

# General Terms and Conditions (Standard Form of Agreement)

v2016.5

[Previous Version](#)

[What changed?](#)

OMNIconnect is a Licensed Telecommunications Carrier and operates as a Carriageway Access Provider (CSP), Internet Service Provider (ISP), Application Service Provider (ASP) and Data Centre Provider (DCP) operating digital microwave and fibre optics networks and provides DSL and other access methods throughout Melbourne, Victoria and nationally.

The Customer has contracted OMNIconnect to provide chosen telecommunications Services.

These General Terms and Conditions will govern the relationship between OMNIconnect and the Customer, together with the Customer Service Agreement and [Acceptable Use Policy \(AUP\)](#) to form the Agreement in relation to the provision of products and services entered into. A [Service Level Agreement \(SLA\)](#) can also form part of this agreement for business grade customers upon request of the customer to OMNIconnect and upon agreement of OMNIconnect.

In the case that you wish to use additional Omniconnect services not detailed in the attached Service and Pricing Agreement, you will be asked to sign additional Service and Pricing Schedules which will form an addendum to this Agreement.

Customer Terms and Conditions Updated: May, 2016

## Definitions and Interpretations

**"Access"** means the telecommunication carriage access method provided by OMNIconnect.

**"Agreement"** means these General Terms and Conditions, Customer Order Form, any applicable Product Terms and Conditions and any other written conditions entered into.

**"Acceptable Use Policy"** means the conditions of use of Internet and carriageway. AUP will be available on the Website.

**"Business Hours"** means 9.00am to 5.30pm Monday to Friday excluding Public Holidays.

**"Charges"** means all monies due to OMNIconnect for use of the Service, in accordance with this Agreement.

**"Civil Works"** means works involving planning applications and permits.

**"Confidential Information"** means all information exchanged between the parties pursuant to this agreement, but does not include information that: is in the public domain; or enters the public domain without any breach of this Agreement.

**"CPE"** means Customer Premises Equipment owned and installed by OMNIconnect at Customer premises to supply service under this Agreement.

**"Customer"** means the business or organization that has entered into an Agreement.

**"Customer Service Agreement"** means the document containing description of products, services and pricing.

**"Commercial Works"** means work that doesn't exclusively relate to the delivery of a particular service, and adds value to the building.

**"Commissioning"** means the handing over of Services following installation.

**"Consumer"** means a Customer that has or will have an annual spend with OMNIconnect.

**"Customer Equipment"** means the equipment of the Customer within Customer network that is beyond the demarcation point of OMNIconnect's Network.

**"Effective Date"** means the date the Term commences following Commissioning at which date the monthly Charges commence.

**"Fee for Service"** means that a charge will apply if the Customer requires additional cabling beyond OMNIconnect's service delivery point.

**"GST"** means the Goods and Services Tax under *The New Tax System (Goods and Services Tax) ACT 1999 (Cth)*.

**"Network"** means the OMNIconnect telecommunications network and any other third party network engaged by OMNIconnect to provide services.

"OCDC" means the OMNIconnect Data Centre.

"Renewal" means to re-contract the service agreement.

"Service" means products and services provided under the Agreement.

"Service Call-out" means a visit to a Customer site, due to any fault or delay caused by the Customer. Service Call-out and travel time charges may apply.

"Service Delivery Point" means the delivery point of service as determined by OMNIconnect.

"Service Suspension" means temporary disablement of a service.

"Service Reconnection" means restoration of a suspended service.

"Site" means the premises of the Customer to which Services are delivered as set out in Customer Order Form.

"Term" means the Initial Term and all renewals thereof collectively commencing from the Effective Date.

"Termination" means the ending of the Agreement by either party under the terms of this Agreement or at the conclusion of the Term.

"Usage Charges" means the charges for Internet data charged by the Megabyte, for voice calls or any other variable charges.

"Website" means the OMNIconnect Website accessible on the Internet.

