

# Our Kloud Pty Ltd

## Customer Terms & Conditions - Basic Conditions

### 1. What is this agreement?

- a. This document sets out the basic terms on which Our Kloud provides services to Customers. They apply to every Service Our Kloud supplies, and are called “Basic Conditions”. “Services” includes both goods and services.
- b. The Basic Conditions are part of our “Standard Form of Agreement” under section 479 of the Telecommunications Act 1997.
- c. Extra terms may also apply in certain cases. These terms indicate when extra terms will apply.
- d. Our Kloud's Customer Contract is a multi-part agreement, consisting of these Basic Conditions plus other terms that relate to particular services.
- e. This document uses headings and footnotes to assist the reader. Headings and footnotes do not form part of the terms, and do not change the effect of the document.

### 2. The parties:

- a. “We” or “Our Kloud” or “OUR KLOUD” or “OurKloud Billing” or Our Kloud Billing” means Our Kloud Pty Ltd, and “you” or “Customer” means anyone that we supply a service to.

### 3. Services and product groups:

- a. a “Service” means any goods or service that we offer or supply. Each Service may be briefly identified by its “Service Description”.
- b. A “Product Group” is a group of similar services that we designate as a product group.
- c. We may assign a Service to more than one Product Group.

### 4. Product Group Conditions:

- a. We may publish extra terms that apply to a Product Group of Services (“Product Group Conditions”).
- b. Product Group Conditions are set out in another document.
- c. Product Group Conditions only apply to the Services in the Product Group they relate to.
- d. Product Group Conditions are also part of our Standard Form of Agreement.

### 5. Service Conditions:

- a. We may also publish extra terms that apply to a particular service (“Service Conditions”).
- b. Service Conditions may be set out in service information, or on an application form, or otherwise notified to you.
- c. Service Conditions only apply to the Service they relate to.
- d. Service Conditions may include, or incorporate by reference, a service level guarantee.
- e. Service Conditions are not part of our Standard Form of Agreement, but they are part of our Customer contract with you.

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#### Sydney

2-4 Birmingham Street  
Alexandria, NSW 2015

#### Brisbane

Level 22  
69 Ann Street  
Brisbane QLD 4000

#### Melbourne

Suite 21, Level 3  
799 – 807 Springvale Road  
Mulgrave VIC 3170

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t 1300 700 929  
f 1300 900 756  
w [www.ourkloud.com.au](http://www.ourkloud.com.au)

## 6. Pricing:

- a. We may charge you for our Services in accordance with our Price List.
- b. We may change the Price List by publishing a new Price List on our web site. A reference to “Price List” means the current Price List at any particular time.
- c. Subject to clause 6 (h), changes take effect immediately. They have no effect on charges for Services that have already been supplied.
- d. In some circumstances, if we change our Price List you may be entitled to cancel your Customer Contract early.
- e. The Price List is not part of our Standard Form of Agreement, but it is part of our Customer Contract with you.
- f. If a Customer Contract states that charges for the contract will be fixed for a certain period, or until a certain date, changes made during that period, or before that date, do not take effect until the end of that period, or until that date.
- g. If a Customer Contract states that charges will be reviewed at certain intervals, we will not change or restructure charges for that Customer Contract more frequently than once per that interval.
- h. Contracts Code – Price rises will only apply to you:
  - a. if you don’t have a fixed term contract;
  - b. if your Customer Contract is a month to month agreement;
  - c. where the pricing relates to international call rates, and international mobile roaming – please review our website or contact us for current pricing;
  - d. where we are required to impose a charge by law;
  - e. where the charge is for an ancillary service such as a credit card transaction fee.

## 7. Special Conditions:

- a. We may also agree with you that Special Conditions will apply to our agreement with you.
- b. Special Conditions only apply if they are in writing and we agree to them. For instance, they may be set out on an order form.
- c. If we agree in writing to charge you on some other basis than the Price List, that agreement is taken to be a special term.
- d. Special Conditions are not part of our Standard Form of Agreement, but they are part of our Customer Contract with you.

## 8. Customer Contract:

- a. When we supply a service to you, the terms and conditions of supply consists of:
  - I. these Basic Conditions; and
  - II. any applicable Product Group Conditions; and
  - III. any applicable Service Conditions; and
  - IV. the applicable items in the Price List; and
  - V. any applicable Special Conditions.
- b. Together, those terms and conditions and items are called the “Customer Contract”.

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## 9. What if different parts of the Customer Contract conflict?

- a. To the extent of any conflict or inconsistency between them, the parts of the Customer Contract have the following order of priority, from highest to lowest:
  - i. Special Conditions;
  - II. Price List;
  - III. Service Conditions;
  - IV. Product Group Conditions;
  - V. Basic Conditions.

