



Terms & Conditions

TFNQ Pty Ltd t/as Telequip
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General Terms & Conditions

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 The **Customer**, the **Fees**, the **Hardware**, the **Software** and the **Services** have the meaning given in the Proposal.
- 1.1.2 The following words have these meanings in the Agreement unless the context otherwise requires:
- 1.1.3 **Acceptance Certificate** means the acceptance certificate to be signed by the Customer in accordance with clause 6.3.
- 1.1.4 **Agreement** means the agreement formed by the Telequip Proposal, these Standard Terms and Conditions and, subject to clause 2.1, the Customer's purchase order.
- 1.1.5 **Contact Details** means either a phone number, email address, address or fax number as provided to Us by You from time to time.
- 1.1.6 **Customer** means the person or entity that signs and submits a Proposal.
- 1.1.7 **GST Law** means the A New Tax System (Goods and Services) Act 1999 and any other law dealing with the imposition or administration of a goods and services tax in Australia. Terms used in the Agreement which are defined in the GST Law have the meaning given in that law.
- 1.1.8 **Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks (whether or not registered), designs, patents, circuit layouts, software, business and domain names and inventions.
- 1.1.9 **Payment** means the amount payable for and in relation to the Products and/or Services as set out in the Proposal which will be inclusive of goods and services tax (GST) unless otherwise specified.
- 1.1.10 **Product** means item(s) or Services(s) of the type offered to You by Us as set out in the Proposal.
- 1.1.11 **Proposal** means an offer made to you by Us in relation to Your purchase of Products and/or Services which You sign and submit to Us. The Proposal can be a presented in person or electronically, via fax, email or other digital media.
- 1.1.12 **Services** means the services provided by Telequip to the Customer under this Agreement as detailed in the Proposal which may include installation services, training services, network services, audit services but excludes maintenance services for hardware or software.
- 1.1.13 **Supplies** means the Software, Hardware and Services.
- 1.1.14 **System Configuration** means the system as outlined in the Proposal supplied to the Customer and installed in accordance with the terms of the Agreement.
- 1.1.15 **Telequip** means TFNQ Pty Ltd (ABN 21 645 811 203) t/as Telequip of 137 Sheridan St, Cairns, QLD, 4870.

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1.1.16 **Us** means Telequip and “We” or “Our” shall be interpreted accordingly.

1.1.17 **You** mean the person or entity that signs and submits a Proposal and “Your” shall be interpreted accordingly.

1.2 Interpretation

1.2.1 The following apply in the interpretation of the Agreement unless the context requires otherwise.

(a) A reference to any act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.

(b) A reference to the singular includes the plural number and vice versa.

(c) A reference to a gender includes a reference to each gender.

(d) A reference to a party means a person who is named as a party to the Agreement.

(e) **Person** includes a firm, corporation, body corporate, unincorporated association and a governmental authority.

(f) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under the Agreement, their substitutes and assigns.

(g) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them both jointly and severally.

(h) **Includes** means includes but without limitation.

(i) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.

(j) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.

(k) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to the Agreement.

(l) A reference to dollars or \$ is to Australian currency.

(m) A heading is for reference only. It does not affect the meaning or interpretation of the Agreement.

(n) Any schedule attached to this Agreement forms part of it. If there is any inconsistency between any clause of this Agreement and any provision in any schedule or attachment, the clause of this Agreement will prevail.

THE AGREEMENT

- 1.3 The Proposal may be recalled, modified, declined or withdrawn by either You or Us at any time prior to Payment being received by Us. Any modifications to the Proposal must be accepted by both parties. Once signed, the modified Proposal shall supersede all previous versions.
- 1.4 By signing and submitting a Proposal to Us, You are agreeing to purchase the Products. The Agreement is formed when Your order is accepted by Telequip, either by notice to You or by commencement of preparation for supply of the Products (without the need to give notice to the Customer). Any additional terms in a Customer's purchase order do not form part of this Agreement unless expressly accepted by Telequip in writing.
- 1.5 These Standard Terms and Conditions may only be varied if approved in writing by Telequip's Managing Director or her/his delegate in writing.
- 1.6 The Agreement contains the entire understanding between the parties for the supply by Telequip to the Customer of the Supplies and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the Supplies. For the avoidance of doubt any quotation or other material provided by Telequip does not form part of the Agreement.
- 1.7 In the event of any inconsistency between these Standard Terms and Conditions and other terms in the Agreement, these Standard Terms and Conditions prevail to the extent of such inconsistency.
- 1.8 The System Configuration may incorporate special terms and conditions applicable to the supply of all or part of the Supplies. In the event of any inconsistency between these Standard Terms and Conditions and any terms and conditions specified in the System Configuration, then to the extent of such inconsistency the former prevails.
- 1.9 Telequip and its suppliers reserve the right to carry out product improvement programmes, which could result in changes to the Supplies to be delivered under this Proposal, provided that these changes will not degrade the quality of the Supplies or their performance in comparison with the relevant manufacturer's written description and specifications current as at the date of the Proposal.
- 1.10 All charges associated with the connection, relocation or conversion of incoming lines (ISDN and PSTN), as well as the telephone handset (where applicable) and line rental etc. with your choice of carrier (Telstra, Optus, AAPT, etc.) are excluded.
- 1.11 MDF, TPF, IDF frame upgrades, replacement and expansion are excluded.
- 1.12 Quoted prices are based on works conducted during Telequip business hours (Mon-Fri 8:00 am – 5:00 pm, excluding public holidays) unless otherwise specified. If works are required/requested to be done outside of these hours, additional charges will apply.
- 1.13 All Products are subject to availability of stock. If Your Product, or part thereof, is unavailable, Telequip will choose to provide a similar product, a refund of the Payment, or a proportion of the Payment which represents the portion of the Product that is unavailable and You will have no further claim against Telequip.
- 1.14 The proposal may contain links to third party websites. Those websites are not under the control of Telequip and We are not responsible for the content of the links contained in those websites or any webcasting or other transmission received from any such websites.

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- (a) You acknowledge that You enter and use any third party websites at Your own risk.
- (b) The proposal may contain advertisements for third parties' goods and/or services. The third party advertisers are responsible for the accuracy of all representations made in those advertisements.

2 FEES AND PAYMENT

- 2.1 If the Proposal does not set out the Fees for all or part of the Supplies, then the Fees will be Telequip's standard list price for those Supplies at the time of the Proposal. If Telequip does not have a standard list price for those Supplies, then the fees will be as reasonably determined by Telequip having regard to the fees charged by Telequip for similar goods and services provided by Telequip.
- 2.2 The Customer must immediately pay to Telequip all Fees when due without deduction or deferment on account of any claim, counter-claim or setoff, on the following basis:
 - (a) Unless otherwise agreed in writing the standard terms of Payment are 50% (non-refundable) on order and remainder invoiced on delivery for business solution sales.
 - (b) Unless otherwise agreed in writing the standard terms of Payment are 100% on delivery for all other Products.
 - (c) Telequip reserves the right to request Payment prior to commencing any services or supplying any equipment.
- 2.3 The Customer must pay the Fees and any other amounts payable under the Agreement within 7 days of the date of Telequip's invoice. In the case of required deposits, ordering and supply will not begin until deposit has been received in full.
- 2.4 If Telequip has accepted the Customer's purchase order and the Customer subsequently requests a variation to the Supplies, any variation must be subject to agreement in writing between the parties (including the Customer's acceptance of any variation in Fees). Unless otherwise agreed in writing the Customer must pay the Fees for any additional Supplies on delivery of the Supplies.
- 2.5 Unless expressly stated in the Proposal, the Fees exclude all duties, taxes, freight and required travel costs. The Customer must pay Telequip all duties and taxes including any new or additional duties or taxes payable in relation to the Supplies or the Agreement, on demand by Telequip.
- 2.6 Where all or part of the Supplies are obtained from an overseas supplier, the Fees will be calculated by Telequip using the National Australia Bank telegraphic transfer rate applicable at time of the Proposal. Telequip may adjust the Fees to take into account any variation in this rate between the date when the Proposal was prepared and the time when Telequip was required to pay for the supplies or when the Customer pays the Fees, whichever occurs first.
- 2.7 If the Customer fails to make any Payment when due ("Unpaid Amount") then:
 - (a) the Customer must pay on demand, as agreed damages for late payment, interest of 0.3% per week on the Unpaid Amount;

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(b) subject to clause 13, Telequip can cease delivery of further items of Supplies and suspend the performance of Maintenance and/ or Services until the Unpaid Amount is received; and

(c) on reasonable notice to the Customer (unless Telequip considers that its ability to repossess maybe jeopardised by any delay), Telequip may repossess any Hardware or Software for which the Unpaid Amount is owing,

(d) Telequip may choose to use Solicitor or Debt collectors to collect from customers, any overdue amount agreed as per service/solutions charges set out by Telequip.

(d) In the event of Telequip instructing its solicitors or debt collectors to collect an overdue amount, all legal fees and collection charges as between solicitor and Telequip shall be borne and charged to the Customer and exercise of these rights will be without prejudice to any other rights Telequip may have under the Agreement.

3 GST

3.1 GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other law dealing with the imposition or administration of a goods and services tax in Australia. Terms used in this clause which are defined in the GST Law have the meanings given in that law. Each party warrants to the other that it is registered for GST. Each party must notify the other if it ceases to be registered for GST.

3.2 Amounts payable under the Agreement do not include GST unless otherwise stated. If any payment made or other consideration given by a party (**Payer**) in connection with this agreement does not include GST and is the consideration for a taxable supply for which the party who makes the supply (**Supplier**) is liable for GST, the Payer must, at the same time as the consideration is given, pay to the Supplier an additional amount equal to the amount of the consideration multiplied by the rate of GST under the GST Law.

3.3 Any reference in the Agreement to a cost or expense to be reimbursed by one party to another (**Payee**) includes any GST payable in connection with a taxable supply to which that cost or expense relates, less the amount of any input tax credit that the Payee or, if the Payee is a member of a GST group, the representative member of the GST group is entitled to claim.

4 DELIVERY AND PERFORMANCE

4.1 Delivery of Supplies will be made to the delivery address stated on the Proposal or Customer Purchase Order or as agreed in writing by the parties.

4.2 Dates for delivery of the Supplies or the performance of any services are only estimates and are not binding on Telequip.

4.3 If Telequip is unable to deliver all or any part of the Supplies or perform any Services within (in Telequip's opinion) a reasonable time or at all, then Telequip may terminate the Agreement, in whole or in part. In this event, the Customer will have no claim against Telequip for any damage, loss or expense incurred in connection with the delay in delivery or performance or the termination.

4.4 If the Customer refuses to accept delivery of any Supplies or performance of any Services, then the Fees for those Supplies or Services, together with all reasonable

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costs as determined by Telequip incurred by Telequip arising from the Customer's refusal to accept delivery (including any transport, inventory and storage costs) will become payable by the Customer on demand.

- 4.5 The Customer may be required to do the following prior to Telequip providing the Products:
- (a) provide proof of identification to Our requisite standard;
 - (b) enter into a hard-copy format of these Terms and Conditions;
 - (c) sign any other requisite documents;
 - (d) fulfil any other request made by Telequip.

5 INSTALLATION AND COMMISSIONING

- 5.1 As soon as practicable following Your order, We will contact You using Your Contact Details to arrange delivery of the Products.
- 5.2 If stated in the Proposal, Telequip must install and commission the Hardware or Software at the Customer's premises nominated in the Proposal.
- 5.3 The Customer must provide Telequip with all assistance reasonably requested by Telequip in respect of the installation and commissioning of the Supplies, including:
- (a) giving Telequip access to the premises and equipment in respect of which the Supplies will be installed and commissioned; and
 - (b) ensuring that the premises and the technology environment conform with any requirements notified by Telequip.
- 5.4 You acknowledge that Telequip may charge a delivery fee if You require Us to deliver a Product to you. Such fee will be advised to You prior to delivery taking place.
- 5.5 Upon completion of the installation and commissioning of the System Configuration the Customer must sign the Acceptance Certificate.
- 5.6 If the Customer disrupts the works, by not being available on the scheduled day, or cancels installation/service within 24 hours of the scheduled time, or informs Telequip that some element is ready when it is not, then any additional time and /or any additional labour or visits required as a result will be billable at Telequip's standard list price and for equipment a re-stocking fee will be applied at Telequip's discretion where equipment has already been ordered.

6 ACCEPTANCE

- 6.1 Except where the Customer is deemed to have accepted the Hardware and Software pursuant to clause 6.3, unless the Customer gives Telequip written notice within 7 days:
- (a) of delivery, if Hardware or Software; or

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(b) of completion, if Services, of the Customer's non-acceptance of the Supplies, then the Supplies are deemed to be accepted by the Customer. The Customer's notice of non-acceptance must give details of the basis for the non-acceptance.

TITLE AND RISK

6.2 Risk in the Supplies passes to the Customer on delivery of the Supplies to the Customer but no legal or equitable title to the Supplies will pass to the Customer until Telequip has received full payment of the Fees or the contract terms are complete. Unless Supplies are delivered to the Customer using the Customer's own freight service, whereby the risk in supply is with the Customer.

6.3 Until the legal and equitable title to the Hardware passes to the Customer, the Customer:

(a) must hold the Hardware as bailee of Telequip and, if demanded by Telequip, immediately deliver up the Hardware to Telequip;

(b) must ensure that the Hardware is readily identifiable and distinguishable from all other equipment held by the Customer and can be retrieved intact or, if necessary, reconstituted or separated, and returned to Telequip and, where the Hardware includes hardware previously supplied by Telequip to the Customer and in respect of which title has passed to the Customer, then the Customer must attach to the Hardware in respect of which title has not passed a notice indicating that the Hardware is held as bailee for Telequip; and

(c) authorises Telequip and Telequip's agents, at any time, to enter the premises in which the Hardware is stored and to repossess the Hardware regardless of the degree and manner of its attachment to realty. The Customer hereby indemnifies Telequip against any claim, action or damages arising out of the same.

6.4 Pending full title of the Hardware passing to the Customer, the Customer must not purport to assign any right or interest in the Hardware to any person.

6.5 Until the legal and equitable title to the Software passes to the Customer in accordance with the relevant licence agreement, the Customer authorises Telequip and Telequip's agents, at any time, to enter the premises in which the Software is stored and to repossess all copies of the Software and to ensure that all Software is downloaded from computer equipment located at such premises.

