



## Parties

The terms and conditions of this Master Service Agreement apply between Comlinx Pty Ltd (**We, Us**) and the Customer (**You**).

## 1 ABOUT THESE TERMS AND THIS MASTER SERVICES AGREEMENT

- 1.1 The terms of this Master Services Agreement (Terms) shall apply to all Services We provide to You from the date You sign any Service Order Form with Us, unless both parties agree in writing to variations to the Master Services Agreement. If varied, You shall be bound by the remainder of these Terms in respect of all other clauses not specified in those variations.
- 1.2 All references to terms, terms and conditions, or general terms, in this document, or any other document provided by Us, is a reference to these Terms.
- 1.3 The meaning of words commencing with a capital letter, are indicated in the definitions section of this document.

## 2 THE AGREEMENT

### About the Agreement

- 2.1 The Agreement consists of:
- (a) An express written agreement between the parties (if applicable);
  - (b) Service Order Form, including any Annexures;
  - (c) Service Description/Schedule (if applicable);
  - (d) Agreed Terms; and
  - (e) These Terms.
- 2.2 Unless otherwise specified, the Agreement will not include any purchase order, quote, confirmation, terms and conditions of any other document issued or provided to or by You.
- 2.3 If there are any special conditions which You require to be included as part of this agreement, You must ensure these are negotiated as an express written agreement, otherwise they shall not apply.

### Priority and Inconsistency in the Agreement.

- 2.4 Where there is any inconsistency between these Terms and any other part of the Agreement, the documents and Terms are to be interpreted and applied in the order listed at Clause 2.1.
- 2.5 Clause 19 – Our liability to You, prevails over all other terms.

### Start of the Agreement

- 2.6 Your Service Order Form constitutes an offer by You to purchase the Service from Us. We may accept or reject Your Service Order Form, or refuse to enter into an Agreement to supply a Service to You, for any reason.

- 2.7 For each Service engagement, both parties must agree and sign a Service Order Form. A binding contract will be formed when both parties have signed a Service Order Form in relation to such a Service engagement.
- 2.8 You acknowledge that if You terminate an Order after the contract has been formed in accordance with Clause 2.7, but before the Service is ready for use, We will have incurred costs, including committing to fixed term contracts with Our suppliers, and payment of the Cancellation Charge in accordance with clause 11 compensates Us for these costs incurred.
- 2.9 Unless stated on the Service Order Form, Billing will commence from the date when You are advised that Your service is ready for use.

## 3 SUPPLY OF THE SERVICE

### Commencement of Supply

- 3.1 We will use reasonable endeavours to commence supplying the Service to You by the Target Service Start Date. We make no guarantee that We will be able to supply the Service to You by the Target Service Start Date. If the Service does not have a Target Service Start Date We will use reasonable endeavours to commence supplying the Service within a reasonable timeframe.

### Representatives

- 3.2 You must appoint one or more Representatives to be responsible for the day-to-day administration of this agreement on behalf of You. Unless otherwise notified by You, the Representatives will be the persons named as a contact person in any relevant Service Order Form.
- 3.3 You must notify Us immediately should the Representative be removed or replaced, together with the contact details of a new Representative, or of any change to the Representative's contact details.
- 3.4 You will be responsible for the acts, omissions and defaults of the Representative. Any direction, instruction, notice, approval or other communication made or given to the Representative will be deemed to have been made or given to You.

### Term of supply

- 3.5 The Agreement shall continue, and We shall continue to supply the service to You, until such times as the service is terminated pursuant to clause 11 or 12.
- 3.6 Unless You otherwise give notice at least 30 days in advance, following the last day of any minimum term, the Agreement will be deemed to be extended for successive periods of 30 days, and We will continue to supply the service to You in accordance with clause 3.5 (Term of Supply) above.



### **Routing and Technical Delivery**

- 3.7 We have absolute discretion in how We provide the service to You. We may decide the route and technical means that We use to provide Your Service.

### **Reasonable Co-Operation to supply and maintain the Service**

- 3.8 You must reasonably co-operate with Us and do all things We reasonably require You to do in order to allow Us or an agent to supply or continue supplying the Service to You, safely and efficiently. This may include:

- (a) Providing additional information to Us within a reasonable timeframe upon request;
- (b) Securing for Us or Our agents, access to the premises to which the Service is being delivered for the purpose of installing Customer Premises Equipment, connecting wiring, or doing any other thing which is necessary for the delivery of the Service.
- (c) Allowing Us or Our agents, access to Your premises for the purpose of maintaining or repairing Customer Premises Equipment or wiring.
- (d) Making yourself or an agent available to Us at a time and place notified by Us.
- (e) Taking delivery of any equipment, documents, invoices or other things relating to Your Service or Your relationship with Us.
- (f) Accepting the end-user licence agreement of Our third party supplier.

- 3.9 If You do not co-operate with Us to allow the Service to be supplied, or that supply to be maintained, We may be entitled to terminate or suspend the Service pursuant to clauses 12 and 15.

### **The Quality of the Service**

- 3.10 We will provide the Service to You with reasonable care and skill.
- 3.11 Should unexpected faults hinder availability of the Service We will use reasonable endeavours to resolve those faults and restore the availability of the Service as soon as possible.
- 3.12 We do not promise, warrant or guarantee that Services will be continuous or fault-free. Due to the nature of Services (including reliance on systems and services owned and operated by third parties) circumstances causing faults and unavailability of Your Service may be beyond Our control.

### **Change of Circumstances**

- 3.13 You must notify Us about any changes to Your Services, equipment, location, usage or circumstances that may affect Our ability to provide the Service to You. This includes if You move address, plan to substantially increase Your usage of the Service or become a Carrier or Carriage Service Provider.

- 3.14 If You request to alter or vary Your Services, or request Us to carry out any work on Your Services outside the scope of the relevant Service Order, We may provide You a separate offer to supply such additional or varied Services at a fee to be determined by Us. If You accept the fee as set out in the offer, We will supply the additional or varied Services at the agreed fees.

- 3.15 If, as a consequence of the supply of incorrect information by You, the cost of performing the Services is increased, We reserve the right to charge extra fees to cover such additional costs and expense.

## **4 USING THE SERVICE**

### **General Use**

- 4.1 In Your use of the Service, and Your use of equipment in relation to the Service, You must comply with:
- (a) All laws,
  - (b) All directions by a regulator,
  - (c) All other documents or notices issued by authorisation under a law,
  - (d) Our reasonable directions in relation to the Service or Your relationship with Us,
  - (e) The rules of third parties whose content or services You access using the Service,
  - (f) All authorisations, permits and licences required under applicable law to receive and utilise the Services.

### **Use for intended purpose**

- 4.2 If Your Agreement states that a Service is provided for a particular purpose, You must use the Service for that purpose. You are not permitted to use the Service in the capacity of a Carrier or Carriage Service Provider without Our express permission.

### **Use by End Users**

- 4.3 You must ensure Your End Users' use the Service complies with the Agreement as if they were You. Acts and omissions of Your End Users with respect of a Service are deemed to be Your acts and omissions.

### **Illegal Use**

- 4.4 You must not, and must not allow anybody else to, use the Service to:
- (a) commit any offence, whatsoever;
  - (b) infringe on the rights of another person;
  - (c) publish, communicate or transmit defamatory, offensive, abusive, indecent, menacing or unwanted material.

