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## STANDARD FORM OF AGREEMENT

With effect from 1 November 2014

This is a legal document that should be read as a whole. Some of the clauses in this Contract may affect the way you use the Goods or Services or the way in which you deal with New Age Solutions.

## CONTACT DETAILS

|           |  |
|-----------|--|
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## RECITALS

- A. New Age Solutions is engaged in the design, implementation, hosting, management, supply and maintenance of computer and server infrastructure, managed network solutions, software, telecommunication services and other services and applications
- B. the Customer wishes New Age Solutions to supply it with some or all services provided by New Age Solutions to support its business operations.
- C. New Age Solutions will supply the Customer with the Goods and or Services in accordance with terms and conditions set out in this Standard Form of Agreement, in conjunction with the terms of trade defined in the separate Master Terms document.

## CORE TERMS

### 1 What is this document?<sup>1</sup>

- 1.1 This document sets out the basic terms on which New Age Solutions provides services<sup>2</sup> to Customers. They apply to every service NAS supplies and are called 'core terms'.
- 1.2 The core terms are part of our 'standard form of agreement' under section 479 of the Telecommunications Act 1997.
- 1.3 Extra terms or alternate terms may also apply in certain cases. These terms indicate when extra or alternate terms will apply.<sup>3</sup>

### 2 Parties

'We' or 'NAS' means New Age Solutions, and 'you' or 'Customer' means anyone that we supply a service to.

### 3 Information accessibility

You can contact us to obtain further information on the following numbers:

- 3.1 07 3421 5700 for customer support;
- 3.2 133 677 national relay service; or
- 3.3 if you cannot speak English you can contact us by calling the Translating & Interpreting Service on 13 14 50;

... otherwise you can view our website at [www.nas.com.au](http://www.nas.com.au) or email us at [contact@nas.com.au](mailto:contact@nas.com.au).

### 4 Important terms

- 4.1 Although all of the terms in our Standard Form of Agreement are important and should be read, some of the most important terms are:
  - 4.1.1 clauses 6, 7, 8 and 11 which deal with services, categories of services and the additional terms that apply to services;
  - 4.1.2 clause 9 which deals with how the applicable industry codes may apply to you and your rights;
  - 4.1.3 clause 10 which deals with our pricing and how we can change pricing;
  - 4.1.4 clause 12 which deals with an explanation as to how your Customer contract is made up and what all of the relevant terms are;
  - 4.1.5 clause 14 which deals with changes to Customer contracts;

<sup>1</sup> This document uses headings and footnotes to assist the reader. Headings and footnotes do not form part of the terms, and do not change the effect of the document.

<sup>2</sup> Note that 'services' includes both goods and services.

<sup>3</sup> Our Customer contract is a modular document, consisting of these core terms plus other terms that relate to particular services

- 4.1.6 clause 15 which deals with how you can locate the official version (being the latest version) of our Standard Form of Agreement;
- 4.1.7 clause 21 which deals with how we charge and bill you;
- 4.1.8 clause 22 which deals with payment terms and some of the consequences of late payment;
- 4.1.9 clauses 26 and 27 which deal with contract terms and in particular minimum terms and fixed/repeating terms;
- 4.1.10 clause 31 which deals with the regulation of Spam and our rights to suspend or terminate a service;
- 4.1.11 clause 34 which deals with how we can suspend services to you;
- 4.1.12 clause 35 which deals with how we can terminate your Customer contract;
- 4.1.13 clause 36 which deals with how our liability is limited;
- 4.1.14 clause 37 which details the indemnities you give us;
- 4.1.15 clause 42 which deals with the PPS Law;
- 4.1.16 clauses 49 and 50 deal with how we can give you notices; and
- 4.1.17 clause 55 which details how we can obtain a credit check about you.

## 5 When does our standard form of agreement apply?

- 5.1 Our standard form of agreement is in force from midnight at the start of 1 November 2014.
- 5.2 If there was an existing fixed term contract to supply services to you when our standard form of agreement came into force:
  - 5.2.1 the existing contract continues until the end of the fixed term; and after that, our standard form of agreement applies.
- 5.3 If we enter a contract with you after 1 April 2007 that states that our standard form of agreement does not apply, then it does not apply to that contract.
- 5.4 Otherwise, our standard form of agreement applies to all services that we supply while it is in force.

## 6 About services and categories

- 6.1 A 'service' means any goods or service that we offer or supply.<sup>4</sup> Each service may be briefly identified by its 'service description'.
- 6.2 A 'category' is a group of similar services that we designate as a category.<sup>5</sup>
- 6.3 We may assign a service to more than one category.<sup>6</sup>

## 7 Category terms

- 7.1 We may publish extra terms that apply to a category of services ('category terms').
- 7.2 Category terms are set out in another document.
- 7.3 Category terms only apply to the services in the category they relate to.
- 7.4 Category terms are also part of our standard form of agreement.

## 8 Service terms

- 8.1 We may also publish extra terms that apply to a particular service ('service terms').
- 8.2 Service terms may be set out in service information, or on an application form, or otherwise notified to you.
- 8.3 Service terms only apply to the service they relate to.
- 8.4 Service terms may include, or incorporate by reference, a service level guarantee.

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<sup>4</sup> e.g. a NASLive Exchange account is a 'service'

<sup>5</sup> e.g. internet access services or managed services are both 'categories'

<sup>6</sup> e.g. a managed DSL service may fall under our DSL category and our managed services category

- 8.5 Service terms are not part of our standard form of agreement, but they are part of our Customer contract with you.

