



GENERAL TERMS AND CONDITIONS –

CLOUD HOSTING SCHEDULE

1. Service Schedule application

- 1.1 The terms of this Schedule apply where the Supplier is supplying Cloud Hosting services to the Customer, as described in the Solutions Document. In accordance with the General Terms and Conditions these terms take precedence over any other terms in respect of the supply of Cloud Hosting services in the case of any inconsistency.

2. Supply terms

- 2.1 The terms set out in Appendix 1 below apply to the Cloud Hosting services provided to the Customer.
- 2.2 The terms set out in Appendix 2 below set out the Service Level Agreement that applies in respect of the Cloud Hosting services.
- 2.3 Reference to “we”, “us”, and “our” is a reference to the Supplier and references to “you” and “your” refer to the Customer.

Appendix 1

1 Definitions

- 1.1 **"Acceptable Use Policy"** means our Acceptable Use Policy at: www.conekt.com.au/legal
- 1.2 **"Assets"** means your assets stored or kept at the Location.
- 1.3 **"Billing Dispute"** means a dispute relating to an issued charge and/or an invoice.
- 1.4 **"CDN"** refers to a Content Delivery Network.
- 1.5 **"Cloud Connect"** means Veeam offsite storage and backup files.
- 1.6 **"Co-Location"** means the running of a client's equipment in the facilities of our Third Party Provider.
- 1.7 **"Fees"** means the fees specified in the Agreement.
- 1.8 **"Force Majeure Event"** means any occurrence or omission outside a party's control and includes:
 - 1.8.1 a physical natural disaster including fire, flood, lightning or earthquake;
 - 1.8.2 war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
 - 1.8.3 epidemic or quarantine restriction;
 - 1.8.4 ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
 - 1.8.5 confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
 - 1.8.6 law taking effect after the date of this agreement; and
 - 1.8.7 strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.
- 1.9 **"Gigabyte"** or **"GB"** means 1073741824 eight-bit bytes.
- 1.10 **"Location"** means the location where your hardware or equipment is located or stored.
- 1.11 **"Related Body Corporate"** has the meaning given to that term by section 9 of the Corporations Act.

1.12 "**Services**" means any product(s) or service(s) you have signed up to use. This can include, but is not limited to, the provisioning of space on one of our servers, a connection to and from the internet for web, email and FTP functions, Virtual Private Servers and Cloud Infrastructure. These product(s) and service(s) are fully identified within the Agreement.

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

1.14 "**Term**" means the term contemplated by clause 3.1.

1.15 "**Third Party Provider**" means any third-party provider that we engage to provide the Services from time to time on our behalf.

2 Acceptance

2.1 You acknowledge that we supply the Services subject to the terms and conditions of our Service Level Agreement, Privacy Policy and Acceptable Use Policy.

2.2 You acknowledge having read the above documents and warrant that you understand the nature and effect of those documents and agree to be bound by them.

3 Term and Early Termination Fee

3.1 You commit to the term for Services as set out in the Solutions Document and thereafter on an ongoing month-to-month basis subject to written cancellation by you or your commitment to a further term.

3.2 If you terminate the Services at any time prior to the expiration of the Term you will be liable to us for the remaining fees that would be payable to us as if you had completed the Term.

4 Server Use

4.1 You acknowledge that:

4.1.1 we provide access to servers subject to terms and conditions of a Third Party Provider that has the right to refuse service and/or access to its servers to anyone;

4.1.2 we do not allow any of the following content to be stored or accessed on our Third Party Provider's servers or within any other owned equipment connected to their network:

i) Illegal material, including copyrighted works, commercial audio, video, or music files, and any material of any type in violation of any Federal, State or Local law or regulation anywhere in the world.

ii) Adult material, including pornography, erotic images, or otherwise lewd or obscene content of any type. What constitutes "adult material" is entirely at the discretion of the Third Party Provider.

iii) Bittorrent.

- iv) Warez, including pirated software, ROMS, emulators, phreaking, hacking, password cracking. IP spoofing, etc., and encrypting of any of the above. Also includes any sites which provide "links to" or "how to" information about such material.
- 4.2 You will comply, and will ensure that you comply, with our Acceptable Use Policy. You confirm that you have read and understood the Acceptable Use Policy prior to signing this Agreement.

