service ("service terms").
- 8.2. Service terms may be set out in service information, or on an application form, or otherwise notified to you.
- 8.3. Service terms only apply to the service they relate to.
- 8.4. Service terms may include, or incorporate by reference, a service level guarantee.

- 8.5. Service terms are not part of our standard form of agreement, but they are part of our customer contract with you.

9. Code Compliance

- 9.1. Where Codes apply to you, terms consistent with the Codes will be included in boxes – these form part of your customer contract and the contract is to be read subject to your rights under the Code (if they apply to you).
- 9.2. If the Codes apply to you:
 - 9.2.1. and the Codes are varied after the commencement of these Core Terms, your customer contract must be read subject to the variations to the Codes;
 - 9.2.2. the boxed Code terms under clause 9.1 are not intended to limit your rights under the Codes and do not form an exclusive list of your rights under the Codes.

10. Pricing

- 10.1. Your service application or order form with us will contain the price we charge you for services during the minimum term of your customer contract, subject to the terms of your customer contract – where your service application or order form does not contain a price, then the price you pay will be determined by reference to our price list. We may change the price list by notifying you. A reference to "price list" means the current price list at any particular time.
- 10.2. Changes take effect immediately. They have no effect on charges for services that have already been supplied.
- 10.3. In some circumstances, if we change our price list you may be entitled to cancel your customer contract early – this is explained in clause 16.
- 10.4. The price list is not part of our standard form of agreement, but it is part of our customer

contract with you.

10.5. If a customer contract states that charges for the contract will be fixed for a certain period, or until a certain date, changes made during that period, or before that date, do not take effect until the end of that period, or until that date.

10.6. If a customer contract states that charges will be reviewed at certain intervals, we will not change or restructure charges for that customer contract more frequently than once per that interval.

10.7. Despite clause 10.5 but subject to clause 16, we may pass on price increases:

10.7.1. which our third party suppliers may impose on us;

10.7.2. which are imposed on us by law such as an increase in GST;

10.7.3. which relate to premium services;

10.7.4. which relate to global roaming charges, and international call charges; during a fixed term or recurring term customer contract, but where we do, we will endeavour to provide you with notice at least 21 days prior to the date on which the variation is intended to take effect (this is not always possible for premium services, global roaming charges or international calls / SMS / MMS).

11. Special terms

11.1. We may also agree with you that special terms will apply to our customer agreement with you.

11.2. Special terms only apply if they are in writing and we agree to them. For instance, they may be set out on an order form.

11.3. If we agree in writing to charge you on some basis other than the price list, that agreement is taken to be a special term.

11.4. Special terms are not part of our standard form of agreement, but they are part of our customer contract with you.

12. Our customer contract

12.1. When we supply a service to you, the terms and conditions of supply consists of:

12.1.1. these core terms – Part 1; and

12.1.2. any applicable category terms – Part 2; and

12.1.3. any applicable service terms; and

12.1.4. the applicable items in the price list; and

12.1.5. any applicable special terms.

12.2. Together, those terms and conditions and items are called the "customer contract".

13. Conflicts

13.1. To the extent of any conflict or inconsistency between them, the parts of the customer contract have the following order of priority, from highest to lowest:

- 13.1.1. special terms;
- 13.1.2. price list;
- 13.1.3. service terms;
- 13.1.4. category terms;
- 13.1.5. core terms.

14. Changes to customer contracts

- 14.1. We may change the terms of your customer contract, subject to this clause.
- 14.2. We may change any part of our standard form of agreement by amending the Official Copy.⁷
- 14.3. We may change our price list – where we do, you can obtain new pricing by contacting us (unless we have already informed you).
- 14.4. We may change any other part of your customer contract, including our price list, by informing you of the change⁸, but in the case of fixed term contracts we cannot change the price you pay until after the fixed term has expired, except in the manner allowed for in clause 10.7.
- 14.5. If *the Telecommunications Act 1997* or any other law requires us to comply with any steps or requirements before we change our standard form of agreement in a particular way, such changes do not take effect until we have complied with those steps or requirements.
- 14.6. You can change your customer contract at the expiration of the minimum term:
 - 14.6.1. if we agree; and
 - 14.6.2. if you give us 30-days notice prior to the commencement of the next billing month;but we are not obliged to effect any change until after the expiry of your 30 day notice.
- 14.7. Otherwise:
 - 14.7.1. changes to our standard form of agreement take effect when we change the “Official Copy”.
 - 14.7.2. changes to any other part of a customer contract take effect 30-days after we inform you of the change; and
 - 14.7.3. despite anything to the contrary, all changes whether to these core terms or any additional terms, apply immediately to all new customer contracts entered into after the changes.

