

**COOPER COMMUNICATIONS PTY LTD**

**AND**

**RECURRING AND POTENTIAL CUSTOMERS**

---

**STANDARD FORM OF AGREEMENT**

---

**Cooper Communications Pty Ltd** (ACN 079 736 968)

PO Box 86,

Brunswick Heads, NSW 2483

Phone: 1300 972 104

Email: [support@cooperict.com.au](mailto:support@cooperict.com.au)

## Standard Form of Agreement

### 1. Terms and Conditions

Please take the time to read this Standard Form of Agreement ("Agreement").

This Agreement shall form part of your Services Agreement with Cooper Communications along with our Website Terms and Conditions and other relevant documents such as our Policies and Procedures for the sale, supply, provision and use of telecommunications products and services.

This is Cooper Communications Pty Ltd Standard Form of Agreement under section 479 of the *Telecommunications Act 1997* (Cth).

Your access to the Cooper Communications Pty Ltd website at [www.coopercommunications.com.au](http://www.coopercommunications.com.au) and related products and services is dependent upon your acceptance of Agreement. If you do not accept this Agreement and related documents, you must refrain from using the Website and taking up our products and services.

#### *Definitions*

- Good and products refer to the products offered for sale on our website; [www.coopercommunications.com.au](http://www.coopercommunications.com.au)
- Services refers to activities offered on our website; [www.coopercommunications.com.au](http://www.coopercommunications.com.au)
- We/us/our refers to Cooper Communications Pty Ltd, any affiliates, subsidiaries, employees, officers, agents or assigns.
- Website refers to this website; [www.coopercommunications.com.au](http://www.coopercommunications.com.au)
- Cooper Communications refers to Cooper Communications Pty Ltd.
- Customer Premises Equipment (CPE) refers to telephone handset, indoor access router, modem, outdoor radio unit and software.

### 2. Intellectual Property

- a) The Website, Services Agreement and materials contained therein are subject to Copyright under Australia Law and under International Treaties. Unless otherwise indicated, the Copyright is owned by Cooper Communications or its related companies and reserves all rights.
- b) You must not reproduce, transfer, adapt, distribute, lease, rent, sell or store any or all parts of the Website and Services Agreement or incorporate into another Website without our prior consent, except for personal use or in accordance with the law.
- c) The Website and Services Agreement includes registered and unregistered Trademarks, being the property of Cooper Communications.

### 3. Privacy and confidentiality

- a) We usually collect personal information directly from you or from our record of how you have used our services. Sometimes we collect personal information from a third party if you have

consented or would reasonably expect us to collect the information in this way, for example from publicly available sources such as websites or telephone directories.

- b) You consent to us and our carriers or suppliers exchanging your information and/or details and the carrier or suppliers. Cooper Communications Pty Ltd and our respective related bodies corporate may all use your details for our own purposes.
- c) The kinds of information that we collect from customers include.
  - i. Contact information such as names, email address, mailing address and phone number.
  - ii. Demographic information.
  - iii. Billing information.
  - iv. Preferences regarding things like the way you prefer to be contacted, billed etc.
  - v. A fault history for your service.
- d) For non-customers the information we collect includes.
  - i. Contact information such as names, mailing and email addresses and phone numbers.
- e) Cooper Communications may when required, exchange your information and details with their carriers and suppliers and related entities to effectively deliver goods and services to you.
- f) When required by law we shall share your information as directed in accordance with the *Privacy Act 1988* (Cth) or any other applicable Acts.
- g) You will keep confidential all information supplied by us and any of our carriers or suppliers, by virtue of your subscription to our goods and services.

#### **4. Services Agreement**

We supply our services to you under a Services Agreement comprising of.

- a) This Standard Form of Agreement:
- b) Cooper Communications Professional Managed Services Agreement (PMSA):
- c) Service Schedule(s):
- d) Website terms and conditions:
- e) Policies and Procedures; and
- f) Any Service terms for that Service.

## 5. Plans

- a) Many of our Services & Products are offered under different Plans, with each having their own features, entitlements, terms of contract, Charges and special conditions.
- b) Your contract with us includes the terms of any Plan you select.

## 6. Peak and Off-peak

- a) A Plan you have selected may specify certain days and times as 'Peak' or 'Off-peak'.
- b) Different charges, entitlements or terms may apply in Peak and Off-peak periods. Your Plan will indicate how that applies in each case.
- c) We may bill you, and your Contract will operate, accordingly.

## 7. Service rates

- a) Our rates for On-site service are charged as per the below table plus the applicable Travel/Call out fee. "On-site" refers to your physical site address as listed on your account with us. Travel/Call out fee is not applicable with "Remote programming" or "Help desk & telephone support"
- b)

SERVICE RATES – Per Hour	PMSA 8:30am-5pm Mon-Fri	NON-PMSA 8:30am-5pm Mon-Fri	AFTERHOURS 5pm-8:30am Mon-Fri	WEEKEND Public Holidays
Telco Technician Hourly rate - Charged in 30min blocks	\$100.00	\$120.00	\$180.00	\$240.00
IT Technician Hourly rate - Charged in 30min blocks	\$130.00	\$150.00	\$225.00	\$300.00
Network Engineer Hourly rate - Charged in 30min blocks	\$160.00	\$180.00	\$270.00	\$360.00
Travel/Call Out Fee (0-100 kms)	\$65.00	\$70.00	\$100.00	\$120.00
Remote programming - Charged in 15min blocks	FREE	\$80.00	\$120.00	\$160.00
Help desk & telephone support – Charged in 15min blocks	FREE	\$80.00	\$120.00	\$160.00

- c) Our Service rates are subject to change.
- d) "PMSA rates" (Discounted) are applicable to customers that have taken up the "Cooper Communications Professional Managed Service Agreement" (PMSA) on a contracted monthly fee. If you would like to take up our "PMSA" please contact our head office to arrange a quote
- e) "Non PMSA rates" are applicable to all other customers and are bound to the terms & conditions stated in this Agreement.