## 10. When does this Standard Form of Agreement apply?

- a. Our Standard Form of Agreement is in force from midnight at the start of July 7, 2007.
- b. If there was an existing fixed term contract to supply services to you when our Standard Form of Agreement came into force:
  - I. the existing contract continues until the end of the fixed term; and
  - II. after that, our Standard Form of Agreement applies.
- c. If we enter a contract with you after July 7, 2007 that states that our Standard Form of Agreement does not apply, then it does not apply to that contract otherwise, our Standard Form of Agreement applies to all services that we supply while it is in force.
- d. Where Our Kloud and Our Kloud Billing have taken over the management and billing of services: "Our Kloud" includes agreements signed with Our Kloud Pty Ltd ACN 603 675 529, Our Kloud Billing Pty Ltd ACN 607 483 401, Australian I.T. Solutions Pty Ltd ACN 098 238 674, National Voice and Data Pty Ltd ACN 128 271 090, Nationwide Digital Solutions ACN 128 271 090, Australian Comms Group Pty Ltd ACN 161 045 932, Protected Networks , IntraPower Terrestrial Pty Ltd ACN 081 193 259, Destra Communications Pty Ltd ACN 091 592 602, Mercury Connect Pty Ltd ACN 095 391 334, F652 Pty Ltd ACN 112 187 578, IP Services Xchange Pty Ltd ACN 104 582 667, Alchemy IT Pty Ltd ACN 082 639 969 and Wavenet Pty Ltd ACN 083 688 340.

## 11. Changes to Customer Contracts:

- a. We may change the terms of your Customer Contract, subject to this clause.
- b. We may change any part of our Standard Form of Agreement by amending the Official Copy.
- c. We may change our Price List by publishing a new one on our web site.
- d. We may change any other part of your Customer Contract, including our Price List, by informing you of the change, but in the case of fixed term contracts we cannot change the price you pay until after the fixed term has expired.
- e. If the Telecommunications Act 1997 or any other law requires us to comply with any steps or requirements before we change our Standard Form of Agreement in a particular way, such changes do not take effect until we have complied with those steps or requirements.
- f. You can change your Customer Contract at the expiration of the Minimum Term:
  - I. if we agree; and
  - II. if you give us 14 days notice prior to the commencement of the next Billing Month; but we are not obliged to effect any change until the start of the next Billing Month after the expiry of your 14 day notice.
- a. Otherwise:
  - I. changes to our Standard Form of Agreement take effect when we change the Official Copy; and
  - II. changes to any other part of a Customer Contract take effect when we inform you of the change.

Sydney	Brisbane	Melbourne	Our Kloud
2-4 Birmingham Street Alexandria, NSW 2015	Level 22 69 Ann Street Brisbane QLD 4000	Suite 21, Level 3 799 – 807 Springvale Road Mulgrave VIC 3170	t 1300 700 929 f 1300 900 756 w www.ourkloud.com.au

## 12. The “Official Copy” of our Standard Form of Agreement:

- a. The “Official Copy” of our Standard Form of Agreement (i.e. these Basic Conditions and Product Group
- b. Conditions) is the copy published online at <http://www.ourkloud.com.au/terms-and-conditions/> .  
The Official Copy is taken to be the current and accurate version of those documents at any time.

## 13. Customer Contract cancellation entitlements:

- a. Contracts Code (or any applicable State or Territory based “unfair contracts” laws) - clause 13 applies to your Customer Contract; otherwise you may only terminate your Customer Contract in accordance with clause 31.
- b. If we change your Customer Contract, you may be entitled to cancel it early. But you only have that right strictly in accordance with this clause.
- c. You may cancel your Customer Contract if:
  - I. we increase the charges that apply to it; and
  - II. the increase is not limited to passing on increases in costs that we incur to a third party or in government charges; and
  - III. the increase in charges would have increased your actual payments to us if it had applied from a date six months earlier; and
  - IV. you give us written notice of cancellation within 30 days after we inform you of the increase charges.
- d. If you cancel a Customer Contract under clause 13 (c):
  - I. the cancellation takes effect seven days after we receive your notice;
  - II. you must pay all charges that accrue before then; but we will recalculate those charges to disregard the increase in charges, if you ask us to do so before you pay your final bill.

## 14. Rights and obligations that survive termination:

- a. When a Customer Contract or this agreement ends;
- b. a right of action that arises from a breach that occurred before it ended survives;
- c. charges for services delivered before it ended can be invoiced and recovered;
- d. clauses 14, 19, 25, 33, 34, 39, 40 and 52 continue to operate; and
- e. any other clause in the Customer Contract that indicates that the clause survives termination also continues to operate.

