

Updated as at 8 October 2020

1. Terms and Conditions

1.1 Supply of Services

SecureCo agrees to supply Services, and the Customer agrees to acquire Services, on the terms set out in these Terms and Conditions, the applicable Product Description and the Service Order entered into between SecureCo and the Customer. By entering into a Service Order with SecureCo, the Customer agrees to these Terms and Conditions.

1.2 Term

These Terms and Conditions shall apply from the date upon which a Service Order is entered into between the Customer and SecureCo, and shall continue for the period during which SecureCo provides a Service to the Customer.

1.3 Inconsistencies

To the extent of any inconsistency, these will be read in the following order of precedence:

- (a) the Service Order;
- (b) the Product Description; and
- (c) these Terms and Conditions,

such that a provision in a document listed higher in the above list shall prevail, to the extent of any inconsistency, over a provision in a document listed lower in the above list.

1.4 Customer constituted by more than one party

Where more than one party constitutes the Customer, the Customer acknowledges and agrees that each such party is jointly and individually responsible for all Charges and other obligations under any applicable Service Order.

1.5 Variation to the Terms and Conditions

(a) These Terms and Conditions may be changed by SecureCo at any time, in its sole and absolute discretion. SecureCo will notify the Customer of any changes to these Terms and Conditions by posting the updated Terms and Conditions on SecureCo's website, and SecureCo will update the "Updated" date above on these Terms and Conditions. It is the responsibility of the Customer to review these Terms and Conditions frequently and to remain informed of any changes to them. SecureCo may also, but is not required to, give the Customer notice in writing of any changes to these Terms and Conditions. The then-current version of these Terms and Conditions will supersede all earlier versions. The Customer agrees that its continued use of the Services after such changes have been published constitutes the Customer's acceptance of these revised Terms and Conditions.

(b) Despite clause 1.5(a), SecureCo will provide thirty (30) days prior written notice to the Customer of any

changes made to these Terms and Conditions, where SecureCo is of the view that the proposed amendments are or may reasonably be detrimental to the Customer. In these circumstances, the Customer will have the option to accept the revised Terms and Conditions as published on the SecureCo website, or continue to be bound by the previous Terms and Conditions. Under no circumstances, does a variation of these Terms and Conditions give the Customer a right to early termination of the Services under any applicable Service Order.

(c) SecureCo may, by giving the Customer thirty (30) days prior written notice, make changes to any Product Description. If the new Product Description materially disadvantages the Customer in relation to the terms of supply of the relevant Service to the Customer, the Customer may terminate the affected part of the Service Order by giving SecureCo thirty (30) days prior written notice.

2. Service Orders

2.1 Making an application for Service(s)

The Customer must first offer to acquire one or more Service(s) by entering into a Service Order for the Service(s).

2.2 Customer's acknowledgement

SecureCo reserves the right to accept or reject a Service Order at its absolute and sole discretion.

2.3 Term of the Service Order

The Service Order shall commence on and from the date upon which it is entered into. After expiration of the Minimum Term, the Service Order will continue thereafter, until it is terminated by either party in accordance with these Terms and Conditions.

3. Supply of Services

3.1 Commencement

(a) SecureCo will commence supplying each Service, and the Customer will be liable to pay the Charges for such Service, from the Service Commencement Date specified in the applicable Service Order or as otherwise agreed in the applicable Service Order.

3.2 Supply standards

- (a) SecureCo will supply each Service:
- (1) with reasonable care and skill; and
 - (2) in accordance with all applicable laws and regulations directly related to its supply of the Service to the Customer.
- (b) SecureCo will maintain its certification as a Level 1 PCI-DSS compliant service provider and, if requested by the Customer to do so, SecureCo will supply a copy of its certificate of compliance.

4. Replacement service

SecureCo may, by giving the Customer thirty (30) days prior notice, replace an existing Service with another Service where the Charge for the new Service is not greater than the Charge for the Service being replaced and the functionality of the new Service is overall substantially the same as, or better, than the Service being substituted, as reasonably determined by SecureCo.

4.1 Service Levels

(a) SecureCo will supply the Services in accordance with the Service Levels set out in Schedule 1 of these Terms and Conditions. SecureCo's liability to the Customer for a failure to meet these Service Levels is set out in Schedule 1.

(b) Schedule 1 of these Terms and Conditions sets out the sole remedy available to the Customer for any failure by SecureCo to meet the Service Levels.

4.2 Services not fault free

SecureCo:

(a) does not represent, warrant or guarantee that any Service will be free of interruptions, delays, faults or errors; and

(b) except as expressly provided in these Terms and Conditions, is not liable (whether in contract, tort (including negligence), statute or otherwise) to the Customer or any other third party for any interruptions, delays, faults or errors in connection with the supply of a Service (in part or in full) for any reason whatsoever.

4.3 Service disruption

SecureCo may temporarily suspend or restrict any Service, without any liability to the Customer for doing so:

(a) if SecureCo believes it is necessary to do so to comply with any law, regulation, order or direction of any Agency;

(b) if SecureCo believes it is necessary to do so to ensure the Service complies with the PCI-DSS;

(c) to protect any person or attend to any emergency;

(d) during any scheduled maintenance;

(e) if the Customer breaches the terms of any applicable Acceptable Use Policy;

(f) if the Service is used in an excessive way (though SecureCo is not obliged to suspend or restrict any Service in those circumstances and the Customer remains liable to pay for any Charges incurred for any excessive usage); or

(g) if the Customer is in material breach of these Terms and Conditions or any applicable Service Order (including by non-payment of any Charge), and the Customer fails to comply with a written notice requiring the Customer to remedy such breach by the date specified in that notice.

5. Customer's obligations and responsibilities

5.1 General obligations

The Customer must:

(a) ensure that for each Service, the Customer meets, and continues to meet all pre-requisites or conditions for the supply of that Service specified in the Product Description for that Service;

(b) use each Service for its intended purpose;

(c) perform all tasks and provide all materials required of it, and by the dates specified in the Project Initiation Document;

(d) co-operate with, and take all reasonable actions requested by SecureCo, to allow SecureCo to provide each Service;

(e) provide SecureCo with all information in the Customer's possession, custody or control that SecureCo reasonably requires to perform each Service and ensure that all information it gives to SecureCo is correct, current and complete;

(f) comply with all applicable laws, regulations, codes and standards (including without limitation the PCI-DSS and any technical standards of an Agency);

(g) comply with all SecureCo's reasonable directions in relation to the use of each Service;

(h) comply with all documentation, user manuals and specifications provided by SecureCo in respect of each Service;

(i) if the Customer has not acquired the managed backup Services, the Customer must conduct and retain backups of any of the Customer's Data (whether hosted on SecureCo's systems or provided to SecureCo in connection with the Services) to the extent reasonable having regard to the nature of the data;

(j) immediately report to SecureCo, in writing, any unauthorised use of a Service;

(k) not:

(1) unreasonably delay any action, approval, direction, determination or decision which is required of the Customer under the Terms and Conditions or any applicable Service Order or for SecureCo to perform any Service;

(2) engage in, procure, assist or allow any of its Personnel or any other person to engage in, any fraudulent or unauthorised use of any Service. The Customer must immediately report any such use to SecureCo as soon as it becomes aware of such use;

(3) interfere with, or procure, assist or allow any of its Personnel or any other person to interfere with, the reasonable use of any Service by any of SecureCo's other Customers

(4) use the Service in any manner which could cause SecureCo or Third Party Facilities to violate a law, regulation or industry code, commit an offence, endanger any person, damage any property, infringe a person's rights (including Intellectual Property Rights), or which could give rise to Third Party Facilities incurring a liability of any kind.

