

SWAVLEY & ASSOCIATES

TERMS AND CONDITIONS OF BROADBAND SERVICE

1. Definitions

1.1 **'Access Period'** means the period commencing on the Commencement Date and ending on the expiry of the Agreement or the date the Agreement is otherwise brought to an end.

1.2 **'Agreement and Agreement Renewal'** means the Application Form together with these Terms and Conditions of Broadband Service (as may be varied from time to time), your nominated Broadband Service plan; and 'Our Agreement' refers to the same.

1.3 **'Application Form'** means the Premium Broadband Service Application Form signed by you.

1.4 **'Broadband'** means a high speed (greater than 256Kbps) connection through a single access line.

1.5 **'Broadband Service'** means the connection service provided by Link.

1.6 **'Charges'** means the charges payable by the Customer to Reseller pursuant to an Agreement.

1.7 **'Commencement Date'** means the date stated in the Application Form.

1.8 **'Commissioned Site Survey'** means a Site Survey that is requested by a Customer in respect of an area or region outside the Territory.

1.9 **'Confidential Information'** means all:

(a) know-how, trade secrets, ideas, concepts, technical and operational information owned or used by Reseller or by Link;

(b) information concerning the affairs or property of Reseller or Link, or any business, property or transaction in which Reseller or Link may be or may have been concerned or interested;

(c) details of any customers or suppliers of Reseller or Link;

(d) information about the terms and effect of this Agreement;

(e) information which by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to Reseller or to Link or any third party with whose consent or approval Reseller or Link used that information; and

(f) information specifically stated or regarded as being confidential by Reseller or Link.

1.10 **'Customer'** means any person who has entered into an Agreement with Reseller for the purpose of the provision of Broadband Service.

1.11 **'Defined Abuse'** means:

- (a) intentionally providing false information to Reseller;
- (b) distributing or making available obscene, pornographic, illegal or Confidential Information or otherwise using the Internet in an unlawful manner;
- (c) to infringe Intellectual Property Rights (such as using, copying or distributing data or software) without the permission of the owner;
- (d) to interfere or otherwise disrupt the Service or any part of the Service, a computer system or anyone else's use of them (or attempting to do any of these things), including the distribution of viruses or deliberately attempting to overload the system;
- (e) to access, monitor or use any data, systems, processes or networks without authority (for example hacking) or attempt to probe, scan or test the vulnerability of any data, system, process or network;
- (f) the sending of unsolicited bulk e-mails or engaging in the practice known as "spamming";
- (g) forging header information, email source addresses or user information;
- (h) disobeying the rules of any newsgroup, chat rooms, forum or emailing list;
- (i) engaging in any conduct or activity which may expose Reseller or Link to liability;
- (j) breaching anyone's privacy or accessing someone's personal information without their consent;
- (k) the use or distribution of components designed to compromise system security, such as credit card generators, password guessers, crackers, packet sniffers, network probes and other such components;
- (l) the deliberate or reckless disruption of Reseller or Link's Service or disruption of a Customer's Internet Access;
- (m) using the Broadband service, or allowing another person to use the Broadband service, for any purpose or activity of an illegal, unlawful or fraudulent nature; or
- (n) any other conduct or activity prescribed by Law or Government agency or body regulation from time to time.
- (o) Any other conduct or activity prescribed by Reseller or by Link from time to time or as set out in any usage policy in place or created by Reseller or by Link.

1.12 **'Event of Default'** has the same meaning ascribed to that term in clause 11.

1.13 **'GST'** has the same meaning as given by the GST Act.

1.14 **'GST Act'** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any such Act which amends, varies or replaces it.

1.15 **'Hardware'** means all equipment and material installed by or on behalf of Link or Reseller at an agreed Site in connection with the Service such as (but not limited to) a base station, receiver, antenna, cabling and in some cases a modem.

1.16 **'Insolvency Event'** means in relation to a Customer:

- (a) that Customer being unable to pay its debts as they fall due;
- (b) that Customer becoming an externally administered body corporate within the meaning of the Corporations Act 2001 (Cth);
- (c) that Customer convening a meeting of its creditors or proposing or entering into a scheme of arrangement or composition for the benefit of any of its creditors;
- (d) an application being made to a court or a notice of intention to propose a resolution for the winding up of that Customer;
- (e) that Customer becoming deregistered; or
- (f) where the Customer is an individual, that Customer becoming bankrupt or otherwise insolvent.

