

SWIFT PLUS TERMS AND CONDITIONS

Updated February 2020

These terms and conditions apply to all contracts for Equipment, Content and Services relevant to the provision of Swift Plus Entertainment and Communication Services by Swift Networks to the Customer.

1 General Provisions

1.1 Definitions

The following terms have the following meaning in the Agreement:

“Additional Services” means any additional services provided by Swift Networks to the Customer in accordance with clause 4.3.

“Agreement” means the agreement between Swift Networks and the Customer comprising:

- a) the Equipment and Services Agreement, including any Schedules; and
- b) these Terms and Conditions (as amended from time to time).

“Business Day” means a day other than a Saturday, Sunday or a public holiday in Western Australia.

“Commencement Date” means the date that the last party signs this Agreement.

“Consequential Loss” means expenses incurred, loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of goodwill, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss, and any forms of special, indirect, punitive or exemplary loss or damages, and any penalties or fines imposed by a regulator, (even if such loss arises directly, naturally or in the usual course of things from any breach, action or inaction in question),

“Consumables” means collectively, remote control batteries.

“Content” means:

- a) all forms of information including text, pictures, animations, video, sound, recordings, information-based updates, multimedia, software, separately or combined;
- b) all licensed motion pictures and short form pictures and linear channels that Swift Network elects to make available to Customer; and
- c) any content services (as defined in the *Telecommunications Act 1997* (Cth)), sent and received across a network.

“Customer” means the party set out in Part 1 of Schedule 1.

“Eligible Screens” means the number of screens for which the Customer has agreed to a minimum commitment in respect of the Aged Care Base Package as set out in the Schedule.

“**Equipment**” means equipment detailed in Schedule 4.

“**Fees**” has the meaning given in Schedule 3.

“**Force Majeure**” has the meaning given to that term in clause 17.2 of this Agreement.

“**Hardware**” means remote controls, the System and the equipment set out in clause 7.1e).

“**Intellectual Property Rights**” means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

“**Loss**” means any loss, cost, liability or damage, including reasonable legal costs and disbursements on a solicitor/client basis and does not include Consequential Loss.

“**Party**” means Swift Networks or the Customer and a reference to “**Parties**” means both Swift Networks and the Customer.

“**Permissible Downtime Allowance**” means total annual System Downtime of 2.5% and excludes all downtime or outages caused or contributed by the Customer including (without limitation) downtime or outages caused or contributed by the Customer’s local area network, Customer-provided internet connectivity, scheduled service downtime notified by Swift Networks to the Customer upon reasonable notice, the Customer’s non-compliant use of the Equipment, Content or the Services and any factors beyond Swift Networks’ reasonable control.

“**Related Bodies Corporate**” of an entity means a body corporate that is related to that entity in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth).

“**Schedule**” means a schedule to the Service and Equipment Agreement.

“**Service and Equipment Agreement**” means the service and equipment agreement (as amended from time to time) between the Customer and Swift Networks to which these terms and conditions apply.

“**Services**” means the services as defined in Schedule 3 and, where applicable, the Additional Services as agreed between the Customer and Swift Networks from time to time in accordance with clause 0 of this Agreement.

“**Start Date**” means the date upon which the Customer takes possession of Equipment, or the date on which the Company provides Services to the Customer and, if more than one date is applicable, whichever is the earlier date.

“**Set Up Services**” has the meaning given in clause 7.1 a)i).

“**Site**” means the location or locations where the Services will be provided as set out in Schedule 6.

“**Specified Marketing Material**” means all marketing material that includes a reference to Swift Networks (including its Related Bodies Corporate), its products, services or personnel.

“**Swift Networks**” means Swift Networks Pty Ltd ABN 96 125 828 453.

“**Swift Networks General Terms and Conditions**” means the Swift Networks Pty Ltd General Terms and Conditions dated February 2017 (as amended from time to time).

“**Swift Plus Entertainment and Communication Services**” means the entertainment and communication services provided by Swift Networks exclusively to aged care facilities.

“**System**” means:

- a) the Swift Networks digital entertainment system used to deliver the Content; and
- b) Swift Networks head end server(s), cloud-based infrastructure, software and ancillary systems used to deliver the Services

“**System Downtime**” means periods when the System is unavailable.

“**Term**” means the period set out in Schedule 2 (subject to extensions permitted under clause 5 of this Agreement).

“**Terms and Conditions**” means the terms and conditions set out in this document.

“**Upstream Contracts**” means a contract or contracts for the supply of the content or telecommunications services relating the Services, entered into between Swift Networks and third-party content and telecommunications service providers.

“**User Interface**” means the user interface provided by Swift Networks for the System.

1.2 Interpretation

In the Agreement, unless the context otherwise requires:

- a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of the Agreement;
- b) a reference to any document is to that document as amended, novated, supplemented or replaced from time to time;
- c) words expressed in the singular include the plural and vice versa;
- d) words expressed in one gender include the other gender;
- e) a ‘person’ includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate;
- f) references to parts, clauses, parties, schedules and annexures are references to parts and clauses of and parties, schedules and annexures to the Agreement;
- g) a reference to a party to the Agreement includes that party’s successors and permitted assigns and, in the case of a natural person, also includes that person’s personal representatives and administrators;
- h) a reference to any thing or any amount is a reference to the whole and each part of it. A reference to a group of persons is a reference to all of them collectively, to 2 or more them collectively and to each of them individually;
- i) references to time are to time in Perth, Western Australia;
- j) where a day, which is not a Business Day, is specified by or on which a thing must be done, that thing that must be done by or on the next succeeding Business Day; and
- k) a covenant or document made by, or for the benefit of, two or more persons binds, and is enforceable against, or may be exercised by (as the case may be), those persons jointly and each of them severally.

2 Terms and Conditions

- a) Subject to clause 2b), these Terms and Conditions apply to the provision of Services, Content, and/or Equipment by Swift Networks to the exclusion of all other terms and conditions, including any terms and conditions which the Customer purports to apply or which are endorsed on any correspondence or documents issued by Customer irrespective of their date of communication to Swift Networks.
- b) The terms and conditions of any separately negotiated written contract between the parties in respect of the Services, Content and Equipment which is properly executed by Swift Networks and the Customer will supersede these Terms and Conditions.
- c) To the extent of any inconsistency between these Terms and Conditions and the Swift Networks General Terms and Conditions, these Terms and Conditions will prevail.