5 Availability of Services

- 5.1 We will endeavour to provide continuous availability of all Services to you, however, we will not be liable for any service interruptions or downtime.
- 5.2 Scheduled maintenance will be performed at times which is deemed suitable by us which has the least noticeable impact on you, and should it require the Services to be offline for greater than thirty (30) minutes, We will post details of the scheduled maintenance at least two (2) days prior. You are required to raise any conflicts you may have with a scheduled maintenance window within one (1) day of the notification being sent.
- 5.3 Unscheduled maintenance will be performed as required and should the Services be offline for greater than thirty (30) minutes we will post details of the maintenance and any updates until it has been completed.
- 5.4 In some cases, we will utilise the services of other providers, such as when overseas services are required. We have no direct control over all services provided by other providers and hence will not be liable for any service interruptions or downtime. Third Party Provider will ensure that any such downtime is communicated to you.

6 Data Charges

- 6.1 Traffic Charges are calculated in accordance with either of the following two options:
 - 6.1.1 Flat Rate, where the monthly Traffic Charges are fixed and do not vary in relation to traffic usage; or
 - 6.1.2 Usage Based, where the Traffic Charges are calculated at the rates set out in the Solutions Document and, in respect of each month during the term of this Agreement, shall be the greater of:
 - (i) the amount specified in the Agreement as the Minimum Monthly Fee payable; or
 - (ii) the total amount calculated at the rate per Gigabyte specified in the Agreement, for inbound traffic (i.e. traffic sent from the Servers network to Your network); and
 - (iii) the total amount calculated at the rate per Gigabyte specified in the Agreement, for outbound traffic (i.e. traffic sent from your network to the internet).

- 6.2 We determine the volume of traffic calculated by the number of Gigabytes and that calculation shall be final and binding on the parties.

7 Power Charges

- 7.1 In the case where you have servers co-located within the facilities of our Third Party Provider, you have been allocated a certain amount of power for each piece of equipment, as outlined in the Solutions Document.
- 7.2 If your equipment power usage exceeds the amount allocated, you will be asked to purchase additional power capacity to meet the requirements of your server.

8 Access Charges:

- 8.1 Outside of the free monthly visits (if any) as specified in the Solutions Document, you will be charged at the rate outlined or referred to in the Solutions Document for access to your equipment. Additional charges may occur for out-of-standard business hours.

9 Limitation of Liability

- 9.1 We shall not be liable to you for harm caused by or related to your Service or inability to utilise the Service unless caused by our gross negligence or wilful misconduct.
- 9.2 Notwithstanding anything else in this agreement, the maximum aggregate liability of us, any of our employees, agents or affiliates, under any theory of law shall not exceed a payment in excess of the amount paid by you for the Service in question for the six months prior to the occurrence of the event(s) giving rise to the claim.

10 Client General Warranties and Undertakings

- 10.1 You warrant that you will keep any passwords or sensitive information used with the Service in a secure location.
- 10.2 You warrant that you hold and will continue to hold the copyright for data stored on our Third Party Provider's servers, or that you are licensed and will continue to be licensed to use that data.
- 10.3 You warrant that at the time of entering into this agreement you are not relying on any representation made by us which has not expressly stated in this agreement.
- 10.4 You warrant that all due care has been taken to ensure data integrity on our Third Party Provider's servers. This includes an undertaking that you will conduct computer virus scanning and other tests as necessary to ensure that the data uploaded by you onto or downloaded by you from the server does not contain any computer virus and will not in any way, corrupt the data or systems of any person.
- 10.5 You agree that you are solely responsible for dealing with anyone who accesses your data, and that you will not refer complaints or inquiries in relation to such access to us.

11 General Warranties and Undertakings

11.1 We accept liability for the supply of the Service to you to the extent provided in this agreement.

11.2 We do not warrant that:

11.2.1 the Services provided within this agreement will be uninterrupted or error free;

11.2.2 the Services will meet your requirements, other than as expressly set out in this agreement;

11.2.3 the Services will not be subjected to external hacking attempts, viruses, worms, denial of service attacks, or other persons gaining unauthorised access to the Service or our internal Third Party Provider systems.

11.3 We do not make or give any express or implied warranties including, without limitation, the warranties of merchantability or fitness for a particular purpose, or arising from a course of dealing, usage or trade practice, with respect to any goods or services provided under or incidental to this agreement, except as required by law.

