

PIPE Networks Standard Form of Agreement (SFOA) for Supply of Services

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General Terms – Part One

1. Your Contract

1.1 This contract

Your contract with us is made up of:

- (a) the Service Order signed, or accepted online, by your authorised representative;
- (b) the General Terms (Part One)
- (c) the relevant Service Schedule (Part Two); and
- (d) the relevant Service Level Agreement, if any (Part Three).
- (e) Acceptable Use Policy (Part Four)

1.2 How long does this contract last?

This contract begins on the date the Service Order is accepted by PIPE and will continue:

- (a) until the end of the minimum term; or
- (b) until it is terminated in accordance with clause 11; or
- (c) where the minimum term has ended and you have continued to use the service in accordance with clause 1.3, on a month-to-month basis and thereafter until it is terminated in accordance with clause 11.

1.3 What will happen at the end of the minimum term of a contract?

If neither you nor PIPE cancel the contract at the end of the minimum term of the contract we will continue to supply you the service on a month-to-month basis. If you do not wish to continue to use the service on a month-to-month basis after the end of the minimum term, you must cancel the contract in accordance with clause 11 at least 30 days prior to the end of the minimum term of the contract. If PIPE will not continue to provide the service to you at the end of the minimum term of the contract we will inform you of this at least 30 days prior to the end of the minimum term.

1.4 How can we change anything in this contract?

We cannot make any changes to this contract that are to your detriment unless we:

- (a) are required to by law; or
- (b) provide you with written notice detailing the change we are proposing and a period of at least 30 days in which to terminate the contract without incurring any additional termination costs or charges.

1.5 How can you change anything in this contract?

You can make changes to this contract by requesting a variation or modification in writing. PIPE will accept the variation or modification at its absolute discretion. If any additional charges will be incurred as a result of the requested variation or modification PIPE will advise you, and if accepted you will be liable for the new charges.

2. Your Application for the Supply of this Service

2.1 The Service

The Service you have selected is detailed in the Service Order.

2.2 Can we refuse your application?

Your application can be rejected if:

- (a) your credit status is not acceptable to PIPE;
- (b) you have amended any part of the Standard Form of Agreement without PIPE's consent;
- (c) another supplier changes the terms offered to PIPE that PIPE based your quotation on;
- (d) you provide incorrect or false information to PIPE;
- (e) PIPE withdraws its offer for any reason; or
- (f) in the circumstances described in clause 3.2.

2.3 How we deal with your personal information

We will only collect, use and disclose personal information that is reasonably necessary to provide the Service. You may at any time contact us to access and if required correct any stored personal information. Any complaints about PIPE's use of personal information should be addressed to feedback@pipenetworks.com Any complaints that cannot be resolved by PIPE may be referred to the Office of the Federal Privacy Commissioner.

3. Using the Service

3.1 When we will deliver the Service

PIPE will use all reasonable endeavours to meet the estimated delivery date on the Service Order but we do not represent or warrant that we will deliver the Service by this date. PIPE shall not be liable for any delay in installation (including, but not limited to, delays in obtaining access to any property or premises) and time for delivery of the Service shall not be of the essence unless previously agreed by PIPE in writing.

3.2 Where delivery of the Service is uncommercial or impractical

PIPE quotes installation fees for the Services based on PIPE's industry experience and assumptions about the likely costs and difficulty of performing similar installations in similar sites, and without making detailed investigations into the buildings where the Service is to be delivered. In some circumstances, due to causes such as heritage listed buildings or lack of available riser space, it may be uncommercial or impractical for PIPE to deliver the Service. If PIPE becomes aware that it is likely to be uncommercial or impractical to deliver the Service, PIPE may reject your application, or cancel your Service (at no cost to you) if your application has been accepted.

3.3 When the Service is connected

You must reasonably co-operate with PIPE to allow us to establish and supply the Service to you safely and efficiently. This includes assisting us liaise with your building management so that we may obtain access to your premises and following our reasonable requests to provide our Representatives with safe and prompt access to your premises and your Representatives, equipment, data and information. We will ensure that our Representatives comply with your reasonable directions while on the premises.

3.4 When does the minimum term commence?

The minimum term commences on delivery of the Service. The Service is deemed to have been delivered on the date that PIPE notifies you of successful installation and testing of the Service or the date you commence using the Service, whichever is earlier.

3.5 Quality of the Service

We will provide the service to you with due care and skill. In the event of unexpected faults outside our control we will restore the Service as soon as possible. You acknowledge that PIPE makes no warranty in relation to the performance or characteristics of any website or software supplied in connection with the Service.

3.6 Permitted uses of the Service

In using the Service, you must comply with all laws, all directions by a regulator and reasonable directions by PIPE. 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 PIPE 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 PIPE or a Supplier to supply the Service;
- (d) in any way which may damage any property or injure or kill any person;
- (e) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted; or
- (f) in any other way which contravenes our Acceptable Use Policy.

