



SUPPLY OF SERVICES CONTRACT

version1.0

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ECN PTY LTD (ABN 75 082 665 905) SUPPLY OF SERVICES CONTRACT

Your entry into this document (“Contract”) occurs at the time of your online acceptance of these terms and conditions from time to time or by making an Application you, (“you” or “Customer”) agree to be bound by this Contract.

RECITALS

- A.** ECN PTY LTD (ABN 75 082 665 905) (**ECN, we or us**) and the Customer agree that their relationship whereby ECN will provide the Service (including any Goods from time to time) to the Customer as set out in each and every Service Commencement Notice (**SCN**) issued by ECN to the Customer, is governed by this Contract, and this document records the terms and conditions under which the Customer will be provided with those Services specified in a SCN.
- B.** The parties acknowledge that each SCN describes the Service to be delivered by ECN and each SCN and the Service described is provided under this Contract for the Service Term for that Service
- C.** Where you and ECN have agreed to a ‘wholesale partner’ or ‘reseller’ relationship then you and ECN have also committed to work together for mutual benefit and these areas of collaborations are set out in out in the document styled ‘Wholesale Partner Relationship Terms’.

AGREEMENT BETWEEN ECN AND YOU

1. The parties agree to be bound by this Contract

1.1 Introduction

- (a) We are a specialist provider of network communication services and each Application is assessed by us to ensure that it is technically and operationally sound.
- (b) Your Services will start on and from the Service Commencement Date stated in the SCN and the SCN shall be governed by this Contract for the Service Term.
- (c) In response to your Application we may give you an Order Accepted Notice (OAN) setting out the features of that Service you require us to provide including an estimate of the Fee.
- (d) An OAN will only be issued by us on receipt of an Application from you. You acknowledge that we prepare an OAN at your direction and you may be liable for an Order Cancellation Charge once you have submitted an Application.

1.2 Making this Contract

- (a) We agree to supply you the Services as set out in an SCN, subject to this Contract. The full terms and conditions of our agreement are set out in the Contract.
- (b) This Contract is entered into at the time the Customer makes an Application, or the Customer has accepted the terms and conditions of the Contract SET OUT HEREIN by an authorised person of the Customer on behalf of the Customer.
- (c) The Customers warrants that such an authorised person has the authority to bind the Customer. The Customer warrants that it has done all that is reasonably required to obtain all the necessary internal approvals to enter into the Contract and by making an Application or by using the Service (or both) confirms that they have entered into this Contract.
- (d) This Contract commences on and from the date the following occurs (**Commencement Date**):

- (i) you submit your Application to us and that Application is received by us; and
- (ii) we commence work for you by processing that Application.

APPLICATION FOR A SERVICE

2. The Application for the Service

2.1 Making an Application and the commencement of a Service

- (a) You may make an Application for supply of a Service to you in the following manner or otherwise in a form which ECN deems is an Application from you under this Contract:
 - (i) Emailing to us a description of your requirement;
 - (ii) completing and submitting an online application form located on our website or through our website portal (or both); or
 - (iii) completing paperwork that we have provided you and returning it.
- (b) Subject to our acceptance of your Application and providing you with the SCN in accordance with clause 2.3, our obligation to provide a Service to you under this Contract commences on and from that date we notify you by email or that date specified in an SCN, whichever is the later.
- (c) Once the Service is ready and can be provided, we will deliver to you an SCN and you accept that the SCN is governed by this Contract and that the SCN is accepted on and from that date we deliver the SCN to you.
- (d) From time to time we may include Special Conditions in an SCN, and the Special Conditions apply only to the Services stated in that SCN. To avoid any doubt in the event of any inconsistency between Special Conditions and the Contract, then the terms of the Contract will apply to the extent of any inconsistency.
- (e) You acknowledge and accept that these terms and conditions apply to and the Service acquired by you unless the parties have by written agreement varied the terms of this Contract.

2.2 Other details about an Application

- (a) In this Contract your Application to us, includes a document which we have prepared for you which sets out our proposal to you for the Service. Such a document whether expressly or impliedly approved by you will be an Application under this Contract
- (b) When we receive your Application we need to assess and consider your eligibility for the Services. You accept that we do not guarantee that the Service requested in an Application will be available to you.

2.3 Accepting your Application

- (a) When you request us to supply the Service to you we will assess your Application and we may issue to you an OAN. Any decision by us in this regard shall be made in our absolute discretion and you shall be notified by email or otherwise in writing of our decision to issue an OAN for the Service requested by your Application or reject an Application submitted by you.
- (b) We reserve the right at any time to re-assess your Application or any OAN issued and to issue one or more revised OAN's which incorporates specific requirements for the Service including but not limited to additional hardware, cabling or specific software functionality. You acknowledge that:

- (i) we will liaise with third parties to deliver the Service described in your Application and the actions and charges of those third parties are not within our control; and
 - (ii) to deliver the Service you may need to pay for costs which ECN will only be advised of and be made aware of when the site conditions are being readied for connection to the Service and ECN can not be held responsible in these circumstances; and
 - (iii) where the circumstances in clause 2.3(b)(ii) have arisen you will be responsible for the third party costs and charges well as our reasonable overheads incurred as a result of circumstances described in clause 2.3(b)(ii).
- (c) In the event that we re-assess your Application in the manner contemplated by clause 2.3(b) (either independently or at your request), then:
- (i) the latest OAN provided to you by us will be the statement of the scope and functionality of and Fees payable for that Service: and
 - (ii) you acknowledge and accept that the OAN is the agreed statement of that Service we will provide to you (subject to any changes stated in the SCN).
- (d) You warrant that in any Application for the Service provided by you that the information provided to us by you is true and accurate.
- (e) On the making of the Applications you authorise us to incur a liability for third party charges as the Service can only be delivered to you where the infrastructure required for the Service is available to meet the requirements specified and you agree:
- (i) that any and all charges which a third party will charge us for the establishment of the Service shall be payable by you; and
 - (ii) that where we have estimated a third-party cost or charge to you that is an estimate only and we have no control over what the final third party costs or charges that will be charged by that third party.

2.4 The details in your Service Commencement Notice

- (a) You acknowledge and accept that each SCN issued sets out all of the Fees payable (including any Break Fee payable).
- (b) The SCN may also include details of any additional matters that we have agreed on in relation to the Service, and will specify the fees and charges payable by you for those additional matters.
- (c) If we cancel or terminate the Service such a cancellation applies only to the Service covered by that SCN.
- (d) You accept that we can provide an SCN to you either by fax, by email, or make the SCN available to you on our web portal. The SCN is treated as accepted by you at the time we issue the SCN.
- (e) Once we issue an SCN to you, any changes to the Service stated in an SCN will be deemed a Modification as defined in clause 4 and clause 4 will apply.
- (f) Our obligation to provide the Service to you:
 - (i) is conditional on us confirming the payment arrangements for the Service including but not limited to you providing the requisite authorisations for payment to us by a direct debit authority to a bank account or direct debit authority to a credit card (or both), as requested by us; and
 - (ii) will be governed by this Contract and the SCN issued by us to you.

3. Our rights if you change your mind

- (a) You may, prior to us issuing an SCN, notify us in writing that you withdraw an Application and the effective date of your withdrawal of an Application will be that

- date specified in our written confirmation to you that we have accepted your request to withdraw an Application.
- (b) You acknowledge and accept that in the event that for any reason, your Application does not proceed (including where you have withdrawn an Application in accordance with clause 3(a)) you will pay to us the Order Cancellation Charge and the Order Cancellation Charge shall be due and payable in accordance with our standard trading terms.
 - (c) For the purposes of this Contract the Order Cancellation Charge payable under clause 3(a) shall be that amount which:
 - (i) we have been charged or will be charged by a Supplier (for any reason) which is a cost to us arising from and due to your Application not proceeding; and
 - (ii) ECN's costs in processing your Application, up until the time that your Application is no longer progressed by us irrespective of whether an OAN has been issued or not.

