

## Standard Terms and Conditions

This Terms and Conditions Statement (the "Agreement") between, Crisp Wireless PTY LTD, ("CRISP Wireless") and the customer which is a signatory hereto ("Customer") is made effective as of the date indicated by the Customer signature on the form 'Residential Master Services Agreement', or 'Business Master Services Agreement' submitted by Customer and accepted by CRISP Wireless.

### 1. OVERVIEW

This Agreement states the terms and conditions by which CRISP Wireless will deliver and the Customer will receive any or all of the services provided by CRISP Wireless, including equipment, bandwidth, managed services, professional support and content delivery. Each Order Form (with exhibits attached) submitted, accepted and executed by both parties is hereby incorporated by reference herein. This Agreement is intended to cover any, and all Services ordered by Customer and provided by CRISP Wireless. Capitalised terms shall have the meanings assigned to them herein or as defined in Section 2.

### 2. DEFINITIONS

- a) "**Customer**" means the person or entity that has entered into the agreement with CRISP Wireless to receive a service, assumes all liability in respect of such service and holds the ultimate authority to act in regards to such service.
- b) "**Customer Technology**" means Customer's proprietary, including Customer's internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the term of this Agreement by Customer.
- c) "**Premises**" means the customers property or properties where the CRISP Wireless equipment has been installed.
- d) "**CRISP Wireless**" means Crisp Wireless Pty Ltd, including CRISP Wireless services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by CRISP Wireless or licensed to CRISP Wireless from a third party) and also including any derivatives, improvements, enhancements or extensions of CRISP Wireless technology conceived, reduced to practice, or developed during the term of this Agreement by either party that are not uniquely applicable to Customer or that have general applicability in the art.
- e) "**Rules and Regulations**" means the CRISP Wireless general rules and regulations governing Customer's use of Services, including, but not limited to, online conduct and CRISP Wireless's Acceptable Use Policy.
- f) "**Order Form(s)**" means the form the customer has submitted for the delivery of service.
- g) "**Service(s)**" means the specific service(s) provided by CRISP Wireless pursuant to this Agreement.



h) "**Billing Date**" means the date CRISP Wireless began providing the Service(s) to Customer as indicated on the Initial Bill.

i) "**Initial Term**" means the minimum term for which the customer has committed to and that CRISP Wireless will provide the Service(s) to Customer, as indicated on the Order Form(s).

j) "**Renewal Term(s)**" means any service term following the Initial Term.

k) "**Supplemental Services**" means any additional services provided outside of the standard price list offerings.

l) "**Service Commencement Date**" means the day the service offering was made active. See initial billing date.

m) "**Service Description**" means the service as described on the order form.

n) "**Equipment**" means any, and all equipment installed by CRISP Wireless to provision the service.

o) "**Incorrect Call-Out Fee**" means a call out to repair service where the service is found not to be at fault.

p) "**Payment Default**" means unpaid arrears as set out in the specific agreement clause.

### **3. DELIVERY OF SERVICES TERMS**

#### **3.1 DELIVERY OF SERVICES**

By submitting an Order Form(s), Customer agrees to take and pay for (i) the Service(s) during the Initial Term and for any Renewal Term, and (ii) certain limited services and equipment needed by Customer on a "one-off" or emergency basis ("Supplemental Services") where such services are not included within the scope of the Services as described in the Order Forms(s). Customer agrees to pay CRISP Wireless the fees charged by CRISP Wireless for Supplemental Services, and hereby authorizes CRISP Wireless to perform such services on its behalf. ALL SUPPLEMENTAL SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND EXCLUDE WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED in accordance with CRISP Wireless's current policies and prices.

#### **3.2 TERMS**

(a) Term Commencement. The term for each Service will commence on the Service Commencement Date.

(b) Renewal Term(s). Upon expiration of the Initial Term, the term shall be extended automatically for a period of thirty (30) days ("Renewal Term"), unless and until either party gives the other no less than thirty (30) days' written notice of a termination. The termination of any Service will not affect Customer's obligations to pay for other Service(s). **3.3 MAINTENANCE**

CRISP Wireless may conduct maintenance on any of our Network, equipment or facilities. We will try to conduct scheduled maintenance outside normal business hours but may not always be able to do so. Notification will be given of any such scheduled outage with at least 5 days' notice, with the exception of emergency repairs or remediation.

