

## **1. Summary and Interpretation**

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1.1 This Service Agreement forms part of the Customer Relationship Agreement between Inticon Pty Ltd (ABN 25 129 437 958) (Referred to as Inticon, we, us, our) and the party acquiring services (Referred to as Customer, you, your).

1.2 A capitalised term within this agreement signifies a term as defined in Appendix 1 – Glossary located at the end of this document.

### 1.3 Construction of Document

- (a) Headings are for convenience only, and do not impact interpretation.
- (b) The singular includes the plural.
- (c) A person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (d) A gender is inclusive of all genders.
- (e) A reference to a document or agreement, or a provision of a document or agreement, includes that document, agreement or provision as amended, supplemented, replaced or novated.
- (f) A reference to a party to this document or to any other document or agreement includes a permitted substitute or permitted assign of that party.
- (g) A reference to "corporation" and any other words or expressions used or defined in the Corporations Act has, unless the context otherwise requires, the same meaning as given in the Corporations Act.
- (h) A reference to dollars or \$ is to Australian currency.
- (i) A reference to a system is a reference to any component or element of that system and a reference to a group of persons is a reference to any one or more of them.
- (j) A reference to a day is a reference to a Calendar Day, a reference to a month is a reference to a Calendar Month, a reference to a year is a reference to a Calendar Year, unless explicitly specified otherwise.
- (k) A reference to a business day is a reference to a day that is or is between Monday and Friday.
- (l) All representations, warranties and indemnities are continuing and survive termination of this Agreement.
- (m) Where under this Agreement Inticon is required to do anything, it may do that thing by any person.

- (n) Where under this Agreement or any Service Schedule or Agreement the customer must do anything, it must procure that its customers and Employees do that thing.
- (o) Where under this Agreement or any Service Schedule or Agreement the customer must not do anything, it must procure that its customers and Employees not do that thing.

## **2. Provision of Agreement**

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2.1 This Agreement continues until it is terminated in accordance with its terms.

2.2 This Agreement establishes provisions governing any relationship between Inticon and the Customer. This Agreement does not oblige Inticon to provide any services to the Customer, nor enter any additional Service Agreement with the Customer.

2.3 Inticon is not obliged to provide services to the Customer or perform actions under any Service Schedule or Agreement until such time as;

- (a) Acceptable completion of Service Schedule or Agreement by the Customer;
- (b) Inticon has received a satisfactory response to its inquiries regarding the credit history of the Customer, including but not limited to credit checks, trade and reference checks
- (c) Inticon security requirements, if applicable, have been met by the Customer;
- (d) The Customer has proved to Inticon's reasonable satisfaction at the Customer's expense that it has all permits, licenses and consents that it must have to receive the Services under the Service Agreement;
- (e) The Customer has provided any applicable privacy consents including but not limited to Non Disclosure Agreements as required by Inticon;
- (f) Except to the extent a Service Schedule or Agreement explicitly provides otherwise the definitions in this Agreement and rules for interpreting this Agreement apply to interpreting all Service Agreements;
- (g) In the case of inconsistency between this Agreement and any Service Schedule or Agreement, the provisions of this Agreement prevail to the extent of the inconsistency;
- (h) Without limiting the scope of Clauses (f) or (g), where in this Agreement there is any limitation or exclusion of Inticon's liability, or the imposition of conditions on the way in which the Customer may seek a remedy for any liability of Inticon, those provisions apply to each Service Agreement.

## **3. Termination of Agreement**

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3.1 If the Customer continues to receive a Service under a Service Agreement after the expiry of its term, the continuing supply of the Service is governed by the terms of the Service Agreement, any other relevant Service Agreements and this Agreement, modified as

follows:

- (a) Any term specified in the Service Schedule or Agreement does not apply;
- (b) Any party may terminate the Service Schedule or Agreement by providing one Month notice to the other party;
- (c) In the event the Customer does not meet its obligations under any Service Schedule or Agreement, or this Agreement Inticon may terminate this Agreement and or any one or more Service Schedule's or Agreements by providing the Customer 48 hours notice without prejudice;
- (d) Inticon may change the amount and or frequency of charges payable by the Customer by giving thirty (30) days notice.

