



**ZettaGrid Pty Ltd**

# **Standard Form of Agreement**

**General Terms and Conditions**

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# 1 The Agreement

## 1.1 The Parties

1.1.1 ZettaGrid Pty Ltd ABN 90 141 800 357, Level 6, 10 William Street, Perth, Western Australia (hereinafter referred to as "ZettaGrid", "us", "our") and the Customer (being an entity subscribing to ZettaGrid for the provision of Cloud services) agree that by accessing ZettaGrid cloud services, you (hereinafter referred to as "The Customer", "you" and "your") accept, without limitation or qualification, the terms and conditions contained within the Standard Form of Agreement.

## 1.2 What is the Standard Form of Agreement?

1.2.1 The ZettaGrid Standard Form of Agreement (SFOA) sets out the standard terms and conditions of our services and the products we offer. The SOFA is made up of:

- a) General Terms and Conditions;
- b) Service Descriptions; and
- c) Website Pricing Schedule or Executed Proposal

## 1.3 Access to the SFOA Document

1.3.1 The Standard Form of Agreement is available via our website or from our office. If you require assistance in reading this document please contact our office.

## 1.4 Changes to the SFOA

1.4.1 The Customer agrees to be bound by the SOFA as executed by us and you on commencement of the Agreement.

## 1.5 Your Rights

1.5.1 Telecommunications Legislation requires ZettaGrid to supply telecommunications services to you on the terms and conditions of a "Standard Form of Agreement".

1.5.2 Under Australian Telecommunications legislation you and ZettaGrid must comply with our Standard Form of Agreement unless you and ZettaGrid have agreed differently.

# 2 Definitions

"**Agreement**" means this agreement for the provision of the Goods and Services by ZettaGrid to you, which includes this Standard Form of

Agreement, the Service Descriptions and Pricing Schedule.

"**Application**" means each application form completed by you (either hard copy or online on our Website) and sent to ZettaGrid requesting the Services.

"**Business Day**" means Monday to Friday excluding public holidays in Western Australia.

"**Charges**" means the charges payable by you to ZettaGrid for the Goods and Services as specified on the Pricing Schedule, Quotes or other means.

"**Contract Term**" means, in respect of a Service, the contract period specified in the Pricing Schedule for that Service.

"**Customer Data**" means all data that is not ZettaGrid Data. Specifically, data or intellectual property that is owned by The Customer and transferred into ZettaGrid for the purposes of using the ZettaGrid service.

"**Early Termination Fee**" means the Charges that are specified as "Early Termination Fee" in the Pricing Schedule (if any).

"**Goods**" means any goods we supply to you, including goods supplied in connection with any Services.

"**GST**" means Goods and Services Tax (Act 1999).

"**Pricing Schedule**" means the list of prices for Services contained in this Agreement.

"**Resubmission Payment**" means the fee payable to a payment processor (typically a credit card gateway or bank) when payment for a service fails.

"**Service Desk**" means the contact point for faults, which you may contact by dialling the telephone number 1300 597 656 or submitting an email to the address support@zettagrid.com.

"**Services**" means the list of services specified in the Pricing Schedule.

"**Services Proposal**" means a document authored by ZettaGrid containing a business proposal for approval by The Customer.

"**Support Hours**" means 0600HRS to 1800HRS AWST on a Business Day.

"**Systems Maintenance**" means maintenance carried out by ZettaGrid, where notice has been provided to you by email or by posting a notice on the ZettaGrid website prior to the scheduled event occurring.

**"Service Guarantee"** means the guarantee that ZettaGrid will meet the Service Level for a particular Service.

**"Service Level"** means the percentage of time during a calendar month that a Service is available to you.

**"Service Level Rebate"** means the refund available for a Service following an outage as defined in the Service Description for that Service.

**"Standard Form of Agreement"** means this document entitled "Standard Form of Agreement" and includes our Policies.

**"Summary Standard Form of Agreement"** means the written summary of the terms and conditions of this Standard Form of Agreement.

**"Telecommunications Company"** means any licensed carrier or carriage service provider as defined by the Telecommunications Act 1997 other than ZettaGrid or ZettaNet.

