

Redtrain Standard Form of Agreement

Contents

1.	About this document.....	3
2.	The parties	3
3.	IMPORTANT: Telecommunications Consumer Protection ('TCP') Code	3
4.	About services and categories.....	3
5.	About category terms	4
6.	About service terms.....	4
7.	About pricing	4
8.	About special terms.....	5
9.	About our business contract	5
10.	What if different parts of the business contract conflict ?	5
11.	When does our standard form of agreement apply ?	5
12.	Changes to business contracts.....	6
13.	Change Rules.....	6
14.	The 'Official Copy' of our standard form of agreement.....	6
15.	Rights and obligations that survive termination.....	6
16.	Ordering services	7
17.	Service prerequisites.....	7
18.	Service delivery	7
19.	No other terms, etc apply	7
20.	What if we supply a mixture of services ?	7
21.	Charges, invoicing, payment, etc.....	8
22.	Payment of invoices	9
23.	Disputes – general	9
24.	Billing disputes	9
25.	General disputes	10
26.	Minimum terms.....	10
27.	Repeating terms	10
28.	GST.....	11
29.	Will we provide support for services ?	11
30.	Acceptable Use Policies	11

Redtrain Standard Form of Agreement

31.	Your other obligations.....	12
32.	Your responsibility for use of your service	12
33.	How can we suspend services ?	13
34.	How can we terminate a business contract ?.....	14
35.	Service Level Assurance	15
36.	Non-excludable terms and warranties	15
37.	Terms, warranties and liability other than under clause 36	15
38.	Your indemnities.....	16
39.	Who is responsible for safety of data and set up ?	17
40.	Matters you acknowledge	17
41.	Will we monitor your system ?	17
42.	Equipment we supply to you.....	17
43.	What if our staff attend your premises ?	18
44.	Records.....	18
45.	Confidential information.....	18
46.	What laws must you observe ?	18
47.	Privacy	18
48.	Force majeure ?	18
49.	Informing you of matters.....	18
50.	How can we give you a notice ?	19
51.	How can you give us a notice ?	20
52.	Customer contact	20
53.	Waiving rights.....	20
54.	Assigning this agreement	21
55.	Credit checks	21
56.	Third party software.....	21
57.	Severance	21
58.	What law applies to this agreement ?	22
59.	What if time expires on a holiday ?	22
60.	Who pays government charges ?	22
61.	How is this agreement interpreted ?	22

Core Terms

1. About this document¹

- 1.1. This document sets out the terms on which Redtrain Networks provides services² to customers. It does not apply to residential contracts, but otherwise applies to every service Redtrain Networks supplies and is called our '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 may also apply in certain cases. This document indicates when extra terms will apply³.

2. The parties

- 2.1. 'We' or 'Redtrain Networks' means Redtrain Networks.
- 2.2. 'You' or 'customer' means anyone that we supply a service to, except under a residential contract.

3. **IMPORTANT: Telecommunications Consumer Protection ('TCP') Code**

- 3.1. The TCP Code gives special rights to certain consumers. These core terms include those rights.
- 3.2. Where these core terms set out a provision headed 'TCP Code' it applies to you if, and only if, you are a TCP consumer.
- 3.3. A 'TCP consumer' means a business or non-profit organisation which at the time it enters into a business contract:
 - 3.3.1. does not have a genuine and reasonable opportunity to negotiate the terms of the business contract; and
 - 3.3.2. has or will have an annual spend with us which is, or is estimated on reasonable grounds by us to be, no greater than \$20,000 (calculated in accordance with the TCP Code) –
but excludes anyone acquiring a service for resale.

4. About services and categories

- 4.1. A 'service' means any goods or service that we offer or supply. Each service may be briefly identified by its 'service description'.

¹ 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.

² Note that 'services' includes both goods and services.

³ Our business contract is a modular document, consisting of these core terms plus other terms that relate to particular services.

Redtrain Standard Form of Agreement

- 4.2. A 'category' is a group of similar services that we designate as a category.
- 4.3. We may assign a service to more than one category.