3.2 This Agreement continues in force even if there is no current Service Schedule or Agreement in force, until it is terminated by Inticon or the Customer giving notice to the other. Notice to terminate this Agreement, other than for a breach of this Agreement or any Service Schedule or Agreement entitling the other party to terminate this Agreement, may not be given by any party during any time when any Service Schedule or Agreement is in force between the parties.

3.3 Despite the termination of this Agreement for any reason, if any party has committed a breach of this or any Service Schedule or Agreement which has or is capable of causing loss to the other party, the aggrieved party's rights in relation to such loss survive termination of this Agreement.

- (a) Where any Service Agreement with the Customer is for a fixed period and the Service Schedule or Agreement is terminated as a result of the Customer's breach or repudiation of it, or the occurrence of any event (including pursuant to a right of Inticon to terminate the Service Schedule or Agreement for the breach or to accept the repudiation) then without prejudice to any other right to damages Inticon may have, Inticon's damages are the total of the amounts the Customer would have become due to pay over the remainder of the fixed term of the Agreement (referred to as the "foregone revenue"), less Inticon's reasonable estimates of the amounts saved by it not providing the Service to the Customer over that period.
- (b) Inticon's statement of the damages calculated under this Clause, and any other damages to which Inticon reasonable believes it is entitled to by law, becomes a liquidated debt due and payable by the Customer forthwith, and is conclusive of the matters stated in it unless the Customer proves it is incorrect.

3.4 In the event the Customer does not meet its obligations under and Service Schedule or Agreement , or this Agreement Inticon may terminate this Agreement and or any one or more Service Schedule's or Agreements by providing the Customer 48 hours notice without prejudice.

#### **4. Supply of Services**

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4.1 The Customer is responsible to have the Hardware it needs to gain benefit from or to use

any Service provided by Inticon. Inticon makes no warranties about the suitability of any Service for the Customer's needs, unless it does so separately in writing.

The Customer is required to

- (a) Grant Inticon necessary access to its Hardware, Network and Premises for the purpose of initial and or ongoing provision of services;
- (b) Make appropriate facilities available to Inticon at the Customer's Premises which Inticon reasonably requires to do anything referred to in Clause (a);
- (c) Grant Inticon necessary access to its Hardware, Network and Premises in order to comply with Australian law;
- (d) Provide to Inticon's satisfaction consent from landlord or facilities management, if applicable, to do anything on the Customer's premises it must or may do under this Agreement or any Service Schedule or Agreement;
- (e) Provide to Inticon's satisfaction consent from landlord or facilities management, if applicable, to remove Inticon Hardware from the Customer's Premises on the termination of this Agreement or any Service Schedule or Agreement;
- (f) Liaise and deal with its own customers concerning all matters, including but not limited to fault reports, complaints and general inquiries about the Services, and is solely responsible for billing and collecting payment from its customers.

4.2 The Customer must be ready at the commencement date as per any Service Schedule or Agreement to receive all Services. Failure by the Customer to be ready at the commencement date does not relieve the Customer from responsibility to pay any fixed and or minimum usage charges, recurring or otherwise.

#### 4.3 Location of Services

- (a) Inticon's obligation to supply a Service under any Service Schedule or Agreement is only to supply it to the port, FNN, IP address, number or address whether physical or electronic ("Address") as specified within the Service Schedule or Agreement as initially advised by the Customer to Inticon, or as allocated by Inticon. Inticon may consent to supplying the Service to any different Address, but if it does so the Customer must pay on demand the extra costs incurred by Inticon, in addition to Inticon's mark up on these costs.
- (b) The Customer acknowledges that it has no right, title or ownership in any Address allocated to it by Inticon as part of any Service supplied by Inticon. Inticon reserves the right to replace or reallocate any Address as a result of compliance with any Law, the National Numbering Plan any direction from an Authority, or any requirement of any third party from whom Inticon obtained the Address. Inticon will notify the Customer of any Address change that will affect the Customer.

