

AMIDATA GENERAL TERMS



AMIDATA GENERAL TERMS

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

1 AGREEMENT TO SUPPLY THE SERVICE

1.1 AMIDATA is not and does not purport to be an ISP or a Telecommunications provider. AMIDATA will provide you the Service by consolidating and packaging products and services of third parties. AMIDATA will engage Third Party Supplier's to provide some or all aspects of the Service described herein. The terms contained herein are based on the terms and conditions of the third party supplier's in addition to those of AMIDATA 's (herein referred to collectively as THE SUPPLIER) and therefore are subject to change given 30 days notice by THE SUPPLIERS.

1.2 THE SUPPLIERS will supply the Service based on the terms and conditions of the standard form of agreement for the Service which comprises of:

- (a) the AMIDATA order form;
- (b) Acceptable Use Policy;
- (c) the Service Description; and
- (d) these General Terms.

If any of the terms of those documents is inconsistent with any other of those terms, then the documents and their terms will prevail in the order set out above, except that clauses 15 (Your Rights Against THE SUPPLIER) and 16 (End Users etc) always prevail over all other terms in any of those documents.

1.3 If you acquire more than one service from THE SUPPLIER, then each service will be provided under the terms and conditions of the respective agreement.

2 YOUR USE OF THE SERVICE

2.1 THE SUPPLIER must supply the Service from the Service Start Date as specified within the AMIDATA Order Form.

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

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

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

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

- (a) to break any law or to infringe another person's rights;
- (b) to expose THE SUPPLIER to liability;
- (c) in any way which damages, interferes with or interrupts the Service, or any telecommunications network, equipment, or facilities, or cabling controlled by THE SUPPLIER to supply the Service, as those things are configured at the time;
- (d) in any way which may damage any property or injure or kill any person.

2.5 You:

- (a) must not use, or attempt to use, the Service to transmit, publish or communicate material which is defamatory,

offensive, abusive, indecent, menacing or unwanted; and

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

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

3 EQUIPMENT

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

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

3.3 Unless otherwise agreed, you must:

- (a) allow AMIDATA' Personnel or their authorized representatives to service, modify, repair or replace AMIDATA Owned Equipment; and
- (b) do all things reasonably required by AMIDATA to make clear the identity of the owner of AMIDATA Owned Equipment.

3.4 You may purchase equipment from AMIDATA or any of its Personnel for use in connection with the Service. Title to that equipment passes to you when you pay for it in full in cleared funds. Risk in that equipment passes to you on delivery. AMIDATA will use reasonable efforts to transfer to you any manufacturer's warranty in any such equipment, from the time title passes to you.

3.5 You must ensure that all equipment you use in connection with the Service, and the way you use that equipment, complies with all laws, as well as directions by a Regulator and reasonable directions by AMIDATA. If you do not do so, AMIDATA may disconnect that equipment from the Service. AMIDATA will try to give you reasonable notice before disconnection, but may do so immediately in an emergency.

3.6 You must provide adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on the Premises. You must supply a surge protected power pack for all AMIDATA Owned Equipment.

3.7 AMIDATA may provide to the client as part of the Service, Hardware supplied by Third Parties. Any Hardware provided by AMIDATA will be clearly labelled to identify the owner of the Hardware and is provided to the client pursuant to the following terms:

- (a) The client will use the Hardware for as long as the Service remains active; and
- (b) Rental payments shall be included within the monthly fee specified within this Agreement; and
- (c) Should the client default on any payments and AMIDATA cancel this Agreement, the client must return all Hardware supplied by AMIDATA within 30 days of receipt by the client of written notice requiring the client to return the Hardware, should the client fail to return the equipment within 30 days of notice of cancellation by AMIDATA, the client agrees to pay all costs incurred by AMIDATA in recovering the Hardware; and
- (d) Any damage sustained to the Hardware supplied to the client by AMIDATA will be remedied by the client at their cost except where the damage is caused by AMIDATA or their representatives. Any replacement Hardware provided by AMIDATA to the client will be covered by the rental terms contained within this Agreement.

