

CHANNEL COMMUNICATIONS

SLA and Terms and Conditions

Channel Communications Pty Ltd | ACN 83 466 092 077 | ABN 099 090 794
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Standard Service Level Agreement (SLA)

Channel Communications Enterprise Class services include the following Service Level Agreement.

1. PERFORMANCE TARGETS

The table below describes the performance objectives for Channel Communications Internet services.

Network Availability Target Parameters	Targets
MTTR (Mean Time to Repair)	4 hours
Availability	99.99%

Availability is a measurement of the percentage of total time that a circuit is operative when measured over a 365 consecutive day (8760 hour) period from Service Delivery Point (SDP) to Channel Communications Carrier core router.

MTTR is the mean time required to restore a service, mean is taken over a one calendar month period.

Service Delivery Point means the customer hand off point at customer located equipment.

Round Trip Time is the time taken for an ICMP Ping packet to travel from a source point (On Channel Communications Carrier Network) to a destination point and back to the source point.

Round Trip Time	Service Type	Network Traffic Flow (%)	Time (msec)
Channel's Carriers Network Traffic	Layer 2 and Layer 3	99%	35msec
National Traffic	Layer 2 and Layer 3	98%	55msec
Internet Traffic – Australia	Layer 3 only	95%	55msec
Internet Traffic – USA	Layer 3 only	95%	220msec
Internet Traffic - UK	Layer 3 only	90%	300msec

Note: All Internet Services are a best effort service and hence Round Trip Time measures are an indicative performance Target with no associated rebates.

Channel Communications Carrier Network Traffic is the traffic that originates on the Channel Communications Carrier network and terminates within the Channel Communications Carrier's network or its gateways to the Internet.

Internet Traffic –Australia is the traffic that originates on the Channel Communications Carrier network within Australia and terminates within the borders of Australia on major ISP networks (eg. Telstra and Optus).

Internet Traffic – USA is the traffic that originates on the Channel Communications Carrier network within Australia and terminates in the USA on major ISP networks (eg. Verizon, UUNet).

Internet Traffic – UK is the traffic that originates on the Channel Communications Carrier network within Australia and terminates in the UK on major ISP networks (eg. British Telecom).

Network Traffic Flow (%) is the percentage of related traffic that flows on the customer's circuit.

2. PERFORMANCE GUARANTEE AND REBATE

Downtime is the period of time commencing when a customer notifies Channel Communications that the Channel Communications service is not operative and ending when the service is restored. Any service outages that are not related to Channel Communications Carrier network or where access at the customer site is restricted (outside business hours; eg. weekends.) are not considered downtime. Scheduled emergency downtime and regular maintenance organised by Channel Communications with at least 48 hours notice are not considered downtime.

Total monthly downtime is the summation of all downtime over a given month. If the total monthly downtime of the Channel Communications broadband Internet service exceeds 3 hours in any given month, the customer must lodge with their Account Manager within 30 days to receive a rebate on their monthly subscription fee in the following month's bill.

The rebate operates in three tiers:

- total monthly downtime of the Channel Communications broadband Internet service exceeds 3 hours but is equal to or less than 7 hours entitles you to a 10 percent rebate on your monthly subscription fee.
- total monthly downtime of the Channel Communications broadband Internet service exceeds 7 hours but is equal to or less than 24 hours entitles you to a 20 percent rebate on your monthly subscription fee.
- total monthly downtime of the Channel Communications broadband Internet service exceeds 24 hours entitles you to a 30 percent rebate on your monthly subscription fee.

This Guarantee is additional to existing customer rights as set out in the Terms and Conditions section of this agreement.

Channel Communications – General Terms and Conditions

1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

ACA means the Australian Communications Authority or any successor.

ACCC means the Australian Competition & Consumer Commission or any successor.

Access Site means the site address nominated in the Application for Service.

Agreement means this agreement for the provision of the Services between Channel Communications and the Customer, comprising in their order of precedence, these Terms and Conditions, the Application for Service, the relevant Service Level Agreement and any other document incorporated by reference or agreed in writing by the parties.

Application for Service means the application document requesting the Services and setting out the information required by Channel Communications to provision the relevant Service.

Business Day means any day other than a Saturday, Sunday or public holiday in Sydney.

Carrier means a carrier as defined in the Telecommunications Act 1997 (Cth).

Charges means all fees and charges payable by the Customer under this Agreement, including without limitation, all Installation Charges, Recurring Charges and Usage Based Charges, and any other Charges set out in the Application for Service.