6.6 If a Product which You purchase from Us is a physical item to be delivered by Us to a place nominated by You, the risk in such item will pass to You when it is delivered or if we are unable to deliver the item to the place nominated by You for any reason (for example if no one is present to accept delivery), when We or our carrier first attempt to deliver the item.

7 SOFTWARE

7.1 The Customer is granted a non-transferable non-exclusive licence to use the Software only for the purpose for which it is supplied.

7.2 The Customer may only use the Software for the Customer's internal business purposes and as notified in writing by Telequip from time to time.

7.3 The Customer must not modify, alter, tamper with, reverse engineer or disassemble the Software or make copies of part or all of the Software without prior the written consent

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of Telequip except to make a copy of the Software for the purpose of backup, security testing.

7.4 Customer must not provide any access, arrange demo to any third party without written consent by Telequip.

7.5 If the Software is identified in the Proposal as third party software (Third Party Software) then:

(a) subject to clause 13.1 and any conditions set out in the Agreement, Telequip gives no warranties in relation to the Third Party Software; and

(b) the licences for the Third Party Software will be between the Customer and the third party software licensors and the Customer must enter into the applicable software licence agreements with those third party software licensors.

8 SERVICES

8.1 Telequip will provide the Services with due care and skill. Telequip reserves the right to determine which personnel will perform the Services. Telequip reserves the right to use third party resources for the Services either onshore or overseas.

8.2 The Customer must obtain all third party consents required for Telequip to provide the Services, provide a safe working environment at the Customer's premises for the personnel performing the Services and supply them with such assistance, including access to the Customer's personnel, equipment and systems, as Telequip may reasonably require to provide the Services.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 The information, names, text materials, graphics, logos, button icons, images, video and audio clips, trade marks (whether registered or not), advertisements, layout, arrangement, graphical user interface, look and feel, and control features of the Proposal and Products (the "Content") is protected by Intellectual Property Rights. You acknowledge that Telequip is the owner of these rights with Telequip's affiliates or other third party licensors where applicable.

9.2 All product and company names and logos contained within the Proposal are the trade marks, service marks or trading names of their respective owners..

9.3 The Customer acknowledges and agrees that no right, title or interest in any of the Intellectual Property Rights in the Content is transferred or granted to them, other than the rights granted expressly by these Terms and Conditions.

9.4 Intellectual Property Rights in the Supplies are owned by Telequip or the manufacturer or licensor of the Hardware or Software (Third Party Suppliers).

9.5 The Customer must promptly notify Telequip of any infringement, or any suspected or claimed infringement, of any Intellectual Property Rights in the Supplies (Infringement) and the Customer:

(a) must give Telequip all information available to the Customer in connection with the Infringement;

(b) must render its fullest co-operation and assistance to Telequip in relation to resolving the Infringement;

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(c) must not, without the prior written consent of Telequip, make any admissions concerning the Infringement; and

(d) releases and holds harmless Telequip from any liability in respect of an Infringement if the Customer used the Supplies on or with equipment or software not supplied or authorised by Telequip, or modified in a manner not authorised by Telequip, or in any way not authorised by or reasonably foreseen by Telequip.

9.6 Telequip and the Third Party Suppliers will have complete control at their own expense of all matters relating to any claim including any defence, negotiations, settlement or compromise in respect of the claim.

9.7 Telequip agrees to provide to its Customers all reasonable assistance to make available to the Customers any remedies granted by Third Party Suppliers under the licence agreements entered into between the Customer and the Third Party Suppliers, and the Customer agrees that Telequip has no liability to any party arising out of any such agreements with Third Party Suppliers.

10 WARRANTY

10.1 Any hardware supplied is governed by the terms of the relevant manufacturer's warranty:

10.2 Unless otherwise agreed in the Proposal, the Customer is responsible at its own cost for the return of defective Hardware to the manufacturer.

10.3 Telequip does not warrant that any supplied Software is error free or that its use will be uninterrupted. Telequip will assist the Customer in making a claim under any warranty given in a Third Party Software licence entered into by the Customer for the Software in accordance with clause 9.4(b).

10.4 Telequip has no liability for defects in the Hardware or Software where it has been used outside the normal use for that Hardware or Software or where there has been inadequate or improper maintenance by the Customer of the Hardware or Software, modifications to the Supplies not authorised by Telequip or misuse of or accidental damage to the Hardware or Software.

10.5 In order to make a claim under this clause, You must give Telequip notice in writing of the alleged defect to the contact details provided on our website including details of the alleged defect and, if applicable, the cause of the alleged defect. Notice must be given within 30 days of the alleged defect occurring provided that the alleged defect occurred no later than 6 months after the date you first took possession of the Product. You must bear the expense of making a claim under this cause.

10.6 If the Customer reports a defect in the Supplies and that defect is found by Telequip to not exist or to have arisen as a result of a matter referred to in clause 12.4, the Customer must pay Telequip the costs as determined by Telequip which Telequip incurred in investigating the defect.

10.7 Due to health and hygiene reasons, earphones and headphones can only be returned for a full refund if they are unopened within 30 days of purchase and are completely sealed or faulty.

10.8 For this reason, if you have changed your mind about your purchase, earphones or headphones must be completely unopened and unused to receive a refund.

11 INDEMNITY AND LIABILITY

- 11.1 The Customer must indemnify Telequip in relation to all losses, damages, expenses, claims, demands, actions and suits suffered or incurred by, or made or instituted against, Telequip as a result, directly or indirectly, of a breach by the Customer of its obligations under the Agreement.
- 11.2 Subject to any condition, warranty or right implied by the *Trade Practices Act 1974* (Cth) or any other law which cannot by law be excluded by agreement, Telequip gives no warranties apart from those, if any, expressly set out in the Agreement and all other implied conditions, warranties and rights are excluded.
- 11.3 Where any condition, warranty or right is implied by law and cannot be excluded, Telequip limits its liability for breach of that implied condition, warranty or right to the extent permitted by law.
- 11.4 Subject to the qualifications in section 68A of the *Trade Practices Act 1974* (Cth) or any other law, Telequip's liability for any breach of any implied condition, warranty or right, in connection with the supply of goods or services, is limited:
- (a) in the case of Products supplied, to any one or more of the following (as Telequip may determine) within a reasonable time of being notified of a breach of any warranty implied:
- (i) the replacement of the Products;
 - (ii) the repair of the Products;
 - (iii) the payment of the costs of replacing the Products or of acquiring equivalent Products; or
 - (iv) the payment of the costs of having the Products repaired; and
- (b) in the case of Services supplied, to one of the following (as Telequip may determine):
- (i) the supplying of the Services again; or
 - (ii) the payment of the costs of having the Services supplied again.
- 11.5 Subject to the provisions of 13.2, 13.3, and 13.4, and despite any implication arising from any other provisions of the Agreement, Telequip is not liable to the Customer in contract, in tort (including negligence), under any statute (to the extent permitted by law) or otherwise for, or in respect of, any indirect or consequential loss or damage suffered by Telequip or any other person arising out of any breach or other act or omission in connection with this agreement.
- 11.6 The parties agree that indirect or consequential loss or damage, for the purpose of clause 13.5 means or includes:

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(a) any financial loss or expense including loss of business opportunity, including where caused by loss of use or of goodwill, loss of data or delay in the performance of any obligation;

(b) any expense incurred in connection with that loss or in mitigation or attempted mitigation of that loss; and

(c) payment of liquidated sums or damages in accordance with any other agreement, even if those losses were in the contemplation of the parties at the time they entered into the Agreement.

11.7 Subject to clauses 13.1, 13.2, 13.3, 13.4 and 13.5 and except in the case of any claim for damages arising from the death of, or injury to, any person caused by any wilful or negligent act or omission of Telequip, but otherwise not withstanding anything else to the contrary contained in or implied in the Agreement, any liability which Telequip may have to the Customer in relation to breach of an obligation:

(a) in relation to the Supplies, will be limited to the remedies set out in clauses 13.4(a) and 13.4(b); and

(b) otherwise, for the aggregate of all events, is limited to 50% of the total Fees per month then paid by the Customer under the Agreement.

11.8 If the provisions of the Competition and Consumer Act 2010 (Cth), Fair Trading Act 1989 (Qld) or other relevant consumer legislation ("Applicable Laws") apply to these Terms and Conditions and there are warranties implied under the Applicable Laws that are implied into these Terms and Conditions, then the Customer shall have the full benefit of those implied warranties but only to the extent to which those warranties are applicable to these Terms and Conditions and may not be excluded from it. To the extent permitted by law, all other warranties, express or implied, are hereby expressly negated and excluded.

11.9 Telequip does not warrant to the Customer that the Proposal or the Products will be virus free, defect free or free of performance anomalies, inaccuracies or typographical errors.

11.10 Any description or photograph of a Product does not in any way offer any opinion as to the suitability of a Product for Your needs nor does it replace an assessment of such suitability in Your circumstances. Telequip recommends that You undertake an independent assessment as to whether the Products are suitable for Your needs.

11.11 A Product which You receive may vary in model number, colour or appearance from any photograph displayed by Us.

11.12 You acknowledge and accept the risk that any communication made by You to Us in relation to the Proposal made across the internet may be intercepted, used or modified by third parties.

11.13 You accept all risks and responsibility for all loss, damage, costs and other consequences resulting from Your use of the Product.

11.14 You release Telequip and our officers, directors, employees, agents or related bodies corporate from liability for any loss or damage including without limitation, losses or damages for loss of profits, business interruption, loss of information, indirect, special, punitive or consequential losses or damages arising out of the use or inability to use or

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reliance on the Products or information available on or accessible through the Proposal whether or not caused by any negligent act or omission on behalf of Telequip.

11.15 Without limiting this clause Your release Us from any loss or damage (including indirect, special or consequential loss or damage) arising from the use of, or reliance on, the Proposal or the Products, whether or not caused by any negligent act or omission by Telequip including but not limited to:

(a) Loss of use, data or profits on any theory of liability arising out of or in connection with the use of or the inability to use the Products;

(b) Your reliance on the Products;

(c) The statements or actions of any employee of agent of Telequip;

(d) Any unauthorised access to or alteration of Your transmission or data

(e) Any information that is sent or received or not sent or received;

(f) Any failure to store or loss of data or files or other content;

(g) Any outage or delay or capacity shortfall caused by any telecommunications or internet service provider;

(h) Your fraudulent, negligent or otherwise unlawful behaviour;

(i) Any delay, interruption or error of the Proposal or Payment;

(j) Any loss incurred as a result of a third party obtaining Your Personal Information, either with or without Your knowledge;

(k) Any loss or damages in relation to the supply of services specified on any advertisement placed on the Proposal or information made available on the Proposal;

(l) Telequip will not be liable by reason of the failure in the performance of obligations under the Terms and Conditions by reason of power outages, strikes, riots, fire, explosion, acts of God, governmental action, or any other cause which is beyond our reasonable control, including any form of technological failure or the actions or omissions of third parties.

11.16 The customer agrees to indemnify and hold harmless Telequip, our officers, directors, shareholders, employees, consultants, agents, and related bodies corporate from and against all losses, damages, expenses and costs (including solicitor client costs on a full indemnity basis) and all third party claims, liability, losses, damages, expenses and costs arising from any claim, demand, suit action or proceeding by any person against any of those indemnified in relation to or in connection with the Proposal or Your use of the Products or Your Payment or Your failure to comply with these Term and Conditions, or from your violation of any applicable law.

12 TERMINATION

12.1 Telequip may by notice immediately terminate the Agreement on the occurrence of any of the following:

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(a) failure by the Customer to perform any material obligation under the Agreement, where the failure cannot be rectified;

(b) failure by the Customer to perform any obligation under the Agreement where Telequip determines the failure can be rectified but it is not rectified within 30 days of Telequip giving notice requesting rectification;

(c) the Customer is "insolvent" within the meaning of the word in the Corporations Act (*Cth*) 2001 or makes any arrangement or composition with or assignment for the benefit of Your creditors, or if the Customer goes into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over Your assets;

(d) the Customer fails to make any payment when due;

(e) the Customer purports to assign any of its rights under the Agreement without Telequip's consent;

(f) the Customer breaches another agreement with Telequip and Telequip is entitled to terminate the other agreement pursuant to the terms of the other agreement;

(g) the Customer commits a material breach of these Terms and Conditions, which is capable of remedy, and the Customer fails to remedy the breach within a reasonable time of a written notice to do so;

(h) the Customer commits a material breach of these Terms and Conditions which cannot be remedied;

(i) the Customer repeatedly is in breach of these Terms and Conditions;

12.2 Upon termination of the Agreement by Telequip under clause 14.1, the Customer must immediately pay Telequip all Fees and other amounts payable under the Agreement, other than Fees for Services due to be provided after the date of termination.

12.3 If Telequip exercises its right to terminate We may take any one or more of the following actions:

(a) declare any monies paid as forfeited; and/or

(b) sue You for damages.

12.4 Termination of Your access to Products shall be without prejudice to Telequip's rights accrued before termination. All restrictions imposed on You, disclaimers and limitations of liability set out in the Terms and Conditions will survive termination.

12.5 Telequip's rights under this clause are in addition to any other rights We may have at law.

13 CONFIDENTIAL INFORMATION

13.1 In this clause, "confidential information" means information disclosed by or on behalf of one party (**Discloser**) to the other party (**Recipient**) or of which the Recipient becomes aware, during the term of the Agreement or in prior discussions between the parties in anticipation of the Agreement, including:

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(a) information designated as confidential by the Discloser; and

(b) any other information which by its nature should reasonably be considered to be confidential information of the Discloser or of a person to whom the Discloser owes a duty of confidence. Confidential information may be provided in writing, electronically, verbally or otherwise. Confidential information does not include any information which the Recipient can prove either is in the public domain or was known by the Recipient at the time of disclosure, other than through a breach of the Agreement.

13.2 The Recipient must:

(a) subject to clause 15.3, keep confidential and not disclose to any person any confidential information;

(b) not use or permit the use of any confidential information for any purpose other than that contemplated by the Agreement, unless authorised by a separate agreement between the parties; and

(c) establish and maintain comprehensive security measures to ensure that all confidential information in its possession, custody or control is secure at all times. This includes information provided to its employees, officers and agents. Without limiting this obligation, the Recipient must keep all confidential information no less secure than its own confidential information.