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4 MAINTENANCE

4.1 THE SUPPLIER may conduct maintenance on THE SUPPLIER Network. THE SUPPLIER will try to conduct scheduled maintenance outside normal business hours (Eastern Standard Time) but may not always be able to do so.

4.2 Except to the extent the Service Description expressly provides otherwise, THE SUPPLIER is not responsible for rectifying any fault in the Service where the fault arises in or is caused by a Third Party Network, your equipment or other equipment or facilities (other than the Hardware).

5 ENGAGEMENT OF THIRD PARTY CONTRACTORS

5.1 AMIDATA has the right at its discretion to engage Third Party Service Supplier (which may form part of AMIDATA) and/or Contractor to assist in the procurement, supply, delivery and installation of any of its products and services as deemed appropriate by AMIDATA from time to time. No such engagement shall relieve AMIDATA of its liability and responsibility in respect of the supply of the Service under this agreement.

5.2 AMIDATA uses third parties in providing its Service. AMIDATA uses its best endeavors to ensure the reliability of its Service and thus AMIDATA is not liable for losses incurred by the client due to the failure of any Third Parties software, hardware or services.

6 SERVICE CHARGES

6.1 You must pay the charges for the Service set out in the AMIDATA Order Form. Charges for the Service accrue from no later than the Service Start Date.

6.2 AMIDATA may charge you an additional amount:

- (a) to service, modify, repair or replace the Service or any equipment, as a result of an Excluded Event; and
- (b) for installation, if the information you provided to AMIDATA to determine the installation required was incomplete or inaccurate; and
- (c) for installation, maintenance or other services which you request AMIDATA to provide outside normal business hours (Melbourne time).

6.3 From time to time AMIDATA may offer special promotions or offers ("Specials") in connection with the Service. A Special may apply to or involve more than one service, and it may be notified in a general advertisement or specifically provided to you. A Special may be subject to certain conditions, including where AMIDATA may:

- (a) offer to vary the price;
- (b) offer to vary the terms of supply (including the Committed Term); or
- (c) require you to acquire all relevant services for a minimum period and to pay a fee if you cancel supply prior to the expiry of that minimum period.

6.4 You may accept the Special by any means notified by AMIDATA (which may include completing and signing an Application that includes some or all of the terms of the Special). If you validly accept a Special, the terms of that Special will prevail to the extent of any inconsistency over those which would otherwise apply in the Agreement, and will apply for at least the duration of the Special notified by AMIDATA. In all other respects, the terms and conditions of the Agreement continue to apply. After the Special expires, AMIDATA may end the Special pricing and terms.

6.5 In calculating charges, AMIDATA need only look at billing information generated or received by AMIDATA or its Suppliers. AMIDATA may round up any charge to the nearest dollar.

7 INVOICES AND PAYMENT

7.1 Unless otherwise agreed, AMIDATA may invoice you:

- (a) for any equipment you purchase from AMIDATA or its Personnel, on or after delivery;
- (b) for any installation charges, after installation;
- (c) for variable charges, in arrears;
- (d) for recurring or fixed charges, in advance

7.2 AMIDATA will notify you of its billing period from time to time. AMIDATA may also issue interim invoices for accrued charges.

7.3 AMIDATA may invoice you using a billing agent.

7.4 Subject to clause 8 (Billing Disputes), you will pay each amount invoiced in the way and by the due date specified in the invoice or which AMIDATA notifies you from time to time.

7.5 AMIDATA will try to include on your invoice all charges for the relevant billing period. This is not always possible; for example, because AMIDATA receives an invoice for your Service from another Supplier, or because of an error or problem with the relevant AMIDATA billing system. AMIDATA may include these unbilled charges in any later invoice(s).

7.6 AMIDATA may re-issue any invoice within six months if any error is later discovered. If you have overpaid as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from AMIDATA, AMIDATA will refund the overpayment promptly and after deduction of any other amounts due by you to AMIDATA.

7.7 You must pay all charges incurred in respect of the Service and equipment whether or not the charges and the related use of the Service were authorised by you except where the charges relate to an error caused by AMIDATA. This includes charges incurred in connection with your End Users' use of the Service.

