

Terms of Service

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

Any warranty against defects provided by us to you in your capacity as a consumer under the Australian Consumer Law is in addition to your other rights and remedies under a law in relation to the goods or services to which the warranty relates.

1. Agreements for the supply of products and services

- 1.1. Each time an Application Form is executed by you and us, a separate contract will be entered into consisting of the following documents (each, an **Agreement**):
 - (a) this Terms of Service;
 - (b) the Application Form; and
 - (c) the applicable Service Schedule.
- 1.2. Where applicable, we will provide you with access to a Critical Information Summary about Ordered Services.
- 1.3. To the extent of any inconsistency between the documents listed in subclauses 1.1(a) to 1.1(c), the document listed first in clause 1.1 shall prevail.
- 1.4. We have no obligation to supply any products or services under an Agreement other than as expressly required by the applicable Application Form(s).
- 1.5. We may modify this Terms of Service, any Service Schedule or our Acceptable Use Policy at any time and from time to time, in our absolute discretion. The modified versions will only apply to Agreements that we subsequently enter into with you. We will provide you with a copy of the modified versions or upload them to our website. It is your responsibility to ensure that you have read and understood them.
- 1.6. We are open to negotiating this Terms of Service or any Service Schedule. Please contact us if you would like to negotiate any part or parts of them prior to entering into the Agreement.

2. Term

- 2.1. Each Agreement will commence on the commencement date specified in the Application Form, or if the Application Form does not specify a commencement date, the Agreement will commence on the date of execution of the Application Form by the last party to execute it.
- 2.2. If a contract term, initial term or minimum period is specified in an Application Form or Service Schedule (each, a **Minimum Period**), upon expiry of the Minimum Period, the Agreement will automatically extend for subsequent consecutive periods each of equivalent length to the Minimum Period (each, a **Renewal Period**), until and unless either party notifies the other party in writing that it wishes to terminate the Agreement at least 60 days prior to the expiry of the Minimum Period or the then current Renewal Period (as applicable) (time being of the essence), in which case if such notice is provided, the Agreement will terminate at the end of the Minimum Period or the then current Renewal Period (as applicable).
- 2.3. If there is no Minimum Period, the Agreement will continue from the Commencement Date until the Ordered Products have been delivered and the Ordered Services first provided, and thereafter until either party terminates the Agreement on 30 days' prior written notice to the other party.

3. Supply of Ordered Products and Services

- 3.1. We will use our best endeavours to supply and/or procure the supply of the products and/or services specified in an

Application Form (respectively **Ordered Products** or **Ordered Services** and collectively, **Ordered Products and Services**) to you, substantially in accordance with any Specifications.

