

## Part A – General Terms and Conditions

### 1. Definitions

- 1.1. **Accession, Collateral, Financing Statement, Financing Change Statement, Purchase Money Security Interest, Security Agreement, Security Interest and Verification Statement** have the meanings given to them in the PPSA.
- 1.2. **Agreement** means the agreement between the parties constituted by the documents specified in clause 2 of Part A of the Agreement.
- 1.3. **Confidential Information** means all information and materials, in any form, which comes into a party's possession about the other party pursuant to, or as a result of or in performance of the Agreement, excluding information:
  - 1.3.1. which at the time of its first disclosure or observation under the Agreement was in the public domain;
  - 1.3.2. which, after disclosure or observation under the Agreement, comes into the public domain otherwise than by disclosure in breach of the Agreement;
  - 1.3.3. which is received by either party from a third party who has the right to provide the information;
  - 1.3.4. which was already in the receiving party's possession or knowledge without restriction prior to its disclosure or observation; or
  - 1.3.5. which the disclosing party is required by law to disclose.
- 1.4. **Commencement Date** means the date specified in the Proposal as the commencement date.
- 1.5. **RCS Telecommunications** means RCS Telecommunications Pty Ltd (ABN 16 163 687 974).
- 1.6. **RCS Telecommunications' Premises** means the premises notified by RCS Telecommunications, from time to time, for the purposes of the Agreement.
- 1.7. **Customer** means the entity described in the Proposal and in the case of a company includes its permitted successors and assigns and in the case of natural persons includes his, her or their heirs, executors, administrators and permitted assigns.
- 1.8. **Defective** means any fault in the Services, Equipment or Network, or malfunction of the Equipment or Network and includes where the equipment is not fit for purpose or is not of merchantable quality, and **Defect** has the same meaning.
- 1.9. **Equipment** means the equipment as specified in the Proposal.
- 1.10. **Expiry Date** means the date specified in the Proposal as the expiry date.
- 1.11. **Fee** means the amount(s) set out in the Proposal.
- 1.12. **Intellectual Property Right** means all intellectual property rights, whether or not now existing, arising under statute or common law anywhere in the world in respect of works protected by copyright, trademarks, designs, patentable inventions, circuit layouts, databases, know-how, confidential information and trade secrets, and any application or right to apply for registration of any intellectual property in respect of such subject matter.
- 1.13. **GST** means the goods and services tax payable under *A New Tax System (Equipment and Services Tax) Act 1999* (Cth) (as amended).
- 1.14. **Rental Period** means the period commencing from the Commencement Date as specified in the Proposal and ending on the Expiry Date or when the Equipment is returned to RCS Telecommunications, whichever occurs last.
- 1.15. **Lost Equipment** means any Equipment which the Customer fails to return in accordance with the Agreement or notifies RCS Telecommunications has been lost or is unable to make available for RCS Telecommunications' inspection within 7 days of a request from RCS Telecommunications for such an inspection to take place.
- 1.16. **Network** means a system or service provided on a non-exclusive basis by RCS Telecommunications that allows for the transmission of data or voice via telecommunications, the internet or other means of such data or voice transmission.
- 1.17. **Network Access** means the shared use of Network.
- 1.18. **Network Access Period** means the period commencing from the Commencement Date and ending on the Expiry Date or when the Customer advises RCS Telecommunications in writing that it no longer requires Network Access, whichever occurs last, as that period may be extended under Part D.
- 1.19. **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- 1.20. **PPSR** means the Personal Property Securities Register established under Section 147 of the PPSA.
- 1.21. **Privacy Act** means the *Privacy Act 1988* (Cth).
- 1.22. **Proposal** means proposal for the Services as issued by RCS Telecommunications to the Customer.
- 1.23. **Replacement Equipment Fee** means 100% of the recommended retail price of the Equipment.
- 1.24. **Security Deposit** means any amount payable by the Customer as security for the fulfilment of the Customer's obligations under the Agreement, as set out in the Proposal.
- 1.25. **Services** means the services described in or referred to in the Proposal, together with all tasks and activities incidental to and necessary for the performance of the Services.
- 1.26. **Tax Invoice** means any invoice issued by RCS Telecommunications, which shall constitute a Tax Invoice as defined in *A New Tax System (Equipment and Services Tax) Act 1999* (Cth) (as amended).
- 1.27. **Warranty Period** means the period (if any) set out in the Proposal.