Commencement Date means the date the Application for Service is signed by the Customer.

Confidential Information means all information and all other knowledge relating to Channel Communications, Channel Communications products or Services which comes into the possession of the Customer from any source, or information which is treated by Channel Communications as confidential regardless of its form, or which is designated by its nature as confidential, but excluding information that is in the public domain.

Current Supplier means a Carrier, a telecommunications service provider or equipment supplier who supplies services or equipment to the Customer.

Customer means the person or entity whose name appears on the Application for Service and that party's successors and permitted assigns.

Customer Premises means the Access Site and any other premises occupied by the Customer to which Channel Communications may require access in order to install, maintain or remove Equipment or the Services.

Equipment means any equipment or other material provided to the Customer or installed at the Access Site by Channel Communications or its representatives in connection with this Agreement.

Force Majeure Event means any event specified in clause 16.1.

GST and GST Law have the same meaning as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended or replaced from time to time.

Insolvency Event means, in respect of a party:

- (a) the party is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt;
- (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party;
- (c) the party enters into an arrangement with its creditors;
- (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; or
- (e) anything analogous or having a substantially similar effect to any of the events described in (a) through (d) above, occurs under the law of any applicable jurisdiction.

Installation Charge means a once-off charge for labour, equipment, number connection and associated cabling for initial installation of the Services set out in the Application for Service.

Minimum Term means the minimum contract term specified in the Application for Service, which commences on the Service Start Date.

Other Supplier means a Carrier, a telecommunications carriage service provider or an equipment supplier other than Channel Communications, as the case may be, and includes Current Suppliers.

Planned Outage means a period of time, as reasonably determined by Channel Communications, that Channel Communications may interrupt supply of the Services to Channel Communications Customers for routine maintenance, upgrading or other similar activities, after giving the Customer reasonable prior notice.

Channel Communications means Channel Communications Pty Ltd ACN 83 466 092 077 ABN 099 090 794

Ready for Service Date means the date that Channel Communications expects to commence supply of the Services to the Customer, which may or may not be the same as the Customer's Requested Delivery Date.

Recurring Charge means a monthly recurring charge set out in the Application for Service.

Service Delivery Point means the port, fibre termination panel or electrical interface at the Access Site as determined necessary by Channel Communications for interconnection to the Channel Communications Carrier network.

Service Start Date means the actual date from which Channel Communications commences initial supply of the Services to the Customer.

Services means the relevant telecommunication services identified in the Application for Service.

Taxes means any fees, charges, taxes or other levies in addition to GST imposed by any Federal or State government or municipal council (other than the tax on the income or capital gains of Channel Communications).

Terms and Conditions means these terms and conditions.

Transferred Services means the telecommunication Services transferred to Channel Communications from the Customer's Current Supplier.

Upload Charge means the charge payable per megabyte sent by the Customer in excess of the Upload threshold ratio (2.5:1 Upload to Download)

Usage Based Charge means a monthly usage charge for utilisation of capacity including any minimum usage charge set out in the Application for Service.

Variation means any change, addition, increase or reduction in respect of the Services including a relocation or increase in bandwidth, and Vary has a corresponding meaning.

2. PROVISION OF SERVICES

2.1 Offer and Acceptance: In an unexecuted format, this Agreement constitutes an invitation by Channel Communications for supply of the Services. By signing the Application for Service, the Customer makes an irrevocable offer to Channel Communications which may be accepted in whole or in part by Channel Communications.

2.2 Provision of Services: Channel Communications agrees to supply and the Customer agrees to acquire the Services in accordance with the terms of this Agreement. The Customer acknowledges that:

(a) before commencing supply of the Services, Channel Communications may need to modify or install necessary equipment to Channel Communications reasonable satisfaction and make arrangements with Other Suppliers for the provision of the Services.

2.3 Suspension of Services: Channel Communications reserves the right to suspend the provision of the Services, without liability:

- (a) if the Customer is in default of any payment or obligation under this Agreement;
- (b) if Channel Communications is required to comply with a request from a government agency or emergency service organisation;
- (c) as an alternative to the exercise of Channel Communications right of termination under this Agreement.

2.4 Consequences of Suspension: If Channel Communications suspends the Services pursuant to clauses 2.3 (a) or (c), the Customer acknowledges and agrees that:

- (a) Channel Communications will continue to incur costs of supply associated with keeping that Service in a suspended state; and
- (b) except in the case of Usage Based Charges, all applicable Charges in relation to the Service will continue to accrue while suspended and will be payable by the Customer.