1.17 **'Intellectual Property Rights'** means all copyright, trade mark, patent, design, Confidential Information, moral, trade secret, or any like rights to the foregoing, whether arising by common law or by statute, or any right to apply for registration under a statute in respect to such rights.

1.18 **'Internet'** means the worldwide connection of computer networks providing for the transmittal of electronic mail, on-line information, information retrieval and file transfer protocol.

1.19 **'Link'** means Link Innovations Pty Ltd (ACN 071 699 637) and its successors or assigns.

1.20 **'Personal Information'** means any information particular to the individual Customer that identifies the Customer or matters associated with the Customer.

1.21 **'Point(s) of Presence'** means the central location in an area from where Link distributes connectivity services.

1.22 **'Renewal Period'** means a renewable period of 12 months, or other period as agreed, commencing the day after the expiry of the initial period.

1.23 **'Reseller'** means Swavley & Associates Pty Limited ACN 052 851 180 of 403/10 Century Circuit, Baulkham Hills NSW 2153

1.24 **'Service(s)'** means Broadband connectivity provided by Link or Reseller.

1.25 **'Site'** means any part of a building or structure (movable or immovable).

1.26 **'Site Survey'** means a survey of a Site to determine whether the Site is or contains a suitable location for access or connectivity to the Service or for the installation or serviceability of Hardware.

1.27 **'Storage Facility'** means any facility provided by Link which allows you to store information, including (but not limited to) your email inbox and web space.

1.28 **'User', 'You', 'Your' and 'Yours'** means the Customer or refers to any person or device that connects to Link for the purpose of gaining Broadband Service including the Customer.

1.29 **'Username'** means the unique form of identification allocated to Customers for connection to Link's Service.

1.30 **'Territory'** means the area or areas in which Link has Points of Presence to provide the Services.

1.31 **'We,' 'Us' and 'Our'** means or refers to Reseller.

1.32 **'World Wide Web'** means a method of representing and obtaining graphical data and linking data items used by Internet users.

2. Registration, Privacy and Credit Information

2.1 Any person seeking to connect to Link for the purpose of gaining Broadband Service must complete an Application Form. The Customer is not authorised to use the Broadband Service unless the application has been accepted by Reseller.

2.2 Use of the Broadband Service is deemed to be unconditional acceptance of our Agreement by the Customer.

2.3 Reseller is committed to the National Privacy Principles in the Commonwealth Privacy Act 1988 as well as any other applicable laws and codes affecting your personal and credit information. Our staff is trained to respect your privacy in accordance with our standards, policies and procedures.

2.4 During the application process you will be asked for Personal Information and you acknowledge and agree that:

2.4.1 It is necessary for Reseller to collect Personal Information about you from you and others to process your application;

2.4.2 The Personal Information collected may be disclosed to and used by Reseller or by Link, other credit providers and a credit reporting agency for any purposes that are reasonable and necessary;

2.4.3 Reseller may provide the Personal Information collected to any parties (such as referees, employers etc) named in the application to the extent that they deem it necessary to assist in assessing and processing the application;

2.4.4 Reseller may use the Personal Information collected to effectively manage and administer all products and Services provided to you including charging, billing and collecting debts;

2.4.5 Reseller may use the Personal Information collected to ensure their internal business operations are running smoothly which may include fulfilling legal requirements and conducting confidential systems maintenance and testing;

2.4.6 Reseller may use the Personal Information collected to identify your individual needs to provide you with a better and more personalised Service and to keep you up to date with the ways in which our Services to you could be improved;

2.4.7 Reseller may disclose the Personal Information to third parties that it engages to assist in the provision of its Services to you including, but not limited to, printing services, outsourced service providers, IT contractors, mailing houses and our professional advisers;

2.4.8 Reseller may disclose the Personal Information to government and regulatory authorities and other organisations, as required or authorised by law;

2.4.9 You understand that you can gain access to, and correct if necessary, the Personal Information that Reseller has collected by contacting Reseller;

2.4.10 You agree that Reseller may retain the Personal Information collected and at its discretion provide to you from time to time, information about Reseller and Link and its products and services. This information may be provided by telephone, mail or electronic media; and

2.4.11 You understand that if you do not wish to receive the information specified in clause 2.4.10, you can cancel this clause by deleting and initialling it. You understand that you can cancel this clause at any time by advising Reseller in writing that you do not require this information.