**"Website"** means the ZettaGrid website located at <http://www.zettagrid.com>.

**"ZettaGrid Data"** means ZettaGrid configuration and supporting infrastructure configuration (i.e. ZettaGrid's core DNS, DHCP, Microsoft AD, VMware vCloud-Director Cells, VMware vCenters, and Microsoft SQL Database clusters), service usage and Customer machine configuration (i.e. the details about your virtual machines seen in the 'My Services' pages).

### **3 Our Services**

#### **3.1 Applying for the Service**

3.1.1 You may make an Application for supply of one or more Goods and Services by:

- a) Completing an online application form located at [www.zettagrid.com](http://www.zettagrid.com) or;
- b) Faxing or delivering an executed ZettaGrid Services Proposal.

3.1.2 Our SFOA is enforceable:

- a) if you apply online, the date you submit the application form; or
- b) if you sign a ZettaGrid Proposal, the date the Agreement is executed by you.

#### **3.2 Provisioning Your Service**

3.2.1 Upon our acceptance of your Application, or, if applicable, execution of this Agreement by ZettaGrid and you, a contract is formed and you become bound by this Agreement and the term and charges associated with the Service. The contract between ZettaGrid remains in force until it is terminated in accordance with this Agreement.

3.2.2 We will retain control and decide the route and technical means that we use to provide the Service.

3.2.3 You must reasonably co-operate with ZettaGrid to allow us to provision and supply the Service to you safely and efficiently.

3.2.4 The Customer agrees that, if The Customer uses the online application system and provides incorrect information which is actioned by a third party, that you, The Customer, will be liable for a resubmission payment to ZettaGrid.

3.2.5 To maintain the quality of services provided to our customers, we may prioritise the delivery of network traffic that is latency, rate or jitter sensitive in preference to traffic that is not, as determined in our absolute discretion.

3.2.6 The Services are provided on an 'as-is' basis.

3.2.7 A delay may occur between execution of the Agreement and the provisioning of the Service. We are not and will not be responsible for any delays, nor any inability by ZettaGrid to provide the Service to you.

3.2.8 Should ZettaGrid not be able to provide the Service to you, you will not be liable to ZettaGrid for any costs incurred by ZettaGrid prior to the provisioning of Service to you as required under these General Terms and Conditions.

### **3.3 Connection, Transmission and Reception Speeds**

3.3.1 Any connection, reception and transmission speeds indicated, refer to the maximum theoretical speeds achievable with the Service under ideal conditions; you acknowledge that the actual achieved speeds may be substantially different from the theoretical speeds.

## **4 Service Usage**

### **4.1 Your Responsibilities**

- 4.1.1 If you complete an online application form you must provide true, current, accurate and complete information as prompted by the registration form. You further agree to keep ZettaGrid current on any changes in that information.
- 4.1.2 You are responsible for all acts or omissions that occur under your account or password, including the content of transmissions through the Services and maintaining the confidentiality of your password/s.
- 4.1.3 You will not publish, distribute or disseminate defamatory or otherwise unlawful material through the use of the Service.
- 4.1.4 You will not use the Service to threaten, harass, stalk, abuse, or otherwise violate the legal rights (including rights of privacy) of others.
- 4.1.5 You will not use the Service to infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy.
- 4.1.6 You will comply with Australian law regarding the transmission of technical data exported from Australia through ZettaGrid.
- 4.1.7 You must ensure that your use of the Service does not expose any minor to material that is unsuitable for minors and you will indemnify ZettaGrid for any liability we incur as a result of your breach of this clause. You may obtain advice on available content filtering software which may be of assistance to you from the following web page: <http://www.iaa.net.au/guideuser.html>
- 4.1.8 You acknowledge that it is your sole responsibility to comply with any rules imposed by any third party whose content or service you access using the Services.
- 4.1.9 You acknowledge that we may take all reasonably necessary steps to ensure the efficient operation of the Services.
- 4.1.10 Your failure to observe any of the foregoing limitations may result in civil or criminal liability, and the immediate termination of your Service.

## **4.2 Responsible Usage**

- 4.2.1 You must comply with rules, regulations and acceptable usage policies that are in force for each system you access. If you act recklessly or irresponsibly or your actions endanger our network or systems, your access may be suspended at any time. You will be notified prior to any termination of Services.