## 15. How are Services ordered?

- a. We may receive an order in any form we choose e.g. by written application online, or over the telephone.
- b. You must comply with any ordering procedures that we specify e.g. if we ask you to use a particular order form, you must do so.
- c. We are not obliged to accept any order.
- d. You must ensure that you provide us with all the information we request in relation to your order and that the information you provide is correct

## 16. What other terms and conditions apply?

- a. Except for things set out in express terms in a Customer Contract, and things that are implied by law and cannot be excluded, there are no other representations, promises, warranties, covenants or undertakings between the parties and Customer Contracts contain the entire understanding between us.

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## 17. What if we supply a mixture of Services?

- a. If we supply a mixture of services, the Special Conditions, prices, Service Conditions and Product Group Conditions that would apply to the different Services if ordered separately apply to each of them individually within the mixture.

## 18. Charges, invoicing and payment for services provided:

- a. We may invoice you, and you must pay us, in accordance with our Price List.
- b. We always deliver our invoice to you by emailing the invoice to the most recent email address you supplied to us; or any nationalvd.com.au email address you have; or to any email address whose mail server we host.
- c. Set-up Charges are payable as soon as we agree to provide a Service, or at any later date we agree to in writing.
- d. Recurring Charges are payable from the date when we inform you that we are ready to supply the Service, whether or not you actually make use of the Service.
- e. All other charges, including Excess Use Charges, are payable on invoice.
- f. When a Customer Contract is terminated or otherwise ends:
  - a. we may immediately invoice any accrued charges (but later invoicing remains effective);
  - b. (subject to clause 18 (k)) our invoices must be paid immediately; and
  - c. we have a lien over any Customer Equipment for unpaid charges.
- g. At our discretion, we may require payment of an advance deposit (or a Direct Debit Authority, or a Credit Card Authority) against future charges or out-of-pocket expenses. If we do, it becomes a condition of your Customer Contract.
- h. We may vary the amount of advance deposit we require under clause 18 (g) at any time.
- i. We may invoice you whenever charges have accrued, but we normally invoice by “Billing Months”. A “Billing Month” is a month, starting on the 21<sup>st</sup> or 23<sup>rd</sup> day of the month
- j. If we hold your advance deposit, Direct Debit Authority, or Credit Card Authority, we may draw payment as soon as a charge has accrued.
- k. Contracts Code - upon termination of a Customer Contract you must pay all fees and charges that are invoiced, within 7 days of the invoice unless we agree to a longer time.

## 19. Payment of invoices:

- a. You must pay our invoices within 7 days by direct debit, 7 days by EFT or by such other means of payment that we approve.  
Your direct debit form signed relating to services provided from Australian IT Solutions Pty Ltd, National Voice and Data Pty Ltd or Australian Comms Group or Protected Networks is still valid for processing all “Our Kloud Pty Ltd” and “Our Kloud Billing Pty Ltd” invoices and will be processed on the due date.  
Your authority signed on the direct debit form from our original merchant facility extends to new merchant facilities that we will have available under Our Kloud Pty Ltd and Our Kloud Billing Pty Ltd.
- b. Apart from our other rights in case of non-payment, we may suspend any Services and/or charge interest and or a one off fee for late payment.
- c. Interest will be calculated at the rate specified from time to time under the Penalty Interest Rate Act. (VIC) (NSW) (QLD), calculated daily.
- d. If your payment is dishonoured then we may pass on our bank’s dishonour fees and a one off administrative fee to you.
- e. Collection and recovery of unpaid monies owing may incur collection, legal and / or other fees of which we may pass on to you.

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## 20. Disputes:

- a. We always encourage dispute resolution by discussion, and we invite you to raise issues with us informally at first instance.
- b. In some circumstances, you may have a statutory right to refer a complaint or dispute to a third party e.g. the Telecommunications Industry Ombudsman. Nothing in your Customer Contract affects those rights, but we still encourage you to discuss issues with us before taking other steps.
- c. We divide disputes into two product groups – Billing Disputes and general disputes. When a formal dispute resolution process is required, we use a particular procedure for each of them.
- d. Contracts Code - you may make a complaint, or claim to any competent body authorised to hear your complaint or claim, and any remedy that is available to you by operation of law is not excluded.

## 21. Billing disputes:

- a. You may dispute charges in an invoice by written notice that:
  - I. you give to us within 14 days of the date of the invoice;
  - II. clearly identifies you and the invoice you dispute;
  - III. detail the grounds of your dispute.
- b. We will acknowledge your notice within 21 days.
- c. You must still pay the disputed invoice by its due date. If we uphold your dispute, we shall credit your account within a reasonable time.

## 22. General disputes:

- a. If a Customer Contract includes a service level guarantee that deals with a dispute between us, the dispute must be dealt with according to that service level guarantee.
- b. If you dispute an invoice, the dispute must be dealt with under clause 21.
- c. Otherwise, if you have a dispute with us then you must notify us by notice in writing which must:
  - I. be given to us within 14 days of the date of the invoice;
  - II. clearly identifies you and the invoice you dispute;
  - III. detail the grounds of your dispute.
- d. We will acknowledge your notice within 7 days.
- e. You must still pay all invoices by their due date.