### **Network Integrity**

- 4.5 You must not use the Service in a way that may interfere with the efficiency, security or integrity of Our network.
- 4.6 You must ensure that no-one interferes with the operation of a Service or any Customer Premises Equipment, or makes it unsafe.



**Failure to Comply**

4.7 If We believe that Your use of the Service is inconsistent with clauses 4.1 to 4.6 then We may request You cease the activity in question, change the way You use the Service or change the type of service You receive. If You do not comply with such a request immediately We may take any steps whatsoever to ensure Your compliance, or suspend or terminate the Service pursuant to clause 15 or 12 respectively.

4.8 If We believe Your use of equipment is not consistent with clause 4.1 then We may:

- (a) Disconnect the equipment from the Service; or
- (b) Suspend or terminate the Service consistent with clause 15 or 12 respectively.

**Unauthorised Use**

4.9 You are responsible for and liable for all use of Your Service in all circumstances, even if that usage is unauthorised.

4.10 Nothing in this section will be construed as imposing an obligation on Us to monitor, detect and/or report fraudulent, illegal or unauthorised use of the Services.

**Excessive Use**

4.11 If Your use of the Services is deemed by Us to be in excess of that which is normal for the Service which You have purchased, We may at Our discretion require You to move onto another Service which is more suitable for Your requirements.

**5 EQUIPMENT**

**Insurance**

5.1 You must effect and maintain all necessary insurances for the loss or damage to any Customer Premises Equipment or Customer Provided Equipment, as well as liability insurance for the damage this equipment may cause.

**Electricity, Ventilation and Other Requirements**

5.2 You are responsible for arranging and paying for any electricity supply required for equipment needed to receive the Service.

5.3 You are responsible for ensuring that the operating requirements for any equipment needed to receive the Service are met. Equipment may have certain requirements for location, ventilation, temperature control, humidity, electricity supply, and other matters.

5.4 You understand and accept that if these requirements are not met, the equipment may not work, and You may not be able to receive the Service.

**Customer Premises Equipment**

5.5 Although it is provided to You on Your premises for the purpose of receiving the Service, all right, title and interest in any Customer Premises Equipment provided or operated by Us will remain exclusively with Us and You

will not obtain any right, title or security interest (including any lien) in or over Customer Premises Equipment.

5.6 You are responsible for any Customer Premises Equipment from the time when You receive it until it is returned to a location nominated by Us. Such responsibility includes ensuring the provision of clean power (eg have a UPS, etc).

5.7 You must not:

- (a) grant any charge, lien or encumbrance over;
- (b) sell, attempt to sell, or transfer;
- (c) modify, service, repair, replace or reverse engineer; or
- (d) destroy, disassemble or dispose of; any Customer Premises Equipment.

5.8 Unless otherwise agreed, You must not allow any person other than Our personnel to service, modify, repair or replace any Customer Premises Equipment.

5.9 We may reasonably charge You for any:

- (a) lost or stolen Customer Premises Equipment;
- (b) damage to Customer Premises Equipment that is beyond fair wear and tear and is not caused by Us or Our personnel.

**Personal Property Securities Register**

5.10 In order to protect Our Customer Premises Equipment, if We consider a security interest may arise, We may register Our ownership interest in the Customer Premises Equipment with the Personal Property Securities Register. We may require information from You in order to perfect the registration. If We register Our interest in the Personal Property Securities Register We will not pass any charges and fees associated with the registration on to You.

5.11 Neither party, nor any receiver, is obliged to give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

5.12 Each party waives any rights to give and receive a notice under sections 95, 118, 121(4), 130, 135 and 157 of the PPSA.

5.13 To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by the secured party of any security interest in the Customer Premises Equipment, the parties agree that the following provisions of the PPSA are excluded:

- (a) to the extent permitted by section 115(1) of the PPSA: sections 125, 132, 135, 142 and 143 of the PPSA; and
- (b) to the extent permitted by section 115(7) of the PPSA: sections 129, 132, 133, 134, 135, 136 and 137 of the PPSA.

**Customer Provided Equipment and Equipment Purchased from Us**



- 5.14 You own, and are responsible for, any equipment You purchase from Us from the time You receive it.
- 5.15 You will be responsible for outstanding payment for equipment purchased from Us or Our personnel even if it has been lost, stolen or damaged after You have taken delivery of it, unless the damage has been caused by Us or Our personnel.
- 5.16 If You connect Customer Provided Equipment to the Service, it must comply with the relevant technical standards and any other relevant requirements, standards and legislation.
- 5.17 We may require You to disconnect Customer Provided Equipment from the Service if the Customer Provided Equipment does not comply with clause 5.16 or the Customer Provided Equipment is having an adverse effect on Our network.

## **6 FAULTS, ERRORS, SERVICE UNAVAILABILITY**

### **Network Maintenance**

- 6.1 We may conduct maintenance on the Network. We will endeavour to schedule Network maintenance outside normal Business Hours, but may not be able to do so.
- 6.2 Maintenance may also be conducted by Our suppliers on supplier network(s) used to supply the Service. You understand and accept that We have no control over network maintenance conducted on supplier's networks.

### **Monitoring and Fault reporting**

- 6.3 We utilise monitoring tools and notification systems to track the status of networks that the Service may be provided upon, however We do not guarantee that We will be able to detect every fault.
- 6.4 We will provide a fault notification system for You to report faults to Us during Business Hours.
- 6.5 Before You report a fault to Us, You will take all reasonable measures to confirm that the fault is not caused by equipment that We are not responsible for.

### **Fault rectification**

- 6.6 We will repair faults within Our Network;
- 6.7 We will not be responsible for repairing any fault that arises in or is caused by:
  - (a) a Supplier's network,
  - (b) equipment that We are not responsible for, such as Customer Provided Equipment,
  - (c) cabling or copper-based services beyond the main distribution frame;
  - (d) any network unit, facility, transit point, terminal or other thing that is outside Our control.
- 6.8 If We are aware of a fault which occurs in or is caused by a supplier's network, We shall notify the supplier of the fault and request prompt rectification of that fault, but we will not bear any further liability or responsibility for such fault.

- 6.9 If a fault described in clause 6.7 above arises, We are not responsible for the rectification of that fault, and if You ask Us to investigate and/or rectify such a fault, we will notify You of Our hourly rate and where possible We will provide You with an estimate of how long it will take to investigate and/or rectify the problem. If You instruct Us to proceed with the repair We will do so at a mutually determined time and charge You at the notified rate for the first hour or part thereof and a pro-rata rate for each subsequent hour for the total time of the investigation and/or repair. We will charge You for any parts used in the repair.

### **Extended Unavailability**

- 6.10 If a fault results in a significant loss of access to or use of the Service, You may be entitled to claim a refund under a Service Level Agreement. In some circumstances You may also be entitled to terminate the Service.