### **5. Service Level Guarantees**

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5.1 Notwithstanding anything else in this agreement, except:

- (a) Where and to the extent of Clauses 11.0 and 13.1 apply;
- (b) In the case of a Service Outage caused or contributed to by the failure of or defect in the supply of any goods or services to Inticon by a third party which Inticon uses to supply the Service;
- (c) In the case of a Planned Service Outage of which five (5) days Notice is given.

where a Service Schedule or Agreement contains a Guaranteed Service Level for a Service, Inticon must provide the Service to that level, except to the extent that the Customer causes or contributes to the failure.

5.2 The Customer's sole remedy if Inticon fails to meet a Guaranteed Service Level is a rebate of the portion of the periodic charge for the Service applicable to the period in excess of the guaranteed service level as specified in the Service Schedule or Agreement for which the service was not operating as defined in the Service Schedule or Agreement, multiplied by the Rebate Factor specified in the Service Level condition of the Service Schedule or Agreement.

5.3 A service is deemed to have been provided as agreed to be provided by Inticon or to such lesser level as admitted by Inticon unless the Customer proves otherwise.

5.4 Inticon may temporarily suspend provision of Service without liability for any reasonable purpose including

- (a) Ongoing maintenance or repair work of any Inticon's Hardware or Network;
- (b) Moving the location of any of Inticon's Hardware or Network.

A suspension under this Clause is referred to as a Planned Service Outage, and where possible five (5) days Notice will be given to the Customer.

## **6. Billing and Payments**

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6.1 The customer must pay Inticon all charges due under this Agreement and any Service Schedules or Agreements on or by their due dates by the method specified by Inticon. If no due date is specified for a charge in any Agreement, the due date is the date specified on the invoice, or if no due date is specified the due date is the date the invoice is generated.

- (a) Charges under a Service Schedule or Agreement which are fixed charged referable to a period ("Billing Period") are payable in respect of each Billing Period in advance;
- (b) Charges under a Service Schedule or Agreement which are based on time or volume use of a Service, are payable in arrears subject to Clause 6.1;
- (c) Charges under a Service Schedule or Agreement which are installation and establishment charges or charges for any goods supplied by Inticon are payable before Inticon is obliged to carry out the installation or supply the goods.

6.2 Where charges under any Service Schedule or Agreement are based on time, usage or volume of a Service, Inticon's records are conclusive, unless the Customer proves they are

incorrect.

6.3 Inticon may make a reasonable estimate of the time for which or the volume of the Service that is likely to be used for a billing period

- (a) That has not commenced;
- (b) That has not expired;
- (c) That has expired, where Inticon does not yet know the actual amount of such use in the period.

and the estimated charge is payable as if it were a fixed charge.

6.4 Where the Customer has paid a charge for the whole or part of any Service based on an estimate by Inticon, Inticon will determine the actual amount of usage of the Service made by the customer at the end of the billing period and:

- (a) if the estimated amount paid was greater than the actual amount due, Inticon must credit the excess amount to the Customer's account, but need not make any payment in respect of the credit unless no other amounts might become due from the Customer to Inticon under any existing agreements between the parties;
- (b) if the estimated amount paid was less than the actual amount due, the Customer must pay Inticon the amount of the underpayment immediately.

6.5 Where a Service is past its due date without payment being received by Inticon, Inticon reserves the right to suspend provision of all or any Service's without prior notice to the Customer until such time as the Customer's account is brought up-to-date.

6.6 Inticon may set off in whole or in part any amounts due by Inticon to the Customer under this Agreement or any Service Schedule or Agreement, against any amount due by the Customer to Inticon under this or any Agreement.

6.7 The Customer may not delay payment or deduct, withhold or set off any amounts for accounts in credit, counterclaims, disputes or for any other reason or attach any condition to a payment except as expressly provided in this Agreement or any Service Schedule or Agreement.

6.8 Inticon is taken to have received a payment from the Customer where

- (a) it is made by Electronic Payment, on the date of deposit as shown by Inticon's Merchant Facility or Bank Statement;
- (b) where it is made by cheque (if permitted by Inticon) on the date it receives the cheque or, if the cheque is dishonored, and Inticon does not reject it, on the date cleared funds are received by Inticon as well as all dishonor fees and charges.

6.9 Upon suspension of services due to non payment, Inticon reserves the right to forward the Customer's account to a commercial debt collection facility. This includes disclosing account information including but not limited to, information referred to in Clause 7.4.