WHILST WE ARE PROVIDING THE SERVICES TO YOU

4. Modifications to the Service

- (a) You acknowledge as follows during the Service Term:
 - (i) from time to time an SCN will need to be amended by us in order to meet your specific requirements or you may request in writing to us to modify the Service (**Modification**);
 - (ii) any changes to any aspect of the Service may result in us requiring an amendment to the applicable SCN for that Service and you will be notified by email or in writing of such an amendment; and
 - (iii) we are at no time obliged to implement or effect any Modification as requested by you, unless:
 - A. you have made the request for the Modification in writing (**Modification Request**);
 - B. we have reviewed the Modification Request and in our absolute discretion either have approved the Modification Request or amended the Modification Request; and
 - C. where required by us, you have paid to us in advance the costs determined by us in our absolute discretion which we will charge for making the Modification.
- (b) To avoid any doubt, we may in response to a Modification Request or a variation to the Service made by us under clause 4(a)(i) issue to you a new SCN and this new SCN replaces the previous SCN for that Service (and such an SCN may include a variation to the Service description , without limitation (including but not limited to a variation to the Fee)).
- (c) Your continued use of the Service as varied in accordance with this clause, confirms your continued acceptance of the Service as set out in the new SCN where one is issued under this clause.

5. Connecting

5.1 Rights and responsibilities

- (a) In accordance with the Telecommunications Legislation (where applicable), we will try to connect some Services within the timeframes stated in the relevant legislation. For any other Service we will try to connect the Service within a reasonable time or within that time as notified to you.

- (b) We decide the route and technical means that we (or a Supplier we engage) use to provide the Service.
- (c) It is your responsibility to reasonably assist and co-operate with us (or a Supplier we engage) to allow us (or a Supplier we engage) to connect and supply the Service to you safely and efficiently. We (or a Supplier we engage) will not be responsible or liable to you for any failure to connect the Service where you have in any manner whatsoever failed to reasonably assist us (or a Supplier we engage) in the connection of the Service to you.

6. Using the Service

6.1 Comply with all laws

In using the Services, you must comply with:

- (a) all applicable laws and all directions given by a Regulatory Authority; and
- (b) all reasonable directions to you given by us in any manner whether by email, in writing or orally, including any directions which we are entitled to make pursuant to any policy we publish from time to time including but not limited to our Fair Use Policy or Acceptable Use Policy or other equivalent policy as issued by us from time to time.

6.2 Prohibited Uses

You must not use, or attempt to use, the Service:

- (a) to commit an offence or to infringe another person's rights;
- (b) in any way, which damages or interferes (or threatens to damage or interfere) with the operation of the Service or with the efficiency of our Network or a Supplier's Network;
- (c) in an excessive or unusual way as determined by us acting reasonably including not in accordance with our Fair Use Policy or Acceptable Use Policy or other equivalent policy as issued by us from time to time;
- (d) in any way which makes it unsafe or which may damage any property or injure or kill any person;
- (e) to transmit, publish or communicate any material which is defamatory, offensive, indecent, abusive, menacing, threatening, harassing or unsolicited;
- (f) use or rely upon the Service for any purpose or in any manner for which the Service is not warranted;
- (g) use the Service for any activities which breach any laws or regulations, infringe a third party's rights, or are contrary to any relevant standards or codes;
- (h) disable any licensing or control features of any software whilst using the Service in any way;
- (i) attempt any of the above or facilitate or assist another person or entity to do or attempt any of the above acts; or
- (j) otherwise misuse the Service, or allow anybody else to do so.

6.3 Your Responsibility

You accept that you:

- (a) are responsible for and must pay for any use of the Service, whether you authorise it or not; and
- (b) will continue to be liable for all charges relating to any use of the Service:
 - (i) if you allow another person to occupy the Premises or use the Service; or
 - (ii) if you do not disconnect the Service when you leave the Premises or transfer legal responsibility for the Service in accordance with clause 22(a); and

- (c) are responsible for and must pay for any use of the Service by any person who uses the Service, or allows someone else to use it.

6.4 Interception

You acknowledge that we may be required to intercept communications over the Service or authorise a third party to do so and may (but are not obligated to) monitor your usage of the Service and communications sent over it for the purposes of ensuring your compliance with our Contract and our compliance with the law, and with any request or direction of a Regulatory Authority, an emergency services organisation or other competent authority.

6.5 Material Terms

Each of clauses 6.2 and 6.3 are Material Terms.

7. Equipment

7.1 Equipment Acquisition

- (a) From time to time prior to the Service being available to be used by you, you may need to acquire equipment, which for the purpose of this clause 7.1 may include software, cabling or any other hardware item and it is your responsibility to acquire that equipment unless we notify you otherwise in writing.
- (b) It is your responsibility to acquire the equipment prior to the commencement of the Service to you.
- (c) In our absolute discretion, we may assist you in identifying the equipment you must purchase and any supplier of that equipment. We are not responsible for your relationship with a supplier of the equipment and it is your responsibility to obtain that equipment and pay the supplier for that equipment.
- (d) You are solely responsible for any equipment purchased by you in accordance with this clause. Clauses 7.3 and 7.4 apply to any equipment acquired by you as contemplated by this clause 7.1.
- (e) You are solely responsible for maintaining such insurance as a reasonable person would maintain in respect of any equipment provided by you (including any equipment which we have purchased on your behalf and sold to you) which is used in any way in the provision of the Service.

7.2 Supply of Our Equipment

- (a) In order to use the Service, we may provide to you equipment or cabling which we own or lease from a third party (**Our Equipment**).
- (b) Where we provide Our Equipment to you in connection with the Service:
 - (i) ownership or title in Our Equipment is not transferred to you;
 - (ii) risk in Our Equipment passes to you on delivery;
 - (iii) you must comply with our reasonable directions relating to our rights of ownership of Our Equipment, including the requirement to return the Equipment to us as directed by us
 - (iv) pay any fees we require you to pay in respect of the Equipment (including but not limited a rental fee or administration fee);
 - (v) you must only use Our Equipment in accordance with the manufacturer's specifications and our directions (which directions may be provided to you in writing, by email or orally);
 - (vi) you are responsible for Our Equipment and must pay us for any loss or damage to Our Equipment, except to the extent that it is caused by us or is due to fair wear and tear;
 - (vii) you must not part with possession of Our Equipment except to us and you must keep Our Equipment free from any encumbrance;
 - (viii) you must allow us to inspect, test, service, modify, repair, remove or replace Our Equipment, or to recover it after the Service is cancelled;

- (ix) you must ensure that Our Equipment will not be altered, repaired, serviced, moved or disconnected except by a person approved by us prior to the alteration, repair, servicing, moving or disconnection;
 - (x) you must ensure that you have all necessary consents and approvals (including landlord approval where applicable) necessary or desirable for us to deliver, install and maintain Our Equipment at the Premises; and
 - (xi) you must provide adequate and suitable space, power supply and environment for all Our Equipment located on the Premises.
- (c) We are not responsible to you or liable to you in any way should you not meet your obligations under one or more of clauses 7.2(b)(viii), 7.2(b)(ix), 7.2(b)(x) or 7.2(b)(xi). You agree to indemnify us for any loss incurred or suffered by us, including loss arising from any damage to Our Equipment arising from a failure by you to meet any of your obligations under this clause 7.2.

