

General Terms

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1 About this Telecommunications Services Agreement

- 1.1 This Telecommunications Services Agreement (**Agreement**) sets out the terms and conditions under which we provide Services to you, and is divided into several sections:
- (a) these **General Terms** – which apply to all Services;
 - (b) **Service Modules** (comprising, where relevant to particular Services, Service Schedules, data sheets and manuals);
 - (c) **Sales Order**;
 - (d) **Service Level Agreement**;
 - (e) **Acceptable Use Policy**; and
 - (f) any applicable **Special Conditions** which vary the General Terms or Service Modules.
- 1.2 To the extent of any conflict or inconsistency between different parts of this Agreement, the order of precedence is set out below:
- (a) Special Conditions;
 - (b) Sales Order;
 - (c) Service Level Agreement;
 - (d) Service Modules;
 - (e) Acceptable Use Policy; and
 - (f) General Terms.

2 Term

- 2.1 This Agreement commences on the Commencement Date and continues for the Service Term, unless the Agreement is terminated earlier in accordance with its terms.
- 2.2 Each Service has a Service Term which is set out in the relevant Sales Order. At the expiry of the Initial Service Term, the relevant Sales Order automatically renews for further one calendar month periods unless terminated by either party on at least one calendar month's written notice prior to any automatic extension.
- 2.3 We will not change our terms (including Fees) during the Initial Service Term. After the expiration of the Initial Service Term, we may change the terms on no less than 30 days' prior notice, including to amend the Fees.

3 Security

- 3.1 We are entitled to review your creditworthiness from time to time in our absolute discretion.
- 3.2 You must provide all assistance as reasonably required by us (including to provide recent unaudited and audited financial statements, and access to staff and records) to enable us to conduct a creditworthiness assessment on you.
- 3.3 If having conducted a creditworthiness assessment of you, we consider that your creditworthiness does not meet our requirements, or you fail to provide assistance as required under clause 3.2, we may require you to provide Security or to vary the amount or type of existing Security.
- 3.4 Where we request new or varied Security under clause 3.3, you must provide the new or varied Security within 15 Business Days of the request being made.
- 3.5 Unless otherwise agreed by us, you must maintain any Security you provide until the expiry of a 3 month period after the last to occur of:
 - (a) termination or expiry of this Agreement; and
 - (b) payment to us of all outstanding Fees and other amounts payable under this Agreement.

4 Provision of Services

Ordering Services

- 4.1 When you order a Service from us, you must submit a Sales Order.
- 4.2 As soon as practicable after receiving a Sales Order from you, we will:
 - (a) if we agree to provide the requested Service, send you an email acceptance; or
 - (b) if we do not agree to supply the requested Service, notify you that we are unable to accept the Sales Order and supply the Service.
- 4.3 If we notify you under clause 4.2(b) that we are unable to accept the Sales Order and provide the Service, we will use reasonable efforts to work with you to try and overcome our reasons why we are unable to provide the requested Service.

Using Services

Provision of Services

- 4.4 We will supply the Services to you in accordance with this Agreement from the Start Date.
- 4.5 If the Services include use of one or more of our IP addresses, then we grant you a limited, revocable, non-transferable licence to use certain IP addresses allocated to us, as notified to you from time to time, during the Term of this Agreement, for the sole purpose of receiving the Services.

Your responsibilities

- 4.6 You must provide and organise, at your own cost, where relevant:

- (a) safe and timely access to relevant premises (including negotiating with the owner or landlord of the premises and paying any licence fees) for us to install, inspect, test, maintain, repair or replace equipment;
- (b) appropriate physical infrastructure, space and environment to house Equipment;
- (c) power to operate Equipment; and
- (d) physical interconnection between the Service and Customer Equipment and your facilities, network and systems,

for the provision of a Service.

4.7 You must:

- (a) at all times comply with all applicable Laws;
- (b) use the Service only for its intended purpose;
- (c) obtain any permit, licence or consent which you are required to have to acquire and use the Service;
- (d) comply with relevant technical standards and requirements in the overall operational, design, installation, configuration and support of Customer Equipment;
- (e) at all times comply with our Acceptable Use Policy;
- (f) not use a Service to commit an offence or allow anyone else to do so; and
- (g) do what we instruct you to do if your use of a Service interferes or may interfere with the efficiency of our Network or that of a third party service provider.

4.8 If we provide any Service using the services and facilities of a third party service provider (whether together with our own facilities and network), you must:

- (a) not do anything which would cause us to breach; and
- (b) do all things necessary to enable us to comply with,

any applicable terms and conditions imposed on us by that service provider, as notified to you from time to time.

5 Fees, payment and taxes

5.1 You must pay us:

- (a) the Fees for a Service from its Start Date in accordance with this Agreement, whether it is in use or not; and
- (b) any reasonable charges required for additional network extension work, providing lead-ins to the relevant premises or in-building cabling, or related to the pre-provisioning activity for a Service. You acknowledge that these charges may not be determined at the time of order and acceptance.

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For the avoidance of doubt, you must pay us for a Service in accordance with this Agreement (including any monthly recurring Fees) during any period where there is a fault or outage (including a Planned Outage).

Invoices

- 5.2 Subject to clause 5.4, we issue Tax Invoices for Fees for your Services monthly in advance.
- 5.3 Recurring Fees are payable from the Start Date of a Service, whether or not you actually make use of the Service.
- 5.4 We may invoice you on a later date for a Fee which has not been previously billed or which has been previously understated if we provide you details of the Fee.

Payment

- 5.5 You must pay us the Fees for Services by the Due Date, without set-off, counterclaim or deduction.
- 5.6 Invoices must be paid in Australian dollars by electronic funds transfer to our nominated bank account, as set out in the Sales Order or as notified to you from time to time.
- 5.7 If you do not pay an invoice by its Due Date, we may charge Interest in respect of any amount outstanding. Interest will accrue daily from the date on which the amount was due to be paid.

GST

- 5.8 Save for the defined terms in this Agreement, capitalised expressions set out in this section (GST) have the meanings given to those expressions in the GST Act.
- 5.9 Unless otherwise stated, all Fees and other amounts specified in this Agreement are GST exclusive.
- 5.10 If we make a Taxable Supply to you and the consideration for that supply does not expressly include GST, you must also pay us an amount equal to the GST payable by us on that Taxable Supply.
- 5.11 You must pay the GST amount at the same time and in the same way that you are liable to provide us with the consideration of the Taxable Supply. We will provide a Tax Invoice to you in respect of the Taxable Supply.
- 5.12 If one party must indemnify or reimburse another party (**Payee**) for any cost, loss or expense incurred by the Payee under this Agreement, the required payment will not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an Input Tax Credit, but the payment will increase under clause 5.10 if the payment is consideration for a Taxable Supply.
- 5.13 A party shall issue an Adjustment Note for or in respect of any Adjustment Event to the other party 5 Business Days prior to the Due Date (if any) or otherwise, within 10 Business Days of when the party became aware or should have become aware of the Adjustment Event, if there is no payment to be made by the other party.

Other Taxes

- 5.14 If you are required by law to make a Tax Deduction, then you must make that Tax Deduction, and any payment required in connection with that Tax Deduction, to the relevant taxing authority in accordance with the applicable law.
- 5.15 Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, you must deliver to us evidence reasonably satisfactory to us that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

6 Intellectual Property

- 6.1 Each party:
- (a) acknowledges and confirms that it owns or is licensed to use its Intellectual Property subsisting in or required to be used in exercising its rights or performing its obligations under this Agreement; and
 - (b) grants a personal, royalty free, non-exclusive, non-transferable licence in Australia to the other party in relation to its Intellectual Property which the other party requires, or which may be necessary, to enable the other party to perform that party's obligations under this Agreement for the term of this Agreement.
- 6.2 Unless specifically agreed in writing between the parties, all Intellectual Property rights in any works created by us in performing our obligations under this Agreement vest in us and remain our property.

7 Confidentiality and privacy

Confidentiality obligations

- 7.1 Each party must:
- (a) keep confidential, and not disclose, any Confidential Information of the other party, except as permitted under this Agreement;
 - (b) not access, use or reproduce each other's Confidential Information for any purpose other than for the purposes of exercising rights or performing obligations under the Agreement; and
 - (c) take all steps reasonably necessary to safeguard each other's Confidential Information from unauthorised access, use or disclosure.

The obligation of confidence in clause 7.1 extends to Confidential Information provided to or obtained by a party before entering into this Agreement.

Permitted disclosure

- 7.2 A party must not disclose the other party's Confidential Information to any person except:
- (a) to its Representatives on a 'need to know' basis for the purposes of performing the relevant party's obligations under this Agreement;

- (b) if disclosure is required by Law, order of a court or other judicial tribunal or the rules of any stock exchange, provided that it first notifies the other party of the required disclosure (where reasonably practicable); or
- (c) with the prior written consent of the other party.