6.10 The Customer is liable to make payment for all collection and legal costs incurred by Inticon at the demand of Inticon or a third party as authorised by Inticon.

## **7. Credit Information**

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7.1 The Customer and or Security Provider warrant that all credit information given by the Customer and or Security Provider was true and correct at the date it was given, and that no material variation to it adverse to the interests of Inticon has occurred since that date.

7.2 The Customer and or Security Provider consent to Inticon obtaining information from third parties specified by Inticon about their creditworthiness, and using it to manage its credit risk under this and any Agreement.

7.3 Inticon may request the Customer and or Security Provider provide any Credit Information while this Agreement is in force.

7.4 In the event there is a change in the income and expenses, assets and liabilities or any relevant circumstances if the Customer and or Security Provider that might affect the ability of the part to meet its obligations to Inticon under this or any Agreement, then that party must immediately notify Inticon.

7.5 For the purposes of processing this Agreement, establishing the Customer's account and the ongoing credit management of the Customer's account, Inticon may disclose to a credit reporting agency, personal information relating to the Customer or any Security Provider which is in Inticon's possession, including but not limited to, information referred to in Clause 7.4. The Customer and or the Security Provider consent to that disclosure or use.

7.6 The following is a list of Customer information relating to the Customer, which may be disclosed to a credit reporting agency:

- (a) Customer name and address, CAN, business names, partnership details;
- (b) Details of the Customer's application for Services and Services supplied to the Customer;
- (c) Credit limits on the Customer's accounts;
- (d) The amount of any payments which are over due;
- (e) Court judgments or bankruptcy orders made against the Customer;
- (f) That Inticon has ceased to provide services to the Customer in accordance with this Agreement as a result of Customer default relating to payment;
- (g) Any additional information that Inticon believes to be relevant.

## **8. Insurance**

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8.1 In the event that

- (a) a Service Schedule or Agreement permits the Customer's Hardware to be located on Inticon's Premises, or in proximity of any of Inticon's Hardware, whether on Inticon's Premise's or elsewhere;
- (b) a Service Schedule or Agreement or an arrangement made in respect of a Service Schedule or Agreement permits the Customer or its Employees to be on Inticon's Premises;
- (c) a Service Schedule or Agreement or an arrangement made in respect of a Service Schedule or Agreement permits Inticon's Employees to be on the Customer's Premises or in proximity to any of the Customer's Hardware;

the Customer must have insurance against

- (a) its liability for any negligence resulting in damage to Inticon and its Employees with cover of at least \$1,000,000 per claim;
- (b) where any Inticon Hardware is placed on any property other Inticon's Premise's at the Customers request, insurance against damage to the Hardware for its full replacement value covering all risks Inticon considers appropriate.

## **9. Title to Goods**

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9.1 Inticon remains title in any goods sold to the Customer until they are paid for in full. The Customer will identify those goods as Inticon's goods, referred to as "Retained Title Goods".

9.2 Inticon shall have access to any premises where the Retained Title Goods are stored to retake possession of them should they not be paid for in full on or by their due date.

9.3 The Customer indemnifies Inticon and its Employees against any claim by the Customer or any third party for any damage caused by Inticon or its Employees in retaking possession of Retained Title Goods.

## **10. Confidentiality**

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10.1 The Customer accepts the provisions as specified within the current Inticon Privacy Agreement, including but not limited to provisions made within any attached appendixes.

## **11. Liability**

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11.1 Except as expressly provided to the contrary in this Agreement or any Service Schedule or Agreement and to the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Services supplied under this Agreement or a Service Schedule or Agreement and a party's obligations under this Agreement and all Service Schedules or Agreements are excluded.

11.2 Where any Act of Parliament implies any term in this Agreement or any Service Schedule or Agreement, and that Act of Parliament makes Invalid provisions under a contract which exclude or modify the operation of the term, the term is deemed to be



included in this Agreement and any relevant Service Schedule or Agreement.

11.3 To the extent permitted by law, Inticon excludes all liability for consequential loss, loss of profits of any kind, loss or corruption of data, loss of revenue, economic loss of any kind and indirect loss, in contract, tort, intended conduct, under any statute or otherwise (including negligence), to the Customer or connected to this Agreement or any Service Schedule or Agreement.

