

Baycity Communications Commercial Standard Terms and Conditions

These are the Terms on which Baycity Communications will provide Services to you. By using the Services, you are taken to have agreed to abide by these Terms.

1. Introduction

- 1.1 These Standard Terms and Conditions (“**Terms**”) apply to customers (“**you**”) of Baycity Communications (“**Baycity**” or “**We**”) for access to any services (“**Services**”) provided to you by Baycity which may include dedicated Bandwidth, broadband access, internet, email, voice (including VoIP), IPTV, video on demand, multicast, broadcast and others.
- 1.2 Baycity may in its sole discretion terminate the Service Agreement by notice in writing to you within 5 working days after it is delivered to Baycity.
- 1.3 Subject to clause 1.2, the Service Agreement commences on and from the date your connection to the service is completed (“**Service Commencement Date**”).
- 1.4 These Terms, together with the terms of the plan (including, if applicable, any special offer) provided to you in writing or appearing on our website (www.Baycity.co.nz), constitute the agreement (“**Agreement**”) between you and Baycity for the provision of Services.
- 1.5 Baycity provides IP data access via Satellite and Wireless access. Depending on the type of technology you use to access the Services, other conditions relating to installation and ongoing use of the Services may apply. For more information please refer to the Baycity website www.Baycity.co.nz.
- 1.6 **Changing our Agreement:** We may change the Agreement for the provision of Services, including these Terms and the provisions or nature of a plan (including pricing and charges, speed, data, data caps and components of bundled plans), at any time by amending or removing existing provisions or by adding new ones. Changes may take the form of completely new terms or plans. We will tell you about any changes to the Agreement at least one month before they come into effect by notifying you by emailing and/or writing to you and by providing relevant information on our website. If (acting reasonably) you consider that the change has a negative impact on your use of the Service you can exercise your right to cancel the Service without paying disconnection fees. I

2. Baycity’s Services

2.1 Provision of Services

- a. Baycity will supply the Services to you on these Terms on and from the Service Commencement Date.
- b. Baycity will provide the Services with reasonable care and skill and use reasonable efforts to provide reliable and high quality Services but it cannot guarantee to provide fully functioning Services at all times and:
 - i. there may be times when the Services are not available;
 - ii. Broadband speeds are provided on “best endeavours” basis and may vary according to number of users online, network loading, applications used and some environmental conditions; and
 - iii. we may interrupt the Services in accordance with clause 7.

2.2 Satellite connections – purpose of use:

- a. Baycity Satellite Broadband connections are designed primarily for internet browsing and email. You may experience less than optimal service if using some interactive applications, such as remote desktop and PC banking.
- b. Some applications may require additional hardware or software before you can use them with your Baycity Satellite Broadband connection. For example, if you wish to use wi-fi, you will need a wi-fi router, and if you wish to use applications that require a VPN connection, you will need a static IP address. Baycity can provide such additional hardware or software as may be required – additional charges will apply.

- c. Baycity does not warrant or represent that Baycity Satellite Broadband will be suitable for any particular application and you are responsible for satisfying yourself as to whether your intended applications will be suitable for use with Baycity Satellite Broadband.

2.3 Wireless connections – purpose of use:

- a. Baycity Wireless Broadband connections are designed primarily for internet browsing and email. Baycity Wireless Broadband includes but is not limited to (RBI) Fixed Wireless and TeamTalk Wireless.
- b. Some applications may not be compatible with Wireless Broadband, or may attract additional service charges to you to ensure compatibility. If you are considering using your Baycity Wireless connection for applications other than internet browsing or email, it is your responsibility to inform your Baycity representative prior to confirming your installation.
- c. Baycity does not warrant or represent that Baycity Wireless Broadband will be suitable for any particular application, and you are responsible for satisfying yourself as to whether your intended applications will be suitable for use with Baycity Wireless Broadband.

2.4 VoIP Services:

The following Terms apply to use of any VoIP System as part of the Services. Baycity VoIP services include but are not limited to Farmside Voice services.

