



COMMUNITY TELCO LIMITED



Community Telco Australia

INTERNET SERVICES

TERMS & CONDITIONS

V1.6, 24/6/05

iTEL Community Telco Limited
31 Nicholas Street
Ipswich Mall
Ipswich QLD 4305
Australia
13 36 36
Fax: 07 3454 9950
www.itel.net

Contents

1.0 Introduction	3
2.0 Binding Agreement	3
2.1 Agreement upon Application	3
2.2 Legislation Governing this Agreement	3
2.3 Customer Obligation	3
2.4 Variation of Agreement	3
2.5 Changing Customer Service Location	4
2.6 General Terms of Agreement	4
2.7 Termination of Agreement	4
3.0 Installation	4
4.0 Equipment	5
5.0 Internet Usage Risks	7
5.1 Spam and Virus Protection	7
5.2 Spy ware & Malicious Website Software	7
5.3 Offensive Material	7
6.0 Acceptable Use Policy	8
7.0 Internet Service	9
7.1 Warranty	9
7.2 Username	10
7.3 Personal Homepage Hosting	10
7.4 Ownership	10
7.5 Fault Rectification	10
7.8 System Availability	10
8.0 Web Hosting Service	11
8.1 Base Hosting Package	11
8.2 Optional Web Hosting Services	11
8.3 Web Hosting Fees & Charges	12
8.4 Web Hosting Term & Termination	12
8.5 Users & Ownership of Web Hosting Service	12
8.6 Suspension & Cancellation of Web Hosting Service	13
8.7 Use of Web Hosting Service	13
8.8 Limitation of Liability of Web Hosting Service	13
9.0 Service Suspension & Cancellation	14
9.1 Suspension	14
9.2 Cancellation	15
9.3 Notice	16
10.0 Charges and Payment	16
10.1 Fees	16
10.2 Payment	16
10.3 Taxes and GST	17
11.0 Customer Privacy	18
12.0 Limitation of Liability	19
12.1 Liability	19
12.2 Indemnity	19
13.0 Definitions	21

1 Introduction

- 1.1 This document sets out iTEL's customer terms and conditions for internet access, web hosting and associated services. It replaces all previous agreements and applies to all users of iTEL services. Definitions used in this document are located at the end.

2 Binding Agreement

2.1 Agreement upon Application

- 2.1.1 This Internet Service Agreement sets out the Terms and Conditions on which iTEL offers Internet and associated services to Customers. By signing the iTEL Internet Application form you agree to be bound by the terms in this document, commencing upon acceptance by iTEL of the application form.
- 2.1.2 iTEL reserves the right to refuse an Application. iTEL is willing to enter into this agreement only if Subscriber accepts all the terms of this agreement. An Application may be accepted electronically by iTEL or its computer system.
- 2.1.3 This agreement (including the Price List) constitutes the entire agreement between iTEL and Subscriber. The only warranties and representations made by iTEL are those set out in this agreement. If there is an express inconsistency between this document and a Price List, then the Price List will prevail.
- 2.1.4 The Customer may not transfer or novate, nor try to transfer or novate the right to receive the iTEL Service or any other right under this Service Agreement to anyone else without iTEL's consent. iTEL may transfer or novate any of its rights or obligations under this Service Agreement without the Customer's consent by sending the Customer a notice.

2.2 Legislation Governing this Agreement

- 2.2.1 This agreement is governed by the laws of the Commonwealth of Australia and the State of Queensland. If any provision in this agreement is void, unenforceable or illegal, it is severed from this agreement and the remaining provisions will continue in full force and effect. No provision of this agreement may be waived except by written notice to the other party.
- 2.2.2 The Subscriber acknowledges that use of the Data, Databases, System and Services may from time to time be subject to certain legal regulations, conditions (including any license conditions) or restrictions including but not limited to those laid down by the Spam Act 2003, Crimes Act 1914, Copyright Act 1968, Classification of Films Act 1991 and the Classification (Publications, Films and Computer Games Act 1994).

2.3 Customer Obligation

- 2.3.1 In order to receive an iTEL Service, the Customer must:
- be a natural person 18 years of age or older and be a permanent resident of Australia;
 - meet iTEL's credit requirements;
 - meet the system requirements of the particular service as notified by iTEL;
 - meet all requirements as detailed in this Service Agreement and the Internet Acceptable Use Policy
 - agree to the Terms and Conditions set forth in this Service Agreement.
 - acknowledge that iTEL will not be liable to compensate Subscriber for the unavailability or loss of access to the Service, and indemnifies iTEL against any claims for liability due to interruption of service.
- 2.3.2 Subscriber may not transfer this agreement or any service provided under this agreement without iTEL's prior written consent. The Customer agrees that the Service is for the Customer's use only and not for resale. iTEL may assign this agreement to a third party without Subscriber's consent.
- 2.3.3 In the utilisation of iTEL Internet Services, the Customer must comply with the iTEL Acceptable Use Policy (clause 6) and the Customer acknowledges and agrees that iTEL may exercise any of the rights specified in the Acceptable Use Policy.

2.4 Variation of Agreement

- 2.4.1 The current version of the internet service agreement is available on iTEL's website.
<http://www.itel.gil.com.au/TermsAndConditions/terms.asp>
- 2.4.2 iTEL may vary the terms of this agreement without advanced notice and without agreement by Subscriber. However, if iTEL changes this service agreement and it would cause detriment to you, we

will first publish this on our website and notify you of the change via e-mail or post. If Subscriber objects to any variations, Subscriber must notify iTEL in writing within 7 days and immediately cease using the Service.

2.4.3 It will be sufficient, for the purposes of clauses 2.4.2, that iTEL may notify the Customer only of the fact that this Service Agreement or the Pricing Schedule has been changed and that we post on our website a revised copy of Terms and Conditions, the Acceptable Use Policy or the Pricing Schedule.

2.4.4 iTEL can offer improved, new or additional features that do not affect any of the Customer's existing Services, including the price for them, at any time.

2.5 Changing Customer Service Location

2.5.1 If the Customer approaches iTEL to change the place at which an iTEL Service is provided (for example, the Customer has moved to a new address), iTEL cannot guarantee that it will be able to provide the Service at the new address. The Customer will have to pay any charges for removing the iTEL Service from the current address and installing the Service at the new address.

2.5.2 If the Customer wants iTEL to provide the iTEL Service at another place in addition to the Customer's premises, the Customer will have to sign a separate application form with iTEL for the Service to be provided at that place. The additional Service site will be subject to the terms and conditions outlined in this Service Agreement.

2.6 General Terms of Agreement

2.6.1 If iTEL does not exercise or delays in exercising its rights under this Service Agreement, iTEL will not be taken to have waived its rights.

2.6.2 The Acceptable Use Policy and any terms set out in the Pricing Schedule of any internet services are incorporated herein.

2.6.3 Clauses 2, 9, and 12 survive termination of this Service Agreement.

2.6.4 Notices can be provided under this Service Agreement by email, post or facsimile.

2.6.5 A reference in this Service Agreement to the singular includes the plural.

2.6.6 iTEL is not liable for any failure to comply with this agreement if that failure is caused by an act beyond iTEL's reasonable control.

2.6.7 Subject to this Service Agreement and the Terms and Conditions contained within, and any required Service Qualification, iTEL will use reasonable endeavours, skill and care in providing the Customer with the Service.

2.6.8 The Customer acknowledges that the iTEL Service is provided without warranty that it is continuous or fault-free. To the maximum extent permitted by law, iTEL is not liable for any loss or disappointment the Customer may suffer as a result of any faults or interruptions in the iTEL Service other than as specified in these Terms and Conditions.

2.7 Termination of Agreement

2.7.1 This agreement continues in force from the date on which it is accepted by iTEL until the end of the Subscription Period.

2.7.2 Unless iTEL is notified otherwise by Subscriber in advance, this agreement automatically renews on the same pricing plan and terms at the end of the Subscription Period.

2.7.3 Subscriber may terminate this agreement during the cooling off period of five clear working days from the date the agreement is accepted. If the customer wishes to exercise termination during the cooling-off period this must be done in writing and any goods supplied in relation to the contract must be returned to iTEL at the Customer's expense.

2.7.4 Subscriber may terminate this agreement by providing 14 days written notice to iTEL prior to the end of Subscription Period or contract period. If Subscriber terminates this agreement before the end of a contract period the remainder of subscription fees for the duration of the contract period must be paid upfront.

2.7.5 iTEL may terminate this agreement at any time by providing 14 days written notice to Subscriber.

