



FIRST RESPONDER
B R O A D B A N D

Terms and Conditions

First Responder Broadband Pty Ltd
ABN: 37 676 469 051

Terms & Conditions

Last updated: 26 November 2024

On the date we accept your application, a binding agreement on these Terms and the associated documents described in clause 1.1 is created between you and **First Responder Broadband Pty Ltd (ABN 37 676 469 051)** trading as **First Responder Broadband (we, us or our)**. These Terms and associated documents govern our provision, and your subscription, of our Services.

We may change these Terms in accordance with clause 3.2 of these Terms, and you are taken to have agreed to such change if you continue to use the Service after the date such change comes into effect.

If you do not agree with these Terms and the associated documents, you must not place an application for a Service.

1. Agreement

1.1 Your agreement with us is made up of the following:

- (a) your application;
- (b) your Welcome Email;
- (c) the CIS;
- (d) these Terms;
- (e) the Service Description;
- (f) the standard fee table;
- (g) the Direct Debit Service Agreement; and
- (h) our Acceptable Use Policy.

1.2 These Terms is a Standard Form of Agreement pursuant to Part 23 of the Telecommunications Act 1997.

1.3 To understand your rights and obligations you need to read all parts of this agreement listed above in clause 1.1, which relate to the Service which you acquire from us.

1.4 To the extent that there is any inconsistency between the parts of this agreement, the part listed higher in clause 1.1 prevails to the extent of the inconsistency.

1.5 Before we supply Services, you must agree to these Terms and all parts of the agreement either:

- (a) verbally if you sign up to a particular Service via the telephone; or
- (b) by ordering Services on the First Responder Broadband website.

1.6 You may obtain a copy of the latest version of these Terms, service description, standard fee table and appendices from us or on our website: www.firstresponderbroadband.com.au/legal

1.7 If any provision of these Terms or the agreement is unenforceable or partly unenforceable (including where a provision is unfair under the unfair terms regime of the Australian Consumer Law), that provision will be severed to the extent necessary to make these Terms or the agreement enforceable (in

other words, that provision will have no force or effect such that we cannot rely on or enforce that provision).

1.8 If you need any help or more information, please contact us as set out in clause 3.6.

2. Term

2.1 Commencement

(a) You may apply for a Service through our application form (which is available through our website) or via telephone. In deciding whether to accept your application, we may consider several factors such as:

- (i) your eligibility for the Services;
- (ii) the availability of the Services to you;
- (iii) any credit requirements we specify;
- (iv) your identification requirements; and
- (v) your prior conduct or history in relation to any previous supply by us or a reseller of any goods or services to you.

(b) Unless we agree otherwise with you, or if earlier terminated in accordance with its terms, the agreement between you and us commences on the date we accept your application, and continues for the Subscription Term.

2.2 Renewal

The Subscription Term renews automatically for the same period, unless a party notifies the other otherwise at least 30 days before the end of that Subscription Term. If we do not notify you otherwise, the Fees that apply will be our standard fees for the relevant Service at that time of the renewal. For clarity, Professional Services under an application do not automatically renew.

3. Supply of a Service

3.1 Our commitment to you

We will:

- (a) use due care and skill in providing a Service, but given the nature of telecommunications systems, including our reliance on systems, equipment and services that we do not own or control, we do not guarantee that they will be fault free or continuous;



- (b) endeavour to supply you with a Service;
- (c) ensure that any Service we provide to you is carried out by suitably qualified personnel in accordance with this agreement; and
- (d) endeavour to meet the Service Levels.

3.2 Changes to a Service

- (a) We may change the Service from time to time, for example to improve the Service or as a result of circumstances beyond our control such as changes in law or urgent changes for security reasons. This may change the functionality or nature of a service or its underlying technology.
- (b) Without qualifying paragraphs (a) above, we may replace or exit a Service, or any part of it, by giving you at least 30 days' prior notice. If so, then we:
 - (i) will also provide you with reasonable details of any potential impacts; and
 - (ii) may migrate you to a modified service or alternative service (and you agree to provide reasonable assistance to enable us to do so); or
 - (iii) cancel the Service, but any cancellation will only take effect at the end of your fixed term if we have agreed a fixed term agreement with you.
- (c) Despite paragraph (b) above, we may, by giving you as much notice as possible, exit or cancel a Service if our third party service provider exits or cancels a service that we rely on to provide the Service to you.

3.3 Changes to the agreement

- (a) Subject to clause 3.4, we may add, replace or otherwise change any part of the agreement from time to time, for example due to circumstances beyond our control, including changes in law, urgent changes for security reasons, changes by one of our relevant third party supplier.
- (b) If a third party supplier changes or updates any of their services and/or changes the cost of, or the charges for, their goods or services, in respect of which we utilise to provide the Services, then we may change or update the Services and/or increase the relevant Fees, including as required to reflect such change or update from the third party service provider. If so, then we will endeavour to provide you with as much notice as is reasonably possible in these circumstances.

