



SUPPLY TERMS

1. Operation of these Supply Terms

- 1.1. These Supply Terms govern your procurement and our supply of products and services, the subject of a Binding Service Order and Service Contract formed for the purposes of these Supply Terms.
- 1.2. For the avoidance of doubt, these Supply Terms do not apply to any of our products or services unless a Binding Service Order expressly refers to them.
- 1.3. By entering into a Binding Service Order and Service Contract pursuant to clause 3 between you and us, you will be deemed to have confirmed that you have read and understand, and wholly and unconditionally agree to be legally bound by, and accept, these Supply Terms.
- 1.4. We may modify and/or replace these Supply Terms at any time and from time to time, in our absolute discretion. The modified and/or replacement Supply Terms will only apply to Binding Service Orders entered into after we publish the modification and/or replacement (as applicable) on this website.
- 1.5. We will always upload the latest version of these Supply Terms to this website.
- 1.6. It is your responsibility to check our website before issuing any Request for Quotation, to ensure that you have read the latest version of these Supply Terms prior to entering into any Binding Service Order.
- 1.7. Notwithstanding any other provisions of these Supply Terms, these Supply Terms do not apply to any services that we provide to you or otherwise govern our commercial relationship with you, if we have entered into a Master Services Agreement with you.

2. Term of these Supply Terms

- 2.1. These Supply Terms commence on the date of the first Binding Service Order that we enter into with you for the purposes of these Supply Terms, and subject to clause 1.4, will continue to apply until each Binding Service Order that we enter into with you terminates or expires.

3. Ordering Procedure

- 3.1. You may issue a Request for Quotation to us at any time and from time to time for one or more of the following:
 - (a) Hardware and/or Software procurement services;
 - (b) Professional Services;
 - (c) Voice Services;
 - (d) Data Services;
 - (e) Managed Data Centre Colocation Services; and/or
 - (f) Managed Network Device Services,(each a **Service**).
- 3.2. You must issue a separate Request for Quotation:
 - (a) each time you wish us to provide any Service to you;
 - (b) each time you wish us to provide any Service to you, in addition to the Services that we already supply to you;
 - (c) each time you wish us to supply Managed Services or Professional Services to you with respect to any additional or modified Supported Item or with respect to your equipment;
 - (d) each time you wish us to provide an additional Network Link to you;
 - (e) each time you wish us to increase or decrease the speed or capacity with respect to an existing Network Link or change the type of Network Link (or relocate a Network Link) that we supply to you via the Data Services.

Example 1: If we are supplying Data Services to you and you wish us to provide an additional Network Link to you, or increase or decrease the speed or capacity of an existing Network Link that we provide to you via the Data Services, then a separate Request for Quotation must be issued with respect to the modified speed and capacity and with respect to the additional Network Link.

Example 2: If we are supplying Data Services with respect to a Supported Item and you wish us to provide Managed Network Device Services with request to an additional device, a separate Request for Quotation must be issued with respect to the additional device.

- 3.3. Requests for Quotation are not offers.
- 3.4. We will use our best endeavours to provide you with a Quotation, as soon as is reasonably practicable after receipt of a Request for Quotation, unless we determine in our absolute discretion that:
 - (a) the Services specified in the Request for Quotation cannot be provided to you for any reason, including because the location specified in the Request for Quotation fails a service qualification test process instituted by us or any of our suppliers;
 - (b) the supply of the relevant Services the subject of the Request for Quotation will result in a debt owed to us in excess of any credit limit that we determine is appropriate;
 - (c) we determine that our supply of the Services specified in the Request for Quotation is not commercially feasible for us; or
 - (d) you are in breach of these Supply Terms.
- 3.5. We may issue a Quotation to you without first having received a Request for Quotation.
- 3.6. If you wish to accept a Quotation, you must follow the instructions on the Quotation that specify how the Quotation can be accepted. Quotations cannot be accepted in any other way.
- 3.7. Each time you accept a Quotation in accordance with clause 3.6, the Quotation will automatically become a Binding Service Order and a contract (**Services Contract**) will be deemed to have been formed by you and us consisting of:
 - (a) these Supply Terms; and
 - (b) the relevant Binding Service Order.
- 3.8. For the avoidance of doubt:
 - (a) one Request for Quotation may be issued for multiple requested Network Links or multiple requested Managed Services or Professional Services;
 - (b) Requests for Quotation do not form part of Services Contracts;
 - (c) any amendments that you make to a Quotation before or after you accept a Quotation (including any additional terms and conditions that you specify therein) are void and shall not form part of the relevant Binding Service Order or Services Contract or otherwise bind you or us.
- 3.9. Where any conflict occurs between the provisions of one of the documents specified in clause 3.7 with the other document specified in that clause, the conflict will be resolved by interpreting the documents in the order of precedence that the documents are listed in that clause (i.e the document in (a) will take precedence over the document in (b)).

4. Your use of the Ordered Services

- 4.1. You may only obtain Services from us under these Supply Terms for your sole use. You may not resell or resupply Ordered Services to any third party or otherwise permit any third party to use, access or operate any Ordered Services, without our prior written consent.
- 4.2. You must:
 - (a) comply with any rules imposed by any third party whose content or services you access using Ordered Services or whose network your data traverses;
 - (b) comply with all applicable laws;
 - (c) not infringe or permit any person to infringe any Intellectual Property Rights;
 - (d) not represent that you are authorised to act on behalf of, or bind, us or any of our suppliers;
 - (e) provide us with any relevant routing information, domain names and other information reasonably required for us to provide and maintain the Ordered Services and ensure that you promptly notify us of any changes to that information;
 - (f) not represent or pass off that you are us or any of our suppliers or misrepresent the manner in which or the extent to which you obtain any Ordered Services from us;
 - (g) not bring our name or our suppliers' names into disrepute or use our name or any of our suppliers' names or trademarks in relation to the Ordered Services (or otherwise);

- (h) read and follow the instructions set out in the Service Handover Pack.
- 4.3. You agree and acknowledge that you are solely responsible for, and must indemnify us in respect of, any loss and damage that we may incur in connection with any claims and/or complaints made by any person where the claim and/or complaint is caused directly or indirectly by:
- your use of or inability to use Ordered Services; and/or
 - Your Data and/or any software that is stored on or transmitted by any of Your Equipment or any Supported Items.
- 4.4. You agree and acknowledge that:
- we and our suppliers are not responsible for the acts or omissions of NBN Co Limited (**NBN Co**) in connection with any activity of NBN Co at Your Premises;
 - NBN Co is not our agent or representative and it is not the agent or representative of our suppliers;
 - to the maximum extent permitted by applicable law, we and our suppliers do not have any liability to you or any third party for the acts or omissions of NBN Co. We are not liable for any such acts or omissions;
 - NBN Co is not providing any products or services to you;
 - NBN Co does not have a contractual relationship with you with respect to the supply of any Ordered Services; and
 - you must not contact NBN Co or any of our other suppliers directly in relation to any Ordered Services, unless otherwise authorised in writing by us.
- 4.5. If you replace any services provided to you by a third party (**Original Telecommunications Supplier**) with services that rely in whole or in part on our provision of Ordered Services, as between you and us, you remain liable for all amounts owing to the Original Telecommunications Supplier if payable as a result of the transition from the services provided by the Original Telecommunications Supplier and/or the termination of any agreement with the Original Telecommunications Supplier, and you must indemnify us from all such liability, and for any loss or damage that we incur as a result of your breach of this clause 4.5.
- 5. Provisioning of Ordered Services**
- 5.1. We will use our best endeavours to provide or procure the Services specified in a Binding Service Order (**Ordered Services**) with due skill and care and substantially in accordance with any specifications for the Ordered Services set out in any relevant Services Contracts (**Specifications**).
- 5.2. You may need to wait for part or the whole of any Ordered Services to be setup, configured and made ready for use (**provisioned**) before you can use the Ordered Services.
- 5.3. There may be extensive delays in the provisioning of Ordered Services. We will not be liable for any such delays. For example, one or more of our suppliers may seek to deliver any services necessary for us to provide Ordered Services using carrier rights and immunities under Schedule 3 of the *Telecommunications Act 1997* (Cth) and any nominated provisioning timeframes may be based on there being no objections by any building owner or occupier for such services. You acknowledge that any such objections may delay the provisioning of any Ordered Services. Further, where any such objection is sustained and our supplier(s) cancel the provisioning of any relevant services as a result thereof or for any other reason cancel the provisioning of any relevant services, we may be unable to deliver any Ordered Services and in those circumstances, we reserve the right to terminate any applicable Services Contracts without liability to you.
- 5.4. You must arrange safe and timely access to Your Premises as required by us or our suppliers to provision any Ordered Services, including for the purposes of installing or facilitating the installation of any Network Termination Unit, any Router and any Supported Items (including, Your Equipment to the extent a Service Contract expressly specifies that we are to carry out installation thereof) at Your Premises. We do not have any obligation to install or procure our suppliers to install any Network Termination Unit, Router, Your Equipment or Supported Items unless and to the extent that a Services Contract expressly specifies that we are required to do so.
- 5.5. You hereby consent to the installation of any Network Termination Unit, Router and Supported Items that a Services Contract specifies that we are to install at Your Premises (and to the disconnection of any unconditional local loop services and/or other services and related devices and equipment where required by any of our suppliers) at Your Premises prior to the installation being performed, for the purposes of the installation.
- 5.6. We and our suppliers shall not be responsible for the installation of electrical wiring, the removal of doors, widening of entrances or any other structural work of any description at Your Premises. You must procure all such work to be carried out prior to our and our suppliers' attendance at Your Premises. We are also not responsible for procuring the installation or maintenance of any cabling in Your Premises other than any cabling from a relevant supplier's network that it connects to the Service Demarcation Point under what the relevant supplier deems to constitute a "standard install". You must install or procure the installation of any other necessary cabling in connection with your receipt of any Ordered Services.
- 5.7. If we or our suppliers are prevented from installing any Network Termination Unit, Your Equipment, Router or Supported Items at Your Premises due to your breach of clauses 5.4, 5.5 or 5.6, you must pay us all costs, charges and losses that we sustain or incur as a result of any such breach.
- 5.8. Without limiting clauses 5.4, 5.5, 5.6 or 5.7, you must also, at all relevant times:
- ensure that all of Your Equipment (other than Supported Items) is installed and properly configured at Your Premises for access to any applicable Network Links in accordance with any requirements that we may specify, except to the extent we are expressly obligated to install and configure Your Equipment pursuant to a Services Contract;
 - arrange for immediate access to be provided to us and our suppliers to Your Premises or other location at which any Network Termination Unit, Router, Your Equipment or Supported Items is held (except at our Data Centres) in the case of an emergency or illegality with respect to any Ordered Services;
 - in any other circumstances, upon 24 hours' notice, provide us and our suppliers' personnel with full and safe access to Your Premises and any other location at which any Network Termination Unit, Router, Your Equipment or Supported Items are held (except at our Data Centres) where reasonably required by us to perform our obligations under these Supply Terms;
 - provide adequate working space and a safe working environment at Your Premises for our use and our suppliers' personnel, as and when required by us;
 - ensure in the interests of health and safety that our and our suppliers' personnel, while on Your Premises, are notified of any safety hazards at or in the vicinity of those premises;
 - provide us with all necessary consents, access credentials, permissions and authorisations necessary for us to perform our obligations under these Supply Terms; and
 - provide us with all necessary information and assistance that we require in order to perform our obligations under these Supply Terms.
- 5.9. With respect to any proposed start date specified in any Services Contract:
- time will not be of the essence in relation to that start date and any such start date is an estimate only;
 - to the extent possible by law, we will not be liable for any delay (whether caused by us, any third party or otherwise) in the provisioning of any Ordered Services;
 - where our selected supplier for the provisioning of any Ordered Service (or any supplier service that we require in order to deliver any Ordered Service) is unable to provision any Ordered Services (or the relevant supplier service) by any agreed or estimated commencement date for those services for any reason, we may terminate the relevant Services Contract at any time upon notice to you, without liability.
- 5.10. We will notify you in writing when Ordered Services are provisioned by sending you a document entitled "Service Handover Pack" (**Service Handover Pack**). Unless you provide us with written notice within three (3) Business Days of the date of the Service Handover

Pack that you reject an Ordered Service, you will be deemed to have irrevocably accepted the Ordered Services.