### 2. Agreement

- 2.1. The Agreement comprises 5 components:
  - 2.1.1. Proposal;
  - 2.1.2. Part A – General Terms and Conditions applying to all Services;
  - 2.1.3. Part B – Services Terms and Conditions;
  - 2.1.4. Part C – Equipment Rental Terms and Conditions; and
  - 2.1.5. Part D – Network Access Terms and Conditions.
- 2.2. Where there is any ambiguity, discrepancy or inconsistency in the documents comprising the Agreement, the following order of precedence applies:
  - 2.2.1. Proposal;
  - 2.2.2. Part A – General Terms and Conditions applying to all Services; and
  - 2.2.3. Part B (Services Terms and Conditions), and Part C (Equipment Rental Terms and Conditions), and Part D (Network Access Terms and Conditions).
- 2.3. The Agreement comprises the entire understanding between the parties and no regard will be had to any prior dealings. Any terms that may have been attached or embodied in RCS Telecommunications' tender (if any), any quotation from RCS Telecommunications or other correspondence between the parties are deemed to have been withdrawn in favour of the terms stated in the Agreement.
- 2.4. The Agreement comes into effect and operates from the Commencement Date.
- 2.5. In the interpretation of the Agreement, no rule of construction applies to the disadvantage of RCS Telecommunications on the basis that RCS Telecommunications prepared or put forward the Agreement or any part of it.
- 2.6. The Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.
- 2.7. Any provision of the Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 2.8. If it is not possible to read down a provision as required by clause 2.7, the part or all of the provision that is unlawful or unenforceable will be severed from the Agreement and the remaining provisions continue in force.
- 2.9. Without limiting any other way in which documents or notices may be given by a party to the other party under the Agreement, a notice or document may be given by electronic delivery to the email address stated in the Proposal or to a substitute email address advised by one party to other from time to time as an address at which notices may be given.
- 2.10. All obligations to indemnify under the Agreement survive termination or expiration and completion of the Agreement.
- 2.11. Failure or delay on the part of RCS Telecommunications to exercise any right, remedy, power or privilege to which it is entitled under the Agreement does not operate as a waiver of such right, remedy, power or privilege.
- 2.12. Unless otherwise expressly stated, RCS Telecommunications or an authorised representative of RCS Telecommunications may exercise a right or power under or arising out of the Agreement in its absolute discretion.

### 3. Default Payment

- 3.1. RCS Telecommunications has the right to charge interest on overdue accounts at the cash rate of the Reserve Bank of Australia plus 2% compounded daily from (and including) the date of due payment until (but excluding) the date of payment in full of the overdue

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account with interest.

- 3.2. The Customer shall pay to RCS Telecommunications any costs, expenses or losses incurred by RCS Telecommunications as a result of the Customer's failure to pay to RCS Telecommunications all monies outstanding from the Customer to RCS Telecommunications, including, without limiting the generality of the obligations set out in the Agreement, any debt collection, mercantile agent and legal costs.

## 4. Warranties

- 4.1. RCS Telecommunications warrants that:
- 4.1.1. the Services will be reasonably fit for purpose; and
  - 4.1.2. any Equipment is of merchantable quality, free from defect in material and workmanship and reasonably fit for the purpose for which it is designed.
- 4.2. All warranties, representations, promises, conditions or statements regarding the Services or the Equipment, whether express or implied are expressly excluded to the full extent permitted by law and the Customer expressly acknowledges that they have relied entirely on their own knowledge, skill and judgement in selecting the Services and ordering and selecting the Equipment for purchase or Rent.

## 5. Limit of Liability

- 5.1. RCS Telecommunications shall not be liable for any loss, damage or injury of any kind whatsoever caused to the Customer, its property and/or equipment of the Customer, to any other person or to the property and/or equipment of any other person arising from or relating to:
- 5.1.1. a failure to provide the Services;
  - 5.1.2. the unavailability of the Services, Equipment or the Network;
  - 5.1.3. mechanical failure of Equipment or the Network;
  - 5.1.4. any Defect in the Services or the Equipment;
  - 5.1.5. Network Access failure, disruption, disturbance, or discontinuance;
  - 5.1.6. disruption or discontinuance of the Australian Communications Authority Service;
  - 5.1.7. any asserted or established violation of legal requirements relating to the safe use of the Equipment;
  - 5.1.8. the Customer's use or operation of the Equipment;
  - 5.1.9. a failure by RCS Telecommunications to deliver or supply the Equipment or the Network Access,
- except to the extent that such loss, damage, or injury is caused by any breach of contract or negligence on the part of RCS Telecommunications or its agents or servants.
- 5.2. The Customer shall defend, indemnify, and hold RCS Telecommunications harmless for all claims for such loss, damage, or injury.
- 5.3. Neither party is liable to the other for any indirect or consequential loss, including pure economic loss, loss of profit, loss of revenue or loss of use.