## **7 FEES AND CHARGES**

### **You must pay Us**

- 7.1 All fees and charges monthly in advance, unless:
  - (a) The fees & charges in any one month period are less than \$1,000, in which case We will grant You 14 days to pay.
  - (b) A Service Schedule states otherwise, or
  - (c) We agree otherwise in a Service Order Form, or
  - (d) You open a credit account with Us.
- 7.2 Other fees and charges payable under the Agreement whether specified in the Agreement (including Your Service Order Form or any Annex) or notified by Us from time to time (such as credit card payment fees appearing on Your invoice). Examples include (but are not limited to):
  - (a) Suspension fees
  - (b) Cancellation Fees
  - (c) Reconnection fees
  - (d) Setup fees
  - (e) Late payment fees
- 7.3 Some forms of payment (such as Credit Card) may attract an additional fee, which will be advised by Us from time to time. In using that form of payment, You agree to pay that charge.
- 7.4 We may require You, from time to time, to prepay all or some of Your fees for a Billing Period. We will advise You at least 7 days in advance when We require prepayment. Any unused proportion of Your prepayment will either be refunded to You in accordance with clause 8.9 or be rolled over into prepayment for the next Billing Period, if such prepayment is required.
- Taxes**
- 7.5 In this clause, expressions used has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*. Taxes which are applicable to any service We offer:





- (a) All prices, or any other amount payable, stated as payable to Us, will be exclusive of GST, unless otherwise indicated.
- (b) If GST is payable by Us on any supply made under the Agreement, You will pay to Us an amount equal to the GST payable on the supply. That amount is to be paid at the same time the consideration for the supply is payable under the Agreement and will be paid in addition to the consideration.
- (c) We shall provide You with a tax invoice in respect of the supply, or any other necessary document which provides You with the ability to claim an input tax credit.

**Fee Indexation**

- 7.6 The fees payable for the Service will be increased by an amount equivalent to the increase in the CPI for the preceding 12 month period upon:
  - (a) The expiry of the initial term of any Fixed Length Agreement, or
  - (b) each anniversary following the commencement of an Ongoing Agreement.

**Unauthorised use**

- 7.7 Because You are responsible for preventing unintended access to Your Service, You must pay all fees and charges which are incurred for the Service, even if You did not authorise the use which gave rise to the fees and charges.

**Adjustments**

- 7.8 We may round charges or fees up or down to the nearest whole cent (0.5 cents is rounded up).
- 7.9 If You pay a bill in cash We may round charges or fees up or down to the nearest multiple of 5 cents.

**8 INVOICING AND PAYMENT**

**Invoices are Payable in full by the due date**

- 8.1 Subject to clauses 9.9-9.10 (Circumstances where You may withhold amounts due), You must pay all fees and charges on any invoice in full by the due date specified on the invoice. If following a dispute, We conclude that We have made an error or You are entitled to a refund under the Agreement, We will make the appropriate adjustment.

**What happens if You do not pay Your invoice by the due date**

- 8.2 If You do not pay Your invoice by the due date, then We may, as relevant:
  - (a) charge You interest on the overdue amount, at an annual rate of 10% above the prevailing base rate of Our principal banker, which will accrue on a daily basis from the date payment becomes overdue.
  - (b) suspend Your Service in accordance with clause 14.

- (c) terminate Your Service in accordance with clause 12 and, if applicable, charge You a Cancellation Charge as outlined in clause 14.4; and/or
- (d) register a credit default with any credit rating agency if Your invoice has not been paid in full after a period of 60 days.

- 8.3 We may engage a mercantile agent to recover money You owe Us. We may charge You a recovery fee to cover the cost of engaging a mercantile agent.
- 8.4 We may institute legal proceedings against You to recover the money You owe Us, and We may seek to recover Our reasonable legal costs.
- 8.5 We may on-sell any unpaid amounts to a third party. If We do this, any outstanding amounts will be payable to the relevant third party.
- 8.6 You grant to Us a lien over any of Your equipment in Our possession, for any outstanding charges owed to Us. If these amounts remain unpaid for a period of 60 days, You authorise Us to sell any or all of the equipment to recover a portion of the outstanding charges, including costs for storing and selling the equipment, as well as other costs associated with Your failure to pay the outstanding charges. You agree the exercise of this lien is not Our sole remedy for recovering the outstanding charges.

**How payments are allocated**

- 8.7 You must notify Us of the invoice number which Your payment should be applied against.
- 8.8 If You do not include an invoice number with Your payment, We may apply Your payment to any outstanding amount(s) We see fit.

**Money We owe You**

- 8.9 In the event that We owe You money (for example because You overpaid Us or You are recovering a deposit):
  - (a) Your account will be credited with the amount We owe You; or
  - (b) If You no longer obtain a service from Us, and the amount owing is not a Service Rebate, We will pay the money into a bank account nominated by You or in another manner mutually agreed.
- 8.10 Service Rebates can only be paid by applying a credit to Your account.

**Credit Accounts and Credit Approval**

- 8.11 We may offer You thirty days credit in which to pay Your invoice. If We do, We must be satisfied at all times with Your credit rating. You must provide Us upon request, any information We require for the purpose of assessing Your credit rating.
- 8.12 We are not obliged to begin providing Services to You until We have satisfied ourselves that You will be able to pay the charges.



- 8.13 If at any time We reasonably consider You to be a credit risk, We may stop providing Services to You until You:
- (a) Pre-pay amounts in respect of Your Service;
  - (b) Lodge a deposit as security for payment;
  - (c) Establish an automatic direct debit drawn on Your bank account;
  - (d) Provide a valid credit card, with a sufficient available credit limit as security for payment;
  - (e) Provide a personal guarantee or directors guarantee, in a form acceptable to Us; and/or
  - (f) Put in place another credit or security arrangement which is satisfactory to Us.

## 9 INVOICE DISPUTES

### You may dispute an invoice

- 9.1 You may dispute invoices We issue You if You, in good faith, believe that they are incorrect, by sending to Us a written dispute notice, in the form described in clause 9.4 within 3 months of the issue date the invoice.
- 9.2 Upon receiving a valid dispute notice, We will investigate the dispute claim and notify You of the progress of the investigation within 14 days.
- 9.3 If You do not validly dispute an invoice within 3 months of its issue, the invoice will be deemed to be correct.

### Dispute notices

- 9.4 You must include the following information in a written dispute notice:
- (a) The invoice number of the invoice on which the disputed fees and charges appear,
  - (b) The total amounts of the fees or charges which are being disputed,
  - (c) Whether You intend to withhold payment for those amounts,
  - (d) The reason that the fees or charges are being disputed,
  - (e) Any evidence which may demonstrate why the fees are incorrect.
- 9.5 If We request that You supply further information or evidence in relation to a dispute, and You fail to do so within 30 days of such request, the dispute will be deemed to be resolved and the original invoice deemed to be correct.

### Our final determination on a dispute

- 9.6 If Our final determination is that the invoice is correct You must pay Us any amounts You have withheld under clauses 9.9-9.10 within five days of the date on which We reached Our decision and notified You of the decision.
- 9.7 If Our final determination is that the invoice is incorrect We must refund the value of the disputed charges or fees to You in accordance with clause 8.9 – Money We owe You, within five days of the date on which We advised Our decision.

### Validity of records

- 9.8 Unless they can be shown to be incorrect, Our records are sufficient proof that a charge is payable.

### Circumstances where You may withhold amounts due

- 9.9 Where Your dispute is lodged 7 days or more prior to the due date of the invoice to which the dispute relates, You may withhold only such amounts as are directly and specifically related to the dispute from Your payment.
- 9.10 Other than where You may withhold disputed amounts due as outlined above, all sums payable under this agreement are payable in full without deduction, withholding, set-off or counterclaim for any reason whatsoever, howsoever arising, other than as may be required by law.