15. Standard form of Agreement - the ‘Official’ Copy

- 15.1. The “Official Copy” of our standard form of agreement (i.e. these core terms and category terms) is the copy published online at www.comcity.com.au/about/terms.

⁷ See clause 15 for information about the Official Copy.

⁸ See clause 48 for the ways in which we can give you information.

15.2. The Official Copy is taken to be the current and accurate version of those documents at any time.

16. The effect of changes to your customer contract

16.1. If the Codes apply to you, clauses 16.2, 16.3 and 16.4 apply to your customer contract, otherwise you may not terminate your customer contract unless permitted by clause 35.

16.2. If we change your customer contract, you may be entitled to cancel it early. But you only have that right strictly in accordance with this clause.

16.3. You may cancel your customer contract if:

- 16.3.1. we increase the charges that apply to it; and
- 16.3.2. the increase is not limited to passing on increases in costs that we incur to a third party⁹ or in government charges;¹⁰ and
- 16.3.3. the increase in charges would have increased your actual payments to us if it had applied from a date six months earlier;¹¹ and
- 16.3.4. you give us written notice of cancellation within 30 days after we inform you of the increase in charges.

16.4. If you cancel a customer contract under clause 16.3:

- 16.4.1. the cancellation takes effect 7 days after we receive your notice;
- 16.4.2. you must pay all charges that accrue before then; but
- 16.4.3. we will recalculate those charges to disregard the increase in charges, if you ask us to do so before you pay your final bill.

17. Rights and obligations that survive termination

17.1. When a customer contract or this agreement ends:

- 17.1.1. a right of action that arises from a breach that occurred before it ended survives;
- 17.1.2. charges for services delivered before it ended can be invoiced and recovered;
- 17.1.3. clauses 17, 22, 28, 37, 38, 43, 44 and 56 continue to operate; and
- 17.1.4. any other clause in the customer contract that indicates that the clause survives termination also continues to operate.

⁹ e.g. if we resupply a service acquired from a wholesaler, and the wholesaler increases its charges to us.

¹⁰ e.g. if the rate of GST is increased.

¹¹ e.g. if we apply a data upload charge to uploads above 12 GB, but that would not have affected you if it had applied during the previous six months.

18. Orders

18.1. We may receive an order in any form we choose e.g. by written application or over the telephone.

18.2. You must comply with any ordering procedures that we specify e.g. if we ask you to use a particular order form, you must do so.

18.3. We are not obliged to accept any order.

18.4. You must ensure that you provide us with all the information we request in relation to your order¹² and that the information you provide is correct.

19. Multiple services

If we supply multiple services, the special terms, prices, service terms and category terms that would apply to the different services if ordered separately apply to each of them individually within the mixture.

20. Additional terms

Except for things set out in express terms in a customer contract, and things that are implied by law and cannot be excluded, there are no other representations, promises, warranties, covenants or undertakings between the parties and customer contracts contain the entire understanding between us.

21. Charges and billing

21.1. We may charge you, and you must pay us, in accordance with our price list.

21.2. Subject to the Codes, we may require payment of our periodic or repeating charges in advance or arrears – but we will ordinarily require payment in arrears.

21.3. Set up charges are payable as soon as we agree to provide a service, or at any later date we agree to in writing.

21.4. Periodic or repeating charges are payable from the earlier of:

21.4.1. 90 days from the date of your request for services; or

21.4.2. the date when we inform you that we are ready to supply the service, whether or not you actually make use of the service.

21.5. All other charges, including excess use charges, are payable on invoice.

21.6. When a customer contract is terminated or otherwise ends:

21.6.1. we may immediately invoice any accrued charges (but later invoicing remains effective);

21.6.2. our invoices must be paid immediately; and

21.6.3. we have a lien over any customer equipment for unpaid charges.

¹² e.g. information requested in an order form.

21.7. At our discretion, we may require payment of an advance deposit (or a Direct Debit Authority, or a Credit Card Authority) against future charges or out-of-pocket expenses. If we do, it becomes a condition of your customer contract.

