

CROSSPOINT STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions set out the general terms and conditions that apply to the relationship between you and CrossPoint.

These Standard Terms and Conditions, the Service Schedules applicable for your particular Service and the Managed Service Application Form or Managed Service Agreement for CrossPoint Managed Service (whichever is applicable to your Service) will together form the Standard Managed Service Agreement between you and CrossPoint. Please note that these Standard Terms and Conditions need to be read in conjunction with your Managed Service Application Form or Managed Service Agreement and the applicable Service Schedule.

By signing the Managed Services Application Form you agree to be bound by our Standard Managed Service Agreement. Should there be any inconsistencies between these Standard Terms and Conditions, the Managed Services Application Form and/or the applicable Service Schedule, the order of preference in applying these agreements is: first these Standard Terms and Conditions prevail, then the Service Schedule and then the Managed Services Application Form.

DEFINITIONS

“Agreement” or “Standard Managed Service Agreement” means these Standard Terms and Conditions, the Service Schedule and the Managed Services Application Form;

“Business Day” means a day which is not a Saturday, Sunday or public holiday in the location/country where your Service is being provided;

“Charge” or “Charges” means the charge or charges (exclusive of any taxes or duties) in respect of a Service as set out in the relevant Managed Services Application Form and in clause 3 below, and include (but is not limited to) installation charges, monthly Service charges which vary according to the type of Service selected and the amount of services installed and any additional Services specified in your Managed Service Application Form or Managed Service Agreement and includes Occasional Charges;

“Committed Term” means the number of months you have agreed to use the Service and pay the Charges, as specified in the Managed Services Application Form;

“Coverage Hours” means the hours of 9am to 5pm during Business Days, local time in the location/country where your Service is being provided.

“Confidential Information” means oral, written or electronic information, including but not limited to your or CrossPoint’s Intellectual Property, operational information, all trade secrets, know-how, computer programmes, network diagrams, designs, equipment configurations, processes, formulae, computer processing systems and techniques, data files, flow charts, specifications, price lists, client lists, practice procedures, marketing plans, financial and business information;

“CrossPoint” or “we” means CrossPoint Telecommunications Pty Ltd A.C.N. 114 647 942, of Suite 2, Level 2, 128-130 Rothschild Avenue, Rosebery in the State of New South Wales, Australia and/or CrossPoint Telecom Pte Ltd of 20 Cecil Street, #14-01, Equity Plaza, 049705 Singapore (as applicable);

“CrossPoint Equipment” means any equipment that CrossPoint or its suppliers provide to you as part of a Service under this Agreement but excluding the Purchased Equipment;

“Equipment” means either CrossPoint Equipment or the Purchased Equipment or both, as the context requires;

“GST” means Goods and Services Tax or value added tax;

“Intellectual Property” means any right in relation to copyright, patent, patent application, registered or unregistered trade mark, trading name, domain name, registered or unregistered design, trade secret, know how, Confidential Information, common law intellectual property right of CrossPoint or any licence to lawfully use any of the above and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967, including any right to register those rights, whether created before or after you Managed Service start date, whether existing in your local country or any other country and in all cases for the duration of those rights;

“MACs” means the management of your Service requests to Move, Add, Change install, remove, upgrade, delete, disconnect, reconfigure and relocate your relevant Service and/or Equipment, requested through the CrossPoint Incident Management System;

“Managed Services Application Form” means our standard order and application form for a service;

“Occasional Charges” mean charges for miscellaneous works, project management costs, support charges and MACs,

“Onsite MAC” shall mean any work, services and tasks performed or to be performed by CrossPoint which require physical presence at your premises or hosted premises. These include equipment relocation requests, addition of hardware terminal devices, recovery of equipment due to reduction or termination of Extensions, addition of interfacing equipment or services from third party such as PSTN services, on-site trouble shooting and repair and restoration of services caused by events which are Service Exceptions.

“Related Bodies Corporate” means an entity directly or indirectly controlling a party; which is under the same direct or indirect ownership or control as that party; or which is directly or indirectly owned or controlled by that party. An entity shall be treated as being controlled by another if that other entity has fifty percent (50%) or more of the votes in such entity, has the same shareholding as that party and is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

“Planned Outage” means a period of time, as reasonably determined by CrossPoint, that CrossPoint may interrupt supply of the Service to you for routine maintenance, repairs, upgrading or other similar activities after giving you reasonable prior notice;

“Project MACs” shall mean on site or remote work considered as projects due to the complexity of the work or estimated time to complete. All charges for Project MACs are to be quoted and have to be agreed to by you and CrossPoint prior to commencing.

“Purchased Equipment” means any equipment which you purchase from us under this Agreement;

“Service” and “Services” means the services and products set out in the relevant Managed Services Application Form and/or Service Schedule;

“Service Exception” means instances or faults which are not covered by the CrossPoint Managed Services or SLAs, and which are more specifically listed in clause 4.1.