## **4.3 Secure Usage**

- 4.3.1 We require that you take responsibility for maintaining the security of your Service. Protection of the security aspects of your Service, like accounts and passwords, are your responsibility. Subsequent usage of your Service by a third party will result in you being responsible for the charges incurred.

## **4.4 Unlawful Usage**

- 4.4.1 Our Services may only be used for lawful and authorised purposes. Storage, transmission or distribution of any material in violation of Commonwealth or State legislation is prohibited. This includes copyright material, material legally judged as threatening or obscene, or material protected by trade secret.
- 4.4.2 You must not use, or allow any other person to use, the network and systems for any activities of an illegal or fraudulent nature, including any activities prohibited under the Telecommunications Act 1989 (Cth) or under other applicable state and/or Commonwealth Laws.
- 4.4.3 You may not use the Service to send, allow to be sent, or assist in the sending of Spam or otherwise or breach the Spam Act 2003.

## **4.5 Alleged Copyright Infringement Notices**

- 4.5.1 Where ZettaGrid is provided with reasonable evidence from copyright owners or their agents that alleges that you may be using the Service unlawfully we will:
  - a) Send you an Alleged Copyright Infringement Notice (ACIN) by email. This email will contain the reference to specific alleged copyrighted content or unlawful activity.
  - b) Request that you remove the alleged copyrighted content and or cease the alleged unlawful activity within 72 hours.
- 4.5.2 Where the provision of alleged copyrighted content or unlawful activity has not ceased after 72 hours from the receipt of the notice, ZettaGrid will limit your Services in order to enforce the restriction of the dissemination of alleged copyrighted content or the activity.
- 4.5.3 If you provide reasonable evidence to suggest the unauthorised use of your Service or a breach and subsequent resolution of your own policies resulted in the issue of the notice from the copyright holder we may waive the ACIN.

4.5.4 Where we issue you with more than three ACIN's within a 30 day period you will be classified as a repeat offender and your Service will be terminated under clause 4.8.1.

## 4.6 Unauthorised Usage

4.6.1 Any attempt to access or modify unauthorised computer system information or to interfere with normal system operations, whether on the equipment of ours or any computer system or network that is accessed by our services, may result in the suspension or termination of your access. Unauthorised activities include, but are not limited to, guessing or using passwords other than your own, accessing information that does not have public permission, and accessing any system on which you are not welcome.

4.6.2 Any attempt to disrupt or interfere with users, services or equipment, may result in the termination or suspension of your access. Disruptions include, but are not limited to, distribution of unsolicited advertising or spamming, monopolisation of services, propagation of, or transmission of information or software which contains, computer worms, trojan horses, viruses or other harmful components, using the network to make unauthorised entry to any other machine accessible via our network, sending harassing or threatening e-mail and forgery or attempted forgery of e-mail messages.

4.6.3 You will be held liable for, and indemnify ZettaGrid for, all costs and damages, attributable to your unauthorised activities or disruptions.

## 4.7 Service Cancellation

4.7.1 Customers are required to contact ZettaGrid four (4) Business Days prior to the end of their Contract Term should they wish to cancel their Service. If we do not receive notification from you prior to the end of your Contract Term the service will roll over for the next billing period in accordance with the Service Description.

## 4.8 Service Termination

4.8.1 Without limiting the generality of any other clause in this Agreement, we may terminate your Agreement immediately by notice in writing if:

- a) you have provided ZettaGrid with false or misleading information or you have not provided ZettaGrid with any information that we have reasonably requested for the purposes of this Agreement;
- b) your nominated payment method is refused or dishonoured, or you fail to pay the amount specified within thirty (30) days of the due date.
- c) we discover or reasonably believe that you are a minor or do not believe you have the authority to enter into this Agreement;
- d) we believe you are about to or may become or are in jeopardy of becoming subject to any form of insolvency administration;
- e) if you being a partnership, dissolve, threaten or resolve to dissolve or are in jeopardy of dissolving;
- f) you unlawfully use the Service.
- g) you are classified as an alleged repeat copyright offender as per clause 4.5.4.

4.8.2 Either Party may terminate this Agreement (other than under Clause 4.8.1) for any reason on the greater of thirty (30) days or the Contract Term notice in writing.