## 10 SERVICE LEVEL AGREEMENTS

### A Service Level Agreement may be applicable to Your Service

- 10.1 Any applicable Service Level Agreement will be listed in Your Service Description.
- 10.2 If We fail to meet a Service Level Agreement, You may claim a Service Rebate in accordance with the terms of the relevant Service Level Agreement.

### A Service Rebate is a genuine and reasonable pre-estimate of loss

- 10.3 A Service Rebate is a genuine and reasonable pre-estimate of the loss that You may suffer as a result of Our failure to maintain the Service levels in accordance with the Service Level Agreement.
- 10.4 Subject to any applicable laws to the contrary which cannot be excluded, Our obligation to issue Service Rebates to You is the full extent of Our liability and Your sole and exclusive remedy in respect of any failure by Us to meet Our obligations under a Service Level Agreement.

### Some events will not be a breach of a Service Level Agreement

- 10.5 Unless the relevant Service Level Agreement expressly and specifically modifies this clause, We will have met a Service Level Agreement even if Services Levels are not met, where Service Levels are not met because of reasons substantially attributable to the following:
- Circumstances or events caused or substantially contributed to by You or Your agent, including removing or disconnecting any equipment, or conditions present on Your premises (dust, vermin, water, lightning, etc).
  - Equipment that We are not responsible for (including Customer Provided Equipment) that You use in connection with the Service.



- Circumstances or events which are substantially or entirely beyond Our reasonable control (eg; Failures by upstream providers, DDoS attacks).
- Necessary scheduled or unscheduled maintenance.
- You have failed to comply with this agreement, another agreement with an Over The Wire Group Company or Our reasonable directions in relation to the Service.
- Any other reason specified in Your Service Level Agreement.

**Service Rebates will not exceed amounts payable**

10.6 A Service Rebate cannot exceed the total amount of the fees You incur for Your Service during the Billing Period when the event giving rise to the Service Rebate is alleged to have occurred.

**How to claim a Service Rebate**

10.7 Unless specified otherwise in Your Service Description, if You believe that We have breached a relevant Service Level Agreement, You must notify Us in writing that You intend to claim a Service Rebate.

Your notification should include;

- (a) A description of the event that You believe breached the Service Level Agreement,
- (b) The date and time where that event occurred,
- (c) Any other information such as helpdesk ticket numbers which helps Us confirm that a breach of the Service Level Agreement occurred.

10.8 If You do not notify Us that You wish to claim a Service Rebate within 30 days of the event which allegedly breaches the Service Level Agreement then You have waived Your right to receive a Service Rebate.

**11 YOUR RIGHTS TO TERMINATE THE SERVICE**

**You may terminate the Service at will**

- 11.1 You may terminate Your Service at will;
  - (a) by giving Us at least 30 days notice that You intend to terminate Your Service; and
  - (b) if the Service is under a fixed length Agreement, paying Us the Cancellation Charge

- 11.2 If We have not:
  - (a) commenced supplying the Service to You, or
  - (b) entered into any agreement with another supplier in relation to Your Service,then You may terminate Your Service at will by:
  - (c) notifying Us as soon as practicable not to commence supplying the Service; and
  - (d) paying Us the Cancellation Charge.

**You may terminate the Service if We are in material breach of this agreement**

11.3 If We breach a material term of this agreement and You have given Us notice of the breach, then You may terminate the Service immediately if:

- (a) We have not remedied the breach 30 days after receiving notice of the breach; or
- (b) the breach cannot be remedied.

11.4 For the purposes of this clauses 11.1-11.4;

- (a) A Breach of a Service Level Agreement does not constitute a material breach,
- (b) Where the Service is unavailable and We have provided no notice to You that the Service will become unavailable or that unavailability is not authorised under this agreement; the unavailability will be considered to be breach remediable by restoring the availability of the Services or taking steps to offset material detriment cause by the unavailability of the Services, subject to clause 18.

**You may terminate the Service in other circumstances**

11.5 You may terminate the Service immediately by giving Us as much notice as possible if;

- (a) We are the subject of an insolvency event; or
- (b) The law requires You to do so; or
- (c) The provision of the Service becomes illegal; or
- (d) Unless otherwise specified in the Agreement, the Service is suspended for more than 14 days, for a reason other than a force majeure event or other event beyond Our reasonable control.

**12 OUR RIGHT TO TERMINATE THE SERVICE**

**We may terminate the Service at will**

12.1 If You have an ongoing Agreement We may terminate Your Service at will by giving You at least 30 days notice that We intend to terminate Your Service.

12.2 If You have a fixed length Agreement We may terminate Your Service at any time;

- (a) By giving You at least 30 days notice that We intend to terminate Your Service; and taking reasonable steps to appropriately offset the effect the Cancellation has on You. (For example by providing a refund); or
- (b) By giving You notice and transferring You to a reasonably similar alternative service for the remainder of Your fixed length Agreement.

**We may terminate the Service if You are in material breach of this agreement**

12.3 If You breach a material term of this agreement, that is not related to paying Your charges, and We have given You notice of the breach, then We may terminate the Service immediately if:

- (a) You have not remedied the breach 30 days after receiving notice of the breach; or
- (b) the breach cannot be remedied.

**We may terminate the Service due to Your finances**

12.4 Unless otherwise set out in the Agreement, We may terminate the Service after providing 14 days' notice to You if:



- (a) Any amount You owe Us in respect of the Service is unpaid after the due date of the relevant invoice; and remains unpaid after the expiry of the 14 days' notice period above, and
- (b) That amount is not validly withheld under clauses 9.9-9.10.

12.5 We may terminate the Service at any time if You suffer an insolvency event.

**We may terminate the Service in other circumstances**

- 12.6 We may terminate the Service immediately if;
- (a) We are the subject of an insolvency event,
  - (b) We become aware or are advised by any regulatory authority that applicable or relevant laws, rules, regulations or authorities, or any decision of a court or government authority, prohibits the provision of the Service,
  - (c) Any application for a consent or permit required for the provision of the Service is rejected or is terminated, lapses or is otherwise terminated and no further replacement, consent or permit can reasonably be obtained,
  - (d) Termination or expiration of any head lease or licence governing the site from which the Services are provided, or where the equipment and or facilities are located, or
  - (e) You vacate the premises to which the Service is connected without making arrangements to relocate the Service.

12.7 If We terminate the Service pursuant to this clause, although in most cases We will give You as much notice as is reasonably practicable, We reserve the right to terminate the Service without any notice to You.

**13 TERMINATION DUE TO A FORCE MAJEURE EVENT**

**Either party may terminate the Service due to Force Majeure**

13.1 If a Force Majeure Event adversely affects either party (whether in relation to the Service or otherwise) for more than 60 days, that party may terminate the Service by giving as much notice as is reasonably possible to the other party.

**14 WHAT HAPPENS WHEN THE SERVICE IS TERMINATED**

**The Agreement terminates**

- 14.1 The Agreement terminates completely when the Service is terminated, except for clauses that are specifically expressed to or impliedly must survive termination.
- 14.2 Termination does not affect any accrued rights or remedies of a party.

**The Service will cease to be provided**

- 14.3 When a Service is terminated:
- (a) We may no longer provide and You will no longer be entitled to receive any element of the Service;

(b) We may permanently and irretrievably erase all records and databases that We keep in relation to the Service, except for records which We keep for administrative and accounting purposes and are required to keep by law.