(5) use the Services to transmit, communicate, access or make public any material which is unlawful, offensive, indecent, defamatory, abusive, menacing, harassing, unsolicited or known to contain a virus or similar.

(6) knowingly do anything or use the Service in any manner which may compromise the security or safety of, or which might damage, interrupt or interfere with the operation of the Services, Third Party Facilities or any other computer, system, network or services, including hack or otherwise obtain unauthorised access to any of them; and

(l) without limiting any of the foregoing, notify SecureCo of any fact, matter or thing which comes to its attention which is material to the performance by SecureCo of any Service.

5.2 Customer responsibilities

(a) The Customer is solely responsible for:

(1) understanding how to access and use each Service;

(2) each of its Personnel who have access to, or use a Service;

(3) any use of a Service, or instruction or direction given, through the Customer's login and/or using the Customer's passwords;

(4) any use of a Service which is fraudulent or not authorised by the Customer;

(5) changing any default password (or any other security safeguard such as a default PIN number) provided to the Customer by SecureCo as part of a Service for the access to or use of a Service; and

(6) implementing and maintaining the security of the Customer's network and systems. The Customer is liable for all Charges resulting from any use of the Services by any person, whether or not authorised by the Customer, resulting from a virus, trojan, worm or other malicious computer code, denial of service attacks, a hacking incident (including a SIM, PABX, IP PBX or SIP Gateway device hack), or other means of exploiting a weakness in the Customer's network, systems or security measure; and

(7) compliance with the PCI-DSS (if applicable to the Customer's business), except to the extent that such compliance is reliant on SecureCo's provision of the Service in accordance with these Terms and Conditions.

(b) The Customer acknowledges and agrees that:

(1) SecureCo is not liable (whether based in contract, tort or otherwise) whatsoever for any Loss suffered or incurred by the Customer; and

(2) the Customer must indemnify, and keep indemnified, SecureCo from and against, any and all Loss suffered or incurred by SecureCo,

as a result, whether directly or indirectly, of any fact, matter or circumstance that is within the responsibility of the Customer under clause 5.

(c) If the Customer contracts with SecureCo for enterprise voice services, the Customer acknowledges and agrees that:

(1) SecureCo provides local numbers in multiple countries for delivery to the Customer in Australia. These numbers are then allocated to agents of the Customer that may be located in Australia or overseas.

(2) For each block of numbers allocated to the Customer, the Customer is responsible for providing an associated physical address to the Emergency Service Organisation where the agents of the Customer are located. This address will be used as the location to which emergency staff will be sent in the event of an emergency.

(3) The Customer must dial a country specific number and provide a country specific number or Calling Line Identification to indicate which country and location the Emergency Service Organisation will need to respond to.

(4) If the agent of the Customer is in a different country than that of the number they are allocated, the Customer is required to change the called and calling number to associate the correct number block and physical address to which the emergency needs to be allocated to.

(5) the Customer is responsible for using the appropriate country's Emergency Service Number and country prefix and emergency designation number, and ensuring a Calling Line Identification associated with the physical address where the call is being made from is used before sending to SecureCo.

5.3 Acceptable use

The Customer must comply, and must ensure that each of its End Users complies, with the Acceptable Use Policy.

5.4 Regulatory compliance

The Customer acknowledges and agrees that:

(a) if SecureCo acquires products or services from any Supplier including a carrier (as defined under the Telecommunications Act) in connection with the supply of a Service, the Customer will adhere with all

reasonable directions given by SecureCo as are necessary for SecureCo to comply with its obligations under any agreement with that Supplier;

(b) SecureCo or its Supplier may:

(1) be required by law, to retain metadata, information and other content in relation to the Customer's use of the Service, intercept the Customer's communications and pass on details of the Customer's use of the Services (including any retained metadata, information and content) to an Agency, a law enforcement authority or other authority;

(2) monitor the Customer's usage of the Services including where requested, or directed, to do so by an Agency, a law enforcement authority or other authority; and

(3) investigate any alleged misuse of a Service by the Customer including where requested, or directed, to do so by an Agency, a law enforcement authority or other authority.

5.5 Third Party Facilities

(a) The supply of a Service may rely on:

(1) Systems, networks, infrastructure and services provided by a third party (whether or not that third party has an agreement or understanding with the Customer) including a third party who provides Carriage Services; and

(2) the Customer's systems, networks and infrastructure,

(Third Party Facilities).

(b) The Customer acknowledges and agrees that:

(1) due to reasons beyond SecureCo's control, a defect or failure in one or more Third Party Facilities may cause a delay, failure or interruption to a Service;

(2) subject to clause 4.1, SecureCo is not liable to the Customer in any way for any Loss (including Consequential Loss) that the Customer may incur or suffer as a result of any such delay, failure or interruption; and

(3) if the Customer requires SecureCo to undertake any remedial work to repair a Service affected by such a delay, failure or interruption that is beyond the scope of SecureCo's obligations under any applicable Service Order or these Terms and Conditions, SecureCo may Charge the Customer, and the Customer must pay an additional Charge for the remedial work that SecureCo undertakes provided that SecureCo seeks the Customer's written consent before proceeding with the remedial work.

5.6 End users

The Customer must ensure that all End Users of each Service comply with this clause 5 as if any reference to "the Customer" were a reference to each "End User".

6. Ongoing support

6.1 Support

(a) SecureCo will provide support to rectify any defect or fault in a Service to the extent expressly set out in the Service Order or Product Description relevant to that Service.

(b) SecureCo support services operate on Business Days, between the hours of 8:30am to 5:30pm AEST. Support required will incur additional costs specified in any applicable Service Order.

6.2 Exclusions to ongoing support

(a) SecureCo has no obligation to the Customer to rectify any defect or fault in a Service caused or contributed to by:

(1) the acts or omissions of the Customer or the Customer's Personnel that are not in accordance with the Service Order or these Terms and Conditions or are otherwise unlawful;

(2) faults or defects that arise in telecommunication services provided to the Customer by a third party supplier.

6.3 Notice of scheduled maintenance

Unless stated otherwise in a Service Order or these Terms and Conditions, SecureCo will endeavour to:

(a) give the Customer at least fourteen (14) days written notice of any scheduled maintenance that is likely to affect any Service; and

(b) not carry out any scheduled maintenance during the Customer's business hours unless otherwise agreed with the Customer.

7. Charges, invoicing and payment

7.1 Charges

(a) The standard Charges for the Services are:

(1) as stated in the Service Order; or

(2) where not so stated, as notified by SecureCo to the Customer from time to time as applicable to each Service.

