

# Wholesale Agreement

Gigacomm Pty Ltd trading as Community Fibre ABN 77 630 583 998

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## Agreement Details

<b>Commencement Date</b>	[insert]
<b>Service Provider</b>	Gigacomm Pty Ltd trading as Community Fibre ABN 77 630 583 998 ( <b>Service Provider, Community Fibre, we, our, us</b> )
<b>Address for notices</b>	Suite 2, 2 Meaden Street, Southbank, Victoria, 3006.
<b>Service Provider Representative</b>	Name: [insert] Contact email: [insert] Contact number: [insert]  (or any other representative which Service Provider nominates to the RSP in writing, who will replace the individual named above).
<b>RSP</b>	[insert name] ([insert ABN/ACN]) ( <b>RSP, you, your</b> )
<b>Address for notices</b>	[insert]
<b>RSP Representative</b>	Name: [insert] Contact email: [insert] Contact number: [insert]

**THIS AGREEMENT** is made on

2025

**BETWEEN:**

- (1) GigaComm Pty Ltd trading as Community Fibre ABN 77 630 583 998; and
- (2) [insert RSP company name] [ABN/ACN] [insert].

**RECITALS:**

- (A) The Service Provider is a Carrier and is the owner of the Service Provider Network or has the right to use and operate the Service Provider Network to provide the Services for the purposes of this agreement.
- (B) The RSP is a Carriage Service Provider and wishes to acquire the Services from the Service Provider delivered over the Service Provider Network in order for the RSP to provide Carriage Services to End Users in its capacity as a retail service provider.
- (C) Where the Service Provider is the Statutory Infrastructure Provider for a Service Area, then pursuant to its obligations under sections 360P and 360Q of the Telecommunications Act, the Service Provider is required to connect certain premises to a qualifying fixed telecommunications network and supply Eligible Services on reasonable request by a Carriage Service Provider.
- (D) This Agreement sets out the terms on which the Service Provider will provide the Services (including any of the services contemplated under Recital C, if applicable) to the RSP.

**THE PARTIES AGREE AS FOLLOWS:**

## 1. Definitions

**Acceptable Use Policy** means the Service Provider's Acceptable Use Policy in Schedule 1 (Acceptable Use Policy), as updated from time to time.

**ADC** has the meaning given in clause 42.4.

**Additional Work** means:

- (a) installation of wiring or equipment in an End User's Premises;
- (b) installation of the lead-in wiring or conduit;
- (c) trenching, ducting or cabling between the boundary of an End User's Premises and the Network Boundary Point;
- (d) any other work that may be required to be undertaken by the Service Provider to connect Service Provider's Equipment to a point at any location beyond the Network Boundary Point;
- (e) any work required at the End User's Premises to enable connection of the Service;
- (f) any work required for connecting the Service Provider Network to RSP's Point of Interconnection; or
- (g) other work which is the responsibility of the End User.

**Affected Party** has the meaning given in clause 25.1.

**Agreement** means the agreement comprised of the documents set out in clause 3.

**Background Material** means any Intellectual Property Right in any material which existed prior to entry into this Agreement that belongs to the Service Provider, the RSP or to any third party (as applicable), or is developed independently of this Agreement and incorporated into any material created in connection with this Agreement, including any modifications, enhancements or improvements to that material.

**Business Day** means a day which is not a Saturday, Sunday, bank holiday or public holiday in the State or Territory in which the Services are located.

**Carrier** has the same meaning as in section 7 of the Telecommunications Act.

**Carriage Service** has the same meaning as in section 7 of the Telecommunications Act.

**Carriage Service Provider** has the same meaning as in section 87 of the Telecommunications Act.

**CCA** has the meaning given in clause 5.9.

**Change in Law** means any one or more of the following:

- (a) a change in, or repeal of, an existing Law;
- (b) the enactment or making of a new Law; or
- (c) a change in the way a Law is applied or interpreted as a result of a binding decision of a court of competent jurisdiction which reverses, overrules or refuses to follow an earlier binding decision of a court of competent jurisdiction where that earlier decision existed on the Commencement Date, which occurs after the Commencement Date and with which a party is legally obliged to comply.

**Claim** includes any interim or final cause of action, claim, cross-claim, counterclaim, demand, legal proceeding, liability or suit of any kind (whether or not the subject of any court, arbitral or tribunal process or order at first instance, appeal or otherwise):

- (a) based in contract (including breach of warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law or equity; or
- (d) under statute,

or otherwise, wherever or whenever arising and whether or not:

- (e) contingent, prospective or unascertained;
- (f) for account, costs, damages, debt, equitable compensation, injunctive relief, set-off, specific performance, restitution or any other remedy; or
- (g) known or knowable to any person.

**Commencement Date** means the date identified as the Commencement Date in the Agreement Details.

**Consequential Loss** means:

- (a) loss of goodwill or damage to reputation;
- (b) loss of production, use, business or revenue;
- (c) loss of profit or the opportunity to earn profit;
- (d) loss of data; and
- (e) any other Loss which cannot fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach or event giving rise to the relevant liability.

**Confidential Information** has the meaning given in clause 31.1.

**Consumer Protection Act** means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

**Contract Year** means each 12 month period starting on the Commencement Date or an anniversary of the Commencement Date.

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

**CSG** means the *Telecommunications (Customer Service Guarantee) Standard 2011* made under the Consumer Protection Act.

**CSG Service** means a standard telephone service supplied by RSP to an End User over the Service Provider Network, as defined in the Consumer Protection Act.

**Data Breach** means:

- (a) misuse, loss, or unauthorised access, modification or disclosure of Personal Information; or
- (b) a breach of a party's obligations in relation to the collection, use, disclosure, storage or handling of Personal Information under this Agreement.

**Dispute** means any dispute or difference arising out of or in relation to this Agreement.

**Dispute Notice** has the meaning given in clause 42.2.

**DR Process** has the meaning given in clause 42.1.

**Due Date** has the meaning given to that term in clause 27.3.

**Eligible Service** has the meaning given in section 360A of the Telecommunications Act.

**Emergency** means an emergency due to an actual or potential state of danger (such as fire, flood, storm, earthquake, explosion, accident, epidemic or war like action) which endangers or threatens to endanger the safety or health of persons, or destroys or damages or threaten to destroy or damage property, including the Service Provider Network.

**Emergency Outage** means a period in which a Service is unavailable as a result of an Emergency which has caused or which the Service Provider reasonably considers would cause an immediate threat to:

- (a) availability of the Service;
- (b) personal injury, death, damage to property; or
- (c) normal operation, access, integrity or security of the Service Provider Network.

**End User** means any person to whom the RSP on-sells, re-sells or re-supplies one or more Services or a service derived from a Service.

**Fees** has the meaning given to that term in clause 27.1.

**Force Majeure Event** means any event, act or cause (except lack of funds) which is beyond the reasonable control of the party, including, without limitation:

- (a) an act of God, including lightning, storm, fire, flood, earthquake or other action of the elements;
- (b) explosion, riot, insurrection, civil commotion or disorder, sabotage, act of public enemy, war (declared or undeclared), blockade, rebellion or revolution;
- (c) pandemic (including COVID-19) or epidemic,

which prevents the performance of any obligation and which:

- (d) was not caused or contributed to by the party which is seeking to rely on the event;
- (e) could not have been prevented by reasonable precautions or remedied by reasonable expenditure by the party which is seeking to rely on the event; and
- (f) could not reasonably be circumvented through alternate sources (including through business or service continuity planning).

**General Terms** means the terms and conditions set out under clauses 1 to 59 of this Agreement.

**Government Agency** means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity or authority, including the ACCC, having or asserting jurisdiction over the parties or where the Services are to be performed and/or delivered.

**GST** means the same as in the GST Law.

**GST Law** means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Information Breach** means unauthorised (or attempted unauthorised) access to, or disclosure or loss of, Confidential Information.

**Insolvency Event** means in respect of a person, any one or more of the following events occurring in respect of that person:

- (a) a resolution is passed for the winding up of that person (other than for the purposes of reconstruction or amalgamation, which, in the case of a party, is on terms which have been previously approved in writing by the other party);
- (b) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all or any part of the property of that person;
- (c) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all or any part of the business or assets of that person;
- (d) that person makes any composition or arrangement or assignment with or for the benefit of its creditors;
- (e) that person or any creditor appoints a voluntary administrator or a resolution is passed for that person to execute a deed of company arrangement;
- (f) that person ceases, or threatens to cease to carry on its business; or
- (g) that person becomes unable to pay its debts as and when they become due.

**Intellectual Property Rights** means any patent, trade mark, registered design, copyright, design right, semiconductor topography right, know-how or any similar right exercisable in any part of the world and includes any applications for the registration of any patent or registered designs or similar registrable rights in any part of the world.

**Laws** means all laws (including acts, regulations, statutory requirements, regulatory determinations) and government policies or directions.

**Loss** means any loss, damage, liability or obligation, tax, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**MDU** means multi-dwelling unit.

**Network** means:

- (a) in the case of the Service Provider, the Service Provider Network; and
- (b) in the case of the RSP, the RSP Network.

**Network Boundary Point** means the demarcation point for the Service as set out in the applicable Service Schedule.

**Operational Documents** means the specifications, Operations Manual, and other ancillary documents relating to this Agreement or the Services, available to the RSP or otherwise notified to the RSP, as varied or replaced by the Service Provider from time to time.

**Operations Manual** means the document entitled "Operations Manual" made available by the Service Provider.

**Payment Dispute Notice** has the meaning given in clause 28.1.

**Personal Information** has the meaning given in the Privacy Act.

**Personnel** means, in relation to a party, that party's officers, employees, agents, contractors, subcontractors and consultants

**Planned Outage** has the meaning given to that term in clause 16.3(a).

**Point of Interconnection** or **POI** means a point of interconnection between the Service Provider Network and the RSP Network to exchange traffic.

**Premises** means any land together with its building(s) used as a place of residence.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Privacy Laws** means the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth), the Privacy Act, the Australian Privacy Principles and any Laws, principles, industry codes and policies relating to privacy, data protection or the management of Personal Information.