5. About category terms

- 5.1. We may publish extra terms that apply to a category of services ('category terms').
- 5.2. Category terms only apply to services in the category they relate to.
- 5.3. Category terms are also part of our standard form of agreement.

6. About service terms

- 6.1. We may also publish extra terms that apply to a particular service ('service terms').
- 6.2. Service terms may be set out in service information, or on an application form, or otherwise notified to you.
- 6.3. Service terms only apply to the service they relate to.
- 6.4. Service terms may include, or incorporate by reference, a service level guarantee.
- 6.5. Service terms are not part of our standard form of agreement, but they are part of our business contract with you.

7. About pricing

During a fixed term contract your monthly access fee, minimum monthly fee or any early termination fee will not change. Otherwise:

- 7.1. We may charge you for our services in accordance with our price list.
- 7.2. We may change the price list at any time. A reference to 'price list' means the current price list at any time.
TCP Code: We shall comply with the Change Rules, where they apply.
- 7.3. Price changes take effect immediately, but they have no effect on charges for services that have already been supplied.
TCP Code: We shall comply with the Change Rules, where they apply.
- 7.4. The price list is not part of our standard form of agreement, but it is part of our business contract with you.
- 7.5. If a business contract expressly 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.
- 7.6. If a business contract expressly states that charges will be reviewed at certain intervals, we will not change or restructure charges for that business contract more frequently than once per that interval.

Redtrain Standard Form of Agreement

8. About special terms

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

9. About our business contract

When we supply a service to you, the terms and conditions of supply consist of:

- 9.1. these core terms; and
- 9.2. any applicable category terms; and
- 9.3. any applicable service terms; and
- 9.4. the price list; and
- 9.5. any applicable special terms.

Together, those are called your 'business contract'.

10. What if different parts of the business contract conflict ?

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

- 10.1. special terms;
- 10.2. price list;
- 10.3. service terms;
- 10.4. category terms;
- 10.5. core terms.

11. When does our standard form of agreement apply ?

- 11.1. This version of our standard form of agreement is in force from midnight at the end of 31 October 2007
- 11.2. If there was an existing fixed term contract to supply services to you when this standard form of agreement came into force:
 - 11.2.1. the existing contract continues until the end of the fixed term; and
 - 11.2.2. after that, our standard form of agreement applies.

Redtrain Standard Form of Agreement

- 11.3. If we enter a contract with you after 31 October 2007 that states that our standard form of agreement does not apply, then it does not apply to that contract.
- 11.4. Otherwise, our standard form of agreement applies to all services that we supply while it is in force except services provided under a residential contract.

12. Changes to business contracts

Subject to the Change Rules and these core terms:

- 12.1. We may change the terms of your business contract.
- 12.2. We may change any part of our standard form of agreement by amending the Official Copy.
- 12.3. Changes to our standard form of agreement take effect when we change the Official Copy.
- 12.4. Changes to any other part of a business contract take effect when we inform you of the change.

13. Change Rules

- 13.1. The 'Change Rules' means section 11 of the *Telecommunications (Standard Form of Agreement Information) Determination 2003* where it applies.
TCP Code: The Change Rules also include TCP Code sections 5.1.3(d)(ix), 5.1.5(g), 5.1.5(h), 5.1.5(i), 5.1.5(j), 5.1.5(k) and 5.1.5(l) (where they apply).
- 13.2. Any parts of the *Telecommunications (Standard Form of Agreement Information) Determination 2003* or the TCP Code that cease to be in force cease to be Change Rules.
- 13.3. If the *Telecommunications (Standard Form of Agreement Information) Determination 2003* or the TCP Code is amended or replaced, the Change Rules will include any part/s of the new version that regulate or restrict whether or how your business contract may be changed.

14. The 'Official Copy' of our standard form of agreement

- 14.1. The 'Official Copy' of our standard form of agreement is the copy published online at www.Redtrain Networks.net.au/sfoa
- 14.2. The Official Copy is taken to be the current and accurate version at any time.