(c) We may take steps to disconnect any equipment used in relation to the Service, regardless of whether You have taken steps to back up Your data and . We accept no responsibility for any data loss.

**We may charge You Cancellation Charges**

- 14.4 If You have a fixed length Agreement, and prior to the minimum date:
- (a) You terminate a Service at will; or
  - (b) We terminate a Service due to Your breach, then We may charge You a Cancellation Charge.

14.5 If You terminate the Service before We have commenced supplying the Service to You We may charge You for reasonable costs We incurred as a result of taking steps to provide the Service to You.

**Return of equipment and other property to Us**

- 14.6 If You have possession of any Customer Premises Equipment or any other property belonging to Us, including but not limited to keys, access cards, proprietary configuration information, You must, at Our option either;
- (a) Return the property to a location nominated by Us as soon as is reasonably possible; or
  - (b) Allow Us, Our suppliers or other agents, reasonable access to the facility where the property is situated for the purposes of uninstalling and collecting the property; or
  - (c) Verifiably destroy the property to Our satisfaction.

14.7 You are responsible for all costs associated with delivery, collection or destruction of the property.

14.8 We will assess the quality of the property upon taking delivery. Subject to clause 5.9, We may charge You for damage.

14.9 If We have not received the property within 7 days of the Service being terminated, We may charge You for the replacement cost of the property and associated administrative costs.

**Return of equipment and other property to You**

- 14.10 If We have possession of Your property or Customer Provided Equipment, unless otherwise specified, once the Service is terminated We will;
- (a) Uninstall or disconnect the equipment or property from any of Our facilities; and
  - (b) Store the equipment either within the facility or at Our nearest office for a period of 7 days, after which, if You have not collected it, it will be deemed abandoned and We may deal with it as We see fit.

**Use of the Service after Terminated**





14.11 If You are still able to use the Service after the Service is terminated, You continue to be liable for any charges arising from Your use of the Service. This clause 14.11 survives termination of the Agreement.

## 15 SUSPENSION OF THE SERVICE

### We may suspend the Service prior to terminated the Service

15.1 Notices of suspension and terminated may be served simultaneously.

15.2 If We suspend the Service or give notice of Our intent to do so this shall not in any way prejudice any right We may have to terminate the Service.

15.3 If We give notice of Our intent to terminate the Service this shall not in any way prejudice any right We may have to suspend the Service.

### We may provisionally suspend or restrict the Service;

15.4 In some circumstances We may provisionally suspend or restrict Your Service by giving You as much notice as reasonably possible (which may be given reasonably soon after We have suspended or restricted Your Service). Suspension or restriction in these circumstances will remain in place until the circumstances giving rise to the suspension or restriction have satisfactorily passed and We believe they are unlikely to return. We may suspend or restrict Your Services under this clause 15.4 where;

- (a) We believe it is reasonably required to prevent fraud, illegality, propagation of spam or malicious software, or interference with any other network, howsoever caused;
- (b) Problems are experienced interconnecting Our network with any other network;
- (c) We cannot enter Our or Your premises to do something in connection with the Service that We need to do in order to supply the Service or make the Service or related equipment safe;
- (d) You vacate the premises to which the Service is connected;
- (e) We believe it is reasonably required to prevent or mitigate interference, howsoever caused, with Our network or Our ability to provide other services;
- (f) Providing the Service becomes illegal or We believe on reasonable grounds that it will become illegal;
- (g) We are required to comply with an order, instruction request or notice of a regulator, emergency services organisation or other competent authority; or
- (h) A force majeure event affects Our ability whether directly or indirectly to provide the Service.

### Maintenance and Repair Work

15.5 We may suspend or restrict Your Service without notice in the event that We, or Our suppliers, believe it is necessary or desirable to conduct maintenance and repair work on any part of the network, facilities or

equipment which are relevant, whether directly or indirectly, to supplying Your Service.

15.6 We will endeavour to give You as much notice as is reasonably possible when suspensions will occur due to maintenance and repairs, however this may not always be possible. We will endeavour to schedule maintenance when it is least inconvenient to Our customers.

15.7 We are not responsible for scheduling maintenance and repairs conducted by Our suppliers. We will endeavour to give You as much notice as is reasonably possible where suspensions are caused by Our suppliers' maintenance, however this may not always be possible.

### Use for Intended Purpose

15.8 If We reasonably believe that You are in violation of clause 4.2,

then We may require You to switch to a more suitable service. If You do not agree to switch, We may suspend or restrict Your usage of the Service.

### We may suspend the Service due to Your finances

15.9 Unless otherwise set out in the Agreement, We may suspend the Service after providing 14 days' notice to You if:

- (a) Any amount You owe Us in respect of the Service is unpaid after the due date of the relevant invoice; and remains unpaid after the expiry of the 14 days' notice period above, and
- (b) That amount is not validly withheld under clauses 9.9-9.10 – Circumstances where You may withhold amounts due.

15.10 If We reasonably consider You to be a credit risk due to any of the circumstances listed in clause 12.4 occur, We may, at Our sole discretion, elect to suspend the service, rather than terminate the Service.

15.11 Your Service shall remain suspended until such time as:

- (a) If You fail to pay undisputed amounts of any invoice in full by the relevant due date; until such time as You have paid the undisputed amounts in full, and
- (b) If We consider a credit risk exists, until such time as:
  - (i) You put in place, or increase, to Our satisfaction, a credit security arrangement in accordance with clause 8.13, and
  - (ii) You pay all undisputed amounts owing on any unpaid and overdue invoices owing to Us and any Over the Wire Group Company.

## 16 WHAT HAPPENS WHEN THE SERVICE IS SUSPENDED

### The Service will be restricted

16.1 During a suspension, Your access to the Service may be limited or unavailable.

### You must pay access fees

16.2 During a suspension, You must continue to pay access fees, although You may be entitled to a refund.



16.3 If the Service is suspended due to circumstances reasonably attributable to You, You must pay to Us any costs We incur in suspending and resuming the Service.

**You may be entitled to a refund**

16.4 If the Service is suspended due to circumstances not reasonably attributable to You or Customer Provided Equipment which You are responsible for maintaining, You will be entitled to a refund of access fees paid to Us during the period of the suspension.

**17 AUTHORITY OF EMPLOYEES AND AGENTS**

**We can rely on the authority of Your employees and agents.**

17.1 From time to time We need Your consent to do certain things. We can reasonably rely on the authority of any of Your employees or agents who tell Us they have authority to act on Your behalf in relation to the matter.

**18 YOUR LIABILITY TO US**

18.1 You, or Your agents, or any person who makes use of the Service (whether authorised or unauthorised) are liable to Us for breach of contract or negligence under the principles applied by the courts.

18.2 If We claim any loss or damage against You, any contribution We or Our agents or any person authorised by Us have made to the loss or damage which is the subject of claim shall proportionally reduce the extent of Your liability.

**We are not liable to End Users**

18.3 In contract, tort (including negligence), statute or otherwise. If an End User makes a claim against Us in relation to:

- (a) The use (or attempted use) of the Service; or
- (b) Equipment used in connection with the Service;
- (c) Other services or products which rely upon the Service;
- (d) Any other matter arising out of the relationship between You and Us,

You hereby indemnify Us against, and must pay Us for any loss or damage We suffer in connection with any and all claims, including Our own costs incurred (which are to include a genuine and reasonable estimate of Our own administration and professional costs), howsoever arising, which may be made against Us in respect of the matters listed in this clause above.

