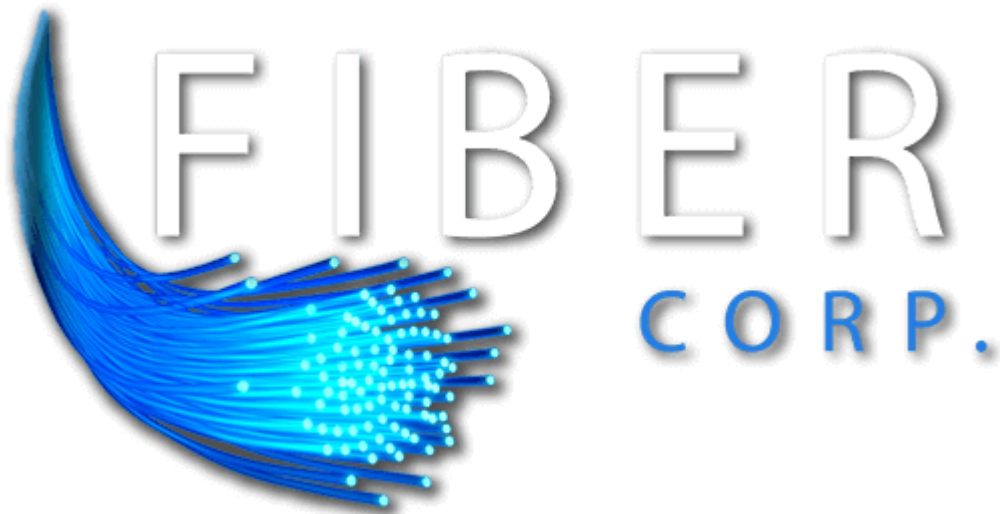


| Thursday, 14 January 2021

## Standard From Access Agreement

**Fiber Asset Management Pty Ltd**  
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**Revision:** 2.1



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# Access Agreement

## Parties

Name	Fiber Asset Management Pty Ltd
Carrier License Number	486
Address	36 Ricketty St Mascot, NSW 2020
Contract Manager	Joel Clarke CIO
Short name	<b>Wholesale Carrier</b>

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## Background

- A. The Customer and the Supplier each hold a carrier licence pursuant to the *Telecommunications Act 1997* (Cth).
- B. The Customer wishes to procure certain telecommunication services from the Supplier.
- C. The Supplier agrees to provide telecommunication services to the Customer, and the Customer agrees to acquire the same, in accordance with the terms and conditions of this Agreement.

### The Parties Agree

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#### 1. Definitions

In this Agreement the following abbreviations, words and phrases have the following meanings, unless the context requires otherwise:

**Accepted Purchase Order** means a Purchase Order accepted by the Supplier in accordance with clause 3.1.

**Ad Hoc Services** means the services so described in Schedule 1 (if any).

**Affiliate** means, in respect of a company or other business entity, any company or other business entity Controlled by, Controlling, or under the common Control of that company or other business entity from time to time.

**Agreement** means this agreement, including the Background paragraphs, clauses 1 to 35 and the Schedules.

**AVC or Access Virtual Circuit** means an Ethernet-based Layer 2 virtual connection on the Supplier Network that carries Customer traffic to and from a UNI to serve a Premises.

**AVC Service** means the supply of and access to an AVC under and in accordance with this Agreement, as further described in [Schedule 1].

**Business Day** means any day which is not a Saturday or a Sunday or a public holiday in New South Wales.

**Carriage Service** has the meaning given to that term in section 7 of the Telecommunications Act, and includes a proposed carriage service.

**Carriage Service Provider** has the meaning given to that term in section 7 of the Telecommunications Act.

**Carrier** has the meaning given to that term in section 7 of the Telecommunications Act.

**Carrier License** has the meaning given to that term in section 56 of the Telecommunications Act.

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

**Confidential Information** means, in relation to a Party, all information relating to that Party and its Affiliates, including all information concerning the business, products, services, Systems, procedures and records (in whatever form, including in electronic format) of that Party and its Affiliates, and their relationships with their customers and suppliers. Confidential Information of the Supplier includes all information relating to the Services and all Intellectual Property Rights existing in the same, the terms and conditions of this Agreement and the Fees payable by the Customer.

**Contract Manager** means, in relation to a Party, the person appointed by that Party to manage the exercise of its rights and performance of its obligations under this Agreement and to act as the single point of contact for the other Party in relation to the same.

**Control** means the direct or indirect power to direct or cause the direction of the management and policies of a company or other business entity, whether through ownership of fifty per cent (50%) or more of the voting interest, by contract, or otherwise (and **Controlled** and **Controlling** are to be construed accordingly).

**CVC or Connectivity Virtual Circuit** means an Ethernet-based Layer 2 virtual capacity on the Supplier Network used to carry Customer traffic between multiple AVC's and from a UNI to serve a Premises.

**CVC Service** means the supply of access to a CVC under and in accordance with this Agreement, as further described in [Schedule 1].

**Deliverables** means the deliverables (if any) arising out of the Services or otherwise supplied to the Customer under or in connection with this Agreement, including any documentation (in whatever form, including in electronic format).

**Documentation** means the user manuals, reference manuals and other materials and documentation (if any) (in whatever form, including in electronic format) relating to the installation, use, operation, performance, capacity, quality, scope or functionality of the Services, including the Specifications.

**Effective Date** means the effective commencement date of this Agreement, as set out at the beginning of this Agreement.

**End User** means any person to whom a Service is resupplied by the Customer or to whom goods or services which use or rely on a Service are supplied by the Customer

**Expenses** means any 'out-of-pocket' third party expenses (for example, travel, accommodation and subsistence) incurred by the Supplier under or in connection with this Agreement.

**Fees** means the fees and charges payable by the Customer under or in connection with this Agreement, including those fees and charges set out or referred to in or calculated in accordance with **Error! Reference source not found.** (Fees).