15. Rights and obligations that survive termination

When a business contract ends:

- 15.1. a right of action that arises from a breach that occurred before it ended survives;
- 15.2. charges for services delivered before it ended can be invoiced and recovered;

Redtrain Standard Form of Agreement

- 15.3. clauses 15, 22, 29, 39, 40, 45, 46 and 59 continue to operate; and
- 15.4. any other clause in the business contract that indicates that the clause survives termination also continues to operate.

16. Ordering services

- 16.1. We may receive an order in any form we choose e.g. by written application or over the telephone.
- 16.2. 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.
- 16.3. We are not obliged to accept any order.
- 16.4. You must ensure that you provide us with all the information we request in relation to your order⁴ and that the information you provide is correct.

17. Service prerequisites

- 17.1. To allow us to connect or provide a service, you may need to:
 - 17.1.1. install cables at your premises; or
 - 17.1.2. arrange other works –
'service prerequisites'.
- 17.2. You have to arrange and pay for any service prerequisites, and we need not provide service until it is done.
- 17.3. If we agree to provide, or arrange for, service prerequisites:
 - 17.3.1. you must pay all expenses including an administration charge;
 - 17.3.2. we will give you the best pre-estimate of expenses as feasible.

18. Service delivery

We decide the route and technical means that we use to provide your service.

19. No other terms, etc apply

Except for things set out in express terms in a business 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 business contracts contain the entire understanding between us.

20. What if we supply a mixture of services ?

If we supply a mixture of 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.

⁴ e.g. information requested in an order form.

21. Charges, invoicing, payment, etc.

- 21.1. We may charge you, and you must pay us, in accordance with our price list.
 - 21.2. Set up charges are payable as soon as we agree to provide a service, or at any later date we agree to in writing.
 - 21.3. 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.
 - 21.4. We may bill a charge up to 190 days after it is incurred.
 - 21.5. All other charges, including excess use charges, are payable on invoice.
 - 21.6. When a business 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.
- TCP Code: We shall allow a reasonable time for payment of the final invoice.
- 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 business contract.
 - 21.8. We may vary the amount of advance deposit we require under clause 21.7 at any time.
- TCP Code: We will only require or increase an advance deposit if there are reasonable grounds to believe you are a credit risk.
- 21.9. We may invoice you whenever charges have accrued, but we normally invoice in 'billing months'. A 'billing month' is a month, starting on the same day of the month that your business contract started.
 - 21.10. If we hold your advance deposit, Direct Debit Authority, or Credit Card Authority, we may extract payment as soon as a charge has accrued.
 - 21.11. If your bill is paid by credit card, we can charge you a payment processing fee.
 - 21.12. We can round charges up or down to the nearest whole cent (0.5 cent is rounded up). If you pay a bill by cash, we can round the amount payable by you to the nearest multiple of 5 cents.
 - 21.13. We can pay you amounts we owe you by deducting them from amounts you owe us.
 - 21.14. If we require you to pay any charges in advance (e.g. monthly access fee) and they are varied or the service is cancelled, we will refund you any overpayment and you must pay us any underpayment.
 - 21.15. We do not have to agree to you terminating a business contract or service early, but if we do we may charge an early termination fee.

22. Payment of invoices

22.1. You must pay our invoices within 30 days from the date of invoice by a payment method that we accept.

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.

TCP Code: We shall either (a) lift the suspension or (b) terminate your business contract, within 60 days.

22.3. Interest will be calculated at the rate specified from time to time under the *Penalty Interest Rate Act 1983 (Victoria)*, calculated daily.

22.4. If your payment is dishonoured then we may pass on our bank's dishonour fees and a one-off administrative fee to you.

22.5. Our invoices are conclusive evidence of the amount payable, but we will always act reasonably when considering a genuine billing dispute in clause 24.

TCP Code: If there are legal proceedings between us, clause 22.5 does not impose any evidential burden on you or limit the evidence you may adduce.

23. Disputes – general

23.1. We always encourage dispute resolution by discussion, and we invite you to raise issues with us informally at first instance.