“Service Resilience Option” means level of Service redundancy and resilience and its associated target availability, as specified in clause 4.2;

“Service Schedule” means a schedule to these Standard Terms and Conditions which sets out, amongst other things, a description of the Service any Service levels (as applicable) and any other relevant terms and conditions, to be read in conjunction with these Standard Terms and Conditions;

“SLA” means the CrossPoint Standard Service Level Agreement, unless CrossPoint has specifically negotiated a specific SLA with you;

“Soft MAC” means shall mean any work, services and tasks performed or to be performed by CrossPoint which can be conducted as a software configuration change, may be performed remotely, and does not require complex configuration changes or on site visits and shall include user name changes, extension number changes, PIN number or password resets email changes for virtual facsimile service, creation of phantom numbers and virtual numbers and termination of services.

“Standard Terms and Conditions” means the general terms and conditions set out in this document;

“You” and “Your” means your company or your business, as identified on the Managed Services Application Form;

“We” and “Us” means CrossPoint; and

“Works” means any design, installation or commissioning works required to enable provision of the Service.



1. PROVISION OF SERVICE

1.1 Installation and Commissioning

- (a) CrossPoint will use its best endeavors to carry out any Works within the agreed timeframe. This timeframe may be set out in the Managed Services Application Form and/or in the Service Schedule.
- (b) The Charges for any Works are based on the information you have provided us. If that information is inaccurate or an unforeseen event occurs, we may charge you for any additional cost incurred by us in completing the Works. Such additional cost will be communicated to you before being incurred.
- (c) You will provide us with reasonable and unconditional access to your premises that complies with standard occupational health and safety requirements and assistance from your employees to allow us to carry out the Works.
- (d) You will provide us with information that we reasonably require or request to carry out the Works and to provision and supply the Service to you.

1.2 Service

- (a) Managed Services Application Form sets out the nature of the Service that we will provide to you.
- (b) Whenever we provide you with a Service, we will:
 - (i) provide the Service with care and skill;
 - (ii) use our best endeavors to begin providing the Service within a reasonable time or by any connection date, installation date or other time set out in the relevant Managed Services Application Form and/or the Service Schedule; and
 - (iii) ensure that the Service substantially conforms to any specifications that we provide.

1.3 Equipment

- (a) If required for a Service, we may supply Equipment to you. This Equipment may be Purchased Equipment (which you buy from us) or CrossPoint Equipment (which we provide to you for use during the duration of the Service).
- (b) You may request upgrades or new versions of Equipment and we will advise you of the availability and any additional costs associated with the upgrade or new version.

1.4 Repairing Faults

- (a) We will arrange for the repair of any fault in the CrossPoint Equipment which adversely affects the Service or any faults in the Service.
- (b) The Charges cover the cost of us repairing faults in the Service during the Coverage Hours (in the location and country from which the Service is provided) unless such faults are caused, or contributed to, by you or your employees or contractors. This excludes MACs or changes to the scope of the Service.
- (c) If you want us to investigate or repair any faults, defects or MACs which are requested to be carried out outside of Business Hours may incur additional hourly charges or a call-out fee.

1.5 Reporting

- (a) As part of the Managed Telephony Service, we will provide such reports as are listed in the features of your selected Managed Telephony Service.
- (b) At additional cost, which will be charged through the MAC charges process, we may also, upon request, provide you with non-standard reports.

1.6 MACs

- (a) We will charge you for the provision of Soft MACs.
- (b) All requests for On Site MACs must be approved by us on a case by case basis.
- (c) We will schedule and coordinate the performance of Onsite MACs at your premises.
- (d) Provision for Onsite MACs includes labour costs for equipment installation (if applicable) and testing. Call out fees, travel and accommodation charges may apply and we will inform you of these

charges before we attend your premises.

- (e) We will bill you for MAC charges monthly in arrears.

How we perform MACs

- (f) If you request MACs, our helpdesk will:
 - (i) liaise with our other service areas;
 - (ii) liaise with our technical areas, as needed;
 - (iii) track progress of your request;
 - (iv) confirm completion and close of your request; and
 - (v) update your configuration records following completion of your request.
- (g) If you or a third party perform a change to your equipment, carriage network or IP carriage service or network that is not expressly authorised by us, and an MAC is required to remedy the unauthorised change, we may charge you for providing the MAC.

MACs requiring project coordination

- (h) A MAC will require project coordination if:
 - (vi) the MAC request requires ten (10) or more actions;
 - (vii) we determine that it has service dependencies or is complicated; or
 - (viii) it is listed anywhere in our documentation as a "Soft MAC Project" or a "Project MAC".
- (i) Where we believe an MAC requires project coordination:
 - (ix) we will provide you with a quotation for the MAC; and
 - (x) we will not proceed with the MAC without your agreement.