## 1. Customer Obligations

### Billing and Charges

- 1.1. The Customer must pay OMNIconnect the amount(s) set out in the Customer Service Agreement as agreed.
  - 1.1.1. All pricing quoted within this document is exclusive of GST unless otherwise specified.
- 1.2. Charges for Setup (where applicable) and first month Service are payable in advance upon invoice prior to Commissioning of Services. If payment is not received prior to Commissioning, Services will be provisioned in a decommissioned state until payment is made.
- 1.3. Monthly Service charges will commence upon OMNIconnect notifying Customer of Commissioning.
- 1.4. Payment for all contracted Service charges is required monthly in advance.
- 1.5. A power consumption surcharge of an additional \$6/100W may apply to any device that is not energy efficient as defined and listed at [www.80plus.org](http://www.80plus.org)
- 1.6. OMNIconnect will pass onto Customer its share of any future carbon tax imposed upon OMNIconnect for the consumption of power to equipment.
- 1.7. Pre-paid data not used in the specified time period will be forfeited.
- 1.8. Any variable charges or amounts resulting from data usage beyond any cap amount/s are calculated and invoiced in the following month services charges.
- 1.9. Data is billed on the total usage in both directions, unless otherwise specified in the customer service agreement.
- 1.10. Unless otherwise stated in the customer service agreement, excess data will be billed at the default per gigabyte rate as found in the current price book (available from your account manager).
- 1.11. Customer Agreements greater than 12 months may be subject to annual CPI adjustments.
- 1.12. Methods of payment**
  - 1.12.1. Payments can be made by credit card, electronic transfer (including direct deposit and BPay).
  - 1.12.2. Credit Card Surcharge applies and will be charged on the following month's invoice for the transaction payable.
  - 1.12.3. Invoices will be issued electronically and sent to an email address provided by Customer.
  - 1.12.4. Hard copy paper invoices can be issued at a cost of \$5.00 per invoice.
  - 1.12.5. Credit card payments – upon receipt of a Direct Debit Authorisation (see [1.13](#)), OMNIconnect will automatically invoice the cost of the service to your account, with the amount billed directly to your credit card, close to the date of invoice. All charges resulting from data usage or voice calls beyond cap will be automatically billed to your credit card and a receipted invoice provided. Failed credit card

transaction attempts during period of service provision incur an administration fee of \$7.00. If payment is unable to be authorised within 14 days of date of invoice then all services may be suspended until payment is received. A Service Reconnection fee will apply (see 3.5).

- 1.12.6. Electronic transfer– if payment is not received within 30 days of billing date, all services may be suspended until payment is received. A Reconnection fee will apply. Upon deposit, signed bank deposit receipt or a remittance must be faxed/mailed to OMNIconnect Accounts department or payment will not be recognised.

### **1.13. Credit Card Direct Debit Authorisation**

- 1.13.1. As the recipient of a DDR (Direct Debit Request), OMNIconnect will:

- 1.13.1.1. Only debit account in accordance with the Customer Service Agreement.
- 1.13.1.2. Allow Customer to stop any direct debit item or cancel a DDR where the term of the Customer Agreement or extension thereof has ceased and you no longer wish to have OMNIconnect Pty Ltd as your service provider.
- 1.13.1.3. Provide 14 days notice if we propose to vary any of your direct debit arrangements.

- 1.13.2. As the provider of a DDR you:

- 1.13.2.1. Authorise us to process a direct debit item at the times and for the amounts specified in the Customer Service Agreement.
- 1.13.2.2. Agree this DDR remains in operation until revoked in writing.
- 1.13.2.3. Agree to advise us immediately of any reason why a direct debit item may not be processed. In such instances an alternative method of payment must be arranged 3 days prior to the due date and payment received by the due date.
- 1.13.2.4. Will advise us in writing of your intention to withdraw the DDR not less than 14 days before the effective date of withdrawal. Such advice is to be communicated to us in the first instance. Where the DDR is withdrawn or cancelled, you agree to pay any outstanding or future debts under the Customer Agreement by an alternative DDR or credit card.
- 1.13.2.5. Will advise us of any disputed direct debit item as soon as practically possible. Such advice should detail the amount of the dispute, the reason for the dispute and your Customer details.
- 1.13.2.6. Authorise us to disclose information to our Financial Institution for the purposes of investigating any claim connected with an alleged incorrect or wrongful direct debit item.
- 1.13.2.7. Acknowledge that it is your responsibility to ensure sufficient clear funds are available in the relevant account to permit the payment of direct debit in accordance with this DDR and the Customer Agreement.
- 1.13.2.8. Acknowledge that if a direct debit is declined at the authorised time and for the authorised amount then a declined transaction fee of \$7.00 will apply to each invoice declined.

- 1.14. Overdue Accounts may attract an overdue account fee at the rate of 2% above Reserve Bank of Australia Cash Rate with a minimum of \$10.00 per month.

### **1.15. Installations and Maintenance**

- 1.15.1. The Customer must pay OMNIconnect any cost OMNIconnect incurs in repairing or replacing property, which is damaged or destroyed as a result of the connection of Customer Equipment to the OMNIconnect Network.

#### **1.15.2. At Customer Premises**

- 1.15.2.1. The Customer must cooperate with OMNIconnect by providing access and facilities as reasonably necessary to enable OMNIconnect to provide installation and maintenance to the standard required by OMNIconnect and to ensure the safety of those at the Customer's premises.
- 1.15.2.2. The Customer must inform OMNIconnect if they are not in possession or control (eg under construction) of a site location requiring installation or maintenance.

- 1.15.2.3. If OMNIconnect determines at its discretion that site conditions for installation or maintenance is going to take an inordinate amount of time and cost, OMNIconnect will inform Customer of any additional time and cost and seek Customer approval prior to proceeding.
- 1.15.2.4. The Customer must ensure that all cabling located at the Customer premises has been installed by a registered cabling service provider and that the cabling meets the minimum technical requirements of the ACMA, before OMNIconnect initiates a connection.
- 1.15.2.5. The location of Customer premises Service Delivery Point will be at OMNIconnect's discretion. Additional cabling costs or Fee For Service may apply beyond this point.
- 1.15.2.6. Commercial Works may be an additional cost required to connect a customer's premises.
- 1.15.2.7. Civil Works may be an additional cost to build network infrastructure to a customer's premises.

**1.15.3. At ODCD**

- 1.15.3.1. In order to access racks at ODCD, the customer (or agent of the customer) must agree to the ODCD Entry and Work Guidelines (available at <https://support.omniconnect.com.au/support/solutions/articles/5000631092>)
- 1.15.3.2. Cabling between racks, must be approved or supplied by OMNIconnect.
- 1.15.3.3. Customer must specify power supply rating of each device to be installed or replaced within ODCD.
- 1.15.3.4. All fees and expenses associated with an installation, repair or move into/out of the ODCD in association with colocation services will be borne solely by Customer. The Customer will also be responsible for any damages created in the process.
- 1.15.3.5. Waste disposal will be the customer's responsibility, but may request OMNIconnect to dispose of rubbish. Charges apply.
- 1.15.3.6. Temporary storage may be arranged at ODCD for equipment prior to installation. Storage charges may apply for equipment stored beyond 14 days.
- 1.15.3.7. Equipment must be configured and run at all times in compliance with the manufacturer's specifications, including power outlet, power consumption and clearance requirements.
- 1.15.3.8. No domestic power boards are permitted for use in the Data Centre.
- 1.15.3.9. Escorted data centre access, support for customer equipment (beyond remote hands) located within the OMNIconnect Data Centre (ODCD) or support of equipment/service outside of the ODCD, may incur charges for each 30-minute block or part thereof. Please email your account manager or the OMNIconnect support team for these prices. Escorted access to the ODCD can be arranged via phone at any time by calling the 24x7 NOC number provided to you in your agreement. An appointment is required at least 2 hours prior to arrival during business hours, and 60 minutes prior to arrival outside business hours. Cancellation of \$80 applies if cancelled within 2 hours of booked escorted access.