## 23. Minimum terms:

- a. If a Customer Contract has a Minimum Term:
  - I. you cannot cancel it during the Minimum Term (except in specific cases where these terms say otherwise);
  - II. you cannot cancel your services within that Customer Contract during the Minimum Term unless you agree to “payout” the balance of your Customer Contract which is calculated as follows:  
(Minimum Monthly Charges X Remaining Months) + 10% Administration Fee = Payout Amount
  - III. after that, either of us may cancel it by giving the other at least 30 days written notice, ending at the end of a Billing Month; and otherwise it continues until one of us cancels it.

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#### 24. Repeating terms:

- a. If a Customer Contract has a Repeating Term, it serially repeats for that term unless one of us gives the other written notice that they do not wish to repeat it.
- b. If a notice under clause 24 (a) is given less than a month before the end of the current term, it takes effect at the end of the next term, not the end of the current term.
- c. Contracts Code – where you enter into a Fixed Term (or Repeating Term) Customer Contract we will obtain your consent a reasonable time before the expiry of it, before any renewal or extension of your Customer Contract.

#### 25. GST:

- a. Except where express provision is made to the contrary, the consideration payable by the Customer under this agreement represents the value of any taxable supply for which payment is to be made.
- b. Subject to us supplying you with a valid tax invoice, if we make a taxable supply for a consideration, which represents its value, then you will pay, at the same time and in the same manner as the value is otherwise payable, (or, if for any reason that does not happen, without delay after we request you to) the amount of any GST payable in respect of the taxable supply.
- c. Subject to us supplying you with a valid tax invoice, if this agreement requires you to pay, reimburse or contribute to an amount paid or payable by us in respect of an acquisition of a taxable supply from a third party, the amount required to be paid, reimbursed or contributed by you will be the value of the acquisition by us less any input tax credit to which we are entitled plus, if our recovery from you is a taxable supply, any GST payable under clause 25 (b).

#### 26. Support for services:

- a. We will support a Service as specified in the Customer Contract.
- b. We are not obliged to support a Service in any way that is not specified. For instance, unless a Customer Contract states otherwise, we are not obliged to provide:
  - I. on-site support;
  - II. software or hardware support; or
  - III. support outside Business Hours.
- c. If a Customer Contract includes a service level guarantee, we will provide support in accordance with it.

#### 27. Acceptable Use Policies:

- a. You must comply with any Acceptable Use Policy (“AUP”) we publish, as amended from time to time.
- b. We will not unfairly use an AUP to change the express provisions of a Customer Contract, or of imposing increased charges.

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## 28. Other Customer obligations:

- a. You must:
  - I. supply, set-up, configure and maintain your own computer and communications equipment;
  - II. obtain any permit, licence or consent which you are required to have for the Service to be provided;
  - III. be responsible for all data that you retrieve, store, transmit, or use in any other way;
  - IV. back up all your data;
  - V. maintain the security of your password and user identification;
- b. You must not:
  - I. do anything which will damage or interfere with our network or facilities;
  - II. do anything unlawful with a service;
  - III. share a service with any third party without our written consent; or
  - IV. do anything with a service which may subject either you or us to a claim.

## 29. Your responsibility for use of your service:

- a. When we provide a Service under a Customer Contract with you, you are responsible, and must pay, for all use of that Service, by you or anyone else; and you are responsible, and must pay, for use by anyone else even if they used the Service without your knowledge or authority.

## 30. Suspension of services:

- a. We may suspend service under a Customer Contract without notice and without any liability for loss and without prejudice to our rights under the Customer Contract or at law if:
  - i. we suspect that your Service has been accessed without authority, or the integrity of the your Service has been compromised;
  - ii. we suspect that your Service has been used for unlawful purposes;
  - iii. you have not paid money you owe us;
  - iv. we consider it is necessary to protect our network;
  - v. you or a guarantor has an adverse credit report;
  - vi. you are in breach of clause 18 (g) or any other clause of your Customer Contract;
  - vii. a governmental or law enforcement agency asks us to do so;
  - viii. a Wholesaler requires us to do so;
  - ix. we consider that unless we do so, there is an unacceptable risk that there will be a breach of a law or of an agreement between us and a Wholesaler; or
  - x. you have changed your contact details without informing us.
  - xi. there is any appointment of an insolvency administrator to the customer.
- b. Suspension does not affect your liability for charges under your Customer Contract.
- c. Unless the reason or circumstance that caused the suspension is resolved to our satisfaction within seven days, we may terminate your Customer Contract.
- d. Contracts Code – We may only suspend services under your Customer Contract for a maximum period of 60 days before we terminate.
- e. Suspended Services may be reinstated if we in our sole discretion decide that you have materially addressed the conditions in 30 (a) subject to the payment within 7 days of a reinstatement charge which we will calculate according to the nature of the suspending condition but in no case will the charge exceed twenty-five percent of the Recurring Charges for your Services.