## 8. Partner requirements

- a) The provision of Telecommunications services, including many of ours, are commonly provided through Partner Facilities, provided by third party Partners.
- b) Partners often have their own Partner Requirements for the use of their Facilities, and we may only be permitted to provide Services to you subject to our Partner's Requirements.
- c) You must comply with any applicable Partner Requirements we have notified you of.

## **9. Authorised contacts**

- a) When you create an account with Cooper Communications, by default the individual whose name the account was created under will have the authority to act on that account.
- b) If you wish to add any additional contacts, please contact us on 1300 972 104. Only once we have verified your authorisation will any other individuals be added as additional contacts. To affect this, we will require that individuals name, date of birth and phone number.

## **10. Events beyond our control**

- a) Neither party shall be liable to the other party for any loss caused by any failure to observe the terms and conditions of this Agreement, where such failure is occasioned by causes beyond its reasonable control including but not limited to by fire, flood, riot, strike, war, pandemics, restrictions and prohibitions or any other actions by any government or semi government authorities.
- b) We will not be liable for any delay in the connection of or failure in the operation of Services due to any occurrence reasonably beyond Our control including failure of any link provided by a third-party carrier.

## **11. Service description**

- a) We will connect your service(s) to the network as soon as is reasonable after our acceptance of your application, consisting of your written form or online internet form and related parts, to take up our goods and/or services.
- b) We will utilise all reasonable efforts to maintain service while you comply with this Agreement, if relevant.
- c) On a combination of Unbundled Local Loop Service (ULL), NBN and/or wireless infrastructure we will provide the telecommunications service(s), a standard (not priority) service, as indicated in the Application ('the Service') to you in Australia through such carrier or supplier network(s) as we nominate from time to time directly with the carrier, supplier or network operator (the 'Carrier' or 'Supplier').
- d) Where carriage is supplied, the quality of the carriage of the services will be the same as that of the carrier or supplier.

- e) Where we are providing data services, the access component of the relevant data service and optionally, a rented Customer Premises Equipment (CPE) router, are supplied to us by a third party(s) as a wholesale Supplier.
- f) You must not resupply any of the goods or services without our express agreement in writing.
- g) Where there is an exclusion or inconsistency between the terms and conditions of particular services and the Standard Form of Agreement, the latter shall prevail, to the extent of any such exclusion or inconsistency.
- h) Goods and services will not be available in all areas. The actual speeds you experience depends on several factors including equipment, the quality and location of your line or cabling, including how far your connection is from the local telephone exchange, distance from radio transmission base station, the weather, any programs or applications you are using, the capacity and speed of our systems, the systems of our carriers and suppliers, and the internet generally. For such reasons you should not expect your actual speed to be at or near the theoretical maximum.

## **12. Telephone numbers**

- a) In connection to a Service, you may be provided with a telephone number(s).
- b) We must comply with the Telecommunications Numbering Plan ('Numbering Plan') which sets out the rules of issuing, transferring, and changing telephone numbers.
- c) You have no claim against us arising from anything we do in complying with the Numbering Plan, including changing or withdrawing a number(s) previously allocated to you.
- d) You must know knowingly or deliberately:
  - i. Do anything that causes us to be in breach of the Numbering Plan or which makes it more difficult for us to comply; or
  - ii. Relocate, reassign, or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.
- e) You do not own any number(s) allocated to you, and except where the law permits you to transfer telephone service(s) and its number to another service provider, you have no right to retain a particular number when your contract with us comes to an end.

## **13. IP addresses, email addresses and domain names**

- a) You may in connection with your Service(s) be allocated IP addresses, email addresses, domain names or other internet identifiers.
- b) These internet identifiers are licensed, controlled and administered by authorities independent of us.
- c) We are not responsible for anything done, or required to be done, by these authorities.

- d) You do not own any internet identifiers allocated to you, and except where rules of the relevant authority permit you to transfer the internet identifiers to another service provider, you have no right to retain them once your contract comes to an end.