3 Installation

3.1 iTEL will use reasonable endeavours to commence a Service by a date agreed between iTEL and the Customer; iTEL will advise the Customer when the Service has commenced. However, the Customer

agrees that neither iTEL nor its Primary Carrier will be held liable for any inconvenience, loss or damage suffered by the Customer if iTEL does not commence the Service by the agreed date.

- 3.2 An Application for an Internet Service is subject to a Service Qualification on the telephone line on which the service is to be provided. The Customer agrees to pay any fees applicable for Service Qualification and that they are non-refundable.
- 3.3 Where the Customer also acquires a Monitoring Service, iTEL will use reasonable endeavours to notify the provider of the Monitoring Service prior to any disconnection or potential disruption of the Customer's standard telephone services caused by or on behalf of iTEL in providing a Broadband Service to the Customer, including any disconnection or disruption arising out of the installation and maintenance of customer premises equipment.. The Customer agrees that neither iTEL nor its Primary Carrier will be held liable for any inconvenience, loss or damage suffered by the Customer as the result of any disruption to the Customer's Monitoring Services.
- 3.4 The Customer acknowledges iTEL can only supply a Broadband Service over a Qualified Pair that is used for standard telephone services and accordingly:
- a) The Customer warrants to iTEL that the Customer to whom iTEL provides services using the Service over a Qualified Pair is the same Customer to whom iTEL (or its Primary Carrier) supplies a standard telephone service using that Qualified Pair. For an iTEL Broadband service, the standard telephone service must be provided by Telstra or a reseller of Telstra services.
 - b) iTEL will only provide the Service to the Customer for so long as the Customer continues to acquire that standard telephone service from iTEL (or its Primary Carrier) using that Qualified Pair, and
 - c) Where the Customer ceases to acquire a standard telephone service from iTEL (or its Primary Carrier) using that Qualified Pair, iTEL will terminate the provision of the Service over that Qualified Pair.
 - d) the provision of the Broadband Service over a Pair will prevent the supply by iTEL or other service providers of Incompatible Products to the relevant Customer over that Pair, and that the Customer is responsible and liable in respect of that inability to supply Incompatible Products; and
 - e) where the Customer is acquiring Incompatible Products over a Pair, iTEL will not provide the Broadband Service to the Customer over that Pair.
- 3.5 The Customer acknowledges that:
- a) in some instances, such as where the Customer is acquiring a an answering machine or Monitoring Service, additional Customer Equipment such as central splitters and network termination devices may need to be installed by the Customer at the Customer's cost before iTEL will provide a Broadband Service in respect of that Customer, in order to maintain continued supply of security and similar services to the Customer. This will also apply where a Monitoring Service is supplied subsequent to a Broadband Service being supplied to that Customer; and where such additional Customer Equipment is required, the additional Customer Equipment will be installed by Customer prior to the provision of a Service by iTEL.
 - b) the installation and operation of the Service may cause temporary disruption in the standard telephone services and any services using this line including a Monitoring Service used by the Customer.
- 3.6 The Customer releases iTEL from all liability to the Customer, and indemnifies iTEL against all costs, expenses, liability, loss or damage incurred or suffered by the Customer in connection with any claims, actions or proceedings against iTEL (including third party claims or claims by a Customer) arising out of the following (to the extent that the liability is caused by the provision or cancellation of the iTEL Broadband Service):
- (i) disruption in Public Switched Telephone Services (PSTN) services or Monitoring Services;
 - (ii) cancellation of the Service;
 - (iii) suspension of the provision of the Service to particular IP Addresses;
 - (iv) cancellation of, or refusals to provide, all Incompatible Products; and
 - (v) possible breaches of the Telecommunications (Customer Service Guarantee) Standard in respect of that Customer.
- 3.7 iTEL provides a choice of national and local dial in numbers for its dialup service; however it is the Customer's responsibility to check with their carrier to confirm that the dial in number is a local or STD

call rate from the Customer's premises. Customer acknowledges that iTEL can not be held responsible for any call charges associated with connecting to the service.

4 Equipment

- 4.1 iTEL provides no guarantees as to the compatibility of its service with any software or hardware, including operating system platforms and virus protection software.
- 4.2 iTEL does not warrant support for Mac OS, UNIX or any other operating system software older than three years from its release date.
- 4.3 iTEL is not liable to provide an iTEL Broadband Service or iTEL Broadband Provided Equipment if the necessary equipment and facilities are not available for the Customer's Premises.
- 4.4 The Customer is wholly responsible for any non iTEL Primary Carrier Equipment and any liability arising from the use of the non iTEL Primary Carrier Equipment if used to access the Primary Carrier networks through iTEL Broadband.
- 4.5 The iTEL Broadband Service does not include the provision of cabling or equipment beyond the Primary Carrier Network Boundary at the Customer's Premises or at or beyond the point of interconnect on the Primary Carrier Network.
- 4.6 When non iTEL Primary Carrier equipment is connected to Primary Carrier networks, and whilst iTEL will undertake reasonable endeavours to ensure the following requirements are met, the iTEL Broadband Service can only be supplied when this non iTEL Primary Carrier equipment:
- a) meets the specifications and requirements of the respective Primary Carrier's Technical Documents;
 - b) at the Customer side of the Network Boundary only, has passed Primary Carrier interoperability tests; and
 - c) is labelled with that ACA telecommunications compliance mark.
- 4.7 If the Customer acquires other Services from iTEL or another Service Provider for use in conjunction with the iTEL Internet Services, the Customer agrees to comply with the terms of such services including any relevant software licences supplied or granted in connection with those services.
- 4.8 Unless otherwise advised by the Customer during the Application process, the Customer's purchase (signature and acceptance of this Agreement and the subsequent ordering and provisioning of the iTEL Broadband Service to the Customer) of the iTEL Broadband Service will result in iTEL providing some Equipment to the Customer. The Customer will accept all risks associated with the equipment from the time it is delivered to the Customer.
- 4.9 If the Customer elects to provide some of its own Equipment to enable it to receive the iTEL Broadband Service:
- a) the Customer will advise the iTEL authorised representative before the Customer accepts this Agreement;
 - b) the proposal may be subsequently and tacitly accepted by iTEL but only on the basis that the Equipment will be functional, compatible and available in time for iTEL to provide this Service as per the other terms and conditions contained within this Agreement and
 - c) the Customer agrees to not hold iTEL liable for any loss the Customer may suffer as a consequence of the Customer supplied modem or other equipment is either not installed, available, functional or compatible.
- 4.10 iTEL cannot guarantee that the iTEL Broadband Provided Equipment will be fault-free. The Customer must provide a suitable place and conditions for the iTEL Broadband Provided Equipment. The Customer must provide electricity and connection points for the iTEL Broadband Provided Equipment and Equipment at the Customer's own expense.
- 4.11 The Customer:
- a) agrees to provide iTEL (or its Primary Carrier) with safe access to the Customer's premises to install, maintain or remove the iTEL Broadband Provided Equipment.
 - b) represents to iTEL that the Customer is either the owner or occupier of the Customer's premises and that the Customer has obtained any necessary permissions to allow iTEL to perform this Service Agreement;

- c) agrees to indemnify iTEL (or its Primary Carriers) against any liability iTEL may incur to any person with an interest in the Customer's premises in connection with the installation, maintenance or removal of the iTEL Broadband Service or iTEL Broadband Provided Equipment.
- 4.12 iTEL reserves the right to quote and charge the Customer if the Customer requires iTEL to remove any part of the broadband transmission facilities. iTEL will not be obliged to repair any damage to the Customer's Premises or property caused by the removal of the iTEL Broadband Service or iTEL Broadband Provided Equipment.
- 4.13 For the purposes of any regulations made for the purposes of sub-section 22(1) of the Telecommunications Act 1997 and in any event, the boundary of iTEL's Primary Carrier's telecommunications network is the wall-plate in the Customer's premises, or such other point as iTEL's Primary Carrier may advise on reasonable notice.
- 4.14 iTEL permits the Customer to use the broadband transmission facilities to receive the iTEL Broadband Service on the terms contained within this Service Agreement.

5 Internet Usage Risks

5.1 Spam and Virus Protection

iTEL provides free Email Anti-Spam and Email Anti-Virus protection for all customers using iTEL's Dial-Up or Broadband internet service ('the Service'). The Service is designed to remove recognised viruses automatically and to tag spam messages in customer mailboxes.

