

Access Health Pty Ltd

**Wholesale Service Agreement**

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**Part B – Details**

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- 1 Effective Date
- 2 Supplier Access Health Pty Ltd ACN 107 850 304
- 3 Supplier Address 1 / 2 Royan Place Bayswater VIC 3153
- 4 Customer
- 5 Customer Address

**Part C – Execution**

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Executed in accordance with section 126(1) of the *Corporations Act 2001* by  
me, acting with the express or implied authority and on behalf of  
**XX Pty Ltd ACN XXX XXX XXX**

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Signature

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Name (PLEASE PRINT)

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Office / role / title (PLEASE PRINT)

Executed in accordance with section 126(1) of the *Corporations Act 2001* by  
me, acting with the express or implied authority and on behalf of  
**Access Health Pty Ltd ACN 107 850 304**

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Signature

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Name (PLEASE PRINT)

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Office / role / title (PLEASE PRINT)

Part D – Introduction

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1 **Supplier**

Supplier is an Access Provider in relation to SBAS.

2 **Customer**

Customer is an Access Seeker in relation to SBAS.

3 **Supply of SBAS**

- (a) This is an Access Agreement in relation to SBAS and Supplier will supply, and Customer will acquire and pay for, SBAS on the terms of this Agreement including the Wholesale Price List as varied from time to time.
- (b) A reference in this Agreement to the supply of SBAS means its supply as would be required under the FAD but for this Agreement, but excluding clause 2.6 of Schedule 2 of the FAD.

4 **Supply of other services**

Supplier may, but is never obliged to, supply to Customer services other than:

- (a) SBAS; and
- (b) any other relevant eligible service declared from time to time under section 152AL of the *Competition and Consumer Act 2010* (noting that, as at the Effective Date, there is none).

5 **Components**

This Agreement consists of Part D to Part Q, its Schedule(s) and the Wholesale Price List as varied from time to time.

6 **Commencement and Term**

This Agreement commences on the Effective Date and, subject to earlier termination in accordance with its terms, and:

- (a) then continues for as long as the FAD is in force;
- (b) if the FAD is replaced by another instrument or series of instruments that require this Agreement to remain on foot – then further continues for as long as that or those instruments are in force; and
- (c) then further continues until the expiry of 60 days' notice of termination by a Party to the other.

Between the Effective Date and the termination of this Agreement is the **Term**.

7 **Wholesale Price List**

- (a) Supplier will maintain a register of its Charges applicable under this Agreement from time to time (**Wholesale Price List**).
- (b) The Wholesale Price List will be consistent with Schedule 2 of the FAD (noting that Schedule 2 provides for Charges to be varied from time to time).
- (c) The Wholesale Price List, as varied from time to time, is deemed to be part of this Agreement.
- (d) The Charges in the Wholesale Price List are exclusive of Goods and Services Tax (**GST**) and, subject to receipt of a valid Tax Invoice, Customer must pay the GST

in respect of any supply made under this Agreement at the same time and in the same manner as Charges are payable.

- (e) The Charges in the Wholesale Price List are exclusive of tax payable under *The Utilities (Network Facilities Tax) Act 2006 (Utilities Tax)* and, on invoice, Customer must pay a *pro-rated* share of the Utilities Tax payable in respect of Supplier's taxable infrastructure at the same time and in the same manner as Charges are payable. The *pro-rating* will be based on the ratio of the number of Customer's end customers that are serviced by the taxable infrastructure to the total number of end customers that are serviced by the taxable infrastructure.

**8 No exclusivity**

Nothing in this Agreement precludes Service Provider from supplying SBAS:

- (a) subject to law – to itself; or  
(b) to any other person.

**9 Special Conditions**

If Part Q includes any terms or conditions (**Special Conditions**) then, to the fullest extent permitted by law, those Special Conditions prevail over anything else in this Agreement (including, without limitation, clause 3(b) above), to the extent of any inconsistency.

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**Part E – Interpretation and definitions**

**10 Interpretation**

In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;  
(b) the words "including" and "include" mean "including, but not limited to"; and  
(c) terms defined in the *Competition and Consumer Act 2010* or the *Telecommunications Act 1997* have the same meaning.

**11 Definitions**

**ACCC** means the Australian Competition and Consumer Commission

**Access Agreement** has the same meaning as given to that term in section 152BE of the CCA

**Access Provider** has the same meaning as given to that term in subsection 152AR(2) of the CCA

**Access Seeker** has the same meaning as given to that term in section 152AG of the CCA

**ACDC** means the Australian Commercial Disputes Centre Limited

**ACDC Guidelines** means the Guidelines for Commercial Mediation published by the ACDC as in force from time to time and available at:

<https://disputescentre.com.au/adr-guidelines/>

**ACMA** means the Australian Communications and Media Authority

**Aggregation Charge** means a charge for the transport of customer traffic from multiple end- users on an aggregated basis

**AVC TC-4** refers to the NBN Co product AVC TC-4 which is an Ethernet-based Layer 2 virtual connection on the NBN Co network that carries traffic to and from a user-network interface used to serve a premises, in traffic class 4. See section 3.1 and 3.2 of the Product Description of Wholesale Broadband Agreement NBN Ethernet Product at <https://www.nbnco.com.au/rsps/supply-agreements/wba> as amended from time to time

**Billing Dispute** means a dispute relating to a Charge or an invoice issued by Supplier

**Billing Dispute Notice** means a notice given pursuant to clause 21 in Part F

**Billing Dispute Procedures** means the procedures set out in clauses 21 to 43 in Part F

**Breach Notice** has the meaning set out in clause 89 of Part J

**Bundled Offer Ceiling** refers to a reference AVC TC-4 product defined in the NBN Co Ethernet Product Module Price List at <https://www.nbnco.com.au/rsps/supply-agreements/wba> as amended from time to time. The monthly charge for the relevant Bundled TC-4 Offer, including CVC Overage, must not exceed this price. For clarity, for financial year 2024 the reference offer is the NBN 100/20 Mbps TC-4 product.

**Business Day** means any day other than Saturday or Sunday or a day which is a gazetted public holiday in the place concerned

**Calendar Day** means a day reckoned from midnight to midnight

**Carriage Service Provider** has the same meaning given to that term in section 87 of the *Telecommunications Act 1997* (Cth)

**Carrier** has the same meaning given to that term in section 7 of the *Telecommunications Act 1997* (Cth)

**Carriage Service** has the same meaning given to that term in section 7 of the *Telecommunications Act 1997* (Cth)

**CCA** means the *Competition and Consumer Act 2010* (Cth)

**Charge** means a charge for the supply of a Service

**Confidential Information** means all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form and whether coming into existence before or after the commencement of this Agreement) relating to or developed in connection with or in support of the Service supplied under this Agreement (the “**first mentioned party**”) but does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of this Agreement);
- (b) information rightfully received by the other party from a third person without a duty of confidentiality being owed by the other party to the third person, except where the other party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first mentioned party; or
- (c) information which has been independently developed or obtained by the other party; or
- (d) information about Services supplied by Supplier (including where that information is generated by Supplier) that has been aggregated with other information of a similar or related nature, such that Customer cannot be identified by the information or any part of it

**CVC Inclusion** means a CVC TC-4 symmetrical bandwidth inclusion. See section 11 of the Price List of Wholesale Broadband Agreement NBN Ethernet Product at <https://www.nbnco.com.au/rsps/supply-agreements/wba> as amended from time to time

**CVC TC-4** refers to the NBN Co product CVC TC-4 which is Ethernet-based Layer 2 virtual capacity on the NBN Co Network used to carry customer traffic between multiple access virtual circuits in a connectivity serving area on an aggregated basis and the network-network interface at the point of interconnection serving that connectivity serving area, in traffic class 4. See section 2.1 and 2.2 of the Product Description of Wholesale Broadband Agreement NBN Ethernet Product at <https://www.nbnco.com.au/rsps/supply-agreements/wba> as amended from time to time

**Daily Peak Hour** means, on a given day for Customer, the 60-minute period during which Supplier observes the highest aggregate download usage (in megabits) across all AVC TC-4 products on that day to Customer

**Daily Peak Utilisation** means the download usage (in megabits) observed by Supplier for a given AVC-TC4 product during the Daily Peak Hour for Customer, divided by 3600 (seconds)

**Demerged Telstra Company** has the meaning given by section 581J of the *Telecommunications Act 1997* (Cth)

**Disclosing Party** has the meaning set out in clause 71 in Part I of this Agreement

**Emergency** means an emergency due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic or war-like action) which:

- (a) endangers or threatens to endanger the safety or health of persons or
- (b) destroys or damages, or threatens to destroy or damage property, being an emergency which requires a significant and co-ordinated response

**Emergency Network Modernisation and Upgrade** means a modernisation or upgrade of a Network that is required or reasonably necessary and is a proportionate response to address an Emergency

**Equivalent Period of Notice** means a period of notice commencing at the time that Supplier has approved and allocated the capital expenditure or otherwise approved and made a decision to commit to a Major Network Modernisation and Upgrade

**Ethernet** has the same meaning given to that term by the Institute of Electrical and Electronics Engineers

**Event** means an act, omission or event relating to or arising out of this Agreement or part of this Agreement

**Expert Committee** means a committee established under clause 65 in Part H

**FAD** means Final Access Determination made under section 152BC of the *Competition and Consumer Act 2010* (Cth) and titled *Final Access Determination No. 1 of 2024* (SBAS)

**Fault** means:

- (a) a failure in the normal operation of a Network or in the delivery of a Service; or
- (b) any issue as to the availability or quality of a Service supplied to an end-user via Customer, notified by the end-user to Customer's help desk, that has been reasonably assessed by Supplier as being Supplier's responsibility to repair



