KernWi-Fi Master Terms and Conditions

1. Definitions and interpretation

1.1 Definitions
In these Master Terms, unless the context otherwise requires:

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

Additional Charges means any charges payable by the Customer in addition to the Recurring Charges, including installation fees, setup fees, survey fees, engineering charges, project charges, remote hands charges, excess usage fees, cancellation charges, recovery charges, restoration charges, freight, power charges, site charges and other non-recurring or pass-through costs.

Agreement means, together, these Master Terms, each applicable Service Order, each applicable Service Schedule, the applicable SLA, and any Special Conditions agreed in writing between the parties.

Business Day means a day other than a Saturday, Sunday or public holiday in Adelaide, South Australia.

Business Hours means 9:00 am to 5:00 pm on a Business Day in Adelaide, South Australia, unless otherwise stated in the relevant Service Order, Service Schedule or SLA.

Carrier License means the carrier license granted to KernWi-Fi Pty Ltd under subsection 56(1) of the Telecommunications Act 1997 (Cth).

Charges means all fees, charges and amounts payable by the Customer under the Agreement, including Recurring Charges, Non-Recurring Charges and Additional Charges.

Commencement Date means the earlier of:
(a) the date stated in the relevant Service Order as the commencement date;
(b) the date the relevant Service is Ready for Service; and
(c) the date the Customer first uses the relevant Service for any purpose other than authorised testing.

Confidential Information means all information disclosed by one party to the other in connection with the Agreement that is by its nature confidential, or is designated confidential, including pricing, technical data, network designs, security information, credentials, customer information, supplier information, software, documentation, business processes and commercial information, but excludes information that:
(a) is or becomes public other than through breach of the Agreement;
(b) was lawfully known by the receiving party without restriction before disclosure;
(c) is lawfully received from a third party without restriction; or
(d) is independently developed without reference to the disclosing party's Confidential Information.

Customer means the person or entity identified in the applicable Service Order.

Customer Equipment means any equipment, software, system, hardware, cabling or infrastructure not supplied by KernWi-Fi and used by the Customer in connection with a Service.

Customer Site means the Customer premises, building, roof, riser, cabinet, rack, room, area, facility or other location at which a Service is supplied, terminated, installed or used.

Data Cabling Services means structured cabling, communications cabling, fibre cabling, copper cabling, termination, patching, labelling, testing, certification, pathway works, cabinet cabling, rack cabling, and related communications infrastructure works supplied by KernWi-Fi.

DID means a direct inward dial number or equivalent inbound numbering service.

Electrical Services means electrical contracting, installation, testing, commissioning, rectification, maintenance, power-related works or related electrical services supplied by KernWi-Fi, whether standalone or as part of another Service.

Equipment means any hardware, radio, antenna, router, switch, optic, cabinet, mount, power supply, cable, appliance or related item supplied, installed, programmed, staged, pre-configured or otherwise made available by KernWi-Fi for the purpose of delivering the Services.

Force Majeure Event means an event beyond the reasonable control of a party, including fire, flood, storm, lightning, earthquake, utility failure, labour dispute, war, terrorism, malicious damage, pandemic, denial of access, failure of a Third-Party Supplier, regulatory action, supply chain shortage, changes in law, or any other event beyond the party's reasonable control.

Hosted PBX means a hosted or cloud-based private branch exchange or equivalent virtual telephony platform supplied by or through KernWi-Fi.

Hosting Services means server hosting, colocated services, data centre services, web hosting, email hosting, virtual infrastructure, remote hands or related hosting or infrastructure services supplied by or through KernWi-Fi.

Incident means any fault, outage, degradation, security issue or service-affecting event relating to a Service.

Intellectual Property Rights means all present and future intellectual and industrial property rights anywhere in the world, including copyright, patents, trade marks, designs, trade secrets, know-how and rights in software, documentation, systems and data.

KernWi-Fi means KernWi-Fi Pty Ltd (ABN 59 619 040 916).

Maintenance means scheduled, emergency, corrective, preventive, upgrade or other work carried out by or on behalf of KernWi-Fi in relation to the Services.

Master Terms means these KernWi-Fi Master Terms and Conditions.

Minimum Term means the fixed contractual period specified in the applicable Service Order.

Non-Recurring Charge means any one-off charge, including installation, setup, activation, survey, engineering, licensing, project, dispatch, build, relocation, decommissioning or recovery charges.

Ready for Service means that, in KernWi-Fi's reasonable opinion, the relevant Service has been installed, configured and made available at the agreed service boundary or handoff point and is capable of normal operation, subject to any minor defect that does not materially prevent use of the Service.

Recurring Charge means the recurring monthly or periodic charge for a Service stated in the relevant Service Order.

Service means any service supplied by KernWi-Fi under the Agreement, including NBN services, NBN Fixed Wireless services, NBN Enterprise Ethernet services, internet access services, Fibre Layer 2 services, Fibre Layer 3 services, Dark Fibre services, wireless access services, Unlicensed Fixed Wireless Services, Licensed Microwave Services, Hosting Services, data centre services, server hosting services, colocation services, Voice and VoIP Services, SIP Trunk services, Hosted PBX services, DID and number-related services, web hosting services, email hosting services, managed services, support services, Electrical Services, Data Cabling Services, Equipment, or any related professional, technical, implementation, field, onsite or consulting services.