7.3 Your Equipment

- (a) You must ensure that all equipment you use in connection with the Service, other than Our Equipment (**Your Equipment**) complies with all laws and relevant technical standards issued by a Regulatory Authority and all reasonable directions by us.
- (b) If we determine in our absolute discretion that you need to make any changes to Your Equipment for any reason, including to avoid any danger or interference caused by it, we will notify you in writing of the changes required. You must ensure that the changes to Your Equipment are made to a standard satisfactory to us within the time stated in any notice given to you under this clause.
- (c) The parties acknowledge and accept that where Your Equipment is situated on a site controlled by us the terms of that arrangement are governed under a separate agreement and where no separate agreement exists then by default the terms of Schedule 3 of this Contract will apply to that collocation arrangement.

7.4 Disconnection of Your Equipment

- (a) If you do not comply with any of your obligations under clause 7.3, we may disconnect Your Equipment from the Service or require you to do so.
- (b) We may give you reasonable notice before disconnection but may do so immediately in an emergency.

7.5 Purchased Equipment

- (a) You may purchase equipment from us for use in connection with the Service (**Purchased Equipment**). You must pay for that equipment in accordance with our trading terms as notified to you from time to time or in accordance with the SCN or any invoice from us.
- (b) Risk in the Purchased Equipment passes to you on delivery of the Purchased Equipment to your nominated delivery address. Title to the Purchased Equipment passes to you when you pay for it in full.
- (c) We will use reasonable efforts to transfer to you any manufacturer's warranty in any Purchased Equipment from the time title passes to you.
- (d) If you purchase the wrong equipment, we may exchange it for you in our absolute discretion only if the equipment you wish to be exchanged is returned to us to our nominated delivery address undamaged and complete with all components and with the packaging intact, within 14 days of delivery.
- (e) If we exchange equipment to you in accordance with clause 7.5(d), you will pay to us all reasonable administration charges and service fees determined by us in our absolute discretion to cover all costs incurred by us arising out of the exchange of equipment.

8. Premises

8.1 Access

In order to provide the Service to you, we may need access to the Premises. You must provide us safe and prompt access to the Premises:

- (a) to install any equipment for the Service you have requested;
- (b) to inspect, test, maintain, modify, repair or replace any equipment; and
- (c) to recover Our Equipment after the Service is cancelled.

8.2 Owner's Permission

- (a) If you do not own the Premises, you must obtain the owner's permission for us to access the Premises and install, and maintain any equipment. By submitting an Application you represent to us that you have obtained that permission.
- (b) You indemnify us against any costs arising in connection with any claim against us by the owner of the Premises relating to our entering the Premises, providing the Service, providing Our Equipment or installing or maintaining any equipment or other item, whatsoever, at the Premises.

9. Quality and Maintenance

9.1 Standard of Service

- (a) We aim to provide, but do not guarantee, continuous or fault-free provision of the Services.
- (b) You acknowledge and agree that we are not and will not be responsible for any damages, costs, expenses or loss, Consequential Loss, including, without limitation any indirect or direct damages for any special, business loss, loss of profits or loss of any data incurred by you as a consequence of the Service outage.

9.2 Customer Support

We will endeavour to provide customer support to you in accordance with our Service Guidelines. Calls outside these hours are generally diverted to a messaging service for action during our normal operating hours, or escalation for some Service types.

9.3 Maintenance

- (a) We may conduct maintenance on any of the Network, equipment or facilities. We will try to conduct scheduled maintenance outside normal business hours but may not always be able to do so. You acknowledge and accept that maintenance under this Contract may also be carried out by a Supplier and any agent, contractor or other representative of a Supplier. All maintenance carried out by a Supplier is outside of our control and we are not liable to you for the impact on you business (including Consequential Loss) of any maintenance carried on by a Supplier and its agents, contractors or other representatives of a Supplier.
- (b) We will make reasonable attempts to perform any Service outage for the purpose of maintenance during historically low use hours based on average use by our customers.
- (c) Where maintenance services are required at the Premises, then we are entitled to charge a Call Out Fee. You permit us to conduct emergency maintenance for the Service on an 'as needed' basis.

9.4 Maintenance of Your Equipment

You are responsible for the proper functioning and security of Your Equipment. You must maintain and repair all of Your Equipment used in connection with the Service.

9.5 Faults caused by You, Your Equipment or by other Suppliers

- (a) Before reporting a fault to us, you must take reasonable steps to ensure that the fault is not a fault in any of Your Equipment. We are not responsible for rectifying any fault in the Service where that fault arises in or is caused by Suppliers' Network or by Your Equipment.
- (b) If you report a fault in the Service and ask us to come to the Premises to repair it and, once at the Premises, we determine that the Service is not faulty or the fault is associated with Your Equipment rather than the Service, we may charge you a Call Out Fee. If you request us to repair Your Equipment, reasonable charges for such repair as determined by us will be payable by you.
- (c) We can charge you for repairing a fault if it is caused by something you do (or do not do), or by something someone else using the Service does (or does not do), intentionally, recklessly or negligently.

9.6 Arrangements with third parties

- (a) The parties acknowledge that from time to time we will provide the Service to you which is a component of the solution you are providing to a third party (**Third Party Solution**).
- (b) Where the Service is part of a Third Party Solution the nature and extent of our obligation to provide the connections for the Service shall be determined by us in our absolute discretion. You are solely responsible for delivering the Third Party Solution.
- (c) You acknowledge and accept that unless otherwise agreed by the parties in writing, we at no time will be liable to any person (including you) for a failure of or fault in a Third Party Solution which incorporates the Service, notwithstanding any other clause of this document.
- (d) Where the Service is used in a Third Party Solution you indemnify us against any claim, loss, liability or damages whatsoever, howsoever arising in respect of the Third Party Solution. You will execute any document reasonably required by us to give effect to this clause 9.6(d).
- (e) You acknowledge and accept that we may use third parties for the purposes of providing the connection for the Service, and you will assist and co-operate with those persons in accordance with clause 5.1 and you must ensure if applicable your customers that utilise a Third Party Solution also co-operate with those persons.

10. Variations to a Service

10.1 Variations made by Us

We may at any time vary the Service if reasonably required for technical operational or commercial reasons. If doing so is likely to have a significant detrimental impact on your use of the Service, we may give you notice in writing of the intended variation at least 7 days before the date on which the variation takes effect.

10.2 Service Term

- (a) Where:
 - (i) an SCN states a term for the delivery of the Service then that period shall be the Service Term and at the expiry of that term and where that Service continues to be delivered the Service Term shall be extended for that period determined under clause 10.2(b); or
 - (ii) an SCN for the Service does not state a term for the delivery of the Service then the term for the delivery of the relevant Service shall be as set out in clause 10.2(b).
- (b) The Service Term shall, as the context so requires, either continue for, or be 1 month and at the end of that month the term shall be automatically extended for a

further 1 month unless a party gives 30 days written notice to the other party at any time that there is to be no further extensions to the Service Term in accordance with this clause.

- (c) Where the Service Term has expired or a party has notified that there is to be no further extensions to the term as contemplated in clause 10.2(b) the parties acknowledge and accept that the Service described in the relevant SCN shall be deemed to no longer be a Service which ECN is obliged to provide under this Contract.
- (d) The parties acknowledge and accept that in relation to a particular Service:
 - (i) you may request and ECN may issue in response to your request a new SCN for the Service where the Service Term for that Service has expired, and the new SCN will state a new Service Commencement Date and Service Term for that Service; and
 - (ii) the Services described in the earlier SCN shall be deemed to no longer be a Service which ECN is obliged to provide under this Contract on and from the Service Commencement Date stated in the later SCN contemplated under clause 10.2(d)(i).