3.4 Your rights arising out of a change

- (a) Subject to clause 3.5, we will give you at least 21 days' notice of any change to any parts of this agreement.
- (b) If we materially reduce the overall functionality of the Service or materially change the terms of the agreement, then:

- (i) you may cancel your subscription to the affected Service before the end of the notice period referred to in paragraph (a) above, and
- (ii) we will not charge you any early termination fees for such cancellation (provided that we can recover any outstanding Fees incurred up to the date on which our agreement ends, and any outstanding amounts that cover installation costs of equipment where such equipment can be used in connection with services provided by other suppliers).

3.5 Exceptions

We may cancel, suspend or change the Services or any of the components of this agreement without any notice to you if:

- (a) we are required by law, for security reasons or technical reasons necessary to protect the integrity of our network, to make urgent changes;
- (b) a new fee is introduced or an existing fee is increased due to additional taxes or levies imposed by law (where it is fair and reasonable for us to pass that on to you); or
- (c) a new fee is introduced or existing administrative fees for ancillary services such as credit card transaction fees are increased (provided that we have offered you a reasonable alternative at the same or lesser cost to the original fee).

Where practicable to do so, we will give you reasonable notice in accordance with clause 17.8.

3.6 Support

- (a) We provide technical support services at:

1300 372 000; or
support@firstresponderbroadband.com.au

from 1000 – 1700 Monday – Friday excluding public holidays
- (b) We are not responsible for, and may not be able to provide support for, any fault caused by:
 - (i) your equipment which was not supplied by us;
 - (ii) the Service interacting with third party software you use;
 - (iii) the inability to gain wireless connectivity from your wireless access point or router to your computer; or
 - (iv) services provided by any third party supplier or carrier (other than our Supplier).

3.7 Scheduled downtime and emergencies

We may perform:

- (a) scheduled maintenance of a Service from time to time (**Scheduled Maintenance**), but we will endeavour to give you prior notice of this maintenance, and will perform such maintenance outside of our normal business hours; and

- (b) emergency maintenance and repairs to a Service at any time. We will endeavour to provide you with advance notice of such emergency maintenance if possible.

3.8 Your responsibilities

You:

- (a) will provide us with all reasonable information that we ask from you so that we may provide a Service to you;
- (b) will, and will ensure that your Users will, use a Service in accordance with the documentation we provide;
- (c) are responsible for complying, and ensuring that all your Users comply, with:
 - (i) all password and other security arrangements and policies we specify from time to time; and
 - (ii) the Acceptable Use Policy;
- (d) are responsible for all actions taken using your Users' logon and passwords, whether authorised or otherwise;
- (e) are responsible for your Data, the use of your Data and for ensuring that your Data complies with all applicable Laws; and
- (f) are responsible for managing your Users, including promptly taking steps to remove any User that no longer requires access and ensuring that User ceases to access and use a Service.

3.9 Changes to your Plan Tier

- (a) You may change your Plan Tier by telling us in writing.
- (b) When we receive your written notice to change your Plan Tier, we will:
 - (i) take reasonable steps to provide you with the new Plan Tier as soon as possible (which may be in the next billing cycle specified in your application), and will provide you with confirmation of your new Subscription Term in respect of your new Plan Tier; and
 - (ii) charge you the Fees for the new Plan Tier on and from the date we provide you with that Plan Tier, but we will give you a credit for unused period from your prior Plan Tier.

3.10 Third party components

You acknowledge that:

- (a) a Service may include third-party components and services (**Third Party Components**);
- (b) your use of a Third Party Component is subject to the licence terms provided by the third party licensor or service provider;
- (c) we are not responsible or liable for any such Third Party component;

- (d) we may remove, replace or otherwise substitute a Third Party Component at any time. If so, we will endeavour to notify you of such change prior to us making that change;
- (e) we may cancel a Service without any liability if we are no longer able to provide a Service because the relevant third party is unable, or ceases, to provide a Third Party Component that we rely on; and
- (f) we are not responsible for any failures by any Third Party Components.

3.11 Suspension, cancellation and termination

- (a) We may restrict, limit, suspend or cancel (including terminate) a Service if:
 - (i) in our reasonable opinion:
 - (A) the supply or use of a Service is, or is likely to become, unlawful or illegal;
 - (B) the provision of a Service is likely to cause death, personal injury or damage to property;
 - (C) there is fraud or attempted fraud;
 - (D) you have vacated the relevant site or premises;
 - (E) you are a serious credit risk;
 - (F) you are insolvent or likely to become insolvent;
 - (ii) we believe that it is necessary to:
 - (A) prevent you or another person from breaching or continuing to breach these Terms;
 - (B) undertaken maintenance of the network;
 - (C) protect the security or integrity of the network;
 - (iii) you do not pay us the undisputed Fees for that Service;
 - (iv) you breach any restriction in these Terms or if you fail to comply with our Acceptable Use Policy (as notified to you from time to time); or
 - (v) you adversely interfere with (or threaten to adversely interfere with) the systems, facilities and network used by us to provide a Service.
- (b) We will endeavour to give you as much notice as possible in the circumstances (which may be immediate notice in an emergency, security incident, fraud, illegal, unacceptably high credit risk or other relevant circumstance, and for other debt management reasons, at least 5 business days' notice) if we need to exercise our rights under paragraph (a) above.
- (c) We may charge you a reconnection charge to reinstate a Service that has been restricted, limited, suspended or cancelled (including disconnected), unless it was caused by our

mistake or an event beyond your reasonable control.