7.8 If you do not pay any amount invoiced by the due date (except any amount which is validly disputed under clause 8), then AMIDATA may charge you a late fee of 2% per month calculated on the daily balance of the unpaid amount from the due date until the date of payment in full. This is an independent obligation which applies before and after judgment. You must also pay AMIDATA's expenses in recovering payment from you.

7.9 If you choose to pay by direct debit and your financial institution fails to honour your payment, you must pay the amount owing directly to AMIDATA and an additional administration fee may apply.

7.10 Subject to clause 9 (Taxes), you may not withhold, deduct or set-off any amount from or against any payment due by you to AMIDATA in any circumstances.

8 BILLING DISPUTES

8.1 You may dispute an amount invoiced by AMIDATA but only if you do so in accordance with this clause 8.

8.2 Except to the extent you raise a valid billing dispute in respect of an AMIDATA invoice, you agree that the invoice is valid and payable (and you must pay any undisputed amount included in the invoice in accordance with clause 7.4).

8.3 To raise a valid billing dispute, you must make a good faith request to AMIDATA to investigate the specific charges or invoice, providing at the same time specific evidence which demonstrates that a particular charge or invoice is incorrect

8.5 If you raise a valid billing dispute, then AMIDATA will conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute.

9 TAXES

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

9.2 In some cases the Agreement may specify a charge followed by another amount in parentheses or as 'without GST' and 'with GST'. In those cases, the specified charge or 'without GST' amount is exclusive of GST and the amount in parentheses or specified as 'with GST' is:

- (a) the charge inclusive of GST at the rate in effect at the date of the Agreement; and
- (b) included by way of information only, and its inclusion does not limit your obligation under clause 9.1 to pay the GST exclusive charge together with an additional amount equal to the GST at the rate applicable from time to time.

9.3 If you are required by law to deduct or withhold Taxes from a payment to AMIDATA, then you may make those deductions or withholdings (or both) and you must give AMIDATA a receipt for each payment.

9.5 AMIDATA will issue you with a valid tax invoice in respect of each taxable supply.

9.6 Terms used in this clause 8 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.

10 PRIVACY AND PERSONAL INFORMATION

10.1 AMIDATA may collect, use and disclose Personal Information about you, to decide whether to start, stop or limit supply to you of:

- (a) the Service; or
- (b) the products and services of other Third Party Suppliers.

10.2 AMIDATA may collect, use and disclose Personal Information about you for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including billing and account management, business planning and product development, and to provide you with information about promotions, as well as the products and services of AMIDATA Companies.

10.3 AMIDATA may collect, use and disclose Personal Information about you for the purposes in clauses 10.1 and 10.2 to or from:

- (a) a credit reporting agency or credit provider;
- (b) third parties who are not related to AMIDATA, limited to AMIDATA' agents, dealers, contractors and franchisees;
- (c) Suppliers who need access to the Personal Information to provide AMIDATA with services, to allow supply of the Service to you; and
- (d) joint venture partners of AMIDATA.

10.4 AMIDATA may be permitted or required by applicable laws to collect, use or disclose Personal Information about you, including:

- (a) to law enforcement agencies for purposes relating to the enforcement of criminal and other laws.

10.5 If you are a natural person, you are entitled to gain access to your Personal Information held by AMIDATA, unless AMIDATA is permitted or required by any applicable law to refuse such access.

10.6 If you do not provide part or all of the Personal Information AMIDATA requests, then AMIDATA may refuse to supply, or limit the supply to you of:

- (a) personal or commercial credit;
- (b) the Service; or
- (c) the products and services of other AMIDATA Companies.

10.7 By providing Personal Information to AMIDATA and obtaining the Service, you acknowledge and consent to the collection, use and disclosure of your Personal Information as set out in this clause 10 and in accordance with AMIDATA privacy policy.

11 MODIFICATIONS

11.1 You may request a modification (which does not include suspension or cancellation) to the Service or an Individual Service at any time by giving 30 days' notice to AMIDATA. AMIDATA may agree, in its absolute discretion, to make that modification.

