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# General Terms & Conditions of Service

## Retail & Business

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## Summary of our Terms & Conditions

Our **Terms & Conditions** document acts as an agreement between **you** and the **CiFi Pty Ltd Entity**, which supplies the **Service** to you. This section aims to provide a preliminary summary of the terms & conditions agreement upon which we supply the service to you.

Full terms & conditions of service can be found in the following pages of this document, and consists of the following:

- (a) Liability & Warranty Disclaimers
- (b) Our Charge & Billing Policy
- (c) Our Acceptable Use Policy
- (d) Our General Terms & Conditions of Service
- (e) Your application for service

It is very important for you to understand the terms & conditions set out in this document, and we encourage you to read this document fully before ordering any service from CiFi Pty Ltd.

Acceptance of these terms & conditions is mandatory to receive a service from us, and you will be required to agree to our T&C's at the time of order.

If you have any questions or concerns, we encourage you to contact us before ordering any services.

Capitalised words used in these General Terms have the meanings set out in section 18 at the end of this document.

Kind Regards,  
CiFi Pty Ltd  
"Christmas Island Fibre Internet"

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## **1. OUR TERMS & CONDITIONS**

**1.1** Our General T&C's is our standard form of agreement setting out the terms & conditions on which we supply our services and products to you. You and we must agree and comply with these T&C's.

**1.2** Our General T&C'S consists of the following:

- (a) Liability & Warranty Disclaimers
- (b) Our Charge & Billing Policy
- (c) Our Acceptable Use Policy
- (d) Our General Terms & Conditions of Service
- (e) Your application for service

If there is any inconsistency between any of the terms of our T&C's, the order of precedence will be as listed above, except that clause (a) of the General T&C's always prevail over all other terms in our T&C's.

For business customers, additional T&C's may also form part of our general T&C's for applicable Service types only. Where those terms apply, they sit between paragraphs (c) and (d) in the order of precedence listed above.

**1.3** We may need to change our T&C's from time to time, and may do so without your agreement. Any changes will be notified by email and updated document posted on our website.

**1.4** We do not need to give you 30 days' notice of our proposed changes or give you a right to cancel the Service under clause 1.4 in relation to:

a) urgent changes we are required to make by law, for security reasons or for technical reasons necessary to protect the integrity of our network.

b) the introduction of a new charge or an increase in an existing charge due to an additional tax or levy imposed by law, or for ancillary services such as credit card transaction fees and direct debit charges.

Where practicable to do so, we will give you reasonable notice of the changes referred to in this clause 1.5 by one of the methods of giving notice listed in clause 1.3.

**1.5** If we reasonably consider that a change to any term of our T&C's is likely to benefit you or have a neutral impact on you, we can make the change immediately and do not need to tell you before making the change. However, we will notify you within a reasonable time after making the change by providing notice of the change on our Website or by one of the other methods of giving notice listed in clause 1.3.

**1.6** You may nominate another person to have the authority to exercise any of your rights under the T&C's (Authorised Person). Anything that Authorised Person does in relation to your Service is deemed to be done by you.

## **2. YOUR APPLICATION FOR SERVICE**

**2.1** You may make an application for supply of a Service by:

- (a) Completing and submitting an online application via our website;
- (b) completing and submitting an application in our store with the assistance of a CiFi staff member;
- (c) any other means agreed by you and us to be an Application.

**2.2** Subject to our acceptance of your Application, our T&C'S commences on:

- (a) if you apply online, the date you submit the application form;
- (b) if you sign an application form, the date you sign the application form;
- (c) in any other case the Service Commencement Date.

Subject to clauses 2.2(c), you agree to the terms and conditions contained in the T&C'S by making an Application.

**2.3** You must provide us with all information that we reasonably require for the purposes of this agreement (including for the purposes of an investigation by us of a suspected misuse of the Service or breach of these T&C'S by you). We rely on the information you supply being accurate, truthful and correct.

**2.4** You must promptly advise us of any changes that are relevant to your account or the Service including changes to your account details (such as registered address or billing address).

**2.5** When you make an Application, we decide (in our absolute discretion) whether to accept your Application and to supply the Service to you based on any factors that we deem to be relevant, including:

- (a) your eligibility for that Service;
- (b) its availability to you;
- (c) the information you provide to us;
- (d) your prior conduct or history in respect of any previous supply by us of any goods or services to you.

### **3. THE PREMISES AND CONNECTING THE SERVICE**

- 3.1** In order to provide the Service to you, we may need to access the Premises. You agree to provide us with, or arrange for us if required, safe and prompt access to the Premises to:
- (a) install any equipment for a Service you have requested;
  - (b) inspect, test, maintain, modify, repair or replace any equipment;
  - (c) recover Our Equipment after the Service is cancelled;
  - (d) enforce our rights under clause 5.4.
- 3.2** If you do not own the Premises, you must obtain the owner's permission for us to access the Premises and install and maintain any equipment. You must notify us prior to the commencement of any work on the Premises if you are unable to obtain the owner's permission. You indemnify us against (and must pay us for) any claim the owner of the Premises makes against us or against anyone working for us relating to entry on to the Premises or doing the things listed in clause 3.1 that occurs as a result of your failure to comply with this clause 3.2
- 3.3** We will connect the Service in accordance with the relevant Service Description, or if no connection timeframe is specified, within a reasonable time.
- 3.4** There may be a time delay between us accepting your Application, and providing you with the Service. We are not and will not be liable for any delays associated with connecting the Service, nor any inability by us to provide the Service to you. You will not be charged for a Service unless or until it is provisioned by us.
- 3.5** We decide the route and technical means to be used to provide the Service. We reserve the right to change the infrastructure used to deliver the Service at any time, so long as this does not adversely affect the performance of the Service or your use of the Service.
- 3.6** You must advise us, in writing or via phone call, within 30 days if you plan to move premises or otherwise relocate any fixed location services (including fixed wireless), or as soon as possible where circumstances beyond your control do not allow you to give 30 days' notice. Failure to notify us of relocation of a fixed location service without our approval may result in immediate suspension of that service.