You acknowledge that, where the Service is a carriage service, PIPE may be required to intercept communications over the Service and may also monitor your usage of the Service and communications sent over it. PIPE may ask you to stop doing something that PIPE reasonably believes is contrary to this clause. You must immediately comply with any such request. If you do not, then PIPE may take any steps reasonably necessary to ensure compliance with this clause or the request.

4. Equipment

4.1 Our equipment

To use the Service, you may need to have on loan our equipment. Ownership or title in that equipment does not transfer to you when you use the Service. You are holding our equipment on our behalf for the duration of this contract. You must take reasonable care of our equipment while it is lent to you. You must provide adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on your premises

4.2 Your equipment

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 PIPE. If you do not do so, PIPE may disconnect that equipment from the Service. PIPE will try to give you reasonable notice before disconnection, but may do so immediately in an emergency.

4.3 Lost, stolen or damaged equipment

You will be responsible for the repair or replacement costs of our equipment that is lost, stolen or damaged while on loan to you, excepting any fair wear and tear.

5. Charges

5.1 What are the charges for using the Service?

You agree to pay all charges incurred in respect of the Service. You agree that you will pay the charges and make payments in conformity with the rates and charges as set out in the Service Order. Where a minimum usage based charge is detailed in the Service Order the minimum amount will apply even if you have incurred lower usage based charges or no usage based charges in that billing period. At any time after the expiry of the minimum term for a Service, PIPE may on at least 30 days written notice vary the charges for that Service.

5.2 Charges you must pay to third parties

You agree to pay any charges payable to any other network operator, facilities provider or any other third party supplier whose services are required in order for PIPE to provide the Service to you, which, for example, may include such things as cross-connect charges within data centres (**Third Party Charges**). PIPE will use reasonable endeavours to ensure that you are advised of any Third Party Charges prior to you acquiring the Service. Where Third Party Charges apply to the Service you agree that you will pay the charges directly to the third party supplier. You will indemnify PIPE from and against any claim, action or demand made against PIPE by a third party supplier with respect to the Third Party Charges.

5.3 Other charges

If you do not pay a bill by its due date, PIPE reserves the right to charge you:

- (a) interest at the rate of 3% above the prevailing base rate charged by our current bank on overdue charges from the due date until paid;
- (b) all reasonable expenses incurred by PIPE (including reasonable legal costs and expenses and the fees of our debt recovery agents) in relation to recovering payments due;
- (c) an equal amount to recoup any bank or financial institution fees incurred because your cheque, credit card payment or direct debit is not honoured.

6. Payment

6.1 How will we bill you?

Invoices will be posted to you each month by mail. You must provide your current postal address for this purpose and keep us informed of any changes to your postal address. Invoices can be sent in electronic form via email on request.

6.2 What will we bill you?

Unless otherwise agreed in the Service Order PIPE will invoice you monthly in arrears for usage-based charges; and monthly in advance for installation charges, recurring charges and all other charges. We will not bill you for any charges that are older than 190 days from the date the charge was incurred by you.

6.3 When must you pay your bill?

Unless otherwise agreed in the Service Order you must pay all invoices within 30 days of the date of the invoice.

6.4 What payment method can you use?

Unless otherwise agreed in writing by PIPE you must pay your bill by direct deposit of funds into PIPE's nominated bank account.

6.5 How can you dispute an invoice?

To dispute an invoice in good faith, you must notify PIPE in writing. This notice must include the detailed reasons for the dispute, and must be issued within 60 days of the invoice date. If you have notified PIPE of your dispute by the due date for payment, you may withhold only the disputed amounts of the invoice. If you fail to notify us by the due date you must pay all sums due in full. PIPE will use reasonable endeavours to resolve any such dispute quickly and efficiently. Where a dispute is determined to be baseless, you must pay PIPE the amount withheld within 7 days of such determination; or where a dispute is determined to be founded and you have already paid the disputed amount, PIPE must refund the relevant amount within 7 days of such determination.

6.6 What happens if you don't pay your bills?

Except for any billing disputes you have with us, if you do not pay your bill on the due date we reserve the right to:

- (a) charge additional fees as detailed in clause 5.2;
- (b) reduce the speed of your Service; and
- (c) take any additional actions as allowed under this contract, including but not limited to suspension or termination.

6.7 GST and other taxes

Unless otherwise expressly noted, all charges for the Services are exclusive of GST. You will pay to PIPE at the same time when any part of the charges for the Service is payable, an amount equal to any GST payable on supply of that Service. We will issue a tax invoice to you for any supply on which GST is imposed. If any additional tariffs become payable by us in relation to or in connection with this contract we will charge an additional amount equal to the amount of the tariffs payable.