11.2 If AMIDATA makes the modification then:

- (a) AMIDATA may notify you of the revised charges for the Service; and
- (b) if the modification is a Downgrade, you must pay a Downgrade Charge if one is specified in the Service Description; and
- (c) if the modification is not a Downgrade, you must pay the charges for making the modification notified to you by AMIDATA at the time.

11.3 You acknowledge that:

- (a) a Downgrade Charge is payable each and every time you Downgrade the Service or an Individual Service; and
- (b) if you Downgrade the Service or an Individual Service in accordance with paragraph 11.1:
 - (i) AMIDATA will suffer loss in connection with the cost of network components no longer required to supply the Service or Individual Service after the Downgrade; and
 - (ii) the Downgrade Charge represents a genuine pre-estimate of the loss AMIDATA will suffer and is not a penalty.

12 YOUR RIGHT TO CANCEL

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

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

12.2 You may cancel the Service or one or more Individual Services before the end of the Committed Term by giving 30 days' notice, to AMIDATA but you will be required to pay a Cancellation Fee in accordance with clause 14.1 and as specified within the AMIDATA Order Form.

12.3 Notwithstanding Clause 12.2 above, you may cancel the Service or one or more Individual Services *during the first six months of the Committed Term* by giving 30 days' notice to AMIDATA if the Service (or Individual Service) is not provided to a reasonable standard due to problems related to information technology that AMIDATA is unable to resolve within 10 business days of a written notice by you to AMIDATA requesting that the problem be resolved. In the event of cancellation under Clause 12.3 no Cancellation Fee will be payable, however, you agree to pay AMIDATA the reasonable set up and recurring cost incurred by

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AMIDATA in relation to the link between the AMIDATA site and your site until the Service is cancelled.

13 AMIDATA'S RIGHT TO SUSPEND OR CANCEL

13.1 AMIDATA may, without liability, cancel the Service or one or more Individual Services:

- (a) at any time after the Committed Term by giving 90 days' notice to you; or
- (b) at any time prior to the Service Start Date, if AMIDATA reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Service or an Individual Service to you.

13.2 AMIDATA may, without liability, immediately suspend or Downgrade the Service or one or more Individual Services at any time if:

- (a) there is an emergency related to the supply of the Service(s);
- (b) doing so is necessary to allow AMIDATA or a Supplier to repair, maintain or service any part of the equipment or relevant networks to supply the Service or the Individual Service;
- (c) AMIDATA is required to do so to comply with an order, instruction or request of a Regulator, an emergency services organisation or any other competent authority;
- (d) problems are experienced interconnecting AMIDATA Network with any Supplier Network;

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

- (e) you breach clause 2 (Use of the Service) or your obligations relating to the use of the Service set out in the Service Description, otherwise misuse either the Service or an Individual Service or breach clause 3.5;
- (f) AMIDATA reasonably suspects fraud by you or any other person in connection with either the Service or an Individual Service and notifies you and you fail to resolve it to the satisfaction of AMIDATA within five Business Days;
- (g) any amount owing to AMIDATA is not paid by its due date (as specified in the relevant invoice or notified by AMIDATA), AMIDATA gives you notice requiring payment of that amount (which AMIDATA may not give in respect of an amount which is validly disputed in accordance with clause 8 (Billing Disputes) until after AMIDATA has completed the investigations referred to in clause 8.5) and you fail to pay that amount in full within five Business Days after AMIDATA gives you that notice;
- (h) you breach a material term of the Agreement (other than a breach which separately gives rise to rights under this clause 13.2) and that breach is not capable of remedy;
- (i) you breach a material term of the Agreement (other than a breach which separately gives rise to rights under this clause 13.2) and that breach is capable of remedy you do not remedy that breach within 30 days after AMIDATA gives you notice requiring you to do so;
- (j) On 90 days notice if a Supplier terminates its agreement with AMIDATA, or ceases to supply services to AMIDATA, and AMIDATA is not able to provide either the Service or an Individual Service using services supplied to AMIDATA by an alternate Supplier on terms reasonably acceptable to AMIDATA;
- (k) you suffer an Insolvency Event;
- (l) you die or, if you are a partnership, the partnership is dissolved or an application is made to dissolve the partnership; or

- (m) AMIDATA is otherwise entitled to do so under this Agreement.

