

**ECN PTY LTD TRADING AS CHANNEL HAUS (ABN 75 082 665 905)
SUPPLY OF SERVICES CONTRACT**

You enter into this Contract (Contract) at the time You accept these terms and conditions online by clicking the 'I accept' button or by making an Application, and by doing so, agree to be bound by this Contract.

- A.** ECN Pty Ltd Trading As Channel Haus (ABN 75 082 665 905), (**ECN, We or Us**) is a specialist provider of network communications services, and this Contract sets out the terms and conditions of Our legal relationship with You for providing the Service as set out in each and every Service Commencement Notice (**SCN**) We issue to You, once You have asked Us to provide a Service.
- B.** The SCN describes the Service that We will deliver to You for the Service Term.
- C.** Where You and ECN have agreed to a 'Wholesale Partner' or 'Reseller' relationship, both parties have agreed to work together for mutual benefit. These areas of collaboration are set out in out in the document styled 'Wholesale Partner Relationship Agreement'.



SUPPLY OF SERVICES CONTRACT

Your Contract is an important document.

This Table of Contents sets out how We created the contract – but You still can (and should) read the whole Contract)

THE CONTRACT	5
1. GETTING STARTED	5
2. APPLYING FOR A SERVICE	5
2.1 How to make an Application for a Service	5
2.2 There might need to be changes	5
2.3 Why the Service Commencement Notice is important	6
2.4 Changing Your mind	6
2.5 Other things You need to know	6
3. CONNECTING YOUR SERVICE	7
4. WHEN WE ARE YOUR SERVICE PROVIDER AND WE SUPPLY THE SERVICE	7
4.1 Comply with all laws	7
4.2 Prohibited uses	7
4.3 Your responsibility	8
4.4 Material terms	8
4.5 Interception	8
5. CHANGING YOUR SERVICE - HERE ARE THE STEPS TO DO IT	8
5.1 Modifications	8
6. HARDWARE AND EQUIPMENT - WHEN WE CAN HELP OR USING YOUR OWN EQUIPMENT	8
6.1 Your equipment	8
6.2 Supply of Our Equipment	9
6.3 Disconnection of Your Equipment	9
6.4 You can buy hardware from Us	10
7. WE MAY NEED TO HAVE ACCESS TO YOUR PREMISES	10
7.1 Access	10
7.2 Owner’s permission	10
8. QUALITY	10



SUPPLY OF SERVICES CONTRACT

8.1	<i>Standard of Service</i>	10
8.2	<i>Customer support</i>	10
9.	MAINTENANCE	10
9.1	<i>Maintenance of Your equipment</i>	11
9.2	<i>Faults caused by You, Your equipment or by other Suppliers</i>	11
9.3	<i>Arrangements with third parties</i>	11
10.	ONCE THE SERVICE IS RUNNING AND WHEN YOUR SERVICE MIGHT CHANGE	11
10.1	<i>Variations made by Us</i>	11
10.2	<i>Service Term</i>	11
11.	WHEN THINGS CHANGE WHAT WILL HAPPEN	12
11.1	<i>When We might end the Contract or cancel or suspend a Service</i>	12
11.2	<i>When You might end the Contract or cancel or suspend a Service</i>	13
12.	COSTS INVOLVED IF THERE IS A SUSPENSION OR CANCELLATION OR BOTH	13
13.	FEE AND CHARGES TO BE PAID	14
13.1	<i>Your SCN sets out the fees and charge</i>	14
13.2	<i>There may be costs incurred at the time you make an Application</i>	15
14.	BILLING AND PAYMENT	15
14.1	<i>Bills</i>	15
14.2	<i>Charges not expressed to be GST inclusive</i>	16
14.3	<i>Bills valid unless disputed</i>	16
14.4	<i>Raising a bill dispute</i>	16
15.	SECURITY AND THE PPSA FOR CERTAIN CLIENTS	16
15.1	<i>If We ask You to provide a security for payment</i>	16
16.	LEGAL TERMS THAT COVER OUR SERVICES TO YOU	16
16.1	<i>Indemnity</i>	16
16.2	<i>Warranties</i>	17
16.3	<i>Exclusions limitations and disclaimers</i>	17
16.4	<i>Quality of Service</i>	18
16.5	<i>Customer Service Guarantee</i>	18
16.6	<i>Suspending the Service</i>	18