21.8. We may vary the amount of advance deposit we require under clause 21.7 at any time.

21.9. We may invoice you whenever charges have accrued, but we normally invoice by "billing months". A "billing month" is a month, starting on a day of the month that we nominate, which is usually either the 24th or the 1st of the calendar month.

21.10. If we hold your advance deposit, Direct Debit Authority, or Credit Card Authority, we may draw payment as soon as a charge has accrued.

TCP Code: Upon termination of a customer contract you must pay all fees and charges that are invoiced, within 7 days of the invoice unless we agree to a longer time.

22. Payments

22.1. You must pay our invoices within 14 days, unless we have agreed otherwise in writing, by means of a payment method that we approve, unless we agree in writing to alternate payment terms.

22.2. Apart from our other rights in case of non-payment, we may suspend any services and/or charge interest and or a one-off fee for late payment.

22.3. Interest will be calculated at the rate which is 2% higher than the rate set from time to time under the section 2 of the Penalty Interest Rates Act 1983 (Vic), calculated daily.

22.4. Without prejudice to any other rights we have, if your payment is dishonoured then we may pass on our bank's dishonour fees and a one-off administrative fee to you.

22.5. Where we agree to accept your payments by credit card, charge card, debit card, or direct debit, we may impose a surcharge on every payment to cover the costs imposed on us by the card issuer or our bank.

23. Disputes

23.1. We divide disputes into two categories – billing disputes and general disputes. When a formal dispute resolution process is required, we have a customised procedure for each of them.

23.2. Although you must follow our dispute resolution procedures, where you have a statutory right to refer a dispute to the Telecommunications Industry Ombudsman, you may still do so – but we recommend that we try to resolve the issue with us first.

TCP Code: You may make a complaint or claim to any competent body authorised to hear the complaint or claim, and any remedy that is available to you by operation of law is not excluded.

24. Billing disputes

24.1. You may dispute charges in an invoice by written notice that:

- 24.1.1. you give to us within 14 days of the date of the invoice;
- 24.1.2. clearly identifies you and the invoice you dispute;
- 24.1.3. detail the grounds of your dispute.

24.2. If a bona fide billing dispute is lodged in accordance with clause 24.1 you may withhold payment of the disputed amount only until we have conducted reasonable and appropriate investigations. At the end of our investigations we will notify you of the outcome.

24.3. Where we require payment after our investigations:

- 24.3.1. we will notify you of the outcome; and
- 24.3.2. you must pay us all outstanding amounts without deduction or set-off within 7 business days of our notice.

24.4. If we do not uphold your billing dispute and you are required to pay us, we may charge interest on any withheld money from the time it was due until the time we actually receive payment.

24.5. Where interest is payable under clause 24.4, it will be at a rate determined under clause 22.3.

25. General disputes

25.1. If a customer contract includes a service level guarantee that deals with a dispute between us, the dispute must be dealt with according to that service level guarantee.

25.2. If you dispute an invoice, the dispute must be dealt with under clause 24.

25.3. Otherwise, if you have a dispute with us then you must notify us by notice in writing which must:

- 25.3.1. be given to us within 14 days of the date of the invoice;
- 25.3.2. clearly identifies you and the invoice you dispute;
- 25.3.3. detail the grounds of your dispute.

25.4. We will acknowledge your notice within 14 days.

25.5. You must still pay all invoices by their due date.

26. Minimum terms

If a customer contract has a minimum term:

26.1. you cannot cancel it during the minimum term (except in specific cases where these terms say otherwise);

26.2. after that, either of us may cancel it by giving the other at least 30 days" written notice, ending at the end of a billing month; and otherwise

26.3. it continues until one of us cancels it.

27. Repeating terms

27.1. If a customer contract has a repeating term, it serially repeats for that term unless one of us gives the other written notice that they do not wish to repeat it.

27.2. If a notice under clause 27.1 is given less than a month before the end of the current term, it takes effect at the end of the next term, not the end of the current term.

27.3. All contracts that we enter into with you will be 12 month repeating term contracts, unless we agree otherwise in writing.

TCP Code: Where you enter into a Fixed Term (or repeating term) customer contract we will obtain your consent a reasonable time before the expiry of the fixed term (or repeating term) before any renewal or extension of your customer contract.

28. GST

28.1. Except where express provision is made to the contrary, the *consideration* payable by the customer under this agreement represents the *value* of any *taxable supply* for which payment is to be made.