A party is liable for any unauthorised access, use or disclosure by its Representatives of the other party's Confidential Information.

Continuance of confidentiality obligations

7.3 The obligations of confidentiality imposed by this clause 7 begin on the Commencement Date and continue in force until:

- (a) all of the Confidential Information is readily available in the public domain; or
- (b) the parties agree in writing to terminate those obligations.

Privacy obligations

7.4 Each party must:

- (a) comply with all Privacy Laws in relation to Personal Information, whether or not that party is an organisation bound by the Privacy Act; and
- (b) provide all assistance as reasonably required by the other party to assist that party in complying with its obligations under any Privacy Law.

7.5 You must not transfer or disclose any Personal Information obtained from us to a person (including yourself) located outside of Australia without our prior written consent.

7.6 You acknowledge that you have read and understood our privacy policy (available at <http://www.nextgengroup.com.au>), as amended from time to time.

7.7 Each party must comply with all Laws in relation to any retention of data requirements applicable under this Agreement.

Remedy for breach

7.8 Each party acknowledges that monetary compensation may not be a sufficient remedy for any breach of this clause 7 and that the other party may seek and obtain specific performance or injunctive relief as a remedy for any breach or threatened breach of this clause 7, in addition to any other remedies available at law.

8 Fault management and service levels

Reporting a fault

8.1 You may report a fault in respect of a Service to the Nextgen SMC at any time, in accordance with this clause 8 and the Service Level Agreement.

8.2 Prior to reporting a fault, you must investigate the fault and ascertain whether it should be reported to us.

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- 8.3 You must submit a Fault Report to the Nextgen SMC when you report a fault. If reasonably required by us, you must provide any further information in relation to the fault, including what you have done to satisfy clause 8.2.

Handling faults

- 8.4 Upon receiving a Fault Report under clause 8.3, we will immediately issue you a unique identifier for the fault. You must use and quote that unique identifier in relation to any dealings with us in respect of that fault.
- 8.5 We will use our absolute discretion to classify and prioritise faults.
- 8.6 You acknowledge that some faults will be assessed and remedied when we deem it necessary and may not give rise to rebates under clause 8.10.
- 8.7 When we have remedied the fault, we will advise you either orally or via written or electronic notice that the fault ticket is closed.
- 8.8 If we reasonably determine that:
- (a) a fault arises out of or in connection with any Customer Equipment or your facilities, networks or systems (**Customer Fault**); or
 - (b) there is or was no fault (**No Fault**),

then we may require you to pay our reasonable costs and expenses (based on our standard rates) in dealing with or remedying that Customer Fault, or dealing with or attempting to remedy that No Fault, and such costs and expenses will be a debt due and payable by you on demand .

Service Levels

- 8.9 Our Service Levels are set out in the Service Level Agreement.
- 8.10 If the fault you report is not progressing in accordance with the Service Levels, you may escalate the fault in accordance with the Service Level Agreement.
- 8.11 In the event we do not meet our Service Levels, if requested by you, we may provide you with a post incident report of our dealing or remedy of that fault, as set out in the Service Level Agreement.
- 8.12 Where we do not meet our Service Levels for a Service, you may have a right to claim a rebate in accordance with the Service Level Agreement (**Service Credit**). If we verify that you are entitled to a Service Credit, we will credit the amount of that Service Credit determined by us to your next monthly invoice.
- 8.13 You acknowledge and agree that:
- (a) payment of the applicable Service Credits are your sole and exclusive remedy in respect of any failure to meet Service Levels; and
 - (b) the amount of the Service Credit (if any) represents a genuine pre-estimate of the loss, damage, costs and/or expenses that you will incur as a result of our failure to meet Service Levels.

Maintenance and Planned Outages

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- 8.14 We will use reasonable endeavours to give you prior written notice of any Planned Outage and the length of that Planned Outage in accordance with the Service Level Agreement.
- 8.15 We may undertake unplanned maintenance work associated with a fault or Emergency without advance notice to you, in accordance with the Service Level Agreement. We will use reasonable endeavours to give you as much notice as is practicable in the circumstances of any unplanned maintenance work.

9 Warranties and liability

Exclusion of warranties

- 9.1 The Competition and Consumer Act implies terms into some contracts for the supply of goods and services, and prohibits the exclusion, restriction or modification of such terms (**Prescribed Terms**). Except as provided by Prescribed Terms or as otherwise expressly provided in this Agreement, to the extent permitted by law:
- (a) subject to any agreed Service Levels, we aim to provide, but do not promise, continuous or fault-free Services; and
 - (b) all terms, conditions and warranties, express or implied by law, in any way relating to Services supplied by us under this Agreement are excluded.

Remedies for warranties implied by law

- 9.2 If we breach any condition or warranty implied by law which cannot be lawfully excluded, to the extent permitted by law, our liability is limited, at our option, to the resupply of, or payment of the cost of resupplying, the Service.

Mutual indemnity

- 9.3 Each party (**Indemnifying Party**) indemnifies the other party, its Related Bodies Corporate and their Representatives (**Indemnified Persons**) from and against any and all Loss suffered or incurred by the Indemnified Person which arises directly as a result of:
- (a) any injury to or death to any person caused by the negligence or wilful misconduct of the Indemnifying Party or its Related Body Corporate or any of its and their Representatives (**Indemnifying Party Group**);
 - (b) any damage to or loss of any real or personal property (including in the case of us, our Equipment) caused by the negligence or wilful misconduct of the Indemnifying Party Group;
 - (c) the Indemnifying Party Group's contravention of any applicable Law (including Privacy Laws); or
 - (d) an infringement or an alleged infringement by the Indemnifying Party Group of Intellectual Property of another person (including the Indemnified Person or a third party) or the Indemnified Person's Confidential Information,

except to the extent that they were caused or contributed to by the Indemnified Persons.

Limitation of liability

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- 9.4 To the maximum extent permitted by law, our sole liability and your sole remedy for the quality or performance of the Services and failure to provide the relevant Services in accordance with the Service Levels is limited to any Service Credits payable under clause 8.12.
- 9.5 Subject to clause 9.7, the total aggregate liability of either party in each calendar year for Loss suffered or incurred by the other party as a result of any act, default, omission or breach of the other party in that calendar year will not exceed an amount equal to the total Fees paid or payable by you in the 12 months immediately before the incident which gave rise to the Claim. The parties acknowledge and agree that this amount is a genuine pre-estimate of the Loss that the second mentioned party will incur as a result of the first mentioned party's act, default, omission or breach.

Exclusion of certain liability

- 9.6 Subject to clause 9.7, and to the maximum extent permitted by law, neither party will be liable to the other party in contract, tort (including negligence), statute or otherwise for any indirect, special or incidental, punitive, exemplary or consequential Loss suffered or incurred by the other party (or for loss of revenue, loss of profit, loss of business, loss of use, loss of data, loss of production, loss of operating time, loss of opportunity, loss of goodwill, loss of anticipated savings or business interruption costs).

No limitation

- 9.7 The limitations of liability in clauses 9.5 and 9.6 do not apply to any liability of a party:
- (a) which by law it cannot contract out of; or
 - (b) which is the subject of an indemnity under clause 9.3.

Proportionate liability

- 9.8 Notwithstanding any other clause in this Agreement, a party's liability will be reduced to the extent the Loss is caused by the other party.

Mitigation

- 9.9 Each party must take all reasonable steps to minimise the Loss it has suffered or is likely to suffer as a result of the event giving rise to an indemnity under clause 9.3. If the Indemnified Person does not take reasonable steps to minimise such Loss then the damages payable by the Indemnifying Party will be reduced as is appropriate in each case.

10 Insurance

- 10.1 We may require you, in our absolute discretion, to provide evidence that you have and maintain valid and enforceable public liability and property damage insurance policies with reputable insurance companies (which note our interest) during the Service Term.
- 10.2 If we exercise our rights under clause 10.1, we will notify you and you must provide to us proof of the currency of the required insurances within 10 Business Days of our request.

11 Suspension

- 11.1 **Our right to suspend for events outside our control**

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We may immediately suspend a Service under this Agreement (giving as much notice to you as is reasonably practicable in the circumstances), and without any liability for Loss and without prejudice to our rights under this Agreement or at law if:

- (a) there is an Emergency or Force Majeure Event;
- (b) doing so is, in our reasonable opinion, necessary to allow us to protect, repair, maintain or service any part of our Network or Equipment;
- (c) we reasonably consider the supply of a Service is or may pose a threat to safety of persons, a hazard to equipment, a threat to normal Network operation, access, integrity or Network security or is likely to impede the activities of authorised persons responding to an Emergency or Force Majeure Event;
- (d) we need to do so to comply with Law, or a Governmental Authority or law enforcement agency or our third party supplier requires us to do so; or
- (e) a supplier of facilities and services to us which are necessary for the provision of the Services ceases or suspends supplying those facilities or services to us,

and we or you or both (as applicable) will use best efforts to promptly rectify the reason for the suspension. We will recommence providing the Services (or relevant part of them) as soon as reasonably practicable after the reason for the suspension has ceased or been rectified.