3.12 Transfer of your Service to another supplier

- (a) If you request that we transfer any of the Services to another supplier, you remain liable to us for any outstanding Fees payable in relation to the Services up to the date of transfer.
- (b) We will cease to provide you the Services on the date on which we transfer your Services to another supplier.
- (c) We will endeavour to invoice you for the outstanding Fees within your next billing cycle. If, after that time, we become aware of any other reasonable Fees or amounts (including fees payable to any other supplier) for those Services up to the date of transfer, or we resolve any dispute such that any liability relating to those Services is quantified and payable by you, then you will pay us all such amounts within 7 days of your receipt of our invoice for those amounts.

3.13 Internet issues and limitations

To the extent permitted by law, you agree that:

- (a) the continuity, speed and performance of access to internet depends on a variety of factors, such as the server which you connect to or the equipment you use, many of which are beyond our control;
- (b) we have no control over the accuracy or appropriateness of information on the internet;
- (c) we are not responsible for any software or data available on the internet;
- (d) in relation to any technical or other support or advice we provide you regarding matters outside our direct responsibility under this agreement are provided in an attempt to assist you and we do not incur any liability other than any which cannot be lawfully excluded.

4. Service Equipment

4.1 If we provide Service Equipment, then:

- (a) title to the Service Equipment is not transferred to you or any third parties, and remains our property at all times, and you will not do anything which might detrimentally affect our ownership to the Service Equipment;
- (b) you must provide, or procure the provision, of access to the relevant premises to install or remove any Service Equipment;
- (c) you must keep the Service Equipment in your possession and control at all times;
- (d) you will not remove or obscure any identification marks on the Service Equipment;
- (e) risk of loss to or damage in the Service Equipment passes to you upon delivery;
- (f) you must provide adequate power and for the operation of any equipment used in the provision

of the Services, and we do not guarantee the supply of the Service where the supply of electricity is disrupted or discontinued; and

- (g) you are responsible for all loss and damage to the Service Equipment.

4.2 We may from time to time update or change the Service Equipment on notice to you.

4.3 We will give you reasonable notice (which may be immediate notice) if we are required to suspend Services for a reasonable period of time to perform maintenance on the Service Equipment.

4.4 You are responsible for maintaining your facilities or equipment.

4.5 On termination of the Service, you will (at our option) return or destroy the Service Equipment, or permit us to collect the Service Equipment.

5. Purchased Equipment

5.1 Until we receive full payment from you for the Purchased Equipment:

- (a) title in the Purchase Equipment is not transferred to you or any third parties, and remains our property, and you will not do anything which might detrimentally affect our ownership to the Purchased Equipment;
- (b) you must keep the Purchased Equipment in your possession and control at all times;
- (c) you will not remove or obscure any identification marks on it; and
- (d) you are responsible for all loss and damage to the Purchased Equipment.

5.2 The risk of loss or damage in or to the Purchased Equipment passes to you on delivery.

5.3 If we agree to provide you with installation services, then we will use reasonable efforts to install the Purchased Equipment at an agreed site, on or around the agreed installation date, at our current rates, provided that:

- (a) you will prepare the installation site in accordance our specifications, and we may refuse to install otherwise; and
- (b) we will not be liable for any loss or failure to do perform the installation service by the agreed installation date.

6. Your obligations

6.1 You:

- (a) are responsible for obtaining all required facilities and equipment to enable you to access and use a Service;
- (b) must not connect or maintain a connection to a facility used in connection with the supply of the Services to you or other parties that does not comply with technical codes, standards or regulations made under the Telecommunications Act, any declaration or other requirements of the Australian Communications and Media Authority

or any code, standard or guidelines published by the Communications Alliance Ltd.;

- (c) must not provide, resell, connect the Service to a local area network, or otherwise make a Service available to anyone;
- (d) are responsible for ensuring that no one interferes with the operation of a Service or makes it unsafe;
- (e) will promptly notify us of any unauthorised access or use that you are aware of;
- (f) are responsible for your Data, including its accuracy, quality and your compliance with all laws;
- (g) are responsible for ensuring you have regular back-ups of all your systems, facilities and Data;
- (h) must comply with applicable laws;
- (i) must not interfere with or disrupt the integrity or performance of a Service, networks or our supplier's networks, including the underlying platform we use to provide that Service;
- (j) must not scan ports on other computers or otherwise probe them for means of access or vulnerabilities;
- (k) must not use a Service to store or transmit infringing, fraudulent or otherwise unlawful material or otherwise use a Service in a manner which is unlawful or would infringe the rights of another person (including any Intellectual Property Rights);
- (l) must not introduce to a Service, or use a Service to, store or transmit Malicious Code;
- (m) must not engage in denial-of-service attacks, or allow a computer under your authority to be used as part of one;
- (n) must not attempt to gain unauthorised access to a Service or its related systems or networks;
- (o) must comply with all reasonable directions provided by us with respect to a Service; and
- (p) at our request, provide reasonable assistance and information to assist us to investigate any outage or security issue relevant to a Service or any suspected breach of this agreement.