**1.15.4. OMNIconnect Services**

- 1.15.4.1. Mailboxes that have been unused for 12 months will be removed from OMNIconnect mail servers.
- 1.15.4.2. Domain names that have expired will be removed from OMNIconnect name servers.

**1.16. Dispute of Invoice.** If the Customer disputes the validity of any charges in an invoice:

- 1.16.1. The Customer must notify OMNIconnect in writing within 30 days of the invoice date outlining the reasons why the charges are in dispute.
- 1.16.2. Customer may only dispute charges that Customer believes are a result of a billing error. If Customer does not dispute such charges within the 30 days, Customer waives its right to dispute the charges and release OMNIconnect from any and all liability and claims of loss resulting from any error or discrepancy.

- 1.16.3. If the Customer has notified OMNIconnect of the dispute within 30 days of the invoice date, the Customer must still pay all undisputed portions of the invoice and any other outstanding charges.
- 1.16.4. OMNIconnect will acknowledge the dispute within 5 business days of receiving the Customer's notice and will investigate the dispute and take appropriate action to resolve it.
- 1.16.5. If the Customer disagrees with the resolution to the disputed invoice, the Customer is entitled to engage in the Dispute Resolution (see 4).

## 2. Term

- 2.1. The Agreement shall be for the Term specified in Customer Service Agreement, commencing from the date the service is commissioned.
- 2.2. Service pricing is fixed at the time the contract is prepared and executed. Changes in OMNIconnect pricing and plans (either increased or decreased) doesn't affect customers under contract.
- 2.3. At OMNIconnect's discretion, the Customer may negotiate to re-contract during the Term.
- 2.4. Pricing changes may affect customers no longer under contract.
- 2.5. OMNIconnect reserves the right to terminate the contract after the contract term but will provide a minimum of 30 days notice before termination.

## 3. Termination

- 3.1. **Prior to Commissioning.** OMNIconnect may terminate this Agreement prior to completing the Installation and Commissioning if it is determined that the Services cannot be provided to the Customer for any reason. Upon any termination of this Agreement by OMNIconnect, the Customer will be refunded any amounts that they have paid for the Set-up Fee and/or Monthly Service Fee.
- 3.2. **Early Termination by Customer.** If the Customer cancels a service before the end of Term, the Customer must pay OMNIconnect the remainder of contract value and must cease all use of the software and equipment relating to the OMNIconnect services.
- 3.3. The Customer may terminate the service at any time with 30 days written notice only in the following circumstances:
  - 3.3.1. The Service availability of the Access falls below 90% in any two consecutive months during the term of the contract. In this event the remainder of the contract value does not apply.
  - 3.3.2. OMNIconnect commits an act of insolvency, comes under any form of insolvency administration, or is wound up under the laws of the State of Victoria.
  - 3.3.3. The service is no longer under contract.
- 3.4. Termination of Service prior to completion of the Term will render the Customer liable for full payment of all outstanding contract items, including but not limited to the following.
  - 3.4.1. Outstanding setup, equipment or upgrade charges
  - 3.4.2. Contracted Service and usage charges or equipment fees for the remainder of the Term
  - 3.4.3. Internet data as provided within the terms of the Customer Service Agreement
  - 3.4.4. Costs to OMNIconnect arising from negligent conduct or items listed in Section 6.
- 3.5. **Suspension of Service**
  - 3.5.1. Suspension of Service due to non-payment of account and subsequent reconnection will require full payment of outstanding account plus a Service Reconnection Fee as applicable in the table below

Service	Reconnection Fee
Email	\$10
Shared Hosting	\$30
Managed Hosting	\$50
Colocation	\$20/RU
Residential Internet Service	\$30
Business Internet Service	\$50