**Regulatory Event** means a Change in Law which has the result that, or a directive or determination by a Government Agency or court of law that, this Agreement or any action taken or required to be taken in accordance with this Agreement contravenes or may contravene any applicable Law.

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

**Reseller** means any person who acquires a resold Service (or a service derived from a Service) who is not an End User.

**RSP Equipment** means equipment and facilities of a RSP or a supplier to a RSP, electronic or otherwise, used in connection with the Services and may include equipment of RSP's End User or part of the common property of a Premises.

**RSP Group** means RSP and its Related Bodies Corporate from time to time.

**RSP Network** means telecommunications network or networks owned or operated by the any RSP Group, including equipment, facilities or cabling and all other equipment ancillary thereto (including any such equipment, facilities or cabling installed for use by the RSP beyond the Network Boundary Point) and the operation of all such RSP Equipment as a whole.

**Schedule** means a schedule to this Agreement.

**Security Legislation** means any Law which imposes obligations on Carriers and/or Carriage Service Providers in relation to the security of a "telecommunications network" or a "facility" (as each term is defined under the Telecommunications Act) including:

- (a) Part 14 of the Telecommunications Act (including section 313 of the Telecommunications Act); and
- (b) the *Security of Critical Infrastructure Act 2018* (Cth), to the extent that that act imposes obligations on Carriers and Carriage Service Providers.

**Service** means a service supplied, to be supplied, by the Service Provider to the RSP on a wholesale basis under this Agreement, as more particularly described in the applicable Service Schedule and a Service Order.

**Service Area** means the relevant area for which:

- (a) the Service Provider intends to make or has made a declaration in accordance with section 360H of the Telecommunications Act to become the statutory infrastructure provider for that area; or
- (b) the Minister has made a declaration that specifies the Service Provider as the statutory infrastructure provider for that area under section 360L of the Telecommunications Act.



**Service Commencement Date** for a Service, means the date set out in the applicable Service Schedule, or the date otherwise agreed by the parties in the Service Order to be the service commencement date for that Service.

**Service End Date** for a Service, means the earlier of:

- (a) the termination of that Service in accordance with this Agreement; and
- (b) the "Service End Date" (if any) set out in the relevant Service Schedule.

**Service Levels** means the service levels for a Service as set out in the applicable Service Schedule.

**Service Order** means a request made by the RSP in accordance with clause 5.1 to procure, vary or cancel a Service (as applicable), in the form required by the Service Provider.

**Service Provider Equipment** means any equipment (electronic or otherwise) or facilities of the Service Provider or a Supplier located on the Site or other RSP Premises (including Premises leased by the RSP or co-location spaces licensed by the RSP) which is used in the provision or consumption of the Services.

**Service Provider Equipment Conditions** means the following requirements in respect of Service Provider Equipment:

- (a) provision of an adequate power supply and a suitable physical environment in accordance with the Service Provider's reasonable directions;
- (b) only permitting Service Provider Equipment to be repaired, serviced, moved or disconnected by the Service Provider unless otherwise permitted by the Service Provider in writing;
- (c) not removing or obscuring any identification marks on Service Provider Equipment;
- (d) making title to Service Provider Equipment clear to all persons;
- (e) complying with all reasonable instructions given by the Service Provider to protect Service Provider's ownership of Service Provider Equipment; and
- (f) not doing anything or allowing anything to be done which might affect the Service Provider's ownership of Service Provider Equipment.

**Service Provider Group** means the Service Provider and its Related Bodies Corporate from time to time.

**Service Provider Network** means the telecommunications network or networks, including equipment, facilities or cabling and all other equipment ancillary thereto and the operation of all such equipment as a whole, used by the Service Provider to provide the Services (including any network of the Service Provider's Supplier).

**Service Schedule** means the schedule attached or added to these General Terms containing terms applicable to the relevant Service.

**Service Term** for a Service, means the period commencing on the Service Commencement Date and ending on the Service End Date.

**Site** means the location at which the Service is supplied or to be supplied by the Service Provider, including the Premises of RSP and RSP's End Users.

**Statutory Infrastructure Provider** has the meaning given in the Telecommunications Act.

**Supplier** means any supplier of goods or services which are used directly or indirectly by the Service Provider to supply a Service.

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

**Term** has the meaning given in clause 4.1.

**Third Party** means any person who is not the Service Provider or a RSP.

## 2. Interpretation

### 2.1 In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (b) unless the context indicates a contrary intention:
  - (i) words in the singular include the plural and vice versa;
  - (ii) if a word or phrase is defined its other grammatical forms have corresponding meanings;
  - (iii) "includes" means without limitation;
- (c) no rule of construction will apply to a clause to the disadvantage of one party merely because that party put forward the clause or would otherwise benefit from it;
- (d) if a party has a right, it may exercise or not exercise that right in its absolute discretion;
- (e) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation, government, statutory body or authority and the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (iv) a right includes a benefit, remedy, discretion or power;
  - (v) **\$, AUD or dollars** is a reference to Australian currency;
  - (vi) this or any other document includes the document, agreement, deed or legal instrument as novated, varied or replaced and despite any change in the identity of the parties;
- (f) this Agreement includes all schedules, annexures and exhibits to it; and
- (g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

## 3. Order of precedence

The following documents constitute this Agreement and must be read in the following order of precedence (from highest to lowest) in the event of any inconsistency between these documents:

- (a) the applicable Service Schedule for the relevant Service;

- (b) the General Terms;
- (c) any other Schedules;
- (d) any Service Order(s); and
- (e) any other document incorporated by reference in this Agreement.

#### **4. Agreement and Service Terms**

- 4.1 This Agreement starts on the Commencement Date and continues until it is terminated in accordance with this Agreement (**Term**).
- 4.2 Subject to clauses 5.3 and 5.4, the Service Provider will supply each Service for the Service Term.

#### **5. Provisioning Services**

- 5.1 To procure, vary or cancel a Service, the RSP must place a Service Order with the Service Provider in accordance with the Operations Manual.
- 5.2 The Service Provider may accept or reject a Service Order in accordance with the processes set out in the Operations Manual.
- 5.3 Subject to clauses 5.4 and 5.5, if the Service Provider accepts a Service Order, the Service Provider will supply the Service in accordance with the terms of this Agreement.
- 5.4 The Service Provider is not required to supply a Service unless:
  - (a) the RSP has satisfied and continues to satisfy the prerequisites (if any) for the Service as specified in the applicable Service Schedule or these General Terms (as applicable); and
  - (b) if a Service is subject to any service qualifications or feasibility studies as specified in the applicable Service Schedule or the Operational Documents (as applicable), the applicable service qualification or feasibility study has demonstrated, to the Service Provider's reasonable satisfaction, that it is commercially and technically viable for the Service Provider to supply that Service.
- 5.5 Subject to clause 8, to the extent a Service is an Eligible Service, the Service Provider will commence supplying that Eligible Service within the maximum period for supply set out in the applicable Service Schedule, or as otherwise agreed between the Service Provider and the RSP in writing. Nothing in this clause 5.5 limits the rights the RSP has under applicable law.
- 5.6 The RSP must give the Service Provider all information and assistance reasonably requested by the Service Provider to:
  - (a) meet its obligations under this Agreement;
  - (b) connect and supply the Services; and
  - (c) enable the Service Provider to compliance with laws related to disaster planning and management.
- 5.7 At the Service Provider's request, the RSP must:
  - (a) provide a certificate of solvency or any other information and assistance that the Service Provider requires to assess the RSP's creditworthiness; and
  - (b) provide security in a form and on terms acceptable to the Service Provider.

- 5.8 If the RSP fails to comply with a request made under clause 5.7 within 10 Business Days of receipt of the request, the Service Provider may, acting reasonable, reject any Service Orders placed by the RSP under this agreement (and this is the Service Providers only remedy for the non-compliance).
- 5.9 To the extent the service provided is a declared service within the meaning of Part XIC of the *Competition and Consumer Act 2010* (Cth) (**CCA**), the Service Provider will provide the service in accordance with its obligations under Part XIC of the CCA.

## **6. Intervening events and changes to the Service by the Service Provider**

- 6.1 The parties acknowledge that the Service may be a regulated service and that the Service Provider may from time to time wish to, or be required to, make changes to the Agreement or the Services.
- 6.2 Where the Service Provider is required to change the Agreement or a Service in accordance with clause 6.1, the Service Provider must give the RSP written notice of any such variation at least 60 days prior to such variation taking effect.
- 6.3 The RSP may notify the Service Provider within 5 Business Days of such notice that it does not agree to the variation, in which case the RSP and the Service Provider must discuss the proposed variation in good faith.
- 6.4 If the parties are unable to agree to the proposed variation within [10] Business Days of the RSP 's notification, either party may terminate the relevant Service by providing the other party with a further 20 Business Days' notice.
- 6.5 Notwithstanding any notice from the RSP pursuant to this clause 6, the variations to the Agreement or the Services (as applicable) as notified by the Service Provider to the RSP will take effect on the date provided in the original notice, unless the Service Provider notifies the RSP in writing otherwise.

## **7. No exclusivity or minimum volumes**

The parties acknowledges and agrees that:

- (a) nothing in this Agreement requires the RSP to request a minimum number of connections and/or Services; and
- (b) the Service Provider is not an exclusive supplier of the Services .