2.5 Instructions: The Customer must comply with any reasonable instructions of Channel Communications, and provide all information and assistance reasonably required by Channel Communications, in order to enable Channel Communications to comply with any request or direction of a government agency, emergency service organisation or other competent authority for reasons of health, safety or the quality of the Services.

3. PERIOD OF AGREEMENT

3.1. Term: This Agreement commences on the Commencement Date and will continue for the Minimum Term (if any) and then on a month to month basis unless otherwise determined in accordance with the terms of this Agreement.

4. TERMINATION

4.1. Termination by Channel Communications: Channel Communications may immediately terminate this Agreement or any part of this Agreement without prior written notice to the Customer if:

- (a) the Customer fails to pay any Charges payable under this Agreement by the due date and does not remedy such failure within 7 days of written notice from Channel Communications requiring the Customer to do so;
- (b) the Customer fails to comply with any license, permit or authorisation relating to the connection of equipment to the Service Delivery Point or the use of the Services and does not remedy such failure within 14 days of written notice from Channel Communications requiring it to do so; or
- (c) Channel Communications reasonably suspects fraud or misuse of the Services on the part of the Customer.

4.2. Termination by Affected Party: Either party ("Affected Party") may without liability terminate this Agreement, with immediate effect from the date of service of a notice (or with effect from such later date as the Affected Party may nominate in such notice), if an Insolvency Event occurs with respect to the other party.

4.3. Termination with notice: After the expiration of the Minimum Term, either party may terminate this Agreement by giving 30 days written notice to the other party, effective 30 days from the date when that written notice is delivered to that other party, or upon such later date as is specified in that notice.

4.4. Liability until Termination: The Customer remains liable for all Charges payable under the Agreement in respect of Services up to the time of termination.

4.5. Accrued Rights Unchanged: Termination of this Agreement is without prejudice to the rights of each party against the other which have accrued up until the time of termination.

4.6. **Termination Fee:** If:

(a) the Customer wishes to terminate this Agreement at any time prior to expiry of the Minimum Term, the Customer may do so by paying to Channel Communications an amount calculated by multiplying the Recurring Charge, payable by the Customer under this Agreement, by the remaining months (or part thereof) of the Minimum Term; or

(b) Channel Communications elects to exercise any right to terminate this Agreement prior to expiry of the Minimum Term pursuant to clause 4.1 or clause 4.2, the Customer must pay to Channel Communications, by way of liquidated damages, the fee referred to in clause 4.6(a), which the parties acknowledge is a genuine pre-estimate of the losses which Channel Communications will suffer as a result of early termination of this Agreement. This clause 4.6 does not otherwise limit the Customer's liability to Channel Communications on termination.

4.7. **Charges Immediately Payable:** On termination of this Agreement for any reason, all Charges (including the fee referred to in clause 4.6) and other amounts owing by the Customer, shall become immediately due and payable.

4.8. **Continuing Obligations:** Termination or expiry of this Agreement shall be without prejudice to the continued effectiveness of all provisions in this Agreement which, by their nature, survive termination or expiration.

5. **INVOICING AND BILLING**

5.1. **Invoicing:** Channel Communications will endeavour to invoice the Customer monthly but reserves the right to bill at different intervals. Channel Communications will provide the Customer with a breakdown of the fees and charges payable in each invoice. Channel Communications records and/or any relevant Other Supplier's records shall be sufficient evidence of the amounts payable by the Customer as stated in each invoice unless those records are shown to be incorrect.

5.2. **Billing Method:** Channel Communications will invoice for, and the Customer will be liable for all Charges in respect of the Services commencing on and from the Service Start Date, whether or not the Customer uses the Services from that date:

(a) in advance for Installation Charges and Recurring Charges; and

(b) in arrears for Usage Based Charges.

5.3. **Continuing Liability:** The Customer will be liable for all Charges whether or not it authorised the particular use of the Services by another person and the Customer will continue to be liable for the Charges if it allows another person to occupy the Customer Premises or use the Services.

5.4. **Set off:** Channel Communications will be entitled to set off in whole or in part any amounts due and payable by Channel Communications to the Customer, against the whole or a proportionate part of any amount due and payable by the Customer to Channel Communications under this Agreement.

