

1 Introduction

1.1 These terms and conditions are divided into sections for convenience.

Section 1 (General) applies to all orders. Section 2 (Third Party Product) applies where Logicalis provides Third Party Product. Section 3 (Sale of Equipment) applies where Logicalis supplies Equipment. Section 4 (Services) applies where Logicalis provides Services. Section 5 (Telecommunications Services) applies where Logicalis provides Telecommunications Services. Where it is appropriate two or more of Sections 2 to 6 may apply.

Section 1 (General)

2 Definitions

2.1 In these terms and conditions unless the context shall otherwise require the following words and expressions shall have the following meanings:

Agreement means the agreement for supply of Equipment and/or Services between Logicalis and the Customer consisting of these terms and conditions, the SoW (if any), the Quotation, Customer's order, Logicalis' order acknowledgment and any other document that Logicalis and the Customer agree in writing forms part of the agreement.

Assumption means any assumption (by whatever name called) which Logicalis has made in calculating the Charges and which is stated in the Quotation or the SoW.

Carrier means where the Services comprise or include Telecommunications Services, the provider of those Telecommunications Services as identified in the Quotation or SoW.

Carrier Terms and Conditions means the standard terms and conditions of the Carrier, a copy of which is available upon request.

Charges means those charges payable by Customer as stated in a Quotation or set out in a SoW.

Confidential Information means this Agreement, each SoW and all other information in whatever form (including oral) disclosed by one party to the other in respect of which the disclosing party owes an obligation of confidence to a third party or which relates to the disclosing party's operations, processes, plans, intentions, products, know-how, design rights, trade secrets, software, market opportunities, customers, business affairs or financial or contractual arrangements or dealings, provided that each such item of information either contains thereon or is accompanied by (in the case of oral information within fourteen days of disclosure) a written statement that it is confidential, or otherwise is information which a reasonable person would consider to be confidential because of its nature.

Controller means the Data Subject with legal authority to determine the purpose for which and the means by which Personal Information is Processed.

Customer means the person, firm or company who purchases Equipment or Services from Logicalis.

Data Subject means the individual to which the relevant Personal Information relates.

Data Protection Legislation means the *Privacy Act 1988* (Cth) and all other applicable laws and regulations relating to the Processing of Personal Information. Words and expressions defined in the Data Protection Legislation shall bear the same meaning in this Agreement.

Deliverables means all materials created by Logicalis specifically for the Customer, including, without limitation, data, diagrams, reports and specifications.

Equipment means any equipment (including any part or parts of it) that Logicalis is to supply to the Customer in accordance with the Agreement.

Intellectual Property Rights means Patents, rights in inventions, copyright and related rights, trademarks, service marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights in data, topography rights, mask works, utility models, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and

renewals or extensions of, such rights, whether vested, contingent or future and wherever existing.

Logicalis means Logicalis Australia Pty Ltd (ABN 95 091 623 326) of 79 Swan Street, Richmond Victoria 3121.

Logicalis Group means Logicalis and any company which is a subsidiary or a holding company of Logicalis, or any company which is a subsidiary of any such holding company, and all companies which in the future become subsidiaries of Logicalis or of any such holding company; 'holding company' and 'subsidiary' having the meanings given to them in the *Corporations Act 2001* (Cth).

Logicalis Items means Items, including but not limited to diagnostic software, hardware and software tools, and associated documentation provided by Logicalis to Customer to assist in the delivery of the Services. Replacement parts and software patches or upgrades provided by Logicalis are not Logicalis Items.

Manufacturer Support means any support services provided in respect of Equipment by the manufacturer of the Equipment as a mandatory feature.

Pre-existing Materials means Materials which existed before the commencement of the Services.

Processing means the collection, use and disclosure of Personal Information.

Quotation means a written document issued by Logicalis which sets out the Charges and any terms, in addition to these terms, upon which Logicalis may sell the Equipment and/or Services to the Customer.

Services means the services that Logicalis is to provide to the Customer in accordance with the Agreement.

Service Year means in respect of recurring Services the period of 12 months commencing on the Commencement Date and any anniversary of that date.

Sites means the premises of the Customer, Logicalis or of a third party, to which the Equipment is to be delivered and/or at which Services are to be performed.

Software means any operating system or other software (whether proprietary to Logicalis or not) installed on the Equipment or otherwise supplied by Logicalis.

Statement of Work or SoW means a statement of work entered into pursuant to this agreement.

Subcontracted Services means Services which Logicalis has subcontracted to a Subcontractor.

Subcontractor means a subcontractor of Subcontracted Services as shown in a Quotation or SoW.

Telecommunications Services means the provision of telecommunications circuits as described in the Quotation or SoW.

Third Party Services means Services which Logicalis procures for the Customer from a third party ("Third Party Provider" as defined below) where the Customer pays Logicalis for the Services but the Services are provided to the Customer directly by the Third Party Provider.

Third Party Product means: (a) Third Party Services supplied directly to the Customer (rather than as a Subcontractor); (b) Equipment ordered pursuant to this Agreement; and (c) Third Party Software.

Third Party Provider means a third party who provides Third Party Product to the Customer (either directly or through Logicalis).

Third Party Software means Software that is not proprietary to Logicalis and which is installed on the Equipment or otherwise supplied by Logicalis.

Vendor means a third party providing support services to the Customer under a contract between the Vendor and the Customer.

Vendor Contract means the contract between the Customer and a Vendor.

Working Day means a day other than a Saturday, Sunday or public holiday in Melbourne.

Working Hours means 0900hrs to 1730hrs on a Working Day.

- 2.2 The headings in this Agreement and the table of contents are for ease of reference only and shall not affect its interpretation.
- 2.3 Reference to the singular includes the plural and vice versa, and reference to a gender includes every other gender.
- 2.4 References to clauses are, unless otherwise stated, references to clauses of this Agreement.