11.2 Our right to suspend for cause

We may immediately suspend a Service under this Agreement (giving as much notice to you as is reasonably practicable in the circumstances), and without any liability for Loss and without prejudice to our rights under this Agreement or at law if:

- (a) you fail to comply with any of your obligations under clause 4.7;
- (b) you breach this Agreement (including failure to make payment) and:
 - (i) you do not rectify the relevant breach within the period stated in the notice (where the breach is capable of remedy) or
 - (ii) the breach is not capable of being remedied;
- (c) you are or become Insolvent;
- (d) your access to our Network or use of the Service contravenes any Law or there is an unacceptable risk of this occurring;
- (e) you cease to hold any licence, regulation or other authorisation or permit required in order for the Services to be provided or received;
- (f) your Service has been accessed without authority, or the integrity of your Service has been compromised;
- (g) you have engaged in conduct that has caused or may cause (in our reasonable opinion) damage to our Network or unreasonable interference to the operation or maintenance of the Network or its use by other persons; or
- (h) you or your Representatives misuse the Services or we reasonably suspect you or your Representatives of misusing the Services, such misuse including but not limited to use by you or your Representatives to commit fraud, an offence or contravene Law,

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and we will recommence providing the Services (or relevant part of them) as soon as reasonably practicable after the reason for the suspension has ceased or been rectified.

- 11.3 Where we suspend your Service by reason of a Suspension Event, we are not liable for any failure to meet the relevant Service Levels (including any obligation to pay Service Rebates), and may require you to pay a reconnection fee before we will reconnect the Service.
- 11.4 Where the Suspension Event is that listed in clause 11.2, we may take any reasonable action to prevent or correct the Suspension Event at your expense, and you remain liable for any ongoing Fees and charges which are not usage based.
- 11.5 We may terminate the relevant Sales Order or this Agreement (as the case may be) by written notice to you where we suspend Service(s) under clause 11.2 for a period exceeding 30 days.
- 11.6 We are not liable for any Loss incurred by you in relation to us suspending any of the Services by reason of a Suspension Event, and you indemnify us from and against any Claim brought by any third party (including your customer or an end user) arising out of or in connection with the suspension of the Services.
- 11.7 The suspension of the Services by reason of a Suspension Event does not limit other rights or remedies available to us.

12 Termination

Termination for breach

- 12.1 A party may immediately terminate this Agreement (in whole or in part) by written notice to the other party, if:
- (a) the other party breaches a material term of this Agreement and:
 - (i) if the breach can be remedied (including for a payment breach), fails to remedy the breach within 10 Business Days from receiving notice from the other party to do so; or
 - (i) the breach cannot be remedied;
 - (b) the other party is Insolvent;
 - (c) the other party or any of its Representatives is guilty of fraud, dishonesty or any other serious misconduct in relation to this Agreement or a Service;
 - (d) a Force Majeure Event substantially adversely affects the ability of the other party to perform any of its obligations under this Agreement continuously for a period exceeding 6 months; or
 - (e) in the case of a termination by us, you fail to provide or maintain any Security required under clause 3 or fail to comply with your other obligations under clause 3.
- 12.2 For the purposes of clause 12.1(a), “material breach” includes (without limitation):
- (a) failure by you to comply with your obligations under clauses 4.6 and 4.7 (Your obligations), 5 (Fees and payment), 6 (Intellectual Property), 7 (Confidentiality and privacy), 9 (Warranties and liability) and 10 (Insurance); and

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- (b) failure by us to comply with our obligations under 6 (Intellectual Property), 7 (Confidentiality and privacy) and 9 (Warranties and liability).

Termination for convenience

- 12.3 Either party may terminate this Agreement (in whole or in part) at any time without cause by giving the other party at least 90 days written notice.

Consequences of termination

- 12.4 If we terminate this Agreement under clause 12.1 (a), (b), (c) or (e), or if you terminate this Agreement under clause 12.3, you must pay us all Fees and charges that would have been payable under this Agreement (including any Sales Order) if it had not been terminated until the expiry of the Initial Service Term.
- 12.5 If we disconnect your Service under clauses 12.1 (a), (b), (c) or (e), we may require you to pay a reconnection fee before we will reconnect the Service.
- 12.6 If you acquire more than one Service, and you breach a material term of this Agreement relating to any one of the Services, we can terminate any or all of your Services or this Agreement (at our election), or exercise any other rights that we may have.
- 12.7 Upon termination, you must:
- (a) pay us all Fees outstanding and payable up to the date of termination;
 - (b) pay us the Fees and charges as set out in clause 12.4 in the event of a termination exercised under clauses 12.1 (a), (b), (c), (e) or clause 12.3.
 - (c) cease using the Services;
 - (d) provide us with safe and timely access to premises occupied by you as may be required to enable us to remove our Equipment (if any) or pay us the current value of our Equipment as a debt due if we cannot access premises occupied or which have been occupied by you to recover it; and
 - (e) remove Customer Equipment from our premises and facility, and return the space in the same condition as it was originally delivered to you (fair wear and tear excepted). You will pay all expenses reasonably incurred in connection with any damage occasioned by the removal of Customer Equipment.
- 12.8 If you do not remove Customer Equipment within 20 Business Days after a mutually agreed date for removal (or failing agreement, a date determined by us), Customer Equipment will be deemed to be abandoned by you and may be disposed of by us, at your cost, without notice or liability to you, unless otherwise agreed between the parties in writing.
- 12.9 Termination of this Agreement or any Service does not affect any rights or remedies of the parties which may have accrued before the date of termination.

13 Dispute resolution

Notice of dispute

- 13.1 If a dispute arises between the parties under or in connection with this Agreement, either party may deliver to the other party a notice of dispute, which notice shall identify and provide reasonable details of the dispute (**Notice of Dispute**).

Negotiation

- 13.2 Within 10 Business Days of the delivery of the Notice of Dispute, each party's Contract Representative must meet or hold discussions and use their reasonable endeavours, acting in good faith, to resolve the dispute, or else to agree a process for the resolution of the dispute, which may include mediation or expert determination (**Dispute Meeting**).

Escalation to senior management

- 13.3 If the dispute is not resolved within 10 Business Days of the date of the Dispute Meeting, either party must refer the dispute to their respective senior management (**Escalation of Dispute Notice**).

Final resolution

- 13.4 If the dispute is not resolved, or a process for the resolution of the dispute has not been agreed within 5 Business Days of the delivery of the Escalation of Dispute Notice, either party may refer the dispute to be finally resolved by arbitration in a binding fashion.
- 13.5 The arbitration must be conducted in Melbourne, Australia by a single arbitrator to be appointed by the Chair of the Victorian Chapter of the Institute of Arbitrators and Mediators Australia (**IAMA**). The arbitration must be conducted in accordance with the IAMA Rules for Conduct of Commercial Arbitrators, except that:
- (a) the arbitrator must only accept evidence which would be accepted in a court of law;
 - (b) a party may be represented by a qualified legal practitioner or other representative;
 - (c) the arbitrator must include in the arbitration award the findings on material questions of law and of fact, including references to the evidence on which the findings of fact were based; and
 - (d) the parties consent to an appeal to the Supreme Court of Victoria on any question of law arising in the course of the arbitration or out of an arbitrator award.

Continuity

- 13.6 Subject to clause 10, notwithstanding any dispute, the parties must continue to perform their obligations under this Agreement.

Injunctive or urgent relief

- 13.7 Nothing in this clause 13 prejudices our right to institute proceedings to enforce any payment due under this Agreement or either party's right to seek injunctive or urgent declaratory relief in respect of a dispute under this clause 13 or any other matter arising under this Agreement.

14 General

Notices

- 14.1 Unless otherwise specified in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing and sent to the other party's Contract Representative.
- 14.2 In the absence of evidence to the contrary, a notice takes effect (unless a later time is specified in such notice):
- (a) if delivered by hand, at the time of delivery;
 - (b) if sent by pre-paid (priority) post, on the fourth Business Day after posting;
 - (c) if sent by legible facsimile, when received by the addressee or when the sender's facsimile machine records a successful transmission; or
 - (d) if sent by email, an hour after the time the sender's information system recorded that the email left the sender's information system unless the sender is informed within 8 hours that the email has not been received by the recipient, but if the delivery or receipt is on a day which is not a Business Day or is outside Business Hours, it is regarded as received on the following Business Day.