13.3 AMIDATA may also cancel the Service or one or more Individual Services if:

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

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

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

14 CONSEQUENCES OF CANCELLATION

14.1 If the Service or an Individual Service is cancelled in accordance with the Agreement (other than in accordance with clause 12.1):

- (a) before the Service Start Date, then you must pay to AMIDATA all onsite infrastructure and installation costs incurred by AMIDATA in connection with preparation for the provision of the Service or the Individual Service and the reasonable set up and recurring cost incurred by AMIDATA in relation to the link between the AMIDATA site and your site until the Service is cancelled; and
- (b) during the Committed Term, then you must pay to AMIDATA the Cancellation Fee and the reasonable set up and recurring cost incurred by AMIDATA in relation to the link between the AMIDATA site and your site until the Service is cancelled.

14.2 If an Individual Service is cancelled in accordance with the Agreement, then AMIDATA may notify you of the revised charges for the Service.

14.3 You acknowledge and agree that if the Service or an Individual Service is cancelled in accordance with the Agreement:

- (a) AMIDATA will suffer loss in connection with the cost of network components no longer required to supply the Service or the Individual Service after the cancellation;
- (b) the Cancellation Fee represents a genuine pre-estimate of the loss AMIDATA will suffer and is not a penalty;
- (c) you must continue to pay all charges relating to the Service or Individual Service until the Service or Individual Service is deactivated or AMIDATA ceases supplying it or for up to 30 days beyond the date of notice of cancellation; and
- (d) AMIDATA may invoice you for all charges for the Service or Individual Service that have not been previously invoiced and you must pay to AMIDATA all amounts specified in that invoice, and all other unpaid amounts relating to that Service or Individual Service, within 10 Business Days of the date of that invoice.

14.4 On cancellation of the Service for any reason:

- (a) you must, by consultation with AMIDATA, return or destroy AMIDATA's Confidential Information within 10 working days, except to the extent that you are required by law to retain AMIDATA's Confidential Information;
- (b) AMIDATA will provide you with a copy of all your data including your Confidential Information in a non-proprietary format within 10 working days of the cancellation of the Service. Once you have confirmed in writing to AMIDATA that the data provided to you is all of your data (including your

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Confidential Information) and that it is in an acceptable format then AMIDATA will securely destroy all copies of your data including any back ups of that data (including your Confidential Information).

- (c) AMIDATA may immediately stop supplying to you the Service and all Individual Services;
- (d) unless otherwise permitted by AMIDATA in writing, you must immediately stop using the Service (including all Individual Services) acquired under the Agreement and AMIDATA Owned Equipment;
- (e) you will, at your cost, within 30 days return to AMIDATA or permit AMIDATA to remove any AMIDATA Owned Equipment, equipment you have purchased but not fully paid for, or other AMIDATA material on the Premises or in your possession or control;
- (f) unless the Agreement expressly states otherwise, each person's accrued rights and obligations are not affected; and
- (g) the parts of the Agreement which are by their nature intended to survive cancellation of the Service will do so. These include clause 3 (Equipment), clause 7 (Invoices and Payment), clause 8 (Billing Disputes), clause 9 (Taxes), clause 10 (Privacy and Personal Information), this clause 14 (Consequences of Cancellation), clause 15 (Your Rights Against AMIDATA), clause 16 (End Users etc), clause 17 (Intellectual Property), clause 18 (Confidentiality), clause 21 (Assignment and Subcontracting) and clause 22 (General) and any other provision of the Agreement to the extent necessary to give effect to them.

15 YOUR RIGHTS AGAINST AMIDATA

15.1 AMIDATA accepts liability to you in connection with the supply or Interruption of any Individual Services, the Service and the Agreement, but only to the extent provided in this clause 15. AMIDATA excludes any liability it might otherwise have to you in connection with the Agreement, the Service or any Individual Service to the extent that such liability is not expressly accepted by AMIDATA under this clause 15.