6.2 You agree that we, or our Supplier, may take step deemed necessary in order to comply with the law, industry code of practice, or under direction from a relevant regulatory authority or court order, including:

- (a) intercepting communications made using a Service; and
- (b) monitoring and retaining data which you access or transmit using the Service.

6.3 Access to Premises

We (or our contractors/suppliers) may need access to your Premises. You agree to provide us safe access to your Premises to install Equipment for a Service you have asked for; and to inspect, test, maintain and

repair or replace Equipment. If you do not own your Premises, you need to obtain the owner's permission for us to access the Premises for the purposes stated above.

7. Fees and payments

7.1 Changes to the Fees

We may change the Fees from time to time by publishing the updated Fees on our website or as otherwise notified to you from time to time. The amended Fees will only take effect on the renewal of the Subscription Term.

7.2 Early termination charge

- (a) If a Service is terminated before the expiry of its Subscription Term for any reason other than our material breach, then we may charge, and you will pay, the early termination charge specified in the relevant application or, if no such early termination charge is specified, an amount calculated as follows, provided that the early termination charge will not exceed the amount that you would have otherwise paid for the terminated Service had the early termination not occurred:

$$\text{ETC} = (50\% \times A \times M) + X$$

where:

ETC = early termination charge;

A = the Fees for the terminated Service for a month;

M = the number of months, or part thereof, from the date of termination to the end of the Subscription Term; and

X = unavoidable costs necessarily incurred by us arising out of such termination (eg., third party service provider termination fees).

- (b) You acknowledge that the early termination charge is a genuine estimate of our loss for early termination.

7.3 Invoices and payment

- (a) Your Fees must be paid by direct debit or credit card, and such direct debit or credit card transaction will occur on the first day of each billing cycle as set out in your application.
- (b) We will invoice monthly Fees in advance and any applicable usage or excess usage charges (if applicable) are billed in arrears, unless otherwise specified in our standard fee table.
- (c) We will bill any applicable connection fees and additional Equipment (if applicable) in your first invoice.
- (d) We may issue an interim invoice in the following circumstances:
 - (i) you change your existing Service;
 - (ii) you request the connection of a new Service;



- (iii) you relocate an existing Service;
 - (iv) you request to be invoiced for any "unbilled" charges;
 - (v) we have reasonable grounds to believe that you may be a credit risk; or
 - (vi) as otherwise agreed by you.
- (e) We will refund or credit any overpayment due to a variation in the Fees or cancellation of a Service. If we have undercharged you, you will be liable for any underpayment.
- (f) If you fail to pay any undisputed Fees by its due date, we may, without limiting our other rights, do one or more of the following:
- (i) we may suspend or restrict a Service under clause 3.11(a);
 - (ii) charge interest on the amount overdue at a rate of 10% (or the maximum amount permitted by law) per annum calculated daily from the date the relevant payment was due until the date on which it is paid in full.
- (g) In addition to any other rights that we have under the agreement in relation to any late payment, if an invoice is paid by direct debit or credit card authorisation and the payment is declined by the bank, we reserve the right to pass any bank fee that we incur as a result of the declined or dishonoured transaction on to you.
- (h) We may use debt recovery services to recover any outstanding Fees (including any administrative fees). You may be liable for any reasonable charges and collection costs, such as legal costs.
- (i) If you are experiencing financial hardship, you may be eligible for Financial Hardship assistance. Please visit www.firstresponderbroadband.com.au/legal for more information.

7.4 Disputed invoices

If you dispute any item on any invoice in whole or in part, you will notify us within 14 days, and the parties will use all reasonable endeavours to settle the dispute at their earliest possible convenience in accordance with clause 16. Nothing in this clause limits your rights to issue proceedings in relation to a disputed invoice or alleged overpayment.

7.5 First Responder Discount

- (a) We may, from time to time, and in our sole discretion, offer a First Responder Discount to selected customers.
- (b) To request a First Responder Discount, you must (i) be employed within the Specified Field; and (ii) provide us with such information as we reasonably require in each case to enable us to verify your eligibility.
- (c) If we determine that you are eligible to receive a First Responder Discount, we will inform you of

the relevant discount, and your First Responder Discount will be reflected in your next billing cycle.

- (d) We may increase or decrease the First Responder Discount provided to you on notice to you. Any changes to your First Responder Discount will take effect from your next billing cycle.