7. Credit Approval

7.1 When may we require credit approval?

Credit approval is required:

- (a) for all new customers;
- (b) for material increases in monthly billing, and
- (c) from time to time to ensure we are satisfied with your credit rating.

To assess your credit rating, you consent to PIPE disclosing to a credit reporting agency personal information relating to you in our possession. If PIPE requires additional information from you to properly assess your credit rating you must supply this requested information.

8. Security Deposit

8.1 When may we require a security deposit?

If PIPE is at any time not satisfied with your credit rating, PIPE may require a security deposit, or an addition to your existing security deposit to limit our financial risk under this contract. If PIPE requires a security deposit you must provide the security deposit within 14 days of the date of our

request. The value of the security deposit must be equivalent to the amount we reasonably believe is necessary to secure our exposure under this contract.

8.2 How can we utilise the security deposit?

PIPE may utilise your security deposit to recover any amounts payable by you to PIPE under this contract or we may compensate ourselves for any loss, liability or expense suffered or incurred by us as a result of any breach of this contract by you.

9. Rebates

9.1 When are you entitled to a rebate?

Where your Service has a Service Level Agreement and we fail to achieve the relevant Service Levels in any one month, you will be entitled to a rebate calculated in accordance with the relevant Service Level Agreement.

9.2 How do I claim a rebate?

In order to claim a rebate, you must lodge a written claim detailing the alleged incident that gives rise to your claim. PIPE must receive the written claim within 45 days of the alleged incident.

9.3 How is the outage time measured?

Outage time is measured as detailed in the relevant Service Level Agreement.

9.4 When am I not entitled to a rebate?

You are not entitled to a rebate when:

- (a) your Service does not have a Service Level Agreement;
- (b) we achieve the relevant Service Levels in any one month;
- (c) you have any undisputed overdue payments outstanding with PIPE; and
- (d) failure to achieve the Service Levels is caused directly or indirectly by, or arises from or in connection with:
 - (i) a continuing event that is reasonably out of our control; for example, earthquake, explosion, natural disaster, sabotage or war;
 - (ii) any act or omission by you or your agents, employees or contractors
 - (iii) your equipment; or
 - (iv) a suspension of the Service, allowed under this contract.

10. Complaints and Disputes

10.1 What to do if you have a complaint

If you have any complaints in connection with your Service (including complaints about your bill) you should contact us first to resolve the complaint. If the complaint is not resolved to your satisfaction you may be able to refer your complaint to the Telecommunications Industry Ombudsman or the Department of Fair Trading.

11. Cancelling the Service

11.1 Your rights to cancel the contract

In some circumstances you may cancel your Service without incurring any additional charges.

- (a) You may cancel your contract immediately if:
 - (i) we breach an essential clause of this contract which isn't resolved within 14 days of you requesting us to do so in writing or which is unable to be resolved;
 - (ii) we become insolvent, bankrupt or unable to pay our debts when due;
 - (iii) your service has been suspended for 14 days, where there is no fault on your part.
- (b) you may cancel your Service by giving us 30 days notice if:
 - (i) the minimum term on the Service Order has ended and you have continued to use the Service.

In addition to these rights you have a general right to cancel the Service at any time, at your convenience. However, if you do so a cancellation fee will apply. The cancellation fee will be calculated by multiplying the monthly charges payable by you under this contract by the remaining months (or part thereof) of the minimum term, and subtracting from that amount the savings (if any) to PIPE which result from no longer providing the Service.

11.2 What do you need to do to cancel the Service?

You can cancel the Service by writing to us. This letter will be a notice to cancel the Service and will be effective on the date we receive the request.

11.3 PIPE's right to cancel the Service

In accordance with clause 1.3 we may cancel your Service at the end of the contract period by informing you at least 30 days before the termination date. In this case, termination will be effective at the end of the minimum contract period as specified in the Service Order. In addition we may cancel your Service in the following circumstances:

- (a) Immediately if:
 - (i) we reasonably suspect fraud by you or anyone using the Service;
 - (ii) we are required to cancel the Service to comply with a direction from a law enforcement agency, or a regulatory authority such as the Australian Communication and Media Authority (ACMA);
 - (iii) you have failed to make a payment by the due date and you fail to make such payment within 5 business days of receipt of a notice requiring you to do so, except where an amount is permitted to be withheld pursuant to a billing dispute;
 - (iv) you have failed to provide the security deposit requested;
 - (v) you fail to comply with a statutory demand issued by PIPE under the *Corporations Act 2001* (Cth);
 - (vi) PIPE determines that you are in breach of the confidentiality provisions of this contract;
 - (vii) you become insolvent, bankrupt or unable to pay your debts when due;

- (viii) you breach an essential clause of this or any contract with PIPE which isn't resolved within 14 days of us requesting you to do so in writing or which is unable to be resolved; or
 - (ix) clause 3.2 applies because PIPE becomes aware that delivery of the Service is uncommercial or impractical.
- (b) By giving you 30 days notice if:
- (i) the minimum period on the Service Order has ended and we have continued to supply the Service;
 - (ii) we are unable to supply the Service to you because a supplier has terminated its agreement with us and we cannot provide the Service to you by using an alternative supplier; or
 - (iii) we are unable to supply the Service to you because of a continuing event that is reasonably out of our control; for example, earthquake, explosion, natural disaster, sabotage or war.