#### **3.4 SUPPORT**

The relevant Service Description sets out our maintenance commitments that apply to the Service. With the exception of Christmas & the Calendar New Year period, generally we provide 24 hour, 7 days-a-week

customer service and support. Various special support lines may have limited hours. You acknowledge that any calls you make to our Customer Support Centre may be monitored or recorded for quality and/or training purposes and you consent to us monitoring or recording such calls.

The customer acknowledges that CRISP Wireless provides support on the following basis.

- a. Before reporting a fault to us, you must take reasonable steps to ensure that the fault is not a fault in any of your equipment or environment.
- b. CRISP Wireless are not responsible for rectifying any fault in the Service where the fault arises in or is caused by another supplier's network or by your equipment and the fault does not arise or was not caused by us or our Equipment.
- c. If you report a fault in the Service and ask us to come to the Premises to repair it and, once at the Premises, we determine (in our reasonable opinion) that the Service is not faulty or the fault is associated with your equipment rather than the Service, we may charge you an Incorrect Call-Out Fee and, if you request us to repair your equipment, charge for such repair.
- d. We can charge you for repairing a fault if it is caused by something you do (or do not do), or by something someone else using the Service (with your express or implied authority) does (or does not do), intentionally, recklessly or negligently.

## **4. FEES AND PAYMENT TERMS**

### **4.1 FEES AND EXPENSES**

Customer will pay all fees due according to the prices and terms listed in the Order Form(s) and all other fees incurred by Customer related to Supplemental Services, Professional Services, reinstatement of service fees and fees for switching or upgrading service, all in accordance with then current CRISP Wireless prices and policies.

### **4.2 PAYMENT TERMS**

On the Service Commencement Date for each Service (the "Commencement Date"), Customer will be billed (the "Initial Bill") an amount equal to

(i) All non-recurring charges indicated in the Order Form(s) and (ii) the pro-rated monthly recurring charges for the first month in advance.

Subsequent monthly billing will occur on the monthly anniversary of the contract commencement date. If the monthly billing day of the month should occur on a weekend or public holiday, the processing of the monthly charges (the "Recurring Bill") will occur on the next working day of the month. Monthly recurring charges for all months will be billed (the "Recurring Bill") in advance of the provision of Services. Payment for all recurring fees is due on or before the billing date of each calendar month. All payments will be made in AUD Dollars.

Notwithstanding anything to the contrary in this Agreement, CRISP Wireless expressly reserves the right to alter, change or amend its billing practices in its sole discretion, including, but not limited to, the date on which such billing will occur and the types of charges that will be included in such bills.

### **4.3 BILLS VALID UNLESS DISPUTED**

Except to the extent you raise a valid billing dispute in respect of a bill issued by us, you agree that the bill is valid and payable.

#### **4.4 LATE PAYMENTS**

Any "Initial Bill" invoice not paid within fifteen(15) days of the date of the invoice date will accrue interest at a rate of 11% per annum calculated daily, or the highest rate allowed by applicable law, whichever is lower.

It is the customer's responsibility to ensure that adequate funds are available in the nominated customer bank account for debit prior to the billing date or to make arrangements to have funds deposited to the provided CRISP Wireless bank account by the billing date.

Any "Recurring Bill" invoice not paid on the billing date will have an automatic \$15.00 late payment fee added if the outstanding monies are not deposited to the CRISP Wireless bank account within 7 days of the billing date.

The customer service may also be suspended if the account is not paid within the same seven day period.

CRISP Wireless staff will not make attempts to deduct monies from the customer account beyond the first attempt. It shall be the customer responsibility to ensure that appropriate funds transfer is made if payment is not made on the billing date. CRISP Wireless will only make an additional attempt to deduct funds once a written assurance has been given by the customer that the funds are clear and available.

This will not reduce CRISP Wireless right to collect any outstanding monies owed or exercise any of its rights under this Agreement or applicable law with respect to a Payment Default or other breach by Customer, including, but not limited to, reasonable legal fees and the fees of any collection agency retained by CRISP Wireless.

#### **4.5 TAXES**

Customer will be responsible for and will pay in full all taxes and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of Services.

### **5. INTELLECTUAL PROPERTY OWNERSHIP**

This Agreement does not transfer from CRISP Wireless to Customer any CRISP Wireless technology, and all rights, title and interest in and to CRISP Wireless technology will remain solely with CRISP Wireless.