**Force Majeure Event** has the meaning assigned to that term in clause 20.1.

**Good Industry Practice** means, in relation to any undertaking and any circumstances, the exercise of the skill, diligence, prudence, foresight and judgment which would be expected from a person engaged in the same type of undertaking under the same or similar circumstances, applying the standards currently generally applied in the Supplier's industry.

**GST** has the meaning assigned to that term in the *A New Tax System (Goods and Services) Act 1999* (Cth).

**Insolvency Event** means, in relation to a Party, any of the following events:

- (a) the Party becomes insolvent;
- (b) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Party or the Party enters into a scheme of arrangement with its creditors or is wound up;
- (c) the Party assigns any of its property for the benefit of creditors or any class of them;
- (d) an encumbrancee takes any step towards taking possession or takes possession of any assets of the Party or exercises any power of sale; or
- (e) the Party has a judgment or order given against it in an amount exceeding \$100,000.00 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within twenty (20) Business Days after being given.

**Intellectual Property Rights** means patents, trade marks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights; inventions, know-how, secret formulae and processes, lists of customers and suppliers and other proprietary knowledge and information; internet domain names; rights protecting goodwill and reputation; database rights; and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licences and consents in respect of any of the rights and forms of protection mentioned in this definition.

**Interconnect and Usage Manual** means the Supplier's collective documents, policies and procedures in relation to interconnection and usage, as updated by the Supplier from time to time.

**Interconnect Service** means the handover of Customer traffic to and from the Customer Network and the Supplier Network at the POI in accordance with the Interconnect and Usage Manual.

**Law** includes:

- (f) any treaty, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
- (g) the common law and the law of equity;
- (h) any binding court order, judgment or decree;
- (i) any applicable industry code, policy or standard, in each case enforceable by law; and
- (j) any applicable direction, policy, rule or order that is given in writing by a Regulator, in each case enforceable by law.

**Licensed Materials** means:

- (a) the Deliverables ; and

to the extent provided or made available by the Supplier to the Customer:

- (b) the Documentation.

**Loss** includes claims, actions, proceedings, losses, damages, liabilities and costs (including legal expenses).

**Personal Information** has the meaning given to that term in the Privacy Legislation.

**Personnel** means, in relation to a Party, that Party's:

- (a) officers and employees;
- (b) Affiliates' officers and employees; and
- (c) in the case of the Supplier only, sub-contractors' officers and employees.

**Point of Interconnect** or **POI** means a point of interconnection between the Supplier Network and the Customer Network located at the Supplier Premises.

**Premises** means an addressable location which is serviced by the Supplier Network.

**Privacy Legislation** means the *Privacy Act 1988* (Cth), the *Telecommunications Act* and the *Spam Act 2003* (Cth) and any applicable analogous legislation in any jurisdiction from time to time.

**Purchase Order** means an order form for the acquisition of Services in the form specified by the Supplier from time to time.

**Regulator** means any statutorily recognised supervisory or government agency, body or authority having regulatory or supervisory authority over a Party.

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

**Service Levels** mean the service levels set out in 36.

**Services** means the [AVC Services, the CVC Services, the Interconnect Services and the Ad Hoc services], as set out or referred to in clause 5 and **Error! Reference source not found.** as modified from time to time by the Supplier in accordance with clause 6.8.

**Specifications** means, in relation to any Services:

- (a) the required functionality and performance criteria for the Services as set out or referred to in the relevant Schedule; and
- (b) the functional and performance specifications set out or referred to in the Supplier's standard documentation for the Services, including in the Documentation,

and in the event of any conflict or inconsistency between the functionality and performance criteria referred to in paragraphs (a) and (b) immediately above, the functionality and performance criteria referred to in paragraph (b) prevails to the extent of such conflict or inconsistency.

**Supplier Network** means the physical Ethernet-based Layer 2 connection owned and operated by the Supplier which enables a virtual connection which carries traffic between each UNI used to service a Premises and a POI, and enables the Customer to supply a Carriage Service to a Premises.

**Systems** includes telecommunications systems, computer systems, networks, computer programs and databases, and the tangible media on which they are recorded and their supporting documentation including operating instructions and user manuals.

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

**Term** means the duration of this Agreement as determined in accordance with clause 3.

**User Network Interface** or **UNI** means the physical port to which the Supplier Network interfaces in respect of a Premises. The type of UNI will depend on the type of Premises.

**Variation** means any change or variation to this Agreement that is agreed between the Parties in accordance with clause 25.



**Virus** means any thing or device (including any software, code, file, programme, worm, trojan horse, virus or other similar thing or device) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience.

---

## **2. Interpretation**

2.1 In this Agreement, unless the context requires otherwise:

2.1.1 any reference to a 'person' includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same includes a reference to the others;

2.1.2 references to any legislation, statute or statutory provisions includes a reference to those provisions as amended or re enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision includes any subordinate legislation made from time to time under that provision;

2.1.3 references to clause(s) and Schedule(s) are references to clause(s) and Schedule(s) of and to this Agreement;

2.1.4 references to sections(s) are references to sections(s) of a Schedule;

2.1.5 references to any Party include its successors (whether by operation of applicable Law or otherwise) and permitted assigns;

2.1.6 any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words;

2.1.7 references to the singular include the plural and to the masculine include the feminine, and in each case vice versa; and

2.1.8 a reference to '\$' or 'dollars' is a reference to Australian dollars.

2.2 The headings and sub-headings in this Agreement are inserted for convenience only and do not affect the meaning of this Agreement.

2.3 Each of the Schedules to this Agreement has effect as if set out in this Agreement.

2.4 In the event of any conflict or inconsistency between clauses 1 to 35 and any Schedule, clauses 1 to 35 prevail to the extent of such conflict or inconsistency.

2.5 If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

### **Order of Priority**

2.6 This Agreement is comprised of:

- 2.6.1 clauses 1 to 35;
- 2.6.2 the Schedules;
- 2.6.3 the Interconnect and Usage Manual; and
- 2.6.4 any Accepted Purchase Order; and
- 2.6.5 Wholesale-RSP-Pricelist-1.4

In the event of any conflict or inconsistency between the documents listed above, the documents will prevail in the order set out above to the extent of such conflict or inconsistency, unless specifically agreed otherwise in writing between the Parties.