## 6. Price

**Unless otherwise stated**, any price or amount specified in the Proposal, including the Fee are:

- 6.1. expressed in Australian dollars;
- 6.2. exclusive of GST, stamp duty, levies and any other applicable taxes unless otherwise expressly stated in writing; and
- 6.3. exclusive of delivery and installation costs unless otherwise expressly stated in the Proposal.

## 7. Intellectual Property

- 7.1. All Intellectual Property Rights subsisting in the Services, Equipment or Network Access, designs, materials, documents, specifications or methods of working created under the Agreement or otherwise by or on behalf of RCS Telecommunications for the purposes of the Equipment or Network Access, is and remains the property of RCS Telecommunications.
- 7.2. Each party retains ownership of its Intellectual Property which was in existence prior to the date of the Proposal and which was not created in connection with the Agreement.
- 7.3. RCS Telecommunications grants to the Customer a non-exclusive, royalty-free licence to use the RCS Telecommunications intellectual property solely for purpose of using the Equipment or Network Access.
- 7.4. The Customer must not infringe any Intellectual Property Right of RCS Telecommunications and indemnifies RCS Telecommunications for

any such infringement.

## 8. Confidentiality

Each party must not disclose or otherwise make available any Confidential Information of the other party to any other person without the prior written consent of the other party.

## 9. Termination Generally

- 9.1. Without limiting any other termination rights under the Agreement, a party can, without prejudice to any other rights and remedies it has under the Agreement, terminate the Agreement prior to the Expiry Date (if applicable) in whole or part with immediate effect by notice in writing if the other party:
- 9.1.1. is in breach of any term of the Agreement;
  - 9.1.2. being an individual, commits an act of bankruptcy, becomes bankrupt, executes a deed of assignment or deed of arrangement under Part 10 of the *Bankruptcy Act 1966* (Cth) as amended or a creditor accepts a composition under that Act or any analogous overseas law;
  - 9.1.3. being a corporation (other than for the purpose of a reconstruction or amalgamation):
    - 9.1.3.1. is the subject of a compromise or arrangement with its creditors;
    - 9.1.3.2. in respect of property of which a receiver or a receiver and manager is appointed; or
    - 9.1.3.3. in respect of which a provisional liquidator or liquidator is appointed.
- 9.2. If the Agreement is terminated pursuant to clause 9 of Part A, if the other party is RCS Telecommunications, RCS Telecommunications is entitled to any costs, expenses or losses incurred by RCS Telecommunications as a result of the termination under clause 9 of Part A of the Agreement.

## 10. Personal Property Securities Act 2009 (CPA)

- 10.1. The Agreement constitutes a Security Agreement for the purposes of the PPSA and a Purchase Money Security Interest is taken by RCS Telecommunications in the Equipment, including, but not limited to, all other present and after-acquired property.
- 10.2. The Customer undertakes to:
- 10.2.1. sign any further documents and/or provide further information, such information to be complete, accurate and up to date in all respects which RCS Telecommunications may reasonably require to register a Financing Statement or Financing Change Statement on the PPSR;
  - 10.2.2. indemnify, and upon demand, reimburse RCS Telecommunications for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR; and
  - 10.2.3. give RCS Telecommunications not less than 14 days' prior written notice of any proposed change in the Customer's details, including but not limited to, changes in address, facsimile number, or business practice.
- 10.3. Unless otherwise agreed to in writing by RCS Telecommunications, the Customer waives its right to receive a Verification Statement in accordance with section 157(3) of the PPSA.
- 10.4. Pursuant to section 275(6) of the PPSA, the Customer agrees it will not disclose to an interested person information pertaining to RCS Telecommunications' Purchase Money Security Interest without prior approval of RCS Telecommunications.
- 10.5. Pursuant to section 115 of the PPSA, the Customer agrees, to the extent permitted by law, that it shall have no rights under Chapter 4 (Enforcement of security interests) to receive:
- 10.5.1. a notice of removal of Accession;
  - 10.5.2. a notice of enforcing Security Interests in accordance with land law decisions;
  - 10.5.3. a notice of disposal of Collateral;
  - 10.5.4. a statement of account where there is no disposal of Collateral; and
  - 10.5.5. a notice of retention of Collateral.