11.4 No oral or written information or advice given by our representatives or employees, to you, shall create a warranty or in any way increase the scope of the express warranties hereby given, and you should not rely on any such information or advice.

12 Fees and Credit Management

12.1 In relation to fees for Services:

12.1.1 Fees for Services ordered by you shall begin on the date specified on the Agreement and shall be prorated to include all days until the first day of the next month, and the chosen billing cycle in advance. This may be monthly, quarterly, semi-annually, annually or biennially as determined by us.

12.1.2 The first day of the month will serve as the anniversary date for all future billings including one time fees, upgrades, additional services, cancellations and service credits, unless the Services only allows annually or biennially billing cycles (eg. domain name registrations, etc).

12.1.3 Fees are due in advance of the billing cycle and will be invoiced to you seven (7) days prior to the due date. If a credit card or Direct Debit details are stored on file, we will charge three (3) days prior to the due date, to allow sufficient time for any potential issues (such as insufficient funds, expired cards, etc) to be rectified before the due date.

12.1.4 All fees are due within the period specified on the invoice and as outlined in the relevant specific schedule.

12.1.5 We reserve the right to report a Customer's delinquent account to a credit reporting agency should payment remain outstanding for more than 60 days. In addition we may refer the outstanding account for debt collection or issue legal proceedings to recover any outstanding invoices. Should an account be referred for debt collection, the Customer acknowledges and agrees to pay debt collection charges to be calculated at not less than 20% plus GST and will be incurred on the day we refer the matter to their nominated debt collection agency. We shall also be liable for interest and all legal recovery costs associated with such action on a solicitor and own Customer or indemnity cost basis.

12.2 In relation to fees for DaaS:

12.2.1 Fees for services will be incurred on a monthly basis, beginning at the time of your first instance provisioning.

12.2.2 The first day of the month will serve as the anniversary date for all future billings, including one time fees, upgrades, additional services, cancellations and service credits.

12.2.3 Fees are payable in arrears, with the billing cycle beginning on the first day of the month, and ending on the last day of the month. Fees will be processed via Direct Debit at the time of invoice generation (1st day of the month, for the previous month). If your account has insufficient funds you will be liable default payment fees and are expected to make alternate payment arrangements to pay the balance outstanding per the invoice sent to you.

12.2.4 If you do not make alternate arrangements to settle your account within 3 days of the balance becoming due (date of invoice issue), we reserve the right to disable your account and suspend any currently running services.

13 Fees for upgrades to Services

13.1 Upgrades ordered by you on the billing anniversary date will be billed for a full cycle and will continue each cycle on the anniversary date, unless the Services only allows annually or biennially billing cycles (eg. domain name registrations, etc).

13.2 Upgrades ordered by you after the billing anniversary date will be prorated to the next anniversary date at the full monthly costs. Future fees will appear as the new plan from your existing anniversary billing date.

13.3 Fees for upgrades will be payable within seven (7) days of the upgrade taking place. If a credit card or Direct Debit details are stored on file, we will charge three (3) days prior to the due date, to allow sufficient time for any potential issues (such as insufficient funds, expired cards, etc) to be rectified before the due date.

- 13.4 Additional fees may be payable for upgrades where manual work is required by us to process the upgrade request (eg. single hosting to reseller hosting, intercontinental transfers, inter-server transfers, etc).

14 Fees for downgrades to Services

- 14.1 You may only downgrade your Services without penalty in circumstances where you have not entered into a fixed term Agreement with us or if you have entered into a fixed term Agreement which has expired you have given us at least 28 days written notice of your intention to downgrade.
- 14.2 In relation to fees for downgrades to Services:
- 14.2.1 Downgrades will be processed when the request is received by us from you, unless otherwise specified in the request.
- 14.2.2 A credit will be issued to your account for the difference of any pro-rated pre-paid amount minus the cost of the new plan pro-rated on the chosen cycle.
- 14.2.3 A \$150.00 administration fee may be charged for a downgrade request at our sole discretion. Additional fees may be payable for downgrades where manual work is required to process the downgrade request (e.g. intercontinental transfers, inter-server transfers, etc.).
- 14.3 Fees for one-off Services including, but not limited to, dedicated IP address, SSL certificates and data blocks, are due within seven (7) of the invoice being issued and are non-refundable.
- 14.4 The provisioning new Services is reliant upon you having paid any and all outstanding fees in full.
- 14.5 Accounts that are more than three (3) days past the due date will automatically attract an overdue administration fee of \$10.00 which will be payable on top of the invoice amount.
- 14.6 Accounts that are more than seven (7) days past the due date will be automatically suspended, and a reconnection fee of \$300.00 on top of any outstanding fees may apply to have the service restored.
- 14.7 Accounts that are not paid in full within fourteen (14) days of the due date will be deleted from our servers.

