

Parties Eftel Corporate Pty Ltd /		
Customer/You	Company Name	
	ABN	
	Address	
	Fax Number	
Eftel	Company Name	Eftel Corporate Pty Ltd
	ACN	154 634 054
	Address	Level 11, 600 St Kilda Rd, Melbourne, 3004
	Fax Number	03 9090 2535
Date of Agreement		

SPECIAL CONDITIONS

BACKGROUND

- A. Eftel provides a variety of telecommunications services.
- B. You wish to acquire telecommunications services from Eftel as a corporate customer.

OPERATIVE PROVISIONS

1. AGREEMENT TO SUPPLY THE SERVICE

- 1.1. Subject to the terms of Your Services Agreement with Eftel, we will use all reasonable commercial endeavours to provide each Service or Individual Service for at least its Contracted Term.
- 1.2. Your Services Agreement with Eftel comprises:
 - 1.2.1. this Master Services Agreement;
 - 1.2.2. each relevant Service Schedule;
 - 1.2.3. each Order;
 - 1.2.4. the Operations Documentation; and,
 - 1.2.5. any other document the parties agree from time to time.
- 1.3. If any of the documents set out in clause 1.2 above is inconsistent with the others, then the documents will prevail in the order set out in clause 1.2.
- 1.4. This Master Services Agreement sets out terms that apply to all telecommunications Services you acquire from Eftel. If you acquire any future telecommunications Services from Eftel, then unless otherwise agreed, this Master Services Agreement will apply to the supply of those additional Services along with the terms of any additional applicable Service Schedules and Orders.

2. Your Use of the Service

- 2.1. Eftel will supply each Service from its Service Start Date.
- 2.2. You will reasonably co-operate with Eftel to allow Eftel to establish and supply each Service to you safely and efficiently. This includes following Eftel's reasonable requests, and providing Eftel Personnel with safe and prompt access to the Premises, your Personnel, equipment, data and information.
- 2.3. In using a Service, you will comply with all directions of a Regulator and all reasonable directions of Eftel.
- 2.4. It is a condition of Your Services Agreement that you will not use or attempt to use a Service:
 - 2.4.1. to break any law, regulations, rules, or to infringe another person's rights;
 - 2.4.2. to expose Eftel to a claim for Loss, damages or any liability;
 - 2.4.3. to transmit, publish or communicate material which is illegal, defamatory, offensive, abusive, indecent, menacing or unwanted; or
 - 2.4.4. in any way which damages, interferes with or Interrupts the Service, the Eftel Network or a Supplier Network.
- 2.5. Eftel may ask you to stop acting or failing to act in a manner which Eftel reasonably believes is contrary to clauses 2.4. You will comply with any such request. If you do not, then Eftel may take any steps it considers reasonably necessary to ensure compliance with the request and clauses 2.4.

3. Service Fees

- 3.1. You will pay the Charges for each Service supplied under Your Services Agreement by the Due Date set out in any invoice issued to You by Eftel without any withholding, deduction or set-off (except as contemplated by clause 6 of this Master Services Agreement).
- 3.2. Eftel may charge you an additional amount to service, modify, repair or replace a Service or any equipment as a result of an Excluded Event (other than a Force Majeure Event).
 - (a) to service, modify, repair or replace a Service or any equipment as a result of an Excluded Event (other than a Force Majeure Event).
 - (b) If agreed between the parties, for installation, maintenance or other services which you request Eftel to provide outside normal business hours (in the time zone in which the maintenance is being conducted).
 - (c) for installation, maintenance or other services if the information you provided to Eftel to determine and enable the installation and activation of any Services was incomplete or inaccurate.
 - (d) to reflect any charges or costs that Eftel incurs in relation to the repair, maintenance or supply of your Services.
- 3.3. If agreed between the parties, Eftel may charge you an additional amount for installation, maintenance or other services which you request Eftel to provide outside normal business hours (in the time zone in which the maintenance is being conducted).

4. Invoices and Payment

- 4.1. Eftel will invoice you monthly and may invoice you:
 - 4.1.1. for any equipment you purchase from Eftel or its Personnel, on or after delivery;
 - 4.1.2. for any installation charges, prior to or after installation;
 - 4.1.3. for variable charges, in arrears;
 - 4.1.4. for recurring or fixed charges, in advance; and
 - 4.1.5. otherwise, as set out in Your Services Agreement.
- 4.2. Eftel requires payment within 30 days of the issue of an invoice (the Due Date) and subject to clause 6 (Billing Disputes), You will pay each invoice by the Due Date specified within each invoice You receive.
- 4.3. Eftel may Charge You an additional amount, as notified to You from time to time, if You utilise credit card facilities to pay an invoice under Your Services Agreement.
- 4.4. Eftel will endeavour to include on your monthly invoice all Charges for that relevant billing period, however in the event Charges are not billed in the relevant billing period Eftel may include unbilled Charges from an earlier period in any later invoice(s) issued to You.
- 4.5. You will pay all Charges incurred in respect of each Service whether or not the related use of the Service was known or authorised by You.
- 4.6. If You do not pay any amount invoiced by the Due Date (except any amount which is validly disputed under clause 6), then Eftel may charge You a late fee of 2% per annum above Westpac's corporate overdraft rate from time to time calculated on the daily balance of the unpaid amount from the Due Date until the date of payment in full. This is an independent obligation which applies before and after judgment. In the event a Billing Dispute is subsequently determined in favour of Eftel then we may charge You interest on the amount determined payable to Eftel at the rate specified in this clause and calculated on the daily balance of the unpaid amount from the Due Date until the date of payment in full.
- 4.7. You will also pay Eftel's expenses in recovering late payment from You.
- 4.8. Eftel may withhold, deduct from, or set-off against any amount which Eftel must otherwise pay or credit to You, any amount payable by You to Eftel or an Eftel Group Company but only if:
 - 4.8.1. You fail to provide financial security required under Your Services Agreement;
 - 4.8.2. You fail to pay Eftel any amount when due under Your Services Agreement; or
 - 4.8.3. Eftel is entitled to Suspend or Cancel the Service or one or more Individual Services as a result of an Insolvency Event or your breach of Your Services Agreement.
- 4.9. You agree to incur Service Charges at least equal to the Minimum Commitment, if any, set out in any applicable Service Schedule. If You do not do so, then Eftel may from time to time invoice You for any shortfall, in addition to Service Charges actually incurred.