Governing law and jurisdiction

- 14.3 This Agreement is governed by the law in force in Victoria, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place.

Assignment

- 14.4 We may assign, novate or sub-contract any or all of our rights or obligations under this Agreement. You must execute any document reasonably requested by us to give effect to the assignment or novation.
- 14.5 You must not assign, novate or sub-contract any or all of your rights or obligations under this Agreement without our prior written consent (which must not be unreasonably withheld).

Waiver

- 14.6 A provision or a right created under this Agreement may not be waived except by written agreement between the parties.

Force Majeure

- 14.7 If a party is unable (in whole or in part), by reason of a Force Majeure Event, to perform an obligation under this Agreement, the affected party will not be liable to the other party for a failure to perform that obligation and that obligation will be suspended to the extent and for the duration of the Force Majeure Event provided that the affected party gives the other party prompt notice with sufficient details of the relevant Force Majeure Event.
- 14.8 The party affected by the Force Majeure Event must:
- (a) use reasonable endeavours to mitigate the effect of the Force Majeure Event upon its performance of this Agreement and to fulfil its obligations under this Agreement (but without prejudice to any party's right to terminate this Agreement);

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- (b) keep the other party informed of the steps being taken to mitigate the effect upon that party's performance of this Agreement; and
- (c) when the period for which its obligations are affected by the Force Majeure Event ceases, recommence performance of all its affected obligations under this Agreement the subject of its original notice.

Variation

14.9 Subject to clause 2.3, this Agreement may only be varied by written agreement between the parties.

Entire Agreement

14.10 This Agreement is the entire agreement between the parties and supersedes all prior agreements, understandings and negotiations on that subject matter.

Giving effect to this Agreement

14.11 Each party must, at the other's request, do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.

Exercising rights

14.12 A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

14.13 The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

Severing clauses

14.14 If a provision in this Agreement is wholly or partly void, illegal or unenforceable, the provision or the part of it that is void, illegal or unenforceable must, to that extent, be treated as severed from this Agreement. This will not affect the validity or enforceability of the remaining provisions.

Survival

14.15 Termination or expiry of this Agreement for any reason does not:

- (a) affect any rights or obligations of the parties which by their nature survive termination or expiry (including clauses 5 (Fees, payment and taxes), 6 (Intellectual Property); 7 (Confidentiality and privacy), 9 (Warranties and liability), 11 (Suspension), 12 (Termination), 13 (Dispute resolution), and 14 (General)); or
- (b) waive any breach of this Agreement, and is without prejudice to and does not limit any rights, remedies, liabilities or obligations of either party which have accrued up to the date of termination or expiry, including the right of indemnity.

15 Definitions and Interpretation

Definitions

15.1 In this Agreement, unless the context otherwise requires:

Acceptable Use Policy means our acceptable use policy available at <http://www.nextgengroup.com.au>, as amended from time to time.

Agreement has the meaning given in clause 1.1.

Business Day means:

- (a) for the purposes of clauses 14.1 and 14.2, any day from Monday to Friday inclusive, excluding any public holidays observed in the city where the notice is received; or
- (b) for all other purposes, any day from Monday to Friday, excluding any public holidays observed in Melbourne, Victoria.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Claim means any claims, demands, actions or proceedings, actual or threatened.

Commencement Date means the date we accept your Sales Order under clause 4.2(a).

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

Confidential Information of a party means any information regarding the business or affairs of that party or its Related Bodies Corporate (including, without limitation):

- (a) trade secrets, know-how, scientific and technical information;
- (b) product, customer, marketing or pricing information;
- (c) the existence or terms of this Agreement, or the commercial arrangements between the parties;
- (d) which is by its nature confidential or which is designated as confidential by that party; or
- (e) which the other party knows, or ought to know, is confidential.

Contract Representative means the person appointed by each party to act on behalf of that party in connection with this Agreement, and named as such in the Sales Order (or as notified to the other party from time to time).

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

Customer Equipment means any equipment installed on your side of the network, in connection with the provision of a Service under this Agreement.

Customer Fault has the meaning given in clause 8.8(a).

Dispute Meeting has the meaning given in clause 13.2.

Due Date means the date specified on a Tax Invoice, or if no date is specified, the day which is no more than 30 days after the Tax Invoice has been issued.

Emergency means an emergency due to an actual or potential occurrence (such as fire, flood,

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storm, earthquake, accident, epidemic or war like action) which endangers or threatens to endanger the safety or health of persons, or destroys or damages or threatens to destroy or damage, property.

Equipment means equipment used by us to provide a Service.

Escalation of Dispute Notice has the meaning given in clause 13.3.

Excluded Tax means:

- (a) any tax imposed on, or calculated having regard to, net income; and
- (b) GST.

Expiry Date means, in respect of a Service, the expiry date of the Initial Service Term, or the expiry date of the Service Term after its extension under clause 2.2.

Fault Report means an oral or written or electronic report submitted by you, in accordance with our fault reporting procedure set out in the Service Level Agreement, which sufficiently identifies:

- (a) you and the contact details of the person reporting the fault;
- (b) name and location of the affected site;
- (c) a description of the fault;
- (d) whether the fault results from any Customer Equipment, or your facilities, networks or systems; and
- (e) the symptoms or cause (if known) of the fault.

Fees means any fees for installation, equipment and ongoing supply of Services by us, as set out in a Sales Order or as amended in accordance with the terms of this Agreement.

Force Majeure Event means an event or cause beyond the reasonable control of a party which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement (which may include, without limitation, acts or omissions of third party network operators or suppliers, lightning, storm, flood, fire, earthquake, forces of nature, acts of God, war, terrorism, riot, insurrection, civil disorders, rebellions or revolution, strike, explosion, power failures or surges, blockade, lockout, other industrial disturbance or labour difficulty, any action or inaction by a government or governmental agency or other competent authority).

General Terms has the meaning given in clause 1.1(a).

Governmental Authority means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

GST has the same meaning as in the GST Act.

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

Indemnified Persons has the meaning given in clause 9.3.

Indemnifying Party has the meaning given in clause 9.3.

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Indemnifying Party Group has the meaning given in clause 9.3.

Initial Service Term means the initial period for the supply of a Service stated in a Sales Order, prior to any extension of that period pursuant to clause 2.2.

Insolvent means, in respect of a party, being under administration or insolvent or having a controller appointed, or being in receivership or in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction (with each of the expressions used in the paragraph having the meaning given to it under the Corporations Act).

Intellectual Property means:

- (a) all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patents, designs, trademarks and circuit layouts or other similar right, whether registered or not; and
- (b) any invention, discovery, trade secret, know-how, computer software and confidential or technical information; and
- (c) any application or right to apply for registration of any of the rights referred to in paragraphs (a) to (b) above.

Interest means interest at the National Australia Bank Limited Business Indicator Base Rate as published weekly in the *Australian Financial Review* (or, if it ceases to be published, an equivalent rate nominated by us) plus 2%.

Law means any applicable law of Australia or another jurisdiction, including Commonwealth, State, Territory, local government legislation or any regulations, by-laws, declarations, ministerial directions and other subordinate legislation, common law, Government Authority requirement or authorisation, and code of conduct, writ, order, injunction or judgment.

Loss means any claim, charges, loss, damage, costs, expenses (including but not limited to legal costs on a solicitor and own client basis) and liabilities whether present, unascertained, immediate, future or contingent, and whether based in contract, statute or otherwise.

Network means the telecommunications networks owned, controlled or used by us to provide the Services.

Nextgen SMC means the Nextgen Service Management Centre (also known as the Network Operations Centre).

No Fault has the meaning given in clause 8.8(b).

Notice of Dispute has the meaning given in clause 13.1.

Payee has the meaning given in clause 5.12.

Personal Information means information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion or about the affairs or personal particulars of a legal entity such as a company or a business.

Planned Outage means an outage period during which we plan to carry out work on our facilities, Networks or systems for any reason, arising out of or in connection with:

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- (a) installation of infrastructure;
- (b) maintenance requirements; and
- (c) software or infrastructure upgrades.

Prescribed Terms has the meaning given in clause 9.1.

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

Privacy Laws means the Privacy Act, the Telecommunications Act, and any other applicable legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information.

Related Body Corporate has the meaning given by the Corporations Act.

Representative means any director, officer, employee, agent, contractor (excluding us) or professional adviser of a party and its Related Bodies Corporate.