Service Credits means any credits payable under the applicable SLA.

Service Order means an order form, quote acceptance, proposal, statement of work, service application or similar written document accepted by KernWi-Fi which identifies the Services, Charges, Minimum Term and any Special Conditions.

Service Schedule means a service-specific or product-specific document issued by KernWi-Fi which sets out additional terms applying to a class of Services.

Service Term means the period commencing on the Commencement Date and continuing for the Minimum Term and any renewal or holding-over period.

SIP Trunk means a session initiation protocol voice service used to carry inbound, outbound or bidirectional voice traffic.

SLA means the service level agreement, if any, expressly stated to apply to the relevant Service.

Special Conditions means any specific contractual conditions agreed in writing and stated in the relevant Service Order or other signed document.

Third-Party Supplier means any carrier, wholesaler, network operator, utility, landlord, cloud provider, vendor, site provider, contractor, integrator or subcontractor used by KernWi-Fi to supply or support a Service.

Unlicensed Spectrum Service means any wireless or access service delivered wholly or partly using unlicensed or shared radio spectrum.

Voice and VoIP Services means voice carriage, SIP trunk, hosted PBX, cloud voice, DID, inbound and outbound calling, call routing, voicemail, unified communications, number hosting, number porting, or related voice services supplied by KernWi-Fi.

1.2 Interpretation

Unless the context requires otherwise:

(a) headings are for convenience only and do not affect interpretation;

(b) the singular includes the plural and vice versa;

(c) a reference to a person includes a company, authority, trust, partnership or other entity;

(d) "including" and similar expressions are not words of limitation;

(e) a reference to legislation includes any amendment, replacement or re-enactment of it; and

(f) if an obligation is to be performed on a day that is not a Business Day, it is taken to be due on the next Business Day.

2. Agreement structure and order of precedence

2.1 Formation of Agreement
The Agreement is formed when:
(a) the Customer signs a Service Order;
(b) the Customer accepts a quote, proposal or order in writing;
(c) KernWi-Fi accepts an order submitted by the Customer; or
(d) the Customer uses, requests provisioning of, or permits installation of a Service.

2.2 Entire agreement
The Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior negotiations, representations and understandings to the extent permitted by law.

2.3 Service-specific documents
The Services may be subject to one or more Service Schedules, SLAs, policies, technical standards, Special Conditions or operational documents.

2.4 Order of precedence
If there is any inconsistency between documents forming the Agreement, the following order of precedence applies unless expressly stated otherwise in a Service Order:
1. Special Conditions
2. the applicable Service Order
3. the applicable Service Schedule
4. the applicable SLA
5. these Master Terms
6. any policy, technical standard or operational guideline issued by KernWi-Fi

2.5 No reliance
Each party acknowledges that it has not relied on any representation or statement not expressly set out in the Agreement, except as required by law.

3. Supply of Services

3.1 Supply
KernWi-Fi will supply the Services described in the applicable Service Order, subject to the Agreement.

3.2 Service dependencies
The Customer acknowledges that Services may depend on:
(a) Third-Party Suppliers;
(b) site access and permissions;
(c) building infrastructure and utilities;
(d) power availability;
(e) Customer Equipment and networks;
(f) environmental, geographic or radio conditions; and
(g) regulatory, planning, licensing or approval requirements.

3.3 Changes to service method
KernWi-Fi may reasonably change the technical method, route, carrier, supplier, equipment, platform, architecture or delivery method used to provide the Services, provided that the material functionality of the affected Service is not adversely reduced except where necessary for operational, supplier, regulatory, legal, commercial or security reasons.

3.4 No universal SLA
Service levels apply only where expressly stated in the applicable SLA, Service Schedule or Service Order. If no SLA is expressly stated to apply, the Service is supplied on a reasonable endeavours basis.

3.5 Unlicensed spectrum acknowledgement
The Customer acknowledges that Unlicensed Spectrum Services operate in shared spectrum and may be affected by interference, congestion, environmental factors and third-party emitters or operators outside KernWi-Fi's reasonable control. Unless expressly stated otherwise in a Service Order or SLA, Unlicensed Spectrum Services are supplied on a best-efforts basis only and are not subject to availability, throughput, latency, jitter, packet loss or service credit commitments.

3.6 Regulatory compliance and carrier status
KernWi-Fi will comply with applicable laws and regulatory obligations relevant to the Services, including, where applicable, obligations arising from its Carrier License.

4. Orders, surveys, design and provisioning

4.1 Orders
Each Service Order must identify, at minimum:
(a) the Services ordered;
(b) the service location or hosting environment;
(c) the applicable Charges;
(d) the Minimum Term (if any);
(e) the applicable Service Schedule(s); and
(f) any Special Conditions.

4.2 Surveys and design
KernWi-Fi may conduct surveys, feasibility checks, engineering reviews, desktop assessments, path studies, access reviews or design work before or after accepting a Service Order.