SUPPLY OF SERVICES CONTRACT

16.7	Consequential Loss	18
16.8	Force Majeure Event	18
16.9	When We are not liable to You	18
16.10	Public Addressing Identifiers	18
16.11	Assignment and subcontracting	18
17.	DISPUTE RESOLUTION BY MEDIATION	19
17.1	Resolution	19
17.2	Notice of dispute	19
17.3	Resolution by negotiation	19
17.4	Mediation	19
18.	GENERAL	19
18.1	Changes to this Contract	19
18.2	Telecommunications legislation	19
18.3	Personal Information	20
18.4	Confidentiality	20
18.5	Notice	20
18.6	Waiver	21
18.7	Further assurance	21
18.8	Severability	21
18.9	Entire understanding	21
18.10	Governing law	21
18.11	Precedence	21
19.	FOR OUR RESELLERS AND WHOLESALE PARTNERS	21
19.1	Your Customers	21
19.2	Limited power of attorney to Us	22
20.	DEFINITION AND INTERPRETATION	22
20.1	Definitions	22
20.2	Interpretation	25
	SCHEDULE 1 – SECURITY INTEREST	26



SUPPLY OF SERVICES CONTRACT

THE CONTRACT

1. GETTING STARTED

- a) This Contract starts at the time You make an Application to Us for provision of the Services and **We** commence processing that Application (Contract Commencement Date).
- b) Your Services will start on the Service Commencement Date which is in the SCN.
- c) We agree to supply You with the Services set out in a SCN, in accordance with the terms and conditions of this Contract.
- d) After assessing your Application, We may give You an Order Accepted Notice (OAN) setting out the features of the Service You require Us to provide, including an estimate of the Fee.
- e) If We prepare an OAN at your direction and You cancel or otherwise do not proceed with that Application, You may have to pay an Order Cancellation Charge in accordance with clause 2.4Error! Reference source not found.
- f) You warrant that:
 - (i) this Contract is entered into by a person properly authorised to do so on Your behalf; and
 - (ii) You have done everything reasonably required to obtain all necessary internal approvals to enter into this Contract.

2. APPLYING FOR A SERVICE

2.1 How to make an Application for a Service

- a) You can make an Application for supply of a Service by Us either by:
 - (i) Emailing Us a description of Your service requirements;
 - (ii) Completing and sending Us an online application form (located on Our website or through Our website portal); or
 - (iii) Completing and returning paperwork that We have provided to You.
- b) We will assess each Application to ensure that it is technically and operationally sound and consider Your eligibility for the Services. We do not guarantee that the Service You request in an Application will be available to You.
- c) If We accept Your Application and provide You with a SCN in accordance with clause 2.3, We will start providing the Service to You on the date specified in the SCN unless both parties have agreed another date that We have notified to You by email.
- d) From time to time We may include Special Conditions in a SCN, and the Special Conditions apply only to the Services stated in that SCN.
- e) Sometimes Your Application to Us might include a document which We have prepared for You, which sets out Our proposal to You for the Service and this might occur when You have complex communication needs. Such a document whether expressly or impliedly approved by You will be an Application under this Contract. Under this Contract, You are able to make more than one Application and therefore buy multiple Services. Each Service will be for the relevant Service Term.