23.2. In some circumstances, you may have a statutory right to refer a complaint or dispute to a third party. Nothing in your business contract affects those rights, but we still encourage you to discuss issues with us before taking other steps.

23.3. 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.

TCP Code: Nothing limits any other right you have to make a complaint or excludes any other legal remedy you may have.

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. We will acknowledge your notice within 14 days of its receipt.

24.3. You must still pay the disputed invoice by its due date. If we uphold your dispute, we shall credit your account within a reasonable time.

Redtrain Standard Form of Agreement

TCP Code: We will comply with clause 7.4 of the TCP Code in relation to any restriction, suspension or disconnection of a service and any credit management action we take.

25. General disputes and complaints

- 25.1. If a business 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 dispute arising;
 - 25.3.2. clearly explain your dispute;
 - 25.3.3. detail the grounds of your dispute.
- 25.4. We will acknowledge your notice within 14 days of its receipt and process it with reasonable promptness.
- 25.5. You must still pay all invoices by their due date.

26. Casual contracts

If a business contract is 'casual' either you are we may terminate it on at least 30 days' notice to the other.

TCP Code: If we terminate your business contract under this clause 26, we shall give written notice as required by the TCP Code and either refund any unexpired pre-paid credits or, if you agree, apply them to another service. If we terminate your business contract under this clause 26, notice takes effect after 30 days.

27. Minimum terms

If a business contract has a minimum term:

- 27.1. you cannot cancel it during the minimum term (except in specific cases where these terms say otherwise);
- 27.2. after that, it becomes a casual contract.

28. Repeating terms

- 28.1. If a business 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.

TCP Code: Clause 28.1 only applies if you have given express consent a reasonable time before the current term expires.

Redtrain Standard Form of Agreement

28.2. If a notice under clause 28.1 is given less than 30 days before the end of the current term, it takes effect at the end of the next term, not the end of the current term.

29. GST

29.1. 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.

29.2. 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*.

29.3. 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 29.2.

30. Will we provide support for services ?

30.1. We will support a service as specified in your business contract.

30.2. We are not obliged to support a service in any way that is not specified. For instance, unless a business contract states otherwise, we are not obliged to provide:

30.2.1. on-site support;

30.2.2. software or hardware support; or

30.2.3. support outside business hours.

30.3. If a business contract includes a Service Level Assurance, we will provide support in accordance with it.

30.4. Where your equipment causes a fault in your service, we can charge you a call-out fee and our reasonable charges for repairing the fault. We will tell you the amount of the call-out fee and hourly rates we charge for repairing faults before we start work.

31. Acceptable Use Policies

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

31.2. We will not use an AUP as a 'backdoor' way of changing these core terms.

TCP Code: An AUP will comply with the TCP Code.

32. 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. arrange and pay for any electricity supply needed for a service at your premises – service may not work if the electricity supply stops;
- 32.4. be responsible for all data that you retrieve, store, transmit, or use in any other way;
- 32.5. back up all your data;
- 32.6. maintain the security of your password and user identification;
- 32.7. not:
 - 32.7.1. do anything which will damage or interfere with our network or facilities;
 - 32.7.2. do anything unlawful with a service;
 - 32.7.3. share a service with any third party without our written consent; or
 - 32.7.4. do anything with a service which may subject either you or us to a claim;
- 32.8. do what we tell you to do if your use of a service interferes (or threatens to interfere) with the efficiency of our network (including because you have inadequate capacity);
- 32.9. make sure that no-one interfere with the operation of a service or makes it unsafe;
- 32.10. only connect equipment to the service that complies with relevant technical standards and other requirements of the Australian Communications and Media Authority;
- 32.11. make any changes we ask to your equipment to avoid any danger or interference it may cause;
- 32.12. tell us about any changes to your service or equipment that may affect our ability to provide service to you;
- 32.13. provide, in a timely and safe manner, any access we reasonably request to your premises to install, set up, maintain, repair or remove a service or our equipment;
- 32.14. not use any goods or services we supply you for ordinary personal, domestic or household use or consumption.

