

1. DEFINITIONS AND INTERPRETATION

1.1 In this Service Schedule:

Services means data and internet services, which may include internet access, email facilities, wide area networking services, web page facilities, broadband, digital subscriber line, frame relay and any other related facility or services that Tradegate or a Supplier may provide from time to time, including any technical and other advice provided by Tradegate or a Supplier.

Service Equipment means any Equipment that Customer requires in order to make use of the Services.

Site means, as is appropriate in the context, either Customer's premises or a location where the Services are to be provided.

1.2 In this Service Schedule, any reference to a clause of the Agreement means a clause of "Part 2 – Network Access Terms" of the Tradegate Network Access Agreement, unless specified otherwise.

2. TERM OF THE SERVICES

2.1 Customer must acquire the Services for the Minimum Service Term specified on its Service Order Form.

2.2 The Minimum Service Term commences when:

2.2.1 if Customer is installing its own Equipment (as required for use of the Services) and:

- (a) Customer supplies such Equipment itself, on the date the Supplier activates Customer's access to the Services; or
- (b) if Tradegate or a Supplier supply Customer with such Equipment, on the date of delivery of such Equipment.

2.2.2 if Tradegate or a Supplier is installing Equipment (as required for use of the Services) for Customer and:

- (a) such equipment is being installed at a single site, the date that Tradegate or the Supplier installs the equipment at the site; or
- (b) such equipment is being installed at multiple sites, the date Tradegate or the Supplier installs the equipment at the second site.

2.3 Unless Customer notifies Tradegate at least six weeks prior to the expiration of the Minimum Service Term that Customer wishes to cease receiving the Services at the expiration of the Minimum Service Term, the Minimum Service Term will be automatically extended from month to month ("**Holding Over Period**") at the same rate, and on the same terms and conditions.

3. CHARGES AND PAYMENT

3.1 Customer must pay the charges for the provision of the Services at the rates notified to Customer from time to time, as well as any other charges incurred by Customer in accordance with the Agreement.

3.2 Tradegate will invoice Customer monthly in arrears for Services, unless otherwise agreed in writing. Tradegate or its Suppliers may invoice Customer separately and at other times for any upgrades or installations which are in addition to the Services.

3.3 Customer must pay Tradegate any charge which any Supplier or other person renders to Tradegate:

3.3.1 if Customer approached that other person directly, or otherwise than through Tradegate; or

3.3.2 for connection or initiation of any service or for cancellation of any service.

3.4 Subject to clause 6.5 of the Agreement, if Customer does not pay any part of the charges by the due date on any invoice, Tradegate may impose a default charge of:

3.4.1 \$10.00 excluding GST per invoice; or

3.4.2 3% about the Commonwealth Bank's corporate overdraft reference rate where the amount due and payable is equal to or greater than \$1,500. The default charge will be calculated daily on each outstanding amount from the due date until the amount is paid in full.

3.5 If Tradegate incurs costs in recovering overdue amounts from Customer, including (without limitation) mercantile agents' costs, disconnection of service costs, costs incurred in commencing legal action such as service fees and search fees, Tradegate may recover such amounts from Customer in addition to the overdue amounts.

3.6 Tradegate will not accept liability for any amounts owing by Customer to a Supplier or other person. Customer indemnifies Tradegate against any claim made by a Supplier or other person against Tradegate in relation to any such amounts.

4. COMMERCIAL ELECTRONIC MESSAGES

4.1 Customer acknowledges that Tradegate or a Supplier may use Customer's Personal Information or business information to send commercial electronic messages, as defined under the *Spam Act 2003* (Cth).

5. CUSTOMER'S OBLIGATIONS

5.1 Unless and until Customer informs Tradegate in writing that there has been unauthorised use of the Services, Customer is liable to Tradegate for all charges in relation to the Services whether or not Customer authorised the use of the Services by another person.

5.2 Customer agrees to comply with such policies, including any "Acceptable Use Policy", of which it is given notice by Tradegate from time to time.