(b) The Charges shall also include:

(1) all additional Charges; and

(2) any other Charge specified as payable by the Customer under any applicable Service Order or these Terms and Conditions.

(c) If the Service Order identifies a minimum monthly spend for any Service, the Customer must pay the greater of the minimum monthly spend and the Charges for the Services based on actual usage.

(d) Other than termination by the Customer pursuant to clause 1.5(c) or clause 13.1(a), if a Service is terminated prior to the end of the Minimum Term for the Service, the Customer must immediately pay to

SecureCo:

(1) the unrecovered proportion of the costs SecureCo has incurred in provisioning the terminated Service (where these costs have been amortised on a straight line basis over the Minimum Term), subject to the provision of evidence by SecureCo of the incurring of such costs;

(2) any costs SecureCo will incur in connection with the terminated Service(s), to the extent that SecureCo is unable to avoid such costs after taking reasonable steps to do so, subject to the provision of evidence by SecureCo of the incurring of such costs; and

(3) 50% of the Charges for the balance of the Minimum Term, calculated based on the average monthly Charges for the three (3) months prior to the termination date or, where a minimum monthly spend applies that is greater than 50% of the Charges (calculated on the aforesaid basis), 100% of the minimum monthly spend for the balance of the Minimum Term.

7.2 Additional charges

Without limiting any other provision of these Terms and Conditions, SecureCo may charge the Customer, and the Customer must pay an additional charge to service, modify, or replace a Service as a result of any defect or failure for which SecureCo is not expressly responsible under the Service Order or these Terms and Conditions, provided that SecureCo gives notice to the Customer as soon as reasonably practicable after it becomes aware of the cause and seeks the Customer's further written consent before proceeding with the remedial work.

7.3 Calculating and adjusting Charges

(a) SecureCo may round up any Charge to the nearest cent.

(b) After the expiration of the Minimum Term of a Service, SecureCo may adjust the Charges by giving not less than one (1) month written notice to the Customer.

(c) Without limiting SecureCo's rights to vary Charges under these Terms and Conditions, SecureCo may vary any Charge if, and to the extent that:

(1) there is an increase in Taxes imposed by law or new Taxes imposed by law come into place;

(2) there is a change to the costs of ancillary services (such as an increase in credit card or direct debit transactions fees imposed on SecureCo by third parties) as long as it has provided the Customer with a reasonable alternative at no additional charge; or

(3) a Charge must be increased by law, regulation, code or standard (including any determination or declaration of an Agency).

7.4 GST

(a) Unless expressly stated otherwise, all Charges for

supplies made, or to be made, under a Service Order or these Terms and Conditions are exclusive of GST.

(b) If any supply by SecureCo under, or in connection with a Service Order or these Terms and Conditions constitutes a taxable supply for the purposes of the GST Law, the Customer must pay SecureCo an amount equal to the GST payable on that supply in addition to, and at the same time as, the amount payable for that supply.

(c) Where the Customer is required under a Service Order or these Terms and Conditions to pay or reimburse an expense or outgoing incurred by SecureCo, the amount to be paid or reimbursed by the Customer will be the sum of:

(1) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which SecureCo, or to which the representative member for the relevant GST group, is entitled; and

(2) if the payment or reimbursement is subject to GST, an amount equal to that GST.

7.5 Invoicing and payment

(a) The Minimum Term for a Service will be specified in any applicable Service Order. The Minimum Term will commence on the applicable Service Commencement Date.

(b) The Customer must make payment of all amounts invoiced by SecureCo within thirty (30) days of the date of invoice or by such other due date expressly stated in the relevant invoice;

(c) All payments of invoices by the Customer must be:

(1) by cheque, electronic funds transfer or any other means specified on the invoice; and

(2) without any set-off or deduction by the Customer.

(d) The payment of any amount by the Customer is not made until the amount is received by SecureCo in immediately available, clear funds;

(e) The Customer's obligation to make payments of an invoice is not affected by the Customer being unable to use the whole or any part of a Service to which the invoice relates;

(f) If the Customer does not pay an invoice in full by its due date, SecureCo may Charge the Customer:

(1) interest on the unpaid amount calculated daily at the Default Rate from the due date until the date that payment (including interest) is made in full; and

(2) an amount representing the costs and expenses of SecureCo in seeking payment of the overdue amount (including any legal or debt recovery expenses incurred by SecureCo and paid to third parties to obtain payment of the overdue amount).

(g) SecureCo may set off or deduct any undisputed amounts due and payable by the Customer to SecureCo against any service rebate payable by

SecureCo to the Customer under clause 4.1.

7.6 Reissuing of invoices

(a) SecureCo may reissue an invoice if any error in the invoice is later discovered;

(b) If the Customer has overpaid any Charges as a result of such an error, the Customer's account will be credited with the overpayment or, if the Customer has stopped acquiring any Service from SecureCo, SecureCo will refund the overpayment promptly after the Customer's request but after deduction of any other amounts due by the Customer; and

(c) If the Customer has underpaid any Charges as a result of the error, the Customer will be required to pay the correct amount to SecureCo after the invoice is reissued in accordance with the timeframes specified in clause 7.5(a).

7.7 Disputing invoices

(a) The Customer may dispute any amount of a Charge invoiced by SecureCo only if:

(1) the Customer requests in writing that SecureCo investigate the Charge disputed within nine (9) months of the date of the invoice in which the Charge is invoiced;

(2) the Customer provides, at the same time, specific evidence which demonstrates that the particular Charge is incorrect; and

(3) the Customer pays any non-disputed Charges in the relevant invoice.

(b) If the Customer validly disputes any amount, SecureCo will conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute. SecureCo's records are sufficient proof of the Customer's usage of the Services, unless the Customer otherwise provides proof, to SecureCo's reasonable satisfaction, that they are incorrect; and

(c) At the end of SecureCo's investigations:

(1) if any disputed amount has been shown to be, or the parties agree was, incorrectly invoiced, SecureCo will refund the disputed amount within thirty (30) days of the amount being shown or agreed to be correct; or

(2) if any disputed amount has not been shown to be, and the parties do not otherwise agree was, correctly invoiced, the procedure under clause 12 must be followed.

8. Warranties

8.1 Warranties as to capacity

Each party represents and warrants to the other that, as at the date that each Service Order is entered into:

(a) no Insolvency Event affects that party, and that party is not aware of any circumstances likely to cause

it to become subject to an Insolvency Event;

(b) that party's execution, delivery and performance of the Service Order has been properly authorised by it and its obligations under these Terms and Conditions are valid, binding and are enforceable against it in accordance with these terms;

(c) the execution and delivery of the Service Order or the transactions contemplated by it do not conflict with, or result in any breach of that party's constituent documents, any applicable law to that party or any obligation or undertaking to which that party is bound; and

(d) it does not enter into the Service Order as trustee of any trust or settlement.

8.2 Customer specific warranties as to capacity

The Customer represents and warrants to SecureCo that, as at the date the Service Order is entered into:

(a) it has had the opportunity to obtain independent professional advice in relation to the legal, taxation, accounting and financial consequences of the applicable Service Order and these Terms and Conditions, and has not relied on SecureCo in relation to any of those matters; and

(b) it does not rely on any representation, warranty or undertaking made by SecureCo (or any other person) in connection with the Service Order that is not expressly set out in the Service Order and acknowledges that SecureCo has been induced to enter into the Service Order on that basis.

