

Our Customer Relationship Agreement

BUSINESS FURTHER TERMS AND CONDITIONS

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Rules of interpretation and capitalised terms used in these Business Further Terms and Conditions are defined in the General Terms of our CRA or our Master Services Agreement (as applicable), or in the body of these Business Further Terms and Conditions.

1. ABOUT THE BUSINESS FURTHER TERMS AND CONDITIONS

- 1.1 If you are a business customer and you receive any Service that contains service level targets (including an Availability Guarantee) in the relevant Service Description provided for such Service, the following additional terms and conditions will apply to that particular Service.

2. DEFINITIONS

In these Business Further Terms and Conditions:

- 2.1 "**Availability Guarantee**" means our guarantee that we will meet the Availability Target and the Restore Target (which only applies to you if specified in an applicable Service Description);
- 2.2 "**Available Hours**" means the actual number of hours during a calendar month that a Service is available to you. For the purpose of calculating Available Hours any unavailability of a Service that is due to the following categories of events shall be deemed as time that that Service is available to you:
- (a) Scheduled Maintenance;
 - (b) the duration of any delay by You in reporting the unavailability of a Service to us;
 - (c) for services that require you to have a telephone line, unavailability of the Service due to any Telecommunications Company circuits or failure of any Telecommunications Company services;
 - (d) unavailability of the Service due to your applications, your equipment or your facilities;
 - (e) unavailability of the Service due to your acts or omissions, or any use of the Service authorised by you; or

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- (f) unavailability of the Service due to a Force Majeure Event;
- 2.3 **"Availability Target"** means the monthly target of Available Hours for a Service expressed as a percentage of the total hours within a calendar month (subject to clause 2.2), if specified in an applicable Service Description;
- 2.4 **"Customer Update Period"** means the times at which we will use reasonable endeavours to provide you with information regarding the progress of resolving a Fault you have reported to us (if there has been a change to any progress information we previously provided), if specified in an applicable Service Description;
- 2.5 **"Fault"** means a failure in the normal operation of the Services;
- 2.6 **"Hours of Coverage for Response"** means the times between which we will respond to your suspected Fault reports, if specified in an applicable Service Description;
- 2.7 **"Hours of Coverage for Restoration"** means the times between which we will undertake Fault restoration work for a Service, if specified in an applicable Service Description;
- 2.8 **"Response Target"** means the target period of time between a failure in the normal operation of a Service being reported to our help desk by a site contact and a response from us acknowledging the report (and providing a "trouble ticket" reference number and, where possible, an estimated restore time), if specified in an applicable Service Description;
- 2.9 **"Restore Target"** means the target period of time between us determining that a reported failure in the normal operation of a Service is a Fault and repair of the Fault by us to restore your Service, if specified in an applicable Service Description;
- 2.10 **"Scheduled Maintenance"** means maintenance carried out by us, where two (2) business days notice has been provided either directly to you or by us posting an advisory notice regarding the maintenance on our Website;
- 2.11 **"Site"** means the site(s) or premises to which a Service is to be supplied, as described in the applicable Application;
- 2.12 **"Software"** means software we provide to you for your use in connection with the Services (if any);
- 2.13 **"Telecommunications Company"** means any licensed carrier or carriage service provider as defined by the Telecommunications Act 1997 other than an iiNet Entity;

3. ENTERING THIS AGREEMENT

- 3.1 All quotations issued by us in respect of the Service, unless otherwise stated, are valid for thirty (30) days from date of issue and are subject to this our CRA. A contract is formed upon execution of an Application. The Business Service Application prepared by your account manager will be deemed to be your Application for the purposes of our CRA or our Master Services Agreement (as applicable). No terms and conditions of any purchase order shall modify the terms and conditions of our CRA or add any additional terms for any reason or purpose whatsoever, regardless of any statement in the purchase order to the contrary. A

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purchase order is any purchase order or similar document created by you requesting services from us.

- 3.2 Unless you advise us otherwise in writing, we can rely on the authority of any of your employees who advise us they have the authority to give your consent as needed under this CRA, provided that we act in good faith. If you limit the employees who are authorised to act on your behalf you acknowledge that it is your responsibility to keep the list of authorised employees updated.
- 3.3 Subject to Clause 3.4, you warrant that you have not relied on any representation made by us which has not been stated expressly in this CRA or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by us.
- 3.4 You acknowledge that to the extent we have made any representation which is not otherwise expressly stated in this CRA, you have been provided with an opportunity to independently verify the accuracy of that representation.