## 4. USING THE SERVICE

- 4.1 In using the Service, you must comply with all laws, all directions by a Regulatory Authority, and all reasonable directions by us.
- 4.2 You, and any person who accesses your Service, must not use, or attempt to use, the Service in any way which breaches our Acceptable Use Policy.
- 4.3 You are responsible for and must pay for any use of the Service, including:
- (a) any unauthorised use, except for any unauthorised use that has arisen as a result of our negligent or wrongful act or omission;
  - (b) any use of the Service by any person that you have expressly or impliedly allowed to use the Service;
  - (c) if you vacate the Premises and do not either disconnect the Service or transfer legal responsibility for the Service in accordance with clause 17.1, any use of the Service after you have vacated the Premises.
- 4.4 You authorise us to scan or conduct any assurance testing of the security of the Network and/or your Service (including Your Equipment and any IP address ranges allocated to you in connection with the Service) for the purposes of helping you improve the security of the use of your Service, but we are not obligated to do so.
- 4.5 You acknowledge that to the extent permitted by law, we may intercept communications over the Service.
- 4.6 We (or our Suppliers) may (but are not obligated to) monitor your usage of the Service and communications sent over it for the purposes of ensuring:
- (a) your compliance with our T&C'S;
  - (b) compliance by us or our Suppliers with the law;
  - (c) compliance with any request or direction of a Regulatory Authority, a law enforcement authority or other authority.
- 4.7 Peak and Off Peak periods on some Service plans are used to manage the volume of traffic on the Network at different times helps us to maximise the performance of the Network.
- For plans that specify separate Peak and Off Peak allowances, your total data allowance is split into the maximum you can download during the Peak hours of the day; and the maximum you can download during the Off Peak hours of the day. The Peak and Off Peak periods are as follows:
- Peak Period Hours:** 08:00 – 00:00 (8am to Midnight)  
**Off-Peak Period Hours:** 00:00 – 08:00 (Midnight to 8am)
- 4.8 You must not connect to our Network using a Username and Password other than those provided for your specific connection. A breach of this clause constitutes a material breach of our T&C'S.
- 4.9 We reserve the right to prioritise applications and the use of those applications, in order to optimise Network performance. Network optimisation is determined by total Network usage, and is not based on your (or any other customer's) use of particular services or applications.
- 4.10 Applications will be prioritised based on whether the performance of the application is time-

sensitive (i.e. the need for real-time usage of the application) and whether it requires a minimum throughput speed. Applications such as streaming video, voice, mail, web, virtual private networking (VPN), gaming, video on demand (VoD), Internet protocol television (IPTV) and other similar applications will therefore be prioritised over non-time sensitive applications such as file transfer protocol (FTP) and file Downloading. For example, your VoIP service will be prioritised over any Downloading you do, thereby maintaining the quality of your VoIP service.

## **5. EQUIPMENT**

**5.1** To enable you to use the Service, you may be required to purchase approved hardware from us at the time of application. This equipment, once purchased, is owned by you (the customer) but while in use on our network, we reserve the right to manage the hardware exclusively to ensure continuity of service.

**5.2** We may prevent the customer or end user for directly accessing the configuration of devices under our management, regardless of ownership. This clause 5.2 will not apply to personal devices such as mobile phones or any device we do not need to directly manage.

**5.3** You agree that you are responsible for:

- (a) Supplying (where we do not supply it), maintaining and repairing all equipment used in connection with the Service;
- (b) Compliance with all laws and relevant technical standards issued by a Regulatory Authority in relation to Your Equipment;
- (c) The proper functioning and security of Your Equipment.

and you agree to comply with all reasonable directions given by us in relation to Your Equipment, including:

- (d) allowing us to inspect Your Equipment;
- (e) making any necessary changes or modifications to Your Equipment to avoid any danger or interference it may cause to Our Network or the Service.

**5.4** If you do not comply with any of your obligations under clause 5.3, we may disconnect Your Equipment from the Service or require you to do so. We will try to give you reasonable notice before disconnection but may immediately disconnect your Service in an emergency.

**5.5** Title to the Purchased Equipment passes to you when you pay for it in full and becomes Your Equipment. You will be responsible for the Purchased Equipment from when it is delivered to you or your nominated address.



## **6. QUALITY AND MAINTENANCE**

**6.1** Subject to the Consumer Guarantees and to clause 13, we aim to provide, but do not guarantee, continuous or fault-free service.