3.6. **Termination by OMNIconnect for Material Breach.** OMNIconnect may restrict and/or immediately terminate this Agreement or suspend the Service upon providing notice of Service Suspension or Termination to Customer at any time at its discretion for violation of any term of this Agreement including but without limitation to the following:

- 3.6.1. Where the Customer has failed to pay all outstanding charges for a period exceeding 45 days from date of invoice.
- 3.6.2. Where the Customer commits an act of insolvency, comes under any form of insolvency administration, or is wound up under the applicable State or Territory laws of Australia.
- 3.6.3. Where the Customer has not adhered to the Terms and Conditions detailed in Clause 6.
- 3.6.4. Where OMNIconnect has reason to believe the Customer has not adhered to the Acceptable Use Policy.

**3.7. Effect of Termination**

- 3.7.1. Upon Termination of Agreement, Service/s will be deactivated by 4pm on date of Termination.
- 3.7.2. Customer will permit OMNIconnect to access the Site to remove OMNIconnect's Equipment in a reasonable time frame from date of Termination or the customer shall remove its own equipment, at its own expense, from the ODCD, being liable for any and all costs and or damages caused by the removal of their equipment.
- 3.7.3. Any termination of this Agreement shall not relieve Customer of any obligations to pay fees and costs accrued prior to the Termination and any other amounts owed by Customer to OMNIconnect as provided in this Agreement. The provisions contained in this Agreement that by their context are intended to survive termination or expiration will survive, including without limitation, the sections entitled, Privacy, Acceptable Use Policy, Disputed Charges, Term, Disclaimers; Limitation of Liability, Indemnification, Applicable law, Arbitration and General Provisions.
- 3.7.4. Should this Agreement be terminated for any reason, OMNIconnect will not be liable to Customer for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with Customer's use of the Services, or for any other reason whatsoever flowing from such Termination.

## 4. Dispute Resolution

- 4.1. Before resorting to external dispute resolution processes, OMNIconnect and the Customer must attempt to resolve any dispute internally. The customer may make a complaint to OMNIconnect by sending an email to: [support@omniconnect.com.au](mailto:support@omniconnect.com.au)
- 4.2. Either party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) until it has complied with Clause 4.
- 4.3. The party claiming the dispute must notify the other party that a dispute has arisen.
- 4.4. If a resolve cannot be met, either party may refer the dispute for mediation by the Communications Ombudsman: (<https://www.tio.com.au>)

## 5. Support

- 5.1. OMNIconnect shall provide telephone support and email support to the Customer relating to the use and operation of the Services (other than problems with Customer Equipment, operating system software or any other software) as described in the Customer Service Agreement. However if the telephone support exceeds 15 minutes for email configuration and/or support, OMNIconnect reserves the right to invoice for support charges at the current applicable rate, available upon request from OMNIconnect. This does not apply to "remote hands" for colocation services.

- 5.2. OMNIconnect will troubleshoot and support the Customer on Services and OMNIconnect CPE issues pertaining to the OMNIconnect network and Services only, and reserves the right to determine that a problem or issue is the Customer's responsibility.
- 5.3. The Customer must ensure that any faults reported to OMNIconnect are located on the OMNIconnect network.
- 5.4. In the event that Customer requests a service call to Customer's Site and OMNIconnect determines in its sole discretion that the problem is Customer's responsibility, Customer shall reimburse OMNIconnect for the Service Call-Out at OMNIconnect's then current hourly rates for on-site service calls, including any and all minimum fees.
- 5.5. While OMNIconnect will use reasonable efforts to respond to Customer's enquiries, OMNIconnect assumes no responsibility to resolve any problem or defect in the Services, except as expressly provided herein.
- 5.6. Customer is responsible for integrating and troubleshooting Customer's local area network and internal network, as necessary. OMNIconnect will not be responsible for any loss of use of Services or degradation in performance resulting from Customer's use of incompatible equipment or for any damage to any additional equipment Customer connects to the OMNIconnect Equipment.
- 5.7. **Service Level Agreement (SLA).** The OMNIconnect Service Level Agreement (SLA) is one of the most competitive in the Australian hosting industry. To view our agreement please visit the [Service Level Agreement page](#).