8.3 Warranties about information

The Customer represents and warrants to SecureCo that:

(a) all information in any applicable Service Order is true, accurate, complete and is not misleading or deceptive or likely to mislead or deceive; and

(b) where the Customer has provided SecureCo with information about any of the Customer's Personnel, each of the Personnel has consented to the Customer disclosing the information to SecureCo and for SecureCo to use, or disclose, the information to provide the Services and exercise any rights and perform any obligations in respect of the Services.

9. Confidentiality

9.1 Obligation of confidence

Subject to clause 9.2, each party must:

(a) keep confidential the Confidential Information of the other party and must ensure that it does not disclose or permit the disclosure of that Confidential Information to any person; and

(b) take all steps and do all things that are reasonably necessary or prudent or desirable in order to safeguard

the confidentiality of the Confidential Information of the other party.

9.2 Permitted disclosure

(a) A party may disclose the Confidential Information of the other party:

(1) to its Affiliates, employees, agents, advisers or financiers (each a Recipient) if, and only if:

(a) the Recipient reasonably needs to know that Confidential Information in order for that party to comply with its obligations under any applicable Service Order and these Terms and Conditions;

(b) that party has informed the Recipient of the obligations of confidentiality under any applicable Service Order and these Terms and Conditions; and

(c) the Recipient has accepted the obligation to treat the Confidential Information as confidential in the same manner and to the same extent as required of that party;

(2) with the consent of the other party;

(3) in connection with legal or other proceedings relating to any applicable Service Order or these Terms and Conditions; or

(4) if compelled by law or by an Agency, court, tribunal or stock exchange.

(b) Notwithstanding clause 9.2(a), SecureCo may:

(1) disclose the Customer's Confidential Information to any Supplier where it is necessary to enable the Supplier to provide any service to SecureCo in connection with a Service;

(2) use or disclose the Customer's Confidential Information where expressly permitted under any other provision of the Service Order or these Terms and Conditions;

(3) use or disclose the Customer's Confidential Information to make contact with, or to deal directly with, the Customer's End Users and other Personnel in connection with the Services and the invoicing of those Services;

(4) refer to the Customer as a customer of SecureCo in press releases, marketing, sales or financial material or reports, including without limitation the use of the Customer's logo;

(5) transmit information about the Customer's location in emergency situations.

9.3 Terms of documents

For the purposes of this clause 9, the terms of a Service Order will be considered Confidential Information of SecureCo.

9.4 Survival

The rights and obligations of each party pursuant to this

clause 9 survive the expiry or termination of these Terms and Conditions or any applicable Service Order.

9.5 Customer Data

For the avoidance of doubt, the Customer will retain ownership and Intellectual Property Rights in Customer Data, which is also the Customer's Confidential Information.

10. Personal Information

10.1 Collection

(a) During the Term, SecureCo or its Suppliers may collect Personal Information from the Customer.

(b) The Customer represents and warrants to SecureCo that it has procured any consent necessary to comply with the Privacy Act from individuals in relation to whom the Customer provides Personal Information to SecureCo for the purpose of any applicable Service Order and these Terms and Conditions. This includes without limitation, consent for disclosure of the Personal Information to SecureCo and for the storage, access, use and disclosure by SecureCo of the Personal Information for the purpose of SecureCo fulfilling its obligations under these Terms and Conditions. The Customer acknowledges that SecureCo may disclose Personal Information to third party service providers authorised by the Customer that provide services that integrate with SecureCo's Service.

10.2 Use

The Customer agrees that SecureCo may:

(a) hold the Personal Information and share it with its employees, contractors and agents, but only to the extent necessary to enable SecureCo to perform the Services, send the Customer invoices, check that the Customer's responsibilities are being met or otherwise to administer and enforce any applicable Service Order;

(b) use any information about the Customer for statistical purposes, provided the Customer is not identified; and

(c) use any information about the Customer for the purposes set out in any privacy policy (including the privacy policies of any Supplier) notified in writing to the Customer from time to time.

10.3 Customer must comply

Each party must comply with its obligations under the Privacy Act. If the Customer is a small business operator under the Privacy Act, the Customer must choose to be treated as an organisation under section 6EA of the Privacy Act during the Term of any applicable Service Order and otherwise comply with the obligations under the Privacy Act as if the Customer was an organisation under the Privacy Act.

10.4 Mandatory Data Breach Notification

All Personal Information which is disclosed by the

Customer to SecureCo and is accessed, used or collected by SecureCo pursuant to any applicable Service Order, will always be subject to compliance with the Privacy Act. SecureCo must:

(a) at its cost, implement all reasonable measures and take all reasonable steps to detect all Data Breaches that may affect the Personal Information and report all such Data Breaches to the Customer in writing as soon as practicable after determining a Data Breach has occurred;

(b) at its cost and subject to clause 10.4(c), comply with all requirements and provide all assistance and information as reasonably requested by the Customer in respect of all Data Breaches relating to or including any Personal Information of the Customer in SecureCo's possession or control (or in the possession or control of any of its contractors) and to assist the Customer to assess the Data Breach, notify it and /or otherwise comply with its obligations under the Privacy Act; and

(c) in respect of any Personal Information subject of a Notifiable Data Breach, or for which SecureCo wishes Notification to occur, not take any action (including Notification) without first notifying the Customer of the Data Breach. The parties will agree whether there is a Notifiable Data Breach or if otherwise the Data Breach should be notified and, if so required, the Customer will prepare and issue the Notification and conduct all follow up actions and meetings with any and all privacy regulatory authorities and/or any affected individuals. Notwithstanding the aforesaid, if the Notification, a press release or any public communication prepared by the Customer refers to SecureCo or to the Services, the Customer must obtain SecureCo's consent before releasing the communication provided that this will not impact on the Customer's ability to comply with the law.

11. Liability

11.1 Exclusions of representations, guarantees or warranties

Subject always to clause 11.2, to the maximum extent permitted by law, SecureCo makes no representation nor gives any guarantee or warranty (including of merchantability, acceptable quality, fitness for any particular purpose or fitness for disclosed result) in connection with any Service.

11.2 Liability under consumer protection laws not excluded

(a) There may be non-excludable statutory guarantees, implied conditions, and warranties or liabilities that SecureCo has to the Customer under the Competition and Consumer Act and other consumer protection laws that may apply to the Services and that cannot be excluded (**Non-Excludable Conditions or Liabilities**).

(b) Nothing in any applicable Service Order or these

Terms and Conditions removes or limits any of the Non-Excludable Conditions or Liabilities.

(c) However, to the extent that SecureCo's liability can be limited under the Competition and Consumer Act and other consumer protection laws that may apply to the Services, SecureCo limits its liability to the Customer for any breach of or non-compliance with, any of the Non-Excludable Conditions or Liabilities, at SecureCo's sole discretion, to resupplying the applicable Service or payment of or reimbursement for the cost of having the applicable Service resupplied, and the Customer acknowledges that this limitation of liability is fair and reasonable in all the circumstances.