13.3 The Recipient may disclose confidential information:

(a) as expressly required or permitted by this agreement (if applicable);

(b) with the written consent of the Discloser; or

(c) to the extent required by law, by an order of a court or of a regulatory body or by the listing rules of the Australian Stock Exchange.

13.4 If the Recipient is required to disclose any confidential information, the Recipient must before doing so:

(a) notify the Discloser; and

(b) if possible, give the Discloser a reasonable opportunity to take any steps it considers necessary to protect the confidentiality of the confidential information.

13.5 On termination of the Agreement, the Recipient must, on the request of the Discloser, immediately:

(a) at the Discloser's choice, either return to the Discloser or destroy all documents in the possession, custody or control of the Recipient containing any confidential information;

(b) delete the confidential information from any computer system or other device operated, controlled or which may be addressed by the Recipient; and

(c) confirm by notice in writing to the Discloser that this clause 15.5 has been complied with.

13.6 The following applies to any information that the Customer provides to Telequip:

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(a) You authorise Telequip to use, store or otherwise process any information including personal information which relates to and/or identifies You, including, but not limited to, Your name, company or business name, date of birth, email address and postal address (the “Personal Information”), to the extent reasonably necessary for the provision of any Products requested by You or to inform You of Products which We consider that You may be interested in, in the future.

(b) You must ensure that the Contact Details which You provide to Us contain Your correct name, address, email address and other requested details.

(c) By accepting these Terms and Conditions, You agree to the processing and disclosure of the Personal Information for the purpose of Telequip providing the Products requested by You. If You would like to review or modify any part of Your Personal Information, the You should contact Us.

14 FORCE MAJEURE

14.1 Telequip is not liable for any failure to observe its obligations under the Agreement where such failure is wholly or substantially due to any cause beyond the reasonable control of Telequip including strikes, industrial action, breakdown of plant, machinery or delivery vehicles or vessels, war, blockades or governmental interference or request or any act of God, or due to a shortage in transportation or inability to obtain labour or materials from the usual sources of Telequip or the manufacturer or licensor of the Hardware, Software or any part of the Hardware or Software.

14.2 Any delay resulting from any of the above causes described in clause 16.1 will immediately extend the date for performance by Telequip of any obligations under the Agreement by the period of the delay.

15 THIRD PARTY TERMS AND CONDITIONS

15.1 If the Customer chooses to purchase a Product provided by a third party or accompanied by a connection with a third party (including without limitation a telecommunications or internet service provider) as per of the Proposal:

(a) You acknowledge that the relevant terms and conditions of that third party will also govern Your purchase and use of that Product;

(b) You are required to located, negotiate and accept those relevant third party terms and conditions if they are not made available to You by Us;

(c) Unless otherwise specified in the Proposal, you will be responsible for payment of any amounts payable to the third party in addition to the Payment; and

(d) you do so at Your own risk and our liability in relation to those Products will be limited in accordance with these Terms and Conditions;

16 MISCELLANEOUS

16.1 The Customer acknowledges and agrees with Telequip that in providing the Products We are doing so as an independent contractor and that neither these Terms and Conditions nor the provision of the Products will create any relationship of employer

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- and employee or partnership or joint venture or agency between Telequip and the Customer.
- 16.2 You acknowledge and agree that these Terms and Conditions apply to updates, supplements, add on components, or internet based services components which Telequip may provide at any time as part of the Proposal or Products. Telequip reserves the right to discontinue any updates, supplements, add on components, or internet based services components provided to You or made available to You at any time.
- 16.3 The Customer must not sell or export the Hardware and Software outside of Australia without first obtaining the consent of Telequip and, in the case of Hardware and Software of US origin, without first obtaining any relevant United States Government licence to do so. The Customer agrees to indemnify and hold harmless Telequip against any losses arising as a result of a breach by the Customer of this clause.
- 16.4 The Customer must not assign any or all of its rights under the Agreement without the prior written consent of Telequip.
- 16.5 Telequip does not waive a right or remedy under the Agreement or at law if it fails to exercise a right or remedy, only partially exercises a right or remedy, or delays in exercising a right or remedy. A waiver or consent is effective only if in writing and properly signed by or on behalf of Telequip.
- 16.6 The Agreement will be governed by the laws of the state of QLD and the parties submit to the jurisdiction of the courts of that State.
- 16.7 Notices under the Agreement must be in writing and transmitted by mail, email or facsimile to the address set out in the Agreement or such other address as may be nominated from time to time by notice. Proof of posting, delivery of email or of dispatch of facsimile is proof of receipt:
- (a) in the case of a letter on the second day after posting;
 - (b) in the case of a facsimile upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the facsimile number of the recipient notified for the purposes of this clause; and
 - (c) in the case of delivery by email, when sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.
- 16.8 If any provision of these Terms and Conditions is found to be invalid or unenforceable, that provision shall be enforced to the maximum extent possible and will be deemed deleted to the extent that it is not enforceable, and the remaining provisions of the Terms and Conditions shall remain in full force and effect.
- 16.9 The failure by Telequip to insist upon or enforce strict performance of any of these Terms and Conditions will not be construed as a waiver of any right or remedy of Telequip in respect of any existing or subsequent breach of these Terms and Conditions.
- 16.10 No waiver by Telequip of a provision of these Terms and Conditions is binding unless made in writing.
- 16.11 Telequip may from time to time amend, update, or change these Terms and Conditions, without prior notice.

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- 16.12 These Terms and Conditions constitute the entire Agreement between You and Telequip with respect to the Products, and the Terms and Conditions replace all prior or contemporaneous understandings or agreements, written or oral, regarding the Products.
- 16.13 No oral explanation or information provided by Telequip affects the interpretation of these Terms and Conditions or constitutes any collateral agreement, warranty or understanding
- 16.14 Telequip operates in Australia. The Products or information available in the Proposal may not be appropriate or available for use in other locations. If You purchase Products for other locations, You do so at Your own initiative and will not be liable to a refund or replacement of the Products on this basis.
- 16.15 Where possible, Your obligations under these Terms and Conditions will indefinitely survive the finalisation or discontinuance of these Terms and Conditions.
- 16.16 These Terms and Conditions shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.
- 16.17 The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under these Terms and Conditions.
- 16.18 The rights and remedies of a party to these Terms and Conditions are in addition to the rights or remedies conferred on the party at law or in equity.
- 16.19 The contra proferentem rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.

Maintenance Terms & Conditions

Maintenance Terms & Conditions are applicable for equipment covered by a Telequip maintenance agreement.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless otherwise indicated by the context or subject matter the following terms have the following meanings:

- 1.1.1 “Agreement” means this equipment service & maintenance agreement;
- 1.1.2 “Equipment” means the items listed in the equipment table and circuit/control boards housed within;
- 1.1.3 “Agreement Term” means the period specified in Schedule A during which maintenance will be provided;
- 1.1.4 “Commencement Date” means the date of execution of the Agreement by Telequip as inserted in Schedule A;
- 1.1.5 “Response Time” means the time within which a Telequip Technician shall respond to a customer following a fault reporting call. Response in the first instance will be via telephone and/or remote diagnostics hardware or software. During the Agreement Term, Response Times are as specified in the Contract Type;
- 1.1.6 “Contract Type” means:
 - 1.1.6.1 “Telequip Standard Day” covers a maintenance period from 8:00am to 5:00pm Mon to Fri excluding Australia wide and Queensland public holidays including Cairns Show holiday. The response times are 4 business hours for Major Faults and 16 business hours for Minor Faults;
 - 1.1.6.2 “Telequip Remote” covers a maintenance period from 8:00am to 5:00pm Mon to Fri excluding Australia wide and Queensland public holidays including Cairns Show holiday. The response times are 4 business hours for Major Faults and 16 business hours for Minor Faults;
 - 1.1.6.3 “Telequip 24/7” covers a maintenance period of 24 hours / 7 days per week including public holidays. The response times are 4 hours for Major Faults and 16 hours for Minor Faults;
 - 1.1.6.4 “Major Fault” means a major system breakdown resulting in the failure of 50% or more of the incoming telephone lines and internal extensions;
 - 1.1.6.5 “Minor Fault” means a minor system breakdown resulting in the failure of less than 50% of the incoming telephone lines and internal extensions;
 - 1.1.6.6 “Site” means the location of the Equipment as specified in Schedule A.

1.2 Interpretation

In this Agreement except to the extent that the context otherwise requires:

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- 1.2.1 Words importing the singular include the plural and vice versa and words importing a gender include other genders;
- 1.2.2 Where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- 1.2.3 A reference to a party to this Agreement or any other document or agreement includes its successor and permitted assigns;
- 1.2.4 Paragraph headings are for reference purposes only and shall not affect the interpretation of this Agreement.

2 TERMS OF AGREEMENT

- 2.1 This Agreement comes into effect on the Commencement Date and shall continue for the period specified in Schedule A;
- 2.2 This Agreement shall be renewed automatically for succeeding terms of three (3) months each, unless either party gives written notice to the other at least five (5) days prior to the renewal date of its intent not to continue the Agreement;
- 2.3 Telequip may terminate the Agreement upon 14 days' notice if the customer is in breach of any term of the Agreement and such breach has not been rectified by the customer within the notice period;
- 2.4 Telequip may terminate the Agreement if it is of the opinion that the Equipment cannot be maintained in proper working order and has so advised the customer in writing.

3 MAINTENANCE SERVICE

- 3.1 Subject to, and in consideration for, the payment of the maintenance charge specified in clause 5 thereof, Telequip shall, during the Agreement Term, perform maintenance service outlined herein;
- 3.2 Telequip will provide maintenance service for the Equipment based upon the Contract Type selected by the customer as described in Schedule A.
- 3.3 Telequip's minimum maintenance service pursuant to this Agreement is as follows:
 - 3.3.1 Telequip shall supply parts, assemblies and sub-assemblies, materials and service necessary to maintain the Equipment according to its specifications;
 - 3.3.2 Telequip Standard Day and Telequip 24/7 Contract Types only: In the event of a Minor or Major Fault, where restoration cannot be achieved via remote diagnostic hardware / software, Telequip shall despatch service personnel to the Site to perform any necessary repairs within a reasonable timeframe – refer to clause 5.5 and 5.6;
 - 3.3.3 Telequip Remote Contract Type only: In the event of a Minor or Major Fault, where restoration cannot be achieved via remote diagnostic hardware / software, Telequip shall despatch service personnel to the Site to perform any necessary repairs within a reasonable timeframe – refer to clause 5.4;
 - 3.3.4 Actual system restoration time will be subject to parts availability either new or refurbished;
- 3.4 The customer acknowledges that Telequip, in providing services under this Agreement cannot guarantee uninterrupted or error free operation of the Equipment while services are in progress.

4 EXCLUDED ITEMS

- 4.1 Telequip's maintenance service does not include:
- 4.2 Services connected with relocation of the Equipment, the addition or removal of accessories, attachments and other devices;
- 4.3 Repair of any equipment not specified in Schedule A;
- 4.4 Repair or replacement of any battery back-up associated with the Equipment
- 4.5 Repair of any malfunction whatsoever caused, in Telequip's opinion, by incorrect operation of the Equipment or from the customers (or its servants or agents) misuse of the Equipment or failure to observe and operate the Equipment in accordance with the manufacturers published instructions;
- 4.6 Repair of any malfunction or damage whatsoever caused by lightning, electrostatic interference, electromagnetic interference or power surges of any type howsoever caused;
- 4.7 Repair of any malfunction or damage whatsoever caused by the failure or fluctuation of electrical power, air-conditioning or humidity control;
- 4.8 Repair of any malfunction or damage whatsoever caused by entry of foreign objects, such as water, liquid, animals or plants;
- 4.9 Repair of any malfunction or damage whatsoever caused to the Equipment by war, fire, flood or any Act of God;
- 4.10 Repair of Equipment, which in the opinion of Telequip was caused by other contractors working on the Equipment;
- 4.11 Replacement of back plan wiring and external cabling;
- 4.12 Software that has been customised after initial installation, except where the customisation has been included in the software maintenance agreement;
- 4.13 Consumable items like ribbons, tapes, print wheels, print heads, analogue phones, batteries;
- 4.14 Software Assurance packages are different in cost and coverage depending on the supplier and have to be purchased separately.

5 FEES

- 5.1 In consideration for the maintenance service provided hereunder the customer shall pay to Telequip the maintenance fee specified in Schedule A, and, as varied from time to time, in advance, on an annual, quarterly or monthly basis as specified in Schedule A;
- 5.2 The customer agrees to pay to Telequip any additional fees as specified in Schedule A and as varied from time to time, for any maintenance service provided outside the Agreement Term;
- 5.3 On the Commencement Date the customer will be invoiced with the annual, quarterly or monthly fee. Thereafter, the customer will be invoiced for annual, quarterly or monthly fees on each anniversary of the Commencement Date during the term of the Agreement;

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- 5.4 Telequip Remote Contract Type only: Site visits shall incur travel charges payable by the customer at the discretion of Telequip;
- 5.5 Telequip Standard Day and Telequip 24/7 Contract Types only: The customer shall incur travel charges payable by the customer for unnecessary Site visits at the discretion of Telequip under the following circumstances: Where the Equipment is capable of remote diagnostics via the internet and the customer has not provided remote internet access to the Equipment and, in Telequip's opinion, the fault would have been rectified without a Site visit;
- 5.6 Telequip Standard Day and Telequip 24/7 Contract Types only: The customer shall incur travel charges payable by the customer for unnecessary visits at the discretion of Telequip under the following circumstances: Where Equipment has been moved to a different location than the Site and the fault cannot be rectified via remote diagnostics;
- 5.7 All charges for services provided under this Agreement are:
 - 5.7.1 Due and payable within seven (7) days from the date of invoicing;
 - 5.7.2 Not affected by a decrease in the use of availability of the Equipment due to the provision of services or any other cause;
- 5.8 If any monies payable under the Agreement are overdue, Telequip's obligation to perform maintenance service will be suspended from the due date of payment until payment is received. Any maintenance services provided under these circumstances will be billed on an individual basis.;
- 5.9 Telequip may charge travel and living expenses for maintenance service provided if the Site is more than 50 km from the Telequip Service Centre.
- 5.10 If requested, Telequip will provide service support for equipment which is not covered by this Agreement at Telequip's usual service rates, as varied from time to time. Any additional charges will be invoiced after the additional services have been provided;