## 6. Service Terms and Conditions

- 6.1. Service Installation, Maintenance and Access to the OMNIconnect network are provided to the Customer subject to the following terms and conditions:
  - 6.1.1. The Customer agrees any usernames and passwords that are issued are for the Customer's use only and the Customer accepts full liability and responsibility for any actions via the Customer's username and password. To ensure network security, passwords are not to be dictionary words.
  - 6.1.2. The Customer agrees to notify OMNIconnect immediately of unauthorised usage of the Customer's account. The Customer username is not transferable to any person or entity. The Customer agrees they, or a representative of the Customer must be at least 18 years of age from the date of connection to have the right and ability to enter into this agreement. Legal Proof may be requested at the discretion of OMNIconnect.
  - 6.1.3. The Customer agrees to take full responsibility for any voice call charges made from the Customer network in relation to services or incurred in connecting to the OMNIconnect network.
  - 6.1.4. The Customer agrees that the setup fee does not include the connection to maintenance of hardware or software on Customer Equipment, or system maintenance.
  - 6.1.5. The Customer agrees to use the Service in a responsible manner, taking into account the effects the Customer's use of the service may have on other users and the network.
  - 6.1.6. The Customer agrees that use of the Service is subject to the Acceptable Usage Policy found at OMNIconnect's Website.
  - 6.1.7. The Customer agrees to receive occasional communication (in the form of email, text, social media) from OMNIconnect.
- 6.2. **Use of the OMNIconnect Data Centre.** The client and/or its representatives shall not do or participate in any of the following:
  - 6.2.1. During installation, maintenance or removal of its equipment, the client shall not cause material inconvenience to OMNIconnect or its customers at the site;
  - 6.2.2. misuse, abuse or make unauthorised access to any OMNIconnect property or equipment or third party equipment;
  - 6.2.3. engage in any activity that is in violation of the law or aids or assists any criminal activity while on OMNIconnect property or in connection with the Data Centre;

- 6.2.4. harass any individual, including OMNIconnect staff and representatives of other OMNIconnect customers;
- 6.2.5. The clients packaging and waste must be removed from the premises. In the case where a lot of waste is expected, arrangement for disposal can be organised with OMNIconnect at fee.
- 6.3. **Cleanliness in the OCDC.** The client shall not do the following, except as otherwise agreed to in writing by OMNIconnect:
  - 6.3.1. Store any paper products or other combustible materials of any kind in the Data Centre; and
  - 6.3.2. Bring any prohibited materials (as defined below) into any Data Centre. "Prohibited Materials" shall include, but be not limited to, the following and any similar items:
    - 6.3.2.1. food and drink
    - 6.3.2.2. tobacco products
    - 6.3.2.3. explosives and weapons
    - 6.3.2.4. hazardous materials
    - 6.3.2.5. alcohol, illegal drugs and other intoxicants
    - 6.3.2.6. electro-magnetic devices which could unreasonably interfere with computer and telecommunications equipment (other than mobile phones)
    - 6.3.2.7. radioactive materials
    - 6.3.2.8. photographic or recording equipment of any kind (other than tape back-up equipment)