- 2.5 References to a statutory provision include a reference to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either party, the parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances.
- 2.6 The words "including", "include" and words of similar effect shall not limit the general meaning of the words which precede them.
- 2.7 Reference to any agreement, contract, document or deed shall include that document as varied, supplemented or novated.
- 2.8 References to a party shall be construed to include its successors and permitted assigns or transferees.

3 Quotations

- 3.1 All Quotations are valid for fourteen (14) days from date of the Quotation, unless otherwise stated in writing on the Quotation. All Quotations are subject to these terms and conditions.
- 3.2 In addition to the Quotation Logicalis may, but is not obliged to, issue a SoW containing details of the Services and any applicable exclusions, activities, outputs and Assumptions.
- 3.3 Unless the Quotation specifies that the Charges are fixed Logicalis may at any time before it has accepted the Customer's order withdraw the Quotation and re-quote to reflect any increase in the cost to Logicalis which is due to any foreign exchange fluctuation or alteration of duties.

4 Conditions

- 4.1 These terms and conditions shall apply to the exclusion of any standard terms or conditions of the Customer, whether appearing in an order or in any other document issued by the Customer and notwithstanding any statement to the contrary appearing in such standard terms or conditions. Pre-printed, standard, or posted terms and conditions in any media (including terms where acquiescence requires only a mouse click) shall not be incorporated into nor construed to amend the terms of this Agreement.
- 4.2 In the case of any conflict or inconsistency between the documents forming this Agreement the documents shall take priority in the following order:
- 4.2.1 these terms and conditions;
 - 4.2.2 the SoW;
 - 4.2.3 the order acknowledgement;
 - 4.2.4 the Quotation; and
 - 4.2.5 the Customer's order.

5 Basis of Sale

- 5.1 Each order or acceptance of a Quotation or SoW by the Customer shall be deemed to be an offer by the Customer subject to these terms and conditions. A binding Agreement shall not come into existence between Logicalis and the Customer unless and until Logicalis issues a written order acceptance to the Customer, the parties sign a SoW or Logicalis delivers the Equipment or supplies the Services to the Customer (whichever occurs earlier).
- 5.2 Subject to clause 36, no order which has been accepted by Logicalis may be cancelled by the Customer, except with the agreement in writing of Logicalis and provided that the Customer indemnifies Logicalis in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Logicalis as a result of cancellation.

6 Charges

- 6.1 Logicalis shall charge and the Customer shall pay the Charges in Australian dollars, or such other currency as agreed in writing, without deduction, set off or counterclaim. The Customer shall also reimburse Logicalis for all reasonable and proper expenses incurred by Logicalis in connection with the supply of Equipment or provision of Services including but not limited to travel and accommodation expenses. Where an expenses policy is included or referred to in the SoW expenses will be charged by Logicalis as set out in that policy. The Customer shall pay the Charges and any additional Charges or expenses for which the Customer is liable under this Agreement not later than thirty (30) days after the date of Logicalis' invoice for the same. In the event of late payment of

the Charges, Customer agrees to pay a late payment charge at the Commonwealth Bank of Australia's published Variable Base Rate for small business unsecured loans plus four (4%) percent per annum, or at the maximum late payment charge permitted by applicable law, whichever is less, on any unpaid amount. The Customer's obligation to pay the Charges is not dependent on the Deliverables meeting any acceptance criteria stated in the SoW. Time of payment is of the essence of this Agreement.

- 6.2 Where the order includes both Equipment and Services the Agreement shall be deemed to be a separate agreement for the supply of Equipment and the Supply of Services. Any default or delay by Logicalis in the supply of Equipment shall not relieve the Customer of its obligation to take and pay for Services and any default or delay by Logicalis in the supply of Services shall not relieve the Customer of its obligation to take and pay for Equipment.
- 6.3 If the Customer fails to pay the Charges in full by the due date Logicalis may, without prejudice to any other right or remedy available to Logicalis:
- 6.3.1 Terminate the Agreement or suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Customer;
 - 6.3.2 Appropriate any payment made by the Customer to such of the Equipment or Services (or the Equipment or Services supplied under any other contract between the Customer and Logicalis) as it thinks fit (despite any purported appropriation by the Customer);
 - 6.3.3 Suspend all Services until payment has been made in full; and/or
 - 6.3.4 Make a storage charge for any undelivered Equipment at its current rates from time to time.
- 6.4 If the Customer fails to pay the Charges in full by the due date Customer shall indemnify Logicalis against all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by Logicalis in recovering sums due in each case without prejudice to any other rights or remedies available to Logicalis.
- 6.5 All sums payable to Logicalis under the Agreement shall, notwithstanding any other provision of the Agreement, become due immediately:
- 6.5.1 on its termination by a notice in writing served by Logicalis under clause 8.1 or 8.2; or
 - 6.5.2 if Logicalis commences legal proceedings to recover any sums due from Customer under this Agreement or any other contract between Logicalis and the Customer.
- 6.6 Logicalis' fees and charges are exclusive of Goods and Service Tax (GST), if applicable, which shall be payable by Customer on receipt of a valid GST invoice.
- 6.7 Logicalis' fees and charges are exclusive of any and all taxes (other than taxes on Logicalis' net income), duties, charges, levies and assessments imposed on the purchase, carriage or import of the products all of which shall be payable by the Customer.
- 6.8 Logicalis may issue and Customer agrees to accept invoices by email or other electronic means of communication.

