

## Service Agreement

These are the terms on which Network Hoist Pty Ltd (ABN 41 661 294 944) (“**Network Hoist**”, “**Us**”, “**Our**” or “**We**”) agrees to provide products and services to our customers (“**You**” or “**Your**”).

### 1. Introduction

#### **1.1 What are the terms that apply to Your Service?**

Under telecommunications laws, We can set out Our standard service terms in a “Standard Form of Agreement”. This is Our “Standard Form of Agreement” and pursuant to section 479 of the Telecommunications Act 1979 applies to any telecommunications service You apply for or obtain from Us. You and We must comply with Our Standard Form of Agreement unless You and We have agreed differently.

#### **1.2 Terms applying to Your Service**

The terms applying to Your Service with Us comprise:

- a. This Service Agreement;
- b. The Quotation & Acceptance;
- c. The Design & Installation Plan;
- d. Our Privacy Policy (at [www.networkhoist.com](http://www.networkhoist.com)); and
- e. Our User Guide.

#### **1.3 Order of precedence**

Unless expressly stated otherwise, the order of precedence between the various terms will be resolved in favour of the document appearing earlier in the list stated in clause 1.2 above, except where otherwise expressly stated.

#### **1.4 Customer assistance**

If You are having connectivity issues, please refer to the troubleshooting section of the user guide.

If You require non urgent assistance or further information, please email Us at [support@networkhoist.com](mailto:support@networkhoist.com).

For urgent troubleshooting please contact Our customer information line on 0434 014 550. For calls made during non business hours, We will return Your call as soon as possible.

## 2. Definitions and interpretations

### **2.1 Definitions**

The following definitions apply unless the context requires otherwise.

**Acceptable Use Policy** means Our policy which applies to Your use of the Service, as outlined in section 7 of this Agreement.

**ACMA** means the Australian Communications and Media Authority ([www.acma.gov.au](http://www.acma.gov.au)).

**Approved Purposes** means:

- a. providing operator services or operator assistance services;
- b. publishing and maintaining public number directories;
- c. providing location dependent carriage services;
- d. the operation of emergency call services or assisting emergency services under Part 8 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth);
- e. assisting enforcement agencies or safeguarding national security under the Telecommunications Act, the Telecommunications (Interception and Access) Act 1979 (Cth) or any other applicable legal requirement;
- f. verifying the accuracy of information provided by the data provider and held in the Integrated Public Number Database (IPND) against the information the data provider holds;
- g. undertaking research of a kind specified in the Telecommunications IPND – Permitted Research Purposes Instrument 2007;
- h. assisting the ACMA, or its nominee, to verify the accuracy and completeness of information held in the IPND;
- i. meeting Our obligations to any Government Agency (for example, the Australian Tax Office) or other law enforcement bodies; and
- j. any other purposes where permitted by the Telecommunications Act and any other applicable laws.

**Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Business Hours** means 9am to 5pm Monday to Friday (AEST), excluding days which are public holidays in the place where the Services are to be provided, and/or in NSW, Australia.

**Claim** includes any debt, cause of action, liability, claim, proceeding, suit or demand of any nature however arising under or in connection with Your Service or its subject matter and whether present or future, fixed or unascertained, actual or contingent, arising under contract (including under any indemnity), tort (including negligence), under statute or otherwise.

**Commercial Credit** has the meaning given in section 6 of the Privacy Act.

**Consequential Loss** means loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any increased operating costs suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute, any other form of consequential, special, indirect, punitive or exemplary loss or damages and any third party loss.

**Consumer Guarantee** means a guarantee referred to in clause 12.4, as more fully described in the Australian Consumer Law.

**Credit Reporting Agency** has the meaning given in section 6 of the Privacy Act 1988 (Cth);

**CSG** has the meaning given in clause 12.3.

**Customer Equipment** means any equipment or facility in Your ownership.

**Design & Installation Plan** is a document provided to You, but Us, detailing the Service, and forms part of these Terms.

**Due Date** unless otherwise agreed, means the date specified on an invoice from Us as the due date.

**Equipment** unless otherwise specified, means equipment You have purchased from Us.

**Facility** or Facilities has the meaning given in the Telecommunications Act.

**Fee(s)** means a fee payable for a Service as set out in Our Quotation in accordance with clause 4 of this Agreement.

**Force Majeure Event** means an event that is beyond Our reasonable control, including acts of God or natural disasters, fire, lightning, explosions, flood, subsidence, insurrection, civil disorder or military operations, war, terrorism, government or quasi-government restraint, expropriation, prohibition, intervention, direction or embargo, strikes, lockouts or other industrial disputes of any kind, or an act or omission of any Government.

**Agency** or an act or omission of any third party (including any Third Party Supplier) where the act or omission is caused by an event or circumstance outside that third party's reasonable control (including any of the things mentioned in this definition).

