



Our Agreement

1 Agreement

- 1.1** This is a legal agreement between you (as specified in Item 1 of the Service Schedule) ("you" or "your") and Yamo Pty Ltd (ACN 161 946 274) ("Yamo", "we", "us" or "our") or together "Party" or "Parties".
- 1.2** This Agreement consists of the Service Schedule and these terms and conditions formulated for the purposes of Part 23 of the Telecommunications Act 1997 (Cth), including any changes we make to these terms and conditions after the date of this agreement ("Agreement"). If there is an inconsistency between the parts of this Agreement, the Service Schedule will prevail, followed by these terms and conditions.
- 1.3** You acknowledge receiving and having had the opportunity to review, a copy of this Agreement.
- 1.4** A reference to a "person" includes the person's executors, successors and assigns.
- 1.5** If any term (or part of a term) in this Agreement is void or unenforceable, that term (or part) is taken to be removed from Agreement and not to form part of this Agreement. The remaining terms continue to have full effect.

2 Definitions

"**Agreement**" means the legal agreement defined in clause 1.

"**Casual Contract Customer**" is a customer that is on a monthly rolling contract as specified in Item 4.

"**Charge**" means the Minimum Monthly Commitment in addition to any other Service Charges, Establishment Fees, Equipment Fees or any other specified amounts payable in this Agreement.

"**Credit Card**" means any credit or charge card accepted by us as a form of payment from time to time.

"**Due Date**" means the date within which payment must be made to us as noted on your invoice.

"**Early Termination Charges**" means a one-time charge equivalent to the Minimum Monthly Commitment multiplied by the number of months remaining to the expiration of the Term.

"**Equipment**" means any hardware used to provide our Service including phones, routers, switches, cabling and any Wi-Fi access points.

"**Equipment Fees**" means the upfront amount payable by you as set out in Item 7.

"**Establishment Fees**" means the amount set out in Item 6 of the Service Schedule.

"**Fixed Term Contract Customer**" means a customer who is bound to this Agreement for a period of time as set out in Item 4 of the Service Schedule.

"**GST**" means the tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 and the related imposition Acts of the Commonwealth.

"**Insolvent**" includes having a receiver, manager, administrator, provisional liquidator or liquidator appointed to you.

"**Installation Fee**" means the amount set out in Item 8 of the Service Schedule.

"**Network**" means any data network used in the provision of our Services

"**Minimum Monthly Commitment**" means the amount titled as such as set out in Item 2 of the Service Schedule.

"**PIN**" means a personal identification number.

"**Premises**" means any land, building, structure, vehicle or vessel, whether owned, leased or occupied by you, containing Equipment or a Service, or to which a Service is supplied.

"**Service**" includes any goods or Equipment provided in connection with a Service.

"**Service Charges**" means the additional usage fees titled as such and set out in the Service Schedule.

"**Tax Invoice**" has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"**Term**" is the period of time specified in Item 4 of the Service Schedule.

3 Term

This Agreement begins on the date that it is signed by you ("Commencement Date") and continues for the Term set out in Item 4 of the Service Schedule.

4 Services and payment

- 4.1** We agree to supply the services described in the Service Schedules ("Services") to you, and you agree to pay the Charges set out in this Agreement on the Due Date for the Term.

- 4.2** The Services must be ordered, supplied and billed against the nominated accounts agreed between you and us.

- 4.3** If you do not pay any amount due under this Agreement on time, we may, on 7 days notice suspend the Services, until all unpaid amounts are paid.

- 4.4** If you dispute an invoice you must give us written notice of the dispute within 21 days of the date of the relevant invoice which identifies the particular Charges disputed and the reasons for disputing those charges. You agree that the dispute will subsequently be dealt with in accordance with clause 24.

- 4.5** You need not pay the disputed amount until the dispute is resolved, however you must pay all undisputed amounts by the Due Date.

- 4.6** If you fail to follow the process outlined in this Clause 4, to the extent permitted by law, you agree that we may conclusively presume the invoice to be accurate and you will be deemed to have waived your rights to dispute the relevant invoice.

5 General

- 5.1** You must not disclose the contents of this Agreement or any of our technical, operational, billing, pricing or other commercially confidential information to any third party without our consent.

- 5.2** This Agreement constitutes the entire agreement about the Services between you and us.

- 5.3** This Agreement is governed by the laws of the Australian State or Territory in which your principal place of business is located. The parties submit to the non exclusive jurisdiction of the courts of that place and the courts of appeal from them.