7 Liability

- 7.1 Neither party excludes or limits liability to the other party for:
- 7.1.1 Death or personal injury due to its negligence; or
 - 7.1.2 Fraudulent misrepresentation; or
 - 7.1.3 Any other liability which may not be excluded by law.
- 7.2 Logicalis' liability for a breach of warranty implied by law will be limited to
- 7.2.1 In the case of Equipment supplied, to any one of the following (as Logicalis may determine):
 - (i) The replacement of the Equipment or the supply of equivalent Equipment;
 - (ii) The repair of the Equipment;
 - (iii) The payment of the reasonable costs of replacing the Equipment or of acquiring equivalent Equipment; or
 - (iv) The payment of the reasonable cost of having the Equipment repaired; and
 - 7.2.2 In the case of Services supplied, to any one of the following (as Logicalis may determine):
 - (i) the supplying of the Services again; or

- (ii) the payment of the reasonable cost of acquiring equivalent Services.
- 7.3 Subject to clause 7.1, the total liability of Logicalis in respect of loss or damage to tangible property arising out of or under this Agreement shall not exceed \$1,000,000 (one million dollars) in aggregate;
- 7.4 Subject to clauses 7.1 and 7.3, the total liability of Logicalis in respect of any or all events giving rise to any loss or damage arising out of or related to recurring Services in any Service Year shall not exceed a sum equal to the amount of the Charges payable by the Customer in respect of the recurring Services in the Service Year in respect of which the loss or damage arose or \$1,000,000 (one million dollars) whichever is the lesser.
- 7.5 Subject to clauses 7.1 and 7.3, the total liability of Logicalis in respect of any or all events giving rise to any loss or damage arising out of or related to the supply of Equipment or the provision of Services (other than recurring Services) shall not exceed a sum equal to the amount of the Charges payable by the Customer for the Equipment or Services in respect of which the loss or damage arose or \$1,000,000 (one million dollars) whichever is the lesser.
- 7.6 Subject to clauses 7.1 and 7.3, the total liability of Logicalis in respect of any or all events giving rise to any loss or damage which is not limited by clause 7.4 or clause 7.5 shall not exceed a sum equal to the amount of the Charges payable by the Customer under this Agreement or \$1,000,000 (one million dollars) whichever is the lesser.
- 7.7 Subject to clause 7.1, Logicalis will not be liable for any loss of profits, revenues, business, goodwill, anticipated savings, data or any special, indirect, consequential or economic loss, howsoever arising (in negligence or otherwise), in relation to or otherwise in connection with the Equipment or Services, this Agreement or any act or omission by Logicalis.
- 7.8 Subject to clause 7.1, and save in respect of its own negligence or wilful default Logicalis will have no liability in respect of Third Party Services or for the acts or omissions of Third Party Providers.
- 7.9 If for any reason the exclusion of liability in clauses 7.7 or 7.8 above is void or unenforceable, Logicalis' total liability for all loss or damage under this Agreement shall be as provided in clause 7.6.
- 7.10 No action (including mediation or litigation) may be brought under this Agreement more than two years after the circumstances giving rise to the action have come, or with reasonable diligence should have come, to the notice of the party bringing the action.

8 Termination

- 8.1 Either party may terminate this Agreement forthwith by notice in writing to the other party where the other party has committed a material breach and where such breach is capable of remedy and the other party has failed to remedy such breach within thirty (30) days of receiving notice specifying the breach and requiring its remedy.
- 8.2 Either party may terminate this Agreement forthwith by notice in writing to the other party if:
 - 8.2.1 the other party stops carrying on a significant part of its business or indicates in any way that it intends to do so;
 - 8.2.2 the other party is unable to pay its debts as they fall due and payable; or
 - 8.2.3 any action, application or proceeding is made with regard to the other party for the appointment of:
 - (i) a receiver, or receiver and manager, of its property;
 - (ii) an administrator, including an administrator of a deed of company arrangement;
 - (iii) a liquidator; or
 - (iv) a trustee or similar officer, in respect of the other party's affairs.
- 8.3 Without prejudice to any rights or remedies arising as a result of such termination Logicalis shall be entitled to be paid in accordance with the Agreement for:
 - 8.3.1 All payments due to Logicalis prior to the date of termination provided that Logicalis has delivered the Equipment or performed the Services; and
 - 8.3.2 The value of all Equipment ordered by Logicalis before the date of termination and for which Logicalis has paid or of which it is legally bound to accept delivery, provided that Logicalis shall deliver such

Equipment to Customer on the terms of this Agreement; and

- 8.3.3 All charges that Logicalis has incurred in respect of Services not yet provided to Customer and a reasonable administration charge in respect of the termination of those Services but subject thereto Logicalis shall refund the Customer any charges paid in advance for Services that Logicalis does not provide.
- 8.4 On the termination of this Agreement each party shall return to the other party any equipment, documents or other materials belonging to the other party which it has no legal right to retain.
- 8.5 Except for Clauses 7, 8, 11, 12, 17, 19, 24.2, 26, 27.2 and 29 which shall remain in full force and effect, and any other provision of these terms and conditions which expressly or by implication remains in effect, termination of this Agreement shall relieve both parties from further performance of their respective obligations hereunder but shall not affect the accrued rights of either party in respect of this Agreement or any breach.
- 8.6 For the purposes of Clause 8.1 a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question substantially in all respects other than as to time of performance.

9 Intellectual Property Rights

- 9.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Logicalis. Logicalis hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If Logicalis terminates the Agreement under clause 8, this licence will automatically terminate.
- 9.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Logicalis obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Logicalis to license such rights to the Customer.
- 9.3 Customer agrees not to directly or indirectly infringe the Intellectual Property Rights of Logicalis or its suppliers and to ensure that such rights are not infringed by its employees or contractors.

10 Intellectual Property Rights Indemnity

- 10.1 Logicalis agrees to indemnify the Customer from and against any damages finally awarded against the Customer in any claim, suit, action or proceeding (collectively called "Action") brought against the Customer to the extent that such Action is based on a claim that any Equipment or Services provided by Logicalis under this Agreement infringes any Intellectual Property Rights provided that:
 - 10.1.1 The indemnity does not apply:
 - (i) Where the Customer has the benefit of an indemnity against infringement of Intellectual Property Rights from the manufacturer of the Equipment;
 - (ii) To Equipment that is not manufactured by Logicalis or Services that are not performed by Logicalis unless Logicalis has the benefit of an equivalent indemnity against infringement of Intellectual Property Rights from the manufacturer of the Equipment or the provider of the Services; or
 - (iii) To Third Party Services or Third Party Software.
 - 10.1.2 The Customer fully co-operates with Logicalis in defending or settling the Action, does not at any time admit liability and makes its employees available to give such statements, advice and evidence as Logicalis may reasonably request;
 - 10.1.3 Logicalis is notified promptly in writing of any Action by the Customer and is given complete authority and information required for the conduct of the defence or settlement of the Action; and
 - 10.1.4 Logicalis shall have the sole control of the conduct of any Action and all negotiations for its settlement, compromise or resolution.
- 10.2 Logicalis shall have no liability to indemnify the Customer against any Action insofar as any such Action is in respect of:

- 10.2.1 Any use in combination with the Equipment or Services of any item not supplied by Logicalis (except where such combination, connection, operation or use is recommended, specified or approved by Logicalis) where such combined use directly gives rise to the Action; or
 - 10.2.2 Any modification carried out by or on behalf of the Customer to any Equipment or Services if such modification has not been authorised by Logicalis in writing; or
 - 10.2.3 The Customer's refusal to: (i) use or supply modified products or services provided pursuant to Clause 10.3; or (ii) accept a refund offered pursuant to Clause 10.3; or
 - 10.2.4 Any infringement or alleged infringement of any intellectual property right arising only by reason of Logicalis compliance with the express written instructions of the Customer.
- 10.3 If at any time any allegation is made that any Equipment or Services infringe any patent, copyright, trade secret or other proprietary right, or if in the reasonable opinion of Logicalis such an allegation is likely to be made, Logicalis may at its own expense:
- 10.3.1 Procure the right for the Customer to continue to use the said Equipment or Services; or
 - 10.3.2 Make such alterations modifications or adjustments to the said Equipment or Services that they become non-infringing without materially reducing performance or function; or
 - 10.3.3 Replace the said Equipment or Services with non-infringing substitutes which are substantially their equal in performance and function; or
 - 10.3.4 If none of the above is practicable offer to refund the price of the said Equipment or Services.
- 10.4 The Customer agrees to indemnify Logicalis from and against any claim, suit, action or proceeding brought against Logicalis and based on a claim that any items provided by the Customer to Logicalis under this Agreement infringes any Intellectual Property Rights. The provisions of clauses 10.1.1 to 10.1.4, 10.2 and 10.3 shall apply *mutatis mutandis*.

11 Publicity

- 11.1 Customer agrees that Logicalis may use the name and logo of the Customer and details of Deliverables, Equipment and Services supplied by Logicalis to the Customer for marketing purposes including: using the Customer's name on lists of Logicalis' customers; announcing new Orders placed by or contracts awarded by the Customer and the preparation and publication of case studies.
- 11.2 Save in respect of trademarks owned by the Customer or any third parties, Intellectual Property Rights in any documents, pictures, charts or other visual or audible material created by Logicalis for marketing purposes will vest in Logicalis.
- 11.3 Customer may withdraw its consent to the use of its name by Logicalis for marketing purposes by contacting Logicalis by sending written notice to Logicalis marked for the attention of 'Marketing'. Such withdrawal of consent will not apply to material published by Logicalis before the notice of withdrawal of consent is received.

12 Solicitation

- 12.1 The Customer shall not (except with the prior written consent of Logicalis) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of Logicalis any person employed or engaged by Logicalis in the provision of the Services at any time while this Agreement is in force or for a further period of 12 months after the termination or expiry of the Agreement other than by means of a recruitment campaign not specifically targeted at any of the staff of Logicalis.
- 12.2 If the Customer commits any breach of clause 12.1, the Customer shall, on demand, pay to Logicalis a sum equal to three month's basic salary or the quarterly fee that was payable by Logicalis to that employee, worker or independent contractor plus the recruitment costs incurred by Logicalis in replacing such person.
- 12.3 The parties agree that the amount payable under Clause 12.2 above is a genuine pre-estimate of the loss that Logicalis may suffer as a result of the Customer breaching the obligations contained in this Clause 12.

13 Notices

- 13.1 Any notice given by a party under this Agreement shall:
 - 13.1.1 be in writing and in English;
 - 13.1.2 be signed by, or on behalf of, the party giving it; and
 - 13.1.3 be sent to the relevant party at the party's registered office or at such other address as may be notified for the purpose of the service of notices hereunder.
- 13.2 Notices may be given, and are deemed received:
 - 13.2.1 by hand: on delivery;
 - 13.2.2 by pre-paid Recorded Signed For post: at 9.00 am on the second Working Day after posting;
 - 13.2.3 by pre-paid International Signed For post: at 9.00 am on the seventh Working Day after posting; or
 - 13.2.4 by email: only if sent to the email address designated for the receipt of notices by the receiving party (which in the case of Logicalis is inhouse.legal@uk.logicalis.com) on receipt of a manual or automated acknowledgment of receipt if sent during Working Hours (or if outside Working Hours at 9 a.m. on the next Working Day following its transmission).
- 13.3 All references to time are to the local time at the place of deemed receipt.

14 Force Majeure

- 14.1 Neither party will be liable for any act, omission, or failure to fulfil its obligations under this Agreement (other than payment obligations) if such act, omission or failure arises from any cause reasonably beyond its control including acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, governmental action after the date of this Agreement, acts omissions or delays of the other party, fire, communication line failures, power failures, earthquakes or other disasters (called "Force Majeure").
- 14.2 The party unable to fulfil its obligations due to Force Majeure will immediately:
 - 14.2.1 Notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of such failure; and
 - 14.2.2 Use all reasonable endeavours to avoid or remove the cause and perform its obligations.
- 14.3 Where a Force Majeure event continues for more than 4 consecutive weeks, either party may immediately terminate this Agreement on written notice to the other.

15 Cost of Compliance with Law

- 15.1 If the direct cost to Logicalis of the performance of this Agreement shall be increased or reduced by reason of the making after the commencement of this Agreement of any relevant law or any relevant order, regulation or bye-law having the force of law that shall be applicable to the Agreement (other than any tax upon profits or revenue), the amount of such increase or reduction shall be notified to Customer and shall take effect upon proof by Logicalis of the amount of any such increase or reduction, which increase or reduction shall be added to or deducted from the Charges stated in Clause 6.