By using the Service, you acknowledge and agree that:

- 5.1.1 to the maximum extent permitted by law:
- a) iTEL makes no representation, warranty or guarantee as to the efficacy of the Service;
 - b) iTEL will not be liable for any loss or damage, including damage to property and/or economic loss, arising from your reliance on the Service, howsoever caused, even if such loss or damage is caused by breach of contract and/or negligence on the part of iTEL, its agents and/or employees;
 - c) any statement made by iTEL, its agents and/or employees does not constitute a term of your agreement with iTEL unless that statement is also expressly contained in this disclaimer or in iTEL's Broadband and Dial-up product terms and conditions
- 5.1.2 The Service may not identify and/or remove all viruses and/or spam.
- 5.1.3 The Service may mistakenly identify some legitimate emails as spam.
- 5.1.4 The Service may mistakenly reject or delay some legitimate emails.
- 5.1.5 iTEL is under no obligation to notify customers of the source of any unsolicited emails received.
- 5.1.6 It is the Subscriber's sole responsibility to obtain and use all other forms of computer protection, including desktop anti-virus, firewall and spy ware protection programs.
- 5.1.7 iTEL strongly recommends the use of desktop anti-virus, firewall and spy ware protection programs, but accepts no liability for any loss or damage, including damage to property and/or economic loss, arising from the Subscriber's use or non-use of such programs, even if such loss or damage is caused by breach of contract and/or negligence on the part of iTEL, its agents and/or employees

5.2 Spy ware & Malicious Website Software

- 5.2.1 In the course of browsing the Internet, it is possible that certain websites may contain malicious software or 'spy ware' programs which can install on the Customer's computer without the Customer's knowledge. iTEL has no control over the content of the Internet and takes no responsibility for the outcomes of software obtained knowingly or unknowingly through use of the Internet.
- 5.2.2 Customer acknowledges that he/she uses the Internet as his/her own risk and that iTEL can not be held liable for any damages suffered through programs installed on the Customer's computer in the course of browsing the Internet.
- 5.2.3 iTEL strongly recommends the use of spy ware/ ad ware protection software.

5.3 Offensive Material

- 5.3.1 The Internet contains content the Customer may find unsuitable, offensive or adult in nature and which may breach Australian laws. iTEL does not endorse or control such content and disclaims any and all liability in respect of your receipt of such content. However, you have the right to make complaints to the ABA about Internet content which is or could be rated R, X or Refused Classification (RC).
- 5.3.2 The Customer acknowledges that children and minors must be supervised by a parent, teacher or other responsible adult at all times while the Customer is either using this Service, or it is allowing

children or minors or other parties to view the content of material received by the Customer when using this Service. Notwithstanding the provisions of clause 5.2.1, iTEL will not be responsible for content that may be viewed by children and minors without proper adult supervision.

- 5.3.3 The Customer must take all reasonable measures to prevent unauthorised access to the iTEL Internet Service. The Customer acknowledges that if it runs certain applications (such as File Transfer Protocol or Hyper Text Transfer Protocol), other users may gain access to the Customer's computer.
- 5.3.4 If the Customer buys goods or services on the Internet, iTEL will not be responsible or liable for those goods and services and the Customer is liable for any fees or charges the Customer incurs. If the Customer sends confidential information such as credit card details over the Internet, the Customer bears all risks and losses arising from such transmissions.
- 5.3.5 iTEL may monitor the Customer's use of the iTEL Internet Service to ensure that the Customer is complying with these Terms; however iTEL is not obliged to do so. iTEL may investigate any misuse or suspected misuse of the iTEL Internet Service and may involve the police or other law enforcement agencies in doing so. iTEL may recover the cost of such investigation if it is established that the Customer has misused the iTEL Internet Service. If the Customer's use of the iTEL Internet Service has caused any loss or damage to third parties, the Customer is to compensate them for such loss or damage.

6 Acceptable Use Policy

- 6.1 Subscriber must use the Service in a responsible and co-operative manner, taking into account the effects the Customer's use of the Service may have on other users and the iTEL network.
- 6.2 The Customer must at all times comply with the Acceptable Use Policy published by iTEL and any instructions iTEL may give to the Customer from time to time.
- 6.3 Subscriber is responsible for obtaining and maintaining Subscriber's Computer System and telephone services necessary to access and use the Service.
- 6.4 Subscriber is responsible for any telephone charges associated with connecting to the Service.
- 6.5 Subscriber must not resell, on-sell or on-provide the Service to third parties. For example, Subscriber may not "sub-host" another's website as part of Subscriber's Personal Home Page.
- 6.6 When using the iTEL Internet Service, the Customer must not contravene any laws or any relevant industry codes of practice or infringe the rights of any person. The Customer must not use the Service to engage in misleading or deceptive marketing practices, or to conduct, or as part of, a business that is illegal. Whilst using the Service, the Customer must not impersonate another person or organisation.
- 6.7 Subscriber must not do any Prohibited Acts.
- 6.8 Attempting to do or knowingly permitting another to do a Prohibited Act is a Prohibited Act
- 6.9 The following are Prohibited Acts:
 - a) using the Service for any illegal purpose or in a way contrary to any law;
 - b) tampering with, hindering the operation of or making unauthorised modifications to the Service (other than in the normal use and operation of Subscriber's Personal Home Page);
 - c) deleting another's data from iTEL's system without permission;
 - d) knowingly transmitting a computer virus, worm or disabling feature to iTEL, to another iTEL customer or via the Service;
 - e) using the Service to access another's computer system without permission;
 - f) using the Service to publish, transmit or store any communication, information or data that is defamatory, obscene, sexually explicit, abusive or violates any federal, state or local law or regulation;
 - g) Subscriber must not do any Prohibited Acts or knowingly permit another to do a Prohibited Act
- 6.10 Federal law allows the *Australian Broadcasting Authority* (ABA) to direct iTEL to remove certain prohibited Internet content from iTEL's servers or prevent users from accessing certain Internet content. iTEL may take any steps necessary to ensure that the iTEL Internet Service complies with any relevant industry code of practice or notification or direction from the ABA, including removing any content (including part or all of a website) from iTEL servers, terminating or suspending the iTEL Internet Service, filtering the Internet content available to you and restricting your access to particular Internet content or websites. iTEL may take these actions at any time without notice to the Customer.
- 6.11 In relation to using the Service for sending and receiving information from/to newsgroups, the Customer must not use the Service to:

- a) engage in mass posting of messages or the posting of messages to inappropriate newsgroups;
- b) post advertisements other than in newsgroups that specifically encourage or permit advertising;
- c) post binary files other than in newsgroups that specifically encourage or permit such postings;
- d) post large or numerous messages with the purpose of disrupting a newsgroup; or
- e) send messages that contain invalid or forged headers or domain names or deceptive addressing.

6.12 Specifically, the Customer must not use the iTEL Internet Service to:

- a) publish, distribute, transmit or otherwise make available any material that is offensive, abusive, discriminatory, illegal, indecent, pornographic, obscene or menacing;
- b) defame, harass or abuse anyone or violate their privacy;
- c) infringe the intellectual property rights or disclose the confidential information of any person without their authority (such as the use, copying or distribution of any data or software without the owner's authority);
- d) interfere with or disrupt iTEL or Primary Carrier systems, or any other computer system (including by overloading iTEL's systems or by distributing harmful viruses);
- e) access, monitor, hack into, or use any data, systems or networks without the authority to do so;
- f) send any bulk unsolicited e-mails to others (i.e. spamming);
- g) send any e-mails, which including attachments, exceed 10 megabytes;
- h) send emails with attachments which exceed 7 megabytes;
- i) send an email to more than 400 single recipients at the one time, the interval between these occasions being no less than 15 minutes;
- j) send e-mails which when multiplied out by the number of recipients exceed 100 Megabytes per 15 minutes;
- k) store emails in your mailbox which, in total, exceed 20 megabytes;
- l) send email that hides or obscures the source of the email you send, that contains invalid or forged headers or domain names or deceptive addressing;
- m) receive responses from bulk unsolicited email where the original was distributed by you;
- n) relay email from a third party's mail server without permission;
- o) collect or harvest screen names or email addresses of others for the purpose of sending unsolicited emails or for exchange;
- p) send large or numerous emails with the purpose of disrupting another's computer or account;
- q) send email that may damage or effect the performance of the email recipient's computer; or
- r) persistently send email without reasonable cause or for the purpose of causing annoyance, inconvenience or needless anxiety to any person.

7 Internet Service

The iTEL internet service includes only;

- a) Internet access according to the pricing plan selected by Subscriber;
- b) one user ID and password to access the Service;
- b) one e-mail address and mailbox;
- c) hosting of one Personal Home Page of no more than 5 MB;
- d) any other additional service made available by iTEL and requested by Subscriber.

7.1 Warranty

7.1 Subscriber is responsible for obtaining, installing and operating Subscriber's Computer System to use and access the Service.

7.2 Subscriber warrants that Subscriber's Personal Home Page does not and will not infringe the intellectual property rights of any other person.