#### **14. Billing and payments**

- a) Ongoing fees for goods and services are charged in advance.
- b) Charges for services are determined in accordance with the plan rate, or by you accepting to use our services when you have accessed our online application forms, or such other manner specified in the application.
- c) We may change the amount of these charges or add new charges from time to time. If such a change would be of reasonable detriment to you, you shall be notified at least 30 days prior to the amendment taking affect.
- d) You will be invoiced for all calls, services, usage, product rental fees or other charges on a monthly basis, unless otherwise specified. You must pay all invoiced amounts by the date specified on the relevant invoice. If you have nominated automatic debit, your credit card will be charged on the invoice date.
- e) Invoices are generated at the beginning of the month, every month and will be sent to your nominated email address. If a new service has been taken up, the billing system will generate an invoice either on the same day of provisioning or the next day and will bill from that date till the end of the month. Any miscellaneous charges or purchases will be billed on the same day and an invoice will be generated and sent out.
- f) Any charges billed to you after the cancellation date from your previous service provider will be due and payable by you to that provider.
- g) Our charges to you may involve fees for connection, initiation, transfer, relocation or cancellation of any service(s). Such charges, if not specified in accordance with the rate plan or such other manner specified in your Services Agreement will be charged to you at cost to us from the carrier and third-party providers.
- h) Charges that do not appear on your monthly invoice may appear on future accounts due to processing procedures. This includes any excess charges accumulated during the previous invoice period.
- i) If you fall into default we may use or disclose any personal information collected and recorded in relation to you, to assist us in the process of debt recovery.
- j) Overdue accounts will incur a late fee calculated at the greater of \$20 + GST or 1.5% per month on amounts outstanding or part thereof. We may charge you interest on overdue amounts at 3% above the per annum National Australia Bank Corporate Overdraft Reference rate applicable at the date of the bill, calculated daily.
- k) We may, without notice, deactivate or cancel all or part of your service if any amount is not paid by its due date. We reserve the right to restrict any service at any time if we feel the

account has gone over its credit limit or the service appears fraudulent. Discounts may also be revoked during the overdue period. If any amount has not been paid by the due date, we reserve the right to deduct any unpaid amount (or part thereof) from your credit card or charge card nominated on the application form.

## 15. Credit check

- a) If we consider it relevant when assessing this application, you agree to us obtaining from a credit-reporting agency a credit report containing personal information
- b) Upon request you shall provide us with all the necessary information required for us to conduct a credit check to ascertain your credit rating.
- c) You agree that we may give to any credit provide and/or credit-reporting agency any information contained in the application completed by your or your representative. You also agree that we may seek from any credit provider and/or credit-reporting agency any credit report (whether commercial for any named business entity, or consumer for any named individual) on all parties named in the application. You acknowledge and understand that such information can include any information regarding your commercial or consumer credit worthiness, credit history or credit capacity that credit providers and/or credit-reporting agencies are allowed to give or receive under the *Privacy Act 1988* (Cth).
- d) You authorise and permit us to make independent enquiries of third parties concerning your financial standing and, for this purpose, authorise and permit third parties to supply such information regardless of any confidentiality or privilege which applies to the information sought.

## 16. GST

Unless otherwise stated, any charge payable for goods or services are inclusive of GST.

## 17. Transfer to us

- a) By providing goods and services to you, we may be required to change arrangements you currently have in place with your current carrier and supplier. We will do so accordingly under this Clause.
- b) By signing any application or Services Agreement for the provision or services by us:
  - i. You authorise us to sign on your behalf, and in your name, any required forms of authority to your current carrier or supplier of goods and services to transfer the goods and services into our name.
  - ii. You will on request give written instructions, where required, to your current carrier or supplier of goods and services to transfer the goods and services from your name to ours.
  - iii. You will immediately pay to your current carrier or supplier all amounts owing to it for the goods and services being transferred up to and including the time of transfer, into our name.



- iv. You agree that for us to provide any goods or services to you, you or your nominated representative applies through our online applications found on our website at [www.coopercommunications.com.au](http://www.coopercommunications.com.au). By completing this form on our website and reading the Services Agreement you agree to be bound by the Services Agreement. You and your representative should ensure that you have read and understood the Services Agreement.

## **18. Transfer from us**

- a) If in the future you ask us or another provider to transfer any of the services provided by us to you, to another supplier, then you remain responsible to us for the amount payable for the services up to the time when we transfer those services to another supplier. You will immediately pay us the amount owing up to that transfer, upon receipt of our invoice.
- b) The provision of services ceases when we transfer those services to another supplier, provided that you have fulfilled your contractual obligations and in respect to the cancellation notice period for your respective service.

## **19. Limitation of liability**

- a) To the full extent permitted by law and subject to the below, we will not be liable in any circumstances, however arising, to you or any person claiming through you in contract, tort, or otherwise (including negligence, wilful or unlawful acts or omissions) for:
  - Any economic loss or damage and in particular (without limitation) any loss of revenue, profits, actual or potential business opportunities, contracts or anticipated savings of profits; or
  - Any indirect or consequential loss; or
  - The acts of omissions of the carrier or any of our employees, officers, agents, contractors or subcontractors or the failure of, or fault or defect, in any contractors of subcontractors or the failure or, or fault or defect, in any telecommunications service, network, facilities, equipment or service, used by us in supplying telecommunications services; or
  - Our failure to continue to provide the service to you for any reason whatsoever. You acknowledge that we do not guarantee continuous fault free provision of the goods or services.
- b) We accept liability to you in respect of any consumer protections conferred to you by the *Competition and Consumer Act 2010* (Cth) and similar legislation where not to do so would be illegal or would make any part of these clauses void or unenforceable. Otherwise, we exclude all conditions and warranties implied into the Services Agreement and limit our liability for any non-excludable conditions and warranties, where permitted by law to do so, at our option to:
  - In the case of services:
    - i. The supply of services again; or
    - ii. The payment of the cost of having the services supplied again.