15.2 AMIDATA accepts liability to you under the *Trade Practices Act* and other laws, where not to do so would be illegal, or would make any part of this clause 15 void or unenforceable. Otherwise, AMIDATA excludes all conditions and warranties implied into the Agreement and limits its liability for any non-excludable conditions and warranties, where permitted by law to do so, to (at AMIDATA' option) repairing or replacing the relevant goods, resupplying the relevant or equivalent services or, in either case, paying you the cost of doing so.

15.3 AMIDATA accepts liability for your Loss (excluding Consequential Loss) arising from personal injury to you or your Personnel to the extent it is caused or contributed to by a negligent act or omission of AMIDATA in connection with the Agreement. The limitation in clause 15.9 does not apply to AMIDATA's liability for your Loss arising under this clause 15.3.

15.4 AMIDATA accepts liability for your Loss (excluding Consequential Loss) arising from damage to your property or equipment to the extent it is caused or contributed to by a negligent act or omission of AMIDATA in connection with the Agreement.

15.5 AMIDATA accepts liability to you for Interruptions to Individual Services and the Service (including Interruptions caused by AMIDATA' negligence) to the extent the Interruptions are not caused or contributed to by Excluded Events, but only:

- (a) by crediting to you a service rebate, where one is specified in the Service Description and validly claimed by you in accordance with the Agreement; or
- (b) if there is no service rebate so specified, by (at AMIDATA' election) repairing or replacing the relevant goods or resupplying any relevant or equivalent services which are capable of being resupplied, or in either case paying you the cost of doing so.

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

15.6 AMIDATA excludes any liability to you (whether based in contract, tort (including negligence), statute or otherwise) for failing to terminate the Agreement or cancel the Service or one or more Individual Services or for suspending or failing to suspend the Service or one or more Individual Services in accordance with the Agreement.

15.7 AMIDATA' liability for your Loss under or in connection with the Agreement or the Service (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that your acts or omissions or your equipment (or the acts, omissions or equipment of a third person, including a Supplier) cause or contribute to that Loss.

15.8 AMIDATA excludes any liability to you for any Consequential Loss suffered or incurred by you in connection with the supply or Interruption of any goods or services (including the Service) or with the Agreement (whether based in contract, tort (including negligence), statute or otherwise).

15.9 In this clause 15 and clause 16 (End Users etc), limitations and exclusions in favour of "AMIDATA" are to be construed as limitations and exclusions in favour of each AMIDATA Company and each Supplier to AMIDATA.

16 END USERS ETC

16.1 AMIDATA excludes any liability to your End Users (whether based in contract, tort (including negligence), statute or otherwise). You indemnify and will keep indemnified AMIDATA against any Loss suffered or incurred by AMIDATA in connection with an End-User claim (whether based in contract, tort (including negligence), statute or otherwise) against AMIDATA in connection with the supply or Interruption of any goods or services (including the Service and any Individual Services).

16.3 You must ensure that your End Users (if you have any) comply with the Agreement as if they were you.

17 INTELLECTUAL PROPERTY

17.1 AMIDATA owns all material (including Intellectual Property Rights) developed by it, or its Personnel, or at its or their direction.

17.2 AMIDATA will permit you to use this material, or other material licensed by AMIDATA, as part of the Service. This will cease when the Service is cancelled.

18 CONFIDENTIALITY

18.1 AMIDATA and you each agree to keep confidential the other's Confidential Information.

18.2 Subject to clause 18.3, AMIDATA and you will not use or disclose the other's Confidential Information for any purpose, other than to the extent necessary to perform its obligations or exercise its rights under the Agreement.

18.3 For clarity, AMIDATA may refer to you as a customer of AMIDATA in AMIDATA press releases, or in AMIDATA marketing sales or financial material or reports.

18.4 The obligations of confidentiality in this clause 18 do not apply to the extent disclosure is required by law or the listing rules of a stock exchange, a direction by government authority or a Regulator, or disclosure to professional advisors in connection with the Agreement.