4.3 Dependencies and prerequisites
KernWi-Fi is not required to commence installation or provisioning until any notified prerequisites are satisfied, including site access, landlord consent, power, cross-connects, rack space, structural approvals, customer information, required upfront payments, or other operational prerequisites.

4.4 Delivery estimates
Any installation date, target delivery date or estimate notified by KernWi-Fi is an estimate only unless expressly stated otherwise. KernWi-Fi is not liable for delay caused by a Third-Party Supplier, access issue, Customer delay, Force Majeure Event, regulatory requirement or supply chain issue.

4.5 Cancellation before service commencement
If the Customer cancels a Service before the relevant Commencement Date, the Customer must pay all Non-Recurring Charges and all reasonable costs incurred by KernWi-Fi in relation to the relevant Service, including survey, engineering, supplier, shipping, licensing, site, installation, build or cancellation costs.

5. Ready for Service, acceptance and commencement

5.1 Ready for Service
KernWi-Fi may notify the Customer when a Service is Ready for Service.

5.2 Acceptance
The Customer is taken to have accepted a Service on the earliest of:
(a) the date the Customer notifies KernWi-Fi that the Service is accepted;
(b) the date the Customer first uses the Service for production or operational purposes; or
(c) the date 5 Business Days after notice that the Service is Ready for Service, unless before then the Customer gives written notice of a material non-conformance.

5.3 Rejection for material non-conformance
The Customer may only reject a Service during the acceptance period where there is a material failure of the Service to conform to the applicable Service Order or Service Schedule, and the Customer provides sufficient details of the non-conformance.

5.4 Minor defects
A Service may not be rejected solely because of a minor defect or omission that does not materially prevent ordinary use of the Service. KernWi-Fi may remedy such defect within a reasonable time.

5.5 Billing commencement
Recurring Charges commence from the Commencement Date unless otherwise stated in the Service Order.

6. Charges, invoicing and payment

6.1 Charges payable
The Customer must pay all Charges under the Agreement.

6.2 Invoicing
Unless otherwise stated in the Service Order:
(a) Recurring Charges are invoiced monthly in advance;
(b) usage-based or variable Charges are invoiced in arrears; and
(c) Non-Recurring Charges and Additional Charges may be invoiced when incurred, when payable, or at delivery milestones.

6.3 Payment
The Customer must pay each invoice in full, without set-off or deduction, by the due date shown on the invoice.

6.4 Payment methods
Where the Customer agrees to pay by direct debit, bank transfer or card, the Customer authorises KernWi-Fi to process payment for all amounts payable under the Agreement and must keep payment details current and valid.

6.5 Late payment
If an invoice is not paid when due, KernWi-Fi may charge interest on the overdue amount at 10% per annum, calculated daily, until paid.

6.6 Recovery costs
The Customer must reimburse KernWi-Fi for all reasonable costs incurred in recovering overdue amounts, including mercantile agent, legal and collection costs to the extent permitted by law.

6.7 Disputed invoices
If the Customer disputes an invoice:
(a) the Customer must notify KernWi-Fi in writing within 7 days of the invoice date, providing reasons;
(b) the Customer must pay the undisputed portion by the due date; and
(c) the parties must work in good faith to resolve the dispute promptly.

6.8 GST
Unless otherwise stated, Charges are exclusive of GST. If GST is payable on a taxable supply under the Agreement, the Customer must pay the GST amount in addition to the applicable Charges.

6.9 Price variation
Unless otherwise stated in the Service Order or prohibited by law, KernWi-Fi may vary Charges:
(a) on not less than 30 days' written notice;
(b) to reflect increased Third-Party Supplier costs, utilities, site costs, regulatory fees, licensing costs, taxes or government charges;
(c) in accordance with any annual review mechanism stated in the Service Order; or
(d) where reasonably necessary due to a material increase in supply cost.

6.10 Pass-through costs
The Customer must pay any third-party or pass-through costs reasonably incurred by KernWi-Fi in providing the Services, including carrier charges, tail charges, utility fees, ACMA fees, licensing charges, power charges, landlord access costs, permit fees, replacement parts, remote hands fees, spectrum-related charges, restoration costs, freight, bank transaction fees, merchant service fees, card processing fees, and other payment processing costs, where payable by the Customer under the relevant Service Order or Service Schedule and to the extent permitted by law.

For clarity, any card payment surcharge, payment processing fee or merchant service fee charged to the Customer must comply with applicable law and payment network rules as in force from time to time.

6.11 Non-refundable amounts
Unless otherwise required by law or expressly agreed in writing, Charges paid or payable under the Agreement are non-refundable.

6.12 Security of Payment

6.12.1
To the extent the Building and Construction Industry Security of Payment Act 2009 (SA) applies to any work, goods or services supplied under the Agreement, the parties acknowledge that the Act may confer rights and obligations in relation to:
(a) progress payments;
(b) payment claims;
(c) payment schedules;
(d) adjudication;
(e) suspension of work; and
(f) related recovery or enforcement procedures.