5. Financial Security

- 5.1. Eftel may at any time require You to supply financial security (for example a deposit, charge or guarantee) for your obligations under Your Services Agreement and may from time to time vary the requirement for, including the amount of, this security.
- 5.2. If during any six month period You twice fail to make full payment of an Invoice by the Due Date specified in that Invoice, You will be required to provide within seven days of notice from Eftel a security deposit in cash or bank guarantee approved by Eftel to the value of the amount invoiced over the previous 3 months
- 5.3. Eftel may apply the whole or any part of any financial security provided by You to satisfy any amounts overdue under Your Services Agreement.
- 5.4. Eftel will return any remaining financial security to You after we have stopped supplying Services to You and You has satisfied all of your obligations under Your Services Agreement.
- 5.5. You authorise Eftel to conduct credit checks and use information provided by You to assess your credit worthiness.

6. Billing Disputes

- 6.1. In the event You validly dispute an amount invoiced by Eftel, You may only do so in accordance with this clause 6.
- 6.2. Except to the extent You dispute particular charges and raise a valid billing dispute, You agree that all Invoices issued by Eftel are valid and payable and You must pay the full amount set out in each invoice, or in the event You validly dispute an amount, any undisputed amounts included in each invoice, on time and in accordance with clause 4.2.
- 6.3. To raise a valid billing dispute, You must:
 - 6.3.1. follow the procedure set out in Schedule 3; and
 - 6.3.2. do so at least 5 Business Days before the Due Date for payment, or within six months after the date of the relevant Eftel invoice if You have paid an amount on an invoice which You later wish to dispute.

- 6.4. You may only make a claim or commence or continue legal proceedings alleging that any Charge or invoice is incorrect if You have acted in accordance with clause 6.3 and legal proceedings have been properly issued and served on Eftel within 12 months of the date of the relevant invoice.
- 6.5. If, after a billing dispute is concluded, You are to pay an amount to Eftel then You must pay that amount no later than the date ("Payment Date") which is ten Business Days after determination of the dispute. Eftel may charge You interest on the relevant amount in accordance with clause 4.6.
- 6.6. If, after a billing dispute is concluded Eftel is to pay an amount to You then it will do so by crediting You with that amount on its next and subsequent invoices until the full amount has been credited or, if the contract has terminated for any reason, no later than the Payment Date. You may require interest on the relevant amount calculated in accordance with clause 4.6.

7. Taxes

- 7.1. If any Charge specified in Your Services Agreement or an invoice is not expressed as GST inclusive then You will pay Eftel an additional amount equal to the GST payable on the Charge, and any other non-monetary consideration or on a supply or any component of supply made or to be made in connection with a Service or the charges.
- 7.2. In some cases Your Services Agreement may specify a Charge followed by another amount in parentheses or as 'without GST' and 'with GST'. In those cases, the specified charge or 'without GST' amount is exclusive of GST and the amount in parentheses or specified as 'with GST' is:
 - 7.2.1. the Charge inclusive of GST at the rate in effect at the date of agreement; and
 - 7.2.2. included by way of information only, and its inclusion does not limit your obligation under clause 7.1 to pay the GST exclusive charge together with an additional amount equal to the GST at the rate applicable from time to time.
- 7.3. If You are required by law to deduct or withhold Taxes from a payment to Eftel, then You may make those deductions or withholdings (or both). However, You will give Eftel a receipt for each payment.
- 7.4. Eftel will issue You with a valid tax invoice in respect of each taxable supply.
- 7.5. Terms used in this clause 7 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning given to them in that Act.

8. Privacy and Personal Information

- 8.1. Eftel may collect, use and disclose Personal Information provided by You for purposes relating to the supply of a Service described in Your Services Agreement, or for purposes that would be reasonably expected as part of the supply of the Service.
- 8.2. The use and disclosure of Your Personal Information contemplated under clause 8.1 includes Eftel's disclosure of information to:
 - 8.2.1. credit reporting or collection agencies;
 - 8.2.2. third party partners, agents and contractors; and
 - 8.2.3. other Suppliers.
- 8.3. Other than permitted under Your Services Agreement, Privacy Laws or other laws, Eftel must not disclose Personal Information provided by You to any person other than its Personnel.
- 8.4. You must not disclose Personal Information provided by Eftel to any person other than your Personnel, except as permitted by the Privacy Laws or other laws.
- 8.5. Both parties must take all reasonable steps to protect Personal Information provided by the other party from misuse and loss and from unauthorised access, modification or disclosure.
- 8.6. Both parties agree to handle Personal Information obtained from the other party in accordance with the Privacy Laws.
- 8.7. In your privacy collection statements You must notify the natural persons from whom You collect Personal Information that their Personal Information may be provided to your suppliers for the purpose of supplying a Service.
- 8.8. For the purposes of this clause a reference to a "party" or "supplier" includes its agents and contractors.

9. Equipment

- 9.1. Eftel or its Suppliers may provide or lease to You, in connection with a Service, equipment which it or they own or lease ("Eftel Owned Equipment").
- 9.2. Title in the Eftel Owned Equipment is not transferred to You. You hold the Eftel Owned Equipment as bailee for Eftel or the relevant Supplier. Risk in any Eftel Owned Equipment passes to You on delivery. You are responsible for any damage to, or destruction or theft of, the Eftel Owned Equipment, except to the extent it is caused by Eftel. You will keep the Eftel Owned Equipment free from any charge, lien, mortgage or encumbrance.
- 9.3. You will:
 - 9.3.1. allow Eftel's Personnel, and only Eftel's Personnel, to service, modify, repair or replace the Eftel Owned Equipment; and

9.3.2. provide adequate and suitable space, power supply and environment for all equipment used in connection with a Service and located on the Premises.