2. YOUR RESPONSIBILITIES

2.1 General Responsibilities

Whenever we provide a Service to you, you will:

- (a) comply with this Agreement;
- (b) complete the prerequisites assigned to you by us in order for us to begin the installation Work;
- (c) not resupply the Service to anyone else without our prior written consent;
- (d) follow our directions and instructions regarding the use of the Service;
- (e) allow us to maintain constant remote access to all of your systems and safe, reasonable and unconditional physical access to the Equipment, with the appropriate authorization levels to access your premises, whenever required.
- (f) ensure that CrossPoint Equipment is kept safe and secure from loss, theft, damage or unauthorised physical access whilst in your premises and that your Service users and end users will use the CrossPoint Equipment appropriately and exercise due care towards the CrossPoint Equipment;
- (g) pay invoices for the Charges issued by us by their due date, even if you dispute an invoice and you are waiting to clear the invoicing dispute with us;
- (h) ensure that all information and data you give us is correct, up-to-date and complete, including but not limited to the list of authorised users who are authorised to approve the logging of requests in the CrossPoint Incident Management System;
- (i) be solely liable for all information and data carried over a third party network;
- (j) use the Service for lawful purposes and without being a nuisance to anyone;
- (k) never interfere with the reasonable use of the Service by our other customers;
- (l) be responsible for any of your employees or other service providers who have access to the Service;
- (m) agree to inform us of any activity that may adversely affect the provision of CrossPoint Managed Service to you, including but not limited to, any interruptions to the supply of electricity or scheduled maintenance breaks or outages (whether by you or your third party service providers)
- (n) train the authorised users on the appropriate use of the CrossPoint helpdesk; and
- (o) comply with all applicable laws, regulations, standards and codes.

2.2 CrossPoint Equipment

- (a) CrossPoint Equipment remains the property of CrossPoint or our suppliers (as the case may be) throughout the Committed Term and any extension of it (or during rolling over on a month by month basis, as applicable). Upon termination of your Service by you or CrossPoint, you will be required to return the said CrossPoint Equipment to us. All CrossPoint Equipment is provided to you on an "as is" basis without any express or implied representations or warranties (other than Service SLAs) of any kind by CrossPoint.
- (b) From the date of delivery of CrossPoint Equipment to your premises, you assume all risks (including, but not limited to loss, theft, damage or destruction) associated with CrossPoint Equipment and you agree to reimburse CrossPoint for any loss or damage (whether full or partial, but excluding normal wear or tear) of CrossPoint Equipment to the extent of replacement value of such Equipment (being the recommended retail value at the time of loss, theft, damage or destruction).
- (c) You agree not to make, or allow to be made, any alterations, modifications, adjustments or repairs to the equipment or servicing of the equipment and you must not remove, cover or alter or allow anyone to remove, cover or alter any labels fixed to the Equipment;
- (d) We may, at any time and at our cost, modify or replace CrossPoint Equipment provided that there is no adverse impact on the Service during your normal business hours.
- (e) For your own safety, and so that the Service is not disrupted, you must:
 - (i) arrange for CrossPoint Equipment to be installed in a suitable, air-conditioned and dry, reasonably accessible place;
 - (ii) as we may specify, protect CrossPoint Equipment from radio or electrical interference, power fluctuations, humidity and water, abnormal environmental conditions, loss, theft and any other risks and ensure it is not damaged and remains in good condition;
 - (iii) only use CrossPoint Equipment at the agreed site location and according to our or the manufacturer's instructions;
 - (iv) not enter into any agreement for the transfer, sale, mortgage, grant of any security interest or other similar dealing, in respect of CrossPoint Equipment;
 - (v) give us reasonable and unconditional access to your premises for the purpose of repairing, maintaining or developing CrossPoint Equipment, or for any other reasonable purpose;
 - (vi) only permit CrossPoint Equipment to be repaired, serviced, moved or disconnected by us or our authorised contractors unless we otherwise permit in Writing;
 - (vii) obtain our written approval prior to connecting or changing a connection to CrossPoint Equipment;
 - (viii) follow the reasonable directions of us or our contractors and any directions from the manufacturer when connecting anything to CrossPoint Equipment or otherwise operating CrossPoint Equipment, ensure it is installed according to our specifications and complies with any applicable local standards;
 - (ix) never use the Equipment for purposes for which it is not designed; and
 - (x) pay our charges for repairing or replacing any part of CrossPoint Equipment which is lost, stolen, destroyed or damaged by you, or by anyone entering your premises (other than CrossPoint). If you become aware of any loss, theft or destruction of, or damage to, CrossPoint Equipment, you must notify us immediately in Writing. There is no charge where damage occurs through normal wear and tear.
- (f) Where third party equipment or network is used to provide the Service, you must comply with any requirements of such third party in relation to that equipment or network.
- (g) It is a condition of your Service that you arrange suitable insurance cover for any loss, damage, destruction or theft of CrossPoint Equipment or any other liability you may incur arising from this Agreement.

2.3 Software

- (a) Where CrossPoint provides you with any software to use:
 - (i) it remains the owner or licensee of the software;
 - (ii) you may use the software only for the purposes for which it is provided;
 - (iii) your right to use the software may not be assigned or otherwise transferred to anyone else without the prior written consent of CrossPoint;
 - (iv) you will not change or interfere with the software in any way;
 - (v) you will not use the software to recreate or reverse engineer any source code;
 - (vi) you will not copy any part of the software except for the purposes of CrossPoint's approved backup or testing procedures; and
 - (vii) you will comply with any further requirements imposed by CrossPoint in relation to the software or where relevant, any requirements of the owner or licensor of the software.
- (b) CrossPoint may at any time install upgrades or new versions of the software. Such upgrades or new versions will be included in your Charges.