6 CUSTOMER RESPONSIBILITIES

- 6.1 The customer agrees to:
- 6.2 The proper use of the Equipment at all times in accordance with operating manuals;
- 6.3 Telequip being the only provider of services to the Equipment;
- 6.4 Ensure that Telequip service staff has prompt and free access to the Equipment as required;
- 6.5 Provide a suitable environment for the effective servicing of the Equipment;
- 6.6 Provide conditions which are consistent with Equipment specifications and that the necessary auxiliary services for the operation of the Equipment are available;
- 6.7 Provide adequate storage for spare parts including consumable parts held on-site;
- 6.8 Replenish stocks of consumable items to ensure that a satisfactory level of service can be maintained;

GENERAL PROVISIONS

- 6.9 Ownership:
The customer warrants that it owns the Equipment or has the authority to enter into this Agreement;
- 6.10 Entire and complete terms:
The Agreement constitutes the entire agreement between Telequip and the customer in respect of the subject matter of this Agreement. No oral or written representation, inducement, statement or promise made by, or on behalf of, either party and not contained in this Agreement will be relied upon or binding upon the parties;
- 6.11 Amendments and waiver:
Any amendments, modifications or supplements to this Agreement must be in writing and signed by the authorised representative of each party. Failure to enforce or insist upon compliance with any of the terms of this Agreement will not constitute a waiver or relinquishment of the terms. ;
- 6.12 Additional equipment:
Additional equipment may be added to the Agreement. The rates charged in respect of such additional equipment will be then in effect when the additional equipment is installed;
- 6.13 Force of nature:
In the event of any delay or prevention in performance by Telequip due to any cause arising from or attributable to any Act of God or to any event beyond the reasonable control of Telequip (including but not limited to delays in obtaining Australian Communications Authority and other statutory approvals, strikes, lock-outs, civil commotion, war, fire, explosions, storm, earthquake, failure of plant, compliance with government authority, inability to obtain suitable materials, components, labour, power or transportation), Telequip shall be under no liability for loss or injury suffered by the customer thereby and any date or dates for the provision of services agreed by the parties shall be postponed during the period of such delay or prevention;
- 6.14 Liability:
The Liability of Telequip under this Agreement or arising from any advice or information provided by Telequip to the customer in respect of the Equipment or otherwise pursuant to conditions and warranties which are implied under the Trades Practices Act or any state legislation and which may not be excluded shall be limited to the provision of the services again, but without limiting the generality of the foregoing Telequip shall not be liable for any direct or consequential loss of damage which the customer may sustain howsoever arising. All the conditions and warranties which might but for this clause is implied by law are hereby expressly negated and excluded to the extent that the law permits;
- 6.15 Applicable law:
This agreement shall be governed and construed in accordance with the laws in force in the State of Queensland.

Telequip Managed Services Terms & Conditions

1 DEFINITIONS AND INTERPRETATION

In this Agreement unless otherwise indicated by the context or subject matter the following terms have the following meanings.

- 1.1 **Agreement** means the terms and conditions on which we supply the Service to you and is made up of these General Terms, the proposal document (if applicable), the Critical Information Summary and your order.
- 1.2 **Carrier** and **Carriage Service Provider** have the meanings given them in the Telecommunications Act 1997 (Cth).
- 1.3 **Charge/Charges** means those monies payable by you to us under the Agreement as varied in accordance with the Agreement. Charges include those set out in your order, the Critical Information Summary and any amounts payable for rental of Our Equipment and for provision of any additional services by us.
- 1.4 **Consumer Guarantee** has the meaning given in Division 1 of Part 3-2 of the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 (Cth)).
- 1.5 **Critical Information Summary** means our document headed 'Critical Information Summary' which sets out charges and information related to the plan ordered for the Service.
- 1.6 **Customer** means the person or entity that signs and submits an order for Services. The customer will be referred to as "Customer" or "You".
- 1.7 **Customer Equipment** means equipment, cabling, software, infrastructure and services of your own, or provided to you by a third party, or located on your side of the Network Boundary, including all equipment you purchase from us but excluding Our Equipment and Our Network.
- 1.8 **Customer Service Guarantee Standard** or **CSG** means the Telecommunications (Customer Service Guarantee) Standard 2011.
- 1.9 **Our Equipment** comprises devices and equipment supplied by Telequip to provide the Services. This includes phones, power packs, UPS, routers and switches used in conjunction with the provision of the Services. Equipment is provided by Telequip for the Term of the Services and remains property of Telequip. Equipment must be returned to Telequip at termination of the Agreement.
- 1.10 **Event** means any circumstance outside the reasonable control of the affected party, including act of god, fire, flood, storm, earthquake, war, riot, strike or unforeseen labour dispute, shortage of labour, equipment or materials, change of law or regulation, act or omission of any government authority including failure or delay in granting any approval or licence, electromagnetic interference, failure or variations in power supply, air conditioning or humidity control, act or omission of any of our suppliers or other third party, cable cut, failure of network, equipment, software, facilities or infrastructure owned or operated by any of our suppliers or another third party.

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- 1.11 **Excluded Incident** means an interruption or delay to the Service caused directly or indirectly by:
- 1.11.1 an Event;
 - 1.11.2 any fraud, negligence or breach of the Agreement by you or any of your officers, employees, agents or contractors;
 - 1.11.3 Customer Equipment;
 - 1.11.4 Our Equipment loaned to you;
 - 1.11.5 provisioning, upgrade or reconfiguring of systems or equipment requested by you;
 - 1.11.6 cancellation, suspension or restriction of the Service in accordance with the Agreement; or
 - 1.11.7 scheduled maintenance, upgrade or repair of Our Network or Our Equipment or network, equipment, software, facilities or infrastructure owned or operated by any of our suppliers.
- 1.12 **Fair Use Policy** means the acceptable use policy as published on our website.
- 1.13 **Network Boundary** means the point where responsibility for the Service transfers from us to you as set out below:
- 1.13.1 for a broadband or other data service to business premises or a multi-storey building, the Network Boundary is the main distribution frame (MDF); and
 - 1.13.2 for a voice service, the Network Boundary is the external carrier interconnect port on our core router at the edge of Our Network.
- 1.14 **Our Equipment** means equipment which we loan or rent to you together with any cabling or other ancillary items provided with it. For clarity, it does not include equipment you purchase from us by instalment payments or otherwise.
- 1.15 **Our Network** means the telecommunications network owned or controlled by us or our group company. For clarity, it excludes any network of a supplier to us.
- 1.16 **Rate Card** means our callout, labour and travel charges as amended from time to time.
- 1.17 **Service** means the service requested in your order and any related equipment, software, firmware and other goods and services we supply you in connection with the Service.
- 1.18 **Start Date** means the earlier of the date when you first use the Service and the date on which the Service is first available for use as notified by us unless stated otherwise in the Critical Information Summary.
- 1.19 **Terms** means these terms and conditions.
- 1.20 **TQMS | SIP** means the Telequip Managed Services SIP product.
- 1.21 **TQMS | HPS** means the Telequip Managed Services Hosted Phone System product.
- 1.22 **TQMS | TQ-CL** means the Telequip Managed Services Hosted Phone System product.
- 1.23 **We, our, us** means TFNQ Pty Ltd, trading as Telequip, ABN 21 645 811 203.

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- 1.24 **You, your** means the customer whose name appears on the order.
- 1.25 In these Terms, unless the context requires otherwise:
 - 1.25.1 headings are used for convenience only and do not affect the interpretation of the terms;
 - 1.25.2 the singular includes the plural and vice versa;
 - 1.25.3 a reference to a person includes a reference to a person, corporation, firm or other legal entity;
 - 1.25.4 “including” and similar expressions are not words of limitation;
 - 1.25.5 a reference to a clause is a reference to a clause in the Terms; and
 - 1.25.6 a reference to all or any part of a statute, regulation or code (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time

2 THE AGREEMENT

- 2.1 The Agreement is created between the Customer and Telequip when we accept your order for Services. It is a standard form of agreement under the telecommunications legislation and the Customer and Telequip must comply with it. The Agreement is made up of the following documents:
 - 2.1.1 the order;
 - 2.1.2 the Critical Information Summary;
 - 2.1.3 the Proposal (only for TQMS | SIP, TQMS | HPS and TQMS | TQ-CL) ; and
 - 2.1.4 these Terms & Conditions.
- 2.2 By signing the order, the Customer acknowledges having read and understood, and the Customer agrees to the terms and conditions of this Agreement, and the Customer represents being of legal age to enter this Agreement, being an authorised representative of the entity represented and become bound by its terms.
- 2.3 You need to read these Terms, your order, the proposal document (if relevant) and the Critical Information Summary for the Service you order to understand the Agreement and your rights and obligations. Words that start with a capital have defined meanings as per clause 1. You need to read the definitions in that clause to understand the meanings of those words.
- 2.4 If there is any inconsistency among the documents which make up the Agreement, the Agreement is interpreted by giving priority as follows:
 - 2.4.1 First to these Terms;
 - 2.4.2 second to your order;
 - 2.4.3 third to the Critical Information Summary and
 - 2.4.4 fourth to the Proposal;

- 2.5 The Agreement commences when we accept your Order and continues until you or we cancel the Service as permitted under clause 10 of the Agreement.
- 2.6 The Service will be supplied from the Start Date and continue, subject to the terms and conditions of the Agreement, on a month to month basis until you or we cancel it as set out in clause 10.

3 SERVICE ORDERS AND CHANGES

- 3.1 Your order specifies the Service which you order and which apply to the Agreement.
- 3.2 To place an order, you must be at least 18 years of age and an authorised representative for your business. You must provide us with complete and accurate information as requested in our order form and all consents we reasonably require in connection with the Service. If you do not do this, it may affect the way we assess your order and any credit terms, as well as cause delays, and you may incur additional costs of Equipment delivery and provisioning for the Service. You must promptly notify us of any change to your contact or other details stated in the order.
- 3.3 All orders are subject to our acceptance. When we receive your order, we assess it based on factors including your eligibility for the Service, availability of the Service to you and your credit risk. As part of this assessment, we may carry out a credit check. We may decide to accept or reject an order, or accept an order subject to provision of financial security or other conditions. If we reject your order, we will tell you our reasons. Any additional terms and conditions you state on an order are excluded from the Agreement unless we agree otherwise in writing.
- 3.4 Before you place an order, you must identify your own requirements and verify that the Service you order meet those requirements.
- 3.5 After we have accepted your order, you can only cancel your order or the Service as permitted under clause 10.
- 3.6 By ordering the Service, you:
 - 3.6.1 represent and warrant that you meet the customer eligibility criteria for the Service, if any, specified in the Agreement;
 - 3.6.2 acknowledge and agree that the Service has the limitations, restrictions and qualifications stated in the Agreement;
 - 3.6.3 warrant that you have authority to order the Service to be installed and connected as specified in the order and you authorise us to undertake any work, order any equipment, and appoint us your agent to deal with other network suppliers, as required to connect and supply the Service in accordance with the Agreement; and
 - 3.6.4 agree to pay us all Charges in connection with the Service, and to comply with any conditions and your obligations stated in the Agreement.

4 SUPPLYING THE SERVICE

- 4.1 We will supply the Service from the Start Date subject to the terms and conditions of the Agreement.

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- 4.2 We will supply the Service within a reasonable time after accepting your order and receiving any initial payment which may be required. We may choose not to commence the process until after a cooling off period (if any) has expired. Before we can connect the Service, we may need to order, configure or install Equipment and make arrangements with our suppliers, which may impact connection and delivery dates. We aim to meet any Service connection and delivery dates we have given you but those dates are estimates and not guarantees, and except as required otherwise by law, we are not liable for any failure to meet them.
- 4.3 Given the technology, we do not guarantee that we can provision and connect every Service and we may cancel a Service under clause 10 if we determine that we will be unable to provision or connect it within a reasonable time after accepting your order.
- 4.4 The Customer shall nominate a contact person at each installation location, inform them of the impending installation and have them instruct the installer of the exact location for installation of the Services at those sites.
- 4.5 We choose the method of provisioning and supplying the Service and we can use a combination of infrastructure and services of our own or provided by third parties. We may at any time vary the method, infrastructure and services which we use to supply the Service and we and our suppliers may make changes to the Service and the infrastructure and services used to supply the Service at any time provided such variation or change does not materially impair supply of the Service.
- 4.6 We will supply the Service using due care and skill but given the technology, we do not guarantee voice quality or data download speeds or other quality of service of a particular standard, or continuous access to the Service at all times, or that the Service will be fault free or uninterrupted or in the case of a data service, that any material sent or received will be sent or received correctly, except if we have agreed otherwise with you in writing or if the law requires otherwise. Quality of the Service can vary by location and is affected by many factors outside our control, including the Customer Equipment you use, distance from the exchange and the quality of the line connecting the exchange to your premises.
- 4.7 You are responsible for keeping in good working order all Equipment unless stated otherwise in the Critical Information Summary, or we agree otherwise in writing. You are also responsible for obtaining all necessary consents and approvals (including landlord or building manager approval if required) in connection with the Service, and for providing adequate power supply and a suitable physical environment for equipment.
- 4.8 You must arrange to give us safe access to your premises promptly when we ask if we need access to provision, connect, supply, install, maintain, support, upgrade, or repair the Service, and on cancellation to remove the Service.. If you do not, you may incur additional charges and connection, service and repair times may be impacted.