9.4. You may purchase equipment from Eftel or any of its Personnel for use in connection with a Service. Title to that equipment passes to You when You pay for it in full in cleared funds. Risk in that equipment passes to You on delivery.

10. Maintenance

10.1. Eftel may conduct maintenance on the Eftel Network. Eftel will use all reasonable endeavours to conduct scheduled maintenance outside normal business hours (in the time zone in which the maintenance is being conducted) but may not always be able to do so. When conducting scheduled maintenance Eftel will provide You with reasonable notice in the circumstances.

11. Modifications

11.1. The parties may agree to modify a Service or Individual Service. If the modification is a Downgrade, You will pay a Downgrade Charge if one is specified in the Service Schedule.

11.2. You acknowledge that if You Downgrade a Service or an Individual Service in accordance with clause 11.1 the Downgrade Charge represents a genuine pre-estimate of the loss Eftel will suffer and is not a penalty.

12. Your Right to Suspend or Terminate

12.1. You may, without liability, terminate one or more Services or Individual Services:

12.1.1. On expiry of the Contracted Term if you have given at least 60 days' notice to Eftel; or

12.1.2. immediately by giving Eftel notice if:

12.1.2.1. Eftel breaches a material term of the Services Agreement and that breach is not capable of remedy;

12.1.2.2. Eftel breaches a material term of the Services Agreement, that breach is capable of remedy and Eftel does not remedy that breach as soon as possible but in all circumstances no later than 14 days after You give Eftel notice requiring the breach to be remedied;

12.1.2.3. Eftel suffers an Insolvency Event, or

12.1.2.4. If you are otherwise entitled to do so under Your Services Agreement.

12.2. In the event Eftel continues to supply Services to you after the end of the applicable Contracted Term then the Term will automatically renew for successive one (1) year periods, and may be terminated at the end of the Term or any renewal term by You providing not less than sixty (60) days notice of such termination.

13. Eftel's Right to Suspend, Restrict or Terminate

13.1. Eftel may, without liability, Suspend a Service or one or more Individual Services:

13.1.1. if Eftel reasonably suspects fraud by You or any other person (except Eftel) in connection with either the Service or the Individual Service and You fail to take immediate steps (to Eftel's satisfaction) to ensure that the fraud does not continue or recur;

13.1.2. to the extent necessary for Eftel to comply with an order, instruction or request of a Regulator, an emergency services organisation or any other competent authority;

13.1.3. unless the relevant Service Schedule says that this clause does not apply, if there is a requirement for a forecast of any kind in any part of the Agreement and your actual usage materially increases compared to the forecast, Eftel has not agreed to allow this material increase and You fail to take steps (to Eftel's satisfaction) to ensure that the increased usage does not continue or recur, within 24 hours after Eftel gives You notice requiring You to do so;

13.1.4. if we believe You have not complied with a notice requirement issued in accordance with clause 2.6 relating to that Service or Individual Service;

13.1.5. to the extent the Service is affected by an Emergency;

13.1.6. if we believe Suspension is necessary to allow Eftel or a Supplier to repair, maintain or service any part of the Eftel Network or a Supplier Network used to supply the Service or the Individual Service.

13.2. Unless the circumstances or urgency of the situation do not lend to giving notice, we will give you written notice before we Suspend a Service or one or more Individual Services under clause 13.1.

13.3. Eftel may, without liability, Suspend, terminate or Restrict one or more Services or Individual Services:

13.3.1. after the expiry of the Contracted Term by giving at least 30 days' notice to You;

13.3.2. immediately if any amount owing to Eftel or any Eftel Group Company under Your Services Agreement is not paid by the Due Date (as specified in the Services Agreement, the relevant invoice or as notified by Eftel), Eftel gives You notice requiring payment of that amount (which Eftel may not give in respect of an amount which is validly disputed in accordance with clause 6 until after Eftel has determined the billing dispute) and You fail to pay that amount in full within five Business Days after Eftel gives You that notice;

- 13.3.3. immediately on notice if You breach any material term of the Services Agreement and that breach is not capable of remedy;
 - 13.3.4. if You breach any material term of the Services Agreement, and Eftel considers that breach is capable of remedy and You do not remedy that breach as soon as possible but in all circumstances within 14 Business Days after Eftel gives You notice requiring the breach to be remedied;
 - 13.3.5. immediately on notice if You suffer an Insolvency Event, do not provide financial security required under clause 5, or Eftel reasonably forms the view that a credit risk has arisen;
 - 13.3.6. immediately on notice if Eftel or another Eftel Group Company is entitled to suspend or terminate any other service supplied to You or one of your Related Corporations (pursuant to the agreement under which that service is supplied) due to You or one of your Related Corporations not paying Eftel or any other Eftel Group Company monies due;
 - 13.3.7. immediately if the Service or that Individual Service is not being supplied and that non supply has continued for more than 10 Business days as a result of a Force Majeure Event having occurred; or
 - 13.3.8. if Eftel is otherwise entitled to do so under Your Services Agreement.
- 13.4. Eftel may, without liability, cancel an Individual Service at any time prior to the Service Start Date, if Eftel reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Individual Service to You. Where there is only one Individual Service to be provided as part of the Service and it is cancelled under this clause, Eftel may, without liability cancel the Service at any time prior to the Service Start Date.
- 13.5. Eftel may also terminate a Service, one or more Individual Services or Your Services Agreement, if any Service or Individual Service supplied under Your Services Agreement is Restricted or Suspended for more than 10 Business Days.
- 13.6. If Eftel Suspends or Restricts a Service or an Individual Service under this clause 13, then Eftel may on notice terminate that Service, Individual Service or Your Services Agreement for the same reason if that reason is continuing.