33. Your responsibility for use of your service

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

Redtrain Standard Form of Agreement

- 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 ?

TCP Code: We will comply with clause 7.4 of the TCP Code in relation to any restriction, suspension or disconnection of a service and any credit management action we take.

34.1. We may suspend service under a business contract without notice and without any liability for loss and without prejudice to our rights under the business contract or at law if:

34.1.1. we reasonably suspect that your service has been accessed without authority, or the integrity of the your service has been compromised;

34.1.2. we reasonably suspect that your service has been used for an unlawful purpose;

34.1.3. you have not paid money you owe us;

34.1.4. you resell a service;

34.1.5. we consider it is necessary to protect our network;

34.1.6. if there is an emergency that we consider requires it;

34.1.7. and to the extent that we are advised that it is necessary to comply with legal requirements;

34.1.8. you or a guarantor has an adverse credit report;

TCP Code: We shall give you reasonable notice before doing this.

34.1.9. you are in breach of your business contract or any other contract you have with us;

34.1.10. a governmental or law enforcement agency asks us to do so;

34.1.11. a wholesaler requires us to do so;

34.1.12. a wholesaler ceases to provide us with a service;

34.1.13. there is force majeure;

34.1.14. 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

34.1.15. you have changed your contact details without informing us.

TCP Code: We will only suspend a business contract based on breach of another contract if have reasonable grounds for believing you are a credit risk.

Redtrain Standard Form of Agreement

34.2. Suspension does not affect your liability for charges under your business contract.

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

TCP Code: We shall either (a) lift the suspension or (b) terminate your business contract, within 60 days.

35. How can we terminate a business contract ?

TCP Code: We will comply with clause 7.4 of the TCP Code in relation to any restriction, suspension or disconnection of a service and any credit management action we take.

35.1. A business contract can only be terminated:

35.1.1. on notice by either party, given after any minimum 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;

TCP Code: If we terminate your business contract under clause 35.1.1, we shall give written notice as required by the TCP Code and either refund any unexpired pre-paid credits or, if you agree, apply them to another service. If we terminate your business contract under clause 35.1.1, notice takes effect after 30 days.

35.1.2. in accordance with clause 35.2;

35.1.3. if, for more than 30 days, your business contract is suspended, or liable to be suspended, under clause 34; or

35.1.4. in any other way that the business contract allows.

35.2. We may terminate your business 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 (under your business contract or otherwise) within 14 days of it being due;

35.2.5. breach your business contract (or any other contract you have with us) and fail to remedy the breach within seven days after receiving a notice requiring that it be remedied;

35.2.6. die;

35.2.7. have provided false or misleading information to us –

and in any other circumstances where the business contract allows us to.

TCP Code: We will only terminate a business contract based on breach of another contract if we have reasonable grounds for believing you are a credit

Redtrain Standard Form of Agreement

risk. We will only terminate under clauses 35.2.1, 35.2.2 or 35.2.3 if we reasonably believe that we are unlikely to receive or retain amounts which are due and payable.

- 35.3. If we terminate a business contract because you have breached it:
- 35.3.1. you must pay us the charges that would have been payable under that business contract if it had not been terminated until after any minimum term; and
 - 35.3.2. we may invoice you for that and any other outstanding amounts, and you must pay the invoice within 7 days.
- TCP Code: We shall only charge a reasonable estimate of our lost profit under clause 35.3.1, and will allow a reasonable period to pay under clause 35.3.2.
- 35.4. If you have more than one business contract, and you breach one of them, you are in breach of all of them. We can terminate any or all of your business contracts, or exercise any other rights we have under a business contract.

36. Service Level Assurance

- 36.1. We may offer a Service Level Assurance for a service.
- 36.2. Subject to clause 37 any service rebates payable under a Service Level Assurance are the only remedy or compensation payable in respect of any breach of the Service Level Assurance.