## **8. Use of the Services**

The RSP must:

- (a) ensure that everything connected to the Service Provider Network by or on behalf of the RSP:
  - (i) is technically compatible with the Service Providers Network;
  - (ii) complies with generally-accepted industry codes or standards; and
  - (iii) otherwise complies with all reasonable procedures, standards or other requirements notified by the Service Provider from time to time;
- (b) ensure that in using the Service it complies with:
  - (i) the Acceptable Use Policy; and
  - (ii) any provisions in this Agreement identified as “restrictions on use”;

- (c) not connect anything to the Service Provider Network, use the Services or do anything at a Service Provider Site or facility in a way that:
  - (i) breaches applicable Law, or would expose the Service Provider to risk of any legal or administrative action including prosecution under any Law;
  - (ii) transmits or risks transmitting any computer virus that may adversely affect the Service Provider Equipment, the Service Provider Network, the equipment or network of any Third Party provider to Service Provider or any network users;
  - (iii) endangers the health or safety of any person or negatively impacts the normal operation of any network or system over which the Service is supplied;
  - (iv) damages or interferes with any Service Provider Site or facility or telecommunications equipment owned or operated by the Service Provider or third parties; or
  - (v) interrupts or degrades the normal operation of the Service;
- (d) comply with the requirements in the Operations Manual and the applicable Service Schedule;
- (e) comply with all regulatory and legal obligations that are applicable to the RSP 's supply of the Services to Resellers and End Users;
- (f) arrange for the Service Provider and its Suppliers and contractors to have safe and timely access to the Sites so that the Service can be connected and supplied, and any equipment relating to the Service or Service Provider Network can be installed or maintained, repaired, enhanced or removed; and
- (g) give all information and assistance reasonably required by the Service Provider, and comply with all of the Service Provider's reasonable directions, to enable the Service Provider to confirm whether the RSP is complying with this clause 8.

## **9. End User compliance**

### **9.1 The RSP:**

- (a) must use all reasonable endeavours to ensure that its End Users comply with the obligations described in clause 8 as if the references in those obligations to "the RSP" were references to "End Users"; and
- (b) must comply with any of the Service Provider's reasonable directions that are intended to ensure that the RSP's End Users comply with the obligations referred to in clause 8.

9.2 The RSP indemnifies the Service Provider in respect of any Claim made against Service Provider (including a Claim made by RSP) under or in connection with RSP 's failure to comply with such obligations.

## **10. End User responsibility and support**

10.1 The RSP is solely responsible for providing support to its End Users. To the extent any issue cannot be resolved by the RSP, the RSP may request the Service Provider to provide support to the relevant End User.

10.2 The Service Provider will not discuss with an End User the relevant services supplied to that End User by the RSP except as required for the Service Provider:

- (a) to perform, exercise rights under, or as permitted by, this Agreement; or
- (b) to comply with applicable Law.

- 10.3 The Service Provider may directly contact and deal with End Users in an Emergency, to protect the safety of persons, equipment or networks (including the Service Provider Network), or to connect or repair the Service as required under this Agreement.
- 10.4 If the Service Provider has a right under this Agreement to suspend or terminate the Service, the Service Provider may contact an End User to inform the End User:
- (a) of the expected time and date for suspension or termination of their service; and
  - (b) if the RSP's Service is being terminated, that the End User's service will no longer operate unless it is transferred to another service provider before termination.
- 10.5 A party must not engage in any unlawful conduct in observing its obligations under this clause 10.

## **11. Assistance and co-operation**

- 11.1 The RSP must, and, where reasonably required by the Service Provider, will procure its End Users to, do everything reasonable to assist, and co-operate with, the Service Provider and any person engaged by the Service Provider to provide the Service to the RSP and the End User, including:
- (a) ensuring that it is possible and safe for the Service Provider and persons engaged by the Service Provider to obtain necessary access to a Site (including for any Emergency);
  - (b) ensuring that the RSP 's Personnel are reasonably available and provide Service Provider with timely instructions as required;
  - (c) ensuring that RSP Equipment is ready at the appropriate times;
  - (d) making any modifications to RSP Equipment reasonably necessary to enable Service Provider to provide the Service (following Service Provider's reasonable instructions, and at the RSP 's expense);
  - (e) obtaining and maintaining any authorisation, permission, licence, waiver, registration or consent from any person necessary for the RSP to enable the Service Provider to provide the Service;
  - (f) informing the Service Provider of the location of Service Provider Equipment (if any);
  - (g) working together with the Service Provider to establish procedures to reduce fraud or the opportunity for fraud in relation to the Service; and
  - (h) providing such information reasonably requested by Service Provider from time to time.

## **12. Reseller compliance**

- 12.1 The RSP may on-sell, re-sell or re-supply the Services to Resellers.
- 12.2 The RSP:
- (a) must do everything reasonable in the circumstances to ensure that its Resellers comply with all of the RSP 's obligations in this Agreement that relate to:
    - (i) the use and supply of the Services; and
    - (ii) any activities ancillary to that use or supply,
 as if references in those obligations to "the RSP" were references to "the Reseller"; and

(b) is liable for any non-compliance by its Resellers with those obligations.

### **13. Non-compliance by End Users or Resellers**

- 13.1 The RSP must immediately notify the Service Provider in the event of any actual or suspected non-compliance with clauses 9 or 12 (as applicable).
- 13.2 The Service Provider may request the RSP to stop or request the RSP to stop its End Users or Resellers (as applicable), acting or failing to act in a manner which the Service Provider reasonably believes is contrary to this Agreement.
- 13.3 The RSP will as soon as practicable (but in any case, within 5 Business Days) comply with any request by the Service Provider under clause 13.2.
- 13.4 If the RSP does not comply, the Service Provider may take any steps reasonably necessary to ensure the RSP's compliance with clause 12.2 or the Service Provider's request, including to limit, restrict or suspend the Service as set out in clause 34.

### **14. Compliance with Operational Documents**

- 14.1 The RSP acknowledges that any failure by the RSP to comply with any requirements in an Operational Document may negatively impact on the Service Provider's provision of, or ability to provide, the Service (including the quality and timeliness of the Service).
- 14.2 The RSP releases the Service Provider from any obligation or liability (including obligations to meet Service Levels or liability for payment of rebates or compensation, such as compensation under the CSG made under the Consumer Protection Act), to the extent that the obligation or liability was caused or contributed to by the RSP's failure to comply with requirements in an Operational Document that have been notified to the RSP.

### **15. Service standards**

- 15.1 The Service Provider does not guarantee that a Service will be continuous or fault free.
- 15.2 Any reference in this Agreement or an Operational Document to any performance related capability for the Services (including references to transmission rates, coverage, delivery times and availability) are targets and not guarantees.
- 15.3 If this Agreement specifies that a Service Level applies to a Service, the RSP's sole and exclusive remedy for the Service Provider's failure to meet that Service Level will be the applicable service credits set out in the applicable Service Schedule.
- 15.4 The parties acknowledge and agree that:
  - (a) where the CSG does not apply to a Service, the Service Provider is not required to comply with the CSG requirements set out in the applicable Service Schedule; and
  - (b) if a Service does include a CSG Service, the parties must comply with the CSG requirements set out in the applicable Service Schedule.

### **16. Maintenance and Planned Outages**

- 16.1 The RSP acknowledges and agrees that the Service Provider may conduct maintenance on the Service Provider Network. Without limiting the foregoing, the Service Provider may:
  - (a) monitor the Service Provider Network for the purposes of maintaining the Service Provider Network at an optimum performance and diagnosing problems associated with the Service Provider Network, and
  - (b) intercept and retain data transmitted on the Service Provider Network or relevant communications for the purpose of complying with its obligations under Law or the requests of Government Agencies.



- 16.2 The RSP will notify the Service Provider as soon as reasonably practicable if it:
- (a) becomes aware or reasonably suspects the existence of a fault or any event or circumstance that is causing or likely to cause an interruption or degradation to a Service; or
  - (b) otherwise detects a degradation in a Service that could lead to a fault occurring.
- 16.3 The Service Provider must:
- (a) subject to clause 16.4, use reasonable endeavours to conduct scheduled maintenance, construction or repairs on the Service Provider Network which will result in a Service being unavailable (a **Planned Outage**) between the hours set out in the applicable Service Schedule; and
  - (b) where a fault impacts an Eligible Service, rectify the fault or service difficulty within the maximum period (as set out in the Service Levels), or as otherwise agreed between the Service Provider and the RSP in writing. Nothing in this clause 16.4 limits the rights the RSP has under applicable law.
- 16.4 Subject to clause 16.5, the Service Provider must provide the RSP with prior notice of a Planned Outage in accordance with the notice period set out in the applicable Service Schedule. The Service Provider will take all reasonable measures to minimise the frequency and duration of Planned Outages in order to minimise impact on RSP.
- 16.5 The Service Provider may declare an Emergency Outage in response to an Emergency. The Service Provider will endeavour to give the RSP as much notice as is practicable in the circumstances of an Emergency Outage.
- 17. Service Provider Equipment**
- 17.1 The Service Provider must supply the Service Provider Equipment required for the provision of the Service.
- 17.2 The RSP is responsible for Service Provider Equipment and must compensate the Service Provider for any loss or damage to it (fair wear and tear excepted), except to the extent caused by Service Provider or Service Provider's Personnel.
- 17.3 The RSP must:
- (a) ensure it and its End Users satisfy the Service Provider Equipment Conditions;
  - (b) promptly notify the Service Provider if the RSP becomes aware of any loss of, damage to, claim over, or malfunction of Service Provider Equipment; and
  - (c) return any Service Provider Equipment to the Service Provider on termination of the relevant Service and/or as otherwise agreed between the parties in writing.
- 17.4 The Service Provider may, at any time and at the Service Provider's cost, modify or replace Service Provider Equipment provided there is no material adverse impact on the provision of the Service.
- 17.5 The Service Provider must ensure that Service Provider Equipment does not have a detrimental effect, as reasonably determined by the RSP, on the RSP and End Users.
- 18. RSP Equipment**
- 18.1 The RSP must ensure that any RSP Equipment does not have a detrimental effect, as reasonably determined by the Service Provider, on the Service Provider Network.
- 18.2 The Service Provider may, without liability, immediately disconnect all or any of RSP Equipment if the Service Provider reasonably considers that RSP Equipment may cause death or personal injury, cause damage to the property of the Service Provider or another



person, or materially impair the operation of the Service Provider Network, provided that, where and to the extent that it is reasonable for the Service Provider to do so, the Service Provider will notify the RSP before disconnection.

- 18.3 Where RSP Equipment is located at a place under the control of the RSP, the RSP must promptly comply with a written request from the Service Provider to disconnect RSP Equipment in accordance with clause 18.2.