3 Term

Subject to clause 12, the Agreement commences on the Commencement Date and continues for the Term.

4 Services

4.1 Provision of Services

- a) In consideration of the Fees specified in Schedule 3 payable by the Customer to Swift Networks, Swift Networks provides the Services to the Customer at the Site on the terms and conditions set out in this Agreement for the duration of the Term.
- b) Subject to the Permissible Downtime Allowance, Swift Networks will use all reasonable endeavours to ensure that the Services are available to the Customer twenty-four (24) hours per day, seven (7) days per week.
- c) The Services are expressly supplied to the Customer on an as-is basis. Neither Swift Networks nor any party to an Upstream Contract guarantees a continuous or fault-free Service. Neither Swift Networks nor any party to an Upstream Contract is liable to the Customer's patrons for any content that is obtained or exhibited using the Services or for any interruption to or failure to provide the Services.

4.2 Covenants with respect to use of Services

- a) Swift Networks will provide the Services in accordance with this Agreement and with the degree of skill, care and diligence expected of a professional providing services of the same kind.
- b) The Customer covenants that (i) the Services will only be used for its intended use within in-room accommodation environments and not in any licensed areas; (ii) the Services will not be used or received by unauthorised persons or for any unauthorised use whatsoever; (iii) that it will not itself, nor authorise others to, unlawfully copy, record, retransmit, videotape, split, redirect, redistribute or otherwise reproduce, offer or supply the Services or any part thereof including but not limited to any other place than the Location agreed herein, and will take reasonable security measures to prevent any unauthorised receipt of the Services, and (iv) not to duplicate, alter, retransmit or redistribute any entertainment program or content provided by Swift Networks through the provision of the Services, including making any change to the picture aspect ratio (for example by inserting digital signage on screen), in any way including but not limited to via the internet.

- c) The Parties acknowledge that Swift Networks is not granting reproduction rights of any kind, and the rights granted are to enable use of the Services to the extent permitted by all applicable laws.
- d) The Customer is solely liable for any Copyrighted content uploaded to the System for viewing with or without authorised permissions from the content owner. The Customer agrees to indemnify Swift Networks against any Loss suffered by Swift Networks as a result of any unauthorised Copyrighted content being uploaded to the System by the Customer.

4.3 Services

- a) The Customer may request Swift Networks to provide Additional Services in addition to the Services currently being provided under this Agreement.
- b) Where Swift Networks agrees to provide the Additional Services:
 - i) All reference to the term "Services" will include such Additional Services as are agreed to be provided to the Customer by Swift Networks; and
 - ii) The payment of Fees by the Customer for the Services will be increased by the Fees for the Additional Services.
- c) Swift Networks may change the Service at any time without notice, including, but not limited to, changing the scheduled broadcast time of, or withdrawing, any program or content; restricting the features and/or adding, withdrawing or changing features of functionality of the Service.
- d) If a change to the Service by Swift Networks under clause renders the Service unfit for its purpose (having regard to the Service as at the date of this Agreement), and Swift Networks fails to restore the Service to a state whereby it is fit for its agreed upon purpose within 28 days of receiving written notice from the Customer, then the Customer may terminate this Agreement immediately.
- e) With respect to any Equipment used for the provision of the Services which remains the property of Swift Networks (**Swift Equipment**), Swift Networks will provide a standard warranty on the Swift Equipment during the Term.
- f) With respect to any Equipment used for the provision of the Services which is acquired by, or transferred to, the Customer (**Customer Equipment**), on and from the date that ownership of the Customer Equipment vests in the Customer, Swift Networks will provide a standard 12 month warranty on the Customer Equipment, regardless of whether Swift Networks is the manufacturer of the relevant Equipment. Swift Networks will provide a standard 12-month warranty on all Equipment provided through the provision of the Services, regardless of whether Swift Networks is the manufacturer of the relevant Equipment.

5 Changes to the Services

- a) The Customer must contact Swift Networks if the Customer requires any changes made to the Services (including any proposed movement or changes to the Equipment or Site).
- b) The Customer acknowledges that relocations to other Sites are only possible with Swift Networks prior written consent in its absolute discretion.
- c) If Swift Networks agrees to make any changes, Swift Networks will notify the Customer of any revised or additional charges and any extra or changed terms that may apply.

- d) Once any modifications are complete, the Customer will be responsible for adhering to any revised terms or payment, including relocation fees and other additional charges.

6. Service alterations by Swift Networks

- a) The Customer acknowledges that the Services and the supply thereof, rely on rights granted by Swift Networks licensors and is subject to change. As such, Swift Networks may at any time by notice in writing to the Customer make alterations to the Services or change, implement or impose additional restrictions on the Services or particular Content.
- b) The Customer acknowledges that:
 - i) Swift Networks may at any time, upon written notice to Customer, make alterations to the Services, impose or change restrictions on the viewing of the Services or particular programmes including but not limited to restrictions on any recording, playing back or viewing in any areas of the Site and the Customer agrees to abide by those restrictions;
 - ii) Swift may at any time change or replace Equipment for the Customers continued use of the Services.

7 Installation

7.1 Connecting the Services

- a) Swift Networks requires the Customer's cooperation to enable Swift Networks to conduct a Site Survey (if applicable), install and supply the Services to the Customer safely and lawfully. To be able to connect to and receive the Services, the Customer will (and it is the Customer's responsibility to):
 - i) obtain all required permits and licences, including council approval and building owner and strata consents as applicable, and procure for Swift Networks all permissions required for Swift Networks and its subcontractors to enter and attend the premises, survey, install and configure any relevant Equipment (including any pre-existing network infrastructure) and set up and connect the Services (including making any necessary physical modifications to the premises that are approved by Customer prior to commencing the Services ("**Set-Up Services**")); and
 - ii) ensure that the access the Customer provides to the premises is safe and free of hazards. The Customer indemnifies Swift Networks against any claim by another person in connection with the Customer's failure to do so. The Customer acknowledges that additional charges will be payable for non-standard installations (as determined by Swift Networks or Swift Networks' Subcontractor) re-installations or re-appointments. Swift Networks or Swift Networks' Subcontractor will notify the Customer if non-standard installation charges apply prior to commencing the installation and the Customer must provide written approval accepting the non-standard installation charges presented, prior to commencement of any non-standard installation works. The Customer must pay these if the Customer decides to go ahead with the Services.
- b) In the event Set-Up Services are required, Swift may agree with the Customer an intended date on which Swift will perform the Set-Up Services and connect the Services. Swift reserves the right to change or reschedule this date by providing at least 5 Business Days' notice to the Customer.

