

Smartcom Business Communications Pty Ltd (Smartcom) ABN: 43 119 984 977, supplies telecommunications and cloud services, including, but not limited to; software as a service; hardware; outbound voice carriage; inbound voice carriage including phone numbers with prefixes; 13, 1300, 1800 (AUS) and 0800 (NZ); SIM cards; and electronic messaging; voice, chat, facsimile & SMS. **Collectively, these services are referred to as; the 'Service'** - regardless of whether all, or parts of the Service is supplied to the Client. The Service is manufactured and/or supplied by Smartcom and third party providers.

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 thereby 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 the Service provided by Smartcom to the Client under the Agreement.
- B. The provision of the Service by Smartcom is upon the request of the Client.
- C. Smartcom agrees to provide the Service within the terms and conditions 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 Upon execution of the Service Agreement, a Client Account will be activated, and hence both Parties are obligated to adhere to the terms and conditions herein.

3.2 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.

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

3.4 The Client may use the Service in accordance with all applicable laws and regulations only. **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 clause 13.1.**

4. Service 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 an Account has been set-up, the Service will be activated as soon as practicable; **taking into consideration Smartcom's work schedule and the Client's adherence to the installation requirements as directed by Smartcom.** Prior to 'Go-Live', Smartcom will advise the Client that the tasks necessary to grant access to the Service have been completed, with the Service deemed as '**Go-Live**' at this point.

4.3 The Client must notify Smartcom via email if access to the Service has not been granted post 'Go-Live'; whether the Client has been notified by Smartcom or otherwise.

4.4 Smartcom reserves the right at any time to re-assess the requirements detailed in the Agreement, and to issue a revised statement of the scope and functionality; and subsequently an amendment to the Service Agreement, stipulating the specific requirements for a Service which may include, but not limited to; additional hardware, software or professional services; which may incur additional costs to the Client.

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. Cancellation

In the event that the Client cancels the Agreement prior to Go-Live, the Client will forfeit the Set-Up Fee, and a cancellation fee (Break-Free) is payable by the Client, to the amount of;

1. Cancellation '**Break-Free**' Fee: Refer Service Agreement
2. Smartcom has been, or will be charged by a supplier at a cost to Smartcom arising from and due to the Service Agreement not proceeding for any reason; and
3. **Smartcom's cost in processing the** Service Agreement, up and until the time that the Service Agreement is no longer progressed by Smartcom, irrespective of whether the Service Agreement has been issued or not.

6. Premises

6.1 In order to provide a Service to the Client, we may need access to Client Facilities and/or the Client Premises. The Client must therefore provide Smartcom and/or its contractors safe access and prompt access to the premises;

1. To install equipment for the Service that the Client has requested;
2. To inspect, test, maintain, modify, repair or replace any equipment; and
3. To recover Smartcom equipment after the Service is cancelled.

6.2 Subsequently, the Client must provide Smartcom and/or its contractors with permission to access the Client Premises and install, and maintain any equipment. In doing so, the Client indemnifies Smartcom against any costs arising in connection with any claim against Smartcom relating to entering the Premises, providing the Service, providing Equipment, or installing or maintaining any equipment or other item, whatsoever, at the Premises.

6.3 If the Client reports a fault in a Service and thereby requests Smartcom to come to the Premises to repair it; however once at the Premises we determine that a Service is not faulty, or the fault is associated with the Client ICT Environment as against the Service; or the fault is the cause of something that the Client has done, or has not done, or something someone else using the Service does, or does not do – intentionally, recklessly or negligently, Smartcom reserves the right to charge the Client a call-out fee. Likewise, if the Client requests Smartcom to repair the fault as determined by Smartcom, the professional services hourly rate may be applied and invoiced accordingly.

7. Equipment

7.1 In order to use the Service, it is the Client's responsibility to either provide, or acquire the necessary software and equipment to gain access to the Service. **It is the Client's sole responsibility for maintaining insurance for any such equipment.**

7.2 The Client may purchase equipment from Smartcom for use with the Service (Purchased Equipment). The Client must pay for that equipment in accordance with the trading terms of the Agreement, or as per notified by Smartcom from time to time.