7.3 In relation to ensuring the continued operation of an iTEL Internet Service, the Customer:

- a) must not interfere with the normal operation of the iTEL Broadband Service, which includes any equipment or facility used to provide that Service to the Customer;
- b) must ensure safe and timely access by staff of iTEL or its Primary Carrier who are:
 - (i) inspecting or testing equipment that may be causing interference or danger; and
 - (ii) conducting maintenance and/or repair work of iTEL Broadband Service Equipment;

- c) must undertake modifications, as requested by iTEL (or its Primary Carrier), to any Facility or Equipment to avoid danger;
- d) indemnifies iTEL (or its Primary Carrier) against a claim by the owner or occupier of the Customer's premises, or any other person, in relation to iTEL (or its Primary Carrier's) entry onto those premises;
- e) acknowledges that due to the carrying out of engineering work, there may be a minor disruption to the Customer's standard telephone Service during Service provisioning;
- f) acknowledges that certain Incompatible Products may not be available to the Customer;
- g) must advise iTEL in a timely manner if the Customer has reason to suspect that the Service is being used contrary to the applicable Terms and Conditions or the Acceptable Use Policy.
- h) acknowledges that iTEL is under no obligation and provides no warranty to deliver emails with attachments over 3mb on a dial-up service.

7.2 Username

- 7.2.1 Subscriber will have one access user ID and password, Subscriber may be able to create other user IDs and passwords for specific components of the Service.
- 7.2.2 Subscriber is responsible for maintaining the secrecy of the password. Subscriber is responsible for changing Subscriber's password at regular intervals. Subscriber must notify iTEL if Subscriber becomes aware that another person has obtained unauthorised access to Subscriber's User ID and password, or if there is a threat to the security or proper operation of the Service.
- 7.2.3 Subscriber must not permit another person to access the Service using Subscriber's User ID and password, other than the spouse or children of Subscriber. All access to, and use of the Service under Subscriber's user ID and password will be assumed to be authorised access and use by Subscriber. Subscriber is responsible for all charges, and use and misuse of the Service by any person using Subscriber's User ID and Password.

7.3 Personal Homepage Hosting

- 7.3.1 Subscriber may create a Personal Home Page to be hosted on iTEL's server of no more than 5 megabytes of storage space. Additional storage space may be made available by iTEL to Subscriber upon the payment of a fee in accordance with the Price List.
- 7.3.2 Subscriber's Personal Home Page must only contain material of a personal or non-profit nature. Subscriber must not post any material of a commercial nature on a Personal Home Page.
- 7.3.3 iTEL will not monitor or be responsible for material posted on Subscriber's Personal Home Page.
- 7.3.4 iTEL does not create or design websites for Subscribers. Subscriber is responsible for the creation of a Personal Home Page, if Subscriber wishes to use this part of the Service.
- 7.3.5 iTEL reserves the right to delete or prevent access to Subscriber's Personal Home Page containing material which iTEL believes is inappropriate. If this occurs, iTEL will not be obliged to compensate Subscriber or to reinstate this part of the Service to Subscriber.

7.4 Ownership

- 7.4.1 Each User ID, e-mail address and Personal Home Page web address allocated by iTEL to Subscriber or selected by Subscriber remains the property of iTEL. Subscriber obtains no ownership rights or goodwill in any such User ID and addresses.
- 7.4.2 iTEL may require Subscriber to change a User ID, e-mail or web address selected by a Subscriber.
- 7.4.3 Subject to technical limitations, use of Subscriber's e-mail address may be transferred to another subscriber upon request or consent of Subscriber.
- 7.4.4 Subscriber acknowledges that Subscriber does not acquire any interest in any intellectual property rights in or associated with the iTEL user's manual, iTEL's system, iTEL's website or the Service provided under this agreement, and that Subscriber will not challenge any interest claimed by iTEL in those intellectual property rights.
- 7.4.5 Subscriber acknowledges that any information transmitted over or placed on the Internet by Subscriber may be accessed by third parties. Subscriber will not transmit over or post on the Internet information which is confidential to another person without that person's prior consent.

7.5 Fault Rectification

- 7.5.1 If the Customer experiences a problem with the iTEL Service, the Customer should report by phoning the number shown in the Application Form.

- 7.5.2 iTEL will use reasonable efforts to rectify the problem as soon as possible.
- 7.5.3 If the Customer reports a fault and iTEL finds there is no fault or the fault was not caused by iTEL (or its Primary Carrier), iTEL may charge for any work undertaken to try to find the fault or repair it.
- 7.5.4 iTEL will not provide fault restoration under this Service Agreement where the fault is in a network or cabling owned, controlled or maintained by any person or organisation other than iTEL (or one of its Primary Carriers).

7.6 System Availability

- 7.6.1 iTEL will use reasonable efforts to ensure that the Service is available to Subscriber at all times, subject to:
- i) scheduled downtime for system maintenance; and
 - ii) the published hours of operation of particular service components (e.g. help desk)
- 7.6.2 Subscriber acknowledges that access to the Service may be unavailable due to:
- i) equipment or services malfunction or breakdown
 - ii) electrical short circuit and power failure
 - iii) telecommunications failure
 - iv) the failure or unavailability of a third party product to service industrial dispute
 - v) act of God
 - vi) unscheduled emergency maintenance
 - vii) causes beyond iTEL's control
 - viii) suspension or cancellation of Service to Subscriber in accordance with clause 9.
- 7.6.3 iTEL may temporarily suspend provision of the Service (or any part thereof) to allow iTEL to perform necessary maintenance of iTEL's system. In doing so, iTEL will attempt to give Subscriber prior notice of the suspension and will attempt to minimize inconvenience to Subscriber.
- 7.6.4 iTEL will not be liable to compensate Subscriber for the unavailability or loss of access to the Service.

8 Web Hosting Service

8.1 Base Hosting Package

- 8.1.1 The Customer may select one Base Hosting Package and, if desired, additional Optional Services. The Base Hosting Package and the Optional Services can be selected by marking the appropriate boxes on the web hosting application form or by requesting such services by written notice to iTEL.
- 8.1.2 A number of Base Hosting Packages are available. Customer must select one Base Hosting Package. The detail of what is included in each Base Hosting Package is set out on the Price List. Each Base Hosting Package comprises the following features:
- storage space on iTEL's server to allow Customer to store Customer's website;
 - the transfer of data from iTEL's server to Internet users via a iTEL's Internet connection;
 - Internet email mailboxes so that Customer can send and receive Internet email;
 - CGI capabilities;
 - database access;
 - provision of usage statistics; and
 - help desk services.
- 8.1.3 iTEL may add features to a Base Hosting Package without prior notice to Customer. iTEL may remove features of a Base Hosting Package used by Customer only upon prior notice to Customer.
- 8.1.4 iTEL will host Customer's website, and if required by Customer, make it generally available to Internet users.
- 8.1.5 iTEL may provide software or automated services to assist Customer develop Customer's website. Customer is responsible for the creation of Customer's website in all circumstances, including when using such software or automated services.
- 8.1.6 Customer can change and update Customer's website using FTP access and other methods made available by iTEL from time to time.

8.2 Optional Web Hosting Services

- 8.2.1 From time to time, iTEL will provide Optional Services. Customer may accept one or more of the Optional Services offered by iTEL. Customer must have a Base Hosting Package as a precondition to

obtaining Optional Services. The details of what is included in an Optional Service will be set out on the Price List for the Optional Service when these become available.

- 8.2.2 Use of an Optional Service is subject to the terms of this Agreement and the Terms of Use for the Optional Service. iTEL may add Optional Services and features to Optional Services without prior notice to Customer. In respect of Optional Services selected by Customer, iTEL may remove Optional Services and features of Optional Services only upon prior notice to Customer.

8.3 Web Hosting Fees & Charges

- 8.3.1 Different fees are charged for commercial enterprises and non-profit/community organisations. Customer warrants that the category of user selected by Customer on the Application form correctly describes Customer. Customer must pay iTEL the fees and usage charges set out on the current Price List for the iTEL services selected by Customer.
- 8.3.2 iTEL will not provide any services pursuant to this Agreement until: this Agreement is signed by Customer and accepted by iTEL; and all applicable establishment fees and "pay in advance" fees are paid by Customer.
- 8.3.3 iTEL will not refund any establishment fees or "pay in advance" fees if Customer: terminates this Agreement; or does not use any services paid for by Customer.
- 8.3.4 Certain fees and charges are payable by Customer to iTEL in arrears. These fees and charges are set out in the Price List and include charges for maintenance requested by Customer, specialist support, and usage greater than that covered by the Base Hosting Package selected by Customer.
- 8.3.5 The amount of all fees and charges are determined according to iTEL's current Price List. iTEL may vary its Price List at any time.
- 8.3.6 iTEL will issue invoices for all fees and charges that are payable in arrears.
- 8.3.7 Customer must pay iTEL's all invoiced amounts within 14 days of the date of the invoice. If Customer disputes an invoiced amount, Customer must notify iTEL in writing within 14 days of the date of the invoice. The undisputed amount of the invoice must be paid on time.
- 8.3.8 iTEL may charge Customer an administration fee of \$20 if a cheque presented by Customer is not honoured or if an electronic or credit card payment made by the Customer is reversed.
- 8.3.9 If an amount remains unpaid after the due date, Customer may be required to pay interest on that amount until it is paid in full. The rate of interest will be the Reserve Bank's Official Cash Rate (as published in the Australian Financial Review) plus 5%.