- c) If Swift or its subcontractors are unable to complete the Set-Up Services on the intended date due to Swift not being able to enter the premises due to the Customer not being able to grant access, the Customer unavailability to attend the appointment, the Customer cancellation of the appointment without providing at least 5 Business Days' notice, Swift may charge the Customer for any and all reasonable costs incurred by Swift Networks as a result.
- d) In relation to the Customer's use of the Services, the Customer will be charged for all applicable Content provided, with all screens within the facility to receive the Service and to be charged accordingly for the Content provided.
- e) The Customer will be required to have the following at each Site in order to receive the Services:
 - i) a location to physically store the Equipment with access to power and the Sites internet point of presence;
 - ii) digital televisions or set-top boxes in each Eligible Room capable of receiving MPEG-4 and high definitional channels; and
 - iii) a MATV head end and RF distribution network which is fit for use of the Services, and requires no remediation.
- f) The Customer agrees and acknowledges that it is solely responsible for ensuring that at all times during the Term it maintains the equipment set out in clause 0e).

7.2.1 Grant

- a) In consideration of the Fee payable by the Customer to Swift Networks, the Customer may be deemed to rent the Equipment outlined in Schedule 4 from Swift Networks (or any other party pursuant to an Upstream Contract) on the terms and conditions set out on this Agreement for the duration of the Term.
- b) Following completion of the Term or upon termination of this Agreement in accordance with its terms, the Customer must (at its own cost) return all Equipment within 28 days of receiving written notice from Swift Networks specifying the relevant Equipment to be returned and setting out Swift Network's nominated address for the Equipment to be returned.

7.3 Covenants with respect to proper use and possession of the Equipment

- a) The Customer covenants that its use of the Equipment will be in accordance with all applicable Laws, including without limitation, the *Radio Communications Act 1992* (and any corresponding regulations).
- b) The Customer agrees and acknowledges that it is a material breach of this Agreement where there is an improper use of the Equipment, including (without limitation) any:
 - i) use of or permission to a third party to use any Equipment which may copy, reproduce, republish, post broadcast transmit, split record, decrypt, re-code or affect a Service, which is intended to override any content protection measure;
 - ii) attempt by the Customer (including its personnel and patrons) to affix the Equipment to any property;
 - iii) attempt by the Customer (including its personnel and patrons) to repair, interfere with or modify the Equipment or any connections to the Equipment or adding hardware to the Equipment without Swift Networks' consent;

- iv) attempt by the Customer (including its personnel and patrons) to tamper or interfere with any hardware comprising the Equipment;
- v) attempt by the Customer (including its personnel and patrons) to use the Equipment to obtain access to or transmission of content or material which is not included in the Services; or
- c) The Customer must at all times keep and maintain the Equipment properly serviced, in proper working order and condition and in good and substantial repair (fair wear and tear is excepted). The Customer must pay all reasonable repair and operating expenses in respect of the Equipment.
- d) The Customer will be fully responsible to Swift Networks for any loss of or damage to the Equipment however occasioned except as a direct result of any act or omission on the part of Swift Networks (including its employees, agents, contractors or other personnel).
- e) The Customer must promptly notify Swift Networks in writing of any loss, damage, fault, destruction or interference that it becomes aware of in relation to the Equipment whatsoever.
- f) The Customer acknowledges and agrees that the Equipment will only be used in accordance with the instructions and recommendations of Swift Networks relating to the Equipment and to their use.
- g) The Customer grants Swift Networks the right, and will use its best endeavours to ensure that any relevant person grant Swift Networks the right, at all reasonable times upon Swift Networks giving the Customer no less than 48 hours' written notice and without unduly interfering with the Customer's operations, to:
 - i) enter with its servants, agents and experts upon or into the location where the Equipment is used or stored;
 - ii) inspect the state of repair of the Equipment;
 - iii) carry out such tests on the Equipment as may seem necessary to Swift Networks;
 - iv) observe the use of the Equipment;
 - v) inspect any maintenance records in respect of the Equipment; and
 - vi) do any act, matter or thing which may be required to be done to give proper effect to the terms of this Agreement or to protect Swift Networks' rights in the Equipment.
- h) In the case of an emergency, in Swift Networks' reasonable opinion, no notice will be required to be given by Swift Networks' to the Customer under clause 7.3g)
- i) Where residents have not received advanced notice in the case of an emergency, Swift Networks acknowledges and agrees that unless its personnel have a police clearance then they must not enter any room or area at the Customer's Site that occupied by a resident of the Customer without being escorted by an employee or representative of the Customer.
- j) Swift Networks will be mindful of the Customer's resident's quiet use and enjoyment of their accommodation within the Site, particularly where residents have not received advanced notice in the case of an emergency.

- j) Swift Networks agrees it will abide by relevant legislation and the Customer's health and safety policies and procedures when attending the Customer's Sites, provided such policies and procedures are reasonable.
- k) Notwithstanding any other clause in this Agreement, Swift Networks agrees permission to access any Site may be withdrawn or restricted where the Customer determines this is necessary (acting reasonably), i.e. there is an existing and immediate threat to the health and safety of any person (e.g. influenza outbreak), there is an operational requirement (e.g. the Site is undergoing accreditation or an agency visit pursuant to the *Aged Care Act 1997* (Cth)).