- 5.4** You must not assign your rights under this Agreement without our prior written consent, which will not be unreasonably withheld.

- 5.5** Notwithstanding anything else in this Agreement neither party is liable for not performing an obligation in whole or in part, or for not performing it on time (except an obligation to pay money), because of an event beyond that party's reasonable control.

6 Your responsibility

- 6.1** You are responsible for and have to pay for any use of your Service, whether you authorise it or not. You are responsible for ensuring your IT infrastructure is secure and appropriate controls in place to prevent unauthorised personnel from learning your Yamo credentials or using Equipment pre-configured with Yamo credentials.

- 6.2** We recommend you consider taking measures to protect yourself from unauthorised use of your Service. Any person who uses your Service, or allows someone else to use it, is jointly and individually liable with you for any charges relating to that use:

- (a) Excessive or unusual use
In some circumstances we may monitor usage of your Service for excessive or unusual usage patterns, but we do not promise to do so.
- (b) Breaking the law
You must not use a Service to commit an offence or allow anybody else to do so.
- (c) Causing interference
You must do what we tell you to do if your use of a Service interferes (or threatens to interfere) with the efficiency of our Network (including because you have inadequate capacity). You have to make sure that no-one interferes with the operation of a Service or makes it unsafe.
- (d) Your responsibility for Equipment
You are responsible for any Equipment at your Premises (including any that belongs to us). You have to pay us for any loss or damage to our Equipment at your Premises, except for fair wear and tear.
- (e) Power supply
You have to arrange and pay for any electricity supply needed for a Service at your Premises. The Service may not work if the electricity supply stops.
- (f) Internet connection
You have to arrange and pay for any internet connection needed for a Service at your Premises. Your internet connection must have the ability to consistently sustain at least 100Kbps both upstream and

downstream per concurrent call. Any degradation in quality caused by your internet connection is your responsibility.

- (g) **Compliant Equipment only**
You must only connect Equipment supplied by us or authorised by us. You must make any changes we ask to your Equipment to avoid any danger or interference it may cause.

7 Tell us if things change

You have to tell us about any relevant changes to your business, the Services or Equipment or any other relevant factor that may affect our ability to provide your Service to you. Where the Services or Equipment are required to be relocated, further Installation Fees may apply.

8 Charges and payment

8.1 Charges

- (a) This Agreement sets out the Minimum Monthly Commitment that is payable by you for the Term of this Agreement in addition to any further Service Charges, Equipment Fees or other Charges payable by you.
- (b) You agree to also pay us in full any Establishment Fees, Equipment Fees and Installation Fees as outlined in the Service Schedule within 14 days following the date you sign this Agreement.
- (c) The Minimum Monthly Commitment is payable by you where the relevant Services are commenced or are terminated part way through a month. No pro-rata amount will be applied.
- (d) You agree to pay us any Services Charges associated with providing any additional Services based on your actual usage.
- (e) If you use your Service to access a service provided by someone else, and we are charged for that other service, you must also pay us for that other service.

8.2 Bills

- (a) We issue bills for charges for your Services regularly. We can also issue an interim bill at any time.
- (b) We try to include all charges relating to a billing period on that bill. Where that does not happen, bills may include charges from previous billing periods as long as we comply with the billing requirements in the Communications Alliance Code – Telecommunications Consumer Protections (C628).
- (c) We are required by various industry codes to ensure that our bills are accurate and verifiable and we are committed to complying with these requirements. Our records are sufficient proof that a Charge is payable unless they are shown to be incorrect.

8.3 Credit Card payments

If your bill is paid by Credit Card, we can charge you a Credit Card payment processing fee. Refer to your bill for the amount of the fee.

8.4 Late or dishonoured payments

- (a) If you do not pay a bill by its due date, we can charge you an administrative fee of \$15.00.
- (b) We can also restrict, suspend or cancel your Service, provided we comply with our rights to cancel or suspend your Service set out in Our rights to cancel or suspend your Service under our Services and payment clause.

8.5 Adjustments

- (a) We can pay you amounts we owe you by deducting them from amounts you owe us.
- (b) If we require you to pay any Charges in advance (e.g. the Minimum Monthly Commitment) and they are varied or the Service is cancelled, we refund you any overpayment and you have to pay us any underpayment.
- (c) In order to provide international calls and premium rate Services to you, we enter into arrangements with other providers and may be charged by them. If the other providers charge us more than we charge you for the Service, and we think your use of Services has been excessive or unusual, we can charge you the difference in addition to our charge.