11.4 The Customer indemnifies and holds Inticon harmless against all claims made against Inticon (including the costs of dealing with unsuccessful claim) arising out of or in connection with:

- (a) a breach of this Agreement;
- (b) a breach of any Service Schedule or Agreement;
- (c) a breach of any law of or that exists in any country of the World;
- (d) the acts and omissions, whether negligent or not;

by the Customer, by the Customer's customers or by the Customer's Employee.

## **12. Force Majeure**

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12.1 For the purposes of this Clause 12, Force Majeure refers to any circumstance beyond the reasonable direct or indirect control and without the fault or negligence of Inticon, including but not limited to any:

- (a) failure of supply of a service to Inticon that Inticon supplies to the Customer;
- (b) failure of any service supplied to Inticon on which the supply of the Service to the Customer is dependant;
- (c) act of God, act of war, cyclone, fire, flood, explosion, storm or earthquake;
- (d) change in law or action of any government or Authority;
- (e) strike, industrial action or riot.

12.2 Failure in performance by Inticon as a result of a Force Majeure event will not constitute a breach of this Agreement or any Service Schedule or Agreement provided that Inticon

- (a) notifies the other party in writing within three (3) days of the occurrence of the Force Majeure event and its anticipated likely duration and effect;
- (b) uses its best endeavours to resume fulfilling its obligations as promptly as possible, providing the other party with written notice within three (3) days of the cessation of the Force Majeure.

### **13. Regulatory Events**

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13.1 If a Regulatory event occurs which Inticon believes will prevent or interfere with the supply of the Service, or make it more expensive or less profitable for Inticon to supply the Service then;

- (a) Inticon may suspend provision of the Service until an agreement, if any, is reached under Clause (c) below and put into effect;
- (b) Inticon must advise the Customer of the Regulatory event;
- (c) Inticon and the Customer must enter good faith negotiations to see whether they can agree on amendments which will avoid the difficulty Inticon perceives the event has caused. If the negotiations do not result in an agreement within fourteen (14) days, Inticon may terminate any one or more of this Agreement and any Service Schedules or Agreements as it sees fit.

### **14. Attribution of Fault**

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14.1 The Customer must not attribute fault to Inticon when communicating with any third party, including but not limited to its own customers, except where to comply with this requirement would:

- (a) require the Customer to breach any law;
- (b) prevent the Customer from defending a claim made against it.

but where a Customer intends to attribute fault to Inticon, it must give Inticon reasonable notice of the claims it intends to make.

### **15. Default**

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15.1 In the event that

- (a) any amount payable is unpaid for fourteen (14) days after becoming due under the Agreement or any Service Schedule or Agreement, excluding an amount that is being dealt with in accordance with the Billing Dispute Procedure;
- (b) the Customer has failed to perform and observe any provision of this Agreement or any Service Schedule or Agreement binding on the Customer, other than an obligation to pay money;
- (c) the Customer or a Security Provider admits to any persons inability to pay its debts in writing;
- (d) an application is made to a Court for an order summoning a meeting of any class of creditors of the Customer or of a Security Provider;
- (e) a controller, as defined in the Corporations Act, is appointed in respect of the Customer or a Security Provider, or of any property of the Customer or a Security Provider;

- (f) a mortgagee takes possession of any property of the Customer or of a Security Provider;
- (g) an investigation is commenced under the Australian Securities Commission Act to investigate the affairs of the Customer or of a Security Provider;
- (h) the Customer or a Security Provider being a natural person, commits an act of bankruptcy;

then the Customer is in default under this Agreement and all Service Schedules or Agreements, regardless of whether, in the case where the default is the failure to perform and observe a provision of an agreement or rectify a failure to perform and observe a provision of an agreement after notice, it was a failure to perform and observe a provision of one or more but not all of the agreements between Inticon and the Customer. Inticon may terminate any one or more of this Agreement and any Service Schedules or Agreements as it chooses if a default occurs. This Clause is without prejudice to Inticon's rights to terminate this Agreement or any Service Schedule or Agreement in other circumstances allowed for by Law.