11. Cancelling or Suspending the Service

11.1 Terminating this Contract

We may in our absolute discretion, terminate this Contract:

- (a) by giving you 14 days written notice where you have breached a Material Term; or
- (b) by giving you 30 days written notice at any time during the term of this Contract.

11.2 Cancellation or Suspension by Us

- (a) We may, without liability, cancel the Service:
 - (i) if there is no Service Term specified in your SCN at any time by giving one month's written notice to you;
 - (ii) if a Service Term for a Service is specified in your SCN at any time after the end of the Service Term by giving 30 days written notice to you; or
 - (iii) if we reasonably determine that it is not technically or operationally feasible to supply the Service to you, at any time prior to the expiry of the Service Term by giving 30 days written notice to you.
- (b) We may, without liability, immediately cancel, suspend or restrict the supply of the Service to you if:
 - (i) you fail to pay any amount owing to us by the due date and you fail to pay that amount within 7 days after we give you notice requiring payment of that amount, except that we may not give you such notice in respect of an amount which is validly disputed in accordance with this document;
 - (ii) you breach a term of this Contract (other than a breach which separately gives rise to rights under this clause 11.2(b)) and that breach is not capable of remedy;
 - (iii) you breach a term of this Contract (other than a breach, which separately gives rise to rights under this clause 11.2(b)) and, where that breach is capable of remedy, you do not remedy that breach within 14 days after we give you notice requiring you to do so);
 - (iv) you become bankrupt or insolvent or appear likely to do so and we reasonably believe that it is unlikely that we will receive or retain amounts due and payable by you under this Contract;
 - (v) you vacate the Premises or you die, or in the case of partnership, on dissolution or on the filing of an application to dissolve the partnership and we reasonably believe that it is unlikely that we will receive or retain amounts due and payable by you under our Contract;

- (vi) a Supplier terminates its agreement with us, or ceases to supply services to us, and we are not able to provide the Service using services of an alternate Supplier on terms reasonably acceptable to us;
 - (vii) there is an emergency;
 - (viii) doing so is necessary to maintain, repair or restore any part of our Network or a Suppliers' Network used to supply the Service, or for other operational reasons;
 - (ix) you breach clause 6, or clause 7.3 or your obligations relating to the use of the Service or otherwise misuse the Service;
 - (x) we reasonably suspect fraud or other illegal conduct by you or any other person in connection with the Service;
 - (xi) if we or a Related Entity of ECN is entitled to (or does) suspend, terminate or cancel any other service supplied to you, or is entitled to (or does) terminate any other agreement with you and we reasonably believe or suspect that you are a credit risk;
 - (xii) we are required by law or in order to comply with an order, direction or request of a Regulatory Authority, an emergency services organisation or any other authority;
 - (xiii) the Australian Competition and Consumer Commission (**ACCC**) issues us with a Competition Notice in respect of the Service or we anticipate that it may do so;
 - (xiv) providing the Service to you may be illegal or we anticipate that it may become illegal;
 - (xv) a Force Majeure Event prevents the supply of the Service in accordance with our Contract for more than 14 days;
 - (xvi) we reasonably believe a threat or risk exists to the security off the Service or the integrity of our Network or a Supplier's Network;
 - (xvii) there is excessive usage of the Service;
 - (xviii) we are allowed to under another provision of our Contract; or
 - (xix) we reasonably consider you a credit risk.
- (c) If we suspend the Service under clause 11.2(b), then we may later cancel that Service for the same or a different reason.

11.3 Notice

We may exercise our rights under clause 11.2(b) immediately, but:

- (a) we will try to give you reasonable notice before exercising our rights under clause 14.2 by reason of the circumstances referred to in clauses 11.2(b)(vii), (xii) or (xiii);
- (b) we may be unable to give you notice in the event of an emergency; and
- (c) we will not be required to give you notice if we exercise our rights by reason of the circumstances referred to in clause 11.2(b)(ix).

11.4 Cancellation or Suspension by you

- (a) You may cancel the Service without liability:
 - (i) if there is no Service Term specified, by giving us 30 days notice in writing;
 - (ii) if a Service Term is specified, at any time after the end of the Service Term by giving us 30 days notice in writing;
 - (iii) at any time by giving us notice if:
 - A. we breach a term of this Contract and that breach is not capable of remedy; or
 - B. we breach a term of this Contract and that breach is capable of remedy but we fail to remedy that breach within 30 days after you give us notice requiring us to do so.

- (b) You may cancel the Service before the end of the Service Term by giving written notice to us but you may be required to pay the Break Fee in accordance with clause 12.2(a)(ii).
- (c) You may ask us to suspend the Service by giving notice to us. We will try to do so within a reasonable period if it is a service for which suspension is an option.
- (d) If you request cancellation of the Service before or after the end of the Service Term, you must:
 - (i) do so only in writing by completing a service cancellation form, which is available upon request; and
 - (ii) provide 30 days notice and pay any outstanding charges up to, and including the 30 day notice period and pay us any Break Fee.

12. Consequences of Suspension and Cancellation

12.1 Consequences of Suspension

- (a) If the Service is suspended in accordance with our Contract, then you will not have to pay any charges for the Service while it is suspended. However, if the Service is suspended:
 - (i) by reason of the circumstances referred to in clauses 11.2(b)(i), (ii), (iii), (iv), (v), (viii), (ix), (x), (xi), (xvi) or (xvii); or
 - (ii) for an insignificant period as a result of the circumstances referred to in clause 11.2(b)(vii);

you must pay all charges (other than usage based charges) arising before, during and after suspension in accordance with this Contract.
- (b) If we reconnect the Service that has been cancelled, you may have to pay us a reconnection charge. You will not be required to pay a reconnection charge if the Service was cancelled pursuant to clause 11.4(a)(iii) or due to our fault or negligence.

12.2 Consequences of Cancellation

- (a) If the Service is cancelled in accordance with this Contract (other than in accordance with clause 11.4(a)(ii) or 11.4(a)(iii)):
 - (i) before the Service Commencement Date, we can charge you any costs incurred by us in preparing to provide it to you; and
 - (ii) during the Service Term then you must pay to us the Break Fee.
- (b) You acknowledge and agree that if the Service is cancelled before the end of the Service Term:
 - (i) we will suffer loss in connection with the cost to us of the Network and/or the Supplier's Network no longer required to supply the Service after the cancellation;
 - (ii) the Break Fee represents a genuine estimate of the loss we will incur as a result of the early cancellation and is not a penalty.
- (c) If the Service is cancelled you still have to pay all charges incurred before the cancellation. We will refund any overpayment on your account and any money that you have paid in advance for the cancelled Service on a pro-rata basis to you. However, we can deduct from your refund any amount that you owe to us, such as charges you have incurred before cancellation or any applicable Break Fee.
- (d) In the event that there is credit remaining on your account at the time of cancellation, you will receive the credit via your credit card or bank account notified to us, without being charged the Handling Fee. We reserve the right to charge any associated merchant fees, as they are a reflection of the costs incurred by us to

- prepare the refund for you. If a cheque or other method of refund is required a Handling Fee is payable.
- (e) On cancellation of the Service for any reason:
- (i) you will, at your cost, immediately stop using and return to us, or allow us to remove, any of Our Equipment, equipment you have purchased but not fully paid for, or other material of ours (including any software) on the Premises or in your possession or control;
 - (ii) unless our Contract expressly states otherwise, each person's accrued rights and obligations are not affected;
 - (iii) all other agreements and contracts between the parties continue to apply; and
 - (iv) you must immediately stop using that Service.

13. Resellers or wholesale partners

- (a) Where the Services provided under this Contract are provided to you and you have contracted with third parties to acquire all or part of the Service we provide to you, you are a Reseller (**Reseller**) this clause 13 forms part of this Contract.