37. Non-excludable terms and warranties

- 37.1. Any term or warranty that by law:
- is implied into your business contract, and
 - cannot be excluded –
- is included in your business contract.
- 37.2. In any case where the law allows, our liability for breach of a term or warranty referred to in clause 37.1 is limited to:
- 37.2.1. if the breach relates to goods –
 - 37.2.1.1. replacing or repairing the goods or supplying equivalent goods; or
 - 37.2.1.2. paying the cost of doing so; and
 - 37.2.2. if the breach relates to services –
 - 37.2.2.1. supplying of the services again; or
 - 37.2.2.2. paying the cost of having the services supplied again.

38. Terms, warranties and liability other than under clause 37

- 38.1. This clause is subject to clause 37.

Redtrain Standard Form of Agreement

- 38.2. We will provide services with reasonable care and skill but do not:
- 38.2.1. warrant that they will be provided without fault or disruption;
 - 38.2.2. provide any guaranteed service level that is not in writing;
 - 38.2.3. warrant hardware, but we will (where capable of assignment) assign the benefit of any manufacturer's warranty to you.
- 38.3. Except for express warranties and conditions:
- 38.3.1. your business contract excludes, and we disclaim, all conditions and warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose, whether such conditions or warranties are implied by custom, law or statute; and
 - 38.3.2. we supply all services 'as is' and without warranties of any kind.
- 38.4. In no circumstances will we be liable to you for or in respect of:
- 38.4.1. indirect or consequential loss or damage;
 - 38.4.2. loss of revenue or profits –
- suffered by you or any third party in connection with or arising out of your business agreement or any service.
- 38.5. Our aggregate liability under or in connection with or arising out of your business contract or any service, whether such liability:
- 38.5.1. is direct or indirect;
 - 38.5.2. is tortious, contractual or statutory in nature;
 - 38.5.3. arises or is incurred as principal or agent, or vicariously;
 - 38.5.4. is a primary liability, or arises by way of an obligation to indemnify or to contribute;
 - 38.5.5. was or was not foreseeable; and
 - 38.5.6. was or was not of a kind or amount that we were on notice of –
- is limited to the higher of:
- any service rebate applicable under a Service Level Assurance; and
 - nil.

39. 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:

- 39.1. any act or omission;
- 39.2. any breach of any law;
- 39.3. any breach of a business contract or an AUP;
- 39.4. unauthorised use of a service –

by you or anyone using a service we provide to you.

40. Who is responsible for safety of data and set up ?

- 40.1. Unless a business contract specifies that we will create a back up 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.
- 40.2. We are entitled to assume that you have complied with clause 40.1.
- 40.3. 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.
- 40.4. 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).
- 40.5. 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 anytime.
- 40.6. We are not required to store any email or data in accounts that are not active⁵, and we are not responsible for any loss or damage because of this.

41. Matters you acknowledge

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

42. Will we monitor your system ?

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

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

43. Equipment we supply to you

If we supply any equipment to you:

- 43.1. we retain title to and ownership of that equipment until it is paid for in full;
- 43.2. risk of loss or damage passes to you when it is delivered to your premises;

⁵e.g. an account that is suspended or terminated.

Redtrain Standard Form of Agreement

43.3. 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;

43.4. you must not, unless title has passed:

43.4.1. mortgage, charge or encumber the equipment without our written consent; and

43.4.2. loan, rent, licence, transfer or assign or part with possession of the equipment without our written consent.

44. What if our staff attend your premises ?

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

45. Records

Subject to the *Privacy Act 1988*, 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.

46. Confidential information

46.1. Each party must treat the confidential information of the other party as confidential and commercially valuable and ensure that its representatives do the same.

46.2. You consent to us accessing your information and data for legitimate purposes to provide the service, improve the service or respond to complaints.

47. What laws must you observe ?

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

48. Privacy

48.1. We may deal with your personal information in accordance with our privacy policy as amended from time to time.

48.2. We may use your personal information for promotional and marketing purposes until you request to opt out of receiving such information.

49. Force majeure ?

We are not responsible for the consequences of force majeure.

50. Informing you of matters

We can 'inform' you of a matter under a business contract:

50.1. by giving you a notice under clause 51; or

Redtrain Standard Form of Agreement

50.2. in any other reasonable way, such as orally.