**Fibre Access Broadband service** has the meaning given by Annexure 1 to the written instrument (as available on the ACCC's [public register](#)) by which the ACCC varied, pursuant to subsection 152AL(3) of the CCA, its declaration of the SBAS and which took effect on 27 July 2021

**General Notification** has the meaning set out in clause 120 in Part M

**HFC network** has the same meaning as hybrid fibre-coaxial network in section 7 of the *Telecommunications Act 1997* (Cth)

**Indemnifying Party** means the Party giving an indemnity under this Agreement

**Individual Notification** has the meaning set out in clause 120 of Schedule Part M

**Initiating Notice** has the meaning as set out in clause 65 of Part H

**Innocent Party** means the Party receiving the benefit of an indemnity under this Agreement

**Labour Rate** means the cost associated for the total number of staff-hours of labour required to perform the relevant activity (rounded up to the next full hour). For the avoidance of doubt, a Carrier or Carriage Service Provider may recover its Labour rate costs

**Liability** (of a party) means any liability of that party (whether in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) under or in relation to this Agreement, or part of this Agreement or in relation to any Event or series of related Events

**Listed Carriage Service** has the same meaning given to that term in section 16 of the *Telecommunications Act 1997* (Cth)

**Loss** includes liability, loss, damage, costs, charges, or expenses (including legal costs)

**Major Network Modernisation and Upgrade** means a modernisation or upgrade that results in a Service no longer being supplied or adversely affects the quality of that Service (or any services supplied by Customer to their end-users using the Service), but does not mean, or include, an Emergency Network Modernisation and Upgrade or a National Broadband Network related upgrade

**Materials** means the cost of materials (including parts) necessary to perform the relevant activity. For the avoidance of doubt, a Carrier or Carriage Service Provider may recover the cost of Materials

**Month** means a period commencing at the beginning of any day of a named month and ending:

- (a) at the end of the day before the corresponding day of the next named month;  
or
- (b) if there is no such corresponding day – at the end of the next named month

**National Broadband Network** means a national telecommunications network for the high- speed carriage of communications, where NBN Co has been, is, or is to be, involved in the creation or development of the network. To avoid doubt, it is immaterial whether the creation or development of the network is, to any extent, attributable to:

- (a) the acquisition of assets that were used, or for use, in connection with another telecommunications network; or
- (b) the obtaining of access to assets that are also used, or for use, in connection with another telecommunications network

**NBN Co** means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed)

**Network** of a party, means that party's system, or series of systems, that carries, or is capable of carrying communications by means of guided or unguided electromagnetic energy

**Network-network Interface** means an interface provided by a Supplier at a point of interconnection where Customer's telecommunications network can interface to Supplier's network

**Non-Billing Dispute** means a dispute other than a Billing Dispute

**Non-recurring Charge** means a charge payable only when a certain activity or event occurs, where that certain activity or event is not reasonably anticipated by the charger to re-occur on a regular or routine basis

**Ongoing Creditworthiness Information** has the meaning as set out in clause 52 of Part G of this Agreement

**Overage Amount** has the meaning as set out in section 11 of the Price List of Wholesale Broadband Agreement NBN Ethernet Product at <https://www.nbnco.com.au/rsps/supply-agreements/wba> as amended from time to time

**Party** means a party to this Agreement

**People** of a party, means each of that party's directors, officers, employees, agents, contractors, advisers, and representatives but does not include that party's end-users or the other party

**Prohibited Traffic** means traffic offered across a POI for which there is no agreement between Supplier and Customer that Supplier will carry such traffic or provide a related service to Customer

**Regulatory Determination** means an access determination or a binding rule of conduct

**Reporting Period** means each three-Month period ending on 31 March, 30 June, 31 September, or 31 December in a year. That is, 1 January to 31 March, 1 April to 30 June, 1 July to 30 September, and 1 October to 31 December, in each year

**Representative** of a Party means each of that party's directors, officers, employees, agents, contractors, advisers and representatives, but does not include that Party's end-users or the other Party

**SBAS** means the superfast broadband access service as described in Annexure 1 to the written instrument (as available on the ACCC's [public register](#)), by which the ACCC varied, pursuant to subsection 152AL(3) of the CCA, its declaration of the SBAS and which took effect on 27 July 2021

**Security** means the amount and type of security provided, or required to be provided, to Supplier in respect of the provision by Supplier of Services, as set out in Part G

**Security Deposit** means any sum of money deposited by Customer with Supplier, from time to time, for the purposes of fulfilling in whole or in part the requirement under this Agreement that Customer provide Security to Supplier

**Service** means an eligible service declared under section 152AL of the CCA

**Service Transfer** means the transfer of an end user service from one Access Seeker to another

**Structural Separation Undertaking** means:

- (a) an undertaking given by Telstra Corporation Limited under subsection 577A(1) of the Telecommunications Act 1997 (Cth) which came into force in accordance with section 577AB, and any amendment to that undertaking which comes into force in accordance with subsection 577B(6); and
- (b) a migration plan approved by the ACCC under Subdivision B of Division 2 of Part 33 of the Telecommunications Act 1997 (Cth) which, pursuant to subsection 577BE(5), formed part of the undertaking referred to in paragraph (a), and any amendment to that plan which is approved by the ACCC in accordance with section 577BF, and includes all binding schedules, annexures and attachments to such documents

**Suspension Event** has the meaning set out in clause 89 of Part J

**Suspension Notice** has the meaning set out in clause 89 of Part J

**Telstra Provider** means a Demerged Telstra Company that is required to comply with any or all of the standard access obligations as defined in the *Competition and Consumer Act 2010* in respect of the relevant declared service

**Transfer Reversal** means the reversal of a Service Transfer in circumstances where the transfer order placed is unauthorised, was placed in error or is a result of an end user rescinding or cancelling a Service Transfer within the cooling off period in accordance with the applicable fair-trading legislation

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## Part F – Billing and notification

- 12 Customer's liability to pay Charges for the Service to Supplier arises at the time the Service is supplied by Supplier to Customer, unless the parties agree otherwise.
- 13 Customer must pay Charges in accordance with this Agreement, including but not limited to this Part F.
- 14 Supplier must provide Customer with an invoice each Month in respect of Charges payable for the Service unless the parties agree otherwise.
- 15 Supplier is entitled to invoice Customer for previously uninvoiced Charges or Charges which were understated in a previous invoice, provided that:
  - (a) the Charges to be retrospectively invoiced can be reasonably substantiated to Customer by Supplier; and
  - (b) subject to clause 16, no more than 6 Months have elapsed since the date the relevant amount was incurred by Customer's customer, except where:
    - (i) Customer gives written consent to a longer period (such consent not to be unreasonably withheld); or
    - (ii) to the extent that the Charges relate to services supplied by an overseas carrier and Supplier has no control over the settlement arrangements as between it and the overseas carrier, in which case Supplier shall invoice such amounts as soon as is reasonably practicable.
- 16 The parties must comply with the provisions of any applicable industry standard made by the ACMA pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) (Standard) and the provisions of any applicable industry code registered pursuant to Part 6 of the

*Telecommunications Act 1997* (Cth) (Code) in relation to billing. Where the effect of a Standard or Code is that Customer is not permitted to invoice its customers for charges that are older than a specified number of days, weeks or Months (the Backbilling Period), Supplier must not invoice Customer for a Charge which was incurred by Customer's customers that, as at the date the invoice is issued, is older than the Backbilling Period.

- 17 Subject to clause 23:
- (a) An invoice is payable in full 30 Calendar Days after the date the invoice was issued or such other date as agreed between the parties.
  - (b) Customer may not deduct, withhold, or set-off any amounts for accounts in credit, for counter-claims or for any other reason or attach any condition to the payment, unless otherwise agreed by Supplier.
  - (c) All amounts owing and unpaid after the due date shall accrue interest daily from the due date up to and including the date it is paid at the rate *per annum* of the 90 day authorized dealers bank bill rate published in the Australian Financial Review on the first Business Day following the due date for payment, plus 2.5 per cent.
- 18 In addition to charging interest in accordance with clause 17 or exercising any other rights Supplier has at law or under this Agreement, where an amount is outstanding and remains unpaid for more than 20 Business Days after it is due for payment, and is not an amount subject to any Billing Dispute notified in accordance with this Agreement, Supplier may take action, without further notice to Customer, to recover any such amount as a debt due to Supplier.
- 19 Unless the parties otherwise agree, there is no setting-off (i.e. netting) of invoices except where a party goes into liquidation, in which case the other party may set-off. However, in order to minimise administration and financial costs, the parties must consider in good faith set-off procedures for inter-party invoices which may require the alignment of the parties' respective invoice dates and other procedures to allow set-off to occur efficiently.
- 20 Supplier must, at the time of issuing an invoice, provide to Customer all information reasonably required by Customer to identify and understand the nature and amount of each Charge on the invoice, and the service the Charge relates to. Nothing in this clause 20 is intended to limit subsections 152AR(6) and 152AR(7) of the CCA.
- 21 If Customer believes a Billing Dispute exists, it may invoke the Billing Dispute Procedures by providing written notice to Supplier (**Billing Dispute Notice**). A Billing Dispute must be initiated only in good faith.
- 22 Except where a party seeks urgent injunctive relief, the Billing Dispute Procedures must be invoked before either party may begin legal proceedings in relation to any Billing Dispute.
- 23 If a Billing Dispute Notice is given to Supplier by the due date for payment of the invoice containing the Charge which is being disputed, Customer may withhold payment of the disputed Charge until such time as the Billing Dispute has been resolved or otherwise terminated. Otherwise, Customer must pay the invoice in full in