## 9 Code Compliance

- 9.1 Where Codes apply to you, terms consistent with the Codes will be included in boxes – these form part of your Customer contract and override anything to the contrary.
- 9.2 If the Codes apply to you:
- 9.2.1 and the Codes are varied after the commencement of these Core Terms, your Customer contract is subject to the variations to the Codes;
  - 9.2.2 the boxed Code terms under clause 9.1 are not intended to limit your rights under the Codes and do not form an exclusive list of your rights under the Codes.

## 10 Pricing

- 10.1 We may charge you for our services in accordance with our price list.
- 10.2 We may change the price list by notifying you. A reference to 'price list' means the current price list at any particular time.
- 10.3 Changes take effect immediately. They have no effect on charges for services that have already been supplied.
- 10.4 In some circumstances, if we change our price list you may be entitled to cancel your Customer contract early. Clause 16 explains that.
- 10.5 The price list is not part of our standard form of agreement, but it is part of our Customer contract with you.
- 10.6 If a Customer contract states that charges for the contract will be fixed for a certain period, or until a certain date, changes made during that period, or before that date, do not take effect until the end of that period, or until that date.
- 10.7 If a Customer contract states that charges will be reviewed at certain intervals, we will not change or restructure charges for that Customer contract more frequently than once per that interval.
- 10.8 Despite clause 10.6 but subject to clause 16, we may pass on price increases:
- 10.8.1 which our third party suppliers may impose on us;
  - 10.8.2 which are imposed on us by law such as an increase in GST;

During a fixed term or recurring term Customer contract, but where we do, we will provide you with notice at least 21 days prior to the date on which the variation is intended to take effect.

## 11 Special terms

- 11.1 We may also agree with you that special terms will apply to our Customer agreement with you.
- 11.2 Special terms only apply if they are in writing and we agree to them. For instance, they may be set out on an order form.
- 11.3 If we agree in writing to charge you on some basis other than the price list, that agreement is taken to be a special term.
- 11.4 Special terms are not part of our standard form of agreement, but they are part of our Customer contract with you.

## 12 Our Customer contract

- 12.1 When we supply a service to you, the terms and conditions of supply consists of:
- 12.1.1 these core terms – Part 1; and
  - 12.1.2 any applicable category terms – Part 2; and
  - 12.1.3 any applicable service terms; and

- 12.1.4 the applicable items in the price list; and
- 12.1.5 any applicable special terms.

12.2 Together, those terms and conditions and items are called the 'Customer contract'.

## 13 What if different parts of the Customer contract conflict?

13.1 To the extent of any conflict or inconsistency between them, the parts of the Customer contract have the following order of priority, from highest to lowest:

- 13.1.1 special terms;
- 13.1.2 price list;
- 13.1.3 service terms;
- 13.1.4 category terms;
- 13.1.5 core terms.

## 14 Changes to Customer contracts

- 14.1 We may change the terms of your Customer contract, subject to this clause.
- 14.2 We may change any part of our standard form of agreement by amending the Official Copy<sup>7</sup>
- 14.3 We may change our price list – where we do, you can obtain new pricing by contacting us (unless we have already informed you).
- 14.4 We may change any other part of your Customer contract, including our price list, by informing you of the change<sup>8</sup>, but in the case of fixed term contracts we cannot change the price you pay until after the fixed term has expired, except in the manner allowed for in clause 10.8.
- 14.5 If the Telecommunications Act 1997 or any other law requires us to comply with any steps or requirements before we change our standard form of agreement in a particular way, such changes do not take effect until we have complied with those steps or requirements.
- 14.6 You can change your Customer contract at the expiration of the minimum term:
  - 14.6.1 if we agree; and
  - 14.6.2 if you give us 30 days notice prior to the commencement of the next billing month; but we are not obliged to effect any change until after the expiry of your 30 day notice.
- 14.7 Otherwise:
  - 14.7.1 changes to our standard form of agreement take effect when we change the Official Copy;
  - 14.7.2 changes to any other part of a Customer contract take effect 30 days after we inform you of the change; and
  - 14.7.3 despite anything to the contrary, all changes whether to these core terms or any additional terms, apply immediately to all new Customer contracts entered into after the changes.

## 15 Locating the 'Official Copy' of our standard form of agreement

- 15.1 The 'Official Copy' of our standard form of agreement (i.e. these core terms and category terms) is the copy published online at [www.nas.com.au/sfoa](http://www.nas.com.au/sfoa).
- 15.2 The Official Copy is taken to be the current and accurate version of those documents at any time.

## 16 The effect of changes to your Customer contract

- 16.1 If the Codes apply to you, clauses 16.2, 16.3 and 16.4 apply to your Customer contract, otherwise you may not terminate your Customer contract unless permitted by clause 35

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<sup>7</sup> See clause 15 for information about the Official Copy

<sup>8</sup> See clause 49 for the ways in which we can give you information.



16.2 If we change your Customer contract, you may be entitled to cancel it early. But you only have that right strictly in accordance with this clause.

16.3 You may cancel your Customer contract if:

16.3.1 we increase the charges that apply to it; and

16.3.2 the increase is not limited to passing on increases in costs that we incur to a third party<sup>9</sup> or in government charges<sup>10</sup>; and

16.3.3 the increase in charges would have increased your actual payments to us if it had applied from a date six months earlier<sup>11</sup>; and

16.3.4 you give us written notice of cancellation within 30 days after we inform you of the increase in charges.

16.4 If you cancel a Customer contract under clause 16.3:

16.4.1 the cancellation takes effect 7 days after we receive your notice;

16.4.2 you must pay all charges that accrue before then; but

16.4.3 we will recalculate those charges to disregard the increase in charges, if you ask us to do so before you pay your final bill.