---

### **3. Ordering process**

- 3.1 Customer will request services by completing a Purchase Order and providing the completed purchase order to Supplier.
- 3.2 Once a Purchase Order is accepted in writing by Supplier, the accepted Purchase Order will form part of the agreement between Supplier and Customer.

---

### **4. Term**

- 4.1 This Agreement is deemed to have commenced on the Effective Date (notwithstanding the date of its execution by each of the Parties) and continues indefinitely (the **Term**), unless terminated by either Party in accordance with its terms.

---

### **5. Services**

- 5.1 Subject to payment of the Fees by the Customer in accordance with the terms and conditions of this Agreement, the Supplier will provide the Services to the Customer in accordance with:
  - 5.1.1 the Specifications for the Services; and
  - 5.1.2 the terms and conditions of this Agreement.
- 5.2 The Customer is responsible for:
  - 5.2.1 ordering the number, type and quantity of Services necessary to ensure it has sufficient capacity to meet the needs of the relevant End User;
  - 5.2.2 acquiring, operating and maintaining all relevant all connections made to the Customer-side of the POI; and
  - 5.2.3 supplying and installing all End User equipment required for the supply of the Service, including any equipment required by the End User such as residential gateways, routers and personal computers.

---

## **6. Services Generally**

### **Standard of Performance**

- 6.1 The Supplier will provide the Services to the Customer and perform its other obligations under this Agreement:
- 6.1.1 in a timely, efficient, proper and workmanlike manner using reasonable care, skill and diligence;
  - 6.1.2 using a sufficient number of suitably trained, qualified, skilled and experienced Personnel;
  - 6.1.3 in accordance with:
    - (a) Good Industry Practice; and
    - (b) all applicable Laws.

### **Speed, performance and availability**

- 6.2 Supply of the Services to the Customer in respect of a particular Premises is dependent on a number of factors, including:
- 6.2.1 serviceability of the Premises;
  - 6.2.2 connection of the Customer Network to the POI associated with the Premises for which supply of Services is sought; and
  - 6.2.3 all necessary testing of the connectivity between the Supplier Network and the Customer Network being completed to the reasonable satisfaction of the Supplier.
- 6.3 The speeds actually experienced by the Customer and End Users will vary and depend upon a number of factors, including:
- 6.3.1 Fiber-Corp wholesale SLA Agreement
- 6.4 The Supplier will use its reasonable endeavours to ensure that the services meet any applicable Service Levels.

### **Reports**

- 6.5 The Supplier will provide the Customer with such written reports or information concerning the Services as may be requested by the Customer, acting reasonably, from time to time during the Term.

### **Specifications**

- 6.6 Fibre Corp may:
- 6.6.1 add additional Services; and
  - 6.6.2 modify the specifications of any Service,

at any time by providing notice in writing to the Customer provided that the Supplier may not make any modification to the Specification of any existing Service which is subject to an Accepted Purchase Order without providing 3 months' notice in writing to the Customer.

---

## **7. Warranties**

7.1 Each Party warrants and undertakes to the other Party that:

7.1.1 it is validly existing under the Laws of the place of its incorporation and has the power and authority to carry on its business as that business is now being conducted;

7.1.2 it has the power, capacity and authority to enter into and observe its obligations under this Agreement;

7.1.3 this Agreement and the obligations created hereunder are binding upon it and enforceable against it in accordance with their terms and do not and will not violate the terms of any other agreement or any judgment or court order to which it is bound; and

7.1.4 it has and will maintain all approvals, licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

7.2 The Supplier warrants and undertakes to the Customer that the Services will provide the functions and meet the performance criteria set out in the relevant Specifications.

7.3 The Customer acknowledges and agrees that the Supplier does not represent, warrant or guarantee that the Services will be fault, error or 'bug' free.

### **Exclusion of implied terms**

7.4 Except as provided for in clause 7.1, but to the fullest extent permitted by applicable law, the Supplier excludes all implied representations, warranties, terms and conditions of any kind whatsoever (whether implied by common law, statute or otherwise) and the application or availability of any statutory rights (including any implied representations, warranties, terms or conditions or any statutory guarantees that any goods or services supplied under this Agreement are of satisfactory quality or fit for their purpose).

### **CCA**

7.5 Nothing in this Agreement is intended to exclude, restrict or modify any rights that the Customer may have under the CCA or any other applicable legislation which may not be excluded, restricted or modified by agreement between the Parties.

7.6 If the CCA or any other applicable legislation provides the Customer with any non-excludable statutory rights (including any implied representations, warranties, terms or conditions or any statutory guarantees) in respect of any goods or services supplied under this Agreement, then the exclusions of and limitations on the Supplier's liability in this Agreement do not apply in respect of such non-excludable statutory rights, however, where the Supplier's liability with respect to such non-excludable statutory rights may be restricted or modified, then, without prejudice to any non-excludable statutory rights that the Customer may have which may not be restricted or modified by agreement, the Supplier's liability is limited to:

7.6.1 in the case of a supply of goods, the Supplier doing any one or more of the following (at its election): replacing the goods or supplying equivalent goods;

repairing the goods; paying the cost of replacing the goods or of acquiring equivalent goods; or, paying the cost of having the goods repaired; and

- 7.6.2 in the case of a supply of services, the Supplier doing either or both of the following (at its election): supplying the services again; or, paying the cost of having the services supplied again.

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## **8. Fees and Payment Terms**

### **Fees and Expenses**

- 8.1 The Supplier may from time to time issue invoices in respect of:
- 8.1.1 the Fees; and
  - 8.1.2 its Expenses.
- 8.2 The Customer must pay each invoice issued by the Supplier to the Customer within thirty (30) days of the date of the relevant invoice.
- 8.3 The Supplier may charge the Customer interest at an annual rate equal to five per cent (5%) above the then current base rate of the Reserve Bank of Australia at the date the invoice was issued on any invoices paid late.
- 8.4 All amounts payable under or in connection with this Agreement are exclusive of GST and any other taxes, duties and levies, which, if applicable, are payable by the Customer in addition to the Fees at the rate prevailing at the time.
- 8.5 The Supplier may modify the Fees by providing not less than 3 months' notice in writing to the Customer, provides that such modification may not take effect within [12 months] of the date of this agreement, and thereafter the Fees may not be modified more often than once in any 12 month period.