**6.2** We may conduct maintenance on any of our Network, Our Equipment, or Facilities. We will try to conduct scheduled maintenance outside normal business hours but may not always be able to do so. We may occasionally update the firmware in our network, including that on your supplied modem/router, to ensure the service performs at its optimal level.

**6.3** Before reporting a fault to us, you must take reasonable steps to ensure that the fault is not a fault in any of Your Equipment. We are not responsible for rectifying any fault in the Service where the fault is caused by you or Your Equipment and the fault does not arise or was not caused by us or Our Supplied/Managed Equipment.

**6.4** If you report a fault in the Service and ask us to come to the Premises to repair it and, once at the Premises, we determine (in our reasonable opinion) that the Service is not faulty or the fault is associated with Your Equipment rather than the Service, we may charge you an incorrect call-out fee of **\$65**.

If you request us to repair Your Equipment, hourly rates for customer owned equipment repair vary and can be advised by our technicians at the time of enquiry.

**6.5** We can charge you for repairing a fault if it is caused by something:

- (a) you intentionally, recklessly or negligently do (or do not do);
- (b) someone else using the Service with your express or implied authority intentionally, recklessly or negligently does (or does not do);
- (c) someone who you have not authorised to use the Service does, or does not do (but only if that person's unauthorised use of the Service occurs due to an intentional, reckless or negligent act or omission by you).

**6.6** You are responsible for the proper functioning and security of Your Equipment. You must maintain and repair all of Your Equipment used in connection with the Service.

## **7. CHARGES**

- 7.1** The charges for the Service are set out in your Application at the time it is submitted.
- 7.2** You must pay all charges for the Service in accordance with the Service Description and Application. Charges for the Service accrue from no later than the Service Commencement Date, or earlier if specified in your Application or the relevant Service Description.
- 7.3** We may charge you an additional amount to service, modify, repair, or replace the Service or any equipment you use in connection with the Service, as a result of:
- (a) a breach of our T&C'S by you;
  - (b) a negligent or fraudulent act or omission by you, a person with your express or implied authority, or by any of your employees, agents or contractors;
  - (c) a failure of any of Your Equipment arising out of an act or omission by you, a person with your express or implied authority, or by any of your employees, agents or contractors;
  - (d) a failure or fluctuation in electrical power supply arising out of an act or omission by you, any person with your express or implied authority, or by any of your employees, agents or contractors;

and we will provide you with details of the additional amount prior to commencing the service repair or replacement.

## **8. BILLING AND PAYMENT**

- 8.1** Unless otherwise agreed or as set out in an Application or Service Description, we will bill you and you will pay for the Services in accordance with our T&C's.
- 8.2** It is a condition of us supplying a Service to you that you:
- (a) ensure we have current and valid credit card or direct debit details at all times;
  - (b) authorise us to direct debit your nominated credit card or bank account for the purposes of paying your bill.
- 8.3** If we do not receive payment from you by previously arranged other means by the due date, you authorise us to debit your nominated credit card or bank account on the due date on your bill.
- 8.4** In the event of a failed direct debit due to expired or cancelled direct debit or credit card details, and If you do not provide us with a new direct debit authorisation to replace a cancelled, expired or invalid direct debit authorisation within 5 working days after we've notified you that one is required, your account may be suspended until such time as you provide us with a new payment details.

**9. VARIATIONS TO THE SERVICE**

- 9.1** If you request a variation to the Service and we, in our discretion, make that variation, then different charges may apply to the varied Service.
- 9.2** We may vary the T&C'S or the Service in accordance with clauses 1 of these General T&C's.

## **10. CANCELLING OR SUSPENDING THE SERVICE**

**10.1** We may, without liability, cancel the Service:

- (a) if there is no Contract Term specified in your Application or the Service Description, at any time by giving 30 days' notice to you;
- (b) if a Contract Term is specified in your Application or the Service Description, at any time after the end of the Contract Term by giving 30 days' notice to you;
- (c) if we reasonably determine that it is not technically, commercially or operationally feasible to supply the Service to you, at any time prior to the Service Commencement Date by giving you notice. If you have paid us fees for the Service, these fees will be refunded to you.

**10.2** Subject to your rights under the Consumer Guarantees, we may cancel the Service if you materially substantiate that the Service has not met or is not meeting your prior expressed expectations or needs and, acting reasonably, we agree that we are not able to provide a Service that meets your prior expressed expectations or needs.

**10.3** We may immediately suspend, cancel or restrict the supply of the Service to you if:

- (a) you fail to pay any amount owing to us by the due date;
- (b) you breach any of clauses in this T&C's (including our Acceptable Use Policy) or any of your obligations relating to the use of the Service specified in the Service Description;
- (c) we reasonably suspect fraud or other illegal conduct by you or any other person in connection with the Service;
- (d) we reasonably believe a threat or risk exists to the security of the Service or the integrity of our Network or a Supplier's Network and that threat or risk is caused directly or indirectly by you;
- (e) you resell the Service or otherwise act as a Carriage Service Provider, or you allow the service to be shared/reticulated to other people/locations other than the ones specified in the Application;
- (f) we reasonably consider you to be an unacceptably high credit risk;
- (g) we are entitled to under another provision of our T&C'S;
- (h) an Insolvency Event occurs in relation to you, your business, or one of your Related Bodies Corporate;
- (i) you vacate the Premises or you pass away;
- (j) you relocate any fixed location service from the Premises specified on the Application without approval from us;
- (k) you are a business customer and you cease or state that you intend to cease conducting your business;
- (l) you verbally abuse or harass our staff, or you threaten to harm, attempt to harm or cause harm to our staff or to our property;
- (m) you, or anyone associated with you, attempt to gain unauthorised access to our Network or any physical location that makes up any part of CiFi Pty Ltd.