28.2. Subject to us supplying you with a *valid tax invoice*, if we make a *taxable supply* for a consideration, which represents its *value*, then you will pay, at the same time and in the same manner as the value is otherwise payable, (or, if for any reason that does not happen, without delay after we request you to) the amount of any GST payable in respect of the *taxable supply*.

28.3. Subject to us supplying you with a *valid tax invoice*, if this agreement requires you to pay, reimburse or contribute to an amount paid or payable by us in respect of an acquisition of a *taxable supply* from a third party, the amount required to be paid, reimbursed or contributed by you will be the *value* of the acquisition by us less any *input tax credit* to which we are entitled plus, if our recovery from you is a *taxable supply*, any GST payable under clause 28.2.

29. Services support

29.1. We will support a service as specified in the customer contract.

29.2. We are not obliged to support a service in any way that is not specified. For instance, unless a customer contract states otherwise, we are not obliged to provide:

29.2.1. on-site support;

29.2.2. software or hardware support; or

29.2.3. support outside business hours.

29.3. If a customer contract includes a service level guarantee, we will provide support in accordance with it.

30. Acceptable Use Policies

30.1. You must comply with any AUP we publish from time to time.

31. Spam

31.1. You may not use a Service to:

- 31.1.1. send, allow to be sent, or assist in the sending of Spam;
- 31.1.2. use or distribute any software designed to harvest email addresses; or
- 31.1.3. otherwise breach the *Spam Act 2003* or the *Spam Regulations 2004* of the Commonwealth.

31.2. In addition to our other rights, we may suspend our provision of the Service to you in the following events:

- 31.2.1. if the Service provided to you is being used to host any device or service that allows email to be sent between third parties not under your authority and control; or
- 31.2.2. if you are in breach of clause 31.1; provided however that we will first make reasonable attempts to contact you and give you the opportunity to address the problem within a reasonable time period. What is reasonable in this context will depend on the severity of the problems being caused by the open service or breach referred to above.

31.3. You agree to use your best endeavours to secure any device or network within your control against being used in breach of clause 31.1 by third parties, including where appropriate:

- 31.3.1. the installation and maintenance of antivirus software;
- 31.3.2. the installation and maintenance of firewall software; and
- 31.3.3. the application of operating system and application software patches and updates.

31.4. Our right to suspend your account applies regardless of whether the open service is provided or the breach is committed intentionally, through misconfiguration, or by other means not authorised by you including but not limited to through a Trojan horse or virus.

31.5. We may scan any IP address ranges allocated to you for your use with the Service in order to detect the presence of open or otherwise misconfigured mail and proxy servers.

31.6. If the Service is suspended and the grounds upon which it was suspended are not corrected by you within 7 days, we may terminate the Service.

31.7. If the Service is terminated under clause 31.6, in addition to our other rights, we may levy a reasonable fee for any costs incurred as a result of the conduct that resulted in the suspension.

32. Additional obligations

You must:

- 32.1. supply, set-up, configure and maintain your own computer and communications equipment;
- 32.2. obtain any permit, licence or consent which you are required to have for the service to be provided;
- 32.3. be responsible for all data that you retrieve, store, transmit, or use in any other way;
- 32.4. back up all your data;
- 32.5. maintain the security of your password and user identification;
- 32.6. not:
 - 32.6.1. do anything which will damage or interfere with our network or facilities;
 - 32.6.2. do anything unlawful with a service;
 - 32.6.3. share a service with any third party without our written consent; or
 - 32.6.4. do anything with a service which may subject either you or us to a claim.

33. Use of service

When we provide a service under a customer contract with you:

- 33.1. you are responsible, and must pay, for all use of that service, by you or anyone else;
- 33.2. you are responsible, and must pay, for use by anyone else even if they used the service without your knowledge or authority;
- 33.3. you must regularly review your data usage to avoid incurring excess charges.

34. Suspension

34.1. We may suspend service under a customer contract without notice and without any liability for loss and without prejudice to our rights under the customer contract or at law if:

- 34.1.1. we suspect that your service has been accessed without authority, or the integrity of the your service has been compromised;
- 34.1.2. we suspect that your service has been used for unlawful purposes;
- 34.1.3. you have not paid money you owe us;
- 34.1.4. we consider it is necessary to protect our network;
- 34.1.5. you or a guarantor has an adverse credit report;
- 34.1.6. you are in breach of clause 21.7 or any other clause of your customer contract;
- 34.1.7. a governmental or law enforcement agency asks us to do so;
- 34.1.8. a wholesaler requires us to do so;
- 34.1.9. we consider that unless we do so, there is an unacceptable risk that there will

be a breach of a law or of an agreement between us and a wholesaler; or
34.1.10. you have changed your contact details without informing us.