## **16. Costs**

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16.1 Where this Agreement states that any party is to pay any costs of Inticon those costs include

- (a) The costs of any litigation to enforce any obligation of the party taken by Inticon, including proceedings for the enforcement of any judgment or order. Without limiting the generality of this Clause, the costs of litigation and enforcement proceeding include the costs of locating any party and serving documents on the party.
- (b) The costs of time spent by any Employee of Inticon and by resources used by Inticon in investigating and dealing with the failure by the Customer or any Security Provider to perform or observe any provisions contained or implied in this Agreement or in any Service Scheduled or Agreement, and doing anything that it would not have been reasonable for Inticon to do if the Customer or the Security Provider had not so failed, including time spent communicating with the Customer or the Security Provider about the failure, at they rate considered reasonable by Inticon having regard to:
  - i. The remuneration paid to the Employees dealing with the matter;
  - ii. The time spent by the Employee;
  - iii. Inticon's fixed and variable overheads of conducting business;
  - iv. Loss or inconvenience caused to Inticon by the diversion of its Employee away from his usual tasks

16.2 On demand of Inticon the Customer shall pay to Inticon

- (a) The stamp duty (including penalties and fines other than penalties and fines due to the default of Inticon) and;
- (b) All Inticon's legal and other costs of and incidental to failure by the Customer or any

Security Provider to perform and observe any provisions contained or implied in this Agreement or in any Service Schedule or Agreement.

16.3 Where expressly under this Agreement or by Law, the Customer or a Security Provider has to compensate or indemnify Inticon against any loss or damage, that obligation includes an obligation pay Inticon's costs in relation to the loss or damage.

16.4 Where under this Agreement or any Service Schedule or Agreement the Customer or a Security Provider must pay the cost of Inticon doing anything id Inticon demands payment of its estimate of those costs in advance the relevant party must pay them on demand and, if Inticon is otherwise required to do that thing, it is not required to do so until the Customer has paid the costs estimated and demanded by Inticon of doing the thing to Inticon in advance. In a case where the Customer makes a payment of Inticon's estimated costs after the actual level of those costs has been ascertained there shall be an accounting between the parties so that the actual level of such costs is in fact paid by the Customer.

## **17. Severability of Provisions**

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17.1 All provisions of this Agreement and of any Service Schedules or Agreements shall so far as possible be construed so as not to be Invalid in any respect but if any provision or part provision on its true interpretation is Invalid in any respect that provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not Invalid so as to give it a valid operation of a partial character. If any such provision or part provision cannot be so read down, such provision or part provision shall be deemed to be severed from this Agreement and the remaining provisions of this Agreement are not in any way be affected or impaired.

17.2 If a provision of this Agreement of a Service Schedule or Agreement is Invalid in whole or in part, and as a result this Agreement or any Service Schedule or Agreement is less beneficial tor more onerous to Inticon, Inticon may:

- (a) deem a provision to be included in this Agreement or the Service Schedule Agreement as it chooses with such wording as it thinks fit which as nearly as possible puts Inticon in the same economic position as it would have been in had the provision or part provision not been severed or affected by Clause 17.1, and as such provision is deemed to have been binding on the parties from the date specific by Inticon including a date in the past;
- (b) in a case where in Inticon's opinion it is not possible to achieve the effect provided for in Clause (a) – terminate the relevant Agreement or deem the relevant Agreement to be terminated from any date as is specified by Inticon, including a date in the past.

## **18. Consents**

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18.1 Except as expressly stated otherwise in this Agreement, Inticon may conditionally or unconditionally give or withhold any consent or permission to be given under this Agreement and any Service Schedule or Agreement and is not obliged to give its reasons for doing so. Inticon's consent is only valid if in writing.

## **19. Legal Costs**

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19.1 Except as expressly stated otherwise in this Agreement, each party must pay its own legal costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement and the Service Schedules or Agreements.

## **20. Rights Cumulative**

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20.1 Except as expressly stated otherwise in this Agreement or any Service Schedule or Agreement, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

## **21. Customer Consent**

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21.1 The Customer must sign all documentation and do all such things as Inticon reasonably requires (at Inticon's cost) to authorise or assist in obtaining consent or approval from an Authority to the transactions contemplated in this Agreement and any Service Schedule or Agreement.