- a. Baycity does not guarantee that you will be able to make successful VoIP calls to every valid number, as Baycity does not own or operate every part of the network used to provide VoIP Services.
- b. Baycity reserves the right to monitor your usage of VoIP Systems which are provided on the basis of reasonable use and to:
 - i. monitor and investigate your usage of the VoIP System; and
 - ii. suspend or withdraw the availability to you of VoIP Services; or
 - iii. charge a standard per minute rate for usage over what is reasonable (to be determined in the absolute discretion of Baycity).
- c. We reserve the right to alter or replace any phone number allocated to you for use of VoIP Services from time to time and if so, we will give as much notice as possible. We will not be liable for any costs which you or anyone else may incur as a result of such a change.
- d. Geographic dialling codes for New Zealand may only be used from their allocated New Zealand geographic zone.
- e. You acknowledge and understand that the VoIP Service will not function in the event of power failure, even when calling 111 Emergency Services, and Emergency Services will not be able to ascertain your location when calling using VoIP Service. Baycity recommends you retain alternate means of telephone access.

3. Your use of Baycity’s Services

3.1 Use: As a Baycity customer, you must:

- a. follow our instructions on using the Services and comply with any reasonable restrictions we impose, or directions we give, in respect of the Services;
- b. use the Services, Baycity software or applications and any information you access or make available through using our Services, in a lawful and responsible manner;
- c. without limiting paragraph b. you must:
 - i. not distribute unsolicited commercial electronic messages (“spam”);
 - ii. not introduce anything harmful (such as viruses, worms or malware) to, or interfere in any other way with, anyone else’s computer system, communications service or use of the internet or associated applications;
 - iii. not infringe any person’s rights, including their right to privacy, copyright or other intellectual property rights;

- iv. not use the Services in a way which is malicious, obscene, defamatory, offensive or which would or could constitute harassment; and
 - v. comply with relevant legislation, including the Unsolicited Electronic Messages Act 2007 and the Crimes Act 1961;
- d. comply with any instruction, order or regulation made under the Telecommunications Act 2001 and any other relevant legislation;
- e. keep confidential any password you use to access our Services and immediately change your password if we ask you to do so;
- f. not use your Baycity connection to distribute or on-sell Broadband or associated Services to any third party except with the prior consent in writing from Baycity;
- k. make sure that anyone who uses the Services meets these responsibilities and obligations; and
- l. be 18 years old or over.

3.2 **Misuse of Service:** You are responsible for any misuse of the Services we provide to you. If we consider that the Services have been used in a way that breaches clause 3.1 (whether intentionally or unintentionally and whether by you or anyone using your account), we will try to contact you to discuss the issue, and we may (acting reasonably) immediately suspend the Services to you pending our discussion. If our discussions do not result in the problem being remedied to our satisfaction, we may terminate your Services without notice and recover our Equipment from your premises. If we do so, we may charge a disconnection and Equipment recovery fee, associated travel costs and any other costs incurred by Baycity in recovering the Equipment.

3.3 You hereby indemnify Baycity (and the providers if Services to Baycity) from and against any loss, cost (including costs on a solicitor own client basis) or expense arising from or out of any claims that may be brought against any of them in respect of the use of the Service by anyone, whether or not they were authorised by you.

3.4 **Your Computer:** Your computer will need to meet certain minimum system requirements before you will be able to use the Services. You are responsible for ensuring that your computer meets these requirements prior to the Service Commencement Date. Details regarding these minimum system requirements can be found on the Baycity website www.Baycity.co.nz. It is also your responsibility to ensure that your computer has sufficient virus protection and security. Please call Baycity help desk on 0508 222 787 if you require more information on this.

3.3 **Connection Point:** A Baycity connection provides Service to one single "Demarcation Point". Our responsibility for provision of Services to you ends at the Demarcation Point. Beyond the Demarcation Point, you are responsible for any problems or issues that may affect the performance of the Services or the Equipment (in particular, you are responsible for all of your equipment, software and associated cabling or equipment, and all costs associated with fault diagnosis or problem resolution). This demarcation point for Satellite and Wireless Broadband is the network access port of the Equipment provided by Baycity.

4. Monitoring Your Usage

4.1 Our Broadband plans are subject to limits (data caps) for the amount of data uploaded or downloaded each month. Exceeding the monthly data cap on your Broadband plan will either result in additional charges for overage and/or a reduction in Service speed. Megabyte usage (the amount of information transferred over your Broadband connection, both uploading and downloading) can include overhead data usage which is required for establishing and maintaining the connection.

