

Standard Terms and Conditions

Special meanings

- 1.1 **We, our, us:** Brisnorth Commander Pty Ltd trading as Brisnorth Communications (ABN 83 123 010 739) and its agents and workers.
- 1.2 **You, your:** the customer in Item 1 of Section A of this Agreement.
- 1.3 **Item:** reference to an Item and a number means that Item in Section A or Section C-1 of this Agreement. Also any further details for that Item in any attachment.
- 1.4 **The Site:** as in Item 1 of Section A.
- 1.5 **The Equipment:** Equipment in Item 2 of Section C-1 (for which a CustomCare charge is listed), also any replacement parts under clause 4 but excluding the Peripheral equipment.
- 1.6 **Peripheral equipment:** the peripheral equipment in Item 2 of Section C-1 marked with an asterisk (*).
- 1.7 **Faults:** faults, damage, operational errors, and problems to the Equipment. Anything else that goes wrong with the Equipment other than to the Peripheral equipment.
- 1.8 **This Agreement:** these terms and conditions, the Customer Contract Application at Section A, the System/CustomCare Schedule at Section C-1 and any schedules attached which apply depending on whether the standard, enhanced or premium CustomCare schedule has been nominated in Item 5 of Section C-1 as applying and any attachments.

Servicing the Equipment

- 2.1 We agree to service the Equipment for you for the Contract term specified in Item 3 of Section C-1.
- 2.2 We will do that according to our standard procedures at the time of servicing. These are designed to keep the Equipment in good working order.
- 2.3 If you require the Equipment serviced, call us on our service hotline (07) 3623 0888. We will advise you of the new number if the hotline number changes.
- 2.4 We will respond to our commitment in accordance with the CustomCare Schedule attached.
- 2.5 But we do not have to respond at any time outside the coverage commitment in the CustomCare Schedule.
- 2.6 Also, the response time only runs during the coverage period.
- 2.7 Our obligations under this CustomCare Agreement are to:
 - (a) advise you of our fault fixing actions and additional charges (if any), refer clause 7,
 - (b) restore the Equipment to working order within the most expedient time,
 - (c) leave the Site in the same condition as upon arrival, if we attend the Site, and
 - (d) provide enhanced services as detailed in the enhanced services Schedules.

Other equipment

- 3.1 If we notice any problem with any equipment not listed in Item 2 of Section C-1 but excluding the Peripheral equipment, we will report it to you.
- 3.2 But please note that checking these peripheral items is not part of our CustomCare obligation.

Parts for the Equipment

- 4.1 Replacement of all faulty parts/components at the site or if agreed at your location is included if the Fault is a result of fair wear and tear.
- 4.2 Replacement parts will be of a quality that is fit for purpose and any faulty replaced parts belong to us.
- 4.3 We especially do not have to supply any consumables (i.e. patch cabling, labels and the like). We can do so if you request. If we do so, we can charge you for them.

What if the Equipment is unserviceable?

- 5.1 If we think any of the Equipment can no longer be kept in good working order, or if it becomes uneconomic to service, we will notify you on 30 days written notice.
- 5.2 We can then also cancel this Agreement at the end of the 30 day period.
- 5.3 Or we can tell you that our CustomCare charges in Item 5 of Section C-1 will no longer apply and that from that time you must pay our actual cost to service the Equipment. In that case, for the following 14 days only, you can cancel this Agreement by writing to us. If you do not do so, then the new service charges will apply from the date notified.