- i. In the case of goods:
  - i. The replacement of the goods or the supply of equivalent goods.
  - ii. The repair of the goods; or
  - iii. The payment of the cost of replacing the goods or acquiring equivalent goods.
- c) You agree to indemnify us and keep us indemnified from and against liability and loss and damages caused directly or indirectly by any breach of the Services Agreement by you or from any claim or action arising directly or indirectly out of any negligence, fraud or wilful act whatsoever, whether by you or any of your employees, officers, agents, contractors or subcontractors.
- d) To the extent permitted by law, you agree that your indemnity shall survive the termination of the Services Agreement, against any actions, claims, expenses, demands, costs, damages, proceedings or any other liability whatsoever suffered by us in connection with you using our goods and services including without limitation, you are using or incorporating the goods or services in other products used by you or supplied to you.
- e) To the extent permitted by law, these provisions of Clause 19 also apply for the benefit of the suppliers and carriers.
- f) In connection with legally requested interception of your service, you indemnify us for all costs, damages or expenses suffered by us as a result of your negligent, wilful or unlawful acts or omissions.

## **20. Your general liability to us**

- a) You must pay all Charges and any other amounts due under your Contract.
- b) You are to pay us the fair value of any Equipment that you fail to return to us when we require you to do so.
- c) You are to pay us fair compensation for any damage to equipment you return to us. Fair wear and tear do not count as damage.
- d) You must indemnify us for any loss or damage we suffer as a result of or in connection with.
  - i. Your breach of your Contract.
  - ii. Your use of a Service or Equipment; or
  - iii. A claim against us by an End User in relation to a Service we supply to you.
- e) You indemnify us for any loss or damage we suffer in connection with any claim made against us by a third party arising out of or in relation to your use of Services or Equipment provided to you by us.
- f) Your obligations under this clause survive termination of your Contract.

## **21. Liability of our Partners**

You release our Partners from any liability to you, whether in contract, tort or otherwise, in relation to any Service or any delay in providing or any failure to provide a Service to you.

## **22. Your liability to us – legal requests**

- a) This applies where we reasonably incur an expense as a result of or in connection with:
  - i. A police request for information or evidence in relation to you or your use of a Service; or
  - ii. A Court or other competent authority's direction for provision of information or evidence in relation to you or your use of a Service; or
  - iii. A demand from a legal practitioner for information or evidence in relation to you or your use of a Service.
- b) You must reimburse our expenses on request.

## **23. Your liability to us for (alleged) illegal use**

- a) This clause applies where:
  - i. Your service is actually or allegedly used in a way that breach any law or infringes the rights of any third party; and
  - ii. We suffer loss or reasonably incur expenses as a result. In which you must make good our loss and reimburse our expenses incurred on request.

## **24. Outages**

Cooper Communications Pty Ltd is not responsible for Outages or issues relating to Carriage networks provided by Retail Service providers and will only take responsibility for network services within our capacity and control. Cooper Communications Pty Ltd is a sales agent "only" for multiple Retail Service providers.

For additional information please refer to the relevant Service Schedules relating to the product or service provided by your Retail Service provider.

## **25. Compensation for outages**

- a) At times your service may experience outages and maintenance issues, leading to the question of compensation.
- b) Our policy applies in cases of unplanned outages and faults where services have been disrupted for at least two days from the time of first contact regarding the fault. Faults lasting for an extended time may also qualify for ongoing compensation only with your current Retail Service provider.

- c) In some cases, outages are caused up the chain by our suppliers, by faults within a customer's premises, or third-party supplier scheduled maintenance. All of which are beyond our control. We do not offer compensation for such outages and maintenance, but we will do our best to troubleshoot them. All services require from time-to-time system maintenance to ensure they operate properly. Cooper Communications will endeavour to keep these maintenance windows brief and outside of primetime hours. However, sometimes maintenance must be carried out during the day as required for the health and safety of technicians and in such cases Cooper Communications will endeavour to minimise downtime when this occurs.
- d) Please contact our Customer Service Team for all requests relating to compensation. We will note on your request, the specific fault it is related to. We will not add compensation to your account until we have achieved a resolution with your service. This is done to ensure the correct figure for compensation is calculated for the total disruption time. In some cases, involving longstanding faults, compensation may be applied intermittently at our discretion.
- e) In cases of general and area wide outages, our assessment of compensation is on an incident-by-incident basis in cases of faults with a disruption to services for at least two days.

For additional information please refer to Service Schedules relating to the product or service provided

## **26. Faults**

- a) You agree that:
  - i. your Service is provided by your Retail Service provider.
  - ii. you do not have any service contract with us for Network Carriage; and
  - iii. You will report any faults or issues with the Service to us via our customer contact policy
- b) Cooper Communications will endeavour to respond and resolve the fault within a reasonable timeframe, unless a specific service level agreement has been contracted.
- c) In the event of you reporting a fault with your Service to us we may require that you conduct some basic preliminary testing of your Service including customer-end Equipment to help us to determine the source of any fault. Until this has been undertaken by you, we may treat the potential faults a preliminary enquiry.
- d) You agree that any faults with the service, must be reported as directed by us or as provided for in any complaint's resolution process.
- e) In the event that you report a fault to us and:
  - i. it is investigated by your Retail Service Provider.