This Agreement does not transfer from Customer to CRISP Wireless any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. CRISP Wireless and Customer each agree that it will not, directly or indirectly, reverse engineer, de-compile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party and/or its third-party vendors.

#### **5.1 CUSTOMER SPECIFICALLY AGREES:**

- a) The customer does not own or have any legal interest in any of our equipment, intellectual property or IP addresses, domain name/s, personal identification number/s or other locator or identifier issued by CRISP Wireless to the customer;
- b) The customer will not to tamper with, make derivative works of, reverse compile, reverse engineer and/or disassemble any of CRISP Wireless Equipment, hardware or software files.;



- c) If the customer violates or exceeds the Permitted Use, CRISP Wireless reserves the right to immediately terminate Customer's account and will pursue any and all legal remedies available;
- d) The Customer rents and does not own all connectivity equipment required to provide the service. This rental is included in the monthly charge. Ownership and/or title in the equipment are not transferred to the customer; even after the expiry of any contract period.
- e) The customer is responsible for all of the provided equipment from the time it is delivered;
- f) The customer is responsible for all of the provided equipment and must reimburse any loss or damage to the equipment, except to the extent that it is caused by us or by fair wear and tear;
- g) The customer must not part with possession of the equipment except to us and you must not mortgage or grant a charge, lien or encumbrance over any of the Equipment;
- h) The customer must allow CRISP Wireless to inspect, test, service, modify, repair, remove or replace the Equipment, or to recover it after the Service is cancelled;
- i) The customer must ensure that the Equipment will not be altered, repaired, serviced, moved or disconnected except by service personnel approved by CRISP Wireless;
- j) The customer must ensure that all necessary consents and approvals (including landlord approval where applicable) necessary or desirable for us to deliver, install and maintain the Equipment at the Premises.
- k) The customer must provide adequate and suitable space, power supply and environment for all the Equipment located on the Premises.

## **6. LIMITED WARRANTIES**

### **6.1. LIMITATION**

Each of the guarantees in the Order Form(s) is null and void if Customer fails to follow CRISP Wireless Rules and Regulations and other policies or otherwise breaches the Agreement in any respect.

### **6.2. NO OTHER WARRANTY**

CRISP Wireless does not exercise control over the content of the information transmitted through its facilities. Use of the services or any information that may be obtained there from is at customer's own risk. The Services are provided on an "as is" basis, and customer's use of the services is at its own risk. Except as provided in the order form(s), CRISP Wireless does not make, and hereby disclaims, any and all other express and/or implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement and title, and any warranties arising from a course of dealing, usage, or trade practice. CRISP Wireless does not warrant that the services will be uninterrupted, error-free, or completely secure.

### **6.3. DISCLAIMER OF ACTIONS CAUSED BY AND/OR UNDER THE CONTROL OF THIRD PARTIES**

CRISP Wireless does not and cannot control the flow of information to or from CRISP Wireless network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt customer's connections to the internet (or portions thereof). CRISP Wireless cannot guarantee that such events will not occur. Accordingly, CRISP Wireless disclaims any and all liability resulting from or related to such events.

## **7. CUSTOMER OBLIGATIONS**

### **7.1 WARRANTIES OF CUSTOMER**

(a) General. Customer represents and warrants that (i) Customer is at least eighteen (18) years of age; (ii) Customer possesses the legal right and ability to enter into this Agreement, and (iii) the performance of its obligations and use of the Services (by Customer, its customers and users) will not violate any applicable laws, regulations or the Rules and Regulations or cause a breach of any agreements with any third parties or unreasonably interfere with other CRISP Wireless customers' use of CRISP Wireless services.

(b) Breach of Warranties. In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, CRISP Wireless will have the right, in its sole discretion, to suspend or terminate immediately any Services.

### **7.2 COMPLIANCE WITH LAW AND RULES AND REGULATIONS**

Customer agrees that it will use the Service(s) only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all applicable laws and regulations and the Rules and Regulations, as updated by CRISP Wireless from time to time. The Rules and Regulations are incorporated herein and made a part hereof by this reference. CRISP Wireless may change the Rules and Regulations upon fifteen (15) days' notice to Customer, which notice may be provided by posting such new Rules and Regulations at the CRISP Wireless Site AUP. Customer agrees that it has received, read and understands the current version of the Rules and Regulations.