- 5.11. You must not reject an Ordered Service unless it fails to comply with the Specifications.
- 5.12. Except where an Ordered Service is rejected by you under clause 5.11, any billing cycle referred to in a relevant Quotation will commence on the date of the Service Handover Pack.
- 5.13. We reserve the right to deliver Ordered Services by such means as we determine in our discretion are appropriate. This includes:
- (a) the Ordered Services may be provided from a location such as a data centre owned and operated by us, or from a location owned and operated by any third party, as we see fit;
 - (b) we may supply Ordered Services ourselves or outsource the whole or part of any Ordered Services to third parties;
 - (c) where we use third party suppliers to provide services that we use to supply all or part of any Ordered Services, or where we resell or resupply third party services in connection with our supply of any Ordered Services, we may choose the suppliers that we use to supply those Ordered Services; and
 - (d) we may choose the underlying technology and telecommunications types by which Ordered Services are to be delivered or provisioned, as long as the technology and telecommunications types do not conflict with the Specifications.
- 5.14. If we consider it necessary, we may at any time or from time to time without liability to you,:
- (a) terminate, discontinue, suspend or modify the way that we deliver any Services or any feature or other aspect of any Services (including any Ordered Services) where we are compelled to do so due to a termination, discontinuance, suspension or modification of any third party services that we rely on to deliver any Services by any of our suppliers; and/or
 - (b) modify any Services or any feature or other aspect of any Ordered Services where we choose to do so in our absolute discretion provided that this does not result in any material deterioration in the quality of any Ordered Services and the modified Ordered Services continue to comply with any applicable Specifications.

6. Managed Data Centre Colocation Services

- 6.1. This clause 6 shall only apply with respect to any Managed Data Centre Colocation Services that we expressly agree we will provide to you in a Binding Service Order.
- 6.2. Where specified in a Binding Service Order, we will install Your Equipment or Supported Items (as applicable) in the applicable Rack Space at the applicable Data Centre, following delivery thereof to the Data Centre by you or on your behalf.
- 6.3. For the purposes of this clause 6:
- (a) subject to clause 6.12, you are not permitted to have physical or remote access to the designated Rack Space or any other part of the Data Centre for the purpose of inserting Your Equipment or Supported Items into the Rack Space or to inspect or maintain Your Equipment or Supported Items or for any other reason;
 - (b) we may access the Rack Space and inspect and modify Your Equipment and Supported Items if required by us at any time to perform our obligations under any Services Contract;
 - (c) other than with respect to Supported Items, we have no responsibility for the support or maintenance of any equipment (including Your Equipment) installed in the Data Centre;
 - (d) you agree and acknowledge that the Data Centre is used by our other clients and other third parties and you are not under any circumstances permitted to access or interfere with the operation of our equipment or any equipment of any of our clients or suppliers, or any third parties, at the Data Centre;
 - (e) you irrevocably agree that you do not have any real property interest in, and nor are you a tenant of, the Data Centre or the Rack Space or any part thereof;
 - (f) we may at any time, on notice to you, relocate Your Equipment or Supported Items to alternative rack space in the Data Centre, at our cost;
 - (g) you agree and acknowledge that the location, storage, housing and operation of Your Equipment or Supported Items in the

designated Rack Space at the Data Centre is subject to and subordinate to any lease, licence or other agreement entered into by us with the landlord of the Data Centre;

- (h) you hereby grant a security interest in our favour and in favour of our suppliers over Your Equipment and the Supported Items delivered to the Data Centre as security for any amount payable to us under these Supply Terms and as security for payment to any of our suppliers under any of our contracts with them with respect to Upstream Supplier Services. We (and our suppliers) are not required to enforce the security interest in this paragraph before seeking to otherwise recover any amounts; and
 - (i) by entering into any Services Contract for Managed Data Centre Colocation Services, you will be deemed to have warranted to us that you have obtained all rights, authorisations, permissions and consents to the extent required for us to house Your Equipment and Supported Items at the Data Centre.
- 6.4. You must:
- (a) not access the Data Centre without our prior written consent (except where otherwise permitted under clause 6.12);
 - (b) ensure that Your Equipment and Supported Items delivered to the Data Centre do not cause or allow to be caused the emission of any electromagnetic emissions in breach of any laws, rules, codes, regulations or standards;
 - (c) ensure that Your Equipment and Supported Items delivered to the Data Centre and any use thereof comply with and are used in accordance with all relevant laws, rules, codes, regulations, standards and manufacturer instructions; and
 - (d) not do anything or permit anything to be done by any third party which would compromise or damage the efficient operation or security of the Managed Data Centre Colocation Services, the Rack Space or the Data Centre or which is determined by us acting reasonably as conduct which is offensive or a nuisance to any person.
- 6.5. You shall bear all risk of loss or damage to Your Equipment and Supported Items delivered to the Data Centre after their delivery to and/or installation in the Data Centre. You must ensure that all of Your Equipment and Supported Items delivered to the Data Centre are insured for their full replacement value prior to delivery thereof to the Data Centre. Such insurance must be effected with an insurer approved by us and for the duration of each relevant Services Contract and for at least twenty-four (24) months thereafter and you must provide us with a certificate of currency in respect of that insurance within three (3) Business Days of request by us at any time or from time to time.
- 6.6. We may switch off or disconnect Your Equipment or Supported Items at a Data Centre at any time, if:
- (a) we believe that it does not comply with these Supply Terms or poses a threat or danger to us, the Data Centre or any third party or third party equipment;
 - (b) you do not pay any Service Charges with respect to the Managed Data Centre Colocation Services in accordance with the Payment Terms; and/or
 - (c) the owner or operator of the Data Centre requires us to do so.
- 6.7. If a Services Contract expressly states that Managed Data Centre Colocation Services include Cross-Connect Services:
- (a) we will connect Your Equipment or Supported Items, as applicable, at the Data Centre, to the equipment of a third party's equipment at the Data Centre specified in the Services Contract by physical or wireless connection (a **Cross-Connect**) subject to us obtaining the prior written consent of that third party to the Cross-Connect;
 - (b) prior to carrying out any Cross-Connect, you and the third party must provide us with a signed acknowledgement confirming that you and the third party:
 - (i) each consent to the Cross-Connect;
 - (ii) each agree to pay the Cross-Connect fees that we specify for the Cross-Connect;
 - (iii) acknowledge that, to the extent possible by law, we are not responsible for any fault or failure in the Cross-Connect; and

- (iv) agree not to use the Cross-Connect for any illegal purpose or in breach of any law, regulation or code or rights of any person.
- 6.8. For the purposes of the Managed Data Centre Colocation Services, we do not, unless and to the extent expressly specified in a Services Contract for the Managed Data Centre Colocation Services, have any obligation to provide AC power, air conditioning, fire detection, fire suppression, backup, data, support, maintenance, internet services, network and electronic security services, data recovery, disaster recovery services or the provision of spare parts.
- 6.9. For the avoidance of doubt, if any services that you require at the Data Centre are not expressly specified in the applicable Services Contract, you shall be solely responsible for the procurement and/or provision of such services and payment therefore and where you seek to have such services supplied by third parties, the provision of such services by those third parties will be subject to our prior written consent in each case.
- 6.10. You must promptly notify us if Your Equipment or Supported Items at the Data Centre become subject to any security interest or purchase money security interest and will indemnify us against any loss or damage that we incur that is caused by the repossession thereof by any person.
- 6.11. We may deliver to you Your Equipment or Supported Items or by notice to you require you to collect Your Equipment or Supported Items if they are disconnected or switched off, fail to comply with these Supply Terms or any applicable Services Contract is terminated. If you fail to comply with any such notice we may treat Your Equipment and Supported Items as abandoned and will dispose of or deal with Your Equipment or Supported Items in any way that we deem fit.
- 6.12. If a Request for Quotation for Managed Data Centre Colocation Services specifies that you may have physical access to Your Equipment or the Rack Space, you may only do so if you comply with both our and the relevant Data Centre's security policies and requirements. Without limiting the provision of this clause, if Your Equipment is being held in a shared Rack Space (i.e. not a dedicated rack for your exclusive use), you must only access the Rack Space accompanied by one of our personnel or a third party designated by us. Further, you are responsible for paying any costs and fees incurred by us associated with you physical accessing the Rack Space, including any fees associated with escorted access to the Rack Space, the procurement and use of access cards, and the cost of any inductions required by the Data Centre operator.
- 7. Managed Network Device Services**
- 7.1. This clause 7 shall only apply with respect to Managed Network Device Services that we expressly agree we will provide to you in a Binding Service Order.
- 7.2. Where we expressly agree that we will supply Managed Network Device Services in any Binding Services Order, we will remotely monitor the applicable Supported Items.
- 7.3. With respect to any Supported Items:
- we will exclusively hold any administrator passwords and other administrator access credentials for the Supported Items;
 - you may only access the administrator functionality in any Supported Items on a remote "read only" basis which does not enable modification of any administrator functions or configuration of any Supported Items;
 - we may access and inspect, and you must procure all consents, authorisations and permissions required for us to access and inspect, Supported Items if required by us at any time to perform our obligations under these Supply Terms;
 - other than with respect to Supported Items, we have no responsibility for the support or maintenance of any equipment (including Your Equipment).
- 7.4. We do not, unless and to the extent expressly specified in a Services Contract for the Managed Network Device Services, have any obligation to provide AC power, air conditioning, fire detection, fire suppression, backup, data, support, internet services, or network and electronic security services, data recovery or disaster recovery services or the provision of spare parts with respect to any Supported Items (**Third Party Ancillary Service**).
- 7.5. If during the Term any Supported Items suffer a Fault (other than a Fault caused or contributed to by an Excluded Event), you must notify us in writing that you require technical support promptly upon you becoming aware of the Fault (**Support Request**) in accordance with the following procedure:
- you must issue a Support Request to us via our service desk using the contact details that we have supplied to you;
 - when issuing a Support Request, you must ensure that you supply to us:
 - the name and contact details of your personnel who is experiencing the Fault;
 - a detailed description of the Fault;
 - the Supported Items and/or Network Link the subject of the Fault, and where applicable, the service identification number; and
 - any other information reasonably required by us in connection with the Fault.
- 7.6. Upon receipt of a valid Support Request, we will provide the following services as part of the Managed Network Device Services specified in the Services Contract (**Support Services**):
- we will confirm receipt of the Support Request and assign a severity to the Fault (low, medium or high);
 - we will use our best endeavours to respond to the Fault in accordance with the applicable Response Time Service Levels;
 - until the Fault is resolved in accordance with paragraph (b), we will provide you with periodic updates on the status of the Support Request and the time anticipated for resolution.
- 7.7. You agree and acknowledge that:
- we do not warrant or represent that all or any Faults can be resolved or the time in which they can be resolved;
 - in the event that the Availability Target is not met, you shall be entitled to Service Credits as your sole remedy for the unavailability and/or non-performance of a Network Link;
 - other than in respect of Service Credits payable under the SLA, we are not liable for any breach of the Availability Target and/or Response Time Service Levels, and any breach thereof will not constitute a breach of a Services Contract.
- 7.8. You agree to comply with our reasonable requests for cooperation and assistance in connection with the operation of the Supported Items and our provision of Support Services and which cooperation shall at a minimum include:
- providing us with all connection and access to any Supported Items, personnel, premises, infrastructure, facilities, servers, passwords and equipment reasonably required by us and our suppliers; and
 - providing us with any information regarding the network or system constraints, protocols, interfaces, architecture and other operating parameters used by you.
- 7.9. Where we determine that a Fault relating to any Supported Items is the responsibility of a third party supplier (such as a hardware vendor), we will notify you accordingly and hand over responsibility for the resolution of the problem to the third party supplier, but only where we:
- have investigated the Fault;
 - have reasonable grounds to believe that the cause of the Fault is a factor for which the third party supplier is responsible; and
 - have given you and the third party supplier notice that we have investigated the Fault and a description of the factor or factors which we consider to have caused the Fault, and a copy of any network or service reports and such other data as reasonably necessary to establish that the cause of the Fault is a factor for which the third party supplier is responsible.
- 7.10. We will have no obligation to provide Support Services with respect to any Supported Items, Network Link or Fault in any of the following circumstances or where directly or indirectly related to any of the following matters (**Excluded Event**):
- in respect of any Fault caused by use of any Supported Items in combination with hardware not supplied or approved in writing by us;
 - in respect of any Fault caused by your use of any Network Link or Supported Items in breach of the Acceptable Use Policy or any other policy, procedure or specifications that we supply to you from time to time;