4.8.3 You may terminate this Agreement immediately if ZettaGrid becomes insolvent or bankrupt. All Customer Data remains your property and must be returned to you within five (5) Business Days.

## 4.9 Systems Maintenance

4.9.1 Our goal is to provide a fault free Service although we cannot guarantee this. We will endeavour to conduct all scheduled Systems Maintenance outside of Support Hours. However, we may be required to suspend supply of our Service during normal Support Hours in order to carry out emergency repairs on our systems.

## 4.10 Fault Reporting & Resolution

4.10.1 Customers may report service faults by:

- a) Telephone contact to the ZettaGrid Service Desk on 1300 597 656
- b) Email to support@zettagrid.com

4.10.2 Each fault will be assigned a unique ticket number. Please use this ticket number when referring to your query.

4.10.3 Issuing of this ticket number is an acknowledged acceptance of the fault report.

- 4.10.4 The Service Desk team will use best efforts to identify and resolve the fault.
- 4.10.5 Where the issue cannot be resolved by the Service Desk they will follow a procedure to escalate the ticket to a technical expert for further investigation.
- 4.10.6 When a ticket has been resolved or closed The Customer will receive an email notifying them of the status change of the ticket.
- 4.10.7 If you ask us to come to your premises to repair a fault and it turns out to be caused by your equipment you may be charged a callout fee.
- 4.10.8 It is your responsibility to maintain and repair any equipment which you own. You are also responsible for any of our equipment on your premises and you must pay us for any loss or damage to our equipment.

#### **4.11 Service Changes**

- 4.11.1 ZettaGrid may withdraw any plans or account types packages at any time, such changes will take effect from the end of the current Contract Term.

#### **4.12 Service Level Agreement**

- 4.12.1 ZettaGrid will set minimum performance targets and provide rebates if the Service fails to meet these targets.
- 4.12.2 The rebates available for specific Services are detailed in the Service Description.
- 4.12.3 Where the Service is unavailable due to scheduled Systems Maintenance outside of Support Hours then this period is exempt from Service Level Rebates.
- 4.12.4 Where the Service is unavailable due to events beyond our control then this disruption period is exempt from Service Level Rebates. These include the following events:

- a) Interruption of the Service due to any Telecommunications Company circuits or failure of any Telecommunications Company services;
- b) Interruption of the Service due to your applications, your equipment, or your facilities;
- c) Where you cause an interruption to the Service due to your acts or omissions, or any use of the Service authorised by you;
- d) Where the Service is interrupted due to force majeure;
- e) Where we are requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts rectification of a fault or service difficulty; and
- f) Where we are prevented from connecting a specified service, or rectifying a fault or service difficulty, because we are unable to obtain lawful access to land or a facility.
- g) Damage to our network, equipment or facilities not caused by ZettaGrid.
- h) Planned or unplanned speed degradation (not Service loss), unless otherwise specified in a Service Description.

- 4.12.5 A Service Rebate is not redeemable for cash and in any month is capped at the relevant specified percentage of the Charges for the individual Service for that month. You must claim any Service Rebate in writing within twenty (20) Business Days of the event resolution by submitting a Service Rebate Application which is available on the ZettaGrid website.

- 4.12.6 Once a claim is made in accordance with paragraph 4.12.5, we will calculate the Service Rebate (if applicable) for the Service at the conclusion of the calendar month and credit to your account the amount equal to the Service Rebate.

- 4.12.7 You will only be entitled to receive a Service Rebate under either this Service Description or the Related Service Description, whichever has the greater entitlement.

- 4.12.8 ZettaGrid will use reasonable endeavours to ensure the availability and other characteristics of the Service, and to ensure provisioning, installation, response and rectification times will be met.



4.12.9 Subject to paragraphs 4.12.10, we will be liable to pay damages to you under section 118A of the Consumer Protection Act only if the End User has made a claim against you for breach of the Customer Service Guarantee and you, acting reasonably, have paid that claim. The amount of damages payable by we will reflect the proportionate contribution of ZettaGrid to your failure to comply with the Customer Service Guarantee.