## 11. Force Majeure

RCS Telecommunications shall not be liable for default or failure in performance of obligations pursuant to the Agreement resulting directly or indirectly from acts of god, civil or military authority, acts of public enemy,

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war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, industrial disputes, shortage of suitable parts, components, materials or any other cause beyond the reasonable control of RCS Telecommunications.

## 12. Access and Safety

- 12.1. If the Customer requires access to the RCS Telecommunications Premises in connection with the performance of the Agreement, RCS Telecommunications will, subject to its usual security requirements, permit the Customer and its personnel reasonable access to the premises at such times as may be reasonably necessary to enable the Customer to perform its obligations under the Agreement.
- 12.2. When the Customer enters the RCS Telecommunications Premises, the Customer must, and must ensure that its personnel, use their best endeavors to:
  - 12.2.1. protect people and property;
  - 12.2.2. prevent nuisance and unnecessary noise and disturbance;
  - 12.2.3. act in a safe and lawful manner and comply with the safety standards and policies of the RCS Telecommunications (as notified to the Customer); and
  - 12.2.4. comply with all applicable work, health and safety laws.

## 13. Credit Reporting and the Privacy Act

- 13.1. The Customer acknowledges that RCS Telecommunications may utilise any sources which it considers necessary in determining whether or not to provide the Equipment to the Customer on credit or at all, including obtaining a report from a credit reporting agency or the PPSR which report may include personal credit information about the Customer.
- 13.2. The Customer agrees that for the purposes of the Privacy Act and generally RCS Telecommunications may give to PPSR or a credit reporting agency information including, but not limited to:
  - 13.2.1. about the Customer or otherwise concerning the agreement between RCS Telecommunications and the Customer pursuant to the Agreement;
  - 13.2.2. that RCS Telecommunications is (if it is the case) a current credit provider to the Customer;
  - 13.2.3. details of payments overdue more than 60 days and for which collection has commenced;
  - 13.2.4. details of payments no longer overdue;
  - 13.2.5. details of cheques drawn by the Customer which have been dishonoured; or
  - 13.2.6. advice that credit provided to the Customer by RCS Telecommunications or other obligation of the Customer to RCS Telecommunications has been paid or discharged.
- 13.3. The Customer authorises RCS Telecommunications to give, or seek from, any credit providers that may be named in a:
  - 13.3.1. credit report;
  - 13.3.2. PPSR; or
  - 13.3.3. credit reporting agency report,information that credit providers are permitted to give or receive under the Privacy Act.

## 14. Dispute Resolution

If any dispute arises between RCS Telecommunications and the Customer in relation to any transaction which is subject to the Agreement or the terms of the Agreement, either party may give written notice of the existence of such dispute and each party must appoint a senior employee of that party to promptly meet and engage in good faith discussions with the objective of resolving the dispute by agreement. If a dispute cannot be resolved by good faith discussions, the dispute shall be settled by the competent court in the State of Queensland.

## 15. Representations and Implied Terms

The Customer acknowledges that neither RCS Telecommunications nor any person acting or purporting to act on its behalf has made any representations, warranties, or statements other than those embodied in the Agreement. To the extent permitted by law, any condition or warranty (including, without limitation, any implied warranty of merchantability, acceptable quality or fitness for a particular purpose) which would otherwise be implied in any contract between RCS Telecommunications and the Customer is hereby excluded.

## 16. Proportionate Liability

The parties agree that, to the extent permitted by Applicable Laws, the provisions of the Proportionate Liability Legislation are excluded, and will not

limit or otherwise affect the operation of the express provisions with respect to the rights, obligations, and liabilities of the Parties under this Agreement.

## 17. Insurances

- 17.1. The Customer is required to insure and maintain insurance cover for the Equipment delivered to it or in its possession for full market value where the Equipment is under a Rent Period until such time as the Equipment ownership and title has transferred to the Customer by way of payment in full.
- 17.2. The Customer shall whenever requested by RCS Telecommunications produce evidence of the currency of the insurance policies in accordance with clause 17.1.

## 18. No Offset

The Customer shall not withhold any payments due under this Agreement in order to offset payments due (or to become due) to the Customer pursuant to this Agreement unless such withholding is mutually agreed to by the Parties in writing or is provided for in the final ruling of a court. Any required adjustment to payments due hereunder will be made as a subsequent invoice.