11.3 Exclusions and limitations of liability

(a) Each party excludes all liability to the other party for any Consequential Loss suffered or incurred by the other party under, or in connection with, a Service Order (whether based in contract, tort (including negligence), statute or otherwise);

(b) SecureCo's total liability to the Customer for any and all Loss the Customer suffers or incurs, and for which SecureCo is liable under, or in connection with, any applicable Service Order (whether based in contract, tort (including negligence), statute or otherwise) is equal to the sum of all Charges paid or payable by the Customer under the respective Service Order for the applicable Service in the twelve (12) month period immediately preceding the event(s) or circumstance(s) which gave rise to that liability; and

(c) The exclusions and limitations of liability in this clause 11.3 do not apply to any Loss arising from any fraudulent act or omission of SecureCo or its employees, agents or contractors in connection with the supply of the Services.

11.4 Contribution and mitigation

(a) Each party's liability for any Loss suffered or incurred by the other party under, or in connection with, any applicable Service Order (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that any of the following caused or contributed to the Loss:

(1) acts or omissions of the other party or its Personnel that are not in accordance with a Service Order, or these Terms and Conditions, or are otherwise unlawful;

(2) in the case of SecureCo, the use of any Third Party Facilities, where the event that caused or contributed to the Loss was beyond SecureCo's control; or

(3) the acts, omissions or equipment of a third party which are beyond a party's control.

(b) Each party's liability to the other party will be reduced to the extent that the other party has not taken reasonable steps to mitigate or avoid the Loss flowing from the event giving rise to the liability of one party to the other party.

11.5 Customer's indemnities

The Customer must indemnify, and keep indemnified, SecureCo and its employees, agents, contractors and Affiliates from and against any claim by a third party arising from the use by the Customer or its Personnel of the Services (including any claims for infringement of Intellectual Property Rights).

12. Dispute Resolution

12.1 Dispute resolution procedure

(a) Where a dispute under, or in connection with a Service Order or these Terms and Conditions arises between the parties (**Dispute**), it must be resolved in accordance with the procedure set out in this clause 12.

(b) Either party may refer, by written notice to the other party, the Dispute to each party's Representative for resolution. If the Representatives cannot resolve the dispute within fourteen (14) days of the notice of dispute being given, either party may escalate the dispute to the respective group managers.

(c) If the dispute is not resolved within fourteen (14) days of such escalation, either party may refer the dispute to mediation in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules. During any such mediation, both parties may be legally represented.

12.2 Neither party to commence legal proceedings

(a) Subject to clause 12.2(b), no party may commence legal proceedings in relation to any Dispute without first following the procedure set out in this clause 12.

(b) Notwithstanding any other provision of a Service Order or these Terms and Conditions, nothing in this clause 12 prevents either party from seeking urgent interlocutory relief.

12.3 Continuing performance of obligations during dispute

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under these Terms and Conditions.

13. Termination

13.1 Termination by Customer

(a) The Customer may terminate the whole of a Service Order or that part of the Service Order relating to a particular Service with immediate effect by notice in writing to SecureCo if:

(1) SecureCo breaches any material obligation under the Service Order or these Terms and Conditions which:

(i) if capable of being remedied, is not remedied within

thirty (30) days after receipt of a written notice from the Customer requiring it be so remedied; or

(ii) is incapable of remedy;

(2) it is required to do so by law; or

(3) if an Insolvency Event occurs in respect of SecureCo;

(b) The Customer may terminate that part of a Service Order relating to a particular Service after the expiration of the Minimum Term by giving not less than thirty (30) days prior written notice to SecureCo.

13.2 Termination by SecureCo

(a) SecureCo may terminate a Service Order relating to a particular Service with immediate effect pursuant to these Terms and Conditions, by notice in writing to the Customer if:

(1) the Customer breaches any material obligation under the Service Order or these Terms and Conditions which:

(i) if capable of being remedied, is not remedied within thirty (30) days after receipt of a written notice from SecureCo requiring it be so remedied; or

(ii) is incapable of remedy.

(2) it is required to do so by law;

(3) if an Insolvency Event occurs in respect of the Customer;

(4) the Customer fails, at any time, to satisfy any pre-requisite for the supply of the Service which has been notified by SecureCo to the Customer and which, if capable of being satisfied, the Customer has not satisfied within thirty (30) days after a request from SecureCo to do so.

(b) SecureCo may terminate a Service Order or that part of a Service Order relating to a particular Service by giving one hundred and eighty (180) days prior written notice to the Customer if SecureCo ceases to offer the Service generally and SecureCo will refund to the Customer any Charges paid in advance by the Customer in relation to a Service Order that has been terminated.

(c) SecureCo may terminate that part of a Service Order relating to a particular Service after the expiration of the Minimum Term by giving not less than thirty (30) days prior written notice to the Customer.

13.3 Consequences of expiration or termination

(a) If all of the Service Order expires or is terminated, all Services under the Service Order are cancelled on and from the date that the Service Order so expires or terminates.

(b) If only part of the Service Order is terminated relating to a particular Service only that Service is cancelled on and from the date that part of the Service

Order so terminates.

(c) If all or part of the Service Order expires or is terminated:

(1) the Customer must pay SecureCo all amounts due under the Service Order in respect of all Services cancelled within thirty (30) days of the date that the Service Order so expires or terminates;

(2) each party must:

(i) as directed by the other party, return to the other party (or in the case of documents or data, destroy), all originals and copies of the other party's written materials, documentation, data and Confidential Information (including all materials derived therefrom). The Customer acknowledges that the return of some Customer Data, including Cardholder Data, may be subject to an additional charge and that SecureCo may be required to retain a copy of some data, such as Payment Transaction Data; and

(ii) if applicable, co-operate with the other party to facilitate SecureCo's continued performance of its obligations in relation to any Services which are not cancelled; and

(3) the rights and obligations of the parties under the Service Order and these Terms and Conditions cease or, if only part of the Service Order is terminated, only those rights and obligations of the parties under the Service Order relating to the Services cancelled cease, except for:

(i) any accrued rights and obligations that have arisen prior to the date of termination; and

(ii) any rights and obligations which are expressed, or by their nature are intended, to continue after termination.

(c) Clauses 4.2(b), 4.3, 5.2(b), 7.4 to 7.7 inclusive, 9, 10, 11, 12, 13.3 and 14 survive expiry or termination of all or any part of a Service Order.

14. General

14.1 Entire agreement

The Service Order, Product Description and these Terms and Conditions:

(a) constitute the entire understanding between the parties; and

(b) in good faith supersedes all previous agreements, understandings, commitments, representations and warranties, whether written or verbal,

in relation to its subject matter.

14.2 Force majeure

If, by reason of a Force Majeure Event, SecureCo is prevented, hindered or delayed in the performance of any of its obligations under an applicable Service Order, SecureCo will not be liable to the Customer for not

performing, or for the manner of its performance of, such obligation to the extent to which, and for the period of time during which, SecureCo is so prevented, hindered or delayed.