- 10.4** Without limiting any other provision of this T&C'S, we may immediately suspend, cancel or restrict the supply of the Service to you if:
- (a) there is an emergency;
  - (b) a Supplier terminates its agreement with us, or ceases to supply services to us, and we are not able to provide the Service using services of an alternate Supplier on terms reasonably acceptable to us;
  - (c) doing so is necessary to maintain, repair or restore any part of our Network or a Supplier's Network used to supply the Service, or for other operational reasons;
  - (d) we are required by law or in order to comply with an order, direction or request of a Regulatory Authority or an emergency services organisation;
  - (e) the ACCC issues us with a competition notice (as that term is used in the *Competition and Consumer Act 2010*) in respect of the Service or we reasonably anticipate that it may do so;
  - (f) providing the Service to you may be illegal or we reasonably anticipate that it may become illegal;
  - (g) a force Majeure Event prevents us from supplying the Service in accordance with our T&C'S for more than 14 days;
  - (h) we reasonably believe that there is a threat or risk to the security of the Service or the integrity of our Network or a Supplier's Network and that threat or risk is not caused directly or indirectly by you.
- 10.5** In the event that we decide to suspend, cancel or restrict the supply of a Service to you under clause 10.4, we will endeavour to provide you with as much notice as is reasonably possible in the circumstances.
- 10.6** If we suspend the Service under clauses 10.3 or 10.4, we may later cancel the Service for the same or a different reason.
- 10.7** Clause 10.2 applies if, for any reason, you withdraw or cancel your Application before the Service Commencement Date.
- 10.8** Except as provided otherwise in the Application for your Service, you may cancel the Service, by giving us notice:
- (a) at any time, if there is no Contract Term specified in the Service Description or your Application;
  - (b) if a Contract Term is specified in the Service Description or your Application, at any time after the end of the Contract Term;
  - (c) if we have breached a material term of our T&C'S and that breach is not capable of remedy;
- 10.9** You may ask us to suspend the Service by giving notice to us. We will try to do so within a reasonable period if it is a Service for which suspension is an option.

## **11. CONSEQUENCES OF SUSPENSION AND CANCELLATION**

- 11.1** If we reconnect a Service that has been cancelled, you may have to pay us a reconnection fee. You will not be required to pay a reconnection fee if the Service was cancelled or suspended under clauses 10.4 and 10.8(c).
- 11.2** At the withdrawal or cancellation of your Application before the Service Commencement Date, you must:
- (a) pay for all costs we have reasonably incurred in arranging to provide the Service to you;
  - (b) pay the full retail price for all Purchased Equipment that we have supplied to you.;
  - (c) return to us, at your cost, all of Our Equipment (if any);
  - (d) pay for all Purchased Equipment and Our Equipment that have not been returned to us in the same condition that the Equipment was in when the Equipment was supplied to you.
- 11.3** At the cancellation of your Service you must:
- (a) immediately cease using the Service;
  - (b) pay for all charges incurred in relation to the Service up to the date of cancellation. Charges include usage charges, installation costs, new development fees, delivery fees, call-out fee and others;
  - (c) if the Service is cancelled during its Contract Term, pay the applicable Break Fee;
  - (d) pay any outstanding amounts for all Purchased Equipment that we have supplied to you;
  - (e) return to us, at your cost, all of Our Equipment;
  - (f) pay for all Purchased Equipment and Our Equipment that have not been returned to us in the same condition that the Equipment was in when the Equipment was supplied to you (allowing for fair wear and tear);
  - (g) return to us, at your cost, all of our materials (including any software) that are on the Premises or in your possession or control.
- 11.4** Clause 11.3(c) does not apply to cancellations under clauses 1.4, 10.1(c), 10.2, 10.4 or 10.8(c) of these T&C's.
- 11.5** If there is credit remaining on your account at the cancellation of the Service or Application (as applicable), you will receive the credit (less any costs under clause 10.3 or 10.2 (as applicable) and Handling Fees) via the relevant payment method. The payment method may be the method listed on your account or the method through which you had made the payment.
- 11.6** Where a Service has been terminated or cancelled for any reason, we may delete all of your data from any storage media related to the cancelled Services. You are solely responsible for backing up your data.

## **12. PERSONAL INFORMATION & PRIVACY POLICY**

**12.1** We may collect Personal information about you for the purposes of your Application, from:

- (a) you directly, when you provide information by phone or in application forms, or when you submit your personal details through our website
- (b) our employees, agents, contractors, or Suppliers
- (c) a credit reporting agency, credit provider or fraud-checking agency
- (d) your representatives
- (e) other telecommunication and information service providers
- (f) publicly available sources of information

**12.2** We may disclose Personal Information about you to:

- (a) our employees, agents or contractors
- (b) Suppliers who need access to the Personal Information to provide us with services that enable us to supply the Service to you
- (c) a credit reporting agency, credit provider or fraud-checking agency, our professional advisers, including our accountants, auditors and lawyers
- (d) other telecommunication and information service providers
- (e) an Authorised Person or Contact Person
- (f) your legal advisers (for example, when requested by you to do so);
- (g) Government and Regulatory Authorities and other organisations, as required or authorised by law (for example, to the operator of the Integrated Public Number Database (IPND), which supplies information for telephone directories and to law enforcement agencies for purposes relating to the enforcement of criminal and other laws.

