

Smartcom Business Communications Pty Ltd (Smartcom) ABN: 43 119 984 977, sells telecommunications and cloud services, including; software, hardware, voice carriage, internet & data, Mobile SIM Cards, and electronic messaging; email, voice, chat, facsimile & SMS. Collectively, these services are referred to as; the 'Service', regardless of whether all, or parts of the telecommunication and cloud services are supplied to a Client. The Service is manufactured and/or supplied by Smartcom and third party providers. This Policy applies to Users' of the Services.

The Client acknowledges that the Service Agreement, and these Terms and Conditions and its Schedules; form the whole 'Agreement' between Smartcom and the Client. In entering the Agreement, both Parties accept the content of the Agreement without exception and agree to meet their respective obligations in full. Further, the parties have agreed to trade under the Agreement which replaces all other prior agreements or statements oral or written in relation to the Service. Further, the Agreement shall prevail under any circumstance; notwithstanding any other document that is submitted by Smartcom or the Client of which neither party may assign such a contract unless mutually agreed upon in writing.

## 1. Background

- A. These terms apply to all Services provided by Smartcom to the Client under the Agreement.
- B. The provision of Services by Smartcom is upon the request of the Client.
- C. Smartcom agrees to provide Services upon the terms set out in the Agreement.

The parties agree as follows:

## 2. Purpose of Goods

2.1 The Client acknowledges that there has been no reliance by it on Smartcom's skill or judgment or written or oral representations in deciding whether the Service is fit for a particular purpose; or to meet a particular criteria.

2.2 The Service is not intended for direct control of nuclear facilities, air traffic, mass transport or life support applications. For these applications, Smartcom requires additional contractual safeguards which will be negotiated on a case by case basis.

## 3. Use of Services

3.1 The Client is solely responsible for all use of the Service, including all fees and charges in connection therewith, notwithstanding that any use and/or charges may have been fraudulent, illegal or not authorised by the Client; except if Smartcom has knowledge of such fraudulent, illegal and/or unauthorised use and fails to inform the Client or fails to seek to limit or prevent such use.

3.2 Nothing in clause 3.1 will be construed as imposing an obligation on Smartcom to monitor, detect and/or report fraudulent, illegal or unauthorised use of Services.

3.3 The Client may use the Services only in accordance with all applicable laws and regulations. If the Client's use of the Service is deemed by Smartcom to be in excess of that which is normal for the Service that was purchased by the Client, Smartcom may Suspend the Service in accordance with Schedule 2.

## 4. Delivery

4.1 To be granted access to the Service, the Client must be a registered business; and thereby provide Smartcom with relevant information upon request; including, but not limited to; registered business name; trading name; business number and/or company number; address; and electronic communication details.

4.2 Once the Account Activation requirements are met in full, the Service will be activated as soon as practicable, taking into consideration Smartcom's work schedule. Smartcom will advise the Client via email in regard to scheduling and its progress until the activation process is completed, and ready for Go-Live.

4.3 The Client must notify Smartcom via email: [support@smartcombusiness.com](mailto:support@smartcombusiness.com) if access to the Service has not been granted post Go-live; whether the Client has been notified by Smartcom or otherwise.

4.4 Freight and insurance costs for delivery of 3rd Party hardware and software is an additional cost and listed in invoices issued by Smartcom where applicable. The risk of loss or damage to such items and its components passes to the Client upon the delivery to the Client's nominated delivery address

4.5 Both parties agree to effect and maintain the following insurance policies during the period of the Agreement term; a) Workers Compensation in a form prescribed, approved or issued under any workers' compensation legislation of any competent jurisdiction against the liability for injury or death. b) Public Liability insurance with a reputable insurer that provides cover of no less than \$5 million for each occurrence. c) Professional Indemnity Insurance that provides cover of no less than \$1 million for each occurrence.

## 5. Delays

5.1 Smartcom shall not be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, government regulations superimposed after the signing of the Agreement, fire, communication line failures, power failures, earthquakes or other disasters.

5.2 Smartcom shall not be responsible for the delay in delivery or functionality of the Service from any 3<sup>rd</sup> party suppliers or vendors.

5.3 Smartcom shall not be responsible for any delay caused by any failure on behalf of the Client in meeting its obligations under the Agreement; and reserves the right to demand payment as per **clause 17** to recover all monies owed to Smartcom in relation to the Agreement. This includes failure to meet responsibilities in relation to activation of the Service to the Client.

## 6. Agreement Term

6.1 The initial Agreement period is for thirty six (36) months (unless stated otherwise on the Service Agreement – whereby the period stated on the Service Agreement will override the term stated in this clause, clause 6.1); and is for that full term; commencing on the 'Go-Live' date.

6.2 At the completion of the initial contract period; the Agreement will rollover for further 12 months, and on an annual basis.

6.3 Upon execution of the Service Agreement, the Client Account will be activated, and hence both Parties are obligated to adhere to the terms and condition herein.

## 7. Termination

7.1 Either party may terminate the Agreement by providing the other party with thirty (30) days written notice prior to end of each Agreement term.

7.2 Smartcom may terminate the Agreement immediately if:

- (a) it notifies the Client that all Dedicated Numbers made available for use by the Client are no longer available;
- (b) a receiver, liquidator, provisional liquidator or administrator is appointed over any of the Client's undertakings or assets, or if the Client enters into any arrangement with any creditors or any class creditors;
- (c) it becomes unlawful for the Client to perform its obligations under this Agreement or the performance by a party of their obligations under this Agreement is in breach of a law;
- (d) the Client sends Restricted Content to End Users;
- (e) the Client threatens the operation, technical integrity or liability of Smartcom's Facilities in the reasonable opinion of Smartcom.
- (f) Smartcom notifies the Client in writing of a breach of this Agreement and the Client fails to remedy the breach to the satisfaction of Smartcom within five (5) Business Days of notification.

7.3 Upon termination, whether it be prior to, or at the end of an Agreement term for any reason, the Client must pay Smartcom all outstanding dues within five (5) Business Days of receiving the invoice from Smartcom. Dues may include, but not limited to; Break-Free Fees, remaining payments for Purchased Equipment (whereby ownership of such equipment passes to the Client); full payment of the collective minimum monthly expenditure for the full term of the Agreement, and any charges owed, prior to, during and after the notice period, including outstanding invoices and amounts owing as a result of usage of the Service.

7.4 Any termination is without prejudice to any rights, liabilities or obligations accruing as at such termination.

7.5 When the Agreement ends:

- (a) Smartcom will immediately remove access to and disconnect the Client Facilities to Services;
- (b) the Client must return and/or destroy all material provided by Smartcom to it under this Agreement.

## 8. Intellectual Property

Smartcom is, and shall remain the owner of all proprietary rights (including, without limitation, patents, trademarks and know-how) in any intellectual property relating to the Service, the upgrades or the provision of services; and nothing in the Agreement operates to transfer any rights in that intellectual property to the Client.

## 9. Client Obligations

9.1 The Client agrees to comply with any instructions concerning access to and/or use of the Service that may be given to it from time to time and agrees not to do anything that may jeopardise the security or integrity of any part of Smartcom's Facilities.

9.2. The Client accepts responsibility for all aspects of their Account, including the actions of all persons in possession of the Client's Facilities, including; username and password.

9.3. The Client agrees not to use the Service to transmit any information or material that violates State or Federal law, or transmit any material that contravenes any privacy or copyright rules or any other proprietary interest.

9.4. Without limiting the operation of clause 9.3, the Client agrees not to use or seek to use the Service for publishing, reproducing or advertising any Message, information, symbol or other communication which is offensive or abusive; or of an indecent, obscene or menacing character; or for the purpose of causing annoyance, inconvenience or needless anxiety to any person, or for any unlawful purpose.

9.5. The Client agrees that the Service is to be used solely for the provision of business related information to End Users and the provision of Restricted Content is specifically prohibited. The Client acknowledges that Smartcom and/or Telecommunications Carriers may audit Content of Services from time to time, and that a breach of this clause may result in a breach of the Client's obligations under the Agreement, or potentially the termination of the Agreement.

9.6 The Client agrees not to use the Service, including connections, or facilities to:

- (a) transmit computer worms or viruses;
- (b) access, any other Smartcom computer systems or networks without Smartcom's consent, or disrupt or damage any Smartcom or third party computer systems or network
- (c) forge any communication; or defamatory material or material that violates or is contrary to any Commonwealth, State, Territory or local law or regulation or guidelines.

9.7 The Client will, to the best of their ability, ensure that any third party using its facilities is bound by the Terms and Conditions of the Agreement.

## 10. Data Management

10.1 The Client is solely responsible for the management and update of their own contact data; whether it has been provided to Smartcom or otherwise.