8.4 Web Hosting Term & Termination

- 8.4.1 This Agreement continues in force until terminated by either party. Customer may terminate the Web Hosting Agreement by providing 14 days written notice to iTEL. If the Customer terminates before the end of a contract period the subscription fees for the remainder of the contract are to be paid to iTEL upon termination.
- 8.4.2 iTEL may terminate this Agreement:
- i) by providing 14 days written notice to Customer;
 - ii) immediately and without notice, if Customer breaches this Agreement; or if required by law or court order.
 - iii) if Customer fails to pay an invoice within 14 days of its due date
- 8.4.3 This Agreement automatically terminates if Customer provides notice to iTEL in accordance with clause 2.4.2.
- 8.4.4 Upon termination of this Agreement, Customer will be provided with an invoice in relation to services used prior to termination. This invoice must be paid within 14 days. All prior invoices immediately become due and payable upon termination of this Agreement.
- 8.4.5 Upon termination of this Agreement, iTEL may delete the Customer's website from iTEL's computer system or prevent access to Customer's website.
- 8.4.6 iTEL is not liable for any failure to comply with this Agreement if that failure is caused by an act beyond iTEL's reasonable control.
- 8.4.7 Customer may not transfer this Agreement or any service provided under this Agreement without iTEL's prior written consent. iTEL may assign this Agreement to a third party without Customer's consent. Cancellation or suspension of the Base Hosting Package or any Optional Services does not effect the provisions of this Agreement regarding limitation of liability and indemnity.
- 8.4.8 Customer may not set-off any claim against amounts payable to iTEL.
- 8.4.9 iTEL may, but is under no obligation to, monitor Customer's website (including non-public sections) to ensure compliance with this Agreement and for any other reason considered appropriate by iTEL.

8.5 Users & Ownership of Web Hosting Service

- 8.5.1 Customer may nominate one or more Registered Users to access and change Customer's website and access Customer's email service. Each Registered User must be a natural person. Each Registered User must be associated with Customer, for example, as a principal, owner, employee or contractor of Customer.
- 8.5.2 Each Registered User of Customer will have: a User ID and initial password; and if e-mail is provided by iTEL's as part of the service requested by Customer, an e-mail address and mailbox.
- 8.5.3 Customer and each Registered User are responsible for maintaining the secrecy of their passwords. All access to and use of any iTEL service under a User ID and password will be assumed to be access and use by the Registered User to whom the User ID has been allocated.
- 8.5.4 Customer and its Registered Users must not permit another person to access an iTEL service using a User ID allocated to a Registered User of Customer.
- 8.5.5 Customer is responsible for all usage fees, and use and misuse of an iTEL service, by any person using a User ID allocated to a Registered User of Customer.
- 8.5.6 iTEL and its respective suppliers retain ownership of all software and data provided by iTEL to Customer, including all intellectual property rights therein.
- 8.5.7 iTEL has no ownership rights in the content of Customer's website.
- 8.5.8 Customer warrants that Customer's website does not and will not infringe the intellectual property rights of any other person.
- 8.5.9 Without limiting clause 8.8.7, Customer indemnifies, will defend and hold iTEL harmless from any claim, action, loss, damage, expense, or cost (including all legal costs and fees) arising out of or resulting from any claimed or actual intellectual property infringement by Customer or relating to Customer's website.
- 8.5.10 Each iTEL e-mail address or iTEL web address (sub-domain) allocated by iTEL to a Customer or selected by Customer remains the property of iTEL. Customer obtains no ownership rights or goodwill in any such address.
- 8.5.11 iTEL may require a Customer to change an iTEL e-mail or web address selected by a Customer. Subject to technical limitations, use of an iTEL e-mail address may be transferred to another Customer upon consent of the Customer associated with the e-mail address.

8.6 Suspension and Cancellation of Web Hosting Service

- 8.6.1 Customer may cancel a Base Hosting Package or Optional Service by notifying iTEL in writing. Without limiting iTEL's right to terminate under clause 8.4.2, iTEL may suspend or cancel a iTEL service, delete the Customer's website from iTEL computer system, or prevent access to Customer's website, if:
- there is an emergency;
 - Customer does not pay an invoice on time;
 - Customer becomes bankrupt, insolvent or has a receiver, manager or liquidator appointed;
 - Customer's or a Registered User's use of an iTEL service interferes with the proper operation of iTEL;
 - Customer breaches this Agreement;
 - iTEL believes (whether this belief is reasonable or not) Customer or a Registered User of Customer have performed or are attempting to perform a Prohibited Act;
 - iTEL believes (whether this belief is reasonable or not) that Customer's website infringes or may infringe another's intellectual property rights, is defamatory, or may involve iTEL in a legal dispute;
 - Customer brings legal action against iTEL;
 - Customer's level of use of an iTEL service is significantly greater than normal; or
 - As required to do so by law or a court order.
- 8.6.2 If the Base Hosting Package is cancelled or suspended pursuant to clause 8.6.1, then all Customer's Optional Services will be cancelled or suspended.
- 8.6.3 iTEL may temporarily suspend an iTEL service if necessary to allow iTEL to perform maintenance of iTEL hardware or software. In doing so, iTEL will attempt to give Customer prior notice of the suspension and will attempt to minimise inconvenience to Customer.

8.7 Use of Web Hosting Service

- 8.7.1 Customer acknowledges that iTEL can not and does not provide web hosting technical support at all times. iTEL provides support during the hours and on the days the call centre is open, published on the iTEL website. iTEL is under no obligation to provide support outside these hours and can not be held liable for damages or loss due to unavailability of call centre support.
- 8.7.1 Customer and each Registered User must use iTEL's services in a responsible, cooperative and professional manner.
- 8.7.2 Customer is responsible for the content contained on Customer's website. iTEL does not exercise editorial control over the Customer's website. Customer is responsible for obtaining and maintaining the equipment and telephone services necessary to access and use any iTEL service and for any telephone charges associated with connecting to any iTEL service.
- 8.7.3 Customer cannot resell, on-sell or on-provide iTEL's services to third parties. For example, Customer may not "sub-host" another's website as part of Customer's website or using iTEL's services.
- 8.7.4 Customer must instruct all Customer's Registered Users not to do any Prohibited Acts. Customer is responsible if any of Customer's Registered Users (or any person using the User ID allocated to a Registered User of Customer) does any Prohibited Act.
- 8.7.5 Customer and each Registered User agree to notify iTEL if Customer or the Registered User become aware that another person has obtained unauthorised access to a Registered User's password, or if there is a threat to the security or proper operation of an iTEL service.

8.8 Limitation of Liability of Web Hosting Services

This clause limits iTEL's liability in relation to this Agreement. Please read it carefully.

- 8.8.1 To the maximum extent permitted by law, in relation to a service provided under this Agreement to Customer, iTEL's liability to Customer is limited to:
- i) at iTEL's option, resupplying the service; or
 - ii) at iTEL's option, paying for the resupply of the service.
- 8.8.2 To the maximum extent permitted by law, iTEL is not liable to Customer or any Registered User: for anything iTEL does or fails to do in relation to this Agreement; and for any loss or damage, whether direct or indirect or consequential, including time, money, good will, lost profits, damage to or loss of data, or damage to hardware or software, which may arise from the use, operation, maintenance or failed use of an iTEL service or which may arise from delays, defects, errors, omissions or interruptions in an iTEL service.
- 8.8.3 iTEL does not warrant the quality, accuracy or fitness for any particular purpose of an iTEL service.
- 8.8.4 Due to technology, iTEL does not warrant that the Customer's website will be accessible at all times or that any iTEL service will be uninterrupted or error free.
- 8.8.5 Customer is responsible for obtaining, installing and operating the hardware and software to use and access to iTEL's services. Customer is responsible for the creation and modification of Customer's website. Customer is responsible for all approvals, consents and permissions necessary in relation to Customer's website.
- 8.8.6 Customer acknowledges that the iTEL services are provided in part using third party services and products. If iTEL's use of such third party services or products is restricted or interrupted, then this may effect the provision of the iTEL's services to the Customer. iTEL is not liable to Customer if this occurs.
- 8.8.7 Customer indemnifies, will defend and hold iTEL harmless from any claim, action, loss, damage, expense, or cost (including all legal costs and fees) arising out of or resulting from:
- i) any action of, representation made by or conduct of Customer;
 - ii) the storage, transmission, display, operation, failed operation or publication of Customer's website, including the content and information provided on the Customer's website;
 - iii) any breach of this Agreement by Customer;
 - iv) any Prohibited Acts of Customer or Customer's Registered Users; or access to or use of a iTEL's service by Customer or Customer's Registered Users.