4.2 You are responsible for all data uploaded or downloaded over your Baycity Broadband connection, whether by you or anyone using your account, and whether you were aware of this or not. You are also responsible for tracking your usage, and for any charges relating to data overages, whether you receive or check usage alerts from Baycity or not.

4.3 You can check your usage online by logging in to www.myBaycity.co.nz. The Baycity usage meter does not show your usage in real time, and it is important that you take this into account

when tracking your usage. Usage is updated approximately every hour under normal conditions and will accurately reflect your usage up to 4 hours earlier. However, in some circumstances it can take longer for your usage meter to be updated, particularly when there are a large number of users on the internet. To help you manage your usage, Baycity will use reasonable endeavours to email usage alerts at 60%, 80%, 100% and 120% of the data cap for your Broadband plan. To receive these alerts you need to ensure that we have your current email address. You can do this by logging in to www.myBaycity.co.nz.

4.4 Any unused portion of the monthly data allowance (data cap) for your Broadband plan will **not** be carried over to future billing periods. Baycity usage for Satellite and Wireless connections is calculated from the 21st of the month to the 20th of the following month. Overage charges for Satellite connections are rounded up to the next megabyte and are available on request. In accordance with our Fair Usage Policy, we may manage network resources to ensure the overall customer experience (in particular for core usage such as web-browsing and email services) is maintained at Broadband speed and is not adversely affected by high bandwidth applications such as peer to peer or file sharing. Use of such applications by customers at peak periods may be subject to network prioritisation by Baycity, where controlled allocation of bandwidth resources is necessary to minimise congestion. You can view the Baycity Fair Usage Policy at www.Baycity.co.nz.

5. Pricing, Billing and Payment

5.1 You must pay our charges for the Services we provide. If someone else uses the Services we provide to you, you are still responsible for payment. We will invoice you monthly for Services we provide to you. Baycity invoices are forwarded to you by email.

5.2 You must pay each invoice within 15 days of the invoice date ("Due Date"). Payment for Services must be made in full without deduction or set off. If at any time you receive credits or benefits associated with connection, upgrade offers, or for any other reason, we may reverse these credits or benefits if any payment due is not received by the Due Date.

5.3 All payments shall be made to Baycity's nominated bank account as specified by us from time to time.

5.4 Fixed charges, effective from the date of completed connection, are calculated for a full calendar month and are payable in advance. Usage based charges (such as data overage where applicable) are calculated from the 21st of the month to the 20th of the following month and are payable in arrears.

5.5 Any work which Baycity undertakes at your request which is outside of the Services will be paid by you at Baycity's current rates.

5.6 Unless we specifically state otherwise, our charges are GST exclusive.

5.7 If you do not pay all of the charges by the Due Date for payment, you must pay:

- a. default interest on all sums owing for the period from the Due Date to and including the date the charges are paid. The default interest rate will be 2% per annum above the rate charged by Baycity's bankers for unsecured overdraft facilities as at the Due Date; and
- b. Baycity's legal and other fees and expenses (including costs on a solicitor own client basis) incurred in respect of the recovery of any overdue charges.

5.8 If any sum payable by you remains unpaid for 14 days after the Due Date, Baycity may discontinue the Service without giving notice to you. Discontinuance of the Services will not:

- a. relieve you from having to pay any sum due and owing to Baycity; or
- b. relieve you of your obligation to pay the network service charges for the Services to the end of the minimum Service term; or
- c. restrict any other right or remedy of Baycity.