## 19. Operation

The Customer must at all times conform to the provisions and requirements of the *Radiocommunications Act 1992* (Cth), the *Telecommunications Act 1997* (Cth), the Australian Communications and Media Authority and the Commonwealth of Australia Department of Transport and Communications standards and regulations for the use of frequencies; and any other relevant legislation or regulations that govern the use of the Services and Equipment provided, as are amended and enacted from time to time

## Part B – Services Terms and Conditions

Part B applies to all Services except for those Services which include:

- (a) Rental Equipment – Part C; and
- (b) Provision by RCS Telecommunications Network Access – Part D.

### 1. Prices and Payment

- 1.1. Subject to receipt of a valid Tax Invoice in the form proposed by RCS Telecommunications, the Customer will pay RCS Telecommunications the Fee by electronic funds transfer no later than 30 days from end of month, unless stated otherwise in the Proposal.
- 1.2. Neither part nor the whole of any invoiced value shall be withheld from RCS Telecommunications due to non-payment to the Customer by the Customer's client, or any other reason.

### 2. Delivery of Equipment

- 2.1. Where the Services include the purchase of Equipment, delivery of the Equipment occurs when the Equipment leaves RCS Telecommunications' Premises, unless specified in the Proposal.
- 2.2. If RCS Telecommunications determines that it is or may be unable to deliver the Equipment within a reasonable time or at all the Proposal may be cancelled by RCS Telecommunications and in the event of cancellation, the Customer shall be entitled to a refund of any portion of the Fee already paid, but shall not have any claim against RCS Telecommunications for any damage, loss, cost or expense whatsoever.
- 2.3. A carrier's docket, signed by RCS Telecommunications, or the collection of the Equipment by or on behalf of the Customer from RCS Telecommunications' Premises shall be conclusive evidence of Delivery.

### 3. Ownership and Risk

Title in and ownership of any Equipment purchased by the Customer passes to the Customer upon payment by the Customer to RCS Telecommunications of all amounts owing by the Customer to RCS Telecommunications on any account.

### 4. Defective Services

- 4.1. During any Warranty Period, the Customer may by a notice in writing to RCS Telecommunications advise it when it considers that the

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- Services are Defective.
- 4.2. Any notice issued by the Customer under clause 4 of Part B must state the reasons for the Customer's opinion.
  - 4.3. Upon notice from the Customer, RCS Telecommunications may elect to either:
    - 4.3.1. reperform or replace the Services or relevant part of the Services (as the case may be);
    - 4.3.2. perform such rectification works as are necessary; or
    - 4.3.3. deny that the Services are Defective.
  - 4.4. Except as expressly nominated by RCS Telecommunications in clause 4.3 of Part B, RCS Telecommunications is not liable for any cost, loss or expense arising from or in connection with Defective Services.
  - 4.5. RCS Telecommunications shall make available the manufacturer's warranty of the Equipment or product (if any) to the Customer.
  - 4.6. If the Customer requires the Equipment or product (if any) to be repaired or replaced under warranty, then the Customer shall return the Equipment to RCS Telecommunications.

## 5. Termination

- 5.1. The Customer may terminate the Agreement prior to completion of the Services, but after any minimum term specified in the Proposal, subject to providing RCS Telecommunications thirty (30) days written notice of intention to terminate. RCS Telecommunications may claim, in its sole and absolute discretion, the costs, losses and expenses incurred by RCS Telecommunications as a result of termination under clause 5 of Part B.
- 5.2. RCS Telecommunications may terminate the Agreement at any time with immediate effect, by giving written notice to the Customer. The Customer will have no entitlement or claim against RCS Telecommunications in relation to or arising out of any termination under clause 5.2 of Part B.

## Part C – Equipment Rental Terms and Conditions

If the Services include the Rental of Equipment to the Customer, Part C applies.

### 1. Prices and Payment

- 1.1. In consideration of the Rental of the Equipment, the Customer shall pay without offset the Fee.
- 1.2. Unless otherwise agreed in writing the amount of the Fee and any applicable Security Deposit payable is specified in the Proposal.
- 1.3. Any increase in the rate or number of the taxes shall be paid by the Customer to RCS Telecommunications by way of additional fees. The Customer shall receive the benefit of any reduction in the taxes.
- 1.4. The Fee shall be paid in the manner and at the time specified in the Proposal. If the Proposal does not specify payment terms, payment of the Fee shall be paid 30 days from end of month.
- 1.5. RCS Telecommunications may in its sole discretion require the payment of a Security Deposit prior to Delivery of the Equipment which shall be held by RCS Telecommunications as security for payment of the Fee and other amounts due from the Customer to RCS Telecommunications for the performance of the Customer's obligations under the Agreement, and against any damages caused to the Equipment by the Customer.
- 1.6. The Security Deposit will be returned to the Customer within seven (7) days of the termination of the Agreement less any offset as provided for under the Agreement.
- 1.7. Neither part nor the whole of any invoiced value shall be withheld from RCS Telecommunications due to non-payment to the Customer by the Customer's client, or any other reason.