### **Withholding taxes**

- 8.6 If the payment by the Customer of any sum due under this Agreement is subject by any applicable Law to withholding tax (or any similar taxes, duties or levies), then the Customer must:
- 8.6.1 account to the relevant tax authority for that withholding tax; and
  - 8.6.2 pay to the Supplier such additional amount as is necessary in order that the amount received by the Supplier under this Agreement after the payment by the Customer of any withholding tax will equal the amount the Supplier would have received had no such payment of withholding tax been required.
- 8.7 The Supplier will, upon written request from the Customer, supply a declaration of tax residence on the prescribed forms and obtain certification by the Australian (or other relevant) taxation authorities in order to confirm the applicability and availability of any reduced rate of withholding tax under the provisions of the relevant double taxation treaty (if applicable).

## Currency

- 8.8 All payments under or in connection with this Agreement must be made in Australian dollars, unless otherwise agreed in writing between the Parties.

## Suspension

- 8.9 Notwithstanding any other provisions of this Agreement and without prejudice to the Supplier's other rights and remedies, the Supplier may immediately suspend provision of the Services if:
- 8.9.1 there are any outstanding invoices which are not paid in accordance with clause 8.2; or
  - 8.9.2 the Customer breaches any of its obligations under clause 15 and fails to remedy such breach within 10 days of receipt of a notice in writing from the Supplier requiring it to do so.

---

## 9. GST

- 9.1 In this clause:
- 9.1.1 words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
  - 9.1.2 **GST** means GST within the meaning of the GST Law and includes penalties and interest; and
  - 9.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 9.2 Except as otherwise provided in clause 9, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 9.3 If GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. Subject to clause 9.4, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in this Agreement).
- 9.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 9.3.
- 9.5 If this Agreement requires a party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:
- 9.5.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other party is entitled; and
  - 9.5.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

- 9.6 If an adjustment event occurs in relation to a taxable supply under this Agreement:
- 9.6.1 the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and
  - 9.6.2 any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

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## **10. Personnel**

### **Compliance with policies while on premises**

- 10.1 Each Party must procure that its Personnel comply with the other Party's staff, health and safety and security policies and practices while attending that other Party's premises.

### **Contract management**

- 10.2 Each Party must appoint a Contract Manager and must procure that their Contract Managers:
- 10.2.1 meet at least monthly (or such other period agreed in writing between the Parties) to discuss:
    - (a) the Services;
    - (b) contract compliance; and
    - (c) any issue of concern or interest to either Party and any proposed solutions for addressing the same; and
  - 10.2.2 work in good faith to resolve any issues of concern.
- 10.3 The Supplier's Contract Manager is responsible for managing the provision of the Services

### **No soliciting**

- 10.4 The Customer must not, during the Term and thereafter for twelve (12) months, directly solicit, or attempt to solicit, any of the Supplier's Personnel, or any person who was in employment of the Supplier during the Term or for a twelve (12) month period thereafter, without the Supplier's prior consent (which may be withheld in the Supplier's absolute discretion). For the purpose of this clause 10.4, solicit means an approach by the Customer or a third party acting on its behalf to an individual with a view to employing or engaging, or procuring the employment or engagement of, such person as an officer or employee, independent contractor or consultant, other than by way of general advertising.

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## **11. Confidentiality**

- 11.1 Subject to the provisions of clauses 11.2 to 11.4, each Party must:
- 11.1.1 treat as strictly confidential and only use the other Party's Confidential Information solely for the purposes contemplated by this Agreement;

- 11.1.2 not, without the prior written consent of the Party from whom the Confidential Information was obtained (which may be withheld in that Party's absolute discretion), publish, use or otherwise disclose to any person the other Party's Confidential Information except for the purposes contemplated by this Agreement;
  - 11.1.3 maintain adequate security for the other Party's Confidential Information while in its possession or control, including protecting the same against any use, disclosure, access, damage or destruction which is inconsistent with the terms and conditions of this Agreement; and
  - 11.1.4 not make use of the other Party's Confidential Information to the commercial, financial or competitive disadvantage of the other Party.
- 11.2 Each Party may disclose Confidential Information which it would otherwise be prevented from disclosing pursuant to clause 11.1 if, but only to the extent, it can demonstrate that:
- 11.2.1 such disclosure is required by applicable Law or by any securities exchange or regulatory or governmental body having jurisdiction over it, wherever situated;
  - 11.2.2 the Confidential Information was lawfully in its possession prior to its disclosure by the other Party (as evidenced by written records) and had not been obtained from the other Party; or
  - 11.2.3 the Confidential Information has come into the public domain other as a result of a breach of this Agreement or any other obligation of confidence,
- provided that any such disclosure must not be made without prior consultation with the Party from whom the Confidential Information was obtained and in the case of disclosures under clause 11.2.1, must be made so as to minimise any such disclosure.
- 11.3 Each Party may for the purposes contemplated by this Agreement and on a strictly 'need-to-know' basis disclose the other Party's Confidential Information to the following persons or any of them, provided that such persons have first been directed (**Direction**) by the disclosing Party to keep it confidential:
- 11.3.1 if the disclosing Party is the Customer, the Customer's officers and employees;
  - 11.3.2 if the disclosing Party is the Supplier, the Supplier's Personnel; and
  - 11.3.3 its professional advisers, auditors, bankers and insurers, acting as such.
- 11.4 The disclosing Party under clause 11.3 must enforce each Direction at its own cost.
- 11.5 A Party must promptly give notice in writing to the other Party if it becomes aware of any unauthorised or suspected unauthorised disclosure to any third party of any of the other Party's Confidential Information and provide the other Party with all information and assistance reasonably required by the other Party in respect of such unauthorised disclosure.