10.2 The Client agrees to comply with all legislation issued by governing bodies in relation to contact data. Furthermore, the Client agrees to make every reasonable effort to comply with guidelines issued by governing bodies, in relation to:

- (a) Washing data in compliance with Do Not Call Registers
- (b) Updating Contact Databases
- (c) Data Source

10.3 Smartcom is under no obligation to rectify client data related issues in any event. However, if Smartcom agrees to provide this service to the Client, fees may be incurred.

10.4 Contact data supplied by the Client to Smartcom remains the property of the Client; and under any circumstance.

10.5 Smartcom agrees to not knowingly provide Client contact data to a third party, nor use any contact data for any purpose other than as per the specific instructions from the Client.

10.6 Smartcom is not liable for either the content or dialog between the Client and End Users via the Smartcom Service; regardless of the source.

10.7 The Client acknowledges that the internet is not an inherently secure system and undertakes responsibility for the protection of its own information and data. Further, the Client is responsible at all times for maintaining the security of its own, and its End User's data, and Smartcom bears no liability for the loss or damage in part or whole, of such data, to the extent that such loss or damage has been caused or contributed to by the Client.

10.8 The Client acknowledges that the internet may contain viruses (including other destructive programs), which may, if not eliminated, destroy parts or all of the data contained within Smartcom Facilities or Network; and that Smartcom has no control over these viruses.

10.9 Smartcom does not provide any filtering or checking of data to eliminate viruses, and the Client agrees to provide its own mechanism for checking its own systems for viruses; and to hold Smartcom harmless from any damage caused by viruses obtained through the use of the Service.

## 11. Warranties

11.1 Smartcom warrants that it is the owner or authorised distributor of the Service, and has the right and authority to provide the Service to the Client in accordance with the Terms and Conditions of the Agreement.

11.2 Except to the extent that the Service or the results of the Service are modified by any person other than Smartcom and subject to the other provisions of the Agreement, Smartcom warrants that the Services;

- (a) will be properly installed.
- (b) will perform in accordance with the Terms and Conditions of the Agreement.
- (c) will comply with all applicable laws, guidelines, professional standards or codes of practice.

11.3 Smartcom limits its liability to the Client for breach of a warranty to performing maintenance, repairing or replacing components of the Service or resupply of Services as Smartcom may in its discretion determine.

11.4 Subject to the other provisions of this Agreement, if the Service or results of the services respectively are found to not comply with the Terms and Conditions of the Agreement, Smartcom will rectify or, if necessary remedy that non-compliance of the Service at its own expense; and at its own discretion.

11.5 3<sup>rd</sup> Party hardware and software covered by manufacturer warranties is outlined in the Service Agreement when applicable. Warranties for additional purchases of hardware and software will be outlined in the purchase documentation at the time.

11.6 The Client uses Services entirely at its own risk, and Smartcom is not responsible for any failure, delay or interruption of the Service, including without limitations, the following events of causation;

- (a) system crashes;
- (b) computer malfunctions;
- (c) hardware faults;
- (d) system errors;
- (e) security breaches;
- (f) theft;
- (d) incompatibility issues;
- (e) telecommunications problems; or
- (f) any supplier problems

## 12. Confidentiality

12.1 Smartcom and the Client agree to keep confidential information obtained about the other which is not in the public domain, and restrict such information to those within each organisation who have a need to know in order to perform their responsibilities under the Agreement, and to allow such confidential information to be included in any standard data back-up procedures that run as a matter of course.

12.2 The parties acknowledge that monetary damages alone would not be adequate compensation for a breach of the obligations of confidentiality under the Agreement, and a Disclosing Party is entitled to seek an injunction from a Court of competent jurisdiction on a breach or threatened breach of this clause. The parties further agree that the party seeking the injunction is not required to provide an undertaking as to damages for the purposes of obtaining the injunction.

12.3 The party against whom the injunction is sought agrees that it will not object to the granting of such an injunction.

12.4 Despite anything else contained in the Agreement and in particular in this clause:

- (a) Smartcom has the unconditional and irrevocable right to disclose the identity and address of the Client and any End User in the event of any complaint received from any regulatory or Government body or licensed Carrier, in connection with the Content made available by the Client;
- (b) all obligations of confidence set out in this clause 12, continue in full force and effect after the expiry or termination of this Agreement;
- (c) each party must ensure that its employees, subcontractors, agents and representatives do not do, or omit to do anything, which if done or omitted to be done by such party, would breach this clause 12.

12.5 Each party acknowledges that a breach of the confidentiality obligations set out in this clause 12, may cause the other irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to a claim for damages and any other remedies available at law or in equity, such party may seek specific performance or injunctive relief (as appropriate) against any breach or threatened breach by the other party, or the employees, subcontractors, agents or Representatives of the other party.

### 13. Privacy

13.1 Each party warrants to the other that: any Personal Information that it discloses to the other under the Agreement has been collected in accordance with the *Privacy Act 1998*; the individual to whom the information relates has been made aware of the recipient's identity, of how to contact the recipient, and of the other matters of which the recipient is required to inform a person about whom it collects information under the *Privacy Act 1998*; and the other is authorised to collect the information for the disclosure and use the information for the purposes of the Agreement.

13.2 In relation to any Personal Information disclosed by one of the parties under the Agreement, the recipient must not; use, disclose, store, transfer or handle the information, except in accordance with the *Privacy Act 1998*; only use or disclose the information for a purpose connected with the Agreement, or as required by law; co-operate with any reasonable request or direction of the discloser which relates to the protection of the information or the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1998*; ensure that access to its employees, representatives and subcontractors is limited to people required to access that information for the purposes of the Agreement and that they comply with the requirements of this clause and of the *Privacy Act 1998*.

13.3 Each party must promptly inform the other in writing of any complaint that it receives concerning the use, disclosure, storage, transfer or handling of Personal Information and comply with any reasonable direction of the other in relation to a complaint concerning the use, disclosure, storage, transfer or handling of Personal Information.

### 14. Grant of Service

14.1 The Client will to the best of their ability, ensure that any party using its facilities is bound by the Terms and Conditions of the Agreement.

14.2 Smartcom will to the best of its ability, ensure that the Client is provided with all that is required under the Terms and Conditions of the Agreement to use the Service. Smartcom is not responsible, nor obliged to supply or service any items not included in this Agreement.

14.3 The Client will comply, where required by legislation, guidelines or codes of practice in regard to using the Service.

14.4 The Client expressly acknowledges that Smartcom will not, at any time, be responsible for the Content, or the destination of any Content conveyed by, or to the Client when using the Service.

14.5 Smartcom does not warrant that its Service will be error free or uninterrupted, or that transmission will be instantaneous.

14.6 Smartcom warrants that it is the owner or an authorised distributor of the Service, and has the right and authority to provide the Service to the Client in accordance with the Terms and Conditions of the Agreement

14.7 The Client agrees to provide Smartcom with remote access to its facilities upon any reasonable request; for either technical or commercial reasons such as the supply of support services, upgrades, new functions or services, and billing.

14.8 Except to the extent that the Service or the results of the Service are modified by any person other than Smartcom; and subject to the other provisions of the Agreement, Smartcom warrants that the Service;

- (a) will be properly installed
- (b) will perform in accordance with the specifications referred to in the Agreement

### 15. Pricing

15.1 Pricing and Charges are detailed in Section 3 of the Service Agreement, and shall be fixed for five (5) Business Days.

15.2 Smartcom reserves the right to review prices from time to time, and hence, may alter the price structure and/or increase the prices from that detailed in Section 3 of the Service Agreement. In this event, Smartcom will provide the Client with thirty (30) days written notice of any change in the price structure and/or price increase.

15.3 The Client may terminate the Agreement with thirty (30) days written notice to Smartcom in the event of a price increase derived from the execution of clause 15.2 that directly increases the unit cost of the specific services used by the Client under the Agreement. For clarity, the Client cannot terminate the Agreement if there is a unit cost increase for a service within the overall Service that the Client is not currently using, and as a result, any price increase would not affect the Client.

15.4 All Call Charges are rounded up to 1c, and the minimum cost of a call is 1c AUD.

15.5 Electronic Messaging is charged per message, once messages have been sent from the Smartcom Network. For Clarity, in regard to SMS, a single SMS is a message of up to 160 characters, including identification display characters if used. Additional message charges are incurred for SMS with greater than 160 character, and charged accordingly.

15.6 At the completion of the initial Agreement Term, Smartcom reserves the right to increase the prices detailed in Section 2 of the Service Agreement on an annual basis; to the value no greater than the Consumer Price Index (CPI), which if applied will automatically be adjusted on July 1 each year.