- ii. If the retail service provider determines that there is no fault in the Access Network or Network of the Service Equipment; and
- iii. We determine acting reasonably that the cause of the fault was likely to be in your Equipment (including customer cabling); we may pass on to you any fees charged to us by your Retail Service Provider for investigating the fault.

## 27. Fault Classification

Faults are classified as "Urgent", "Major" and "Minor" as follows.

- a) **Urgent Fault** - being one in which the entire PBX system is not functioning or more than 30% of extensions not working
- b) **Major Fault** - being one in which a significant part of the PBX system is not functioning: for example
  - i. Unable to make or receive calls on more than one line.
  - ii. At least 20% of the extensions are not working
  - iii. Systematic dropping of calls
- c) **Minor Faults** - being one in which the equipment is in an operational condition and the user can receive and make calls to practical effect but in which there may be minor or significant faults which do not affect the general use of the PBX system.

Cooper Communications will endeavour to respond and resolve the fault within a reasonable timeframe unless a specific service level agreement has been contracted.

## 28. Service software

- a) We may provide you with software to use in conjunction with your product and service.
- b) You acknowledge and agree to.
  - i. The Software is the exclusive property of its owner who retains the goodwill, property, title, right and interest in the Software and the Software Documentation (including intellectual property rights).
  - ii. You will ensure that no act is done (or no act is failed to be done) which interfere with the owner's goodwill, right, title or interest in the Software or Software Documentation or offends the owner's moral rights in the Software or Software Documentation.
  - iii. You are granted a limited, non-exclusive, non-transferable, non-sub licensable, no assignable license to use the Software.
  - iv. The provision of the Software to you is not to be interpreted as any representation by us or the owner of the Software that the Software will perform to a certain level or that the Software will be compatible with your Equipment or other software.

- v. You have made your own prior independent inquiries in respect of the performance of the Software and the compatibility of the Software with your Equipment and with other software; and
  - vi. You will ensure that the End User License Agreement in respect of the Software is strictly complied with.
- c) You must:
- i. Only use the Software in accordance with the Software Documentation.
  - ii. Only use the Software for the purpose of using your Service.
  - iii. Not disassemble, decompile or reverse engineer the software.
  - iv. Not copy, reproduce or make a backup of the Software or Software Documentation or otherwise deal with the Software or Software Documentation in a manner which is inconsistent with the rights of its owner.

**29. Terms of agreement, suspension, cancellation or part cancellation of a product, or termination**

- a) In respect of each service set out in the application, the Service Agreement will commence on the date of its submission by you and will continue in relation to that service until:
  - ii. Expiry of the contract term selected for the service on the application; and
  - iii. Continue indefinitely after the expiry of the contract term selected for the service, until terminated formally, orally or in writing. In such circumstances, charges for the service will cease at the earliest of 30 days after receipt of formal oral or written notification, unless otherwise stated in any particular service.
- b) We may terminate your Service Agreement if you breach any term or condition of the Services Agreement or if a receiver or receiver and manager is appointed over any of your property or assets, or if a liquidator or provisional liquidator is appointed to you or if you enter into any arrangement with your creditors or you assign or otherwise deal with your rights under the Services Agreement without our prior written consent, or in the case of an individual, you pass away.
- c) We may suspend your service(s) at any time without notice if any of the following occur:
  - i. We are not satisfied with our credit assessment of you.
  - ii. If you breach any terms or conditions of your Services Agreement, your goods and services will be suspended. If you have failed to remedy the breach within 10 days of receiving written notification from us, as to your breach, your service(s) shall be terminated.
  - iii. You fail to pay amounts owing to us for the goods and services by their due date.

- iv. We are unable to, for any reason including the default of a carrier or supplier, to provide the whole or part of the goods or services.
  - v. You become subject to any formal insolvency or bankruptcy administration.
- d) If we suspend your service(s), you shall remain liable for all monies due to us under the Services Agreement, during the period of such suspension.
- e) If your service has been suspended by us due to your non-compliance with the Terms and Conditions of your Services Agreement, you shall be charged a fee of \$44.00 (Inc GST) for us to re-activate your service(s).
- f) If we agree to provide a service for a fixed period, then the amount payable for the whole of that period is a debt owing to us at the time of entering into the Services Agreement for which we may bill you even if you cancel the service(s) or terminate the Services Agreement before the term ends.
- g) Where you have entered into an agreement to purchase two or more products or services from us, and during the term of your Services Agreement you cancel the supply of one of those products or services, the pricing of the remaining product(s) or service(s) will revert to the non-bundled (or non-discounted) price. Once adjusted the rate for the service(s) and/or product(s) we continue to supply to you, will be charged to you for the remainder of your term.
- h) If this Service Agreement is cancelled by you, or terminated by us:
- i. Any right accruing to us in respect of your obligations under your Service Agreement that has not been fulfilled, will continue to exist.
  - ii. You must pay us all reasonable costs and expenses incurred by us in relation to your cancellation or our termination of your product(s) and service(s).
  - iii. Where we have provided data and/or data access services, such as DSL, ADSL, SHDSL, Ethernet, Wireless Broadband or Co-Hosting, you must pay all amounts due at the time the Services Agreement ends including the balance of the monthly service fees as set out in the application or agreed to by us. This includes any amount for service or CPE that was spread out over the term of your Services Agreement, for all months up to the end of the originally agreed upon term, that remains unpaid at the date of your early cancellation.
  - iv. In addition to any liabilities arising under this clause and where we are providing fixed wire service(s), if you terminate the service(s) before the expiry of the term of your Services Agreement or such lesser time having been agreed to between us, then you shall pay us a genuine estimate of the loss that we incur due to your early termination of your Services Agreement. The amount payable will be calculated as being the difference between the charges billed to you up until the date of termination and the charges that would have been billed to you for supply of the service(s) up until the date of termination of the Services Agreement under any applicable standard rate or pricing plan.
- i) Where we are providing Data Service(s), if this Service Agreement is terminated in accordance with this Clause, the Carrier may arrange for you to be supplied by the Carrier with the Carrier's services that had been supplied by us. You acknowledge that the Carrier may not be able to