13.2 Your Customers

- (a) Where you are a Reseller and have contracts with third parties to acquire all or part of the Service we provide to you (**Your Customers**) and at any time ECN forms the reasonable opinion that;
- (i) you are about to become Insolvent;
 - (ii) you will for whatever reason no longer pay us for the Service; or
 - (iii) you have become a customer of ECN that is an unsuitable customer which ECN no longer wishes to do business with;
- (b) then you:
- (i) must do all that ECN reasonably requires you to do to ensure that Your Customers enter into an arrangement with us directly to receive the Services and pay ECN directly for the Services;
 - (ii) must execute any document reasonably required by ECN to give effect to the assignment of agreements with Your Customers to ECN (or nominee);
 - (iii) authorise us to approach Your Customers directly for any purpose related to our rights under this clause 13; and
 - (iv) must notify Your Customers in a form reasonably required by ECN of either the termination of Your Customers agreement with you or the transfer of Your Customers' agreements to ECN or both.
- (c) We may at any time during the term of this Contract, require that you obtain an authorisation or other such permission or agreement from Your Customers to give effect to our rights under this clause 13.
- (d) Your obligation to obtain and provide to us an authorisation or other such permission or agreement from Your Customers to give effect to our rights under this clause 13 is a Material Term of this Contract and your failure to comply with your obligation under clause 13.2(c) gives us the right to terminate this Contract in accordance with clause 11.1(a).

13.3 Limited power of attorney to us

- (a) This clause records that you grant to each of the Directors of ECN personally a limited power of attorney to sign any document, agreement or undertaking as your attorney which document, agreement or undertaking is required to be signed in order to give effect to the rights of ECN under this clause 13.

- (b) You will comply with any request of ECN to execute any document reasonably required by ECN to record the power of attorney granted under this clause.

PAYMENTS AND OTHER LEGAL MATTERS

14. Charges

14.1 Stated in the SCN

- (a) The charges for the Service are set out in the relevant SCN and include any additional charges set out in the SCN.
- (b) Charges for the Service accrue from the relevant Service Commencement Date. In the case of a Current Service the Service Commencement Date shall be the Commencement Date.
- (c) We may also charge you an additional amount to service, modify, repair or replace the Service or any equipment used in connection with the Service as a result of one or more of the following:
 - (i) a breach of the Contract by you;
 - (ii) a negligent or fraudulent act or omission by you or by any of your employees, agents or contractors or anyone who has access to and uses the Services;
 - (iii) a failure of any equipment, including Your Equipment; or
 - (iv) a failure or fluctuation in electrical power supply, including where caused by an electrical storm.
- (d) You acknowledge and accept that:
 - (i) from time to time in order to provide certain Services to you, we enter arrangements with other Suppliers;
 - (ii) our charges to you for the Service may vary as a result of a variation of a Supplier's charges to us; and
 - (iii) we may pass on any additional charges a Supplier charges to us to you.
- (e) We will give you reasonable notice of any proposed increase in charges or additional charges, and if provided for under the applicable law you may cancel the Service without incurring any Break Fee or other charges (other than those incurred by you before cancellation), by giving notice to us by the time specified under the relevant legislation or if no time is specified under legislation, within 42 days after the date we give you notice of the proposed variation.
- (f) A change in the charges payable for the Service notified to you in accordance with clause 14.1(e) is deemed a variation to the applicable SCN.

14.2 Charge associated with an Application

- (a) You acknowledge and accept that on and from the issuing of an OAN, we will incur costs and charges.
- (b) Where for any reason after an Application is received and we do not issue you with an SCN for a substantially similar Service as described in that Application, then you will be liable to the Order Cancellation Charge and this will be payable by you on the issuing of an invoice by us for the Order Cancellation Charge.
- (c) An Order Cancellation Charge associated with any Application that does not proceed may be invoiced by us at any time during the term of this Contract.

15. Billing and Payment

15.1 Bills

- (a) We may bill you:
 - (i) for recurring or fixed charges, in advance;

- (ii) for variable charges, in arrears (for example, excess traffic usage charges);
 - (iii) for installation or setup charges, before or after installation;
 - (iv) for any equipment you purchase from us, on or after delivery;
 - (v) for any other charges set out in this Contract your OAN or the subsequent SCN, in accordance with those documents; or
 - (vi) using more than one invoice in the same month for billing alignment purposes where applicable.
- (b) We will bill you in accordance with the details stated in the SCN. We can also issue an interim bill at any time. The charges payable by you are those charges set out in the SCN unless no SCN has been issued then the charges payable under the OAN will apply.
- (c) We may reissue any bill if any error is subsequently discovered. If you have overpaid as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from us, we will refund the overpayment promptly after your request and after deduction of any other amounts due by you to us.
- (d) Subject to clause 16, you must pay each amount billed by the due date specified in the bill. Upon payment of an invoice you acknowledged and accept that the charges stated therein have been validly incurred and are not in dispute.
- (e) A surcharge for payment by credit card may be charged by us in our absolute discretion.
- (f) Where a direct debit arrangement has been established we shall effect payment of our bill on or before the due date. If a direct debit payment request is rejected / dishonoured by your financial institution, you will be charged an administration fee to cover costs incurred by us as well as any fees or charges which our financial institution charges us.
- (g) If you do not pay a bill:
- (i) by its due date, then we may charge you a late fee of up to 8% interest of the amount due under the invoice, compounding on a monthly basis; and
 - (ii) in addition, you must pay our reasonable expenses and costs in recovering payment from you. We can also suspend or cancel the Service in accordance with clause 11.2(b)(i).
- (h) If you pay a bill by cheque and the cheque is dishonoured, you may be charged an administration fee to cover costs incurred by us due to your cheque being dishonoured.

15.2 Charges not expressed to be GST inclusive

If GST is imposed on any supply we make to you under our Contract and the charges, or other consideration, payable for the supply are not expressed to be inclusive of GST, you must pay to us an additional amount calculated by multiplying the value of that GST-exclusive consideration (without deduction or set-off) by the prevailing GST rate. We will issue a tax invoice to you for any supply on which GST is imposed. This clause applies if you ordinarily reside in a State or Territory within Australia.

16. Billing Disputes

16.1 Bills valid unless disputed

- (a) If you wish to dispute a charge in a bill you must do so in accordance with this clause.
- (b) Except to the extent you raise a valid billing dispute in respect of a bill issued by us, you agree that the bill is valid and payable (and you must pay any undisputed amount included in the bill in accordance with clause 15.1).
- (c) If you dispute the whole or any part of the amount claimed in an invoice submitted by us pursuant to this Contract, you will pay the undisputed portion when the invoice is due.

16.2 Raising a valid bill dispute

- (a) To raise a valid billing dispute, you must, within 3 months of the date of the bill, make a good faith request to us to investigate the specific charges or bill in dispute and provide details which show that a particular charge or bill is incorrect (for example missing details, wrong account details and wrong addresses, wrong service number or incorrect Service charges).
- (b) If you raise a valid billing dispute, then we will, within a reasonable timeframe, conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute. At the end of these investigations, if we reasonably determine that:
 - (i) there is an error in the bill, we will issue a corrected invoice or adjustment note as appropriate and, if you have overpaid as a result of the billing error, credit your account with the overpayment or, if you have cancelled your Service with us, refund the overpayment promptly after deduction of any other amounts due by you to us; or
 - (ii) the bill is correct, you must pay any outstanding amount (together with interest on that amount calculated in accordance with clause 15.1(g) from the original due date for payment) within 5 Business Days.

17. Security

17.1 You may be required to give us security

- (a) From the Commencement Date if so requested by us you will give us the financial security as requested by us from time to time as security for the payments due to us for delivering the Service. If the requested financial security is not provided, then we can suspend the Service without further notice.