15.7 A higher price rate may be applied to purchases of additional items not listed in Section 2 and 3 of the Service Agreement. Under no circumstance does this constitute the Client being able to terminate the Agreement under clauses 15.2 and 15.3.

15.8 In some circumstances, Smartcom may request a Security Deposit, with the agreed amount articulated in the Service Agreement. The Security Deposit will be returned in full upon termination of the Agreement. Smartcom may use the Security Deposit for payment of outstanding invoices post thirty (30) days of the due date, and to its discretion, terminate the Agreement accordingly - whereby any remaining funds in the Security Deposit can be used as payment to finalised the Client Account upon termination.

## 16. Taxes

16.1 Unless otherwise stated in writing, prices are exclusive of Goods and Services Tax (GST), and the Client is responsible and liable for all customs and import duties, and taxes including GST, and like levies or taxes at their assessed value.

16.2 It is the Client's responsibility to obtain exemption from duty or tax.

## 17. Payment Terms

17.1 The Client agrees to make payments in accordance with the Terms and Conditions of this Agreement; as outlined in Section 3 of the Service Agreement.

17.2 Invoices are electronically distributed to the Client email address, It is the Client's obligation to advise Smartcom of a change of email address.

17.3 In the event that the Client provides Smartcom written notice of termination of the Agreement within the Terms and Conditions of the Agreement, or otherwise, the Client agrees to pay all monies owing to Smartcom at the termination date, including, but not limited to; outstanding invoices and amounts owing as a result of usage of the Service; in addition to full payment of the collective minimum monthly expenditure for the full term of the Agreement (Refer Section 3 of the Service Agreement).

17.4 Upon termination of the Agreement, Smartcom will refund the Client any unearned revenue within thirty (30) days of the termination date.

17.5 Late Payment Fees and Interest fees apply to non-payment by the due date. Clients shall be liable for interest charges calculated at the prevailing overdraft reference rate of the Macquarie Bank plus two percent for fair debts unpaid to Smartcom by their due date. Such charges will be calculated on a daily basis beginning on the due date. The Client shall be liable to Smartcom for all costs and disbursements incurred by Smartcom for recovery of any debts not paid by the due date including any legal costs incurred by Smartcom.

17.6 If the Client fails to make a payment properly due under the Agreement, Smartcom reserves the right to suspend all, or some Services without notice, and for the Service to remain suspended until such payment is made to Smartcom (Refer Schedule 1: Services).

17.7 Provision of the Service is subject to Smartcom being satisfied at all times with the credit rating of the Client and granting credit approval to the Client. The Client must provide to Smartcom upon request, any information required by Smartcom for the purpose of assessing the credit rating of the Client. If at any time Smartcom is not satisfied with the credit rating of the Client it may require the Client to; pre-pay amounts in respect of fees; lodge a deposit as security for payment; provide a personal guarantee in a form acceptable to Smartcom given by a director of the Client; and/or put in place other credit and/or security arrangements satisfactory to Smartcom in respect of payment of fees, including but not limited to establishment of an automatic bank debit drawn on a debit, credit or other account of the Client.

17.8 Sums payable under the Agreement are payable in full without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law.

17.9 Smartcom accepts Credit Card and electronic (EFT) payments as either a single transaction, or as a periodical payment. Smartcom may use third parties such as secure payment gateways to process such payments; and in any circumstance, the Client must authorise such payments in writing.

## 18. Disputes

18.1 In the case of an invoice being disputed in good faith by the Client, the Client must give prompt written notice to Smartcom of any such dispute, which must include the reasons for the dispute ('Dispute Notice'), and in any event within three (3) months of receiving the invoice. If the Client has issued the Dispute Notice by the due date for payment, the Client will be permitted to withhold only such amounts as are directly related to disputed elements of the invoice. The parties will use reasonable endeavours to resolve any such dispute as quickly and efficiently as possible, and: where any such dispute is determined to be unfounded, the Client must pay to Smartcom in full the amount withheld within five (5) Business Days of such determination; or where any such dispute is determined to be founded and the Client has already paid the disputed amount, Smartcom must pay the Client in full, the relevant amount within five (5) Business Days of such determination.

18.2 If a dispute arises under the Agreement, either party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. Nominated senior representatives of both parties must meet within ten (10) five Business Days of the notice and endeavour to resolve the dispute in good faith. If such meeting does not take place or if after ten (10) Business Days of the meeting the dispute remains unresolved, either party may pursue its rights at law.

18.3 During a dispute, each party must continue to perform its obligations under the Agreement.

## 19. Limited Liability and release

19.1 To the extent lawfully permitted:

- (a) under no circumstances is Smartcom liable to the Client for any damage or loss whatsoever arising from the use of the Service by the Client, including any indirect or consequential losses, loss of data or loss of profit;
- (b) under no circumstances is Smartcom liable to a third party claiming under or through the Client for any indirect or consequential losses, loss of data, loss of revenue or loss of profit; and if Smartcom's liability is not otherwise excluded or limited to a lesser amount by any other provision of the Agreement, then the total liability of Smartcom and its officers, employees, agents and contractors, to the Client for all claims made by or against the Client (whether under the Agreement or otherwise at law, in tort or in equity) or for any loss or damage paid, suffered or incurred by the Client, including interest on any claim accruing from the date on which the claim first arose to the date of judgement, settlement, deduction or set off, arising out of or in any way connected with the Agreement or the Service, is limited in the aggregate to the total amount payable by the Client at the time of the claim. This includes but is not limited to loss or damage caused by the negligence of Smartcom, their employees or contractors.

19.2 To the extent permitted by law, the Client releases Smartcom, the Smartcom Group and all Smartcom Group Personnel from all Claims under, arising from, or in connection with the Services provided by Smartcom (including any claim for any Loss and any claim under any indemnity in this Agreement) relating to any End User Loss relating to the condition, quality, state of repair, fitness for purpose, reliability, functionality, contention rates, quality of service, service levels, maintenance, fault restoration, speed or availability (including any interruption or suspension) of the Smartcom Network.

19.3 The release in clause 19.2 extends to:

- (a) any and all claims relating to any termination of supply of the Service; and
- (b) any and all claims in connection with the Agreement (including any claim for any loss and any claim under any indemnity of the Agreement) that exist or may exist, and whether known (actually or constructively) or unknown to either party, its employees, officers, agents and associated entities (and their employees, officers and agents), and includes claims in connection with the Agreement that may be discovered after execution of the Agreement.

## 20. Support Service

Smartcom will provide the Client with the Support Services as set out in Schedule 2; Service Level Agreement.

## 21. General Provisions

21.1 Each party to the Agreement shall conduct its business and regulate its operations in a way that will maintain and enhance the goodwill and reputation of the other party.

21.2 The Agreement for the Service shall be subject to these Terms and Conditions and prevail under any circumstances for the term of the Agreement; notwithstanding written amendments agreed to by both parties.

21.3 All rights and remedies conferred under this Agreement or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any Agreement term shall not be deemed a waiver of future enforcement of that or any other term, unless the provisions of the Agreement are declared to be severable.

21.4 It is the Client's responsibility to provide Smartcom with remote access to its ICT Environment in the provision of Smartcom Services, including but not limited to;

- (a) System set-up
- (b) Client activation – 'Go-Live'
- (c) Service Support
- (d) Upgrades

21.5 In the event that the Client denies Smartcom access to its ICT environment, Smartcom will be under no obligation to provide the services as per clause 21.4; nor Support Service to the Client. Further, in this event, the Client is not in any way relieved from the Terms and Conditions or any other aspect of the Agreement.

21.6 The Agreement governs the independent relationship between Smartcom and the Client. Nothing herein shall be construed to create between the parties any relationship other than that expressly stipulated in the Agreement. Further, the Agreement shall be binding upon and injure to the benefits of the parties and their respective successors and assigns. The Client may not assign or transfer its rights hereunder, without the prior written consent of Smartcom.

21.7 The Client accepts that Smartcom is in part reliant on carriers and other third party suppliers (collectively referred to as 'Telecommunication Providers'); and the Client will not hold Smartcom liable in any way whatsoever for Smartcom's inability to provide the services as a result of faults that are the responsibility of the Telecommunication Providers.

21.8 In the event of a Telecommunication Provider fault, Smartcom must, to the best of its ability, and upon written request by the Client, communicate in writing to the Client all relevant information relating to the Telecommunication Provider service fault to evidence the consequential damage.

21.9 Except as may be expressly provided elsewhere in the Agreement, neither party may transfer, novate, assign or sub-license the Agreement or any of its rights or obligations hereunder without the prior written consent of the other party (not to be unreasonably withheld or delayed). For the avoidance of doubt, Smartcom will not provide its consent in the event that the Client proposes to transfer, novate, assign or sub-license the Agreement in competition with Smartcom's business.