2.2 There might need to be changes

- a) After We assess Your Application, We may issue You with an OAN. We will notify You by email or otherwise in writing of Our decision to accept 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 revise any OAN. You agree that:



SUPPLY OF SERVICES CONTRACT

- (i) We may liaise with third parties to deliver the Service described in Your Application however the actions and charges of those third parties are not within Our control;
 - (ii) You may need to pay for costs which We may only become aware of when the site conditions are being prepared for connection to the Service. We are not responsible for any costs that arise in these circumstances; and
 - (iii) where the circumstances in clause 2.2b)(ii), have arisen, You are responsible for any third party costs and charges as well as Our reasonable overheads incurred.
- c) In the event that We re-assess your Application in accordance with clause 2.2b) (either independently or at Your request), then:
- (i) the latest OAN We provide to You will be the statement of the scope and functionality of and Fees payable for that Service: and
 - (ii) You agree that the OAN is the agreed statement of that Service We will provide to You (subject to any changes stated in the SCN).

2.3 Why the Service Commencement Notice is important

- a) 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, that cancellation applies only to the Service covered by that SCN.
- d) You agree that We can provide an SCN to You either by fax, by email, or make the SCN available to You on Our web portal. At the time We issue the SCN, the SCN is deemed as accepted by You.
- 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 5.1 and clause 5.1 will apply.
- f) Our obligation to provide the Service to You is conditional on Our 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.

2.4 Changing Your mind

- a) You may, prior to Us issuing an SCN, notify Us in writing that You withdraw an Application. 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 agree that if Your Application does not proceed (including where You have withdrawn an Application in accordance with clause 2.4a) You will pay Us the Order Cancellation Charge in accordance with Our standard trading terms.
- c) The Order Cancellation Charge payable will be the 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) Our 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.

2.5 Other things You need to know

- a) You warrant that in any Application for the Service provided to Us that the information You provide is true and accurate.
- b) On making an Application, 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. You agree:



SUPPLY OF SERVICES CONTRACT

- (i) that You will pay all charges which a third party will charge Us for the establishment of the Service; and
 - (ii) that while We may estimate a third-party cost or charge to You, We have no control over what the final third party costs or charges that will be charged by that third party.
- c) The following conditions will apply before we provide a Service to You:
- (i) We are reasonably satisfied that You have in place automated payment arrangements for the Service, including the giving of requisite authorisations for payment to Us by direct debit or by the giving of a valid credit card authorisation in Our favour.

3. CONNECTING YOUR SERVICE

- a) We will connect some Services within the timeframes stated in the relevant Telecommunications Legislation (where applicable) when those apply to a Service. For all other Services, We will connect the Service within a reasonable time or within the time We notify to You.
- b) We will decide the route and technical means that We (or a Supplier We engage) use to provide the Service.
- c) You must reasonably assist and co-operate with Us (or a Supplier We engage) to allow Us to connect and supply the Service 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 failed to reasonably assist Us in the connection of the Service to You.

4. WHEN WE ARE YOUR SERVICE PROVIDER AND WE SUPPLY THE SERVICE

4.1 Comply with all laws

When using the Services, You must comply with:

- a) all applicable laws and directions given by a Regulatory Authority; and
- b) all reasonable directions We give to You whether by email, in writing or orally, including any directions which We publish from time to time including Our Fair Use Policy and Acceptable Use Policy or other policy.

4.2 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 a way inconsistent with Our Fair Use Policy or Acceptable Use Policy or other policy We issue;
- d) in any way which makes the Service unsafe or which may damage 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) for any purpose or in any manner for which the Service is not warranted;
- g) 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) to disable any licensing or control features of any software; or
- i) to attempt any of the above or facilitate or assist another person to do or attempt any of the above.



SUPPLY OF SERVICES CONTRACT

4.3 Your responsibility

You accept that You:

- a) are responsible for and must pay for any use of the Service by any person, 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 16.11a); and
 - (iii) 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.

4.4 Material terms

Each of clauses 4.1, 4.2, and 4.3 are material terms of this Contract.

4.5 Interception

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 this Contract and Our compliance with the law or any request or direction of a Regulatory Authority, an emergency services organisation or other competent authority.