2.5 Access to Commercial Credit Information (Section 18L(4) Privacy Act 1988):

2.5.1 You agree that Reseller may obtain information about you from a business which provides information about the commercial credit worthiness or commercial activities of persons for the purposes of assessing any application for commercial credit.

2.6 Access to Consumer Credit Information (Section 18K(1)(b) Privacy Act 1988):

2.6.1 You agree that Reseller may obtain a consumer credit report containing information about you from a credit reporting agency for the purposes of assessing any application for consumer credit.

2.7 Exchange of Credit Worthiness Information (Section 18N, Privacy Act 1988):

2.7.1 You agree that Reseller may exchange information with credit providers named in a credit report issued by a credit reporting agency for the following purposes:

- a) To assess an application by you for credit;
- b) To notify other credit providers of a default by you;
- c) To exchange information with other credit providers as to the status of this loan where you are in default with other credit providers; and
- d) To assess your credit worthiness.

2.7.2 You understand that this information can include any information about your credit worthiness, credit standing, credit history, credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

3. Site Survey

3.1 A Customer must engage Reseller to have conducted and completed a Site Survey in respect to any Site it desires to connect to the Service.

3.2 Upon receiving a request for a Site Survey Reseller will advise the Customer of the estimated delivery date of the Site Survey and the fee or cost of the Site Survey (if any) payable by the Customer in respect to the Site Survey. If the Site is located at the Customer's premises, the Customer must provide a safe environment for the Site Survey. Reseller will use reasonable endeavour to meet the estimated delivery date (provided the fee (if any) for the Site Survey is paid by the Customer) but shall not be liable to the Customer, despite such endeavour, if there is any delay in delivery.

3.3 If a Customer seeks a Site Survey outside the Territory, the Customer may request Reseller to undertake a Commissioned Site Survey, and the following provisions shall apply:

- a) Reseller at its sole and absolute discretion may agree or refuse to undertake the Commissioned Site Survey; and
- b) If Reseller elects to carry out the Commissioned Site Survey it will advise the Customer of the estimated cost payable to carry out the Commissioned Site Survey; and
- c) If agreement is reached on the cost of the Commissioned Site Survey, Reseller will advise the Customer of the estimated delivery date of the Commissioned Site Survey. Reseller will use reasonable endeavour (provided the fee for the Commissioned Site Survey is paid by the Customer) to meet the estimated delivery date but shall not be liable to the Customer, despite such endeavour, if there is any delay in delivery; and
- d) If the Commissioned Site Survey establishes the Site is suitable for serviceability or access to the Wireless Broadband Network or the Service, Reseller may impose

such rules or conditions pertaining to such Access given that it is outside the designated Territory; and

e) Reseller will provide the Customer with an invoice specifying the actual cost of the Commissioned Site Survey once undertaken and the Customer must pay the costs (less any amount already paid pursuant to the estimate given) and if the actual cost is less than the estimate, Reseller will at its discretion refund the balance or credit the balance against any monies payable by the Customer under the Agreement; and

f) In some cases successful Site Surveys and successful Commissioned Site Surveys may still not guarantee a Service due to unforeseen circumstances.

3.4 The Customer accepts that Reseller reserves the right to vary the Territory, but Reseller agrees to provide the Customer with at least 30 days notice of any such variation, with all such notifications to be made via Reseller's website.

4. Installation of Hardware

4.1 Upon the successful completion of a Site Survey of a particular Site being undertaken, Reseller shall at the request of the Customer make arrangements for the installation of the Hardware at the Site nominated by the Customer and agreed to by Reseller.

4.2 Reseller will use all reasonable endeavours to have the Hardware installed on or around the agreed installation date, but will not be liable for any loss or damage in failing to do so.