- (c) in respect of any Fault caused or contributed to by a fault or error in, or misconfiguration of, Your Equipment or any other equipment (other than a Supported Item);
- (d) in respect of any modification of any Supported Items (including by way of installation of software not previously installed thereupon, or the modification of any software or the configuration thereof) not authorised by us;
- (e) where any Fault is caused by any loss, corruption or hacking of Your Data;
- (f) where any Fault is caused or contributed to by a failure or error in any Third Party Ancillary Service;
- (g) where required as a result of any obsolete or out of warranty hardware or software comprising or installed on any Supported Items;
- (h) a failure or corruption of any Supported Items, Your Data, third party software or the failure to apply any patch or update to any third party software or Supported Items;
- (i) with respect to Supported Items not covered under a current active 24 hour per day, 7 day per week, 365 day per year vendor support and maintenance agreement;
- (j) with respect to any Supported Items where replaceable parts are not readily available;
- (k) with respect to any Fault caused by any Force Majeure Events, building modifications, power failures or other adverse environmental conditions or factors;
- (l) with respect to any service and repair made necessary by the alteration or modification of Supported Items other than where authorised in writing by us, including alterations, software installations or modifications of equipment made by any third party;
- (m) where a failure of Supported Items requires programming (modification of software code);
- (n) with respect to a Fault handed over under clause 7.9; and/or
- (o) where any Fault is caused by your breach of a Services Contract.

7.11. In addition to any other amounts payable under a Services Contract, you must pay, with respect to any Supported Items:

- (a) the cost of any spare or replacement parts, equipment, or shipping charges of any kind;
- (b) the cost of replacement, modification or repair;
- (c) the cost of vendor support and maintenance agreements with respect to each Supported Item;
- (d) the cost of any software, licensing, or software renewal or upgrade fees of any kind;
- (e) any Unnecessary Service Fees;
- (f) any loss, damage or costs that we incur in connection with any Excluded Event; and
- (g) the cost of any third party hardware/software vendor or manufacturer support or incident fees of any kind.

8. Voice Services

- 8.1. This clause 8 applies where we expressly agree to provide Voice Services pursuant to any Binding Service Order (**Voice Services**).
- 8.2. The Voice Services the subject of a Binding Service Order will allow you, if you have an IP PBX or SIP Gateway Device, to connect it to our network (**Access**) and have your telephony traffic carried over that Access via IP utilising Session Initiation Protocol (**SIP**).
- 8.3. The specific components of the Voice Services that we agree to provide will be as set out in the relevant Binding Service Order.
- 8.4. You may not alter the specifications of any Ordered Services that comprise Voice Services, except with our prior written consent.
- 8.5. You must ensure that you have Data Services or other network services that have sufficient bandwidth to support the Voice Services the subject of a relevant Binding Service Order. In addition, you must shape any bandwidth on any relevant Data Services or other network services where required pursuant to any relevant Binding Service Order.
- 8.6. The availability of Voice Services is subject to, among other things, the geographic availability of the Access and any maintenance or downtime of our upstream suppliers who we rely on in order to provide you with the Access or the Voice Services.
- 8.7. For each location at which you Access our Voice Services:

- (a) the Service Demarcation Point for that location is the Ethernet access interface provided on the Network Terminating Unit (NTU) that we specify for the purpose of this clause;
- (b) you are responsible for all cabling from that Service Demarcation Point to your own equipment (e.g. IP PBX);
- (c) you are responsible for connecting your own equipment to the Service Demarcation Point to obtain connectivity to the Voice Services;
- (d) any configuration required on your own equipment is your responsibility;
- (e) you must provide appropriate telecommunications hardware for connection to the Service Demarcation Point;
- (f) you must provide space and power at the location for the NTU which complies with the environmental conditions specified by us from time to time. We reserve the right to make reasonable amendments to those requirements (including the stated environmental conditions) from time to time and you must comply with them;
- (g) you must implement and maintain network security sufficient to secure the Voice Services.

8.8. We will not configure nor conduct testing on any equipment provided by you for use with the Voice Services.

8.9. We may vary the Voice Services provided to you in the following circumstances:

- (a) if in our reasonable opinion such a variation or addition is required as a result of a change made by one of our upstream suppliers, in which case we may do so without reference to you;
- (b) if, in our reasonable opinion, the Voice Services need to be varied or added to in any way from time to time, in which case we may do so at our sole discretion without reference to you, provided the variation does not result in any material deterioration in the quality of the Voice Services; and
- (c) in any other case, upon thirty (30) days' prior written notice to you (such notice may contain a new terms and conditions for the provision of the Voice Services (the **New Voice Services Terms**)). For the avoidance of doubt the New Voice Services Terms will supersede this clause 8.

8.10. You may not modify or relocate any Voice Services without our prior written consent.

8.11. You must pay all Service Charges associated with the use of the Voice Services, whether or not authorised by you.

8.12. If in providing the Voice Services we need to change your arrangements with your current supplier of Voice Services, you will be deemed to have hereby authorised us to advise your current supplier that the Voice Services are to be provided by us in place of the current supplier's Voice Services (**Transferred Service**) and to sign on your behalf and in your name forms of authority to your current supplier to transfer the provision of the Transferred Service to us. If we request, you will give written instructions to your current supplier to transfer the Transferred Service from your name to us. You will immediately pay to your current supplier all amounts owing for the Transferred Service including alteration of charges which your current supplier may demand up to the time of transfer of those accounts. Within seven (7) days of our request you will provide us with a written list of all amounts which you presently owe to your current supplier for the Transferred Service and include details of any amounts which are in dispute between you and your current supplier in relation to the Transferred Service. You hereby authorise us to, at our discretion, resolve all disputes between you and your current supplier about charges owed by you to the current supplier. You will settle all disputes with your current supplier in accordance with such resolution and, at our discretion, authorise us to immediately pay your current supplier on your behalf. If we pay or credit any amount to your current supplier on your behalf, you must indemnify and reimburse us for that amount.

8.13. If you apply to port geographic service numbers from the Transferred Service to the Voice Services (a process commonly referred to as Local Number Portability), we do not warrant or guarantee the feasibility or success of such a port or that numbers successfully ported to us are capable of being ported to any third party service provider.