## **22. Relationship of Parties**

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22.1 This document is not intended to create a partnership, joint venture or agency relationship between the parties. No party has the authority to pledge the credit of another.

## **23. Entire Agreement**

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23.1 This Agreement contains the entire Agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

## **24. Counterparts**

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24.1 This Agreement may be signed in counterparts and all counterparts taken together constitute one document.

## **25. Notices**

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25.1 Any notice, consent, approval or other communication required or permitted under this Agreement:

- (a) must be in writing;
- (b) must be delivered by personal service, facsimile or by registered mail, addressed to the recipients' address or to any alternate address or facsimile number notified by either part.

25.2 Any Notice given or made under Clause 25.1 of this Agreement may also be sent by email if:

- (a) the Notice is signed by a person clearly authorised by the sender;

- (b) the Notice is sent to:
- a. Inticon: The email address of the Customer's Account Manager
  - b. The Customer: The email address of the Customer's representative

## **26. Governing Law**

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26.1 This Agreement and any Service Schedule or Agreement is governed by and takes effect and will be construed in accordance with the laws of New South Wales, Australia. Each party submits to the jurisdiction of courts exercising jurisdiction there and waives any right to Claim those courts are an inconvenient forum.

## **Appendix 1 – Glossary**

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**"ACCC"** means the Australian Competition & Consumer Commission.

**"ACMA"** means the Australian Communications and Media Authority

**"Act of Parliament"** means any Act of Parliament, delegated legislation, order in Council, proclamation, notice, rule, regulation, by-law, local law, notice, and other instrument imposing legal obligations on any other person (not being a matter of private law).

**"Agreement"** means this Agreement and includes any annexure, modification and schedule to this Agreement.

**"Authority"** includes any body or corporation which administers or has powers under any Law and includes Federal, State, and local governments and any department or agency of any government, and any body or corporation which exercises any executive, administrative or public function anywhere in Australia.

**"Authority of any part of the World"** includes Authority and also includes any body or corporation which administers any law of any country or subdivision of any country, and includes National, Federal, State, and local governments and governments of any subdivision of any country, and any department or agency of any such government and any body or corporation which exercises any executive, administrative or public function anywhere in the World.

**"Billing Dispute Procedure"** means the procedure available on demand from Inticon.

**"Business Day"** means a day other than a Saturday, Sunday or bank or public holiday in New South Wales.

**"Clause"** means a clause of this Agreement.

**"Corporations Act"** means the Corporations Act (Cth) 2001.

**"Credit Information"** means information and copies of documents relevant to a party's assets, liabilities, income and expenses, losses, gains, the likelihood of any of the foregoing occurring and all information that Inticon may wish to know to help it to understand whether the relevant party will be able to discharge its obligations under this Agreement and any actual or contemplated Service Schedule or Agreement at the relevant time or any

time in the future.

**“Customer's Hardware”** includes any Hardware used by the Customer, whether owned by it or not, but excludes Hardware owned by Inticon or which Inticon obtained the right to use from any party other than the Customer.

**“Customer's Network”** includes any Network used by the Customer, whether owned by it or not, but excludes a Network owned by Inticon, or which Inticon obtained the right to use from any party other than the Customer.

**“Customer's Premises”** means:

- (a) any premises owned or occupied as tenant by the Customer
- (b) any premises on which the Customer has a licence to place any of its Hardware or Network, but in that case excluding any premises which is Inticon's premises.

**“Damage”** includes without limiting the generality of that expression:

- (a) physical damage to Hardware;
- (b) loss or corruption of data;
- (c) economic loss;
- (d) interference with
  - I. the proper operation of a person's Hardware or Network
  - II. the proper flow or transmission of signals, data, electrical current, microwaves, optical signals, radio waves or other communications from to, from, between or over a person's Hardware or Networks;

**“Emergency”** means a situation reasonably deemed by Inticon to be an emergency whether before, during or after the fact.

**“Employee”** includes employee, officer, agent and independent contractor (where that contractor is acting on behalf of the party to whose employee the reference is).