4.12.10 In relation to contributory payments under Section 118A of the Consumer Protection Act, you acknowledge, to the extent this information is relevant under section 118A of the Consumer Protection Act, that the following are elements to be considered when determining liability:

- a) the extent to which you fail to take advantage of any available exemptions from compliance with the Customer Service Guarantee (or where entitled to do so under the Customer Service Guarantee, fails to extend guaranteed maximum rectification periods);
- b) requirements of good engineering practices;
- c) requirements for reasonable use of the Service; and
- d) the diagnostic information provided by you to us at the time of the fault giving rise to the claim was notified by you to us.
- e) To the extent that we are liable to make contribution payments to you under section 118A of the Consumer Protection Act, the amount of ZettaGrid's contribution to each payment made by you for breach of the Customer Service Guarantee will be reduced by the total amount of credits or rebates payable under this Schedule in relation to the matter that gave rise to ZettaGrid's liability to make contributions to you under Section 118A of the Consumer Protection Act.

## **4.13 Support Services**

4.13.1 Our Services include Service Desk support during commissioning of the Services. Once you have successfully provisioned your ZettaGrid Services and/or gained any additional Services you have purchased from us, we have fulfilled our support obligations to you.

4.13.2 Additional support may be provided, although it may be at an additional cost to you in the event that the reported problem is due to faults in your software, operating systems or applications.

4.13.3 In the event of an unscheduled outage or incident, we will communicate the details of the issues and expected resolution times via our website.

4.13.4 Our standard response time to any support issue raised is 8 hours.

4.13.5 In the event of a Severity 1 incident, we will update our notifications every 60 minutes.

4.13.6 We cannot provide free support for:  
a) faults that are outside our system; or  
b) Customers that do not have an existing Agreement with us.

4.13.7 When communicating with you we will use the details stored in our My Account system.

4.13.8 ZettaGrid do make incident reports available to our clients after a Severity 1 incident.

4.13.9 ZettaGrid reserve the right to shut down or isolate any service offering that is impacting, or will impact, service level agreements

## **5 Data and Intellectual Property**

### **5.1 Data Ownership**

5.1.1 At all times, the "Customer Data" remains the exclusive property of The Customer.

### **5.2 Data Import and Export**

5.2.1 Customer Data (subject to any licence transfer limitations as per section 5.8) may be imported or exported from or to ZettaGrid at any time by you.

5.2.2 If you are unable to retrieve this data using ZettaGrid supplied self-provisioned means (i.e. File Download) and You request manual intervention by ZettaGrid, then we will charge You an hourly rate for the copy and shipping of this data.

### **5.3 Data Retention**

5.3.1 Once The Customer cancels their service, ZettaGrid will erase the Customer Data from our systems no later than 90 days from the date of cancellation.

5.3.2 The Customer Data shall not be retrievable at this point by ZettaGrid in any shape or form.

5.3.3 We may retain meta data pertaining to The Customer account and usage for an indefinite period.

## **5.4 Data Access**

5.4.1 We will not attempt to gain access to the Customer Data without express written consent of The Customer.

5.4.2 We do not use Customer Data in order to generate revenue other than through provision of the service.

5.4.3 If we are approached by law enforcement agencies it is our policy to provide the request information upon receipt of a valid state or federal legal request.

5.4.4 We do not provide access to Customer Data to third parties other than law enforcement agencies as set out above.

## **5.5 Data Sovereignty**

5.5.1 We store all Customer Data and backups of this data within Australia.

5.5.2 We may offer Products that store data outside of the Australian lawful jurisdiction. Where this is the case, we will identify that the Customer Data maybe stored in a non-Australian location.

5.5.3 We cannot guarantee the service usage information and related meta data is not stored by our upstream communication providers in non-Australian locations.

## **5.6 Data Backup**

5.6.1 ZettaGrid will be responsible for backup of ZettaGrid Data.

5.6.2 ZettaGrid does NOT backup your Customer Data unless you purchase a ZettaGrid Backup service.

5.6.3 You are solely responsible for backup of Customer Data and for implementation of an appropriate retention strategy.

5.6.4 Where you subscribe to a ZettaGrid Backup Service, you are responsible for setting up, maintaining, monitoring and testing backups.