8. GST

8.1 GST

The parties agree that:

- (a) despite the definition of consideration in the GST law, and unless otherwise expressly stated in this agreement, the Fees payable or consideration in accordance with this agreement are exclusive of GST;
- (b) if we make a taxable supply under or in connection with this agreement, you must pay to us at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply;
- (c) we must, as a precondition to the payment of GST under paragraph (b), give you a tax invoice;
- (d) if an adjustment event arises in connection with a supply made under this agreement, we must give the other party an adjustment note in accordance with the GST law; and
- (e) if this agreement requires one party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.

8.2 Withholding taxes

If any law requires you to deduct an amount in respect of GST from a payment under this agreement, then you will:

- (a) pay an amount equal to the amount required to be deducted to the relevant government agency in accordance with applicable laws;
- (b) give the original receipts to us within 30 days of making such payment; and
- (c) pay us the amount deducted so that we will receive a net sum equal to the Fees without the deduction.

9. Data

- (a) You own your Data. You grant us a perpetual, non-exclusive, and royalty-free licence to:
 - (i) use your Data for the purposes of providing a Service under, or otherwise performing, this agreement;

- (ii) permit any person to assist us to do any of the things referred to in paragraph (i) above; and
 - (iii) sub-licence any of our rights to any person.
- (b) We will:
- (i) maintain reasonable administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of your Data that you have provided to us and that is stored by a Service; and
 - (ii) not access your Data other than in accordance with this agreement.
- (c) We may create an aggregated anonymised data set from your Data for our internal business purposes, including to improve a Service.

10. Intellectual Property

- (a) Nothing in this agreement affects the ownership of a party's Background Material. Each party grants the other party a non-exclusive, non-transferable, royalty free licence to use a party's Background Material provided by it to the other solely for the purposes, and to the extent necessary, for the other party to perform its obligations and exercise its rights under this agreement.
- (b) You agree that all Intellectual Property Rights of whatever nature in a Service (including the outputs of a Service and all derivative works of a Service) are and will remain our property. Nothing in this agreement must be construed as transferring any aspects of such rights to you or any third party.
- (c) We grant you a personal and non-exclusive licence to use the deliverables we provide to you as part of the Services for the Subscription Term.
- (d) You will immediately notify us if you become aware that a Service may infringe the Intellectual Property Rights of a third party.
- (e) If you suggest any new features, improvement or corrections to a Service (**Suggestion**), you assign all Intellectual Property Rights in and to such Suggestion to us. A Suggestion is our Confidential information for the purposes of this agreement.

11. Confidential Information

11.1 Obligations of confidentiality

A party receiving the other party's Confidential Information must:

- (a) keep the Confidential Information of the disclosing party secret and confidential;
- (b) not disclose the Confidential Information of the disclosing party to any person, except:
 - (i) to its employees, agents, contractors, officers and auditors, on a need-to-know basis, provided that the receiving party is

liable for any breach of this clause 11 by these persons;

- (ii) with the disclosing party's prior written consent;
 - (iii) if required by law, regulatory authority or stock exchange;
 - (iv) if it is the public domain, other than through a breach of this agreement; or
 - (v) for us, to our Related Entities or any of our professional advisors, provided that each such person agrees to observe the confidentiality of the information;
- (c) take reasonable steps to secure and keep secure all Confidential Information of the disclosing party in its possession or control; and
- (d) only use the Confidential Information of the disclosing party for the purposes of performing its obligations, or exercising its rights, under this agreement.

11.2 Publicity

Despite any provision to the contrary, we may during and after the Subscription Term communicate in any media (including press releases, general announcements, annual reports and print and online marketing materials), the existence of our arrangement with you and to otherwise identify you as our customer, including your name and the Service we provide to you.

12. Privacy

- (a) You acknowledge that you are primarily responsible for the collection, use and storage of any of your Data affected by any data protection or privacy legislation, guidelines or directives, including Privacy Laws, through your use of our Services.
- (b) You undertake to ensure that you and all your Users will comply with the requirements of any Privacy Laws that may be applicable to the operation of the Services and otherwise in respect of any Personal Information collected, held, accessed, used, or otherwise dealt with by you in connection with this agreement and that you and they will not do or omit to do anything to cause us to breach such Privacy Laws.
- (c) You acknowledge that:
 - (i) from time to time, in order to perform our obligations under this agreement, we will collect Personal Information about you and your Users; and
 - (ii) in performing our obligations under this Agreement, or as otherwise required by law, we may provide that Personal Information to third parties anywhere in the world.
- (d) You undertake to take reasonable steps to ensure that your users (including, if you are a business, your employees, proprietors, directors and shareholders) are aware:

- (i) that we may from time to time collect Personal Information about them in order to perform our obligations under this agreement;
 - (ii) of our Privacy Policy; and
 - (iii) that we may use and disclose Personal Information about them in accordance with our Privacy Policy.
- (e) You must ensure that you have provided the appropriate notifications and procured the necessary consents and authorisations to allow us to collect your Data and the Personal Information referred to in this clause 12, as well as the Personal Information about your Users (if applicable), and to use your Data and such Personal Information as contemplated by this agreement, our Privacy Policy, and in accordance with Privacy Laws.
- (f) You must notify us immediately upon becoming aware of any breach of any Privacy Laws that may be related to the operation of any of the Services.
- (i) Our insurer may obtain a credit report about you, your business and other key individuals connected with your business (if applicable) to assess whether to provide us insurance in relation to your or your business' application for commercial credit.
- (g) We may also disclose a credit report or other report relating to your Personal Information (and the Personal Information of other key individuals connected with your business, if applicable) derived from that report to any credit reporting body in accordance with Privacy Laws.
- (h) We may use and may disclose your credit related information (and the credit related information of other key individuals connected with your business, if applicable) to a credit reporting body for our business operations to obtain a credit report to assess any finance or credit application. The credit reporting bodies which we could use will be set out in our Privacy Policy.

13. Warranties

- (a) Each party warrants that it has full legal capacity and power to enter into this agreement and to carry out the transactions contemplated by this agreement.
- (b) You warrant that you have not relied on any representation made by us which has not been stated expressly in this agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by us.
- (c) Our responsibilities and obligations under the law include those under:
 - (i) the Telecommunications Legislation,
 - (ii) the Competition and Consumer Act, including the Australian Consumer Law;

- (iii) applicable laws, regulations and codes, and nothing in this agreement removes or limits any rights that you have under existing laws or regulations.
- (d) If you are a consumer under the Australian Consumer Law, certain consumer guarantees apply to goods and services regardless of any express warranties which you may be entitled to under this agreement. We guarantee that:
- (i) goods are of acceptable quality (unless we specifically drew to your attention the reasons why the goods are not of acceptable quality);
 - (ii) any express warranties will be honoured;
 - (iii) you are buying goods that have clear title, that do not have undisclosed securities and with a right to undisturbed possession;
 - (iv) you are buying goods that are fit for any disclosed purpose;
 - (v) you are buying goods that match the description, sample or demonstration model; and
 - (vi) the Services we supply are provided with due care and skill, are fit for any specified purpose (as are any products resulting from the Services) and are provided within a reasonable time, if no time is fixed for supply of the Services.
- (e) To the fullest extent permitted by law, our liability for a breach of a non-excludable guarantee referred to in clause 13(d) is limited, at our option, to:
- (i) re-supplying of the Services and/or the Equipment; or
 - (ii) paying the cost of having the Services and/or the Equipment re-supplied.

14. Liability and Indemnity

14.1 Liability

To the extent permitted by law, and subject to clauses 14.2 and 14.3, a party's maximum aggregate liability to the other under or in connection with this agreement, however arising (including contract, tort, negligence, law or otherwise), is limited to the average monthly Fee paid by you to us for the affected Service in the first 12 months of the commencement of date of this agreement, multiplied by 12.

14.2 Exclusion of Consequential Loss

Subject to clause 14.3, neither party shall be liable to the other party for any loss of business, goodwill, contracts, profits, anticipated savings, loss or corruption of data, or for any indirect, special, consequential, incidental, exemplary or punitive damages or loss, damage, cost or expense (and even if that party has been advised of the possibility of such damages or loss, damage, cost or expense) which may be suffered or incurred or which may arise directly or indirectly under or in relation to this agreement.

14.3 Exclusions

Nothing in this agreement operates to limit or exclude:

- (a) any rights you may have under the Australian Consumer Law;
- (b) a party's liability for:
 - (i) bodily injury or death; and
 - (ii) damage to real property and tangible personal property,
 - (iii) caused by that party's breach of this agreement or negligent act or omission;
- (c) liability under clause 14.5;
- (d) liability for fraudulent acts or omissions;
- (e) your liability for a breach of our Intellectual Property Rights; and
- (f) your liability for any Fees payable under this agreement.

14.4 Contribution

The liability of a party for any cause of action (including under an indemnity) will be reduced proportionally to the extent that the liability arises as a result of a breach of this agreement by the other party or the other party's negligent or unlawful acts or omissions.

14.5 Third party infringement claims

- (a) We will defend you against all claims by a third party to the extent arising from a claim by a third party that a Service infringes the Intellectual Property Rights of that third party, and will pay all damages awarded by a final court in a competent jurisdiction or the settlement amount that we agree with the relevant third party.
- (b) Clause 14.5(a) will only apply if you:
 - (i) promptly provide us with written notice of such a claim against you;
 - (ii) give us sole control of the defence and settlement of such claim against; and
 - (iii) provide us with all reasonable assistance in relation to the defence and settlement of such claim.
- (c) If a claim is made by a party alleging your use of a Service infringes that party's Intellectual Property Rights, we will, at our option either:
 - (i) modify or replace the Service so that they become non-infringing;
 - (ii) procure for you the right to continue using the Service; or
 - (iii) if the options in 14.5(c)(i) and 14.5(c)(ii) are not commercially viable, terminate this agreement without any liability to you.
- (d) You indemnify us from all claims, losses, damages, costs and expenses (including legal expenses on a full indemnity basis) arising out of or in connection with an allegation or claim by a third party that the provision by you of, and our

use of, your Data infringes the rights, including Intellectual Property Rights, of that third party.