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### 31. Termination of a Customer Contract or Service:

- a. A Customer Contract or Service can only be terminated:
  - i. on written notice by either party, given after its Minimum Term has expired and in accordance with clause 31 (f). Such a notice takes effect at the end of the next Billing Month that occurs at least 30 days after the notice was given; or in accordance with clauses 31 (b), or 24; or in any other way that the Customer Contract allows.
- b. We may terminate your Customer Contract/s or Service/s immediately if you:
  - i. become insolvent;
  - ii. are subject to an application for winding up;
  - iii. are subject to any form of external administration or management;
  - iv. fail to pay us money within 14 days of it being due;
  - v. breach a Customer Contract and fail to remedy the breach within seven days after receiving a notice requiring that it be remedied;
  - vi. die;
  - vii. have provided false or misleading information to us – and in any other circumstances where the Customer Contract allows us to.
- c. If we terminate a Customer Contract or Service because you have breached it, you must pay us, on invoice, the charges that would have been payable under that Customer Contract or Service if it had not been terminated until after any Minimum Term.
- d. If you have more than one Customer Contract, and you breach one of them, you are in breach of all of them. We can terminate any or all of your Customer Contracts, or exercise any other rights we have under a Customer Contract.
- e. You acknowledge that any charges payable under clause 31 (c), or any other clause under your Customer Contract, on account of early termination, are a reasonable estimate of our likely loss as a result of termination.
- f. The cancellation process will not commence whilst monies are still owed for the service/s provided. Minimum Monthly charges will continue to be charged until all outstanding monies are paid in full.

### 32. Warranties and liability:

- a. To the extent permitted by law we:
  - i. will provide Services with reasonable care and skill but do not warrant that they will be provided without fault or disruption;
  - ii. do not provide a service level guarantee or any guaranteed service level unless the Customer Contract states otherwise;
  - iii. do not provide a warranty for hardware provided under a Customer Contract, but we will (where capable of assignment) assign the benefit of any Manufacturer's Warranty to you.

Except for any express warranties in a Customer Contract, to the extent permitted by law we disclaim all express and implied warranties in relation to a service or a Customer Contract.

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- b. In the case of any breach of a Customer Contract, or any negligence for which we are responsible, or breach of a condition or warranty that legislation prohibits us from excluding (which condition or warranty shall accordingly be included), our liability to you will be limited, at our option, to:
- i. if the breach or negligence relates to goods –
    1. replacement of any goods involved or the supply of equivalent goods;
    2. the repair of such goods;
    3. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    4. the payment of the cost of having the goods repaired; and
  - ii. if the breach relates to services –
    1. supplying of the services again; and
    2. the payment of the cost (for the period of the breach) of having the services supplied again.
    3. In no circumstances are we liable for any indirect, secondary or consequential loss or loss of income that you or anyone else may suffer.

### 33. Your indemnities:

- a. You indemnify us (on a full indemnity basis including all legal costs and expenses) against any Claim, Loss or damage we suffer to the extent that it arises from any act or omission; any breach of any law; any breach of a Customer Contract or an AUP; any unauthorised use of a Service – by you or anyone using a Service we provide to you.

### 34. Who is responsible for the safety of data and set up?

- a. Unless a Customer Contract specifies that we will create a back up of any data and/or customised software set up of yours, you are solely responsible for ensuring that you have a complete, working back up of them.
- b. We are entitled to assume that you have complied with clause 34 (a).
- c. You indemnify us against loss or damage that you or anyone else suffers as a result of damage to data or customised software set up on your computer system.
- d. We are not obliged to provide you or any third party with historical data (e.g. material that used to be stored on our server).
- e. You do not have any rights to any particular user identification, password, customer number, IP address, or any other thing which we may provide as part of a Service. We can direct you to change these at anytime.
- f. We are not required to store any email or data in accounts that are not active, and we are not responsible for any loss or damage because of this.

### 35. Matters you acknowledge:

- a. A Customer Contract may state that you acknowledge certain matters.
- b. You must accept service from us subject to those matters, and none of them constitutes a defect in service.
- c. You release us from all losses and claims in respect of, or out of, such matters or their consequences.

### 36. Will we monitor your system?

- a. Unless a Customer Contract states otherwise, no Service is provided on the basis that we will monitor your computer system or any part of it; follow up or review any issue once it has been attended to; update, upgrade or patch anything in future; and/or notify or remind you about anything in future.

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### 37. What if we supply equipment to you?