### **7.3 THIRD PARTY RIGHTS**

Customer shall not (i) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any Third Party Product (as defined in Section 7.4) or that appear during use of any Third Party Product; or (ii) reverse engineer, decompile, or disassemble any Third Party Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

## **8. LIMITATIONS OF LIABILITY**

### **8.1 DELAYS AND INTERRUPTIONS**

CRISP Wireless shall not be liable for any loss of data resulting from delays, corruption of data, non-deliveries, mis-delivered or service interruptions. Customer shall be solely responsible for the selection, use and suitability of the services and CRISP Wireless shall have no liability therefore. Except to the extent of CRISP Wireless gross negligence or wilful misconduct, neither CRISP Wireless nor its network services supplier will be liable for unauthorised access to CRISP Wireless or customer's transmission facilities or premise equipment or for unauthorised access to or alteration, theft or destruction of customer's data files, programs, procedures or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of CRISP Wireless or its network service supplier's negligence.

### **8.2 CONSEQUENTIAL DAMAGES**

Except for the parties' indemnity obligations, in no event will either party be liable or responsible to the other for any type of incidental, punitive, indirect or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, or interruption or loss of use of service or equipment, even if advised of the possibility of such damages,

whether arising under theory of contract, tort (including negligence), product liability, strict liability or otherwise.

### **8.3 MAXIMUM LIABILITY**

Notwithstanding anything else to the contrary contained in this agreement, CRISP Wireless's maximum aggregate liability to customer for any claim related to, or in connection with, this agreement, whether in contract, tort or otherwise, shall be limited to the total amount of fees actually paid by the customer to CRISP Wireless for the prior three (3) months.

### **8.4 THIRD PARTY PRODUCTS**

CRISP Wireless may provide customer access to other third-party software and/or services ("third party products") through reseller relationships CRISP Wireless has established with certain commercial vendors. Unless otherwise notified, customer understands that product support for third party products is provided by CRISP Wireless and not by the third-party vendor. Neither CRISP Wireless nor any third-party vendor makes any representations or warranties, express or implied, regarding any third-party products. Customer expressly acknowledges and agrees that use of third party products is at customer's sole risk and such third party products are provided "as is" and without representation or warranty of any kind from CRISP Wireless or any third party vendor, including without limitation, any implied warranty of merchantability, fitness for a particular purpose, lack of viruses, accuracy or completeness of responses or results, correspondence to description, or non-infringement of third party rights. To the maximum extent permitted by applicable law, neither CRISP Wireless nor any third-party vendor will be legally responsible for any damages, whether direct, indirect, or consequential, arising from the use or inability to use any third-party product. Customer agrees to observe the terms of any license and/or applicable end user subscriber agreement for third party products and that customer shall be fully liable to third party vendors and CRISP Wireless with respect to any improper use of such third-party products or violation of license agreements with them and/or applicable end user subscriber agreements.

## **9. INDEMNIFICATION**

Each party agrees to indemnify and hold the other harmless against any losses, costs, expenses (including, but not limited to, reasonable attorneys' fees), claims, damages, liabilities, penalties, actions, proceedings or judgments (collectively, "Losses") resulting from any claim, suit, action, or proceeding brought by any third party against the other or its affiliates related to or arising out of

(i) any infringement or misappropriation or alleged infringement or misappropriation of any Australian copyright, trade secret, patent, trademark, or other proprietary right related to any hardware or software utilised in connection with any of the Services (but excluding any infringement contributory caused by the other party) and

(ii) any violation of or failure to comply with the Rules and Regulations. Customer further agrees to indemnify CRISP Wireless and its affiliates against any losses which arise out of, or relate to, any content provided by customer or the customers/clients of customer, and customer will reimburse CRISP Wireless and its affiliates for all legal expenses, including reasonable attorneys' fees, incurred by CRISP Wireless and its affiliates in connection with any such losses.

## **10. TERMINATION**

### **10.1 CONTRACT CONCLUSION**

This Agreement may be terminated by either party at the completion of the Initial Term for any or no reason upon either party giving to the other no less than thirty (30) days' prior written notice of termination.

## **10.2 TERMINATION DURING CONTRACT TERM**

The Customer can terminate the contract during the contract term by giving 30 days' notice in writing. In the event of the Customer terminating this contract pursuant to this clause the Customer must pay to CRISP Wireless within 14 days of providing the notice of early termination:

- (i). an early termination fee of \$750; and
- (ii). a sum equivalent to the total of the remaining fees that would be payable to CRISP over the remaining period of that contract term had it not been terminated.