4.3 The Customer is liable for all costs involved in and associated with the installation of any Hardware at the Customer's premises. Wherever possible, Reseller will advise the Customer of the estimated cost of installing the Hardware prior to undertaking the installation. Where this is not possible or practicable, the Customer agrees to pay the reasonable costs of Reseller incurred in the installation of the Hardware.

4.4 All efforts will be made by Reseller to consult with the Customer in relation to the positioning of the Hardware, however Reseller and/or any agent or technicians or supplier engaged by Reseller will make the final decision on the positioning of the Hardware. The Customer must provide a safe environment for the installation, maintenance and removal of any Hardware.

4.5 The Customer must provide Reseller with evidence that the Customer is the owner of the premises or Site where the installation of the Hardware is to take place and where the Customer is not the owner of the premises or Site, the Customer must provide Reseller with written evidence from the Customer that the owner or landlord of the premises or Site has consented to the work and installation being carried out by Reseller or its agent. The Customer indemnifies Reseller against any loss or damage Reseller incurs and/or indemnifies Reseller against any claim Reseller may suffer in the event the lawful consent of the owner of the Site had not been obtained in order to install the Hardware.

4.6 Link and Reseller as the case may be at all times retains full right, title and interest to and in the Hardware installed.

4.7 The Customer must not, and must ensure that any other person does not, interfere with the Hardware installed without the express written consent of Reseller or of Link as appropriate. The Customer indemnifies Reseller and Link against any loss or damage suffered by Reseller or Link caused by unlawful interference with the Hardware by Customer or by anyone acting on their behalf or under their direction.

4.8 Where the Hardware is affixed, attached or secured to land or premises, the Hardware shall be deemed not to be a fixture and may be removed by Reseller or Link as appropriate at any time in accordance with the or any other Agreement.

4.9 The Customer acknowledges that Hardware installed at a Site may require maintenance from time to time and that the costs of such maintenance may be payable by the Customer depending on the nature of the maintenance required.

4.10 The Customer agrees to keep all Hardware in the same condition as at the date of installation (except for fair wear and tear), not sell the Hardware or any part thereof, not give possession of Hardware to any other person and not attempt to give any interest in such Hardware as security for any purpose.

4.11 If Reseller reasonably believes that there are circumstances which exist or which are likely to exist where its interests in the Hardware may be adversely affected, then Reseller is at liberty to take, or have its nominated agent take, or request that all Hardware immediately be returned to its possession and shall subsequently be entitled to terminate the Agreement and if there is any delay in the return of the Hardware (whether or not it is caused by the Customer) then Reseller may charge reasonable fees for the non-return of the Hardware at the discretion of Reseller through its normal billing procedure.

5. Access Period

5.1 The Service shall be provided by Reseller to the Customer from the Commencement Date for the Access Period.

5.2 Our Agreement may be renewed for the Renewal Period, subject to approval by Reseller.

5.3 Renewal of our Agreement for the Renewal Period may involve an adjustment to the Charges as a condition of Reseller providing its consent to renewal.

6. Provision of Service

6.1 Reseller, in accordance with our Agreement, shall provide the Customer with the Broadband Service by such means as Reseller determines.

6.2 Reseller shall use all reasonable endeavours to provide the Broadband Service on a continuous basis during the term of our Agreement. During peak periods, network capacity may be limited and Access is not guaranteed.

6.3 Reseller will not be liable for any loss or damage suffered by you by disruption or interruption to the provision of the Service. Where this limitation of Reseller's liability is held to be invalid, Reseller's liability will be restricted to the re-supply of the Service.

6.4 Reseller will inform the Customer if the Service is unavailable for Access by the Customer due to maintenance or any other foreseeable factor.

6.5 Reseller shall provide the Customer with all identification and log-in information required for connection to the Internet. This information will be unique to each Customer.

6.6 All identification and log-in information remains the property of Reseller and may not be modified or altered in any way by the Customer.

6.7 Reseller reserves the right to modify your Username at our sole discretion.

6.8 Where a Customer's use of a Storage Facility exceeds specified limits, Reseller may remove any of the stored information without notice to bring the Storage Facility back within allowable limits. The information removed may include information in your email mailbox or in your personal web space.

