



Comms Channel

**COMMSCHANNEL
Standard Terms and
Conditions**

Version 1.0

The terms and conditions on which Comms Channel Pty Ltd trading as CommsChannel ICT(COMMSCHANNEL) ABN: 67 625 816 613 (COMMSCHANNEL) provides Services to You are detailed in the following pages.

COMMSCHANNEL TERMS AND CONDITIONS

This Agreement commences upon submitting a request for service on an approved CommsChannel Service Application Form and We accept Your application.

This agreement is made up of:

- (a) the Service Application.
- (b) the CommsChannel Channel Partner Agreement
- (c) the Product Service Schedule, Pricelist, and Product Description
- (d) these Terms and Conditions
- (e) the Acceptable Use Policy

In completing the Service Application You warrant that You are legally entitled to enter into the agreement.

The Agreement is for the Term or as provided for in clause 12.

1. DEFINITIONS

Acceptable Use Policy means our policy on acceptable use of the Service, the current version of which is attached to these Terms and Conditions.

ACMA means the Australian Communications and Media Authority.

Agreement means this Agreement between You and Us for the supply of service.

Application or **Order** means the Order for service completed by You.

Application Form means the application form for provision of the Service completed by You.

Cooling-Off Period means a cooling-off period required by any applicable State or Territory door-to-door sales legislation.

Customer or **End User** mean refers to all other persons, companies, or other entities identified on the Application, who acquires the Service from Us and uses the Service.

Customer's Premises means the building in and to which Provided Equipment and Services will be provided and the land on which that building sits.

Customer Equipment is that provided by You to facilitate the Service as advised by us. Such equipment might include but not limited to personal computers, servers, IP telephones, data or network terminating equipment.

Customer Service Guarantee means the current minimum performance standard set by the ACMA under sections 115, 117 and 120 of

the Telecommunications (Consumer Protection and Service Standards) Act 1999.

COMMSCHANNEL or **We** or **Us** means Comms Channel Pty Ltd trading as COMMSCHANNEL (ABN 67 625 816 613).

GST means the tax imposed or to be imposed by the A New Tax System (Goods and Services Tax) Act 1999 (C'th) and the related imposition Acts of the Commonwealth.

Individual Service means a particular Service ordered and supplied under an Order for Service.

Installation means the provision of equipment and connection to the Service at the Customer premises.

Maintenance means the ongoing support and operation of the Service during the course of the Term.

Minimum Term commences on the day that We first provide the Service to You and continues thereafter for 12 months or the duration as specified in the Service Application.

Monthly Fee means the monthly fee for the Service as set out in the Pricelist.

Personal Information has the same meaning as defined within the Privacy Act 2000

Price list, Price Book and **Price Schedule**, mean Service Prices published and provided to You in writing from time to time.

Primary Contact means the telephone number, email address or other specific contact designated by You and accepted by Us to use as our primary means of contacting You in relation to Your service.

Provided Equipment comprising the equipment that maybe required for the Service and be provided by Us to You

Service and **Services** means a service to You by Us, as described in the corresponding Product Service Schedule.

Service Equipment and Facilities is that infrastructure provided by a Us including third party such as Access data network, switching equipment, computer infrastructure, and any other equipment or facilities.

Third Party Service Provider (TTP) means a carrier, carriage service provider, IT Service Provider, or an equipment supplier, other than Us.

Term means the Minimum term as extended by each month the Customer continues to use the Service after the ending of the Minimum Term.

Usernames and **passwords** means the information or security codes used by Us

to confirm that the End User has authority to use the service.

You or Your means the Customer.

2. THE SERVICE

2.1 In order to receive the Service, You must:

- (a) complete a Service Application; and
- (b) meet the Service requirements as notified by us; and
- (c) install or arrange for installation of the Customer Equipment required for the delivery of the Service.

2.2 You warrant that information provided to Us in the Application is true and correct in all material respects and You acknowledge that We will rely on it. You agree that, if You give Us incorrect information during an application which is then relied upon and used by Us You will be liable of any additional costs incurred in the provision of the service.