### 2. Obligations of Customer During Rental Period

- 2.1. During the Rental Period, the Customer must:
  - 2.1.1. assume complete responsibility for control of the physical operation of Equipment;
  - 2.1.2. comply with all legal requirements relating to the safe use of the Equipment, including compliance with any safety guidelines and/or instructions provided by RCS Telecommunications;
  - 2.1.3. exercise care to prevent damage to or destruction or loss

of Equipment (including ensuring the secure lock-up of the Equipment) and in the event of the loss or destruction of, or damage to, Equipment or its becoming non-functional by reason of the neglect or default of the Customer then, the Customer shall pay the Replacement Equipment Fee; and permit RCS Telecommunications upon request to inspect Equipment at all reasonable times.

- 2.2. The Customer must not:
  - 2.2.1. make any additions or alterations to the Equipment without the written consent of RCS Telecommunications;
  - 2.2.2. remove, obscure or deface any identifying mark, label or device on the Equipment or any part thereof;
  - 2.2.3. allow the Equipment to be used by any unauthorised person;
  - 2.2.4. abandon the Equipment;
  - 2.2.5. purport or attempt to sell or on-rent the Equipment; dispose of, charge or encumber the Equipment; or assign the Customer's rights to the Equipment, without RCS Telecommunications' prior written consent (which consent may be withheld by RCS Telecommunications in its sole and absolute discretion) and without immediately accounting to RCS Telecommunications for any amounts owing by the Customer to RCS Telecommunications in respect of the Equipment.
- 2.3. If, despite clause 2.2 of Part C, the Customer supplies any of the Equipment to any person, the Customer agrees that:
  - 2.3.1. the Customer holds the proceeds of the resupply of the Equipment on trust for and as agent for RCS Telecommunications immediately when they are receivable or are received;
  - 2.3.2. The Customer must pay the amount of the proceeds of resupply to RCS Telecommunications immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit taking institution as trustee for RCS Telecommunications; and
  - 2.3.3. if the Customer fails to pay for the Equipment within the period of credit (if any) extended by RCS Telecommunications to the Customer, RCS Telecommunications may recover possession of the Equipment at any place owned, possessed, occupied or controlled by the Customer and the Customer agrees that RCS Telecommunications has an irrevocable licence to do so without incurring liability to the Customer or any other person.

### 3. Maintenance of Equipment

- 3.1. During the Rental Period, the Customer shall maintain the Equipment in accordance with maintenance standards prescribed by RCS Telecommunications from time to time.
- 3.2. The Customer shall immediately advise RCS Telecommunications of any damage to, or Defect in, the Equipment and shall not permit any person not authorised by RCS Telecommunications to repair or maintain Equipment, other than to replace batteries and only with those batteries supplied by RCS Telecommunications.
- 3.3. At the request of RCS Telecommunications or upon the Equipment becoming non-functional or Defective the Customer shall, at the Customer's expense, deliver the Equipment to RCS Telecommunications or RCS Telecommunications' authorised agent, for adjustment, maintenance, service, or repair.
- 3.4. If Equipment having been maintained by RCS Telecommunications in accordance with clause 3 of Part C remains Defective, the Equipment shall be returned immediately to RCS Telecommunications and exchanged for similar Equipment which shall be rented pursuant to the Agreement as though it had been the original Equipment.
- 3.5. The Customer must not connect accessories or other equipment which are not supplied by RCS Telecommunications to the Equipment.

### 4. Return of Equipment

- 4.1. Upon the completion of the Rental Period or the earlier termination of the Agreement howsoever arising, the Customer shall return the Equipment in a clean and usable condition to RCS Telecommunications' Premises.
- 4.2. If the Customer returns the Equipment in a worse condition than can be accounted for by fair wear and tear, RCS Telecommunications may charge the Customer for cleaning, reconditioning, renewing, or replacing the Equipment as it considers necessary.
- 4.3. In the event that the Customer does not return the Equipment in

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accordance with clause 4 of Part C, the obligation to pay the Fee shall continue until such time as the Equipment is returned to RCS Telecommunications' Premises.