11.4 Information contained in a notice to cancel the Service

If we cancel the Service, the written notice will contain:

- (a) the effective date on which cancellation takes effect;
- (b) the reasons for the cancellation;
- (c) details of all charges for the use of the Service up to the date of cancellation;
- (d) how these charges are calculated;
- (e) when the charges are due;
- (f) details of any applicable refunds or rebates and how these refunds or rebates are calculated; and
- (g) details of any cancellation fee and how it is calculated.

11.5 What happens when the Service is cancelled?

Where the Service is cancelled:

- (a) you will not be able to use the Service after the cancellation date;
- (b) subject to any disputes you have with us, you agree to pay for any charges for your use of the Service until the cancellation date;
- (c) any credits on your account will be applied to pay for any undisputed, outstanding charges at the cancellation date;
- (d) we will refund to you any used portion of any security deposits we hold;
- (e) we will refund to you any money that you have paid in advance for that part of the Service that is being cancelled on a pro-rata basis;
- (f) you will return our equipment to us within 30 days;
- (g) if you cancel the contract before the end of the contract period, except where cancellation occurs in the circumstances set out in clause 11.1, you will have to pay the cancellation fee set out in that clause;
- (h) if we cancel the Service before the end of the contract period pursuant to clause 11.3(a), you will have to pay the cancellation fee set out in clause 11.1.

12. Suspending the Service

12.1 PIPE's right to suspend the Service

We may suspend your service by giving you reasonable prior notice where:

- (a) it is necessary to do so to maintain or restore any part of the network;
- (b) we reasonably suspect fraud by you or anyone using the Service;
- (c) we are required to suspend the Service to comply with a direction from a law enforcement agency, or a regulatory authority such as the Australian Communication and Media Authority (ACMA);
- (d) you have failed to make a payment by the due date and you fail to make such payment within 5 business days of receipt of a notice requiring you to do so, except where an amount is permitted to be withheld pursuant to a billing dispute;
- (e) you have failed to provide a security deposit as requested;
- (f) you fail to comply with a statutory demand issued by PIPE under the *Corporations Act 2001* (Cth);
- (g) PIPE determines that the you are in breach of the confidentiality provisions of this contract;
- (h) we are temporarily unable to supply the Service to you because a supplier has temporarily withdrawn its carriage service from PIPE;
- (i) we are temporarily unable to supply the Service to you because of an continuing event that is reasonably out of our control; for example, earthquake, explosion, natural disaster, sabotage or war;
- (j) you breach an essential clause of this contract or any other contract with PIPE; or
- (k) you breach the Acceptable Use Policy.

We will only suspend your Service for a period that is reasonable in the circumstances. A reasonable period of suspension means a period that does not exceed that which is necessary to give effect to the demands of law enforcement agencies and other circumstances.

12.2 Information contained in a notice to suspend the Service

If we suspend the Service, the notice that we give you will contain all the relevant information including the dates on which the suspension will take effect and the reasons for the suspension.

12.3 What happens when a Service is suspended?

When the Service is suspended:

- (a) you will not be able to use the service;
- (b) you will be liable to us for any charges for access to or use of the Service during the period of suspension; except where the suspension was a result of an event that was reasonably out of your control.

13. Liability

13.1 Your liability to us

You are liable to us for:

- (a) all charges for the use of your Service; and
- (b) any damage to our equipment lent to you, which is not the result of fair wear and tear or the fault or negligence of PIPE, or its Representatives.

13.2 PIPE's liability to you

PIPE has responsibilities and obligations under the *Telecommunications Act 1997* (Cth), the *Competition and Consumer Act 2010* (Cth) and other laws. Nothing in this contract limits or removes these rights where it would be illegal to do so. We exclude all conditions and warranties implied into the contract and limit our liability for any non-excludable conditions and warranties, where permitted to do so by law, to (at our option):

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

We are also liable to you for:

- (d) any damage to your property caused by the fault or negligence of PIPE or its Representatives during installation, repair or maintenance;
- (e) interruptions in your use of the service as a result of a fault or negligence of PIPE and its Representatives to the extent of a rebate as detailed in the relevant Service Level Agreement. Your entitlement to a rebate is your sole and exclusive remedy for any interruption to your Service and for PIPE's acts or omissions leading up to the rebate;
- (f) death or personal injury caused by PIPE and its Representatives.