**Government Agency** means any Commonwealth, State or local or foreign government, government authority or semi-government authority (including a judicial body) that has legal power to require another person to act or not act in a particular way or to authorise a particular act, including a minister responsible for administering Part XIB or XIC of the Competition and Consumer Act 2010 (Cth), the Telecommunications Act, the ACMA or the Australian Competition and Consumer Commission.

**GST** has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Interest** means interest at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) plus 2% calculated daily and compounded monthly.

**Internet** means the world-wide connection of computer networks which provides a number of services to users, including the transmission of electronic mail, provision of information on the world wide web and transfer of files.

**Interruption** means a delay in supplying, a failure to supply or an error or defect in the supply of a Service.

**Law** means Commonwealth, State, or local legislation, judicial, administrative, or regulatory decrees, judgments, awards or orders, binding industry codes and all common laws and equity.

**Our Network** means the infrastructure used and/or maintained by Us or Our Third Party Suppliers to provide You with Your Service. Our Network does not include the computer networks that make up the Internet.

**Personal Information** means any information or document referred to in section 276(1) of the Telecommunications Act and any personal information within the meaning given in section 6 of the Privacy Act.

**Privacy Act** means the Privacy Act 1988 (Cth).

**Purchased Equipment** has the meaning given in clause 10.

**Service** means the service as described in Our Design & Installation Plan provided to you, and/or as described in any other documents forming the Terms, including any related goods and ancillary services provided to You by Us in connection with that Service.

**Service Equipment** has the meaning given in clause 9.

**Taxable Supply** has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Telecommunications Act** means the Telecommunications Act 1997 (Cth).

**Terms** or General Terms means the terms of this Service Agreement on which We will supply the Service You, and include all documents listed in clause 1.2 of this Agreement.

**Third Party Supplier** means a third party supplier from whom We acquire wholesale services that form all or part of the Service We provide to You.

## **2.2 Interpretation**

In the Terms unless the contrary intention appears:

- a. a reference to a person includes a reference to a corporation, an association, joint venture, an unincorporated body, partnership, government or local authority or agency or other entity;
- b. a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- c. the singular includes the plural and vice versa;
- d. a reference to any gender includes a reference to all other genders;
- e. a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- f. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- g. an agreement, representation or warranty made in favour of two or more persons is made for the benefit of them jointly and for each of them severally;
- h. a reference to a recital, clause, paragraph, schedule or annexure is to a recital, clause or paragraph of, or schedule or annexure to, these General Terms, and a reference to these General Terms includes any schedule or annexure;
- i. a reference to dollars and \$ is to Australian currency;
- j. headings are inserted for convenience only and do not affect the interpretation of the Terms; and

k. specifying anything in the Terms after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

### **3. Provision of the service**

#### ***3.1 Service availability***

Subject to Your rights under the Australian Consumer Law, We aim to provide, but cannot guarantee, a continuous Service free of any Interruptions. You are aware that We may be reliant on Third Party Suppliers for supplying the Service to You and that circumstances beyond Our control may cause Interruptions to the Service from time to time. Our liability to You for any Interruption to a Service is limited in accordance with clause 12.

#### ***3.2 Installation***

- a. Depending on the nature of Your circumstances, the installation process can take up to 30 days to be completed after You sign to accept our Quotation.
- b. We will provide email or SMS updates to You as to the progress of the installation process.
- c. If hardware installation is required at Your premises, You or an authorised adult may need to be present at Your service location address.

#### ***3.3 Maintenance and fault restoration***

Subject to Your rights under the Australian Consumer Law and to the maximum extent permitted by law, We are not obliged to restore any fault with a Service that is caused as a result of:

- a. damage due to causes external to the facilities used by Us and/or Our Third Party Suppliers to provide the Service;
- b. interference;
- c. a Force Majeure Event; or
- d. planned outages.

#### ***3.4 Technical support***

We will provide technical support services in accordance with the Terms. We are not responsible for, and will not provide support for, any fault caused by:

- a. the interaction of the Service with third party software packages used by You;
- b. the inability to gain wireless connectivity from Your wireless access point/router to Your computer; or
- c. services provided by any Third Party Supplier or carrier (other than Our Third Party Suppliers).

#### ***3.5 Commencement***

Your Service will commence when We receive Your signed acceptance of our Quotation and initial 50% payment, and continues until terminated in accordance with these Terms.

When You request Us to supply the Service to You, We decide whether to accept Your request and to supply the Service to You based on a variety of factors including:

- a. Your eligibility for the Service;
- b. its availability to You; and
- c. Your prior conduct or history with respect to any previous supply by Us or a reseller of any goods or service to You.

### **3.6 Application**

These General Terms do not apply to the extent that they are varied in writing between the Parties.