7.3 Freight and insurance costs for delivery of Purchased Equipment and 3rd Party 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 shipment by Smartcom to **the Client's nominated delivery address.**

7.5 Title to Purchased Equipment passes to the Client when the equipment is paid for in full; whereby the transfer of any manufacturer's warranty passes to the Client. Until such time, the Equipment remains the property of Smartcom, and hence the Client must not part with possession of Purchased Equipment until payment in full.

7.6 The supply of Purchased Equipment is dependent on available inventory and supply from third parties. In the event that Smartcom is unable to source the equipment detailed in the Service Agreement, Smartcom will recommend suitable, equipment as an alternative; making every effort to minimise a detrimental cost differential to the Client, albeit not guaranteed.

The Client may reject Smartcom's new recommendation for equipment and choose different equipment as an alternative. Under no circumstance does any part of this clause (7.6) constitute grounds for termination of the Agreement, unless after all attempts, alternative equipment is also unavailable and therefore unable to be ordered up to a period of sixty (60) days of Smartcom advising the Client that the original equipment could not be secured.

7.7 The price of Equipment may vary from the time of quotation to the Client, to the time of a Service Agreement being place with a supplier. This is typically attributed to fluctuations in international currencies. To avoid incurrence of price increases, Smartcom will honour the prices quoted in formal documentation for a period of five (5) business days for correctly specified equipment.

7.8 If during the Client Activation Process, Smartcom determines any Purchased Equipment to be incompatible with the Client ICT Environment, Smartcom will re-scope the equipment required, and thereby recommend alternative equipment in a revised statement of the scope and functionality. In this event, Smartcom may exchange equipment at its absolute discretion, and only if the equipment to be exchanged is returned to Smartcom to the nominated delivery address, undamaged and complete with all components, and with the packaging intact - within fourteen (14) days of notification by Smartcom to the Client.

7.9 If the Client purchases the wrong equipment, Smartcom may exchange equipment at its absolute discretion, and only if the equipment to be exchanged is returned to Smartcom to the nominated delivery address, undamaged and complete with all components, and with the packaging intact, within fourteen (14) days of notification by the Client to Smartcom.

7.10 If Smartcom exchanges equipment to the Client in accordance with either clauses 7.8 or 7.9, the Client will pay to Smartcom all reasonable administration charges and service fees determined by Smartcom to its absolute discretion to cover all costs incurred by Smartcom arising out of the exchange of equipment.

7.11 Standard Provisioning of telephony equipment and software, (namely Handsets and Softphones) is via remote access to the Client Network. At times, Smartcom may require access to the Client Premises to provision Services. (Refer Clause 6)

7.12 Once the warranty of Purchased Equipment has expired, **it is the Client's responsibility to pay for any replacement equipment needed to use the Service. Under no circumstances is Smartcom responsible for the replacement or exchange of Purchased Equipment outside any manufacturer's warranty.**

7.13 Replacement insurance for some Purchased Equipment, ie: Handsets, is available at an additional cost. If the Client elects to pay for this service, it will be detailed in the Service Agreement and/or subsequent purchase documentation.

7.14 To its own discretion, Smartcom may determine that the Client may need to make changes to its ICT Environment to gain access to the Service.

7.15 Smartcom is not responsible for rectifying equipment supplied by the Client. Nor is Smartcom responsible for rectifying any fault in the Service that arises in, **or is caused by the Client's** ICT Environment, or by the Client in any way. Before reporting a fault to Smartcom, the Client must take reasonable steps to determine whether the fault is in fact a fault of Equipment supplied by Smartcom.

8. Delays

8.1 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.

8.2 Smartcom shall not be responsible for the delay in delivery or functionality of the Service from any 3rd party suppliers or vendors.

8.3 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. This includes the **Client's** failure to meet responsibilities in relation to activation of the Service to the Client.

9. Agreement Term

9.1 Upon execution of the Service Agreement, both Parties are obligated to adhere to the terms and conditions herein.

9.2 The Agreement term is detailed in the Service Agreement. At the completion of the initial contract period; the Agreement will rollover for a further 12 months, and on an annual basis.