2.3 Subject to this Agreement, We will use reasonable skill and care in providing You with the Service. You acknowledge that the Service is provided without warranty that it is continuous or fault-free, and maybe unavailable during maintenance and other works. Subject to law, We are not liable for any loss or disappointment You may suffer as a result of any interruptions in the Service other than as specified in these Terms and Conditions.

2.4 In the case of COMMSCHANNEL Connectivity Services:

- (a) You acknowledge that due to the carrying out of engineering work, there may be a minor disruption to Your standard telephone Service during Service provisioning
- (b) You acknowledge that certain incompatible products may not be available to You.

2.5 In the utilisation of the Service, You must comply with the Acceptable Use Policy and You acknowledge and agree that We may exercise any of the rights specified in the Acceptable Use Policy.

2.6 While We will use our best endeavours in providing the Service, You use it at Your own risk.

2.7 You must do the following in relation to Your Service:

- (a) adopt appropriate measures to ensure the security of the Your account information, password and data; and
- (b) advise Us in a timely manner if You have reason to suspect that the Service is being used contrary to the applicable Terms and Conditions or the Acceptable Use Policy.

2.8 You are solely responsible for the Service and its use including:

- (a) data usage including internet downloads;
- (b) telephone calls made and messages sent;
- (c) websites and content accessed;
- (d) the content or software downloaded and the effect it may have on Your equipment or service;
- (e) the products and services purchased;
- (f) the information provided to others;
- (g) the installation or use of any equipment or

software whether provided by Us or not; (h) the modification of any settings or data on Your service or related services or equipment whether instructed by Us or not; (i) the personal supervision of any users under the age of 18 who use the service; and (j) the lawfulness of Your activities when using the service and accessing any sites and third party content.

2.9 You must not use the service in a way which contravenes any fair use policy, acceptable use policy or fair go policy that applies to the service.

2.10 We may refuse an application for Service

(a) where You have not completed an application process correctly or have been unwilling to provide Us with a document or information We require;

(b) where You do not meet our credit assessment criteria.

(c) where the necessary Service Equipment and Facilities required for the Service or the installation of Provided Equipment are not available for the Customer's Premise.

2.11 We may apply restrictions to a service without notice where:

(a) in our reasonable opinion the service has been used directly or indirectly involved in a manner that is detrimental to our service, or jeopardise the use of our service or its performance for other customers.

(b) You have not met our credit assessment criteria.

We will advise You of the general nature of the reasons for these restrictions and, if applicable, how You may access services which have been restricted.

3. OTHER SERVICES

If You acquire other services from Us for use in conjunction with the Service, You agree to comply with the terms of such services including of any relevant software or other licences supplied or granted in connection with those services.

4. PAYMENT OF ACCOUNTS AND CHARGES

4.1 We will be taken to have commenced supplying the Service to You from the date of activation of the Service.

4.2 You must pay the Monthly Fee during the Term and other fees set out in our Price Schedule from the date on which We commence supplying the Service to You. The Monthly Fee must be paid in advance by Direct Debit, Credit Card, or EFT as specified in the Application Form, or by other means of payment that We notify You is acceptable to Us.

4.3 You must pay Us any other applicable charges as set out in the Application Form and Pricing Schedule upon our request including installation charges, charges for changing Your service where those changes are requested by You, and any costs of labour or parts in maintaining the Provided Equipment after the expiry of the Minimum Term.

4.4 You acknowledge that charges will be incurred when the service is used. It is therefore important that You take steps to ensure that such usage does not occur without Your authorization and approval. You should ensure that You are in control of devices that might make use of Your services, such as computers, handsets, mobile phones, and wireless devices connected to Your service, and that third parties cannot access or use such equipment without Your authority. You acknowledge that usage of some services can occur because of an infection of Your computer with a virus or due to other unauthorised third party intrusions.

4.6 The charges in the Price list may not include all taxes. You must pay Us when We ask all stamp and other duties, fees, taxes (including any Goods and Services Tax) and charges payable on:

- (a) the provision of the service relating to this Agreement or the performance of this Agreement; and
- (b) Your purchase of any hardware in relation to the Service; and
- (c) any payment, receipt or other transaction arising out of this Agreement.