- a. If we sell any equipment to you:
  - i. we retain title to and ownership of that equipment until it is paid for in full;
  - ii. risk of loss or damage passes to you when it is delivered to your premises;
  - iii. you must fully insure it from the time of delivery and maintain the insurance until you obtain title, and failing that until the equipment is delivered up to us;
- II. you must not mortgage, charge or encumber the equipment without our written consent; and loan, rent, licence, transfer or assign or part with possession of the equipment without our written consent.

### 38. What if our staff attend your premises?

- a. If our staff attend any premises at your request, you must ensure that the premises are safe and free of risks to life, health or welfare.

### 39. What records may be kept?

- a. We may make and keep any record that we reasonably require for the purpose of operating our business. All such records are our sole property.

### 40. How must Confidential Information be treated?

- a. Each party must treat the Confidential Information of the other party as confidential and commercially valuable and ensure that its Representatives do the same.
- b. You consent to us accessing your information and data for legitimate purposes to provide the Service, improve the Service or respond to complaints. The terms of clause 40 (a) apply to this clause.

### 41. What laws must you observe?

- a. You must observe all laws of Australia in relation to your use of our Services.

### 42. Privacy

- a. We may deal with your Personal Information in accordance with our privacy policy <http://www.ourkloud.com.au/privacy-policy/> as amended from time to time.
- b. We may use your Personal Information for promotional and marketing purposes until you request to opt out of receiving such information.

### 43. What if there is Force Majeure?

- a. We are not responsible for the consequences of Force Majeure.

### 44. How can we inform you?

- a. We can “inform” you of a matter under a Customer Contract by giving you a notice under clause 45, or in any other reasonable way, such as orally.

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2-4 Birmingham Street  
Alexandria, NSW 2015

#### Brisbane

Level 22  
69 Ann Street  
Brisbane QLD 4000

#### Melbourne

Suite 21, Level 3  
799 – 807 Springvale Road  
Mulgrave VIC 3170

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f 1300 900 756  
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#### 45. How do we deliver notices?

- a. Some laws (e.g. the Telecommunications (Standard Form of Agreement) Determination) regulate the way in which certain notices can be given. This clause is subject to any such laws.
- b. We can give you a notice:
  - i. by emailing the notice (or a hyperlink to a web page that contains the notice) to the most recent email address you supplied to us; or any nationalvd.com.au email address you have; or to any email address whose mail server we host;
  - ii. by fax to the most recent fax number you supplied to us;
  - iii. by ordinary mail or hand delivery to the most recent postal address you supplied to us, or (if you are a company) to your registered office;
  - iv. by hand delivery to you;
  - v. by sending the notice by SMS to the last mobile phone number you supplied to us;
  - vi. by publishing the notice on our web site and sending you an alert about the notice (including its web site address) by SMS to the last mobile phone number you supplied to us;
  - vii. in any other way permitted by law.
- c. Any notice that we send you is deemed to have been received by you as follows:
  - i. if it (or a hyperlink to it) is emailed: one hour after it leaves our mail server;
  - ii. if it (or a hyperlink to it) is emailed to a nationalvd.com.au email address that you may have: one
- d. hour after we send it;
  - i. if it is faxed: when our fax machine issues a successful delivery record;
  - ii. if it is mailed: at 10 a.m. on the second Business Day after posting;
  - iii. if it is hand delivered to you or your postal address or (if you are a company) your registered office at the time of delivery;
- e. if it is delivered in another way – at the time when it would have been delivered in the normal course of that way of delivery.
- f. A notice from us need not be signed.
- g. You consent to us using email for any notice under the Telecommunications (Standard Form of Agreement) Determination.

#### 46. How can you give us a notice?

- a. You can give us a notice by fax to the current fax number indicated by our web site contact details page; or by ordinary mail or hand delivery to the current postal address indicated by our web site contact details page – and in no other way.
- b. Any notice that you send us has no effect until we actually receive it. Even then, it has no effect:
  - I. if it is mailed: before noon on the second Business Day after posting;
  - II. if it is received outside Business Hours: before noon on the next Business Day;
  - III. if it is received after 3.00 p.m. on any day: before noon on the next Business Day.
- c. A notice from you must be signed. We are never obliged to verify any mark that purports to be your signature. If you are a corporation, we are never obliged to verify the authority of anyone who purports to sign on your behalf.
- d. Any notice that you send us must be in the English language.

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#### 47. What is the Customer Contact?

- a. On our request, you must nominate at least one Customer Contact.
- b. You must keep us informed of current and accurate contact details of your Customer Contact/s.
- c. A Customer Contact must be contactable at all reasonable times.
- b. We may deal with a Customer Contact on the basis that they are your Representative and have your full authority.
- c. A person remains your Customer Contact until we are given notice that they are no longer your Customer Contact.

#### 48. How can rights be waived?

- a. No right under a Customer Contract can be waived except by notice in writing signed by the party waiving it. If a party overlooks a breach by the other party on one or more occasions, it is not taken to have agreed to any future breach.