14. Consequences of Suspension

- 14.1. If a Service or an Individual Service is Suspended in accordance with Your Services Agreement, then You will not be liable to pay usage based Charges for the Service or the Individual Service while it is Suspended, but You will have to pay any other Charges payable or arising during Suspension if the Service or Individual Service was Suspended as a result of a breach of Your Services Agreement by You.
- 14.2. If Eftel Suspends or Downgrades a Service or an Individual Service under clause 13.1.5 or 13.1.6 and such suspension or Downgrade is not due to a Force Majeure Event, the period during which the Service or an Individual Service is Suspended will count towards outage time used in calculating service level rebates (if any) applicable to the affected Service or Individual Service.
- 14.3. If You ask Eftel to do so, Eftel may stop the suspension of a Service or Individual Service as soon as reasonably possible after the reason for that suspension has stopped.
- 14.4. If Eftel reactivates or reinstates a Service or an Individual Service after it has been Suspended due to a breach of the Services Agreement by You, You may have to pay Eftel a reactivation charge as advised at the time.

15. Consequences of Termination

- 15.1. If a Service or an Individual Service is terminated in accordance with Your Services Agreement (other than in accordance with clause 12):
 - 15.1.1. before its Service Start Date, then You will pay to Eftel all infrastructure, installation and other fixed costs incurred by Eftel in connection with preparation for the provision of the Service or the Individual Service; and
 - 15.1.2. during the Contracted Term, then You will pay to Eftel the Cancellation Fee.
- 15.2. You acknowledge and agree that if a Service or an Individual Service is terminated by Eftel in accordance with the Agreement:
 - 15.2.1. Eftel will suffer Loss in relation to the early termination;
 - 15.2.2. the Cancellation Fee represents a genuine pre-estimate of the loss Eftel will suffer and is not a penalty;
 - 15.2.3. You must pay all charges relating to the Service or Individual Service until the Service or Individual Service is deactivated or Eftel ceases supplying it; and
 - 15.2.4. Eftel may invoice You for all Charges for the Service or Individual Service that have not been previously invoiced and You will pay to Eftel all amounts specified in that invoice, and all other unpaid amounts relating to that Service or Individual Service, within the payment terms set out in the invoice, the terms of Your Services Agreement or as otherwise notified to You by Eftel.
- 15.3. On termination:
 - 15.3.1. of the Services Agreement or all Services provided under the Services Agreement for any reason, each party will (on request by the other party) immediately return or destroy the other person's Confidential Information, except to the extent that it is required by law to retain it;

- 15.3.2. of a Service for any reason, You will (unless otherwise permitted by Eftel in writing) immediately stop using the Service (including all Individual Services) and the Eftel Owned Equipment;
- 15.3.3. of a Service or Individual Service for any reason, You will immediately allow Eftel to remove any related Eftel Owned Equipment or equipment You have purchased but not fully paid for;
- 15.3.4. of the Agreement for any reason, each person's accrued rights and obligations are not affected and the parts of the Agreement which are by their nature intended to survive termination of Your Services Agreement will do so.

16. Each Party's Rights Against the Other

- 16.1. Each party accepts liability to the other in connection with the Individual Services, the Services and Your Services Agreement, but only to the extent provided for in this clause 16. Each party excludes any liability (including in negligence) it might otherwise have to the other in connection with Your Services Agreement, a Service or any Individual Services to the extent that such liability is not expressly accepted under this clause 16.
- 16.2. Each party indemnifies the other party for Loss to the other party arising from personal injury to the other party's Personnel to the extent it is caused directly by the negligence of the first party in connection with the Services Agreement.
- 16.3. Each party indemnifies the other party for Loss arising from damage to the other party's physical property to the extent it is caused directly by the negligence of the first party in connection with the Services Agreement.
- 16.4. Each party's liability for the other party's Loss (including for negligence) is reduced to the extent that:
 - 16.4.1. a Loss suffered or incurred by the other party could have been avoided or mitigated by reasonable action by that party; and
 - 16.4.2. acts or omissions of the other party or its personnel cause or contribute to that Loss.
- 16.5. Eftel acknowledges that the Competition and Consumer Act 2010 (Cth) and other laws may imply into Your Services Agreement conditions and warranties that cannot lawfully be excluded, restricted or modified (Statutory Warranties). Where any Statutory Warranties do apply to Your Service Eftel limits its liability, where permitted to do so by law, to (at Eftel's discretion) repairing or replacing the relevant goods, resupplying the relevant or equivalent services, or in either case paying You the cost of doing so.
- 16.6. Subject to any Statutory Warranties that may otherwise apply, Eftel accepts liability to You for Interruptions to Individual Services and the Services (including for Interruptions due to negligence) to the extent the Interruptions are not caused or contributed to by Excluded Events, but only to the extent of being required to credit to You a service rebate where one is specified in the relevant Service Schedule and has been validly claimed by You in accordance with Your Services Agreement
- 16.7. If Eftel credits You with a service rebate, this is your sole remedy for Eftel's acts or omissions leading up to the credit, except to the extent clauses 16.2 and 16.3 apply.
- 16.8. Each party's liability to the other for Loss suffered or incurred in connection with Individual Services, Services or Your Services Agreement is, where permitted to do so by law, limited to:
 - 16.8.1. In relation to liability under clauses 16.2 and 16.3, a maximum of AU \$5 million per incident or series of connected incidents; and
 - 16.8.2. In all other cases, except for claims under clauses 16.10 and 16.11 and unless stated otherwise within this Master Services Agreement, a maximum amount equal to the total of Charges paid to Eftel over the Contracted Term of Your Services Agreement.
- 16.9. Unless required under Statutory Warranties, Eftel excludes liability for any Consequential Loss suffered or incurred in connection with an Individual Service, the Services or Your Services Agreement (including liability for negligence). This clause applies despite anything to the contrary elsewhere in Your Services Agreement.
- 16.10. You indemnify Eftel against any Loss or damage we suffer relating to:
 - 16.10.1. The use (or attempted use) of Your Service;
 - 16.10.2. Equipment used in connection with your Service
- 16.11. You indemnify Eftel against (and must pay us for) any costs (including legal costs) relating to Your breach of Your Services Agreement.
- 16.12. In this Master Services Agreement, indemnities, limitations and exclusions in favour of "Eftel" are to be construed as indemnities, limitations and exclusions in favour of each Eftel Group Company and each Supplier to Eftel.