- accordance with this Agreement (but subject to the outcome of the Billing Dispute Procedures).
- 24 Except where payment is withheld in accordance with clause 23, Supplier is not obliged to accept a Billing Dispute Notice in relation to an invoice unless the invoice has been paid in full.
- 25 A Billing Dispute Notice must be given to Supplier in relation to a Charge, at the earlier of:
- (a) as soon as reasonably practicable after Customer becomes aware a Billing Dispute exists, or
  - (b) within six Months of the invoice for the Charge being issued in accordance with clause 17.
- 26 Supplier
- (a) Supplier must acknowledge receipt of a Billing Dispute Notice within two Business Days by providing Customer with a reference number.
  - (b) Within five Business Days of acknowledging a Billing Dispute Notice under clause 26(a), Supplier must, by written notice to Customer:
    - (i) accept the Billing Dispute Notice; or
    - (ii) reject the Billing Dispute Notice if Supplier reasonably considers that:
      - (A) the subject matter of the Billing Dispute Notice is already being dealt with in another dispute;
      - (B) the Billing Dispute Notice was not submitted in good faith; or
      - (C) the Billing Dispute Notice is incomplete or contains inaccurate information.
- 27 If Supplier fails to accept or reject the Billing Dispute Notice within five Business Days of acknowledging the Billing Dispute Notice under clause 26(a), Supplier is taken to have accepted the Billing Dispute Notice.
- 28 For avoidance of doubt, if Supplier rejects a Billing Dispute Notice under clause 26(b)(ii)(C), Customer is not prevented from providing an amended Billing Dispute Notice to Supplier relating to the same dispute provided that the amended Billing Dispute Notice is provided within the timeframe under clause 25.
- 29 Customer must, as early as practicable and in any case within five Business Days, unless the Parties agree on a longer period, after Supplier acknowledges a Billing Dispute Notice, provide to the other party any further relevant information or materials (which were not originally provided with the Billing Dispute Notice) on which it intends to rely (provided that this obligation is not intended to be the same as the obligation to make discovery in litigation).
- 30 Without affecting the time within which Supplier must make the proposed resolution under clause 12, Supplier may request additional information from Customer that it reasonably requires for the purposes of making a proposed resolution pursuant to clause 31. This additional information may be requested up to 10 Business Days prior to the date on which Supplier must make the proposed resolution under clause 31. Customer must provide the requested information within five Business Days of receiving the request. If Customer fails to do so within five Business Days, Supplier

may take Customer's failure to provide additional information into account when making its proposed resolution.

- 31 Supplier must try to resolve any Billing Dispute as soon as practicable and in any event within 30 Business Days of accepting a Billing Dispute Notice under clause 26 (or longer period if agreed by the parties), by notifying Customer in writing of its proposed resolution of a Billing Dispute. That notice must:
- (a) explain Supplier's proposed resolution (including providing copies where necessary of all information relied upon in coming to that proposed resolution); and
  - (b) set out any action to be taken by:
    - (i) Supplier (e.g. withdrawal, adjustment or refund of the disputed Charge); or
    - (ii) Customer (e.g. payment of the disputed Charge).

If Supplier reasonably considers that it will take longer than 30 Business Days after accepting a Billing Dispute Notice to provide a proposed resolution, then Supplier may request Customer's consent to an extension of time to provide the proposed resolution under this clause 31 (such consent not to be unreasonably withheld).

- 32 If Customer does not agree with Supplier's decision to reject a Billing Dispute Notice under clause 26 or Supplier's proposed resolution under clause 30, it must object within 15 Business Days of being notified of such decisions (or such longer time as agreed between the parties). Any objection lodged by Customer with Supplier must be in writing and state:
- (a) what part(s) of the proposed resolution it objects to;
  - (b) the reasons for objection;
  - (c) what amount it will continue to withhold payment of (if applicable); and
  - (d) any additional information to support its objection.
- If Customer lodges an objection to the proposed resolution under this clause, Supplier must, within 5 Business Days of receiving the objection, review the objection and
- (e) provide a revised proposed resolution (Revised Proposed Resolution in this Part F); or
  - (f) confirm its proposed resolution.

- 33 Any:
- (a) withdrawal, adjustment or refund of the disputed Charge by Supplier; or
  - (b) payment of the disputed Charge by Customer (as the case may be),
- must occur as soon as practicable and in any event within one Month of Supplier's notice of its proposed resolution under clause 31 or its Revised Proposed Resolution under clause 32 (as applicable), unless Customer escalates the Billing Dispute under clause 36. If Supplier is required to make a withdrawal, adjustment or refund of a disputed Charge under this clause but its next invoice (first invoice) is due to be issued within 48 hours of its proposed resolution under clause 31 or its Revised Proposed Resolution under clause 32 (as applicable), then Supplier may include that withdrawal, adjustment or refund in the invoice following the first invoice notwithstanding that

this may occur more than one Month after Supplier's notice of its proposed resolution or Revised Proposed Resolution.

34 Where Supplier is to refund a disputed Charge, Supplier must pay interest (at the rate set out in clause 17) on any refund. Interest accrues daily from the date on which each relevant amount to be refunded was paid to Supplier, until the date the refund is paid.

35 Where Customer is to pay a disputed Charge, Customer must pay interest (at the rate set out in clause 17) on the amount to be paid. Interest accrues daily from the date on which each relevant amount was originally due to be paid to Supplier, until the date the amount is paid.

36 If

- (a) Supplier has not proposed a resolution according to clause 31 or within the timeframe specified in clause 31, or
- (b) Customer, having first submitted an objection under clause 32 is not satisfied with Supplier's Revised Proposed Resolution, or Supplier's confirmed proposed resolution, within the timeframes specified in clause 32,

Customer may escalate the matter under clause 37. If Customer does not do so within 15 Business Days after the time period stated in clause 31 or after being notified of Supplier's Revised Proposed Resolution under clause 32(e) or confirmed proposed resolution under clause 32(f) (or a longer period if agreed by the parties), Customer is deemed to have accepted Supplier's proposed resolution made under clause 31 or Revised Proposed Resolution under clause 32(e) or confirmed proposed solution under clause 32(f) and clauses 34 and 35 apply.

37 If Customer wishes to escalate a Billing Dispute, Customer must give Supplier a written notice:

- (a) stating why it does not agree with Supplier's Revised Proposed Resolution or confirmed proposed resolution; and
- (b) seeking escalation of the Billing Dispute.

38 A notice under clause 37 must be submitted to the nominated billing manager for Supplier, who must discuss how best to resolve the Billing Dispute with Customer's nominated counterpart. If the Parties are unable to resolve the Billing Dispute within five Business Days of notice being given under clause 37 (or such longer period as agreed between the parties) the Billing Dispute must be escalated to Supplier's nominated commercial manager and Customer's nominated counterpart who must meet in an effort to resolve the Billing Dispute.

39 If the Billing Dispute cannot be resolved within five Business Days of it being escalated to Supplier's nominated commercial manager and Customer's nominated counterpart under clause 38 (or such longer period as agreed between the parties):

- (a) either party may provide a written proposal to the other party for the appointment of a mediator to assist in resolving the dispute. Mediation must be conducted in accordance with the mediation guidelines of the ACDC and concluded within three Months of the proposal (unless the parties agree to extend this timeframe); or
- (b) if the parties either do not agree to proceed to mediation within five Business Days of being able to propose the appointment of a mediator under clause

- 39(a) or are unable to resolve the entire Billing Dispute by mediation, either party may commence legal proceedings to resolve the matter.
- 40 The parties must ensure that any person appointed or required to resolve a Billing Dispute takes into account the principle that Customer is entitled to be recompensed in circumstances where Customer is prevented (due to regulatory restrictions on retrospective invoicing) from recovering from its end-user an amount which is the subject of a Billing Dispute (a **Backbilling Loss**), provided that:
- (a) such principle applies only to the extent to which the Billing Dispute is resolved against Supplier; and
  - (b) such principle applies only to the extent to which it is determined that the Backbilling Loss was due to Supplier unnecessarily delaying resolution of the Billing Dispute.
- 41 Each party must continue to fulfil its obligations under this Agreement while a Billing Dispute and the Billing Dispute Procedures are pending.
- 42 All discussions and information relating to a Billing Dispute must be communicated or exchanged between the parties through the representatives of the parties set out in clause 38 (or their respective nominees).
- 43 There is a presumption that all communications between the Parties during the course of a Billing Dispute are made on a without prejudice and confidential basis.
- 44 If it is determined by the Billing Dispute Procedures, any other dispute resolution procedure, or by agreement between the parties, that three or more out of any five consecutive invoices for a given Service are incorrect by 5 per cent or more, then, for the purposes of clause 34, the interest payable by Supplier in respect of the overpaid amount of the invoices in question is the rate set out in clause 17, plus 2 per cent. The remedy set out in this clause 44 is without prejudice to any other right or remedy available to Customer.

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## Part G – Creditworthiness and Security

- 45 Unless otherwise agreed by Supplier, Customer must (at Customer's sole cost and expense) provide to Supplier and maintain, on terms and conditions reasonably required by Supplier and subject to clause 46, the Security (as is determined having regard to clause 47 and as may be varied pursuant to clause 48) in respect of amounts owing by Customer to Supplier under this Agreement.
- 46 Release of security
- (a) Customer acknowledges that unless otherwise agreed by Supplier, it must maintain (and Supplier need not release or refund) the Security specified in clause 45 for a period of six Months following (but not including) the date on which the last of the following occurs:
    - (i) cessation of supply of the Service under this Agreement, and
    - (ii) payment of all outstanding amounts under this Agreement.
  - (b) Notwithstanding clause 46(a), Supplier has no obligation to release the Security if, at the date Supplier would otherwise be required to release the Security



under clause 46(a), Supplier reasonably believes any person, including a provisional liquidator, administrator, trustee in bankruptcy, receiver, receiver and manager, other controller or similar official, has a legitimate right to recoup or claim repayment of any part of the amount paid or satisfied, whether under the laws or preferences, fraudulent dispositions or otherwise.