6.9 Reseller may delete email sent to or from you where:

6.9.1 Individual messages are greater than the specified limit;

6.9.2 Messages remain on the Reseller's servers for more than 90 days; and

6.9.3 Messages contain objectionable material (as in Defined Abuse) as detected by the system.

6.10 Reseller will take all reasonable steps to investigate allegations of Defined Abuse. If a Customer is found to have engaged in Defined Abuse then Reseller may:

6.10.1 Provide your information to any third parties affected by your conduct;

6.10.2 Notify the relevant authorities if applicable;

6.10.3 Charge you **\$150** per hour for time spent investigating the Defined Abuse allegation;

6.10.4 Terminate your Broadband Service without further notice;

6.10.5 Remove any Storage Facilities utilised by you; and

6.10.6 Terminate our Agreement without further notice.

7. Customer Obligations

7.1 The Customer must provide their own facilities for Broadband Service unless agreed otherwise.

7.2 The Customer is responsible for maintaining the secrecy and confidentiality of the Username and all identification and log-in information required by the Customer to Access the Service. The Customer must exercise due care in choosing passwords. Passwords should be changed regularly and should never be recorded on your computer.

7.3 The Customer agrees not to disclose to any other person, corporation, entity or organisation the Username or any identification or log-in information, whether in use or not, nor any other information relating to the Service or Reseller.

7.4 The Customer is liable for all Charges resulting from use of the Service accessed through the Customer's identification or log-in information, whether authorised by the Customer or not.

7.5 The Customer must not maintain or permit multiple concurrent connections to the Internet at any given time.

7.6 The Customer shall maintain an up to date and secure computer system with appropriate anti-virus and firewall measures.

7.7 Where Reseller or Link has supplied software, the Customer agrees to abide by any associated copyright and licensing restrictions including, but not limited to, the number of computers the software is to be installed on, sublicensing of the software and assignment of your rights and obligations to the software.

8. Use of the Service

8.1 The Customer shall comply with all reasonable directions by Reseller regarding the Broadband Service and use of the Service.

8.2 Throughout the Access Period, the Customer will not engage in Defined Abuse.

8.3 The Customer warrants that in accessing and using the Service it will only use software that it is legally entitled to use.

8.4 The Customer acknowledges that Reseller does not and cannot in any way supervise, edit or control the content and form of any information or data accessed through the Broadband Service and Reseller shall not be held responsible in any way for any content or information accessed via the Broadband Service.

8.5 Notwithstanding clause 8.4, Reseller may, to the extent permitted by law, monitor material transferred by the Customer through the Internet. This information may be provided to third parties without notice to the Customer.

8.6 Reseller disclaims all or any liability for any material on the Internet that the Customer finds offensive, upsetting, defamatory or personally offensive.

8.7 A Customer must not connect a sub-network to the Broadband Service unless Reseller expressly allows otherwise (in writing). This includes (without limiting) the hosting of FTP, SMTP, HTTP and Proxy Services.

8.8 The Customer is responsible for preparing and maintaining sufficient back-up files and data storage capacity for all Customer data including electronic messages.

8.9 Reseller has no responsibility to provide training in the use of the Service pursuant to this Agreement. Training may be provided or procured for an additional fee.

8.10 The Customer must not resell or purport to resell the Broadband Service.

8.11 The Customer is responsible for ensuring that the telephone number that the Customer is dialling to connect to the Broadband Service (if applicable) is a local call. These telephone costs (and any other costs associated with connecting the Customer to the Broadband Service such as modems, software and hardware) are the responsibility of the Customer.

9. Prices, Charges and Billing

9.1 Reseller will issue a tax invoice in respect of each Charge payable and such invoices will be paid by the Customer within the trading terms specified in the Agreement. The invoicing billing cycle is calculated from midnight on the 26th day of billable month to 11:59pm on the 25th day of the billable month.

9.2 Reseller's billing cycle is subject to change with 30 days written notice given by Reseller.

9.3 All payments of the Charges payable under the Agreement are to be paid monthly in advance. Set-up and establishment fee, hardware and software purchases and installations are payable upon acceptance by Reseller of an Application Form.

9.4 Payment of the Charges payable under the Agreement will be made either by direct deposit into an account nominated by Reseller, by cheque.

9.5 Unless a dispute has been lodged, in the event the Charges payable under the Agreement or otherwise is or are not paid within Reseller's trading terms then interest is computed and becomes payable on the outstanding balance at the rate of 10 per cent per annum calculated daily, with interest capitalised at the end of each calendar month.