make those arrangements immediately and once the Carrier has made those arrangements those services acquired by you will be acquired on the Carrier's current rates, Terms and Conditions. The Carrier will bill you accordingly for your early termination on the preceding basis.

- j) While you are still within your selected contract period, you may only change to a higher rate plan.

### **30. Removable discount**

Notwithstanding Clause 16. if we provide you with a service(s) and/or product(s) at a discount on payment over a fixed period and you cancel the service(s) and/or product(s) or terminate the Services Agreement before that period ends, you will be liable to pay the full undiscounted amount for the service(s) and/or product(s) for the period prior to cancellation and termination of your Services Agreement. We will bill you for the amount of the discount allowed to you during the elapsed period on your next bill.

### **31. Assignment**

We may assign the benefit of this Services Agreement at any time to a person or corporation nominated by us, including a Carrier or Supplier and in the event of this occurring, such Assignee or nominated Carrier or Supplier shall deal directly with you for the purposes associated with the provision of that service(s) or product(s) under this Services Agreement.

### **32. Customer Premises Equipment**

- a) Any CPE you use, not provided by us, must comply with applicable standards and specifications, including those set by the Carrier or Supplier of the product.
- b) We may substitute any component of the CPE or part of any component of the CPE prior to delivery without consultation with you and may in any respect modify the CPE if, in the reasonable opinion of us, the substitution or modification:
  - i. Will not adversely affect the performance or capacity of the CPE in any material way.
  - ii. Will not alter the configuration of the CPE in any material way; and
  - iii. Will not otherwise materially affect our obligations or prejudice your rights under this Services Agreement.
- c) Risk in any CPE provided to you by us passes to you upon delivery.
- d) If purchased from us, title in any CPE does not pass to you until all amounts owing have been paid in full to us and the cost of such CPE will be held by you in a fiduciary capacity as bailee for us.
- e) You irrevocably grant to us, our agents and servants, leave and license without the necessity of giving any notice, to enter at any time on and into premises occupied by you using



reasonable force if necessary to inspect, search for and take back possession of any CPE in respect to which payment is overdue.

f) On the termination of your Services Agreement for any reason, you will immediately return all of our CPE, should the CPE be our property.

g) CPE delivery:

- i. We will use our best endeavours to deliver the CPE to you on the delivery date at the site during your normal business hours.
- ii. If you wish the CPE to be delivered to a location other than the site, you must request this in the Application Form upon signup for the Service.
- iii. If you request delivery of the CPE to be made in advance of the delivery date or postponed beyond the delivery date, we shall use reasonable endeavours to re-schedule delivery accordingly but shall otherwise be under no obligation to comply with Your request.
- iv. If we request permission to deliver the CPE prior to the delivery date, you shall use your best endeavours to prepare the site and to do all other things necessary to enable us to comply with the request and to accept early delivery.

h) Reasonable delivery costs:

- i. Where we reasonably determine the requirements for installation exceeds reasonable expectations for any Installation Fee quoted or agreed with you, we will not be bound to provide the installation at the Installation Fee previously quoted or agreed and we agree to discuss and use our respective reasonable endeavours to agree a new Installation Fee.
- ii. You agree to obtain and maintain, at your expense, any and all permits, licences, approvals, authorisations, required for the installation and operation of the CPE.
- iii. In the event that you are relocating your premises and as a result, your CPE will be required to move to the new premises, upon your request we may allow you to relocate the CPE from your current premises to your new premises during the term so that you can continue using our services as the new premises, subject to:
  - Our ability to provide the service(s) at your new premises.
  - You are agreeing that these terms and conditions apply to the provision of the service(s) at the new premises; and
  - You pay all costs incurred by us as a result of the relocation of the CPE.

i) Exclusions of CPE:

- i. You acknowledge that the CPE does not include the goods and services specified as excluded.
- ii. You may upon request, ask that we supply additional services including without limitation; inspection, repairs, adjustment and replacement of unserviceable or defect

parties not subject to the limited warranty provided in Clause 20. k) in respect of the CPE.