5 EQUIPMENT

5.1 Customer Equipment

5.1.1 Customer Equipment is only allowed to be connected to the following services:

5.1.1.1 TQMS | Data Services;

5.1.1.2 TQMS | Mobile Services;

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- 5.1.1.3 TQMS | Fixed Line Services; and
- 5.1.1.4 TQMS | SIP.
- 5.1.2 TQMS | HPS and TQMS | TQ-CL does not allow Customer Equipment to be used with the Service.
- 5.1.3 You must ensure that all Customer Equipment complies with applicable Australian laws and standards and our reasonable directions and is suitably provisioned and configured, and compatible for use with the Service.
- 5.1.4 You must upgrade or reconfigure the Customer Equipment as we may reasonably request at any time, including as a result of changes to the infrastructure used to supply the Service.
- 5.1.5 We may disconnect Customer Equipment from the Service if, in our reasonable opinion, it may interfere with or disrupt the Service.
- 5.1.6 You acknowledge and agree that if Customer Equipment is faulty or not compatible, it may affect your ability to access the Service, the quality of the Service or our ability to provide support to you.
- 5.2 Purchase of Equipment from us
 - 5.2.1 This clause if you purchase Equipment from us (including by instalment payments or by bundling with the Service).
 - 5.2.2 If you receive the equipment in damaged or incomplete condition, you must notify us immediately and follow our directions.
 - 5.2.3 Your ownership of Equipment we sell you commences when you have paid in full for it, or title is transferred by written consent from Telequip and your responsibility for all risk of loss or damage to it commences on delivery of the equipment to you.
 - 5.2.4 The Equipment we supply you may be locked and programmed to work only with the infrastructure used to supply the Service. If you ask us, we may (but are not obliged to) agree to unlock the equipment and in that case, we will not be liable to you for any associated loss, damage, expense or liability, except if we have been negligent.
 - 5.2.5 If you change the electronic serial number or equipment identifier of the equipment or perform a factory reset of equipment we supply you, we will not be liable to you for any resulting impact on our ability to supply the Service or to provide you with remote support, and you must pay our reasonable charges for any additional costs incurred as a result. It may also affect any rights and remedies you may have in relation to supply of the equipment.
 - 5.2.6 You are responsible for installation, upgrade and maintenance of all Equipment you purchase from us unless we agree otherwise in writing.
 - 5.2.7 Until your ownership commences under clause, we retain legal and equitable ownership of the Equipment.
 - 5.2.8 Until ownership passes to you, you must comply with the obligations set out in clause 6.3.
 - 5.2.9 If the Equipment we supply you has the benefit of a warranty, warranty is a back-to-base manufacturer's warranty. This means that in case of a fault covered by warranty, the Equipment has to be returned to the manufacturer for assessment, repair and/or

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replacement at your expense. During this time you will be without the part and no interim replacement will be provided.

5.3 Our Equipment

5.3.1 This clause applies if we rent Our Equipment to you in connection with the Service.

5.3.2 We own Our Equipment at all times and ownership of Our Equipment does not pass to you even at the end of the rental period.

5.3.3 You are responsible for any loss of or damage to Our Equipment from the time of delivery to you until it is returned to us.

5.3.4 You must, in respect of Our Equipment:

5.3.4.1 keep it in your control at all times and at the premises to which we delivered it or other premises we have agreed to in writing;

5.3.4.2 not loan, rent, give or sell Our Equipment to any other person, or allow a security interest, charge, lien or encumbrance to be created over it, not attach it to any real property and not remove from it any nameplate identifying Our Equipment as our property;

5.3.4.3 only use it in connection with the Service and for the manufacturer's intended purpose;

5.3.4.4 obtain all necessary consents and approvals (including landlord or building manager approval if required) for installation;

5.3.4.5 provide a suitable physical environment for installation and operation including an adequate power supply;

5.3.4.6 install, operate and maintain the equipment in accordance with manufacturer's requirements and our directions;

5.3.4.7 not change the electronic serial number or equipment identifier or perform a factory reset of it without our prior written consent;

5.3.4.8 comply with our directions; and

5.3.4.9 make sure that anyone using the equipment complies with your obligations under this clause 6.3.

5.3.5 You must allow us to inspect, service, upgrade, reconfigure, repair, replace or disconnect Our Equipment at any time we reasonably request and ensure that no other person modifies, services, upgrades, reconfigures, repairs or disconnects Our Equipment except with our prior written consent.

5.3.6 You must notify us immediately, and follow our directions, if Our Equipment is damaged or incomplete when you receive it, or if at any time Our Equipment is lost, damaged, stolen or becomes faulty while in your care custody or control.

5.3.7 On cancellation of the Service for any reason, the rental of Our Equipment is automatically cancelled. We may cancel the rental of Our Equipment immediately at any time by giving you notice:

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5.3.7.1 if, in our reasonable opinion, you are in breach of any obligation under this clause 6.3; or

5.3.7.2 if we are entitled to cancel the Service.

5.3.8 On the sooner of expiry or cancellation of any agreed rental period, you must permit us to enter onto the premises where Our Equipment is located and to disconnect and remove it, or if we request, at your cost, and in accordance with our directions, immediately return Our Equipment to us in good condition (except fair wear and tear).

5.3.9 Telequip can request you to sign a cancellation form by authorized person if the customer choose to cancel from their side. Till the time we received a completed and signed cancellation form all the service and rental charges are applicable.

5.4 PPSA & Security Interest

5.4.1 This clause applies to the extent that the Agreement creates or evidences a security interest in Equipment (and in proceeds of sale Equipment) including Equipment to which we retain ownership under clause 6.2, and Our Equipment, for the purposes of the Personal Property Securities Act 2009 (Cth) ('PPSA'). The terms 'accession,' 'perfected security interest,' 'security agreement,' 'security interest', and 'verification statement' have the meanings given them in the PPSA.

5.4.2 If we ask you, you must promptly sign any document and do anything else we reasonably require to ensure that our security interest is a perfected security interest. You must not enter into any security agreement that permits any other person to have or to register any security interest in respect of the equipment or proceeds of sale of the equipment until we have perfected our security interest.

5.4.3 If you are a business or a non-profit organisation, you acknowledge and agree that the equipment is not used predominantly for personal, domestic or household purposes and accordingly you and we agree to contract out of sections 95, 118, 121(4), 130, 132(4), 135, 142 and 143 to the extent permitted by section 115(1) of the PPSA. You waive any rights you may otherwise have to receive notices under sections 95, 118, 121, 130, 132 or 135 of the PPSA, to apply to court for an order concerning the removal of an accession under section 97 of the PPSA, to object to a proposal by us to retain any collateral under sections 130 and 135 of the PPSA, and to receive a verification statement in relation to registration events in respect of the equipment supplied to you from time to time.

5.4.4 You and we agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. You must do everything on your part necessary to ensure that section 275(6)(a) of the PPSA continues to apply.

6 NETWORK MAINTENANCE, SUPPORT SERVICES AND FAULT REPAIR

6.1 Our responsibility and obligations:

6.1.1 We and our suppliers may perform maintenance, upgrade or repair services at any time on Our Equipment, and the infrastructure we and they use to supply the Service and will try to minimise any interruption to the Service or adverse impact on quality.

6.1.2 We provide support for use of the Service in Australia within the hours stated in the Critical Information Summary. We may agree to provide additional support services, for additional charges.

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- 6.1.3 We are only responsible for repairing a fault in the Service which you notify to us if the fault is created or caused within Our Equipment or the infrastructure we and our suppliers use to supply the Service, up to our side of the Network Boundary.
- 6.1.4 If we are responsible for repairing a fault in the Service we will take reasonable steps to restore the Service as soon as we reasonably can. We aim to meet any fault repair times that we give you but (except if we have agreed otherwise with you in writing or if the law requires otherwise) those times are estimates only and we do not guarantee to meet them. If we become aware that a fault in the Service is on your side of the Network Boundary, our sole responsibility is to notify you. We may, but are not obliged to, provide additional help.
- 6.2 Your responsibility and obligations:
 - 6.2.1 You are responsible for, and must repair or arrange the repair of a fault in the Service created in or caused by Customer Equipment or on your side of the Network Boundary. You are responsible for providing all support services in respect of the Customer Equipment and infrastructure on your side of the Network Boundary.
 - 6.2.2 You must promptly report any fault in the Service which you reasonably believe is our responsibility, and you must make any request for other support services, by contacting our customer service team by telephone or online inquiry as stated in the Critical Information Summary. Before reporting a fault to us, you must try to ensure that the fault is not in the Customer Equipment or on your side of the Network Boundary.
 - 6.2.3 You must notify us promptly of any changes to the Customer Equipment which may be relevant to the Service.
 - 6.2.4 You must arrange access to the premises if we request and provide other help if needed to enable us and our suppliers to investigate and repair a fault and provide support services.

7 USING THE SERVICE

- 7.1 Your responsibility and obligations:
 - 7.1.1 You must ensure that the Service is used only for its intended use as specified in the Critical Information Summary.
 - 7.1.2 You must comply with our Fair Use Policy.
 - 7.1.3 You are responsible for keeping secure the means of access to the Service to ensure that unauthorised access does not occur. You must keep secure any equipment you connect to the Service and any data stored on that equipment (including keeping user names and passwords secure) and you are responsible for the risk of unauthorised access, misuse and loss or corruption of that data. You must take reasonable steps to keep the Service and your account secure from unauthorised access. You must notify us immediately you become aware of any actual or attempted unauthorised use of the Service or breach of security, giving us your account number and full details of the security breach. Information about security tools is available on our website.
 - 7.1.4 You are solely responsible for all use of the Service and for all risks associated with your activities when you use the Service (including risks associated with transmitting, communicating, accessing, downloading, or publishing material, content of communications, making purchases or providing personal or confidential information, ensuring that material is sent or received correctly, and data loss, corruption or

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- interception, whether by using the internet or other means). We are not liable for any loss, cost, damage or liability arising from your activities when using the Service.
- 7.1.5 You must ensure that anyone you authorise to use the Service complies with your obligations under this clause 8 and you are responsible if they fail to do so.
- 7.1.6 You must comply with our reasonable directions and all directions of any regulatory body in connection with use of the Service. Where you access third party content or where a third party network is used to transmit material in connection with the Service, you must comply with any applicable acceptable use terms or other rules of those third parties.
- 7.1.7 You must provide us all the information and assistance we reasonably require to enable supply of the Service and compliance with any request or direction of a government agency, emergency services organisation or other authority, and to investigate if we reasonably suspect unauthorised use of the Service or if you have misused the Service or breached the Agreement.
- 7.1.8 You must use the Service only for lawful purposes and activities and must comply with all laws, regulations and industry codes of practice which apply to your use.
- 7.1.9 You must not use the Service in any manner which could cause you or us to violate a law, regulation or industry code, commit an offence, endanger any person, damage any property, infringe a person's rights (including copyright), or which could give rise to us incurring a liability. You must not use the Service to transmit, communicate, access or publish any material which is unlawful, offensive, indecent, defamatory, abusive, menacing or harassing, material which is unsolicited and material known to contain a virus or similar.
- 7.1.10 You must not knowingly do anything, or use the Service in any manner, which might compromise the security or safety of, or which might damage, interrupt or interfere with the operation of, the Service, the infrastructure used to supply the Service, Our Equipment or any other computer, system, network or services, including hack or otherwise obtain unauthorised access to any of them.
- 7.2 Our rights to intercept, monitor and take other action
- 7.2.1 You acknowledge and agree that, without liability to you, we may:
- 7.2.1.1 intercept communications and provide call related information to government authorities (including law enforcement agencies), to the extent required by law to do so;
- 7.2.1.2 (but we are not obliged to) monitor the usage of the Service and communications sent over it for compliance with the Agreement and to protect the infrastructure used to supply the Service and its other users;
- 7.2.1.3 implement traffic management measures as set out in our Fair Use Policy to; and
- 7.2.1.4 take any steps necessary to monitor and ensure our compliance with the law, relevant industry code of practice, court order, or notification or direction from a regulatory body.
- 7.2.1.5 We may (but are not obliged) to scan Customer Equipment or otherwise test the security of your Service, in order to help you to keep your Service secure from unauthorised access.

8 CHARGES, BILLING AND PAYMENT

8.1 Charges

- 8.1.1 You must pay all Charges in connection with the Equipment, the Service and the Agreement set out in your order, the Critical Information Summary, these Terms and our Rate Card.
- 8.1.2 Charges for the Service accrue from the Start Date and may include set up Charges (which may be payable before we commence provisioning), usage based Charges and recurring Charges and any other charges set out in the Agreement.
- 8.1.3 You are responsible for all Charges for use of the Service whether or not you authorised the use, including those arising from toll fraud or other unauthorised or fraudulent usage, or from your failure to keep your Service secure. You are also responsible for any Charges arising from your failure to access or disconnect a call properly or from your failure to disconnect a Service when vacating premises.
- 8.1.4 Recurring Charges are payable from the Start Date until cancellation of the Service. The recurring Charges continue to be incurred during any period of interruption to the Service including if caused by your failure to connect equipment to the Service, failure of Customer Equipment or other fault of you or anyone else who uses the Service, relocation of the Service, failure of services provided to you by anyone else (including broadband internet service where this is not provided by us), interruption for an insignificant period, or suspension of the Service for any reason. Recurring Charges also continue to be incurred during any period when the Service is not available because you failed to pay the Charges. If the interruption was caused by our fault or negligence, you may claim a credit for the recurring charge for the period of interruption as set out in clause 11.1
- 8.1.5 If you ask us to provide onsite services outside of postcode 4870, or outside the support hours specified in our Critical Information Summary, or if you ask us to provide services in connection with Customer Equipment which are outside of any warranty or Consumer Guarantee obligations we may have, you must pay our reasonable charges for those services.
- 8.1.6 You must pay our reasonable charges to repair, replace, modify or service the Service or Our Equipment if required as a result of:
 - 8.1.6.1 failure of Customer Equipment arising from any act or omission of you, your employees, agents or contractors or anyone authorised by any of them;
 - 8.1.6.2 your failure to return Our Equipment in good condition (excepting fair wear and tear) when required under the Agreement or loss, theft or damage of Our Equipment (except to the extent caused or contributed to by us); or
 - 8.1.6.3 any negligence, fraud or breach of the Agreement by you, your employees, agents or contractors or anyone authorised by any of them.
- 8.1.7 We will try to advise you of these charges before you incur them but given their nature, we may not always be able to do so.
- 8.1.8 You must pay our call out fees if we make an onsite visit after giving you reasonable prior notice, and you fail to give us access or to have a suitably qualified representative onsite to assist us.