## **19. Installation of Equipment**

The parties are responsible for the installation of RSP Equipment or Service Provider Equipment (as applicable) used in connection with the Services around the Network Boundary Point as set out in the applicable Service Schedule.

## **20. Additional Work**

- 20.1 The RSP agrees that the Service Provider or a Supplier may be required to contact End Users to arrange installation of Service Provider Equipment to provide the Services. During this installation the Service Provider, a Supplier, or their nominated agents may be required to perform Additional Work.
- 20.2 The Service Provider's fees for performing Additional Work will be paid by the RSP in accordance with the applicable Service Schedule.

## **21. Title and Equipment**

- 21.1 Unless expressly stated otherwise in this Agreement or a Service Order, nothing in this Agreement:
- (a) transfers any right, title or interest in the Service Provider Equipment to the RSP or any of the RSP 's Personnel; and
  - (b) transfers any right, title or interest in the RSP Equipment to the Service Provider or any of the Service Provider's Personnel.
- 21.2 Each party must not create or cause to be created, or purport to do so, a security interest over, or in respect of the other party's rights in the RSP Equipment or Service Provider Equipment (as applicable).
- 21.3 The RSP, its Related Bodies Corporate, or any of its sublicensees may, in the ordinary course of the RSP 's business, dispose or part with possession of, or create or allow another interest in, the RSP Equipment that is at or on a Site, including registering their interest in such RSP Equipment on the Personal Property Securities Register established under the *Personal Property Securities Act 2009* (Cth).

## **22. Access to Sites**

- 22.1 The Service Provider must:
- (a) access RSP Sites only to the extent necessary to install, operate and maintain the Service Provider Network, as required by Law or otherwise for any purpose related to the provision of the Services;
  - (b) on reasonable request by the RSP, participate in and comply with any induction processes in relation to work performed on RSP Sites; and
  - (c) when accessing RSP Sites, comply with the RSP 's policies and procedures, reasonable directions and any site security provisions and coordinate such access with the RSP.

## 23. Access to End User Premises

- 23.1 If the Service Provider or a Supplier must perform work in an End User's Premises in order to provide or maintain the Services, the RSP will:
- (a) obtain any necessary approvals and permits (including occupant, homeowner or landlord consent as applicable) prior to the Service Provider or a Supplier accessing the Premises; and
  - (b) make an appointed time with the homeowner or builder in accordance with the CSG (if applicable).
- 23.2 Work referred to in clause 23.1 will be performed by the Service Provider or the Supplier or their appointed Personnel, at the request of the RSP and, unless the work is required because of a fault in the Service Provider or Service Provider's Equipment, at the RSP 's cost in accordance with the applicable Service Schedule.
- 23.3 The RSP will provide all reasonably necessary assistance to enable the Service Provider or the Supplier to perform work in an End User's Premises for the purposes of clause 23.1.
- 23.4 In entering, using or accessing any of the RSP 's Equipment, facilities, Premises or Personnel, the Service Provider must observe all of the RSP 's reasonable security, administrative and other requirements and directions, including any training or other requirements relating to occupational health and safety.

## 24. Compliance with Laws

- 24.1 Each party must:
- (a) comply with all Laws applicable to the Services and the performance of its obligations under this Agreement;
  - (b) not provide or utilise the Services in a way which would cause the other party to be in breach of any Laws; and
  - (c) subject to clause 25, comply with any reasonable instruction from the other party, at the other party's cost (provided always that such costs must be reasonable and substantiated), to the extent that that instruction is necessary to enable the other party to comply with any Laws, Change in Law or any Regulatory Event.

## 25. Approvals and Regulatory Events

- 25.1 If at any time:
- (a) any licence, authorisation, consent, approval or permit required by applicable Laws relating to the subject matter of this Agreement cannot be obtained from, or is withdrawn by, any Government Agency or other Third Party; or
  - (b) a Regulatory Event occurs,
- which adversely affects a party's (**Affected Party**) ability to perform its obligations under this Agreement or a Service Order, then:
- (c) the Affected Party must give an immediate notice to that effect to the other party detailing the remedial action that the Affected Party proposes to take;
  - (d) the Affected Party must obtain the other party's approval of the Affected Party's proposal, approval not to be unreasonably withheld, before the Affected Party takes any remedial action to the extent that the Affected Party's proposal is inconsistent with this Agreement; and
  - (e) without limiting any other provision in this Agreement, the Affected Party is relieved from performing its obligations under this Agreement (other than its obligation to pay

the Fees) to the extent it is legally unable to comply with those obligations due to a Regulatory Event.

## 26. Governance

- 26.1 The RSP will nominate at least two authorised operational contacts and provide any relevant details in relation to them as required by the Service Provider. The RSP may change its authorised operational contacts by giving notice to the RSP providing all relevant details. The authorised operational contacts will have access to the RSP 's support and maintenance staff for the Services, and to report faults and make requests for maintenance or support.
- 26.2 The Service Provider is not obliged to respond to requests from anyone other than the authorised operational contacts.

## 27. Fees and invoicing

- 27.1 The RSP must pay to the Service Provider the applicable fees for each Service as set out in the applicable Service Schedule (**Fees**).
- 27.2 The Service Provider must invoice the RSP in accordance with the billing procedures in the Operations Manual.
- 27.3 The RSP must pay the Fees by the due date specified in the invoice (**Due Date**). The relevant Due Date will be no earlier than 30 days after the date the invoice was issued.
- 27.4 The RSP must, if required by the Service Provider, pay the Service Provider interest on any overdue amount of an invoice applied for each day from the Due Date until the date that the Service Provider receives payment in full at an percentage rate equal to the then-current official cash rate of the Reserve Bank of Australia plus two (2) percent, calculated annually.
- 27.5 Unless otherwise specified in this Agreement, the Service Provider may amend the Fees by giving RSP at least 60 days' prior written notice.

## 28. Payment disputes

- 28.1 The RSP may in good faith dispute all or part of the Fees on an invoice by providing the Service Provider with written notice (**Payment Dispute Notice**) at any time prior to the applicable Due Date setting out in reasonable detail the applicable disputed amounts.
- 28.2 The Service Provider will endeavour to give the RSP a determination on the disputed amount(s) within a reasonable time of receiving the RSP's Payment Dispute Notice and the Service Provider must keep the RSP informed as to the expected timeframe for finalisation.
- 28.3 Where the Service Provider determines that a disputed amount is payable to the Service Provider, the RSP must pay such amount within 5 Business Days of receiving notice of the Service Provider's determination.
- 28.4 If the RSP disagrees with the Service Provider's determination, the RSP may escalate the dispute to the DR Process, and the parties will use their reasonable endeavours to resolve the payment dispute in accordance with the DR Process.
- 28.5 If, after the DR Process is concluded it is determined that the RSP is required to pay the disputed amount to the Service Provider, then the RSP must pay that amount no later than the date which is 10 Business Days after determination of the dispute. The Service Provider may charge the RSP interest on the relevant amount in accordance with clause 27.4.
- 28.6 If the RSP raises a payment dispute in accordance with this clause 28, it may withhold payment of the disputed amount until the payment dispute is resolved.
- 28.7 Notwithstanding clause 28.6, the RSP must pay any undisputed amount on an invoice, irrespective of whether other amounts on that invoice are disputed, on or before the Due Date.

## **29. Taxes**

- 29.1 Except where the context suggests otherwise, terms used in this clause 29 have the meanings given to those terms in the GST Law.
- 29.2 If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- 29.3 Any component of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 29.
- 29.4 Unless otherwise expressly stated, all consideration to be provided under this Agreement is exclusive of GST.
- 29.5 If GST is or will be payable by a party making a supply (**supplier**) on a supply made under or in connection with this Agreement, to the extent that the consideration otherwise provided for that supply under this Agreement is not stated to be inclusive of GST on that supply:
- (a) the consideration otherwise provided for that supply under this Agreement is increased by the amount of that GST; and
  - (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or any part of it, must be paid or provided or, if the consideration has already been paid or provided, within seven days of receiving a written demand from the supplier.
- 29.6 If the amount of GST on a supply is or should be different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment event:
- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving seven days' written notice; or
  - (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner; and
  - (c) must issue an adjustment note or tax invoice reflecting any adjustment event in relation to the supply to the recipient within 28 days of the adjustment event.
- 29.7 The supplier must provide a tax invoice to the recipient of the supply no later than 14 days after the day on which the consideration is to be first provided for that supply or component of the supply, as relevant.
- 29.8 Any costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this Agreement must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

## **30. Intellectual Property Rights**

- 30.1 All Intellectual Property Rights in any Background Material provided by a party under this Agreement remains the property of the relevant party or its licensors.
- 30.2 The RSP grants to the Service Provider Group a non-exclusive, non-transferable, irrevocable, royalty free licence, including the right to sub-licence to the Service Provider's Personnel), to use its Background Material during the Term to the extent necessary for the Service Provider to perform its obligations under this Agreement.

30.3 The Service Provider grants to the RSP Group a non-exclusive, non-transferable, irrevocable, royalty free licence to use its Background Material during the Term solely the extent necessary for the RSP to receive the benefit of the Services.

30.4 Each party must perform its obligations and exercise its rights under this Agreement so as not to infringe any Intellectual Property Rights of the other party.

### **31. Confidentiality**

31.1 The parties must treat as confidential:

- (a) the provisions of this Agreement; and
- (b) all information provided by the other party under this Agreement, including without limitation, technical, operational, billing, pricing and commercial information,

**(Confidential Information).**

31.2 A party must not disclose the other party's Confidential Information to any person except:

- (a) to its Personnel and its external advisors on a need to know basis, provided those persons first agree to observe the confidentiality of the information;
- (b) if the information, as at the Commencement Date, is lawfully in the possession of the recipient;
- (c) with the other party's written consent (not to be unreasonably withheld);
- (d) if required by Law, any stock exchange, government agency or regulator;
- (e) if it is in the public domain other than by a breach of an obligation of confidence by the person receiving the information; or
- (f) in the case of the Service Provider, to its Related Bodies Corporate.