- 5.9 If we discontinue Services to you pursuant to clause 5.8, we shall be entitled to charge you a Service reactivation fee if we agree to restore Services to you.
- 5.10 Baycity shall use its best endeavours to resolve any dispute it may have with you concerning the Charges within 60 days of being advised by you that there is a dispute. You must make payment of all amounts which are not disputed in good faith by the Due Date.
- 5.11 Suspension may involve throttling of Service, suspension of specific Services (i.e. local, national or international calling) or total suspension of Service (except as set out in clause 2.4e, 111 Emergency Service calls will not be affected).
- 6. Credit**
- 6.1 A credit application form must be completed by you prior to any credit being provided to you. If any applicant(s) fail a credit check then a guarantee must be provided by guarantor(s) who have completed a credit application and have passed a credit check.
- 6.2 We may apply credit limits to your account.
- 7. Faults and repairs**
- 7.1 Sometimes we may need to change, withhold, suspend, restrict, replace or terminate a Service where we think is reasonably necessary or desirable to do so. This could happen because (for example) our systems or the network are undergoing maintenance, or have become unavailable, or so that we can manage network traffic or access to network services or improve functionality and attributes of the Service.
- 7.2 We will use our best efforts to give you prior notice of the change via our website, or where appropriate, email – for example, by giving you notice of scheduled maintenance. We will also do our best to ensure, where possible, that suspensions or restrictions take place during off peak network times.
- 7.3 Where we have changed or replaced an existing Service, and we have to do this without providing you with prior notice of the change in order to protect our network, we will advise you of the changes and the impact on your immediately following the change.
- 7.4 Where there is a fault with any aspect of Services, we will use all reasonable endeavours to remedy the problem as soon as possible. However, where remedial work, action or onsite support is required as a result of any act or omission on your part, or due to issues not originating from the core Baycity network or on Baycity's side of the Demarcation Point, we may charge you for the cost of remedying the fault, as well as any non-standard charges, including travel.
- 8. Equipment on Your Premises–Satellite and Wireless Connections**
- 8.1 To provide Broadband and associated Services to you via Satellite or through Wireless access, we may provide and install equipment at the site you have designated for Service including (without limitation) Satellite or Wireless Broadband access equipment, software and associated cabling ("Equipment"). The costs of standard installation or fault/repair will be provided to you prior to commencement and is available on request.
- 8.2 Unless Baycity agrees in writing to sell or give you the Equipment it remains the property of Baycity.
- 8.3 Non-standard installations or fault/repairs will attract additional costs and travel costs may apply. Details of these costs are available on request.
- 8.4 You are responsible for obtaining all necessary approvals and consents for the installation/repair/removal of equipment related to our Services at your premises; for any alteration to your premises required in order to install the equipment; and for allowing our installers to access your premises.
- 8.5 You must confirm an installation date for any Equipment required so that we can provide the Services within one month of requesting the Services from Baycity. Any request for postponement of the installation date must be received within one month of the date of you requesting the Services.
- 8.6 We may remove the Equipment on termination of these Terms, or earlier if we decide the Equipment is no longer required for your use of the Services. You agree to allow us, or any person authorised by us, access to your premises at all reasonable times and on reasonable notice (subject to compliance with your reasonable security requirements and where applicable, health and safety requirements) to inspect, maintain or remove the Equipment.
- 8.7 If Baycity ceases providing Services to you, or if we decide the Equipment is no longer required for your use of the Services, we may instruct you to de-install and return the Equipment to us. In such cases you must follow our instructions carefully. Should you fail to do so, you may be liable for any associated costs resulting from damage to the Equipment or your own property or person. You must only de-install the Equipment on your premises if explicitly requested to do so by us.
- 8.8 If you are the Baycity account holder but do not own the premises on which the Equipment is installed, or is to be installed, you warrant that you have permission from the property owner for us, or any person authorised by us, to access the property to conduct any or all reasonable activities related to installation/repair/removal of the Equipment.
- 8.9 If for any reason the Equipment is not returned to us when we require (whether on termination of Service or otherwise) or the Equipment, on return, is found to be damaged (Fair wear and tear excepted), you must pay us the reasonable replacement cost of such Equipment upon demand.
- 8.10 In order to provide the Services to you, we may disconnect equipment that may have been connected by other Service providers and may reconfigure your computer or associated equipment to enable it to be compatible with our Services.
- 8.11 You must not interfere with the Satellite Equipment or the Wireless Equipment in any way except as authorised under these Terms. You must also:
- provide a suitable operating environment for the Satellite Equipment and/or the Wireless Equipment including, where applicable, ensuring that line of sight is not obstructed for Satellite or Wireless Services (i.e. by tree growth);
 - take reasonable precautions to protect the Equipment from theft or other loss or damage;
 - not use any equipment (including modifications) which has not been approved by Baycity or do anything to interfere with the service of, or cause physical harm to the transponder services of the satellite. If you do, Baycity may, without notice to you, discontinue the Service to that Equipment;
 - ensure that all equipment on your premises that is connected to the Baycity network but not provided by Baycity, is telepermitted;
 - take all reasonable precautions to protect the Equipment from radio or electromagnetic interference, electrical interference or power fluctuations; and
 - follow our reasonable directions in the use of the Satellite Equipment and the Wireless Equipment, and use the Satellite Equipment and Wireless Equipment solely for the purpose of receiving the Services.
- 9. Insurance**
- You are responsible for all of the Equipment installed on your property or installed at your request under these Terms and you indemnify Baycity against any loss or damage to such Equipment. You must insure all of the Equipment with appropriate insurance cover for its replacement value. For insurance purposes, we recommend cover to the value of NZD\$2,000 incl GST for standard installations.
- 10. Personal Property Securities Act 1999 (PPSA)**
- 10.1 All Terms in this clause have the meaning given in the PPSA and section references are to sections of the PPSA.
- 10.2 Ownership of all Equipment and or associated software (including the user terminal and modem) is retained by Baycity, except for Equipment purchased outright.