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- 8.1.9 All Charges are in Australian dollars. If a Charge is stated to exclude GST, and we are liable to pay GST on supply of the Service to you, we may increase the Charge by the amount of GST and you must pay us the whole of that amount when we ask. If the charge is stated to be inclusive of GST, but the GST rate used is incorrect or changes, the amount of the charge will be adjusted to reflect the actual GST rate.
- 8.1.10 All rates and charges are ex GST unless specified differently.
- 8.1.11 Prices quoted do not include any onsite costs unless specified.
- 8.1.12 Call charges shall apply for any answered call whether the called party is an answering machine, disconnected service, wrong number, service switch-off announcement or actual conversation. The call charge begins when the call is answered and ends when the call is terminated.
- 8.1.13 All equipment and labour quoted is ex Cairns, QLD, 4870 for Queensland and Melton, VIC,3338 for Victoria. Customer is responsible for paying freight and travel from Cairns to site unless agreed otherwise.
- 8.1.14 Telequip will conduct regular rate reviews and will advise the Customer any variation of the call rate within two (2) working days' notice before the rate change takes effect. The continuation of the use of the Service constitutes an acceptance of the revised rates.
- 8.2 Billing and Payment
- 8.2.1 We may bill and require payment of certain Charges as set out in the Agreement before we commence to deliver equipment or connect the Service. Typically these are Charges for set up and provisioning of the Service. We may bill and require payment of Charges for any additional services before we provide those services. Unless otherwise stated in the Critical Information Summary, recurring Charges are billed in advance and usage based Charges are billed in arrears.
- 8.2.2 We will bill you monthly, on the first calendar day of the month. We will try to include all Charges relating to the current billing period on your bill but usage based Charges and some other Charges may not appear on your bill until up to 160 days from the date you incurred the charge. We may bill and you must pay any minimum monthly Charge stated in the Critical Information Summary even if you have not incurred the Services related to those Charges.
- 8.2.3 We will send bills to your address (by email, facsimile or post and in HTML, pdf or paper format, at our option). If we send or offer to send your bill by email, and you ask us to provide a paper copy, we may charge you a paper invoice fee.
- 8.2.4 if we have taken reasonable steps to ensure you receive it, a bill remains payable even if you do not receive it because you have changed address and not notified us or because your email mailbox is full or for other reason attributable to you.
- 8.2.5 If we find an error on a bill, we will apply an adjustment to your service account and this will appear on your next bill. We will credit your account with any overpayment and you must pay any underpayment by the due date. If you no longer have an account with us, we will take reasonable steps to refund any overpayment to you.
- 8.2.6 If we owe you an amount, we can provide it as a credit on your service account and deduct it from amounts you owe us.
- 8.2.7 You must pay the Charges by the due date specified on the bill.

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- 8.2.8 You must pay the Charges using the payment method specified on the bill.
- 8.2.9 If you have agreed to pay by automatic payment or direct debit from your credit card, charge card or bank account:
- 8.2.9.1 (i) you authorise us to:
- 8.2.9.1.1 (in the case of payments by card) disclose your card details to and obtain information from the card issuer to verify those details and your ability to pay the Charges using the card; and
- 8.2.9.1.2 debit your credit card, charge card or bank account all Charges you owe us from time to time in accordance with the Agreement, including any Charges which may become owing as a result of cancellation of the Service;
- 8.2.9.2 you must ensure that your account has sufficient funds to allow payment when required; and
- 8.2.9.3 you must notify us promptly if there is a change to your card or bank details.
- 8.2.10 If you fail to pay the Charges in accordance with the Agreement, we may:
- 8.2.10.1 withdraw any discounts in connection with the Service and/or restrict, suspend or cancel the Service as permitted under clause 10.2;
- 8.2.10.2 charge you a late payment fee;
- 8.2.10.3 exercise a general lien over any Customer Equipment in our possession until any outstanding charges have been paid in full; and
- 8.2.10.4 charge you our costs of recovering payment for outstanding charges, including reasonable debt recovery agent costs and legal costs.
- 8.2.11 If your payment is dishonoured by the bank or credit or charge card issuer, we may charge you a dishonour fee.
- 8.2.12 If at any time we have reason to become concerned about your ability to pay the Charges, we may in respect of your credit account (if any), decline to extend further credit or vary your credit limit and any related conditions.
- 8.2.13 If you fail to pay any amount when due or otherwise breach the Agreement, become bankrupt, insolvent, enter into an arrangement with your creditors, receivership, liquidation or similar, or if we become concerned about your ability to pay the Charges for any other reason, we may cancel your credit account (if any) without prior notice and all balances owing will become immediately due and payable.
- 8.3 Billing Disputes
- 8.3.1 If you have reason to believe there is an omission or error in relation to a charge on a bill, you may dispute the bill, by giving written notice to our customer service team before the due date for payment of the bill. Your notice must set out the date and number of the disputed bill, itemised details of the charges in dispute, your detailed reasons and any documentation to support your claim and enable us to investigate it. You must pay any undisputed amount by the due date.

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8.3.2 We are committed to ensuring that our bills are accurate and unless you provide reasonable substantiation of your claim, we may rely on our records as proof of usage and Charges incurred.

8.3.3 You can lodge billing disputes and other complaints in the following ways:

8.3.3.1 Via the complaint form on our website

8.3.3.2 By calling us at 07 4047 7000

8.3.3.3 By sending an email to complaints@telequip.net

8.3.3.4 Via mailing our office: Telequip, Complaints, 137 Sheridan St, Cairns, QLD, 4870

8.4 Financial Security

8.4.1 As a condition of our acceptance of your order, or if we have reason to be concerned about your ability to pay at any time and based on the outcome of a credit assessment conducted in relation to you, we may ask you to provide a security in the form of a cash deposit to be held by us, or a bank guarantee in a form acceptable to us, or to increase any security previously provided.

8.4.2 If you fail to provide adequate security within 5 working days of our request, we may, without liability, suspend the Service to you in accordance with the Agreement until we receive adequate security.

8.4.3 We may access the security at any time to pay outstanding Charges you owe us but only after giving you at least 5 working days' notice that we intend to access the security if you fail to pay the Charges within that period.

8.4.4 We will refund you the security deposit less any amounts owing, without interest, within 10 working days of the sooner of you satisfactorily completing the terms of the security arrangements, or cancellation of the Service.

9 SUSPENSION AND CANCELLATION

9.1 Our 100% satisfaction guarantee

9.1.1 If you cancel the Service within 30 calendar days from Start Date, Telequip will refund all charges paid by you to us in association with this service. This includes:

9.1.1.1 Setup charges;

9.1.1.2 Porting fees;

9.1.1.3 Installation fees;

9.1.1.4 Call charges with our Fair Use Policy; and

9.1.1.5 Recurring charges.

9.1.2 We will remove all of Our Equipment from your premises and return to Telequip.

9.1.3 We will not refund charges that you may have to pay for porting to another carrier.

9.1.4 Otherwise clause 10.2 applies for all cancellations.

9.2 Your Rights to cancel the Service

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- 9.2.1 To cancel the Service you must give us written notice as set out in clause 16 (unless the law specifies otherwise) with the notice periods set out in this clause. Failure to pay Charges does not automatically cancel the Service and recurring Charges will continue to be incurred until the Service is cancelled by you or us.
- 9.2.2 You may cancel the Service at any time. You and we must comply with the obligations relating to return of Equipment, refunds and payments set out in clause 9.3 unless the law requires otherwise.
- 9.2.3 You may cancel the Service at any time before we give you notice of Service connection and in this case you may incur the Charges set out in clause 9.3(b).
- 9.2.4 You may cancel the Service at any time after we give you notice of Service connection by giving us 30 days' notice before the end of a billing period. In this case you may incur the Charges set out in clause 10.3..
- 9.2.5 You may cancel the Service if we commit a material breach of the Agreement and fail to correct the breach within 30 days of receiving notice from you to do so. In this case you may incur the Charges set out in clauses 10.3.
- 9.2.6 You may cancel the Service if permitted under any other clause of the Agreement.
- 9.3 Our Rights to restrict, suspend or cancel the Service
- 9.3.1 To cancel the Service we must give you notice as set out in clause 16 if required but there are also circumstances where we can cancel immediately without giving you notice beforehand, as set out in this clause 10.2.
- 9.3.2 We may cancel the Service:
- 9.3.2.1 if we determine that for technical or other reasons we will be unable to provision or connect the Service to you within a reasonable time after accepting your order, immediately by giving you notice;
- 9.3.2.2 at any time by giving you 30 days' notice;
- 9.3.2.3 if you consent to cancellation of the Service.
- 9.3.3 We may cancel or suspend the Service immediately and without notice beforehand if you fail to pay any amount by the due date for payment and:
- 9.3.3.1 we assess that you or your account status present an unacceptably high credit risk to us;
- 9.3.3.2 we reasonably suspect fraud or attempted fraud; or
- 9.3.3.3 you fail to pay the amount owing within 5 working days of us giving you notice that the amount is overdue and that the Service may be disconnected, suspended or restricted.
- 9.3.4 We may restrict the Service immediately and without notice beforehand if we have agreed to restrict the Service at a certain point and you have reached that restriction point. (A restriction point is the point (if any) you have nominated at which access to a service or an aspect of a service is limited.).
- 9.3.5 We may cancel or suspend the Service immediately by giving you notice if you:

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- 9.3.5.1 commit a material breach of the Agreement which is capable of being corrected and you fail to correct the breach within 30 days of receiving notice from us to do so;
- 9.3.5.2 commit a material breach of the Agreement which is not capable of being corrected;
- 9.3.5.3 withdraw your consent (if any) to waive your rights and protections under the Customer Service Guarantee Standard;
- 9.3.5.4 fail to provide us with access, authority or information reasonably notified as required by us to enable us to provide the Service or as set out in clause 12;
- 9.3.5.5 if anyone using the Service, in our reasonable opinion, have been, or is, involved in fraud or other illegal conduct in connection with the Service;
- 9.3.5.6 if anyone using the Service fails to use the Service as permitted under the Agreement;
- 9.3.5.7 in our reasonable opinion, are, or are operating as, or using the Service as, a Carrier or Carriage Service Provider;
- 9.3.5.8 in our reasonable opinion, are using the Service for a purpose other than that for which it is intended as set out in the Critical Information Summary, and you fail to change to a more suitable service within 30 days of receiving notice from us asking you to do so;
- 9.3.5.9 if you fail to provide or increase financial security, as required under the Agreement, within 5 working days of receiving notice from us to do so;
- 9.3.5.10 become bankrupt, insolvent, or have a receiver, manager, administrator, provisional liquidator or liquidator appointed, enter into an arrangement with your creditors or if a partnership, the partnership is dissolved or application made to dissolve it;
- 9.3.5.11 vacate your premises;
- 9.3.5.12 if an individual, die; or
- 9.3.5.13 do not use the Service for a period of at least 6 months, have a zero or negative account balance, and do not notify us that you wish to retain the Service, within 30 days of receiving notice from us of our intention to cancel.
- 9.3.6 We will try to give you notice beforehand, but we may cancel or suspend the Service immediately and without giving notice beforehand, if:
 - 9.3.6.1 required by law, or to comply with a direction or order of a government authority or court;
 - 9.3.6.2 a competition notice is or is likely to be issued by a government authority in connection with the Service;
 - 9.3.6.3 there is an emergency;
 - 9.3.6.4 we have reasonable grounds to believe there is a threat or risk to the security of the Service or integrity of the network, or the Service may cause death, personal injury or damage to property;

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- 9.3.6.5 we are unable to supply the Service because of an Event;
- 9.3.6.6 prudent or necessary to allow maintenance or repair of, or to avoid or minimise a risk to the networks and infrastructure used to supply the Service, or for other operational reasons; or
- 9.3.6.7 where we supply the Service using another supplier's network or services, our supplier ceases to supply its services to us.
- 9.3.7 We may cancel the Service if permitted under any other clause of the Agreement.
- 9.3.8 If we suspend or restrict a Service, we may later cancel the Service for the same reason.
- 9.4 Effect of restriction, suspension, cancellation and termination
 - 9.4.1 During any period of restriction or suspension by us under clause 10.2 or requested by you, you remain responsible for all recurring Charges which will continue to be incurred and any usage based Charges incurred.
 - 9.4.2 If the Service is cancelled before we give you notice of Service connection, you must pay:
 - 9.4.2.1 our reasonable charges and all third party costs we have incurred in connection with preparing to supply the Service; and
 - 9.4.2.2 equipment charges in accordance with clause 10.3.
 - 9.4.3 If the Service is cancelled for any reason after we give you notice of Service connection, you must pay:
 - 9.4.3.1 all Charges incurred for the Service including any usage based Charges whether incurred before or after the date of cancellation;
 - 9.4.3.2 equipment charges in accordance with clause 10.3.
 - 9.4.4 If any equipment you purchased from us has not been paid in full, pay us the unpaid balance of our standard retail price for the equipment (including the amount of any discount given); and
 - 9.4.5 If Our Equipment is included in the Service return the equipment to us in good condition, fair wear and tear excepted.
 - 9.4.6 (e) Cancellation of the Service takes effect on expiry of any notice period required by the Agreement, unless we agree otherwise. On cancellation of the Service for any reason, we may disconnect the Service and you must:
 - 9.4.6.1 immediately cease to use the Service;
 - 9.4.6.2 immediately cease to use and comply with your obligations in respect of Our Equipment as set out in clause 6.3 and in respect of any software we licensed as set out in clause 13; and
 - 9.4.6.3 pay all invoices for the Charges by the due dates.
 - 9.4.7 Except if required otherwise by law, we are not liable to refund any monies which you have paid in advance. We will refund you the balance of any monies which you have paid in advance, after you have met your obligations under clauses 10.3.

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- 9.4.8 Except if required otherwise by law or as otherwise stated in this clause 10.3, we are not liable to you for any loss, cost, damage or liability in connection with suspension or cancellation of the Service by us in accordance with the Agreement.
- 9.4.9 Cancellation of one Service does not affect your contract obligations in connection with any other services we supply to you.
- 9.4.10 If we agree to reconnect a Service after suspension or cancellation in accordance with the Agreement, you may incur a reconnection fee.
- 9.4.11 If a Service is cancelled and the Agreement terminates, clause 11 and any provision of the Agreement which is clearly intended to operate after termination will continue as will the rights and liabilities that have accrued to you or us.

10 LIABILITY

10.1 Our Liability to you

- 10.1.1 The only terms and conditions which apply to our supply of the Service and any other goods and services to you are the terms and conditions expressly set out in the Agreement and any rights you have at law which cannot be excluded. For example, we have obligations under the Consumer Guarantees, which may apply to the supply of goods and services to you. If you have rights and remedies under the law which cannot be excluded, nothing in the Agreement excludes those rights or remedies. We exclude any other liability we may otherwise have to you in connection with this Agreement and the Service, and we exclude all implied terms, conditions, warranties, rights, remedies.
- 10.1.2 If we have obligations to you under the Consumer Guarantees which cannot be excluded, but the law allows a supplier to limit liability for a breach of those obligations, we limit our liability to replace or repair goods, resupply the Services or pay the cost of replacement, repair or resupply, only if it is fair and reasonable to do so.
- 10.1.3 If your use of the Service is interrupted, or connection of the Service is delayed, as a result of our fault or negligence only, within a reasonable period of the interruption you can ask us to credit the amount of any recurring Charges billed to you for the affected Service for the period of the interruption or delay, unless we have an obligation under a service level to provide you a service credit in which case you can ask us to provide the service credit, and we limit our liability to you to that amount.
- 10.1.4 Except for any liability we have to you under the law which cannot be excluded, an interruption or delay to the Service is not caused by our fault or negligence, and we are not liable, if it is caused by an Excluded Incident.
- 10.1.5 If the law requires, we will also pay you compensation for any reasonably foreseeable loss you suffer as a result of interruption or delay to the Service caused by our fault or negligence.
- 10.1.6 The limitations set out in clause 11.1 do not apply to any legal liability we may have for direct loss or damage to tangible property or for personal injury or death.
- 10.1.7 Except for any liability we have to you under the law which cannot be excluded, we are not liable for any delay, interruption or failure to perform an obligation under the Agreement to the extent caused by an Event.