34.2. Suspension does not affect your liability for charges under your customer contract, where that suspension is caused by a breach of your customer contract with us.

34.3. Unless the reason or circumstance that caused the suspension is resolved to our satisfaction within seven days, we may terminate your customer contract.

34.4. Where we suspend your services, we may:

34.4.1. restrict your access to any customer equipment within our possession;

34.4.2. hold any customer equipment as security for payment.

TCP Code: We may only suspend services under your customer contract for a maximum period of 60 days before we terminate.
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35. Termination

35.1. A customer contract can only be terminated:

35.1.1. on notice by either party, given after its minimum term (or fixed term) has expired. Such a notice takes effect at the end of 30 days after the notice was given; or

35.1.2. in accordance with clauses 35.2, or 27; or

35.1.3. in any other way that the customer contract allows.

35.2. We may terminate your customer contract/s immediately if you:

35.2.1. become insolvent;

35.2.2. are subject to an application for winding up;

35.2.3. are subject to any form of external administration or management;

35.2.4. fail to pay us money within 14 days of it being due;

35.2.5. breach a customer contract and fail to remedy the breach within seven days after receiving a notice requiring that it be remedied;

35.2.6. die (in the case where you are a sole trader or partner in a partnership);

35.2.7. have provided false or misleading information to us –

and in any other circumstances where the customer contract allows us to.

35.3. If we terminate a customer contract because you have breached it, you must pay us, on invoice, the charges that would have been payable under that customer contract if it had not been terminated until after any minimum term. This is our genuine estimate of the loss we will suffer or are likely to suffer.

35.4. If you have more than one customer contract, and you breach one of them, you are in breach of all of them. We can terminate any or all of your customer contracts, or exercise any other rights we have under a customer contract.

36. Warranties and liability

36.1. To the extent permitted by law we:

36.1.1. will provide services with reasonable care and skill but do not warrant that they will be provided without fault or disruption;

36.1.2. do not provide a service level guarantee or any guaranteed service level unless the customer contract states otherwise;

36.1.3. do not provide a warranty for hardware provided under a customer contract, but we will (where capable of assignment) assign the benefit of any manufacturer's warranty to you.

36.2. Except for any express warranties in a customer contract, to the extent permitted by law we disclaim all express and implied warranties in relation to a service or a customer contract.

36.3. In the case of any breach of a customer contract, or any negligence for which we are responsible, or breach of a condition or warranty that legislation prohibits us from excluding (which condition or warranty shall accordingly be included), our liability to you will be limited, at our option, to:

36.3.1. if the breach or negligence relates to goods –

36.3.1.1. replacement of any goods involved or the supply of equivalent goods;

36.3.1.2. the repair of such goods;

36.3.1.3. the payment of the cost of replacing the goods or of acquiring equivalent goods; or

36.3.1.4. the payment of the cost of having the goods repaired; and

36.3.2. if the breach relates to services –

36.3.2.1. supplying of the services again; and

36.3.2.2. the payment of the cost (for the period of the breach) of having the services supplied again.

36.4. In no circumstances are we liable for any indirect, secondary or consequential loss (including loss of profits, loss of bargain, loss of revenue, loss of goodwill, and business interruption) or loss of income that you or anyone else may suffer.

36.5. Where we offer a service levels, a breach of those service levels does not constitute a defect in service or give you grounds to terminate your customer contract – you expressly acknowledge that a breach of a service level is not a material breach by us.

37. Your indemnities

You indemnify us (on a full indemnity basis including all legal costs and expenses) against any claim, loss or damage we suffer to the extent that it arises from:

37.1. any act or omission;

37.2. any breach of any law;

- 37.3. any breach of a customer contract or an AUP;
- 37.4. any unauthorised use of a service – by you or anyone using a service we provide to you.