### **3.7 Third Party Suppliers**

We may use Third Party Suppliers for the provision of the Service to You. You will not contact any of Our Third Party Suppliers for any reason in relation to the Service. You acknowledge that if You do contact one of Our Third Party Suppliers, You will be liable for all costs imposed on Us by Our Third Party Supplier in connection with You having contacted that Third Party Supplier directly.

### **3.8 Changing the terms of Your Service**

- a. During the term of Your Service, We may need to change the terms of Your Service due to circumstances beyond Our control, including changes in Law, urgent changes required for security reasons, changes by one of Our Third Party Suppliers of the terms on which they supply services to Us or to the functionality or nature of a Service or its underlying technology. We may not always be able to provide You with ongoing supply of a Service on the same terms and conditions that existed when We first commenced providing that Service to You.
- b. In addition to changes which We are required to make due to circumstances beyond Our control, We may elect to make changes for Our own purposes during the term of Your Service. Any changes We elect to make will take effect for Your Service in accordance with clauses 3.9 and 3.10 below.
- c. You acknowledge that:
  - i. in accordance with paragraphs (a) and (b), from time to time the nature of the Service and the Terms on which We supply the Service to You may change; and
  - ii. if We elect to change those Terms We will give You notice in accordance with clauses 3.9 and 3.10 below.

### **3.9 Your rights if We change the terms of Your Service**

- a. Subject to the exceptions permitted by clause 3.10:
  - i. We will give You notice of any changes We propose to make to Your Service, including these Telecommunications General Terms, at least 21 days prior to the date on which those changes are to take effect; and
  - ii. if the changes We propose to make will cause more than a minor detriment to You then You may immediately cancel the affected Service without incurring any Early Termination Fee or penalty (provided that We can recover any outstanding Fees incurred up to the date on which Your Service ends and any outstanding amounts that cover installation costs or equipment where such equipment can be used in connection with services provided by other suppliers), by giving Us notice in writing to that effect within 42 days of the date of the notice referred to in paragraph (i) above.

b. If the date on which You give notice to Us to cancel Your Service in accordance with paragraph (ii) occurs after the date of the change to the Terms, the change will not apply to You. We will issue a corrected invoice or adjustment note as appropriate and, if You have overpaid as a result of the change to the Terms, credit Your account with the overpaid amount or, if You have cancelled Your Service with Us, refund the overpaid amount promptly after deduction of any other amounts due by You to Us. Upon cancellation of the Service due to a change to the Terms that has more than a minor detrimental impact on You, the charge for costs of equipment that We have provided to You and that You have not paid for will be owed by You as a lump sum and payable by the relevant due date.

c. If You do not give notice to Us within the 42 day period referred to in paragraph (ii), You are deemed to have accepted Our changes from the date those changes are to take effect and that the Terms of Your Service, as amended by those changes, will govern the relationship between You and Us from that date.

### **3.10 Exceptions**

Our obligation to give You 21 days' notice of Our proposed changes and to afford You a right to terminate Your Service in accordance with clause 3.9 will not apply in relation to:

a. urgent changes We are required to make by Law, for security reasons or technical reasons necessary to protect the integrity of Our Network;

b. the introduction of a new Fee or an increase in an existing Fee due to an additional tax or levy imposed by Law (where it is fair and reasonable for Us to pass that on to You);

c. the introduction of a new Fee or an increase in existing administrative Fees for ancillary services such as credit card transaction fees (provided We have offered You a reasonable alternative at the same or lesser cost to the original Fee); and

d. increases in Fees due to increases imposed on Us by other suppliers (including Third Party Suppliers).

## **4. Fees for the Service**

### **4.1 Fees**

a. You are liable to pay all Fees arising out of the use of the Service that We provide to You, whether that use was by You or any other person with or without Your consent.

b. If a Service is used to access the facilities or services of another supplier, amounts charged by that other supplier are, unless the Terms specify otherwise, Your responsibility, and You will indemnify Us in relation to any such charges. If We are charged those amounts We may include them in the Fees.

### **4.2 GST**

Unless expressly stated otherwise, all amounts payable by You under or in connection with Your Service are inclusive of GST. If GST is payable on a Taxable Supply made to You, the amount payable by You for that Taxable Supply will be the amount expressed in the Terms.

### **4.3 Invoicing**

a. Invoices will be issued by email to your nominated email contact address.

b. Our quarterly plan billing cycle for Service Management & Data, as detailed in a Quotation we have provided You, will commence on the date that Your connection becomes active, pro rata for the initial period leading to the first full accounting quarter.

c. For the period Your connection was activated prior to an accounting quarter commencing, Your plan billing cycle will be shifted to the 1st of the following accounting quarter month. Your second invoice will contain the unpaid portion of the prior quarter calculated on a pro-rata basis from the day the service was activated until the first day of the following accounting quarter month.

d. Your payment will be due on the Due Date as indicated on Your invoice.