- 3.2. You must provide all necessary:
 - (a) cooperation, permissions, authorisations, assistance and consents (including all relevant third-party and End User consents and authorisations); and
 - (b) access to such information (including account logins and accurate addresses and installation locations), Your Equipment, Personnel, End Users, servers, networks, data, content, facilities, documentation, records, resources, records, equipment and premises, as reasonably required by us to supply and/or procure the supply of the Ordered Products and Services to you.
- 3.3. Where required by us, you must also arrange safe and timely access to Your Premises for our Personnel and Third Party Providers to provision, install, support and maintain the applicable Ordered Products and Services. Support and maintenance are not within the scope of the Agreement unless the applicable Application Form clearly states that they will be provided.
- 3.4. We are not liable for:
 - (a) the content, security or communications that you receive, access or rely upon when using Ordered Products and Services (except to the extent that we cannot exclude such liability under non-excludable applicable law);
 - (b) ensuring that any data sent or received over any Ordered Products and Services is sent or received correctly (except to the extent that we cannot exclude such liability under non-excludable applicable law) and to the maximum extent possible by law, we and our Third Party Providers do not have any responsibility for loss of data, delays, non-deliveries or mis-deliveries of data;
 - (c) the installation of electrical wiring, removal of doors, widening of entrances or any other structural work of any description at Your Premises. You must procure all such work to be carried out prior to our, and/or our Third Party Providers', attendance at Your Premises for the purposes of carrying out any installation, configuration or setup of any Ordered Products and Services;
 - (d) any loss of connectivity of any third party services or other services caused by our and/or our Third Party Providers' installation of any Ordered Products and Services;
 - (e) ensuring that Your Equipment is compatible or interoperable with Ordered Products and Services. Information about compatibility is available from us upon request; and
 - (f) all and any acts and omissions of your Personnel and End Users.
- 3.5. You consent to us disclosing all information about you in our possession or control, including full name, billing address, street address and if applicable, detailed of Ordered Products and Services, to our suppliers and for our suppliers to use such information to the extent necessary or desirable in connection with Ordered Services.
- 3.6. With respect to any proposed installation, commencement or start dates specified in an Application Form, except as set out otherwise in a Service Schedule:
 - (a) time is not of the essence and such dates are estimates only; and
 - (b) where our Personnel or Third Party Providers are unable to provision any Ordered Products and Services by any agreed or estimated installation, commencement or start date for any reason:
 - (i) we may terminate the relevant Agreement at any time prior to the provisioning being completed, by notice to you, without liability; and
 - (ii) you may terminate the relevant Agreement prior to the provisioning being completed, by notice to us, without liability.

4. Performance and availability of Ordered Products and Services

- 4.1. We warrant that Ordered Products and Services will perform materially in accordance with the Specifications.
- 4.2. We do not warrant that Ordered Products and Services will be:
 - (a) uninterrupted or error-free, free from fault or external intrusion; or
 - (b) suitable for or will meet your requirements, unless such warranties are expressly set out in an Application Form or Service Schedule or cannot be excluded from the Agreement under Applicable Law. Except where prohibited under Applicable Law, we may in our sole discretion, vary the Ordered Services at any time or from time to time, provided that such variation does not have a material adverse effect on the performance of the Ordered Services.
- 4.3. We will notify you in writing within 14 days of any variation to the Ordered Services made in accordance with clause 4.2, and you may terminate the Agreement without further liability, within 14 days of receipt of such notice, if you do not consent to such variation.

5. Your Equipment and Our Equipment

- 5.1. An Agreement does not transfer or assign title to Your Equipment to us.
- 5.2. An Agreement does not transfer or assign title to Our Equipment to you unless it expressly provides otherwise.
- 5.3. You must not, except as authorised in writing of us, grant or permit the grant or existence of any Security Interest in Our Equipment.
- 5.4. You must promptly notify us if any of Your Equipment becomes subject to any Security Interest or Purchase Money Security Interest (as defined under the PPSA) and you hereby indemnify us from and against all and any loss and/or damage incurred by us caused by any of the foregoing matters or the repossession of Your Equipment or any other action taken by any person that is a secured party in respect of Your Equipment.
- 5.5. You must keep Your Equipment insured for its full replacement value at all applicable times. You must provide us with a certificate of currency in respect of that insurance within 3 Business Days of a request by us at any time.

6. Your Data

- 6.1. Data in any form entered into, uploaded into or generated from Ordered Products and Services (**Your Data**) is, as between you and us, owned by you and the Agreement does not transfer any IPR in Your Data to us.
- 6.2. We will not use Your Data other than to:
 - (a) perform our obligations under the Agreement; and
 - (b) comply with our legal obligations.
- 6.3. You must ensure that:
 - (a) your End Users are fully entitled (and where applicable, licensed) to disclose to us all of Your Data that is entered into Your Equipment and Ordered Products and Services; and
 - (b) the collection, use, disclosure and processing of Your Data by us, our Personnel and Third Party Providers does not breach any Applicable Law or any person's rights.
- 6.4. Your Data may be hosted by us or our Third Party Providers on hardware or infrastructure located in or outside Australia. We may or may not own the infrastructure or the premises in which the infrastructure is located.
- 6.5. Data loss and corruption is unpredictable and can occur from time to time. In the event of any loss, destruction, alteration, corruption, or damage to any of Your Data that you transmit via an Ordered Services, we shall not have any liability for any such loss, destruction, alteration, corruption, damage or for any unauthorised access to or disclosure of Your Data unless it is caused by our wilful misconduct or intentional breach of the Agreement or we are unable to exclude such liability under Applicable Law.