19 INTERVENING EVENTS

19.1 If an Intervening Event occurs which affects AMIDATA or any of its Personnel and AMIDATA from performing any of its obligations (other than an obligation to pay money) under this Agreement, then AMIDATA will not be liable for failing to perform that obligation.

19.2 AMIDATA will notify the other person promptly of the Intervening Event and use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible.

20 PUBLIC ADDRESSING IDENTIFIERS

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20.1 The Service may use one or more identifiers such as a telephone number, IP address or domain name ("**Public Addressing Identifiers**").

20.2 You must comply with the requirements of any Regulator or other body which administers Public Addressing Identifiers.

20.3 You acknowledge and agree that:

- (a) AMIDATA does not control the allocation of Public Addressing Identifiers;
- (b) AMIDATA is not liable to you if AMIDATA is required to change any Public Addressing Identifier as a result of any direction given by a Regulator or other body which administers Public Addressing Identifiers; and
- (c) on cancellation of the Service or any relevant Individual Service, your right to use any related Public Addressing Identifier may cease.

21 ASSIGNMENT AND SUBCONTRACTING

21.1 To the extent they are assignable, you may assign your rights under the Agreement so long as you have AMIDATA's prior written consent.

21.2 To the extent they are assignable; AMIDATA may at any time assign some or all of its rights under the Agreement to any person. AMIDATA may also transfer some or all of its obligations under the Agreement to any Third Party Supplier that is able to perform those obligations.

21.3 AMIDATA may perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a Supplier or another AMIDATA Group Company.

22 GENERAL

22.1 You and AMIDATA must give notice under the Agreement to the other in writing except:

- (a) where the Service Description for the Service specifies otherwise;
- (b) for the purposes of clause 13.2(g), for which AMIDATA can give notice in any form of notification that payment of an amount is required (including by email or facsimile or in a statement or invoice); and
- (c) for variations by AMIDATA, for which notice can be given in accordance with the *Telecommunications Act*.

22.2 Unless you are a natural person you must nominate at least two authorised operational contacts and provide any relevant details in relation to them required by AMIDATA. You may change your authorised operational contacts by giving notice to AMIDATA providing all relevant details. The authorised operational contacts will:

- (a) have access to AMIDATA' support and maintenance staff for the Service, report faults and make requests for maintenance or support; and
- (b) be entitled to notify AMIDATA of the persons to be added or removed as End Users. AMIDATA need not respond to requests from anyone other than authorised operational contacts and will not be liable for any consequences arising from compliance or non-compliance with any requests made by persons who are not authorised operational contacts.

22.3 If AMIDATA has a right arising out of a breach by you of the Agreement and AMIDATA does not exercise that right, AMIDATA does not waive:

- (a) that right unless it does so in writing signed by AMIDATA; or
- (b) its right to insist on performance of that or any other obligation at any other time.

22.4 If a provision of the Agreement is void, voidable or unenforceable, it will be severed and the remainder of the Agreement will not be affected.

22.5 Each person must pay its own costs and expenses in respect of the Agreement and any agreement or document contemplated by the Agreement or required to give effect to it.

22.6 You must pay any stamp duty (including fines) assessed on the Agreement and any agreement or document contemplated by the Agreement or required to give effect to it.

22.7 AMIDATA may pay commission to any AMIDATA Personnel in connection with the Agreement.

22.8 You acknowledge that:

- (a) nothing in the Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between you and AMIDATA; and
- (b) you have no right to bind AMIDATA in contract or otherwise.

22.9 The Agreement is governed by the laws applicable in the State of Victoria and you and AMIDATA submit to the nonexclusive jurisdiction of the courts of that State.

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

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

23 CARRIERS AND CARRIAGE SERVICE PROVIDERS

23.1 You represent that you are not a Carrier or Carriage Service Provider (as those terms are defined in the Telecommunications Act).

23.2 If you are or become a Carrier or Carriage Service Provider, then AMIDATA may immediately cancel the Service by notice to you. If AMIDATA does so, AMIDATA will negotiate in good faith with you to enter into an agreement governing supply of the Service, on terms to be agreed.