15 Suspension and Termination of Services

- 15.1 We may suspend or terminate Services if:
- 15.1.1 You are found to be in breach of these terms and conditions;
- 15.1.2 You are found to be in breach of the Acceptable Use Policy;

15.1.3 You have become insolvent or bankrupt;

15.1.4 You have outstanding fees that are more than seven (7) days past the due date;

15.2 From time to time we may be required to suspend or disconnect Services without notice, or deny access to the Service during a technical failure, modification or maintenance. If your Service is suspended for excessive resource usage in a shared environment you will be given three (3) formal written opportunities to rectify the issue before permanent suspension is applied.

15.3 We may decide at our sole discretion to advise you that your service will be terminated by giving thirty (30) days written notice. In this circumstance, we will refund any prepaid fees for Services on the account.

15.4 If your account is closed for any reason, you must pay all outstanding charges by the due dates.

15.5 We are under no obligation to provide you with a copy of the data stored on our servers if we have suspended or terminated access to the Service for any breach of terms 17.1 and 17.2. In these circumstances, a copy of the data may be provided to you for an additional fee that represents the costs associated with providing that data.

15.6 You acknowledge that it is reasonable in all the circumstances that we retain a lien over your Assets in the event that this Agreement terminates and, on such termination, any moneys remain owing to us under this Agreement. In that event, we may retain the Assets until all moneys owing have been paid.

15.7 All Assets must be collected from us within seven (7) days after the termination of your service to avoid a holding fee of up to the current average rack unit retail price

16 Cancellation

16.1 You can request cancellation of any Services with us for any reason by submitting a secure cancellation request.

16.2 You agree to immediately pay any and all outstanding fees upon cancellation of the Services.

16.3 We reserve the right to deny access to services or release data to you until the final balance has been paid.

16.4 Cancellation requests must be received by us 28 days before the package renewal date. If cancellation is not received before this time, package renewal costs generated for the next period of time will remain outstanding.

17 Infrastructure as a Service (IaaS)

- 17.1 You acknowledge that IaaS is powered by VMware vCloud, Microsoft Azure or alternate partner and is the virtual delivery of server operating systems and resources in the form of hardware, network and storage services.
- 17.2 Under the provision of IaaS, you will be allocated a monthly data traffic quota. Inbound and outbound internet traffic contribute towards this predetermined quota.
- 17.3 You acknowledge that you are responsible for all configuration and maintenance of firewalls, although firewalls will be provided as a standard protocol within the Service.
- 17.4 We do not guarantee latency, or available bandwidth from any resources to the internet or other end points where a non-dedicated link is used.
- 17.5 You hold the responsibility of ensuring that the IaaS is secure, safe and protected from any vulnerabilities. If we believe that your service is compromised and there is potential for a security breach, we may suspend the Service at our own discretion.
- 17.6 You will be allocated one or more IP addresses. Our Third Party Provider takes ownership over these IP addresses and they become their property. The IP addresses cannot be transferred outside of the network however, if you provide your own IP addresses to use within your IaaS, they will remain your property.

18 Cloud Connect

- 18.1 You acknowledge that Cloud Connect is a Veeam compatible off-site backup and storage service.
- 18.2 In order for you to be compatible with Cloud Connect, you must already possess a compatible and licenced version of Veeam on premise.
- 18.3 You acknowledge that when using Cloud Connect you will be allocated two quota's in order to implement the service:
 - 18.3.1 The number of Virtual Machines to backup; and
 - 18.3.2 Your virtual machine total disk storage in Cloud Connect measured in GB.
- 18.4 You acknowledge that you hold full responsibility over passwords and access tokens. Should your service become compromised we reserve the right to suspend or terminate the Service if no actions have been taken by you to resolve the issue in a reasonable timeframe.