**12.3** We may use the Service to communicate with you in relation to your account (including to notify you of your level of usage, remind you of unpaid invoices and to provide notice of Service suspension or cancellation). You acknowledge that by allowing third parties to access the Service you are consenting to the disclosure to those third parties of your Personal Information.

**12.4** We may collect, use and disclose Personal Information about you for the purposes of:

- (a) verifying your identity;
- (b) assessing your eligibility for our Services;
- (c) assisting you with an Application;
- (d) administering and managing those services, including billing, account management and debt collection;
- (e) conducting appropriate checks for credit-worthiness and for fraud;
- (f) determining whether to provide to you (or to cease or limit the provision to you of) trade, personal or commercial credit and the ongoing credit management of your account;
- (g) researching and developing our products and services and the products and services;
- (h) business planning;
- (i) reporting to credit reporting agencies if you fail to make payments due under our T&C'S by the applicable due dates.

**12.5** If you are a natural person (i.e. an individual), you are entitled to access your Personal Information held by us, unless we are permitted or required by law to refuse such access.

- 12.6** If you choose not to provide all or part of the Personal Information we request, we may not be able to provide you with the Services requested by you, or we may refuse to provide, or limit the provision to you of, any Service or personal or commercial credit requested by you.
- 12.7** By providing Personal Information to us and acquiring the Service, you acknowledge and consent to the collection, use and disclosure of your Personal Information as set out in this clause 12.



### **13. OUR LIABILITY TO YOU**

- 13.1** We agree to provide the Service to you subject only to the terms, conditions and warranties contained in the T&C'S and any non-excludable rights you have under the Australian Consumer Law.
- 13.2** Where we are not permitted to exclude our liability for any loss or damage in connection with our breach of a Consumer Guarantee, but are permitted to limit our liability for such a breach, then, unless you are able to establish that it is not fair and reasonable for us to do so, our liability to you is limited to:
- (a) if the breach relates to the supply of Our Equipment or Purchased Equipment, the repair or replacement of the equipment, the supply of equivalent equipment or the payment of the cost of repairing or replacing the equipment or supplying equivalent equipment;
  - (b) if the breach relates to the supply of a Service, resupplying the Service as a best effort, if and when possible, within all terms laid out in these T&C's.
- 13.3** Subject to clause 13.6, in the case of Interruptions to the Service, we may offer you a refund or rebate for the period of the Interruption equivalent to the value of the Service supplied.
- 13.4** Except for liability which is expressly accepted by us under this clause 13 and any liability we have under the Australian Consumer Law (including the Consumer Guarantees) that cannot be excluded, we exclude all other liability to you (whether based in contract, tort (including negligence), statute or otherwise) for suspending, cancelling or restricting the Service where we do so in accordance with our T&C'S.
- 13.5** Our liability for any loss, cost, liability or damage suffered or incurred by you under or in connection with our T&C'S or the Service (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that your acts or omissions or Your Equipment (or the acts, omissions or equipment of a third person) caused or contributed to that loss, cost, liability or damage.
- 13.6** We exclude any liability to you for any Consequential Loss suffered or incurred by you, except to the extent that you are entitled to recover your reasonably foreseeable loss under law.
- 13.7** We accept liability to you for the acts of our agents in accordance with the principles of vicarious liability at common law. The Australian Consumer Law (including the Consumer Guarantees) imposes obligations on us that cannot be excluded, including obligations on us that arise as a result of the acts or omissions of our Suppliers.
- 13.8** Other than as expressly stated under clause 13.7, we have no liability to you or to any other person for the acts, omissions or defaults of any Supplier who is not acting as our agent, or any person who provides goods or services directly to you for use in connection with a Service.
- 13.9** Subject to your rights under the Australian Consumer Law, which we do not exclude, we are not liable for failing to comply with any of our obligations under our T&C'S if a Force Majeure Event occurs which prevents us from performing those obligations.
- 13.10** While We make a concentrated effort to provide Network resilience and redundancy and to ensure Service continuity (including power and transmissions backups, local stock of supplied equipment & core network equipment, and more) We exclude any liability or damage suffered or incurred by you in the event of a network outage for any length of time. This clause 13.10

is impacted specifically by factors beyond our control that are related to operating our Services in a remote isolated Island environment, such as Christmas Island.

These factors include, but are not limited to, power supply infrastructure, environmental factors (rain and heat etc), damage or disruption caused by fauna & flora, and delays in time-to-fix caused by logistical challenges such as shipping lead times and delays.

CiFi Pty Ltd offers all of its Services strictly on a “Best Effort” basis to You, with no guarantees or agreed SLA’s of service uptime or continuity. Response times to all reactive maintenance causing network outages will be prioritised as practicable in the order of business customers followed by retail customers, or as we see fit.