6.12.2
Nothing in the Agreement is intended to exclude, restrict or contract out of the operation of the Building and Construction Industry Security of Payment Act 2009 (SA) to the extent that Act applies.

6.12.3
KernWi-Fi may issue payment claims or other notices under the Building and Construction Industry Security of Payment Act 2009 (SA), where applicable, in addition to any contractual invoice, claim or demand under the Agreement.

6.12.4
The Customer must comply with any applicable obligations under the Building and Construction Industry Security of Payment Act 2009 (SA), including any obligation to provide a payment schedule or make payment within the time required by law.

6.12.5
Where the Building and Construction Industry Security of Payment Act 2009 (SA) does not apply, the parties' payment rights and obligations are governed exclusively by the Agreement and any other applicable law.

7. Minimum term, renewal and holdover

7.1 Minimum Term
If a Minimum Term is stated in the Service Order, the relevant Service continues for that Minimum Term unless terminated earlier in accordance with the Agreement.

7.2 Renewal
Unless otherwise stated in the Service Order, at the end of the Minimum Term the relevant Service continues on a month-to-month basis until terminated by either party on at least 30 days' written notice.

7.3 Renewal pricing
KernWi-Fi may vary Charges during any month-to-month continuation period on 30 days' written notice.

8. Customer obligations

8.1 General obligations
The Customer must:
(a) cooperate with KernWi-Fi in relation to the Services;
(b) provide accurate and complete information;
(c) comply with reasonable directions relating to the Services;
(d) ensure its personnel act safely and lawfully; and
(e) use the Services only in accordance with the Agreement and applicable law.

8.2 Site access and readiness
The Customer must, at its cost unless otherwise agreed:
(a) provide safe, timely and lawful access to each Customer Site;
(b) obtain and maintain all owner, landlord, occupier and regulatory consents required for installation, operation, maintenance and removal of Equipment;
(c) provide suitable space, power, earthing, cooling, environmental conditions, pathways, roof rights, riser access, rack access, cross-connects and internal cabling as required;
(d) ensure the structural suitability of any rooftop, mast, wall, mounting location or support used for Equipment; and
(e) maintain site conditions that allow safe and continuous operation of the Services.

8.3 Customer Equipment and networks
The Customer is responsible for:
(a) procuring, configuring and maintaining Customer Equipment;
(b) ensuring Customer Equipment is compatible with the Services;
(c) securing its systems, credentials and user access;
(d) maintaining appropriate backups unless a contracted backup service applies; and
(e) all activity occurring via the Services using the Customer's credentials, systems or infrastructure, except to the extent caused by KernWi-Fi.

8.4 No interference or tampering
The Customer must not:
(a) tamper with, move, disconnect, reset, modify or interfere with Equipment;
(b) obstruct any radio path, cable path, rooftop installation or service demarcation;
(c) connect equipment likely to damage or impair the Services; or
(d) interfere with KernWi-Fi's network or other customers.

8.5 Building works and changes
The Customer must give KernWi-Fi prior notice of any proposed fit-out, building works, roof works, relocation, electrical works, data cabling changes, riser changes, landlord instruction, obstruction creation or other site change likely to affect the Services or Equipment.

8.6 Acceptable use
The Customer must not use, and must not permit any person to use, the Services:
(a) unlawfully;
(b) to distribute malware, spam or harmful code;
(c) to threaten, harass or defraud;
(d) to infringe another person's rights;
(e) in a manner that impairs a network or service; or
(f) contrary to any Acceptable Use Policy or other policy notified by KernWi-Fi.

8.7 Resale
The Customer must not resell, sub-license, wholesale or otherwise supply the Services to a third party unless expressly authorised in writing by KernWi-Fi.

9. Equipment and access rights

9.1 Ownership and supply of Equipment
Equipment supplied by KernWi-Fi may be supplied on one of two bases:

(a) as service-delivery equipment retained by KernWi-Fi or its supplier; or
(b) as equipment sold to the Customer.

Unless expressly stated otherwise in the applicable Service Order, quotation or other written agreement, Equipment supplied by KernWi-Fi for the purpose of delivering a Service remains the property of KernWi-Fi or its supplier, even if installed at a Customer Site.

Where Equipment is expressly quoted and sold to the Customer, title to that Equipment passes to the Customer upon payment in full for that Equipment, subject to any applicable retention of title provisions in these Master Terms.

KernWi-Fi may supply, stage, configure, pre-program, pre-commission or otherwise prepare Equipment for the purpose of delivering a Service to the agreed Demarcation Point, whether that Equipment is retained by KernWi-Fi or sold to the Customer.

Unless otherwise expressly stated in the Service Order, KernWi-Fi's responsibility for supplied Equipment extends only to the agreed Demarcation Point and does not include the Customer's internal network, internal cabling, LAN, switching, routing, Wi-Fi, endpoints or downstream systems beyond that point.

9.2 Risk
Risk in KernWi-Fi-owned Equipment passes to the Customer to the extent of loss or damage caused by the Customer, its personnel, contractors, invitees, building manager or site conditions within the Customer's control.

9.3 Care of Equipment
The Customer must take reasonable care of Equipment located at or connected to a Customer Site and must promptly notify KernWi-Fi of any loss, theft, damage, interference or malfunction.