- iii. If agreed to by us, additional services will be provided on a time and materials basis charged at our standard rates in effect from time to time and on terms agreed to between us.
  - iv. Unless agreed in writing, any subsequent agreement to provide additional services between us will not modify or vary the terms conditions of this Services Agreement.
- j) In respect of the CPE:
- i. We warrant that at the date of this Services Agreement we believe the CPE to be free from defects in materials and workmanship.
  - ii. You may during the Warranty Period notify us in writing of any defect or suspected defect in the CPE. We shall, to the extent necessary, inspect, replace or repair the CPE at no additional charge, as soon as practicable after receiving written notice from you.
  - iii. We shall not be liable under Clause 20. J) (ii), under Clause 20. k) if the defect is the result of:
    - Improper use or mismanagement of the CPE by you.
    - Operation of the CEP other than in accordance with the instructions provided by us.
    - Use of the CPE in a manner not reasonably contemplated by us.
    - Modification of the CPE not authorised by us.
    - Use of the CPE in a manner contrary to law.
    - Subjecting the CPE to unusual or not recommended physical, environmental or electrical stress.
    - Reinstallation or moving of the CPE by a person other than us.
    - Use of the CPE by a person other than you or your authorised representatives.
    - Your failure to comply with the terms of your Services Agreement.
    - Your failure or refusal to install engineering changes or enhancements recommended by us.
  - iv. If you provide a notice of defect or suspected defect pursuant to Clause 20. j) ii. and any subsequent inspections of the CPE by us reveals no defect, the direct and indirect costs and expenses associated with such inspection shall be borne by you as an additional charge.
  - v. You agree that the warranty in Clause 20. j) may, at our option, be varied or replaced by specific warranty conditions issued in respect of the CPE.

- k) We are not liable for faulty CPE provided to you by a third-party manufacturer. Where you are experiencing CPE fault, you should contact the manufacturer direct, of whose contact details may be found on our website at [www.convirt.com.au](http://www.convirt.com.au).

### **33. Notices**

Any notice, demand, consent or other communication required to be given by either party must be delivered personally, or sent by email, prepaid mail, or by facsimile to the address of the other, as last notified.

### **34. Disputed amounts**

- a) In the event that a bill is disputed by you, you agree to pay to us all the total amount as indicated on the disputed bill without deduction or set-off and we agree to refund any monies found to be charged incorrectly after a reasonable and proper investigation.
- b) If a billing dispute is not raised within three months of the bill issue date, charges will be deemed as correct and payable by you.

### **35. Communications and content**

- a) You are responsible for the content of the message(s) you communication with using our services as well as any consequences of those messages. You agree that you will not use our services to engage in activities that are illegal, obscene, threatening, defamatory, invade privacy, infringe intellectual property rights, or otherwise injure third parties or are objectionable. You may not use a false email address, impersonate any person or entity, or otherwise mislead others or us as to your identity. We reserve the right to suspend or terminate the service in the event of a breach of this clause and in such cases, you will be responsible for any costs associated with suspension or termination of the service.
- b) We believe that any correspondence or emails from Us or its related parties are a valuable part of our service as they enable you to keep up to date with matters regarding Internet security, viruses, useful tools, promotions, sites of interest and other related matters. The correspondence and emails do not constitute spam as we have a continuing business relationship with you. However, if You do not want to receive such commercial communication from us, please contact us to unsubscribe, otherwise we will continue sending you relevant information until you request us to remove your email address (this does not affect other electronic communications specifically regarding the provision of the service of your account).

### **36. Installation and programming of equipment**

- a) Where we are providing fixed wire or fixed wireless products and services, you will assist us to ensure that any equipment necessary for you to receive the products and services as well as access to our network and installed and programmed so that calls to destinations nominated by us from time to time, as far as possible, carried by our preferred switched services network.

- b) Where we are providing data and/or broadband services, you will assist in ensuring that any equipment necessary for you to receive the services and access our network is installed and maintained.

### **37. Conditions of data and/or broadband service**

- a) We may at our discretion, provide a service by using either:
  - i. An existing or new unbundled local loop Service (ULLS); or
  - ii. An existing or new access line that supplies a standard telephone service, provided by Telstra Corporation Limited (Telstra) or other reseller, depending on the technical and operation requirements of the particular service; or
  - iii. Our fixed Wireless Service or NBN infrastructure.
- l) Where a telephone exchange area is shown as being broadband (i.e., DSL) enabled, there is no guarantee that individual telephone services provided from that exchange will qualify for DSL service provision.
- m) The performance of the end-to-end service offered over DSL is determined by the quality of the copper line and the distance from the DSL exchange. As such the performance of the end-to-end service can only be estimated until we have qualified the line performance. We will accept a customer order upon appropriate qualification where the line performance meets our service objectives and the availability of the said service.
- n) The performance of the end-to-end service offered over fixed wireless can be impacted by environmental factors including but not limited to; weather conditions, obstructions to line of site to radio transmission base station and power supply at local or remote transmission sites.
- o) Delivery times of data tails specified in the original proposal to you assume availability of service and/or no Carrier delays. If following submission of your order by us to the Carrier service qualification is unsuccessful then a new service proposal may be provided that may differ from the original proposal and may incur additional charges.