51. How can we give you a notice ?

51.1. 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, and we shall comply with them as applicable.

51.2. We can give you a notice:

51.2.1. by emailing the notice (or a hyperlink to a web page that contains the notice) to:

51.2.1.1. the most recent email address you supplied to us; or

51.2.1.2. any Redtrain Networks email address you have; or

51.2.1.3. to any email address whose mail server we host;

51.2.2. by fax to the most recent fax number you supplied to us;

51.2.3. 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;

51.2.4. by hand delivery to you;

51.2.5. by sending the notice by SMS to the last mobile phone number you supplied to us;

51.2.6. 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;

51.2.7. in any other way permitted by law.

51.3. Any notice that we send you is deemed to have been received by you as follows:

51.3.1. if it (or a hyperlink to it) is emailed: one hour after it leaves our mail server;

51.3.2. if it (or a hyperlink to it) is emailed to a Redtrain Networks email address that you may have: one hour after we send it;

51.3.3. if it is faxed: when our fax machine issues a successful delivery record;

51.3.4. if it is mailed: at 10 a.m. on the second business day after posting;

51.3.5. 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;

51.3.6. 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.

51.4. A notice from us need not be signed.

Redtrain Standard Form of Agreement

51.5. You consent to us using email for any notice under the *Telecommunications (Standard Form of Agreement) Determination*.

TCP Code: Where the TCP Code requires that we give notice in a particular way, we will do so.

52. How can you give us a notice ?

52.1. You can give us a notice:

52.1.1. by fax to the current fax number indicated by our web site contact details page;

52.1.2. by ordinary mail or hand delivery to the current postal address indicated by our web site contact details page –

and in no other way.

52.2. Any notice that you send us has no effect until we actually receive it. Even then, it has no effect:

52.2.1. if it is mailed: before noon on the second business day after posting;

52.2.2. if it is received outside business hours: before noon on the next business day;

52.2.3. if it is received after 3.00 p.m. on any day: before noon on the next business day.

52.3. 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.

52.4. Any notice that you send us must be in the English language.

53. Customer contact

53.1. On our request, you must nominate at least one customer contact.

53.2. You must keep us informed of current and accurate contact details of your customer contact/s.

53.3. A customer contact must be contactable at all reasonable times.

53.4. We may deal with a customer contact on the basis that they are your representative and have your full authority.

53.5. A person remains your customer contact until we are given notice that they are no longer your customer contact.

54. Waiving rights

No right under a business 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.

55. Assigning this agreement

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

56. Credit checks

- 56.1. You authorise us to do the things set out in this clause 56 and acknowledge that we may do so, whenever we see fit for as long as a business contract continues or you owe us any money.
- 56.2. We may use a credit report (within the meaning of the *Privacy Act 1988*) on you to assess your creditworthiness or for debt recovery purposes.
- 56.3. We may give to a credit reporting agency any information we have about you to enable us to obtain a credit report.
- 56.4. We may exchange information about you with other credit providers or a credit reporting agency.
- 56.5. You acknowledge that we are authorised to do the things set out in this clause 56 under the *Privacy Act 1988* 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.
- 56.6. You must cooperate with any enquiries that we make about your creditworthiness and provide any further information, consent or authority we reasonably require.

57. Third party software

- 57.1. If we provide any third party software to you, then:
 - 57.1.1. we do so subject to the licence terms and conditions that apply to that software; and
 - 57.1.2. you are solely responsible for ensuring the suitability and compatibility of the software.
- 57.2. 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.

58. Severance

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.

59. What law applies to this agreement ?

This agreement and any business contract is governed by the law of Victoria, Australia. Subject to clause 47, any legal proceedings relating to them can only be taken in courts with jurisdiction in Victoria.

TCP Code: At your option, the law of the State or Territory where you ordinarily reside applies, and the courts of that State or Territory have jurisdiction.

60. What if time expires on a holiday ?

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.

61. Who pays government charges ?

You must pay stamp duty and other government charges in relation to a business contract.