9.3 The Agreement term detailed in the Service Agreement commences from the **'Go-Live' date. For clarity, the monthly charges** for the Service, such as, but not limited to; subscription, licensing, hosting fees and telecommunication charges commence as of the **'Go-Live'** date, and monthly thereafter for the period of the Agreement term.

10. Termination

10.1 Either party may terminate the Agreement by providing the other party with sixty (60) days written notice prior to the end of each Agreement term.

10.2 The Agreement may be terminated immediately if:

- (a) Smartcom 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) Smartcom reasonably considers the Client as a credit risk.
- (d) it becomes unlawful for the Client to perform its obligations under the Agreement, or the performance by a party of their obligations under the Agreement is in breach of a law;
- (e) the Client sends Restricted Content to End Users;
- (f) the Client threatens the operation, technical integrity or liability of Smartcom's **Facilities in the reasonable opinion of** Smartcom.
- (g) 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.

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

10.4 Upon termination, whether it be prior to, or at the end of an Agreement term for any reason, the Client agrees to 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); an amount equal to the average of the last three months of normal invoiced amounts and no less than the minimum monthly fee, multiplied by the number of months remaining in the Agreement term; 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.

10.5 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.

11. Client Obligations

11.1. 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.

11.2. 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.

11.3. 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.

11.4. Without limiting the operation of clause 11.3, 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.

11.5. 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 Providers 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.

11.6 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.

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

12. Grant of Service

12.1 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.

12.2. 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.

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

12.4 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.

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

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

12.7 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.

12.8 Smartcom may from time to time, without liability: vary the Service; or modify, change, upgrade or enhance the Smartcom Facilities or Network or any other technology, software or equipment that Smartcom uses to provide a Service.

12.9 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 will be properly installed.

13. Suspension of Service

13.1 Smartcom may to its absolute discretion, suspend or cancel any Service without liability in the event of:

- (a) a Client breach: the Service is used by the Client or any End User in breach of the Terms and Conditions of the Agreement;
- (b) the Client does not pay a Bill within thirty (30) days after the due date;
- (c) the 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 are 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 ACMA) 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);
- (l) the ACCC issues Smartcom with a Competition Notice in respect of the Service or Smartcom anticipates that it may do so;
- (m) Smartcom has evidence, or reasonably suspects that the Service, or any part thereof, has been modified by the Client, or any other person without authorisation from Smartcom.

13.2 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;
- (b) Client action following unacceptable activity: where Smartcom provides evidence to the 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).

13.3 Notification of suspension of Services:

Where a suspension event occurs, or suspension right arises, Smartcom may take the steps 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 acts 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 thirty (30) days from the due date), prior to Services being suspended, cancelled or limited, due to non-payment.

14. Consequences of Suspension

If the Service is suspended as per clause 13.1, the Client must pay all charges arising before, during and after suspension in accordance with the Agreement.

15. Pricing

15.1 Fees and Charges are detailed in the Service Agreement.

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 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, is for a service that has a recurring monthly charge, and directly increases the cost of a specific service used by the Client under the Agreement; if the increase is greater than the Consumer Price Index (CPI) at the time. For clarity, the Client cannot terminate the Agreement if there is a unit cost increase for a service that the Client is not currently using, and as a result, any price increase would not affect the Client.

15.4 At the completion of the initial Agreement Term, Smartcom reserves the right to increase the prices detailed in 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.

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

15.6 Services that incorporate telecommunications, include charges for Voice and Electronic Messaging. Some services incorporate either a Flat Fee or Variable Rates. Likewise, some services are available as Variable Rates only. Flat Fees can be invoiced either Monthly or Annually. Variable charges are invoiced Monthly. All calls on Variable Rates are rounded up to the nearest cent.

15.8 Electronic Messaging is charged per message, at the point in time that messages have been sent from the Smartcom Network. For Clarity in relation 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 characters and charged accordingly.

15.9 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 finalise the Client Account upon termination.

16. Taxes

16.1 Unless otherwise stated in writing, prices are exclusive of Goods and Services Tax (GST) or Value Added Tax (VAT); and the Client is responsible and liable for all customs and import duties, and taxes including GST, VAT, 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 Payments may include recurring and/or fixed charges. The Client agrees to make payments in accordance with the Terms and Conditions of the 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 in accordance with clause 10.4.