13.3 What PIPE is not liable to you for

PIPE is not liable to you for:

- (a) consequential loss, including but not limited to;
 - (i) indirect loss, loss of profits of any kind;
 - (ii) loss or corruption of data;
 - (iii) interruption to business;
 - (iv) loss of customers or customer losses;
 - (v) loss of revenue and economic loss of any kind.

13.4 Limits to PIPE's liability

To the extent permitted by law, our total liability to you in any 12 month period in respect of all claims arising out of or connection with this contract will not in any circumstances exceed the lesser of:

- (a) the total amount paid or payable by you to us under this contract in the preceding 12 month period; or
- (b) \$1 million.

Without limiting the above liability cap, PIPE's liability for your loss under or in connection with the contract or the Service 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.

14. Indemnity

14.1 You are liable and will indemnify PIPE against

You are liable and will indemnify PIPE against all loss arising from or in relation to:

- (a) a claim against us arising out of the death of or personal injury to our Representatives, to the extent that such damage or loss is caused by a negligent act or omission, or an act or omission intended to cause death or personal injury, by you or any of your Representatives;
- (b) any damage to or loss of any equipment, network or other tangible property of ours or any third party to the extent that such loss is caused by a negligent act or omission, or an act or omission intended to cause loss, by you or any of your Representatives;
- (c) a claim by a third party against us to the extent that the claim relates to any negligent or wilful act or omission of you or any of your Representatives in relation to this contract;
- (d) all loss (including consequential and indirect loss or damage) arising from any breach by you or your Representatives of clause 3.6;
- (e) if we use an other supplier in providing the Services, you will indemnify us for all loss suffered by us as a result of a claim by you or a third party against the other supplier (excluding claims for death, personal injury or physical damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services;
- (f) you will indemnify us for all loss suffered by us as a result of a third party claim against us (excluding claims for death, personal injury or damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services.

Without limiting any other term of this contract, you will release PIPE from any and all loss to the extent that such loss or liability is caused by a negligent act or omission of you or any of your Representatives.

15. Confidentiality

15.1 Your confidentiality obligations

You agree to keep in confidence and not to use or disclose any of our confidential information. You may only disclose confidential information to the extent necessary:

- (a) to your legal advisers in relation to its rights under this Agreement;
- (b) to your Representatives;
- (c) to abide by any law, binding directive of a regulator or a court order;
- (d) to abide by the listing rules of any stock exchange on which its securities are listed.

You acknowledge that a breach of this confidentiality clause may cause us irreparable damage for which monetary damages would not be an adequate remedy. In addition to other remedies that may be available, we may seek and obtain injunctive relief against such a breach or threatened or suspected breach. Your obligations with respect to the confidential information survive termination of this contract. You must return our confidential information immediately upon request.

15.2 PIPE's confidentiality obligations

We agree to keep in confidence and not to use or disclose any of your confidential information. We may only disclose confidential information to the extent necessary:

- (a) to our legal advisers in relation to its rights under this contract;
- (b) to our Representatives;
- (c) to abide by any law, binding directive of a regulator or a court order;
- (d) to abide by the listing rules of any stock exchange on which our securities are listed.

We acknowledge that a breach of this confidentiality clause may cause you irreparable damage for which monetary damages would not be an adequate remedy. In addition to other remedies that may be available, you may seek and obtain injunctive relief against such a breach or threatened or suspected breach. Our obligations with respect to the confidential information survive termination of this contract. We must return your confidential information immediately upon request. Nothing in this clause will prevent PIPE disclosing any information to anyone undertaking due diligence enquiries or the like in relation to PIPE, provided they are bound by confidentiality restrictions equal to the above.

16. Intellectual Property

16.1 Your intellectual property

We must not use your Intellectual Property Rights without your prior written consent.

16.2 PIPE's intellectual property

You acknowledge that our Intellectual Property Rights and all goodwill associated with our Intellectual Property Rights remains our sole property and no rights are conferred on you with respect to our Intellectual Property except as specifically expressed in this contract. All Intellectual Property Rights created in delivering the Service to you remains the sole property of PIPE.

17. Other Important Information

17.1 Costs

Each party must pay its own costs in respect of this contract.

17.2 Assignment

You may not assign, novate, mortgage, charge, sublicense or subcontract or otherwise delegate any of your obligations under this contract without PIPE's prior written consent (such consent not to be unreasonably withheld). We may assign, novate or otherwise delegate all or any of our rights and obligations under this contract to a related body corporate or any other person or entity.