21.10 The Service is manufactured and/or supplied by Smartcom and third party providers.

21.11 Smartcom may also sub-contract the performance of the Agreement, in whole or in part, to any third party.

21.12 Except as otherwise set out in the Agreement, each party must pay its own costs in relation to preparing, negotiating and executing the Agreement and any document related to the Agreement.

21.13 The Agreement and its Schedules contains everything the parties have agreed to in relation to the matters it deals with and supersedes any prior agreement, understanding or arrangement between the parties in relation to the Service, whether oral or in writing. No representation, undertaking or promise will be taken to have been given or implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in the Agreement. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this document was executed, except as permitted by law.

21.14 If a clause or part of a clause of the Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

21.15 Provisions of the Agreement which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such termination, will remain in full force and effect notwithstanding such expiry or termination.

21.16 No variation of the Agreement will be of any force or effect unless it is in writing and signed by the parties to the Agreement to which it relates. The parties must negotiate in good faith regarding any changes to the Terms and Conditions.

21.17 The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## 22. Force Majeure

With the exception of any obligation to pay charges, failure or omission by either party to carry out or observe any Terms and Conditions of the Agreement shall not give rise to any claim against the party in question or be deemed a breach of the Agreement if such failure or omission arises from any cause reasonably beyond the control of the party seeking to rely upon such failure or omission, including but not limited to acts of God, flood, drought, storm, fire, acts or omissions of any government agency, war, acts of terrorism, labour disturbances outside the party's own organisation and acts or omissions of other operators beyond the reasonable control of that party.

## 23. Indemnification

23.1 The Client agrees to defend, indemnify, and hold Smartcom, its officers, directors, employees, affiliates and agents and any other services provider who furnishes services to the Client in connection with the Agreement, or service, harmless from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable legal fees) by, or on behalf of, or on behalf of the Client or any third party or user of the Service, relating to or arising out of using the Service. This clause shall survive termination of the Agreement.

23.2 The Client agrees that Smartcom is not responsible for any third party claims that may arise against us as a result of the Client using the Service, and that the Client agrees to reimburse Smartcom for all costs and expenses of any such claims, including legal fees of any such claims that are based on willful misconduct or gross negligence. This clause shall survive termination of this Agreement.

23.3 The Client agrees that Smartcom is not responsible for any third party claims that may arise against us as a result of the Client's actions, including its officers, directors, employees, affiliates and agents. This clause shall survive termination of the Agreement.

23.4 The Client is liable for the use and performance of its own operation, and holds Smartcom free and harmless from injuries or damages arising from the use or representation of the service. The Client acknowledges that Smartcom has no control

whatsoever on the conditions, procedures or performance of products and services provided by the Client, and cannot be held to any claims regarding poor or unsatisfactory service. This clause shall survive termination of the Agreement.

23.5 The Client indemnifies Smartcom from all costs (including legal costs on a full indemnity basis), expenses, loss, liabilities, suits, actions, damages or claims arising or in any other way connected with the Client's use of their Account and the related products and services provided by Smartcom, or any other person using the Client's username and password.

23.6 In particular, the Client agrees to indemnify Smartcom in connection with any action, claim or demand which may be instituted against Smartcom arising out of:

- (a) any wilful or negligent act or omission by the Client, its employees, agents or contractors;
- (b) an actual infringement or allegation that the Intellectual Property Rights of any person have been infringed by the use of the Client's Facilities; or
- (c) any Electronic Communication sent by the Client whether or not the claim is brought or made by a Smartcom Client or another party.

23.7 Any indemnity in the Agreement is a continuing obligation, independent of other obligations under this Agreement and continues after this Agreement ends. It is not necessary for Smartcom to incur expense or make payment before enforcing a right of indemnity under the Agreement.

## 24. Whole Agreement

Both parties acknowledge that the Agreement; the Terms and Conditions and Schedules in this document contain all the terms upon which the parties have agreed to trade; and replaces all other prior Service related Agreements or statements, oral or written.

## 25. Severance

25.1 If any provision of these Terms and Conditions is void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.

25.2 Notwithstanding clause 25.1, a provision of these Terms and Conditions is still void or voidable or unenforceable or illegal:

- (a) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed: and
- (b) in any other case, the whole provision is hereby severed, and the remaining Terms and Conditions have full force and effect.

## 26. Disclaimer

Smartcom (including its affiliates, directors, officers, employees, agents, contractors, successors or assignees) will not be liable for any loss or damage caused to the Client or anyone else howsoever arising as a result of using the Service. This includes, but is not limited to loss or damage caused by loss or delay of Messages, Telecommunications Carriage or any loss caused by the negligence of Smartcom, their employees or contractors.

## 27. Waiver

Any time or other indulgence granted by either party, or any failure of either party to exercise in any respect any rights provided for herein shall not be deemed a waiver of any rights hereunder.

## 28. Jurisdiction

The Agreement shall be governed by and construed in all respects in accordance with the law for the time in force in the State of Queensland in Australia. Smartcom shall, however, have the right to institute proceedings in any competent jurisdiction for the recovery of unpaid debts.

## 29. Service of Notices

The respective addresses of service and notices under these Terms and Conditions ("the notice address") shall be the registered offices of Smartcom and the Client provided that either of the parties may by giving written notice to the other party substitute another address that will then become the notice address.

Notices may be given by being:

- (a) left at the notice address,
- (b) sent to the notice address by post, email or facsimile,
- (c) delivered by hand to either of the parties to the Agreement.

Any notice posted shall be deemed to have been received seven (7) business days after the date of posting and any notice given in any other manner shall be deemed to have been received at the time when in the ordinary course it may be expected to have been received.

## 30. Interpretation

30.1. In the Agreement, unless inconsistent with or repugnant to the context:

- (a) Words denoting the singular number shall include the plural and vice versa.
- (b) Reference to any particular gender shall include both genders.
- (c) The word 'person' shall include an incorporated company and vice versa.
- (d) Words importing persons shall include corporations and other entities recognised by law and where a person is referred to as the trustee of any Trust or Settlement the reference is to that person in his capacity as such.
- (e) Headings are for convenience only and shall not affect interpretation.
- (f) References to clauses are references to clauses of this Agreement and references to sub-clauses are references to sub-clauses of this Agreement.



- (g) References to this Agreement shall be deemed to include references to this Agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) References to any party to this Agreement shall include its transferees, successors or permitted assigns.
- (i) Words denoting any gender shall include all genders.
- (j) Each Schedule and Appendices (if any) to this Agreement hereby incorporated into this Agreement, provided that if there is any inconsistency between any such Schedule and the provisions of this Agreement, the provisions of this Agreement shall prevail.
- (k) Reference to "\$" and "dollars" are to Australian currency.
- (l) A reference to an Act of Parliament, ordinance, code or other law includes regulations and other statutory instruments under it and shall include any amendment, consolidation, modification or re-enactment thereof or any replacement legislation.
- (m) A reference to a party binds if a corporation its liquidators, controllers, receivers, managers and administrators and if an individual their executors, trustees and beneficiaries.
- (n) No provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision.

30.2 In the construction of the Agreement and its Terms & Conditions, each Clause shall be construed separately and, in the event of any Clause or any part of any Clause being declared by a Court of competent jurisdiction to be invalid or in inoperative for any reason, then the rest of this Agreement shall remain in force to the fullest possible content and application.