9.4 Access rights
The Customer grants KernWi-Fi and its personnel a right of access, on reasonable notice or immediately in an emergency, to install, inspect, maintain, replace, upgrade, disconnect or recover Equipment and to perform works relating to the Services.

9.5 Return, recovery and customer-owned equipment
On termination or expiry of a Service:

(a) the Customer must allow KernWi-Fi access to recover any Equipment that remains owned by KernWi-Fi or its supplier;
(b) the Customer must return any removable Equipment owned by KernWi-Fi or its supplier as directed by KernWi-Fi;
(c) where Equipment has been expressly quoted and sold to the Customer, that Equipment remains the Customer's property and is not required to be returned to KernWi-Fi;
(d) if the Customer requests removal, relocation, de-installation, recovery, recommissioning, disposal or other work in relation to customer-owned equipment, KernWi-Fi may charge the applicable labour, travel, de-installation, freight, make-good, recommissioning, disposal, site access and other reasonable related costs;
(e) if the Service is renewed, extended or continues on a renewal or holding-over basis, no removal or recovery of equipment is required unless otherwise agreed in writing or reasonably required for upgrade, replacement, reconfiguration, relocation or service redesign; and
(f) the Customer must pay any reasonable de-installation, recovery, make-good, restoration, freight, disposal or related charges applicable to Equipment owned by KernWi-Fi or its supplier, or to chargeable work requested by the Customer in relation to customer-owned equipment.

9.6 Damage and replacement
The Customer must pay the reasonable repair or replacement cost of Equipment that is lost, damaged or destroyed due to the Customer's act, omission, negligence or breach.

9.7 Equipment lifecycle, compatibility and upgrades
The Customer acknowledges that technology platforms, supplier products, firmware, software, security standards and industry practices change over time.

KernWi-Fi may, acting reasonably, notify the Customer where supplied Equipment:
(a) is no longer supported by the manufacturer or supplier;
(b) is no longer compatible with the relevant Service, Network, security standard or platform;
(c) materially limits service improvement, resilience, security or compatibility; or
(d) should be upgraded or replaced due to product obsolescence, vendor end-of-life, end-of-support, or industry improvement.

Where such an upgrade or replacement is reasonably required to maintain compatibility, supportability, security or service continuity, the Customer must pay the applicable Charges for replacement or upgraded Equipment, installation, configuration, migration and related works unless otherwise expressly agreed in writing.

KernWi-Fi will use reasonable efforts to notify the Customer of major changes or upgrade requirements as soon as reasonably practicable.

9.8 Removal, relocation and re-attendance
If the Customer relocates, vacates, changes premises, changes building access arrangements, or otherwise requests removal, relocation, disconnection, recovery, reinstallation or re-attendance in relation to any Equipment or Service, KernWi-Fi may charge:
(a) labour charges;
(b) travel charges;
(c) de-installation charges;
(d) freight and logistics charges;
(e) reinstallation or recommissioning charges;
(f) third-party site access, parking, induction, make-good or facility charges; and
(g) any other reasonable costs incurred by KernWi-Fi in connection with the relocation, removal, recovery or re-provisioning.

Any relocation or reinstallation may also require a new Service Order, revised Charges, revised delivery dates or a new Minimum Term.

9A. Retention of title and PPSA

9A.1
Title to any goods supplied by KernWi-Fi does not pass to the Customer until KernWi-Fi has received payment in full for:
(a) those goods; and
(b) all other amounts owing by the Customer to KernWi-Fi on any account.

9A.2
Until title passes, the Customer:
(a) holds the goods as bailee for KernWi-Fi;
(b) must store the goods separately where reasonably practicable and identify them as KernWi-Fi property;
(c) must not sell, lease, charge, encumber, dispose of or otherwise deal with the goods except in the ordinary course of business and only to the extent permitted by law and the Agreement.

9A.3
The Customer grants KernWi-Fi, its employees, agents and contractors an irrevocable licence to enter any premises where the goods are or may be located, on reasonable notice or immediately where reasonably necessary, to inspect, recover or repossess goods in which title has not passed.

9A.4
The Customer acknowledges that this clause creates a security interest for the purposes of the Personal Property Securities Act 2009 (Cth) (PPSA).

9A.5
KernWi-Fi may register any actual or contemplated security interest created under the Agreement on the Personal Property Securities Register (PPSR), including as a purchase money security interest where applicable.

9A.6
The Customer must promptly do all things and sign all documents reasonably required by KernWi-Fi to:
(a) enable perfection, registration, amendment, renewal, enforcement or priority protection of any security interest created under the Agreement; or
(b) facilitate the exercise of KernWi-Fi's rights under the PPSA.

9A.7
To the extent permitted by law, the Customer waives its right to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135, 142 and 157 of the PPSA.

9A.8
The Customer must not grant, allow or permit any security interest, lien or encumbrance over goods subject to this clause that is inconsistent with KernWi-Fi's rights under the Agreement.