### **38. Acceptable use of products and services**

Upon taking up any services and products with Cooper Communications, you must agree to comply with our Acceptable Use Standards which included but are not limited by:

- a) You agree to wilfully damage or recklessly use any products if used on a rental basis with Cooper Communications or any of its suppliers, carries or related entities.
- b) You agree not to send any emails, containing attachments, that may destroy or damage an email recipient device.
- c) You agree to not knowingly accept any emails which you believe may be unlawful or violates or infringes upon the rights of any person or corporation.

- d) You agree not to reveal confidential information about us and our related entities or our suppliers and carriers which may result in unauthorised usage of the goods or services by a third party.
- e) You agree not to transmit information which contains viruses or other harmful components.
- f) You agree to not interfere, damage or destroy computer systems operations of the goods or services including disobeying any of our requirements, procedures, polies or regulations, other users and/or third parties.
- g) You agree not to store or transmit any unlawful, threatening, defamatory, offensive or pornographic materials that constitutes a criminal or civic offence under State and Commonwealth Laws.

### **39. Network security**

- a) You agree to accept responsibility and liability for the security of and/or access to your networks and related systems. You will take reasonable and appropriate precautions to prevent any violations of your network and/or related systems security.
- b) We do not take responsibility nor are we liable in any way for any violations of your network and/or related systems security, however caused.
- c) While we are responsible for the provision of services, you are responsible for ensuring that adequate security in the form of anti-virus protection and firewalls exist to protect your electronic data and computer operating system or the electronic data and computer operating systems of your business against unauthorised or unwarranted intrusion.

### **40. Wholesale networks**

Cooper Communications is only a Sales Agent for Retail Service Providers and is not responsible for any network services supplied by Retail Service Providers. These include and are not limited to Telstra, Optus, Vocus, TPG, Comvirt Cloud Phone, & Macquarie.

### **41. Governing law**

This Services Agreement is governed by the laws of New South Wales and the Commonwealth where applicable and the parties submit to the non-exclusive jurisdiction of the courts of those jurisdictions. Any references to provisions of legislation include any changes or re-enactments and regulations issued thereunder.

### **42. Entire agreement**

- a) This document and any documents referred to therein, contain the totality of the Services Agreement reached between us.
- b) Each party acknowledges that they have not relied on any representations, statements, or claims in entering into the Services Agreement.

- c) You agree that you will not hold us liable for any and all damages arising from actions based in misrepresentation or negligence. Your remedies will be limited to contractual remedies only.
- d) Your Services Agreement and documents referred to therein is the entire Services Agreement. If any part of your Services Agreement is unenforceable, illegal, or void, it is severed. The remaining Services Agreement remains valid and enforceable.

#### **43. Telecommunications Consumer Protections Code Information**

- a) The Telecommunications Consumer Protections (TCP) Code provides a host of consumer safeguards for mobile, landline and internet users.
- b) These safeguards are set out in clear rules that providers like us must follow when communicating and dealing with customers. The rules cover the areas of advertising and point of sale, billing, payment methods, complaint handling, financial hardship and more.
- c) The TCP Code was developed by the Telecommunications Industry following extensive consultation and negotiation with consumer groups, the Australian Communications and Media Authority (ACMA), and other relevant interest groups. The ACMA regularly monitors compliance with the code.
- d) You can find a copy of the code on the Communications Alliance website at <https://www.commsalliance.com.au/Documents/all/codes/c628>.

#### **44. Telecommunications Industry Ombudsman membership**

Cooper Communications is not a member of the Telecommunications Industry Ombudsman (TIO). As a sales agent only for Telco Carriers, Cooper Communications not required to be a member.

- a) If you have any complaints in connection with the Network Service (including complaints about your invoice), you should contact your Retail Service provider first to resolve the complaint via the contact details available on their website or your bill.

#### **45. Agreement subject to change**

- a) From time to time our Services Agreement may change or need updating, without notice to you. By using our services, you hereby agree to familiarise yourself with changes made to the Services Agreement and thereby indemnify Cooper Communications from claims arising from a misunderstanding or ignorance, on your party, arising from such amendments. All changes will be made available on our website at [www. Cooper Communications.com.au/legal](http://www.CooperCommunications.com.au/legal)
- b) By subscription to and continued use of Cooper Communications services and products, you are bound by the Services Agreement.
- c) Cooper Communications may vary or terminate the Service Agreement at any time and will provide you, if a customer, with 21 days written notice of such a change. Written notice will be

sent to each customer's Primary Contact Details. It is your responsibility to ensure that your Primary Contact Details are up to date, and you agree to make no claim against Cooper Communications in the event that you have failed to ensure your details are accurate and up to date with Cooper Communications and have as a result not been made aware of updates to our terms and conditions due to being sent to out of date contact details.

- d) Cooper Communications reserves the right to take action against violations of the Services Agreement.

#### **46. How to contact us**

- a) The contact point for all Service & faults shall be **1300 972 104** at the Head Office of Cooper Communications. (This is the preferred point of contact as faults can be immediately logged directly to our system.)
- b) Non urgent faults can be logged by emailing: [support@cooperict.com.au](mailto:support@cooperict.com.au) or [service@cooperict.com.au](mailto:service@cooperict.com.au).
- c) The above contact points are to apply to standard business hours, extended business hours and 24/7 after hour's calls.