19 Indemnification

- 19.1 You agree to defend, indemnify and hold us harmless against liabilities arising out of:
 - 19.1.1 any injury to person or property caused by any products sold or otherwise distributed in connection with our Third Party Provider's servers;

- 19.1.2 any material supplied by you infringing or allegedly infringing on the proprietary rights of a third party;
- 19.1.3 copyright infringement;
- 19.1.4 any defective products sold from our Third Party Provider's server and any defamatory or allegedly defamatory material on our Third Party Provider servers.
- 19.1.5 the negligence or intentional acts or omissions of any of you or your officers, agents, employees or contractors;
- 19.1.6 your use of the Services;
- 19.1.7 any breach of the Acceptable Use Policy;
- 19.1.8 the transmission of or the presence of any illegal, fraudulent or offensive material by you;
- 19.1.9 any breach of this Agreement by you; or
- 19.1.10 any wilful, unlawful or negligent act or omission of you.

20 Access to Location

- 20.1 You will use your best endeavours to give us as much notice as we require of a request to enter the Location.
- 20.2 In the case of failure of any of your Equipment requiring urgent repairs necessitating unscheduled access to the Location, You must notify us as soon as practicable and make arrangements for access to the Location.
- 20.3 Third Party Provider may charge fees for access to the Location outside of the agreed complimentary monthly visits, as specified in the relevant Solutions Document.
- 20.4 You agree to comply with our security regulations and other local site operating policies and procedures as advised by us to you from time to time.
- 20.5 You and your agents, employees and contractors must not interfere with or modify any equipment at the Location other than your Equipment.
- 20.6 You and your agents, employees and contractors must not cross-connect any of you Equipment with any other equipment at the Location without our prior written consent (which is subject to your agreement to pay additional Charges for such cross-connect Services) and the third party owner of such other equipment.
- 20.7 You will be liable for any damage to other equipment caused by you, your agents, employees or contractors.

- 20.8 Unless you have Secure Access Status (which is personal to the Key Holder and cannot be assigned or delegated without our consent.) You must be accompanied by an authorised Third Party Provider staff member when accessing the Location, and may be denied access to the Location unless accompanied by such authorised Third Party Provider staff member.

21 General Obligations

21.1 During the Term you will:

- 21.1.1 provide, monitor and maintain your own network and network security on any directly attached or accessing network to the Service including VPN and internet access points;
- 21.1.2 adhere to our and the Third Party Provider's operational procedures and technical specifications (where applicable) and any other reasonable directions given by us in relation to Your obligations under this Agreement from time to time;
- 21.1.3 not do, or permit to be done, any act which damages the reputation of us;
- 21.1.4 provide us with all information, assistance and cooperation reasonably requested by us in order to enable us to meet our obligations under this Agreement including, without limitation, all information, assistance or cooperation required in relation to the resolution of any dispute between us or any of our Related Bodies Corporate and any supplier or any other third party in relation to the Services;
- 21.1.5 ensure that all equipment that you connect to our Third Party Provider Network is appropriate, adequately maintained and meets minimum technical standards determined by the Australian Communications Authority.

22 Acknowledgements

- 22.1 You acknowledge that our Third Party Provider network is not necessarily a secure and confidential method of communications and you shall transmit data on our Third Party Provider network at your own risk.
- 22.2 You acknowledge that neither us or our Third Party Provider supervises, edits or controls the nature, content and form of any material available to be accessed through use of the Services and that we are not responsible in any way for the nature, content and form of that material, access to that material or use of that material.
- 22.3 You acknowledge that we will not be responsible for ensuring that any material sent or received by means of the Services is sent or received correctly.
- 22.4 You acknowledge that, to the extent permitted by law, we make no representations or warranties as to the effectiveness or fitness for purpose of any access restrictions, our Third Party Provider' network security or your network security. You shall make no claim against us concerning any access restrictions, our Third Party Provider's network security or your network security.

22.5 You agree not to disclose to any other person any identification or log-in information, whether in use or not, nor any other confidential information relating to the Services, other than to your employees, agents and contractors who require this information to properly perform their function.

22.6 You acknowledge that we may assign or novate our rights and obligations under this agreement and any other services agreement we may enter into with you at any time without notice and you hereby irrevocably consent to any such assignment or novation.

23 Fault Reporting

23.1 Procedures:

23.1.1 During the Term you must report any faults in relation to the Services in writing to us. You acknowledge and agree that we will only respond to faults reported in accordance with these procedures.