10. Maintenance, support and incidents

10.1 Maintenance
KernWi-Fi may carry out Maintenance at any time. Planned Maintenance will, where reasonably practicable, be notified in advance. Emergency Maintenance may be performed without prior notice.

10.2 Support and SLA
Incident response times, support windows, restoration targets and performance commitments are only those expressly stated in the applicable SLA or Service Schedule.

10.3 Emergency restriction or suspension
KernWi-Fi may restrict or suspend a Service without liability where reasonably necessary to:
(a) protect the network or other customers;
(b) respond to a security threat or abuse event;
(c) perform emergency Maintenance;
(d) comply with law or a lawful direction; or
(e) prevent damage, injury or unacceptable operational risk.

10.4 Exclusions
KernWi-Fi is not responsible for any inability to restore, repair or maintain a Service caused by:
(a) lack of safe site access;
(b) Customer-caused damage;
(c) Customer Equipment or internal network issues;
(d) power failure at the Customer Site;
(e) Third-Party Supplier dependencies or outages outside KernWi-Fi's control;
(f) environmental or RF conditions outside design assumptions;
(g) Force Majeure Events; or
(h) any other exclusion stated in the applicable Service Schedule or SLA.

11. Subcontractors and Third-Party Suppliers

11.1 Use of subcontractors
KernWi-Fi may subcontract or outsource any part of the Services to any Third-Party Supplier.

11.2 Third-party dependency
The Customer acknowledges that some Services depend on Third-Party Suppliers and that KernWi-Fi's obligations may be affected by the acts, omissions, availability and operational limitations of those suppliers.

11.3 No direct entitlement
Unless expressly stated otherwise, the Customer has no direct contractual rights against a Third-Party Supplier engaged by KernWi-Fi.

12. Insurance

12.1 KernWi-Fi insurance
KernWi-Fi will maintain, during the supply of the Services, insurance policies that KernWi-Fi reasonably considers appropriate to its business and the Services supplied, which may include professional indemnity insurance and public and products liability insurance.

12.2 Evidence of currency
KernWi-Fi may provide reasonable evidence of insurance currency on written request, subject to confidentiality obligations, insurer restrictions and document availability.

12.3 No direct rights
Nothing in the Agreement gives the Customer any direct right against KernWi-Fi's insurer or under any policy held by KernWi-Fi.

13. Warranties and disclaimers

13.1 Mutual authority
Each party warrants that it has authority to enter into and perform the Agreement.

13.2 Service warranty
KernWi-Fi will supply the Services with due care and skill and in accordance with the Agreement.

13.3 No uninterrupted service warranty
Except as expressly stated in the Agreement, KernWi-Fi does not warrant that any Service will be uninterrupted, error-free, continuously available, secure against all threats, or suitable for a particular purpose.

13.4 Third-party and internet dependency
The Customer acknowledges that carrier services, internet services, cloud services, wireless services, hosted services and electrical works may be affected by matters outside KernWi-Fi's control, including routing issues, supplier platform changes, denial of service events, congestion, interference, cyber incidents, weather, power interruption, site conditions and access constraints.

13.5 Implied terms
Except for rights that cannot lawfully be excluded, all warranties, conditions and guarantees not expressly stated in the Agreement are excluded to the maximum extent permitted by law.

13.6 ACL rights
Nothing in the Agreement excludes, restricts or modifies any guarantee, right or remedy the Customer may have under the ACL or another law that cannot lawfully be excluded, restricted or modified.

13.7 Equipment warranty and manufacturer support
Where KernWi-Fi supplies Equipment to the Customer and that Equipment is sold to the Customer, the Equipment may be covered by the applicable manufacturer's warranty, subject to the manufacturer's terms, processes and limitations.

If an extended manufacturer warranty, support plan or similar coverage has been purchased, it applies only to the extent expressly stated in the applicable quotation, Service Order or other written agreement.

Unless expressly stated otherwise, KernWi-Fi does not provide any warranty on customer-purchased Equipment beyond:
(a) any non-excludable rights under law; and
(b) any manufacturer warranty or extended manufacturer support applicable to that Equipment.

KernWi-Fi may assist the Customer with manufacturer warranty administration, return, repair or replacement processes, but such assistance may be chargeable unless expressly included in the Service Order or required by law.

13.8 Customer-purchased equipment outside warranty
If customer-purchased Equipment fails, becomes defective, becomes unsupported or otherwise requires replacement after the expiry of the applicable manufacturer's warranty or any purchased extended support or extended warranty period, the Customer must pay the applicable Charges for replacement Equipment, supply, installation, configuration, migration, recommissioning and any related works, unless otherwise expressly agreed in writing.

For the avoidance of doubt, the continuation of a Service does not, by itself, require KernWi-Fi to replace customer-purchased Equipment at KernWi-Fi's cost after the expiry of the applicable manufacturer's warranty or purchased extended support coverage.

13.9 Chargeable replacement and recommissioning work
Where replacement of customer-purchased Equipment is required, KernWi-Fi may charge for:
(a) replacement hardware;
(b) labour;
(c) travel;
(d) de-installation and disposal;
(e) installation and recommissioning;
(f) configuration and migration; and
(g) any third-party access, induction, rooftop, parking, make-good or facility costs reasonably incurred in connection with the replacement.