**“Guaranteed Service Level”** means a guaranteed service level in a Service Schedule or Agreement or Service Level Agreement.

**“Hardware”** means computer, electronic device, electrical device, optical device, mechanical device and physical object used in conjunction with electronic, electrical optical or mechanical devices, notwithstanding that anything which is Hardware may also be a Network or part of a Network.

**“Injury”** includes death.

**“Invalid”** includes void, voidable, illegal and unenforceable.

**“Law”** includes any Act of Parliament, Requirement, and the rules of common law and equity.

**“Legal Process”** includes writ, summons or other originating process of any type whatever without limitation including any process which may be served in the course of proceedings to establish or enforce legal rights or obtain legal remedies, and any document that may be

used to commence arbitration proceedings.

**“Maximum Permitted Downtime”** means time for which a Service is not guaranteed to be operational under a Service Level Guarantee.

**“Money Due”** means any money due by the Customer under this Agreement or any Service Agreement, whether the Service Agreement has been entered into or is entered into at a future date, including money due under a Service Agreement that is renewed or extended on a monthly or other periodic basis.

**“Network”** means any means of connecting any two or more items of Hardware together, whether wholly or partly by cable, optic fibre, any physical means, transmission of electromagnetic radiation, or without limitation by any other means whatsoever. Where reference is made to a Network owned by or of any person, it is immaterial that the person does not own or use the whole means of connecting two or more items of Hardware together. The reference includes a reference to anything owned or used by that person which, when used in conjunction with anything else, is a means of connecting any two or more items of Hardware together.

**“Notice”** means a notice in writing signed by an Employee of the party giving the notice or its solicitor.

**“Officer”** includes any director, alternate director, secretary, assistant secretary, executive officer and attorney of the particular party.

**“Person”** includes corporation and vice versa.

**“Regulatory Event”** means:

- (a) the enactment, amendment, replacement or appeal of any Law which materially affects Inticon’s business or its rights or obligations under this Agreement or any Service Agreement;
- (b) the determination, addition, variation or removal of a Service Provider rule under the Telecommunications Act 1997 (Cth) applicable to Inticon, which materially affects Inticon’s business or its rights or obligations under this Agreement or any Service Agreement;
- (c) the issue, registration, making, promulgation, amendment or replacement of any code by an Authority which materially affects Inticon’s business or its rights or obligations under this Agreement or any Service Agreement;
- (d) the issue of a competition notice by the ACCC to Inticon in relation to its business or anything done under this Agreement or Service Agreement;
- (e) an Authority issuing any notice or without limitation other instrument requiring Inticon specifically or as part of a class to do or refrain from doing any act of thing, which materially affects its business or its rights or obligations under this Agreement or any Service Agreement;
- (f) an order by any court or Authority to the effect of the whole or any part of this Agreement or any Service Agreement is Invalid, or that Inticon must do or refrain from doing any thing (except as a result of a breach of this Agreement).

**“Requirement”** includes any requirement, notice, order, direction, recommendation, stipulation or similar notification received from or given by any Authority, whether in writing



or otherwise, and regardless of to whom such Requirement is addressed or directed.

**“Security Agreement”** means any agreement entered into between any person and Inticon which secures or purports to secure in whole or in part all or any of the Customer’s obligations under this Agreement or any Service Agreement, and includes any guarantee contained in this Agreement.

**“Security Provider”** means a person who has provided security to secure all or part of the Customer’s obligations under this Agreement or any Service Agreement and includes the guarantor.

- (a) Where the Customer has provided security in respect of its obligations under this Agreement or any Service Agreement, “Security Provider” also includes the Customer.
- (b) Where (a) applies and a provision of this Agreement refers to an obligation on the part of the Customer and the Security Provider, that reference is for the purposes of clarity only and does imply that in that or any relevant provision the expression “Security Provider” does not include “Customer”

**“Service”** means goods and services provided by Inticon under any Service Agreement.

**“Service Schedule or Agreement”** means any agreement entered into between the Customer and Inticon, whether before, on or after the date of this Agreement, which relates to the provision of services and or goods by Inticon to the Customer.

**“Service Outage”** means any interruption or termination of the Service occurring for any reason, whether planned or not.