6. **CHARGES**

6.1. **Price:** After expiry of the Minimum Term, the relevant Charges will continue on a monthly basis, subject to change upon 30 days prior written notice or publication of new rates.

6.2. **Minimum Usage Charge:** Where a minimum Usage Based Charge is provided for in the Application for Service, that amount will apply even if the Customer has incurred lower Usage Based Charges or no Usage Based Charges in that calendar month.

6.3. **Payment Terms:** The Customer must pay all fees and Charges within 14 days of the date of invoice.

6.4. **Interest:** Channel Communications reserves the right to charge interest on any part of the charges or GST not paid to Channel Communications by the due date. Interest will be charged from the due date until payment at a rate equal to 3% above the Commonwealth Bank Corporate Overdraft Reference Rate or such other comparable rate chosen by Channel Communications most recently published before that date. The Customer will be liable to pay Channel Communications all expenses (including legal costs and expenses and the fees of Channel Communications's debt recovery agents) incurred by Channel Communications in relation to seeking payments due under this Agreement.

6.5. **Discounts:** Channel Communications reserves the right to withdraw any discounts that the Customer receives from Channel Communications in connection with the supply of Services where payment is not received within the terms of clause 6.3.

6.6. **Taxes:**

(a) Subject to clause 6.6(b), the Charges are inclusive of all state and commonwealth taxes, with the exception of GST and any stamp or transaction duty on this Agreement and any related interest, expense, fine, penalty or other charge relating to these taxes, which must be paid by the Customer.

(b) Where Channel Communications becomes liable to pay any Taxes, the Customer must pay Channel Communications the charges referred to in clause 4.2 plus an amount equal to the Taxes payable by Channel Communications. Channel Communications must identify the Taxes to be paid on each invoice.

6.7. **GST:** Channel Communications may charge an additional amount equal to the amount of its GST liability, at the time of invoice (unless the consideration for the supply is expressed in this Agreement to be GST inclusive). Where GST is charged, Channel Communications will provide a tax invoice, which will enable the Customer, where permitted, to claim a credit or refund of GST.

6.8. Where Channel Communications becomes liable to any penalties or interest as a result of the late payment of GST or any stamp or transaction duty (whether the relevant tax is included in an amount of consideration expressed in this Agreement or not), due to the Customer's failure to comply with the terms of this Agreement (including this clause) or the Customer's obligations under the GST Law, then an additional amount equal to those penalties and interest will be payable to Channel Communications.

6.9. Should the GST amount recovered by Channel Communications from the Customer in connection with any supply made differ to the GST liability either due to an amendment in the GST Law or an adjustment to the consideration under this Agreement, the parties will adjust the amount of GST and make any payments necessary to give effect to the adjustment.

6.10 If the rate of GST increases from that applying as at the date of this Agreement, Channel Communications may increase the consideration by the amount necessary to ensure that the economic benefit to it of this Agreement remains the same whatever the rate of GST is.

7. CREDIT ASSESSMENT

7.1 Consent: Subject to the Privacy Act 1988 and the Act, for the purposes of assessing the Customer's Application for Service, establishing and managing its account, assessing its creditworthiness and collecting overdue payments:

(a) the Customer's consent to Channel Communications disclosing to a credit reporting agency, any of the Customer's personal information in Channel Communications's possession, including but not limited to:

(i) the Customer's name and address;

(ii) details of the Customer's Application for Service and/or other services supplied to the Customer;

(iii) credit limits on the Customer's accounts;

(iv) the amount of any payments which are overdue for at least 60 days;

(v) where an overdue payment has been previously reported, advice that the payment is no longer overdue;

(vi) cheques or credit card payments which have been dishonoured;

(vii) information that, in Channel Communications's reasonable opinion, the Customer has committed a serious credit infringement; and

(viii) information that Channel Communications has ceased to provide Services to the Customer, in order to obtain a consumer credit report about the Customer or to allow the credit reporting agency to create or maintain a credit information file about the Customer.

(b) the Customer consents to Channel Communications disclosing a credit report about the Customer to any credit provider, debt collecting agency or Other Supplier;

(c) the Customer authorises Channel Communications to obtain information about the Customer from any business which provides information about commercial credit-worthiness;

(d) the Customer must provide to Channel Communications, or any independent person nominated by Channel Communications, within 10 business days of Channel Communications's request, any information (including the Customer's financial accounts) or any consent the Customer is capable of giving, which is necessary for a person to comply with any request from Channel Communications to confirm the Customer's credit-worthiness.