4. EQUIPMENT AND SOFTWARE

- 4.1 We may install equipment at the Sites, and you must permit us to access the Sites for the purpose of installing that equipment and co-operate with any reasonable request by us regarding the installation of that equipment.
- 4.2 The following terms apply in relation to Your Equipment:
- (a) if we consider that it is necessary in provisioning a Service, on request by us you must arrange for Your Equipment to be supplied to us for us to approve Your Equipment as suitable to allow us to comply with our obligations under our CRA.
 - (b) we may test Your Equipment prior to its installation. In the event that the Your Equipment fails these tests, you may be required to procure replacement equipment at your expense in order to use the Service. We will be relieved of our obligations relating to the affected Services (including the payment of the Availability Guarantee) until Your Equipment has been replaced with satisfactory equipment.
 - (c) you are responsible for all third party charges for maintenance, repair or otherwise to Your Equipment required to connect to or use the Services, and for the fee charged by us for any relevant callout made in accordance with clause 6.9 of these Business Further Terms and Conditions.
 - (d) if you fail to pay any amount as specified on an overdue notice we may recover any Purchased Equipment supplied for which payment has not been made in full (in the event that we did not require advance payment for Purchased Equipment).
- 4.3 Until such time as title to Purchased Equipment passes to you in accordance with the CRA:
- (a) you must hold the Purchased Equipment as our bailee and must keep the Purchased Equipment separate from all other goods;
 - (b) you must keep the Purchased Equipment properly stored, protected and identified as our property;

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- (c) we may at any time require you to deliver up the relevant Purchased Equipment to us and, if you fail to do so immediately, we may enter your premises or any third party's premises where the Purchased Equipment is located and repossess the Purchased Equipment;
- (d) you agree that we are authorised to enter any premises where the Purchased Equipment is located and you will indemnify us against all losses of whatever nature suffered by us as a result of recovering or attempting to recover the Purchased Equipment.

4.4 If we terminate our CRA or cancel the Service in accordance with the CRA as a result of your non-payment of any charges:

- (a) we will be entitled to remove any Purchased Equipment supplied to you to which we have title;
- (b) you consent to us entering the premises on which the items referred to in paragraph (a) above are stored or may be accessed or located, in order to enforce our rights to possess, use and sell those items;
- (c) we will set off any amounts we receive from the sale or use of these items against the amounts you owe to us under the CRA; and
- (d) we will re-assign or re-transfer to you any items that remain after all amounts owed to us by you under the CRA have been paid by you and/or set off by the sale or use of these items, in accordance with this clause.

4.5 The following terms apply in relation to Our Equipment:

- (a) you are responsible for Our Equipment and the Software and must indemnify us against all loss and damage to the Our Equipment and Software until it is returned to us, unless the loss and damage is due to reasonable wear and tear; and
- (b) upon the termination or expiration of this CRA or cancellation of the relevant Service for any reason, you must provide us (and any person nominated by us) with access to each Site in order to remove the Our Equipment and Software.

5. SERVICE LEVELS

5.1 You must report the details of a suspected Fault to our help desk as soon as possible after you become aware of the suspected Fault.

5.2 You may report a suspected Fault to us 24 hours per day. However if you make a fault report outside the Hours of Coverage for Response, the Response Time will not commence until the beginning of the Hours of Coverage for Response.

5.3 When reporting a suspected Fault to us, you must provide the following information to us:

- (a) Service details which identify the affected Service to such particularity as requested by us (including the location of the affected Service); and

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- (b) contact details, including your name, your contact point(s), the Site contact (if Site attendance is required), contacts at both ends of the Service (where appropriate) and details of the Fault systems.