47 The Security (including any varied Security) may only be requested where Supplier has reasonable grounds to doubt Customer's ability to pay for services, and must be of an amount and in a form determined reasonably by Supplier taking into account all the relevant circumstances. As a statement of general principle the amount of any Security is calculated by reference to:

- (a) the aggregate value of all Services likely to be provided to Customer under this Agreement over a reasonable period; or
- (b) the value of amounts invoiced in respect of the Service but unpaid (excluding any amounts in respect of which there is a current Billing Dispute notified in accordance with this Agreement).

For the avoidance of doubt, any estimates, forecasts, or other statements made or provided by Customer may be used by Supplier in determining the amount of a Security

48 Examples of appropriate forms of Security, having regard to the factors referred to in clause 47, may include without limitation:

- (a) fixed and floating charges;
- (b) personal guarantees from directors;
- (c) Bank Guarantees;
- (d) letters of comfort
- (e) mortgages;
- (f) a right of set-off;
- (g) a Security Deposit; or
- (h) a combination of the forms of Security referred to in paragraphs (a) to (g) above.

If any Security is or includes a Security Deposit, then:

- (i) Supplier is not obliged to invest the Security Deposit or hold the Security Deposit in an interest bearing account or otherwise; and
- (j) Customer is prohibited from dealing with the Security Deposit or its rights to that Security Deposit (including by way of assignment or granting of security).

If any security is or includes a Bank Guarantee and that Bank Guarantee (Original Bank Guarantee) has an expiry date which is the last day by which a call may be made under a Bank Guarantee, Customer must procure a replacement Bank Guarantee for the amount guaranteed by the Original Bank Guarantee no later than two Months prior to the expiry date of the Original Bank Guarantee, such replacement Bank Guarantee to have an expiry date of no less than 14 Months from the date of delivery of the replacement Bank Guarantee.

If Customer fails to procure a replacement Bank Guarantee, then in addition to any other of Supplier's rights under this Agreement, Supplier may, at any time in

the Month prior to the expiry date of the Bank Guarantee, make a call under the Bank Guarantee for the full amount guaranteed. The amount paid to Supplier pursuant to a call on the Bank Guarantee will become a Security Deposit.

- 49 Supplier may from time to time where the circumstances reasonably require, request Ongoing Creditworthiness Information from Customer to determine the ongoing creditworthiness of Customer. Customer must supply Ongoing Creditworthiness Information to Supplier within 15 Business Days of receipt of a request from Supplier for such information. Supplier may, as a result of such Ongoing Creditworthiness Information, having regard to the factors referred to in clause 47 and subject to clause 51, reasonably require Customer to alter the amount, form or the terms of the Security (which may include a requirement to provide additional security), and Customer must provide that altered Security within 20 Business Days of being notified by Supplier in writing of that requirement.
- 50 Customer may from time to time request Supplier to consent (in writing) to a decrease in the required Security and/or alteration of the form of the Security. Supplier must, within 15 Business Days of Customer's request, comply with that request if, and to the extent, it is reasonable to do so (having regard to the factors referred to in clause 47). Supplier may request, and Customer must promptly provide, Ongoing Creditworthiness Information, for the purposes of this clause 50.
- 51 If Customer provides Ongoing Creditworthiness Information to Supplier as required by this Part G, Customer must warrant that such information is true, fair, accurate and complete as at the date on which it is received by Supplier and that there has been no material adverse change in Customer's financial position between the date the information was prepared and the date it was received by Supplier. If there has been a material adverse change in Customer's financial position between the date the information was prepared and the date it was received by Supplier, Customer must disclose the nature and effect of the change to Supplier at the time the information is provided.
- 52 For the purposes of this Part G, **Ongoing Creditworthiness Information** means:
- (a) a copy of Customer's most recent published audited balance sheet and published audited profit and loss statement (together with any notes attached to or intended to be read with such balance sheet or profit and loss statement);
  - (b) a credit report in respect of Customer or, where reasonably necessary in the circumstances, any of its owners or directors (**Principals**) from any credit reporting agency, credit provider or other third party. Customer must co-operate and provide any information necessary for that credit reporting agency, credit provider or other independent party to enable it to form an accurate opinion of Customer's creditworthiness. To that end, Customer agrees to procure written consents (as required under the *Privacy Act 1988* (Cth)) from such of its Principals as is reasonably necessary in the circumstances to enable Supplier to:
    - (i) obtain from a credit reporting agency, credit provider or other independent party, information contained in a credit report;
    - (ii) disclose to a credit reporting agency, credit provider or other independent party, personal information about each Principal; and

- (iii) obtain and use a consumer credit report;
  - (c) a letter, signed by the company secretary or duly authorised officer of Customer, stating that Customer is not insolvent and not under any external administration (as defined in the *Corporations Act 2001* (Cth)) or under any similar form of administration under any laws applicable to it in any jurisdiction; and
  - (d) Customer's credit rating, if any has been assigned to it; and
  - (e) any other information reasonably required to determine the ongoing creditworthiness of Customer, as agreed between the parties before the request under clause 49 is made.
- 53 Customer may require a confidentiality undertaking to be given by any person having access to confidential information contained in its Ongoing Creditworthiness Information prior to such information being provided to that person.
- 54 Subject to this Part G, the parties agree that a failure by Customer to provide the warranties set out in clause 51 or to provide Ongoing Creditworthiness Information constitutes:
- (a) an event entitling Supplier to alter the amount, form or terms of the Security (including an entitlement to additional Security) of Customer and Customer must provide that altered Security within 15 Business Days after the end of the period set out clause 49; or
  - (b) breach of a material term or condition of this Agreement.

Any disputes arising out of or in connection with Part G must be dealt with in accordance with the procedures in Part H. Notwithstanding that a dispute arising out of or in connection with Part G has been referred to the procedures in Part H and has not yet been determined, nothing in this clause 54 or Part H prevents Supplier from exercising any of its rights to suspend the supply of a Service under Part J.

## Part H – General dispute resolution procedures

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- 55 If a dispute arises between the parties in connection with or arising from the terms and conditions set out in this Agreement for the supply of the Service, the dispute must be managed as follows:
- (a) in the case of a Billing Dispute, the dispute must be managed in accordance with the Billing Dispute Procedures; or
  - (b) subject to clause 56, in the case of a Non-Billing Dispute, the dispute must be managed in accordance with the procedures set out in this Part H.
- 56 To the extent that a Non-Billing Dispute is raised or arises in connection with, or otherwise relates to, a Billing Dispute, then unless otherwise determined, that Non-Billing Dispute must be resolved in accordance with the Billing Dispute Procedures. Supplier may seek a determination from an independent third party on whether a dispute initiated by Customer as a Billing Dispute is a Non-Billing Dispute. If the independent third party deems the dispute to be a Non-Billing Dispute, Supplier may provide written notice to Customer to pay any withheld amount to Supplier on the due date for the disputed invoice or if the due date has passed, immediately on notification being given by Supplier.

For the purposes of this clause 56:

- (a) the independent third party must be a person who:
    - (i) has an understanding of the relevant aspects of the telecommunications industry (or have the capacity to quickly come to such an understanding);
    - (ii) have an appreciation of the competition law implications of their decisions; and
    - (iii) not be an officer, director or employee of a telecommunications company or otherwise have a potential for a conflict of interest;
  - (b) the independent third party may include an arbiter from the ACDC.
- 57 If a Non-Billing Dispute arises, either party may, by written notice to the other, refer the Non-Billing Dispute for resolution under this Part H. A Non-Billing Dispute must be initiated only in good faith.
- 58 Any Non-Billing Dispute notified under clause 57 must be referred:
- (a) initially to the nominated manager (or managers) for each party, who must endeavour to resolve the dispute within 10 Business Days of the giving of the notice referred to in clause 57 or such other time agreed by the parties; and
  - (b) if the persons referred to in paragraph (a) above do not resolve the Non-Billing Dispute within the time specified under paragraph (a), then the parties may agree in writing within a further five Business Days to refer the Non-Billing Dispute to an Expert Committee under clause 65, or by written agreement submit it to mediation in accordance with clause 64.
- 59 If:
- (a) under clause 58 the Non-Billing Dispute is not resolved and a written agreement is not made to refer the Non-Billing Dispute to an Expert Committee or submit it to mediation; or,
  - (b) under clause 64(f), the mediation is terminated; and
  - (c) after a period of five Business Days after the mediation is terminated as referred to in paragraph (b), the parties do not resolve the Non-Billing Dispute or agree in writing on an alternative procedure to resolve the Non-Billing Dispute (whether by further mediation, written notice to the Expert Committee, arbitration or otherwise)
- either party may terminate the operation of this dispute resolution procedure in relation to the Non-Billing Dispute by giving written notice of termination to the other party.
- 60 A party may not commence legal proceedings in any court (except proceedings seeking urgent interlocutory relief) in respect of a Non-Billing Dispute unless:
- (a) the Non-Billing Dispute has first been referred for resolution in accordance with the dispute resolution procedure set out in this Part H or clause 56 (if applicable) and a notice terminating the operation of the dispute resolution procedure has been issued under clause 59; or
  - (b) the other party has failed to substantially comply with the dispute resolution procedure set out in this Part H or clause 56 (if applicable).