## 5. Ownership and Risk

- 5.1. Title and ownership in the Equipment shall at all times remain with RCS Telecommunications.
- 5.2. The Customer is responsible for any loss or damage caused to the Equipment during the Rental Period and will indemnify RCS Telecommunications against any loss of or damage to the Equipment whatsoever regardless of whether or not the Customer has obtained and maintained insurance in respect of the Equipment.
- 5.3. If the Equipment becomes Lost Equipment, RCS Telecommunications may at its sole discretion invoice the Customer for the Replacement Equipment Fee. The Fee for the item of Lost Equipment will continue to accrue until the Customer pays the Replacement Equipment Fee.

## 6. Delivery

- 6.1. Delivery of the Equipment occurs when the Equipment leaves RCS Telecommunications' Premises.
- 6.2. All transport of Equipment during the Rental Period is at the Customer's own risk and the Customer must ensure that it has sufficient insurance cover for any loss that occurs during such transportation.
- 6.3. Where RCS Telecommunications arranges the transport of the Equipment during the Rental Period:
  - 6.3.1. it does so as agent only for the Customer and accepts no responsibility or liability in respect of such transport arrangements;
  - 6.3.2. the Customer shall be responsible for payment of all expenses associated with the transport arrangements.
- 6.4. If RCS Telecommunications determines that it is or may be unable to deliver the Equipment within a reasonable time or at all the Proposal may be cancelled by RCS Telecommunications and in the event of cancellation, the Customer shall be entitled to a refund of any portion of the Fee already paid and the return of any Security Deposit paid, but shall not have any claim against RCS Telecommunications for any damage, loss, cost or expense whatsoever.
- 6.5. A carrier's docket, signed by RCS Telecommunications, or the collection of the Equipment by or on behalf of the Customer from RCS Telecommunications' Premises shall be conclusive evidence of Delivery.

## 7. Cancellation

- 7.1. The Customer may cancel part or all of an order prior to Delivery of the Equipment, the subject of the Proposal.
- 7.2. In the event of cancellation under clause 7.1 of Part C, the Customer shall pay to RCS Telecommunications its direct costs resulting from the cancellation.

## 8. Termination

- 8.1. The Customer may terminate the Agreement prior to the Delivery of the Equipment or during the Term, but after any minimum term specified in the Proposal, subject to providing RCS Telecommunications thirty (30) days written notice of intention to terminate. RCS Telecommunications may claim, in its sole and absolute discretion, the costs, losses and expenses incurred by RCS Telecommunications as a result of termination under clause 8 of Part C.
- 8.2. RCS Telecommunications may terminate the Agreement at any time with immediate effect, by giving written notice to the Customer. The Customer will have no entitlement or claim against RCS Telecommunications in relation to or arising out of any termination under clause 8.2 of Part C.
- 8.3. In the event the Agreement is terminated by the Customer prior to the Expiry Date (but after any minimum term specified in the Proposal), the Customer shall pay to RCS Telecommunications:
  - 8.3.1. a sum equivalent to the pro-rata Fee at the prevailing rate applicable to the amended term of the Agreement, for the period between the Commencement Date and the date the Equipment is wholly returned to RCS Telecommunications; and
  - 8.3.2. a cancellation fee equivalent to one week's Fee.
- 8.4. The Customer may request in writing to RCS Telecommunications to terminate the Agreement during any minimum term specified in the

Proposal and RCS Telecommunications, may in its sole and absolute discretion, agree to such termination request, and if so agreed the Customer must pay to RCS Telecommunications the balance of the Fee due for the remainder of the minimum term Rental Period as a consequence of such termination.

## 9. Term

The term of Part C of the Agreement shall be for the Rental Period unless terminated earlier in accordance with clause 9 of Part A or Clause 7 or 8 of Part C.

# Part D – Network Access Terms and Conditions

If the Services include the provision of Network Access by RCS Telecommunications, then Part D applies.