- 8.14. We undertake to use reasonable endeavours and proper skill and care to port numbers to and from third party service providers as reasonably required in order for us to provide the Voice Services.
- 8.15. We will supply you with geographic numbers which have been allocated to us by the ACMA. You acknowledge that you have no right, title or interest in any number allocated to you as part of the Voice Services. We will comply with the National Numbering Plan and reserve the right to alter or replace any number as a result of compliance with the National Numbering Plan or with any direction from the ACMA. We will use our reasonable endeavours to provide you with at least seven (7) days' prior written notice of any numbering change that will affect the Voice Services supplied to you. Where at least seven (7) days' prior written notice is not practical in the circumstances, we will provide you with as much notice as is practical in the circumstances.
- 8.16. You must use the numbers we supply to you solely for the purposes of terminating and originating calls over the Voice Services. Numbers supplied by us cannot be used as the originating caller line identification (CLI) on calls which do not traverse our network.
- 8.17. You must provide the CLI of the A-party to us on all calls. You agree that:
- the CLI provided must be valid, meaning it can be identified for the purpose of terminating a call to the called party. We will not terminate calls from CLI that cannot be identified;
 - if you do not bar CLI in respect to calls terminated by the Voice Services, you agree that when a call is made using the Voice Services, the relevant telephone number may be sent automatically to the equipment of the called party;
 - if a party calling a number issued by us as part of the Voice Services has not barred their CLI from calls made from their equipment, the telephone number of the calling party may be displayed on the screen of the handset, which receives the call, if the handset is technically capable of displaying CLI; and
 - you agree that you will indemnify us for any and all loss or damage that arises as a result of your failure to comply with the requirements of this clause 8.17.
- 8.18. When you either order a number from us or activate a reserved number, on your request, we will forward information relating to you to Sensis to enable you and Sensis to arrange a directory listing. We will not act upon your instructions to request a new directory listing or to amend an existing directory listing at a date after the initial order to issue a number has been processed. You must contact Sensis to either modify an existing directory listing or to request a new directory listing at a date after the number has been issued by us.
- 8.19. In relation to the Voice Services, you acknowledge and agree that:
- the usage based charges for the Voice Services are based on usage volume for either outbound calls only or a combination of outbound and inbound calls.
 - You must ensure that your use of the Voice Services for outbound calls accounts for at least 40% of your overall call volume. For the avoidance of doubt, it is not an acceptable use of the Voice Services if:
 - the Voice Services are used for inbound calls only; or
 - the Voice Services comprise outbound and inbound calls, but the volume of inbound calls exceeds 60% of the overall call volume for the Voice Services (measured across the Voice Services connecting to us in a given state over a given month).
- 8.20. You must assist us and you hereby authorise us (including to sign forms of authority on your behalf) to ensure that any of our equipment necessary for us to provide the Voice Services (including providing access to our network) is installed and programmed so that calls to destinations nominated by us from time to time are, so far as possible, carried by our network. You hereby authorise us and our agents to disconnect, install or make amendments to any autodiallers, key systems or PABX/IP PBX programming at any location from which you access the Voice Services, as may be required by us or our suppliers in connection with the provision of the Voice Services.
- 8.21. We have a "fair use policy" that applies with respect to the Voice Services. A copy of the fair use policy is available at <https://www.netsq.co/service-agreements> and may be updated by us from time to time (**Fair Use Policy**). Despite any other provision of these Supply Terms, if you breach the Fair Use Policy, we may, at our sole discretion, without telling you before we do so, suspend, limit or terminate the supply of the Voice Services to you.
- 8.22. WHEN YOU DIAL '000' FROM THE VOICE SERVICES, YOU WILL BE CONNECTED TO EMERGENCY SERVICES. IT IS IMPERATIVE THAT YOU UNDERSTAND THAT THE VOICE SERVICES CANNOT BE UTILISED IF THERE IS A POWER OUTAGE, WHEN YOUR INTERNET CONNECTION IS INTERRUPTED OR IF THE HARDWARE YOU ARE USING TO ACCESS THE VOICE SERVICES IS FLAWED, DISCONNECTED, FAULTY OR UNAVAILABLE. WE STRONGLY RECOMMEND THAT YOU HAVE AN ALTERNATIVE TELECOMMUNICATIONS SERVICE SUCH AS A CELLULAR, FIXED LINE OR SATELLITE TELEPHONE CONNECTION TO CONTACT EMERGENCY SERVICES IN THE EVENT THAT THE VOICE SERVICES ARE UNAVAILABLE OR INOPERABLE AT ANY TIME.
- ## 9. Hardware and software procurement
- 9.1. Words used in this clause 9 and in clause 10 have the meanings given to them in the *Personal Property Securities Act 2009 (PPSA)*, except where otherwise defined in these Supply Terms.
- 9.2. Where we agree to supply software under any Services Contract, the following provisions will apply:
- In each item of software the Intellectual Property Rights are owned absolutely by the manufacturer of the software unless and to the extent a third party is identified in the relevant Services Contract as the owner of the software (such manufacturer or third party shall be referred to in this clause as "the software owner"). No assignment of any such rights is expressed or implied under these Supply Terms or any Services Contract.
 - Our performance under the applicable Services Contract is in all respects conditional upon you entering into on the date of the Services Contract an end-user licence agreement with the software owner (a **Licence Agreement**), a copy of which is accessible via the Internet hyperlink(s) specified on the relevant Quotation and which governs your use of that item of software as may be required by the software owner.
 - You hereby agree with us as a term of the Services Contract to be bound and abide by the terms and conditions of each such Licence Agreement and of any shrinkwrap, clickwrap or other software licence agreement, end user licence agreement, hardware licence agreement and other standard agreements of the manufacturer/vendor of the goods in force at the time that you enter into the Services Contract.
 - You agree and acknowledge that in purchasing the software, you are purchasing the media and/or the equipment on which such software is recorded or embedded only, and not any Intellectual Property Rights in the software.
 - You agree that nothing contained in these Supply Terms or the Services Contract shall be construed as an assignment or transfer of any copyright, design right or other Intellectual Property Rights in such software, and all such rights are reserved by the software owner.
 - You agree that, except and to the extent as otherwise provided in the relevant Licence Agreement, you shall have only a non-exclusive and non-transferable licence to use the software in the form in which it is embedded in or integrated at the time of delivery to you for your internal business purposes only.
 - Except as expressly permitted by a Licence Agreement and save to the extent and in the circumstances expressly required to be permitted by law, you shall not rent, lease, sub-license, loan, copy, modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the software or use, reproduce or deal in such software or any part thereof in any way, or interface the software with any other software.
 - To the maximum extent permissible by applicable law, we are not liable for any defect in, or non-performance of the software and you hereby accept all consequences for your use of the software.

- 9.3. This clause 9.3 applies to hardware that we may agree to sell to you and not to any hardware that we offer to provide on a rental basis (**Goods**). In respect of such Goods:
- (a) Risk in the Goods passes to you immediately upon delivery or installation (whichever occurs earlier).
 - (b) Property and title in Goods supplied to you under a Services Contract does not pass to you until all money (including money owing in respect of other transactions between you and us) due and payable to us by you have been fully paid.
 - (c) Where Goods are supplied by us to you without payment in full, you:
 - (i) are a bailee of the Goods until property in them passes to you;
 - (ii) irrevocably appoint us to be your attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in our favour with respect to the Goods under applicable law;
 - (iii) must be able upon demand by us to separate and identify as belonging to us Goods supplied by us from other goods which are held by you;
 - (iv) must not allow any person (other than us) to have or acquire any security interest in the Goods;
 - (v) agree that we may repossess the Goods if payment is not made within 7 days (or such longer time as we may, in our complete discretion, approve in writing) of our supply of the Goods to you; and
 - (vi) you grant an irrevocable licence to us and our agents to enter any premises in which the Goods are situated in order to recover possession of Goods pursuant to this paragraph. You indemnify us for any damage to property or personal injury which occurs as a result of us entering any such premises.
 - (d) Where Goods are supplied by us to you without payment in full of all moneys payable in respect of the Goods, you acknowledge that we have a right to register and perfect a personal property security interest (including a purchase money security interest) in those Goods.
 - (e) You agree that these Supply Terms create a security interest (including a purchase money security interest) in each of the Goods we supply to you under a Services Contract until your payment in full of all moneys payable in respect of the Goods.
 - (f) You consent to us effecting a registration on the PPSR in relation to the security interest arising under or in connection with these Supply Terms.
 - (g) Where Goods are supplied by us to you without payment in full of all moneys payable in respect of the Goods, until such payment has been made in full, you must provide all access, assistance and cooperation required by us to effect registration and/or to enable us to exercise our rights in connection with the Goods. Without limiting the foregoing provisions, until such payment has been made in full, you must do everything necessary to enable us to repossess the Goods at any time upon the earlier of:
 - (i) you failing to pay any Service Charges to us by the due date in accordance with these Supply Terms or any Services Contract; or
 - (ii) termination of any applicable Services Contract.
 - (h) You must not allow any security interest to arise in respect of the Goods without our prior written consent.
 - (i) You must immediately notify us of any changes to your name or address.
 - (j) Except where the notice must be provided under a provision of the PPSA that cannot be excluded, you waive the right to receive any notice under the PPSA with respect to the Goods.
 - (k) You must on demand by us indemnify us from and against, any loss, damage, costs and expenses incurred in connection with the registration of a security interest over the Goods and/or any action taken by us to protect our security interest in the Goods.
 - (l) We are not required to comply with the Personal Properties Securities Act 2009 (Cth) or any related regulations to the extent that we and you may contract out of any such provisions in relation to the Goods or with respect to any security interest referred to in this clause 9.3.
- (m) If you fail to advise us in writing of any fault in Goods or failure of Goods to accord with a Services Contract within 24 hours of delivery, you will be deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Services Contract. Nothing in this paragraph affects your rights for any alleged failure of a guarantee under the Australian Consumer Law.
- 10. Rented Equipment**
- 10.1. You agree that these Supply Terms create a Security Interest in all Equipment that we supply to you that is expressly specified as being supplied on a rental basis in any Services Contract (**Rented Equipment**).
 - 10.2. You may only use Rented Equipment for the purpose specified in the applicable Services Contract.
 - 10.3. Each item of Rented Equipment remains our property at all times.
 - 10.4. You must ensure that all Rented Equipment is kept safe and secure and is not damaged in any way. Rented Equipment must be kept at the location specified in the applicable Services Contract. You may not provide Rented Equipment to any third party or permit any third party to access Rented Equipment.
 - 10.5. You must ensure that each item of Rented Equipment is insured with an insurer approved by us for its full replacement value.
 - 10.6. You must pay us, on demand, the cost of repair to each item of Rented Equipment, where the Rented Equipment is damaged in any way, fair wear and tear excepted. You are also responsible for paying us, on demand, the full replacement cost of each item of Rented Equipment, if the Rented Equipment is lost or stolen in any circumstances or where we determine in our absolute discretion that the Rented Equipment cannot be repaired.
 - 10.7. You must permit us to inspect the Rented Equipment at any time or from time to time, upon reasonable notice.
 - 10.8. You hereby grant us a Security Interest in each item of Rented Equipment and agree that these Supply Terms constitute a Security Agreement in our favour in respect of each item of Rented Equipment.
 - 10.9. You consent to us effecting a registration on the PPSR in relation to the Security Interest arising under or in connection with these Supply Terms with respect to the Rented Equipment.
 - 10.10. You must provide all access, assistance and cooperation required by us to effect registration and/or to enable us to exercise our rights in connection with the Rented Equipment. Without limiting the foregoing provisions, you must do everything necessary to enable us to repossess the Rented Equipment at any time upon the earlier of:
 - (a) you failing to pay any Service Charges to us by the due date in accordance with these Supply Terms; or
 - (b) termination of the relevant Services Contract.
 - 10.11. Other than with respect to a Security Interest in our favour, you must not grant, register or permit any Security Interest in respect of the Rented Equipment without our prior written consent.
 - 10.12. You must immediately notify us of any changes to your name or address.
 - 10.13. Except where the notice must be provided under a provision of the PPSA that cannot be excluded, you waive the right to receive any notice under the PPSA with respect to Rented Equipment.
 - 10.14. You must on demand by us indemnify us from and against, any loss, damage, costs and expenses incurred in connection with the registration of a security interest over any Rented Equipment and/or any action taken by us to protect our security interest in Rented Equipment.
 - 10.15. We are not required to comply with the Personal Properties Securities Act 2009 (Cth) or any related regulations to the extent that we and you may contract out of any such provisions in relation to the Rented Equipment or with respect to any security interest referred to in this clause 10.
- 11. Your obligation to pay us**
- 11.1. You must pay all fees and charges, without set off or deduction, set out in the Services Contract (or as otherwise agreed between you and use in writing (**Service Charges**)) in consideration for our provision of the Ordered Services. Those fees and charges must be paid at the time and in the manner set out in the Services Contract (or as