14.3 Consents and approvals

Unless the Service Order expressly provides otherwise, a party may conditionally or unconditionally give or withhold any consent or approval to be given under the Service Order and is not obliged to give its reasons for doing so.

14.4 Enforceability

If, at any time, any provision of a Service Order or these Terms and Conditions is held to be invalid, illegal or unenforceable then, to the extent permitted by law, it must be read down to the extent necessary to be valid and, if it cannot be so read down, it will be severed. The validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

14.5 Assignment

The Customer must not assign any of its rights or otherwise deal with, or transfer, any of its obligations under a Service Order, without the prior written consent of SecureCo.

14.6 No waiver

No failure or delay on the part of either party in exercising any power or right, and no grant of any indulgence or forbearance by that party, under a Service Order will prejudice any of the rights or powers of that party under these Terms and Conditions or be construed as a waiver of any warranty or obligation on the part of the other party under a Service Order.

14.7 Changes in the Customer's details and notices

(a) The Customer must notify SecureCo in writing of any change to the Customer's details (including its ABN, its contact details and/or the details of its Representative);

(b) Any notice that SecureCo gives to the Customer under a Service Order will be effectively served if:

(1) the notice is sent by hand or mail:

(a) unless SecureCo has been notified by the Customer that the address no longer applies, the address listed in a Service Order;

(b) any address notified by the Customer to SecureCo as its current address from time to time (whether or not that address is the registered address of the Customer); or

(c) if the Customer is a corporation, its registered address or principal place of business as registered with the Australian Securities and Investments

Commission; or

(2) the notice is sent by email to an email address listed in a Service Order or as subsequently notified to SecureCo.

(c) Notice is deemed to be received by a person:

(1) when delivered by hand;

(2) if sent by mail, two (2) Business Days after posting; or

(3) if sent by email, one (1) hour after sending unless the sender receives a report or notice indicating the email has not been delivered within that one (1) hour period.

However, if the notice is deemed to be received on a day which is not a Business Day or after 5.00pm at the addressee's location, it is deemed to be received at 9.00am on the next Business Day.

14.8 Commission or rebates

SecureCo may pay commission or rebates in connection with a Service Order.

14.9 Representatives

(a) Each party appoints its Representative as its agent to (non-exclusively):

(1) exercise powers;

(2) perform duties; and

(3) carry out the overall supervision and co-ordination of the obligations,

of that party under any applicable Service Order and these Terms and Conditions.

(b) Each party's Representative is entitled to act entirely in the interests of the party who appointed them;

(c) A party may at any time, by written notice to the other party, replace the person then acting as the party's Representative; and

(d) If a party's Representative knows of a matter, that knowledge is taken to also be within the knowledge of that party.

14.10 Intellectual Property Rights

(a) Any Intellectual Property Rights owned by either party prior to entering into a Service Order, or developed independently of the Service by either party, will continue to be owned by that party;

(b) None of SecureCo's Intellectual Property Rights are transferred to the Customer and, unless specifically authorised by any applicable Service Order, the Customer cannot and will not use or reproduce such Intellectual Property Rights for any purpose unconnected with the Service Order or these Terms and Conditions.

(c) The rights and obligations of each party pursuant to this clause 14.10 survive the expiry or termination of

any applicable Service Order.

14.11 Relationship

SecureCo is an independent contractor to the Customer. No partnership, employment, agency or joint venture relationship is created, evidenced or intended by these Terms and Conditions or any Service Order.

14.12 Governing law

These Terms and Conditions and any applicable Service Order are governed by, and construed in accordance with the laws of New South Wales. The parties submit to the exclusive jurisdiction of the courts of New South Wales to settle any disputes that may arise out of or in connection with these Terms and Conditions or any Service Order.

15. Definitions and Interpretations

15.1 Definitions

Acceptable Use Policy means SecureCo's policy on acceptable use of its Services as provided to the Customer and may be amended from time to time.

Affiliate means, in respect of a party:

(a) the party's related bodies corporate (as that term is defined in the Corporations Act) or any other bodies corporate associated with the party (including any body corporate one of whose directors is also a director of the party); and

(b) without limiting paragraph (a) of this definition, if the Customer is a franchisee, its franchisor and each of the franchisor's related bodies corporate.

Agency means any governmental, semi-governmental, administrative, fiscal, statutory, judicial or quasi-judicial body, department, commission, authority, tribunal, agency, regulator, industry body or entity having operation or jurisdiction within Australia or anywhere else in the world.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney or in Melbourne, Australia.

Calling Line Identification means a telephone service, available in telephone systems, including Voice Over Internet Protocol (VoIP), that transmits a caller's telephone number to the called party's telephone equipment when the call is being set up. Calling Line Identification may include the transmission of a name associated with the calling telephone number.

Cardholder Data means data associated with a person's credit or debit card including the primary account number, cardholder name, expiration date or service code.

Carriage Service has the meaning given in the *Telecommunications Act 1997* (Cth).

Charges means any charges or fees (which, except where otherwise stated, are exclusive of any Taxes or withholdings) applicable to any Service.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth).

Confidential Information of a party, means all information in whatever form (including verbal information, or information recorded on paper or by electronic means) relating to that party which that party indicates, or which by its nature, is confidential but excludes information which:

- (a) is already in the possession of that party; or
- (b) becomes known or generally available to the public, except as a result of a breach of any obligation of confidence under the Service Order or these Terms and Conditions (in which case, it remains Confidential Information); or
- (c) that party independently develops.

Consequential Loss means:

- (a) any loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss even if any of that Loss arises naturally (according to the usual course of things) from the fact, matter or circumstance giving rise to the Loss;
- (b) any Loss that is suffered or incurred by a party as a result of a fact, matter or circumstance which does not arise naturally (that is, according to the usual course of things) from the fact, matter or circumstance giving rise to the Loss; and
- (c) any penalties imposed by an Agency.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer Data means all data, information, text, drawings or other materials embodied in any electronic or tangible medium, including data about or relating to the businesses of the Customer, or its Affiliates or customers of the Customer or its Affiliates and which:

- (a) are supplied by the Customer to SecureCo under the Service Order and these Terms and Conditions; and
- (b) may be accessed by SecureCo in the course of performing the Services.

Data Breach means any failure, act or omission (whether accidental or otherwise and no matter by who committed) which has caused, or has the potential to cause, any unauthorised access to, or disclosure or loss of any Personal Information.

Default Rate means the rate which is the sum of 2% and:

- (a) Westpac Bank's ninety (90) day bank bill rate; or

(b) if there is no such reference rate, Westpac Bank's rate for overdraft facilities in excess of \$100,000 available to prime commercial customers,

on the date of the default, expressed as a percentage per annum.

Emergency Services Number has the same definition as in the Telecommunications Act 1997 (Cth). The Emergency Services Number is "000" for Australia, however different numbers may be specified for use in different countries.

Emergency Services Organisation has the same definition as in the Telecommunications (Consumer Protection and Services Standards) Act 1999.

End User means any person who acquires the Services (or part thereof) from the Customer and uses those Services (with or without the Customer's authorisation).