31.3 Without prejudice to the obligations of the RSP and the Service Provider under applicable Security Legislation, if a party becomes aware of any Information Breach in respect of the other party's Confidential Information, it must notify and co-operate with the other party in dealing with the act and use its best endeavours to prevent a recurrence of such Information Breach. Each party must bear its own costs of compliance.

31.4 Each party acknowledges that, in addition to any other remedy, either party is entitled to injunctive relief to prevent a breach of, and to compel specific performance of, this clause 30.

31.5 The rights arising under this clause 31 do not exclude or limit any other rights of either party.

### **32. Privacy**

32.1 The parties must ensure that they comply with all Privacy Laws, including the Privacy Act. Where the RSP is a small business operated under the Privacy Act, the RSP is required to comply with the Privacy Act as if it were an organisation regulated by the Privacy Act.

32.2 The RSP must comply with all other relevant requirements applicable to their handling of Personal Information.

32.3 The RSP must take all reasonable steps to ensure that the Service Provider may use and disclose Personal Information in compliance with Privacy Laws, including making any relevant individuals aware of matters required by Privacy Laws in respect of disclosure to the Service Provider and obtaining any relevant consents.

32.4 Without limiting clause 32.1, to the extent a party discloses Personal Information to the other party, that party must:

- (a) take all reasonable steps to protect all Personal Information in its possession or control against Data Breaches;
- (b) immediately notify the other party if it becomes aware of an actual or suspected Data Breach; and
- (c) provide all reasonable co-operation to the other party in respect of any investigation or dealings with a Government Agency in relation to a Data Breach.

### **33. Limitation of liability**

33.1 Subject to clause 33.2, the total aggregate liability (whether in contract, tort (including negligence) or otherwise) of a party for all Losses sustained or incurred by the other party in each Contract Year arising out of or in connection with this Agreement is limited to the greater of:

- (a) AUD\$10 million; and
- (b) the fees paid and payable in the 12 month period preceding the claim in the Contract Year.

33.2 Notwithstanding clause 33.1, a party's maximum liability (whether in contract, tort (including negligence) or otherwise) for all Losses arising out of or in connection with a breach of any obligations under clause 31 (*Confidentiality*) or clause 32 (*Privacy*) is limited to AUD\$50 million.

33.3 Subject to clause 33.4, to the extent permitted by Law:

- (a) in no circumstance is either party liable, whether in tort (including negligence), contract, statute or otherwise, to the other party for any Consequential Loss, however nothing in this clause 33.3(a) will preclude the recovery by a party of any regulatory or governmental penalties or fines that are imposed on that party; and
- (b) each party excludes all representations, conditions, warranties or guarantees implied or imposed by Law.

33.4 The limitations of liability in clause 33.1 and 33.2, and the exclusion in clause 33.3, do not apply to:

- (a) liability for any death or personal injury, or damage to any real or tangible property; or
- (b) a party's obligation to pay charges (or other amounts in the applicable Service Schedule) under this Agreement.

33.5 Where a party breaches any representation, condition, warranty or guarantee implied or imposed by Law that cannot lawfully be excluded but can be limited, a party's liability is limited, at that party's option, to:

- (a) in the case of services, re-supplying or paying the cost of re-supplying those services; and
- (b) in the case of goods, repairing, replacing or paying the cost of repairing or replacing those goods.

### **34. Rights to limit, restrict, or suspend the Services**

34.1 Subject to its obligations to comply with applicable Law, the Service Provider may immediately limit, restrict or suspend the supply of the Service (or part of the Service), or the RSP's ability to place new Service Orders, if any of the following occurs:

- (a) a prerequisite for the supply of the Service, as contemplated in clause 5, is no longer being satisfied;

- (b) the RSP breaches clauses 8 or 13;
- (c) the Service Provider is entitled to terminate this Agreement or the Service “for cause” under clause 37;
- (d) the RSP suffers an Insolvency Event;
- (e) an administrator, receiver or scheme administrator is appointed to the RSP, and that administrator, receiver or scheme administrator does not accept personal liability for the ongoing supply of the Service by the Service Provider within 3 Business Days of the Service Provider’s request that they do so;
- (f) an Emergency necessitates limitation, restriction or suspension of the Service (including to support emergency and other essential services);
- (g) the supply of the Service poses a threat to safety of persons, a hazard to equipment or other property or a threat to normal network operation or integrity; or
- (h) the use, sale, promotion or resupply of the Service (or any service derived from the Service) is, or is likely to become, unlawful.

34.2 If the Service Provider exercises a right under clause 34.1, it will:

- (a) give the RSP as much notice as is reasonable in the circumstances. In some circumstances it may not be practicable to give notice in advance of the Service Provider’s exercise of this right. In this case, the Service Provider will notify the RSP as soon as practicable after exercising this right;
- (b) not be limited in exercising any other rights; and
- (c) exercise those rights only for so long as the event or circumstance giving rise to that right continues (as long as the RSP pays any disconnection and reconnection charges that may be payable in those circumstances).

34.3 If the Service Provider exercises a right under clause 34.1 in any of the circumstances set out in clauses 34.1(a), (g) or (h) and the RSP, a Reseller or an End User was not to any extent responsible for the circumstance, then the RSP may immediately terminate the Service and the Service Provider.

## **35. Termination of Services**

35.1 The RSP may terminate an ordered Service by providing the Service Provider a Service Order setting out its intention to terminate that Service, with such termination taking effect:

- (a) on the date that is [20 Business Days following the date of the Service Provider’s receipt of the relevant Service Order; or
- (b) immediately if the RSP reasonably believes it is necessary to do so to comply with a Regulatory Event or to comply with any Law or Change in Law.

35.2 Subject to clause 35.3, the Service Provider may terminate an ordered Service:

- (a) at any time without cause by giving the RSP at least 12 months’ notice;
- (b) on 10 Business Days’ notice to the RSP r if:
  - (i) the Service Provider reasonably suspects fraud by the RSP or an End User in respect of such Service;
  - (ii) the RSP, an End User or a Reseller is in material breach of the Acceptable Use Policy in respect of such Service;



- (iii) the RSP breaches clauses 8, 9 or 12 in relation to that Service, provided it is reasonable to terminate that Service, having regard to the impact or potential impact on the Service Provider Network or the Service Provider's legitimate business interests;
  - (iv) the Service Provider reasonably believes it is necessary to do so to comply with Law or a Regulatory Event;
  - (v) the use, sale, promotion or resupply of the Service (or any service derived from the Service) is, or is likely to become, unlawful;
  - (vi) the Service has been restricted, limited or suspended by the Service Provider under clause 34.1 for a period of 30 days or more; or
  - (vii) a Force Majeure Event substantially and adversely affects the ability of the other party to perform obligations under this Agreement continuously for a period of 30 days or more; and/or
- (c) immediately on notice to the RSP if:
- (i) the RSP is in material breach of this Agreement in respect of that Service and the breach is:
    - (A) capable of remedy but not remedied within 20 Business Days after the date of receipt of notice of the breach from the Service Provider; or
    - (B) not capable of remedy;
  - (ii) the RSP has failed to pay the applicable undisputed Fees for that Service by the Due Date and fails to make such payment within a further 5 Business Days of receipt of a notice requiring the RSP to do so;
  - (iii) the RSP is in breach of the confidentiality or privacy provisions of this Agreement with respect to that Service;
  - (iv) one or more Insolvency Events occurs in respect of the RSP; or
  - (v) the Service Provider has a right to suspend the Services under clause 34.1(e).

35.3 Without limiting clause 35.2, subject to its obligations under applicable Law, the Service Provider may exit a Service from the market (so that the RSP can no longer order the Service) by providing the RSP with at least 6 months' written notice.

### **36. Termination of this Agreement for convenience**

Either party may terminate this Agreement at any time without cause by giving the other party at least 6 months' written notice.

### **37. Termination of this Agreement for cause**

37.1 A party may terminate this Agreement immediately on notice to the other if:

- (a) the other party suffers an Insolvency Event;
- (b) the other party commits a material breach of this Agreement that is not capable of remedy;



- (c) the other party commits a material breach of this Agreement that is capable of remedy and fails to remedy that breach within 10 Business Days of receiving notice from the terminating party to do so; or
- (d) a Force Majeure Event substantially and adversely affects the ability of the other party to perform obligations under this Agreement continuously for a period of 30 days or more.

37.2 The Service Provider may terminate this Agreement immediately on notice to the RSP if the Service Provider has a right to suspend the Services under clause 34.1(e).

### **38. Consequences of termination**

38.1 On termination of this Agreement or a Service (as applicable);

- (a) unless specified otherwise in this Agreement, the RSP must pay the Service Provider all amounts owed up to the date of termination, including any early termination charges specified in the applicable Service Schedule;
- (b) unless specified otherwise in this Agreement (including the applicable Service Order), the Service Provider will cease providing the Service;
- (c) a party must promptly disconnect its Network from the other party's Network, or remove any of its equipment, where the Network or equipment is no longer required for the Service. The parties must give each other all reasonable assistance (including complying with any reasonable instructions) to facilitate this; and
- (d) the RSP will return any Service Provider Equipment in its possession to the Service Provider within 20 Business Days of the effective date of termination.

### **39. Disengagement**

Upon termination of this Agreement, the Service Provider may, upon request from the RSP, continue to provide a Service whose Service Term has not expired as at that terminate date of this Agreement for a period equivalent to the minimum term required under each applicable agreement between the RSP and its End Users and:

- (a) if the RSP wishes the Service Provider to cease providing that Service, it must give the Service Provider at least 20 Business Days written notice; and
- (b) all relevant provisions of this Agreement (including payment terms and the applicable then-current Fees) continue to apply to that Service until supply of the Service ceases; and
- (c) on termination of that Service, any outstanding amount for that Service becomes immediately due and payable.

#### **40. Insurance**

40.1 The RSP must effect and maintain:

- (a) public and products liability insurance for an amount not less than \$50,000,000 for any one occurrence and in the aggregate;
- (b) property insurance for an amount not less than the full value of the assets the subject of this Agreement; and
- (c) workers compensation insurance in accordance with Law.