38. Data safety and set up

- 38.1. Unless a customer contract specifies that we will create a backup of any data and/or customised software set up of yours, you are solely responsible for ensuring that you have a complete, working back up of them.
- 38.2. We are entitled to assume that you have complied with clause 38.1.
- 38.3. You indemnify us against loss or damage that you or anyone else suffers as a result of damage to data or customised software set up on your computer system.
- 38.4. We are not obliged to provide you or any third party with historical data (e.g. material that used to be stored on our server).
- 38.5. You do not have any rights to any particular user identification, password, customer number, IP address, or any other thing which we may provide as part of a service. We can direct you to change these at anytime.

- 38.6. We are not required to store any email or data in accounts that are not active (such as a suspended or terminated account), and we are not responsible for any loss or damage because of this.

39. Matters you acknowledge

- 39.1. A customer contract may state that you acknowledge certain matters.
- 39.2. You must accept service from us subject to those matters, and none of them constitutes a defect in service.
- 39.3. You release us from all losses and claims in respect of, or out of, such matters or their consequences.

40. Monitoring

Unless a customer contract states otherwise, no service is provided on the basis that we will:

- 40.1. monitor your computer system or any part of it;
- 40.2. follow up or review any issue once it has been attended to;
- 40.3. update, upgrade or patch anything in future;
- 40.4. notify or remind you about anything in future.

41. Hardware supply

- 41.1. If we sell any equipment to you:
 - 41.1.1. we retain title to and ownership of that equipment until it is paid for in full;
 - 41.1.2. risk of loss or damage passes to you when it is delivered to your premises;
 - 41.1.3. you must fully insure it from the time of delivery and maintain the insurance until you obtain title, and failing that until the equipment is delivered up to us;
 - 41.1.4. you must not:

41.1.4.1. mortgage, charge or encumber the equipment without our written consent; and

41.1.4.2. loan, rent, licence, transfer or assign or part with possession of the equipment without our written consent.

42. Onsite attendances

If our staff attend any premises at the your request, you must ensure that the premises are safe and free of risks to life, health or welfare.

43. Records

We may make and keep any record that we reasonably require for the purpose of operating our business. All such records are our sole property.

44. Confidential information

44.1. Each party must treat the confidential information of the other party as confidential and commercially valuable and ensure that its representatives do the same.

44.2. You consent to us accessing your information and data for legitimate purposes to provide the service, improve the service or respond to complaints. The terms of clause 44.1 apply to this clause.

45. Compliance with law

You must observe all laws of Australia in relation to your use of our services.

46. Privacy

46.1. We may deal with your personal information in accordance with our privacy policy at <http://www.comcity.com.au/about/privacy.asp> as amended from time to time.

46.2. We may use your personal information for promotional and marketing purposes until you request to opt out of receiving such information.

46.3. You consent to us using email as a medium for promotional and marketing purposes.

47. Force majeure

We are not responsible for the consequences of force majeure.

48. Information provision

48.1. We can "inform" you of a matter under a customer contract:

48.1.1. by giving you a notice under clause 49; or

48.1.2. in any other reasonable way, such as orally.

49. Notices from us

49.1. Some laws (e.g. the *Telecommunications (Standard Form of Agreement) Determination*) regulate the way in which certain notices can be given. This clause is subject to any such laws.

49.2. We can give you a notice:

49.2.1. by emailing the notice (or a hyperlink to a web page that contains the notice) to:

49.2.1.1. the most recent email address you supplied to us; or

49.2.1.2. any comcity.com.au email address you have; or

49.2.1.3. to any email address whose mail server we host;

49.2.2. by fax to the most recent fax number you supplied to us;

49.2.3. by ordinary mail or hand delivery to the most recent postal address you supplied to us, or (if you are a company) to your registered office;

49.2.4. by hand delivery to you;

49.2.5. by sending the notice by SMS to the last mobile phone number you supplied to us;

49.2.6. by publishing the notice on our web site and sending you an alert about the notice (including its web site address) by SMS to the last mobile phone number you supplied to us;

49.2.7. in any other way permitted by law.

49.3. Any notice that we send you is deemed to have been received by you as follows:

49.3.1. if it (or a hyperlink to it) is emailed: one hour after it leaves our mail server;

49.3.2. if it (or a hyperlink to it) is emailed to a .comcity.com.au email address that you may have: one hour after we send it;

49.3.3. if it is faxed: when our fax machine issues a successful delivery record;

49.3.4. if it is mailed: at 10 a.m. on the second business day after posting;

49.3.5. if it is hand delivered to you or your postal address or (if you are a company) your registered office – at the time of delivery;

49.3.6. if it is delivered in another way – at the time when it would have been delivered in the normal course of that way of delivery.