9 Service Suspension and Cancellation

9.1 Suspension

- 9.1.2 Without limiting iTEL's right to terminate under clause 9.2, iTEL may suspend or cancel provision of the Service (or any part thereof) to Subscriber, delete Subscriber's Personal Home Page from iTEL's server, or prevent access to Subscriber's Personal Home Page, if:
- a) there is an emergency;

- b) Subscriber does not pay an invoice by the due date;
- c) Subscriber's Computer System or Subscriber's use of the Service interferes with the proper operation of iTEL, iTEL's system or the Service;
- d) iTEL believes (whether this belief is reasonable or not) Subscriber has performed or is attempting to perform a Prohibited Act;
- d) iTEL believes (whether this belief is reasonable or not) that Subscriber's Personal Home Page infringes or may infringe another's intellectual property rights, is defamatory, or may involve iTEL in a legal dispute;
- e) Subscriber brings legal action against iTEL; or
- f) required to do so by law or a court order.

9.2 Cancellation

- 9.2.1 Cancellation or suspension of the Service does not effect the provisions of this agreement regarding limitation of liability and indemnity.
- 9.2.2 Subject to clause 9.2.4, the Customer can terminate the iTEL Internet Service by giving **14 days written notice to iTEL and paying any amounts in arrears for the remainder of the contract.**
- 9.2.3 If iTEL suspects that the Customer has breached any material term of this Service Agreement including engaging in conduct that is contrary to the Acceptable Use Policy, iTEL can without affecting any other rights iTEL may have, immediately terminate or suspend the Customer's Service. The Customer will still be liable to pay Monthly Fees during the period of suspension if iTEL terminates this Service Agreement. If the Customer has not paid the cancellation fee in clause 9.2.4, the Customer must return to iTEL all iTEL Provided Equipment.
- 9.2.4 If the Customer decides to terminate an iTEL Broadband Service after the end of the Cooling-off Period, if applicable, and before the end of the Initial Term, the Customer must pay to iTEL a cancellation fee which is made up of the following cancellation charges
 - a) Balance of Minimum Term monthly fees.
 - b) Balance of Modem cost OR return of the modem (if applicable).
 - c) Disconnection fee.
 - d) Cancellation charges payable for cancellation before Minimum Term expires are – (a), (b) and (c).
 - e) Cancellation charges payable for cancellation after expiry of the Minimum Term and before Initial Term expires are – (b) and (c).
 - f) Cancellation charges listed above do not apply for cancellations after the Initial Term expires.
- 9.2.5 If iTEL terminates or suspends the iTEL Service for any reason covered by clause 9.2.9 and later at the Customer's request iTEL agrees to reinstate the iTEL Broadband Service, the Customer must pay a reconnection fee and any other applicable fees.
- 9.2.6 iTEL is otherwise entitled to terminate this Service Agreement by giving the Customer **14 days notice.** If iTEL terminates this Service Agreement in this way, the Customer may purchase any iTEL Broadband Provided Equipment for the unamortised cost of it as advised by iTEL.
- 9.2.7 iTEL may cease to supply a Service to the Customer **upon 14 days written** notice to the Customer. iTEL will use reasonable endeavours to provide as much notice to Customer as possible (but not less **than 14 days notice**) of its intention to cease the supply of an Individual Service.
- 9.2.8 If iTEL terminates this agreement under clause 9 where such termination takes place prior to the end of a Subscription Period, iTEL will refund all unused "paid in advance" subscription and usage fees paid by Subscriber, less any other fees owed by Subscriber to iTEL.
- 9.2.9 iTEL may terminate this agreement immediately without notice if:
 - a) Subscriber breaches this agreement;
 - b) Subscriber does not pay an invoice by the due date;
 - c) iTEL in its sole discretion determines that Subscriber has used the Service in an unacceptable manner;
 - d) any claim is made or threatened against iTEL or iTEL is exposed to potential liability for a statutory penalty, infringement of third party rights or prosecution for an offence due to acts of Subscriber;
 - e) iTEL's licence or authority to provide the Service is withdrawn, restricted or altered in such a way that iTEL considers it undesirable to continue to supply the Service;
 - f) Subscriber becomes or threatens to become bankrupt or insolvent or has a receiver, manager or liquidator appointed or ceases or threatens to cease to carry on business in the normal manner;
 - g) Subscriber dies;

- h) required to do so by law or court order; or
- i) iTEL is otherwise obliged to discontinue provision of the Service.

- 9.2.10 This agreement automatically terminates if Subscriber provides notice to iTEL in accordance with clause 9.2.2
- 9.2.11 Upon termination of this agreement, Subscriber will receive from iTEL an invoice in relation to the Service used but previously not billed. This invoice must be paid within 14 days. All prior invoices immediately become due and payable upon termination of this agreement.
- 9.2.12 Termination of this agreement will not prejudice any accrued rights of either party.
- 9.2.13 On termination of this agreement, iTEL may delete Subscriber's Personal Home Page from iTEL's system or prevent access to Subscriber's Personal Home Page.
- 9.2.14 Once this agreement is terminated for any reason, Subscriber must submit a new Application and pay any re-connection fee to resubscribe to the Service.

9.3 Notice

- 9.3.1 Written notice may be given by iTEL to Subscriber by:
 - a) mail to Subscriber's address set out in the Application;
 - b) by e-mail to Subscriber's iTEL e-mail address for the Service; or
 - c) by fax to Subscriber at the fax number set out in the Application.
- 9.3.2 An e-mail to Subscriber's e-mail address is deemed received by Subscriber when placed by iTEL in Subscriber's mailbox.
- 9.3.3 All e-mails received by iTEL that originated from Subscriber's iTEL e-mail service are deemed to have been sent by Subscriber.
- 9.3.4 Subscriber may change Subscriber's address, email or fax details by providing written notice to iTEL.
- 9.3.5 Notice may be given by Subscriber to iTEL only through written confirmation either by e-mail or by fax.

10 Charges and Payment

10.1 Fees

- 10.1.1 Different fees may be charged by iTEL for different classes of subscribers, such as commercial and personal subscribers, and based on the geographic location of subscribers. Subscriber warrants that Subscriber is within the class and geographic area relating to the pricing plan selected by Subscriber.
- 10.1.2 Subscriber must pay the fees and user charges set out in the Price List for the pricing plan selected by Subscriber. The current Price List is located on iTEL's website.
- 10.1.3 Some fees must be paid in advance, as specified in the Price List. iTEL will not provide any Service pursuant to this agreement until all paid-in-advance fees are paid by Subscriber.
- 10.1.4 iTEL will not refund any fees if Subscriber:
 - a) terminates this agreement; or
 - b) does not use the Service.
- 10.1.5 iTEL may vary its Price List at any time without notice to Subscriber. The new Price List will take effect at the commencement of the next Subscription Period.

10.2 Payment

- 10.2.1 The Customer must pay the Monthly Fee during the Term and other fees set out in iTEL Pricing Schedule from the date on which iTEL commences supplying the iTEL Internet Service to the Customer. The Monthly Fee must be paid in advance by cheque to iTEL's address as specified in the Application Form, or by other means of payment that iTEL notifies the Customer as acceptable. The Customer must pay iTEL any other applicable charges as set out in the Application Form or Pricing Schedule upon iTEL's request including the Installation Charge and charges for changing the Customer's Services where those changes are requested by the Customer and any costs of labour or parts in maintaining iTEL Provided Equipment.
- 10.2.2 If the Customer does not notify iTEL of the Customer's termination of this Service Agreement upon expiration of the Initial Term, this Service Agreement will automatically renew at the end of the Initial Term on the same pricing plan and terms.
- 10.2.3 Subject to clauses 9 and specifically 8.2.9, the Customer may change the Customer's nominated Service associated with the Customer's contract, as set out in the Application Form, by contacting or calling iTEL. The change will become effective as soon as practicable.