7.2. Refusal to Supply: Channel Communications may refuse to supply the Services to the Customer on the basis of its credit assessment of the Customer, after consultation with the Customer to confirm the accuracy of the assessment.

8. PRIVACY

8.1. The Customer agrees to Channel Communications collecting, using and disclosing information about the Customer for:

(a) the purposes outlined in clause 7;

(b) all purposes associated with the provision of telecommunications Services to the Customer and the management of the Customer's account;

(c) the purposes of communicating with the Customer about products and Services which Channel Communications or partners or affiliates of Channel Communications may provide to the Customer;

(d) the purpose of implementing this Agreement; and

(e) the purpose of complying with legal requirements.

8.2. Channel Communications will provide the Customer with access to any personal information relating to the Customer held by Channel Communications, at the request of the Customer. Channel Communications reserves the right to charge a reasonable fee for the provision of this information. Channel Communications agrees to correct or amend any personal information held by Channel Communications which is inaccurate or out of date, at the Customer's written request.

8.3. Channel Communications will handle the Customer's personal information in accordance with the requirements of relevant laws and industry standards.

8.4. Subject to compliance with this clause 8, Channel Communications may, at any time in its absolute discretion:

- (a) intercept the Services or the data being transmitted over the Services, for the purpose of complying with its obligations at law;
- (b) monitor use of the Services.

9. ACKNOWLEDGEMENTS

9.1. The Customer acknowledges and agrees that:

- (a) **Suitability:** it has relied on its own judgment to evaluate the suitability of the Services for the purpose for which it requires the Services;
- (b) **Commissions:** Channel Communications may at its discretion pay commissions to any Channel Communications agent, representative or retailer who introduces the Customer to Channel Communications;
- (c) **IP Address:** it will have no right, title or interest in any IP addresses allocated to it as part of the Services. Channel Communications will notify the Customer of any IP numbering change affecting the Customer;
- (d) **Managed Router Service:** in respect of Managed Router Services:
 - (i) the Services will include the management of a Channel Communications owned router at the relevant Access Site;
 - (ii) Channel Communications will be responsible for management of the Services up to the Ethernet port on each router located at the Customer Premises;
 - (iii) title to the router configuration files remains at all times with Channel Communications; and
 - (iv) the Customer must not make any changes to the configuration files without the prior written consent of Channel Communications.
- (e) **Internet Services:** In respect of Internet Services:
 - (i) the Recurring Charge for the Channel Communications Internet Service is based on the amount of traffic the Customer receives where the Customer does not exceed the specified Upload/Download threshold ratio. If the Upload threshold Ratio exceeds the specified threshold, an Upload Charge, in addition to the monthly Recurring Charge may be payable per Megabyte sent by the Customer above the threshold;
 - (ii) while Channel Communications may (without obligation to do so) configure the router with basic access lists, the Internet by its nature is not secure and Channel Communications does not provide as part of the Internet Service, security features in the form of fire walls. Accordingly the Customer is responsible for providing for any security or privacy that it requires for its computer networks and any data stored on those networks or accessed through the Service;

- (iii) Channel Communications may access and store certain content accessible through use of the Internet (known as caching) for fast and easy access by customers, that content is updated on a regular basis but there may be delays in that updating and therefore content accessed through the Internet Service may not be the most up to date version;
- (iv) neither Channel Communications nor any Other Supplier exercises any control over the content accessible through the Internet;
- (v) to the extent permitted by law, neither Channel Communications nor any Other Supplier gives any warranties, express or implied, in respect of the Services or has any other liability to the Customer or its end user in respect of the Services; and
- (vi) neither Channel Communications nor any Other Supplier, will be responsible for any damage that the Customer may suffer arising from using:
 - (a) the Services (including loss of data, delays, non-deliveries, or mis-deliveries); or
 - (b) any content accessed through the Services (including inaccurate, incomplete or out of date information); and
 - (c) inaccurate, incomplete or out of date information.