6. INVESTIGATION OF FAULTS BY US (APPLICABLE SERVICE TYPES ONLY)

- 6.1 We will analyse the cause of the suspected Fault and promptly take steps to determine if the suspected Fault is in fact a Fault.
- 6.2 We may be unable to provide Fault restoration under this Agreement where the fault is in a network owned or maintained by any person other than us.
- 6.3 Where a Fault report is lodged, we will undertake Fault restoration work (subject to clause 6.2 above) during the Hours of Coverage for Restoration for the Service.
- 6.4 On completion of Service restoration activities, we will contact you to confirm that the Service has been completely and satisfactorily restored. Where the Service has not been completely and satisfactorily restored, we will continue the restoration process.
- 6.5 If you wish to escalate the Fault, as a result of either the Response Target or Restore Target not being met, you must contact us explaining the outstanding issue.
- 6.6 If the escalation does not result in the restoration of the Service, you should contact your sales representative and report this escalation failure.
- 6.7 Where an on-site visit is required, we will arrange an appropriate appointment time with the Site contact.
- 6.8 You are responsible for all third party charges for maintenance, repair or otherwise to Your Equipment required to connect to or use the Services, and for the fee charged by us for any relevant callout made in accordance with clause 6.9.
- 6.9 Where we attend the Site in response to a Fault report and the Fault is found to be in Your Equipment, you will be liable for a fee charged by us for the relevant callout, and all third party charges in relation to Your Equipment in accordance with clause 6.8.
- 6.10 If we must gain access to the Site to restore the Service, the response time and restore time will be subject to the provision of entry to the Site, and delays in the provision of such access will result in a corresponding adjustment of the stated Availability Target, Response Target or Restore Target.
- 6.11 Our obligations do not extend to Faults caused as a result of:
 - (a) any fault in equipment, software or any network not forming part of the Service or Our Equipment; or
 - (b) damage due to causes external to the Service or Our Equipment.

7. SERVICE PERFORMANCE LEVELS (APPLICABLE SERVICE TYPES ONLY)

- 7.1 We will use reasonable endeavours to meet the Response Target.
- 7.2 We will use our reasonable endeavours to meet the Restore Target and the Availability Target.

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7.3 The Availability Target will be calculated in accordance with the formula set out below:

$$(\text{Available Hours during month} \times 100) \div \text{hours in month}$$

7.4 For the purposes of Clause 7.3, the Available Hours are measured at a point in the relevant network designated by us to be indicative of the availability experienced by you.

7.5 At your request, we will calculate the Available Hours in a calendar month. If a Service is unavailable to you for any period of time as a result of an outage, this period of time will only be excluded from your Available Hours if you notify the our help desk within five days of the outage.

8. AVAILABILITY GUARANTEE PROCESS & REMEDY (APPLICABLE SERVICE TYPES ONLY)

8.1 Subject to clause 14 of the General Terms, you agree that the remedy set out in this clause 8 is your sole and exclusive remedy for our failure to meet an Availability Target, Restore Target or any other failure by us to provide the Supplies. This remedy is referred to in our CRA as the Availability Guarantee.

8.2 If the Availability Target is not met for a Service then, for each hour of Service unavailability or fraction thereof below the Availability Target in any calendar month , at your request your account shall be credited by an amount equivalent to one day of Charges (on a pro-rata basis) for that particular Service.

8.3 If the Restore Target is not met then, for each day the Restore Target is not met, at your request your account shall be credited by an amount equivalent to one day of Charges (on a pro-rata basis) for the Service with respect to which the Restore Target has not been met. You may obtain no more than one credit per day, irrespective of how often in that day we failed to meet the Restore Target.

8.4 Notwithstanding anything to the contrary, the maximum total amount of credit issued in any calendar month as the Availability Guarantee remedy shall not exceed the total of the monthly charges and the start-up charges (if any) which, absent the credit, would have been charged for that month for the Service with respect to which the Availability Guarantee has not been met.

8.5 The Availability Guarantee in respect of the Availability Target and Restore Target is applicable only if you complete our "Service Level Agreement Rebate Form", which is available on request from our corporate support department. You are solely responsible for providing us with accurate and current contact information for your account administrator. We will be relieved of our obligations under this Availability Guarantee in respect of an Availability Target and a Restore Target if our contact information for your account administrator is out of date or inaccurate due to your action or omission.

8.6 We will use all reasonable endeavours to provide you with information regarding the progress of resolving any reported fault before the end of each Customer Update Period, but you acknowledge that we are only required to do so if any new information is available.