## **5.7 Data Breaches & Security Incidents**

5.7.1 If we discover that your data has been lost or compromised, we will notify you as soon as practicable by email, telephone or our website, unless that notification would compromise a criminal investigation into the breach.

5.7.2 When we are in possession of evidence of criminal activity associated with the breach (such as evidence of hacker activity) we will notify appropriate law enforcement agencies.

5.7.3 We receive a request for information under clause 5.4.3 we will notify you of this request unless otherwise requested by the law enforcement agency.

## **5.8 Licence Ownership**

5.8.1 All software and licenses used to operate the ZettaGrid environment are owned by ZettaGrid.

5.8.2 The Customer is responsible for maintaining licenses to operate the software on virtual servers that have been provisioned in the ZettaGrid environment. The Customer must maintain valid licences at all times and ZettaGrid retains the right to immediately discontinue your service if you are found to be in breach of any software licensing agreements.

5.8.3 Microsoft SPLA

5.8.4 Where the Customer utilises a Microsoft product this is licensed under SPLA (Service Provider License Agreement) this license is leased from Microsoft for use on the ZettaGrid environment. This license is non-transferrable and cannot be removed from the ZettaGrid environment. Where an image of a virtual server is transferred out of the ZettaGrid environment The Customer is responsible for obtaining valid Microsoft licences.

5.8.5 GPL Licensing

5.8.6 Where the Customer uses software that is licensed under [GPL](http://www.gnu.org/licenses/gpl.html) (<http://www.gnu.org/licenses/gpl.html>) you are required to adhere to these license conditions. Operating systems licensed under GPL may be exported from the ZettaGrid environment. An export fee may apply should you require manual intervention to copy your virtual machines out of the environment.

## **6 Equipment Access**

6.1.1 Customers are not permitted access to the physical hosts. Where media and temporary connection of a device is required The Customer must request this permission from ZettaGrid. ZettaGrid management has complete and sole discretion to authorise this access.

## **7 Billing and Payments**

### **7.1 Billing**

- 7.1.1 ZettaGrid may bill you for:
- a) recurring or fixed charges, in advance for monthly contracts and monthly in arrears for contracts longer than a month;
  - b) variable charges, in arrears, including but not limited to excess traffic usage charges;
  - c) installation or set-up charges, before installation occurs;
  - d) any equipment you purchase from us, on or after delivery; or
  - e) for any charges defined in the Pricing Schedule.
- 7.1.2 ZettaGrid will bill you in accordance with the billing period described in the Service Description.
- 7.1.3 We will provide you with reasonable information on your use of our services via the ZettaGrid website.
- 7.1.4 Bills will be calculated by reference to data recorded, logged or received by our systems and our Suppliers and you acknowledge that in calculating charges we need only look at that data as logged or received by ZettaGrid or our Suppliers.
- 7.1.5 Bills may include charges from previous billing periods where these have not been remitted.
- 7.1.6 We may reissue any invoice if any error is discovered. If you have overpaid as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from ZettaGrid we will refund the overpayment within twenty (20) Business Days.
- 7.1.7 Subject to clause 7.2.1, you must pay each amount billed by the due date specified in the bill and in the manner specified in the Service Description or the Pricing Schedule.
- 7.1.8 Bills and receipts will be available in an electronic document format and distributed to you via email.

## 7.2 Billing Disputes

- 7.2.1 Where you dispute the bill sent to you by ZettaGrid please provide a written notice to us within thirty (30) days of the issue date. You will need to specify:

- a) The specific line items in dispute; and
- b) Reasons for disputing each of the charges.

7.2.2 We will assess the validity of these claims and provide a written response within five (5) Business Days.

7.2.3 Where a billing dispute is found to be in our favour you will be required to pay the outstanding amounts by the due date. Where this due date has passed, you will be obliged to pay all outstanding monies within 24 hours.

## 7.3 Payments

7.3.1 You are responsible for and must pay for all use of the Service, even unauthorised use.

7.3.2 We reserve the right to charge The Customer all fees specified in this Agreement, unless otherwise agreed in writing by The Customer and ZettaGrid.

7.3.3 The Customer may elect to have their bills paid by way of:

- a) A direct debit from an account held by the Customer at an approved financial institution;
- b) An accepted credit card (Visa, MasterCard); or
- c) Direct deposit.