## 17 Rights and obligations that survive termination

17.1 When a Customer contract or this agreement ends:

17.1.1 a right of action that arises from a breach that occurred before it ended survives;

17.1.2 charges for services delivered before it ended can be invoiced and recovered;

17.1.3 clauses 17, 22, 28, 37, 38, 44, 45 and 57 continue to operate; and

17.1.4 any other clause in the Customer contract that indicates that the clause survives termination also continues to operate.

## 18 How do you order services ?

18.1 We may receive an order in any form we choose e.g. by written application or over the telephone.

18.2 You must comply with any ordering procedures that we specify e.g. if we ask you to use a particular order form, you must do so.

18.3 We are not obliged to accept any order.

18.4 You must ensure that you provide us with all the information we request in relation to your order<sup>12</sup> and that the information you provide is correct.

## 19 Multiple services

If we supply multiple services, the special terms, prices, service terms and category terms that would apply to the different services if ordered separately apply to each of them individually within the mixture.

## 20 Additional terms

Except for things set out in express terms in a Customer contract, and things that are implied by law and cannot be excluded, there are no other representations, promises, warranties, covenants or undertakings between the parties and Customer contracts contain the entire understanding between us.

<sup>9</sup> e.g. if we resupply a service acquired from a wholesaler, and the wholesaler increases its charges to us

<sup>10</sup> e.g. if the rate of GST is increased

<sup>11</sup> e.g. if we apply a data upload charge to uploads above 12 GB, but that would not have affected you if it had applied during the previous six months

<sup>12</sup> e.g. information requested in an order form

## 21 Charges and billing

- 21.1 We may charge you, and you must pay us, in accordance with our price list.
- 21.2 Subject to the Codes, we may require payment of our periodic or repeating charges in advance or arrears – but we will ordinarily require payment in arrears.
- 21.3 Set up charges are payable as soon as we agree to provide a service, or at any later date we agree to in writing.
- 21.4 Periodic or repeating charges are payable from the date when we inform you that we are ready to supply the service, whether or not you actually make use of the service.
- 21.5 All other charges, including excess use charges, are payable on invoice.
- 21.6 When a Customer contract is terminated or otherwise ends:
  - 21.6.1 we may immediately invoice any accrued charges (but later invoicing remains effective);
  - 21.6.2 our invoices must be paid immediately; and
  - 21.6.3 we have a lien over any Customer equipment for unpaid charges.
- 21.7 At our discretion, we may require payment of an advance deposit (or a Direct Debit Authority, or a Credit Card Authority) against future charges or out-of-pocket expenses. If we do, it becomes a condition of your Customer contract.
- 21.8 We may vary the amount of advance deposit we require under clause 21.7 at any time.
- 21.9 We may invoice you whenever charges have accrued, but we normally invoice by 'billing months'. A 'billing month' is a month, starting on a day of the month that we nominate, which is currently the 1st day of every calendar month.
- 21.10 If we hold your advance deposit, Direct Debit Authority, or Credit Card Authority, we may draw payment as soon as a charge has accrued.

Contracts Code: Upon termination of a Customer contract you must pay all fees and charges that are invoiced, within 7 days of the invoice unless we agree to a longer time.

## 22 Payments

- 22.1 You must pay our invoices within 14 days by means of a payment method that we approve, unless we agree in writing to alternate payment terms.
- 22.2 Apart from our other rights in case of non-payment, we may suspend any services and/or charge interest and or a one off fee for late payment.
- 22.3 Interest will be calculated at the rate which is 2% higher than the Commonwealth Bank Business Overdraft interest rate specified from time to time, calculated daily.
- 22.4 Without prejudice to any other rights we have, if your payment is dishonoured then we may pass on our bank's dishonour fees and a one off administrative fee to you.

## 23 Disputes – general

- 23.1 We divide disputes into two categories – billing disputes and general disputes. When a formal dispute resolution process is required, we have a customised procedure for each of them.
- 23.2 Although you must follow our dispute resolution procedures, where you have a statutory right to refer a dispute to the Telecommunications Industry Ombudsman, you may still do so – but we recommend that we try to resolve the issue with us first.

Contracts Code: You may make a complaint or claim to any competent body authorised to hear the complaint or claim, and any remedy that is available to you by operation of law is not excluded.

## 24 Billing disputes

- 24.1 You may dispute charges in an invoice by written notice that:
  - 24.1.1 you give to us within 14 days of the date of the invoice;

- 24.1.2 clearly identifies you and the invoice you dispute;
- 24.1.3 detail the grounds of your dispute.
- 24.2 If a bona fide billing dispute is lodged in accordance with clause 24.1 you may withhold payment of the disputed amount only until we have conducted reasonable and appropriate investigations. At the end of our investigations we will notify you of the outcome.
- 24.3 Where we require payment after our investigations:
  - 24.3.1 we will notify you of the outcome; and
  - 24.3.2 you must pay us all outstanding amounts without deduction or set-off within 7 business days of our notice.
- 24.4 If we do not uphold your billing dispute and you are required to pay us, we may charge interest on any withheld money from the time it was due until the time we actually receive payment.
- 24.5 Where interest is payable under clause 24.4, it will be at a rate determined under clause 22.3.

## 25 General disputes

- 25.1 If a Customer contract includes a service level guarantee that deals with a dispute between us, the dispute must be dealt with according to that service level guarantee.
- 25.2 If you dispute an invoice, the dispute must be dealt with under clause 24.
- 25.3 Otherwise, if you have a dispute with us then you must notify us by notice in writing which must:
  - 25.3.1 be given to us within 14 days of the date of the invoice;
  - 25.3.2 clearly identifies you and the invoice you dispute;
  - 25.3.3 detail the grounds of your dispute.
- 25.4 We will acknowledge your notice within 14 days.
- 25.5 You must still pay all invoices by their due date.