40.2 On request by the Service Provider, but no more than once in every 12 month period, the RSP will produce to the Service Provider certificates of currency as satisfactory evidence that the RSP has complied with, and continues to comply with, its obligations under this clause 40.

#### **41. Force Majeure**

If a party is unable to perform or is delayed in performing an obligation under this Agreement (other than an obligation to pay money) because of a Force Majeure Event:

- (a) that obligation is suspended to the extent, and for so long as, that party is affected by the Force Majeure Event; and
- (b) the non-performing party must:
  - (i) promptly give the other party notice of the event and an estimate of the impact of the Force Majeure Event on performance and anticipated delay;
  - (ii) take all reasonable steps to overcome the effects of the event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms); and
  - (iii) resume compliance as soon as practicable after the event no longer affects the non-performing party.

#### **42. Dispute Resolution**

42.1 The parties agree to use best endeavours to resolve any Disputes in good faith in accordance with clauses 42.2 to 42.5. A party must not commence court proceedings (except to enforce payment or for urgent injunctive or declaratory relief) unless it has followed the procedures in clauses 42.2 to 42.5 (**DR Process**).

42.2 If a Dispute arises, a party must notify the other party that it wishes to resolve the Dispute (**Dispute Notice**). The Dispute Notice must contain or annex reasonable details of the Dispute. The parties must each nominate a senior executive to meet within 7 days of the notice who must meet at least once in that period to try and resolve the Dispute.

42.3 If the Dispute remains unresolved 7 days after the issue of the Dispute Notice, the parties must escalate the dispute to representatives who are authorised to settle the dispute on behalf of each party to meet within 14 days to try and resolve the Dispute.

42.4 If the Dispute remains 14 days after the escalation of the Dispute under clause 42.3, the parties must try to resolve the Dispute by mediation administered by the Australian Disputes Centre (**ADC**) according to its mediation guidelines. The Dispute may be referred to ADC by either party. The parties will use their best endeavours to resolve the Dispute within 3 months of the issue of the Dispute Notice.

42.5 If the Dispute remains unresolved 3 months after the issue of the Dispute Notice, either party may commence court proceedings in relation to the Dispute, unless the mediation is terminated earlier, in which case court proceedings may be commenced at any time following the termination of the mediation.

**43. Notices**

- 43.1 Any notice, consent, approval, request and demand under this Agreement must be:
- (a) delivered by hand, sent by prepaid post, or email;
  - (b) include a prominent statement that it is given under this Agreement; and
  - (c) be addressed and delivered to the last address or email address for the relevant party notified in writing to the party giving the notice.
- 43.2 A notice under this Agreement must be addressed to the relevant party's representative listed in the Agreement Details (or their replacement as advised in writing).

**44. Assignment, novation and subcontracting**

- 44.1 A party must not assign its rights or novate its obligations under this Agreement without the other party's prior written consent (not to be unreasonably withheld).
- 44.2 The Service Provider may, in conjunction with a corporate group reconstruction or sale, assign, or require the RSP to join in a novation of its rights and obligations under, this Agreement to a Service Provider Group Member with the consent of the RSP (not to be unreasonably withheld or delayed). At the request of the RSP, the Service Provider must execute all documents necessary to give effect to such assignment or novation.
- 44.3 The Service Provider may perform any of its obligations under this Agreement by arranging for them to be performed by another person, including a Supplier, provided that any such subcontracting is to a reputable subcontractor.

**45. Amendment**

Unless otherwise specified in a Service Order, or in accordance with clause 6, this Agreement and/or any Service Order may only be varied, supplemented or replaced by a document executed by the parties.

**46. Severance**

Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement however the remaining provisions of this Agreement will continue in full force and effect.

**47. Waiver and exercise of rights**

- 47.1 A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 47.2 A party is not liable for any loss of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- 47.3 The RSP acknowledges that nothing in this Agreement constitutes a waiver of or affects, restricts or limits the Service Provider's rights and powers under its carrier licence, under Schedule 3 of the Telecommunications Act, or at Law.

**48. Further steps**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under this Agreement.

**49. Governing law and jurisdiction**

This Agreement is to be construed in accordance with the Laws of Victoria and each party submits to the non-exclusive jurisdiction of the courts of Victoria.

**50. Counterparts**

This Agreement and Service Orders made under it may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

**51. Entire Agreement**

51.1 This Agreement constitutes the entire agreement between the parties in respect of the subject matter set out in this Agreement and supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of this Agreement.

51.2 Each party acknowledges that neither the other party nor any person acting on the other party's behalf has made any representation or other inducement to enter into this Agreement except representations or inducements expressly set out in this Agreement.

**52. Survival**

52.1 The following provisions survive termination, or expiry, of this Agreement:

- (a) clauses 30 to 39, 41, 42 and 52; and
- (b) provisions which by their nature, are intended to survive, including any provisions in this Agreement dealing with transfer of title, confidentiality, intellectual property, professional indemnity insurances, indemnities, waiver of notices under the Telecommunications Act and dispute resolution.

**53. Rights cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and in addition to any of the other rights of that party.

**54. Relationship**

Nothing in this Agreement is to be construed to constitute the parties as partners (in a legal sense) nor to constitute either of the parties as the agent of the other party. Neither party may attempt to bind or impose any obligation on the other party or incur any joint liability without the written mutual consent of the other party except as set out in this Agreement. The right of any individual, firm or corporation claiming by, through or under a party against any right, title or interest of that party in this Agreement is limited solely to the entitlements of that party as set out in this Agreement.

**55. No assumption of duty to the Service Provider**

Except to the extent that this Agreement provides otherwise, the Service Provider is solely responsible for the discharge and satisfaction of the Service Provider's duties in connection with the Services and this Agreement.

**56. Costs, expenses and duties**

Each party must pay its own costs and expenses in relation to the negotiation, preparation, execution and variation of this Agreement. The Service Provider must pay all stamp and other duties payable in relation to this Agreement or any Service Order. To avoid doubt, any stamp or other duty that is payable in relation to any other agreement between the parties, including in relation to the transfer of any assets in transactions contemplated by those agreements, will be governed by the terms of those other agreements.

**57. No derogation**

If an issue arises which is not provided for expressly in this Agreement, the parties must work together in good faith to resolve that issue. Neither party may enter into agreements, arrangements or understandings after the Commencement Date, which contain terms and

conditions that have the effect of avoiding any obligations of that party contained in this Agreement.

**58. Publicity**

Neither party may use the other party's name, trade marks or service marks or refer to the other party or its Related Bodies Corporate directly or indirectly in any media release, public announcement or public disclosure relating to this Agreement or its subject matter, without obtaining prior written consent from the other party except in relation to any disclosure which a party is required to make by Law or the listing rules of a recognised stock exchange.

**59. Prohibition and enforceability**

- 59.1 The rights, duties and remedies granted or imposed under the provisions of this Agreement operate to the extent not excluded by Law. Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition. Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

## Schedule 1 – Acceptable Use Policy

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### **Purpose and Intent**

The purpose of the Acceptable Use Policy is to outline the boundaries of acceptable use by an RSP of the Service Provider's Network. It is intended to ensure that RSPs are aware of the thresholds and boundaries for different types of applications and traffic loads that are considered acceptable when delivering End User services using the Service Provider's access connectivity and subscriber management products.

These thresholds and boundaries are necessary for the Service Provider to maintain a reliable and secure network.

### **Intended Use**

The Service Provider's access connectivity and subscriber management services are intended for use as inputs to an RSP's end-to-end service delivery architecture, for delivering consumer-grade internet access to individual customer premises within the Service Provider Network footprint. For these services, it is expected that the direct customer of the RSP will be the owner/tenant of a single premises.

The Service Provider's services are delivered using a shared network infrastructure, that is managed in accordance with the expected traffic demands of consumer-grade internet applications. RSPs must ensure that they (or any downstream users) do not make use of the Service Provider's services for any of the following:

1. Aggregation services that utilise a single connection for multiple premises,
2. Carrier backhaul and interconnect applications (including wireless mobile base stations),
3. End User applications that drive continuous, excessive traffic onto the Service Provider Network to the extent that the Service Provider must act by exception at the operational level to maintain network integrity and performance,
4. Activities that impact the overall or localised robustness, functional integrity or security of the Service Provider Network, or the safety of Service Provider personnel.

Such activities are considered unacceptable within the context of this service Agreement.

### **Outcomes of Unacceptable Use**

Upon detection of unacceptable use, the Service Provider will work with the RSP to understand and rectify any issues and may, at its discretion:

1. Enforce network-level practices that limit the impact of individual services on the Service Provider's network, including traffic shaping/throttling and individual service disconnection,
2. Enforce RSP-level network and/or systems-level restrictions that limit the impact of multiple services on the Service Provider's network, including shaping/throttling and service disconnection at the ENNI level, and/or restricting the provisioning of further services by the RSP.