2.4 Purchased Equipment

- (a) If required for the provision of the Service, CrossPoint will sell to you the Purchased Equipment and in return, you will pay to CrossPoint the agreed purchase price quoted by CrossPoint.
- (b) Title to, and legal and beneficial ownership of, the Purchased Equipment remains with us until we have received payment in full for the Purchased Equipment. Until CrossPoint receives payment in full, you must keep the Purchased Equipment separate from your other assets and clearly indicate with markings that the Purchased Equipment is the property of CrossPoint.
- (c) Risk of damage to, or loss or theft of, the Purchased Equipment passes to you on delivery of the Purchased Equipment to your requested delivery address.
- (d) CrossPoint will make reasonable efforts to assign to you supplier warranties provided in respect of the Purchased Equipment as provided by law but otherwise gives no direct warranties regarding the Purchased Equipment.
- (e) For your own safety, and so that the Service is not disrupted, you will:
 - (i) arrange for Purchased Equipment to be installed in a suitable, reasonably accessible place;
 - (ii) as we may specify, protect Purchased Equipment from radio or electrical interference, power fluctuations, abnormal environmental conditions which may impact the Service provided by CrossPoint; and
 - (iii) follow the reasonable directions of us or our contractors and any directions from the manufacturer when connecting anything to or otherwise operating Purchased Equipment, ensure it is installed according to our specifications and complies with any applicable local standards;

2.5 Indemnity

- (a) You agree that you will operate and possess the Equipment and the Service at your own risk and CrossPoint excludes liability to you (except to the extent required by law) for or in respect of any loss or damage caused to you whether by way of personal injury, property damage, delay, financial loss or otherwise arising from or incidental to breakdown or defect in the Equipment or any accident involving the Equipment or Service or any act or omission caused by our employees or subcontractors.
- (b) You indemnify and will keep indemnified CrossPoint to the maximum extent permitted by law against any loss suffered or incurred by CrossPoint in connection with the Equipment or any actions, claims, demands, liabilities, losses (including data losses), damages or expenses arising from a breakdown or defect in the Equipment or in relation to its use, operation repair, maintenance or storage. This indemnity is not limited by the maximum amount set out in clause 6.2(b)(ii).
- (c) You agree that you have relied on your own judgment to evaluate the suitability of the Service for the purpose for which you require the Service.

3. CHARGES & INVOICES

3.1 Our Charges

- (a) Your monthly Service Charges will be billed monthly in advance from the date the Service, or any part of it, is installed (the "Installation Date") unless otherwise agreed in writing between you and CrossPoint or in the Managed Services Application Form. Invoices will be raised from the month of the installation of the Service, or three months after the date of Signing the CrossPoint Managed Service Application Form or Managed Service Agreement, whichever is earlier. Service additions (if any) will be billed during the month following the installation of the addition and are calculated on a pro rata basis from the Installation Date to the end of that monthly billing period.
- (b) You agree to pay the Charges for all the Services and Equipment (as applicable) as set out in the Managed Services Application Form or Managed Service Agreement (as applicable) in accordance with this Agreement.
- (c) Service charges are exclusive any usage fees (such as telephone call usage fees, network usage fees. Such fees may subject to a separate service agreement between you and the third party service provider.

3.2 Invoicing

- (a) Your monthly Service charges will be billed monthly in advance from the date the Service, or any part of it, is installed (the "Installation Date") unless otherwise agreed in writing between you and CrossPoint or in the Managed Services Application Form. Invoices will be raised from the month of the installation of the Service, or three months after the date of Signing the CrossPoint Managed Service Application Form or Managed Service Agreement, whichever is earlier. Service additions (if any) will be billed during the month following the installation of the addition and are calculated on a pro rata basis from the installation date to the end of that monthly billing period.
- (b) If you do not pay an invoice by the due date for payment, you will be in default and CrossPoint may charge you an overdue penalty fee and interest on the unpaid amount calculated on a daily basis from the due date until payment is made at the rate of five per cent (5%) per annum above the prime lending rate of Westpac Banking Corporation, Australia.
- (c) If you consider there is a mistake in any invoice, you may raise a valid billing dispute by notifying CrossPoint within one (1) months from the date of invoice with full details of the disputed Charge. CrossPoint will investigate the matter and report back to you within a reasonable time. You agree to pay the disputed invoice in full by its due date. CrossPoint will agree to give you a credit note for the wrongly invoiced Charges, should the dispute later be determined in your favour. If the matter cannot be resolved, the procedure under clause 9 must be followed.
- (d) Your invoice will indicate the outstanding balance and the methods of payment acceptable to CrossPoint. CrossPoint may include unbilled service charges in a later invoice(s).
- (e) CrossPoint uses reasonable endeavors to invoice you on a monthly basis but reserves the right to back bill up until 1 year from the date when charges have been incurred.
- (f) CrossPoint will be entitled to deduct (in whole or in part) any amount payable by CrossPoint (whether due to a credit or other reason) to you from any monies due and payable by you to CrossPoint.