7. Our Intellectual Property Rights

- 7.1. As between you and us, we own all IPR in:
 - (a) Ordered Services (including any software, Source Code, Object Code, databases and database structures that are

incorporated into or supplied in connection with the Ordered Services); and

- (b) all output of Ordered Services (**Output**) (except to the extent that it comprises Your Data) made available in or via the Ordered Products and Services, (collectively, **Our IPR**).
- 7.2. You must not represent that you own any of Our IPR.
 - 7.3. You must not directly or indirectly do anything that would or might invalidate, jeopardise, limit, interfere with or put in dispute Our IPR and you must not do or authorise the commission of any act that would or might invalidate or be inconsistent with our (or our 'licensors') ownership of Our IPR.

8. Acceptable Use

- 8.1. You must ensure that any person who accesses and/or uses any Ordered Products and Services (each, an **End User**):
 - (a) complies with all applicable Documentation, Applicable Law and our reasonable directions and policies in the course of such access and/or use;
 - (b) does not infringe or permit any person to infringe any of our, or our licensors', IPR;
 - (c) provides us with access to Your Data, Personnel, Your Equipment and/or any cooperation or assistance necessary for us to carry out our duties under the Agreement;
 - (d) does not provide their passwords or other access credentials for an Ordered Service to any other person;
 - (e) immediately notifies us of any unauthorised or suspected unauthorised use or disclosure of any access credentials for Ordered Products and Services; and
 - (f) uses reasonable and appropriate security measures and precautions when using any Ordered Products and Services.
- 8.2. You must:
 - (a) ensure that Your Premises are suitable and maintained in a manner suitable for the use of any Ordered Products and Services;
 - (b) maintain all building cabling (existing and new) in accordance with all Australian industry standards and guidelines necessary for any Ordered Products and Services to operate; and
 - (c) not do anything that interferes with or prevents the proper functioning of any Ordered Products and Services.
- 8.3. The availability of any Ordered Services will be subject to any bandwidth limitations, internet and network downtime and congestion, database size limitations, throughput limitations and other technical and non-technical limitations or restrictions as set out in the Specifications and/or Documentation.
- 8.4. Unless otherwise expressly specified in the Agreement, you must not, and must not permit any person to, use any Ordered Services:
 - (a) to copy, alter, modify, tamper with, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance any Ordered Services or any trade marks, any patent or copyright notices, or any confidentiality legend, notice or other means of identification, used on or in relation to any Ordered Services;
 - (b) in any manner that breaches Applicable Law or violates all or any legal rights of any person in any jurisdiction (including any person's privacy, such as by way of identity theft or "phishing");
 - (c) to license, sublicense, resell, assign, novate, transfer, distribute, or provide others with access to, any Ordered Services;
 - (d) to "frame", "mirror" or serve any Ordered Services on any web server or other computer server over the Internet or any other network;
 - (e) to store, transmit, distribute or introduce malicious programs into our systems, network or servers (e.g., malware, viruses, worms, trojan horses, e-mail bombs);
 - (f) to make fraudulent or misleading offers of goods or services;
 - (g) to carry out security breaches or disruptions of network communication (security breaches include, accessing data of which you are not an intended recipient, logging

into a server or account that you are not expressly authorised to access, corrupting any data, network sniffing, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);

- (h) to execute any form of network monitoring which will intercept data not intended for you; or
- (i) to circumvent user authentication or security of any of our hosts, networks or accounts or those of our customers or Third Party Providers, (collectively, **our Acceptable Use Policy**).