What our CustomCare does not cover

- 6.1 CustomCare does not cover:
 - (a) servicing on equipment not listed in Item 2 of Section C-1, servicing on Peripheral equipment or cabling,
 - (b) changing the Equipment or relocating it, or attaching things to it, or removing things from it,
 - (c) fixing any Faults in the Equipment other than those caused in normal proper use,
 - (d) taking responsibility for lines or network terminations on the Equipment, as this is your network provider's responsibility unless the work is performed by us (i.e. cabling),
 - (e) fixing problems or damage caused by events beyond our control, including accident, lightning, power surges, power failures, over-hot or over-cold conditions, vandalism or misuse.
 - (f) Any loss or damage to software, firmware, information or memory data of yours contained in, stored on, or integrated with the Equipment while it is being repaired.
 - (g) Travel and expenses where on-site support is required at a Site located more than 100km from our point-of-presence, which are payable by you as extra charges.
- 6.2 We do not have to fix any Fault caused or contributed to by:

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- (a) anything attached to the Equipment or the Peripheral equipment (unless we agreed in writing to it being attached),
- (b) non-compliance with any guidelines on the use and care of the Equipment,
- (c) anything done or not done to the Equipment by anybody apart from us and which affects the Equipment, or
- (d) the Equipment not being compatible with or working in combination with hardware or applications software products provided by third parties.

Extra work and charges

- 7.1 If we service any Fault not covered by this Agreement you must pay our extra charges (for parts and labour). But only if you agreed to pay beforehand.
- 7.2 However, if you have anything done to the Equipment without our written authority and as a result corrective work is required, we are entitled (but not obliged) to do that corrective work. If we elect to do it, you must pay our extra charges.
- 7.3 You must pay any extra charges set out in the invoice we give you for them.

Your other obligations

- 8.1 Unless you first get our written consent, you must not change or repair the Equipment or attach anything to it.
- 8.2 When using the Equipment you must comply with any guidelines of ours or of the supplier or manufacturer of the Equipment ..
- 8.3 You must tell us immediately you no longer have the Equipment.
- 8.4 You must protect the Equipment from electromagnetic interference.
- 8.5 If a Fault occurs wholly or partly because of something done or not done contrary to 8.1, 8.2 or 8.4, we do not have to fix it.
- 8.6 It is your responsibility to arrange for servicing of the Peripheral equipment by the manufacturer or any of its authorised service providers.

You must use recommended consumables

- 9.1 You should only use consumable items that have been recommended for use with the Equipment. Consumables are things such as, for example, diskettes, cables, batteries and such.
- 9.2 We take no responsibility for any Fault or loss which happens (whether to the Equipment or any software used with it) as a result of using consumable items.

What you must pay

- 10.1 You must pay us the CustomCare charges in Item 5 of Section C-1 as may be varied in accordance with 10.2, at the times specified in Item 5 of Section C-1.
- 10.2 If any Goods and Services Tax (GST) is or becomes payable by us in respect of any supply made by us to you which is subject to these terms you must, at the time of making payment, reimburse us for any GST paid or payable by us.
- 10.3 We will charge you interest on what is unpaid after it should have been paid. The interest rate will be calculated daily at 3% per annum above our cost of funding the overdue amount.
- 10.4 Charges are set based on the capacity of the Equipment, not on its use. Charges are not reduced because of reduced use, or non-use, of the Equipment.

What happens at the end of the period?

- 11.1 This Agreement will cease at the end of its Term and a new agreement may be negotiated. Subject to confirmation by both parties, the Agreement may be extended on a month-by-month basis beyond the end of its Term.
- 11.2 . Either you or we can cancel this Agreement on one month's written notice. Otherwise these terms continue to apply.

What if you break this Agreement?

- 12.1 You must comply with all your obligations in this Agreement fully, correctly and on time. Each is a fundamental and essential condition and your strict compliance is required.
- 12.2 You will be deemed to have repudiated this Agreement if you do not pay on time the CustomCare charges and other monies payable or you breach any of your obligations under this Agreement. Without limiting 12.3 we may suspend or limit the provision of services if you do not pay on time.
- 12.3 In that event, or where you otherwise repudiate this Agreement, we may terminate this Agreement and you must pay us on demand as liquidated damages for the loss of this Agreement the total of:
 - (a) all sums due and payable but unpaid in respect of this Agreement including any costs, and
 - (b) 20% of the unpaid balance of the CustomCare charges that would have been payable during the period from the date of termination until expiry of the CustomCare period.
- 12.4 Our rights under this clause 12 are additional to other rights under this Agreement.