**Schedule 1:** Services - Product & Service Description and additional terms and conditions

**Schedule 2:** Service Level Agreement

Definitions	
<b>ACCC:</b>	means the Australian Competition and Consumer Commission.
<b>Account:</b>	means the entirety of the Client's rights and obligations under the Agreement, as well as any usernames, passwords, software, access to Smartcom services and infrastructure.
<b>ACMA:</b>	means the Australian Communications and Media Authority.
<b>Activation:</b>	in respect of a Service Number means the steps required to be undertaken so that a Service Number is capable of initiating and receiving communications and Activate has a corresponding meaning.
<b>Adverse Event:</b>	<ul style="list-style-type: none"> <li>(a) in relation to a party means any of the following: The party is liquidated or dissolved, or a step is taken to liquidate or dissolve it.</li> <li>(b) A liquidator, provisional liquidator, trustee, receiver or administrator of the party is appointed.</li> <li>(c) The party comes under an obligation to hand over to any third party any amount it has received from the other party, whether under this Agreement or not.</li> <li>(d) The party enters or proposes to enter into any form of agreement, composition, arrangement with, or assignment for the benefit of, any of its creditors without the consent of the other party.</li> <li>(e) A notice under section 601AB(3) of the <i>Corporations Act 2001</i> (Cth) is given in respect of the party. The party is, or is reasonably assumed to be, subject to an event described in section 459C(2) of the <i>Corporations Act 2001</i> (Cth), or is registered as being unable to pay its debts under section 585 of the <i>Corporations Act 2001</i> (Cth).</li> <li>(f) The party ceasing, or indicating that it is about to cease, carrying on business.</li> <li>(g) Anything happening under any law or in any jurisdiction that is similar to, or has a similar effect to, any of the events listed above.</li> </ul>
<b>Agency:</b>	has the meaning given in the Interception Act.
<b>Agreement:</b>	Refers to the binding contractual arrangement between the Client and Smartcom set out in the Agreement and its Schedules.
<b>Allocated Service Numbers:</b>	means the Service Numbers allocated to the Client.
<b>Annual Numbering Charge:</b>	means the annual charge imposed by the ACMA under the TA and the Telecommunications (Numbering Charges) Act 1997 (Cth) on the Carriage Service Provider holding a number in accordance with the Numbering Plan.
<b>Break-Free Fee:</b>	means a cancellation fee or termination charge calculated in accordance with terms set-out in the Agreement.
<b>BSA:</b>	means the Broadcasting Services Act 1992 (Cth).
<b>Business Day:</b>	means a day upon which trading banks are open for business in Queensland.
<b>Call Associated Data:</b>	means call related data for an End User.
<b>Call Charge Records:</b>	means those records of calls made by an End User where available to Smartcom.
<b>Carriage Service Provider:</b>	has the meaning given in the TA.
<b>Carriage Service:</b>	has the meaning given in the TA.
<b>Carrier:</b>	has the meaning given in the TA.
<b>CCA:</b>	means the Competition and Consumer Act 2010 (Cth)
<b>Charges:</b>	means the charges payable by the Client for each of the Services provided under this Agreement, as specified in the Price Schedule in the Services Agreement.
<b>Claim:</b>	means any claim, action, proceeding or investigation of any kind and includes the allegation of a claim.
<b>Client Data:</b>	Refers to all data held or stored by the Client, including the software and the underlying systems. Data maybe created by or on behalf of the Client or arising out of or in connection with the Client's use of Smartcom Services; regardless of the source of data.
<b>Client Facilities:</b>	means material owned or licensed by the Client (including its IT systems, documentation, templates and data, and web site) which is used by either party to this Agreement in the performance of their obligations under this Agreement and any modification to same.
<b>Client Premises:</b>	means any premises owned or occupied by the Client.
<b>Client Services:</b>	means any services supplied by the Client to an End User using the Services.
<b>Confidential Information:</b>	<p>means, in relation to each party (for the purposes of this definition, the Discloser):</p> <ul style="list-style-type: none"> <li>(a) all information relating to or used by the Discloser or its Related Body Corporate, including know-how, trade secrets, ideas, marketing strategies and operational information;</li> <li>(b) all information concerning the business affairs (including products, services, Clients and suppliers) or property of the Discloser or its Related Body Corporate, including any business, property or transaction in which the Discloser or its Related Body Corporate may be or may have been concerned or interested;</li> <li>(c) any other information disclosed by or on behalf of the Discloser or its Related Body Corporate which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential;</li> <li>(d) the terms &amp; the actual existence of this Agreement; and including any such information made available to the Discloser or its Related Body Corporate by any third party, but excluding any information that:                             <ul style="list-style-type: none"> <li>(i) is publicly known or becomes publicly known other than by breach of the Agreement or any other obligation of confidentiality;</li> <li>(ii) is disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or</li> <li>(iii) is developed independently by the other party without reliance on any of the Discloser's Confidential Information.</li> </ul> </li> </ul>
<b>Content:</b>	means the content or content services made available or communicated to End Users by the Client.
<b>Corporations Act:</b>	means the <i>Corporations Act 2001</i> (Cth) and any regulations made under it.
<b>CPE:</b>	means Customer Premise Equipment
<b>CPI:</b>	means the Consumer Price Index (All Groups) National published by the Australian Bureau of Statistics from time to time or the index officially substituted for it and if no such index is available, such published price index agreed by the parties acting reasonably.
<b>De-Activation:</b>	in respect of a Service Number means the steps required to stop a Service Number from being capable of initiating and receiving communications and De-Activate has a corresponding meaning.
<b>Dedicated Number:</b>	means a Standard Rate digital mobile service and or DID provided by Smartcom to the Client under the Agreement for exclusive use by the Client.
<b>DID Number:</b>	means Direct Inward Dialling Number
<b>Dispute Notice:</b>	means formal document presented by the Client in regard to contended Charges.
<b>Directory Assistance Services:</b>	has the meaning given in the TA.
<b>Electronic Messaging /Communication:</b>	Refers to any electronic means of sending or receiving information ie; SMS, Voice, Facsimile, Email, Chat & the Internet.
<b>Emergency Call Services:</b>	has the meaning given in the TA.

<b>Emergency:</b>	means a situation that unless immediately addressed or remedied has the potential to jeopardise human life or safety, or to cause immediate risk to property.
<b>End User:</b>	means a person to whom the Client extends the benefit of the Service, in each case being an employee or Director of the Client, for that person's end use and not for re-supply.
<b>End User Contract (if any)</b>	means a contract for the supply of Client Services to an End User.
<b>End User Loss</b>	means any Loss suffered by a person who receives a Service directly or indirectly from the Client.
<b>Equipment</b>	The Smartcom system or components thereof that are installed onsite at the Client site or at a designated location ie; data centre.
<b>Facilities:</b>	Refers to Smartcom's infrastructure and/or interfaces needed to deliver and gain access of Services.
<b>Fees:</b>	mean the Account Activation and License Fee, Monthly Access Fee, Monthly License Fee, Custom Development Fee, and any other agreed cost.
<b>Go-Live:</b>	Refers to the moment in time that the Client has been notified by Smartcom that full production access to the Services has been granted to the Client for use.
<b>ICT Environment:</b>	means the Client Information, Communication & Technology environment.
<b>IN Platform:</b>	means the Smartcom Intelligent Network Platform as modified by Smartcom from time to time.
<b>Integrated Public Number Database:</b>	has the meaning given in the TA.
<b>Intellectual Property Rights:</b>	means all rights conferred under statute, common law and equity in and in relation to inventions, designs, trademarks, trade names, logos, and get up, circuit layouts, semi-conductor and copyright and any other intellectual property rights including moral rights, confidential or other proprietary rights, or other rights to registration of such rights.
<b>Interception:</b>	has the meaning given in the Interception Act.
<b>Interception Act:</b>	means the Telecommunications (Interception and Access) Act 1979 (Cth).
<b>Interception Capability:</b>	has the meaning given in the Interception Act.
<b>Law:</b>	means any: <ul style="list-style-type: none"> <li>(a) legislation, regulations, determinations, by-laws, declarations, ministerial directions and other subordinate legislation;</li> <li>(b) common law;</li> <li>(c) government agency requirement or authorisation (including any conditions of any authorisation);</li> <li>(d) mandatory codes, standards and guidelines;</li> <li>(e) writ, order, injunction or judgement; or</li> <li>(f) local government legislation including regional, district and zone plans, regulations, by-laws, declarations and other subordinate legislation.</li> </ul>
<b>Loss</b>	means all losses, expenses, damages, fees, fines and costs (including legal costs on a full indemnity basis).
<b>Minimum Monthly Fee:</b>	means the minimum fee due in particular month, regardless of usage.
<b>Monthly Access Fee:</b>	means the fee set out in the Service Agreement and charged by Smartcom to the Client on a monthly basis for access to the Electronic Messaging Service.
<b>Monthly License Fee:</b>	means the fee set out in the Price Schedule of the Service Agreement and charged by Smartcom to the Client on a monthly basis for exclusive use of a Dedicated Number.
<b>Network:</b>	has the meaning given to the term "telecommunications network" in the TA.
<b>Number Portability:</b>	has the meaning given in the TA and the Numbering Plan.
<b>Number Register:</b>	means the register of numbers maintained by the ACMA pursuant to section 465 of the TA.
<b>Numbering Plan:</b>	means the Numbering Plan made by the ACMA under the TA.
<b>Operations Manual:</b>	means Smartcom's operations support processes and procedures that apply to the supply and use of the Services as amended by Smartcom from time to time.
<b>Operator Services:</b>	has the meaning given in the TA.
<b>Order:</b>	means a valid order of a court or tribunal of competent jurisdiction.
<b>Personnel:</b>	of a party means that party's officers, employees, agents and contractors.
<b>POP:</b>	Point of Presence
<b>Privacy Laws:</b>	means the Privacy Act 1988 (Cth) and Part 13 of the TA.
<b>Public Mobile Telecommunications Network:</b>	means a Network that supplies a "public mobile telecommunications service" as defined in section 32 of the TA.
<b>Restricted Content:</b>	means the Content that: (a) is likely to be, having regard to the contemporary attitudes of Australian society, offensive to reasonable adults; (b) is likely to be, having regard to the contemporary attitudes of Australian society, unsuitable for minors; <ul style="list-style-type: none"> <li>(a) promotes, incites or instructs in matters of crime;</li> <li>(b) describes, incites or promotes unlawful sexual activity;</li> <li>(c) promotes or incites violence against any person or group, or incites racial hatred;</li> <li>(d) causes unnecessary alarm, distress or panic;</li> <li>(e) breaches a code of practice that applies to the Service;</li> <li>(f) is false, misleading or deceptive, or likely to mislead or deceive;</li> <li>(g) provides financial advice to any person;</li> <li>(h) is out of date, having regard to information generally available, subsequently published, or released, or made available; or</li> <li>(i) (k) is for the purpose of providing any warning or notification about a serious risk to the safety of persons or property (for example, emergency services).</li> </ul>
<b>Regulatory Authority:</b>	means: <ul style="list-style-type: none"> <li>(a) any government or local authority and any department, minister or agency of any government; and</li> <li>(b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.</li> </ul>
<b>Regulatory Event:</b>	means: <ul style="list-style-type: none"> <li>(a) the enactment, amendment, replacement or repeal of the TA, the TCPSS Act, the CCA, the BSA or other telecommunications related legislation or regulations;</li> <li>(b) the making of a determination or finding by the ACCC, the ACMA or a Court of law that all or any part of this Agreement contravenes any provision of any Law;</li> <li>(c) the determination, addition, variation or removal of a service provider rule (as defined in the TA) applicable to a party;</li> <li>(d) the issue, registration, making, promulgation, amendment or replacement of any code or standard by the ACCC or the ACMA or a Court of law;</li> <li>(e) the issue of a competition notice to a party under Part XIB of the CCA;</li> <li>(f) the grant of an injunction against a party in relation to a breach or alleged breach of the CCA;</li> <li>(g) the giving of a lawful direction to a party by the ACCC, the ACMA or any relevant Minister or other</li> </ul>