10. CUSTOMER USE & INDEMNITY

10.1. Use of Services: The Customer will not use or allow others to use the Services:

- (a) to distribute material that is defamatory, offensive, abusive, obscene, menacing, threatening, harassing, or illegal under any law at any place where transmissions are sent from, viewed or received;
- (b) to copy or distribute material where it has no right to do so (for example, someone else's copyrighted works or confidential information);
- (c) to commit a crime or in the course of committing a crime or for an unlawful purpose or do any act that may damage the network or systems or cause the quality of the Service to be impaired;
- (d) to engage in any activities in such a manner as to expose Channel Communications or any Other Supplier to liability;
- (e) to do any act that may damage the network or systems or cause the quality of the Services to be impaired; or
- (f) in a manner that does not comply with the terms of any legislation or license applicable to the Customer or that does not comply with any instructions given by Channel Communications under clause 2.8.

10.2. Indemnity: The Customer will indemnify Channel Communications against all costs, losses, damages, liabilities and expenses (including all reasonable legal costs, fees and expenses) incurred or suffered by Channel Communications as a result of:

- (a) any personal injury to, or death of, any person or any loss of, or damage to, any personal property (including without limitation the Equipment) caused by the Customer's breach of this Agreement or its negligent or unlawful act or omission;
- (b) use of the Services in breach of clause 2.8, clause 11.1 or clause 12.1.

11. CUSTOMER EQUIPMENT & WARRANTIES

11.1. Customer Equipment: The Customer must ensure that any equipment that it uses in connection with the Services:

- (a) has all necessary regulatory approvals;
- (b) is not prohibited by the Australian Communications Authority ("ACA");
- (c) complies with all applicable regulatory standards;

(d) is approved by Channel Communications; and

(e) is capable of operating with the Services. If there are faults with the equipment causing interference with the Services, Channel Communications may require the Customer to stop using and disconnect the equipment until the problem is fixed.

11.2. Installation of Equipment: The Customer will assist Channel Communications to ensure that any Equipment necessary for the Customer to receive the Services and access the Channel Communications network is installed and programmed

11.3. Customer Supply: The Customer will provide:

(a) a suitable physical environment at the Customer Premises for the storage and operation of the Equipment including supplying an adequate power supply for the operation of the Equipment.

11.4. Access: The Customer will ensure that Channel Communications (or where relevant the lessor or licensor of the Equipment to Channel Communications) is provided with such access to the Equipment and Customer Premises during normal business hours as Channel Communications may request and at such other times as Customer and Channel Communications mutually agree. This right of access will not end until all the Equipment is returned to Channel Communications, even if this Agreement has terminated. After termination of this Agreement, the Customer must allow Channel Communications to retake possession of the Equipment. The Customer must ensure that Channel Communications personnel are provided with a safe working environment while at Customer Premises. Channel Communications will ensure that its personnel comply with the Customer's reasonable directions while on the Customer Premises.

12. CHANNEL COMMUNICATIONS EQUIPMENT AND SERVICES

12.1. Property: Except as expressly provided by this Agreement:

(a) the Customer will bear the risk of loss or damage to any Equipment used by or located on the Customer Premises;

(b) the Equipment always remains the property of Channel Communications (or where relevant the lessor or licensors of the Equipment to Channel Communications);

(c) the Customer will ensure that it has all necessary consents and approvals (including landlord approval where applicable) necessary or desirable for Channel Communications to deliver, install and maintain the Equipment at the Access Site;

(d) the Customer will not part with possession of the Equipment except to Channel Communications and will comply with all reasonable directions of Channel Communications relating to Channel Communications's rights of ownership of the Equipment; and (e) the Customer will only use the Equipment in accordance with the manufacturer's specifications or the written directions of Channel Communications.

12.2. Change of Equipment: Channel Communications may at any time and from time to time change, modify or service the Equipment.

12.3. Interference: The Customer will ensure that the Equipment will not be altered repaired, serviced or moved except by service personnel approved by Channel Communications. The Customer must take good care of the Equipment while it is in the Customer's possession. The Customer will be liable to Channel Communications for all loss of or damage to the Equipment while at the Customer Premises, apart from normal wear and tear.

13. CARRIER SERVICES

13.1. If Channel Communications uses the services of an Other Supplier in providing the Services, the Customer agrees to comply with any reasonable direction of Channel Communications necessary to avoid causing any breach by Channel Communications of the relevant Other Supplier's terms and conditions of supply applicable to that service.

14 LIABILITY

14.1. Except as expressly provided to the contrary in this Agreement and to the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Services supplied under this Agreement or Channel Communications obligations under this Agreement are excluded.

14.2. Where any Act of Parliament implies in this Agreement any term, and that Act of Parliament voids or prohibits provisions under a contract which exclude or modify the operation of such term, the term is deemed to be included in this Agreement.