Limits on our liability

- 13.1 To the full extent permitted by law, any warranty or condition implied (or other liability put on us) under the law is excluded from this Agreement. However, if it cannot lawfully be excluded, then if allowed, our liability is limited to repairing or replacing or re-servicing the Equipment or supplying equivalent Equipment (whichever option we choose) at no charge to you.

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- 13.2 We have no liability to you except as written in this Agreement, or except for our deliberate misconduct.
- 13.3 Subject to 13.1, we exclude all liability in Contract, tort (including negligence) or otherwise for claims, actions, loss, liability or damage (whether direct, indirect, consequential or incidental loss or damage and whether for loss of profits, costs of delay or data or otherwise) suffered or incurred by you or anybody else because of a failure of the Equipment or any act, omission, delay or non performance by us or any network service provider or any toll fraud suffered by you..

When may compliance be excused?

- 14.1 This clause 14 applies if a party cannot fully comply with an obligation under this Agreement due to a cause out of the party's reasonable control.
- 14.2 In that case, so far as, and for as long as, the party cannot comply with the obligation due to that cause, the party is excused from doing so.
- 14.3 Industrial disputes, changes in the law and our failure to obtain materials from our suppliers are, amongst others, to be treated as causes out of our reasonable control. Payment of money is never excused.

Our right of entry

- 15.1 We or our agents can enter the Site (or any other place) to service the Equipment. You must assist us in doing so.

Our cooling off right

- 16.1 Brisnorth Communications may cancel this Agreement by written notice to you so long as the notice is given within 14 days after this Agreement is made.
- 16.2 In that case, we will pay back what you have paid us under this Agreement. You have no other right against us.

Void or unenforceable terms

- 17.1 Clauses in this Agreement must be read so that they are not illegal, void or unenforceable.
- 17.2 If they cannot, they must be severed (that is, treated as if cut out).
- 17.3 The rest of this Agreement is not affected if any clauses are read down or severed.

Signing over rights or obligations

- 18.1 Except with our written consent, you cannot transfer any of your rights or obligations under this Agreement to anybody else.

Copies

- 19.1 You agree that an electronic or faxed copy of this Agreement is admissible evidence of this Agreement.

Governing law

- 20.1 This Agreement is governed by the laws of the State of Queensland and the parties agree to the non-exclusive jurisdiction of its courts.

Privacy Act notice and consents

- 21.1 You agree that we may give certain information about you to a credit reporting agency to obtain a credit report about you. (The information which may be given is covered by the s18E(1) of the Privacy Act 1988 (the "Act") and includes identity particulars and the fact that you are entering this Agreement).
- 21.2 You agree that we may seek and obtain information about you from a credit reporting agency or another credit provider and give information about you to another credit provider. (This may include anything about credit worthiness, history standing or capacity, including information about commercial credit, which credit providers are permitted by the Act to obtain or receive).
- 21.3 If you are a natural person, we may collect personal information about you including but not limited to your electronic contact details such as email ("your personal information"). If you are a business customer we may collect information about your business including but not limited to your electronic contact details such as email ("your business information"). You acknowledge and agree that we may use your personal information or business information to send commercial electronic messages, as defined under the *Spam Act 2003 (Cth)*. Unless you ask us not to, we will use your personal information or business information to provide information to you about goods or services which we or any of our related bodies corporate or any of our partners, dealers and agents may offer to you; provide information to our related bodies corporate, our partners, our dealers and agents so that they can provide information to you about goods and services they offer; send commercial electronic messages as defined under the *Spam Act 2003 (Cth)* and for billing, administration and customer information purposes. If you do not want us to use your personal information or business information in this way, you may ask us not to by sending an email to admin@brisnorth.com.au or by contacting our Admin officer on 07 3623 0800. Otherwise we will assume that you have consented to the use and disclosure of the information for these purposes.

Certificate/Invoice

- 22.1 A certificate or Invoice given by us or on our behalf regarding any amount owing by you under this Agreement, the occurrence of any event or the existence of any fact is prima facie evidence of the matters certified.