Force Majeure Event means a circumstance beyond SecureCo's reasonable control, including acts or omissions of third party network operators or service providers, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes or lockouts.

GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event in relation to a person, means the happening of any one or more of the following events:

- (a) the person is unable to pay their debts as and when they fall due;
- (b) a receiver, manager, administrator, liquidator, trustee for creditors or trustee in bankruptcy or analogous person being appointed over the person's undertaking or assets or any of them;
- (c) if the person is a natural person, an application and filing for bankruptcy being made in respect of the person; or
- (d) if the person is a corporation:
 - (1) an application for winding up or other process seeking orders which, if granted, would render the person an externally-administered body corporate being filed and not being withdrawn within twenty (20) Business Days;
 - (2) the person being or becoming the subject or an order, or a resolution being passed, for the person's winding up or dissolution; or
 - (3) the person entering into, or resolving to enter into, a deed of company arrangement, or an arrangement, composition or compromise with, or assignment for the benefit, of its creditors generally or any class of creditors, or proceedings being commenced to sanction

such a deed of company arrangement, or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

Intellectual Property Rights means all industrial and intellectual property rights of any kind which may subsist in Australia or anywhere else in the world, including:

(a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and domain names;

(b) any application or right to apply for registration of any of the rights referred to in paragraph (a) of this definition; and

(c) all rights of a similar nature to any of the rights in paragraphs (a) or (b) of this definition,

whether or not such rights are registered or capable of being registered.

Loss includes all loss, damage or liability (including liability to a third party) of any kind.

Minimum Term means the minimum term for a Service, identified in the applicable Service Order, which commences on the Service Commencement Date.

Non-excludable Conditions or Liabilities has the meaning given to such term in clause 11.2(a).

Notifiable Data Breach means any Data Breach which, by or under the Privacy Act, is required to be notified to any privacy regulatory authority and/or any affected individuals.

Notification means both (i) the act of notifying any Notifiable Data Breach (or Data Breach if such is to be voluntarily notified) to any privacy regulatory authority and/or any affected individuals and (ii) the form and content of such notice.

Payment Transaction Data means data received, stored, processed, retrieved, used or generated by SecureCo that is required to enable SecureCo to process payment transactions for the purpose of SecureCo's Secure Payment Gateway service.

PCI-DSS means the Payment Card Industry Data Security Standard and any guidelines issued by the PCI Security Standards Council.

Personal Information means information or an opinion about a person from which the person's identity is apparent or can reasonably be ascertained.

Personnel means, in respect of a party, the employees, agents, contractors and Affiliates of the party and the employees, agents and contractors of the party's Affiliates and includes, in the case of the Customer, the Customer's end users of the Services.

Privacy Act means the *Privacy Act 1988* (Cth) and all regulations made under it.

Product Description means the written description of a particular Service, which can be found at www.SecureCo.co/legal/ProductDescriptions.

Project Initiation Document means the document provided to the Customer by SecureCo that defines the Service deliverables and how the implementation of the Service is to be managed. The Project Initiation Document sets out what outcomes are expected from the Customer and SecureCo in order to deliver the Service.

Recipient has the meaning given to that term in clause 9.2.

Representative means the individual identified by a party as its representative in the applicable Service Order, as may be replaced by that party under clause 14.9.

Request Severities determine the speed and method of SecureCo's service response.

Service means an individual service ordered by the Customer in a Service Order and which SecureCo agrees to supply to the Customer.

Service Attributes relates to the level of Service SecureCo provides to the Customer.

Service Commencement Date means the date on which SecureCo delivers a Service ready for use by the Customer.

Service Commencement Notice means the document provided by SecureCo to the Customer notifying the Customer of the Service Commencement Date.

Service Levels means, in relation to a Service, the service levels (if any) applicable to that Service as specified in Schedule 1 of these Terms and Conditions.

Service Order means a duly completed document in a form approved by SecureCo from time to time providing all relevant details in relation to a Service or Services.

Service Order Date means the date upon which a Service Order is entered into by SecureCo and the Customer.

Service Rebates means the compensation applicable when specific Service Attributes do not perform in accordance with the corresponding Service Level commitment set out in Schedule 1 of these Terms and Conditions.

Supplier means a third party supplier that SecureCo uses to directly or indirectly supply the Services to the Customer and expressly includes, any third party who provides Carriage Services.

Tax means any tax, rate, levy, impost or duty (other than a tax on the net overall income of any person) and any interest, penalty, fine or expense relating to any of them.

Telecommunications Act means the *Telecommunications Act 1997* (Cth).

Term has the meaning given to that term in clause 1.2.

Terms and Conditions means this document that contains the standard terms which apply to each Service acquired by the Customer from SecureCo.

Third Party Facilities has the meaning given to that term in clause 5.5(a).

15.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) words that are gender neutral or gender specific include each gender;

(c) if a word or phrase is defined its other grammatical forms have corresponding meanings;

(d) 'includes' means includes without limitation;

(e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

(f) a reference to:

(1) a person includes a firm, unincorporated association, corporation and an Agency;

(2) a person includes the person's legal personal representatives, successors and assigns, and persons substituted by novation;

(3) 'law' includes:

(a) statutes, regulations or by-laws of the Commonwealth, a State, a territory or an Agency; and

(b) rules, proclamations, ordinances, orders, decrees, requirements or approvals (including conditions) of foreign, state, territorial or local jurisdiction or an Agency that have the force of law;

(4) a right includes a benefit, interest, remedy, discretion, authority or power;

(5) an obligation of more than one person binds them all jointly and severally;

(6) an obligation includes a warranty or representation and a reference to a failure to observe or perform an

obligation includes a breach of warranty or representation;

(7) provisions of these Terms and Conditions or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;

(8) time is AEST – Australian Eastern Standard Time;

(9) month is a reference to a calendar month;

(10) '\$' or 'dollars' is a reference to Australian currency;

(11) 'costs' includes charges, expenses and legal costs (on a full indemnity basis);

(12) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes electronic transmissions;

(13) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;

(14) these Terms and Conditions or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;

(15) a clause or paragraph is a reference to a clause or paragraph, as the case may be, of these Terms and Conditions; and

(g) if the date on or by which any act must be done under a Service Order or these Terms and Conditions is not a Business Day, the act must be done on or by the next Business Day;

(h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and

(i) a term or expression:

(1) given a meaning in the *Corporations Act 2001* (Cth) that is not otherwise defined in these Terms and Conditions, has the same meaning in these Terms and Conditions as in the *Corporations Act 2001* (Cth); and

given a meaning in the GST Law, that is not otherwise defined in these Terms and Conditions or in the *Corporations Act 2001* (Cth), has the same meaning in these Terms and Conditions as in the GST Law.