3.3 Changes to Charges

- (a) Charges will remain fixed during the Committed Term.
- (b) Notwithstanding the above, CrossPoint may vary the Charges, with your prior written consent, if:
 - (i) it continues to provide the Service after the end of any Committed Term; or
 - (ii) you have requested a change to the Service in Writing to be provided and CrossPoint has agreed in Writing to that change.

3.4 Cancellation Charges

- (a) You will be liable to pay cancellation charges if:
 - (i) You cancel the Service and terminate this Agreement before the end of the Committed Term; or
 - (ii) CrossPoint terminates the Service prior to the end of the Committed Term in accordance with 10.2(b).
- (b) Except as expressly set out in a Service Schedule the cancellation charges are the sum of monthly Charges multiplied by the total number of remaining months before the end of the Committed Term.
- (c) You agree that the cancellation charges are a reasonable estimate of the likely loss incurred by CrossPoint if the Service is terminated early.

3.5 Taxes

Unless otherwise expressly stated, the Charges are exclusive of government taxes to be levied on CrossPoint (such as GST, VAT, sales tax or withholding tax). You must pay to us, in addition to the Charges, an amount equal to any tax payable on the supply of the Service according to the rate of the applicable tax in the country where the Service is being provided. That additional amount is payable at the same time as any part of the Charges is payable. We will issue a tax invoice to you for the supply of the Service at or before that time.

4. SERVICE EXCEPTIONS, SERVICE DISRUPTIONS AND SERVICE LEVELS

4.1 Service Exceptions

The CrossPoint Managed Service does not cover any cost associated with repair or restoration of Service (cost of labour or replacement of damaged equipment) or guarantee any Service Levels in case of incidents caused by events listed below:

- (a) damage caused by anyone other than CrossPoint employees, business partners or contractors;
- (b) damage caused by fire, water, failure of power or air-conditioning systems, accident or other events classified as Force Majeure;
- (c) negligent use or abuse of the Equipment by individuals other than CrossPoint employees, business partners or contractors;
- (d) repairs and modifications to the Equipment by individuals other than CrossPoint employees, business partners or contractors, excluding activities performed under the guidance of CrossPoint;
- (e) attachment of products to the Equipment which are not provided by CrossPoint, excluding activities performed under the guidance or instructions or CrossPoint;
- (f) repair or maintenance work carried out in relation to faults due to Third Party Provided Services or products not supplied by CrossPoint;
- (g) disconnection or removal (whether accidental or otherwise) CrossPoint Equipment of lines, cables or underlying infrastructure required or associated with the provision of the Service;
- (h) unavailability of Third Party Provided Services in relation to connectivity (internet VPN or private data links for service management)

4.2 Service Disruptions and Service Levels

- (a) Some Services may be affected by your levels of use, the levels of use of other users and of facilities used to provide the Service. For this reason, we do not warrant that Services will be free of blockages, delays or faults of any kind.
- (b) You agree that CrossPoint will not be responsible for any unplanned service disruptions or outages due to disruptions in services provided by third parties (whether contracted by you or CrossPoint, referred to as "Third Party Provided Services"), which may affect the Service.
- (c) The CrossPoint SLAs define the applicable availability for your Service based on the Service Resilience Option selected. In order to find the service levels CrossPoint provides and the applicable Service Resilience Option, you will need to refer to the CrossPoint Standard SLA and the Service specific SLAs relevant to your Managed Service. The SLAs for third party services and/or any applicable service disruption rebates for Third Party Provided Services are based on the SLA's and terms and conditions provided by such third parties.

- (d) CrossPoint will use reasonable endeavors to meet the Service Levels for the relevant Service but it does not guarantee them.
- (e) Subject to the relevant SLA, should CrossPoint fail to achieve the relevant Service Levels in any month, you may be entitled to a rebate ("Service Level Rebate") as per the the relevant SLA.
- (f) Notwithstanding any other provision of this Agreement, you will not be entitled to Service Level Rebate, where the failure to achieve the relevant Service Level has been caused directly or indirectly by, or arises in connection with:
 - (i) an event of Force Majeure;
 - (ii) a Planned Outage;
 - (iii) the exercise of CrossPoint's right to suspend the Service under this Agreement;
 - (iv) a breach of this Agreement by you; or
 - (v) any fault of the Equipment caused by the misuse of the Service or your negligence.
- (g) We may temporarily suspend, downgrade or restrict any Service, if:
 - (i) prior to the commencement of the service, CrossPoint determines that it is not viable to supply the Service to you;
 - (ii) you misuse the Service;
 - (iii) non-compliant equipment is used by you;
 - (iv) there is an unusually high use of the Service;
 - (v) You fail to pay any charges to CrossPoint before their due date;
 - (vi) during any scheduled or agreed maintenance period;
 - (vii) if we think it is reasonable or necessary to carry out urgent repairs to CrossPoint Equipment;
 - (viii) in order to comply with any applicable law or an order or request of any government or regulatory body;
 - (ix) if CrossPoint loses remote access to the CrossPoint system or if CrossPoint is denied reasonable or unconditional physical access to the Equipment; or
 - (x) where a liquidator, receiver, manager and receiver or any other administrator is appointed over your assets, or if you enter into any composition with your creditors
 - (xi) where the Service is affected by Force Majeure.
- (h) in the case of service suspension, downgrading or restriction due to clauses 4(g) above, CrossPoint may charge you for the full Charges arising during the suspension, downgrading or restriction.
 - (i) Unless otherwise stated in a Service Schedule, we will:
 - (i) give you at least three (3) days notice of scheduled maintenance that is likely to affect your Service; and
 - (ii) not carry out any scheduled maintenance between 9am – 5pm unless we agree this with you first.