## 26 Minimum terms

If a Customer contract has a minimum term:

- 26.1 you cannot cancel it during the minimum term (except in specific cases where these terms say otherwise);
- 26.2 after that, either of us may cancel it by giving the other at least 30 days' written notice, ending at the end of a billing month; and otherwise
- 26.3 it continues until one of us cancels it.
- 26.4 the minimum term stated on a contract or order form commences on the day the last activated service on that form.

## 27 Repeating terms

- 27.1 If a Customer contract has a repeating term, it serially repeats for that term unless one of us gives the other written notice that they do not wish to repeat it.
- 27.2 If a notice under clause 27.1 is given less than a month before the end of the current term, it takes effect at the end of the next term, not the end of the current term.
- 27.3 All contracts that we enter into with you will be 12 month repeating term contracts, unless we agree otherwise in writing.

Contracts Code: Where you enter into a Fixed Term (or repeating term) Customer contract we will obtain your consent a reasonable time before the expiry of the fixed term (or repeating term) before any renewal or extension of your Customer contract.

## 28 GST

- 28.1 Except where express provision is made to the contrary, the *consideration* payable by the Customer under this agreement represents the *value* of any *taxable supply* for which payment is to be made.
- 28.2 Subject to us supplying you with a *valid tax invoice*, if we make a *taxable supply* for a consideration, which represents its *value*, then you will pay, at the same time and in the same manner as the value is otherwise payable, (or, if for any reason that does not happen, without delay after we request you to) the amount of any GST payable in respect of the *taxable supply*.
- 28.3 Subject to us supplying you with a valid *tax invoice*, if this agreement requires you to pay, reimburse or contribute to an amount paid or payable by us in respect of an acquisition of a *taxable supply* from a third party, the amount required to be paid, reimbursed or contributed by you will be the *value* of the acquisition by us less any *input tax credit* to which we are entitled plus, if our recovery from you is a *taxable supply*, any GST payable under clause 28.2.

## 29 Will we provide support for services?

- 29.1 We will support a service as specified in the Customer contract.
- 29.2 We are not obliged to support a service in any way that is not specified. For instance, unless a Customer contract states otherwise, we are not obliged to provide:
- 29.2.1 on-site support;
  - 29.2.2 software or hardware support; or
  - 29.2.3 support outside business hours.
- 29.3 If a Customer contract includes a service level guarantee, we will provide support in accordance with it.

## 30 Acceptable Use Policies

- 30.1 You must comply with any AUP we publish, as amended from time to time.

## 31 Spam

- 31.1 You may not use a Service to:
- 31.1.1 send, allow to be sent, or assist in the sending of Spam;
  - 31.1.2 use or distribute any software designed to harvest email addresses; or
  - 31.1.3 otherwise breach the Spam Act 2003 or the Spam Regulations 2004 of the Commonwealth.
- 31.2 In addition to our other rights, we may suspend our provision of the Service to you in the following events:
- 31.2.1 if the Service provided to you is being used to host any device or service that allows email to be sent between third parties not under your authority and control; or
  - 31.2.2 if you are in breach of clause 31.1;
- provided however that we will first make reasonable attempts to contact you and give you the opportunity to address the problem within a reasonable time period. What is reasonable in this context will depend on the severity of the problems being caused by the open service or breach referred to above.
- 31.3 You agree to use your best endeavours to secure any device or network within your control against being used in breach of clause 31.1 by third parties, including where appropriate:
- 31.3.1 the installation and maintenance of antivirus software;
  - 31.3.2 the installation and maintenance of firewall software; and
  - 31.3.3 the application of operating system and application software patches and updates.

- 31.4 Our right to suspend your account applies regardless of whether the open service is provided or the breach is committed intentionally, through misconfiguration, or by other means not authorised by you including but not limited to through a Trojan horse or virus.
- 31.5 We may scan any IP address ranges allocated to you for your use with the Service in order to detect the presence of open or otherwise misconfigured mail and proxy servers.
- 31.6 If the Service is suspended and the grounds upon which it was suspended are not corrected by you within 7 days, we may terminate the Service.
- 31.7 If the Service is terminated under clause 31.6, in addition to our other rights, we may levy a reasonable fee for any costs incurred as a result of the conduct that resulted in the suspension.

## 32 What are your other obligations?

You must ...

- 32.1 supply, set-up, configure and maintain your own computer and communications equipment;
- 32.2 obtain any permit, licence or consent which you are required to have for the service to be provided;
- 32.3 be responsible for all data that you retrieve, store, transmit, or use in any other way;
- 32.4 back up all your data;
- 32.5 maintain the security of your password and user identification;
- 32.6 not:
  - 32.6.1 do anything which will damage or interfere with our network or facilities;
  - 32.6.2 do anything unlawful with a service;
  - 32.6.3 share a service with any third party without our written consent; or
  - 32.6.4 do anything with a service which may subject either you or us to a claim.

## 33 Your responsibility for use of your service

When we provide a service under a Customer contract with you:

- 33.1 you are responsible, and must pay, for all use of that service, by you or anyone else; and
- 33.2 you are responsible, and must pay, for use by anyone else even if they used the service without your knowledge or authority.

## 34 How can we suspend services?

- 34.1 We may suspend service under a Customer contract without notice and without any liability for loss and without prejudice to our rights under the Customer contract or at law if:
  - 34.1.1 we suspect that your service has been accessed without authority, or the integrity of the your service has been compromised;
  - 34.1.2 we suspect that your service has been used for unlawful purposes;
  - 34.1.3 you have not paid money you owe us;
  - 34.1.4 we consider it is necessary to protect our network;
  - 34.1.5 you or a guarantor has an adverse credit report;
  - 34.1.6 you are in breach of clause 21.7 or any other clause of your Customer contract;
  - 34.1.7 a governmental or law enforcement agency asks us to do so;
  - 34.1.8 a wholesaler requires us to do so;
  - 34.1.9 we consider that unless we do so, there is an unacceptable risk that there will be a breach of a law or of an agreement between us and a wholesaler; or
  - 34.1.10 you have changed your contact details without informing us.
- 34.2 Suspension does not affect your liability for charges under your Customer contract, where that suspension is caused by a breach of your Customer contract with us.