16 Know How

- 16.1 Nothing herein shall be so construed as to prevent Logicalis from using data processing techniques, ideas, know-how and the like gained during the performance of the Services in the furtherance of its normal business, to the extent that this does not result in a disclosure of confidential information or infringement of any valid Intellectual Property Rights of Customer.

17 Confidential Information

- 17.1 Each party undertakes in relation to the other party's Confidential Information;
 - 17.1.1 To maintain the same in confidence and to use it only for the purposes for which it was disclosed and for no other purpose and in particular, but without prejudice to the generality of the foregoing, not to make any commercial use thereof or use the same for the benefit of itself or of any third party other than pursuant to this Agreement or a further agreement with the other party;
 - 17.1.2 to apply thereto no lesser security measures and degree of care than those which the receiving party

- applies to its own confidential information, but in any event not less than reasonable care to protect the Confidential Information;
- 17.1.3 not to copy or reduce to writing any part thereof except as may be reasonably necessary for the proper use of the Confidential Information for the purposes for which it was disclosed, and that any such copies or reductions to writing shall be the property of the disclosing party; and
- 17.1.4 not to disclose the same to its employees except in confidence to such of its employees who need to know the same and shall ensure that any employee to whom Confidential Information is disclosed is made aware of and complies with its obligations hereunder.
- 17.2 The restrictions on the disclosure of Confidential Information contained herein shall not apply to;
- 17.2.1 information which was in the public domain at the time it was disclosed or which subsequently enters the public domain other than by a breach of the provisions of this Agreement by the recipient party;
- 17.2.2 information which was already known to the recipient party prior to its receipt thereof from the disclosing party and which was not previously acquired by the receiving party from the disclosing party under an obligation of confidence, or which is independently discovered by the recipient party;
- 17.2.3 information which is disclosed to the recipient party by a third party without restriction on disclosure or use; or
- 17.2.4 any disclosure of Confidential Information required by law, by any rule or regulation of any stock exchange of which the recipient party is a member, by any Court procedure or by any rule or regulation of any governmental or quasi-governmental authority having jurisdiction over the recipient party. Provided that, so far as it is practicable to do so the recipient party shall consult with the disclosing party prior to such disclosure and shall in any event inform the disclosing party of the nature, content and timing of the disclosure of its Confidential Information.
- 17.3 The disclosure of Confidential Information shall not confer on the recipient party any right or licence to it or to any copyright or other intellectual property rights in it.
- 17.4 Each party shall, upon receipt of a written request from the other, return to the other all Confidential Information (including any and all copies thereof in whatever form) received by it under this Agreement and/or expunge to the extent reasonably possible any Confidential Information from any computer or any other storage device or storage media in its possession save that a party may retain copies of any documents or material prepared by it or on its behalf where this is necessary to comply with regulatory or statutory requirements and excluding copies of the Confidential Information created as a result of the normal operation of the receiving party's backup and/or archival systems, providing that access to such copies is restricted to those persons whose function is primarily related to the receiving party's information technology infrastructure.
- 17.5 Each party warrants that it has the right to disclose its Confidential Information to the other party and the right to authorise the other party to use the same on the terms of this Agreement.
- 17.6 Each party acknowledges that damages alone would not be an adequate remedy for any breach of the provisions of this Clause and, accordingly, without prejudice to any and all other rights or remedies that either party may have against the other each shall be entitled without proof of special damage to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Clause.
- 18 Data Protection**
- 18.1 Each party shall provide the other party with reasonable assistance in complying with its obligations under applicable Data Protection Legislation as they apply to this Agreement. Customer is: (a) the sole Controller of Personal Information; or (b) has obtained authorisation of the relevant Controller(s) to agree to the Processing of Personal Information by Logicalis as set out in this Agreement.
- 18.2 In so far as Logicalis Processes any Personal Information on behalf of the Customer, Logicalis shall:
- 18.2.1 Process the Personal Information only for the purposes of performing this Agreement or in accordance with any other written instructions received from the Customer from time to time as long as it is required by law or agreed between the parties;
- 18.2.2 not otherwise modify, amend or alter the contents of the Personal Information;
- 18.2.3 at all times implement appropriate technical and organisational measures to protect the Personal Information in its custody against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;
- 18.2.4 not transfer Personal Information to a country or territory outside of Australia unless that country or territory provides an adequate level of protection for Personal Information or adequate safeguards to protect that Personal Information have been put in place;
- 18.2.5 take reasonable steps to ensure the reliability of any of Logicalis' personnel who have access to the Personal Information;
- 18.2.6 ensure that those of Logicalis' personnel who need to have access to the Personal Information are bound by confidentiality obligations;
- 18.2.7 notify the Customer if it receives:
- (i) a request from a Data Subject to have access to that person's Personal Information; or
- (ii) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 18.2.8 provide the Customer with reasonable co-operation and assistance in relation to any complaint or request made in respect of any Personal Information, including by:
- (i) providing the Customer with details of the complaint or request;
- (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation but in accordance with the Customer's reasonable instructions;
- (iii) provide the Customer the most recent certifications and/or summary audit report, which Logicalis has procured to evaluate the effectiveness of its technical and/or organisational measures (e.g. ISO 27001 reports) and Logicalis shall reasonably cooperate to provide additional information concerning its technical or organisational measures; and
- (iv) allowing for and contributing appropriately to reasonable audits and inspections, conducted by the Customer or another auditor mandated by the Customer (at Customer's cost) in respect of Personal Information held by Logicalis in connection with this Agreement.
- 18.3 The Customer acknowledges that Logicalis is reliant on the Customer alone for direction as to the extent Logicalis is entitled to Process the Personal Information. Consequently, Logicalis shall be entitled to relief from liability in circumstances where a Data Subject makes a claim or complaint with regards to Logicalis' actions to the extent that such actions result from: (i) instructions or lack of instructions received from the Customer; or (ii) arise from performance of the Services in the manner contemplated in this Agreement.
- 18.4 The Customer warrants to Logicalis that, where necessary, it has obtained consent from Data Subjects to the processing of Personal Information in the manner contemplated by this Agreement.
- 19 General**
- 19.1 This Agreement is complete and constitutes the entire agreement between the parties with respect to the subject matter hereof and any and all written or oral agreements, arrangements, representations (other than fraudulent misrepresentations) or understandings of any kind that may have been made prior to the date of this Agreement shall be deemed to have been superseded by the terms of this Agreement. No statement or representation made by either party has been relied upon by the other party in agreeing to enter into this Agreement.
- 19.2 All implied terms, conditions or warranties are excluded to the fullest extent permitted by law.