5 HELPDESK AND FAULT REPORTING

5.1 Helpdesk

- (a) The CrossPoint helpdesk is your first point of contact for reporting incidents and making service requests. You may contact our helpdesk by sending an email to helpdesk@crosspoint-telecom.com or support@crosspoint-telecom.com or (if a URL, login name and password are provided to you by CrossPoint) by accessing and logging a ticket via the incident management system directly.
- (b) Our helpdesk will:
 - (i) provide incident tracking number ("Ticket Number") numbers to the authorised person within your organisation who logged the fault;
 - (ii) make an initial assessment of each incident and service request and, if appropriate, attempt to resolve the incident or satisfy the service request, or refer it to the next level of support;
 - (iii) provide updates on incidents and service requests to the authorised person within your organisation who logged the request;
 - (iv) close incidents or service requests after confirming that the person who logged the call, or the authorised user (as the case may be) is satisfied that the incident has been fixed or that the service request has been completed.

- (c) Unless otherwise agreed with you in writing, the CrossPoint helpdesk will operate during the 8am to 5pm, except that incidents may be reported at any time (24 x 7 x 365).

5.2 Fault Reporting

As soon as you become aware of a fault in the service, you must report it to CrossPoint by sending an email to helpdesk@crosspoint-telecom.com or support@crosspoint-telecom.com or (if a URL, login name and password are provided to you by CrossPoint) by accessing and logging a ticket via the incident management system directly. CrossPoint may charge you for any costs incurred by it to investigate any fault that turns out to be caused by you or your equipment.

6. WARRANTIES AND LIABILITIES

6.1 Warranties

- (a) You warrant that, if other equipment than CrossPoint Equipment is used upon your request, you own such equipment or you have a valid, lawful lease to use such equipment.
- (b) have obtained and will maintain, all necessary licences (including those relating to software), permits, consents, authorisations and approvals necessary to operate such equipment and permit us to perform our obligations under the CrossPoint Managed Service Agreement with you.
- (c) You agree that you must not directly or indirectly solicit, employ or contract any helpdesk staff member until at least 6 months after the end of the date we cease providing the CrossPoint Managed Service to you, unless:
 - (i) you have obtained our prior written consent; or
 - (ii) the relevant helpdesk staff member has ceased employment with us for a period of at least six months.

6.2 Limitation of Liability

- (a) CrossPoint (including its Related Bodies Corporate):
 - (i) except as expressly set out in this Agreement, excludes all conditions, warranties and representations, whether express or implied, to the extent permitted by law; and
 - (ii) limits its liability for any breach of any conditions, warranties and representations (that cannot be excluded or restricted by law) under this Agreement, at its option, to the repair or re-supply of CrossPoint Equipment, Service or software or the payment of the cost of having CrossPoint Equipment, Service or software repaired or re-supplied by a subcontractor of CrossPoint.
- (b) Where either you or CrossPoint (including Related Bodies Corporate) is liable to pay the other any damages, refunds, rebates or other compensation under this Agreement ("Compensation") the following applies, to the extent permitted by law:
 - (i) the maximum combined amount of Compensation CrossPoint or its Related Bodies Corporate will have to pay you, and anyone else who uses the Service provided to you, is the sum of the Charges paid or payable by you in the 1 month period preceding the date of the event that gave rise to the claim;
 - (ii) the maximum amount of Compensation you will have to pay us is equivalent to the total value of the Charges during the Committed Term;
 - (iii) both you and CrossPoint will not be liable in any way for any loss of profit, loss of savings or data or for any indirect or consequential loss, including any losses that may reasonably be supposed to have been in the contemplation of the parties (as at the date of the first supply of the Service) as a probable result of any act or omission, arising out of or in connection with the supply of any Service or any equipment under this Agreement or otherwise in connection with the relationship established by this Agreement, including any loss or damage caused by our negligence or any fundamental breach of this Agreement;
 - (iv) the amount of Compensation that either of us has to pay the other will be reduced to the extent that the event giving rise to the obligation to pay Compensation has been caused or contributed to by the other.

6.3 Force Majeure

If you or CrossPoint is delayed or interrupted in, or prevented from, performing our obligations under this Agreement by any cause beyond your or our reasonable control (and that cause was not originally and directly caused by the act or omission of that party), including but not limited to acts or omissions of third party network operators or suppliers, acts of war or terrorism, natural disasters (including but not limited to floods, tsunamis, earthquakes and the like), strikes, lockouts or premises access restrictions (whether by you or by a third party), that party will not be in breach of this Agreement and the time for performance of its obligations will be extended by a period of time equal to the duration of the cause of the delay, interruption or prevention, (except in respect of your obligation to pay the Charges for Services you have received, no extension will be for a period greater than one (1) month).