17.3 Network security

You are entirely responsible for implementing and maintaining the security of your network. You will be liable to pay for any and all charges included on your bill that were incurred as a result of a breach of your network security including but not limited to where there is any unauthorised use of your network. Unauthorised use could include any use of your Services which is not authorised by you, use resulting from a viral infection of any computers or related equipment on your network, attacks from the internet, a denial of service attack, spam and misuse of your Services by third parties including your employees.

17.4 Waiver and exercise of rights

A waiver by a party of a provision of or of a right under this contract is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer

of the party granting the waiver. A waiver is effective only in the specific instance and for the specific purpose for which it is given. A single or partial exercise of a right by a party does not preclude another exercise or attempted exercise of that right or the exercise of another right. Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

17.5 Severability

If the whole or any part of a provision of this contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction and the remainder of this contract otherwise has full force and effect. This clause has no effect if the severance alters the basic nature of this contract or is contrary to public policy.

17.6 Entire agreement

This contract constitutes the entire agreement of the parties about its subject matter and any previous contracts, understandings, negotiations and representations on that subject matter cease to have any effect.

17.7 Jurisdiction

This contract is governed by the laws from time to time in force in Queensland.

17.8 Notices

A notice, approval or consent, to be issued under this contract must be in writing and in the absence of evidence to the contrary will be taken to be received:

- (a) if left at the address of the addressee, at the time it was left;
- (b) if sent by ordinary post, on the third day after posting;
- (c) if sent by express post, on the next day;
- (d) if sent by facsimile, at the time recorded on a transmission report from the machine from which the facsimile was sent; and
- (e) if sent by electronic email, at the time the sending party receives a “return receipt” confirmation of successful transmission.

17.9 Interpretation

- (a) Undefined words and expressions have the same meaning as in the *Telecommunications Act 1997* (Cth) and associated Acts, regulations and determinations.
- (b) A reference to a person includes a reference to a person, firm, corporation or other legal entity.
- (c) The singular includes the plural and vice versa.
- (d) Headings are purely for ease of reference and do not form part of or affect the interpretation of this contract.
- (e) Different grammatical forms of the same word have the corresponding meaning.
- (f) A reference to a clause is to a clause in this Standard Form of Agreement, unless otherwise stated.
- (g) References to each party include references to its successors in title, permitted assigns and novatees.

17.10 Special meanings

In these General Terms:

Business day means any day other than a Saturday, Sunday, or gazetted public holiday applicable at the registered office of PIPE.

contract means this binding agreement between you and PIPE.

Essential term or clause will be essential if a breach of that term or clause by either you or PIPE would make it impossible or impractical for the other to continue to provide or receive the Service, for example a continuing failure to pay bills or to provide the Service.

Intellectual Property Rights means any patent, copyright, design right, registered design, trade mark, service mark, database right, and all other intellectual property rights of a similar nature in any jurisdiction and all applications and rights to apply for the protection of the same;

minimum term is the period for which you agree to acquire the Services under this contract.

Representatives of either party means that party's staff, contractors or agents.

Service means the services as outlined in the Service Schedule (Part 2) that PIPE provides to you under this contract.

Service Order means the form or online form that details the Service, the charges and minimum term accepted by you.

you means the customer

Service Schedules – Part Two

1. PipeEthernet Services

1.1 What is PipeEthernet?

PipeEthernet is a high-speed ethernet service providing Committed Bandwidth between the Locations identified in the Service Order.

1.2 What will PIPE provide?

PIPE will provide you with:

- (a) the PipeEthernet Service in accordance with all applicable laws and Service levels (if any) on the terms and conditions contained in this contract;
- (b) Help Desk services. However, you are responsible for providing help desk services to the End User.

As set out in a Service Order PIPE will provide you with the following as part of the PipeEthernet Services:

- (c) Circuit(s) between the Locations; and
- (d) Committed Bandwidth between the Locations.

1.3 What must you do?

In order for PIPE to supply, and you to receive, the PipeEthernet Service you must ensure that:

- (a) the End User leases, licences or otherwise lawfully occupies premises within the Locations where the Service(s) is to be delivered;
- (b) you are able to connect to the equipment provided by PIPE using interfaces approved by PIPE;
- (c) the End User is able to connect to the equipment provided by PIPE using interfaces approved by PIPE;
- (d) you do not oversubscribe your capacity between the Locations; and
- (e) you only use the PipeEthernet Service either for resale purposes to one End User or for connectivity within your own network.

1.4 Relocation by PIPE

PIPE may, by giving you not less than 30 days' notice in writing, relocate the Circuit. In relocating the Circuit PIPE will use reasonable endeavours to minimise any disruption to, or non-availability of, the PipeEthernet Service.