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## 12. Publicity

The Supplier may disclose in its advertising, referral or publicity material or otherwise (including in any electronic media) the existence of this Agreement and the terms of its relationship with the Customer, including using for such purposes the Customer's name or other identifying names of the Customer and any trade mark of the Customer.



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### **13. Privacy**

- 13.1 Each Party must comply with all requirements of the Privacy Legislation.
- 13.2 The Customer must indemnify and hold harmless the Supplier against all losses, liabilities and costs (including reasonable legal expenses) sustained, incurred or suffered by the Supplier arising as a result of the Customer's breach of clause 13.1.

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### **14. Intellectual Property**

#### **Limited licence**

- 14.1 Subject to payment of the Fees by the Customer in accordance with the terms and conditions of this Agreement, the Supplier grants to the Customer a non-exclusive, non-transferable, non-sublicensable, personal licence during the Term, to use the Licensed Materials, solely in accordance with the terms and conditions of this Agreement.

#### **No transfer of ownership**

- 14.2 All Intellectual Property Rights subsisting in, relating to or arising out of the Services are (as between the Parties) owned by and vest in the Supplier, including all modifications, developments or enhancements made by or on behalf of either Party to such Intellectual Property Rights.
- 14.3 The Customer acknowledges and agrees that this Agreement does not transfer any right, title or interest in the Supplier's Intellectual Property Rights in the Services to the Customer or any other person.
- 14.4 The Customer hereby (and must procure that its Affiliates and Personnel) unconditionally and irrevocably assigns and transfers absolutely to the Supplier with full title guarantee and free from all encumbrances all rights, title and interest it (or its Affiliates or Personnel) may have or obtain in the Intellectual Property Rights and other rights in the Services, including all modifications, developments and enhancements made by or on behalf of the Customer to such Intellectual Property Rights.

#### **Licence by the Customer**

- 14.5 The Customer grants (and must procure that the Customer's licensors grant) to the Supplier a royalty free, non-exclusive licence during the Term to use, copy and modify any Intellectual Property Rights owned or licensed by the Customer that the Supplier requires to provide the Services to the Customer or to perform its other obligations under this Agreement for the sole purpose of the Supplier providing the Services to the Customer and performing its other obligations under this Agreement.
- 14.6 The Customer must indemnify and hold harmless the Supplier against all losses, liabilities and costs (including legal expenses) sustained, incurred or suffered by the Supplier
- 14.6.1 as a result of the Customer's failure to procure all necessary licences and consents required by the Customer to grant the licence in clause 14.5; or
- 14.6.2 as a result of any claim, action or proceeding that the use, possession or receipt by the Supplier of any software, data, information or materials (in whatever form, including in electronic format (such as software)) provided or made available by the Customer infringes the Intellectual Property Rights of any third party.

### **Third party infringement of the Supplier's IPR**

- 14.7 The Customer must promptly give notice in writing to the Supplier if it becomes aware of any infringement or suspected infringement by any third party of any of the Supplier's Intellectual Property Rights (including the Supplier's trade marks and any Intellectual Property Rights in or relating to the Services) and provide the Supplier with all information and assistance reasonably required by the Supplier in respect of such an infringement.

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## **15. Customer's Obligations - General**

- 15.1 The Customer must:
- 15.1.1 provide the Supplier promptly with all information and materials that the Supplier reasonably requires to provide the Services and perform its other obligations under this Agreement;
  - 15.1.2 provide the Supplier with access to the Customer's premises and the Customer's Systems to the extent reasonably necessary to enable the Supplier to provide the Services and perform its other obligations under this Agreement;
  - 15.1.3 use the Services in good faith and strictly in accordance with the terms and conditions of this Agreement;
  - 15.1.4 use its best endeavours to preserve the goodwill the subsists in the Licensed Materials;
  - 15.1.5 comply with all applicable Laws;
  - 15.1.6 maintain adequate security and safety for any property (including intangible property) owned by the Supplier and within the possession or control of the Customer; and
  - 15.1.7 take all necessary steps to prevent any Viruses being introduced into the Supplier's Systems.
- 15.2 When using any Service supplied under this Agreement, the Customer must comply with:
- 15.2.1 any direction given by a Regulator; and
  - 15.2.2 any reasonable directions of the Supplier.
- 15.3 The Customer must not use or attempt to use a Service, and must use all reasonable endeavours to ensure to prevent End Users using or attempting to use a Service:
- 15.3.1 in a manner which is not in accordance with any Law;
  - 15.3.2 to infringe any person's rights;
  - 15.3.3 to expose the Supplier to liability;
  - 15.3.4 to transmit, publish or communicate material which is abusive, offensive defamatory, menacing or unwanted;
  - 15.3.5 in a way which does, or might reasonably be expected to, damage, interfere with or interrupt the Service or the Supplier Network.

- 15.4 The Customer is solely responsible for ensuring that it has all necessary consents, permissions and authorisations in place to acquire and resupply each Service and to End Users, including any necessary consent from an End User, third party suppliers or service providers and Regulators.
- 15.5 The Customer is solely responsible for, and must ensure that each End User is aware that the Customer is solely responsible for:
- 15.5.1 managing its relationship with End Users;
  - 15.5.2 receiving, managing, responding to and resolving fault reports, complaints and enquiries about, or in connection with, any Service;
  - 15.5.3 receiving, managing, responding to and resolving fault reports, complaints and enquiries about, or in connection with, any service provided using a Service;
  - 15.5.4 billing and collecting payment from End Users for all services provided using a Service;
  - 15.5.5 informing End Users that, where a Service is a Carriage Service, the Supplying Carrier may be required to intercept communications over the Service and may also monitor the End User's usage of the Service and communications sent over it.
- 15.6 Subject to any express provision in this Agreement to the contrary and except to the extent that such rights may not be excluded or limited as a matter of applicable Law, the Customer must not:
- 15.6.1 engage in any misleading or deceptive conduct, or conduct likely to be misleading or deceptive, in relation to its use of the Services;
  - 15.6.2 remove, alter, cover or obfuscate any copyright notices, trademark notices or other proprietary rights notices placed or embedded on or in the Licensed Materials;
  - 15.6.3 sell, transfer, licence, rent, lease, loan, provide, distribute or otherwise transfer all or any portion of the Licensed Materials to any third party;
  - 15.6.4 access or attempt to access the Supplier's Systems without the prior written consent of the Supplier; or
  - 15.6.5 disclose passwords (if any) supplied by the Supplier to access the Supplier's Systems to any person other than its Personnel with a need-to-know.