Sales Order means the order form submitted by you for ordering a Service, using the order form specified by us (as amended from time to time) setting out:

- (a) the type of Service requested;
- (b) the address of the premises at which the Service will be provided and contact details of the Contract Representative for those premises;
- (c) the date by which you would like the Service to commence;
- (d) the proposed Service Term; and
- (e) any other information necessary for us to provide the requested Service.

Security means any financial security provided or to be provided by you to us under this Agreement or otherwise, and may include a bank guarantee, a letter of credit, security over a bank deposit, a parent company guarantee, a deed of cross guarantee, a related company guarantee, a fixed charge or a floating charge.

Service means a service supplied, or to be supplied, under this Agreement.

Service Credit has the meaning given to it in clause 8.122.

Service Level means the service levels as set out in our Service Level Agreement.

Service Level Agreement means our service level agreement available at <http://www.nextgengroup.com.au>, as amended from time to time.

Service Module has the meaning given in clause 1.1(b).

Service Schedule has the meaning given in clause 1.1(b).

Service Term means, in respect of a Service, the service term as set out in the relevant Sales Order, or the expiry date of the Service Term after its extension under clause 2.2. A Service Term commences on the Start Date for the relevant Service.

Special Conditions has the meaning given in clause 1.1(f).

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Start Date means, in respect of a Service, the date when the Service is ready for use, which will be specified in the Sales Order (or will otherwise be notified to you in writing).

Suspension Event means an event listed in clause 11.1 or clause 11.2.

Tax Deduction means a deduction or withholding for or on account of Taxes from a payment.

Taxes means taxes, levies, imposts, duties, excise, and charges, deductions or withholdings, however described, imposed by law or government authority or agency, including any related interest, penalties, fines, or other charges or other expenses, other than an Excluded Tax.

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

We / our / us means Nextgen Networks Pty Limited ACN 094 147 403, our Related Bodies Corporate and our and their Representatives.

You / your means the customer named on a Sales Order to whom we supply a service for the primary purpose of business use, and not for personal, domestic or household use, and includes your Representatives.

Interpretation

15.2 In this Agreement:

- (a) if an expression is defined in the dictionary, grammatical derivatives of that expression have a corresponding meaning;
- (b) headings and footnotes are only for convenience only and do not affect the interpretation of this Agreement;
- (c) a schedule to a document is part of that document;
- (d) a reference to the singular includes the plural and vice versa;
- (e) words of inclusion are not words of limitation;
- (f) there is no significance in the use of gender-specific language;
- (g) a “person” includes any entity which can sue and be sued;
- (h) a “person” includes any legal successor to or representative of that person;
- (i) a reference to a law includes any amendment or replacement of that law;
- (j) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (k) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of that provision;
- (l) money is in Australian dollars; and
- (m) all lump sums and rates stated in this Agreement (including each Sales Order) will be deemed not to include GST, unless expressly stated otherwise.

SPECIAL CONDITIONS – COLOCATION SERVICES (HDDC)

1. Co-Lo Services

1.1. We provide colocation services (**Co-Lo Services**) for customers who wish for availability and reliability reasons to install and operate the Customer Equipment in our physically secure, stable, high-quality data centre (**Facility**) which offers:

1.1.1. Access for you to connect to and use:

1.1.1.1. either single or three phase electric power via dual redundant busways within the private suite which is supported by an Uninterruptible Power Supply (UPS) system;

1.1.1.2. an emergency back-up power supply in the case of mains power failure via automatic start diesel generators;

1.1.1.3. the UPS, standby generators and switchboards set up in N+1 configuration allowing for concurrent maintainability; and

1.1.2. a technical reference earthing system with resistance of less than 1 Ohm;

1.1.3. a remotely managed site facilities management system that continuously monitors and surveys the facility and manages all the associated essential services;

1.1.4. VESDA and gas suppression system within the data hall and fire detection within plant room areas;

1.1.5. a concurrently maintainable air conditioning system utilising adiabatic free air cooling with DX units as backup, controlling temperature and humidity within preset parameters and alarms that are triggered if the temperature or humidity falls outside those preset parameters;

1.1.6. 24 hour security monitoring including:

1.1.6.1. CCTV Video surveillance and recording of all entry doors;

1.1.6.2. Monitoring and recording of time and duration of each entry and exit; and

1.1.6.3. 24-hour programmable access control for approved customers;

1.1.7. our Secure Data Distribution System: a managed cable distribution system incorporating: diverse data cable entry ducts within the building; managed ODF and DSX, cable tray (for copper) and fibre guide (for fibre) systems providing for the secure and flexible provisioning of all cabling and cross connections within the Facility. Our Secure Data Distribution System is utilised to provide all cross connections required for interconnection of our and third party circuits to your

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- cabinet and between your cabinets within the Facility;
- 1.1.8. Equipment Staging Area: this area is provided to allow the customer to pre-configure, test and power-up the Customer Equipment prior to installation in the High Density Data Centre Data Hall.
- 1.2. The Co-Lo Services include the following:
- 1.2.1. Secure Full Cabinet including:
- 1.2.1.1. Intelligent Power Distribution Units
- 1.2.1.2. Optical Patch Panel
- 1.2.1.3. Copper Patch Panel
- 1.2.2. Cross Connect Services.
- 1.3. Details of the Co-Lo Services can be found at <http://www.nextgengroup.com.au>.
- 2. Service Activation Date and Commencement of Billing**
- 2.1. The Service Activation Date is the date that you receive notification from us to commence the installation of the Customer Equipment.
- 2.2. We will commence billing you for all charges 14 days following notification under clause 2.1 or the actual date of installation of the Customer Equipment, whichever is sooner.
- 3. Increase in Price During Service Term**
- 3.1. The Fees for all Co-Lo Services will increase by 4% each year, commencing on the anniversary of the ready for service date for each such Service.
- 3.2. In addition to any Fee increase under clause 3.1, we reserve the right to increase the pricing at any time during the term of any Co-Lo Service which includes an allowance/component in the price for power consumption if there is an increase in the price charged to us by its power supplier for such power consumption. Such increase in price will be limited to the allowance/component for power consumption, and will be commensurate with the increase in the price charged to us for such power consumption.
- 3.3. If the heat dissipation and/or power consumption of the Space increases above the specified rating in the Sales Order, we reserve the right to automatically charge/invoice you at the higher monthly fee associated with the new higher power consumption.
- 4. No Tenancy**
- 4.1. We grant to you a right to use and occupy the equipment storage space (“Space”) in the Facility identified in the Sales Order for installing, operating and maintaining Customer Equipment in accordance with this Agreement.
- 4.2. The rights conferred on you under this Agreement:
- 4.2.1. shall be in contract only and will not create or confer any estate or interest in the Facility or the Space; and
- 4.2.2. confer no right of exclusive occupation of the Facility on you and subject to the terms of this Agreement we may at any time exercise its rights as lessee/owner, to use, possess and enjoy the whole or any part of the Facility.
- 4.3. You will not provide, make available, sub-license or permit in any manner any third party to use all or any portion of the Space or the Facility without our prior written approval.
- 5. Our Obligations**
- 5.1. We shall:
- 5.1.1. provide services which support the overall operation of the Facility to enable you to operate and maintain its equipment located in the Facility; and

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| <p>5.1.2. provide and maintain, using best efforts, the Environmental Standards of the Facility in accordance with the standards specified in our Data Centre Facilities Customer Manual.</p> <p>5.2. The Co-Lo Services are provided subject to availability</p> <p>5.3. The location of the Space within the Facility is at our sole discretion. We do not guarantee that the location of the Space will be in your preferred location.</p> <p>5.4. Our aggregate liability in each calendar year that a Co-Lo Service is provided for costs, losses, expenses and damages suffered or incurred by you as a result of any act, default, omission or breach by us in that calendar year is limited to that amount which is the same amount as the amount of the Fees payable by you to us in that calendar year, plus GST if applicable.</p> | <p>contact personnel available for contact by us.</p> |
| <p>6. Customer Obligations</p> <p>6.1. You may use the Space only for the purposes of installing, maintaining and operating the Customer Equipment.</p> <p>6.2. Prior to any installation of the Customer Equipment in the Space, you must perform a power-up test in our staging area to demonstrate that the equipment does not cause any power faults. You must comply with this clause before being permitted to access the Space.</p> <p>6.3. Access to the Facility is restricted to your authorised representatives. You must provide us at the Service Activation Date with a list (the List) containing the full name, title, signature and photo identification of each of your authorised representatives who are authorised by you to gain access to the Space and shall ensure that you notifies us promptly of any addition to or deletion from that list.</p> <p>6.4. You shall maintain and provide to us a list of primary and secondary contact personnel to include each person's name, contact telephone number and hours of availability. You will ensure that at any given time there is a</p> | <p>6.5. You must ensure that each of your authorised representatives:</p> <p>6.5.1. has not been convicted of a felony;</p> <p>6.5.2. has identification available and display security passes at all times whilst in the Facility;</p> <p>6.5.3. remain only in the Space or common area;</p> <p>6.5.4. follow our reasonable instructions concerning security, safety and our other general procedures (as amended by us from time to time) as they apply in the Facility, data centre area and the Space, including prohibition on smoking in the Facility;</p> <p>6.5.5. do not interfere with any security arrangements in place in the Facility;</p> <p>6.5.6. return all security access badges to us when any of the authorised representatives no longer have responsibilities which require access to the Facility;</p> <p>6.5.7. participate in any site safety awareness induction training as required by us and any site safety training updates as may be required by us from time to time; and</p> <p>6.5.8. comply with all requirements, processes and procedures as detailed in our Data Centre Facilities Customer Manual.</p> <p>6.6. You have sole and exclusive control over the content residing on the Customer Equipment (Customer Content). You acknowledge and we agree that in the provision of the Co-Lo Services, we are not provided, either directly or indirectly, and will not seek access to Customer Content. In particular, we will not store, read, retrieve, make copies of, intercept,</p> |