5.3 Customer must not use the Services to send unsolicited information to third parties.

6. TERMINATION, SUSPENSION & CANCELLATION

6.1 Nothing in this clause 6 of this Service Schedule limits clause 9 of the Agreement.

6.2 Tradegate may terminate the Services or limit or suspend the supply of the Services:

6.2.1 if Services have been used in breach of any "Acceptable Use Policy" of which Customer has been notified;

6.2.2 after providing Customer 30 days notice if, subject to clause 6.5 of the Agreement, Customer fails to pay any amount due for the supply of Services, Tradegate gives Customer notice requiring payment of the amount, and Customer fails to pay that amount in full within 7 days after Tradegate gives Customer that notice; or

6.2.3 after 120 days if:

- (a) Tradegate is unable to supply or continue to supply Customer with the Services due to the cancellation, suspension or termination of any agreement with our Suppliers, for whatever reason, or as much notice as is practicable if less than 120 days notices is given to Tradegate by our Supplier; or

- (b) Tradegate or a Supplier are unable

- to supply or continue to supply Customer with the Services due to geographic coverage, capacity or technical capability limitations.
- 6.3 Tradegate may terminate the Service or limit or suspend the supply of Services:
- 6.3.1 by giving Customer 120 days prior written notice;
- 6.3.2 if Customer ceases receiving a telephony service that Tradegate or a Supplier rely upon to provide Customer's Service;
- 6.3.3 if Service cannot be provided at a new Site in accordance with clause 9 of this Service Schedule;
- 6.3.4 if any Tradegate Equipment is lost, stolen or substantially destroyed or if clause 11.5 of this Service Schedule otherwise applies; or
- 6.3.5 if the physical infrastructure and site conditions for Customer's service does not pass service qualification by Tradegate's Supplier or if it is found to be unsuitable as a result of a feasibility study.
- 6.4 If Tradegate terminates the supply of Services under clause 6.3 of this Service Schedule, Customer must pay to Tradegate within seven days of Tradegate's demand, an amount equal to the total of:
- 6.4.1 all outstanding charges payable to Tradegate under the Agreement up to the date of termination and any duty payable; and
- 6.4.2 if Tradegate or a Supplier is not able (having made reasonable efforts) to repossess its Service Equipment, an amount equal to:
- (a) Tradegate's or its Supplier's then current installation fees for that equipment;
- (b) any costs incurred by Tradegate or its Supplier in attempting to repossess such equipment; and
- (c) any interest payable.
- 6.5 If Tradegate terminates the supply of Services under clause 6.3.2 or 6.3.3 of this Service Schedule or clause 9.1 of the Agreement, Customer must pay to Tradegate by way of liquidated damages within seven days of its demand, an amount equal to the total of:
- 6.5.1 all outstanding charges payable to Tradegate under the Agreement with respect to this Service Schedule up to the date of termination and any duty payable;
- 6.5.2 either:
- (a) the monthly charges that would have been payable during the period from the date of termination to the end of the Minimum Service Term where termination is within 12 months of commencement of the Minimum Service Term; or