14. SLA and service credits

14.1 SLA only where stated
An SLA applies only if the relevant Service Order, Service Schedule or SLA expressly states that it applies to the relevant Service.

14.2 Exclusive remedy
To the maximum extent permitted by law, any Service Credits available under an applicable SLA are the Customer's sole and exclusive remedy for KernWi-Fi's failure to meet the service levels stated in that SLA.

14.3 No double recovery
The Customer is not entitled to receive Service Credits and any other refund, rebate, damages or compensation for the same service level failure, except to the extent required by law.

14.4 Claims
The Customer must comply with the claim process and claim period stated in the applicable SLA, otherwise the claim is waived.

15. Suspension

15.1 Rights to suspend
KernWi-Fi may suspend, restrict or disconnect a Service immediately, with or without notice, if:
(a) the Customer fails to pay an amount when due;
(b) the Customer breaches the Agreement;
(c) KernWi-Fi reasonably suspects fraud, abuse, unlawful activity, compromise or security risk;
(d) KernWi-Fi is required to do so by law, a regulator, court or lawful authority;
(e) there is a threat to health, safety, property or network integrity;
(f) KernWi-Fi cannot safely access the Customer Site; or
(g) a Third-Party Supplier suspends or ceases a dependent service.

15.2 Charges during suspension
KernWi-Fi may continue to charge Recurring Charges during any suspension arising from the Customer's act, omission, breach, payment default, access failure or site issue.

15.3 Reconnection
KernWi-Fi may charge a reconnection or restoration fee following suspension.

16. Termination

16.1 Termination for cause
Either party may terminate the Agreement or an affected Service immediately by written notice if the other party:
(a) commits a material breach that cannot be remedied;
(b) commits a material breach capable of remedy and fails to remedy it within 10 Business Days after written notice; or
(c) becomes insolvent, enters administration, ceases business or is unable to pay its debts as they fall due.

16.2 Termination by KernWi-Fi for impracticability
KernWi-Fi may terminate a Service on written notice if:
(a) a required Third-Party Supplier service becomes unavailable and no reasonably equivalent substitute is available;
(b) a regulatory, licensing or approval issue prevents continued supply;
(c) safe or lawful access to a Customer Site is denied or withdrawn; or
(d) continued supply is impracticable due to a Force Majeure Event lasting more than 30 days.

16.3 Termination for convenience by Customer
If the Customer terminates a Service for convenience before expiry of the Minimum Term, the Customer must pay:
(a) all outstanding Charges up to the termination date;
(b) all unpaid Non-Recurring Charges;
(c) any Third-Party Supplier cancellation or early termination charges incurred by KernWi-Fi; and
(d) an early termination charge equal to the Recurring Charges that would have been payable for the remainder of the Minimum Term multiplied by 70%, unless another method is stated in the relevant Service Order.

16.4 Effect of termination
Termination does not affect accrued rights or obligations. On termination:
(a) all amounts owed to KernWi-Fi become immediately due and payable;
(b) the Customer must cease using the affected Service;
(c) clauses intended to survive termination continue, including clauses relating to confidentiality, liability, indemnity, payment and Equipment recovery; and
(d) the Customer must comply with clause 9.5.

17. Confidentiality

17.1 Confidentiality obligations
Each party must:
(a) keep the other party's Confidential Information confidential;
(b) use it only for the purposes of performing or receiving the Services; and
(c) not disclose it except as permitted under the Agreement.

17.2 Permitted disclosure
A party may disclose Confidential Information:
(a) to its officers, employees, contractors, professional advisers, insurers, financiers and subcontractors who need to know it and are bound by confidentiality obligations;
(b) as required by law, a regulator, court or lawful authority; or
(c) with the other party's written consent.

17.3 Return or destruction
On reasonable request, a receiving party must return or destroy Confidential Information, except to the extent it is retained for legal, regulatory, backup or archival purposes.

18. Privacy and data handling

18.1 Privacy compliance
Each party must comply with applicable privacy law in relation to Personal Information handled under the Agreement.

18.2 Customer acknowledgement
The Customer acknowledges that KernWi-Fi may collect, use and disclose information relating to the Customer and the Services:
(a) to provide, support, bill and maintain the Services;
(b) to disclose to Third-Party Suppliers where reasonably required to supply the Services;
(c) to conduct credit, identity, fraud and security checks;
(d) to recover debts; and
(e) as otherwise permitted by law and KernWi-Fi's privacy or credit reporting policies.

18.3 Operational and telemetry data
KernWi-Fi may collect and use operational, telemetry, service, performance and traffic management data relating to the Services for support, security, billing, analytics, planning, service improvement and network management, subject to applicable law.

19. Intellectual property

19.1 Ownership
Nothing in the Agreement transfers ownership of Intellectual Property Rights. KernWi-Fi retains all Intellectual Property Rights in its Services, systems, software, documentation, designs, processes, branding and materials.