## Schedule 2 – Wholesale Access Connectivity Service

Service Terms	
1. Service Details	
<b>Service Name</b>	Wholesale Access Connectivity Service
<b>Service Term</b>	<p>Service Commencement Date: <b>[insert]</b></p> <p>Service End Date: The Agreement terminates in accordance with the terms set out in this Agreement.</p>
2. Service Description	
<b>General</b>	<p>Wholesale Access Connectivity Service is a high-speed, data access service provided at layer 2, between individual premises within a MDU and a POI.</p> <p>This Service is intended to act as input to an RSP's consumer-grade internet products, offered at downstream speed options ranging from 25Mbps to 2Gbps and upstream speed options ranging from 5Mbps to 200Mbps.</p>
<b>Network Boundary Point</b>	<p>Each individual Service comprises of a layer 2, point-to-point, OVC that traverses the Service Provider Network, terminated at the following Network Boundary Points:</p> <ol style="list-style-type: none"> <li>between the Service Provider's network and the RSP's network. At the POI, this is the ENNI.</li> <li>between the Service Provider's network and the EUP, <ol style="list-style-type: none"> <li>for FTTP services this is the UNI port on the NTD; and</li> <li>for FTTdP (g.fast) services this is defined as the network side of the copper main distribution frame, where the Service Provider's network is first connected into the building wiring to access the EUP. Note that the demarcation between Service Provider's network and the RSP network is the UNI port on the NTD.</li> </ol> </li> </ol>
<b>Supply Connection</b>	<p>Once the RSP has passed Operational Acceptance Testing as set out in the Operations Manual, the Wholesale Connectivity Access Service will be supplied in response to a Service Order placed by the RSP, in accordance with the terms of the Agreement and the Service Levels described in Appendix B of the Operations Manual.</p> <p>Supply of individual Services will continue until disconnected by either the RSP or the Service Provider in accordance with the Operations Manual, or, otherwise terminated in accordance with this Agreement.</p>
3. Pre-requisites	
<b>Supply Pre-requisites</b>	<p>Before the supply of any Services under this Agreement, the RSP must complete all pre-requisites, including:</p> <ul style="list-style-type: none"> <li>agreeing to the Service Provider's Wholesale Agreement and this Service Schedule;</li> </ul>

	<ul style="list-style-type: none"> <li>• completing all required credit check and Operational Acceptance Testing activities as specified in the Operations Manual;</li> <li>• meeting the requirements set out in the Product Technical Specification; and</li> <li>• establishing IT system (API or web portal) connectivity and service management capabilities as specified in the Operations Manual;</li> </ul>												
<b>Installation Requirements</b>	<p>The Service Provider will install the Service Provider Equipment at a time and location agreed in advance with you.</p> <p>The RSP must:</p> <ul style="list-style-type: none"> <li>• appoint a contact person at each installation location to instruct the installer;</li> <li>• prepare the Site and provide a suitable physical environment for that Service Provider Equipment, including any remediation work and any building services required before installation.</li> </ul> <p>The RSP will be responsible for installing, commissioning, securing, managing and maintaining all RSP Equipment beyond the Service Provider's Network Boundary Points, and ensuring that such RSP Equipment is compatible with the configurations and testing performed through the on-boarding process.</p> <p>The RSP is responsible for notifying the Service Provider if any modifications are made to the RSP Equipment and service configurations that interface to, or are used across the Service Provider Network, that deviate from those established and agreed during the Operational Acceptance Testing phase.</p>												
<b>4. RSP Obligations</b>													
<b>Restrictions on Use</b>	The RSP must fully comply with the Acceptable Use Policy of this Service specified in Schedule 1.												
<b>Other</b>	The RSP is responsible for all infrastructure and service capabilities as necessary to operate a layer 3+ product across this Service, including (without limitation) routing devices at both the End User's Premises and Point of Interconnection, subscriber management systems, processes and hardware, service-level monitoring, security and diagnostics and upstream connectivity to network services for the purpose accessing internet content and services.												
<b>5. Charges</b>													
<b>Fees</b>	<p>The Fees for the Services are as specified in the table below. Further details of these Fees are supplied in Annexure A to this Service Schedule.</p> <table border="1"> <thead> <tr> <th colspan="2">UNI Once-Off Charges</th></tr> <tr> <th>Activity</th><th>Charge per Activity</th></tr> </thead> <tbody> <tr> <td>Standard Initial Installation</td><td>\$0</td></tr> <tr> <td>Non-Standard Initial, and Subsequent Installation</td><td>Price Upon Application</td></tr> <tr> <td>Equipment Modification</td><td>Price Upon Application</td></tr> <tr> <td>Service Transfer</td><td>\$0</td></tr> </tbody> </table>	UNI Once-Off Charges		Activity	Charge per Activity	Standard Initial Installation	\$0	Non-Standard Initial, and Subsequent Installation	Price Upon Application	Equipment Modification	Price Upon Application	Service Transfer	\$0
UNI Once-Off Charges													
Activity	Charge per Activity												
Standard Initial Installation	\$0												
Non-Standard Initial, and Subsequent Installation	Price Upon Application												
Equipment Modification	Price Upon Application												
Service Transfer	\$0												



	Late Cancellation or Not in Attendance		\$80
	Replacement NTD - End User Fault		Materials + \$135 per hour (min 2 hours)
	Incorrect Call-Out		\$135 per hour (min 2 hours)
	ENNI Bearer Recurring and Once-Off Charges		
	Interface Type	Monthly Recurring Charge	Once-Off Setup Charge
	10GBaseLR	\$400	\$3,000
	10GBaseER	\$500	\$4,000
	100GBaseLR4	\$1,400	\$10,000
	100GBaseER4	\$2,000	\$12,000
	ENNI Miscellaneous Once-Off Charges		
	Activity		Charge per Activity
	ENNI Group Initial Setup and Configuration		\$0
	ENNI Group Modification		\$0
	Order Withdrawal Fee		\$1,000
	OVC Once-Off Charges		
	Activity		Charge per Activity
	Service Modification – Speed Upgrade		\$0
	Service Modification – Speed Downgrade		\$30
	OVC Recurring Charges		
	Peak Speed (Mbps) (Downstream/Upstream)		Monthly Recurring Charge
	25/25		\$32.00
	25/5		\$34.64
	50/50		\$42.00
	50/20		\$55.19
	100/100 (Social)		\$32.00
	100/100		\$46.00
	500/100		\$54.00
	1,000/100		\$68.00
	2,000/200		\$99.00
	Early Termination Charges	Not applicable.	
6. Service Performance			
Service Levels	The CSG does not apply for this Service. All applicable Service Levels are outlined below and are to be interpreted in conjunction with further details and definitions contained in Appendix B of the Operations Manual.		
	External Network to Network Interface Service Levels		

	Category	Service	Service Level
	Activation	ENNI Activation	15 Business Days
	Modification	ENNI Modification (No Truck Roll required)	5:00pm next Business Day
		ENNI Modification (Truck Roll required)	9 Business Days
	Cancellation	ENNI Cancellation (logical)	5:00pm next Business Day
	End User Services Service Levels		
	Category	Service	Service Level
	Activation	End User Service Activation (Service Class < 212)	N/A
		End User Service Activation (Service Class is 212)	20 Business Days
		End User Service Activation (Service Class is 213)	10 Business Days
		End User Service Activation (Service Class is 214 or 314)	5 Business Days
	Modification	End User Modification (No attendance at premises required)	5:00pm next Business Day
		End User Fault Modification (Attendance at premises required)	10 Business Days
	Cancellation	End User Cancellation (No attendance at premises required)	5:00pm next Business Day
	Fault Rectification	End User Fault Rectification (No Truck Roll required)	5:00pm next Business Day
		End User Fault Rectification (Attendance at End User Premise Required)	5 Business Days
	Network Performance and Availability Service Levels		
	Category	Service	Service Level
	Network Performance and Availability	Network Availability	99.90%
	Network Fault Response (refer Operations Manual for Incident Priority definitions)	Network Fault Response (Incident Priority 1)	0.5 hours
		Network Fault Response (Incident Priority 2)	1 hours
		Network Fault Response (Incident Priority 3)	2 hours
		Network Fault Response (Incident Priority 4)	4 hours
	Network Fault Rectification (refer Operations)	Network Fault Rectification (Incident Priority 1)	6 hours
		Network Fault Rectification (Incident Priority 2)	12 hours

	Manual for Incident Priority definitions)	Network Fault Rectification (Incident Priority 3)	20 hours
		Network Fault Rectification (Incident Priority 4)	28 hours
Planned Outage	Planned Outage hours: Scheduled between midnight and 7 am Monday to Friday.  Planned Outage notice period: 48 hours		
7. Additional Terms			
Restrictions and limitations on the service	The “100/100 (Social)” OVC plan is only offered to where Community Fibre services have been installed and are connected to government-subsidised, short and long-term rental, multiple dwelling units. The service address must be qualified before formal acceptance and commencement of service delivery.		
Authorisations	Certain deployment activities related to the installation of network equipment within the End User Premises may require consent from the End User to perform modifications to the premises, such as the drilling of holes and fixing of network equipment to the internal structures of the premises. The RSP is responsible for obtaining any such authorisations from the End User prior to the scheduling of activities with the Service Provider.		
Title in equipment	See clause 21 of the Agreement.		
Special Conditions	The RSP is responsible for maintaining a minimum of one active OVC service on each provisioned ENNI. Any ENNI instance that is not carrying active OVC services for a period of 1 month or more will be disconnected.  The RSP is required to maintain a rolling 12-month forecast of Services with their respective Account Manager, as per section 4.2.2.2.1 of the Operations Manual.		
8. Definitions			
The definitions in this Schedule are the same as those in the general terms and/or the Operations Manual.  The following additional definitions apply to this Schedule:  <b>Account Manager</b> means the relevant account manager appointed by the Service Provider.  <b>Operational Acceptance Testing</b> or <b>OAT</b> means the relevant testing specified in the Operations Manual to determine that the RSP and the Service Provider's processes are compatible and working end to end, and the relevant Service can be provided.  <b>OVC</b> means operator virtual circuit.  <b>UNI</b> means user network interface.  <b>Wholesale Service Area</b> has the meaning given in the Operations Manual.			

## Annexure A to Schedule 2 – Further Details of Fees

### 1.1 UNI Once-Off Charges

Activity	Further Details
Standard Initial Installation	Relates to the connection of the first service to a premises, within standard deployment guidelines
Non-Standard Initial, and Subsequent Installation	Relates to installation activities, as necessary for the connection of the first service to a premises, that fall outside the standard deployment guidelines or relate to additional services installed at a premises
Equipment Modification	Relates to any work that is requested by the End User after the completion of the initial installation, related to moving, repairing or maintaining the in-premises infrastructure related to the service
Service Transfer	Relates to activities whereby an End User requires their service to be disconnected from one RSP, and connected to another RSP, utilising the same UNI
Late Cancellation or Not in Attendance	Relates to events where an appointment is scheduled by the RSP but is unable to proceed due to factors outside of Service Provider's control, such as the RSP cancelling the appointment within a period before the appointment time, or the Service Provider technician unable to complete scheduled activities due to inability to access the premises
Replacement NTD - End User Fault	Relates to events where it is necessary to replace an NTD due to activities caused by the End User.
Incorrect Call-Out	Relates to events where it is necessary to dispatch a technician to a premises, in response to an End User request, and the cause of the issue is deemed to be not within the scope of the Service Provider's responsibilities.