17.2 Customer authorises us to do credit check

- (a) On entering into this Contract, you consent to us obtaining from a credit reporting agency a credit report containing personal credit information about you and all your related entities and to us using, storing, disclosing, transferring and exchanging the same with any credit reporting agency or creditor for the purposes of:
 - (i) assessing your capacity to pay monies owed to us at any time, directly or indirectly; and
 - (ii) assessing your suitability as a Guarantor.

17.3 PPSA

If we determine that this Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, then you acknowledge and accept that you will be bound by the terms set out in Schedule 1. You will do any act including executing any document reasonably required by us to give effect to the rights and obligations set out in Schedule 1.

18. Indemnity

- (a) The Customer indemnifies ECN against any damages, costs, and liability that may result from the Customer's use of the Services. The Customer further indemnifies, and holds harmless ECN and its officers, employees and agents (**those indemnified**) from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (i) any act or omission by the Customer carried out in respect of the Service; or
- (ii) any wilful, unlawful or negligent act or omission of the Customer (whatsoever).

19. Warranties

- (a) ECN provides each of the Services “as is” and, to the extent permitted by law, disclaims all warranties, liability or conditions, express or implied, in relation to this Contract including but not limited to implied warranties as to title, merchantability and fitness for a particular purpose, or for negligence.
- (b) To the extent that any law prohibits ECN from so disclaiming any warranty or condition, to the extent permitted by law, ECN limits its liability in the manner permitted by Australian Consumer Law or equivalent legislation in the jurisdiction which implies certain consumer protection warranties.
- (c) Without limiting Clause 19(b), to the extent permitted by law in no circumstances will ECN be liable to the Customer for any Consequential Loss suffered by the Customer or a Related Entity of the Customer arising in connection to this Contract.

20. Exclusions, Limitations and Disclaimers of Liability

20.1 General

- (a) ECN exercises all due care to provide accurate, complete and timely information. However, ECN accepts no liability for any errors or omissions in such information. The Customer is responsible for making an independent judgment and assessment of these factors. The Customer may not rely upon any opinions, interpretations, statements, assurances or representations that ECN may give.
- (b) The Customer acknowledges that it has examined the functionality and capability of the Service and is satisfied that the Service is suitable for its purpose. The Customer is responsible for determining that the Service is suitable for its use. The Customer must make its own independent judgment and assessment and should not rely upon any opinions, interpretations, statements, assurances or representations of ECN.
- (c) The Customer is not relying on any representation given by or on behalf of ECN (written or otherwise) other than as contained in this Contract. Without limiting the generality of the foregoing, the Customer is not relying on any descriptions, illustrations or specifications contained in any document, including manuals, catalogues or publicity materials produced by ECN.
- (d) ECN cannot warrant that any Service will be compatible with every computer and operating environment. It is the Customer’s responsibility to ascertain whether the Service is compatible with its computers and operating environment.
- (e) ECN shall not be liable for any delay, damage, loss, injury, failure or breakdown that the Customer may suffer as a consequence of any defect or deficiency in the Service, including any delay, damage, loss, injury, failure or breakdown to the Customer’s software and equipment.
- (f) ECN does not warrant that each Service will meet the Customer’s requirements.
- (g) ECN does not represent and warrant that the use of the Services will reduce the Customer’s costs.
- (h) The Customer uses the Services entirely at its own risk.
- (i) ECN shall not be responsible for any failure, delay or interruption in the Customer’s use of the Services, including without limitations, the following events of causation:
 - (i) system crashes;
 - (ii) computer malfunctions;
 - (iii) hardware faults;
 - (iv) system errors;
 - (v) security breaches;

- (vi) theft;
- (vii) incompatibility issues;
- (viii) telecommunications problems; or
- (ix) any Supplier problems.

20.2 Quality of Service

- (a) Certain laws imply terms into contracts for the supply of goods or services that cannot be excluded (e.g. that services are provided with due care and skill and goods are reasonably fit for their purpose and of a certain quality). If those terms are implied into our Contract and we breach them, we accept liability for the breach.
- (b) To the maximum extent permitted by law including the Australian Consumer Law, to the extent that our liability to you is not excluded by any other term of this document if we are liable to you (howsoever arising) under the Service, our maximum liability in aggregate to you or any person by or through you in relation to this Contract, its subject matter or the Service, will not exceed the average monthly amount paid by you for that Service in the 6 months before the liability arises.

20.3 Customer Service Guarantee

You may also have certain rights and remedies under the Customer Service Guarantee, which establishes minimum connection and fault repair times and entitles you to specified amounts of damages if they are breached. We accept liability to you in accordance with, and subject to, the Customer Service Guarantee.

20.4 Suspending the Service

We exclude any liability to you (whether based in contract, tort (including negligence), statute or otherwise) for suspending the Service where we do so in accordance with our Contract.

20.5 Consequential Loss

We exclude any liability to you for any Consequential Loss suffered or incurred by you in connection with the supply or Interruption of any goods or services (including the Service) or with our Contract (whether based in contract, tort (including negligence), statute or otherwise).

20.6 Force Majeure Event

We are not liable for failing to comply with any of our obligations under this Contract if a Force Majeure Event occurs which prevents us from performing those obligations.

20.7 When We are Not Liable to You

We are only liable to you in the cases set out in this clause 20. Otherwise we exclude any liability we might otherwise have to you in connection with our Contract or the Service to the extent that such liability is not expressly accepted by us under this clause 20.

21. Public Addressing Identifiers

- (a) The Service may use identifiers such as an IP address or domain name (“**Public Addressing Identifiers**”). You must comply with the requirements of any Regulatory Authority or other body which administers Public Addressing Identifiers.
- (b) You acknowledge and agree that:
 - (i) we do not control the allocation of Public Addressing Identifiers;
 - (ii) we are not liable to you if we are required to change, withdraw, suspend or reassign any Public Addressing Identifiers as a result of any direction given by a Regulatory Authority or other body which administers Public Addressing Identifiers; and
 - (iii) on cancellation of the Service, your right to use a Public Addressing Identifier may cease.

22. Assignment and Subcontracting

- (a) You may assign or transfer your right and obligations under this Contract only if you obtain our prior written consent.
- (b) To the extent they are assignable; we may at any time assign:
 - (i) our rights under our Contract to any person;
 - (ii) assign our obligations under our Contract to a Related Entity that is able to perform those obligations and, if that Related Entity of ECN undertakes to perform those obligations, we will be released from any further performance with effect from the date of transfer.
- (c) We may perform any of our obligations under our Contract by arranging for them to be performed by another person, including a Supplier or a Related Entity.

23. Dispute resolution by mediation

23.1 Condition precedent to start of mediation

If any dispute between the parties arises from this document (whether during the term of or after termination of this document) (**Dispute**), the parties agree to resolve it in the manner set out in this clause, and a party may not start court proceedings or arbitration concerning the Dispute unless:

- (a) the party starting proceedings has complied with this clause;
- (b) the party starting proceedings seeks urgent interlocutory relief; or
- (c) another party has first started proceedings other than by complying with this clause.

23.2 Notice of dispute

Where a Dispute has arisen, a party claiming that a Dispute has arisen must notify each other party to the Dispute, specifying the nature of the claim (**Dispute Notice**).