7. PROPERTY RIGHTS

7.1 CrossPoint Equipment

Acquiring Services from us does not give you any ownership or other property rights in CrossPoint Equipment or software provided by CrossPoint in conjunction with the Service.

7.2 Intellectual Property

- (a) Any Intellectual Property owned by either of us prior to entry into the Agreement, or developed independently of this Agreement by either of us, will continue to be owned by you or CrossPoint, as the case may be.
- (b) CrossPoint either owns the Intellectual Property in the Service provided to you, or where it uses any Intellectual Property belonging to anyone else, CrossPoint has a license to do so.
- (c) We grant you non-exclusive non-transferable, royalty-free licence to use any Intellectual Property provided by us to you under these terms, while we provide the CrossPoint Managed Service to you solely for the purposes of meeting your obligations under these terms
- (d) You acknowledge that none of the Intellectual Property is transferred to you. You further acknowledge that unless specifically authorised by this Agreement, you cannot, and will not, use or reproduce the Intellectual Property for any purpose outside this Agreement.
- (e) All Intellectual Property in any improvements or changes to any Service devised or made by anyone during the time we are providing the Service to you, belongs to us.
- (f) You grant us a broad licence to any Intellectual Property provided by you to us under these terms. To avoid doubt, the broad licence survives the expiry of your CrossPoint Managed Telephony Service, or termination of the service for any reason
- (g) Each party warrants that the use (as permitted or necessitated by these terms) of any Intellectual Property licensed to the other party under these terms will not infringe any person's rights in that Intellectual Property or constitute a misuse of any person's confidential information. Each party indemnifies the other party against all loss, damage, injury, claim, demand, cost or expense (including legal fees and expenses) that it suffers or incurs as a result of any breach of any warranty in this clause.

8. INFORMATION

8.1 Confidential Information

- (a) you and we must always keep each other's Confidential Information confidential.
- (b) you and we both agree:
 - (i) to use the Confidential Information of the other only to the extent required for the purpose it was provided;
 - (ii) not to copy or reproduce any of the Confidential Information of the other in any way; and
 - (iii) to disclose the other's Confidential Information only to employees, advisers and contractors who need access to the information and who have agreed to keep it confidential.

- (c) you or we must promptly return all Confidential Information of the other (including any copies of it) in our possession or control, at the other's request.
- (d) you and we acknowledge that Confidential Information excludes information generally available in the public domain (without unauthorised disclosure under this Agreement) and excludes information received from a third party entitled to disclose it.
- (e) You agree that CrossPoint may use your organization name as a current or past customer for referencing purposes, without any further written approval from you.

9. DISPUTE RESOLUTION

- (a) Where a dispute arises between us, it will be referred to CrossPoint's and your representatives for resolution. You and CrossPoint agree to solve any disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until we have exhausted the dispute resolution channel provided in this clause.
- (b) The dispute resolution process will be as follows: a party may give notice to the other party about the nature of the dispute (a "Dispute Notice") and the parties will seek to reach settlement amongst themselves within ten (10) Business Days of receipt of the Dispute Notice ("Negotiation Period"). Should the Parties fail to determine the dispute within the Negotiation Period, the Parties may seek within a further period of ten (10) Business Days (or such longer period as agreed in writing between the Parties) to reach Agreement on:
 - (i) A mediation procedure out of courts and arbitration proceedings, (such as mediation, reconciliation or expert determination process);
 - (ii) the steps to be taken by each Party and the timing of those steps;
 - (iii) who will be the independent person/body conducting the mediation process and who will pay for such independent person's/ body's professional fees and expenses.
- (c) If the Parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) days (or any other period agreed in writing) from the date of the Dispute Notice, either Party may commence court proceedings or arbitration proceedings to resolve the dispute.

10. TERM AND TERMINATION

10.1 Term of the Agreement

This Agreement will, subject to clause 10.2:

- (a) remain in effect for the Committed Term and any extension of it (as applicable); and
- (b) unless otherwise stated in the applicable Managed Services Application Form or Service Schedule, on expiry of the Committed Term (or any extension of it), continue unless and until terminated by either of us by giving to the other not less than 30 Business Days prior written notice.

10.2 Termination

- (a) Either of us may terminate this Agreement:
 - (i) on written notice where the other party has materially breached this Agreement as such breach relates to the Service and that party has subsequently failed to remedy the breach within twenty (20) Business Days of receipt of written notice from the other party, as the case may be; or
 - (ii) where a liquidator, receiver, manager and receiver or any other administrator is appointed over the assets of the business of the other party, or if the other party enters into any composition with its creditors.
- (b) CrossPoint may terminate this Agreement:
 - (i) in whole or in part, if you materially breach this Agreement and fail to rectify such breach within twenty (20) Business Days of written notice of such breach from CrossPoint; or
 - (ii) if we are required to do so by law.

- (c) You may cancel the Service and terminate this Agreement at any time prior to the end of the Committed Term by giving thirty (30) days written notice to CrossPoint. However, if you do so, you are liable for cancellation charges, as specified in clause 3.

10.4 Suspension Rights

If you are in material breach of this Agreement (including by non-payment of our Charges when due), CrossPoint has the right to suspend performance of any or all of its obligations under the Agreement.