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- modify or exercise any control over the Customer Content without your prior written agreement.
- 6.7. You must keep the Space in good condition.
- 6.8. You must not do anything which may invalidate or breach our lease or occupation agreement with the lessor or owner of the Facility or make void or voidable or cause an increase in the insurance premium of any policy for the Facility, to the extent that we have given you prior notice of the effect of any such action.
- 6.9. You shall be liable to us for the repair of any damage caused by you to the Space or any part of the Facility to the extent that such damage is caused by your act or omission.
- 6.10. You shall not install any form of transmitting device in the Space or any part of the Facility.
- 6.11. You acknowledge that photography in any part of the Facility is not allowed. You must not use any photographic equipment in the Space or any part of the Facility including but not limited to security cameras, unless expressly approved in writing by us.
- 7. High Density Data Centre Access**
- 7.1. At all times, we will have the right to determine, decide or order the schedule and priorities of access to or security of the Facility but we will use our best efforts to meet your reasonable access requirements.
- 7.2. You agree that:
- 7.2.1. you assume responsibility for all acts or omissions of any persons included on the List or authorised by you to enter the Facility and agrees to indemnify and hold you harmless from any claim arising from the acts or omission of these individuals
- 7.2.2. you may use the common areas of the Facility solely for the purpose of entry to and exit from the Space and for use of the amenities to which you are allowed access by us
- 7.2.3. your authorised representatives will comply with all applicable laws and ordinances; with the standards and practices of the telecommunications industry; and with all Facility security procedures, Facility rules, requirements and safety practices. Such rules include, but are not limited to, a prohibition against smoking in the Facility.
- 7.3. we may refuse entry to the Facility to any person whose name and other details do not appear on the List. Unless we have received written notification from you in advance of the removal of any name from the List, we are entitled to treat the List as current. We will not be liable for any loss or damage incurred by you as a result of:
- 7.3.1. our allowing access to any persons who are no longer authorised by you to access the Facility if you have not notified us of the removal of such persons from the List; or
- 7.3.2. our refusing entry to any person whose name and other details have not been added to the List by you.
- 7.4. In our absolute discretion, we may deny any person access to the Facility, and/or restrict the number of persons in the Facility at any one time for safety and security reasons.
- 7.5. We may at all reasonable times, and any time in the case of emergency:
- 7.5.1. enter and view the state and condition of the Space; and
- 7.5.2. make any necessary repairs to the Space.
- 8. Security**
- 8.1. You must not jeopardise, attempt to breach the security of, or in any way interfere with our Network, the Facility or any third party system or any network connected to the Facility.

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- 8.2. You must not damage the property of us, our vendors, our other customers or our landlord (if applicable) in any manner.
- 8.3. If we determine in our sole discretion that you pose an immediate risk to the Network, the Facility or to any of our property, the landlord (if applicable) or our vendors or our other customers, we may take any reasonable action to prevent or correct such risk at your expense without prior notice or liability to you.
- 9. Allocation and Reservation of Space**
- 9.1. The location of the Space within the Facility is at our sole discretion. We do not guarantee that the location of the Space will be in your preferred location.
- 9.2. We do not guarantee that if you order more than one lot of Space (Cabinet, Caged Space or other similar High Density Data Centre product) that you will have the Spaces located adjacent or contiguous to each other. Subject to availability, we will make reasonable attempts at the time of order to provide adjacently located Spaces.
- 9.3. If at the time of order, and subject to availability, you wish to reserve Space for future use adjacent or contiguous to the allocated Space in the Sales Order, we reserve the right to charge you a Reservation Fee. This Reservation Fee allows you first right of refusal for the associated Space. We reserve the right to request return of this reserved space from you. If after ten (10) working days we have not received a signed Sales Order from you for the associated Reserved Space, we may reallocate the Space to another customer as required. In that event, Fees associated to the reservation of space will cease.
- 10. Third Party Circuit Provision and Cross Connection**
- 10.1. You must purchase bandwidth requirements primarily from us.
- 10.2. We recognise your need for third party network connectivity for the purposes of remote administration, office connectivity, management, redundancy and diversity. We take no responsibility, and do not give any performance guarantees for such circuits.
- 10.3. All third party network connectivity providers must have commercial agreements for the purpose of providing third party connectivity to our customers located in the Facility in place with us prior to services being delivered by that provider into the Facility.
- 10.4. You must order your own services from the third party provider.
- 10.5. Connection of the third party service from the third party point of presence in the Facility to the Space will be provisioned by us in accordance with our standards, procedures and practices. Unless agreed to by us, all cross connections between the Space and third party point of presence in the Facility must be provided via the Secure Data Distribution System. You must pay us the agreed Fee for this cross connection service.
- 10.6. In order for us to ensure all commercial and infrastructure requirements are in place to support delivery of the third party service within the Facility, we require you to provide:
- 10.6.1. for services from third party providers with which we have commercial agreements in place, at least ten (10) Business Days' notice of any activity that the third party may wish to undertake in relation to provisioning of the service at the Facility. We do not guarantee, but will make all reasonable efforts, in order to meet your advised requirements;
- 10.6.2. for services from third party providers with which we do not have commercial agreements in place, details of the ordered services and required delivery dates as soon as the services are ordered. We do not guarantee, but will make all reasonable efforts in order to complete

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- commercial negotiations with the 3rd party provider in order to meet your advised requirements.
- Australian electrical and fire standards and our standards and specifications (if any).
- 11. Access to Space by a third party**
- If you require us to provide access to the Space to a third party you must advise us by providing us with a signed authorisation letter detailing these requirements.
- 12. Cross Connection between Spaces in the Facility**
- 12.1. All connections between Spaces must be provisioned by us in accordance with our standards, procedures and practices. All cross connections between Spaces must be provided via our Secure Data Distribution System. You must pay to us the agreed fee for this cross connection service.
- 12.2. Unless agreed to by us, provision of cross connections is only allowed between contiguous Spaces occupied by you.
- 12.3. If a cross connection facility is being provided between Spaces allocated to third party customers, a signed authorisation letter must be provided by both parties to us.
- 13. Delivery, Installation, Operation, and Maintenance of Customer Equipment**
- 13.1. You are solely responsible for accepting delivery of the Customer Equipment and any other facilities or materials delivered to the Facility on your behalf.
- 13.2. At your request, we may, in our sole discretion, accept delivery of the Customer Equipment at the Facility if we have the means to do so. Delivery must be pre-arranged and agreed with us.
- 13.3. Notwithstanding the foregoing, you remain responsible for risk of loss of the Customer Equipment unless such loss is caused by the negligence or our wilful misconduct.
- 13.4. You are only permitted to install its equipment and cabling within the allocated Space. All other installation and cabling within the Facility must be undertaken by us or approved by our contractors in accordance with
- 13.5. Unless agreed to by us or in an emergency situation, all installation and/or removal of the Customer Equipment must be undertaken during our normal business hours and must be pre-approved and pre-scheduled with us in accordance with the procedures specified in the Data Centre Facilities Customer Manual. We reserve the right to charge a fee associated with all installation works undertaken by you outside of our normal business hours.
- 13.6. All of the Customer Equipment must be installed and fit within the Space. None of the Customer Equipment or wiring may protrude beyond the cabinet/cage enclosure or cabinet's footprint. All cabinet doors must be fully and securely closed and locked and remain in the closed locked position, except when performing maintenance.
- 13.7. You agree not to alter, tamper with, adjust, or repair any equipment or property not belonging to you, and agrees not to erect signs or devices on the exterior of any cabinet or to make any construction changes or material alterations to the Space or the interior or exterior portions of the Facility.
- 13.8. You must list details of all of the Customer Equipment to be installed in the Space. If you intend during the Service Term to install additional Customer Equipment and/or to remove the Customer Equipment, you must notify us by submitting a revised Customer Equipment List. This Customer Equipment List will be signed by you and us at the time the Customer Equipment is installed/removed. You agree with us that the last signed Customer Equipment List sets out the only the Customer Equipment located in the Facility.
- 13.9. You must operate and maintain the Customer Equipment in a safe manner, and keep the Space and portion of the Facility it accesses in good order and condition.
- 13.10. All of the Customer Equipment must be unpacked and power tested in the