- otherwise agreed between you and us in writing), plus any GST that is applicable in respect of the supply of the Ordered Services.
- 11.2. Each time you order Services from us, you will be deemed to have warranted that you have obtained all necessary consents, authorisations and permissions to enable us to provide the Ordered Services to you.
- 11.3. The Service Charges that apply to your order for any Services that are specified when a Binding Service Order comes into existence, are calculated based on the information that you have provided to us at the time we issued the relevant Quotation. Without limiting any of our other remedies, we reserve the right to terminate any Services Contract by notice to you, without liability to us, if we discover that any information that you provided to us in any Request for Quotation is incorrect, incomplete, false or misleading.
- 11.4. You must pay the applicable Service Charges with respect to any Ordered Services, whether or not you use or authorise their use.
- 11.5. If a Binding Service Order specifies a minimum term for any Ordered Services (**Minimum Term**) the Services Contract cannot be cancelled or terminated by you prior to the expiry of the Minimum Term, unless expressly permitted under the terms and conditions of these Supply Terms.
- 11.6. If you cancel or terminate any Ordered Services prior to the expiry of the Minimum Term you must immediately pay to us any monies that would have been payable to us for the balance of the Minimum Term had the Ordered Services not been cancelled or terminated prior to the expiry of the Minimum Term (plus any other monies that you owe to us). You agree that payment pursuant to this clause is not a penalty and is a reasonable estimate of the loss we are likely to suffer flowing from the early cancellation or termination of any Ordered Services.
- 11.7. Upon expiry of the Minimum Term with respect to any Services Contract, the Services Contract shall automatically renew for consecutive renewal terms specified in the Services Contract, or consecutive renewal terms of 3 months if no renewal terms are specified in the Services Contract, on the same terms and conditions (each, a **Renewed Services Contract Term**), unless either we or you provide at least thirty (30) days' written notice but not more than sixty (60) days' prior written notice prior to the expiry of the Minimum Term or any then current Renewed Services Contract Term of termination of the Services Contract, in which case where such notice is provided the Services Contract shall terminate at the end of the Minimum Term or the then current Renewed Services Contract Term (as applicable).
- 11.8. If a Services Contract does not have a Minimum Term, either you or we may terminate the Services Contract at any time on sixty (60) days' prior written notice to the other party. You may only do so if you have paid to us all monies due and owing under the Services Contract. For the avoidance of doubt, each Renewed Services Contract Term shall constitute a separate Minimum Term for the purposes of these Supply Terms.
- 11.9. As between you and us, you must pay all costs associated with using or receiving Ordered Services and those associated with any use of any Ordered Services, including internet access costs, web browser and computer and smartphone equipment costs, telecommunications costs, data costs, roaming charges and Service Charges.
- 11.10. For the avoidance of doubt, if any services required by you are not expressly specified in any Services Contract, you shall be solely responsible for the procurement and/or provision of such services and payment therefore.
- 11.11. Except in the case of manifest error, any invoice raised by us for Ordered Services will be deemed to be correct and prima facie evidence of all applicable and relevant Service Charges contained therein.
- 11.12. Except as specified otherwise in a Services Contract, we will issue invoices on a monthly basis in advance for the Service Charges calculated by reference to the fees, charges and prices specified in the applicable Services Contracts. All fees, charges and prices set out in these Supply Terms or any Services Contracts are exclusive of GST. Each invoice is payable within thirty (30) days of the date the invoice is issued by us unless specified otherwise in the applicable Services Contract.
- 11.13. You may not dispute any invoices issued by us unless disputed in accordance with this clause 11.13. If you genuinely dispute any invoiced Service Charges in good faith, you may withhold the disputed amount, but only if:
- (a) on or before expiry of the period in which payment is required under the Payment Terms, the undisputed amount of the invoice is paid in full; and
 - (b) within five (5) days of the invoice being issued notice is given by you to us of the dispute, details of the amount disputed, the reasons for the dispute and the basis for calculating the disputed amount (**Fee Dispute Notice**).
- 11.14. Upon receipt of any Fee Dispute Notice, we will investigate the dispute and raise it with our relevant suppliers and our decision (or our supplier's decision if applicable) will, in the absence of fraud or manifest error, be final. We will provide you with the reasons for our (or our supplier's) decision. If the disputed amount is determined by us or any relevant supplier to be payable, you must pay the disputed amount in full plus interest from the original due date under the Payment Terms until it is paid in full, at the rate of 4% per annum above the Commonwealth Bank Corporate Overdraft Reference Rate published most recently prior to the first day of the month of the original due date.
- 11.15. Any Fee Dispute Notice will be determined in accordance with clause 11.14 and will not be subject to clause 24.
- 11.16. If we make a decision about a Fee Dispute Notice in our favour you must not issue a further Fee Dispute Notice or otherwise raise any dispute in respect of the same or similar circumstances.
- 11.17. If some or all of any invoiced Service Charges are not paid in accordance with the Payment Terms, we may without prejudice to any of our other rights, do one or more of the following:
- (a) impose interest on the outstanding amount from the due date until it is paid in full at the rate of 4% per annum above the Commonwealth Bank Corporate Overdraft Reference Rate published most recently prior to the first day of the month of the original due date;
 - (b) suspend all or any Ordered Services, including by disconnecting any Supported Items, Network Termination Units, Routers, your devices and Network Links;
 - (c) terminate the supply of any Ordered Services including by disconnecting any Supported Items, Network Termination Units, Routers, your devices and Network Links and recover from you all losses incurred by us as a result of the termination of the supply of the Ordered Services;
 - (d) terminate the applicable Services Contracts, including by disconnecting any Supported Items, your devices and Network Links and recover from you all losses incurred by us as a result of the termination;
 - (e) report the default to a credit reporting agency;
 - (f) as a condition of continuing to supply you with any Ordered Services or other Managed Services, require that you:
 - (i) pre-pay amounts that we request (in addition to any amounts which are otherwise payable in advance);
 - (ii) lodge a bond as security against payment in an amount that we consider to be reasonable in the circumstances;
 - (iii) provide us with personal guarantees;
 - (iv) provide us with an unconditional bank guarantee without an expiry date in an amount that we consider to be reasonable in the circumstances from a bank approved by us; and/or
 - (v) comply with any other reasonable arrangement that we specify in writing with respect to payment of Service Charges.
- 11.18. You agree to replenish the amount of any prepayment, bond or bank guarantee to the original amount, if we draw down on any amounts the subject of those prepayments, bonds or bank guarantees to pay Service Charges, within seven (7) days of demand by us at any time.
- 11.19. You agree and acknowledge that we intend to pay our suppliers from Service Charges that we receive from you and that your failure to pay us in accordance with the Payment Terms may result in us being in default under one or more of our agreements with our suppliers. You agree that in the event we are in default under any agreements with our suppliers in circumstances where you are in default of the Payment Terms, and as a result we incur any fees, costs, charges or

liability to our suppliers, you shall be responsible for and indemnify us in respect of all such fees, costs, charges and liability.

11.20. If, at any time there is an increase imposed on us in the cost of providing Ordered Services, we may review and modify the Service Charges by an equivalent amount by written notice to you of the new Service Charges (the **Revised Charges**). The Revised Charges so advised will become the Service Charges effective from the date that is ten (10) Business Days after the date of the notice.

11.21. Subject to clause 11.20, Service Charges agreed in a Service Contract will be valid for the duration of the Initial Term of the Agreement. Upon expiration of the Initial Term, the Services Charges will be revised and we will increase the Service Charges by an amount equivalent to the greater of 3% and the increase in CPI for the twelve (12) months period preceding the price increase. The Service Charges will not decrease at any time as a result of any negative CPI or otherwise..

12. Compliance and cooperation

12.1. You must provide us with all information, access details (including usernames and passwords), building clearances and cooperation requested by us, on a timely basis and as reasonably necessary for us to carry out our obligations under these Supply Terms. Without limiting the foregoing provisions, you must cooperate with us if we are required to comply with any direction from the Australian Communications and Media Authority or the Australian Competition and Consumer Commission, or any other government agency or regulatory authority (which may include a direction to suspend Ordered Services).

12.2. You must provide all reasonable assistance in any investigation by any government agency or regulatory authority in connection with the supply of Ordered Services in which we are involved, whether or not you are required by law to do so. You acknowledge and agree that we may be compelled to disclose your information (including details of Identifiers and other Personal Information) to law enforcement agencies pursuant to applicable law.

12.3. We do not make any representations or warranties (other than any applicable Non-Excludable Guarantees, if any) as to the effectiveness or fitness for purpose of our network security or the security of your networks, equipment and data that you connect to, or transmit via, any Supported Items, Your Equipment or any Network Link.

12.4. You acknowledge that there is no guarantee of security or privacy on the internet, and while we will use our best endeavours to adhere to industry best practises, we offer no guarantee and provides no warranty (express or implied) that Your Equipment, Supported Items, Network Links or Your Data will be secure or private.

12.5. You agree and acknowledge that the Network Links are not necessarily secure or confidential and you agree and acknowledge that security in respect of:

- (a) your use of Your Equipment, Supported Items or Network Links; and/or
- (b) software, data, Your Data, materials and information that is stored on or transmitted by any of your equipment or any Network Termination Units, Routers, Your Equipment, Supported Items or Network Links,

is at your sole risk and you agree that you will not bring any claim against us or our suppliers concerning our or our suppliers' network security and you hereby release and indemnify us against any claims concerning our or our suppliers' or your network security.

12.6. You retain sole responsibility and accept sole liability for all Your Data and any other software, information, data or material of any nature stored on any Network Termination Units, Routers, Your Equipment, Supported Items or which is transmitted via any Network Link.

12.7. You must:

- (a) implement and maintain network security at each of Your Premises and where relevant ensure that you implement and maintain network security at Your Premises;
- (b) comply with any security procedures and standards that we notify you of from time to time;
- (c) comply with all security policies, fair use policies and other procedures and policies notified by us in writing from time to time;
- (d) ensure all Your Equipment at Your Premises complies with any compatibility criteria and other requirements that we may

specify in writing from time to time, including where applicable, any telecommunications labelling requirements;

(e) ensure that you do not in connection with any Ordered Services, damage, threaten, interfere with or degrade or cause the deterioration of the operation or performance of any network, the supply of any products or services to any person, or any network system, equipment or facilities;

(f) comply with, and ensure that you comply with, any reasonable directions that we issue with respect to any Ordered Service, including any directions to resolve any interference between Your Equipment or Supported Items and any of our equipment or the equipment of any third party;

(g) not make or attempt to make any claim against any supplier used by us to provide some or all of the Ordered Services.