5. EQUIPMENT

5.1 We will install the Provided Equipment in the Customer Premises and will maintain that Provided Equipment while We are supplying the Service to You and warrant it to be free of defects during the Minimum Term. We cannot guarantee that the Provided Equipment will be fault-free.

5.2 We will agree with You the date on which We will install Provided Equipment at the Customer Premises. Where We specify a date to You for installation, We will try to keep to the date, but We cannot be liable for any loss You may suffer if We fail to do so.

5.3 We will try to install the Provided Equipment at the Customer Premises in the way You would like, but for technical and commercial reasons, We have the final decision on installation. For example the position of any connection point or cables.

5.4 You must provide Us with safe access to the Customer premises to install, maintain or remove Provided Equipment. You represent to Us that You are either the owner or occupier of the Customer Premises and that You have obtained any necessary permissions to allow Us to perform this Agreement.

5.5 You must indemnify Us against any liability We may incur to any person with an interest in the Customer Premises in connection with the installation, maintenance or removal of the Service or Provided Equipment.

5.6 If it is necessary in providing the Service to disconnect You from a third party operated service, We will seek Your approval prior to disconnection.

5.7 We reserve the right to quote and charge You if You require Us to remove any part of the

Provided Equipment. We will not be obliged to repair any damage to the Your premises or property caused by the removal of the Service or Provided Equipment.

6. SUPPLY OF EQUIPMENT

6.1 If You are sold or supplied with equipment by us, You acknowledge and agree that the sale or lease (as applicable) of the equipment is on the terms and condition of this agreement;

6.2 We will arrange for the equipment to be delivered, installed and configured at the Customer Premises as specified in the Application Form;

6.3 if You rent equipment from Us then:

6.3.1 Your possession and use of the Provided Equipment is subject to our title and other rights of our suppliers and You have no legal or other interest in the Provided Equipment other than under this agreement;

6.3.2 You grant Us and our nominees an irrevocable license to access the Customer Premises where the Provided Equipment is situated to inspect, repair, modify and/or remove the Provided Equipment during the term of this Agreement and to disconnect and remove the Provided Equipment on the expiration or termination of this Agreement, or on default by You under any Agreement between You and Us, or on the expiration or termination of any Agreement necessary for Us to provide the Service or the equipment, whether or not You are a party to that Agreement;

6.3.3 You will not remove the Provided Equipment from the Customer Premises without our prior written consent;

6.3.4 You will not remove any nameplate identifying the Provided Equipment as the property of any third party or make any alterations or additions to the equipment;

6.3.5 You will not sublet, part with possession, assign, sell, transfer, deposit, pledge, lend bail or otherwise dispose of the Provided Equipment without our prior written consent. If any person seizes or attempts to seize the Provided Equipment, You will notify Us and You will notify that person of the title and other rights belonging to Us concerning the Provided Equipment.

6.3.6 You will use the Provided Wequipment for ordinary purposes only. You will not use the Provided Equipment for any illegal or unlawful purpose which may result in its confiscation or seizure.

6.4.4 You will ensure that the Provided Equipment is operated and housed in an environment which meets the manufacturer's requirements and will not affix the Provided Equipment to any real property;

6.3.7 if the equipment is no longer able to be used, is not operating or is lost, destroyed or damaged while on Your premises, You will notify

us. We may require You to reimburse Us for the reasonable cost of replacement or repair. If the Provided Equipment is not in Your possession, You will do everything You can to assist Us to locate the equipment, and

6.3.8 You must immediately return the Provided Equipment to Us upon the expiry or termination of this agreement for any reason.

6.4 if You purchase equipment from us:

6.4.1 the charges for the equipment will be included as part of the fees applicable to the Service and will be subject to the payment terms that apply to You;

6.4.2 title in the equipment remains with Us until We have been paid in full the charges for the equipment;

6.4.3 risk in the equipment passes to You upon delivery at Your premises; and

6.4.4 You will ensure that the equipment is operated and housed in an environment which meets the manufacturer's requirements.