- 10.3 You hereby grant to Baycity a security interest in all of the Equipment and any proceeds of the Equipment (both being “the Collateral”) and agree that Baycity may register a security interest in the Equipment on the Personal Properties Securities Register.
- 10.4 You agree to allow Baycity or its agent to enter the premises upon which the Equipment is installed at any time to recover the Equipment without in any way being liable to any other person.
- 10.5 On request from Baycity, you will promptly provide all information necessary to enable Baycity to perfect its interest in the Collateral.
- 10.6 So far as permitted by the PPSA you waive your rights under sections 114(1) (a), 116, 117, 119, 120(2), 121, 125, 129, 131, 133 and 148 of the PPSA.

11. Minimum Service Term/Fixed Term Agreement

- 11.1 Baycity Broadband Services are subject to a minimum Service term (from the Service Commencement Date), which we also call a Fixed Term Agreement.
- 11.2 The Term of the Service is specified in the Baycity Service Agreement unless extended by agreement in writing signed by you and by Baycity (in which case reference to the “Term” includes any extended term).
- 11.3 The Term is for a specified period and the Service Agreement will terminate at the end of that period. However, if you continue to use the Service after the end of the Term, the Term will convert to a monthly term and you must continue to pay the Charges each month.
- 11.4 A minimum of 30 days’ notice is required to cancel your Fixed Term Agreement. If you choose to disconnect from Services prior to the expiry of the minimum Service term, then you must pay a disconnection fee equal to the balance of the monthly service charge due under the Service Agreement had the service remained in place for the entire term.
- 11.5 The disconnection fees are a genuine pre-estimate of the loss that we will incur as a result of cancelling your Broadband Service early. However, you will not be required to pay a disconnection fee if you are cancelling your Broadband Service early as a result of:
- any negative change we have made to this Agreement; or
 - a material reduction in the Broadband Service.
- 11.6 Your Services will continue to be provided to you on an ongoing basis once the minimum Service term has expired. Should you wish to terminate the Service following the minimum Service term clause 17 applies.

12. Consumer Guarantees Act

You acknowledge that that the Services and any goods provided to you under this Agreement are supplied and acquired in trade, that you and we wish to contract out of the Consumers Guarantees Act 1993 and that it is fair and reasonable that this clause be binding on us

13. No Representations and Warranties

- 13.1 Baycity shall not be bound by any representation, warranty, description or condition as to suitability, fitness or otherwise (whether expressed or implied) except as stated in these Terms or as stated in writing by an authorised officer of Baycity.
- 13.2 No dealer, agent, representative or employee is authorised to make any such representations, warranties, descriptions or conditions unless they are in writing and signed by an authorised officer of Baycity.
- 13.3 You acknowledge that you are relying on your own assessment of the Services to be provided.