15. Termination

15.1 Termination

- (a) You may cancel your subscription of a Service by submitting a cancellation request on our online portal at www.firstresponderbroadband.com.au/portal and giving us at least 5 Business Days' notice. Upon cancellation of your subscription of a Service, you will continue to have access to the Service for the remainder of the relevant billing cycle. Any pre-paid Fees are not refundable.
- (b) We may terminate a Service (in whole or in part) in accordance with clause 3.11 on written notice if you fail to pay us any amounts owed to us.
- (c) We may terminate a Service by giving you 30 days' written notice.
- (d) The party not at fault may terminate this agreement immediately upon written notice to the other party if the other party:
 - (i) breaches a material term in this agreement, and:
 - (A) the breach is incapable of remedy; or
 - (B) if capable of remedy, the other party has failed to remedy the breach within 10 Business Days of receiving written notice of the breach from the first party; or
 - (ii) is insolvent, including the appointment of a receiver or administrator.

15.2 Consequences of Termination

- (a) Any termination under this clause 15 will be without prejudice to any right, action or remedy which has accrued or which may accrue in favour of either party.
- (b) Upon termination of this agreement by either party:
 - (i) you must cease your access to and use of (and ensure your Users cease their access to and use of) a Service;
 - (ii) we will permanently delete your Data from the relevant Service;
 - (iii) we will provide you with a final invoice for the supply of a Service (including all Services performed), up to and including the date of termination under this agreement;
 - (iv) we may retain any moneys paid by you.
- (c) This clause 15 and clauses 10, 11, 12, 13, 14, 16, 17 and 17 inclusive will survive expiration or termination of this agreement, as do any other clause that by its nature is intended to survive such expiry or termination.



16. Dispute Resolution

We seek to resolve any dispute by agreement or consultation with you. Please contact us at 1300 372 000 (1000 – 1700 Monday to Friday), or via support@firstresponderbroadband.com.au. In the event the dispute is unresolved, you may have rights under the Telecommunications Industry Ombudsman (TIO) scheme.

17. General

17.1 Force Majeure

Where any failure or delay in the performance of obligations under this agreement is caused, directly or indirectly, by a Force Majeure Event:

- (a) the affected party must as soon as practicable give the other party written notice of that fact;
- (b) the affected party is not liable for that failure or delay;
- (c) the affected obligations under this agreement are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event; and
- (d) if the Force Majeure Event continues for more than 30 consecutive days and while it continues, any party other than the affected party may, at its sole discretion, terminate this agreement by giving written notice to the affected party and all other parties (if any).

17.2 Entire understanding

These Terms contains the entire understanding between you and us concerning this agreement and supersedes, terminates and replaces all prior agreements and communications between you and us concerning that subject matter.

17.3 No adverse construction

These Terms, and any provision of this agreement, are not to be construed to the disadvantage of a party because that party was responsible for its preparation.

17.4 No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this agreement does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this agreement.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

17.5 Severability

Any provision of this agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and

- (b) be severed from this agreement in any other case,

without invalidating or affecting the remaining provisions of this agreement or the validity of that provision in any other jurisdiction.

17.6 No assignment

- (a) You cannot assign, novate or otherwise transfer the benefit of this agreement without our prior written consent.
- (b) We may assign, novate or otherwise transfer the whole or part of this agreement without your prior written consent. you agree to execute any document necessary or desirable to give effect to this clause 17.6.

17.7 Governing law and jurisdiction

These Terms are governed by and must be construed in accordance with the laws in force in New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia in respect of all matters arising out of or relating to this agreement, its performance or subject matter.

17.8 Notices

Any notice or other communication to or by a party under this agreement:

- (a) may be given by personal service, post or email specified in your application;
- (b) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown in your application, or to any other address last notified by the party to the sender by notice given in accordance with this clause;
- (c) is deemed to be given by the sender and received by the addressee:
 - (i) if delivered in person, when delivered to the addressee;
 - (ii) if posted, at 9.00 am on the second Business Day after the date of posting to the addressee whether delivered or not; or
 - (iii) if sent by email transmission, and no undelivered email message is received within 24 hours, at the time and the date it was sent,
 - (iv) but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

17.9 Operation of indemnities

Unless this agreement expressly provides otherwise, each indemnity in this agreement survives the expiry or termination of this agreement. A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

17.10 Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this agreement.

17.11 Relationship of parties

Nothing in this agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

18. Definitions and interpretation

18.1 Definitions

Capitalised terms are defined in these Terms, including this clause 18.1.