	(h) governmental agency or authority; (i) an arbitration by the ACCC under Part XIC of the CCA; or the declaration by the ACCC under Part XIC of the CCA of any service not declared as at the date of this Agreement, or a material variation to any service declared as at the date of this Agreement.
<b>Schedule:</b>	means a schedule to the Agreement.
<b>Service Level:</b>	means the service levels set out in the Service Level Agreement provided to the Client.
<b>Service Number:</b>	means any telephone, facsimile, data or other service number that is capable, in accordance with the Numbering Plan, of being used as an individual Network address on a Network as the home Network for that address.
<b>Service:</b>	Refers to the products and services made available by Smartcom for Client use, including; Electronic Messaging Services and the Voice Services described in Service Schedule of the Agreement.
<b>Service Support:</b>	means the support of Services provided by Smartcom to the Client. Refer Schedule 2.
<b>Security Deposit:</b>	means a sum of money paid in advance and held in trust as part of the Payment Terms of the Service Agreement.
<b>Smartcom Facilities &amp; Network:</b>	means Smartcom's infrastructure, platforms, gateway and systems technology which the Client will connect to in order to operate the Services.
<b>Smartcom Group</b>	means all entities directly associated and under control of Smartcom.
<b>TA:</b>	means the Telecommunications Act 1997 (Cth).
<b>TCPSS Act:</b>	means the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth).
<b>Telecommunications Carriage:</b>	means Voice & Data services provided to Smartcom for its Services by 3 <sup>rd</sup> Party Telecommunications Carriers.
<b>Telecommunications Providers:</b>	means an Australian and/or international telecommunications carriers.
<b>Terms &amp; Conditions:</b>	Refers to the terms and conditions in the Agreement.
<b>Third Party Claim:</b>	means any claim or potential claim by a third party against Smartcom in relation to the provision of the Services or use of them by the Client.
<b>Upgrades:</b>	means improvements made to the Service from time to time
<b>Voice Services:</b>	means the services described in the Voice Service Schedule which is provided under the terms and conditions set out in the Agreement.
<b>Warrant:</b>	means a valid warrant issued under the Interception Act.
<b>WAN:</b>	Wide Area Network
<b>Year:</b>	means any 12-month period commencing on the Commencement Date or an anniversary of the Commencement Date.

## Schedule 1: Services

### Product & Service Description & additional terms and conditions

1. This Services Schedule:
  - (a) is to be read with and forms part of the 'Service Agreement – Telecommunication Services' made between the parties and to which this is a Schedule (the 'Agreement'); and
  - (b) applies to the provision of the Voice, Broadband, Data and Messaging services by Smartcom to the Client.
2. **Definitions:** In addition to the definitions set out in the Service Agreement, in this Services Schedule:
3. **Product description for the Service:**  
Table 1 describes the products for the Services.

Table 1:

Category	Product	Description
Voice	VoIP	Telecommunications Carriage via Voice over Internet Protocol (VoIP) via Smartcom's Facilities and Network.
Internet	Broadband & Data	Fixed line or wireless, high speed internet connections for the provision of data, and/or voice via Smartcom's Facilities and Network.
Messaging	SMS	Short Messaging Service: text messaging using standardised communication protocols to enable mobile devices to exchange short text messages via Smartcom's Facilities and Network.
	Chat	The process of communicating, interacting and/or exchanging messages over the Internet via Smartcom's chat-enabled software via Smartcom's Facilities and Network. Chat may be in the form of SMS or various internet based communication channels.
	Email	Electronic Mail: The transmission of mail messages via Smartcom's Facilities and Network.
	Voice	Voice Broadcasting: mass broadcast of telephone messages to call recipients via Smartcom's Facilities and Network.
	Fax	Facsimile: fax to email transmission of documents via Smartcom's Facilities and Network.

Smartcom may also supply Peripheral services to the Client, such as;

- (a) Dedicated Number ranges, special number allocation and
  - 1) the allocation of Service Numbers will be in accordance with Smartcom' number management processes;
  - 2) The Client is responsible for payment of any charges and Taxes applicable to Service Number ranges reserved by Smartcom to Client for use by End Clients (regardless of whether they are Activated) under the Telecommunications (Numbering Charges) Act 1997. On Smartcom's direction, Client must execute any documentation necessary to record the Client's liability for numbering charges under this paragraph;
  - 3) Smartcom may remain the registered allocatee under the Telecommunications Numbering Plan 1997 of Service Number ranges reserved by Smartcom to Client for use by End Clients (regardless of whether they are Activated);

#### 4. Supply of the Service:

Smartcom will:

- (a) from the Commencement Date, supply Services to the Client in accordance with this Services Schedule; and
- (b) subject to this Services Schedule, use reasonable endeavours to supply the Services to the Client in accordance with the Service Standards.

#### 5. Client representations and warranties:

Client represents and warrants that:

- (a) it is not a carrier or carriage service provider (as those terms are defined in the Telecommunications Act 1997 (Cwth));
- (b) the Service will only be used for business purposes relating to the conduct of the client's business;
- (c) its projected capacity demand and connection speed expectations and general requirements for the first 12 months of the term shall be as advised by Client and recorded by Smartcom for the purpose of scoping the Service.

#### 6. Variation to Services:

Smartcom may from time to time, without liability:

- (a) vary the Services; or
- (b) modify, change, upgrade or enhance the Smartcom Facilities or Network or any other technology, software or equipment that Smartcom uses to provide a Service, provided that the Services continue to comply with this Services Schedule.