## 1. Prices and Payment

- 1.1. In consideration of RCS Telecommunications granting Network Access, the Customer must pay to RCS Telecommunications the Fee specified in the Proposal.
- 1.2. Unless otherwise agreed in writing the amount of the Fee and any applicable Security Deposit payable is specified in the Proposal.
- 1.3. Any increase in the rate or number of the taxes shall be paid by the Customer to RCS Telecommunications by way of additional fees. The Customer shall receive the benefit of any reduction in the taxes.
- 1.4. The Customer shall pay the Fee 30 days from end of month, unless specified in the Proposal.
- 1.5. RCS Telecommunications may in its sole discretion require the payment of a Security Deposit prior to Network Access which shall be held by RCS Telecommunications as security for payment of the Fee and other amounts due from the Customer to RCS Telecommunications for the performance of the Customer's obligations under the Agreement, and against any damages caused to the Network by the Customer.
- 1.6. The Security Deposit will be returned to the Customer within seven (7) days of the termination of the Agreement less any deduction as provided for by clause 1.5 of Part D of the Agreement.
- 1.7. Neither part nor the whole of any invoiced value shall be withheld from RCS Telecommunications due to non-payment to the Customer by the Customer's client, or any other reason.

## 2. Fee Review

The Fee shall be subject to review by RCS Telecommunications once each calendar year, unless specified in the Proposal, and RCS Telecommunications may vary the Fee, in its sole and absolute discretion, by giving 14 days' written notice to the Customer.

## 3. Automatic Renewal

For the purposes of Network Access only, the Agreement will be automatically renewed on a month to month basis at the end of the initial Network Access Period, unless terminated pursuant to the Agreement.

## 4. Operation

During the Network Access Period, the Customer must all at times conform to the provisions and requirements of the *Radiocommunications Act 1992* (Cth), the *Telecommunications Act 1997* (Cth), the Australian Communications and Media Authority and the Commonwealth of Australia Department of Transport and Communications standards and regulations for the use of frequencies; and any other relevant legislation or regulations that govern the use of the Services and Equipment, as are amended and enacted from time to time.

## 5. Network Access

- 5.1. In the event of a Defect or a system failure in relation to the Network Access, including any failure of communications for any reason, RCS Telecommunications will use all reasonable endeavours to repair the Defect and reinstate communications with a minimum service time.
- 5.2. RCS Telecommunications is not liable to the Customer for any service time, quality of radio signals or any interference in relation to the Network and any costs, loss, expenses or damage arising from or in connection with Network Access for any reason whatsoever.

# RCS Telecommunications Terms and Conditions



Tel: +61 7 3228 0800  
Web: [www.rcst.com.au](http://www.rcst.com.au)  
Email: [sales@rcst.com.au](mailto:sales@rcst.com.au)

5.3. Where there is a change in law or policy regarding Network Access from any governmental authority or regulator or any Network owner, which results in RCS Telecommunications no longer having access to the Network, RCS Telecommunications may terminate the Agreement pursuant to clause 7.2 of Part D.

5.4. The Customer must not use or access the Network in a way which is not intended or considered fair and appropriate use. If RCS Telecommunications considers in its sole and absolute discretion that the Customer has misused its Network Access, RCS Telecommunications may terminate the Agreement in accordance with clause 7.2 of Part D and the Customer indemnifies RCS Telecommunications for any cost, loss, expense or damage incurred as a result of any misuse of the Network Access and termination under clause 5.4 of Part D.

## 6. Suspension

6.1. In the event the Customer fails to comply with clause 1.4 of Part D, RCS Telecommunications may suspend granting Network Access to the Customer, at any time with immediate effect, by giving written notice to the Customer.

6.2. The Customer will have no entitlement or claim against RCS Telecommunications in relation to or arising out of any suspension under clause 6 of Part D.

6.3. RCS Telecommunications may revoke any suspension under clause 6 of Part D upon receipt of the outstanding Fee from the Customer.

## 7. Termination

7.1. The Customer may request in writing to RCS Telecommunications to terminate the Agreement prior to the Expiry Date specified in the Proposal and RCS Telecommunications, may in its sole and absolute discretion, agree to such termination request, and, if so agreed, the Customer must pay to RCS Telecommunications

7.1.1 the costs, losses and expenses incurred by RCS Telecommunications as a result of termination under clause 7 of Part D.

7.1.2 the balance of the Fee due for the remainder of the Network Access Period as a consequence of such termination.

7.2. RCS Telecommunications may terminate the Agreement at any time with immediate effect, by giving written notice to the Customer. The Customer will have no entitlement or claim against RCS Telecommunications in relation to or arising out of any termination under clause 7.2 of Part D.

## 8. Term

The term of Part D of the Agreement shall be for the Network Access Period unless terminated earlier in accordance with clause 9 of Part A or clause 7 of Part D.