#### 49. Assignment

- a. You may not transfer your rights or obligations under a Customer Contract to or share them with anyone without our prior written consent.
- b. We may transfer our rights or obligations under this agreement to or share them with anyone on notice to you.

#### 50. Credit checking

- a. You authorise us to do the things set out in this clause 50 and acknowledge that we may do so, whenever we see fit for as long as a Customer Contract continues or you owe us any money.
- b. We may use a credit report (within the meaning of the Privacy Act 1988 (Commonwealth)) on you to assess your creditworthiness or for debt recovery purposes.
- c. We may give to a credit reporting agency any information we have about you to enable us to obtain a credit report.
- d. We may exchange information about you with other credit providers or a credit reporting agency.
- e. You acknowledge that we are authorised to do the things set out in this clause 50 under the Privacy Act 1988 (Commonwealth) and that to assess or review your creditworthiness, we may:(a) request a third party to report about the your creditworthiness; and (b) disclose financial, credit and other information about you to any person.
- f. You must cooperate with any enquiries that we make about your creditworthiness and provide any further information, consent or authority we reasonably require.

#### 51. Third party software usage restrictions

- a. If we provide any third party software to you, then we do so subject to the licence terms and conditions that apply to that software; and you are solely responsible for ensuring the suitability and compatibility of the software.
- b. If you use software not distributed or approved by us, you acknowledge that it may result in interference to the service or it may result in loss, which we are not responsible for.

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## 52. Severance

- a. If any provision in this agreement is unlawful or inconsistent with any law, then to the extent of the unlawful nature or inconsistency, that provision may be severed from without affecting the remainder of the agreement.

## 53. Applicable Law

- a. This agreement irrespective of where services are delivered to, and any Customer Contract irrespective of where the contract was originally signed are governed by the law of New South Wales, Australia. Subject to clause 41, any legal proceedings relating to them can only be taken in courts with jurisdiction in New South Wales.
- b. Contracts Code - the governing law of your State or Territory in which you ordinarily reside and the jurisdiction of the Courts in that jurisdiction are not excluded.

## 54. What if time expires on a holiday?

- a. Anything that can or must be done on or before a day that is not a Business Day can be done on the next Business Day.

## 55. Codes Compliance

- a. Where Codes apply to you, terms consistent with the Codes will be included throughout this document these form part of your Customer Contract and override anything to the contrary.
- b. If the Codes apply to you:
  - I. and the Codes are varied after the commencement of these Basic Conditions, your Customer Contract is subject to the variations to the Codes;
  - II. the Code terms under clause 55 (a) are not intended to limit your rights under the Codes and do not form an exclusive list of your rights under the Codes;
  - III. your Customer Contract must be read subject to the Codes.

## 56. Spam

- a. You may not use a Service to:
  - I. send, allow to be sent, or assist in the sending of Spam;
  - II. use or distribute any software designed to harvest email addresses; or
  - III. otherwise breach the Spam Act 2003 or the Spam Regulations 2004 of the Commonwealth.
- b. In addition to our other rights, we may suspend our provision of the Service to you in the following events:
  - I. if the Service provided to you is being used to host any device or service that allows email to be sent between third parties not under your authority and control; or
  - II. if you are in breach of clause 56 (a);
  - III. provided however that we will first make reasonable attempts to contact you and give you the opportunity to address the problem within a reasonable time period. What is reasonable in this context will depend on the severity of the problems being caused by the open service or breach referred to above.
- c. You agree to use your best endeavours to secure any device or network within your control against being used in breach of clause 56 (a) by third parties, including where appropriate:
  - i. the installation and maintenance of antivirus software;
  - ii. the installation and maintenance of firewall software; and
  - iii. the application of operating system and application software patches and updates.

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- d. Our right to suspend your account applies regardless of whether the open service is provided or the breach is committed intentionally, through mis-configuration, or by other means not authorised by you including but not limited to through a Trojan horse or virus.
- e. We may scan any IP address ranges allocated to you for your use with the Service in order to detect the presence of open or otherwise mis-configured mail and proxy servers.
- f. If the Service is suspended and the grounds upon which it was suspended are not corrected by you within 7 days, we may terminate the Service.
- g. If the Service is terminated under clause 56 (f), in addition to our other rights, we may levy a reasonable fee for any costs incurred as a result of the conduct that resulted in the suspension.

#### 57. Who pays government charges?

- a. You must pay stamp duty and other government charges in relation to a Customer Contract.