18.4 We are not liable to third parties for any claims in relation the Service, including Your use of the Service. You hereby indemnify Us against, and must pay Us for any reasonably foreseeable loss or damage, including Our own costs incurred (which are to include a genuine and reasonable estimate of Our own administration and professional costs), arising out of or in connection with

any and all claims which third parties may make against Us in respect of Your Service, including in respect of Your use of the Service.

18.5 You, Your agents and any other party making use of the Service are jointly and severally liable for any loss or damage, howsoever caused, arising out of or in connection with the Service.

18.6 This section 18 shall survive termination.

**19 OUR LIABILITY TO YOU**

**Our legal responsibilities and obligations**

- 19.1 We have statutory responsibilities and obligations under:
- (a) The Telecommunications Act,
  - (b) The Competition and Consumer Act including Schedule 2, the Australian Consumer Law, and
  - (c) Other applicable laws, regulations and codes.
- 19.2 Nothing in the Agreement removes or limits any rights that cannot be excluded or modified under existing laws or regulations.

**The Australian Consumer Law**

19.3 We will comply with the Australian Consumer Law as in effect from time to time, if under the Agreement We supply goods or services with a price of less than \$40,000 or which are ordinarily acquired for domestic, personal or household use.

**Our liability for breaches of consumer guarantees**

- 19.4 Our liability (if any) for breach of Your statutory rights as a consumer in connection with those goods or services is limited to (at Our option):
- (a) In respect of goods; repairing or replacing those goods, or paying the cost of having those goods repaired or replaced, and
  - (b) In respect of services; resupplying the services, or paying the cost of having those services resupplied.

**Our liability in respect of matters not covered by the Australian Consumer Law**

- 19.5 Other than Your statutory rights which cannot be excluded, We expressly exclude all liabilities, rights, remedies, conditions, warranties and other terms that may be implied by custom, statute or common law, to the extent that is permitted by the law.
- 19.6 We may be liable to You for
- (a) Repair or replacement of Your tangible property if damage is directly caused to it by fault, negligence or fraud by Us or Our personnel during installation, repair or maintenance,
  - (b) Subject to any Service Level Agreement, clause 19.5 and the Agreement, Interruptions in the Service resulting from a fault or negligence of Us or Our personnel,
  - (c) Death or personal injury directly caused by negligence or breach of contract by Us or Our personnel.



19.7 If You claim any loss or damage against Us, any contribution You or Your agents or any other person have made to that loss or damage shall proportionally reduce the extent of Our liability.

**Our liability for interruptions and delays**

19.8 If Your Service is interrupted or delayed We accept liability to You but Our liability is limited as specified in any applicable Service Level Agreement. If no Service Level Agreement applies to Your Service, liability in respect of interruptions or delays is limited to an amount equal to the charges billed in respect of the interrupted Service pro-rated for the period of the interruption or delay.

19.9 In no event will Our liability exceed the total amount of charges You incur for the interrupted Service during the Billing Period in which the interruption or delay occurred.

**Our liability for matters beyond Our control**

19.10 We will not under any circumstances be responsible for any loss or damage arising from circumstances beyond Our reasonable control.

**Our liability in respect of certain types of loss.**

19.11 We will not under any circumstances be liable to You or any third party for Consequential Loss.

19.12 This section 19 shall survive termination.

**20 WARRANTIES**

**Mutual warranties**

20.1 Each party represents and warrants to the other on a continuing basis that:

- (a) It has full power, and has taken all necessary action, to enter into this agreement, and perform its obligations contemplated by this agreement;
- (b) Upon execution of this agreement, its obligations will be valid, binding and enforceable;
- (c) Unless otherwise disclosed, it does not enter into this agreement as trustee of any trust; and
- (d) It holds all licences, permits, consents and authorisations required under any law in relation to the provision or acquisition of the Services, as relevant, and will continue to do so at all times during the term of this agreement.

**Your warranty to Us**

20.2 You represent and warrant to Us on a continuing basis that:

- (a) You accept all responsibility for the selection of the Services to meet Your requirements, and that We do not warrant that the Services will be suitable for such requirements, nor that any Services will be uninterrupted or error-free;
- (b) You accept all responsibility for ensuring that regular copies of all of Your data are made and backed up, and that it is not Our responsibility to back up Your data.

**21 COMPLAINTS**

21.1 If You have any complaints regarding the Service, You may complain to Us.

21.2 We will handle, investigate and attempt to resolve the complaint to Your satisfaction.

21.3 We will use Our best endeavours to reasonably resolve complaints, however, if We are unable to resolve the complaint to Your satisfaction, depending on the nature of the complaint, You may request external review from agencies such as the Telecommunications Industry Ombudsman.

**22 CHANGING THE AGREEMENT**

**We may change certain terms of an Agreement**

22.1 Subject to this section 22, We cannot change fees during the term of a fixed length Agreement unless, either;

- (a) The change is the result of a change in the price from a supplier for an input which is required for Your Service;
- (b) The change is required by law or are necessary for security reasons, fraud prevention or for technical reason;
- (c) The change is in relation to a fee or charge that accounts for a tax imposed by law;
- (d) The change is in relation to a solely administrative fee, pursuant to clause 22.2; or
- (e) You agree to the change.

**We may make changes on the following grounds**

22.2 We may increase existing charges or introduce new charges for administration facilities (eg; credit card payments). If We make such changes and You are an affected customer We will;

- (a) Offer You a reasonable alternative administrative facility with no additional charges; or
- (b) If We are unable to offer You a reasonable alternative administrative facility, and the Service is conditional upon access to such a facility, offer You an opportunity to terminate that Service on Fair Terms.

**Impact of the change**

22.3 If You can demonstrate that the change has a detrimental impact on You, and is not a change of the type specified in this clause 22, then We will offer You the chance to terminate that Service on Fair Terms.

**Notifying You of a change**

22.4 If We seek to make a change to the Agreement under this clause 22, other than a change made under clause **Error! Reference source not found.**, we will:

- (a) Endeavour to individually notify You of the change prior to the change taking effect, although at times this may not be possible; and
- (b) Individually notify You in writing of the change within 90 days of the change taking effect.



## 23 ASSIGNMENT BY US

- 23.1 We may assign, novate, transfer or sub-licence any of Our rights under this agreement to any person.
- 23.2 We may perform any of Our obligations under the Agreement by arranging for them to be performed by another person, including a Related Body Corporate or a supplier.
- 23.3 If We sell or transfer any part of Our business We may novate full right, title and interest in Your Agreement to the purchaser or transferee by giving 30 days notice to You.

## 24 ASSIGNMENT BY YOU

- 24.1 You may assign Your rights under the Agreement only with Our prior written consent.
- 24.2 You may transfer Your obligations under this agreement if:
  - (a) The Service is available where the transferee wishes to receive it, and
  - (b) The person to whom You transfer the obligations meets proof of identification, eligibility criteria for the Service and credit rating requirements.

## 25 JURISDICTION

- 25.1 This Agreement is governed by the laws of Queensland and both You and We irrevocably submit to the non-exclusive jurisdiction of the Queensland courts and courts of appeal from them. Neither You nor We will object to the exercise of jurisdiction by those courts on any basis.