5. CHANGING YOUR SERVICE - HERE ARE THE STEPS TO DO IT

5.1 Modifications

During the Service Term:

- a) We may from time to time need to amend an SCN in order to meet Your specific requirements or You may request Us in writing to modify the Service (**Modification**);
- b) any changes to the Service may mean We require an amendment to the SCN for that Service and We will notify You in writing, usually by email, on the details of the changes; and
- c) You can ask for a Modification to a Service, by following the steps set out below:
 - (i) Make the request for the Modification in writing (**Modification Request**);
 - (ii) Give Us time to review the Modification Request;
 - (iii) let Us notify You that We have either approved or amended the Modification Request; and
 - (iv) where You still want the Modification to a Service to go ahead You must pay in advance the costs determined by Us for making the Modification as notified to You.
- d) We may in response to a Modification Request or a variation to the Service issue You a new SCN which replaces the previous SCN for that Service. This SCN may include a variation to the Service description, including variation to the Fee. By continuing to use the Service as varied You agree to the terms of the new SCN where one is issued under this clause.

6. HARDWARE AND EQUIPMENT - WHEN WE CAN HELP OR USING YOUR OWN EQUIPMENT

6.1 Your equipment

- a) If You need to acquire equipment prior to accessing the Service to be used by You, including software, cabling or any other hardware item, it is Your responsibility to purchase that equipment unless We notify You otherwise. We may assist in identifying equipment You need to purchase and suggest potential



SUPPLY OF SERVICES CONTRACT

suppliers of that equipment.

- b) You are responsible for maintaining any necessary insurance in respect of any equipment (whether purchased or provided by You or sold to You by Us) which is used in any way in the provision of the Service.
- c) You must ensure that all equipment You use in connection with the Service, other than equipment provided by Us, complies with all laws and relevant technical standards issued by a Regulatory Authority and all reasonable directions by Us.
- d) If We determine that You need to make changes to your equipment for any reason, including to avoid any danger or interference caused by it, We will notify You of the changes required. You must ensure that all required changes to your equipment are made and are satisfactory to Us within the time stated in any notice We give to You.
- e) Where your equipment is located on a site controlled by Us, a separate agreement will apply to that arrangement. Where no separate agreement exists, then the standard collocation agreement terms as published on Our website from time to time will apply.

6.2 Supply of Our Equipment

- a) To use the Service, We may provide You with equipment or cabling which We own or lease from a third party (**ECN Equipment**). Where We provide ECN Equipment to You in connection with the Service:
 - (i) All ECN Equipment remains Our property;
 - (ii) You must comply with Our directions relating to ECN Equipment, including where We direct that You return ECN Equipment to Us;
 - (iii) You must pay any fees We require You to pay in respect of ECN Equipment (including rental or administration fees);
 - (iv) You must only use ECN Equipment in accordance with the manufacturer's specifications and Our directions;
 - (v) You are responsible for ECN Equipment from the time it is delivered to You and must pay Us for any loss or damage to ECN Equipment, unless it is caused by Us or is due to fair wear and tear;
 - (vi) You must not part with possession of ECN Equipment except to Us and You must keep ECN Equipment free from any encumbrance;
 - (vii) You must allow Us to inspect, test, service, modify, repair, remove or replace ECN Equipment, or to recover it after the Service is cancelled;
 - (viii) You must ensure that ECN Equipment is not altered, repaired, serviced, moved or disconnected, except by a person approved by Us prior to the alteration, repair, servicing, moving or disconnection;
 - (ix) You must have all necessary consents and approvals (including landlord approval) for Us to deliver, install and maintain ECN Equipment at the Premises; and
 - (x) You must provide adequate and suitable space, power supply and environment for all ECN Equipment located on the Premises.
- b) We are not responsible or liable to You in any way should You not meet your obligations under this clause 6.2. You agree to indemnify Us for any loss incurred or suffered by Us, including loss arising from any damage to ECN Equipment, arising from a failure by You to meet any of your obligations under this clause 6.2.

6.3 Disconnection of Your Equipment

If You do not comply with any of your obligations under clause 6.1, We may disconnect your equipment from the Service or require You to do so. We will give You reasonable notice before disconnection but may do so immediately in an emergency.