e. Recurring quarterly Service Management and Data Fees are billed in advance. Data will not be limited in the first instance, though we reserve the right to limit data use if a 250GB cap per SIM per month is exceeded in consecutive months.

f. We may vary invoice frequency upon giving You reasonable notice. All portions of Your use of the Service are charged for and unused allocations are not transferable or refundable. We reserve the right to reissue an invoice if any error in the amount shown as owing on the invoice is subsequently discovered.

h. We may issue an interim bill in the following circumstances:

- i. You change Your existing plan;
- ii. You request a new Service to be connected;
- iii. You relocate an existing Service;
- iv. You request to be invoiced for any 'unbilled' charges; or
- v. as otherwise agreed with You.

i. We will refund or credit any overpaid amount due to a variation in the Fees or cancellation of a Service. If We have undercharged You, You will be liable for any underpayment.

#### ***4.4 Calculation of fees***

Fees are calculated by reference to data recorded or logged by Us. We are required to ensure that Our bills are accurate and verifiable. Records held by Us will be conclusive evidence of the usage of Your Service and charges payable by You unless they are shown to be incorrect.

#### ***4.5 Spend management***

Usage charges, plan details and other personal information are available by contacting Us at [support@networkhoist.com](mailto:support@networkhoist.com)

#### ***4.6 Time for payment***

All Fees must be paid in full by the Due Date. We reserve the right to charge Interest on any unpaid amount from the Due Date until the date of payment in full.

#### ***4.7 Methods of payment***

Payment for Your Service must be made by direct payment to Network Hoist Pty Ltd as indicated on Your invoice.



#### ***4.8 Suspension for non-payment***

We reserve the right to:

- a. physically disconnect Your Service if Fees or any other amount payable by You remains unpaid 45 days after the applicable Due Date (unless We have received written notice from You of a legitimate dispute of those Fees or other amount prior to the Due Date and that dispute remains unresolved); and
- b. suspend the Service if You fail to pay the outstanding amount in full within 7 days after We give You a notice demanding payment of the Fees.

#### ***4.9 Debt recovery services***

We may use debt recovery services to recover any outstanding Fees (including any administrative fees). You may be liable for any charges and collection costs, such as legal costs.

#### ***4.10 Early Termination Fee***

You may cancel the Service at any time in accordance with this Agreement without incurring an early termination fee, subject to all previous services being paid as per invoices.

#### ***4.11 Refunds and credits***

- a. Any connection fee for a non-standard installation is non-refundable unless We are unable to provision the service You have requested Us to provide. This does not limit any rights You may have to a refund under an applicable Consumer Guarantee.
- b. You may elect to claim a refund for any amount credited on Your final invoice or apply the credited amount to another service We may supply to You by notifying Us within 90 days of Your receipt of the final invoice.

#### ***4.12 Disputed invoices***

- a. If You become aware of an error in Your invoice or Fees You have paid, You can dispute an invoice or claim a refund for overpayment of any Fees under the Terms. We recommend that You do so within 5 months of the date of the invoice to which the disputed amount or alleged overpayment relates. It may be more difficult for Us to process disputes or claims after this period.
- b. The process for disputing an invoice is to email Network Hoist at [sales@networkhoist.com](mailto:sales@networkhoist.com).
- c. The disputed amount remains payable on the Due Date pending the resolution of the dispute, at which time any applicable refund or credit will be issued.
- d. Nothing in this clause limits Your right to issue proceedings in relation to a disputed invoice or alleged overpayment.

#### ***4.13 Cancellation, suspension or disconnection for non-payment***

If We cancel, suspend or disconnect the Service for non-payment, You remain liable for all Fees and other liabilities incurred before the date of cancellation, suspension or disconnection of the relevant Service.

#### ***4.14 Set off***

Unless otherwise varied by Us in writing, You must pay the Fees without any set off, counterclaim or deduction.

## **5. Transfer of Your Service from us to another supplier**

### ***5.1 Transfer***

If You ask Us to transfer any of the Services to another supplier, You remain liable to Us for any amount payable in relation to the supply of the Services up to the date on which We transfer those Services to another supplier. You will pay Us that amount by the applicable Due Date.

### ***5.2 Termination of Services on transfer***

The provision of Your Service will cease on the date on which We transfer Your Services to another supplier.

### ***5.3 Invoicing***

We will endeavour to invoice You for Fees incurred in relation to Services that You transfer to another supplier within the next normal billing period. If, after that time, We become aware of other Fees or amounts (including fees payable to any other supplier) for those Services up to the date of transfer, or We resolve any dispute so that any liability relating to those Services is quantified and payable by You, then You will pay Us all such amounts within 7 days of Your receipt of our invoice for them.

### ***5.4 Indemnity***

We will not accept liability for any amounts owing by You to a supplier or other person. You must indemnify Us against any Claim made by a supplier or other person against Us in relation to any such amounts.