## 26 EXERCISE OF RIGHTS AND WAIVER OF RIGHTS

- 26.1 If a party does not exercise a right that party is entitled to exercise, this does not mean that party has waived its entitlement to that right, and that party may subsequently exercise that right if the circumstances permitting that right to be exercised exist.

## 27 INTELLECTUAL PROPERTY

### We own intellectual property

- 27.1 We own all material developed by Us or Our personnel or at Our direction, including intellectual property rights.
- 27.2 We may permit You to use all or some material or other material, appropriately licensed by Us as part of the Service. Any such permission is subject to any reasonable conditions We may attach from time to time.
- 27.3 Any permission which is granted to use material under this clause ceases when the Service is terminated and the Agreement terminates.
- 27.4 You must not infringe any person's intellectual property rights in using the Service. If You do so We may terminate the Service under clause 12 or suspend the Service under clause 15.
- 27.5 You agree, at Our request, to take all actions and execute all documents as may in Our reasonable opinion be

necessary to enable Us to obtain, defend or enforce Our rights in the intellectual property, and You must not do or fail to do any act which would or might prejudice Our rights under this clause.

## 28 CONFIDENTIALITY

- 28.1 Both parties acknowledge that in the course of performing their obligations under this agreement, they will receive information which is proprietary and confidential to the other party. Both parties agree not to use confidential information of the other party except in the proper performance of their obligations, and not to disclose the confidential information to any person or entity other than their own employees or agents directly involved in the performance of the Services.
- 28.2 Where it is necessary to disclose the confidential information to external agents or contractors, these are to be bound by a separate written undertaking to protect the confidentiality of such Confidential Information, on the same terms as this agreement.

### Further permitted use and disclosure

- 28.3 Notwithstanding clauses 28.1-28.2 above, both parties may use or disclose Confidential Information to the extent necessary to:
  - (a) Comply with any law, binding directive of a regulator or a court order;
  - (b) Comply with the listing rules of any stock exchange on which its securities are listed; or
  - (c) Obtain professional advice in relation to matters arising under or in connection with this document.

### Equitable remedies

- 28.4 Both parties acknowledge that a breach of the confidentiality obligations set out in this clause may cause the other irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to a claim for damages and any other remedies available at law or in equity, one party may seek specific performance or injunctive relief against any breach or threatened breach by the other party.

### Obligations to continue after Agreement ends

- 28.5 All obligations of confidence set out in this clause continue in full force and effect after the expiry or termination of this agreement.

## 29 PRIVACY

- 29.1 In electing to receive the Service from Us You consent to Us collecting, using and disclosing Your personal information to give effect to this agreement. We will only collect and use Your personal information in accordance with the Services, Our Privacy Policy, and the *Privacy Act*.

### Privacy Complaints





29.2 You must promptly notify Us of any complaint You receive concerning the use, disclosure, storage, transfer or handling of Personal Information, and We will comply with any reasonable direction by You in relation to a complaint concerning the use, disclosure, storage, transfer or handling of Your Personal Information.

### **30 NOTICES**

30.1 Any notice, consent, application or request that must or may be given or made under this agreement is only given or made according to clause 30.2 or 30.3.

#### **Us Giving notices to You**

30.2 A notice can be given to You by Us in one of the following ways:

- (a) Delivered or posted to You at the address set out in a Service Order Form.
- (b) Emailed to You at an email address set out in a Service Order Form.

#### **You Giving notices to Us**

30.3 A notice can be given to Us by You by:

- (a) delivery or post at GPO Box 1807, Brisbane QLD 4000;
- (b) Email to [compliance@overthewire.com.au](mailto:compliance@overthewire.com.au).

#### **Change of address**

30.4 Either party must give the other at least three (3) Business Days' notice of any change of its address or email address, for it to be a valid address under this agreement.

#### **Time notice is given**

30.5 Any notice, consent, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address,
- (b) if it is sent by post, the earlier of five (5) Business Days after it is posted or the date delivery has been confirmed (for example by the use of registered mail),
- (c) if it is sent by email, the earlier of confirmation of receipt by the recipient, or the sender receives from the sender's email server a report of an error free transmission to the receiver's server.

30.6 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

### **31 WE MAY PAY COMMISSIONS**

31.1 We may pay a commission to any of Our personnel, agents or third parties in connection with the Agreement.

### **32 SEVERABILITY**

**If a clause of the Agreement can be read in a way which is illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, then the clause is to be read in the way that makes it legal, enforceable and valid.**

32.1 If a clause or a part of a clause of the Agreement is illegal, unenforceable or invalid that clause, or part of a clause, shall be severed from the Agreement without affecting in anyway the legality, enforceability and validity of any other part of the Agreement.

### **33 MISCELLANEOUS**

33.1 Except as otherwise set out in this agreement or any Contract, each party must pay its own costs in relation to preparing, negotiating and executing this agreement and any document related to this agreement.

33.2 This Agreement together with any relevant Service Order Form and Service Schedule contains everything the parties have agreed in relation to the matters it deals with and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise will be taken to have been given or implied from anything said or written in negotiations between the parties prior to this agreement except as expressly stated in this agreement. Neither party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this document was executed, except as permitted by law.

33.3 This Agreement is properly executed if each party executes either this agreement or an identical document. In the latter case, this agreement takes effect when the separately executed Agreements are exchanged between the parties.

33.4 Each Service Order Form is properly executed if each party executed either the same document or an identical document. In the latter case, the document takes effect when the separately executed documents are exchanged between the parties.

33.5 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

33.6 No variation of this agreement, any Contract, Service Schedule or Service Order Form will be of any force or effect unless it is in writing and signed by both parties.

33.7 The Agreement shall endure to the benefit of and be binding upon the successors, assigns, heirs, executors and administrators of the parties.



## 34 INTERPRETATION

In this agreement, unless the context requires another meaning:

- 34.1 Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 34.2 A reference:
- (a) to the singular includes the plural and vice versa;
  - (b) to a document is a reference to that document as amended, consolidated, supplemented, novated or replaced;
  - (c) to a party means a party to this agreement;
  - (d) to a notice means a notice, approval, demand, request, nomination or other communication given in writing by one party to another under or in connection with this agreement;
  - (e) to a person (including a party) includes:
    - (i) an individual, company, other body corporate, association, partnership, firm, joint venture, trustee or Government Agency; and
    - (ii) the person's successors, permitted assigns, substitutes, executors and administrators;
  - (f) to a law:
    - (i) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange;
    - (ii) is a reference to that law as amended, consolidated, supplemented or replaced; and
    - (iii) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law;
  - (g) to proceedings includes litigation, arbitration and investigation;
  - (h) the word "including" or "includes" means "including, but not limited to", or "includes, without limitation".

## 35 DEFINITIONS

*Agent*; means a person acting on Our or Your behalf in relation to the Service. Our agents may at times include suppliers or contractors outside Over The Wire Group Companies.

*Agreement*; means an entire agreement between You and Us, constituted as specified in clause 2.1, regarding the provision of a Service

*Annexures*; means, documents annexed to this agreement which may have the effect of modifying a clause or term of the Agreement.

*Australian Consumer Law*; means Schedule 2 of the Competition and Consumer Act

*Billing Period*; means 1 month, unless specified otherwise in an Annex or Service Description

*Business Day* means a day between Monday and Friday that is not a public holiday in Brisbane, Queensland.