14.3. To the extent permitted by law Channel Communications liability for breach of an express term or implied term of this Agreement in contract, negligence or any other tort under any statute or otherwise, is limited to one of the following remedies at Channel Communications discretion:

(a) if the breach relates to services, the resupply of the Services or the payment of the cost of resupplying the Services; or

(b) if the breach relates to goods, the replacement of the goods or the supply of equivalent goods, the payment of the cost of such replacement, the repair of such goods or the cost of such repair.

14.4. To the extent permitted by law, Channel Communications excludes all liability to the Customer in connection with this Agreement for consequential loss, indirect loss, loss of profits of any kind, loss or corruption of data, interruption to business, loss of revenue and economic loss of any kind, whether in contract, negligence or any other tort under any statute or otherwise.

14.5. To the extent permitted by law, Channel Communications aggregate liability to the Customer in connection with this Agreement in respect of all claims, whether in contract, negligence or any other tort, under any statute or otherwise, will not exceed the amount paid to Channel Communications by the Customer during the Minimum Term.

15. CONFIDENTIALITY

15.1. **Confidential Information:** Channel Communications retains all rights in the Confidential Information.

15.2. **Non-Disclosure:** The Customer will keep all Confidential Information confidential, will not disclose or allow any Confidential Information or the terms of this Agreement or Application for Service (including pricing) to be disclosed to any third party without Channel Communications prior written consent and will return it to Channel Communications on Channel Communications request.

15.3. Use of Confidential Information: The Customer will not use Confidential Information or the terms of this Agreement, which the Customer acquires from Channel Communications for any purpose other than use of the Services or as otherwise expressly permitted by Channel Communications and, in particular, will not use Confidential Information in any way which may cause Channel Communications loss, whether by way of damage to Channel Communications reputation, financial loss, or otherwise.

16. FORCE MAJEURE

16.1. Channel Communications is not liable for any failure to perform, or for any delay in performing any of its obligations under this Agreement where the failure or delay is occasioned by:

- (a) strike or other industrial action;
- (b) any act or omission of the Customer or any third party, including failures or delays by Other Suppliers;
- (c) legislative or governmental prohibitions, restrictions, or delays in the granting of approvals, consents, permits, licenses or authorities;
- (d) fire, flood, war, cable cut, or any other act of God or act of nature; or
- (e) any other event beyond Channel Communications reasonable control.

17. NO ASSIGNMENT

17.1. The Customer may not assign or otherwise deal with its rights under this Agreement without Channel Communications prior written consent.

18. GENERAL

18.1. This Agreement is governed by and construed in accordance with the laws of New South Wales. The parties submit to the jurisdiction of the Courts of New South Wales and any court hearing appeals from those Courts.

18.2. This Agreement contains the whole understanding of the parties to the exclusion of any prior Agreement, representation or understanding relating to the Services.

18.3. A notice, approval or consent, to be issued under this Agreement must be in writing and in the absence of evidence to the contrary will be taken to be received:

- (a) if left at the address of the addressee, at the time it was left;
- (b) if sent by ordinary post, on the third day after posting;
- (c) if sent by express post, on the next day;
- (d) if sent by facsimile, at the time recorded on a transmission report from the machine from which the facsimile was sent;
- (e) if sent by electronic e-mail, at the time the sending party receives a "return receipt" confirmation of successful transmission.

Channel Communications Acceptable Usage Policy (AUP)

This Acceptable Usage Policy applies to your use of the Channel Communications Services as defined in the Service

Description Section contained herewith of this document.

1. GENERAL OBLIGATIONS

1.1. You must not use the Service:

- 1.1.1. for any illegal, improper or malicious purpose;
- 1.1.2. to transmit a computer virus knowingly;
- 1.1.3. to access other computers or data on the Internet without permission;

1.1.4. to publish or distribute material that is obscene, defamatory, abusive or that violates any law or regulation;

1.1.5. to conduct an illegal business;

1.1.6. alter or modify the radio transmission equipment installed by Channel Communications in any way without written consent of Channel Communications authorised representative.

2. EMAIL

2.1. In email service provided by Channel Communications you should not:

2.1.1. send unsolicited bulk emails

2.1.2. send emails with obscene, defamatory or illegal content

2.1.3. collect unsolicited email sent from accounts on other Internet hosts or email services which violates this Acceptable User Policy.

2.1.4. remove or alter the appearance of the email headers.