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## 16. Resolution of Disputes

- 16.1 A Party claiming that a dispute (**Dispute**) has arisen under or in connection with this Agreement must notify the other Party in writing giving details of the dispute.
- 16.2 During the ten (10) Business Day period after a notice is given under clause 16.1 (or any longer period agreed in writing between the Parties) (the **Initial DR Period**) the Parties' Contract Managers must work in good faith to resolve the Dispute.
- 16.3 If the Dispute is not resolved by the Parties within the Initial DR Period, the Dispute must be referred to the Customer's chief information officer (or equivalent) and the Supplier's chief information officer (or equivalent), who must work together in good faith to resolve the

Dispute within a period of ten (10) Business Days (or any longer period agreed in writing between the Parties).

16.4 While the procedure set forth in this clause 16 is being followed, both Parties must continue to fulfil their obligations under this Agreement.

16.5 The procedure set out in this clause does not limit or exclude a Party's rights under this Agreement or at common law or equity (including the right to make applications for interim relief, including injunctions).

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## **17. Termination**

### **Termination by the Customer for cause**

17.1 The Customer may terminate this Agreement with immediate effect by providing written notice to the Supplier if the Supplier is in material breach of this Agreement and fails to remedy the breach within thirty (30) days of its receipt of a notice requiring it to do so.

### **Termination by the Supplier for cause**

17.2 The Supplier may terminate this Agreement in whole or in part with immediate effect by providing written notice to the Customer if the Customer is in material breach of this Agreement and fails to remedy the breach within thirty (30) days of its receipt of a notice requiring it to do so.

### **Termination by either Party for insolvency**

17.3 Either Party may terminate this Agreement in whole with immediate effect by providing written notice to the other Party if the other Party is subject to an Insolvency Event.

### **Termination of Services**

17.4 The Supplier may terminate the provision of any Service without cause on the provision of not less than [3 months' notice] to the Customer.

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## **18. Effects of Termination**

### **Return of Confidential Information and property**

18.1 On termination or expiration of this Agreement, each Party must promptly return to the other Party (or at the request or with the consent of the other Party, destroy):

18.1.1 all Confidential Information (including copies, summaries and excerpts);

18.1.2 all software, hardware, books, documents, papers, materials, equipment, customer lists, technical information, data and reports; and

18.1.3 any other property,

(in whatever form, including in electronic format) of or belonging to the other Party which are in its possession or control.

### **Survival**

- 18.2 On termination or expiry of this Agreement:
- 18.2.1 the obligations of confidentiality (but not the rights to use or disclose) under clause 11;
  - 18.2.2 clauses [1, 2, 8 and 11.5 to 35 (excluding clause 14.1)]; and
  - 18.2.3 any other provision of this Agreement which expressly or by implication is intended to come into or remain in force on or after termination or expiration of this Agreement,
- will continue in full force and effect notwithstanding any such termination.
- 18.3 Termination or expiration of this Agreement for whatever reason does not affect the rights and obligations of the Parties which have accrued due prior to the date of termination or expiration, including the right to claim damages as a result of a breach of this Agreement.

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## 19. Limitation of Liability

### Unlimited liability

- 19.1 The exclusions and limitations on a Party's (or its Affiliates') liability in this Agreement, including this clause 19, do not apply in the case of:
- 19.1.1 a breach of clause 11;
  - 19.1.2 the indemnity given by the Customer under clause 13.2;
  - 19.1.3 the indemnity given by the Customer under clause 14.5;
  - 19.1.4 a breach or misappropriation of a Party's (or its licensors') Intellectual Property Rights;
  - 19.1.5 the Customer's obligation to pay any Fees due and payable under this Agreement;  
or
  - 19.1.6 any liability to the extent that the same may not be excluded or limited as a matter of applicable Law.

### Exclusion of indirect loss

- 19.2 Subject to clause 19.1, the Supplier (and its Affiliates) is not liable, whether in contract, tort (including negligence), under an indemnity, breach of statutory duty, or otherwise, under or in connection with this Agreement for any indirect, consequential or special loss or damage, even if the Supplier (or its Affiliates) has been advised of the possibility of such loss or damage, or for any loss of profits, loss of sales, loss of business or agreements, loss of goodwill, loss of or wasted management of staff time, loss of use or corruption of software, loss or corruption of data or loss of anticipated savings.

### Cap on the Supplier's liability

- 19.3 Subject to clauses 19.1 and 19.2, the Supplier's (and its Affiliates') total maximum liability to the Customer for all Loss sustained, incurred or suffered by the Customer (a **Customer Claim**) arising under or in connection with this Agreement, whether in contract, tort (including negligence), under any indemnity, breach of statutory duty, or otherwise, is limited

for all Customer Claims in aggregate to an amount equal to one hundred per cent (100%) of the total Fees paid by the Customer to the Supplier under this Agreement in the successive twelve (12) month period prior to the most recent Customer Claim.

### **Customer Claims**

- 19.4 Any Customer Claims by the Customer under or in connection with this Agreement must, to the extent permitted by applicable Law, be brought by the Customer itself against the Supplier and not against the Supplier's Affiliates or the Supplier's Personnel.
- 19.5 For the avoidance of doubt, the Customer acknowledges and agrees that, subject to clause 19.1, the Customer cannot bring a Customer Claim against the Supplier if the total value of Customer Claims already made against the Supplier exceeds the relevant limitation of liability amount determined in accordance with clause 19.3.