## **14. YOUR LIABILITY TO US**

- 14.1** If you and one or more others are the customer for a Service, each of you is jointly and individually responsible for all charges and other obligations relating to that Service.
- 14.2** You must pay us for any loss, damage, cost or liability including reasonable legal costs (but excluding any Consequential Loss) (**Losses**) we suffer or incur relating to the use (or attempted use) of the Service or equipment used in connection with the Service, arising out of your (or any person acting with your express or implied authority) breach of this T&C'S or negligent acts or omissions.
- 14.3** You must pay us for any Losses we suffer or incur as a result of or in connection with the suspension or disconnection of your Service (unless the suspension or disconnection occurred under clause 10.4), including Losses suffered or incurred by us as a result of a claim against us by any third party that relates to our suspension or disconnection of your Service.
- 14.4** You must ensure that any person who you allow to use the Service, or to whom you ask us to supply the Service directly, complies with our T&C'S as if they were you.

## **15. ASSIGNMENT AND SUBCONTRACTING**

- 15.1** You must not assign or transfer or otherwise deal with any of your rights or obligations under this T&C'S without our prior written consent.
- 15.2** We may assign some or all of our rights under our T&C'S to any person.
- 15.3** We may transfer some or all of our obligations under this T&C'S to a purchaser of our business.
- 15.4** We may perform any of our obligations under the T&C'S by arranging for them to be performed by another person. We will still be responsible for the performance of the obligations.
- 15.5** Otherwise, we may transfer or deal with our obligations under our T&C'S on terms to which you consent.

## 16. GENERAL

- 16.1** If we have a right arising out of your breach of our T&C'S and we do not exercise that right, we do not waive that right or any other obligation unless we do so in writing signed by us.
- 16.2** If a provision of T&C'S is void, voidable or unenforceable in any jurisdiction, it will be severed and the remainder of our T&C'S will not be affected.
- 16.3** You do not own or have any legal interest in any of our intellectual property or in an IP address, domain name, personal identification number or other locator or identifier issued by us to you.
- 16.4** You must comply with the terms and conditions of the software licences which apply to the use of any software supplied by us in connection with a Service (including software supplied with Our Equipment, such as routers).
- 16.5** If you have a business Service, you agree that if we need your consent to undertake certain actions then, provided we act in good faith, we may rely upon the authority of any of your employees, who tell us that they are authorised to provide that consent on your behalf. For residential Services, you must inform us if you want another person to have authority to access or make changes to your Service or account. We will not let another person access your account unless we have received your authority to do so.
- 16.6** You acknowledge that:
- (a) advice from our staff is given in good faith and with the best of intention, however we do not represent that our staff are experts in the operation of your computer hardware or software. Subject to your rights under the Australian Consumer Law and the general law relating to misleading or deceptive conduct, you undertake to act on any advice given by any of our staff members at your own risk;
  - (b) we make reasonable efforts to ensure that the information on our Website is correct and up to date. However, we do not warrant the accuracy of that material.
- 16.7** Our T&C'S is governed by the laws of the Commonwealth of Australia and the laws of the State or Territory:
- (a) in which you ordinarily reside;
  - (b) of your main business location, if you are a business customer,
- (as stated in your Application) (**Your State**). You and we agree to submit to the exclusive jurisdiction of the courts of the Commonwealth of Australia and Your State, and any courts of appeal from these courts.

## **17. ACCEPTABLE USE POLICY**

- 17.1** To ensure the availability of our Services to eligible customers, we have an Acceptable Use Policy to make sure everyone gets a fair go. We have designed our products to be generous, but we do not want those generous terms abused.
- 17.2** We may immediately suspend, cancel or restrict the supply of the Service to you under clause 12.3 of the General Terms if you use the Service, or if any person who accesses your Service uses the Service, in any way which breaches this Acceptable Use Policy.
- 17.3** You, and any person who accesses your Service, must not use, or attempt to use, the Service:
- (a) for illegal purposes or practices;
  - (b) for any purpose if we advised you that such purpose was prohibited in your Application or the relevant Service Description;
  - (c) in any way which damages or interferes (or threatens to damage or interfere) with the operation of a Service or with the efficiency of our Network or a Supplier's Network (including as a result of attempts by you to increase the capacity or performance of your system or Your Equipment);
  - (d) in any way which makes it unsafe or which may damage any property or injure or kill any person;
  - (e) to transmit, publish or communicate any material or engage in any conduct which is defamatory, abusive, menacing or harassing;
  - (f) to engage in abusive behaviour toward our staff;
  - (g) to make inappropriate contact with children or minors;
  - (h) to access, store, reproduce, distribute, publish or commercially exploit any information or material of any kind that infringes any copyright, patent, trade mark, design or other intellectual property right;
  - (i) to send, relay or distribute any electronic data, the contents or properties of which have been manipulated for the purpose of maliciously or illegally impersonating or obscuring the original source of that data. This does not include the use of Virtual Private Networks or similar concepts in circumstances where this is legal and otherwise complies with this Policy;
  - (j) to access, monitor, use or control any other person's equipment, systems, networks or data (including usernames and passwords) or to otherwise probe, scan or test the vulnerability of any other person's equipment, networks, systems or data, without that person's consent;
  - (k) to access, or attempt to access, the accounts or private information of others, or to penetrate, or attempt to penetrate, our or a third party's security measures, computer software or hardware, electronic communications system or telecommunications system, whether or not the intrusion results in the corruption or loss of data. This does not include conducting network security testing specifically requested by the owner of the targeted network or system;
  - (l) to use or distribute software (such as password guessing programs, keyboard loggers, viruses or trojans) with the intent of compromising the security of any network or system;
  - (m) to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as 'pyramid schemes', 'Ponzi schemes', and 'chain letters';
  - (n) to engage in any unreasonable activity which impairs the ability of other people or systems to use our Services or the Internet. This includes any malicious activity resulting in an adverse effect such as denial of service attacks against