14. Contact Details and Notices

- 14.1 To provide Services to you, to invoice you, and to ensure we can contact you regarding your Services, we need to maintain up to date contact information, particularly your email address, phone number and physical address. You must make sure the contact information we hold for you remains correct and up to date. Should any of your

contact details change, you must inform us immediately. You can check or change your contact details by:

- updating them online at www.myBaycity.co.nz;
- sending an email to your Baycity Account Manager or sales@Baycity.co.nz; or
- calling the Baycity help desk on 0508 222 787

- 14.2 A notice shall be deemed to have been validly given if it is in writing (which includes facsimile and e-mail) and is sent to the relevant party at any address, facsimile number or email listed in the Service Agreement or subsequently notified by either party to the other in writing and shall be deemed to have been duly given or made:

- If by mail, on the second working day after being posted by mail correctly addressed and stamped;
- If by hand, on personal delivery to the recipient or to such address; and
- If by facsimile or email, when transmitted to the correct number or address with no indication of the incomplete transmission to such addresses.

PROVIDED THAT if a notice is given by hand, facsimile or email after 5pm on a working day or on a day which is not a working day it shall be deemed to have been received at 9AM on the next following day.

- 14.3 A notice sent by email from a party’s email domain that states on its face that it is from a particular person shall be “signed” by that person for the purpose of this Agreement.

- 14.4 Baycity is not responsible for any notices or emails not received by you due to your contact details being incorrect. Any notices or emails sent to the addresses last notified by you to Baycity will be deemed to have been received.

15. Privacy and Confidentiality

- 15.1 We are committed to acting in accordance with the Privacy Act 1993 by providing you with Services in a way that does not affect your privacy.
- 15.2 You may at times supply Baycity with personal information, for example, when you become a customer, activate a new Service or request a change to an existing Baycity Service. You agree to our:
- Collecting and storing information about you and the property to which Baycity access and Services are delivered whether from you or from any other person;
 - Using such information, and disclosing such information, to any person in each case in the course of our business, including for credit assessment, debt collection, direct marketing and for assessing customer satisfaction; and
 - In particular, disclosing your information to other Network Operators so you can make and receive calls, so we can transfer numbers from one network to another, and to monitor or investigate fraud or other offences, and to public sector agencies in order for them to investigate alleged offences.
- 15.3 Except as provided in these Terms, we will not disclose, sell or lend your personal information to other companies or persons who are not part of our business group without prior permission from you, except as part of the sale of any part of our business.
- 15.4 We may refer to you as a user of our Services, but otherwise all details of Services provided to you (or account information) shall be kept confidential both by you and Baycity.
- 15.5 You consent to us recording our telephone conversations with you and such recordings being used in any legal proceedings.
- 15.6 You must keep confidential any information we provide you such as pricing or network or equipment design information as it is confidential or commercially sensitive to us. You may only disclose confidential or commercially sensitive information if you are required to by law.

The Baycity Privacy Policy can be found on the website www.Baycity.co.nz

16. Intellectual Property

16.1 All intellectual property rights in the Services provided to you are owned by, or licensed by the owner to, Baycity. You acknowledge that none of these intellectual property rights are transferred to you. Any intellectual property rights and any improvements or changes to any of the Services devised or made by anyone during the time Baycity is providing the Services to you belong to Baycity.

17. Termination of Service

17.1 This Agreement and the provision of Services may be terminated by us immediately and without notice to you if:

- a. we consider the Services are not being used in accordance with these Terms; or
- b. You become unable to pay your due debts, are declared bankrupt or if any event similar in nature has occurred.

17.2 This Agreement and the provision of Services may be terminated by:

- a. By us giving you a minimum 30 days' notice; or
- b. by you giving us a minimum of 30 days' notice (email notice is sufficient).

17.3 If this Agreement and the provision of Services is terminated for any reason:

- a. you must continue to pay for Services provided to you, including Usage charges, up to the end of your 30 day notice period (if a notice period applies);
- b. you must pay all amounts owing at the time of termination plus any interest payable under clause 5.7 and any disconnection fees payable pursuant to clause 11 (you acknowledge that this recovery is in respect of Baycity's actual losses and does not amount to a penalty);
- c. amounts invoiced and paid for in advance will not be refunded, unless we in our discretion agree otherwise; and
- d. you must pay an Equipment recovery fee (including any associated travel costs and other costs incurred by Baycity in recovering the Equipment), and if the Equipment cannot be recovered, or, upon being recovered, is found to be damaged (fair wear and tear excepted) we may charge you the reasonable cost of replacing that Equipment.