9.6 Internet Access will be charged one (1) month in advance. Any additional charges incurred or accrued during the month will be charged in the next month period.

9.7 In addition to paying the Charges and any other amount payable or in connection with the Agreement (which is exclusive of GST), the customer will pay to Reseller an amount equal to any GST payable from any supply by Reseller in respect of which the Charges or any other amount is payable under our Agreement.

9.8 If you dispute the Charges you must notify Reseller immediately after receiving your invoice or credit card statement.

9.9 If the Customer disputes the whole or any part of the amount claimed in an invoice submitted by Reseller pursuant to our Agreement, the Customer will pay the undisputed portion on the due date. The dispute regarding the remainder may be referred to the Dispute Resolution procedure prescribed in clause 22. If it is subsequently resolved that the further amount is payable, the Customer will pay that amount together with interest at the rate of 10 per cent per annum calculated daily, with interest capitalised at the end of each calendar month.

9.10 Deliberately omitted.

9.11 Where a Customer has nominated that payments are to be made by direct debit from a nominated bank account they must complete a direct debit form as provided by Reseller. The Customer must ensure that there are sufficient funds in the nominated bank account on the due date for payment. Any dishonoured payments will incur a **\$45.00** administration fee.

9.12 The Customer indemnifies Reseller and will pay all costs and expenses incurred in recovering from you any overdue amount, including any legal costs.

10. Agreement Renewal

10.1 Reseller requires all Customers to be under a current Agreement.

10.2 A Customer whose Agreement has expired or will expire shortly, may be offered a new Agreement for a new Renewal Period with Service levels, etc to be agreed. These terms and conditions will continue to apply.

10.3 During a time when Reseller continues to provide the Service after a Customer's Agreement has expired, prior to signing a new Agreement, there will be an automatic Agreement Renewal for 12 months and these terms and conditions will continue to apply.

11. Event of Default

A Customer commits an Event of Default if:

11.1 A Customer fails to pay any money due to Reseller under the Agreement and such failure subsists for a period of 14 days;

11.2 A Customer defaults in any of its obligations or duties under the Agreement and fails to remedy the default within 10 business days of a request being made by Reseller;

11.3 A Customer is the subject of an Insolvency Event;

11.4 Being an individual, dies or becomes incapable of managing his or her own affairs or is guilty of committing a criminal offence;

11.5 There is any material change in the control of the Customer except with the prior written consent of Reseller which will not be unreasonably withheld;

11.6 Any action is initiated by any competent authority with a view to striking the name of a Customer off any register of companies;

11.7 Where a Customer's shares are at any time listed on any stock exchange, the listing is suspended or revoked and such suspension or revocation remains in force for a period greater than 14 days;

11.8 Any distress or execution is levied or enforced against any of the assets against a Customer for an amount exceeding \$100,000.00;

11.9 Any licenses, authorities or permits required to be held by a Customer to discharge its obligations under the Agreement cease to be held;

11.10 Any representation of warranty made by a Customer to Reseller is found to be incorrect in any material respect;

11.11 A Customer's Access to the Service is suspended by Reseller for a continuous period of more than 30 days or an aggregate period of more than 45 days in any 12 month period.

12. Suspension & Termination

12.1 Reseller may immediately or upon notice suspend the Customer's Access to the Service if:

12.1.1 in the reasonable opinion of Reseller the Customer materially breaches or there is a threatened material breach of any term or condition of this Agreement (for the avoidance of doubt and without limiting the generality of this clause, conduct on the part of the Customer construed as engaging in Defined Abuse is considered a material breach of a term or condition of the Agreement); or

12.1.2 the Customer does not pay any money payable to Reseller under the Agreement within Reseller's trading terms; or

12.1.3 if Reseller is required to comply with any law or direction from a government agency or body; or

12.1.4 on any other basis prescribed in Reseller's terms and conditions.

12.2 Reseller may terminate the Agreement by written notice immediately upon the Customer committing an Event of Default.