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 part of the Service without notice, and for the Service to remain suspended until such payment is made to Smartcom. (Refer clause 13)

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, or 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.

17.10 Payment by Credit Card, EFT or secure payment gateways is the standard accepted method of payment. A surcharge for payment by Credit Card may be charged by Smartcom at its discretion.

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) 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 this 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 the Agreement, in relation 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 the Agreement.

21. Data Management

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

21.2 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

21.3 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.

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

21.5 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.

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

21.7 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.

21.8 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.

21.9 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.

22. Warranties

22.1 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.

22.2 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.

22.3 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.

22.4 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.

22.5 **Smartcom provides each Service 'as is', and to the extent permitted by law, disclaims all warranties, liability or conditions**, express or implied, in relation to the Agreement, including but not limited to implied warranties as to the merchantability and fitness for a particular purpose, or for negligence.

22.6 To the extent that any law prohibits Smartcom from so disclaiming any warranty or condition, to the extent permitted by law, Smartcom limits its liability in the manner permitted by Australian Consumer Law or equivalent legislation in the jurisdiction which implies certain consumer protection warranties.

22.7 3rd 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.

22.8 The Client uses the Service 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

23. 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.

24. Confidentiality

24.1 Parties obligations

The Parties agree to keep confidential, and not to use or disclose, other than as permitted by the Agreement, any Confidential Information of the other party provided to or obtained by the other party before or after entry into the Agreement.

24.2 Exclusions

The obligations of confidence in clause 24.1 do not apply to Confidential Information:

- (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency, as long as the Client:
 - i. discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - ii. before disclosing any information, gives all available written notice to Smartcom and takes all available steps (whether required by Smartcom or not) to maintain such Confidential Information in confidence; or
- (b) that is in the public domain otherwise than as a result of a breach of the Agreement or other obligation of confidence.

25. Privacy

25.1 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.

25.2 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.

25.3 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.

26. 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.

27. Indemnification

27.1 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.

27.2 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.

27.3 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.

27.4 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.

27.5 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.

27.6 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.

27.7 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.

28. Severance

28.1 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.

28.2 Notwithstanding clause 28.1, 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.

29. 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.

30. 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.

31. Waiver

31.1 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.

31.2 A party is not entitled to rely on a delay in the exercise or non-exercise of right, power, authority, discretion or remedy arising from a breach of the Agreement or default under the Agreement as constituting a waiver of that right, power, authority, discretion or remedy.

32. 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.

33. 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.

34. General Provisions

34.1 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.

34.2 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.

34.3 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.

34.4 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

34.5 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 34.4; 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.

34.6 The Agreement governs the independent relationship between Smartcom and the Client. Nothing herein shall be constructed 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.

34.7 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.

34.8 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.

34.9 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.

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

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

34.12 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.

34.13 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.

34.14 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.

34.15 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.

34.16 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.

34.17 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.

34.18 Smartcom may amend the Terms and Conditions from time to time without agreement by the Client. Subject always to the relevant legislation **and in Smartcom's absolute discretion**. If Smartcom makes a change which is detrimental to the Client, Smartcom may notify the Client at least thirty (30) days before the proposed changes take effect in writing.

34.19 A Service may use identifiers such as IP addresses or domain names. The Client must comply with the requirements of any Regulatory Authority or other body which administers Public Addressing Identifiers. Further, the Client therefore agrees that Smartcom does not control the allocation of Public Addressing Identifiers; and that, Smartcom is not liable to the Client if Smartcom is required to change, withdraw, suspend or reassign any Public Addressing Identifiers as a result of any direction given by a Regulatory Authority or another body which administers Public Addressing Identifiers, and on cancellation of the Service, your right to use a Public Addressing Identifier may cease.

35. Interpretation

35.1. 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.

35.2 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 inoperative for any reason, then the rest of this Agreement shall remain in force to the fullest possible content and application.