#### 7. Grounds for suspension of Services:

Smartcom may suspend any Service (which in the case of an event caused by an End User may be limited to the Services relating to that End User) if:

- (a) Client breach: the Service is used by the Client or any End User in breach of any term of this Services Schedule or the Service Agreement;
- (b) Client does not pay a Bill within thirty (30) days after the due date;
- (c) Client vacates (except on a temporary basis) the premises to which the Services are provided or it is reasonable to do so in circumstances where Smartcom is not able to enter premises to which the Services is provided in order to inspect, repair or maintain any equipment belonging to Smartcom and connected with the Services;
- (d) there occurs or there are reasonable grounds for suspecting:

- 1) fraud or other illegal conduct in relation to the Service;
  - 2) or the commission of an offence against any law;
  - 3) interference with Smartcom's Facilities or Network;
  - 4) an act or omission of the Client or an End User that will or is reasonably likely to impair or adversely affect the quality of one or all of the Services or any part of one or all of the Services or the operation of the Smartcom Facilities or Network, by the Client or any End User;
- (e) urgent maintenance is required to avoid potential for fraud on, or to allow Smartcom to reduce the incidence of fraud or to reduce or prevent interference within, the Smartcom Facilities or Network;
- (f) to perform system and network management and maintenance determined by Smartcom to be necessary from time to time;
- (g) Smartcom is required to do so by reason of a Regulatory Event (including by the ACA) or the continued provision of the Services by Smartcom is, or becomes unlawful;
- (h) there are Emergency circumstances including for the provision of support to emergency and other essential services, or an anticipated emergency;
- (i) it is unable to continue to supply the Services due to a failure of any other network that is interconnected to or relied on by the Smartcom Facilities or Network in providing the Services;
- (j) where Smartcom reasonably believes that there has been an unusually high use of a Service substantially in excess of any traffic profile or forecast given to Smartcom by the Client;
- (k) if Client becomes a carrier or carriage service provider as those terms are defined in the Telecommunications Act 1997 (Cwth).

## 8. Suspension rights and powers:

- (a) Where a suspension right arises, Smartcom may do any of the following:
- 1) refuse to Activate or Re-Activate any Service for any Service Number;
  - 2) Deactivate any Service for any Activated Service Number;
  - 3) suspend part or all of any Service;
  - 4) depending on the nature of the event and if there is a termination right under [clause 5 of the Services Agreement], terminate the Voice Services.
- (b) Client action following unacceptable activity; where Smartcom provides evidence to Client that an End Client's individual service is being used in a manner that amounts to unacceptable End Client activity giving rise to a suspension event:
- 1) Client authorises Smartcom to immediately notify the End-User and if the activity continues following notification to immediately disconnect or suspend part or all of the individual service to that End User;
  - 2) Smartcom may ask the Client to stop, or ask the Client to stop Client's End-Users, acting or failing to act in that manner;
  - 3) where Smartcom asks the Client to do so, the Client will as soon as reasonably practicable (but in any case within two Business Days) comply with any such request (failing which Smartcom may suspend all Services).

## 9. Notification of suspension of Services:

Where a suspension event occurs, or suspension right arises, Smartcom may take the steps outlined in clause 8 of this Schedule at any time without notice to the Client and:

- (a) Smartcom shall use its best endeavours to notify the Client of any suspension, cancellation or limitation of a Service as soon as it is reasonably practicable to do so in the circumstances, taking into account technical, operational and commercial issues or liability (where it is not reasonably practicable to do so in the circumstances, Smartcom may suspend any Service without prior notice to the Client);
- (b) if the Services are suspended for reasons that do not relate to act or omissions of the Client or its personnel, then while the Services are suspended, the Client is relieved of its obligation to pay for [any Service Charges] for such Services;
- (c) To its own discretion, Smartcom may provide the Client with a reasonable period of time to pay any outstanding Bills (not exceeding 30 days from the due date), prior to Services being suspended, cancelled or limited, due to non-payment.

## 10. Intervening Event:

If an Intervening Event occurs which prevents Smartcom from performing any of its obligations under the Agreement, then:

- (a) it will not be liable for failing to perform that obligation;
- (b) it will notify the Client promptly of the Intervening Event and shall use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible; and
- (c) the Client obligations continue during the Intervening Event.

## 11. Regulatory Events – negotiation:

Despite any other provision of this Services Schedule, if a Regulatory Event occurs or is likely to occur which, in the reasonable opinion of a party, materially adversely affects or is likely to materially adversely affect the rights or obligations of that party (Affected Party) under this Services Schedule, the parties agree to commence good faith negotiations as soon as practicable to amend this Services Schedule to the extent necessary to mitigate or alleviate the relevant effect.

## 12. Acknowledgements:

The Client acknowledges and agrees that:

- (a) a telecommunications network, including the Smartcom Facilities and Network and any carrier network to which it interconnects or on which it relies, and the capabilities associated with such facilities and

- networks, are not fault free and Smartcom does not represent or warrant that the Service will be uninterrupted, error free or continuously available;
- (b) quality of Services are dependent upon a range of technical and capacity factors and [depending upon load demands and capabilities, service quality may be affected] and certain Services may not be available from time to time including as a result of capacity constraints, network failure, maintenance, call drop out, call set up failure, call handover failure, electromagnetic interference, adverse weather conditions, equipment, technology or software failure, modifications, changes, upgrades or enhancements, or the location of an End User;
  - (c) the VoIP services are essentially data transmissions and so do not have the same characteristics as dedicated fixed line phone services and their quality and reliability may be affected by a range of factors;
  - (d) telecommunications services and computer services run the risk of security breaches and Client is responsible for security, firewall, threats, monitoring and dealing with End Users and any breaches of these terms and conditions by any End User or caused by any third party;
  - (e) in relation to some Services ie; voice and SMS, Smartcom has obligations to its carrier and usage by Client or its End Users will generate carrier charges that will be passed on to Client and Client will be fully responsible for all such charges, regardless of these arising from actions such as a security breach or unintended usage;
  - (f) Smartcom is not liable to the Client, any End User, or any other person for any unavailability of any Service by reason of any of the circumstances specified in this clause or otherwise;
  - (g) connection of the Services to any numbers operating on mobile networks will be subject to the limitations of such networks including:
    - 1) service may be available in each place within an area where there is poor or no coverage;
    - 2) 'drop-outs' may occur;
    - 3) there may be delays in transferring data when switching between bearer networks;
    - 4) there may be congestion on Carrier Mobile Network;
    - 5) there may be loss of packets of data or failures in downloads for data usage.
  - (h) The Client is solely responsible for:
    - 1) maintenance and use (including charges arising from traffic generated by) all Client equipment and software used to connect to the Smartcom Network, except to the extent maintenance or replacement support is provided in the Service Agreement and/or any warranty or service support arrangements under it in relation to the Equipment;
    - 2) the security and integrity of any information that the Client or any of its End Users transmits or receives.
  - (i) Smartcom does not check and is not obligated to monitor the Client or End User's use of the Smartcom Facilities or Network or the internet, and is not liable or responsible for:
    - 1) any Loss suffered by the Client or any other person as a result of using information or material obtained using the Smartcom Facilities or Network, including, but not limited to, Loss caused by a virus;
    - 2) informing the Client that Smartcom may be required to intercept communications over the Service and may also monitor usage of the Service and communications sent over it.
  - (j) Smartcom has certain obligations to assist law enforcement and other agencies, including a requirement to ensure that it or the Client is capable of intercepting a communication passing over the Client's network or facilities;
  - (k) The Client is responsible for all aspects of any other services it supplies to End Users using the Services, including complying with all applicable Laws and regulatory obligations except to the extent those services are provided by Smartcom

### 13. Use of Services – Client negative covenants:

The Client must not, and will procure that End Users do not:

- (a) use the Services:
  - 1) in contravention of any applicable Law;
  - 2) in any manner that is indecent, obscene or otherwise offensive, menacing, threatening or abusive;
  - 3) in any manner that is defamatory or tortious or infringes the rights of any third party;
  - 4) in a way that interferes with the use of the Services by other Clients of Smartcom;
  - 5) to access or attempt to access the Personal Information of any person who is not an End User;
  - 6) in connection with a device that switches or re-routes calls to or from the Carrier Network;
- (b) act or attempt to act as wholesaler of our Service (including transit, refile or aggregate domestic or international traffic) or the Carrier Network or resell or re-supply the SIM or our Service to others; or
- (c) undertake behaviour or usage which would be considered by Smartcom or a Carrier to constitute an abuse of the Network, which might include:
  - 1) excessive aggregating of data accounts;
  - 2) illegal activity;
  - 3) automated applications;
  - 4) knowingly transmitting any virus or other harmful software;
  - 5) any action or attempt to access, corrupt, interfere with, hack disassemble, decompile or reverse engineer any software used or provided by Smartcom in relation to the Service.

### 14. Use of Services – Client positive covenants:

The Client must, and will procure that End Users:

- (a) shall be authorised Client employees or Directors only, or other invitees at Client Premises;

- (b) notify Smartcom immediately if it becomes aware of any resupply of any Services by any End User or any other person;
- (c) use reasonable endeavours to comply with the procedures set out by Smartcom;
- (d) in using the Services, performing its obligations and exercising its rights under this Services Schedule (which includes, in the case of the Client, when supplying any services to End Users), comply with all applicable Laws, including:
  - 1) the TA including any codes or standards in force under Part 6 (Industry Codes and Industry Standards) of the TA;
  - 2) the TCPSS Act;
  - 3) the Interception Act;
  - 4) the BSA;
  - 5) the CCA;
  - 6) Privacy Laws;
  - 7) Laws relating to occupational health and safety; and
  - 8) all industry codes and standards made by the ACIF division of Communications Alliance Ltd, which are registered with the ACMA or to which Smartcom is a signatory.
- (e) provide such assistance as Smartcom may reasonably require to comply with applicable Laws, including assistance required in relation to obligations relating to or arising under:
  - 1) Directory Assistance Services;
  - 2) Operator Services;
  - 3) the Integrated Public Number Database;
  - 4) Emergency Call Services; and
  - 5) Part 14 (National Interest Matters) of the TA, and
  - 6) the Interception Act.