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- Staging Room facilities prior to installation in the Data Hall of the Facility. No packaging equipment is to be moved onto the Data Hall of the Facility.
- 13.11. Our staff and agents may observe the work activities of your employees and agents in the Facility and may inspect at any time the Customer Equipment brought into the Data Hall of the Facility. You will provide/ensure that we have access to the Space.
- 13.12. At completion of your installation works, inspection of your installation will be conducted by our designated facility manager or authorised representative. Any defect or issues identified during this inspection must be rectified and approved by our designated facility manager or authorised representative prior to service activation.
- 13.13. You will be responsible for the prompt removal of all rubbish, packing materials, cartons and other items or materials that you bring into or delivers to the Facility.
- 13.14. You will ensure all of the Customer Equipment is appropriately labeled.
- 13.15. You will be responsible for obtaining and fully complying with all necessary approvals and appropriate licences regarding the installation and operation of the Customer Equipment (including compliance with industry standards as to RFI and/or EMI in regards to any such equipment) as well as any licence regarding the operation of that equipment
- 13.16. You will notify us immediately of any failure of any of the Customer Equipment (including switches, access lines and/or apparatus) which may affect the Facility, other Spaces or equipment or services
- 14. Removal of Customer Equipment During Service Term**
- 14.1. We will provide five (5) Business Days' written notice to you to remove any unapproved items from the Space or its intent to disconnect or remove any unapproved items from the Space.
- 14.2. Notwithstanding the foregoing, if we determine in our reasonable discretion that such unapproved items pose an immediate risk to the Facility or our other customers, we may immediately disconnect or remove such unauthorised items from the Space without prior notice to you and without liability to you.
- 14.3. If you intend during the Service Term to remove the Customer Equipment from the Space, you must notify us by submitting a revised Customer Equipment List. This Customer Equipment List will be signed by you and us at the time the Customer Equipment is removed. You agree that the last signed Customer Equipment List sets out all of the Customer Equipment located in the Facility.
- 14.4. You may only remove the Customer Equipment from the Facility for which it can show proof of ownership, or possessory interest.
- 15. Removal of Customer Equipment on Expiration or Termination of Contract**
- 15.1. Upon the expiration or termination of the relevant Sales Order, you must arrange with us a mutually convenient time ("**Removal Date**") to remove the Customer Equipment from the Space and return the Space to us in the same condition as it was originally delivered to you, reasonable wear and tear excepted.
- 15.2. You will remove from the Space and the Facility all of the Customer Equipment and your trade fixtures, equipment and personal property, whether or not the Customer Equipment or trade fixtures are fastened to the Space or the Facility.
- 15.3. You will fully repair any damage occasioned by the removal of the Customer Equipment or any trade fixtures, equipment and your personal property.
- 15.4. Unless otherwise agreed between you and us, all of the Customer Equipment and any trade fixtures, equipment or personal property not removed within thirty (30) calendar days after the Removal Date will, at our option, conclusively be deemed to be abandoned by you and may be disposed of by us without notice to you or to any other person or entity and without any obligation to account for such property and without any

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- liability to you or any other person or entity.
- 15.5. You will pay all expenses incurred in connection with our disposition of such property, including without limitation to cost of repairing any damage to the Facility or the Space caused by removal of such property.
- 15.6. Each party's obligation to observe and perform the obligations under this clause will survive the expiration or termination of any Sales Order.
- 16. Infringing Equipment**
- You agree to immediately remove or render non-infringing, at your expense, any of the Customer Equipment that infringes any third party Intellectual Property rights.
- 17. Heat and Power Management**
- 17.1. You must provide accurate power consumption information for all Customer Equipment installed in the Space.
- 17.2. You will comply with all of our specifications, rules, procedures and policies in relationship to heat and power management of the Space. This includes, but is not limited to, installation of the Customer Equipment in the Space to allow sufficient cool air flow to reach all items of the Customer Equipment located in the Space, and installation of the Customer Equipment in the Space in accordance with our hot/cold aisle design, installation of required blanking panels at our direction.
- 17.3. We do not warrant temperatures within cabinets.
- 17.4. The temperature in the Facility shall be measured using only sensors installed and operated by us.
- 17.5. We undertake to be aware of the impact of increased load in the Space on the temperature and heat dissipation of the Space.
- 17.6. You will ensure that the maximum heat dissipation and power consumption for the Space does not exceed the specified rating as defined in the Sales Order. Any deviations from the Sales Order must be agreed in writing with us. We reserve the right to charge/invoice you the increased
- fees associated with the higher power consumption and heat rating.
- 17.7. We reserve the right to limit the excess power usage to keep the temperature of Space within what we consider in our sole discretion as the safe limit for the Space.
- 17.8. We reserve the right to request you to distribute the Customer Equipment within the Space or in additional Space, in order to not exceed the Sales Order limit. If additional Space is required, we reserve the right to automatically charge/invoice you for all fees associated with provision of the additional Space.
- 18. Floor Loading and Weight Management**
- 18.1. The Facility may have an installed Customer Equipment weight limitation. We reserve the right to limit the weight of the Customer Equipment installed in the Space at each Facility.
- 18.2. We reserve the right to request you to distribute load of the Customer Equipment if the loading is identified to be excessive for the Facility. If additional Space is required as a result of the distribution, then we reserve the right to automatically charge/invoice you for all fees associated with provision of the additional Space.
- 19. Relocation**
- 19.1. We reserve the right to relocate the Customer Equipment within the Facility or to move the Customer Equipment to another Facility with the same capability of service that is provided in the existing Facility and with at least forty-five (45) days' written notice. Any of the Customer Equipment moved or relocated at our initiative will be at our expense. Every commercial reasonable effort will be made to minimise downtime and service interruption if the Customer Equipment is moved or relocated.
- 19.2. If you object to the location of the new Facility, you may terminate the relevant Sales Order without penalty within forty-five (45) days of receiving notice of the new Facility's location.

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20. Alterations to the Space and/or Facility

- 20.1. If we require any alterations to be made to the Space and/or Facility for any reason, the such alterations will be made at our expense provided that we shall give reasonable notice to you.
- 20.2. If you requires any alterations to be made to the Space and/or Facility then such alterations may only be made with our written approval, and undertaken by us or our approved contractors and all costs are to be paid by you.

or dangerous materials (as determined by us in our sole discretion) into the Facility. Such materials include, but are not limited to, batteries, explosives, flammable liquids or gases, alcohol, controlled substances, weapons, cameras, tape recorders and similar equipment and materials.

- 22.2. You will not install in the Space any equipment which may cause or have the potential to cause any adverse effects to performance or damage to any of our facilities. This includes the installation of rectifiers connected to our UPS.

21. Damage to Space

- 21.1. If the Space is damaged due to a Force Majeure event, we will give prompt notice to you of such damage, and may temporarily relocate the Customer Equipment to the new Space of a new Facility, if practicable.
- 21.2. If the Facility's landlord or we exercise an option to terminate a particular lease due to damage or destruction of the Space, or if we decide not to rebuild the Space, the relevant Sales Order will be terminated as of the date of the damage. The Fees for all Co-Lo Services will proportionately abate for the period from the date of such damage.
- 21.3. If neither the Facility's landlord or us exercise the right to terminate, we will repair the particular Space to subsequently the same condition it was in prior to the damage, completing the same with reasonable speed. In the event that we fail to complete the repair in reasonable time period, you will have the option to terminate the relevant Sales Order with respect to the affected Space, which option will be the sole remedy available to you against us under this Sales Order relating to such failure. If the Space or portion thereof is rendered unusable by reason of such damage, the Fees for Co-Lo Services will proportionately abate for the period from the date of such damage to the date when such damage has been repaired.

23. Indemnity

- 23.1. You will notify us immediately of any lien(s) on or security interest(s) in the Customer Equipment.
- 23.2. You agree to indemnify us against actions by any person claiming an ownership or possessory interest, lien, trust, pledge, or security interest in any of the Customer Equipment, including without limitation any attempt by such third party to take possession of the Customer Equipment.