17. Intellectual Property

- 17.1. Eftel owns all material (including Intellectual Property Rights) developed by it, or its Personnel, or at its or their direction.
- 17.2. Eftel may permit You to use this material, or other material licensed by Eftel, as part of a Service. This permission is subject to any conditions which Eftel may impose from time to time and will cease when the Service is terminated.

18. Your Confidentiality

- 18.1. Eftel and You each agree to keep confidential the other's Confidential Information.

- 18.2. Subject to clause 19.3 and unless otherwise agreed in writing, Eftel and You will not use or disclose the other's Confidential Information for any purpose, other than to the extent necessary to perform its obligations or exercise its rights under Your Services Agreement. This includes Eftel not disclosing any information relating to your End Users to Eftel Personnel, except to the extent that it is necessary to do so to supply a Service to You, or for You to resupply a Service to your End Users.
- 18.3. For clarity, Eftel may refer to You as a customer of Eftel in Eftel press releases, or in Eftel marketing sales or financial material or reports.
- 18.4. The obligations of confidentiality in this clause 19 do not apply to the extent disclosure is required by law or the listing rules of a stock exchange, a direction by government authority or a Regulator, or disclosure to professional advisors in connection with the Agreement, or as necessary to activate and continue supply of Services.

19. Force Majeure Events

- 19.1. If a Force Majeure Event occurs which prevents You or Eftel ("Affected Person") from performing any of its obligations (other than an obligation to pay money) under this Agreement, then the Affected Person will not be liable for failing to perform that obligation.
- 19.2. The Affected Person will notify the other person promptly of the Force Majeure Event and use its best efforts to resume performance in accordance with the Services Agreement as soon as reasonably possible. The other person's obligations continue during the Force Majeure Event.

20. Public Addressing Identifiers

- 20.1. A Service may use one or more identifiers such as a telephone number, IP address or domain name (Public Addressing Identifiers).
- 20.2. You will comply with the requirements of any Regulator or other body which administers Public Addressing Identifiers.
- 20.3. You acknowledge and agree that:
- 20.3.1. Eftel does not control the allocation of Public Addressing Identifiers;
- 20.3.2. Eftel is not liable to You if Eftel is required to change any Public Addressing Identifier as a result of any direction given by a Regulator or other body which administers Public Addressing Identifiers; and
- 20.3.3. on termination of a Service or any relevant Individual Service, your right to use any related Public Addressing Identifier may cease.

21. Assignment, Subcontracting and Transfer

- 21.1. To the extent they are assignable, You may assign your rights under Your Services Agreement so long as You have Eftel's prior written consent, which cannot be unreasonably withheld.
- 21.2. Eftel may perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a Supplier or another Eftel Group Company. If this occurs Eftel remains responsible for its obligations in accordance with this Agreement, unless Eftel legally assigns or transfers its rights and obligations under Your Services Agreement to another party.
- 21.3. Eftel will continue supplying the Services even if any interest in You, including your business or any of your shares, is transferred to a third party ("Purchaser") provided that:
- 21.3.1. You notify Eftel of the details of the proposed transfer, before entering into any binding arrangement to give effect to it;
- 21.3.2. You and/or the proposed Purchaser comply with any reasonable requests from Eftel for financial or operational information demonstrating the creditworthiness of the Purchaser;
- 21.3.3. You and/or the proposed Purchaser provide any financial security which Eftel believes reasonable; and
- 21.3.4. You and/or the proposed Purchaser enter into any necessary assignment or novation which Eftel reasonably requests in the circumstances, within 30 days of that request.

22. Disputes

- 22.1. This clause applies to any dispute arising under the Agreement except billing disputes.
- 22.2. A party must notify the other if it believes a dispute exists and that notice must provide details of the matter in dispute.
- 22.3. After receipt of the notice set out in clause 23.2, the parties will promptly seek to resolve the dispute by escalation within their respective organisations.
- 22.4. Except where urgent interlocutory relief is required, a party may not commence legal proceedings in relation to any dispute unless it has complied with this clause 23 and the dispute has not been resolved within 10 Business Days after the notice in clause 23.2 is given.

23. General

- 23.1. Every notice under or in connection with the Agreement:
- 23.1.1. must be in writing (except where expressly stated otherwise);
- 23.1.2. must be addressed as follows (or as otherwise notified in writing from time to time)

To Eftel		To Customer	
Company Name	Eftel Corporate Pty Ltd	Company Name	
ACN	154 634 054	ABN	
Address	Level 11, 600 St Kilda Rd, Melbourne, 3004	Address	
Fax	03 9090 2535	Fax	
For the attention of	Chief Executive Officer	For the attention of	
Email Address	Notices@team.eftel.com	Email Address	