9 GST

If GST is imposed on any supply we make to you under this Agreement and the consideration payable for the supply under any other clause of this Agreement is not expressed to be inclusive of GST, you must pay us on demand by us, an additional amount calculated by multiplying the value of that GST exclusive consideration (without deduction or set-off) by the prevailing GST rate. We will issue a Tax Invoice to you for any supply on which GST is imposed.

10 Your rights to cancel or suspend your Service

10.1 Choosing to cancel your Service

- (a) If you are a Casual Contract Customer, you may cancel your Service at any time by telling us in writing at least 30 days beforehand.
- (b) If you are a Fixed Term Contract Customer, you may cancel your Service by telling us in writing at least 30 days beforehand, however, such cancellation will incur an Early Termination Fee.
- (c) If you cancel a Service before we have provided it to you, we can charge you any reasonable costs we incurred as a result of preparing to provide it to you, including an Early Termination Fee if you are a Fixed Term Contract Customer.

10.2 Material breach by us

- (a) You can cancel your Service at any time if:
 - i. we are in material breach of this Agreement (for example, because we fail to use reasonable care and skill in providing the Service to you); and
 - ii. you have told us in writing of our material breach and we have failed to remedy it within 20 business days of you telling us;
- (b) We will not charge you any Early Termination Charge if you cancel your Service because of our material breach.

10.3 Your other rights to cancel

- (a) You can also cancel your Service by telling us with as much warning as you reasonably can if:
 - i. we become bankrupt or Insolvent or appear likely to do so;
 - ii. the law requires you to do so; or
 - iii. provision of the Service becomes illegal.
- (b) We will not charge you any Early Termination Charge if you cancel your Service in these circumstances.

10.4 Refunds of prepayments

If you cancel your Service under this clause 10, we will refund to you any unused portion of your Minimum Monthly Commitment and any other amount you have prepaid. We may also deduct from your refund any amounts that you owe to us, such as charges you incurred before the cancellation or any applicable Early Termination Charge.

11 Choosing to cancel your Service

11.1 We can cancel your Service before the end of the Term set out in Item 4 if:

- (a) we get your consent to do so; or
- (b) we take reasonable steps to appropriately offset the effect of the cancellation on you (for example, by providing a credit or rebate to you); or
- (c) we transfer you to a reasonably comparable alternative Service for the remainder of your Term; or
- (d) we offer to transfer you to an alternative Service for the remainder of your Term and take reasonable steps to offset any material detrimental effects of the transfer caused by any material differences between the cancelled Service and the alternative Service we offer.

If we cancel your Service in this way, we will not charge you any Early Termination Charge.

12 Our rights to cancel or suspend your Service

12.1 We can cancel or suspend your Service at any time if:

- (a) you are in material breach of this Agreement; and
- (b) we have told you in writing of your breach and you have failed to remedy it within 14 days of us telling you (or such longer period as we tell you or as set out in another section of this Agreement); or
- (c) you become bankrupt or Insolvent or appear likely to do so; or
- (d) the breach is something which cannot be remedied (in which case we can cancel the Service immediately by telling you).

12.2 You will be in material breach of this Agreement if you:

- (a) breach your obligation to pay our charges for your Service;
- (b) use your Service in a way which we reasonably believe is fraudulent, poses an unacceptable risk to our security or Network capability or is illegal or likely to be found illegal.

Using your Service this way is also a breach that cannot be remedied.

12.3 We can charge you the applicable Early Termination Charge if you are a Fixed Term Contract Customer and we cancel your Service before the end of the Term because of your material breach.

13 We can suspend or restrict the provision of your Service during the period before we cancel your Service because you are in material breach of this Agreement. If you ask us to reconnect your Service following your suspension for failing to pay an account, you may have to pay us a reconnection fee. The amount of the reconnection fee is the greater of \$100 (inclusive of GST) or \$10 (inclusive of GST) per connection.

14 Our other rights to cancel, suspend or restrict your Service

14.1 We can cancel, suspend or restrict your Service by telling you with as much warning as we reasonably can if:

- (a) the law requires us to do so;
- (b) providing the Service becomes illegal or we believe on reasonable grounds that it may become illegal;
- (c) you die;
- (d) there is an emergency that affects our ability to provide the Service;
- (e) we are not able to provide the Service to you due to an event outside our reasonable control (such as a failure in Equipment that is not owned or operated by us, an industrial strike or an act of God); or
- (f) we reasonably believe that providing the Service may cause death, personal injury or damage to property.