Schedule 1 – Service Level

SecureCo's Service Levels have three separate components:

1. Service Attributes;
2. Service Rebates; and
3. Request Severities.

Service Level Targets

For all Services, unless otherwise indicated, SecureCo's Service Level Targets are as follows:

Service Attribute	Service Level Target
Availability	99.99% of time available

Toll Free Voice

For Toll Free Voice Services, SecureCo's Service Level targets are as follows:

Service Attribute	Service Level Target
Availability	99.95% of time available

Single Carrier Services

For Services where only a single upstream Carrier is utilised, SecureCo's Service Level targets are as follows:

Service Attribute	Service Level Target
Availability	99.95% of time available

Global Carrier Services

For Services where global numbers are provided a single upstream Carrier is utilised and SecureCo's Service Level targets are as follows:

Service Attribute	Service Level Target
Availability	99.95% of time available

SecureCo will endeavour to maintain the Service at a level consistent with achieving these Service Level Targets. Failure to achieve these Service Level Targets will entitle the Customer to a Service Rebate.

Service Level Targets are not applicable to Enterprise Voice Testing Services.

Availability

Availability measures the amount of time that a Service is available for use by the Customer.

It is calculated per calendar month as the total number of hours that the Service was available less any maintenance divided by the number of hours in the calendar month less any maintenance and rounded up to the nearest two decimal places.

Service Rebates

Service Rebates apply if SecureCo fails to meet the Service Level Targets.

The following Service Rebates are applicable.

For all Services, unless otherwise indicated, the following Service Rebates are applicable:

Service Attribute	Performance Achieved	Rebate
Availability	99.99% or above	Nil
	Between 99% and 99.98%	5%
	Between 98% and 98.99%	10%
	Between 95% and 97.99%	25%
	Between 0% and 94.99%	50%

For Toll Free Voice Services, the following Service Rebates are applicable:

Service Attribute	Performance Achieved	Rebate
Availability	99.95% or above	Nil
	Between 99% and 99.94%	10%
	Between 98% and 98.99%	15%
	Between 95% and 97.99%	25%
	Between 0% and 94.99%	30%

For Single Carrier Voice Services, the following Service Rebates are applicable:

Service Attribute	Performance Achieved	Rebate
Availability	99.95% or above	Nil
	Between 99% and 99.94%	10%
	Between 98% and 98.99%	15%
	Between 95% and 97.99%	25%
	Between 0% and 94.99%	30%

For Global Carrier Services and Enterprise Voice Testing Services there are no service rebates available.

Service Request Severity

To ensure that the Customer receives an appropriate level of responsiveness to service requests and service incidents, severity levels are defined as follows:

		Urgency		
		High	Medium	Low
Impact	Major	1	2	3
	Moderate	2	3	4
	Minor	3	4	5

Impact	Definition
Major	Impacts the entire End User organisation.
Moderate	Impacts a single End User department.
Minor	Impacts a single user of the End User.

Urgency	Definition
High	A whole group of users (or department) or a VIP requires request fulfilment. This urgency is also associated with requests that have the potential to impact the business significantly if not fulfilled ASAP .
Medium	A request needs to be fulfilled but can wait 2-3 Business Days .
Low	A request needs to be fulfilled but can wait 5+ Business Days .

Service Response Targets

The incident severity determines the speed and method of SecureCo's Service Response Targets. Response time targets are as follows:

Priority	Severity	Initial Business Communication	Target Response	Target Resolution	Time Scale
1	Critical	15 minutes	15 minutes	4 hours	24x7
2	High	30 minutes	30 minutes	8 hours	24x7
3	Medium	As Needed	2 hours	3 days	Business Hours Support
4	Low	As Needed	8 hours	5 days	Business Hours Support
5	Scheduled	As Needed	5 days	20 days	Business Hours Support

Single Carrier Services

For all services using a Single Carrier, the Response time targets are as follows:

Priority	Severity	Initial Business Communication	Target Response	Target Resolution	Time Scale
1	Critical	15 minutes	15 minutes	6 hours	24x7
2	High	30 minutes	30 minutes	12 hours	24x7
3	Medium	As Needed	2 hours	5 days	Business Hours Support
4	Low	As Needed	8 hours	7 days	Business Hours Support
5	Scheduled	As Needed	5 days	30 days	Business Hours Support

Global Carrier Services

For all services using a Global Carrier, the Response time targets are as follows:

Priority	Severity	Initial Business Communication	Target Response	Target Resolution	Time Scale
1	Critical	15 minutes	15 minutes	6 hours	24x7
2	High	30 minutes	30 minutes	12 hours	24x7
3	Medium	As Needed	2 hours	5 days	Business Hours Support
4	Low	As Needed	8 hours	7 days	Business Hours Support
5	Scheduled	As Needed	5 days	30 days	Business Hours Support

Enterprise Voice Testing

For all services using Enterprise Voice Testing, the Response time targets are as follows:

Initial Business Communication	Target Response	Target Resolution	Time Scale
As needed	24 hours	5 days	Business Hours Support

Service Rebate Conditions

1. The maximum Service Rebate payable for any Service in a calendar month is capped at 50% (or 30% for single carrier) of the total Charges in the calendar month for that Service.
2. The payment of a Service Rebate is the sole remedy that the Customer has under any applicable Service Order for failure to meet the relevant Service Attribute.
3. The Customer acknowledges and agrees that the Service Rebates represent fair and reasonable pre-estimates of the damages that will be suffered by the Customer for failure to meet the Service Levels.
4. The Customer must apply for the Service Rebate by contacting SecureCo's Customer Service Centre and following the prescribed process for obtaining Service Rebates within thirty (30) calendar days of the end of the calendar month in which the Service Rebate applies.
5. The Service Rebate is only to be applied by way of a credit, and cannot be redeemed for cash; and
6. Services Rebates will not apply where one or more of the Service Rebate Exemptions (outlined below) apply.

Service Rebate Exemptions

1. The Customer will not be entitled to a Service Rebate to the extent that one or more of the following exemptions apply:
 - a. the incident giving rise to the Service Rebate was caused by the Customer or End User's acts or omissions or the acts or omissions of the employees, contractors or agents or the Customer or End User; or
 - b. the incident giving rise to the Service Rebate was caused by a Force Majeure Event;
2. The Customer will not be entitled to a Service Rebate in relation to a failure to meet a Service Level to the extent that one or more of the following applies:
 - a. the incident giving rise to the failure to meet the Service Level was caused by the installation of Customer or End User-ordered or approved software modifications, updates or changes (whether or not approved by SecureCo), or the failure or malfunction of applications or systems not owned or controlled by SecureCo; or
 - b. the incident giving rise to the failure to meet the Service Level is caused by a disruption or delay is caused or contributed to by the Customer or End User (including, without limitation, the exercise of SecureCo's right to suspend the Service in accordance with these Terms and Conditions);
 - c. the incident giving rise to the failure to meet the Service Level is caused by a temporary suspension of the Service permitted under these Terms and Conditions;
 - d. the incident giving rise to the failure to meet the Service Level is caused by the failure of the Customer to comply with its obligations under the Service Order or these Terms and Conditions;
 - e. the Customer has failed to pay any Charges to SecureCo when due and payable;
 - f. the incident giving rise to the failure to meet the Service Level is caused by a defect or failure in one or more Third Party Facilities; or
 - g. the incident giving rise to the failure to meet the Service Levels is caused by a third-party service provider (other than SecureCo's carriers) or as a result of a fault on a third-party service provider's network (other than SecureCo's carrier's network).