- 23.1.3. must be delivered by hand, or posted by prepaid post to the address, or sent by fax to the number or sent by email to the address listed in the table at clause 24.1.2; and
- 23.1.4. is taken to be received by the addressee:
- (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (in the case of prepaid post sent to the address in another country) on the fifth day after the date of posting by airmail;
 - (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent;
 - (in the case of email) and a notification is not received by the sending party advising that the email was unable to be delivered, at 9am on the day after it was sent; and
 - (in the case of delivery by hand) on delivery, but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).
- 23.2. You will nominate at least two authorised operational contacts and provide any relevant details in relation to them required by Eftel. You may change your authorised operational contacts by giving notice to Eftel providing all relevant details. The authorised operational contacts will:
- 23.2.1. have access to Eftel's support and maintenance staff for the Services, report faults and make requests for maintenance or support; and
 - 23.2.2. be entitled to notify Eftel of the persons to be added or removed as End Users. Eftel need not respond to requests from anyone other than authorised operational contacts and will not be liable for any consequences arising from compliance or non-compliance with any requests made by persons who are not authorised operational contacts.
- 23.3. If either party has a right arising out of a breach by the other party and does not exercise that right, not exercising that right does not waive:
- 23.3.1. that right unless it does so in writing; or
 - 23.3.2. its right to insist on performance of that or any other obligation at any other time.
- 23.4. If a provision of the Agreement is void, voidable or unenforceable, it will be severed and the remainder of the Agreement will not be affected.
- 23.5. Each person will pay its own costs and expenses in respect of the Agreement and any agreement or document contemplated by the Agreement or required to give effect to it, but You must pay any stamp duty (including fines) assessed on the Agreement and any agreement or document contemplated by the Agreement or required to give effect to it.
- 23.6. Nothing in the Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties.
- 23.7. The Services Agreement is governed by the laws applicable in the State of Victoria and You and Eftel submit to the exclusive jurisdiction of the courts of that State.
- 23.8. The Services Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter.
- 23.9. Eftel may, acting reasonably, amend this Master Supply Agreement and the terms of Your Services Agreement:
- 23.9.1. in response to any changed terms of supply imposed by another Supplier;
 - 23.9.2. to comply with any laws, legal obligations, regulations or rules;
 - 23.9.3. to ensure it does not infringe another person's rights; and



MASTER SERVICES AGREEMENT

EXECUTED AS AN AGREEMENT

Customer Name

Customer ABN

SIGNED FOR AND ON BEHALF OF CUSTOMER

Authorised Person's Name	Authorised Signature
Title	
Date	
Witness Name	Witness Signature
Title	
Date	

SIGNED FOR AND ON BEHALF OF EFTEL CORPORATE

Authorised Person's Name	Authorised Signature
Title	
Date	
Witness Name	Witness Signature
Title	
Date	

I/we irrevocably authorise Eftel to obtain from any person or company any information which Eftel may require for credit reference purposes. I/We further irrevocably authorise Eftel to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with Eftel as a result of this guarantee being actioned by Eftel.

EXECUTED as a Deed this day of 20

Director/ Guarantor 1 Name	Authorised Signature
Date	
Witness Name	Witness Signature
Title	
Date	

Director/ Guarantor 2 Name	Authorised Signature
Date	
Witness Name	Witness Signature
Title	
Date	

Director/ Guarantor 3 Name	Authorised Signature
Date	
Witness Name	Witness Signature
Title	
Date	

DIRECTORS / GUARANTORS PERSONAL INFORMATION

Director/ Guarantor 1 Name				DOB	
Residential Address					
Phone		Mobile		Drivers license	
Residential status	Own home	Rent	Other	Have you ever been declared bankrupt?	Yes No
Marital status		Name of spouse		Spouse's DOB	

Director/ Guarantor 2 Name				DOB	
Residential Address					
Phone		Mobile		Drivers license	
Residential status	Own home	Rent	Other	Have you ever been declared bankrupt?	Yes No
Marital status		Name of spouse		Spouse's DOB	

Director/ Guarantor 3 Name				DOB	
Residential Address					
Phone		Mobile		Drivers license	
Residential status	Own home	Rent	Other	Have you ever been declared bankrupt?	Yes No
Marital status		Name of spouse		Spouse's DOB	

SCHEDULE 2: INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

AGREEMENT, "YOUR AGREEMENT OR "YOUR SERVICES AGREEMENT"	has the meaning given in clause 1.2.
BUSINESS DAY	means a day (other than a Saturday, Sunday or public holiday) on which banks are open generally for business in Victoria.
CANCELLATION FEE	means the relevant cancellation fee or termination charge (if any) calculated in accordance with the Service Schedule or any appendix to the Service Schedule.
CARRIAGE SERVICE	has the same meaning given in Section 7 of the Telecommunications Act 1997 (Cth)
CHARGES	means amounts levied, due or payable by You in relation to the supply of Individual Services or the Service as set out in any relevant Service Schedule, Order and/or invoice.
CONFIDENTIAL INFORMATION	<p>of a person means all information of that person (Owner) of a confidential nature, which another person (Recipient) first becomes aware, whether before or after the date of the original Order, either through disclosure by the Owner to the Recipient or otherwise through the Recipient's involvement with the Owner. Confidential Information does not include information:</p> <ul style="list-style-type: none"> (a) the Recipient creates (whether alone or jointly with any person) independently of the Owner's Confidential Information; (b) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom it has disclosed the information); or (c) obtained without restriction as to further disclosure from a source other than the Owner through no breach of confidentiality by that source. (d) for Eftel, Owner and Recipient includes Eftel and each Eftel Group Company.
CONSEQUENTIAL LOSS	<p>means:</p> <ul style="list-style-type: none"> (a) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages; and (b) any penalties or fines imposed by a Regulator
CONTRACTED TERM	means, in respect of a Service or Individual Service, the period specified as the "Contracted Term", "Term" or the period generally described as the period over which Eftel will supply the Services, as set out in the Order or elsewhere in the Agreement, including variations or extensions of that period however described. The Contracted Term, in respect of a Service or Individual Service, commences on the Service Start Date. If there is no period of Contracted Term specified in the Order or Agreement, then there will be no period of Contracted Term after the Service Start Date. On expiry of the Contracted Term Eftel may continue to supply the Services on the same terms under a "month by month" supply arrangement.
DOWNGRADE	means any modification to a Service or an Individual Service which reduces the capacity, use or utility of that Service or Individual Service.
DOWNGRADE CHARGE	means the relevant downgrade charge (if any) calculated in accordance with the Service Schedule or any appendix to the Service Schedule.
DUE DATE	means the date set out on an invoice by which all amounts billed and set out on that invoice must be paid to Eftel.
EFTEL GROUP COMPANY	means Eftel Ltd ABN 47 073 238 178 and each of its Related Corporations.
EFTEL NETWORK	means any telecommunications network, equipment, facilities or cabling controlled by Eftel.
EFTEL OWNED EQUIPMENT	has the meaning set out in clause 8.1.
EFTEL MASTER SERVICES AGREEMENT AND "MASTER SERVICES AGREEMENT"	means this document.