34.3 Unless the reason or circumstance that caused the suspension is resolved to our satisfaction within seven days, we may terminate your Customer contract.

Contracts Code: We may only suspend services under your Customer contract for a maximum period of 60 days before we terminate.

## 35 How can a Customer contract be terminated?

35.1 A Customer contract can only be terminated:

35.1.1 on notice by either party, given after its minimum term (or fixed term) has expired. Such a notice takes effect at the end of the next billing month that occurs at least 30 days after the notice was given; or

35.1.2 in accordance with clauses 35.2, or 27; or

35.1.3 in any other way that the Customer contract allows.

35.2 We may terminate your Customer contract/s immediately if you:

35.2.1 become insolvent;

35.2.2 are subject to an application for winding up;

35.2.3 are subject to any form of external administration or management;

35.2.4 fail to pay us money within 14 days of it being due;

35.2.5 breach a Customer contract and fail to remedy the breach within seven days after receiving a notice requiring that it be remedied;

35.2.6 die (in the case where you are a sole trader or partner in a partnership);

35.2.7 have provided false or misleading information to us – and in any other circumstances where the Customer contract allows us to.

35.3 If we terminate a Customer contract because you have breached it, you must pay us, on invoice, the charges that would have been payable under that Customer contract if it had not been terminated until after any minimum term. This is our genuine estimate of the loss we will suffer or are likely to suffer.

35.4 If you have more than one Customer contract, and you breach one of them, you are in breach of all of them. We can terminate any or all of your Customer contracts, or exercise any other rights we have under a Customer contract.

## 36 Warranties and liability

Rights and remedies for non-PDH goods costing no more than \$40,000

36.1 If we supply you with goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption but costing no more than \$40,000 you have extensive rights under the Australian Consumer Law including consumer guarantees and remedies but:

36.1.1 in relation to these goods, our liability for failure to comply with a consumer guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:

36.1.1.1 replacing the goods or supplying equivalent ones;

36.1.1.2 repairing the goods; paying the cost of replacing the goods or of acquiring equivalent ones; or

36.1.1.3 paying the cost of having the goods repaired; and

36.1.2 in relation to these services, our liability for failure to comply with a consumer guarantee is limited to:

36.1.2.1 supplying the services again; or

36.1.2.2 paying the cost of having the services supplied again.

Exclusion of implied terms and limitation of liability

36.2 Subject to clause 36.1:

- 36.2.1 Any representation, warranty, condition, guarantee or undertaking that would be implied in these terms by legislation, common law, equity, trade, custom or usage or otherwise is excluded to the fullest extent permitted by law.
  - 36.2.2 We do not warrant or represent the performance, accuracy, reliability or continued availability of our goods and services or that they will be free from faults, errors or interruptions.
  - 36.2.3 We are never liable to you for, and you release us from any Claim for, any Contract Loss.
- 36.3 For the purpose of this Agreement:
- 36.3.1 Claim means any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim); and
  - 36.3.2 Contract Loss means loss or damage suffered by you and arising in connection with or out of these terms or any supply made under them (whether pleaded in contract, tort, breach of statutory duty or on any other basis, and whether arising from acts or omissions, and whether or not loss or damage the risk of which we were or should have been aware), including but not limited to economic loss, business interruption, loss of revenue, profits, actual or potential business opportunities or contracts, anticipated savings, loss of profits, loss of data, indirect or consequential loss, an obligation to indemnify another person or an obligation to contribute to the compensation of loss or damage suffered by another person.

## 37 Your indemnities

You indemnify us (on a full indemnity basis including all legal costs and expenses) against any claim, loss or damage we suffer to the extent that it arises from:

- 37.1 any act or omission;
- 37.2 any breach of any law;
- 37.3 any breach of a Customer contract or an AUP;
- 37.4 any unauthorised use of a service – by you or anyone using a service we provide to you.

## 38 Who is responsible for the safety of data and set up?

- 38.1 Unless a Customer contract specifies that we will create a backup of any data and/or customised software set up of yours, you are solely responsible for ensuring that you have a complete, working back up of them.
- 38.2 We are entitled to assume that you have complied with clause 38.1.
- 38.3 You indemnify us against loss or damage that you or anyone else suffers as a result of damage to data or customised software set up on your computer system.
- 38.4 We are not obliged to provide you or any third party with historical data (e.g. material that used to be stored on our server).
- 38.5 You do not have any rights to any particular user identification, password, Customer number, IP address, or any other thing which we may provide as part of a service. We can direct you to change these at any time.
- 38.6 We are not required to store any email or data in accounts that are not active (such as a suspended or terminated account), and we are not responsible for any loss or damage because of this.

## 39 Matters you acknowledge

- 39.1 A Customer contract may state that you acknowledge certain matters.
- 39.2 You must accept service from us subject to those matters, and none of them constitutes a defect in service.
- 39.3 You release us from all losses and claims in respect of, or out of, such matters or their consequences.

## 40 Will we monitor your system?

Unless a Customer contract states otherwise, no service is provided on the basis that we will:

- 40.1 monitor your computer system or any part of it;
- 40.2 follow up or review any issue once it has been attended to;
- 40.3 update, upgrade or patch anything in future;
- 40.4 notify or remind you about anything in future.