### 1.2 ENNI Bearer Recurring and Once-Off Charges

Activity	Further Details
ENNI Bearer Recurring and Once-Off Charges	<p>Relates to the initial setup, and ongoing rental of ENNI Bearer instances (as further described in the Operations Manual). These are applied in relation to installation and operation of ENNI Group instances.</p> <p>ENNI Bearer Once-Off Charges are applied at time of ENNI Bearer activation.</p> <p>ENNI Bearer Recurring Charges begin at time of ENNI Bearer activation, irrespective of whether there are any OVC services active on the ENNI Group.</p>

### 1.3 ENNI Miscellaneous Once-Off Charges

Activity	Further Details
ENNI Group Initial Setup and Configuration	Relates to the initial setup, and ongoing management of ENNI Group instances (as further described in the Operations Manual). These are applied in response to RSP-initiated events, as related to the installation and operation of ENNI Group instances at a specified Point of Interconnection
ENNI Group Modification	
Order Withdrawal Fee	

### 1.4 OVC Once-Off Charges

Activity	Further Details
Service Modification – Speed Upgrade	Relates to the initial setup, and ongoing operation of active OVC instances.
Service Modification – Speed Downgrade	

### 1.5 OVC Recurring Charges

Peak Speed (Mbps) (Downstream/Upstream)	Further Details
25/25	Relates to the recurring monthly rental of OVC instances. Charging will begin at completion of activation. For services that are active for a portion of the month, a pro-rata charge will be applied.
25/5	
50/50	
50/20	
100/100	
500/100	
1,000/100	
2,000/200	

## Schedule 3 – Broadband Subscriber Management

Service Terms	
1. Service Details	
<b>Service Name</b>	Broadband Subscriber Management
<b>Service Term</b>	<p>Service Commencement Date: [insert]</p> <p>Service End Date: The Agreement terminates in accordance with the terms set out in this Agreement.</p>
2. Service Description	
<b>General</b>	<p>Broadband Subscriber Management (BSM) is a digital service provided at the Service Provider's Points of Interconnect, only available for purchase in conjunction with the Service Provider's purchase of a Wholesale Access Connectivity Service.</p> <p>BSM is intended for RSPs who are utilising the Service Provider's Wholesale Access Connectivity Service as inputs to delivering consumer-grade retail internet services, and require additional core routing, subscriber management and internet connectivity functions within the PoI site to complete a full, end-to-end IP over Ethernet (IPoE) retail product.</p> <p>Each BSM service instance comprises:</p> <ul style="list-style-type: none"> <li>- a per-subscriber bandwidth profile that matches the OVC profile of the corresponding Wholesale Access Connectivity Service,</li> <li>- an IPv4 address (dynamically assigned private address by default, with the option for a static, public address) and configuration information that attaches this service to a corresponding Wholesale Access Connectivity Service on a nominated ENNI, and</li> <li>- a shared, busy-hour allocation of data capacity to the internet.</li> </ul>
<b>Network Boundary Point</b>	<p>BSM service instances are terminated at the following Network Boundary Points:</p> <ol style="list-style-type: none"> <li>An active ENNI instance (purchased under the Service Provider's Wholesale Access Connectivity Service) that is under an active commercial agreement with the same RSP as the BSM service, and</li> <li>An internet peering point within the same PoI site as the ENNI instance specified in (a), that connects the BSM service instance to the internet.</li> </ol>
<b>Supply Connection</b>	<p>Once the RSP has passed Operational Acceptance as set out in the Operations Manual, BSM service instances will be supplied on a per-subscriber basis in response to an order by the RSP, according to the service levels described in the Operations Manual.</p> <p>Supply of individual services will continue in conjunction with a corresponding Wholesale Access Connectivity Service OVC instance until disconnected by either the RSP or the Service Provider.</p>

3. Pre-requisites			
Supply Pre-requisites	Before the supply of any services under this Agreement, the RSP must complete all pre-requisites, including: <ul style="list-style-type: none"><li>• Agree to the Service Provider's Wholesale Agreement and this Service Schedule</li><li>• Completion of all required credit check and agreed Operational Acceptance activities as specified in the Operations Manual</li><li>• Establishment of IT systems (API or web portal) connectivity and service management capabilities as specified in the Operations Manual</li><li>• Agree to the Service Provider's Wholesale Access Connectivity Service, and the ordering and commissioning of at least one ENNI interface at the required PoI sites.</li></ul>		
Installation Requirements	The RSP is not required to install any equipment for use of this service.		
4. RSP Obligations			
Restrictions on Use	The RSP must comply with the Acceptable Use Policy as specified in Schedule 1.		
Other	The RSP is responsible for all subscriber-related interaction, including (but not limited to) supply and configuration of routing devices at the End User Premises, subscriber front-end management systems, processes and hardware for capturing, storing and securing subscriber personal details, and operational processes and tools for performing front-line customer support.		
5. Charges			
Charges	Charges are as specified in the table below. Further details of these charges are supplied in Annexure A to this Service Schedule.		
	Once-Off Charges		
	Activity	Charge per Activity	
	Standard Initial Installation	\$0	
	Allocation of Static IPv4 Public Address	\$50	
	Recurring Charges		
	Peak Speed (Mbps) (Downstream/Upstream)	Busy-Hour Capacity Allocation (Mbps)	Monthly Recurring Charge
	25/25	4	\$8.50
	50/50	4	\$8.50
	100/100	4	\$8.50
	500/100	4	\$8.50
	1,000/100	4	\$8.50
	2,000/200	20	\$32.50

Early Termination Charges	Not Applicable.		
6. Service Performance			
Service Levels	The CSG does not apply for this Service. All applicable service levels are outlined below and are to be interpreted in conjunction with further details and definitions contained in Appendix B of the Operations Manual.		
	BSM Services Service Levels		
	Category	Service	Service Level
	Activation	BSM Service Activation	5 Business Days
	Modification	BSM Modification	5:00pm next Business Day
	Cancellation	BSM Cancellation	5:00pm next Business Day
	Fault Rectification	BSM Fault Rectification (No Truck Roll required)	5:00pm next Business Day
		BSM Fault Rectification (Attendance at PoI site Required)	1 to 5 Business Days
	Network Performance and Availability Service Levels		
	Category	Service	Service Level
	Network Performance and Availability	Network Availability	99.90%
	Network Fault Response (refer Operations Manual for Incident Priority definitions)	Network Fault Response (Incident Priority 1)	0.5 hours
		Network Fault Response (Incident Priority 2)	1 hours
		Network Fault Response (Incident Priority 3)	2 hours
		Network Fault Response (Incident Priority 4)	4 hours
	Network Fault Rectification (refer Operations Manual for Incident Priority definitions)	Network Fault Rectification (Incident Priority 1)	6 hours
		Network Fault Rectification (Incident Priority 2)	12 hours
Network Fault Rectification (Incident Priority 3)		20 hours	
Network Fault Rectification (Incident Priority 4)		28 hours	
Planned Outage	Planned Outage hours: Scheduled between midnight and 7 AM  Planned Outage notice period: 48 hours		
7. Additional Terms			



<b>Restrictions and limitations on the service</b>	The Busy-Hour Capacity Allocation of each BSM service is managed by the Service Provider on an aggregate basis, across all BSM services purchased by the RSP. The Service Provider will monitor the RSP's aggregate allocation in line with the Acceptable Use Policy.
<b>Authorisations</b>	Not applicable
<b>Title in equipment</b>	Not applicable
<b>Special Conditions</b>	<p>Any ENNI instance (purchased under the Service Provider's Wholesale Access Connectivity Service) that is specified for use in terminating BSM services must be used exclusively for BSM interconnect, i.e. it is not permitted to use an ENNI for BSM services that is also carrying non-BSM services.</p> <p>The RSP is required to maintain a rolling 12-month forecast of BSM instances with their respective Account Manager, as per the Operations Manual.</p>
<b>8. Definitions</b>	
<p>The definitions in this Schedule are the same as those in the general terms and/or the Operations Manual.</p> <p>The following additional definitions apply to this Schedule:</p> <p><b>Account Manager</b> means the relevant account manager appointed by the Service Provider.</p> <p><b>Operational Acceptance Testing</b> or <b>OAT</b> means the relevant testing specified in the Operations Manual to determine that the RSP and the Service Provider's processes are compatible and working end to end, and the relevant Service can be provided.</p> <p><b>OVC</b> means operator virtual circuit.</p> <p><b>Wholesale Service Area</b> has the meaning given in the Operations Manual.</p> <p><b>Busy-Hour Capacity Allocation</b> means the amount of capacity that is allocated to that service in the core network and aggregate network interfaces, to meet the needs of an individual service during the peak demand period (7-11pm)</p>	

## Annexure A to Schedule 3 – Further Details of Fees

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### 1.1 Once-Off Charges

Activity	Further Details
Standard Initial Installation	Relates to the initial configuration of a BSM service instance.
Allocation of Static IPv4 Public Address	Relates to the supply and configuration of a static, public IPv4 address for a specified BSM service instance.

### 1.2 Recurring Charges

Peak Speed (Mbps) (Downstream/Upstream)	Further Details
25/25	Relates to the recurring monthly rental of BSM instances. Charging will begin at completion of activation. For services that are active for a portion of the month, a pro-rata charge will be applied.
50/50	
100/100	
500/100	
1,000/100	
2,000/200	

**EXECUTED** as an agreement.

**SIGNED** for **GIGACOMM PTY LTD** trading  
as **COMMUNITY FIBRE ABN 77 630 583**  
**998** by its authorised representative:

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Signature of authorised representative

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Name

---

Date

**EXECUTED** by **[INSERT RSP NAME AND**  
**ABN/ACN]** in accordance with section 127  
of the *Corporations Act 2001* (Cth):

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Signature of director

---

Name

---

Date

---

Signature of director/secretary

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Name

---

Date