1.5 How long must you acquire the PipeEthernet Service?

The minimum term for which you must acquire the PipeEthernet Service will be for the term as stated in the Service Order.

1.6 What must you do when acquiring the PipeEthernet Service?

You must comply (and ensure that the End Users comply) with PIPE's directions in regard to the use of the PipeEthernet Services, including complying with the Acceptable Use Policy.

1.7 What else may affect your use of the PipeEthernet Service?

This contract is made subject and subordinate to the terms and conditions of any underlying ground or facilities lease or licence or other superior rights by which PIPE has acquired an interest in the site(s) from which or through which the PipeEthernet Service is located or provided.

1.8 Definitions

With respect to PipeEthernet Services:

Circuit means the Ethernet service as configured and as described in the Service Order connecting the Locations.

Committed Bandwidth means bandwidth size as set out in the Service Order which is allocated between the Locations. The speed of the Ethernet Service can only be committed if there is no oversubscription of bandwidth between the Locations.

End User is the actual user of the PipeEthernet Service. Where PipeEthernet is bought by you for wholesale or resale purposes the End User will be the third party connected to you via the Circuit.

Help Desk means the telephone technical support provided by PIPE to you.

Location means the site address where one end of the PipeEthernet Service is to be delivered. Every PipeEthernet Service will have at least two Locations.

2. PipeIP Services

2.1 What is PipeIP?

PipeIP is a high-speed Internet access service. At a minimum PipeIP consists of:

- (a) an interconnection point in a PIPE approved data centre; or
- (b) a Circuit delivered to your premises; and
- (c) a connection to the Internet as detailed in the Service Order.

In addition, PipeCloud is available to you as an optional extra service.

2.2 What is PipeCloud?

PipeCloud is the private network connecting all PipeIP users to each other and to applications hosted on PIPE's network within the same metropolitan area. PipeCloud is an optional extra service.

2.3 What will PIPE provide?

PIPE will provide you with:

- (a) the PipeIP Service in accordance with all applicable laws, Service levels (if any) and on the terms and conditions contained in this contract; and
- (b) Help Desk services; and
- (c) An on-line portal for you to track usage of your PipeIP service.

2.4 What must you do?

In order for PIPE to supply, and you to receive, the PipeIP Services you must ensure that you:

- (a) are co-located at a data centre approved by PIPE; or
- (b) are located in a building approved by PIPE; or
- (c) have a connection via a Circuit provisioned to your premises; and
- (d) are able to connect to the equipment provided by PIPE using interfaces approved by PIPE; and
- (e) have obtained appropriate rights with respect to your IP Address from the relevant registry.

2.5 Relocation by PIPE

PIPE may, by giving you not less than 30 days' notice in writing, relocate the Circuit. In relocating the Circuit PIPE will use reasonable endeavours to minimise any disruption to, or non-availability of, the PipeIP Service.

2.6 How long must you acquire the PipeIP Service?

The minimum term for which you must acquire the PipeIP Service will be for the term as stated in the Service Order.

2.7 What must you do when acquiring the PipeIP Service?

You must comply with PIPE's directions in regard to your use of the PipeIP Service, including complying with the Acceptable Use Policy.

2.8 What else may affect your use of the PipeIP Service?

This contract is made subject and subordinate to the terms and conditions of any underlying ground or facilities lease or licence or other superior rights by which PIPE has acquired an interest in the site(s) from which or through which the PipeIP Service is located or provided.

2.9 Definitions

With respect to PipeIP Services:

Bandwidth means the width or capacity of a communications channel. Bandwidth is used to describe the amount of data that can be transmitted and is indicated in terms of either bits per second or bytes per second. Unless otherwise specified Bandwidth in bytes refers to the higher of inbound and outbound traffic. Inbound traffic is the traffic from PIPE to you, while outbound traffic is the traffic from you to PIPE.

PipeCloud has the meaning given to it at clause 1.2.

Circuit refers to the Ethernet circuit provided by PIPE and used by you to access the PipeIP Service. Each Service Order will indicate the bandwidth of the Circuit delivered to you.

Help Desk means the telephone technical support provided by PIPE to you.

Internet means a global inter-network of computer networks, connected via an Internet Protocol (IP) and the world's telecommunications infrastructure. Each Service Order will indicate, in bits per second, the maximum bandwidth to the Internet available to you.

IP Address means the numerical identification (logical address) that is assigned to devices accessible across the Internet using the Internet Protocol.