- 10.2.4 Migrating to another iTEL Service does not shorten the Term or terminate the Service Agreement. The Service Agreement continues to apply for the remainder of the Term.
- 10.2.5 If the Customer varies the number of connected Services, the monthly fee will be pro-rated from the date those Services are made available to the Customer or withdrawn.
- 10.2.6 iTEL will be taken to have commenced supplying the iTEL Service to the Customer from the date of provisioning of the iTEL Service.
- 10.2.7 The charges in the Pricing Schedule may not include all taxes. The Customer must pay iTEL all stamp and other duties, fees, taxes (including any Goods and Services Tax) and charges payable on:
- a) the Customer's purchase of any hardware in relation to the iTEL Service; and
 - b) this Service Agreement or the performance of this Service Agreement; and
 - c) any payment, receipt or other transaction arising out of this Service Agreement.
- 10.2.8 Without limiting clause 10.2.7, if GST is imposed on any supply made by iTEL pursuant to this Service Agreement, the Customer must pay iTEL, in addition to any consideration payable, or to be provided, by the Customer under this Service Agreement for such supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable, or to be provided, (without any deduction or set-off) by the Customer under any other clause in this Service Agreement. Any amount payable by the Customer under this clause is payable on demand (on demand by iTEL) whether such demand is by means of an invoice or otherwise.
- 10.2.9 iTEL may terminate the Customer's iTEL Service and the Customer's Software Licences if any charges remain outstanding for **14 days**.
- 10.2.10 Subscriber must select the method by which Subscriber will pay fees and charges from the payment options made available by iTEL from time to time.
- 10.2.11 If Subscriber chooses to pay fees and charges by credit card, iTEL will automatically:
- a) charge Subscriber's credit card for any upfront or pay in advance fees at the beginning of the Subscription Period or the beginning of any renewed Subscription Period;
 - b) will charge Subscriber's credit card for ongoing, usage or extra usage charges on a monthly basis based on usage and activity of Subscriber during the previous monthly billing cycle;
 - c) may charge Subscriber's credit card for any other fees, charges, interest or indemnification amount due or payable under this agreement; and where relevant or if specified in the Price List, iTEL will send Subscriber a monthly statement of account detailing the fees and charges so charged.
 - d) If Subscriber chooses to pay other than by credit card,
 - e) initial upfront and pay in advance fees must be paid before Service commences; and iTEL will send Subscriber a monthly invoice for all other fees and charges according to the pricing plan selected by Subscriber.
 - f) iTEL may send the monthly statement of account, invoice or request for payment by e-mail to Subscriber's iTEL e-mail address.
 - g) Subscriber must pay iTEL all invoiced amounts by the due date specified in the invoice.
- 10.2.12 If Subscriber disputes an invoiced amount or a statement of account, Subscriber must notify iTEL in writing within 14 days of the date of the invoice or statement. The undisputed amount of any invoice must be paid on time.
- 10.2.13 iTEL may suspend or cancel the Service and charge Subscriber an administration fee of \$20 if a cheque presented by Subscriber is not honoured or if an electronic or credit card payment made by Subscriber is reversed or is not authorized or approved.
- 10.2.14 If an amount remains unpaid after the due date, Subscriber may be required to pay interest at a rate of 12% per annum on that amount calculated on a daily basis until it is paid in full.

10.3 Taxes and GST

- 10.3.1 For the purposes of this agreement, "GST" means the tax imposed or to be imposed by the New Tax System (Goods and Services Tax) Act 1999 (Cwlth) and the related imposition acts of the Commonwealth.
- 10.3.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this lease are exclusive of GST.
- 10.3.3 If GST is imposed on any supply or importation made by iTEL pursuant to this agreement, to the extent that any consideration payable or to be provided by the Subscriber under any other clause in this agreement for the supply is exclusive of GST, the Subscriber must pay to iTEL, in addition to that GST-exclusive consideration, an additional amount for the supply calculated by multiplying the

prevailing GST rate by the GST-exclusive consideration for the relevant supply, without any deduction or set-off. Any amount payable by the Subscriber under this clause is payable upon demand by iTEL whether such demand is by means of an invoice or otherwise.

- 10.3.4 If the amount on account of GST recovered from the Subscriber on any supply made under this agreement differs for any reason from the amount of GST paid or payable by iTEL to the Commissioner of Taxation, the difference between the two said amounts will be paid by or to the Subscriber as the case may be, provided always that if iTEL has paid the difference between the two said amounts to the Commissioner of Taxation, whether or not as part of a larger sum, no amount will be paid to the Subscriber under this clause unless iTEL is entitled to a refund of such amount from the Commissioner of Taxation.

11 Customer Privacy

- 11.1 iTEL endeavours to adopt appropriate measures to ensure the security of the Customer's account information, password and the Customer's data.
- 11.2 Information concerning the Customer will be held in a database. The database will contain the Customer's name, address, telephone numbers, bank account or credit card details, billing details, information relating to the provision and use of the iTEL Service, and information provided by the Customer in connection with this Service Agreement or the iTEL Service.
- 11.3 This information (other than bank account and credit card details) may be used:
- a) to enable iTEL to perform its obligations to the Customer under this Service Agreement, including to provide the iTEL Service;
 - b) to enable iTEL to ensure that the Customer performs their obligations under this Service Agreement;
 - c) by any entity related to iTEL and any Service Provider, for planning, research and marketing of iTEL or any Service Provider products and services, or if required by any law (including without limitation the Corporation Act), or if required by the rules of any stock exchange.
- 11.4 In addition to iTEL's other rights under this clause 11, iTEL may give Credit Information about the Customer to a credit reporting agency to:
- a) obtain a consumer credit report about the Customer; or
 - b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 11.5 In addition to iTEL's other rights under this clause 11, iTEL may (in accordance with the Privacy Amendment [Private Sector] Act 2000):
- a) obtain and use information concerning the Customer's commercial activities and commercial credit worthiness from a credit reporting agency or other business that reports on commercial credit worthiness to assess the Customer's application for the iTEL Service (if the application is for consumer credit) or to collect overdue payments;
 - b) obtain or use a consumer credit report about the Customer from a credit reporting agency to assess the Customer's application for the iTEL Service (if it is for commercial credit) or collect overdue payments; and
 - c) disclose information about the Customer to other credit providers or obtain and use information from other credit providers for the purposes of assessing the Customer's application for the iTEL Service, the Customer's ongoing credit worthiness or the status of any account held by the Customer with us or with any other credit provider.
- 11.6 The Customer consents to the collection, use and disclosure of information as set out in this clause 11. If the Customer does not want the information to be used for direct marketing, or as set out in clause 11.4 or 11.5, please notify iTEL in writing to ensure that the information is not used for these purposes.
- 11.7 "Credit Information" in the above cases means:
- a) identity particulars (name, address, and date of birth);
 - b) the Customer's application for credit or commercial credit, including the amount applied for;
 - c) the fact iTEL is a current credit provider to the Customer;
 - d) payments which are overdue by more than 60 days and for which debt collection has commenced;
 - e) advice that payments are no longer overdue in respect of a default which has been listed;

- f) information that, in iTEL's opinion, indicates that the Customer has committed a serious credit infringement; and
 - g) cheques drawn by the Customer for more than \$100 and which have been dishonoured more than once.
- 11.8 Subscriber expressly permits and authorises iTEL to furnish to Subscriber, electronically or by any other means selected by iTEL, information prepared by iTEL or by (or on behalf of) other entities, including advertising information and solicitations.
- 11.9 Subscriber acknowledges that iTEL may provide information concerning Subscriber to third parties for marketing, credit checking or other business purposes.

12 Limitation of Liability

This clause limits iTEL's liability in relation to this agreement. Please read it carefully.

12.1 Liability

- 12.1 To the maximum extent permitted by law, in relation to the Service, iTEL's liability to Subscriber is limited to, at iTEL's option:
- a) resupplying the Service; or
 - b) paying for the resupply of the Service.
- 12.1.2 To the maximum extent permitted by law, all indirect and consequential loss and damage is excluded. This includes loss or damage such as lost time, goodwill and profits, damage to or loss of data, and damage to hardware or software, which may arise from the use, operation, maintenance or failed use of the Service or which may arise from delays, defects, errors, omissions or interruptions in the Service.
- 12.1.3 iTEL does not create or check any material on the Internet other than iTEL's own website. iTEL does not take any responsibility for or warrant the accuracy, completeness or truth of anything contained on any website.
- 12.1.4 iTEL does not warrant that Subscriber's Personal Home Page will be accessible at all times or that the Service will be uninterrupted or error free.
- 12.1.5 Subscriber acknowledges that the Service is provided in part using third party services and products. If iTEL's use of such third party services or products is restricted or interrupted, then this may effect the provision of the Service to Subscriber. iTEL is not liable to Subscriber if this occurs.
- 12.1.6 iTEL does not own or control the Internet and is not responsible for Internet problems, faults or delays.
- 12.1.7 On becoming aware of any fault in iTEL's computer system or the Service, Subscriber should notify iTEL of that fault as soon as possible. Subscriber must not attempt to rectify or permit any other person to attempt to rectify such fault.