- (b) 50% of the monthly charges that would have been payable during the period from the date of termination to the end of the Minimum Service Term where termination is after 12 months of commencement of the Minimum Service Term.
- Customer agrees that the early termination charge specified in this clause 6.5.2 of this Service Schedule is a genuine pre-estimate of the actual loss which would be experienced by Tradegate as a result of early termination of the Services;
- 6.5.3 any duty payable on the amounts payable; and
- 6.5.4 either:
- (a) any costs incurred by Tradegate in repossessing its or a Supplier's Service Equipment and making repairs that Tradegate or a Supplier consider necessary; or
- (b) if Tradegate is not able to repossess such Services Equipment, an amount equivalent to:
- (i) Tradegate's or its Supplier's then current installation fees for that equipment;
- (ii) any costs incurred by Tradegate or a Supplier in attempting to repossess such equipment; and
- (iii) any interest payable.
- 6.6 If, as a result of Tradegate's or a Supplier's failure to maintain its network, Tradegate materially fails to supply the Services, Customer may terminate the Services without liability for the Services, provided that Customer first gives Tradegate 30 days' notice of the failure, after which Tradegate or the relevant Supplier have failed to remedy the failure.
- 6.7 On termination of the Services for any reason, Customer will, if Tradegate requests and at Tradegate's option, either immediately:
- 6.7.1 return all Service Equipment related to the Services belonging to Tradegate or a Supplier (excluding any Customer Equipment); or
- 6.7.2 make such equipment available for Tradegate or its Supplier's collection.
- 7. LIABILITY AND INDEMNITY**
- 7.1 Nothing in this clause 7 of this Service Schedule limits clause 7 of the Agreement.
- 7.2 To the maximum extent permitted by law, Tradegate and its related bodies corporate have no liability to Customer or any other person for:
- 7.2.1 acts or defaults of any Supplier;
- 7.2.2 faults or defects in any facility or Equipment or the Services, which are caused by or contributed to by Customer's or a third party's conduct or misuse; or
- 7.2.3 faults or defects that arise in services not provided under the Agreement (even if they are connected, with Tradegate's consent, to Services), which are due to incompatibility with the Services or Equipment.
- 7.3 To the maximum extent permitted by law, no Supplier will have any liability to Customer in connection with the Agreement.
- 7.4 Tradegate and Suppliers are not liable for:
- 7.4.1 any delay in installing any Service or any Equipment;
- 7.4.2 any delay in correcting any fault in any Service or any Equipment;
- 7.4.3 failure or incorrect operation of any Service or any Equipment;
- 7.4.4 Service outages; or
- 7.4.5 any other delay or default in complying with the Agreement,
- if it is caused directly or indirectly by any event beyond Tradegate's or the Supplier's reasonable control.
- 7.5 Customer indemnifies Tradegate and will keep Tradegate and its related bodies corporate indemnified against any loss, cost, expense,