19.2 Customer materials
The Customer retains ownership of its own pre-existing Intellectual Property Rights and content.

19.3 Licence
To the extent necessary for KernWi-Fi to provide the Services, the Customer grants KernWi-Fi a non-exclusive, royalty-free licence during the Service Term to use Customer-provided information, data, software, content and materials.

20. Liability

20.1 Exclusion of indirect loss
To the maximum extent permitted by law, neither party is liable to the other for any indirect, incidental, consequential, special or punitive loss, or for any loss of profit, loss of revenue, loss of opportunity, loss of savings, loss of goodwill, loss of business, loss of anticipated data or business interruption.

20.2 Liability cap
To the maximum extent permitted by law, KernWi-Fi's aggregate liability to the Customer arising out of or in connection with the Agreement, whether in contract, tort (including negligence), statute or otherwise, is limited to the lesser of:
(a) the total Recurring Charges paid or payable by the Customer for the affected Service in the 12 months immediately preceding the event giving rise to the claim; and
(b) AUD 250,000.

20.3 Exceptions
Clause 20.2 does not apply to:
(a) the Customer's obligation to pay Charges;
(b) either party's liability for fraud or wilful misconduct;
(c) the Customer's liability under clause 21; or
(d) any liability that cannot lawfully be excluded or limited.

20.4 ACL limitation
If a statutory guarantee applies and KernWi-Fi is entitled to limit its liability, KernWi-Fi's liability is limited, at its option, to:
(a) supplying the Services again; or
(b) paying the cost of having the Services supplied again.

21. Indemnities

21.1 Customer indemnity

The Customer indemnifies KernWi-Fi against all loss, damage, liability, cost and expense reasonably incurred by KernWi-Fi arising from:
(a) the Customer's breach of the Agreement;
(b) unlawful or improper use of the Services by the Customer or its personnel;
(c) damage to Equipment caused by the Customer or its site conditions;
(d) personal injury, death, property damage or third-party claims arising from unsafe conditions at a Customer Site;
(e) the Customer's failure to obtain required consents, approvals or permissions; or
(f) any content, data or material transmitted, hosted or published by the Customer using the Services.

21.2 Mitigation

Each party must take reasonable steps to mitigate any loss it suffers or incurs.

22. Force majeure

22.1 Force Majeure Event

A party is not liable for failure to perform an obligation to the extent caused by a Force Majeure Event, except the obligation to pay Charges already due.

22.2 Notification

The affected party must notify the other party as soon as reasonably practicable after becoming aware of the Force Majeure Event and its expected effect.

22.3 Ongoing impact

If a Force Majeure Event continues for more than 30 days and materially prevents the supply of a Service, KernWi-Fi may suspend or terminate the affected Service on written notice.

23. Changes to the Agreement

23.1 Changes for new orders

KernWi-Fi may update these Master Terms from time to time. Updated Master Terms will apply to new Service Orders from the date notified by KernWi-Fi.

23.2 Existing contracted Services

For Services already subject to a Service Order:
(a) an update to these Master Terms will not materially reduce the Customer's rights during the Minimum Term unless required by law, regulation, supplier requirement, security requirement or operational necessity; and
(b) any material change will be notified to the Customer in writing.

23.3 Customer-requested changes
If the Customer requests a change to a Service, KernWi-Fi may:
(a) accept or reject the request;
(b) require a new Service Order or written variation; and
(c) revise Charges, technical scope, Minimum Term or delivery timeframes.

24. Notices

24.1 Form of notice
A notice under the Agreement must be in writing and sent by email, hand delivery or prepaid post to the address or email address most recently notified by the receiving party.

24.2 Receipt
A notice is deemed received:
(a) if sent by email, when the sender's system records successful transmission, unless an automated failure notice is received;
(b) if delivered by hand, on delivery;
(c) if sent by post within Australia, 3 Business Days after posting.

24.3 Operational notices
Operational notices, maintenance notifications, invoices, account notices and service updates may be sent to the Customer's nominated operational, billing or administrative contact.

25. General

25.1 Assignment
The Customer must not assign, novate or transfer any right or obligation under the Agreement without KernWi-Fi's prior written consent. KernWi-Fi may assign or novate the Agreement to a related body corporate or as part of a business sale, transfer or restructure on written notice to the Customer.

25.2 Waiver
A waiver is only effective if in writing. Failure or delay to exercise a right is not a waiver.

25.3 Severability
If a provision is invalid, illegal or unenforceable, it is severed to the extent necessary without affecting the remaining provisions.

25.4 Relationship
Nothing in the Agreement creates a partnership, joint venture, agency or employment relationship between the parties.

25.5 Survival
Any provision which by its nature is intended to survive termination survives, including clauses relating to payment, confidentiality, privacy, intellectual property, indemnity, liability and Equipment recovery.

25.6 Governing law
The Agreement is governed by the laws of South Australia and the Commonwealth of Australia. Each party submits to the non-exclusive jurisdiction of the courts of South Australia.

Internal contact standard
Recommended contact references for the contract and policy pack:

Accounts / billing: accounts@kernwifi.com.au
General / admin: admin@kernwifi.com.au
Resolutions / complaints: resolutions@kernwifi.com.au
Office phone: 1800 314 638