12.8. Other than as set out in these Supply Terms, you are responsible for:

(a) controlling access to and use of the Ordered Services, except to the extent otherwise agreed in writing by us;

(b) controlling access to and use of any passwords and other access credentials provided to you by us or any of our suppliers;

(c) ensuring that the Ordered Services are used only in accordance with these Supply Terms and all applicable laws;

(d) any viruses, hacking and denial of service attacks on Your Equipment, Your Data and Supported Items, except to the extent specified otherwise in a Services Contract; and

(e) ensuring the security of any communications made using any Network Links or Your Equipment or Supported Items connected to the Ordered Services. We and our suppliers do not guarantee or warrant the security or privacy of any communications made using any Network Links or any Network Termination Units, Routers, Your Equipment or Supported Items connected to the Ordered Services.

12.9. You must ensure that all of your employees, agents, officers, contractors and subcontractors comply with your obligations under these Supply Terms. You will be liable to us for their acts, omissions, defaults and conduct, as fully as if they were your acts, omissions, defaults and conduct and you agree to indemnify us for all and any loss that we incur as a result of their acts, omissions, defaults and conduct in breach of these Supply Terms. The provisions of this clause do not create any contract between us and them.

13. Your Data and Your Equipment

13.1. As between you and us, you own all data you transmit in the course of using and/or accessing the Ordered Services, including any data stored on Your Equipment or Supported Items or transmitted via any Network Link, Network Termination Units or Routers (collectively, **Your Data**).

13.2. You agree and acknowledge that:

(a) Ordered Services and/or Your Data may be hosted by us or our suppliers on hardware or infrastructure located in or outside Australia; and

(b) we may not own or operate the infrastructure upon which Ordered Services and/or Your Data is hosted.

13.3. Each time you use Ordered Services you shall be deemed to have agreed and warranted and represented to us that:

(a) Your Data will only be uploaded, inputted and transferred into and/or via the Ordered Services, and Your Data will only be disclosed to us, which can be uploaded, inputted and transferred into and/or via the Ordered Services and disclosed to us without contravening any applicable laws or the rights of any person;

(b) your Data and our collection, use, holding and/or disclosure thereof in the course of providing or provisioning the Ordered Services, will not breach any applicable law or right of any person including the *Privacy Act 1988* (Cth); and

(c) all software, data, materials and information that is stored on or transmitted by Your Equipment, Network Termination Units, Routers, Supported Items or via any Network Link will not infringe the rights of any person or breach any applicable law.

13.4. As between you and us, you are solely responsible for the accuracy, legality and quality of all Your Data and for obtaining any permissions, licences, rights and authorisations necessary for us and our suppliers

to use, host, hold, transmit, store and disclose in connection with the provisioning and supply of any Ordered Services.

- 13.5. As between you and us, you agree that you, not us, are solely responsible for backing up and archiving all Your Data held on Your Equipment and Supported Items and for ensuring that all Your Equipment complies with all requirements that we specify from time to time, including any compatibility requirements that our suppliers specify.
- 13.6. As between you and us, you agree that we are not responsible for any loss, corruption or hacking of any of Your Data.
- 13.7. You must indemnify us and our suppliers in respect of any loss and damage that we incur in respect of any claim that any of Your Data is lost, unavailable or corrupted or that the transmission, storage, hosting, disclosure, access or use of any of Your Data by us or our suppliers in the course of providing Ordered Services infringes the Intellectual Property Rights or other rights of any person or breaches any law, regulation, code or standard.
- 13.8. If we become aware of any of Your Data or other content that breaches our Acceptable Use Policy or any other provision of these Supply Terms, we will:
 - (a) use reasonable endeavours to disconnect from the relevant Network Links the relevant Router, Your Equipment or Supported Items that the relevant Your Data or content is hosted on or transmitted through; or
 - (b) notify you that you are required to disconnect that Your Equipment or those Supported Items from the relevant Network Link (**Equipment Disconnection Request**).
- 13.9. We may at any time, on written notice to you, and without any liability, disconnect Network Termination Units, Routers, Your Equipment or Supported Items from any Ordered Services where required by any of our suppliers.
- 13.10. If we issue an Equipment Disconnection Request pursuant to clause 13.8 or require you to otherwise disconnect Your Equipment or Supported Items as a result of our supplier(s) requiring disconnection of Your Equipment or Supported Items, you must procure the disconnection of Your Equipment and Supported Items from the applicable Network Links within two (2) Business Days of our request.

14. Responsibility for Performance of Ordered Services

- 14.1. We may engage subcontractors or third parties to enable us to provide Ordered Services and/or to perform our obligations under these Supply Terms.
- 14.2. You acknowledge that Ordered Services will not be supplied uninterrupted or error free.
- 14.3. We are not responsible for ensuring that any data sent or received over Ordered Services is sent or received correctly.
- 14.4. To the full extent possible by law, except in respect of any Non-Excludable Guarantee:
 - (a) we will have no liability for any failure, downtime, interruption or error in any Network Links or other Ordered Services, irrespective of whether the failure, downtime, interruption or error is caused by a Force Majeure Event, a Scheduled Outage, your conduct or otherwise;
 - (b) we and our suppliers do not have any responsibility for loss of data, delays, non-deliveries, or mis-deliveries of data;
 - (c) we and our suppliers are not responsible for any battery backups. The replacement of a backup battery with respect to your devices, Network Termination Unit, Router or Supported Item will be your risk; and
 - (d) we and our suppliers do not have any responsibility for any content accessed through any Ordered Services (including inaccurate, incomplete or out of date information).
- 14.5. We will use our best endeavours to notify you in advance of any scheduled outage of any Ordered Services.
- 14.6. You hereby release and agree to indemnify us in respect of any loss and damage we incur and/or claims and/or complaints you and any other third parties you deal with may have against us in respect of any failure, interruption, downtime, error or unavailability of any Ordered Services or Your Equipment, Network Termination Units, Routers, Supported Items or Your Data.
- 14.7. You must provide and maintain all cabling from the Service Demarcation Point to Your Equipment and ensure that Your Equipment complies with any requirements specified in the Services

Contracts or requirements that we otherwise notify you of from time to time including requirements that relate to space, power and other environmental conditions for Your Equipment and our or our suppliers' equipment at the Service Demarcation Point. Unless specified in a Services Contract to the contrary, you must provide space and power at all relevant premises for the Network Termination Unit, Router and Your Equipment that complies with any environmental conditions and other specifications that we may provide to you from time to time.

- 14.8. It is your responsibility to connect and configure Your Equipment (including any firewalls) to the Service Demarcation Point, unless a Services Contract expressly provides that we are required to do so.
- 14.9. If a Services Contract expressly provides for our installation of any Router at Your Premises, the Services Demarcation Point will be deemed to be the Router located within Your Premises.
- 14.10. If a Services Contract expressly provides for our installation of a Network Termination Unit at Your Premises (but does not expressly provide for our installation of a Router), the Services Demarcation Point will be deemed to be the Network Termination Unit at Your Premises.
- 14.11. We will provide you with details of any relevant technical requirements for connecting Your Equipment to the Router and/or Network Termination Unit at the Service Demarcation Point, unless a Services Contract Expressly provides that we are required to connect Your Equipment to the Router and/or the Network Termination Unit. We may make amendments to any such requirements or carry out maintenance of the Router from time to time if required in order to maintain connectivity to any services that our suppliers provide that are related to Ordered Services and you must also comply with those amendments within five (5) days of us notifying you of any such amendments.

15. Acceptable Use Policy

- 15.1. You must comply with our Acceptable Use Policy.
- 15.2. In addition to the Acceptable Use Policy, you must comply with each Security Policy.
- 15.3. We may terminate any Services Contract if you:
 - (a) infringe our Acceptable Use Policy or any Security Policy and our suppliers terminate any Upstream Supplier Service as a result;
 - (b) repeatedly infringe our Acceptable Use Policy or any Security Policy; or
 - (c) commit a material breach of our Acceptable Use Policy or any Security Policy.
- 15.4. You indemnify us in respect of any loss, costs or damage we incur as a result of your breach of our Acceptable Use Policy or any Security Policy.

16. Confidential Information

- 16.1. Each party agrees and acknowledges that it may receive confidential information from the other party during the term of these Supply Terms in connection with these Supply Terms which is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure (**Confidential Information**).
- 16.2. Each party (the **first party**) agrees and acknowledges that the Confidential Information of the other party will be received and held by the first party in strict confidence and will not be disclosed by the first party, except:
 - (a) with the prior written consent of the other party;
 - (b) where disclosed to the employees, agents, suppliers (but only as necessary to enable performance of obligations or taking the benefit of these Supply Terms) or professional advisors of the first party on a confidential basis;
 - (c) as required by the rules of any stock exchange; or
 - (d) as required by a court of competent jurisdiction, and then, only to the extent required, and provided that the first party promptly notifies the other party of such requirement of disclosure and provides full particulars to the other party of the disclosure, unless notification is prohibited by applicable law.
- 16.3. Confidential Information does not include any information:
 - (a) that enters the public domain other than through a breach of these Supply Terms or that is disclosed to the first party by a third party on a non-confidential basis; and/or that is