7.3.4 Accepted payment types vary for each Service. Please see the Service Description for accepted payment types for each Good and Service.

7.3.5 ZettaGrid will send you a Tax Invoice for Services on a monthly basis.

7.3.6 If the payment type is credit card or direct debit The Customer is responsible for ensuring there are sufficient funds available in their nominated credit card or direct debit account at any time we bill the account.

7.3.7 Dishonour fees and any other charges, expenses or losses resulting from ZettaGrid attempting to debit the credit card or direct debit account will be borne solely by The Customer.

7.3.8 The Customer hereby authorises ZettaGrid to charge any excess usage of their account at the current rate applicable in the Pricing Schedule.

7.3.9 Where The Customer provides a credit card for payment of reoccurring Services, The customer authorises ZettaGrid to debit this card for the fees and on a frequency as set out in the Pricing Schedule.

- 7.3.10 ZettaGrid will notify you by email, then by phone if your credit card is due to expire in the next billing period.
- 7.3.11 In addition to fees and charges you incur in the normal use of your Service, we may charge you an administration fee which may include cancellation fees, relocation fees and/or payment dishonour fees. These charges are outlined in our Pricing Schedule.
- 7.3.12 Dishonoured cheques incur a \$16.50 inc GST handling charge.
- 7.3.13 Direct Debit rejections incur a \$20.00 inc GST charge.
- 7.3.14 All administration, registration and set-up fees are non-refundable.
- 7.3.15 Customers may exchange or receive a refund for equipment which has not been opened or used and has been returned to us within 30 days of purchase.
- 7.3.16 We reserve the right to suspend or terminate your Service without notice upon rejection of any card, cheque or direct debit charges or if your card issuer (or its agent or affiliate) seeks return of payments previously made to ZettaGrid when we believe you are liable for the charge. Such rights are in addition to and not in lieu of any other legal rights or remedies available to ZettaGrid.

## **7.4 Refund Policy**

- 7.4.1 You may request a refund of monies paid within the first 7 days of the original date of purchase of the Service. This is referred to as the “cooling off period”.
- 7.4.2 Setup or once-off charges are not refundable.
- 7.4.3 Monies paid after the cooling off period are not refundable.
- 7.4.4 If you validly terminate this Agreement as a result of our breach, your only remedy will be:
  - a) In respect of Services, a refund for the services for which you have paid in advance but which have not been supplied by us, calculated at the applicable daily rate; and/or
  - b) In respect of Goods, possession of the Goods.

## **8 Consumer Credit**

### **8.1 Supply to Credit Reporting Agency**

- 8.1.1 You agree that ZettaGrid may give certain personal information about you to a credit reporting agency as specified in Section 18E(8)(c) Privacy Act 1988 (cth).
- 8.1.2 You agree that ZettaGrid may obtain information about you from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing your application for consumer credit as specified in Section 18L(4) Privacy Act 1988 (cth).
- 8.1.3 You agree that ZettaGrid may obtain a consumer credit report containing information about you from a credit reporting agency for the purpose of assessing your application for commercial credit as specified in Section 18K(1)(b), Privacy Act 1988 (cth).
- 8.1.4 You agree that ZettaGrid may exchange information with those credit providers named in your Application or named in a consumer credit report issued by a credit reporting agency under Section 18N, Privacy Act 1988 (cth) for the following purposes:
  - a) To assess an application by you for credit.
  - b) To notify other credit providers of a default by you.
  - c) To assess your credit worthiness.
- 8.1.5 You understand that the information exchanged can include anything about your credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

## **9 Your Information**

### **9.1 Collection, Use and Disclosure**

- 9.1.1 We may be permitted or required by applicable laws to collect, use or disclose personal information about you (which may include, for example, IP addresses, internet traffic information, numbers called, time of call, location of call), to:
  - a) the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data;
  - b) emergency services organisations; and
  - c) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

### **9.2 Opting-out**

9.2.1 If you wish to only receive communications that are account-related or legally required, you may request not to receive other communications (that is, you may 'opt out'). You will need to contact our Service Desk to make a request to opt-out. We will not charge you for processing a request to opt-out.