62. How is this agreement interpreted ?

In a business contract, unless the context indicates otherwise:

62.1. Dictionary

the expression:	means:
ancillary services	as in clause 5.1.5(i) of the TCP Code
AUP	our Acceptable Use Policy/ies
base allowance	a service use allowance below the amount that attracts excess use charges e.g. if an internet access service allows 2 GB in downloads before excess use charges apply, 2 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 contract	the documents indicated by clause 9
business day	any day from Monday to Friday inclusive, excluding any public holidays observed in

Redtrain Standard Form of Agreement

	Victoria
business hours	between 8:30 a.m. and 5 p.m. on a business day
casual	as per clause 26
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
consumer contract	a contract that is with a 'consumer' within the meaning of the TCP Code as amended, updated or replaced from time to time
core terms	this document
Credit Card Authority	a written authority to debit your credit card
customer	has the meaning given by clause 2.2
customer contact	a person/s nominated by you under clause 53
customer equipment	server/s and associated equipment and, where they are connected to a telecommunications services provided by a carrier, those connections
dictionary	this table of defined terms
Direct Debit Authority	a written authority to debit your bank

Redtrain Standard Form of Agreement

	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
early termination fee	a fee including (a) reasonable costs we incurred as a result of preparing to provide a service, but have not otherwise recovered (b) the price of any equipment we have provided, but have not otherwise recovered and (c) our reasonable lost profit as a result of an early termination
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 circumstances 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	<i>A New Tax System (Goods and Services Tax) Act 1999 (as amended)</i>
international services	services referred to by clause 5.1.5(g) of the TCP Code
loss	any harm, losses or expenses of any nature whether direct or indirect, secondary or consequential suffered by your or anyone else

Redtrain Standard Form of Agreement

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 9 a.m. and 5 p.m. on a business day
periodic fee	a fee payable at regular intervals e.g. an amount per month
personal information	the same thing as in the <i>Privacy Act 1988</i>
price list	our list of fees and charges from time to time
Redtrain Networks or 'we'	Redtrain Networks Pty Ltd ACN 153 859 244 trading as <i>Redtrain Networks</i>
repeating term	a period that we specify as such
representative	a delegate, authorised representative, employee or agent
residential contract	a contract that is subject to Part 2B of the <i>Fair Trading Act 1999</i> (Victoria) or a corresponding law of Australia or a State or Territory as amended, updated or replaced from time to time
service	any service that you request and we agree to supply, generally as described in a service description
Service Level Assurance	a written assurance regarding a service: <ul style="list-style-type: none">• issued under that exact title; and• providing for specified rebates or credits in the event that the assurance is not satisfied

Redtrain Standard Form of Agreement

service terms	has the meaning given by clause 6
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
taxes	taxes within the meaning of clause 5.1.5(h) of the TCP Code
TCP Code	Telecommunications Consumer Protections Code C628:2007
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

62.2. Interpretation

- 62.2.1. If an expression is defined in the dictionary in clause 62.1, that is what it means.
- 62.2.2. 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'.)
- 62.2.3. Headings and footnotes are only for convenience. They are to be ignored when interpreting the agreement.
- 62.2.4. A schedule to a document is part of that document.
- 62.2.5. A reference to the singular includes the plural and vice versa.
- 62.2.6. Where one thing is said to include one or more other things, it is not limited to those other things.
- 62.2.7. There is no significance in the use of gender-specific language.
- 62.2.8. A 'person' includes any entity which can sue and be sued.
- 62.2.9. A 'person' includes any legal successor to or representative of that person.
- 62.2.10. A reference to a law includes any amendment or replacement of that law.
- 62.2.11. Anything that is unenforceable must be read down, to the point of severance if necessary.

Redtrain Standard Form of Agreement

- 62.2.12. Anything a party can do, it may do through an appropriately authorised representative.
- 62.2.13. Any matter in our discretion, including anything that we 'may' do, is in our absolute and unfettered discretion.
- 62.2.14. Expressions in clause 29 in italics have the same meaning as in the GST Act.