Service Level Agreements – Part Three

1. PipeEthernet Services

We will provide the PipeEthernet Services to you in accordance with the following Service Levels:

<i>Service Criteria</i>	<i>Measurement and frequency of measurement</i>	<i>Target Service Level</i>
<i>Availability</i>	$SA = \text{Uptime} / (\text{Total Time} - \text{Excused Downtime}) \times 100$ <p><i>Where:</i></p> <p><i>Uptime means: the time (measured in minutes) in any month during which the Service is able to be used by you as intended.</i></p> <p><i>Total time means: the time (measured in minutes) in any month.</i></p> <p><i>Excused Downtime means: the time (measured in minutes) in any month during which the Service is not available due to any of the following:</i></p> <ol style="list-style-type: none"> <i>a. Any matter or thing out of our control (eg. act of God, strike, war, terrorism, riot, explosion etc)</i> <i>b. Failure of your equipment</i> <i>c. Any Act or omission by you</i> <i>d. Planned maintenance we undertake</i> <i>e. Permitted suspension by us of the Service</i> 	99.95 %

Rebates for Service Level Failure

Service Availability Target Failure	Percentage of Monthly Service Charge credited
Less than 21 minutes per calendar month	NIL
21 minutes to less than 4 hours per calendar month (Availability < 99.95%)	20%
4 hours or more per calendar month (Availability < 99.5%)	50%

2. PipeIP Services

We will provide the PipeIP Services in accordance with the following Service Levels:

Service Criteria	Measurement and frequency of measurement	Target Service Level
Availability	$SA = \text{Uptime} / (\text{Total Time} - \text{Excused Downtime}) \times 100$ Where: <i>Uptime means: the time (measured in minutes) in any month during which the Service is able to be used by you as intended.</i> <i>Total time means: the time (measured in minutes) in any month.</i> <i>Excused Downtime means: the time (measured in minutes) in any month during which the Service is not available due to any of the following:</i> <ol style="list-style-type: none"> a. Any matter or thing out of our control (eg. act of God, strike, war, terrorism, riot, explosion etc) b. Failure of your equipment c. Any Act or omission by you d. Planned maintenance we undertake a. Permitted suspension by us of the Service 	99.95 %

Rebates for Service Level Failure

Service Availability Target Failure	Percentage of Monthly Service Charge credited
Less than 21 minutes per calendar month	NIL
21 minutes to less than 4 hours per calendar month (Availability < 99.95%)	20%
4 hours or more per calendar month (Availability < 99.5%)	50%

Acceptable Use Policy – Part Four

1. General

- (a) This Acceptable Use Policy applies to your use of the Service.
- (b) You are responsible for ensuring that your use of the Service complies with this policy. You are also responsible for the use of the Service even where such use has not been authorised by you.

2. Illegal Activity

- (a) You must not use the Service for any activity which breaches any law, order, regulation or industry code of practice.
- (b) Activities which are prohibited include, but are not limited to:
 - (i) distribution of content that is or would be classified as RC or X under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth);
 - (ii) distribution of content which violates the copyright or other intellectual property rights of others;
 - (iii) distribution of content that defames, harasses or abuses anyone or violates their privacy;
 - (iv) carrying out pyramid or other illegal soliciting schemes; or
 - (v) any fraudulent activities.

3. Security

- (a) You must take reasonable steps to ensure that others do not gain unauthorised access to the Service.
- (b) You must not use the Service to:
 - (i) distribute tools designed for compromising security including, but not limited to, password guessing programs, cracking tools, packet sniffers or network probing tools;
 - (ii) knowingly transmit or disseminate any information or software, which contains a virus or other harmful feature;
 - (iii) interfere with the technical operation of the Service or any other computer system, network or telecommunications services;
 - (iv) interfere with the regular workings of PIPE's systems or network connections; or
 - (v) obtain or attempt to obtain unauthorised access to any computer, system or network.
- (c) You are solely responsible for your equipment used to connect to the Service, including any data stored on that equipment.

4. Email and Newsgroups

- (a) It is a prohibited use of the Service to transmit or distribute unsolicited bulk email of an advertising or promotional nature. You may only use the Service in circumstances which comply with the provisions of the *Spam Act 2003* (Cth).
- (b) You must not allow the Service to be used to:
 - (i) engage in mass posting of messages to newsgroups;
 - (ii) post advertisements other than in newsgroups that specifically encourage or permit advertising;
 - (iii) post binary files other than in newsgroups that specifically encourage or permit such postings;
 - (iv) post large or numerous messages with the purpose of disrupting a newsgroup; or
 - (v) send messages that contain invalid or forged headers or domain names or deceptive addressing.

5. Violation of Acceptable Use Policy

- (a) If in PIPE's sole discretion PIPE believes that your use of the Service or a person with access to the Service violates this policy PIPE may take such action as it deems appropriate. Such actions may include, but are not limited to, the removal of any information, content or materials and the immediate suspension or termination of the Service in whole or in part.
- (b) PIPE has no liability for any of the actions it takes and may take any other legal or technical action it deems appropriate.
- (c) Nothing in this policy imposes an obligation on PIPE to monitor the use of the Service.