## 41 What if we supply equipment to you?

41.1 If we sell any equipment to you:

- 41.1.1 we retain title to and ownership all that equipment sold by us to you until all amounts due in respect of all equipment and all other amounts you owe us actually or contingently presently or in future have been paid by you in full;
- 41.1.2 risk of loss or damage passes to you when it is delivered to your premises;
- 41.1.3 you must fully insure it from the time of delivery and maintain the insurance until you obtain title, and failing that until the equipment is delivered up to us. You must insure the equipment for its full value and ensure that our interest is noted on the policy. We may require you to demonstrate compliance with this clause by producing a copy of the insurance policy;
- 41.1.4 you must not:
  - 41.1.4.1 mortgage, charge or encumber the equipment without our written consent; and
  - 41.1.4.2 loan, rent, licence, transfer or assign or part with possession of the equipment without our written consent.
- 41.1.5 You must allow us to enter upon your premises to inspect the equipment in your possession upon reasonable notice from time to time;
- 41.1.6 If:
  - 41.1.6.1 You fail to pay any amount (whether in whole or part) payable in respect of any equipment by the time required for payment;
  - 41.1.6.2 You become insolvent (as that term is defined in the Corporations Act 2001); or
  - 41.1.6.3 Our Customer contract is terminated, or becomes terminable at our option, we may, without notice to you, enter at any reasonable time any premises where equipment is located (or believed by us to be located) and take possession of that equipment not paid for and any other equipment to the value of the amount owing. Our permission to enter your premises for that purpose is irrevocable. We are not liable to you in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by you as a result of any action taken by us under this clause.
- 41.1.7 If any equipment belonging to us are sold or otherwise disposed of by you or if any insurance claim is made in respect of them, we are entitled to trace and receive the sale or insurance proceeds. You must notify us of all insurance claims made you in respect of the equipment. You must keep the proceeds of sale or insurance in a separate bank account on trust for us.
- 41.1.8 You must reimburse to us all costs incurred by us in exercising our rights under this clause.

## 42 PPS Law

- 42.1 This clause applies to the extent that our Customer contract provides for or contains a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (PPS Law) (or part of it).
- 42.2 The security interest granted to us is a 'purchase money security interest' (PMSI) to the extent that it can be under section 14 of the PPS Law.
- 42.3 We may register our security interest. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:



- 42.3.1 Ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - 42.3.2 Enabling us to gain first priority (or any other priority agreed to us in writing) for our security interest; and
  - 42.3.3 Enabling us to exercise rights in connection with the security interest.
- 42.4 Our rights under our Customer contract are in addition to and not in substitution for our rights under other law (including the PPS Law) and we may choose whether to exercise rights under our Customer contract, and/or under such other law, as we see fit.
- 42.5 The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are “contracted out” of our Customer contract in respect of goods that are not used predominantly for personal, domestic or household purposes:
- Sections 95 (notice of removal of accession to the extent it requires us to give a notice to you), 96 (retention of accession), 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires us to give a notice to you); section 132(3)(d) (consents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 42.6 The following provisions of the PPS Law:
- Section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral), Confer rights on us. You agree that in addition to those rights we shall if there is default by you, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any equipment, not only under those sections but also, as additional and independent rights, under our Customer contract and you agree that we may do so in any manner we see fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 42.7 You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 42.8 The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to us the benefit of section 275(6)(a) and we shall not be liable to pay damages or any other compensation or be subject to injunction if we breach this sub-clause.
- 42.9 You must not create, purport to create or permit to be created any ‘security interest’ (as defined in PPS Law) in the equipment other than with our express written consent.
- 42.10 You must not lease, hire, bail or give possession of (‘sub-hire’) the equipment to anyone else unless we (in our absolute discretion) first consent in writing. Any such sub-hire must be in writing in a form acceptable to us and must be expressed to be subject to our rights under our Customer contract.
- 42.11 You must take all steps including registration under PPS Law as may be required to:
- 42.11.1 Ensure that any security interest arising under or in respect of the subhire is enforceable, perfected and otherwise effective under the PPS law;
  - 42.11.2 Enabling you to gain (subject always to our rights) first priority (or any other priority we agree to in writing) for the security interest; and
  - 42.11.3 Enabling each of us to exercise our respective rights in connection with the security interest.
- 42.12 We may recover from you the cost of doing anything under this clause, including the registration fees and the costs notification.

## 43 What if our staff attend your premises?

- 43.1 If our staff attend any premises at either our or your request, you must ensure that the premises are safe and free of risks to life, health or welfare.

## 44 What records may be kept?

- 44.1 We may make and keep any record that we reasonably require for the purpose of operating our business. All such records are our sole property.

## 45 How must confidential information be treated?

- 45.1 Each party must treat the confidential information of the other party as confidential and commercially valuable and ensure that its representatives do the same.
- 45.2 You consent to us accessing your information and data for legitimate purposes to provide the service, improve the service or respond to complaints. The terms of clause 45.1 apply to this clause.

## 46 What laws must you observe?

You must observe all laws of Australia in relation to your use of our services.

## 47 Privacy

- 47.1 We may deal with your personal information in accordance with our privacy policy at [www.nas.com.au/privacy](http://www.nas.com.au/privacy) as amended from time to time.
- 47.2 We may use your personal information for promotional and marketing purposes until you request to opt out of receiving such information.

## 48 What if there is force majeure?

- 48.1 We are not responsible for the consequences of force majeure.

## 49 How can we inform you of matters?

- 49.1 We can 'inform' you of a matter under a Customer contract:
- 49.1.1 by giving you a notice under clause 50; or
  - 49.1.2 in any other reasonable way, such as orally.