## 7. Modifications of Service

- 7.1. OMNIconnect reserves the right to change or modify the Services, any product, the terms and conditions of this Agreement, or any policy or guideline applicable to the Services, at any time in its sole discretion; provided, however, such change does not materially alter the terms and conditions of this Agreement, the scope of Services and/or the cost of the Services.
- 7.2. Changes to this Agreement, the product or any policy or guidelines governing the Services will be effective fourteen (14) days after public publishing on the OMNIconnect website: [www.omniconnect.com.au](http://www.omniconnect.com.au)
- 7.3. If Customer does not agree to any change to this Agreement, the Service Plan, or any governing policy or guideline, Customer's sole remedy is to immediately terminate this Agreement pursuant to Section 3 (notwithstanding any notice period). Customer's continued use of the Services following the later of OMNIconnect posting on the Website or the effective date of any changes to this Agreement, product, or any policy or guideline will constitute Customer's acceptance of such changes or modifications.
- 7.4. If Customer requests modifications to pending Services or previously installed services, Customer agrees to reimburse OMNIconnect for its actual costs incurred in reengineering and modifying the Services, including any third-party charges assessed against OMNIconnect for such modification.
- 7.5. In the event OMNIconnect makes a change that materially alters the scope or cost of the Services, then Customer can terminate this Agreement and get a prorated refund of any prepaid fees for the remainder of the Term except for any installation fees.
- 7.6. OMNIconnect management reserves the right to vary conditions of use and service conditions at its discretion without impacting the client's service. OMNIconnect will give notice of any variations to applicable clients. Hosting rates at time of signed contract will remain locked to the specified contract term. On immediate renewal of contract, rates may increase. If this is likely to occur, the client will be notified of the new rate for the next contract term before signing. However, an exception lies with electricity charges. As electricity costs fluctuate, as set by our provider, they are beyond the control of OMNIconnect. If electricity rates increase, we will provide the client with a 1 month notification of the new monthly price per 100 watts. This new price will be prompted only if the rates of power are inflated.

## 8. OMNIconnect Legal Rights



- 8.1. OMNIconnect reserves the right to terminate or suspend Services at any time, after due consultation with Customer, and establishment of due cause, in accordance with OMNIconnect terms and conditions, without refund of prepaid access, or data usage.
- 8.2. OMNIconnect takes no responsibility for the legality or factual integrity of any information retrieved from files stored on OMNIconnect's servers, or servers hosted at OMNIconnect's hosting site.
- 8.3. OMNIconnect accepts no liability for damages or loss of income due to system downtime, connection difficulties, termination of the Customer's' account, or the Customer's' use of the OMNIconnect network or its Products and Services.
- 8.4. OMNIconnect reserves the right to act in an appropriate legal manner if there is evidence, either documented, recorded or circumstantial, that malicious, unauthorised, or irresponsible access of OMNIconnect's computer systems, or any other computer system accessible via OMNIconnect, is occurring or that any of these terms and conditions are being or are likely to be contravened.

## 9. Confidential and Proprietary Information.

- 9.1. Each party of this agreement including directors, officers, shareholders and employees, shall not disclose information relating to either parties business, products, services, trade secrets, technical information, product design information, payment, and other proprietary information, with the exception of information:
  - 9.1.1. that was already previously know to either party;
  - 9.1.2. the disclosure of which is required by Law;
- 9.2. The customer shall inform its employees and agents of the confidentiality obligations set forth herein. Customer shall take all steps reasonably necessary to assure that confidentiality is maintained by its employees and agents and shall take all reasonable steps requested by OMNIconnect to assure such confidentiality.

## 10. Indemnities

Customer shall indemnify and hold OMNIconnect harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable legal fees, which arise from any alleged breach made under this Agreement, provided that OMNIconnect is promptly notified of any such claims. Customer shall have the sole right to defend such claims at its own expense. OMNIconnect shall provide, at the Customer's expense, such assistance in investigating and defending such claims as the Customer may reasonably request. This indemnity shall survive the termination of this Agreement.