12.3 Subject to clause 12.4, despite suspension or termination of the Agreement, the Customer agrees it will remain liable to Reseller for all monies otherwise payable under the contracted term of the Agreement had the suspension or termination not occurred. The Customer agrees that such liability is a fair and reasonable payment to Reseller by way of liquidated damages of the loss and damage Reseller would suffer by reason of the suspension or termination.

12.4 Clause 12.3 does not apply to a termination caused by a breach on the part of Reseller.

12.5 The Customer may terminate the Agreement upon giving Reseller 30 days written notice, but shall pay Reseller by way of liquidated damages for the termination the total aggregate value of the Charges Reseller would have derived, but for the termination, on the unexpired term of the Agreement.

13. Indemnity

13.1 The Customer indemnifies Reseller from and against all claims which may be brought against, suffered or incurred by Reseller:

13.1.1 By reason of any breach by the Customer, its directors or staff of its duties and obligations under or in connection with the Agreement;

13.1.2 By reason of any fraud or act of deceit by the Customer its staff or directors in connection with an Application Form, or any other matter under the Agreement;

13.1.3 By reason of the occurrence of any Event of Default, suspension or termination; or

13.1.4 By reason of the contravention by the Customer of its obligations under any law relevant to its obligations under the Agreement.

13.2 The indemnities given by the Customer in this clause and elsewhere in the Agreement will continue in full force and effect and will survive notwithstanding the suspension, termination or expiration of the Agreement.

14. Disclaimer

14.1 The Customer acknowledges and accepts that:

14.1.1 Reseller does not exercise any control over content accessible by the Customer through use of the Broadband Service or any other Service;

14.1.2 Reseller is not responsible for any damage the Customer may suffer arising from using:

a) the Service (or any part thereof), including any loss of data, delays, non-deliveries, mis-deliveries or service interruptions, whether or not caused by Reseller's negligent acts or omissions;

b) any content accessed through the Service (including inaccurate, incomplete or out of date information).

14.1.3 Reseller is not liable for any charges levied against the Customer by any telecommunications carrier or any content provider; and

14.1.4 Reseller is not able to provide support for software not supplied by Reseller, including software downloaded over the Internet.

14.2 Except for any warranties or conditions on the Service Reseller is required to give by law, Reseller makes no statement, warranty or promise about the quality or suitability of the Service (or any part thereof).

14.3 Any terms, conditions or warranties implied into the Agreement by the Trade Practices Act 1974 (Cth) are, to the extent allowed by law, excluded, and in respect to those implied conditions or warranties which may not be excluded, restricted or modified by agreement, it is agreed, that to the extent of any liability Reseller may have in respect to such implied conditions or warranties, such liability is (at the option of Reseller) limited to:

a) For goods, replacing or repairing those goods or paying the cost of repair or replacement;
or

b) For services, supplying the Service again or paying the cost of having the Service supplied again.

14.4 Except to the extent clause 14.3 applies, Reseller expressly excludes all liability to the Customer or any other person in respect to any claim (whether direct, indirect or consequential) arising out of the Agreement or the supply of the Service by Reseller, including any inaccuracy or omission in the Service or as a result of any act, omission or negligence on the part of Reseller or its directors, employees or agents.

15. Notices

15.1 A notice or other communication required or permitted to be given by one party to another must be in writing and:

- a) delivered personally;
- b) sent by pre-paid mail to the address of the addressee specified in this Agreement; or
- c) sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee.

15.2 A notice or other communication is taken to have been given (unless otherwise proved):

- a) if mailed, on the second business day after posting; or
- b) If sent by facsimile before 4 pm on a business day at the place of receipt, on the day it is sent and otherwise on the next business day at the place of receipt.

15.3 A party may change its address for service by giving notice of that change in writing to the other parties.

16. Assignment

Reseller may assign or dispose of its rights under the Agreement at any time. The Customer may not assign or deal with its rights or obligations under the Agreement without the prior written consent of Reseller. Reseller may withhold its consent for such an assignment at its absolute discretion and without assigning a reason.

17. Intellectual Property & Confidentiality

17.1 The Customer must not use in any advertising or promotional material in relation to its business or under the Agreement (unless otherwise permitted or stated under the Agreement) the name of Reseller or Link or any Intellectual Property of Reseller or of Link without the prior written consent of Reseller or Link as the case may be. If consent is provided (which may be withheld at Reseller or Link's absolute discretion), the Customer agrees not to alter, change or otherwise interfere with the Intellectual Property Rights of Reseller or Link.