9. Fees

- 9.1. You must pay the Fees to us in accordance with the Payment Terms and any applicable Service Schedule.
- 9.2. Except as expressly specified otherwise in the Payment Terms, all invoices issued by us must be paid within 7 days from the date of issue of an invoice.
- 9.3. If you wish to pay by Direct Debit, you must complete our Direct Debit Request Form.
- 9.4. If you pay by credit card, you acknowledge that a processing fee set out at <https://stripe.com/au/pricing> will be payable by you.
- 9.5. Except as otherwise set out in an Application Form, the Fees are exclusive of all taxes such as GST and you agree to pay all such taxes to us, in respect of any Supply (as that term is defined in the GST Law) made for the purposes of the Agreement. You must pay all such taxes at the same time as the Fees.
- 9.6. If you fail to make any payment due to us under this Agreement in accordance with the Payment Terms then, without limiting our rights and remedies, you shall pay interest on the overdue amount at a rate equal to 2% per annum above the current overdraft rate that we have with our principal banker from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment, and you shall pay the interest together with the overdue amount upon demand by us. You hereby indemnify us from and against all and any legal costs and disbursements (on a full indemnity basis) that we incur in connection with the proceedings set out in this clause 9.6.

10. Liability

- 10.1. All information, specifications and samples provided by us in relation to Ordered Products or Services are approximations only and, subject to any applicable guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect your use of the Ordered Products or Services will not entitle you to reject Ordered Products upon delivery, or to make any claim in respect of them.
- 10.2. Other than any applicable implied guarantees under the Australian Consumer Law and other similar State and Territory non-excludable consumer law, we provide no warranty in relation to Ordered Products or Services.
- 10.3. Except to the extent that such liability cannot be excluded by applicable law, under no circumstances is either party liable or responsible in any way to the other party or any other person for any loss of profits, loss of savings, loss of business, loss of opportunity or loss of revenue.
- 10.4. The Australian Consumer Law gives you certain guarantees from us. Where liability for breach of any such guarantee can be limited, our liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Ordered Products, to the replacement or repair of the Ordered Products or the costs of resupply or replacement of the Ordered Products or with respect to Ordered Services to the supply of Ordered Services again or cost of re-supplying the Ordered Services again.
- 10.5. Ordered Products may be covered by a manufacturer's warranty supplied with the Ordered Products. You may contact us or the manufacturer in respect of such warranties.
- 10.6. In no event will we be liable for loss or damage to Ordered Products arising in the following circumstances:
 - (a) where defects result from normal wear and tear, overuse or any misuse of Ordered Products contrary to any instructions, user guides or user manuals that are provided by us, the licensor or the manufacturer;

- (b) accidental damage or defects that arise as a result of negligent use or care by you or any other person who uses the Ordered Products after we deliver them to you or you collect them from us (including where caused by damage caused by dropping equipment, cracking or spilling liquid on any equipment);
- (c) where any Ordered Products or component thereof that have been subject to neglect, accident, abuse, misuse, misapplication, incorrect connection or that have been subject to repair or alteration not authorised or undertaken by us;
- (d) use of Ordered Products for any purpose other than what they were designed for.

- 10.7. Upon receipt of a valid claim from you under a Non-Excludable Guarantee, we will contact you to arrange a suitable remedy. Where we elect to repair Ordered Products the subject of a valid claim, the Ordered Products may be replaced by refurbished goods of the same type rather than being repaired and refurbished parts may be used to repair Ordered Products. Where Ordered Products are repaired and are capable of retaining user-generated data, it is possible that the repair of the Ordered Products may result in loss of data.

11. Force Majeure Event

- 11.1. We are not liable for any failure by us to perform our obligations under the Agreement if such failure was caused by a Force Majeure Event. If a Force Majeure Event that prevents us from performing our obligations under the Agreement continues for 14 consecutive days, either party may terminate the Agreement by prior written notice.