7. CUSTOMER SERVICE

7.1 If You experiences a problem with the Services or Provided Equipment, You should report by phoning the nominated number shown in the Application form or CommsChannel website(www.CommsChannel.com.au)

7.2 We will use reasonable efforts to rectify the problem as soon as possible.

7.3 If You report a fault and We find there is no fault or the fault was not caused by Us, We may charge for any work We have done to try to find the fault or repair it.

8. INDEMNITY AND LIMITATION OF LIABILITY

8.1 You must indemnify Us against any loss, damage, liability, expense, cost or charge arising from or incurred in connection with:

- (a) any fault in the Service or the Provided Equipment due to Your negligence or wilful misuse, or any unauthorised use of any of them; and
- (b) any breach by You of the Acceptable Use Policy.

8.6 You indemnify Us in respect of any loss, liability or expense arising out of the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by You using the Service.

8.2 Subject to clauses 2.3 and 2.6, We accept liability for the supply of the Service but only to the extent provided in this clause 8.

8.3 We accept liability where:

(a) the Service is not supplied with due care and skill;

(b) any materials supplied in connection with the Service (including the Provided Equipment) are not reasonably fit for the purpose for which they are supplied; and

(c) it is otherwise required to do so by the Trade Practices Act.

8.4 To the extent (if any) that the Service is not of a kind ordinarily acquired for personal, domestic use, our liability under clause 8.3 is limited to, at our option, resupplying or paying for the resupply of the Service.

8.5 Except as stated above, We are not liable in tort (including negligence), contract or otherwise for any damages, including loss of profits, business or anticipated savings or any other indirect or consequential damage.

8.6 We will not be liable for:
(a) any delay in installing any service.
(b) any delay in correcting any fault in any service.

(c) failure or incorrect operation of any service, or
(d) any other delay or default in performance under this Agreement,

if it is caused by any event or circumstance reasonably beyond our control, including but not limited to; war, accident, civil commotion, riot, military action, sabotage, act of terrorism, vandalism, embargo, judicial action, labour dispute, an act of a government or a government authority, acts of God, earthquake, fire, flood, plague or other natural calamity, computer viruses, hacker attacks or failure of the internet or delay, or failure or default by any other supplier.

9. PERSONAL INFORMATION

9.1 Information concerning You will be held in a database. The database will contain the Your name, address, telephone numbers, bank account or credit card details, billing details, information relating to the provision and use of the Service, and information provided by You in connection with this Agreement or the Service.

9.2 This information (other than bank account and credit card details) may be used:

- (a) to enable Us to perform our obligations to You under this Agreement, including to provide the Service;
- (b) to enable Us to ensure that You perform Your obligations under this Agreement;
- (c) by any entity related to Us and any TPP for planning, research and the promotion and marketing (whether targeted, direct or indirect) of ours or their products and Services, or if required by any law (including without limitation the Corporation Act), or if required by the rules of any stock exchange.

9.3 In addition to our other rights under this clause 9, We may give Credit Information about You to a credit reporting agency to:

- (a) obtain a consumer credit report about You; or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about You.

9.4 In addition to our other rights under this clause 9, We may (in accordance with the Privacy Act 1988):

- (a) obtain and use information Your commercial activities and commercial credit worthiness from a credit reporting agency or other business that reports on commercial credit worthiness to assess Your application for the Service (if the application is for consumer credit) or collect overdue payments;
- (b) obtain or use a consumer credit report about You from a credit reporting agency to assess the Customer's application for the Service (if it is for commercial credit) or collect overdue payments; and
- (c) disclose information about You to other credit providers or obtain and use information from other credit providers for the purposes of assessing Your application for the Service, Your ongoing credit worthiness or the status of any account held by You with Us or with any other credit provider.

9.5 You consent to the collection, use and disclosure of information as set out in this clause 9. If You do not want the information to be used for direct marketing, or as set out in clause 9.3 or 9.4, please notify Us in writing and We will ensure that the information is not used for these purposes.