23.1.2 We reserve the right to charge you at our then commercial rates for fault restoration services if we respond to a request from you and we are able to demonstrate that:

- i) the failure to provide the Service to you was not due to a matter for which we are responsible; and
- ii) the fact that we are not responsible for that matter would have been disclosed upon reasonable investigation by you.

23.2 Fault Restoration Exclusions:

23.2.1 Our fault restoration obligations do not extend to faults caused as a result of:

- i) any fault in equipment, software or any network unit which does not form part of the network owned by our Third Party Provider or any of our Related Bodies Corporate;
- ii) damage due to causes external to the facilities used by our Third Party Provider to provide the Service;
- iii) interference;
- iv) Force Majeure Event; or
- v) planned outages.

24 Compliance

24.1 Privacy Obligations:

24.1.1 You must comply with your obligations under the Privacy Act.

24.1.2 You shall also comply with any reasonable direction of us with respect to the collection, use, disclosure, storage and disposal of personal information.

24.2 Compliance:

- 24.2.1 Each party shall comply with all relevant local, State and Commonwealth laws and regulations and any registered industry based codes of practice.
- 24.2.2 Each party shall comply with the provisions of the Telecommunications Act and the Interception Act. In particular, you acknowledge that we may be required to disclose information to comply with Part 13 of the Telecommunications Act. In such a case we will use our reasonable endeavours to advise you of the information provided to the enforcement agency.
- 24.2.3 Each party must provide the assistance the other party reasonably requires to comply with relevant local, State and Commonwealth laws and regulations and any registered industry based codes of practice.

25 Taxes and Disputed Invoices

25.1 Taxes:

- 25.1.1 All prices quoted for supplies made and/or to be made under this Agreement are in Australian dollars and are exclusive of GST.
- 25.1.2 If GST is applicable to any supply made by Third Party Provider under this Agreement, Third Party Provider is entitled to add to the amount otherwise payable an additional amount for the applicable GST.
- 25.1.3 You hereby agree to pay us such GST charge in the same manner and at the same time as the payment for the relevant supply.
- 25.1.4 We will issue tax invoices to you for the purposes of GST.
- 25.1.5 If required by applicable law, we will give you an adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with, this Agreement within 30 days after the date we become aware of the adjustment event.
- 25.1.6 For the purposes of this clause 25, "GST" means the Goods and Services Tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

25.2 Disputed invoices:

- 25.2.1 In the event of a Billing Dispute, you may, by written notice provided to us, invoke the dispute resolution mechanism in this agreement
- 25.2.2 A Billing Dispute must be initiated only in good faith.
- 25.2.3 You must pay all undisputed amounts in the invoice containing the Charge that is being disputed in full in accordance with this Agreement.
- 25.2.4 We are not obliged to accept a notice of a Billing Dispute in relation to an invoice unless you have complied with the above clause.

25.2.5 Subject to all of the requirements of this clause being met, we will investigate a Billing Dispute within 20 Business Days of receipt by us of a Billing Dispute Notice, and will report to you on our findings as soon as possible after completing such investigation.

25.2.6 Where you are required to pay a previously disputed Charge that you withheld, you shall pay interest at the Interest Rate on any such amount. Interest shall accrue daily from the date on which each relevant amount was first withheld by you until the date it is paid in full to us.

25.3 Notification of Disputed Invoices:

25.3.1 You must notify us of any Billing Dispute within 30 days of the date of receipt of the invoice to which the dispute relates (in relation to which time is of the essence) by submitting a completed Billing Dispute Notice to us by email.

25.3.2 You must provide any further details reasonably requested by us in relation to the Billing Dispute.

25.4 Failure to notify us

25.4.1 In the event that you do not:

- i) notify us of a Billing Dispute within the time period; or
- ii) provide the requested additional information to us within 14 days of receipt of our request for further information; or
- iii) pay all amounts (excluding any disputed amounts, subject to Your compliance with this agreement) in the invoice to which the Billing Dispute relates by the due date,
- iv) then all amounts in the invoice to which the Billing Dispute relates will be deemed to be agreed and accepted by you and acknowledged as a debt due and payable in accordance with the terms of this agreement.