### **9.3 Gaining Access To Your Information**

9.3.1 If you are an individual, you are entitled to:

- a) gain access to your personal information held by ZettaGrid, unless we are permitted or required by any applicable law to refuse such access; and
- b) correct any personal information held by ZettaGrid.

### **9.4 Providing Your Information**

9.4.1 If you do not provide part or all of the personal information we request, then we may refuse to supply, or limit the supply to you of, personal credit or the Service.

### **9.5 Notices**

9.5.1 All notices and changes shall be in writing and shall be hand delivered, or sent by post, or facsimile, or email to the parties hereto at their respective addresses.

### **9.6 Assignment**

9.6.1 The Customer and ZettaGrid agree not to assign or, transfer any of the Services provisioned by ZettaGrid under this Agreement or any rights given by the use of this Service, unless prior written permission from an authorised officer.

## **10 Other Terms**

### **10.1 Our Rights**

10.1.1 ZettaGrid reserve the right to remove any information or materials, in whole or in part, that we, in our sole discretion, deem to be offensive, obscene, indecent, or otherwise inappropriate regardless of whether such material or its dissemination is unlawful.

10.1.2 ZettaGrid are under no obligation to monitor transmissions or published content on the Services.

10.1.3 However, ZettaGrid or our agents have the right to monitor such transmissions or published content from time to time.

### **10.2 Liability**

10.2.1 ZettaGrid shall not be held liable in any way or by any means for any direct or indirect, special or consequential damages, resulting from the use or the inability to use the Services or from any goods or Service purchased or obtained or message received or transaction entered into through ZettaGrid or from unauthorised access to or alteration of your transmission or data to your e-mail address, even if we have been advised of the possibility of such damages.

10.2.2 ZettaGrid are not liable for any delay or failure to perform resulting directly or indirectly from any causes beyond our reasonable control.

10.2.3 Our liability to you or any third party is limited to the Service Level Rebates described in the Service Schedule.

### **10.3 Precedence**

10.3.1 Where any conflict or inconsistency exists in the documents and/or schedules the following precedence is in effect:

- a) General Terms and Conditions.
- b) Service Descriptions.
- c) ZettaGrid Website or Executed Proposal.

### **10.4 Warranties**

10.4.1 ZettaGrid warrants the Services as specified in the Service Description.

10.4.2 ZettaGrid make no warranties that Services will meet your requirements, or that Services will be uninterrupted, secure, or error free, or the results that may be obtained from the use of Services, or to the accuracy or reliability of any communication or transmission of data, or the accuracy of any information obtained through Services or that defects in the software used to provide the Service will be corrected.

10.4.3 ZettaGrid make no warranty regarding any Services or any transaction entered into through Services. We take no responsibility for the deletion or failure to backup Customer Data. No advice or information, whether oral or written, obtained by you from ZettaGrid or through Services shall create any warranty by ZettaGrid.

### **10.5 Indemnification**

10.5.1 You agree to indemnify ZettaGrid, its parents, subsidiaries, representatives and employees from any claim or demand, including solicitors' fees, arising out of your negligent use of the Service, including any violation of this Agreement by you or any other person using your account.

## **10.6 Complaints Procedure**

- 10.6.1 We are committed to resolving customer complaints quickly and in a satisfactory manner. If you have a complaint, we request that you contact [support@zettagrid.com](mailto:support@zettagrid.com) or call 1300 597 656. A ticket number will be created and assigned to your complaint.
- 10.6.2 We will formally respond to the complaint within 21 business days.
- 10.6.3 If you are not satisfied with our review and response to your complaint you may contact the Office of Fair Trading in your state or territory.

## **10.7 Customer Service Guarantee**

- 10.7.1 The Customer Service Guarantee as part of the Telecommunications Act 1999 prescribes mandatory performance standards for certain telecommunications services. We will comply with such standards to the extent that they apply to the Services offered.

## **10.8 Governing Law**

- 10.8.1 This Agreement shall be deemed to have been made in Perth, Australia, and it shall be governed and interpreted according to the laws, including conflict of laws, applicable in the State of Western Australia. Each of the parties submits to the jurisdiction of the Courts of Western Australia.

## **10.9 Legal Capacity**

- 10.9.1 You confirm that you are at least 18 years old and that you have the legal capacity to enter into this Agreement.