7.4 Maintenance and repair of Equipment

- a) Swift Networks may in its sole discretion repair, maintain and if necessary replace any Equipment where Swift Networks considers such repair, maintenance or replacement is necessary for the provision of the Services and where such repair or maintenance does not arise as a result of damage to the Equipment. Where any repair or maintenance works attract a fee or charge, such repair or maintenance works must be pre-approved by the Customer in writing. Any repair or maintenance must be carried out by Swift Networks (and/or its nominee(s)) promptly and with minimal disruption to the Services. The Customer agrees that it will not unreasonably withhold any pre-approval for any repair or required maintenance work.
- b) The Customer must not permit any person not authorised by Swift Networks to repair or interfere with any Equipment other than to replace batteries.
- c) The Customer must ensure that all other equipment and software the Customer uses in connection with the Services (as well as any Equipment supplied) complies with all laws, regulations, approval conditions, regulator directions, notices issued under law and Swift Networks reasonable directions. The Customer also agrees to make sure all other equipment used is fully compatible with the Services. Swift Networks does not take any responsibility for the Customers equipment and software and/or its compatibility.
- d) The Customer acknowledges that the Equipment needs to be used and maintained correctly in accordance with any instructions Swift Networks gives. This includes making sure it has suitable space and power and is operational and available by the Start Date. Unless otherwise agreed in writing, the Customer is responsible for the operation, repair and maintenance of the Equipment once rented by the Customer (except as otherwise stated in the terms of any warranty applicable to that Equipment).
- e) If Swift Networks on supplies to the Customer third party standard product maintenance services as part of the Services, the relevant third-party maintenance terms and conditions of supply apply to the provision of those maintenance services.

7.5 Lost, Stolen and Damage Equipment

- a) The Customer must, if requested by Swift Networks to do so, provide Swift Networks with such information as relating to the damage, theft or loss of Equipment, as Swift Networks reasonably requires.
- b) The Customer will be liable for the replacement cost in relation to lost or stolen Equipment in accordance with clause 7.6.
- c) The following applies with respect to damaged Equipment:
 - i) The Customer must promptly, at the request of Swift Networks, arrange for the damaged Equipment to be returned to Swift Networks, at the Customer's own cost and expense.

- ii) Swift Networks will form a view, in its sole discretion, as to whether or not the damaged Equipment should be repaired or replaced in the circumstances.
- d) The Customer is liable for any damage to the Equipment. Any replacement or repair costs of the Equipment will be at the Customer's own cost and expense including where damage is caused by any act or omission of the Customer (including its employees, agents, contractors or other personnel) that has resulted (in whole or in part) in the damage to the Equipment and/or where the damage to the Equipment is or is a result of (in whole or in part and without limitation) physical damage, liquid ingress and electrical surge.
- e) Repair or replacement costs will not exceed the amounts set out in clause 7.6 for the relevant damaged Equipment.

7.6 Payment - Damaged, lost or stolen Equipment

- a) Subject to this clause 7.6, the Customer must continue to pay the Fees in accordance with Schedule 3, for any Equipment that is damaged, lost, missing or stolen, where that Equipment is under the Customer's control. For the purposes of this clause 7.6, the Equipment is under the Customer's control on and from the date the Equipment is delivered or provided to the Customer (whether at its final destination or not) and until:
 - i) the date the Equipment is returned to and received by Swift Networks; or
 - ii) the date the Customer notifies Swift Networks that the Equipment is lost, missing or stolen.
- b) If Swift Networks supplies to the Customer any replacement Equipment, the Customer must pay the Fees in accordance with this Agreement for that replacement Equipment in substitution for the Fee for the original Equipment.
- c) Fees for the Services relating to the Equipment that is damaged, lost, missing or stolen (if separate to the Fees for the Equipment) are not payable:
 - i) on and from the date of notice from the Customer to Swift Networks that the Equipment is lost, missing or stolen until the date the Equipment is replaced by Swift Networks, if such period is greater than 10 Business Days; or
 - ii) on and from the date any damaged Equipment is returned to and received by Swift Networks, until the date the Equipment is replaced or repaired and returned to the Customer if such period is greater than 10 Business Days.

7.7 Replacement Hardware Costs

If the Equipment, Hardware or Consumables are damaged by the Customer (including its personnel and patrons), lost by the Customer (including its personnel and patrons), missing or stolen, the costs (including repair and replacement costs, as applicable) will be determined by Swift Networks in its sole discretion on a case by case basis dependent upon the damaged, lost, missing or stolen item. For the avoidance of doubt, the Customer will be responsible for obtaining and replacing all damaged items of Consumables and Hardware at its own cost and expense save for where loss or damage is attributable to an act or omission of Swift Networks.

7.8 Availability and Delivery of Equipment

- a) The parties acknowledge that, the Equipment may be procured through third-party manufacturers and that the supply of Equipment to the Customer will, in all cases, be subject to availability.

- b) Any estimated times of delivery of the Equipment to the Customer will be a non-binding estimate and not a firm deadline.
- c) Swift Networks will have no liability whatsoever for delivery or procurement delays in relation to the supply of the Equipment.
- d) Promptly following the commencement date of this Agreement, Swift Networks provide to the Customer a schedule of proposed milestones for delivery of the Equipment and the Services (**Delivery Schedule**) for Agreement with the Customer.
- e) Upon Agreement of the Delivery Schedule, Swift Networks must use its best endeavours to meet the timeframes and milestones set out in the Delivery Schedule.

7.9 Title and Risk

- a) Each party agrees and acknowledges that nothing in this Agreement passes title in any item of Equipment and the risk of loss or damage to the Equipment is with the Customer on and from delivery until the end of this Agreement.
- b) The Customer must notify any person seizing the Equipment of the ownership and rights of Swift Networks and must give immediate written notice to Swift Networks of such seizure during the Term.
- c) The Customer must not without the Swift Networks' prior written consent:
 - i) agree, attempt, offer or purport to sell, assign, sublet, lend, pledge, encumber, mortgage, let on hire or otherwise part with or attempt to part with the personal possession of or otherwise deal with the Equipment; or
 - ii) conceal or alter the Equipment or make any addition to the Equipment except as directed in writing by Swift Networks.
- d) Where the Customer has rented the Equipment title to the Equipment will remain with Swift Networks during and after completion of this Agreement.