9.6 "Credit Information" in the above cases means:

- (a) identity particulars (name, address, and date of birth);
- (b) Your application for credit or commercial credit, including the amount applied for;
- (c) the fact We are a current credit provider to You;
- (d) payments which are overdue by more than 60 days and for which debt collection has commenced;
- (e) advice that payments are no longer overdue in respect of a default which has been listed;
- (f) information that, in our opinion, You have committed a serious credit infringement; and
- (g) cheques drawn by You for more than \$100 and which have been dishonoured more than once.

10. CHANGING THIS AGREEMENT

10.1 Subject to clause 12, You may change the Service associated with this Agreement where the Service allows by contacting or calling Us. The change will become effective as soon as practicable. Changing a Service does not shorten the Term or terminate the Agreement. The Agreement continues to apply for the remainder of the Term.

10.2 If You ask Us to change the place at which the Service is provided (for example, You have moved to a new address), We cannot guarantee that We will be able to provide the Service at the new address. If We can provide it, You will have to pay any charges for installing the Service at the new address.

10.4 We can change the Agreement at any time provided that We notify You of any change within at least 30 days. You must notify Us of Your consent to the change within 14 days of our notice, otherwise We may exercise our right to terminate the Agreement under clause 12.4.

Your continued use of the Service beyond the date of the change will be deemed acceptance of it.

10.5 We can offer new or additional features that do not affect Your existing Service, including the price, at any time.

10.5 It will be sufficient, for the purposes of clause 10.4, that We may notify You of the fact that this Agreement, the Acceptable Use Policy or the Pricing Schedule has been changed:

- (a) by email to Your nominated account email address, or
- (b) with or as part of a bill, or
- (c) otherwise in writing, including by fax or mail.

10.6 Where changes have taken place a revised copy of Terms and Conditions, the Acceptable Use Policy or the Pricing Schedule will be available on the CommsChannel website (www.CommsChannel.com.au).

11. TRANSFERRING THE SERVICE

You may not transfer or novate, nor try to transfer or novate the right to receive the Service or any other right under this Agreement to anyone else without our consent. We may transfer or novate any of our rights or obligations under this Agreement without Your consent by sending You a notice.

12. SERVICE SUSPENSION, CANCELLATION OR AMENDMENT

12.1 Subject to clause 12.5, You can terminate the Service by giving 30 days notice to us.

12.2 If We suspect that the Customer has breached any material term of the Terms and Conditions of this Agreement including engaging in conduct that is contrary to the Acceptable Use Policy, We can without affecting any other rights We may have, immediately terminate or suspend the Customer's Service. The Customer will still be liable to pay Monthly Fees during the period of suspension if We terminate this Agreement and the Customer has not paid the cancellation fee in clause 12.4, the customer must return to Us all COMMSCHANNEL Provided Equipment.

12.3 We may terminate Your Service by giving 7 days' notice if any charges remain outstanding for 21 days.

12.4 We are otherwise entitled to terminate this Agreement by giving You 30 days notice.

12.5 If You decide to terminate the Service after the end of the Cooling Off Period, if applicable, You must pay to Us a cancellation fee which is made up of the following cancellation charges:
(i) Balance of Minimum Term monthly fees
(ii) Balance of Equipment cost and return of the Equipment (if applicable)
(iii) Disconnection fee (if applicable).

12.5.1 Cancellation charges payable for cancellation before Minimum Term expires are – (i), (ii) and (iii).

12.5.2 Cancellation charges payable for cancellation after expiry of the Minimum Term are - (ii) and (iii).

13. GENERAL TERMS

13.1 If We do not exercise or delay in exercising our rights under this Agreement, We will not be taken to have waived our rights.