17.4 For the avoidance of doubt, termination of this agreement (or any other agreement between us) does not relieve you from your obligations to pay us all amounts you owe us, or to return our Equipment. It does not affect the accrued rights or liabilities of either of us nor prevent either of us from pursuing additional or alternative remedies provided by law.

18. Liability

18.1 We may be liable to you if we breach the terms of this Agreement, .. We are not liable for any loss to the extent that it was caused or contributed to by you. If we cause you any loss, you agree to take reasonable steps to avoid or minimise your loss - we are not liable for any loss that results from your failure to take reasonable steps to do so. You must notify us of your claim within 60 days after you become aware (or, acting reasonably, should have become aware) of the events giving rise to the claim.

18.2 If the Service does not function in accordance with this Agreement due to a fault for which Baycity is responsible, then in lieu of any other liability, Baycity may give a credit to you for the period during which the Service did not function. The credit will be equal to the portion of the Charge applicable to the affected Service for the period beginning at the time you notify the fault to Baycity until the Service is restored.

18.3 Our liability to you (and to anyone else who uses the Services we provide for you) is limited to:

- a. \$2,500 for any event or series of related events; and
- b. A total of \$7,500 in respect of all events in any 12 month period,

18.4 You may be liable to us if you breach the terms of this Agreement. You are not liable for any loss to the extent that it was caused or contributed to by us. If you cause us any loss, we agree to take

reasonable steps to avoid or minimise our loss - you are not liable for any loss that results from our failure to take reasonable steps to do so. We must notify you of our claim within 6 months after we become aware (or, acting reasonably, should have become aware) of the events giving rise to the claim.

18.5 Your liability to us is limited to:

- a. \$2,500 for any event or series of related events; and
- b. A total of \$7,500 in respect of all events in any 12 month period,

PROVIDED that these limitations do not apply to your obligation to pay the Charges, or to any loss or damage caused by your fraud, gross negligence, wilful breach or wilful damage.

18.6 Neither of us shall be liable to the other of us for any consequential loss or damage of any kind whether direct or indirect, including without limitation loss of profits, business, anticipated savings or any financial loss.

18.7 All liability of any kind (including but not limited to negligence) on the part of any third party network or Service operator, its officers, employees, contractors and agents however arising in the provision of Services by such network or Service operator to us is excluded. This exclusion is included for the benefit of those people and may be enforced by them as a complete defence to any claim.

19. IP Numbers

19.1 Baycity retains ownership of the IP numbers allocated to you and reserves the right to change them (but will use reasonable efforts to avoid making a change).

20. General

20.1 Force Majeure and Delay or Reduction in Provision of Service:

- a. Neither Party to this Agreement is liable for failures or delays in performance of its obligations under these Terms due to any cause or circumstances beyond its control. However, this clause shall not apply to the failure by you to make payment when due under these Terms.
- b. Without limiting 20.1a, Baycity is not liable for failure to provide the Services due to acts of God, civil disorder or war, national or local emergency, adverse weather conditions, industrial dispute, or acts or omissions of other carriers, late delivery of equipment or materials to Baycity for reasons beyond the control of Baycity, industrial or legal action which obstructs or prevents continuation of the Service, operational and technical difficulties such as radio interference, atmospheric conditions, network conditions, maintenance, outages, and obstructions to a signal path beyond the control of Baycity, and Baycity agreements and licences or consents which enable it to operate its network being ended or suspended.

20.2 Entire Agreement, Variation and Non-Waiver:

- a. This Agreement constitutes the entire agreement in relation to the sale and provision of Services. No modification of this Agreement is valid unless expressly made in writing;
- b. Our failure to enforce any provision of this Agreement is not a waiver of any of the rights or obligations we have under this Agreement and no waiver shall be binding on us unless signed by an authorised officer of Baycity and by you; and
- c. If any provision of this Agreement cannot be enforced or relied on by us all other provisions remain binding.

20.3 **Laws:** This Agreement is to be interpreted in accordance with the laws of New Zealand. Any dispute regarding the provision of our Services under this Agreement is to be determined by New Zealand Courts.

20.4 **Assignment:** You must not assign your rights under this Agreement. We can transfer our rights and obligations under this Agreement to anyone else. We will notify you if we do so.