#### 58. Interpretation

In this agreement or a Customer Contract, unless the context indicates otherwise:

- a. Glossary:

Expression	Meaning
AUP	Acceptable Use Policies
Base Allowance	a service use allowance below the amount that attracts excess use charges e.g. if an internet access service allows 2 GB in downloads before excess use charges apply, 2 GB is the "Base Allowance"
Basic Conditions	this document
Billing Dispute	a dispute or difference between us as to whether you are liable to pay an amount that we have invoiced to you
Billing Month	has the meaning given by clause 18 (i)
Business Day	any day from Monday to Friday inclusive, excluding any public holidays observed in Queensland and New South Wales
Business Hours	between 8:30 a.m. and 5 p.m. on a Business Day
Claim	any demand, or allegation of liability, and all related costs, claims, demands, liability, damages, losses and expenses of any nature including all legal expenses suffered or incurred
Code terms	terms and conditions required to be included in all Customer Contracts – in this document, they are the terms contained in the boxes throughout it
Codes	all compulsory industry codes which apply to us by operation of law, and includes the Contracts Code and Credit Code includes the Contracts Code and Credit Code
Contracts Code	ACIF Code C620:2005 Consumer Contracts as amended from time to time
Credit Code	ACIF Code C541:2006 Credit Management as amended from time to time
Confidential Information	any information of a party which the other party knows or should know is confidential to the other party, for as long as it remains confidential, or would have remained confidential except for a wrongful disclosure by the first party
Credit Card Authority	a written authority to debit your credit card (or a verbal authority to do so), in the form available on our website

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Glossary Continued

Customer	has the meaning given by clause 2
Customer Contact	a person/s nominated by you under clause 47
Customer Contract	the documents indicated by clause 8
Customer Equipment	server/s and associated equipment and, where they are connected to telecommunications services provided by a carrier, those connections
Direct Debit Authority	a written authority to debit your bank account, in the form available on our website
Disputed Amount	in relation to a Billing Dispute means the amount within the relevant invoice that you dispute liability to pay
Excess Use Charge	a charge for use of a service in excess of any Base Allowance in Mega Bytes (MB)
Fixed Service Fees	fees for any service that apply on a once only basis, or on a periodic basis and are not variable based on data volumes as between periods
Force Majeure	an event or circumstance beyond our reasonable control
General dispute	any dispute or difference between us other than (a) a Billing Dispute or (b) a claim by us solely for the payment of money
Glossary	this table of defined terms
GST	GST within the meaning of the GST Act
GST Act	A New Tax System (Goods and Services Tax) Act 1999 (as amended)
Loss	any harm, losses or expenses of any nature whether direct or indirect, secondary or consequential suffered by you or anyone else
Manufacturer's Warranty	a warranty given by the manufacturer or distributor of a thing, or a person from whom we obtain a thing for resupply
Minimum Term	a period that we specify as such from the issue of an SCA (Service Completion Advise) for an order item or items
Office Hours	between 9 a.m. and 5 p.m. on a Business Day
Our Kloud	Our Kloud Pty Ltd ACN 603 675 529
Recurring Charge	a fee payable at regular intervals e.g. an amount per month
Personal Information	the same thing as in the Privacy Act 1988
Price List	our list of fees and charges published from time to time
Repeating Term	a period that we specify as such from the completion of a previous Minimum Term
Representative	a delegate, authorised Representative, employee or agent
Service	any service that you request and we agree to supply, generally as described in a Service Description
Service Conditions	has the meaning given by clause 5
Service Description	a guide or description we publish, describing a service we offer, as amended from time to time
Set-up Charge	a charge that we describe as such, or any charge that we require to be paid in respect of the set up or establishment of a service
Undisputed Amount	in relation to a Billing Dispute means the amount within the relevant invoice that you do not dispute liability to pay
Wholesaler	a third party whose services we utilise in providing a service to you

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b. Interpretation:

- i. If an expression is defined in the Glossary in clause 58 (a), that is what it means.
- II. If an expression is defined in the Glossary, grammatical derivatives of that expression have a corresponding meaning.
- III. Headings and footnotes are only for convenience. They are to be ignored when interpreting the agreement.
- IV. A schedule to a document is part of that document.
- V. A reference to the singular includes the plural and vice versa.
- VI. Where one thing is said to include one or more other things, it is not limited to those other things.
- VII. There is no significance in the use of gender-specific language.
- VIII. A “person” includes any entity which can sue and be sued.
- IX. A “person” includes any legal successor to or Representative of that person.
- X. A reference to a law includes any amendment or replacement of that law.
- XI. Anything that is unenforceable must be read down, to the point of severance if necessary.
- XII. Anything a party can do, it may do through an appropriately authorised Representative.
- XIII. Any matter in our discretion, including anything that we “may” do, is in our absolute and unfettered discretion.
- XIV. Expressions in clause 25 in italics have the same meaning as in the GST Act.
- XV. Apart from the matters set out in black and white in a Customer Contract, we are not obliged to provide any service, and make no promise or representation, to you.

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Mulgrave VIC 3170

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