- 19.3 This Agreement shall not be amended or modified except by a written instrument signed by the parties.
- 19.4 The Customer cannot assign any or all of its rights under the Agreement without the prior written consent of Logicalis, which may be withheld at Logicalis' absolute discretion. Logicalis may at any time assign or subcontract all or any of its rights or obligations under this Agreement to another company in the Logicalis Group
- 19.5 Any failure or delay by either party to enforce or take action on any of its rights under this Agreement shall not be construed as a waiver of the same.
- 19.6 Severability:
- 19.6.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provisions eliminated. In the event that a provision of this Agreement that is fundamental to the accomplishment of the purpose of the Agreement is held invalid, Logicalis and the Customer shall immediately commence good faith negotiations to remedy such invalidity.
- 19.6.2 The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement and the Agreement shall continue in full force and effect except for any such invalid and unenforceable provision.
- 19.7 A person who is not a party to this Agreement has no right to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available pursuant to applicable law. The consent of any third party is not required for any variation (including any release or compromise of any liability hereunder) or termination of this Agreement.
- 19.8 Logicalis and the Customer acknowledge and agree that this Agreement shall not constitute, create or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership or formal business organisation of any kind and neither Logicalis nor the Customer shall have the right to bind the other without the other's express prior written consent.
- 19.9 Logicalis may retain or set off any amount owed to it or to any other company in the Logicalis Group by Customer against any amount due to Customer under this or any other Agreement.

20 Law

- 20.1 This Agreement shall be governed by and construed in accordance with the laws of Victoria. The United Nations Convention on the International Sale of Goods is hereby expressly excluded from application to this Agreement.
- 20.2 Customer and Logicalis hereby irrevocably submit to the jurisdiction of the Courts of Victoria and the Court registries in Victoria. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of Logicalis to take proceedings against Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

Section 2 (Third Party Products)

21 Third Party Products

- 21.1 It is agreed that:
- 21.1.1 The Third Party Products will be provided by the Third Party Provider and not by Logicalis and Logicalis' obligations are limited to procuring the Third Party Products from the Third Party Provider on behalf of the Customer and paying the Third Party Provider's charges subject to payment of the Charges by the Customer;
- 21.1.2 Logicalis will arrange for the Third Party Provider to provide the Third Party Products to the Customer but Logicalis has no control over the supply or the performance of the Third Party Products by the Third Party Provider; and
- 21.1.3 The Third Party Provider will provide the Third Party Products directly to the Customer.

- 21.2 In consideration of Logicalis accepting the Customer's purchase order for the Third Party Products the Customer agrees:
- 21.2.1 That save in respect of its own negligence or wilful default, and without prejudice to any other clause in this Agreement which excludes or restricts its liability, Logicalis will have no liability in respect of the Third Party Products and will have no liability for the acts or omissions of the Third Party Provider. The Customer understands that without this exclusion of liability Logicalis would not be willing to accept the Customer's order for the Third Party Products; and
- 21.2.2 That if so required by the Third Party Provider the Customer will enter into a contract with the Third Party Provider for the Third Party Products in the Third Party Provider's standard form or such other form as may be agreed between the Customer and the Third Party Provider.
- 21.3 In the case of any conflict or inconsistency between the terms of this clause and any other term or condition in this Agreement, the terms of this clause shall prevail.

Section 3 (Sale of Equipment)

22 Quantity and Description

- 22.1 The quantity and description of the Equipment shall be as set out in Logicalis' acknowledgement of order or (if there is no acknowledgment of order) Quotation.
- 22.2 All samples, drawings, descriptive matter, specifications and advertising issued by Logicalis or the manufacturer, and any descriptions or illustrations contained in any catalogues, brochures or web sites are issued or published for illustrative purposes only and they do not form part of the Agreement.
- 22.3 Any typographical, clerical or other error or omission in any sales literature, web site, Quotation, SoW, price list, acceptance of offer, invoice or other document or information issued by Logicalis shall be subject to correction without any liability on the part of Logicalis.
- 22.4 Logicalis' employees, contractors and agents are not authorised to make any contractually binding representations concerning the Equipment. In entering into the Agreement, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Logicalis. However, nothing in these conditions limits Logicalis' liability for fraudulent misrepresentation.

23 Delivery and Risk

- 23.1 Logicalis shall, subject to clauses 23.3, 23.4 and 23.5 arrange and pay for:
- 23.1.1 Delivery of the Equipment to the Sites; and
- 23.1.2 Insurance of the Equipment until it is delivered to the Sites.
- 23.2 Risk in the Equipment shall pass to the Customer when the Equipment has been delivered to the Sites.
- 23.3 Where the Customer has paid for the Equipment in whole before delivery Logicalis will not arrange or pay for insurance under clause 23.1 and the Customer is responsible for arranging and paying for any insurance that it requires.
- 23.4 If the Sites are outside of Australia delivery will, unless otherwise stated in the Quotation or SoW, be Ex Works.
- 23.5 Logicalis may make an additional charge to the Customer to cover the cost of delivery of the Equipment.
- 23.6 Logicalis shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in Logicalis' acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order.
- 23.7 Delivery shall be made during the hours of 9.00 a.m. to 5.30 p.m. Monday to Friday on Working Days. Logicalis may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 23.8 Logicalis may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of clause 6. Each instalment shall be a separate contract and no cancellation or termination by either party of any one contract relating to an instalment shall entitle the Customer to repudiate or cancel any other contract or instalment.
- 23.9 If Logicalis is unable to deliver Equipment to the Sites (provided that delivery may not be before the earlier of the

delivery date stated in the Customer's order or in the Quotation or SoW) because Customer refuses to accept delivery or due to any other act or omission of customer:

- 23.9.1 Risk in the Equipment shall pass to the Customer on the date on which Logicalis offers to deliver the Equipment;
- 23.9.2 The Customer shall bear all costs of any further delivery or attempted delivery of the Equipment; and
- 23.9.3 Without prejudice to any other right or remedy available to it Logicalis may:
 - (i) Store the Equipment and make a reasonable charge for storage; and
 - (ii) Having given reasonable prior notice to the Customer terminate the Agreement and sell the Equipment.

23.10 The Customer shall be responsible (at the Customer's cost) for preparing the Sites for the delivery of the Equipment and (save where the Site is on Logicalis' premises) for the provision of all necessary access and facilities reasonably required for delivering and installing the Equipment. If Logicalis is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out or because the preparation is inadequate, Logicalis may levy additional charges to recover its additional costs arising from this circumstance.

23.11 Where Logicalis delivers the Equipment it shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies Logicalis (or its carrier, if applicable) of such damage, shortage or loss within five working days of delivery or the proposed delivery date of the Equipment and that the Equipment has been handled in accordance with Logicalis' stipulations. Any remedy under this clause 23.11 shall be limited, at the option of Logicalis, to the replacement or repair of any Equipment which is proven to Logicalis' satisfaction to have been lost or damaged in transit or issuing a credit note against any invoice raised for such Equipment.

24 Title

24.1 Ownership of the Equipment shall pass to the Customer when Logicalis has received in full in cleared funds all sums due to it in respect of:

- 24.1.1 The Equipment; and
- 24.1.2 All other sums which are or which become due to Logicalis from the Customer on any account.

24.2 Until ownership of the Equipment has passed to the Customer under clause 24.1, the Customer shall:

- 24.2.1 Hold the Equipment on a fiduciary basis as Logicalis' bailee;
- 24.2.2 Store the Equipment (at no cost to Logicalis) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Logicalis' property;
- 24.2.3 Not destroy, deface or obscure any identifying mark on or relating to the Equipment; and
- 24.2.4 Keep the Equipment insured for its full price against all risks to the reasonable satisfaction of Logicalis, and hold the proceeds of such insurance on trust for Logicalis and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

24.3 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 8.2 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to Logicalis on the due date.

24.4 Logicalis may appropriate payments by the Customer to such Equipment as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

25 Invoices (Equipment)

25.1 Logicalis may issue its invoice for the price of the Equipment on the earlier of:

- 25.1.1 The date of delivery of the Equipment to Logicalis from its supplier or the manufacturer; or
- 25.1.2 The date of shipment of the Equipment (whether from Logicalis, the manufacturer or Logicalis' supplier) for delivery to the Customer or to a third party nominated by the Customer.

25.2 Where the Quotation or SoW includes a discount for trade-in or other items of equipment to be returned to Logicalis the full Charges of the Equipment will be invoiced by Logicalis and is payable by the Customer and Logicalis will issue a credit on receipt of the trade-in items within the times and otherwise in accordance with any terms state in the Quotation or SoW.

25.3 Logicalis may issue and Customer agrees to accept invoices by email or other electronic means of communication.

26 Warranty (Equipment)

26.1 Logicalis shall pass to the Customer so far as it is legally able to do so, any warranty provision applicable to the Equipment and provided by the original manufacturer of the Equipment. Customer acknowledges that Logicalis is not the manufacturer of the Equipment and is therefore unable to provide any additional warranty.

27 Software

27.1 The Customer acknowledges that:

- 27.1.1 Logicalis gives no warranties in relation to the Third Party Software;
- 27.1.2 The licences for all Third Party Software will be between the Customer and the manufacturer and the Customer must comply with all licence terms;
- 27.1.3 The Customer is buying only the media on which the Third Party Software is recorded and the accompanying user manuals; and
- 27.1.4 Nothing contained in this Agreement shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals.

27.2 Where the Customer has registered with the manufacturer or other third party to obtain support for Third Party Software (whether or not such registration was originally effected by Logicalis) it is the responsibility of the Customer to maintain such registration and to give notice of any relevant changes to the manufacturer or other third party.

28 Manufacturer Support

28.1 Where the order includes Equipment Logicalis will charge the Customer for Manufacturer Support where provided by the manufacturer of the Equipment.

28.2 Logicalis' charges for Manufacturer Support are payable annually in advance within thirty (30) days after the date of Logicalis' invoice for the same.

29 Export Control

29.1 Equipment and Software supplied to Customer by Logicalis under this Agreement is supplied for use or resale solely within Australia. Customer acknowledges that the export of Equipment or Software from Australia may be subject to export control laws and regulations of the country in which the Equipment or Software was manufactured (including but not limited to the Export Administration Regulations of the United States). Customer undertakes not directly or indirectly to export Equipment or Software, or the product of any Software, from Australia in contravention of such laws or regulations and agrees that it shall be solely responsible for obtaining and complying with any export licence or other permission that may be required by any law or regulation of the country of manufacture. Customer shall fully indemnify Logicalis against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a full indemnity basis), losses and damages arising directly or indirectly from the export by Customer of Equipment or Software from Australia in breach of the export control laws or regulations of any country.

30 Producer Obligation

30.1 The Customer acknowledges that:

- 30.1.1 Logicalis is not a producer or manufacturer for the purposes of standards and regulations relating to: (a) the restriction and/or regulation of hazardous substances in electrical and electronic equipment; and/or (b) the reduction of the amount of waste electrical and electronic equipment incinerated or sent to landfill sites.; and
- 30.1.2 The relevant producer or manufacturer is solely responsible for compliance with the obligations imposed by those standards and regulations.