49.4. A notice from us need not be signed.

49.5. You consent to us using email for any notice under the *Telecommunications (Standard Form of Agreement) Determination*.

50. Notices to us

50.1. You can give us a notice:

50.1.1. by fax to the current fax number indicated by our web site contact details page;

50.1.2. by ordinary mail or hand delivery to the current postal address indicated by our web site contact details page – and in no other way.

50.2. Any notice that you send us has no effect until we actually receive it. Even then, it has no effect:

- 50.2.1. if it is mailed: before noon on the second business day after posting;
- 50.2.2. if it is received outside business hours: before noon on the next business day;
- 50.2.3. if it is received after 3.00 p.m. on any day: before noon on the next business day.

50.3. A notice from you must be signed. We are never obliged to verify any mark that purports to be your signature. If you are a corporation, we are never obliged to verify the authority of anyone who purports to sign on your behalf.

50.4. Any notice that you send us must be in the English language.

51. Customer contact

51.1. On our request, you must nominate at least one customer contact.

51.2. You must keep us informed of current and accurate contact details of your customer contact/s.

51.3. A customer contact must be contactable at all reasonable times.

51.4. We may deal with a customer contact on the basis that they are your representative and have your full authority.

51.5. A person remains your customer contact until we are given notice that they are no longer your customer contact.

52. Non Waiver

No right under a customer contract can be waived except by notice in writing signed by the party waiving it. If a party overlooks a breach by the other party on one or more occasions, it is not taken to have agreed to any future breach.

53. Assignment

53.1. You may not transfer your rights or obligations under a customer contract to or share them with anyone without our prior written consent.

53.2. We may transfer our rights or obligations under this agreement to or share them with anyone on notice to you.

54. Credit check

54.1. You authorise us to do the things set out in this clause 54 and acknowledge that we may do so, whenever we see fit for as long as a customer contract continues or you owe us any money.

54.2. We may use a credit report (within the meaning of the Privacy Act 1988 (Commonwealth)) on you to assess your creditworthiness or for debt recovery purposes.

54.3. We may give to a credit reporting agency any information we have about you to enable us to obtain a credit report.

54.4. We may exchange information about you with other credit providers or a credit reporting agency.

54.5. You acknowledge that we are authorised to do the things set out in this clause 54 under the Privacy Act 1988 (Commonwealth) and that to assess or review your creditworthiness, we may:(a) request a third party to report about the your creditworthiness; and (b) disclose financial, credit and other information about you to any person.

54.6. You must cooperate with any enquiries that we make about your creditworthiness and provide any further information, consent or authority we reasonably require.

55. Restrictions on software

55.1. If we provide any third party software to you, then:

55.1.1. we do so subject to the licence terms and conditions that apply to that software; and

55.1.2. you are solely responsible for ensuring the suitability and compatibility of the software.

55.2. If you use software not distributed or approved by us, you acknowledge that it may result in interference to the service or it may result in loss, which we are not responsible for;

56. Severance

56.1. If any provision in this agreement is unlawful or inconsistent with any law, then to the extent of the unlawful nature or inconsistency, that provision may be severed from without affecting the remainder of the agreement.

57. Jurisdiction

57.1. This agreement and any customer contract is governed by the law of Victoria, Australia. Subject to clause 45, any legal proceedings relating to them can only be taken in courts with jurisdiction in Victoria.

TCP Code: The governing law of your State of Territory in which you ordinarily reside and the jurisdiction of the Courts in that jurisdiction are not excluded.

58. Expiry of time

Anything that can or must be done on or before a day that is not a business day can be done on the next business day.

59. Government charges.

You must pay stamp duty and other government charges in relation to a customer contract.