another network host or individual user, flooding of a network, overloading a service, improper seizing or abuse of operator privileges, and attempts to harm a system or network. For the avoidance of doubt, this clause does not capture an activity solely because it unintentionally contributes to network congestion;

(o) to access, store, reproduce, distribute or publish any content which is prohibited or unlawful under any Commonwealth, State or Territory law or classification system, or to provide unrestricted access to material that is unsuitable for minors.

**17.4** Due to Payment Card Industry (PCI) requirements, You, and any person who accesses your Service, must not use, or attempt to use, our web-hosting Services to store credit card data without our express consent in writing.

**17.5** In this clause 3, “Spam” includes one or more unsolicited commercial electronic messages with an “Australian link” as contemplated by the Spam Act 2003. You must not use the Service to:

- (a) send, allow to be sent, or assist in the sending of Spam;
- (b) use or distribute any software designed to harvest email addresses; or
- (c) otherwise breach the Spam Act 2003 or any regulations made under the *Spam Act 2003*.

**17.6** You must use reasonable endeavours to secure any device or network within your control against being used in breach of this Acceptable Use Policy by third parties, including where appropriate:

- (a) the installation and maintenance of antivirus and firewall software;
- (b) the application of operating system and application software patches and updates;
- (c) protecting your account information and password and taking all reasonable care to prevent unauthorised access to your service, including taking reasonable steps to secure any Wi-Fi network that you operate;
- (d) for residential users, requiring any persons (for example, other members of your household) that you allow to use your Service from time to time to also comply with this Policy;
- (e) for business and government users, maintaining and enforcing appropriate workplace and guest user policies that are consistent with the requirements of this Acceptable Use Policy.

**17.7** Unless otherwise stated, our rights to suspend, cancel or restrict the supply of the Service to you applies regardless of whether the breach or suspected breach was committed intentionally, or by means not authorised by you (such as through Trojan horses, viruses or other security breaches).

## 18. DEFINITIONS AND INTERPRETATION

### 18.1 In our T&C'S:

**Acceptable Use Policy** means clause 17 forming part of this T&C'S that describes our policy on excessive, unreasonable, prohibited or otherwise unacceptable use of the Service.

**Application** has the meaning given to it in clause 2.1.

**Approved Purposes** means:

- (a) the operation of emergency call services or assisting emergency services under Part 8 of the *Telecommunications (Consumer Protection and Service Standards) Act 1997*;
- (b) assisting enforcement agencies or safeguarding national security under Parts 14 and 15 of the *Telecommunications Act 1997* or any other applicable legal requirement;
- (c) assisting the Australian Communications and Media Authority, or its nominee, to verify the accuracy and completeness of information held in the IPND; and
- (d) any other purposes where permitted by the *Telecommunications Act 1997*, and any other applicable laws.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010*.

**Authorised Person** has the meaning given to that term in clause 1.6.

**Break Fee** means the relevant cancellation fee or termination charge (if any) that is payable when a Service is terminated during its Contract Term. It is calculated in accordance with the Application, Billing Policy, Pricing Schedule, a Service Description or any appendix to the Service Description.

**Business Day** means a day that is not a Saturday, Sunday or gazetted public holiday in the capital city of the State or Territory of Australia in which the Service is provided.

**Carriage Service Provider** has the meaning given by section 87 of the *Telecommunications Act 1997* (Cth).

**Consequential Loss** means:

- (a) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages;
- (b) any penalties or fines imposed by a Regulatory Authority,

in connection with or arising under this T&C'S, whether based in contract, tort (including negligence) or otherwise.

**Consumer Guarantee** has the meaning given in Division 1 of Part 3-2 of the Australian Consumer Law.

**Contract Term** means the minimum contract term specified in your Application, which commences on the Service Commencement Date, or, if no contract term is specified in the Application or our T&C'S, then there will be no minimum contract term.

**Credit Information** means:

- (a) personal identifying particulars including your name, gender, current address (and your previous two addresses), date of birth, telephone number, mobile number, banking details, credit card details, name of employer and drivers licence number;
- (b) your application for credit or commercial credit – the fact that you have applied for credit and the amount;
- (c) the fact that we are a current credit provider to you and any credit limit on your account;
- (d) payments which are overdue by more than 60 days and/or for which debt collection action has started;
- (e) advice that your payments are no longer overdue in respect of any default that has been listed;
- (f) the fact that, in our opinion, you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations);
- (g) information about any payments, including cheques, credit cards and direct debits, which have been dishonoured;
- (h) court judgments or bankruptcy orders made against you;
- (i) the fact that we have ceased providing the Service to you (and the timing of that cessation of service).