8 Payment

8.1 Payment

- a) Within thirty (30) days following the invoice date of each invoice sent during the Term, the Customer must pay to Swift Networks the Fees set out in Schedule 3 without any deductions and Swift Networks shall send a valid tax invoice to the Customer for the relevant period.
- b) All payments must be paid by the Customer to the bank account nominated by Swift Networks in Part 2 of Schedule 1.
- c) Payments not received by Swift Networks' within fifteen (15) days after the date for which payment is due will bear interest at a rate of 1.5% for each month or part of a month (or at Swift Networks' discretion, its usual bank unsecured overdraft rate plus 1.5%).
- d) Swift Networks reserves the right to suspend and/or terminate the Services for non-payment. If the Services are suspended for non-payment, Swift Networks may reconnect the Services upon payment of all outstanding amounts and a reasonable reconnection fee.

- e) Payments are to be made into Swift Networks' account as set out in Schedule 1 (or as directed from time to time) with all network billing/finance queries directed to the finance contact set out in Schedule 1.
- f) Non-electronic payments are to be made to the attention of the account contact set out in Schedule 1 (or as directed from time to time).

9 Representations and Warranties

9.1 Mutual

The Customer and Swift Networks represent and warrant to each other that:

- a) it has the right to enter into and perform fully its respective obligations under this Agreement;
- b) it has not and will not during the Term enter into an Agreement or arrangement which limits the full performance of its obligations hereunder (in the case of Swift Networks, this does not include any effects from a change in an Upstream Contract);
- c) it is and will remain in full compliance with all applicable laws and regulations;
- d) this Agreement has been duly authorized, executed and delivered, and constitutes a valid and legally binding Agreement enforceable in accordance with its terms; and
- e) it will provide statements, records and other documents reasonably necessary to the other party to demonstrate its compliance with applicable laws as and when reasonably requested in writing.

9.2 Swift Networks

Swift Networks represents that:

- a) it has the full right, power and authority to provide the Services and rent or sell the Equipment under this Agreement; and
- b) to the best of its knowledge the Equipment and the programming on the Services do not infringe any other material, or violate or infringe any common law or statutory rights of any third including, without limitation, contractual rights, copyrights (not including through-to-the-viewer music performance rights), trademarks and privacy rights.

9.3 Customer

The Customer agrees that nothing in this Agreement requires Swift Networks to do anything which is or will be a breach of the law.

10 Liability and Indemnification

10.1 Limitation of liability

- a) Notwithstanding any term of this Agreement, Swift Networks is only liable (whether by way of indemnity or otherwise) up to the lower of the total value of this Agreement and the total amount received by Swift Networks under this Agreement, provided however that in the event of a loss due to a cyber-attack, Swift Networks' liability shall be limited to \$2 million.

- b) Swift Networks excludes liability for any consequential loss.
- c) Swift Networks may set off any final settled claims it may have against the Customer prior to paying anything to the Customer under this Agreement.
- d) The Customer may set off any final settled claims it may have against the Swift Networks prior to paying anything to Swift Networks under this Agreement.
- e) The Customer agrees to indemnify Swift Networks, its licensors and a party to an Upstream Contract against all Loss suffered or incurred by them for:
 - i) any claims by a patron or any like person (including a resident at the Site) arising out of or arising in connection with the use of the provision of the Services;
 - ii) use of, access to or transmission of any content using the Services;
 - iii) any negligent act or omission of the Customer's subcontractors in connection with the Services.
- f) Swift Networks agrees to indemnify the Customer against all losses suffered or incurred by it for any negligent act or omission of Swift networks in the provision of the Services.

11 Intellectual Property

- a) The Customer acknowledges that all Intellectual Property Rights subsisting in the Services and the Equipment including the User Interface are owned by Swift Networks, Swift Networks Content licensors or other licensors and suppliers, and are protected by copyright laws as well as other laws and treaties relating to the intellectual property rights. Neither Swift Networks nor its Content licensors or other licensors and suppliers transfers any title, right or interest to or in the System, the Services or Products to the Reseller.
- b) Swift grants the Customer a limited, non-exclusive, non-transferable and revocable licence to access, use, resell, deploy and support the Services and to exhibit the Content to at the Site, on the terms and conditions of this Agreement.
- c) The Customer may use digital content and marketing material as provided to the Customer by Swift Networks which may include imagery, videos and logos in connection with the promotion of the Services or the Customers services generally, provided that the Customer first obtains prior written approval from Swift Networks in doing so. The Customer must provide all content proofs and the intended use to Swift Networks for approval, and comply with all direction from Swift Networks with regards to brand guidelines and use of the digital content and marketing material. Swift Networks may grant or withhold approval at its absolute discretion.
- d) The Customer may only use the Specified Marketing Material provided that the Customer first obtains prior written approval from Swift Networks in doing so. The Customer must provide all content proofs and the intended use of the Specified Marketing Material to Swift Networks for approval, and comply with all direction from Swift Networks with regards to brand guidelines and use of the digital content and marketing material. Swift Networks may grant or withhold approval at its absolute discretion.
- e) All Intellectual Property Rights created during the Term in the course of the provision of the Services vests in and is owned absolutely upon creation in Swift Networks (**Developed IP**) and Swift Networks has the right to use, exploit and licence the Developed IP as it sees fit.

- f) The Customer agrees to do all things and sign all documents required to vest all title, rights and interests in any Developed IP in Swift Networks. Despite the foregoing, in the event the title, rights and interests in the Developed IP does not vest in Swift Networks for any reason, the Customer agrees to do all things and sign all documents required to transfer and/or assign all title, rights and interests in any Developed IP in Swift Networks.

12 Termination

12.1 Termination for default

- a) The Customer will be in default of the Agreement if it (each a “**Default**”):
- i) fails to make any payment due under the Agreement within 14 days following receipt of any notice from Swift Networks providing details of the failed payment;
 - ii) fails to comply with any other material condition of the Agreement and Swift Networks has provided a written notice (“**Default Notice**”) to the Customer specifying the nature of any claimed default on which it intends to rely to terminate this Agreement and the Customer has not remedied the item(s) set out in the Default Notice within 14 days of receipt of the Default Notice, or further period as is agreed in writing by the parties;
 - iii) is placed under any form of external administration (whether insolvency or otherwise) or does or suffers any act or event from which any form of external administration (whether insolvent or not) does or might follow; or
 - iv) makes an assignment for the benefit of creditors, whether voluntary or involuntary.
- b) Upon the occurrence of an event under sub-clause 12.1a), Swift Networks may in its sole discretion (without prejudice to any other right or remedy of Swift Networks under this Agreement or implied at law) do one or more of the following:
- i) take action to enforce the performance of the Agreement by the Customer and/or recover damages for breach;
 - ii) by written notice to the Customer, immediately terminate its rights under the Agreement and recover possession, at the Customers cost, of any or all of the Equipment wherever the Equipment may be located provided that Swift Networks must at all relevant times co-operate with the Customer, subject to the Customer’s health, safety and security considerations, in relation to its endeavour to repossess the Equipment; or
 - iii) by notice to the Customer, immediately terminate its rights under the Agreement and require the Customer to, at its own cost, immediately return the Equipment to Swift Networks.
- c) Following a Default under clause 12.1a), in the event that Swift Networks:
- i) takes possession of any or all of the Equipment; and
 - ii) lawfully terminates this Agreement,
- then the Customer’s rights under the Agreement will terminate without prejudice to the rights and remedies of Swift Networks and the Customer must immediately pay to Swift Networks without the need for any demand:

- iii) the sum of all amounts due and unpaid under the Agreement;
- iv) if any of the Equipment is not recovered by Swift Networks as required by the Agreement, an amount reasonably determined by Swift Networks equal to the shortfall between the amount due by the Customer and the value of the Equipment actually recovered (if any) by Swift Networks from the Customer; and
- v) an amount equal to the amount of unpaid Fees that would have been due and payable under this Agreement for the duration of the Term had the Agreement not been terminated

12.2 Termination in all other cases

- a) Without limiting any rights of Swift Networks or the Customer under this Agreement, either party may terminate this Agreement upon 14 days' written notice if a Force Majeure event has been subsisting for 30 days.
- b) Where the Customer fails to comply with this clause 12.2, this will be considered a breach of the Agreement, and the termination for default clause (clause 12.1) applies.
- c) Notwithstanding any term of this Agreement, on termination of this Agreement, Swift Networks may issue the Customer a notice for the return of the Equipment, at the Customer's cost and in good functional order and condition (fair wear and tear excepted), to Swift Networks. The Customer must comply, with the notice by Swift Networks within 14 days from the date of that notice.
- d) Without limiting either party's rights under clause 12.2a) where a third party claims a force majeure event under an Upstream Contract, Swift Networks will not be in breach of this Agreement to extent that the event of force majeure in the Upstream Contract prevents Swift Networks from performing any obligation under this Agreement.

12.3 Termination by Customer

Without limiting any rights of the Customer under this Agreement, the Customer may terminate this Agreement upon 30 days' written notice if:

- a) Swift Networks fails to comply with any material condition of the Agreement and the Customer has provided a written notice ("**Default Notice**") to Swift Networks specifying the nature of any claimed default on which it intends to rely to terminate this Agreement and Swift Networks has not remedied the item(s) set out in the Default Notice within 14 days of receipt of the Default Notice, or further period as is agreed in writing by the parties;
- b) Swift Networks is placed under any form of external administration (whether insolvency or otherwise) or does or suffers any act or event from which any form of external administration (whether insolvent or not) does or might follow; or
- c) Swift Networks makes an assignment for the benefit of creditors, whether voluntary or involuntary.

12.4 Accrued rights

The termination or expiration of this Agreement for any reason shall not relieve either party of any of its liabilities or obligations under this Agreement that accrued on or prior to the date of such termination. Termination of this Agreement is in addition to any other rights or remedies that it may have in law or equity.

13 Confidentiality

- a) The provisions of this Agreement and all information obtained by the Customer or Swift Networks from or about the other party or its related parties as a result of negotiating, executing or implementing this Agreement constitutes confidential information.
- b) The Customer and Swift Networks must keep confidential and not disclose the confidential information unless:
 - i) the disclosure is to comply with a law (including a listing rule of any stock exchange on which it is listed), in which case the disclosing party must notify the other party as promptly as practicable prior to making the disclosure.
 - ii) it is to their representatives, accountants, auditors and legal counsel who are under a duty of confidentiality; or
 - iii) as otherwise through the prior written approval of Swift Networks or the Customer (as applicable).
- c) The Customer and Swift Networks must not release or publish any media release or announcement in connection with this Agreement or use the other party's name in any media release or announcement without the other party's prior written consent other than in the case of Swift Network ASX announcements (subject to clause 10e)) and the Customer's resident and family marketing in the ordinary course of business. Should a party seek the consent of the other to release or publish a media announcement in connection with this Agreement, the consenting party agrees it will cooperate with the requesting party in an effort to reach an Agreement on the content of the proposed media release or announcement.
- d) Swift Networks agrees the Customer may publish material in the public domain (including Swift Networks' name) in connection with this Agreement for the purposes of promoting the availability of the Services at the Customer's (or its related entities) locations.
- e) The Customer acknowledges that Swift Networks is a publicly listed company on the Australian Securities Exchange (ASX) and that Swift Networks has obligations to comply with the official listing rules of the ASX (**Listing Rules**) including rules in relation to announcements and continuous disclosure obligations. Swift Networks agrees that it will liaise with the Customer prior to making any announcement on the ASX in connection with this Agreement so as to give the Customer an opportunity to provide comment and feedback in relation to the proposed announcement. The Customer agrees that it will not unreasonably delay or prevent Swift Networks from releasing any announcement on its ASX announcements platform that would result in a breach of the Listing Rules by Swift Networks.

14 Rights in Trademarks

- a) All rights in and to the Services and the Equipment not specifically granted to the Customer are reserved to Swift Networks for its exclusive use.
- b) The Customer acknowledges that, all marks relating to the Services and the Equipment (the "**Marks**") are the exclusive property of or are licensed for use by Swift Networks either directly or through Upstream Contracts.
- c) The Customer has no right and will acquire no proprietary rights to the Marks by virtue of this Agreement.