## **6. Personal information**

### ***6.1 Consent to collection and use***

You consent to Us obtaining, using and disclosing Your Personal Information for any Approved Purpose including the purposes specified in this clause 6. If You choose not to provide all or part of the Personal Information We request, We may not be able to provide You with the Services, or We may refuse to provide or limit the provision to You of any Service or credit.

### ***6.2 Use of Personal Information***

a. You authorise Us to collect, use and disclose Personal Information which You provide to Us in connection with the supply to You of the Services in accordance with Our Privacy Policy. Further information about Our privacy practices can be found at [www.networkhoist.com](http://www.networkhoist.com)

## **7. Your obligations**

### ***7.1 Compliance***

a. You are responsible for the use of Your Service and You will not use Your Service other than in accordance with the Terms and Laws and obligations applicable to the Services and their use.

b. You must comply with any reasonable direction given by Us in relation to the Service.

### ***7.2 Responsibility for persons who You allow to use Your Service***

You must ensure that any person You allow to use Your Service complies with the Terms as if they were You.

### **7.3 Internet security**

You acknowledge and accept that any access to the Internet involves security risks and that new threats to Internet security are continually evolving. You accept responsibility for maintaining Your own security and acknowledge that We have recommended that You should at least:

- a. maintain and protect Your user identity, email address and password (keeping the password secure, including not disclosing it, avoiding the use of dictionary words, names or dates, changing it regularly, not keeping it in writing or storing it on a computer);
- b. not disclose Personal Information (including credit card details) on the Internet;
- c. use and keep current anti-virus software and firewall;
- d. restrict access to Equipment;
- e. not accept emails or files from unknown sources;
- f. protect users from unsuitable Internet content; and
- g. keep up to date on Internet security issues; and

### **7.4 Information**

You warrant that the information supplied by You in relation to Your Service is true and correct. You will promptly inform Us of any changes to this information.

### **7.5 Assistance**

For the duration of Your Service, You will provide Us free of charge with all assistance, information, access, facilities and services reasonably required by Us to enable Us to perform Our obligations under the Terms, including use of Customer Equipment (including PABX and key system equipment) and any other telecommunications facilities which You own or control, if required.

## **8. Use of Services**

### **8.1 Interference**

If inadequate capacity in the Customer Equipment or Equipment or Your use of the Service interferes, or in Our opinion threatens to interfere, with the efficiency of any network used in the supply of the Services, You must follow Our directions or the directions of the relevant network operator on how to end or avoid that interference.

### **8.2 Use of Services**

You must:

- a. ensure the Services are used solely for their intended purpose;
- b. notify Us immediately of any security breach (suspected or otherwise) regarding the Service or Your confidential password or customer login; and
- c. not permit any other person to resell or purport to resell any Service.

### **8.3 Technical regulation**

You must not connect or maintain a connection to a facility used in connection with the supply of Services to You or other parties that does not comply with technical codes, standards or regulations made under the Telecommunications Act, any declaration or other requirement of the ACMA or any code, standard or guideline published by the Australian Communications Alliance Ltd.

## **9. Equipment We supply to You**

### **9.1 Title**

We provide for Your ownership of any item of equipment (Service Equipment) supplied to You for use in the provision of the Services.

### **9.2 Access**

a. You will allow Us access to the Service Equipment during Business Hours (or at such other times as We arrange with You), and this right of access will not end until the Services have been cancelled or the term of Our agreement concludes.

b. We (or a Third Party Supplier) may need access to Your premises from time to time in connection with the provision and maintenance of the Service Equipment or a Service. If You do not provide such access as We, or a relevant Third Party Supplier, reasonably require, We may limit, suspend, cancel or disconnect Your Service.

c. If You want Us to provide a Service and that Service requires the installation of any facility, equipment or cabling on Your premises whether by Us or a Third Party Supplier, You must allow Us or any relevant Third Party Supplier to:

- i. have access to Your premises to install the facility, equipment or cabling; and
- ii. install the facility, equipment or cabling on Your premises.

d. If You do not own the premises referred to in paragraph (c), You must have the owner's permission and You warrant to Us that You do have that permission.

e. If We need access to Your premises You must provide Us with safe access and indemnify Us against and must reimburse Us for any Claim by the owner or occupier of the premises in relation to Our entry onto the premises.

### **9.3 Maintenance of Service equipment**

We may suspend Services for a reasonable period of time to perform maintenance on the Service Equipment, provided that in each case, We will use Our reasonable endeavours to:

- a. give You reasonable notice (bearing in mind the urgency and nature of the work) of any Interruption to the Services; and
- b. minimise any Interruption to the Services.

### **9.4 Maintenance of customer equipment**

If We use any of Your facilities or Customer Equipment to provide the Services to You, You are responsible for the maintenance of Your facilities and Customer Equipment unless We otherwise agree in writing.