Section 4 (Services)

31 Provision of Services

- 31.1 Logicalis shall use reasonable endeavours to meet any performance dates specified in the SoW or Quotation, but any such dates shall be estimates only.
- 31.2 Logicalis may make any changes to the Services:
- 31.2.1 Needed to comply with applicable law or safety requirements; and/or
 - 31.2.2 Which do not materially affect the nature or quality of the Services,
- and will notify the Customer in advance of such changes.
- 31.3 Where individuals are named in the SoW Logicalis will use all reasonable endeavours to ensure that those personnel are made available to perform the Logicalis' obligations under this Agreement but Logicalis may replace any personnel who are temporarily or permanently unable to perform the Services due to ill health, holidays, termination of employment or leave of absence permitted or mandated by statute.

32 Invoices (Services)

- 32.1 Logicalis may issue its invoice for Services monthly in arrears. Logicalis may issue and Customer agrees to accept invoices by email or other electronic means of communication. Where the Services are provided for a fixed price Logicalis may make an additional charge at its standard daily fee rates for additional work necessitated by any Assumptions proving to be incorrect, because of the Customer failing to fulfil or delaying the fulfilment of any Customer Dependencies, because of the inaccuracy of any information provided by Customer or under the terms of clause 35 (Customer Obligations). Subject thereto the Charges (subject to any agreed variation and any additional charges that become payable under the terms of this Agreement for expenses or otherwise) shall be as set out in the SoW or Quotation.
- 32.2 Where Services are provided on a time-and-materials basis:
- 32.2.1 The charges payable for the Services shall be calculated in accordance with Logicalis' daily fee rates as set out in the SoW or the Quotation;
 - 32.2.2 Logicalis' daily fee rates are calculated on the basis of work performed between the hours of 9.00 am and 5.30 pm Monday to Friday (excluding bank and public holidays);
 - 32.2.3 The minimum charge is for one half of a day even if the time actually worked is less;
 - 32.2.4 Logicalis shall be entitled to make an additional charge at enhanced rates for time worked outside the hours referred to in clause 32.2.2;
 - 32.2.5 Where required by Logicalis at the end of each week the Customer shall sign a time sheet verifying the number of hours worked by Logicalis personnel during that week. Failure to sign the time sheet does not absolve the Customer of its obligation to pay the charges in respect of the hours worked; and
 - 32.2.6 Any estimate contained in the SoW is for information purposes only and is not legally binding.
- 32.3 Where any Assumption is shown to be incorrect and this has an impact on Logicalis' costs, Logicalis shall be entitled to make such reasonable adjustment to the Charges as is necessary so as to place Logicalis in the same financial position as it would have been in if the Assumption had been correct.
- 32.4 Logicalis will not be required to provide or give any refund for any Services which have been ordered by the Customer but which have not been taken within twelve months of the date of the Customer's order unless the provision of the Services is delayed by the default of Logicalis and the Services would otherwise have been taken within that period.

33 Warranty (Services)

- 33.1 Logicalis warrants that it will:
- 33.1.1 Carry out the Services with reasonable care and skill;
 - 33.1.2 Obtain and maintain all licences, permits and other consents required for its performance of the Services; and
 - 33.1.3 Comply with all applicable laws and regulations.

34 Control and Supervision of Services

- 34.1 Logicalis and the Customer shall each designate an authorised person who shall be responsible for directing the specific activities of their respective employees and contractors and shall have sufficient authority to represent the Customer and Logicalis respectively on all technical, administrative and supervisory matters arising in connection with the performance of the respective Services. Either party may replace its authorised person upon reasonable notice to the other party.

35 Customer Obligations

- 35.1 The Customer agrees:
- 35.1.1 To respond within reasonable timeframes to requests for information or input on relevant documents. Examples of reasonable timeframes are: Response to emails requesting information – four (4) Working Days; Response to design documents – seven (7) Working Days;
 - 35.1.2 To provide Logicalis with reasonable access to such of the Customer's employees and contractors, infrastructure topology diagrams and equipment as shall be necessary for timely completion of the Services;
 - 35.1.3 To give not less than 10 (ten) Working Days' notice of any requested changes to a previously agreed timetable;
 - 35.1.4 To provide full, safe access to and adequate working space at all Sites necessary for the proper and timely completion of the Services; and
 - 35.1.5 To provide any other facilities specified by Logicalis as necessary to enable Logicalis to provide the Services.
- 35.2 If Customer does not meet any of the above requirements and as a result Logicalis incurs additional costs in the provision of the Services, Logicalis shall be entitled to charge Customer for the additional time and materials incurred at the Logicalis rates stated in the Quotation or the SoW or if the SoW is on a fixed price basis at Logicalis' then standard daily fee rates.

36 Cancellation

- 36.1 Customer shall pay a Cancellation Fee to Logicalis in the event that Customer delays or cancels an accepted order or a signed SoW without giving at least fifteen (15) Working Days written notice prior to the day on which the Services were due to commence (the "Commencement Date"). The Cancellation Fees shall be calculated as follows:
- 36.1.1 0-2 Working Days before the Commencement Date: 100% of the Charges of the days cancelled or delayed, plus any expenses incurred;
 - 36.1.2 3-7 Working Days before the Commencement Date: 50% of the Charges of the days cancelled or delayed, plus any expenses incurred; or
 - 36.1.3 8-14 Working Days before the Commencement Date: 30% of the Charges of the days cancelled or delayed, plus any expenses incurred.

Section 5 (Telecommunications Services)

37 Telecommunications Services

- 37.1 The terms and conditions upon which Logicalis shall provide the Telecommunications Services shall be the Carrier Terms and Conditions. Customer agrees that Logicalis' obligations to the Customer under the Carrier Terms and Conditions shall be performed by the Carrier. To the extent that the Services comprise Telecommunications Services the terms of the Carrier Terms and Conditions shall prevail over the terms of this Agreement (except for this clause) in the event of any conflict or inconsistency.