- (b) developed independently by the first party without reference to the confidential information of the other party.
- 16.4. Your Data is not your Confidential Information for the purposes of these Supply Terms.
- 17. Intellectual Property Rights**
- 17.1. You agree and acknowledge that these Supply Terms does not transfer or assign any Intellectual Property Rights to you.
- 17.2. As between you and us, except in respect of Your Data, we own all Intellectual Property Rights in the Managed Services and Ordered Services and in all of our equipment, networks and in all of our other property.
- 17.3. You have no rights in the Managed Services or Ordered Services or in any part of them or in any modification or enhancement thereof, other than the rights temporarily granted to you to use Ordered Services pursuant to these Supply Terms.
- 17.4. You must not take any step to invalidate or prejudice our (or our licensors' or suppliers') Intellectual Property Rights in the Managed Services, Ordered Services or otherwise. Without limiting the foregoing provisions, you must not register any security interest or purchase money security interest on the Personal Property Securities Register, or otherwise encumber or charge your rights under or in connection with these Supply Terms, any Services Contract or our property.
- 18. Identifiers**
- 18.1. You agree and acknowledge that:
- (a) in order for us to supply Ordered Services, we may need to allocate to you one or more identifiers such as an IP address (**Identifiers**).
- (b) Identifiers are not owned by you and as between you and us, remain our property and you agree and acknowledge that we may be required to forego, reallocate or reassign the Identifiers to comply with rules and other requirements (as applicable) of any relevant government entities or authorities in respect of the Identifiers including the Australian Communications and Media Authority;
- (c) where we allocate public IP addresses to you we will record that allocation in the APNIC WHOIS database.
- 18.2. We grant to you a non-transferable licence for you to use Identifiers that we allocate to you only for the purpose of you receiving Ordered Services from us.
- 18.3. We will notify you in writing if we are required to forego, reallocate or reassign any Identifier allocated to you, and you must cooperate in respect of all such matters.
- 18.4. We are not liable for any abuse or malicious use of any Identifiers (including any public IP addresses).
- 18.5. Ordered Services do not include the provision of any Identifiers unless expressly specified in the applicable Services Contract.
- 19. Limitation of Liability**
- 19.1. Except in respect of any Non-Excludable Guarantees, neither party shall be liable to the other for any indirect, special or consequential loss or damage incurred by the other party, including liability for loss of profits, loss of business opportunity, loss of savings, loss of revenue or any other economic loss, or loss of data or goodwill, regardless of the cause of such loss or damage or whether we or you have been advised of the possibility of such loss or damage.
- 19.2. Except in respect of any Non-Excludable Guarantees, to the maximum extent permitted by law, we will not have any liability to you for:
- (a) any loss or damage howsoever incurred in relation to your use of or inability to use Ordered Services;
- (b) any and all claims brought against you by a third party to whom you provide products or services;
- (c) the acts or omissions of any third party, including the suppliers which have been engaged by us for the purpose of supplying or maintaining any Ordered Services or any part thereof;
- (d) any matter for which you are responsible under these Supply Terms;
- (e) any loss that you incur in connection with any Ordered Service, to the extent such loss is caused or contributed to by any and all claims brought against you by a third party to whom you provide products or services under a contract to the extent that that liability could have been lawfully excluded, restricted or limited under that contract;
- (f) any Force Majeure Event; and/or
- (g) any other liability for one or more events, in an amount that exceeds the amount equivalent to the Service Charges paid by you in the aggregate, for any relevant Ordered Services in the five (5) month period preceding the date of the event (or the date of the last event, where there is more than one event).
- 19.3. Goods and services that we may supply under these Supply Terms may come with Non-Excludable Guarantees. The extent of the implied guarantees depends on whether you are a 'consumer' of the goods or services within the meaning of that term pursuant to the Australian Consumer Law, as amended. If you are a 'consumer' within the meaning of that term in the Australian Consumer Law, as amended, you will have the benefit of certain non-excludable guarantees in respect of the goods and services that we supply to you pursuant to these Supply Terms and nothing in these terms and conditions excludes or restricts or modifies any guarantee which pursuant to the *Competition and Consumer Act 2010* (Cth) is so conferred. However, if the goods or services are subject to a Non-Excludable Guarantee and are not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to section 64A of the Australian Consumer Law, we limit our liability for breach of any such Non-Excludable Guarantee (other than a guarantee implied by sections 51, 52 or 53 of the Australian Consumer Law) or expressly given by us to you, in respect of each of the goods and services, at our option, to one or more of the following:
- (a) if the breach relates to goods:
- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of such goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again.
- 19.4. Any warranty against defects provided by us to you in your capacity as a 'consumer' under the Australian Consumer Law is in addition to your other rights and remedies under a law in relation to the goods or services to which the warranty relates.
- 19.5. Except with respect to any Non-Excludable Guarantees, all conditions, warranties and guarantees implied in these Supply Terms and any Services Contract are excluded, to the extent possible by law.
- 19.6. You release and indemnify us and our officers and employees (those indemnified) from and against all actions, claims and demands which may be instituted against those indemnified, and all loss (including reasonable legal costs) with respect to all or any liability incurred or suffered by any of those indemnified, where such action, claim, demand, loss or liability was caused by or arises out of:
- (a) your misuse or neglect of any Ordered Services;
- (b) a breach of these Supply Terms or any Services Contract by you;
- (c) your equipment, Supported Items or data generated by your equipment or Your Equipment, Supported Items or your networks, systems or facilities;
- (d) your use of an Ordered Service in breach of our written instructions;
- (e) damage or loss to our property or the property of any third party caused by you;
- (f) disruption to, interference with, interruption to or deterioration or degradation of our network or any Ordered Services caused by you;
- (g) the installation, repair, operation or removal of your equipment or Supported Items;
- (h) any use of any software provided by you; and/or
- (i) Your Data.
- 19.7. To the maximum extent permitted by law, all liability of our suppliers in connection with the supply of services to us that we use to supply Ordered Services to you is excluded and you agree not to bring any

claim against them, their Related Bodies Corporate or personnel arising out of or in connection with any Ordered Services or any network security.

19.8. You acknowledge that our suppliers do not by virtue of these Supply Terms have any contractual relationship with you and are not directly providing you with any services under these Supply Terms.

19.9. You acknowledge that the Ordered Services require mains power in the ordinary course.

19.10. If you wish to make any claim against us alleging our breach of these Supply Terms or contravention of any law in connection with these Supply Terms you must do so within three (3) months of the date on which you first became aware or ought reasonably to have been aware of the event giving rise to the claim.

20. Excluded Events

20.1. The speeds set out in Services Contracts are maximum potential data rates for upload or download of an individual Network Link. The actual data rates will vary depending on (among other things):

- (a) electrical interference from outside sources;
- (b) distance from a relevant exchange;
- (c) the type of Network Link;
- (d) the number of concurrent users on the network;
- (e) the nature and quality of the connection at Your Premises;
- (f) network utilization and the number of end users accessing the network at any one time;
- (g) Your Equipment and software.

20.2. We do not warrant that the maximum data rate will be achieved and you agree that failure to meet the data rate is not a Fault and is not a breach of the Service Levels by us.

20.3. Notwithstanding any other provisions of these Supply Terms, we will not be liable for any non-performance of any Ordered Services to the extent caused by or arising out of:

- (a) any breach of these Supply Terms by you, or your negligence;
- (b) use of any Ordered Services other than in accordance with any user manuals or instructions of the manufacturer or any of our reasonable directions;
- (c) any virus, denial of service attack or other malicious attack by a third party;
- (d) any Network Link not meeting any speeds specified in a Services Contract;
- (e) any other matter or thing which we are expressly not liable for in accordance with a provision of these Supply Terms, including any Excluded Event or Force Majeure Event.

20.4. Except with respect to any Non-Excludable Guarantees, we give no warranty in relation to the Ordered Services provided or supplied. Under no circumstances are we or any of our suppliers liable or responsible in any way to you or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in any goods or services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:

- (a) any goods or services supplied to you;
- (b) any delay in supply of good or services; or
- (c) any failure to supply good or services.

20.5. Each party (the **first party**) warrants to the other party that:

- (a) the first party is a company duly existing under the laws of Australia and has full corporate power and authority to enter into each Services Contract that it enters into and complete the transactions contemplated by these Supply Terms;
- (b) during the Term, the first party will comply with all applicable laws and regulations;
- (c) the execution, delivery and performance of each Services Contract by the first party has been duly and validly authorised by all necessary corporate action on its part and is a valid and binding agreement on the first party enforceable in accordance with its terms.

21. Insurance

21.1. We must obtain insurance under and remain the beneficiary of the following insurances during the Term and for a period of five (5) thereafter:

- (a) public liability insurance to the value of at least \$20,000,000 (any one claim and in the aggregate);
- (b) Workers Compensation insurance in accordance with applicable legislation;
- (c) Cyber liability insurance privacy protection insurance in the amount of two million dollars (\$2,000,000) in respect of any one claim; and
- (d) professional indemnity insurance to the value of at least \$10,000,000 (any one claim) and \$20,000,000 in the aggregate.

22. Termination and Suspension

22.1. Without limiting any other provisions of these Supply Terms which permit us to suspend or restrict any Ordered Services, we may temporarily suspend or restrict any Ordered Services:

- (a) if we are required to do so by law;
- (b) if any of our suppliers who supply goods or services to us in connection with our supply of Ordered Services to you suspend or restrict their supply of goods or services to us;
- (c) if we reasonably consider it necessary for unscheduled repair, maintenance or servicing of the Ordered Services;
- (d) if there is a Scheduled Outage;
- (e) if it is necessary due to a Force Majeure Event or for the protection of life, health or property;
- (f) if you are in breach of these Supply Terms;
- (g) if an emergency occurs;
- (h) if we reasonably believe that you or any other person is jeopardising the operation or quality of a carrier's network or the services a telecommunications carrier or carriage service provider supplies.

22.2. You agree and acknowledge that during any suspension of Ordered Services (other than where Ordered Services are suspended in accordance with the provisions of clauses 22.1(a) - 22.1(e)), the Service Charges will continue to accrue and you will, in addition, be liable to pay any reactivation fee charged by our suppliers where that supplier ends a suspension of any services that forms part of the Ordered Services. We will end a suspension as soon as reasonably practicable after the event or circumstance requiring the suspension has ceased, or in the case of clause 22.1(f) only where you have remedied the breach within a further period (as specified by us in writing).

22.3. You acknowledge that our suppliers may terminate the supply of services to us from time to time that we require or rely on in order to deliver Ordered Services (**Upstream Supplier Services**), including pursuant to any terms and conditions of any underlying ground facilities lease or licence or other superior rights by which they acquire any interest in a site from which or through any of their services are located or provided.

22.4. We may terminate these Supply Terms or any Services Contract including any Ordered Services and Network Links by notice to you if:

- (a) any of our suppliers withdraw or terminate any Upstream Supplier Services;
- (b) you breach any material term of these Supply Terms which is not capable of remedy;
- (c) you become subject to any form of Insolvency Event (except where terminating these Supply Terms or any Services Contract as a result of you becoming subject to the Insolvency Event would contravene any provision of the *Corporations Act 2001* (Cth) or any other applicable law);
- (d) any representation made by you to us proves to have been false, incorrect or misleading when made;
- (e) a Force Majeure Event continues for more than fourteen (14) days that prevents us from being able to deliver any Ordered Services and/or Network Links in accordance with any applicable Service Levels; and/or
- (f) in any other circumstances where these Supply Terms expressly permit us to do so.

22.5. If you are in breach of these Supply Terms or any Services Contract and we give you notice:

- (a) specifying the breach; and
- (b) requiring you to rectify the breach within a time period specified in the notice,

we may temporarily suspend the supply of Ordered Services, including any Network Links, while you remain in breach of your obligations.

22.6. We may elect at our discretion to either:

- (a) terminate these Supply Terms and/or any Services Contract and/or your access to any Ordered Services; and/or
- (b) disconnect you from any Ordered Services,

if after the expiry of the period specified in the notice referred to in clause 22.5, you have not rectified the breach specified in the notice.

22.7. You indemnify us from any claims made by any third party as a result of any suspension or termination of any Ordered Services by us in accordance with these Supply Terms.

22.8. You may only terminate these Supply Terms where:

- (a) we breach any material term of any Services Contract not capable of remedy;
- (b) we are in breach of any material term of any Services Contract capable of remedy and do not rectify the breach within sixty (60) days' written notice specifying the breach and requiring rectification of the breach.

22.9. You acknowledge and agree that in the case of termination by you or us, any fees and charges paid by you in advance will not be refunded, whether or not Ordered Services have been provided or used.