### **9.5 Interference**

You will ensure that the Service Equipment, and any other Customer Equipment, facilities or connections used in providing Services, are not altered, maintained, repaired or connected to, or disconnected from, any power source or line except by service personnel approved by Us.

## **10. Equipment You acquire from Us**

### **10.1 Title**

If We sell to You a facility or any item of equipment (Purchased Equipment) either for use in the provision of the Services to You or otherwise, then:

- a. that Purchased Equipment remains Our property until We receive full installation purchase payment from You;
- b. until We receive full payment from You, You will not part with possession of the Purchased Equipment except to Us;
- c. if You do part with the Purchased Equipment before making full payment to Us, We may recover the value of it as a debt due, including offsetting the value of the Purchased Equipment against any monies owed to You by Us;
- d. until full payment of the Purchased Equipment is received, You indemnify Us against and must reimburse Us for any loss or damage to it, unless that loss or damage arises from fair wear and tear; and
- e. until We receive full payment for the Purchased Equipment, You must not remove or obscure any identification marks on it, and must comply with Our reasonable instructions to protect Our ownership and not do anything which might detrimentally affect Our ownership of the Purchased Equipment.

### **10.2 Risk**

Risk of loss or damage to the Purchased Equipment will pass to You upon delivery.

### **10.3 Installation**

Subject to agreement between Us and You as to which Services We or a contractor on behalf of Us will install, such Services will be installed at the service location address nominated by You. We may charge You Our current Fees for a non-standard installation of a Service. We will use reasonable endeavours to install a Service on or around the installation date requested by You.

### **10.4 Returns and refunds**

Subject to any rights You have in respect of Our breach of a Consumer Guarantee:

- a. We do not refund unwanted Purchased Equipment. If You require a different model, We allow 7 business days from the date You receive the Purchased Equipment to return to Us at Your own cost.

b. No credit will be applicable on any Purchased Equipment returned after the 7 business day period referred to in paragraph (a).

c. We do not refund Purchased Equipment which has its performance affected by changes to 3rd party network infrastructure where those changes were unforeseeable at the time of purchase. Our Services are customised and provided based on analysis of available network infrastructure (ie coverage available from the nearest Telstra & Optus mobile towers). We are not responsible for interruption to your Services as a result of any changes to this network infrastructure after installation.

## **11. Change, suspension and cancellation of Services**

### ***11.1 Your rights to change, cancel or terminate***

a. You may notify Us of Your intention to change a Service at any time by giving Us written notice. The change of Service will occur at the start of the month following the date of receipt of notice.

b. You may cancel a Service by giving Us 30 days' notice.

c. You may also cancel a Service at any time by giving Us notice if:

i. You are entitled to do so in accordance with clause 3.9;

ii. You are entitled to do so in accordance with clause 13.2;

iii. We are in material breach of the Terms, which is capable of being remedied, but which We have failed to remedy within 30 days after You telling Us of that breach; or

iv. We are in material breach of the Terms and it is something which cannot be remedied, including where there have been prolonged or repeated Interruptions to the Service. This clause does not apply to Interruptions which occur because of:

1. a cancellation, suspension or restriction to the supply of the Service in any of the circumstances listed in clause 11.3;

2. a system or network outage for an insignificant period;

3. scheduled maintenance of Our Network in accordance with clause 11.3.e;

4. a fault or other event which may reasonably be attributed directly or indirectly to Your Equipment; or

5. Your acts or omissions.

d. If You cancel a Service for any of the reasons set out in paragraph (c) You will be entitled to a refund of the unexpired portion of any amounts You have paid in advance for the Service in accordance with clause 4.11.

### ***11.2 Our suspension and cancellation rights***

We may suspend, limit or cancel a Service:

a. if You notify Us in accordance with clause 11.1;

- b. to the extent necessary for Us to comply with an order, instruction or request of a Government Agency, an emergency services organisation or any other competent authority (whether such an order, instruction or request is received or reasonably anticipated by Us);
- c. if We are required to do so by Law;
- d. if there is an emergency;
- e. if the Network is being modernised or upgraded;
- f. if a third party (including any Third Party Supplier) withdraws or suspends a service which means We cannot provide Your Service;
- g. during any technical failure, modification or maintenance involved in the Service provided that We will use reasonable endeavours to procure the resumption of the Services as soon as practicable;
- h. if there are reasonable grounds for believing a threat or risk exists to the security or integrity of Our Network or that provision of the Service may cause death, personal injury or damage to property;
- i. if We reasonably determine that such action is necessary to repair, maintain or restore any part of Our Network;
- j. if the provision of the Services by Us does or may contravene any Law or We have reasonable grounds to believe that it may in the immediate future contravene any Law;
- k. a Force Majeure Event prevents Us from supplying the Service in accordance with the Terms for 30 days; or
- l. if Your Service has not been used or accessed for a continuous period of 24 months.