Definitions	
ACCC:	means the Australian Competition and Consumer Commission.
Account:	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.
ACMA:	means the Australian Communications and Media Authority.
Activation:	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.
Adverse Event:	<ul style="list-style-type: none"> (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. (b) A liquidator, provisional liquidator, trustee, receiver or administrator of the party is appointed. (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. (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. (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). (f) The party ceasing, or indicating that it is about to cease, carrying on business. (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.
Agency:	has the meaning given in the Interception Act.
Agreement:	Refers to the binding contractual arrangement between the Client and Smartcom set out in the Agreement and its Schedules.
Allocated Service Numbers:	means the Service Numbers allocated to the Client.
Annual Numbering Charge:	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.
Break-Free Fee:	means a cancellation fee or termination charge calculated in accordance with terms set-out in the Agreement.
BSA:	means the Broadcasting Services Act 1992 (Cth).
Business Day:	means a day upon which trading banks are open for business in Queensland.
Call Associated Data:	means call related data for an End User.
Call Charge Records:	means those records of calls made by an End User where available to Smartcom.
Carriage Service Provider:	has the meaning given in the TA.
Carriage Service:	has the meaning given in the TA.
Carrier:	has the meaning given in the TA.
CCA:	means the Competition and Consumer Act 2010 (Cth)
Charges:	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.
Claim:	means any claim, action, proceeding or investigation of any kind and includes the allegation of a claim.
Client Activation Process:	means the formal process of on-boarding the Client for Services ordered.
Client Data:	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.
Client Facilities:	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.
Client Premises:	means any premises owned or occupied by the Client.

Client Services:	means any services supplied by the Client to an End User using the Services.
Confidential Information:	means, in relation to each party (for the purposes of this definition, the Discloser): (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; (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; (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; (d) the terms & 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: (i) is publicly known or becomes publicly known other than by breach of the Agreement or any other obligation of confidentiality; (ii) is disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or (iii) is developed independently by the other party without reliance on any of the Discloser's Confidential Information.
Consequential Loss:	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 any penalties or fines imposed by a Regulatory Authority.
Content:	means the content or content services made available or communicated to End Users by the Client.
Corporations Act:	means the <i>Corporations Act 2001 (Cth)</i> and any regulations made under it.
CPE:	means Customer Premise Equipment
CPI:	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.
De-Activation:	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.
Dedicated Number:	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.
DID Number:	means Direct Inward Dialling Number
Dispute Notice:	means formal document presented by the Client in regard to contended Charges.
Directory Assistance Services:	has the meaning given in the TA.
Electronic Messaging /Communication:	Refers to any electronic means of sending or receiving information ie; SMS, Voice, Facsimile, Email, Chat & the Internet.
Emergency Call Services:	has the meaning given in the TA.
Emergency:	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.
End User:	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.
End User Contract (if any)	means a contract for the supply of Client Services to an End User.
End User Loss:	means any Loss suffered by a person who receives a Service directly or indirectly from the Client.
Equipment:	The Smartcom system or components thereof that are installed onsite at the Client site or at a designated location ie; data centre.
Facilities:	Refers to Smartcom's infrastructure and/or interfaces needed to deliver and gain access of Services.
Fees:	mean the Account Activation and License Fee, Monthly Access Fee, Monthly License Fee, Custom Development Fee, and any other agreed cost.
Flat Rate:	means a monthly price without variation.
Go-Live:	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.
Handset:	means the telephony hardware, used to receive and transmit audio and/or video via a PBX.
Headset:	means the telephony device connected to a Handset or Computer; that is worn on the head by users to receive and transmit audio.
ICT Environment:	means the Client Information, Communication & Technology environment.