22.10. On termination of any Services Contract:

- (a) you must at our election, either permit us to access Your Premises to recover, or return to us within seven (7) days of that termination, any Network Termination Units and Routers that have been installed at Your Premises for the purposes of a Services Contract;
- (b) you shall immediately pay to us all moneys due and owing as at the date of termination in relation to any Ordered Services the subject of the terminated Services Contract.

22.11. On termination or expiration of these Supply Terms:

- (a) all Services Contracts and therefore all Network Links will automatically terminate;
- (b) you shall immediately pay to us all moneys due and owing as at the date of termination of these Supply Terms including in relation to any Ordered Services.

22.12. Termination of these Supply Terms and access to any Ordered Services does not affect any accrued rights of either party.

23. Force Majeure

23.1. Neither party is liable for any delay or failure to perform its obligations pursuant to these Supply Terms (except an obligation to pay money) if such delay or failure is due to a Force Majeure Event. If a delay or failure of a party to perform its obligations is caused or anticipated due to a Force Majeure Event:

- (a) that party must promptly notify the other party in writing stating the cause of the delay and the effect upon the party's performance;
- (b) the performance of that party's obligations will be suspended; and
- (c) that party must use reasonable endeavours to overcome or resolve the Force Majeure Event as promptly as possible.

24. Dispute Resolution

24.1. If a dispute arises between you and us out of or relating to these Supply Terms (**Dispute**), any party to the Dispute must seek to resolve it strictly in accordance with the provisions of this clause. Compliance with the provisions of this clause is a condition precedent to seeking relief in any court in respect of the Dispute, except as otherwise provided in this clause.

24.2. A party seeking to resolve a Dispute must notify the existence and nature of the Dispute to the other Party (**Notification**). Upon receipt of a Notification, each party must refer resolution of the Dispute to its chief executives (or nominees).

24.3. If the Dispute has not been resolved within one (1) calendar month of the Notification, then each party will be entitled to pursue such course of action as it determines.

24.4. Nothing in this clause shall limit either party's right to seek urgent interlocutory relief from any court of competent jurisdiction at any time.

25. Notices

25.1. A notice under these Supply Terms shall be sent by hand delivery, post or email using the address specified in the relevant Service Contract.

25.2. Any notice issued by hand shall be deemed delivered upon delivery.

25.3. Any notice issued by post shall be deemed delivered six (6) Business Days after posting if posted domestically, or ten (10) Business Days after posting if posted internationally.

25.4. Any notice issued via email shall be deemed to be delivered upon the email being sent provided that the sender receives a read receipt, delivery receipt or reply to the email (which reply includes a copy of the original email).

26. General

26.1. **Assignment:** A party may not assign or novate its rights or obligations under these Supply Terms without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed).

26.2. **Severability:** If any part of these Supply Terms is deemed invalid by a court of competent jurisdiction, the remainder of these Supply Terms shall remain enforceable.

26.3. **Relationship:** We are an independent contractor and these Supply Terms do not create any relationship of partnership, joint venture, or employer and employee or otherwise between you and us.

26.4. **No exclusivity:** Nothing in these Supply Terms requires us to supply any goods or services to you, or you to acquire any goods and services from us, on an exclusive basis.

26.5. **Entire agreement:** These Supply Terms (and each applicable Services Contract) constitute the entire agreement between you and us and supersedes all prior understandings, representations, proposals, arrangements and agreements between you and us regarding its subject matter.

26.6. **Jurisdiction:** These Supply Terms (and each applicable Services Contract) will be interpreted in accordance with the laws in force in New South Wales. You and we irrevocably submit to the exclusive jurisdiction of the courts located in New South Wales.

26.7. **Waiver:** Waiver of any right arising from a breach of the terms and conditions of these Supply Terms (or a Services Contract) must be in writing and signed by the party granting the waiver. A failure or delay in exercise, or partial exercise, of a right arising from a breach thereof does not result in a waiver of that right.

27. Definitions and Interpretation

27.1. Definitions

In this document, terms in bold font in brackets have the meanings given thereto as set out in the applicable clauses in which they are defined. In addition, the following words have the following meanings:

Acceptable Use Policy means the document located at <https://www.netsg.co/service-agreements>

Australian Consumer Law means schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Availability Target has the meaning given in the SLA.

Availability Target Service Credit has the meaning given in the SLA.

Broadband Network Services means the consumer grade broadband access products supplied using various last mile access technologies, as specified in the applicable Services Contract, but which may include ADSL/ADSL2+, Ethernet First Mile (EFM), NBN and Ethernet Bitstream.

Business Day means Monday - Friday excluding public holidays in New South Wales.

Business Hours means 8:30am - 5:30pm on Business Days.

CPI at any time means the difference between the then latest published Consumer Price Index All Groups Index number for the weighted average of 8 capital cities, and the equivalent Index number published 12 months earlier, expressed as a percentage of the earlier Index number.

Dark Fibre Network Services means a Network Link between two distinct Your Premises as specified in the applicable Services Contract to provide dark fibre circuits as described in the Services Contract.

Data Centre means a data centre used by us to supply Managed Data Centre Colocation Services.

Data Services means, the Network Links specified in the applicable Services Contract to be provisioned under these Supply Terms, namely:

- (a) Fibre and Ethernet Network Services;
- (b) Dark Fibre Network Services;
- (c) Fixed Wireless Network Services;
- (d) Broadband Network Services.

Fibre and Ethernet Network Services means a point-to-point or point-to-multipoint Network Link that provides ethernet or fibre connectivity (other than Dark Fibre Network Services) between Your Premises and our or one or more

of our suppliers' networks or other locations, as specified in a Services Contract, using fibre optic cabling or Ethernet cabling delivered to a Network Termination Unit at Your Premises. In some cases, the Network Termination Unit may have Ethernet ports which can be configured by us separately so that you can, where available from us, obtain different Network Links into Your Premises at a single location.

Fixed Wireless Network Services means any fixed wireless Network Links specified in a Services Contract.

Force Majeure Event means any event, act or circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform (either on time or at all) an obligation under the terms and conditions of these Supply Terms (excluding any obligation to pay money), including fire, flood, storm, strikes, accidents, plague, earthquake, riots, explosions, wars, hostilities, acts of government, acts of God, labour disputes, industrial action and acts or omissions of providers of third party hardware and/or other service providers or suppliers of us.

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hardware means any hardware specified in a Binding Service Order.

Initial Term means specified in a Binding Service Order.

Insolvency Event means, in respect of a party (a) the party ceases to carry on business, is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt; (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party, or an application (including voluntary application filed by that party) is lodged or an order is made or a resolution is passed for the winding up (whether voluntary or compulsory) or reduction of capital of that party; (c) the party enters into an arrangement with its creditors; (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; (e) the party suspends payment of its debts to the other party or a third party, or the party takes the benefit of any law for the relief of insolvent debtors; or (f) anything analogous or having a substantially similar effect to any of the events described in (a) through (e) above occurs under the law of any applicable jurisdiction.

Intellectual Property Rights means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under article 2 of the convention establishing the World Intellectual Property Organization, and all rights to enforce any of the foregoing rights.

Managed Data Centre Colocation Services means colocation of Your Equipment and Supported Items in the Data Centre, the monitoring of the Supported Items against the Availability Target and the provision of Support Services with respect to the Supported Items at the Data Centre, as specified in a Services Contract.

Managed Services means, as applicable:

- (a) Managed Data Centre Colocation Services;
- (b) Managed Network Device Services; and/or
- (c) Data Services.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Network Link means a distinct telecommunications link provided by us to you as part of the Data Services specified in the applicable Services Contract.

Network Termination Unit means the point at Your Premises at which a Network Link terminates, if any.

Non-Excludable Guarantee means a non-excludable guarantee implied under the Australian Consumer Law.

Ordered Services has the meaning given to it in clause 5.1.

Payment Terms means any terms set out in a Binding Service Order with respect to payment of Service Charges.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Professional Services means any consulting, training or other professional services described in a Quotation.

Quotation means a document entitled "Quotation" executed by us and issued to you;

Rack Space means space in the Data Centre as specified in any applicable Services Contract.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth);

Request for Quotation means a request made by you to us for a Quotation;

Response Time Service Levels has the meaning given in the SLA.

Router means any router specified in a Services Contract.

Scheduled Outage means an outage or downtime of any Network Link or Supported Items that we notify you of in advance.

Security Policy means:

- (a) any policy instituted by us or our suppliers from time to time with respect to the security of a Data Centre or the security of any Managed Services (including any Ordered Services);
- (b) any other policies, rules and procedures that we or any of our licensors or landlords may institute with respect to the use of any Data Centres and/or Managed Services or Ordered Services (including with respect to health and safety, security and any other matters relevant to access to and/or use of the Data Centres or any device or other hardware or telecommunications equipment),

as notified by us to you from time to time.

Service Credit means an Availability Target Service Credit.

Service Demarcation Point means the physical location at Your Premises to which we will supply, or procure the supply, of a Network Link from our telecommunications network and/or any telecommunications network of our suppliers.

Service Levels means the Availability Target and the Support Service Levels.

SLA means the documented entitled "Service Level Agreement" available at <https://www.netsg.co/service-agreements>

Support Service Levels means the Response Time Service Levels.

Term means any Initial Term and each applicable Renewed Term.

Supply Terms means these Supply Terms and the Acceptable Use Policy.

Unnecessary Service Fees means:

- (a) any fees specified in a Services Contract or charged to us by any of our suppliers as a result of the investigation and/or rectification of any Fault where you issue a Support Request with respect to a Fault that is caused in whole or part by an Excluded Event; or
- (b) a fee calculated at the rate of \$200 per hour ex GST for any time we spend investigating, rectifying, liaising with suppliers or otherwise with respect to any Fault that is caused in whole or in part by an Excluded Event. Surcharge of \$300 per hour ex GST applies with respect to Business Days after Business Hours and a Surcharge of \$400 per hour ex GST applies with respect to any day that is not a Business Day.

Your Equipment has the meaning given to that term in any applicable Binding Service Order.

Your Premises means any premises owned, controlled or occupied by you specified in a Binding Service Order.

27.2. Interpretation

In the terms and conditions of these Supply Terms:

- (a) headings and underlinings are for convenience only and do not affect the construction of these Supply Terms;
- (b) a provision of these Supply Terms will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision;
- (c) currency refers to Australian dollars;
- (d) a reference to a statute or regulation includes amendments thereto;
- (e) a reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of these Supply Terms;
- (f) a reference to a party means a reference to you or us, as the context dictates;
- (g) in a Services Schedule, a reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of the Service Schedule unless specified otherwise;
- (h) a reference to a subclause or paragraph is a reference to the subclause or paragraph in the clause in which the reference is made;
- (i) a reference to time is to time in New South Wales unless expressly specified otherwise;
- (j) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity;
- (k) the words "includes", "including" and similar expressions are not words of limitation and shall not be interpreted as if the words "without limitation" followed them in each case;
- (l) a reference to the singular includes the plural and vice versa.