### ***11.3 Other suspension or cancellation events***

We may suspend, limit or cancel a Service if:

- a. You vacate the premises to which We have been supplying a Service to You;
- b. We are unable to enter the premises to inspect, repair or maintain any Equipment or cabling connected with a Service provided to You;
- c. We have the right to do so in accordance with clause 4.8 for Your failure to pay Fees or other amounts;
- d. We have reasonable grounds to suspect fraud or other illegal conduct by You in applying for the Service;
- e. We have reasonable grounds to suspect fraud or other illegal conduct by You or any person using Your Service;
- f. You fail to rectify any defect or inadequacy in any Customer Equipment or cabling not owned or maintained by Us within 30 days of being requested to do so by Us;
- g. Your use of the Services interferes with the efficiency of Our Network or a Third Party Supplier's network and You fail to rectify the situation within 24 hours of being requested to do so by Us;

- i. if You do, or allow to be done, anything which in Our reasonable opinion may have the effect of jeopardising the operation of any Service;
- j. You become a carrier or carriage service provider within the meaning of the Telecommunications Act;
- k. You become bankrupt, insolvent or have a receiver, manager, administrator or liquidator appointed over You or any of Your assets;
- l. You are in material breach of any of the Terms, including these General Terms.

#### ***11.4 Cancellation for convenience***

We reserve the right to remove any Service:

- a. at any time after the end of the Fixed Term by giving You 30 days' notice; or
- b. during the Fixed Term, if We have Your consent; or
- c. during the Fixed Term, if We offer to migrate You to a reasonably comparable alternative service for the remainder of the Fixed Term and take reasonable steps to offset any more than minor detrimental effects of the migration caused by differences between the cancelled service and the alternative service We offer;

#### ***11.5 Consequences of cancellation, suspension or termination***

- a. If We cancel or suspend the Service for any of the reasons listed in clause 11.2 or 11.4, We will not charge You any disconnection or reconnection fee.
- b. If We advise You that We are removing Your Service, You will not be liable to pay a disconnection fee, but will be liable to pay all other Fees incurred up to the time We remove Your Service.
- c. If We suspend a Service in accordance with these Terms as a result of a breach of these Terms by You, You will have to pay all charges arising in respect of the Service during the suspension (excluding usage based charges).
- d. You remain liable for all Fees payable in respect of Services provided to You up to the time of cancellation, suspension or termination.
- e. If Your Service has been terminated or cancelled for any reason, We may delete all of Your data from any storage media. You are solely responsible for backing up Your data.

#### ***11.6 Expiration of a Fixed Term or other period***

If:

- a. We provide a Service to You for a Fixed Term or any other period;
- b. that Fixed Term or other period expires; and
- c. neither You nor We cancel the Service;

We will continue to supply the Service to You on a quarterly basis.

#### ***11.7 Re-connection Fees***



We may charge You a fee for the reconnection of any Service, except where the disconnection was caused by Our error or Our failure to perform Our obligations as set out in the Terms or was the result of any of the events specified in clause 11.2.

## **12. Liability**

### ***12.1 Our liability for property damage, personal injury and death***

We are liable to You for:

- a. any loss, destruction or damage to Your tangible property during installation, repair or maintenance of Equipment; and
- b. personal injury (including illness and disability) or death, which is caused by Our fault, negligence or fraud.

### ***12.2 Our liability for Interruptions to the Service***

a. Subject to paragraph (b), We accept liability to You for Interruptions to the Service to the extent of providing You with a pro-rata refund of service charges payable for the duration of the Interruption.

b. The refund in paragraph (a) does not apply:

i. to Interruptions which occur because of:

1. a system or network outage for an insignificant period;
2. scheduled maintenance to Our Network, a Third Party Supplier's network, Our Equipment or Purchased Equipment;
3. a cancellation, suspension or restriction to the supply of the Service in accordance with clause 11.3; or

c. To receive the refund set out in paragraph (a), You must contact Our team via email at [sales@networkhoist.com](mailto:sales@networkhoist.com) and lodge a complaint about the Interruption.

### ***12.3 Our liability under the Customer Service Guarantee***

a. This clause 12.3 applies subject to any waiver of Your entitlements under the Customer Service Guarantee Standard (the CSG) that You have provided to Us. It may be a condition of some services that You waive Your entitlements under the CSG.

b. To the extent that We provide You with a standard telephone service (as defined in the Telecommunications (Consumer Protection and Service Standards) Act 1999) and specified enhanced call handling features, Our service must comply with the CSG. The CSG sets out minimum performance standards in relation to service connection times, fault repair times and keeping appointments to provide You with a Service. The CSG does not apply to Customer Equipment or to customers that have more than five telephone services. We will connect Services not covered by the CSG within a reasonable time.

c. If We do not meet the CSG performance standards, You may be entitled to receive monetary compensation as specified in the CSG. However, there are circumstances in which We may be exempt from meeting those requirements, including:

- i. if You have agreed to a CSG waiver under the terms of the Agreement in accordance with Part 5 of the Telecommunications (Customer Service Guarantee) Standard 2011; or
- ii. where You unreasonably refuse Us access to Your premises; or
- iii. if You miss an appointment without giving Us reasonable notice. For more information about the CSG, go to the ACMA website at [www.acma.gov.au](http://www.acma.gov.au).