## **10.3 TERMINATION FOR CAUSE**

In addition to any other rights it may have under this Agreement or applicable law, CRISP Wireless may immediately terminate this Agreement or suspend service, effective without notice, in the event of (i) a Payment Default, or (ii) Customer's breach or failure to comply with any other obligation of Customer under this Agreement including, but not limited to, its failure to comply with any of the terms of the Rules and Regulations or other policies of CRISP Wireless. Customer may terminate this Agreement if CRISP Wireless breaches any material term or condition of this Agreement and fails to cure such breach within ten (10) days after receipt of written notice of same. If this Agreement is terminated by CRISP Wireless under this Section 9.2, all remaining monthly recurring and other charges specified on the applicable Order Form(s) for the balance of the then current term shall immediately become due and payable. In addition to the foregoing, CRISP Wireless reserves the right to prohibit any conduct or to remove any materials or content in violation of the Rules and Regulations or which CRISP Wireless believes in its sole discretion to be illegal or potentially harmful to others or may expose CRISP Wireless to harm or liability.

## **10.4 SURVIVAL**

The following provisions will survive any expiration or termination of the Agreement: Sections 3, 4, 5, 6, 8, 9, 11 and 12.

## **10.5 IP ADDRESSES**

Upon expiration, cancellation or termination of this Agreement, Customer shall relinquish any internet protocol ("IP") numbers, addresses or address blocks assigned to Customer by CRISP Wireless or its network services supplier (but not the URL or top level domain connected therewith). CRISP Wireless reserves, in its sole discretion, the right to change or remove any and all such IP numbers, addresses or address blocks.

## **11. USE OF CUSTOMER'S NAME FOR MARKETING AND PROMOTION**

Customer agrees that during the term of this Agreement CRISP Wireless may publicly refer to Customer, orally and in writing, as a Customer of CRISP Wireless in resumes, client lists and in other promotional materials and communications, including, but not limited to, press releases, brochures, reports, letters and electronic media such as e-mail or web pages. The Customer also agrees that CRISP Wireless and its affiliates may communicate with the customer from time to time via email, written correspondence, and other means, unless specifically requested not to do so by the customer.

## **12. MISCELLANEOUS PROVISIONS.**

CRISP Wireless shall not be deemed to be in default of any provision of this Agreement or be liable for any delay, failure of performance or interruption of the provision of Services to Customer resulting, directly or indirectly, from any unforeseen or force majeure event. CRISP Wireless and Customer agree that, except



as otherwise expressly provided in this Agreement, the Order Form(s) or the terms and conditions of use of any third-party software products, there shall be no third-party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or the customers of Customer.

This agreement is made under and will be governed by and construed in accordance with The Laws of the state of Western Australia within the Commonwealth of Australia.

In the event any provision of this agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this agreement will remain in full force and effect. The waiver of any breach or default of this agreement will not constitute a waiver of any subsequent breach or default and will not act to amend or negate the rights of the waiving party.

Customer may not sell, assign or transfer its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of CRISP Wireless, and any attempted assignment or delegation without such consent will be void.

CRISP Wireless may assign this agreement in whole or part. CRISP Wireless also may delegate the performance of certain Services to third parties, including CRISP Wireless's wholly owned subsidiaries. All notices, demands, requests or other communications required or permitted under this Agreement shall be deemed given when delivered personally, sent by facsimile upon confirmation, sent and received by return receipt email, or upon receipt of delivery of overnight mail.

CRISP Wireless and the Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between CRISP Wireless and Customer. Neither CRISP Wireless nor the Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter.

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original. Except as expressly provided in this Agreement, this Agreement may be changed only by a written document signed by authorised representatives of CRISP Wireless and Customer.

Authorised representatives of Customer and CRISP Wireless have read the foregoing and all documents incorporated therein and, by executing the Order Form(s), agree and accept such terms effective as of the date indicated below the Customer signature on the initial Service Order Form.

CRISP Wireless agrees to use best efforts and commercially reasonable best practices when deploying services related to data integrity, backup, security, and retention. These services include, but are not limited to: hard drive storage, raid hard drive arrays, network attached storage, storage area networks, operating system installs, operating system reloads, customer portal information, and other situations involving customer data. Customer assumes ultimate responsibility for data integrity, retention, security, backup, and ownership. In the event that CRISP Wireless must handle Customer data, i.e., when replacing hard drives, CRISP Wireless will act in accordance with PCI guidelines to ensure data is securely handled.