- 61 Each party must continue to fulfil its obligations under this Agreement while a Non-Billing Dispute and any dispute resolution procedure under this Part H are pending.
- 62 All communications between the parties during a Non-Billing Dispute and in connection with that Non-Billing Dispute, are made on a without prejudice and confidential basis.
- 63 Each party must, as early as practicable, and in any case within 14 Calendar Days unless a longer period is agreed between the parties, after the notification of a Non-Billing Dispute pursuant to clause 57, provide to the other party any relevant materials on which it intends to rely (provided that this obligation is not intended to be the same as the obligation to make discovery in litigation).
- 64 Where a Non-Billing Dispute is referred to mediation by way of written agreement between the parties, pursuant to clause 58(b):
- (a) any agreement must include:
    - (i) a statement of the disputed matters in the Non-Billing Dispute; and
    - (ii) the procedure to be followed during the mediation, and the mediation must take place within 15 Business Days upon the receipt by the mediator of such agreement;
  - (b) it must be conducted in accordance with the ACDC Guidelines and the provisions of this clause 64. In the event of any inconsistency between them, the provisions of this clause 64 prevail;
  - (c) it must be conducted in private;
  - (d) in addition to the qualifications of the mediator contemplated by the ACDC Guidelines, the mediator must:
    - (i) have an understanding of the relevant aspects of the telecommunications industry (or have the capacity to quickly come to such an understanding);
    - (ii) have an appreciation of the competition law implications of his/her decisions; and
    - (iii) not be an officer, director or employee of a telecommunications company or otherwise have a potential for a conflict of interest;
  - (e) the parties must notify each other no later than 48 hours prior to mediation of the names of their representatives who will attend the mediation. Nothing in this subclause is intended to suggest that the parties are able to refuse the other's chosen representatives or to limit other representatives from the parties attending during the mediation;
  - (f) it must terminate in accordance with the ACDC Guidelines;
  - (g) the parties must bear their own costs of the mediation including the costs of any representatives and must each bear half the costs of the mediator; and
  - (h) any agreement resulting from mediation binds the parties on its terms.
- 65 The parties may by written agreement in accordance with clause 58(b), submit a Non-Billing Dispute for resolution by an Expert Committee (**Initiating Notice**), in which case the provisions of this clause 65 apply as follows:
- (a) The terms of reference of the Expert Committee are as agreed by the parties. If the terms of reference are not agreed within five Business Days after the date of

- submitting the Initiating Notice (or such longer period as agreed between the parties), the referral to the Expert Committee is deemed to be terminated.
- (b) An Expert Committee acts as an expert and not as an arbitrator.
  - (c) The parties are each represented on the Expert Committee by one appointee.
  - (d) The Expert Committee must include an independent chairperson agreed by the parties or, if not agreed, a nominee of the ACDC. The chairperson must have the qualifications listed in paragraphs 64(c)(i), (ii) and (iii).
  - (e) Each party must be given an equal opportunity to present its submissions and make representations to the Expert Committee.
  - (f) The Expert Committee may determine the dispute (including any procedural matters arising during the course of the dispute) by unanimous or majority decision.
  - (g) Unless the parties agree otherwise the parties must ensure that the Expert Committee uses all reasonable endeavours to reach a decision within 20 Business Days after the date on which the terms of reference are agreed or the final member of the Expert Committee is appointed (whichever is the later) and undertake to co-operate reasonably with the Expert Committee to achieve that timetable.
  - (h) If the dispute is not resolved within the timeframe referred to in clause 65(g), either party may by written notice to the other party terminate the appointment of the Expert Committee.
  - (i) The Expert Committee has the right to conduct any enquiry as it thinks fit, including the right to require and retain relevant evidence during the appointment of the Expert Committee or the resolution of the dispute.
  - (j) The Expert Committee must give written reasons for its decision.
  - (k) A decision of the Expert Committee is final and binding on the parties except in the case of manifest error or a mistake of law.
  - (l) Each party must bear its own costs of the enquiry by the Expert Committee including the costs of its representatives, any legal counsel and its nominee on the Expert Committee and the parties must each bear half the costs of the independent member of the Expert Committee.
- 66 Part H does not apply to a Non-Billing Dispute to the extent that:
- (a) there is a dispute resolution process established in connection with, or pursuant to, a legal or regulatory obligation (including any dispute resolution process set out in a Structural Separation Undertaking);
  - (b) a party has initiated a dispute under the dispute resolution process referred to in clause 66(a); and
  - (c) the issue the subject of that dispute is the same issue in dispute in the Non-Billing Dispute.

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## Part I – Confidentiality

- 67 Subject to clause 70 and any applicable statutory duty, each party must keep confidential all Confidential Information of the other party and must not:

- (a) use or copy such Confidential Information except as set out in this Agreement;  
or
  - (b) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any third person.
- 68 For the avoidance of doubt, information generated within Supplier's Network because of or in connection with the supply of the relevant Service to Customer or the interconnection of Supplier's Network with Customer's Network (other than information that falls within paragraph (d) of the definition of Confidential Information) is the Confidential Information of Customer.
- 69 Supplier must upon request from Customer, disclose to Customer quarterly aggregate traffic flow information generated within Supplier's Network in respect of a particular Service provided to Customer, if Supplier measures and provides this information to itself. Customer must pay the reasonable costs of Supplier providing that information.
- 70 Subject to clauses 71 and 76, Confidential Information of Customer may be:
- (a) used by Supplier:
    - (i) for the purposes of undertaking planning, maintenance, provisioning, operations or reconfiguration of its Network;
    - (ii) for the purposes of supplying Services to Customer;
    - (iii) for the purpose of billing; or
    - (iv) for another purpose agreed to by Customer; and
  - (b) disclosed only to personnel who, in Supplier's reasonable opinion require the information to carry out or otherwise give effect to the purposes referred to in paragraph above.
- 71 A party (**Disclosing Party**) may to the extent necessary use and/or disclose (as the case may be) the Confidential Information of the other party:
- (a) to those of the Disclosing Party's directors, officers, employees, agents, contractors (including sub-contractors) and representatives to whom the Confidential Information is reasonably required to be disclosed in connection with the provision of the Service to which this Agreement relates;
  - (b) to any professional person for the purpose of obtaining advice in relation to matters arising out of or in connection with the supply of a Service under this Agreement;
  - (c) to an auditor acting for the Disclosing Party to the extent necessary to permit that auditor to perform its audit functions;
  - (d) in connection with legal proceedings, arbitration, expert determination and other dispute resolution mechanisms set out in this Agreement, provided that the Disclosing Party has first given as much notice (in writing) as is reasonably practicable to the other party so that the other party has an opportunity to protect the confidentiality of its Confidential Information;
  - (e) as required by law provided that the Disclosing Party has first given as much notice (in writing) as is reasonably practicable to the other party, that it is required to disclose the Confidential Information so that the other party has an opportunity to protect the confidentiality of its Confidential Information, except

- that no notice is required in respect of disclosures made by Supplier to the ACCC under section 152BEA of the CCA;
- (f) with the written consent of the other party provided that, prior to disclosing the Confidential Information of the other party:
    - (i) the Disclosing Party informs the relevant person or persons to whom disclosure is to be made that the information is the Confidential Information of the other party;
    - (ii) if required by the other party as a condition of giving its consent, the Disclosing Party must provide the other party with a confidentiality undertaking in the form set out in Annexure 1 of this Part I signed by the person or persons to whom disclosure is to be made; and
    - (iii) if required by the other party as a condition of giving its consent, the Disclosing Party must comply with clause 72;
  - (g) in accordance with a lawful and binding directive issued by a regulatory authority;
  - (h) if reasonably required to protect the safety of personnel or property or in connection with an emergency;
  - (i) as required by the listing rules of any stock exchange where that party's securities are listed or quoted;
  - (j) in accordance with a reporting obligation, or in response to a request from a regulatory authority or any other Government body, in connection with Supplier's Structural Separation Undertaking where the party cannot comply with the reporting obligation or request without using or disclosing the Confidential Information, provided that:
    - (i) prior to disclosing the Confidential Information of the other party the Disclosing Party informs the relevant person or persons to whom disclosure is to be made that the information is the Confidential Information of the other party; and
    - (ii) unless prohibited by law, the Disclosing Party informs the other Party in writing as soon as reasonably practicable after receiving the request that the Disclosing Party will disclose Confidential Information to the regulatory authority or any other Government body to fulfil that reporting obligation or respond to that request.
  - (k) in response to a request from a regulatory authority or any other Government body in connection with interception capability (as that term is used in Chapter 5 of the *Telecommunications (Interception and Access) Act 1979* (Cth)) relating to access to a declared service, where the party cannot comply with the request without using or disclosing the Confidential Information, provided that:
    - (i) prior to disclosing the Confidential Information of the other party the Disclosing Party informs the relevant person or persons to whom disclosure is to be made that the information is the Confidential Information of the other party; and
    - (ii) unless prohibited by law, the Disclosing Party informs the other Party as soon as reasonably practicable after receiving the request that the



Disclosing Party will disclose Confidential Information to the regulatory authority or any other Government body to respond to that request.

- 72 Each party must co-operate in any action taken by the other party to:
- (a) protect the confidentiality of the other party's Confidential Information; or
  - (b) enforce its rights in relation to its Confidential Information.
- 73 Each party must establish and maintain security measures to safeguard the other party's Confidential Information from unauthorised access, use, copying, reproduction, or disclosure.
- 74 Confidential Information provided by one party to the other party is provided for the benefit of that other party only. Each party acknowledges that no warranty is given by the Disclosing Party that the Confidential Information is or will be correct.
- 75 Each party acknowledges that a breach of this Part I by one party may cause another party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a party may seek injunctive relief against such a breach or threatened breach of this Part I.
- 76 If:
- (a) Supplier has the right to suspend or cease the supply of the Service under:
    - (i) Part J due to a payment breach, or
    - (ii) under clause 96
  - (b) after suspension or cessation of supply of the Service under this Agreement, Customer fails to pay amounts due or owing to Supplier by the due date for payment, then Supplier may do one or both of the following:
    - (i) notify and exchange information about Customer (including Customer's Confidential Information) with any credit reporting agency or Supplier's collection agent; and
    - (ii) without limiting clause 76, disclose to a credit reporting agency:
      - (A) the defaults made by Customer to Supplier; and
      - (B) the exercise by Supplier of any right to suspend or cease supply of the Service under this Agreement.