#### **12.4 Consumer Guarantees**

We will provide the Services to You subject only to the terms, conditions and warranties contained within the Terms and those imposed by Law which cannot be excluded. Certain remedies are available to You under the Australian Consumer Law if the Service or Equipment We supply to You fails to meet the standard required by applicable Consumer Guarantees.

#### **12.5 Limitation of liability for breach of a Consumer Guarantee**

a. Where We are not permitted to exclude Our liability for Our breach of a Consumer Guarantee but are permitted to limit Our liability for such a breach, unless You are able to establish that it is not fair and reasonable for Us to do so, Our liability to You is limited to:

- i. if the breach relates to Equipment, the repair or replacement of the Equipment, the supply of equivalent Equipment or the payment of the cost of repairing or replacing the Equipment or supplying equivalent Equipment; or
- ii. if the breach relates to a Service, resupplying the Service or payment of the cost of having the Service resupplied.

b. The limitations of liability in clause 12.5(a) do not apply to:

- i. a breach of the Consumer Guarantees relating to clear title, undisclosed securities and undisturbed possession under sections 51 to 53 of Schedule 2 to the Competition and Consumer Act 2010 (Cth); or
- ii. a breach of any Consumer Guarantee relating to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

#### **12.6 Exclusion of liability**

To the extent permitted by Law, neither a Third Party Supplier nor Us have any liability to You or to any other person for:

- a. any Claim by You or any other person for Consequential Loss (other than loss resulting from Our breach of a Consumer Guarantee);
- b. any loss or damage suffered by You in connection with Your Service to the extent that Your acts or omissions or any Customer Equipment cause or contribute to that loss or damage;
- c. any loss to the extent that it results from Your failure to take reasonable steps to avoid or minimise Your loss; and
- d. acts, omissions or defaults of any third party or any person who provides goods or services directly to You for use in connection with a Service.

#### **12.7 Cancellation of a Service**

Cancellation of a Service or termination or expiry of Your Service does not affect the provisions of the Terms concerning limitation of liability and indemnity.

### **13. Force Majeure**

#### ***13.1 No liability***

Subject to Our obligations under the CSG as described in clause 12.3 and any non-excludable rights You have under the Australian Consumer Law, We are not liable for, and will not be deemed to be in breach of the Terms in the event of:

- a. any delay in installing a Service;
- b. any delay in correcting any fault in a Service;
- c. failure to provide a Service or incorrect operation of any Service;
- d. Service outages; or
- e. any default by Us in compliance with the Terms,

if it is caused directly or indirectly by a Force Majeure Event.

#### ***13.2 Termination for Force Majeure***

If any delay, Interruption or failure to deliver under clause 13.1 continues for more than 30 days after the commencement of the delay, Interruption or failure to deliver, then either party may terminate the affected Service(s) by notice in writing to the other party.

### **14. General**

#### ***14.1 Giving notice to You***

We may satisfy any obligation to give You notice by:

- a. delivering the information to You in person;
- b. sending the information by pre-paid post to the address listed in Our records for You;
- c. sending the information by SMS message to the mobile telephone number listed in Our records for You if;
- d. transmitting the information to the email address listed in Our records for You. By applying for the Service, You consent to notices being sent to Your email address. It is Your responsibility to check Your emails and to inform Us of the most appropriate address for receipt of notices or if You do not wish to receive notices via email; or
- e. including the information on, in or with an invoice, including by an invoice made available to You via email.

#### ***14.2 Disputes***

We will seek to resolve any dispute in good faith. If a dispute remains unresolved, You may have rights under the Telecommunications Industry Ombudsman (TIO) scheme.

#### ***14.3 Authority***

You must inform Us if You want another person to act as an authorised representative in accessing or making changes to Your Service or account. Subject to Our rights and obligations in clause 6, We will not let another person access Your account unless We have received Your authority to do so.

#### ***14.4 Subcontractors***

We may subcontract any of Our obligations under the Terms.

#### ***14.5 No waiver***

No failure to exercise, or any delay in exercising, any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting the waiver unless made in writing.

#### ***14.6 Survival***

Any provision of the Terms which by its nature is intended to survive termination or expiry of Your Service (including without limitation any exclusion or limitation of liability or indemnity in the Terms) will survive termination or expiry of Your Service for any reason.

#### ***14.7 Severability of provisions***

Any provision of the Terms that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of the Terms nor affect the validity or enforceability of that provision in any other jurisdiction.