Appendix 2

Service Level Agreement

1 Service Level Agreement

- 1.1 We will take commercially reasonable efforts to make our services available to you with a guaranteed service availability of at least 99.9% as measured over any calendar month.
- 1.2 The SLA covers the availability of our services as well as the environment (servers, storage, routers, switches, internet connectivity) they run on and that is either under our or our Third-Party Provider's exclusive control. This SLA does not apply to any outages or downtime related to scheduled maintenance, scheduled outages or your initiated downtime. It also does not cover any services running within our environments that are not managed by us. This SLA is only applicable to products that are deemed as "Released Products" and does not apply to products identified as being in "Beta" release phase.
- 1.3 If we do not comply with this SLA commitment, you will be eligible to receive a Service Credit for the Eligible Service Credit Period.

2 Definitions

- 2.1 **Availability** is measured as a percentage of time that the service is operational and contactable from the wider Internet. This is measured over any calendar month. This availability percentage does not include any scheduled outage, where the required notice period has been met.
- 2.2 **Beta** - when a product is released to the market for testing and feedback. You should not run mission critical services on a product marked as Beta, and we assume no liability for loss of data held within a Beta product.
- 2.3 **Eligible Service Credit Period** - is a single calendar month in which the 'Service Outage' occurred.
- 2.4 **Scheduled Outages** - when maintenance is required to be performed on the system, we will schedule an outage window. A period of at least 5 days notice will be given to clients regarding a scheduled outage window.
- 2.5 **Service Credit** - is a dollar credit (in AUD), as calculated below, that is credited to your account once an SLA claim has been approved.
- 2.6 **Service Outage** - is defined as the situation when a Customer instance is not available to the wider Internet or where the Customer instance is unable to be restarted by us within the 'Time to Repair' (TTR) window.
- 2.7 **Time to Repair (TTR)** - is defined as a 1.5 hour window, during which we will perform all that is commercially reasonable to restore 'Availability' to your service. If the 'Availability' of an instance is not restored within this window, then a 'Service Outage' event is deemed to have occurred.

3 Service Credits / Rebate

- 3.1 You are entitled to service level rebates should your service be disturbed, interrupted or unresponsive as indicated below:
- 3.2 Less than 120 minutes service disruption = no rebate
- 3.3 More than 120 minutes service disruption but less than 240 minutes during a given calendar month = 20% rebate of the monthly service fee
- 3.4 More than 240 minutes service disruption but less than 480 minutes during a given calendar month = 40% rebate of the monthly service fee
- 3.5 More than 480 minutes service disruption but less than 960 minutes during a given calendar month = 60% rebate of the monthly service fee
- 3.6 More than 960 minutes service disruption but less than 1440 minutes during a given calendar month = 80% rebate of the monthly service fee
- 3.7 More than 1440 minutes in a calendar month = 100% rebate of the monthly service fee
- 3.8 Service Credits will be applied against your account for the calendar month in which the outage occurred. Service credits may not be transferred or applied to any other account.

4 Request & Rebate Procedures

- 4.1 To request a Service Credit, you must submit an email request to legal@conekt.com.au. You must include the following details in a request:
 - a) Your registered email address, contact name and phone number.
 - b) Dates and times of the incident, as well as the duration of this incident.
 - c) Details of the outage experienced.
- 4.2 All requests must be submitted within 14 days of the SLA breach. We will then contact you and process the SLA claim (where valid).

5 SLA Exclusions

- 5.1 This SLA service guarantee does not apply to any issues caused by factors outside our reasonable control, such as force majeure events, or events affecting the wider Internet. It also does not apply to any outages caused by:
 - a) Your actions or any third party.
 - b) Your software or configuration issues.
 - c) Suspension or termination of your account under the agreement.

6 General:

- 6.1 Communications under the Agreement must be in writing and sent by registered post or by hand to the recipient's principle place of business.
- 6.2 We are entitled to transfer its rights and obligations under the Agreement, or any part of it to any person, firm or corporate body whomsoever it thinks fit.
- 6.3 The Customer may not assign any part of the Agreement without our written consent.
- 6.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 6.5 No waiver by us of any breach of the Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 6.6 No failure by us to exercise any power given to it or to insist upon strict compliance by the Customer with any obligation hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute any waiver of our rights under the agreement.
- 6.7 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby. The Agreement shall be governed by and construed in all respects in accordance with the laws of New South Wales, Australia.