### **Limitation where the Customer contributes to loss or damage**

- 19.6 Any liability of the Supplier for any Loss sustained, incurred or suffered by the Customer arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is reduced to the extent that the Customer or the Customer's Personnel contributes to the Loss.

### **Obligation to mitigate**

- 19.7 The Customer must (and must procure that its Affiliates) promptly mitigate any Loss likely to be or actually sustained, incurred or suffered by the Customer.

### **Benefit for the Supplier and the Supplier's Personnel**

- 19.8 In entering into and obtaining the benefits of the exclusions and limitations of liability in this Agreement, including this clause 19, the Supplier acts on its own behalf and as trustee for each of the Supplier's Personnel.

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## **20. Force Majeure**

- 20.1 Notwithstanding any other provision of this Agreement, neither Party will be in breach of this Agreement or otherwise liable to the other Party (or its Affiliates) as a result of any delay or other failure in the performance of its obligations under this Agreement (other than an obligation to pay money, including the Fees) if and to the extent that such delay or other failure is caused by or arises from any event or circumstance not within the reasonable control of the Party concerned (**Force Majeure Event**), and the time for performance of the relevant obligation(s) is extended accordingly.
- 20.2 A Party whose performance of its obligations under this Agreement is delayed or prevented by a Force Majeure Event must:
- 20.2.1 notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event as soon as reasonably practicable; and
  - 20.2.2 after cessation of the Force Majeure Event, as soon as reasonably practicable notify the other Party thereof and resume full performance of its obligations under this Agreement.

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## 21. Excused Performance

- 21.1 Notwithstanding any other provision of this Agreement, the Supplier will not be in breach of this Agreement or otherwise liable to the Customer as a result of any delay or other failure in the performance of its obligations under this Agreement if and to the extent that such delay or other failure is caused by or arises from:
- 21.1.1 the Customer's non-performance, delayed performance or other breach of its obligations under this Agreement;
  - 21.1.2 the delayed arrival or non-arrival of information or data from the Customer;
  - 21.1.3 information or data supplied by the Customer being faulty, damaged or incorrectly prepared;
  - 21.1.4 any failure by the Customer to obtain all necessary rights and licences in relation to the Intellectual Property Rights of third parties; or
  - 21.1.5 any act or omission of the Customer that has an adverse effect upon the performance by the Supplier of its obligations under this Agreement.
- 21.2 The Customer acknowledges and agrees that:
- 21.2.1 the Supplier may be unable to supply an ordered Service supplied by means of the Supplier Network in the event of a power outage which affects any Supplier Systems, equipment or the Supplier Network; and
  - 21.2.2 the Supplier may be unable to supply an ordered Service due to a failure caused by a third party supplier, including the operator of a third party network.

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## 22. Indemnity Assistance

- 22.1 On a Party (the **Indemnified Party**) becoming aware of any facts that could give rise to a claim by it under an indemnity given by the other Party (the **Indemnifying Party**) in this Agreement, the Indemnified Party must:
- 22.1.1 notify the Indemnifying Party of the same, together with all relevant facts;
  - 22.1.2 allow the Indemnifying Party to defend and have full conduct of any negotiations and settlement of any matter in respect of which the Indemnifying Party has given an indemnity, subject to the Indemnifying Party considering any reasonable request made by the Indemnified Party if the Indemnified Party is likely to suffer any adverse publicity or detriment to its commercial interests; and
  - 22.1.3 provide the Indemnifying Party with such information and assistance (at the Indemnifying Party's expense) as the Indemnifying Party may reasonably request.
- 22.2 If, contrary to what is contemplated by clause 22.1.2, the Indemnifying Party does not assume the defence of any matter in respect of which the Indemnifying Party has given an indemnity, then the Indemnified Party will defend the claim, action or proceeding and will consult with Indemnifying Party (but is not bound to act in accordance with the Indemnifying Party's wishes) before taking any material action in relation to the claim, action or proceeding and will keep the Indemnifying Party fully informed of the progress of the defence.

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**23. Regulations**

- 23.1 The Customer must apply for and obtain all approvals, licences and permits from any Regulator that may be necessary or desirable in relation to the Customer's use of the Services.

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**24. Assignment and Subcontracting**

- 24.1 The Customer must not assign, novate, transfer, sub-contract, sub-licence or otherwise dispose of any or all of its rights and/or obligations under this Agreement without the prior written consent of the other Party (which may be withheld in that Party's absolute discretion).
- 24.2 The Supplier may enter into any sub-contract with any third party for the performance of its obligations under this Agreement without the prior written consent of the Customer. Any such sub-contract does not excuse the Supplier from performing its obligations under this Agreement.
- 24.3 The Supplier may assign, novate, transfer, or otherwise dispose of any or all of its rights and/or obligations under this Agreement to a third party that has acquired a significant part of the Supplier's business, assets or undertaking, without the prior consent of the Customer and, in the case of a novation, the Customer, the Supplier and the relevant third party will each execute a novation agreement in a form reasonably prescribed by the Supplier.

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**25. Variations**

No variation of this Agreement will be effective unless agreed in writing and signed by each of the Parties.

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**26. Entire Agreement**

- 26.1 This Agreement constitutes the whole agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 26.2 Each Party acknowledges that it has not been induced to enter into this Agreement by any representation or warranty other than those contained in this Agreement and, having negotiated and freely entered into this Agreement, agrees that it will have no remedy in respect of any other such representation or warranty except in the case of fraud.

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**27. Rights etc, Cumulative and Other Matters**

- 27.1 The rights, powers, privileges and remedies provided under any provision of this Agreement, including under any indemnity, are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of this Agreement or by applicable Law or otherwise.



27.2 A failure to exercise, or any delay in exercising, any right, power, privilege or remedy under this Agreement by any Party will not impair such right, power, privilege or remedy, or operate as a waiver thereof, in whole or in part.

27.3 No single or partial exercise of any right, power privilege or remedy under this Agreement prevents any further or other exercise thereof or the exercise of any other right, powers, privilege or remedy.

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## 28. Further Assurance

During the Term each of the Parties must, at the cost of the requesting Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the requesting Party may reasonably require to receive the full benefit of all the terms and conditions of this Agreement.