23.3 Resolution by negotiation

- (a) During the seven Business Days after the date the Dispute Notice is given (or a longer period as the parties may agree in writing) each party must:
 - (i) prepare, and exchange with the other parties, a brief statement setting out their own position on the Dispute and its reasons for adopting that position; and
 - (ii) give to the other party any information it may reasonably require to consider the issues relevant to the Dispute.
- (b) Within seven Business Days after the date the statements are due to be exchanged under clause 23.3(a), the chief executive officer of each party (or the party in person, if the party is a natural person) must meet, and use their best endeavours to resolve the Dispute each having full authority to do so.
- (c) The meeting contemplated under clause 23.3(b) must not last more than two days in total.
- (d) If the parties to the Dispute do not resolve the dispute in accordance with this clause 23.3, then clause 23.4 will apply.

23.4 Mediation

The Dispute must be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

24. General

24.1 Changes to this Contract

- (a) You agree that the terms and conditions of this Contract may be amended by us from time to time. Changes to the Contract may be made by us without your agreement.
- (b) Subject always to the relevant legislation and in our absolute discretion, we will notify you at least 14 days before the proposed change takes effect. We may notify you directly by publishing the updated terms and conditions on our website's terms and conditions page.

24.2 Telecommunications Legislation

Where, Telecommunications Legislation permits us to supply telecommunications services to you on the Terms and Conditions of a "Standard Form of Agreement". This Contract is our "Standard Form of Agreement". Under the Telecommunications Legislation all the parties must comply with the Contract unless the parties have agreed otherwise.

24.3 Personal Information

- (a) In the case where you provide us with Personal Information about you as an individual we will deal with that information in accordance with our Privacy Policy. Our Privacy Policy is located on ECN's website.
- (b) You acknowledge that the Services may require us to store on our servers personal information collected by and disclosed to third parties which has been provided to you. You have determined that the Service meets your obligations as a collector, user and holder of personal information under the Privacy Act 1988 (Cth) or as a provider of a service to a person who collects uses or holds personal information disclosed to them. We agree to meet with you on a regular basis to discuss any issues which you have notified to us in writing relating to your compliance with the Privacy Act 1988 (Cth) requirements.
- (c) Nothing in this clause 24.3, obliges ECN to amend any Service:
 - (i) specified in an SCN unless such a variation to an SCN (including the fees/ charges payable) is mutually agreed to by ECN and you subsequent to a meeting carried out under this clause; and / or
 - (ii) so that it is not compliant with any legislation imposing obligations on a telecommunications provider to do or not do a certain act or omission.

24.4 Confidentiality

- (a) The parties each agree to keep confidential the other's Confidential Information. The parties will not use or disclose the other's Confidential Information for any purpose, other than:
 - (i) to the extent necessary to perform obligations or exercise rights under our Contract;
 - (ii) to the extent disclosure is required by law or the listing rules or a stock exchange or a direction by a Regulatory Authority; or
 - (iii) to professional advisors in connection with our Contract.
- (b) For clarity, we may refer to you as a customer of ours in our press releases, or in our marketing sales or financial material or reports.

24.5 Notice

- (a) A notice or other communication to a party under this Contract ("notice") must be:
 - (i) where the sender is the Customer, must be signed by either an officer or authorised signatory of the Customer; and
 - (ii) addressed as follows:

- A. if to the Customer to the Customer's contact email address ECN has in its files; and
- B. if to the ECN, to invoice@ecn.net.au,
or a substitute address notified to the sender by the party.
- (b) How notice must be given and when notice is received:
- (i) A notice must be given by one of the methods set out in the table below.
 - (ii) A notice is regarded as given and received at the time set out in the table below.
 - (iii) However, if this means the notice would be regarded as given and received outside the period between 9.00 am and 5.00 pm (addressee's time) on a Business Day, then the notice will instead be regarded as given and received at 9.00 am (addressee's time) on the following Business Day.

Method of giving notice	When notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the third Business Day after the date of posting
By email to the nominated email address	On receipt of a transmission report confirming successful transmission of the email received by the sender of the email, or 24 hours after the time the email has been sent to the nominated email address whichever is the earliest.

24.6 Waiver

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this document, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this document or default under this document as constituting a waiver of that right, power, authority, discretion or remedy.

24.7 Further Assurance

All parties must do all things reasonably necessary to give full effect to this document and the transactions contemplated by this document.

24.8 Severability

If any part of this document is, or becomes, legally invalid or unenforceable, the remainder of this document subsists and remains enforceable.

24.9 Entire Understanding

This document contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this document and relating to any matter dealt with in this document are merged in this document and do not have any effect from the date of this document.

24.10 Governing Law

- (a) This document is governed by the law of Queensland.

- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

24.11 Assignment

The Customer must not assign its rights under this document without our written consent.

24.12 Precedence

- (a) This Contract sets out the standard terms and conditions on which we supply the Service to you. If there is any inconsistency between any of the terms of the Contract and any SCN, the order of precedence will be the:

- (i) Contract;
- (ii) SCN;
- (iii) Wholesale Partner Relationship Terms (or equivalent),

except that clauses 14 to 20 of this Contract will always prevail over all other terms in the Contract.

25. Definition and Interpretation

25.1 Definition

In this document:

Application means the request from you to us for the provision of the Service, made either directly to us in writing (including email) or in accordance with the format specified on our website (or any on - line 'portal' established by us) or otherwise notified by us from time to time. To avoid any doubt the Service requested for us to provide may include, you buying from us equipment or product(s).

Bank Guarantee means an irrevocable and unconditional bank guarantee payable on demand:

- (a) issued by an Australian trading bank registered pursuant to the Banking Act 1959 (Cth) or other financial institution approved in writing by ECN; and
- (b) in a form approved by ECN.

Break Fee means a cancellation fee or termination charge (if any) calculated in accordance with the formula stated in the SCN or otherwise is that amount notified to you in writing from time to time.

Business Day means a day that the banks are open for trading in Brisbane but not a Saturday, Sunday or public holiday.

Call Out Fee means the fee for providing maintenance services after hours to you as notified from time to time to you by us either through our website or otherwise in an SCN.

Confidential Information means for a party all information of that person (**Owner**) of a confidential nature, which another person (**Recipient**) first becomes aware, whether before or after the date of the first Application received from the Customer, either through disclosure by the Owner to the Recipient or otherwise through the Recipient's involvement with the Owner. Confidential Information does not include information:

- (a) The Recipient creates (whether alone or jointly with any person) independently of the Owner's Confidential Information;
- (b) That is public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom it has disclosed the information); or

- (c) Obtained without restriction as to further disclosure from a source other than the Owner through no breach of confidentiality by that source. In respect of us, “Owner” and “Recipient” includes us and each Related Entity of ECN.

Consequential Loss means:

- (a) Loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages; and
- (b) Any penalties or fines imposed by a Regulatory Authority.

Credit Information means:

- (a) Personal identifying particulars including your name, gender, current address (and your previous address), date of birth, telephone number, mobile number, banking details, credit card details, name of employer and drivers licence number;
- (b) Your application for credit or commercial credit - the fact that you have applied for credit and the amount;
- (c) The fact that we are a current credit provider to you and any credit limit on your account;
- (d) Payments which are overdue by more than 60 days and/or for which debt collection action has started;
- (e) Advice that your payments are no longer overdue in respect of any default that has been listed;
- (f) The fact that, in our opinion, you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations);
- (g) Information about any payments, including cheques and credit cards which have been dishonoured;
- (h) Court judgments or bankruptcy orders made against you; and
- (i) The fact that we have ceased providing the Service to you (and the timing of that cessation of service).

Credit Rating means information about your credit worthiness, credit standing, credit history or credit capacity that credit providers may give to each other under the *Privacy Act 1998 (Cth)*.

Customer Service Guarantee means any performance standards issued under Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)*.

Contract means this document which sets out the terms upon which we provide the Service.

Fees means all of the charges which are payable by you in accordance with this Contract.