13.2 This Agreement will be governed by and interpreted in accordance with the laws of the State of Victoria.

13.3 The Acceptable Use Policy and any terms set out in the Pricing Schedule are expressly incorporated herein.

13.4 Clauses 4, 5, 6, 8 and 9 survive termination of this Agreement.

13.5 Notices can be provided under this Agreement by email, post or facsimile.

13.6 A reference in this Agreement to the singular includes the plural

Use of Service

When using the Service, You must not contravene any laws or any relevant industry codes of practice or infringe the rights of any person. You must at all times comply with the Acceptable Use Policy published by COMMSCHANNEL and any instructions COMMSCHANNEL may give to You from time to time without limiting this, You must not use the Service to:

- a) publish, distribute, transmit or otherwise make available any material that is offensive, abusive, discriminatory, illegal, indecent, pornographic, obscene or menacing;
- b) defame, harass or abuse anyone or violate their privacy;
- c) infringe the intellectual property rights or disclose the confidential information of any person without their authority (such as the use, copying or distribution of any data or software without the owner's authority);
- d) interfere with or disrupt the Service, or any other computer system (including by overloading COMMSCHANNEL's systems or by distributing harmful viruses);
- e) access, monitor, hack into, or use any data, systems or networks without the authority to do so; and
- f) send any bulk e-mails (i.e. spamming) over the Internet.

You are not permitted to authorise a third party to use Your service without direct supervision and/or written authorisation by us.

COMMSCHANNEL may monitor Your use of the Service to ensure that You are complying with these Terms, but COMMSCHANNEL is not obliged to do so. COMMSCHANNEL may investigate any misuse or suspected misuse of the Service and may involve the police or other law enforcement agencies in doing so. COMMSCHANNEL may recover the cost of such investigation if it is established that You have misused the Service. If Your use of the Service causes any loss or damage to third parties, You must compensate them for such loss or damage

Security of Service

You must take all reasonable measures to prevent unauthorised access to the Service.

COMMSCHANNEL may provide You with credentials such as a username and password associated with access to, and use of the service during service activation. It is Your responsibility to maintain safe and secure the credentials.

You must ensure that appropriate security mechanisms are placed on all equipment so as to protect against hacking, including over wireless networks. Some steps that You should take include:

- (a) not recording Your username and password details on Your computer or in any other location where they may be obtained by a third party;
- (b) changing and not using default or common usernames and passwords on customer premises equipment and computers;

- (c) restricting administration access to Your equipment;
- (d) ensuring that WIFI access is protected with appropriate encryption and with limitation on persons and equipment that are permitted to access the WIFI; and ensuring that Your passwords (including Your router passwords) are not given out to unauthorised persons and are regularly changed.

Content

Federal law allows the ACMA to direct COMMSCHANNEL to remove certain prohibited Internet content from our servers or prevent users from accessing certain Internet content. COMMSCHANNEL may take any steps necessary to ensure that the Service complies with any relevant industry code of practice or notification or direction from the ACMA, including removing any content (including part or all of a website) from COMMSCHANNEL's servers, terminating or suspending the Service, filtering the Internet content available to You and restricting Your access to particular Internet content or websites. COMMSCHANNEL may take these actions at any time without notice to You.

Internet Security

The Internet is an unsecure environment. COMMSCHANNEL advises that it may be possible for a third party (such as a hacker) to obtain access to Your equipment or software, including equipment or software provided to You by COMMSCHANNEL, and to use of Your service.

You acknowledge that if You run certain applications and protocols (such as File Transfer Protocol, or Hyper Text Transfer Protocol), other users may gain access to Your computer.

The Internet contains content You may find unsuitable, offensive or adult in nature and which may breach Australian laws. COMMSCHANNEL does not endorse or control such content and disclaims any and all liability in respect of such content. You have the right to make complaints to the ACMA about Internet content which is or could be rated R, X or Refused Classification (RC).

Children and minors must be supervised by a parent, teacher or other responsible adult at all times while using a Service. COMMSCHANNEL will not be responsible for content that may be viewed by children and minors without proper adult supervision.

If You buy goods or services on the Internet COMMSCHANNEL will not be responsible or liable for those goods and services and You will be responsible for any fees or charges You incur. If You send confidential information such as Your credit card details over the Internet, You bear all risks and losses arising from such transmissions.