17.2 The Customer acknowledges and agrees that Reseller and Link are and will at all times remain the owner of all their respective Intellectual Property Rights and all goodwill and other rights and interests arising from any use of any any party's Intellectual Property Rights belong to and vest in that party.

17.3 Whenever requested to do so by Reseller, or upon termination of the Agreement, the Customer must immediately discontinue the display or use of any of Reseller's names, logos, related decorations or insignia and will not use any of them or any other name, trade mark, logo or decoration bearing any resemblance to them which may be likely to cause confusion or to mislead any person.

17.4 The Customer must not at any time make public or disclose to any person any Confidential Information of Reseller except as required by the Customer in the ordinary course of business or to fulfil its obligations under the Agreement. Particularly, the Customer must:

- a) treat Confidential Information as secret and confidential;
- b) not use Confidential Information for any purpose other than the performance of its obligations under the Agreement (without the prior written consent of Reseller);
- c) restrict the disclosure of Confidential Information to:
 - i) those of its employees and other professional service providers who require Confidential Information to enable the Customer to perform its obligations under the Agreement; and
 - ii) any person to whom the Customer is required to disclose the Confidential Information by law, and provided that the Customer has given at least 7 business days written notice to Reseller of this requirement and its intention to disclose the Confidential Information;
- d) maintain proper and secure custody of the Confidential Information;
- e) use its best endeavours to prevent the use or disclosure of Confidential Information by third parties which have lawfully received or accessed that information through the Customer;
- f) notify Reseller of any actual or suspected breach of confidence or security of Confidential Information of which the Customer becomes aware;
- g) as soon as is practicable after the termination of the Agreement deliver to Reseller all the Confidential Information which is in its possession or control and is in a physical form;
- h) as soon as is practicable after a request by Reseller, destroy all Confidential Information (in the case of computer software or other computer data, by erasing it from the magnetic or other media on which it is stored such that it cannot be recovered or in anyway reconstructed or reconstituted) instead of delivering it to

Reseller and must notify Reseller in writing that the Confidential Information has been destroyed;

i) ensure that all its employees, professional service providers or anyone else to whom Confidential Information is disclosed is aware of the confidential nature of the Confidential Information and ensure that its employees hold that information in confidence on the terms of this clause and otherwise comply with the Customer's obligation to Reseller under this clause with respect to handling and dealing with the Confidential Information including return and destruction.

17.5 The Customer acknowledges that the Confidential Information received from Reseller and all Intellectual Property Rights in such information will remain the sole and exclusive property of Reseller.

17.6 The Customer agrees to indemnify and keep indemnified Reseller and agrees to hold Reseller harmless from and against any claim suffered or sustained by any breach of the Customer of clauses 17.3 and 17.4 and any breach of confidence by the Customer's employees.

18. Waiver or Variation

18.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

18.2 The exercise of a power or right does not preclude:

- a) its future exercise; or
- b) the exercise of any other power or right.

18.3 The variation or waiver of a provision of the Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

19. Governing Law & Jurisdiction

19.1 The Agreement is governed by the laws of New South Wales.

19.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and any appellate courts there from.

20. Severability

20.1 Should any part of our Agreement be or become invalid, that part shall be severed from our Agreement. Such invalidity shall not affect the validity if the remaining provisions of our Agreement.

21. Entire Agreement

21.1 Our Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the whole agreement between the parties relating to the provision of Internet Access. No addition to or modification of any provision of our Agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

22. Conflict or Inconsistency

22.1 It is agreed that to the extent of any conflict or inconsistency between the terms and provisions of our Agreement and the terms and provisions of any other document, terms and conditions or agreement referred to herein, the terms and provisions of our Agreement, to the extent of any conflict or inconsistency shall prevail.

23. Dispute Resolution

23.1 Any dispute or difference arising in connection with our Agreement shall be submitted to arbitration in accordance with, and subject to, the Rules for the Conduct of Commercial Arbitration of the Institute of Arbitrators and Mediators, Australia. During such arbitration, both parties may be presented by a duly qualified legal practitioner. Each party will pay its own costs.