[Amend where necessary]

**CONFIDENTIALITY UNDERTAKING**

I, [ ] of [employer’s company name] ([undertaking company]) undertake to [full name of party who owns or is providing the confidential information as the case requires] ([Provider]) that:

77 Subject to the terms of this Undertaking, I will keep confidential at all times the information listed in Attachment 1 to this Undertaking (Confidential Information) that is in my possession, custody, power or control.

78 I acknowledge that:

- (a) this Undertaking is given by me to [Provider] in consideration for [Provider] making the Confidential Information available to me for the Approved Purposes (as defined below);
- (b) all intellectual property in or to any part of the Confidential Information is and will remain the property of [Provider]; and
- (c) by reason of this Undertaking, no licence or right is granted to me, or any other employee, agent or representative of [undertaking company] in relation to the Confidential Information except as expressly provided in this Undertaking.

79 I will:

- (a) only use the Confidential Information for:
  - (i) the purposes listed in Attachment 2 to this Undertaking; or
  - (ii) any other purpose approved by [Provider] in writing;(the Approved Purposes);
- (b) comply with any reasonable request or direction from [provider] regarding the Confidential Information.

80 Subject to clause 55, I will not disclose any of the Confidential Information to any other person without the prior written consent of [Provider].

81 I acknowledge that I may disclose the Confidential Information to which I have access to:

- (a) any employee, external legal advisors, independent experts, internal legal or regulatory staff of [undertaking company], for the Approved Purposes provided that:
  - (i) the person to whom disclosure is proposed to be made (**the person**) is notified in writing to [Provider] and [Provider] has approved the person as a person who may receive the Confidential Information, which approval shall not be unreasonably withheld;
  - (ii) the person has signed a confidentiality undertaking in the form of this Undertaking or in a form otherwise acceptable to [Provider]; and
  - (iii) a signed undertaking of the person has already been served on [Provider];
- (b) other persons, if required to do so by law, but then only:

- (i) if I notify [Provider] of that request within 7 days of receiving the request;
  - (ii) to the person(s) to whom I am obliged to provide the Confidential Information;
  - (iii) to the extent necessary as required by law; and
  - (iv) if I notify the recipient of the Confidential Information that the information is confidential and is the subject of this Undertaking to the [Provider]; and
- (c) any secretarial, administrative and support staff, who perform purely administrative tasks, and who assist me or any person referred to in paragraph 81(a) for the Approved Purpose.
- 82 I will establish and maintain security measures to safeguard the Confidential Information from unauthorised access, use, copying, reproduction or disclosure and will protect the Confidential Information using the same degree of care as a prudent person in my position would use to protect their own confidential information.
- 83 Except as required by law and subject to paragraph 86 below, within 14 days after whichever of the following first occurs:
- (a) termination of this Undertaking;
  - (b) my ceasing to be employed or retained by [undertaking company] (provided that I continue to have access to the Confidential Information at that time); or
  - (c) my ceasing to be working for [undertaking company] in respect of the Approved Purposes (other than as a result of ceasing to be employed by [undertaking company]);
- I will destroy or deliver to [Provider] the Confidential Information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Confidential Information in my possession, custody, power or control other than electronic records stored in IT backup system that cannot be destroyed or deleted.
- 84 Nothing in this Undertaking shall impose an obligation upon me in respect of information:
- (a) that is in the public domain; or
  - (b) that has been obtained by me otherwise than from [Provider] in relation to this Undertaking;
- provided that the information has not been obtained by me by reason of, or in circumstances involving, any breach of this Undertaking, any other confidentiality undertaking in favour of [Provider] for the Approved purpose, or by any other unlawful means.
- 85 I acknowledge that damages may not be a sufficient remedy for any breach of this Undertaking and that [Provider] may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this Undertaking, in addition to any other remedies available to [Provider] at law or in equity.

- 86 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to [Provider] of the Confidential Information pursuant to paragraph 83 above.
- 87 I acknowledge that this Undertaking is governed by the law in force in the State of [insert relevant state] and I agree to submit to the non-exclusive jurisdiction of the court of that place.
- Signed:
- Print name:
- Dated:
- Witness signature:
- Witness name:

#### **ATTACHMENT 1**

Any document, or information in any document provided by [provider] to [undertaking company] which [provider] claims is confidential information for the purposes of this Undertaking.

#### **ATTACHMENT 2**

[Approved purpose(s)]

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### **Part J – Suspension and Termination**

- 88 Supplier may immediately suspend the supply of a Service or access to Supplier's Network, provided it notifies Customer where practicable and provides Customer with as much notice as is reasonably practicable:
- (a) during an Emergency; or
  - (b) where in the reasonable opinion of Supplier, the supply of that Service or access to Supplier's Network may pose a threat to safety of persons, hazard to equipment, threat to Network operation, access, integrity or Network security or is likely to impede the activities of authorised persons responding to an Emergency;
  - (c) where, in the reasonable opinion of Supplier, Customer's Network or equipment adversely affects or threatens to affect the normal operation of Supplier's Network or access to Supplier's Network or equipment (including for the avoidance of doubt, where Customer has delivered Prohibited Traffic onto Supplier's Network);
  - (d) where an event set out in clauses 96(a) to (i) occurs
  - (e) and is entitled to continue such suspension until (as the case requires) the relevant event or circumstance giving rise to the suspension has been remedied.
- 89 If:
- (a) Customer has failed to pay monies payable under this Agreement;
  - (b) a Court determines that (and the decision is not subject to an appeal) Customer's use of:
    - (i) its Facilities in connection with any Service supplied to it by Supplier;

- (ii) Supplier's Facilities or Network; or
    - (iii) any Service supplied to it by Suppliers,
- is in contravention of any law; or
- (c) Customer breaches a material obligation under this Agreement (**Suspension Event**) and:
  - (d) as soon as reasonably practicable after becoming aware of the Suspension Event, Supplier gives a written notice to Customer:
    - (i) citing this clause;
    - (ii) specifying the Suspension Event that has occurred;
    - (iii) requiring Customer to institute remedial action (if any) in respect of that event; and
    - (iv) specifying the action which may follow due to a failure to comply with the notice, (**Suspension Notice**) and:
  - (e) Customer fails to institute remedial action as specified in the Suspension Notice within 10 Business Days after receiving the Suspension Notice (in this clause 89, the **Remedy Period**), Supplier may, by written notice given to Customer as soon as reasonably practicable after the expiry of the Remedy Period:
  - (f) refuse to provide Customer with the Service:
    - (i) of the kind in respect of which the Suspension Event has occurred; and
    - (ii) a request for which is made by Customer after the date of the breach, until the remedial action specified in the Suspension Notice is completed or the Suspension Event otherwise ceases to exist; and
  - (g) suspend the provision of the Service until the remedial action specified in the Suspension Notice is completed.
- 90 For the avoidance of doubt, subclause 89(a) does not apply to any monies payable that are the subject of a Billing Dispute that has been notified by Customer to Supplier in accordance with the Billing Dispute Procedures set out in this Agreement.
- 91 In the case of a suspension pursuant to clause 89, Supplier must reconnect Customer to Supplier's Network and recommence the supply of the Service as soon as practicable after there no longer exists a reason for suspension and Supplier must do so subject to payment by Customer of Supplier's reasonable costs of suspension and reconnection.
- 92 If:
- (a) Customer ceases to be a carrier or carriage service provider; or
  - (b) Customer ceases to carry on business for a period of more than 10 consecutive Business Days or
  - (c) in the case of Customer, any of the reasonable grounds specified in subsection 152AR(9) of the CCA apply; or
  - (d) Customer breaches a material obligation under this Agreement, and:
    - (i) that breach materially impairs or is likely to materially impair the ability of Supplier to deliver Listed Carriage Services to its customers; and
    - (ii) Supplier has given a written notice to the first-mentioned party within 20 Business Days of becoming aware of the breach (**Breach Notice**); and

- (iii) Customer fails to institute remedial action as specified in the Breach Notice within 10 Business Days after receiving the Breach Notice (in this clause 92, the **Remedy Period**), or
  - (e) the supply of the Service(s) to Customer has been suspended pursuant to the terms and conditions of this Agreement for a period of three Months or more, Supplier may cease supply of the Service under this Agreement by written notice given to the first-mentioned party at any time after becoming aware of the cessation, reasonable grounds or expiry of the Remedy Period specified in the Breach Notice (as the case may be).
- 93 If Supplier ceases to carry on business for a period of more than 10 consecutive Business Days, the other party may cease acquisition of the Service under this Agreement by written notice given to Supplier at any time after becoming aware of the cessation.
- 94 A party must not give the other party both a Suspension Notice under clause 92 and a Breach Notice under clause 92 in respect of:
  - (a) the same breach; or
  - (b) different breaches that relate to or arise from the same act, omission or event or related acts, omissions or events;  
except:
  - (c) where a Suspension Notice has previously been given to Customer by Supplier in accordance with clause 92 in respect of a Suspension Event and the Suspension Event has not been rectified by Customer within the relevant Remedy Period specified in clause 92; and
  - (d) where Customer has not rectified a Suspension Event, then notwithstanding clause 92(d)(ii), the time period for the purposes of clause 92(d)(ii) will be 20 Business Days from the expiry of the time available to remedy the Suspension Event.
- 95 For the avoidance of doubt, a party is not required to provide a Suspension Notice under clause 89 in respect of a breach before giving a Breach Notice in respect of that breach under clause 92.
- 96 Notwithstanding any other provision of this Agreement, either Party may at any time immediately cease the supply of the Service under this Agreement by giving written notice of termination to the other Party if:
  - (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (otherwise than for the purposes of solvent reconstruction or amalgamation) of the other Party; or
  - (b) a receiver, receiver and manager, official manager, controller, administrator (whether voluntary or otherwise), provisional liquidator, liquidator, or like official is appointed over the undertaking and property of the other Party; or
  - (c) a holder of an encumbrance takes possession of the undertaking and property of the other party, or the other party enters or proposes to enter into any scheme of arrangement or any composition for the benefit of its creditors; or