## 50 How can we give you a notice?

- 50.1 Some laws (e.g. the Telecommunications (Standard Form of Agreement) Determination) regulate the way in which certain notices can be given. This clause is subject to any such laws.
- 50.2 We can give you a notice:
- 50.2.1 by emailing the notice (or a hyperlink to a web page that contains the notice) to:
    - 50.2.1.1 the most recent email address you supplied to us; or
    - 50.2.1.2 any [nas.com.au](http://nas.com.au) email address you have; or
    - 50.2.1.3 to any email address whose mail server we host;
  - 50.2.2 by fax to the most recent fax number you supplied to us;
  - 50.2.3 by ordinary mail or hand delivery to the most recent postal address you supplied to us, or (if you are a company) to your registered office;
  - 50.2.4 by hand delivery to you;
  - 50.2.5 by sending the notice by SMS to the last mobile phone number you supplied to us;
  - 50.2.6 by publishing the notice on our web site and sending you an alert about the notice (including its web site address) by SMS to the last mobile phone number you supplied to us;
  - 50.2.7 in any other way permitted by law.
- 50.3 Any notice that we send you is deemed to have been received by you as follows:

- 50.3.1 if it (or a hyperlink to it) is emailed: one hour after it leaves our mail server;
  - 50.3.2 if it (or a hyperlink to it) is emailed to a .nas.com.au email address that you may have: one hour after we send it;
  - 50.3.3 if it is faxed: when our fax machine issues a successful delivery record;
  - 50.3.4 if it is mailed: at 10 a.m. on the second business day after posting;
  - 50.3.5 if it is hand delivered to you or your postal address or (if you are a company) your registered office – at the time of delivery;
  - 50.3.6 if it is delivered in another way – at the time when it would have been delivered in the normal course of that way of delivery.
- 50.4 A notice from us need not be signed.
- 50.5 You consent to us using email for any notice under the Telecommunications (Standard Form of Agreement) Determination.

## 51 How can you give us a notice?

- 51.1 You can give us a notice:
- 51.1.1 by fax to the current fax number indicated by our web site contact details page;
  - 51.1.2 by ordinary mail or hand delivery to the current postal address indicated by our web site contact details page – and in no other way.
- 51.2 Any notice that you send us has no effect until we actually receive it. Even then, it has no effect:
- 51.2.1 if it is mailed: before noon on the second business day after posting;
  - 51.2.2 if it is received outside business hours: before noon on the next business day;
  - 51.2.3 if it is received after 3.00 p.m. on any day: before noon on the next business day.
- 51.3 A notice from you must be signed. We are never obliged to verify any mark that purports to be your signature. If you are a corporation, we are never obliged to verify the authority of anyone who purports to sign on your behalf.
- 51.4 Any notice that you send us must be in the English language.

## 52 What is the Customer contact?

- 52.1 On our request, you must nominate at least one Customer contact.
- 52.2 You must keep us informed of current and accurate contact details of your Customer contact/s.
- 52.3 A Customer contact must be contactable at all reasonable times.
- 52.4 We may deal with a Customer contact on the basis that they are your representative and have your full authority.
- 52.5 A person remains your Customer contact until we are given notice that they are no longer your Customer contact.

## 53 How can rights be waived?

No right under a Customer contract can be waived except by notice in writing signed by the party waiving it. If a party overlooks a breach by the other party on one or more occasions, it is not taken to have agreed to any future breach.

## 54 Can this agreement be assigned?

- 54.1 You may not transfer your rights or obligations under a Customer contract to or share them with anyone without our prior written consent.
- 54.2 We may transfer our rights or obligations under this agreement to or share them with anyone on notice to you.

## 55 Can we obtain a credit check?

- 55.1 You authorise us to do the things set out in this clause 55 and acknowledge that we may do so, whenever we see fit for as long as a Customer contract continues or you owe us any money.
- 55.2 We may use a credit report (within the meaning of the Privacy Act 1988 (Commonwealth)) on you to assess your creditworthiness or for debt recovery purposes.
- 55.3 We may give to a credit reporting agency any information we have about you to enable us to obtain a credit report.
- 55.4 We may exchange information about you with other credit providers or a credit reporting agency.
- 55.5 You acknowledge that we are authorised to do the things set out in this clause 55 under the Privacy Act 1988 (Commonwealth) and that to assess or review your creditworthiness, we may:(a) request a third party to report about the your creditworthiness; and (b) disclose financial, credit and other information about you to any person.
- 55.6 You must cooperate with any enquiries that we make about your creditworthiness and provide any further information, consent or authority we reasonably require.

## 56 Are there restrictions on use of third party software?

- 56.1 If we provide any third party software to you, then:
  - 56.1.1 we do so subject to the licence terms and conditions that apply to that software; and
  - 56.1.2 you are solely responsible for ensuring the suitability and compatibility of the software.
- 56.2 If you use software not distributed or approved by us, you acknowledge that it may result in interference to the service or it may result in loss, which we are not responsible for;

## 57 Severance

- 57.1 If any provision in this agreement is unlawful or inconsistent with any law, then to the extent of the unlawful nature or inconsistency, that provision may be severed from without affecting the remainder of the agreement.

## 58 What law applies to this agreement?

- 58.1 This agreement and any Customer contract is governed by the law of NSW, Australia. Subject to clause 46, any legal proceedings relating to them can only be taken in courts with jurisdiction in NSW.

Contracts Code: The governing law of your State or Territory in which you ordinarily reside and the jurisdiction of the Courts in that jurisdiction are not excluded.

## 59 What if time expires on a holiday?

- 59.1 Anything that can or must be done on or before a day that is not a business day can be done on the next business day.