14.2 We will not charge you any applicable Early Termination Charge if we cancel your Service for one of these reasons.

14.3 We can also cancel, suspend or restrict your Service by telling you with as much warning as we reasonably can if:

- (a) we cannot enter your Premises to do something in connection with the Service that we need to do in order to supply the Service or make the Service or related Equipment safe;
- (b) you become bankrupt or insolvent or appear likely to do so;
- (c) you vacate the Premises to which the Service is connected;
- (d) there is excessive or unusual use of the Service; or
- (e) we reasonably consider that you pose an unacceptably high credit risk to us. We consider that you pose an unacceptably high credit risk to us when there is some doubt as to your ability to pay by the due date based on factors such as:
 - (f) previous payment history and payment behaviour (e.g. late payments, dishonoured payments or failure to pay);
 - (g) any previous advice from you about a potential inability or unwillingness to pay;
 - (h) your usage is inconsistently high when compared with previous usage patterns;
 - (i) your response where we have told you of this unusually high usage; or pending bankruptcy or insolvency.

14.4 We can charge you any applicable Early Termination Charge if you are a Fixed Term Contract Customer and we cancel your Service before the end of the Term.

15 Maintenance and repair work

15.1 We can also suspend or restrict your Service temporarily if we reasonably believe it is desirable or necessary to do so to maintain or restore any part of our infrastructure or a Network used to supply your Service.

15.2 Where possible, maintenance and repair work will be attempted to be performed at times that will cause the least inconvenience to our customers. However where your pre-requisite internet Service is supplied by a third party, we are unable to determine the times for this work or provide information about the third party. In these circumstances we will try and give you as much warning as we reasonably can. If we have no alternative but to cancel your Service due to necessary maintenance or restoration of any part of our infrastructure or a Network used to provide your Service, we will not charge you any Early Termination Charge.

16 Termination

16.1 If a party materially breaches this Agreement and does not remedy the breach within 30 days of receiving a notice to do so, then the other party may (by notice) cancel that relevant Service Schedule or terminate this Agreement.

16.2 If for any reason this Agreement expires or terminates or is cancelled:

- (a) you must pay us all outstanding invoices within 30 days of the date of invoice and all other amounts outstanding as at the date of, or arising as a result of, expiry, termination or cancellation (including any applicable Early Termination Charges);
- (b) those Services offered under this Agreement, will be supplied on the same terms (including price) of this Agreement if you continue to use those Services; and
- (c) any accrued rights are not affected.

17 If you use your Service for business purposes

If you are or become or operate as a "carrier" or "carriage Service provider" under the Telecommunications Act 1997, you have to tell us. We can refuse to provide a retail Service to you if you tell us or we reasonably believe that you are operating and using retail Services as a carrier or carriage Service provider. We can also cancel or suspend your retail Services by telling you in writing 30 days before we do so. You can enter into a written agreement with us for the supply of wholesale Services, if you choose to do so. If we do not exercise a right under this clause fully or at a given time, we can still exercise it later.

18 Consent

We occasionally need your consent to do certain things. We can rely on the authority of any of your employees who tell us they have authority to give your consent, as long as we act reasonably.

19 Our liability to you

19.1 Interruption or delay

We will use reasonable care and skill in providing our Services but do not guarantee or warrant that they will be continuous or fault free. We are in no way liable to you for any failure to provide part or all of the Service due to any Network failure, any Network congestion or any call or Service drop out.

19.2 When we are not liable

- (a) We exclude all liability whether to you or a third party arising from or in connection with this Agreement or the Services, whether arising in contract, tort, in equity, by operation of statute or otherwise. We will not be liable to you for any indirect or consequential loss, damage, cost or expense arising out of or in connection with this Agreement, including but not limited to any loss of profit, interest or revenue. For any liability which cannot lawfully be excluded, our liability is limited to resupplying or repairing the Service.
- (b) Notwithstanding anything else in this clause 19, our liability will be reduced to the extent the loss or damage is caused by you, your employees, agents or contractors.

19.3 Beyond our control

We will not be responsible for any loss or damage arising from acts of God, war, flood, fire, explosion, civil disobedience, labour disputes or delays of third parties or any other circumstances outside our reasonable control.

19.4 After cancellation or suspension

These provisions relating to liability will continue unaffected by cancellation or suspension of your Service.

19.5 Your liability to us (Joint customers)

If you and one or more others are the customer for a Service, each of you is jointly and individually responsible for all charges and other obligations relating to that Service.