12.2 Indemnity

- 12.2.1 The Customer will be liable to iTEL for any loss, damage, liability, expense, cost or charge arising from or incurred in connection with:
- a) any fault in the iTEL Service or the iTEL Broadband Provided Equipment or Software caused by the Customer's negligence or wilful misuse, or any unauthorised use of any of this Service or iTEL Provided Equipment; and
 - b) any breach by the Customer of the iTEL Service Agreement.
- 12.2.2 iTEL accepts liability for the supply of the iTEL Service but only to the extent provided in this clause 12.
- 12.2.3 iTEL accepts liability where:
- a) the iTEL Service is not supplied with due care and skill;
 - b) any materials supplied by iTEL in connection with the iTEL Service (including the iTEL Broadband Provided Equipment) are not reasonably fit for the purpose for which they are supplied; and
 - c) it is otherwise required to do so by the Trade Practices Act.
- 12.2.4 To the maximum extent permitted by law, in relation to the Service, iTEL's liability under clause 12.2.3 is limited to, at iTEL's discretion, resupplying or paying for the resupply of the Service.
- 12.2.5 Except as stated above, iTEL is not liable in tort (including negligence), contract or otherwise for any damages, including loss of profits, business or anticipated savings or any other indirect or consequential damage.

- 12.2.6 The Customer indemnifies iTEL in respect of any loss, liability or expense arising out of the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by the Customer, using the Service.
- 12.2.7 Subscriber indemnifies, will defend and hold iTEL harmless from any claim, action, loss, damage, expense, or cost (including all legal costs and fees) arising out of or resulting from:
- a) any action of, representation made by or conduct of Subscriber;
 - b) the storage, transmission, display, operation, failed operation or publication of Subscriber's Personal Home Page, including the content and information provided on that Personal Home Page;
 - c) any breach of this agreement by Subscriber;
 - d) any Prohibited Acts of Subscriber; and
 - e) access to or use of the Service by Subscriber.
- 12.2.7 Subscriber may not set-off any claim against amounts payable to iTEL.

13 Definitions

"**ABA**" means Australian Broadcasting Authority

"**Acceptable Use Policy**" means our policy as to acceptable use of the iTEL Internet Service.

"**ADSL**" means asymmetrical digital subscriber line technology for the transmission of digital information at high bandwidths on twisted metallic pairs.

"**ADSL Cam**" means a Primary Carrier customer access module within which ADSL multiplexing equipment is located.

"**Aggregating Virtual Circuits**" means a virtual circuit with an indicative maximum transmission rate carrying aggregated iTEL Customer access traffic from an Aggregation Point to the point of interconnect on the Primary Carrier Network.

"**Aggregation Point**" means a point in the Primary Carrier network where iTEL Customer access traffic is collected together for placement onto one or more Aggregating Virtual Circuits.

"**Agreement**" means the iTEL Service Agreement and Terms and Conditions, the Application Form for the iTEL Internet Service or Web Hosting Service, the Acceptable Use Policy Price List and any other terms of use introduced by iTEL from time to time.

"**Application**" means Subscriber's application for connection to iTEL's system, which may be an electronic application made via the Internet.

"**Application Form**" means the Internet Services Application Form completed and signed by the Customer.

"**Computer System**" means any computer, terminal or device which may be connected to or used by means of a connection with iTEL's computer service, including any software and equipment used in association with that computer, terminal or device.

"**ATM**" means Asynchronous Transfer Mode, a layer 2 protocol as described in the Service Provider Technical Document (relevant Primary Carrier Technical Reference).

"**ATM POP**" means a Primary Carrier exchange with appropriate ATM infrastructure and capacity from which an ATM Service is provisioned.

"**Cooling-Off Period**" means a cooling-off period required by any applicable State or Territory legislation.

"**Customer**" refers to all other persons, companies, or other entities identified on the Application Form.

"**Customer's Premises**" means the building in and to which iTEL Broadband Provided Equipment and iTEL Broadband Services will be provided and the land on which that building sits.

"**Customer Premises Equipment**" means that equipment provided by the Customer to facilitate the iTEL Broadband Service as advised by us. Such equipment might include a personal computer, set top box, data or network terminating equipment.

"**Customer's website**" is the website hosted by iTEL pursuant to this Agreement, and includes all data and programs stored by the Customer on iTEL's computer system.

"**End User Access**" means a single virtual circuit for the provision to an iTEL Customer of ADSL over a Qualified Pair between the Network Boundary and the Primary Carrier nominated Aggregation Point; it excludes the provision of Non Primary Carrier Equipment and iTEL Customer Premises Equipment.

"**GST**" means the tax imposed or to be imposed by the A New Tax System (Goods and Services Tax) Act 1999 (C'th) and the related imposition Acts of the Commonwealth.

"**Incompatible Product**" means a product defined from time to time by a Primary Carrier as an Incompatible Product.

"**Initial Term**" commences on the day that iTEL first provides the iTEL Internet Service to the Customer and continues thereafter for the term as set out in the Pricing Schedule.

"**Installation**" means the provision of the modem and connection to the iTEL Broadband Service network at the Customer premises.

"**Internet Services**" includes Dial-up, Broadband, Web Hosting & Design as well as any other products and services supplied by iTEL relating to the Internet.

"**iTEL**" means iTEL Community Telco Limited and its subsidiaries (ACN 091 840 294; ABN 58 098 028 230).

"**iTEL Broadband Provided Equipment**" comprises any modem and ancillary equipment to be provided by iTEL to the Customer. It also means equipment provided by Primary Carriers, equipment that allows iTEL to provide its iTEL Broadband Services to its Customers.

"**iTEL's website**" means the Internet website located at <http://www.itel.net>

- "Minimum Term"** commences on the day that iTEL first provides the iTEL Internet Service to the Customer and continues thereafter for the term as set out in the Pricing Schedule.
- "Monthly Fee"** means the monthly fee for the iTEL Internet Service as set out in the Pricing Schedule.
- "Network Boundary"** means in relation to a Pair that enters a building on the Customer's Premises either on distribution frame side closest to iTEL's Primary Carrier or if there is a network termination device located in the near vicinity, the side of that device located nearest to the Customer. If neither a distribution frame or network termination device exist, then "network boundary" is as defined in Section 22 of the Telecommunications Act.
- "Network Equipment and Facilities"** is that infrastructure provided by a third party such as twisted pair lines, switched data network, switching network, interfaces to third party content and any other equipment or facilities provided but not included in this Service Agreement.
- "Pair"** means a single twisted metallic pair between the Customer's premises and an ADSL CAM.
- "Personal Home Page"** means a website created and posted on the Internet by Subscriber containing personal material only, and includes all data and programs stored by Subscriber on iTEL's server.
- "Price List"** is the current price list or lists published by iTEL and on iTEL's website for Internet and Web Hosting Services.
- "Pricing Schedule"** means the current iTEL Service rates as issued by iTEL, and as varied in accordance with this Agreement.
- "Qualified Pair"** means a Pair which passes a Service Qualification and over which the Customer is acquiring a standard telephone service, this service being either directly supplied by iTEL or resold to the Customer from one of iTEL's Primary Carriers.
- "Registered User"** is a person nominated in accordance with clause 8.5.1.
- "Service"** means the services provided by iTEL to Subscriber pertinent to this agreement.
- "Service Provider"** means a person who provides or is considering providing products or Services in connection with the iTEL Broadband network or in conjunction with iTEL or any related entity, but does not include iTEL or any related entity.
- "Service Qualification"** means a desktop analysis carried out either by iTEL or one of its Primary Carriers to determine if the Broadband Service requested by the Customer can be provided to the Customer; this analysis includes a determination whether the Service can be provided, given the information regarding the Customer Provided Equipment. Note that the results of the desktop studies do not conclusively demonstrate that a Pair is suitable for the provision of the Broadband Service.
- "Software"** refers to any of the type referred to in this Service Agreement.
- "Subscriber"** means the person named in an Application accepted by iTEL.
- "Subscription Period"** means the initial period of time selected by Subscriber in the Application and each successive Subscription Period following the initial period.
- "Telstra"** means Telstra Corporation Limited
- "Term"** means the Initial Term as extended by each month the Customer continues to use the iTEL Internet Service after the ending of the Initial Term.