- a) The Customer acknowledges and agrees that the provision of the Services to the Customer under this Agreement, is at all times subject to the terms of the Upstream Contracts, and that the Customer shall comply with any reasonable direction(s) issued by Swift Networks to ensure compliance with the terms of the Upstream Contracts, which govern the on-distribution of the Services to the Customer. For the avoidance of doubt, Swift Networks is entitled to revise its Fees to reflect any increase in the pricing of any Upstream Contract and the revised Fee will be payable for the full calendar month in which the change occurred unless Swift Networks notifies the Customer in writing that a later start date will apply for the revised Fee. If Swift Networks increases its Fees in any year the Customer may only terminate the content component of this Agreement associated with the Upstream Contracts which directly resulted in the relevant increase in the Fees.
- b) Without limiting any term of this Agreement, the Customer acknowledges and agrees to the following:
- i) **(Advertising)** The supplier of content in the Upstream Contracts has the right to broadcast advertising commercials of third parties on the channels as well as the right to arrange sponsorship for any program on the channel (with all revenue flowing to the supplier of content in the Upstream Contracts).
 - ii) **(Reporting and Audit):** The Customer agrees it will, upon request by Swift Networks, provide Swift Networks with details of user numbers and other associated information reasonably required by Swift Networks in connection with its reports in respect of the Services being provided under this Agreement, and the use and transmission of those Services, in order for any reporting and audit requirements under the Upstream Contracts to be satisfied. Additionally, the Customer agrees that Swift Networks or other parties to the Upstream Contracts may access the Customer's premises, after having given reasonable notice to the Customer, to audit compliance with the terms of this Agreement.
 - iii) **(Force majeure):** Where a third party claims a force majeure event under an Upstream Contract, Swift Networks will not be in breach of this Agreement to extent that the event of force majeure in the Upstream Contract prevents Swift Networks from performing any obligation under this Agreement. Nothing in this clause prevents a party from claiming Force Majeure event under clause 17.2.
 - iv) **(Suspension):** The Customer acknowledges that Swift Networks is a reseller of the Services, and accordingly, Swift Networks is not required to do anything under this Agreement that is not permissible under the Upstream Contracts. Swift Networks may suspend or terminate this Agreement at any time without any liability to Customer to the extent that it is required to suspend under the Upstream Contracts, or if the relevant Upstream Contract is terminated. Where Swift Networks suspends or terminates this Agreement under this clause 15b)iv), Swift Networks must promptly refund to the Customer all fees paid in advance for Services in and relation to, and to the extent of, the Upstream Contracts which will not be used as a result of the suspension or termination.
- c) The Customer acknowledges that Swift Networks may need to obtain licenses, permissions and authorisations to distribute the Services to the Customer under this Agreement (or otherwise perform its obligations under this Agreement) from third parties which may be out of Swift Networks' control. In the event that Swift Networks is unable to obtain a licence, permission or authorisation to distribute the Services, the Parties agree that Swift Networks may elect (in its sole discretion) to either:

- i) offer the Customer an alternative service in lieu of the Services; or
- ii) terminate this Agreement in accordance with clause 12.2.

16 PPS Act

- a) The Customer acknowledges and agrees that:
 - i) this Agreement is a security agreement;
 - ii) this Agreement creates a purchase money security interest in Swift Networks' favour over the Equipment (**Security Interest**), in accordance with the Personal Property Securities Act 2009 (Cth) (**PPS Act**);
 - iii) value has been given to the Customer for the security interest or the Customer has done an act by which it has arisen;
 - iv) Swift Networks may register a financing statement for the Security Interest;
 - v) the Customer waives its right to receive a registration event notice;
 - vi) the collateral is any goods or Equipment supplied under this Agreement;
- b) The Customer must do all things, at Swift Networks' cost, that Swift Networks may reasonably require from time to time to ensure that Swift Networks has a perfected purchase money security interest over the Equipment supplied by Swift Networks to the Customer under this Agreement.
- c) To the extent the law permits, the Customer and Swift Networks agree that:
 - (i) for the purposes of section 115(1) and 115(7) of the PPS Act:
 - (A) Swift Networks need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPS Act; and
 - (B) sections 142 and 143 of the PPS Act are excluded;
 - (ii) for the purposes of section 115(7) of the PPS Act, Swift Networks need not comply with sections 132 and 137(3) of the PPS Act;
 - (iii) if the PPS Act is amended after the date of this Agreement to permit the Customer and Swift Networks to agree to not comply with or to exclude other provisions of the PPS Act, Swift Networks may notify the Customer that any of these provisions is excluded, or that Swift Networks need not comply with any of these provisions, as notified to the Customer by Swift Networks; and
 - (iv) The Customer will not exercise its rights to make any request of Swift Networks under section 275 of the PPS Act, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- d) If Swift Networks exercises a right, power or remedy in connection with this Agreement, that exercise is taken not to be an exercise of a right, power or remedy under the PPS Act unless Swift Networks states otherwise at the time of exercise. However, this paragraph does not apply to a right, power or remedy which can only be exercised under the PPS Act.
- e) To the extent the law permits, the Customer waives:

- (i) its rights to receive any notice that is required by:
 - (A) any provision of the PPS Act (including a notice of a verification statement); or
 - (B) any other law before a secured party exercises a right, power or remedy; and
 - (ii) Any time period that must otherwise lapse under any law before a secured party exercises a right, power or remedy.
- f) If the law which requires a period of notice or lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer). However, nothing in this clause prohibits Swift Networks from giving a notice under the PPS Act or any other law.
- g) Terms used in this clause which are defined terms in the PPS Act have the same meaning as in the PPS Act.

17 Miscellaneous

17.1 Assignment

- a) The Customer must not assign its rights or obligations under this Agreement without the prior written consent of Swift Networks which must not be unreasonably withheld.
- b) For the avoidance of doubt:
 - i) a change in control of the Customer or its assets will not constitute an assignment for the purposes of this Agreement;
 - ii) Swift Networks must not unreasonably withhold its consent to a request from the Customer to assign its rights and obligations under this Agreement to a purchaser of the Customer's business where the Customer has reasonably demonstrated the proposed assignee is of sound financial standing and capable of performing the Customer's obligations under this Agreement.
- c) Swift Networks may assign its rights and obligations under this Agreement to any third party without notice at any time subject to all Fees and the Services not being materially affected.