**Credit Rating** means information about your credit worthiness, credit standing, credit history or credit capacity that credit providers may give to each other under the *Privacy Act 1998* (Cth).

**Download** or **Downstream** means data that is inbound (i.e. incoming to your internet connection).

**Excess Usage Charges** means the fees payable for Internet Usage over and above the Monthly Usage Allowance as specified in the Billing Policy or Pricing Schedule.

**Facility** means the equipment, infrastructure and or devices that are not any part of Your Equipment by which the Service is provided to you.

**Force Majeure Event** means any event outside that person's reasonable control, and may include a failure or fluctuation in any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, cable cut, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission, failure or delay of any third party or any failure of any equipment owned or operated by any third party (including any Regulatory Authority or Supplier).

**Handling Fee** means a fee incurred by us to provide you with a refund.

**CiFi, CiFi Pty Ltd, we, us, our** means the CiFi Pty Ltd Entity named in your Application.

**Insolvency Event** means you:

- (a) have a controller or administrator
- (b) become insolvent or are under administration;
- (c) are in liquidation, in provisional liquidation, or have a receiver appointed to any part



- of your property;
- (d) suspend payment of any of your debts;
  - (e) become unable to pay your debts as and when they are due;
  - (f) become bankrupt.

**Interruption** in the supply of goods or a service means a material delay in supplying, a failure to supply for a significant period or a major error or defect in the supply of, those goods or that service.

**Monthly Usage Allowance** means the total data quota that is provided (without Shaping or additional charges) per month or billing period in accordance with the Service plan selected in your Application.

**Network** means a telecommunications network, including equipment, facilities or cabling.

**Our Equipment** has the means any equipment supplied by us for provision of a Service not paid for and owned by the Customer.

**Off Peak** means the hours of the day when your data usage is counted towards your Off Peak quota allowance.

**Peak** means the hours of the day when your data usage is counted towards your Peak quota allowance.

**Personal Information** is as defined in section 6 of the *Privacy Act 1988*. It means information or an opinion about an individual, whether the information or opinion is true or not. Generally this includes your name, current and previous addresses, service number, date of birth, email address, bank account or credit card details, driver's licence number and your Credit Information and Credit Rating.

**Premises** means the location(s) to which we supply the Service.

**Privacy Statement** means clause 12 of these T&C's.

**Purchased Equipment** means any equipment that you purchase from us for use in connection with a Service.

**Regulatory Authority** means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, Communications Alliance, the Telecommunications Industry Ombudsman or any other government or statutory body or authority.

**Related Body Corporate** has the meaning given to that term in section 50 of the *Corporations Act 2001*.

**Rent** means to pay an amount for the use of a product for an agreed period of time during which, ownership of the product is not passed. The product is returned at the end of the period.

**Security Interest** means a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention agreement, preferential right, trust arrangement or other arrangement (including, without limitation, any set-off or flawed-asset arrangement) having the same or equivalent commercial effect as a grant of a security.

**Service** means the service requested by you in your Application. The Service is described in the relevant Service Description, and encompasses any related goods (including Our Equipment and Purchased Equipment) and ancillary services provided to you by us in connection with that Service.

**Service Commencement Date** means the date on which the Service is ready for use.

**Service Description** means the document forming part of this T&C'S describing the Service and setting out specific terms and conditions for the Service.

**Shaping** means, where your Usage exceeds the Monthly Usage Allowance in any given billing month, the internet speed will be slowed to the shaped speed specified in the Application.

**Supplier** means any supplier of goods or services (including interconnection services) that may be used directly or indirectly by us to supply the Service.

**Telecommunications Act** means the *Telecommunications Act 1997*

**Telecommunications Legislation** means the *Telecommunications Act 1997*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and Part XIB, Part XIC and related provisions of the *Competition and Consumer Act 2010*, each as amended or replaced from time to time.

**Usage** means the amount of time generated or data Downloaded and Uploaded by your Internet access.

**You** means the customer who makes the Application and where two or more persons have applied, means those persons individually and every two or more of them jointly (and your will have a corresponding meaning).

**Your Equipment** has the meaning set out in clause 5.3.

**Warranty Information Statement** means the document forming part of this T&C'S which describes your rights with respect to some equipment we supply to you, the warranty periods that apply and how to claim under the warranty.

**Website** means the website of the CiFi Pty Ltd entity: <http://www.cifi.com.au>

**18.2** Unless the context otherwise requires:

- (a) undefined words and expressions have the same meaning as in the Telecommunications Legislation.
- (b) the expressions "we", "us", "our", "you" or "your" will include their respective successors and permitted assigns and novatees.
- (c) a reference to a person includes a reference to a person, firm, corporation or other legal entity.
- (d) a term which i defined in any part of our T&C'S has the same meaning in every other part of our T&C'S.
- (e) the singular includes the plural and vice versa.
- (f) different grammatical forms of the same word have the corresponding meaning.
- (g) a reference to a clause is to a clause in the T&C's, unless otherwise stated.
- (h) the words 'including', 'includes' or 'for example' or similar expressions are not words of limitation,
- (i) a "reasonable" notice period means a period which is reasonable in the circumstances taking into account technical, operational and commercial issues.