24 AGREEMENT AS TO TERMS

24.1 If for any reason the terms and conditions of the standard form of agreement for the Service are found not to apply to any supply of the Service by AMIDATA (including because you are or become a Carrier or Carriage Service Provider), you and AMIDATA agree that the supply and acquisition of the Service is made under an agreement between them which:

- (a) will be taken to have come into effect:

if the Application was made using the relevant standard application form approved by AMIDATA and that form does not provide otherwise, when you complete and sign the Application and provide it to AMIDATA; or

otherwise, when AMIDATA accepts the Application (which AMIDATA will be taken to have done if it supplies the Service);

- (b) consists of the terms and conditions of the standard form of agreement for the Service in force at the time of any relevant supply, except that where there is a reference in the terms and conditions of that standard form of agreement to cancellation of the Service, that reference includes, and will effect, termination of that agreement; and

AMIDATA GENERAL TERMS



- (c) can be varied, including by AMIDATA varying the terms and conditions of the relevant standard form of agreement, in accordance with clause 24.

DICTIONARY TO GENERAL TERMS

A. Definitions

In the Agreement:

Agreement means:

- (a) the terms and conditions of the standard form of agreement for the Service; or
- (b) if **clause 24** applies, the agreement referred to in that clause.

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

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

Carriage Service has the meaning given in the Telecommunications Act.

Cancellation Fee means the total balance of the monthly payments for the remainder of the Committed Term as specified in the AMIDATA Order Form.

Committed Term means the period from the Service Start Date specified as the "Committed Term" in the AMIDATA Order Form or, if no period is specified in the AMIDATA Order Form or the Agreement or is otherwise agreed, then the Committed Term will be three years from the Service Start Date.

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

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

Consequential Loss means:

- (a) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages; and
- (b) any penalties or fines imposed by a Regulator.

Credit Information means:

- (a) personal identifying details, including your name and current and previous addresses, date of birth, employer, and driver's licence number;
- (b) the fact that AMIDATA is a credit provider to you and any credit limit on your account;
- (c) information about any payments which are overdue for at least 60 days, when recovery steps have been taken by AMIDATA;
- (d) where an overdue payment has been previously reported, advice that payment is no longer overdue;

- (e) information about any payments including cheques, credit cards and direct debits which have been dishonoured;
- (f) court judgments or bankruptcy orders made against you;
- (g) the fact that, in the opinion of AMIDATA, you have committed a serious credit infringement; and
- (h) the fact that (and timing of) AMIDATA has ceased providing the Service to you.

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

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

End User means any person:

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

Excluded Event means:

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

General Terms means this document.

Hardware means any hardware provided by AMIDATA to you in relation to the Service.

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

Insolvency Event means:

- (a) bankruptcy proceedings are commenced against you, or you are declared bankrupt;
- (b) any step is taken to enter into any scheme of arrangement between you and your creditors;
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of your assets or business;
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to you or to the whole or any part of your assets or business;
- (e) you suspend payment of your debts generally; or
- (f) you are or become unable to pay your debts when they are due or you are or are presumed to be insolvent for the purposes of any provision of the *Corporations Act 2001* (Cth).

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

AMIDATA GENERAL TERMS



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

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

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

AMIDATA Owned Equipment has the meaning set out in clause 3.1.

Personal Information means:

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

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

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

Regulator means the Australian Communications Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman or any other government or statutory body or authority.

Related Corporation of an entity means a body corporate that is related to that entity in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth).

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

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

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

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

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

Special has the meaning set out in clause 5.3.

AMIDATA - means AMIDATA Pty Ltd, ABN 71 142 453 585 and/or its distribution affiliates.

AMIDATA Order Form means AMIDATA standard rate plan, pricing and charges list for the Service.

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

Suspend means suspend, reduce, restrict or limit supply.

Tax means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority but does not include any income or capital gains tax.

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

Telecommunications Legislation means the Telecommunications Act, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) and Part XIB, Part XIC and related provisions of the Trade Practices Act, each as amended or replaced from time to time.

Trade Practices Act means the *Trade Practices Act 1974* (Cth), as amended or replaced from time to time.

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

B. Interpretation

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