- (d) the other party is or is likely to be unable to pay its debts as and when they fall due or is deemed to be unable to pay its debts pursuant to section 585 or any other section of the *Corporations Act 2001* (Cth); or
  - (e) as a result of the operation of section 459F or any other section of the *Corporations Act 2001* (Cth), the other party is taken to have failed to comply with a statutory demand; or
  - (f) a force majeure event substantially and adversely affecting the ability of a party to perform its obligations to the other party, continues for a period of three Months; or
  - (g) the other party breaches any of the terms of any of its loans, security or like agreements or any lease or agreement relating to significant equipment used in conjunction with the business of that other party related to the supply of the Service under this Agreement; or
  - (h) the other party seeks or is granted protection from its creditors under any applicable legislation; or
  - (i) anything analogous or having a substantially similar effect to any of the events specified above occurs in relation to the other party.
- 97 The cessation of the operation of this Agreement:
- (a) does not operate as a waiver of any breach by a party of any of the provisions of this Agreement; and
  - (b) is without prejudice to any rights, liabilities or obligations of any party which have accrued up to the date of cessation.
- 98 Without prejudice to the parties' rights upon termination of the supply of the Service under this Agreement, or expiry or revocation of this Agreement, Supplier must refund to Customer a fair and equitable proportion of those sums paid under this Agreement by Customer which are periodic in nature and have been paid for the Service:
- (a) for a period extending beyond the date on which the supply of the Service under this Agreement terminates, or this Agreement ceases to have effect, and/or,
  - (b) as applicable, in respect of a Service which has been suspended for a period of 10 or more consecutive Business Days under Part J of this Agreement, for the period extending beyond that 10 Business Day suspension period to the extent the Service remains suspended under Part J of this Agreement, subject to any invoices or other amounts outstanding from Customer to Supplier. In the event of a dispute in relation to the calculation or quantum of a fair and equitable proportion, either party may refer the matter for dispute resolution in accordance with the dispute resolution procedures set out in Part H of this Agreement.

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## Part K – Liability and Indemnity

- 99 Subject to clause 100, each Party's liability in respect of:
- (a) the 12 Month period commencing on the date of the first supply of the Service under this Agreement is limited to the aggregate amount paid or payable by

Customer to Supplier for the Service provided by Supplier in that initial 12 Month period;

- (b) any subsequent 12 Month period commencing on any anniversary of the date of the first supply of the Service under this Agreement is limited to the aggregate amount paid or payable by Customer to Supplier for the Service provided by Supplier in the 12 Month period immediately prior to that anniversary.

For the purposes of this clause 99, Liability arises when the act or omission giving rise to the Liability occurs, not when any claim is made by a party under this Agreement in connection with that Liability.

- 100 The liability limitation in clause 99 does not apply to Customer's liability to pay the Charges for the Service provided under this Agreement, or the Parties' indemnification obligations under clauses 101 and 102.
- 101 Each Party indemnifies the other Party against all Loss arising from the death of, or personal injury to, a Representative of the other Party, where the death or personal injury arises from:
  - (a) an act or omission that is intended to cause death or personal injury; or
  - (b) a negligent act or omission;by the first Party or by a Representative of the first Party.
- 102 Each Party indemnifies the other Party against all Loss arising from any loss of, or damage to, the property of the other party (or the property of a representative of the other Party), where the loss or damage arises from:
  - (a) an act or omission that is intended to cause death or personal injury; or
  - (b) a negligent act or omission;by the first Party or by a Representative of the first Party.
- 103 Each Party indemnifies the other Party against all Loss arising from a claim by a third person against the Innocent Party to the extent that the claim relates to a negligent act or omission by the first Party or by a Representative of the first Party.
- 104 Subject to clauses 101 and 102, a Party has no Liability to the other Party for or in respect of any consequential, special or indirect Loss or any loss of profits or data.
- 105 A Party has no Liability to the other Party for or in relation to any act or omission of, or any matter arising from or consequential upon any act or omission of, any end-user of a Party or any other third person who is not a Representative of a Party.
- 106 The Indemnifying Party is not obliged to indemnify the Innocent Party under this Part K to the extent that the liability the subject of the indemnity claim is caused or contributed to by:
  - (a) a breach of this Agreement;
  - (b) an act intended to cause death, personal injury, or loss or damage to property; or
  - (c) a negligent act or omission;by the Innocent Party.



- 107 The Indemnifying Party is not obliged to indemnify the Innocent Party under this Schedule or for in respect of a claim brought against the Innocent Party by an end-user of the Innocent Party, or a third person with whom the Innocent Party has a contractual relationship, to the extent that the Loss under such claim could have been excluded or reduced (regardless of whether such a Liability actually was excluded or reduced) by the Innocent Party in its contract with the end-user or third person.
- 108 The Innocent Party must take all reasonable steps to minimise the Loss it has suffered or is likely to suffer as a result of an event giving rise to an indemnity under this Part K. If the Innocent Party does not take reasonable steps to minimise such Loss then the damages payable by the Indemnifying Party must be reduced as is appropriate in each case.
- 109 A Party's liability to the other Party for Loss of any kind arising out of the supply of the Service under this Agreement or in connection with the relationship established by it is reduced to the extent (if any) that the other Party causes or contributes to the Loss. This reduction applies whether the first Party's liability is in contract, tort (including negligence), under statute or otherwise.
- 110 The Indemnifying Party must be given full conduct of the defence of any claim by a third party that is the subject of an indemnity under clause 101 or 102, including, subject to the Indemnifying Party first obtaining the written consent (which must not be unreasonably withheld) of the Innocent Party to the terms thereof, the settlement of such a claim.
- 111 Nothing in this Part K excludes or limits a Party's entitlement to damages under Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

## Part L – Communication with end users

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- 112 Supplier may communicate and deal with Customer's end-users as expressly provided in clauses 113 to 115 and as otherwise permitted by law.
- 113 Subject to clause 114, Supplier may communicate and deal with Customer's end-users:
- (a) in relation to goods and services which Supplier currently supplies or previously supplied to the end-user provided that Supplier only communicates and deals through its retail division;
  - (b) as members of the general public or a part of the general public or members of a particular class of recipients of carriage or other services;
  - (c) where Supplier performs wholesale operations which require communications or dealings with such end-users, to the extent necessary to carry out such operations;
  - (d) in a manner or in circumstances agreed by the Parties; or
  - (e) in or in connection with an Emergency, to the extent it reasonably believes necessary to protect the safety of persons or property.
- 114 If:

- (a) an end-user of Customer initiates a communication with Supplier in relation to goods and/or services supplied to that end-user by Customer, Supplier must advise the end-user that they should discuss any matter concerning Customer's goods and/or services with Customer and must not engage in any form of marketing or discussion of Supplier's goods and/or services;
  - (b) an end-user of Customer initiates a communication with Supplier in relation to goods and/or services supplied to that end-user by Supplier, Supplier may engage in any form of marketing or discussion of Supplier's goods and/or services; and
  - (c) an end-user of Customer initiates a communication with Supplier in relation to goods and/or services supplied to that end-user by Supplier and Customer, Supplier must advise the end-user that they should discuss any matter concerning Customer's goods and/or services, with Customer, but may otherwise engage in any form of marketing or discussion of Supplier's goods and/or services.
- 115 Where a Party communicates with the end-user of the other Party, that first mentioned Party must, where practicable, make and maintain records of that communication with the other Party's end-user in circumstances where that communication discusses anything concerning the other Party's goods or services with the end-user. For the avoidance of doubt, the obligation in this paragraph does not include a requirement to provide such records to the other Party (however such a requirement may arise pursuant to any dispute resolution procedure).
- 116 For the purposes of clauses 113 to 115, a "**communication**" shall include any form of communication, including without limitation telephone discussions and correspondence.
- 117 Neither Party may represent that:
- (a) it has any special relationship with or special arrangements with the other Party, including through the use of the other party's trade marks, service marks, logos or branding unless otherwise agreed;
  - (b) there are no consequences for an end-user when an end-user signs an authority to transfer their accounts or services;
  - (c) a Service has any characteristics or functionality other than as specified in a relevant standard form of agreement or the service description for the Service or in any specifications, collateral or brochures published in relation to the Service; or
  - (d) the other Party participates in the provision of the first mentioned Party's services, provided that a Party may, upon enquiry by an end-user, inform the end-user of the nature of its relationship with the other Party.
- 118 Where a Party communicates with an end-user of either Party, the first mentioned Party shall ensure that it does not attribute to the other Party:
- (a) blame for a Fault or other circumstance; or
  - (b) the need for maintenance of a Network; or
  - (c) the suspension of a Service,

provided that this requirement does not require a Party to engage in unethical, misleading or deceptive conduct.

- 119 This Part L shall be subject to any applicable industry standard made by the ACMA pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) and any applicable industry code registered pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) in relation to communications or dealings with end-users.

## Part M – Network modernisation and upgrade notice periods

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### Notice to be provided where Supplier undertakes a Major Network Modernisation and Upgrade

- 120 Except where the parties agree otherwise, Supplier may make a Major Network Modernisation and Upgrade by:
- (a) providing Customer with notices in writing in accordance with clauses 121 and 123 (**General Notification**) and clauses 122 and 124 (**Individual Notification**); and
  - (b) consulting with Customer, and negotiating in good faith, to address any reasonable concerns of Customer, in relation to the Major Network Modernisation and Upgrade.

This clause 120 does not apply to an Emergency Network Modernisation and Upgrade.