EMERGENCY	means an actual or potential state of danger requiring immediate action to avoid any Loss, including personal injury or property Loss.
END USER	means any person whom You allow to use a Service or an Individual Service.
EXCLUDED EVENT	means: (c) a breach of the Agreement by You, (d) a Force Majeure Event; (e) a negligent or fraudulent act or omission of You or any of your Personnel; or (f) a failure of any of your equipment.
FORCE MAJEURE EVENT	affecting a person means any event or circumstance outside that person's reasonable control, and includes fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or regulation, an act or omission of any Regulator or an act or omission of any third party (including any 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).
GENERAL TERMS	means this Eftel Master Services Agreement.
GST	has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
INDIVIDUAL	means a natural person.
INDIVIDUAL SERVICE	means each individual service making up a Service; for example, an individual circuit or connection. For clarity, there may be more than one Individual Service making up a Service.
INSOLVENCY EVENT	means in relation to a person: (g) the person proposing to enter, or entering, into any scheme of arrangement between that person and its creditors (except an arrangement for the purposes of a solvent reconstruction); (h) a mortgagee entering into possession or disposing of the whole or any part of the assets or business of the person; (i) appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or other like person to the person or to the whole or any part of its assets or business, or the person taking any step to have such a person appointed to itself or the whole or any part of its assets or business; (j) the person suspending payment of its debts generally; or (k) the person being or becoming insolvent for the purposes of section 95A of the Corporations Act 2001 (Cth).
INTELLECTUAL PROPERTY RIGHTS	means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright) and includes the right to have Confidential Information kept confidential.
INTERRUPTION	in the supply of goods or a service (including a Service and each Individual Service) means a delay in supplying, a failure to supply or an error or defect in the supply of, those goods or that service.
LOSS	means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/client basis and includes Consequential Loss, unless otherwise stated.
MINIMUM COMMITMENT	means the minimum amount of Service charges or Service connections, if any, that must be incurred or maintained by You as set out in the relevant Service Schedule or elsewhere in Your Agreement.
OPERATIONS DOCUMENTATION	means the service documentation published or varied by Eftel from time to time in connection with the Service.
ORDER	means a request for a Service or an Individual Service made in the manner specified by Eftel from time to time and accepted by Eftel.
PERSONAL INFORMATION	means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether included in material form or not, about an Individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

PERSONNEL	of a person means that person's employees, agents, contractors or other representatives and, in the case of Eftel, includes the employees, agents, contractors or other representatives of any Eftel Group Company.
PREMISES	means locations at which Eftel supplies a Service, and locations to which Eftel needs to have access to supply a Service.
PRIVACY LAWS	means Privacy Act 1988 (Cth), the Telecommunications Act 1997 (Cth), the Spam Act 2003 (Cth) and the ACIF Protection of Personal Information of Customers of Telecommunications Providers Industry Codenumber code C523:2001, each as amended or replaced from time to time.
REGULATOR	means the Australian Communications Authority, the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman or any other government or statutory body or authority.
RELATED CORPORATION	of an entity means a body corporate that is related to that entity in any of the ways specified in section 50 of the Corporations Act 2001 (Cth).
RESTRICT	means to reduce, limit or impair the functionality of Individual Services or a Service.
SERVICE	means the service with the options and features requested in the Order as described in the relevant Service Schedule, and any related goods (including equipment) and ancillary services which Eftel supplies to You in connection with that service.
SERVICE DELIVERY POINT	means the point at which a Service is made available for connection to your equipment or cabling.
SERVICE OPTION	means certain features and characteristics of a Service which may be selected by You and which are described as a 'Service Option' (together with any additional terms on which the Service Option is supplied) in the Service Schedule or any appendix to the Service Schedule.
SERVICES AGREEMENT	has the meaning given in clause 1.2.
SERVICE SCHEDULE	means the part of the Agreement entitled "Service Schedule" which describes a Service.
SERVICE START DATE	for a Service or an Individual Service means the date on which Eftel starts supplying that Service or Individual Service to You, or is deemed to do so.
SUPPLIER	means any supplier of goods or services (including interconnection services) which are used directly or indirectly by Eftel to supply a Service.
SUPPLIER NETWORK	means any telecommunications network, equipment, facilities or cabling controlled by a Supplier.
SUSPEND	means suspend, reduce, restrict or limit supply.
TAX	means any withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority at any time but does not include GST, or any tax on income or capital gains.
TELECOMMUNICATIONS LEGISLATION	means the Telecommunications Act 1997 (Cth) and the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth), each as amended or replaced from time to time, and Part XIB and Part VIX and related provisions of the Competition and Consumer Act 2011 (Cth).
YOU	means the person who makes the Order and agrees to acquire Services under the terms of Your Services Agreement, and where applicable any End Users, and where two or more persons have applied to acquire the Services, those persons severally and every two or more of them jointly (and "your" will be constructed accordingly).