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- 10.1.8 Except for any liability we have to you under the law which cannot be excluded, we exclude all liability to you for loss of profits, loss of revenue, loss of opportunity or goodwill, loss of actual or anticipated savings, loss or corruption of data, loss of any equipment value, any exemplary, punitive or special damage and any kind of indirect or consequential loss.
- 10.1.9 We are not liable for any loss you suffer to the extent that you or any of your officers, employees, agents or contractors caused or contributed to the loss, or to the extent caused by you failing to take reasonable steps to reduce or avoid the loss.
- 10.1.10 Except for any liability we have to you under the law which cannot be excluded, if we do not expressly accept liability to you in connection with the Agreement or the Service under this clause 11.1, then we exclude that liability.
- 10.1.11 Except if the law requires otherwise, we limit our total cumulative liability to you in connection with the Agreement and the Service to the amount you paid us for the Service.
- 10.1.12 The limitations and exclusions of our liability set out in this clause 11.1 are to be construed for our benefit and that of our group companies.
- 10.2 Your liability to us
- 10.2.1 You are liable to us for any breach of the Agreement or negligence by you according to general legal principles.
- 10.2.2 You must pay us the amount of any loss, cost (including legal costs), damage, expense or liability we suffer or incur in connection with:
- 10.2.2.1 use of the Service, or equipment used in connection with the Service, arising from negligence, fraud or breach of the Agreement by you, your employees, agents or contractors or anyone authorised by any of them; and
- 10.2.2.2 any third party claim arising from inaccurate or incomplete information or improper authorisation provided to us or our contractors by you, your employees, agents or contractors in connection with the Service.
- 10.2.3 You are not liable for any delay or failure to perform any obligation under the Agreement due to circumstances outside your reasonable control.
- 10.2.4 You are not liable for any loss we suffer to the extent that we or any of our officers, employees, agents or contractors caused or contributed to the loss, or to the extent caused by Our Equipment, the networks and infrastructure we or our suppliers use to supply the Service, or by us failing to take reasonable steps to reduce or avoid the loss.
- 10.2.5 Except as set out in clause 11.2.2 you are not liable to us for loss of profits, loss of revenue, loss of opportunity or goodwill, loss of actual or anticipated savings, loss or corruption of data, loss of any equipment value, any exemplary, punitive or special damage and any other indirect or consequential loss.
- 10.2.6 If the customer for a Service is more than one person, each of you is jointly and individually responsible for the Charges and other obligations relating to the Service.

11 PRIVACY

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- 11.1 We collect, use and disclose your personal information as set out in our privacy policy published on our website, and as disclosed to you when we collect information from you.
- 11.2 If you do not provide personal information which we reasonably require, we may choose not to supply, or to cancel or suspend supply of the Service to you, or to limit or not to provide credit terms to you.
- 11.3 You may ask us only to send you communications about your account, the Agreement or as required by law, and not to send communications which market our services or Special Offers.
- 11.4 You agree for us to contact you or your company with our regular newsletter, promotional materials, product updates, notifications, unless requested to Telequip via a unsubscribe form or written notice.

12 SOFTWARE LICENCE

- 12.1 This clause 13 applies if we provide you any software to use with the Service except to the extent stated otherwise in the Critical Information Summary or agreed in writing by us.
- 12.2 We grant you a revocable, non-exclusive, non-transferable licence to use the software to the extent there is no conflict with the terms and conditions of this clause 13:
 - 12.2.1 if third party software, subject to the terms and conditions of the applicable third party software licence; and
 - 12.2.2 otherwise, subject to the terms and conditions of any licence agreement packaged with the software; and
- 12.3 You acknowledge and agree that we do not warrant the performance or features of the software and we are not responsible for providing any upgrades or updates for the software.
- 12.4 You may only use the software until cancellation of the software licence or the Service in connection with which the software is licensed.
- 12.5 You must:
 - 12.5.1 only use the software with the Service and in accordance with our directions;
 - 12.5.2 comply with any restriction on the number of end users or other capacity restriction applicable to the software;
 - 12.5.3 not copy, modify, decompile or reverse engineer the software or derive or develop other software based on the software we supply;
 - 12.5.4 not remove or modify any copyright notice on the software;
 - 12.5.5 not sub-license, assign or otherwise transfer the right to use the software to any other person; and
 - 12.5.6 cease to use the software on the sooner of our request or cancellation of the Service, and if we request, promptly return to us or delete or destroy all copies of the software in your possession or control.

13 TELEPHONE NUMBERS AND IP ADDRESSES

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- 13.1 You acknowledge and agree that any telephone number used in connection with the Service is allocated and regulated by law and your right to use it may cease on cancellation of the Service (unless you transfer the telephone number to another service provider) or if the number is required by the numbering regulations to be changed. If on cancellation of the Service, you do not transfer the telephone number to another service provider, it may be issued to another customer as set out in the numbering regulations. We will not be liable for any loss, cost, expense, damage or liability you suffer in connection with loss of the right to use a telephone number or change of a telephone number, in accordance with the numbering regulations.
- 13.2 If we allocate an IP address to you for the Service, you must use it only connection with the Service. You do not own the IP address and your right to use it ceases on cancellation or suspension of the Service for any reason.

14 CHANGES TO THE AGREEMENT

- 14.1 We may make a change to the Agreement at any time and without giving you notice if:
- 14.1.1 you agree to the change;
 - 14.1.2 the change benefits or has a neutral impact on you; or
 - 14.1.3 the change is necessary for security or technical reasons or required by law and in this case we will try, but do not have to give you notice of the change beforehand.
- 14.2 We may vary any Charge and introduce any new Charge at any time and without giving you notice (unless stated otherwise):
- 14.2.1 for international rates or any other Charge described as variable or subject to change or similar, and for incidental charges such as credit card fees;
 - 14.2.2 to reflect an increase in our costs of supplying the Service resulting from a regulatory decision and in this case we will give you notice within a reasonable period but may not be able to give you notice beforehand; and
 - 14.2.3 to reflect a change in tax laws and in this case we will give you notice within a reasonable period but may not be able to give you notice beforehand.
- 14.3 Apart from the kinds of changes set out in clauses 15.1 and 15.2 we may make a change to the Agreement which we reasonably expect to adversely affect you by giving you reasonable notice of the change.
- 14.4 You can only change the Agreement with our written agreement. An upgrade, downgrade, relocation or other change to the Service (if we agree) may result in revised Charges, incur additional Charges, impact provisioning times and quality of service and cause interruption to the Service.

15 GENERAL

- 15.1 We aim to resolve complaints efficiently, fairly and courteously. For information on how to lodge complaints and how they are handled, refer to our website or by contacting our customer service team.
- 15.2 We do not provide a priority assistance service for life threatening medical conditions, and we have no legal obligation to do so. If you require a priority assistance service you need to contact a carrier that offers these services. As an example, Telstra does offer priority assistance.

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- 15.3 We do not provide call detail records (“CDR”) reporting.
- 15.4 You can appoint an authorised representative to deal with us on your behalf as your authorised agent, by nominating that person in your order, or notifying us as we reasonably request. If you appoint an authorised representative, that person has the power to act on your behalf as if they were you, or if appointed with more limited rights, to the level of access you have allowed them. If you are a business or non-profit organisation and you do not nominate anyone, we can rely on the authority of any of your employees who tell us they have authority and you will be bound by any order, consent or direction made or given by them.
- 15.5 You can nominate an advocate to deal with us on your behalf, but unlike an authorised representative, your advocate has no power to act on your behalf and has no access to your account information, unless your advocate is also your authorised representative, or you are present and agree to that access or action.
- 15.6 If the Agreement requires you or us to give notice, it must be given in writing unless otherwise specified in the Agreement. We may give you notice by mail, facsimile, by message on or sent with the bill or by email to your last known address (but we will only give notice of changes to the Agreement by email if you have agreed beforehand that we can give them by email). You can give us notice by mail, facsimile or email to our customer service team. A notice will be deemed to be received as follows: if given by normal mail on the 3rd day after posting, if given by express post on the next day after posting, if given by facsimile or email immediately when sent if during normal working hours, or if outside those hours, at 9am on the next working day.
- 15.7 We do not assign or grant a licence of any copyright or other intellectual property rights to you under the Agreement. You must not use any of our trade names, trade marks, service marks, domain names or logos without our prior written consent.
- 15.8 We are an independent contractor to you. You are not authorised to act on our behalf or to bind us to any obligation.
- 15.9 You acknowledge and agree that we may at our absolute discretion pay commission to any person in connection with the Agreement.
- 15.10 We may engage other suppliers and subcontractors to perform any of our obligations under the Agreement, but we will remain responsible for their performance. We may also arrange for any of our obligations under the Agreement to be performed by any of our group companies.
- 15.11 If any term of the Agreement is considered void or voidable or unenforceable because of law, the rest of the Agreement will not be affected.
- 15.12 If you or we do not exercise any right under the Agreement, it will not be considered to waive that right or any other rights under the Agreement. If you or we waive a right under the Agreement, that waiver is effective only in the specific instance and for the specific purpose for which it is given.
- 15.13 You can only assign or transfer your rights or obligations under the Agreement with our prior written consent, which we must not unreasonably withhold. We can assign our rights under the Agreement to any person.
- 15.14 This Agreement is governed by the laws of the Australian state or territory in which you reside and the courts of that state or territory will have non-exclusive jurisdiction.

Broadband Service Terms & Conditions

1 APPLICATION OF TERMS

- 1.1 The Broadband Service Terms and Conditions apply to supply of the TQMS data products and services to our customers. If you are purchasing a data service, you need to read these terms and conditions as well as the Telequip Managed Services Terms and Conditions.

2 STANDARD AGREEMENT

- 2.1 These Terms & Conditions of Broadband Service form part of an agreement ("Agreement") between TFNQ Pty Ltd trading as Telequip, ('Telequip', 'we', 'us', 'our') and each of its customers ("you", "your", or "Customer"). Telequip Managed Services Terms and Conditions posted on the Telequip website form part of this Agreement. Together these documents are called the 'Agreement.' This Agreement governs both the Service and any devices (customer premises equipment), such as a modem, an adaptor, or any other IP connection device, ("Device" or "Equipment") used in conjunction with this Service. By activating the Service, you acknowledge that you have read and understand, and you agree, to the terms and conditions of this Agreement, and you represent that you are of legal age to enter this Agreement and become bound by its terms.

3 GENERAL BROADBAND SERVICE AVAILABILITY AND PROVISION

- 3.1 We agree to supply you the Service only in geographical region covered by Telequip broadband service wholesale suppliers on the conditions that there is network infrastructure and free capacity available and that there is a continuous copper pair available between the customer's premises and the local exchange.
- 3.2 Your application of Service is subject to qualification check during the provisioning process. If we cannot provide the Service, you can cancel the Service order without penalty. See clause 6.
- 3.3 You acknowledge and accept that we are not obligated to accept your application for the broadband Service, and we reserve the right at our sole discretion to accept or reject an application without disclosure of reasons.
- 3.4 If we accept your application, we will endeavour to provide the Service as soon as we can, but cannot guarantee availability and a date of commencement.
- 3.5 We rely on you to provide the correct telephone number and address of the premises to which the Service is required. Any incorrect information provided by you may result in delay and/or incorrect installation and you are then liable for cancellation and/or relocation charges.
- 3.6 If we provide the Service, it will be delivered to the network boundary point of the customer premises. The network boundary typically is the first telephone socket in a single dwelling residential home or the main distribution frame, MDF in a business premises or multi storey building. You are responsible for any cabling work required beyond the network boundary in terms of installation, maintenance and repairs. For NBN FTTP, NBN Fixed Wireless, NBN HFC and FTTN (where a passive network

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termination device is applicable) services, the network boundary point is to the NBN network termination device (“NTD”).

- 3.7 You are fully responsible for contacting your existing service provider and make the necessary arrangements in terms of contractual commitments and/or break disconnection fees & charges etc for the existing telephone services, DSL services and NBN services, if applicable.
- 3.8 To apply for ADSL or ADSL2+ broadband Service, you must be the holder of the current telephone service account. By completing the service order form, you have given us permission to install our Service on your telephone line and you warrant that this requirement has been met.
- 3.9 You may include Telequip broadband phone VoIP service as part of the Broadband Service. While we endeavour to provide the best possible service quality, the VoIP service is not a standard telephony service and should not be relied on for emergency 000 call communications. The VoIP service may be disrupted if there is a power failure at your premises.

4 ADSL OR ADSL2+ BROADBAND

- 4.1 The Service requires you to provide your existing telephone number and line which must be active without any incompatible elements such as complex service or Incompatible Spectrum shared service when you submit your application to acquire the Service from us. Once we have installed our Service on your telephone line, you will keep your existing telephone number and line as well as any services associated with it. These may include back to base alarms, EFTPOS, dial-up services and Pay TV etc. You will still be liable for any telephone line charges from your existing telephone service provider
- 4.2 In order to keep our Service running, you must keep your telephone service and line active with your current telephone service provider. Terminating, or changing your existing telephone account or service with your provider will cause your ADSL or ADSL2+ service to be disconnected immediately. If the customer managed to re-connect their telephone service, Telequip may assist customer to reinstate the ADSL or ADSL2+ Service via Telequip’s wholesale supplier but we will not guarantee the outcome. Customer must notify Telequip within 2 business days to request for service reinstatement.
- 4.3 If the service cannot be reinstated for any reason, customer will have to pay for full service installation fee again to reconnect the service. Refer to specific Critical Information Summaries for installation fee amount.