- 121 The period of notices given under a General Notification provided by Supplier to Customer:
- (a) must be an Equivalent Period of Notice; and
  - (b) in any event, must not be less than 30 weeks before the Major Network Modernisation and Upgrade is scheduled to take effect.
- 122 An Individual Notification must be provided by Supplier to Customer as soon as practicable after the General Notification, taking account of all the circumstances of the Major Network Modernisation and Upgrade.

### Information to be provided in the notices

- 123 A General Notification must include a general description of the proposed Major Network Modernisation and Upgrade, including the indicative timing for the implementation of the Major Network Modernisation and Upgrade.
- 124 An Individual Notification must include the following information in addition to the information provided in the relevant General Notification:
- (a) the anticipated commencement date for implementing the Major Network Modernisation and Upgrade
  - (b) the anticipated amount of time it will take to implement the Major Network Modernisation and Upgrade;
  - (c) details of Customer's activated Services, or Services in the process of being activated at the date of the notice, that are likely to be affected by the Major Network Modernisation and Upgrade;

- (d) the likely action required by Customer as a result of the Major Network Modernisation and Upgrade (including the possible impact of the Major Network Modernisation and Upgrade upon Customer's Service); and
  - (e) details of who Customer may contact to obtain further information about the Major Network Modernisation and Upgrade.
- 125 An Individual Notification only needs to be given where a Service has been activated or Supplier is in the process of activating a service as at the date of the Individual Notification, and:
- (a) the Major Network Modernisation and Upgrade will require Customer to take particular action in order to continue to use the Service; or
  - (b) the Major Network Modernisation and Upgrade will result in the Service no longer being supplied or the Service being suspended for a period of no less than 20 Business Days.
- 126 Where Supplier has provided Customer with an Individual Notification, Supplier must provide Customer with:
- (a) updates about the Major Network Modernisation and Upgrade covered by the notice, including:
    - (i) any update or change to the information provided in the Individual Notification;
    - (ii) any new information available at the time of the update about:
      - (A) how Customer may be impacted by the Major Network Modernisation and Upgrade; and
      - (B) what steps Customer will be required to take to facilitate the Major Network Modernisation and Upgrade.
- 127 The updates referred to in subclause 126(a) must be provided regularly (which is not required to be any more frequently than Monthly) after the Individual Notification.

#### **Emergency Network Modernisation and Upgrade**

- 128 In the event of an Emergency, Supplier may conduct an Emergency Network Modernisation and Upgrade, and
- (a) must use its best endeavours to provide Customer with an Individual Notification prior to the Emergency Network Modernisation and Upgrade being implemented; or
  - (b) where it is not practicable for prior notice to be given, Supplier must provide Customer with an Individual Notification as soon as reasonably practicable after the Emergency Network Modernisation and Upgrade is implemented.

#### **Negotiations in good faith**

- 129 Except where the parties agree otherwise, Supplier must not commence implementation of a Major Network Modernisation and Upgrade unless:
- (a) it complies with clauses 120 to 127; and
  - (b) it has consulted with Customer and has negotiated in good faith, and addressed the reasonable concerns of Customer in relation to the Major Network Modernisation and Upgrade.

- 130 Notwithstanding any continuing negotiations between Supplier and Customer pursuant to clauses 120 and 129, if Supplier has complied with this Part M, a Major Network Modernisation and Upgrade may proceed within a reasonable time period, taking account of all the circumstances, after an Individual Notification has been issued, unless both parties agree otherwise.
- 131 In attempting to reach a mutually acceptable resolution in relation to a variation under clauses 120 and 129, the parties must recognise any need that Supplier may have to ensure that the specifications for the Services which Suppliers supplies to more than one of its customers need to be consistent (including, without limitation having regard to the incorporation by Supplier of any relevant international standards).

#### **Dispute Resolution**

- 132 If a dispute arises in relation to a Major Network Modernisation and Upgrade, then the matter may be resolved in accordance with the dispute resolution procedures set out in Part H of this Agreement.

#### **Miscellaneous**

- 133 A requirement for Supplier to provide information in written form includes provision of that information in electronic form.
- 134 Any information provided by Supplier in electronic form must be in a text- searchable and readable format.

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### **Part N – Changes to operating manuals**

- 135 Operational documents concerning the Service that have been provided to Customer by Supplier, or should be provided because they affect the supply of the Service including the technical and operational quality of the Service, or affect the rights and/or obligations of Customer, may be amended:
- (a) by Supplier from time to time to implement or reflect a change to its standard processes, subject to:
    - (i) giving 20 Business Days prior written notice to Customer including a documented list of all amendments, and a marked-up copy of the proposed new operational document that clearly identifies all amendments; and
    - (ii) allowing Customer to provide comments during the notice period on the proposed amendments, and where provided, Supplier having reasonably considered those comments and implemented any such comments where Supplier considers it reasonable to do so; and
  - (b) otherwise, by agreement of the parties.
- 136 Operational documents referred to in this clause include ordering and provisioning manuals, fault management procedures and operational manuals.
- 137 For the purposes of 135(a)(ii), a Supplier in considering whether it is reasonable for it to implement any comments may consider whether the changes reflect all Customer and Supplier's interests.

- 138 Upon completion of the process set out in clause 135, Supplier must notify Customer and make available to Customer a copy of the new operational document
- 139 Where operational documents concerning the Service are amended in accordance with clause 135 and Customer believes that the amendments:
- (a) are unreasonable; or
  - (b) deprive Customer of a fundamental part of the bargain it obtained under this Agreement;

Customer may seek to have the matter resolved in accordance with the dispute resolution procedures set out in Part H of this Agreement.

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### Part O – Recourse to regulated terms

- 140 Unless otherwise agreed by the parties, if
- (a) an Access Agreement between Supplier and Customer is in force and the Access Agreement relates to access to the same Service which this Agreement relates to;
  - (b) the ACCC makes or varies a Regulatory Determination in relation to the Service and the new Regulatory Determination or the variation deals with a matter other than price; and
  - (c) a party to the Access Agreement proposes, by written notice, to the other party to vary the Access Agreement to reflect the terms and conditions in the new or varied Regulatory Determination about that matter, each party must:
    - (i) consider the proposed changes in good faith; and
    - (ii) negotiate the proposed changes in good faith for a reasonable period not exceeding 20 Business days unless a longer period of time is agreed in writing, including, if requested by the other party, to meet with the other party to discuss the other party's proposal.
- 141 If the process under clause 140 does not result in a variation to the Access Agreement, this is not a Non-Billing Dispute or Billing Dispute for the purposes of this Agreement.
- 142 Unless otherwise agreed by the parties, if
- (a) an Access Agreement between Supplier and Customer is in force and the Access Agreement relates to access to the same Service which this Agreement relates to; and
  - (b) the ACCC makes or varies a Regulatory Determination in relation to the Service and the new Regulatory Determination or the variation deals with a matter other than price;
- either party may terminate the Access Agreement in respect of that Service (but only in respect of that Service) by providing the other party with a written notice, and termination will take effect on the expiry of the period specified in the notice, which must be no less than 120 Business Days after the day that notice is provided.

## Part P – Network performance reporting

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- 143 This Part P contains performance reporting requirements relating to access by Access Seekers to superfast broadband networks used to supply a declared SBAS Service.
- 144 Supplier:
- (a) must measure and monitor its performance, and based on that information, produce reports about the performance metrics set out in this Part P;
  - (b) must use its best endeavours to ensure that any reports provided or otherwise made available under this Part P are accurate in all material respects; and
  - (c) must correct, and notify Customer of the correction of, any inaccuracies (including omissions) in any such report within 30 business days.
- 145 Supplier must:
- (a) specify and keep current its Service standards in relation to the attributes in this Part P, inclusive of a benchmark level of performance to be determined by Supplier; and
  - (b) provide information to Customer on any corrective action taken by Supplier when it fails to meet its own benchmark Service standards including, but not limited to, any compensation available.
- 146 Supplier must provide to Customer, by no later than one Month after the end of each Reporting Period, a report setting out the following minimum information in respect of the relevant Reporting Period:
- (a) in relation to the connection, activation, and transfer of Services, the benchmark number of business days to complete these activities, whether Supplier has met its benchmark timeframes and, if not, the number of Services for which the benchmark was exceeded
  - (b) the number of network faults, the benchmark number of business days to rectify the fault, whether Supplier has met its benchmark fault rectification timeframes and, if not, the number of faults for which the benchmark was exceeded
  - (c) the number of Services experiencing recurring faults, defined as Services with 3-plus faults in any 60-day period or 4-plus faults in any 12-Month period (where the exceeding fault falls within the Reporting Period)
  - (d) the number of Services experiencing multiple dropouts (lasting 30 seconds or more) or temporary loss of Service within a 24-hour day
  - (e) the number of network outages, including both planned and emergency outages, the duration of outages, and the number of Services impacted by the outages
  - (f) network performance metrics aggregated across the entirety of Supplier's network through which it provides the declared SBAS, including:
    - (i) information on attainable download and upload speeds of Services on Supplier's network
    - (ii) Supplier's network performance regarding traffic frame delays

- (iii) Network utilisation on Supplier's network, including the number of times its shared network resource exceeds a benchmark threshold and the duration of the exceedance
- 147 The manner and format of the reports to be delivered may be determined by Supplier.
- 148 Supplier is required to provide the information in clause 146, for the nearest Reporting Period, on request or as soon as practical to:
- (i) a prospective Customer negotiating access in good faith; and
  - (ii) the ACCC on request.

**Commencement and duration**

- 149 This Part P commences from 1 October 2024 and remains in force for the duration of this Agreement.
- Note: For the avoidance of doubt, the first Reporting Period for which the above information is to be made available to Customers is the 31 December 2024 Reporting Period.
- 150 This Schedule is not applicable to a Telstra Provider in respect of the supply of the Fibre Access Broadband Service for the duration of this Agreement.

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**Part Q – Special Conditions**

[If any]