- damage or other liability (including legal costs on a solicitor/client basis) arising out of:
- 7.5.1 Customer's breach of the Agreement;
 - 7.5.2 any claim or demand against Tradegate (including for negligence) by any person other than Customer, which arises from or is connected with our supply of the Services or any Equipment;
 - 7.5.3 any claim or demand (including for negligence) which Customer or any other person make against any Supplier which arises from or is connected with the supply of the Services or any Equipment;
 - 7.5.4 any damage which Customer or Customer's employees, agents or contractors cause to Tradegate's or any Supplier's, network, equipment or other property;
 - 7.5.5 the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by Customer; or
 - 7.5.6 any breach of a person's rights or defamation of a person (or allegation of such breach or defamation) involving the use of the Services or any Equipment.
- 7.6 Except to the extent that liability is imposed upon Tradegate by terms implied by law or to the extent that failure to provide the Service is caused by something within Tradegate or a Supplier's reasonable control, Customer indemnifies Tradegate from all liability (including liability to any third party) arising from the following:
- 7.6.1 disruption in PSTN services and Customer's standard telephony services;
 - 7.6.2 cancellation of any Services;
 - 7.6.3 suspension of any Services, particularly IP addresses; and
 - 7.6.4 cancellation of, or refusal to provide, all incompatible telephony services.
- 8. PROVISION OF SERVICES**
- 8.1 Tradegate will provide the Services and subject to availability, geographical and technical capability, lack of capacity and faults in other telecommunications networks to which the Services are connected. There may also be times when maintenance being performed on the Services limits availability. Tradegate is not obliged to provide Customer with Services where capacity, geography or technical capability, affect the application or installation of the Service at Customer's premises.
 - 8.2 Tradegate is not obliged to provide Services to Customer if the physical infrastructure of Customer's premises or site does not pass service qualification by a Supplier or if it is found to be unsuitable as a result of a feasibility study.
 - 8.3 Customer agrees that Tradegate and its Suppliers do not supply a 'standard telephone service' (for the purposes of the *Telecommunications Act 1997*) under this Service Schedule with the internet access component and as such the Services are not subject to the Customer Service guarantee standard administered by the ACMA.
 - 8.4 Customer acknowledges that, as notified from time to time, certain Services will be available to Customer use for its business purposes only.
- 9. SHIFTS/MOVES/UPGRADES**
- 9.1 If Customer requests that the Services be moved to a new address at any time, there may be a charge payable. Customer will be notified of the amount of such charge by Tradegate at the time of Customer's request.
- 9.2 Customer may request a change to the nature of the Services, and Tradegate may approve such change at its absolute discretion. If such changes involve a downgrade or reduction in the nature of Services or value of the charges for Services, Tradegate may require Customer to commit to a new Minimum Service Term on all or part of the Services from the date of change, equivalent to Customer's current Minimum Service Term, or a fee may apply, up to a maximum of that portion of the charges for Services that are no longer payable as a result of the downgrade or reduction, or Customer may be required to continue to pay the current charge for Services for the remainder of the Minimum Term.
- 10. INSTALLATION OF EQUIPMENT RELATED TO SERVICES**
- 10.1 Nothing in this clause 10 of this Service Schedule limits clause 2 of the Agreement.
 - 10.2 At Customer's option, Tradegate or a Supplier may install any Service Equipment at a Site or Customer may install the Service Equipment itself.
 - 10.3 If inspection of the Site reveals conditions substantially different from those notified to Tradegate or Supplier by Customer, Tradegate may reasonably vary the pricing to allow for the increased cost of installation.
 - 10.4 If requested by Tradegate, Customer will execute an acknowledgment of delivery in an acceptable form.
 - 10.5 Tradegate reserves the right to charge Customer, if Tradegate or a Supplier is unable to obtain access to Customer premises at the time agreed for installation of Service Equipment.
 - 10.6 Customer is responsible for all additional installation service charges where the work required on Site is greater than two hours, unless otherwise agreed. The installation charge is payable on commencement of the Service.
 - 10.7 Customer acknowledges that installation of the Services may cause temporary disruption to Customer's standard telephony services.
 - 10.8 Tradegate and its Suppliers will use reasonable endeavours to configure the equipment such that it works with Customer's network based on the information supplied by Customer about Customer's network. Tradegate or its Suppliers will also endeavour to provide telephone support to assist Customer where possible. However, as there are many possible network configurations, Tradegate cannot guarantee the Services will work in conjunction with Customer's network, modem, router and/or site conditions. Local network configuration remains Customer's responsibility.
 - 10.9 Telephone line configuration changes are only available for supported modems and routers, as notified by Tradegate or its Suppliers from time to time.
 - 10.10 Changes made by Customer to the supplied configuration are at Customer's risk and will not be supported by Tradegate or its Suppliers.
- 11. CUSTOMER'S OBLIGATIONS IN RELATION TO SERVICE EQUIPMENT**
- 11.1 Customer must:
 - 11.1.1 take responsibility for the physical security of, and maintenance of appropriate environmental conditions for, the Service Equipment from the time of delivery to any Site;
 - 11.1.2 comply with the manufacturer's