1.2. Interpretation

Unless expressed or implied to the contrary in this Agreement:

- 1.2.1. this Agreement is governed by and is to be construed in accordance with the laws of Victoria, Australia;
- 1.2.2. if a party consists of more than one person, this Agreement binds them jointly and each of them severally;
- 1.2.3. headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 1.2.4. any provision in this Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable and if it is not possible to read down the provision, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement;
- 1.2.5. this Agreement contains the entire understanding between the parties as to the subject matter contained in it and all previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect;

- 1.2.6. this Agreement may be executed in any number of counterparts all of which taken together constitute one instrument;
- 1.2.7. if a payment or other act is required to be made or done on a day which is not a business day, the payment or act must be made or done on the next following business day;
- 1.2.8. a reference in this Agreement to:
 - (a) a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (b) a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
 - (c) a person includes the legal personal representatives, successors and assigns of that person;
 - (d) any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;
 - (e) a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Agreement;
 - (f) this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - (g) writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
 - (h) "\$" or "dollars" is a reference to Australian dollars;
 - (i) the singular includes the plural and vice versa; and
 - (j) a gender includes the other genders.

SCHEDULE 3: BILLING DISPUTES

1. This document sets out the obligations of You and Eftel in resolving a Billing Dispute including lodgement, analysis and resolution of a Billing Dispute arising from the provision of invoices to the Customer by Eftel.
2. A Billing Dispute is any alleged inaccuracy, omission or error in relation to a Charge on an invoice. A dispute that involves any claim that a Service was not provided properly or at all or that You entitled to a counterclaim or set-off for any reason is not a Billing Dispute, even if, were You successful, You would be liable to pay nothing in respect of a Charge or less than the amount of a Charge or be entitled to a payment or credit from Eftel.
3. If You have a Billing Dispute, a Billing Dispute notice must be lodged in accordance with the process set out in this Schedule. Any Charge recorded on an invoice the subject of a Billing Dispute which is not submitted in accordance with this process is payable in full to Eftel by its due date.
4. For the avoidance of doubt "Charge", when used in this Schedule in relation to a Billing Dispute, means a specific line item amount (not being a total or aggregate amount) being a component of a the total charge in an invoice.
5. In the event that You reasonably believe that it You are not liable to pay a Charge in an invoice in full because there is a Billing Dispute, You must deliver a Billing Dispute Notice to Eftel by not later than the chronologically later occurrence of these two alternatives:
 - 5.1. 5 Business Days prior to the due date of the invoice;
 - 5.2. 5 Business Days following the receipt of the invoice by You, with such receipt being deemed to occur, where the invoice was posted, 2 Business Days after the invoice was posted, and where sent by email or facsimile, at the time of transmission, and where delivered in person, at the time of delivery to the Customer. If You fail to deliver a Billing Dispute Notice in accordance with this Clause, while You will not be precluded from lodging a Billing Dispute Notice and initiating the Billing Dispute Procedure as long as You do so within one Month of the date of the invoice, You must pay the Disputed Amount and the Undisputed Amount by the due date for payment.
6. The Billing Dispute Notice must include, as a minimum, the following information:
 - 6.1. Invoice Number and Date.
 - 6.2. Amount of the invoice in dispute ("Disputed Amount")
 - 6.3. Amount of the invoice not in dispute ("Undisputed Amount")
 - 6.4. Details of the dispute including:
 - 6.4.1. the Service or Service Numbers relating to the Disputed Amount;
 - 6.4.2. dispute category and details (e.g.: missing details, terminated services, guaranteed service level failure, wrong account details, incorrect charges etc); and
 - 6.4.3. detailed reasons why it is claimed that the Charge is not payable in full.
7. Where You lodge a Billing Dispute Notice in accordance with this Schedule:
 - 7.1. You must make payment of the Undisputed Amount by the Due Date;
 - 7.2. Eftel must, within 10 business days of receipt, respond to the Billing Dispute Notice or notify the Customer of a date upon which it will respond.
 - 7.3. Within 10 business days of receipt by the Customer of Eftel's response to the Billing Dispute Notice, the Senior Management Committee must meet to resolve the dispute.
8. If the Senior Management Committee does not resolve the Billing Dispute within the period specified in Clause 7.3 of this Schedule, then the parties must refer the dispute to an Expert Committee in accordance with Clause 9 of this Schedule; and
9. If a dispute is referred to an Expert Committee under Clause 8 of this Schedule, then:
 - 9.1. the day which is 5 Business Days of the expiry of the time specified in Clause 7.3 of this Schedule is called the "Commencement Date";
 - 9.2. the Expert Committee will comprise one nominated representative of each party, and an independent person with expertise in the area of billing disputes and disputes concerning billing information in the telecommunications industry;
 - 9.3. the independent expert will be agreed between the parties, or failing agreement by the Commencement Date, will be appointed by the Australian Commercial Dispute Centre. Either party may request the Centre to appoint the expert;
 - 9.4. each member of the Expert Committee will be entitled to one vote and any decision of the Expert Committee will be by a majority vote;
 - 9.5. the Expert Committee must reach a decision in relation to the dispute within 15 Business Days of the Commencement Date; and
 - 9.6. the Expert Committee (or in the absence of agreed consensus, the majority of the Expert Committee) must give reasons for its decision to the parties within 5 Business Days of reaching a decision.
10. Any decision or award of the Expert Committee is final and binding on the parties..

11. The costs of the Expert and the performance of the Expert Committee, shall be borne by the unsuccessful party, provided that each party should bear the costs of its own legal representative.
12. A party must continue to fulfil its obligations under the agreement pending resolution of a dispute and any dispute resolution process invoked under this Schedule, except where vexatious disputes are continually notified or where the requirement for a party to comply with that obligation is itself a matter in dispute.
13. A party must not use any information obtained from the other party during the course of any dispute resolution process invoked under this Schedule for any purpose other than to resolve the particular dispute, by whatever means.
14. Except in the case of urgent interlocutory relief, a party may not start legal proceedings in any court or start any arbitration in respect of a Billing Dispute unless the dispute has first been through the procedure under this Schedule.
15. A party may commence court proceedings relating to any dispute arising from this Agreement or any Service Schedule at any time for the purpose of seeking urgent interlocutory relief or to enforce an arbitral or expert determination.