24. Public Liability Insurance

- 24.1. You agree to take out and maintain, during the entire time that the relevant Sales Order is in effect:
- 24.1.1. public liability insurance in an amount not less than \$20 million in relation to your liability under this Agreement; and
- 24.1.2. property insurance for an amount of not less than the reinstatement cost of the Customer Equipment,
- and at our request, produce evidence of currency of such insurance.

25. Customer to Insure

- 25.1. Neither we nor our Related Bodies Corporate will insure or be responsible for any loss or damage to property of any kind owned or leased by you or by its employees and agents other than losses or damages resulting from the

22. Prohibited Materials

- 22.1. Your employees and agents are prohibited from bringing any harmful

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negligent or willful acts of such parties.

- 25.2. Any insurance policy covering the Customer Equipment against loss or physical damage will provide that the underwriters have given their permission to waive their rights of subrogation against us, our Related Bodies Corporate or the Facility landlord, and their respective directors, officers and employees.
- 25.3. You will insure or self-insure against claims involving your employees and agents.
- 25.4. You agree to release and indemnify us against claims by any of your employees and agents arising from dismissal, suspension or termination of work, or from denial of entry to the facility; and claims by any person arising from your non-payment for Co-Lo Services.

SPECIAL CONDITIONS - REMOTE HANDS SERVICES

You may request Remote Hands Services as an add-on service to assist you with the diagnosis and repair of your issues and for scheduled operational services.

We do not warrant that Remote Hands Services will be available at any given time, and will not be in breach of this Agreement or otherwise be liable to you if we do not accept your request for Remote Hands Services.

The Service Levels specified in the Service Level Agreement (Remote Hands Services) as set out below apply to any Remote Hands Services provided by us.

Your sole and exclusive remedy (including for any resulting breach of warranty) in respect of any failure by us to meet the Service Levels applicable to the Remote Hands Services is payment of the applicable Service Credits.

You acknowledge that the amount of the Service Credit determined in accordance with the Service Level Agreement (Remote Hands Services) represents a genuine pre-estimate of the loss, damage, costs and expenses that you will incur as a result of any failure by us to meet the Service Levels applicable to the Remote Hands Services.

We will provide the Remote Hands Services in accordance with your reasonable instructions. For the avoidance of doubt, in providing the Remote Hands Services, we are acting as the remote hands of you, not as a provider of engineering or other specialist services.

To the extent permitted by law, we exclude all liability to you for loss or damage incurred by you arising out of or in connection with the provision of Remote Hands Services.

SERVICE DESCRIPTION

Overview

On acceptance of your request, we will provide Remote Hands Services to support you during both initial migration and ongoing operations:

24 x 7 On Call Response Services

A reactive, entry level service provides any or all of the following:

- Location and description of status of equipment
- Parts receipt and dispatch management
- Escorting of third party engineers

- Asset audits
- Hard and soft reboots of equipment
- Cable tracing & trouble shooting
- Replacement of externally accessible hot-swap components
- Replacement of rack mounted devices, like for like
- Audit existing installation
- Installation of rack airflow blanking panels

Scheduled MACs (Moves, Adds and Changes) Services

A pro-active service to assist you with planning and executing your physical migration between locations, including any or all of the following:

- Receiving equipment deliveries
- Auditing existing installation
- Un-installation of equipment, transportation, re-installation and airflow blanking
- Customer rack patch cabling
- Bringing equipment back up to a remotely manageable state

Media Management Services

Scheduled tape management services including offsite media storage and retrieval.

Provision of Remote Hands Services

Scheduled MAC and Media Management Services will only be provided after provision of a quotation by us and your acceptance of that quotation.

The following are excluded from Remote Hands Services:

- Supply of equipment or parts
- Installation, alteration and removal of power cabling and devices, including power cables, rails (PDUs) and busbar tap off boxes
- Installation, alteration and removal of racks and Structured Cable Infrastructure
- Project management and design services

SCOPE OF REMOTE HANDS SERVICES

1 Scope of 24 x 7 On Call Response Services

We will provide Remote Hands in respect of the Customer Equipment at the specified Data Centre, including any or all of the following:

- (a) provision of a central contact point with 24x7 availability for the purpose of enabling you to lodge, track and query service requests;
- (b) attending the Data Centre where the Customer Equipment is reported as being faulty to assist remediation of the defect or problem (including liaising with your appropriate personnel);
- (c) resetting, rebooting and replacing of any components or Customer Equipment, as directed; and
- (d) assisting with fault identification as necessary.

2 Scope of Scheduled MAC Services

At your request, we will issue a quotation for the provision of Scheduled MACs. On written acceptance of our quotation by you, we will, as applicable having regard to Services as specified in the Sales Order, perform any or all of the following tasks:

- (a) supervise, manage and implement change outs related to the Customer Equipment;
- (b) receive, log and track the completion of Service requests in a management system for Hard MACs and notify you;
- (c) dispatch and manage the performance of appropriate technicians to install and test the Customer Equipment within the timeframes specified in the Service Levels;
- (d) co-ordinate and communicate with you regarding scheduling and requirements;
- (e) provide the necessary technical support to complete a Hard MAC;
- (f) physically move Customer Equipment and provide Cable Management, as required;
- (g) notify you of the completion of a Hard MAC; and

- (h) upon completion of each Hard MAC, assist you with end-to-end acceptance testing.

3 Scope of Media Management Services

At your request, we will issue a quotation for the provision of Media Management Services. On written acceptance of our quotation by you, we will perform the Media Management Services as specified in the Sales Order.

4 Customer's Responsibilities

You must:

- (a) report Faults to our designated single point of contact;
- (b) dispatch spare devices as required to the Data Centre; and
- (c) notify our onsite engineer of a successful reboot.

We will not be liable to you under the Service Levels or otherwise in respect of any issues arising from or in connection with your failure to carry out these responsibilities.

5 Charges

The Charges payable by you for Remote Hands Services are set out in the Sales Order.

6 Glossary

Cable Infrastructure: Our cabling installed between the Customer Space and other areas of the data centre.

Cable Management means:

- (a) the installation and maintenance of Customer Equipment patch cabling between Customer Equipment;
- (b) assisting you on a best efforts basis to troubleshoot faults on your cable infrastructure (horizontal and vertical cabling) but does not include the repair or replacement of the cable infrastructure).

Hard MAC means a single request for an onsite move, add or a change relating to an item of Customer Equipment.

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Service Levels means the service levels applicable to Remote Hands Services as set out below.

Severity Level means the level of severity of a particular Restoration Event as determined by us having regard to its impact on your business and the measurement parameters listed in the Service Levels.

Restoration Event means problem impacting on performance of the Customer Equipment resulting in a degradation of your data services.

REMOTE HANDS SERVICE LEVEL AGREEMENT

Definitions

Service Credit means a unit of measure for each particular SLA, as set out in this Remote Hands Service Level Agreement, for the purpose of determining your entitlement.

SLA means the service levels in this Remote Hands Service Level Agreement.

Contract management service levels

Severity Code	Description
1	A total loss of service, which cannot be circumvented. Fault affecting customer facing systems, having a critical impact upon business operation.
2	Service is partially interrupted, or impaired. Fault affecting all or a large percentage of users and customer facing systems and cannot be circumvented. Having a substantial impact on business operation.
3	Minor impact on usage that can be circumvented. Loss of service to a user or a small group of users. Not a significant impact on business operation.
4	Problem circumvented. Little or no customer impact. General request for information, and 3rd party product keys and licenses.

Service reliability (all locations)

Hours of Service Desk Coverage	Remote Hands Business Hours – 8:30am to 5:30pm – Monday to Friday excepting Public Holidays	
	24x7x365 incident logging and critical alert response	
Severity of Request or Alert Escalation	Business Hours Response Time Objective 1 (request logged during Remote Hands Business Hours)	After Hours Response Time Objective 2 (request logged after Remote Hands Business Hours)
1	1hr	2hrs
2	1hr	2hrs
3	2hrs	4hrs
4	4hrs	4hrs

Response Service Credits

The below table provides Service Credits for response times not met as per the above Service Levels.

SLA Response Time Objective for Remote Hands Requests	
Request breached SLA (subject to verification of SLA breach based on above criteria and terms)	Per Request Charge credited 50% (Charge will be based on recorded effort within Service Desk ticketing system x per hour effort charge rate for Remote Hands service)

Response Time Objective excludes elapsed time where we are waiting for advice, guidance or access from you or third party provider in order to complete the work to resolve problem where information or access supplied is not sufficient or due to a Force Majeure event. While further advice, guidance or access is pending, the SLA duration for the request will be paused, and will resume once we are provided with appropriate information to complete the resolution.

The SLA start time for a response will start from the point of request being logged and registered to us and continues until attendance to the relevant data centre site is reached.

We will credit Service Credits claimed by you and verified by us on your next monthly invoice.