## 11. Limitations on Warranties

- 11.1. OMNIconnect shall not be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to access or loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Service.
- 11.2. Nothing in section 11 is intended to exclude, restrict or modify or have the effect of excluding, restricting or modifying warranties implied by law which by law cannot be excluded, restricted or modified, and these clauses shall be construed appropriately and (if necessary) any provision which would have such an effect shall be severed. If Part V of the Competition and Consumer Act 2010 or any similar or equivalent state legislation is applicable, OMNIconnect's liability for breach of any implied warranty will be limited to one of the following as determined by it in its absolute discretion:
  - 11.2.1. supply of the Services again or payment of the cost of having the services supplied again;
  - 11.2.2. payment of the cost of having the Services supplied again;

## 12. Independent Contractor

Customer acknowledges and agrees that OMNIconnect is at all times acting and performing as an independent contractor with respect to the subject matter of this Agreement. Customer shall neither have nor exercise any control or direction over the methods by which OMNIconnect performs the Services. This Agreement shall not be construed as

creating a partnership between the parties or as creating any other form of legal association that would impose liability upon one party for the act or failure to act of the other party.

## 13. Disclaimers

EXCEPT AS SET FORTH IN SECTION 10, CUSTOMER ACKNOWLEDGES THAT THE SERVICES, AND THE OMNICONNECT NETWORK (INCLUDING ANY SOFTWARE AND ANY OTHER ITEMS USED OR PROVIDED BY OMNICONNECT IN CONNECTION WITH ANY SERVICES HEREUNDER) ARE PROVIDED "AS IS" OR "AS AVAILABLE." OMNICONNECT OR ITS AGENTS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF THE SERVICES OR THE NETWORK, OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, OMNICONNECT OR ITS AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER THAT THE SERVICES AND THE NETWORK WILL BE UNINTERRUPTED, NOT DELAYED, ALWAYS ACCESSIBLE, OR FREE OF HARMFUL COMPONENTS, ACCURATE OR ERROR-FREE.

## 14. General

### 14.1. Taxes

14.1.1. All prices quoted or shown on Customer Service Agreement are exclusive of GST unless otherwise specified

14.1.2. OMNIconnect will add the GST amount applicable to Tax Invoices.

### 14.2. Force Majeure.

Except as otherwise provided herein, OMNIconnect shall not be liable, or be in breach of any provision hereof, for any failure or delay on its part to perform any obligation under any provision of this Agreement because of circumstances of force majeure, including, but not limited, any act of God, flood, fire, explosion, strike, lockout, labour dispute, war, insurrection, riot, sabotage, or any injunction, law, ordinance or demand or requirements of any governmental authority, or inability to procure or use materials, labour, equipment or energy sufficient to meet the Customer's needs, or any other cause whatsoever whether similar or dissimilar to those enumerated herein, beyond the reasonable control of OMNIconnect.

### 14.3. Assignment.

The Customer may not assign, without the prior written consent of OMNIconnect, any rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise. OMNIconnect may assign this Agreement at any time without notice to Customer.

### 14.4. Entire Agreement.

The Agreement including but not limited to Customer Service Agreement, Product Terms and Conditions, AUP and any other documents associated including applicable documents on the Website, sets forth the entire agreement among the parties and merges and supersedes all prior discussions and agreements among them with respect to the subject matter hereof. Neither party shall be bound by any condition, definition, warranty or representation with respect to any term or condition other than those provided for in this Agreement.

### 14.5. Invalid Provision

In the event that any provision of this Agreement is held to be invalid or illegal for any reason, such determination shall not affect the remaining provisions which shall be construed and enforced as if such illegal or invalid provision had never been included.

### 14.6. Descriptive Headings

All section headings, titles and subtitles contained herein are inserted for convenience and reference only and are to be ignored in any construction of the provisions hereof.

### 14.7. Privacy

Privacy statement is available at our website.

### 14.8. Notices

All notices required or permitted shall be in writing and be deemed delivered when delivered in person or

deposited in the mail, postage prepaid, addressed as follows:  
OMNIconnect Pty Ltd  
14 Elite Way,  
Carrum Downs  
VIC 3021

Customer contact details as in Customer Service Agreement

Such addresses may be changed from time to time by either party providing written notice in the manner set forth above.

14.9. **Applicable Law**

This Agreement is governed by the law of Victoria, Australia, and the Customer and OMNIconnect submit to the non-exclusive jurisdiction of the Victorian courts.