10.5 Recovery of CrossPoint Equipment

- (a) On termination of the Service under this Agreement, you will be required to return the CrossPoint Equipment to us after CrossPoint giving you notice in Writing.
- (b) If, following 30 days from the date of termination of the Service, you fail to return CrossPoint Equipment, or refuse to allow us to recover CrossPoint Equipment, you agree that such CrossPoint Equipment will be deemed as lost and CrossPoint will charge you for the replacement value (at the current recommended retail price of that time) of the lost CrossPoint Equipment.

10.6 Post-Termination

Clauses 2.5, 3, 6, 7, 8, 10, 11, 12, 13, 14 and 15 survive termination of this Agreement.

11. NOTICES

- (a) All notices and invoices must be in writing and be sent post, fax or electronic transmission to the address and contact person on the front of Managed Services Application Form, or to a nominated replacement address, fax number or email address. Any notice to CrossPoint in writing may further be in the form of a signed Managed Service Application Form, customer purchase order to CrossPoint or a ticket logged in the CrossPoint incident management system or an email request from you to CrossPoint (in this agreement "in Writing").
- (b) Any notice or invoice sent by post to that contact address will be assumed to have been delivered two (2) Business Days after it is posted. Any notice sent by fax or by email to that contact number or email address will be assumed to have been delivered immediately.

12. DISCREPANCY

Should there be any discrepancy between these Standard Terms and Conditions or the terms in the relevant Service Schedule, the Standard Terms and Condition will prevail.

13. GENERAL

- (a) You and CrossPoint will comply with reasonable requirements for security and health and safety when working at each other's premises. Where practical, these requirements will be communicated to each other in writing;
- (b) You may not assign any of your rights, benefits or obligations under this Agreement without the written consent of CrossPoint;
- (c) CrossPoint may have subcontractors or other agents meet any of its responsibilities under the Agreement but CrossPoint will remain liable to you for meeting its responsibilities under this Agreement;
- (d) This Agreement is not intended to create a partnership, a joint venture or a relationship of principal and agent between you and CrossPoint; and neither party will hold itself out as being so related;
- (e) These Standard Terms and Conditions, the CrossPoint Managed Service Application Form or Managed Service Agreement (as applicable) and any relevant CrossPoint Service Schedule sets out the entire agreement between you and CrossPoint concerning all matters dealt with by it, and it supersedes any prior agreement between us in regard to those matters;

- (f) You agree that you have entered into this Agreement entirely based on your own enquiries and without relying on any representation by CrossPoint or by any person purporting to represent CrossPoint, except as expressly set out in this Agreement;
- (g) The waiver of a breach of any term of this Agreement will not be a waiver of any other breach of that term or the breach of any other term. No waiver of a breach of any term of this Agreement will be valid unless it is in writing;
- (h) If a provision of this Agreement is void or voidable or unenforceable or the invalid part severed, the remainder of this Agreement will not be affected;
- (i) If a you or CrossPoint is delayed or interrupted in, or prevented from, performing its obligations under this Agreement by any cause beyond that party's control (and that cause was not originally and directly caused by the act or omission of that party), that party will not be in breach of this Agreement and the time for performance of its obligations will be extended by a period of time equal to the duration of the cause of the delay, interruption or prevention; and
- (j) The Agreement will be governed by the laws of New South Wales, Australia or Singapore (depending on the CrossPoint company who is providing the Service to you) and both you and CrossPoint agree to submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia or Singapore (as applicable) and the courts entitled to hear appeals from such courts.

14. INTERPRETATION

- (a) Headings are for convenience only and do not affect the interpretation of these Terms and Conditions;
- (b) Reference to the singular includes the plural and vice versa;
- (c) Reference to a person includes a corporation and vice versa; and reference to a person or a corporation includes a firm, a body corporate, an incorporated association or an authority;
- (d) Reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (e) Every obligation entered into by two or more parties binds them jointly and each of them severally;
- (f) Any term which is defined in the descriptions of the parties, the recitals or elsewhere in this Agreement has the meaning there defined;
- (g) Where any word or phrase is defined in these Terms and Conditions, any other grammatical form of that word or phrase has a corresponding meaning;
- (h) Reference to a schedule or an annexure is to a schedule or an annexure to these Terms and Conditions;
- (i) Reference to any agreement or terms and conditions or any other document referred to in these Terms and Conditions includes any amendments to it and any document in addition to or in substitution for it;
- (j) No provision of this Agreement will be construed adversely to a party on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (k) Reference to "month" is to a calendar month;
- (l) Reference to a time is to the official time in the location where the Service is being provided;
- (m) Reference to a statute, ordinance, code or other law includes any amendment to it, any replacement of it and any statute, ordinance, code or other law intended to operate in conjunction with it and, in each instance, includes every regulation, rule and other instrument pursuant to it;
- (n) "Including" and similar expressions are not words of limitation.

15. CHANGES TO THESE STANDARD TERMS AND CONDITIONS

CrossPoint may from time to time change its Standard Terms and Conditions or any of its terms and conditions in the Service Schedules, by notifying of the change on its website.



For any questions please contact your
CrossPoint sales representative