17.2 Force Majeure

- a) Subject to clause 7.5, neither party will be liable to the other for any delays, pre-emption's or other failure to perform when such delays, pre-emption's or failures are due to any cause beyond the reasonable control of the party whose performance is so affected, including, without limitation, fire, war, terrorism, strike, riot, labour dispute, blackout, government intervention, natural disaster, civil disturbance, technical failure, an act of God ("**Force Majeure**") or other cause (except financial inability) beyond the party's reasonable control including but not limited to any delay or omission by a party to the Upstream Contracts.
- b) In the event of any such delay under this clause 17.2, pre-emption or failure, the affected performing party will promptly notify the other party of the nature and anticipated length of continuance of such Force Majeure, and during such period both Parties will be excused from performance hereunder. The affected party must use its best endeavours to remove or remedy the Force Majeure event, and mitigate its losses.

17.3 Agency

The Agreement does not create any relationship of partners, joint ventures or agency as between the Customer and Swift Networks.

17.4 Severability

The invalidity or unenforceability of any provision of this Agreement will not affect the validity of any other provision of this Agreement, and in the event that any provision is determined to be invalid or otherwise illegal, this Agreement will remain in effect and will be construed in accordance with its terms as if the invalid or illegal provision were not contained herein; provided that the Parties will negotiate in good faith an equitable adjustment to this Agreement so as to give effect to the intent so expressed and the benefits so provided.

17.5 Amendment

- a) The Agreement constitutes the entire agreement and understanding between the Parties with regard to the subject matter and supersedes all prior or contemporaneous oral or written proposals, agreements and representations between the Parties.
- b) Any amendment, modification or alteration of the Service and Equipment Agreement must be in writing and signed by both Parties.
- c) Swift Networks may unilaterally amend these Terms and Conditions by providing the Customer with 30 days' notice of any proposed changes (**Amendment Notice**). If the Customer disputes the proposed changes following receipt of the Amendment Notice, the parties agree to enter into good faith negotiations to resolve any dispute within 10 Business Days. In the event a resolution is not reached, the Parties hereby agree that matter will be resolved in accordance with clause 18.

17.6 Waivers

No term or condition of this Agreement will be deemed waived, and no breach will be excused, unless such waiver or excuse is in writing and signed by the party against whom such waiver or excuse is claimed. The captions and headings in this Agreement are intended only for convenience, and will in no event be construed to define, limit or describe the scope or intent of this Agreement, or of any provision of this Agreement, nor in any way affect the interpretation of this Agreement. The schedules to this Agreement form part of this Agreement.

17.7 Survival

Clauses 13, 15 and 16 survive the expiration or termination of this Agreement.

17.8 Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts together shall constitute but one and the same instrument. The Parties also agree that this Agreement shall be binding upon the transmission by each party of a signed signature page thereof to the other party via electronic means (including facsimile and PDF), and such signatures shall have the same force and effect as original signatures.

17.9 Taxes

- a) Swift Networks is not liable for, and the Customer indemnifies Swift Networks from all sales, use, excise, income, franchise, corporate or similar taxes (including GST), including any fees payable to federal, local or state authorities, or other charges,

which are imposed upon or assessed against the Customer in connection with the Customer's distribution or use the Services and use of the Equipment.

- b) The Customer must pay Swift Networks as additional amount for all GST (for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time)) payable by Swift Networks for any taxable supplies made by Swift Networks under this Agreement. The GST amount must be paid at the same time as the Fee is payable, or when the taxable supply is made (whichever is earlier).

17.10 Non-Recourse

Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the Parties hereto that each and every representation, warranty, covenant, undertaking and agreement made in the Agreement was not made nor intended to be made as a personal representation, undertaking, warranty, covenant, or agreement on the part of any incorporator, member, stockholder, director, officer, partner, employee or agent, past, present or future, or any of them, and any recourse, whether in common law, in equity, by statute or otherwise, against any of them is hereby forever waived and released.

17.11 Notices

Any notice required by this Agreement must be in writing and provided to the addresses set out in this Agreement (or notified from time to time by the parties in writing), and is deemed given:

- a) if personally delivered, at the time of delivery;
- b) if mailed, on the day of receipt of the mail or within 3 Business Days of when the notice is posted if there is no evidence of receipt to of the mail;
- c) if by facsimile transmission, on the day of transmission (or the next Business Day if the transmission was effected after 5pm Perth time); or
- d) If by email, as soon as it enters the recipient's information system.

17.12 Governing law

This Agreement is governed by the laws of Western Australia, and the parties submit to its non-exclusive jurisdiction.

18 Dispute Resolution

18.1 Referral of certain disputes to an Expert

If any dispute or difference arises between the Parties in respect of any matter referred to in the Agreement, then either Party may by notice in writing to the other specify the nature of the dispute. If the Parties cannot resolve the dispute within 10 Business Days of receiving notice, either Party may submit such dispute to an independent expert for determination (Expert).

18.2 Nomination of Expert

The Expert to be appointed shall be as agreed between the Parties. If the Parties do not reach agreement on the Expert within 5 Business Days after receipt of the notice referred to in clause 18.1, the Expert will be appointed by the President for the time being of the Law Society of Western Australia.

18.3 Expert to have appropriate experience

The Expert shall be required to have a reasonable commercial, technical and practical experience in the area of dispute. The Expert shall be required to undertake to keep matters coming to his or her knowledge by reason of his or her appointment and carrying out his or her determination confidential.

18.4 Powers of Expert

The Expert shall have the powers to:

- a) inform himself or herself independently as to facts and if necessary technical matters to which the dispute relates;
- b) receive written submissions, sworn and unsworn written statements, photocopy documents and to act upon the same; and
- c) take such measures as he or she thinks fit to expedite the completion of the dispute resolution including finding adversely to any party who fails to comply with a timetable reasonably set by the Expert.

18.5 Expert not an arbitrator

The Expert shall act as an expert and not as an arbitrator. The determination of the Expert shall be final and binding on the parties.

18.6 Procedures

Unless the Parties otherwise agree, the Expert will accept submissions from the Parties as to the subject matter of the dispute within 14 days of his or her appointment and will state his or her determination in writing within 14 days thereafter.

18.7 Costs of Expert

All costs of the Expert appointed pursuant to this clause shall be paid by the Parties in equal shares.

19 Insurance

- a) The Customer and Swift Networks must take out and maintain, during the Term, the insurances set out in Schedule 5.
- b) Either party must, promptly upon request from the other, supply certificates of currency evidencing active insurance policies.
- c) The Customer or Swift Networks must promptly notify the other of any cancellation or failure to renew their policies of insurance to the extent required under Schedule 5.