## 60 Who pays government charges?

- 60.1 You must pay stamp duty and other government charges in relation to a Customer contract.

## 61 How is this agreement interpreted?

In this agreement or a Customer contract, unless the context indicates otherwise:

- 61.1 Dictionary

The expression ... means ...

|                          |   |
|--------------------------|---|
| AUP                      | our Acceptable Use Policies   |
| Base allowance           | a service use allowance below the amount that attracts excess use charges e.g. if an internet access service allows 8 GB in downloads before excess use charges apply, 8 GB is the 'base allowance'                                       |
| Billing dispute          | a dispute or difference between us as to whether you are liable to pay an amount that we have invoiced to you   |
| Billing month            | has the meaning given by clause 21.9  |
| Business day             | any day from Monday to Friday inclusive, excluding any public holidays observed in QLD  |
| Business hours           | between 8.30 a.m. and 5.30 p.m. on a business day   |
| Claim                    | any demand, or allegation of liability, and all related costs, claims, demands, liability, damages, losses and expenses of any nature including all legal expenses suffered or incurred   |
| Confidential information | any information of a party which the other party knows or should know is confidential to the other party, for as long as it remains confidential, or would have remained confidential except for a wrongful disclosure by the first party |
| Core terms               | this document   |
| Codes                    | all compulsory industry codes which have been registered by the ACMA under relevant legislation and include the Contracts Code and Credit Code  |
| Code terms               | terms and conditions required to be included in all Customer contracts – in this document, they are the terms contained in the boxes throughout this document   |
| Contracts Code           | ACIF Code C620:2005 Consumer Contracts as amended from time to time   |
| Credit Code              | ACIF Code C541:2006 Credit Management as amended from time to time  |
| Credit Card Authority    | a written authority to debit your credit card (or a verbal authority to do so), in the form available on our website  |
| Customer                 | has the meaning given by clause 2   |
| Customer contact         | a person/s nominated by you under clause 52   |
| Customer equipment       | server/s and associated equipment and, where they are connected to telecommunications services provided by a carrier, those connections   |
| Dictionary               | this table of defined terms   |
| Direct Debit Authority   | a written authority to debit your bank account, in the form available on our website  |
| Disputed amount          | in relation to a billing dispute means the amount within the relevant invoice that you dispute liability to pay   |
| Excess use charge        | a charge for use of a service in excess of any base allowance   |
| Fixed service fees       | fees for any service that apply on a once only basis, or on a periodic basis and are not variable based on data volumes as between periods  |
| Force majeure            | an event or circumstance beyond our reasonable control  |
| General dispute          | any dispute or difference between us other than (a) a billing dispute or (b) a claim by us solely for the payment of money  |
| GST                      | GST within the meaning of the GST Act   |
| GST Act                  | A New Tax System (Goods and Services Tax) Act 1999 (as amended)   |
| Loss                     | any harm, losses or expenses of any nature whether direct or indirect, secondary or consequential suffered by you or anyone else  |
| Manufacturer's warranty  | a warranty given by the manufacturer or distributor of a thing, or a person from whom we obtain a thing for resupply  |
| Minimum term             | a period that we specify as such  |
| Office hours             | between 8.30 a.m. and 5.30 p.m. on a business day   |
| NAS                      | New Age Solutions Pty Ltd ACN 066 446 820   |
| Periodic fee             | a fee payable at regular intervals e.g. an amount per month   |
| Personal information     | the same thing as in the Privacy Act 1988   |
| Price list               | our published list of fees and charges from time to time  |
| Customer contract        | the documents indicated by clause 12  |
| Service description      | a guide or description we publish, describing a service we offer, as amended from time to time  |
| Service terms            | has the meaning given by clause 8   |
| Spam                     | includes one or more unsolicited commercial electronic messages with an Australian link for purposes of the Spam Act 2003, and derivations of the word "Spam" have corresponding meanings   |

|                   |  |
|-------------------|--|
| Repeating term    | a period that we specify as such   |
| Representative    | a delegate, authorised representative, employee or agent   |
| Service           | any service that you request and we agree to supply, generally as described in a service description                               |
| Set up charge     | a charge that we describe as such, or any charge that we require to be paid in respect of the set up or establishment of a service |
| Undisputed amount | in relation to a billing dispute means the amount within the relevant invoice that you do not dispute liability to pay             |
| Wholesaler        | a third party whose services we utilise in providing a service to you  |

## 61.2 Interpretation

- 61.2.1 If an expression is defined in the dictionary in clause 61.1, that is what it means.
- 61.2.2 If an expression is defined in the dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if “to colour” means “to paint red”, then “coloured” means “painted red”.)
- 61.2.3 Headings and footnotes are only for convenience. They are to be ignored when interpreting the agreement.
- 61.2.4 A schedule to a document is part of that document.
- 61.2.5 A reference to the singular includes the plural and vice versa.
- 61.2.6 Where one thing is said to include one or more other things, it is not limited to those other things.
- 61.2.7 There is no significance in the use of gender-specific language.
- 61.2.8 A “person” includes any entity which can sue and be sued.
- 61.2.9 A “person” includes any legal successor to or representative of that person.
- 61.2.10 A reference to a law includes any amendment or replacement of that law.
- 61.2.11 Anything that is unenforceable must be read down, to the point of severance if necessary.
- 61.2.12 Anything a party can do, it may do through an appropriately authorised representative.
- 61.2.13 Any matter in our discretion, including anything that we “may” do, is in our absolute and unfettered discretion (but always subject to the Codes).
- 61.2.14 Expressions in clause 28 in italics have the same meaning as in the GST Act.
- 61.2.15 Apart from the matters set out in black and white in a Customer contract, we are not obliged to provide any service, and make no promise or representation, to you.