## 15. Interception

In addition to Client's obligations set out above where Smartcom receives and copies to Client a warrant or other official interception directive from the Regulator or a Governmental Agency relating to an End User, Client must comply with any warrant or directive and, on request, must provide to Smartcom copies of all relevant End Client records generated or controlled by Client.

## 16. Warning of Suspension for events beyond Smartcom control

Smartcom may suspend the Services in the circumstances set out in this Schedule 2. Where Smartcom is entitled to, or does suspend the Services it will endeavour to give as much notice as reasonably practicable of any Service suspension and will use reasonable endeavours to minimise any Service disruption and/or suspension where that suspension arises from any of the following circumstances:

- (a) Smartcom is required to undertake the repair, maintenance or service of any part of the facilities or equipment owned or operated by Smartcom relevant to the provision of the Services (or an interconnected supplier is required to undertake such work on its network);
- (b) due to events caused by a third party Telecommunication Provider that provides services to Smartcom and on which the Services are dependent;
- (c) Smartcom is required to comply with an order, instruction or request of or by a government or regulatory authority, the ACMA, emergency services or other competent authority.



## Schedule 2: Service Level Agreement

### Introduction

This SLA formalises Smartcom’s commitment to the Client and outlines our operational policies and practices that define the customer experience. This SLA outlines our commitment to the Client in relation to services that may include: Data Network Connections (DSL and Wireless Connections); Co-location; Ethernet; Frame Relay; Electronic Messaging; and Wavelengths & Voice Services.

### Commitment to Provide Technical Support

Smartcom will provide the Client access to technical support during the operating hours outlined in table 1. Smartcom endeavours to provide a quick response to all queries, however during high volume support periods the Client may be asked to leave a message through our voicemail service. Similarly, if the Client places a support call before or after the aforementioned access hours, the Client may be asked to leave a message through our voicemail service.

If a message is left with Smartcom’s telephone voicemail service, a technical support officer will return the call within two hours of the commencement of the next business day.

Table 1: Operating Hours

Days	Operational Hours
Monday to Friday	Mon-Fri 8.30am to 5pm

\*Support is not provided on Australian National Public holidays.

### Service Desk

Smartcom agrees to provide the Client with IT Helpdesk support as per the Terms & Conditions of the Agreement with Smartcom. The Client may access the Service Desk via; telephone or email. Note: the Client must provide Smartcom with remote site access in order to provide some support services.

### Client ID

Each Client is issued with a unique Client ID number. It is mandatory for this number to be quoted when seeking assistance from the Service Desk.

### Case Number

All enquiries directed to the Service Desk are assigned a classification and Case # - this is regardless of the communication method used to contact the Service Desk. The Case # is used as a reference thereafter for prompt and efficient service.

### Case Categories & Response Times:

After a preliminary diagnostic analysis, each Case # will be categorised and acted upon accordingly.

### Fault Reporting

The Client is responsible for isolating and rectifying technical faults within their LAN based equipment and software. In cases where the Client believes that the fault is not in their equipment, but in the Smartcom network, the fault is to be logged by phone or email to the Smartcom Support Desk. All faults logged with Smartcom will be issued a Case Number for reference.

### Service Availability Targets

Smartcom strives to meet the following Service Availability Targets;

Table 2: Service Availability

Service	Target Service Availability	Operational Hours
All DSL and Wireless Services	98.8%	Mon-Fri 8.30am to 5pm
Co-Location, Ethernet, Frame Relay (x.163), SMS, Wavelength and Voice Services	99.9%	Mon-Fri 8.30am to 5pm

### Voice Quality of Service

On the provision that Smartcom provides the Client with a private WAN connection, the target service levels measured from the Smartcom POP to the end CPE demarcation point; over a 24 hour period is outlined in table 3;

Table 3: Voice Quality of Service

Item	Target Service Availability
RTA Latency	sub 30ms
Jitter	sub 2ms
Loss	0%

### Planned Service Outage Notifications

Smartcom may plan a service outage to conduct necessary maintenance and upgrades to the Smartcom network. In this event, Smartcom will notify the Client and will provide details of the Planned Service Outage. Smartcom will use reasonable efforts to

provide a minimum of 5 business days notification of any planned service outage. Smartcom will attempt to schedule any such outages between 9:00pm and 6:00am AEST.

In circumstances where an emergency service outage is required, Smartcom reserves the right to undertake the service outage without notice. In such cases Smartcom will endeavour to notify the Client prior to any service outage.

### Changes to Service Level Agreement

By using the Service, the Client agrees to accept the provisions of this Service Level Agreement, and the related Service Reliability Commitment, or their subsequent amendments. Smartcom reserves the right to change this Service Level Agreement from time to time, providing prior notice is given to the Client.

### Response and Restoration Targets

Response times are outlined in table 4.

Table 4: Service Desk Request Categories & Response Times:

Issue	Category	Initial Response Time Telephone	Initial Response Time Email
System Outage	Severity 1	within 15 minutes.	within 15 minutes.
User (s) Affected Incident	Severity 2	within 15 minutes.	within 30 minutes.
Feature Affected Incident	Severity 3	within 15 minutes.	within 1 hour.
Change to Feature Requested	Severity 4	within 15 minutes.	within 1 business day.
General Request	Severity 5	within 15 minutes.	within 1 business day.

### Target Restoration Times

Restoration Times for Faults Logged During Business Hours;

Table 5:

Time of Day	Target Time Response	Applicable Services
CBD/Metropolitan	Within 12 business hours	All Services
Regional	Within 24 business hours	All Services

NOTE: Restoration time targets apply on the basis that a site visit is not required to rectify the fault. If an engineer is required to visit the Client's premises, a local exchange or street cabling pits longer restoration times can be expected. Furthermore, Service restoration targets are conditional on Smartcom or an approved representative having access to the Client's premises and equipment. Upon restoration of the service, Smartcom will contact the customer and confirm that the Service is operating suitably.

### Service Availability Rebates

Where Smartcom fails to meet the above Service Availability Targets, the Client may in certain circumstances be entitled to a service fee rebate; where a fault is attributed to the Smartcom network and the fault is not part of a Planned Outage, Smartcom may provide a service fee rebate to the Client. Where a fault is attributable to a copper fault or a fault related to the Client network (including power to the CPE), no rebate is payable for service downtime.

Table 6: Rebates

Service Unavailability (Total hours per month within Coverage Window)	Location	Rebate % of Monthly Recurring Charge	Applicable Services
More than 1 hour, less than 4 hours	CBD/Metro	10%	Co-Location, Ethernet, Frame Relay (x.163), SMS, Wavelength and Voice Services
More than 4 hours but less than or equal to 6 hours	CBD/Metro	15%	Co-Location, Ethernet, Frame Relay (x.163), SMS, Wavelength, Voice, Wireless and DSL services.
More than 24 hours but less than or equal to 26 hours	Regional	15%	Co-Location, Ethernet, Frame Relay (x.163), SMS, Wavelength, Voice, Wireless and DSL services.
More than 6 hours	CBD/Metro	30%	Co-Location, Ethernet, Frame Relay (x.163), SMS, Wavelength, Voice, Wireless and DSL services.
More than 26 hours	Regional	30%	Co-Location, Ethernet, Frame Relay (x.163), SMS, Wavelength, Voice, Wireless and DSL services.

### Exceptions to Service Level Agreement

Smartcom is not responsible for outages in the following circumstances:

1. Where the outage is a consequence of a Smartcom Scheduled Maintenance Event and the Client has been advised by email at least 7 days prior to that maintenance.
2. Where service downtime is as a result of an act of God, inclement weather, flood, lightning, fire, or any other natural disaster, industrial action, the act or omission of any government, terrorism, war, military operations or riot.
3. If the Client cannot access the Smartcom Service as result of a technical issue at their end, including, but not limited to, hardware or software issues, internet connectivity issues, services provided by third parties or agents.
4. Where any other failure to perform its obligations by Smartcom is attributable to third party carriers, or any other telecommunications service provider beyond Smartcom's direct control, or attributable to materials or elements provided by the Client.