Unless the context indicates a contrary intention:

Acceptable Use Policy means our policy which applies to your use of the Services, a copy of which can be found at www.firstresponderbroadband.com.au/legal

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

Application means an application submitted by you and agreed to by us in writing for the provision of Services.

Background Material means any material in which the Intellectual Property Rights are owned by, licensed to or developed by or on behalf of a party which are pre-existing or created independently of these Terms, but does not include a Service.

Business Day means a day excluding a Saturday, Sunday or public holiday in Sydney, Australia.

CIS means the Critical Information Summary relevant to a Service which you have subscribed to, which can be found at www.firstresponderbroadband.com.au/legal

Confidential Information means:

- (a) for us, this agreement;
- (b) information that at the time of disclosure by a discloser is identified to the recipient as being confidential; and
- (c) all other information belonging or relating to a discloser, or any Related Entity of that discloser, that is not generally available to the public at the time of disclosure other than by reason of a breach of this agreement or which the recipient knows, or ought reasonably to be expected to know, is confidential to that discloser or any Related Entity of that discloser,

but excludes your Data, and information which:

- (d) is in the public domain, other than as a result of an unauthorised disclosure by either party;
- (e) is or becomes available to a party from a third party lawfully in possession of such information

and who has the lawful power to disclose such information to the party on a non-confidential basis; or

- (f) is rightfully known by a party to this agreement (as shown by written record) prior to the date of disclosure under this agreement.

Fees means the fees for a Service, including as published by us and as set out in an application.

First Responder Discount means the discount provided in accordance with clause 7.5.

Force Majeure Event means, for a party, an event beyond the reasonable control of that party including a pandemic, epidemic, third party failures and acts by a government agency.

GST has the meaning given to it in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business and domain names, database rights, confidential information, know how, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields existing anywhere in the world, whether or not registered or capable of registration, and any goodwill associated with such activity and any applications, renewals and extensions of such rights.

Malicious Code means any virus, Trojan horse, worm, logic bomb or other malicious code that infect, manipulate, modify, deny, corrupt or inhibit the operation of a Service.

NBN means the broadband network which provides Australian premises with access to a broadband internet service through optical fibre, wireless or satellite technologies, as operated by NBN Co Ltd.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form, electronic form or otherwise, about an identified individual or an individual who is reasonably identifiable, and includes anything that is defined as personal information or as sensitive information in the relevant Privacy Laws.

Plan Tier means the tiered package of Services as specified in your application.

Purchased Agreement means equipment that we sell to you for use in the provision of the Services to you or otherwise;

Premises means any land, building, structure, vehicle or vessel whether owned, leased or occupied by You, containing Equipment, or to which a Service is supplied.

Privacy Laws means any applicable law, statute, regulation, ordinance, code, standard or requirements of any government, governmental or semi-governmental body which relates to privacy or health

information, including without limitation the *Privacy Act 1988 (Cth)* and the Australian Privacy Principles under that Act, the *Spam Act 2003 (Cth)* and the *Do Not Call Register Act 2006 (Cth)*, and any other applicable legislation from time to time in force which relates to or affects privacy rights or Personal Information.

Privacy Policy means our privacy policy, a copy of which can be found at www.firstresponderbroadband.com.au/legal

Professional Services means the professional services that are made available by us to you from time to time, as described in your application.

Related Entity has the meaning given to that term in the *Corporations Act 2001 (Cth)*.

Service means: (a) the agent software and application as a service, application programming interfaces, tools and other application products; and (b) the Services, set out in your application.

Service Equipment means equipment that we provide to you for use in the provision of the Services or otherwise, but excludes Purchased Equipment;

Service Levels means any target levels of performance or quality with respect to a Service specified in your application.

Services means the Professional Services and the Support Services.

Specified Field means, for the purposes of the First Responder Discount, customers who have previously been employed or are currently employed in the following fields within Australia:

- (a) Australian Defence Force military personnel;
- (b) ambulance or paramedics;
- (c) police;
- (d) firefighters;
- (e) doctors;
- (f) nurses;
- (g) Border Force;
- (h) State Emergency Services;
- (i) surf lifesavers;
- (j) marine rescue;
- (k) volunteer emergency workers; or
- (l) any other fields as determined by us from time to time.

Subscription Term means the subscription term specified in your application or, if no such term is specified, 1 month from the commencement date of your application.

User means any individual you authorise to access and use a Services, subject to the Acceptable Use Policy.

Welcome Email means the email we send you upon our acceptance of your application for supply of a Service.

Your Data means your data or data supplied by or on behalf of you that is hosted by a Service (excluding a Service).

19. Interpretation

In this agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) the headings are used for convenience only and do not affect the interpretation of this agreement;
- (c) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (d) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- (e) wherever "include", "for example" or any form of those words or similar expressions is used, it must be construed as if it were followed by "(without being limited to)";
- (f) money amounts are stated in Australian currency unless otherwise specified; and
- (g) a reference to time is to the time in Sydney, Australia.