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## 29. Invalidity

If any provision of this Agreement is held to be illegal, void, invalid or unenforceable under the applicable Laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction is not affected, and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction is not affected.

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## 30. Costs

Subject to any express provision in this Agreement to the contrary, each Party must pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

End user contributions for new phone or internet connection	\$270.00 Inc GST
CSP new connection fee	\$37.50 Ex GST
Maximum period to connect premises following a service request on behalf of an end-user	30 Days
Minimum contract for service	30 Days
Type of service sold to CSP	Layer 2 Bitstream

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## 31. Counterparts

This Agreement may be executed in any number of counterparts, which together constitute one Agreement. Any Party may enter into this Agreement by signing any such counterpart.

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## **32. Notices**

- 32.1 Any notice (which term in this clause 32 includes any other communication) required to be given under, or in connection with the matters contemplated by this Agreement must, except where otherwise specifically provided, be in writing in the English language.
- 32.2 Any notice relating to a breach (or an alleged breach) or termination (of purported termination) of this Agreement must be addressed as per the Parties' details set out on the first page of this Agreement (as updated from time to time in accordance with clause 32.3) and may be:
- 32.2.1 personally delivered, in which case it is deemed to have been given upon delivery at the relevant address if it is delivered not later than 17.00 hours on a Business Day, or, if it is delivered later than 17.00 hours on a Business Day or at any time on a day which is not a Business Day, at 09.00 hours on the next Business Day; or
- 32.2.2 sent by pre-paid post (or equivalent), in which case it is deemed to have been given four (4) Business Days after the date of posting (or seven (7) Business Days after the date of posting if international post).
- 32.3 All other notices not expressly subject to clause 32.2 may be sent in accordance with clause 32.2 but alternatively may be sent via email addressed to a Party's Contract Manager as per the details set out on the first page of this Agreement (as updated from time to time in accordance with clause 32.4). Provided that in reply to a notice sent by email the sender does not receive an 'out of office' or 'message undeliverable' (or similar) reply, notices sent by email are deemed to have been given upon sending if sent not later than 17.00 hours on a Business Day, or, if it sent later than 17.00 hours on a Business Day or at any time on a day which is not a Business Day, at 09.00 hours on the next Business Day.
- 32.4 A Party may notify the other Party of any change to its, or its Contract Manager's address details, provided that such notification is only effective on the date specified in such notice or five (5) Business Days after the notice is given, whichever is later.

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## **33. Relationship of the Parties**

- 33.1 Each of the Customer and the Supplier are independent contractors.
- 33.2 Nothing in this Agreement constitutes, or will be deemed to constitute, a relationship of employer and employee between the Parties, a partnership between the Parties or that either Party is the agent of the other Party for any purpose.
- 33.3 Subject to any express provision in this Agreement to the contrary, neither Party has any right or authority to and must not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the other Party or bind the other Party in any way.

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## **34. Third Party Rights**

- 34.1 In entering into and obtaining the benefits, rights and remedies under this Agreement, including the benefit of the Customer's obligations and any indemnity given by the Customer, the Supplier acts on its own behalf.

34.2 The Customer waives any right of subrogation it may have in respect of any indemnity given by it under this Agreement.

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**35. Governing Law and Jurisdiction**

35.1 This Agreement is governed by, and must be construed in accordance with, the laws of New South Wales.

35.2 In relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement (**Proceedings**) each of the Parties irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum.

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## 36. Service Levels

### BEFORE YOU REPORT A SERVICE DIFFICULTY

There are several steps you need to undertake before reporting a service difficulty to Fiber Corporation:

1. Undertake isolation testing and sectionalise the fault to ensure that there is no fault in either the end-users equipment or your own network. This is an Australian Communications Industry Forum requirement. Failure to adhere to this requirement may result in significant down time to your end-user and / or result in incorrect callout charges.

2. Verify and provide the following end-users details:

- Site name
- Address
- Relevant contact numbers, and
- Site access requirements (including hours of access).

3. Specify, at the time of reporting, if your end-user can provide after-hours site access, if required. This is for service difficulties that have a Service Level Agreement (SLA) with coverage outside of normal business hours (Monday to Friday, 9.00am to 5.00pm).

### SERVICE LEVEL AGREEMENTS

Fiber Corporation will attempt to respond to your service difficulty and restore a service within the target timeframes as specified in your Service Level Agreement (SLA) with us.

A single service residential fault will be covered by SLA target of 12h/5d/M-F:

- 12 hour response (working hours)
- 5 day restoration (working days)
- Monday to Friday (excluding public holidays).

It is important that you select SLAs that are aligned with your business and contractual requirements, together with the requirements of your end-users.

RSP Portal is the preferred mechanism for lodging a service difficulty and can be accessed from within the Fiber Corporation Customer Portal.

RSP Portal allows you to:

- Report problems with Fiber Corporation products and services
- Track the progress of any faults reported to Fiber Corporation
- View a summary of faults that have been previously reported against a service number, and
- Extract reports (daily, weekly and monthly) relating to service difficulties.

## **SERVICE LEVEL AGREEMENTS CHARGES**

Service Call Charge for attending your client's premises or somewhere else.  
We may charge you a Service Call Charge unless the Incorrect Callout Charge.

Applies:

- An Incorrect Callout Charge for attending your premise or somewhere else for a fault condition which is found not to be in the Fiber Corporation network but in your private equipment or cabling, unless such equipment or cabling is covered by a separate maintenance agreement with us.
- Labour Charge: Where we attend your premise on a Service Call or fix remotely.
- Materials/Other Charge: This includes all items to support the repair or installation of a Fiber Corporation product or service, and/or consultancy service.

## **SERVICE DIFFICULTY ESCALATION**

There may be occasions where you need to escalate your service difficulty with Fiber Corporation

An escalation is criteria based and must address at least one of the following:

1. Urgent Medical (life threatening), excluding Priority Assistance.
2. Missed appointment/commitment.
3. Missed response or restoration times.

37.

**// ENDS**