5 NBN BROADBAND

- 5.1 Customer is authorised to request the NBN service at the address and will be able to physically attend for installation if necessary. You will accept all liability and charges.
- 5.2 All our NBN services do not support battery backup and priority assistance and are not intended for end users who have medical and/or security alarms. Where NBN Network Termination Device is provided as part of the Service, it will be connected to a standard power supply, i.e. no optional battery backup. This means your voice and data services will be temporarily unavailable for the duration of the power outage.
- 5.3 The installation of FTTB or FTTN services will result in permanent disconnection of the current voiceband service (e.g. PSTN), non-voiceband service (e.g. DSL service) and

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existing ancillary services/devices relying on copper-line telecommunication at your premises. You will need to check with your device/service manufacturer or provider to see if the device is NBN compatible.

- 5.4 There may be a slight interruption to your new Service during the installation of your nbn™ supplied equipment if you have existing pay TV or cable internet services.
- 5.5 NBN connections requires Lot numbers associated with the physical location of the address where the connection is made. Customer is responsible for giving the correct lot number as per property documents. Telequip is not liable to NBN connection/disconnection issues due to lot number mismatch in NBN database or human error.

6 BROADBAND SERVICE ORDER CANCELLATION AND REFUND

- 6.1 If you no longer wish to continue with the Service order, you must be the applicant of the order and notify Telequip within 3 business days by authorized representative from the time you submit your order. An order cancellation fee may apply.
- 6.2 If the customer cancels an order at the point after it has been submitted by Telequip to its wholesale provider, and it is due to be completed, the customer is required to pay for the installation
- 6.3 If the service ordered is cancelled as a result of circumstances attributable to you before the service start date, you must pay Telequip all infrastructure and installation costs incurred by us in connection with preparation to supply the service to you.
- 6.4 Other cancellation rights are set out in the Telequip Managed Services Terms and Conditions.

7 BROADBAND SERVICE MAINTENANCE

- 7.1 Before you report any service faults to Telequip, you must take all reasonable steps to ensure the faults are not caused by or attributed to Telequip. Customers may be liable for a call out charge if subsequent investigation by Telequip or its authorised wholesale supplier shows the faults lie beyond the Network Boundary Point (NBP) or the Main Distribution Frame (MDF).
- 7.2 You must provide all reasonable assistance to enable Telequip personnel or its supplier's personnel, to investigate and, where applicable, repair faults. The assistance includes appropriate and timely access to customer's premises up to the Network Boundary Point (NBP) or Main Distribution Frame (MDF), dependent on the premises type. You may be liable for a call out charge if such accesses were denied.
- 7.3 You agree to waive the application of the Customer Service Guarantee prescribed under the Telecommunications Act 1997.

8 SERVICE RELOCATION

- 8.1 If you move to another dwelling or location, you will pay a relocation fee and the Service continues if the Service is available at the new location.
- 8.2 If there is no coverage at your new address, we will not be able to relocate your Telequip broadband service and will have to cancel it.

9 SERVICE INSTALLATION

- 9.1 We will notify you of the Service activation via email address provided by you on the service order form.
- 9.2 If Telequip or its supplier's personnel are required to visit your premises to connect the service, you must provide appropriate and timely access to your Network Boundary Point (NBP) or Main Distribution Frame (MDF), dependent on the premises type. You may be liable to a call out charge if such accesses were denied.
- 9.3 You are responsible for all cabling and wiring within your premises. Where cabling does not exist or you have a fault with the wiring in your premises, you must arrange for your own service contractor to rectify this. Telequip or its supplier only deliver the service up to the Network Boundary Point (NBP) or Main Distribution Frame (MDF).

10 EQUIPMENT

- 10.1 We will provide the Service to you with the equipment supplied by us. You may subscribe the Service with your own equipment, (BYO).
- 10.2 Telequip are under no obligation to provide the Service to you if you do not purchase the equipment from us. Even though you may be able to purchase the equipment on the open market, the equipment supplied by us have been optimised and configured to work with the Telequip Service to deliver the best possible quality. We will only provide technical support to the equipment supplied by us and are not responsible for the equipment purchased by you from third parties.

11 USE OF SERVICE

- 11.1 You must not use or permit any use of the Service:
 - 11.1.1 To transmit any defamatory, abusive, menacing, threatening, harassing or illegal material or any unsolicited material of an offensive, obscene or indecent nature or otherwise contrary to law or any applicable code of conduct;
 - 11.1.2 In any manner which constitutes a violation or infringement of any duty or obligation on contract or tort or otherwise, to any third party; or
 - 11.1.3 In, or in relation to, the commission of an offence against any applicable law.
- 11.2 You must not use the Service to create, use or distribute tools designed for compromising the security of Telequip's network or any communications over that network.
- 11.3 You are responsible for all usage charges in respect of the use of the Services whether or not such usage was authorized by you because it is your responsibility to maintain the security of the means of access to the services and ensure unauthorized use does not occur.

12 SERVICE SPEED

- 12.1 The service speed is dependent on numerous factors, including the length, gauge and quality of the local wire that connects your premises to the exchange. As we have no control over these external factors, we do not guarantee to customers that you will be able to obtain the maximum theoretical speed.

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- 12.2 For ADSL2+ a speed of 1.5Mb/s is considered as an acceptable standard and no investigation will be undertaken by Telequip if the speed of the service reaches or exceeds 1.5Mb/s
- 12.3 Due to the complexity of issues involved, Telequip requires up to 30 working days to investigate customer's complaint that the speed of ADSL2+ service is less than 1.5Mb/s. During the investigation period, Telequip will not change the customer's service status, e.g. suspension until the investigation has been completed and the results are known.
- 12.4 NBN speed tiers indicate a denoted maximum port speed provided by NBN Co. The actual speed you can achieve could vary due to a number of factors, such as equipment used at your premises; the nature, quality and length of the connection to, and signal reception (including any interference within building cabling or prevailing radio conditions) at or affecting the relevant premises; the number of simultaneous end users using the network; the source and type of content being downloaded by the end-user; the distance from the node; the quality of the copper network and etc. Therefore, Telequip does NOT guarantee you can get the denoted maximum port speed at your premises.

13 DATA USAGE ALLOWANCE

- 13.1 Each Telequip Service plan provides a maximum data usage that can be used during a billing month. At the start of each billing month, the data allowance is set to zero and all traffic is counted towards the monthly usage allowances. Any unused data allowances for any given billing month cannot be rolled over for use in subsequent billing months.

14 SHAPING

- 14.1 Once the data allowances have been used up for the billing month, the excess data will be charged in accordance with Telequip pricing schedule or specific service Critical Information Summaries.

15 SERVICE CHARGES AND BILLING

- 15.1 You must pay the Service Charges as selected by you in the Service order form submitted by you. The relevant fees and charges are specified in the specific Service Critical Information Summaries
- 15.2 The Service Charge will start from the time the device is despatched by us to you;
- 15.3 We will bill you for the charges of the Service in accordance with the billing cycle specified in the Critical Information Summary;
- 15.4 We will send an invoice to you electronically to the email address nominated by you. We provide paper copies on request only.
- 15.5 If you have disputes with some charges, you must pay the undisputed amounts of the invoice on the due date.

16 PAYMENT

- 16.1 Customer may pay the Service charges and Equipment by direct debit of Customer's credit card or nominated bank account. Terms and conditions for Telequip direct debit apply. See details in the Service order form.

17 TERMINATION AFTER SERVICE ACTIVATION

- 17.1 For Customer to notify Telequip of termination, Customer must be the holder of the Service;
- 17.2 Customer may terminate the Service at any by giving Telequip 30 days written notice.
- 17.3 Telequip may without liability terminate the supply of the Service or part of the Service to Customer with immediate effect if
 - 17.3.1 Customer defaults in the payment of any charges by the due date and fails to remedy such default within 7 days of written notice from Telequip;
 - 17.3.2 Customer defaults in the performance or observance of any obligation under this Agreement and, in the case of a breach capable of remedy, Customer fails to correct that breach within 14 days of written notice from Telequip;
 - 17.3.3 Telequip reasonably suspects fraud or misuse of the Service on Customer's part;
- 17.4 On termination for any reason all charges and other amounts owing by Customer to Telequip shall become immediately due and payable;
- 17.5 Although Telequip will endeavour to give Customer as much notice as reasonably practicable, Telequip may, without liability, suspend the Service immediately (including without notice if:
 - 17.5.1 Telequip is required to comply with an order, instruction or request of a government agency, emergency services organisation or other Australian government authorities;
 - 17.5.2 Telequip is required to undertake emergency repair, maintenance or service of any part of the Telequip service facilities;
 - 17.5.3 if it is reasonably required to reduce or prevent fraud or interference within the Telequip service facilities; or
- 17.6 As an alternative to the exercise of Telequip rights of termination under this Agreement.
 - 17.6.1 On termination the Customer's right to use the Services ceases immediately.
 - 17.6.2 Termination will not affect any rights or liabilities that have already accrued to either party nor will it affect any provision which is expressly or by implication intended to operate after termination.

Fair Use Policy

1 APPLICATION

- 1.1 This document describes our acceptable use policy. It applies to all Services we supply to all our Customers.
- 1.2 We may amend this policy from time to time by putting a notice on our website and/or giving you notice by email.
- 1.3 You must comply with this policy and you must ensure that all users and each person who uses the Service agree to comply with this policy.
- 1.4 You are responsible for all use of the Service and for compliance with this policy whether or not you authorise the use.
- 1.5 We may, without liability, suspend or cancel the Service to you without notice if we reasonably consider you have breached or are likely to breach this policy. We may do this whether the breach or likely breach is intentional or authorised by you or not.
- 1.6 In this policy, 'User' means a person who acquires a product or service that relies on the Service, who is the ultimate recipient or user of the Service (excepting you), to whom we supply the Service at your request, to whom you resupply the Service, or whom you authorise to use or distribute the Service.

2 SECURITY

- 2.1 You must take reasonable steps to keep secure any equipment and infrastructure you use in connection with the Service to ensure that unauthorised access to the Service does not occur.
- 2.2 You must keep your passwords and account details confidential, install and keep up to date antivirus and firewall software and keep your operating systems and software up to date.
- 2.3 You must keep secure, and back up as appropriate, any data stored on equipment you use in connection with the Service. We will not be liable for any misuse or loss or corruption of your or User data.

3 UNACCEPTABLE USE

- 3.1 All services
 - 3.1.1 You must not use or try to use any Service in any manner:
 - 3.1.1.1 for any illegal or fraudulent purpose;
 - 3.1.1.2 to endanger a person or damage property;
 - 3.1.1.3 to commit an offence;
 - 3.1.2 to communicate, transmit or distribute any computer worms, trojans, viruses, or other similar programs;

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- 3.1.3 to communicate, transmit or publish any harassing, abusive, menacing, defamatory or illegal material;
- 3.1.4 to send unsolicited electronic message(s) or do anything else in breach of the Spam Act 2003;
- 3.1.5 to reproduce, download, distribute, transmit, publish, store, copy or exploit any material in any way which infringes copyright, patent, trade mark, design or other intellectual property rights;
- 3.1.6 to access, store, copy, distribute or publish any content in contravention of applicable law or regulation;
- 3.1.7 to provide or permit unrestricted access to content contrary to relevant classification rules;
- 3.1.8 to hack or gain unauthorised access to or control of, or to conduct unauthorised monitoring of, any equipment, system, network, accounts or private or confidential information of others;
- 3.1.9 to do anything which might compromise the security or safety of, or which might damage, interrupt or interfere with the operation of the Service, or the networks used to supply the Service;
- 3.1.10 to violate a law or cause us to violate a law.

3.2 Voice services

- 3.2.1 If we are providing you with a TQMS | HPS, TQMS | TQ-CL or TQMS | SIP service, Mobile Services, you must not undertake or try to undertake any of the following:
 - 3.2.1.1 use of an auto-dialler or a system capable of auto dialling; continuous or extensive call forwarding;
 - 3.2.1.2 use of virtual extensions for regular business use;
 - 3.2.1.3 continuous connectivity for the purpose of making outbound calls;
 - 3.2.1.4 making numerous short duration calls;
 - 3.2.1.5 fax broadcast or fax blasting;
 - 3.2.1.6 junk faxing;
 - 3.2.1.7 fax spamming;
 - 3.2.1.8 calling or faxing any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process;
 - 3.2.1.9 unlawful or unauthorized telemarketing;
 - 3.2.1.10 use for the purpose of supporting a call centre type of business;

4 GENERAL

- 4.1 You must comply with our reasonable directions, those of our network suppliers and any government or regulatory body in relation to use of the Service. You must comply

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- with any third party rules and pay for any third party charges related to content or services you or Users access via the Service.
- 4.2 You are responsible for all content you publish via the Service, and for all risks associated with your use of the Service, including risks associated with: downloading, accessing, viewing, using, transmitting, publishing or communicating material; making purchases; and transmitting personal or confidential information.
 - 4.3 You must take appropriate steps to prevent minors from accessing or receiving any content that may be inappropriate for them.
 - 4.4 By using the Service to reproduce, publish, display, transmit or distribute content, you authorise us (or our agents) to reproduce, publish, display, transmit and distribute the content as necessary for us to supply the Service.
 - 4.5 We do not supervise, control or authorise your or Users' access, use, receipt or transmission of material via the Service and we are not responsible for the content, nature or form of that material.
 - 4.6 We may, but are not obliged to, block access to, remove, or refuse to post any content that we consider is offensive, indecent, or otherwise inappropriate regardless of whether the content or its publication is unlawful.
 - 4.7 We do not supervise or control whether material sent or received via the Service is sent or received correctly or at all or if it is corrupted or intercepted.
 - 4.8 We will not be liable for any loss, cost, damage, expense or liability related to your or any User's use of the Service.

5 TRAFFIC MANAGEMENT

- 5.1 We may, without liability, implement traffic management measures to ensure that the minority of heavy use customers do not affect the Service for the majority of customers on the network. These measures include:
 - 5.1.1 traffic managing download speeds for certain customers during peak periods to improve the service for other users;
 - 5.1.2 limiting customers who have downloaded an excessive amount of data during a one hour period of the peak time frame to 256kbps on a one off basis for the remainder of the peak period for that day or month depending on their plan;
 - 5.1.3 managing the amount of bandwidth allocated to certain applications whose operation is not time-critical (such as Peer-to-Peer file sharing) during peak periods.