Force Majeure Event means any event, outside that person’s reasonable control, and includes circumstances and events beyond the control of a person which cumulatively cause the non-delivery of the Service (which cause may include a third party refusing to give an authorisation or permission to do a certain act), a failure or fluctuation in any electrical power supply, failure of air conditioning or humidity control, electromagnetic interference, cable cut, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act of omission, failure or delay of any third party or any failure of any equipment owned or operated by any third party (including any Regulatory Authority or Supplier).

Goods means any goods which includes any one or more of any of the following; equipment, hardware or software supplied by us to you under this Contract.

Guarantee means a deed of guarantee and indemnity provided by the Guarantor in favour of ECN in a form reasonably acceptable to ECN.

Guarantor means the person which has given us a Guarantee for the benefit of ECN in order to secure the payment for a Service or Services.

Handling Fee means a fee incurred by us to provide you with a refund.

Insolvent includes having a receiver, manager, administrator, provisional liquidator or liquidator appointed to you, you entering into any scheme of arrangement with your creditors, a mortgagee entering possession or disposing of the whole or any part of your assets or business.

Interruption in the supply of Goods or the Service means a delay in supplying, a failure to supply or an error or defect in the supply of, those goods or that Service.

Material Term is a term which the parties acknowledge and accept is for the purposes of this Contract a fundamental term of this Contract and a failure to comply with such a term will be a fundamental breach of this Contract by you, which entitles us to terminate this Contract in accordance with clause 11.1(a).

Network means a telecommunications network, equipment, facilities or cabling.

Order Accepted Notification or **OAN** means the document issued by us to you which states the Service requested by you and may include details of the fees, cost and charges payable by you. For any OAN a later version of the OAN can be issued by us (**Revised Order Accepted Notification**) or (**ROAN**) which sets out the revised Services to be provided to you and includes details of the fees, cost and charges payable by you. The latest OAN issued by us replaces any previous OAN for that Service.

Order Cancellation Charge means those charges payable by you in the circumstances set out in clause 3

Personal Information means information or opinion about an individual from which that individual's identity is apparent or can reasonably be ascertained and includes your name, current and previous addresses, service number, date of birth, email address, bank account or credit card details, occupation, driver's license number and your Credit Information.

PMSI means a purchase money security interest as defined in the PPSA.

PPSA means the Personal Property Securities Act 2009 and any other legislation and regulations in respect of it and the following words, and all related terms used in this document have the respective meanings given to them in the PPSA: "security interest", "security agreement", "financing statement", "financing change statement", "verification statement", "attached", "attachment" and "perfected".

PPSR means the Personal Property Securities Register.

Premises means locations at which we supply the Service and locations to which we need to have access to supply the Service.

Purchased Equipment has the meaning set out in clause 7.4.

Regulatory Authority means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman or any other government or statutory body or authority which is a successor to a body stated herein.

Related Entity means an entity that is related to a person in a manner specified under section 50 of the Corporations Act 2001.

SCN or **Service Commencement Notification** or **Order Completion Notice** means the document styled Service Commencement Notification or Order Completion Notice (or similar title) issued by us to you which document includes the description of the scope, functionality and standard of the Service to be provided, fees, pricing, Service Term and any other matters as notified via our website or in writing, by email or otherwise to you from time to time as well

as including (but not limited to) any additional details relevant to that Service such as fees or charges for features, goods or equipment provided by us to you as part of that Service.

Service means the service requested by you in your Application and ancillary services provided to you by us in connection with that service. The Service that will be provided under this Contract will be as described in the SCN, and to avoid any doubt includes any related goods (including equipment) and ancillary services provided to you by us in connection with that service as specified in the SCN. The **Services** refers to collectively each Service acquired by you from us under one or more separate contracts.

Service Commencement Date means the date determined under the SCN.

Service Guidelines means the document published by us from time to time styled ECN Service Guideline.

Service Term means that term specified in the relevant SCN commencing on the Service Commencement Date, and where no term is specified in the SCN, then the term shall be determined in accordance with clause 10.2.

Special Conditions means any conditions stated in an SCN and which apply only to that Service set out in the relevant SCN.

Supplier means any supplier of goods or services (including interconnection services) which may be used directly or indirectly by us to supply the Service and to avoid any doubt includes an electricity retailer from whom we purchase electricity.

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

Telecommunications Legislation means the *Telecommunications Act 1997 (Cth)*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)* and Part XIB, Part XIC and related provisions of the *Competition and Consumer Act 2010 (Cth)*, each as amended or replaced from time to time.

The Institute of Arbitrators & Mediators Australia means The Institute of Arbitrators & Mediators Australia ACN 008 520 045, a company limited by guarantee and any successor organisation.

we, us means ECN Pty Ltd (ABN 75 082 665 905) or any Related Entity which supplies the Services to you (and our will have a corresponding meaning), unless the context otherwise requires.

Your Equipment has the meaning set out in clause 7.3.

25.2 Interpretation

Unless expressed to the contrary:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this document;
- (b) where an expression is defined anywhere in this document another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to:
 - (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;
 - (ii) any gender includes all genders;
 - (iii) the singular includes the plural and vice versa;
 - (iv) recitals, clauses, schedules or annexures are to recitals, clauses, schedules or annexures of or to this document;
 - (v) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
 - (vi) money is to Australian currency;

- (vii) this document or another document includes the document as varied or replaced; and
 - (viii) any party to this document, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.
- (d) The expressions "we", "us", "our", "you" or "your" will include their respective successors and permitted assigns and novatees.
- (e) A reference to a person includes a reference to a person, firm, corporation or other legal entity.

SCHEDULE 1 – SECURITY INTEREST

- (f) You acknowledge that this Contract constitutes a security agreement which creates a security interest in favour of us where:
 - (i) we supply equipment to you, in any Goods (and all after acquired Goods supplied by us to you, or your account); or
 - (ii) there is any obligation to us that is required to be performed by you under this Contract in your all your present and after acquired property.
- (g) You agree to grant a PMSI in the Goods and all future Goods supplied to you by us during the term of this Contract.
- (h) You agree that the PMSI has attached to all Goods now or in the future supplied to you by us.
- (i) You agree, until title in the Goods passes to you, to keep all Goods free of any charge, lien or security interest except as created under this Contract and not otherwise deal with the Goods in a way that will or may prejudice our rights under this Contract or the PPSA.
- (j) You undertake to sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and current) which we may reasonably require to enable registration of a financing statement or financing change statement on the PPSR or to ensure that the security interest in the Goods or in all your present and after acquired property is otherwise enforceable, perfected and effective.
- (k) You undertake to indemnify, and upon demand, reimburse us for all expenses incurred in registering a financing statement or financing change statement on the PPSR.
- (l) You undertake to give to us not less than 14 days prior written notice of any proposed change in your details, including, but not limited to, changes of address, company or business name and/or contact details.
- (m) Unless otherwise agreed to by us in writing, you will not disclose to any third party any information of the kind referred to in Section 275(1) of the PPSA.
- (n) We are not obliged to give you any notice or provide copies of any documents under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded and you consent to the waiver of the requirement for notice or copies of any documents under this clause.
- (o) ECN and the Customer each agrees that the following provisions of the PPSA do not apply to or in relation to the security interest to the extent that the PPSA permits the parties to contract out of or waive such provisions: section 95 (notice of removal of accession) to the extent that it requires us as a secured party to give a notice to the Customer as grantor; section 96 (when person may retain an accession); section 117 (obligations secured by land and personal property); section 118 (enforcing securities in accordance with land law); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); section 130 (notice of disposal), to the extent that it requires us as secured party to give a notice to the Customer as grantor; section 132(3)(d) (secured party to give statement of account); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention of collateral); and section 143 (reinstatement of security agreement).