60. Interpretation

In this agreement or a customer contract, unless the context indicates otherwise:

60.1. Dictionary- the expression means:

AUP	our Acceptable Use Policies
base allowance	a service use allowance below the amount that attracts excess use charges e.g. if an internet access service allows 20 GB in downloads before excess use charges apply, 20 GB is the „base allowance“
billing dispute	a dispute or difference between us as to whether you are liable to pay an amount that we have invoiced to you
billing month	has the meaning given by clause 21.9
business day	any day from Monday to Friday inclusive, excluding any public holidays observed in Victoria
business hours	between 9 a.m. and 5 p.m. on a business day
claim	any demand, or allegation of liability, and all related costs, claims, demands, liability, damages, losses and expenses of any nature including all legal expenses suffered or incurred
confidential information	any information of a party which the other party knows or should know is confidential to the other party, for as long as it remains confidential, or would have remained confidential except for a wrongful disclosure by the first party
core terms	this document
Codes	all compulsory industry codes which have been registered by the ACMA under relevant legislation and include the TCP Code
Code terms	terms and conditions required to be included in all customer contracts – in this document, they are the terms contained in the boxes throughout this document
Comcity	Comcity Technology Pty Ltd ACN 094 017 937 of Level 4, 517 Flinders Lane, Melbourne 3000

Credit Card Authority	a written authority to debit your credit card (or a verbal authority to do so), in the form available on our website
customer	has the meaning given by clause 2
customer contact	a person/s nominated by you under clause 51
customer equipment	server/s and associated equipment and, where they are connected to telecommunications services provided by a carrier, those connections
dictionary	this table of defined terms
Direct Debit Authority	a written authority to debit your bank account, in the form available on our website
disputed amount	in relation to a billing dispute means the amount within the relevant invoice that you dispute liability to pay
excess use charge	a charge for use of a service in excess of any base allowance
fixed service fees	fees for any service that apply on a once only basis, or on a periodic basis and are not variable based on data volumes as between periods
force majeure	an event or circumstance beyond our reasonable control
general dispute	any dispute or difference between us other than (a) a billing dispute or (b) a claim by us solely for the payment of money
GST	GST within the meaning of the GST Act
GST Act	A New Tax System (Goods and Services Tax) Act 1999 (as amended)
loss	any harm, losses or expenses of any nature whether direct or indirect, secondary or consequential suffered by you or anyone else
manufacturer's warranty	a warranty given by the manufacturer or distributor of a thing, or a person from whom we

	obtain a thing for resupply
minimum term	a period that we specify as such
office hours	between 9 a.m. and 5 p.m. on a business day
periodic fee	a fee payable at regular intervals e.g. an amount per month
personal information	the same thing as in the <i>Privacy Act 1988</i>
price list	our published list of fees and charges from time to time
customer contract	the documents indicated by clause 12
service description	a guide or description we publish, describing a service we offer, as amended from time to time
service terms	has the meaning given by clause 8
spam	includes one or more unsolicited commercial electronic messages with an Australian link for purposes of the Spam Act 2003, and derivations of the word "Spam" have corresponding meanings
repeating term	a period that we specify as such
representative	a delegate, authorised representative, employee or agent
service	any service that you request and we agree to supply, generally as described in a service description
set up charge	a charge that we describe as such, or any charge that we require to be paid in respect of the set up or establishment of a service
TCP Code	Communications Alliance Ltd – Telecommunications Consumer Protections Code C628:2007 including any amendment or replacement of it

undisputed amount	in relation to a billing dispute means the amount within the relevant invoice that you do not dispute liability to pay
wholesaler	a third party whose services we utilise in providing a service to you

60.2. Interpretation

60.2.1. If an expression is defined in the dictionary in clause 60.1, that is what it means.

60.2.2. If an expression is defined in the dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if "to colour" means "to paint red", then "coloured" means "painted red".)

60.2.3. Headings and footnotes are only for convenience. They are to be ignored when interpreting the agreement.

60.2.4. A schedule to a document is part of that document.

60.2.5. A reference to the singular includes the plural and vice versa.

60.2.6. Where one thing is said to include one or more other things, it is not limited to those other things.

60.2.7. There is no significance in the use of gender-specific language.

60.2.8. A "person" includes any entity which can sue and be sued.

60.2.9. A "person" includes any legal successor to or representative of that person.

60.2.10. A reference to a law includes any amendment or replacement of that law.

60.2.11. Anything that is unenforceable must be read down, to the point of severance if necessary.

60.2.12. Anything a party can do, it may do through an appropriately authorised representative.

60.2.13. Any matter in our discretion, including anything that we "may" do, is in our absolute and unfettered discretion (but always subject to the Codes).

60.2.14. Expressions in clause 28 in italics have the same meaning as in the GST Act.

60.2.15. Apart from the matters set out in black and white in a customer contract, we are not obliged to provide any service, and make no promise or representation, to you.