12. Termination

- 12.1. A party may terminate the Agreement by written notice to the other party if the other party (**the defaulting party**) commits a breach of the Agreement that is not remediable, or if the breach is a remediable breach and the defaulting party fails to remedy the breach within 14 days of written notice to the defaulting party requiring the breach to be remedied.
- 12.2. We may terminate or suspend our provision of any Ordered Products and Services if:
 - (a) you fail to pay any Fees to us in accordance with the Payment Terms;
 - (b) you or any End User infringes or breaches our Acceptable Use Policy; or
 - (c) a Third Party Provider ceases to provide hardware, software, products or services that we require to comply with our obligations to supply any Ordered Products or Services to you.
- 12.3. Either party may terminate the Agreement by written notice to the other party if the other party suffers an Insolvency Event.
- 12.4. If an Agreement is terminated prior to the expiry of the Minimum Period (other than due to our breach or if we suffer an Insolvency Event), you will pay 75% of any outstanding amounts that we calculate or reasonably estimate would have been payable by you under the Agreement for the remainder of the Minimum Period (collectively, the **Outstanding Amount**). If an Outstanding Amount is payable, we shall send you a tax invoice in respect of the Outstanding Amount and you will pay that invoice within 30 days. You agree that: (i) payment under this clause is not intended to be, and will not, be punitive and you will compensate us for reasonable loss and damage resulting from early termination of the Agreement; and (ii) the Outstanding Amount is less than the total loss and damage that we will suffer from the early termination of the Agreement.
- 12.5. Any rights or obligations that, by their nature, survive termination shall so survive, including any provision dealing with confidentiality, IPR, liability, dispute resolution and jurisdiction.
- 12.6. Termination does not affect any accrued rights of either party.

13. Notices

- 13.1. All notices required or permitted to be made under the Agreement shall be in writing and shall be deemed delivered if:
 - (a) delivered in person;
 - (b) sent by post to the recipient's postal addresses identified in the relevant Application Form; or

- (c) sent by email to the recipient's email addresses identified in the relevant Application Form.
- 13.2. Notice given under subclause 13.1(a) shall be effective upon delivery.
- 13.3. Notice given under subclause 13.1(b) shall be effective 6 Business Days after posting if posted domestically in Australia, or 20 Business Days after posting to or from any other country.
- 13.4. Notice given under subclause 13.1(c) shall be effective on the day on which it is transmitted if the sender receives a read or delivery receipt confirming delivery or receipt of the email, or on the next Business Day unless a notification failure email is received, or otherwise when a reply to the email is received.
- 13.5. Any party may change its address for notice hereunder by giving written notice to the other party in accordance with this clause 13.

14. General

- 14.1. A party may not assign its rights or novate its obligations under the Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed).
- 14.2. If any provision of the Agreement is deemed void or invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain enforceable.
- 14.3. The relationship between you and us is non-exclusive and nothing in the Agreement will prevent us from supplying any goods or services to any third party in our absolute discretion. You and we are independent contracting entities and nothing contained in the Agreement creates any relationship of partnership, employment, joint venture or agency between the parties.
- 14.4. The Agreement is the entire agreement between you and us about its subject matter and supersedes all other written or verbal proposals, arrangements, representations or agreements between the parties about its subject matter.
- 14.5. The Agreement may be amended only by a written document signed by you and us and a provision of or a right under the Agreement may not be waived or varied except in writing signed by the party to be bound.
- 14.6. The Agreement is governed by the laws in force in Queensland. Each party submits to the exclusive jurisdiction of the courts located in that State and the courts of appeal from them in relation to any proceedings and disputes concerning the Agreement.