19.6 Liability and excluded types of loss

You are liable to us for breach of contract or negligence under the principles applied by the courts. However, you are not liable to us for any loss to the extent that it is caused by us (for example, through our negligence or breach of contract).

19.7 After cancellation or suspension

These provisions relating to liability will continue unaffected by cancellation or suspension of your Service.

20 Telephone numbers and PINs

20.1 The Telecommunications Numbering Plan sets out rules for issuing, transferring and changing telephone numbers. We must comply with the Telecommunications Numbering Plan. In using your Service, you must not do anything that would be inconsistent with the Telecommunications Numbering Plan or that would adversely affect our ability to comply.

20.2 You do not own or have any legal interest or goodwill in any telephone number issued to you. You are entitled to continue to use any telephone number we issue to you, except in circumstances where the Telecommunications Number Plan allows us to recover the number from you.

20.3 Because you have to pay for any use of your Service, whether you authorise it or not, we recommend you protect the security of any PIN or password used with your Service.

21 Supply of Equipment

21.1 To the extent permitted by law, we make no warranty or representation, express or implied, in relation to the Equipment.

21.2 Subject to the terms of any Equipment manufacturer's warranty, and to the extent permitted by law, if during the warranty period of that manufacturer's warranty, you notify us in writing of a defect or malfunction, we will, at our discretion:

- (a) Replace the Equipment with an equivalent;
- (b) Assist you with lodging a warranty/support request with the third party manufacturer.

21.3 The legal and beneficial title in the Equipment remains with Yamo until such time as all claims, debts or moneys owed by you to us for that Equipment has been paid in full to Yamo and until such time you hold the Equipment as bailee for Yamo.

21.4 We are not liable under clause 21.2 to the extent that a defect or malfunction is caused by:

- (a) you or a third party operating the Equipment other than in accordance with its published specifications;
- (b) a third party, unless the third party is our contractor or agent;
- (c) a Force Majeure event; or

- (d) any modification or configuration of the Equipment which has not been authorised by Yamo.
- (e) If requested by us, you must ship the Equipment requiring repair or replacement during the manufacturer's warranty period to us at your own expense, and we will return the repaired or replacement Equipment to you at our expense.

22 Title to Equipment

- 22.1** Where your Equipment not been fully paid for by you, you must not and must ensure your employees, contractors and agents, do not do anything, or fail to do anything which might adversely affect our interest, including selling, assigning, or permitting any charge, lien, mortgage or encumbrance to be created in any Equipment supplied by us.

23 Accessing your Premises

23.1 When we can access your Premises

We may need access to your Premises. You agree to provide us safe access to your Premises to:

- (f) install Equipment for a Service to be provided; and
- (g) inspect, test, maintain, repair or replace Equipment; and
- (h) recover our Equipment after your Service is cancelled or after we transfer you to another Service in accordance with our rights under clause 12 and 13.

- 23.2** You owe us the value of our Equipment as a debt due if we cannot access your Premises to recover it.

- 23.3** If you do not own your Premises, you have to get the owner's permission for us to access the Premises and install any Equipment. You promise to us that you have got that permission.

24 Security

- 24.1** At any time, we can require you to provide some form of security (e.g. a security deposit, a charge or bank guarantee) or pay some or all of the charges for your Service in advance. We will only do so if we have reasonable concerns about your credit worthiness or have reasonable grounds for believing that we may not be paid for this Service. In the case of new Services, we can refuse to provide you the Services until we receive the security. In the case of existing Services, if you do not provide the security within 14 days of our request, we can restrict, suspend or cancel the Service - this is in addition to any other rights that we may have.

- 24.2** If you cancel all your Services, we will return the security deposit or advance payment to you less any outstanding Charges or fees payable by you in accordance with this Agreement.

- 24.3** Our acceptance of any form of security or advance payment does not affect any other terms of this Agreement.

25 Dispute resolution

- 25.1** All disputes, differences or questions arising out of this Agreement should be notified to accounts@yamo.com.au.

- 25.2** Within 15 business days (or any other period agreed by you and us) after a notification is given pursuant to clause 4.4 or 25.1, both Parties agree to use best endeavors to resolve in good faith any disputes or claims concerning this Agreement.

- 25.3** If the process in clause 25.2 does not resolve the dispute, the Parties may try to resolve it by mediation administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines before starting court proceedings (except for urgent injunctive or declaratory relief).

26 Privacy

We collect, use and disclose personal information as set in our "Protecting Your Privacy" Statement. The current version of our Privacy Statement is available at www.yamo.com.au