- instructions relating to the Service Equipment and its use, including the supply of suitable power and environment;
- 11.1.3 comply with all laws and regulations relating to the Service Equipment, the use or possession of it, or any premises on which it is situated;
- 11.1.4 keep the Service Equipment at the Site addresses notified to Tradegate, or at such other place as Tradegate approves in writing;
- 11.1.5 produce the Service Equipment for inspection, testing, repair, modification, change, replacement and/or removal by Tradegate, or a person approved by Tradegate, at our request, and for this purpose allow Tradegate access to any premises where the Service Equipment is kept. If Customer does not own the Site, Customer must obtain the owner's permission for access and warrant to Tradegate that Customer has such permission. Customer indemnifies Tradegate and any person approved by Tradegate against a claim by the owner of the premises in relation to such entry on the premises. If Customer does not provide access to a Site as Tradegate reasonably requests, which must be during Business Hours, Tradegate may limit, suspend or cancel the Services to that Site;
- 11.1.6 disconnect and remove Service Equipment on the expiration or termination of the Services, or the termination of any relevant agreement between Tradegate and a Supplier or on the expiration or termination of any agreement necessary for Tradegate to provide the Services or the Service Equipment, whether or not Tradegate is a party to that agreement;
- 11.1.7 notify Tradegate immediately of any power outage, loss or failure that may affect the Services;
- 11.1.8 insure any Service Equipment that is Tradegate Equipment and keep it insured for its full insurable value under an all risks policy;
- 11.1.9 take out and maintain an adequate level of public risk liability insurance in relation to the Service Equipment and its use; and
- 11.1.10 in respect of the insurance policies referred to in clauses 11.1.8 and 11.1.9:
- take out each insurance policy with a reputable insurer in its and Tradegate's joint names for each's respective rights and interests;
 - punctually pay all premiums on each insurance policy and not prejudice any policy; and
 - if Tradegate requests, provide Tradegate with adequate evidence of the insurance policies.
- 11.2 Customer must not:
- 11.2.1 change the Service Equipment, make any addition to it or install anything with it without Tradegate's written consent. Customer agrees that the changed Service Equipment, including any other goods supplied with or attached to it, becomes Tradegate's property and will comprise Tradegate Equipment;
- 11.2.2 alter or cover up any insignia, number or mark in or on any Tradegate Equipment;
- 11.2.3 alter the installation of any Tradegate Equipment in a way that makes it a fixture; or
- 11.2.4 do anything to give rise to an adverse claim to Tradegate's rights (or the rights of a Supplier or of an entity related to Tradegate or a Supplier) in or ownership of any Tradegate Equipment.
- 11.3 Notwithstanding clause 2.5 of the Agreement, Customer has no right to buy any Service Equipment that is Tradegate Equipment at the end of the supply of Services, or at any other time.
- 11.4 The Service Equipment may be subject to design rights or other rights. Customer must not copy or reproduce any part of the manuals or of the Service Equipment without Tradegate's written permission.
- 11.5 Customer acknowledges:
- 11.5.1 if the Service Equipment is lost, stolen or substantially destroyed Customer must notify tradegate immediately and Tradegate may terminate this Service Schedule by notice to Customer;
- 11.5.2 except as provided in clause 11.5.1 of this Service Schedule, Customer's obligations under the Agreement continue even if the Service Equipment breaks down, is defective or damaged; and
- 11.5.3 if the Service Equipment breaks down, is defective or damaged, lost, stolen or substantially destroyed, Customer agrees it has no right or claim to set-off or withhold rent or other money.
- 12. FAULT REPORTING AND MAINTENANCE**
- 12.1 Before reporting a fault to Tradegate or a Supplier, Customer should ensure that the fault is not due to hardware, software or networks that are not being managed by Tradegate or the Supplier. Tradegate reserves the right to charge Customer an on-site visit fee if no fault is found.
- 12.2 Tradegate is:
- 12.2.1 responsible for correcting faults in the Services and Customer must provide all necessary assistance to enable Tradegate or its Supplier to locate and repair any fault which is Tradegate's responsibility;
- 12.2.2 not responsible for any fault which is on Customer's side of the network termination point; and
- 12.2.3 not responsible for any fault which is within the network of a Supplier, although Tradegate will notify that Supplier of the fault and request that the fault be corrected promptly.
- 12.3 If Tradegate requests, Customer must provide Tradegate or our Suppliers with reasonable access to Customer's premises during the hours of 9am - 5pm, Monday to Friday (excluding public holidays), or such other times as the parties agree in writing.
- 12.4 Tradegate reserves the right to charge Customer if Tradegate or its Supplier are unable to obtain access to Customer's premises at the agreed appointment time. Regional services attract an additional charge. A charge may be due where line fault requires an on-site visit to rectify.
- 12.5 Customer is responsible for the supply and maintenance of any additional hardware required to make the Services Equipment operational as a result of incompatible services being used.