15. Definitions and Interpretation

- 15.1. In this Terms of Service, words in bold font in parentheses have the meanings given to them therein. In addition, the following words have the following meanings:
- Acceptable Use Policy** has the meaning given in clause 8.
- ACL** means schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- Applicable Law** means any legislation, rule of the general law, including common law and equity, judicial order or consent or requisition from, by or with any governmental agency, including any Data Protection Law and the ACL, in any applicable jurisdiction.
- Application Form** means a document entitled "Application Form" or similar issued by us to you that is executed by you and us.
- Business Day** means any day from Monday to Friday excluding public holidays in Queensland.
- Business Hours** means 9:00am – 5:00pm on Business Days.
- Data Protection Laws** means all applicable data protection and privacy laws in any applicable jurisdiction, including the *Privacy Act 1988* (Cth).
- Documentation** means any user manuals, notes, technical instructions and documentation provided by us in respect of the Ordered Products and Services.
- End User** has the meaning given in clause 8.1.
- Fees** means any fees and charges set out in the Agreement.
- Force Majeure Event** means war, industrial action, government action, natural disaster, flood, labour disturbance, pandemic, harmful code or component, or other circumstances beyond our reasonable control.
- GST and GST Law** have the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means, in respect of a party:

- (a) the party ceases to carry on business, is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt or a sequestration order is made against it;
- (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party, or an application (including voluntary application filed by that party) is lodged or an order is made or a resolution is passed for the winding up (whether voluntary or compulsory) or reduction of capital of that party;
- (c) the party enters into an arrangement with its creditors;
- (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution;
- (e) the party suspends payment of its debts to the other party or a third party, or the party takes the benefit of any law for the relief of insolvent debtors; or
- (f) anything analogous or having a substantially similar effect to any of the events described in (a) through (e) above occurs under the law of any applicable jurisdiction.

IPR means Intellectual Property Rights comprising of all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under article 2 of the Convention Establishing the World Intellectual Property Organisation, and all rights to enforce any of the foregoing rights.

Object Code means Source Code in compiled or binary form.

Ordered Product has the meaning given in clause 3.1.

Ordered Service has the meaning given in clause 3.1.

Ordered Products and Services has the meaning given in clause 3.1.

Our Equipment means any equipment, systems, software, networks, servers, hardware, cabling, ports, switches or other ancillary equipment or tools owned or operated by us.

Payment Terms means payment terms set out in the applicable Application Form or Critical Information Summary.

Personnel means a party's employees, agents, officers and subcontractors. We are not your Personnel and you are not our Personnel for the purposes of the Agreement.

PPSA means *Personal Property Securities Act 2009* (Cth) as amended from time to time and any regulations thereunder.

PPSR means the Personal Property Securities Register established under the PPSA.

Service Schedule means a document with that title that we supply to you.

Source Code means human readable computer code.

Specifications means the technical specifications for Ordered Products and Services as set out in, referred to from, or attached by us to a Service Schedule.

Term means the term of an Agreement determined pursuant to clause 2.

Third Party Providers means any of our third party suppliers, subcontractors or providers who provide any goods or services that we rely on, supply or resupply as part of Ordered Products and Services.

we, our and us means Freedom Broadband Pty Ltd ABN 18 634 053 277.

Your Equipment means any systems, software networks, servers, equipment, hardware, cabling, ports, switches and/or other ancillary equipment or tools owned or operated by you or on your behalf, other than Our Equipment. For the avoidance of doubt, Our Equipment is not Your Equipment.

Your Premises means any premises owned, controlled or occupied by you specified in an Application Form.

15.2. Unless the context requires otherwise:

- (a) a reference to "a party" means you or us (as the context dictates) and a reference to "the parties" means you and us;
- (b) headings and underlinings are for convenience only and do not affect the construction of the Agreement;
- (c) a provision of the Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision;
- (d) currency or "\$" refers to Australian dollars;
- (e) a reference to a statute or regulation includes amendments thereto;

- (f) a reference to time is to time in Queensland;
- (g) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity;
- (h) the words “such as”, “including”, “particularly” and similar expressions are not words of limitation and shall be interpreted as if the words ‘but not limited to’ immediately followed them in each case; and
- (i) a reference to the singular includes the plural and vice versa.