IN Platform:	means the Smartcom Intelligent Network Platform as modified by Smartcom from time to time.
Integrated Public Number Database:	has the meaning given in the TA.
Intellectual Property Rights:	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.
Interception:	has the meaning given in the Interception Act.
Interception Act:	means the Telecommunications (Interception and Access) Act 1979 (Cth).
Interception Capability:	has the meaning given in the Interception Act.
Law:	means any: <ul style="list-style-type: none"> (a) legislation, regulations, determinations, by-laws, declarations, ministerial directions and other subordinate legislation; (b) common law; (c) government agency requirement or authorisation (including any conditions of any authorisation); (d) mandatory codes, standards and guidelines; (e) writ, order, injunction or judgement; or (f) local government legislation including regional, district and zone plans, regulations, by-laws, declarations and other subordinate legislation.
Loss	means all losses, expenses, damages, fees, fines and costs (including legal costs on a full indemnity basis).
Minimum Monthly Fee:	means the minimum fee due in particular month, regardless of usage.
Monthly Access Fee:	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.
Monthly License Fee:	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.
Network:	has the meaning given to the term "telecommunications network" in the TA.
Number Portability:	has the meaning given in the TA and the Numbering Plan.
Number Register:	means the register of numbers maintained by the ACMA pursuant to section 465 of the TA.
Numbering Plan:	means the Numbering Plan made by the ACMA under the TA.
Operations Manual:	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.
Operator Services:	has the meaning given in the TA.
Order:	means a valid order of a court or tribunal of competent jurisdiction.
Premises:	means locations at which Smartcom supplies the Service and locations to which Smartcom needs to have access to supply the Service
Purchase Equipment:	has the meaning set out in clause 7.
Personnel:	of a party means that party's officers, employees, agents and contractors.
POP:	Point of Presence
Privacy Laws:	means the Privacy Act 1988 (Cth) and Part 13 of the TA.
Public Mobile Telecommunications Network:	means a Network that supplies a "public mobile telecommunications service" as defined in section 32 of the TA.
Restricted Content:	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"> (a) promotes, incites or instructs in matters of crime; (b) describes, incites or promotes unlawful sexual activity; (c) promotes or incites violence against any person or group, or incites racial hatred; (d) causes unnecessary alarm, distress or panic; (e) breaches a code of practice that applies to the Service; (f) is false, misleading or deceptive, or likely to mislead or deceive; (g) provides financial advice to any person; (h) is out of date, having regard to information generally available, subsequently published, or released, or made available; or (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).
Regulatory Authority:	means:

	<ul style="list-style-type: none"> (a) any government or local authority and any department, minister or agency of any government; and (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.
Regulatory Event:	<p>means:</p> <ul style="list-style-type: none"> (a) the enactment, amendment, replacement or repeal of the TA, the TCPSS Act, the CCA, the BSA or other telecommunications related legislation or regulations; (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; (c) the determination, addition, variation or removal of a service provider rule (as defined in the TA) applicable to a party; (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; (e) the issue of a competition notice to a party under Part XIB of the CCA; (f) the grant of an injunction against a party in relation to a breach or alleged breach of the CCA; (g) the giving of a lawful direction to a party by the ACCC, the ACMA or any relevant Minister or other governmental agency or authority; (h) an arbitration by the ACCC under Part XIC of the CCA; or (i) 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.
Schedule:	means a schedule to the Agreement.
Security Deposit:	means a sum of money paid in advance and held in trust as part of the Payment Terms of the Service Agreement.
Service Level:	means the service levels set out in the Service Level Agreement provided to the Client.
Service Number:	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.
Service:	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.
Service Support:	means the support of Services provided by Smartcom to the Client. Refer Schedule 2.
Smartcom Facilities & Network:	means Smartcom's infrastructure, platforms, gateway and systems technology which the Client will connect to in order to operate the Services.
Smartcom Group	means all entities directly associated and under control of Smartcom.
Subscription:	means monthly fees paid in advance for Services
TA:	means the Telecommunications Act 1997 (Cth).
TCPSS Act:	means the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth).
Telecommunications Carriage:	means Voice & Data services provided to Smartcom for its Services by 3 rd Party Telecommunications Carriers.
Telecommunications Providers:	means an Australian and/or international telecommunications carriers.
Terms & Conditions:	Refers to the terms and conditions in the Agreement.
Third Party Claim:	means any claim or potential claim by a third party against Smartcom in relation to the provision of Services or use of them by the Client.
Upgrades:	means improvements made to the Service from time to time
Variable Rate:	means a fixed rate applied usage of Services.
Voice Services:	means the services described in the Voice Service Schedule which is provided under the terms and conditions set out in the Agreement.
Warrant:	means a valid warrant issued under the Interception Act.
WAN:	Wide Area Network
Year:	means any 12-month period commencing on the Commencement Date or an anniversary of the Commencement Date.