*Business Hours*; means between 8:30AM and 5:00PM, Monday to Friday in Brisbane, Queensland.

*Cancellation fee*; means a fee specified in the Service Price List which becomes payable immediately if the Service is terminated in certain circumstances.

*Cancellation Charge*; means all remaining months of a fixed term contract; plus an administration fee determined by Us which represents a genuine and reasonable estimate of the cost incurred and time spent in processing and administering Your termination; less the costs that would have been incurred in performing the remainder of the contract that We are reasonably able to mitigate, reduce or eliminate; less a discount for the value of the early receipt of the remainder of the contract price.

*Carriage Service Provider*; has the same meaning as "Carriage Service Provider" as defined in the Telecommunications Act.

*Carrier*; has the same meaning as "carrier" as defined in the Telecommunications Act.

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

*Consequential Loss* means any loss of profit or revenue (including potential profit or revenue), loss of business opportunities, loss of goodwill, loss of productivity or production, loss of data, loss caused by additional labour costs or loss caused by additional costs incurred in mitigating any circumstance.

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

*Customer Premises Equipment*; means any equipment which We own but must install on Your premises in order for You to receive and make use of the Service.

*Customer Provided Equipment*; means any equipment You own which You use in connection with the Service or to receive the Service in place of Customer Premises Equipment. In some cases We may sell You equipment which will be subsequently used to receive the Service, this will be considered Customer Provided Equipment.

*Dispute Notice*; means a notice in writing formed in accordance with clause 9 which notifies Us that You are disputing certain fees and charges.

*End User* is any person who makes use of a Your Service (or part of Your Service) with your consent, or from your premises, or using Your equipment or log-in credentials or as a result of You reselling the Service to them (in whole or in part).

*Equipment*; includes but is not limited to routers, masts, antennas, towers, rack-mount chassis, servers and similar things.

*Excluded Event*; means an event caused by a breach of the agreement by You, a negligent omission by You or Your agents, a fraudulent act by You or Your agents, a failure of Customer Provided Equipment.



*Fair Terms*; means notifying You at least 20 days before the changes occur and offering You the right to terminate the Service, without paying a Cancellation fee, within 40 days of Our notice.

*Fault Notification System*; means a series of contact points to receive reports of faults

*Fixed-length Agreement*; means an agreement which has a specified minimum term during which We agree to supply the Service to You and You agree to acquire the Service from Us.

*Force Majeure Event*; means an extraordinary event beyond the control or reasonable contemplation of all parties, including but not limited to; flooding, cyclone, storm, earthquake, volcanic eruption, any other natural disaster, fire, explosion, civil unrest, civil war, riot, invasion, insurgency, act of terror, blockade, embargo, marshal law, usurped power, confiscation, nationalisation, hostilities (regardless of declaration of war), strike action, labour dispute, lockout, crime (including extra-ordinary acts of cybercrime or state-sponsored acts adversely affecting cyber security), extended power outage, or other adverse, emergency or extraordinary event.

*General Terms*; means this document.

*Insolvency Event*; means:

- an application is made to a court of competent jurisdiction for an order that the relevant party be wound up, declared bankrupt or a provisional liquidator be appointed where such an application is not withdrawn, struck out or dismissed within 14 days of being made;
- a liquidator is appointed to the relevant party;
- a decision is taken to appoint an administrator to the relevant party or a controller in respect of any of the party's assets;
- the relevant party enters into or proposes to enter into an arrangement or composition with or assignment for the benefit of creditors except as part of a reconstruction or amalgamation while solvent;
- anyone on behalf of the relevant party proposes a reorganisation, moratorium, deed of company arrangement or other administration arrangement which involves these, or the winding up and dissolution of the relevant party;
- the relevant party states that it is or is or is presumed to be under any applicable law, insolvent;
- the relevant party becomes insolvent under administration as defined in section 9 of the *Corporations Act* or action is taken which could result in that event;
- the relevant party fails to comply with a statutory demand as a result of section 459F(1) of the *Corporations Act*; or

- the relevant party dies, or is dissolved, deregistered, wound up or otherwise ceases to exist as an entity capable of purchasing and receiving Services;
- anything having a substantially similar effect to any of the dealings above happens to the relevant party under the law of any jurisdiction.

*Minimum Term*; means a set period of time for which the parties agree that the contract should remain in effect and that cannot be terminated without paying a Cancellation Charge.

*Minor Detrimental Impact*; means an impact which while it is detrimental does not substantially alter the agreement, and includes impacts from changes in the Service which while placing You in a slightly less advantageous position do not have any significant impacts.

*Network*; has the same meaning as "telecommunications network" as defined in the *Telecommunications Act*.

*Neutral Effect*; means an impact which does not result in either detriment or benefit to You.

*Ongoing agreement*; means an agreement with no specified term which automatically renews on a monthly basis until You notify Us that You wish to terminate it.

*Over the Wire Group Company*; means Over the Wire Pty Ltd or any of its Related Bodies Corporate.

*Positive Impact*; means impacts from changes in the Service which place You in a more advantageous position than the original agreement.

*PPS Register* means the Personal Property Securities Register established under section 147 of the PPSA.

*PPSA* means the Personal Property Securities Act 2009 (Cth).

*Privacy Policy* means the Over the Wire Privacy Policy as published on Our website.

*Regulator*; means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman or any other competent authority, government body or statutory body with powers to regulate Our conduct.

*Related Bodies Corporate*; has the meaning given to the term in the *Corporations Act*.

*Service Description*; means, the document entitled "Service Description" or "Service Schedule" which describes the nature of a Service being purchased and any specific terms which apply to Services of that type.

*Service Level Agreement*; means the section entitled "Service Level Agreement" as part of a Service Description which specifies the minimum levels of service



which We will uphold as part of the agreement and what will occur if We fail to meet those levels.

*Service Order Form*; means the document entitled "Service Order Form" which when completed and returned to Us constitutes an offer by You to Us to purchase a Service of the type listed in the Service Order Form from Us. Details on the Service Order Form include the nature of the Service being ordered, the address to which the Service is to be delivered, any special notes on the Service as well as Your billing and contact details.

*Service Price List*; means, the document entitled "Service Price List" which shows the prices, rates and charges associated with the Service.

*Service Rebate*; means a rebate paid to You in accordance with clause 10 for an amount in accordance with an applicable Service Level Agreement.

*Service Start Date*; means the date when We commence supplying the Service to You.

*Service*; means the Service specified in the Service Order Form and any related goods or services which We supply to You in connection with the Service.

*Target Service Start Date*; means the date, if specified in the Agreement or notified to You, by which We will attempt to commence supplying the Service to You.

*Tax*; includes any value-added, goods or services, excise, sales, withholding or environmental tax, charge, rate, duty, impost or tariff but does not include taxes levied on income or capital gains.

*Telecommunications Act*; means the *Telecommunications Act 1997 (Cth)* and its regulations.

*We*; means Comlinx Pty Ltd, or as relevant any Related Body Corporate, or its agents. (Us, Our and other similar language is to be construed accordingly).

*You*; means the person who fills out the Service Order Form, or the entity or person on whose behalf the person who fills in the Service Order Form was acting, and, as relevant, includes Related Bodies Corporate. (Your, Yours and other similar language is to be construed accordingly).