SUPPLY OF SERVICES CONTRACT

6.4 You can buy hardware from Us

- 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.
- 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 the Purchased Equipment from the time title passes to You.
- d) If You purchase the wrong equipment, We may exchange it for You if the equipment You wish to be exchanged is returned to Us to Our nominated delivery address undamaged, complete with all components and with the packaging intact, within 14 days of delivery.
- e) If We exchange equipment in accordance with clause 6.4d), You must pay Us all reasonable administration charges and service fees We charge to cover all costs We incur by exchanging the equipment.

7. WE MAY NEED TO HAVE ACCESS TO YOUR PREMISES

7.1 Access

You must provide Us safe and prompt access to the Premises, should We need to do so to:

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

7.2 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 access to the Premises, providing the Service, providing Our Equipment or installing or maintaining any equipment or other item at the Premises.

8. QUALITY

8.1 Standard of Service

- a) We do not guarantee continuous or fault-free provision of the Services.
- b) You agree that We are not 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.

8.2 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. 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. We may engage a Supplier to perform maintenance under this Contract. All maintenance carried out by a Supplier is outside of Our control and We are not liable to You for the impact on Your business (including Consequential Loss) of any maintenance carried on by a Supplier or its agents, contractors or other



SUPPLY OF SERVICES CONTRACT

representatives.

- 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, We are entitled to charge a Call Out Fee. You agree to allow Us to conduct emergency maintenance for the Service on an 'as needed' basis.

9.1 Maintenance of Your equipment

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

9.2 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, You must pay any reasonable charges for that repair.
- 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.

9.3 Arrangements with third parties

- a) From time to time the Service We will provide to You 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, We will determine the nature and extent of Our obligation to provide the connections for the Service. You are solely responsible for delivering the Third Party Solution.
- c) You acknowledge and accept that unless both parties agree in writing, We will not 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 Contract. Where the Service is used in a Third Party Solution You indemnify Us against any claim, loss, liability or damages, howsoever arising in respect of the Third Party Solution. You will execute any document reasonably required by Us to give effect to this clause 9.3c).
- d) You agree 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 third parties and You must ensure, if applicable, that any of Your customers that utilise a Third Party Solution also do so.

10. ONCE THE SERVICE IS RUNNING AND WHEN YOUR SERVICE MIGHT CHANGE

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 will 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 will be the Service Term. Where the Service continues to be delivered at the expiry of that term, the Service Term shall be extended in accordance with clause 10.2(b);
 - (ii) an SCN for the Service does not state a term for the delivery of the Service then the term for the



SUPPLY OF SERVICES CONTRACT

delivery of the relevant Service shall be in accordance with clause 10.2(b).

- b) The Service Term will, as the context requires, be one month and at the end of that month, the Service Term will be automatically extended for one further month unless either party gives 30 days' written notice to the other that there are to be no further extensions to the Service Term.
- c) Where the Service Term has expired or a party has notified that there is to be no further extensions (as set out in clause 10.2b), the Service described in the relevant SCN will no longer be a Service which We are obliged to provide under this Contract.
- d) In relation to a particular Service, if You request, We may issue a new SCN for the Service where the Service Term for that Service has expired and the new SCN will include a new Service Commencement Date and Service Term for that Service. From the new Service Commencement Date, the Services described in the previous SCN will no longer be a Service which We are obliged to provide under this Contract.

11. WHEN THINGS CHANGE WHAT WILL HAPPEN

11.1 When We might end the Contract or cancel or suspend a Service

- a) We may terminate this Contract:
 - (i) by giving You 14 days' written notice where You have breached a material Term; or
 - (ii) by giving You 30 days' written notice at any time during the term of this Contract.
- b) We may without liability cancel the Service, after giving You 30 days' written notice, if:
 - (i) there is no Service Term specified in Your SCN;
 - (ii) the Service Term specified in Your SCN ends; or
 - (iii) We reasonably determine that it is not technically or operationally feasible to supply the Service to You.
- c) We may without liability immediately cancel, suspend or restrict the supply of the Service to You if:
 - (i) Any amount owing to Us (unless disputed in accordance with clause 14.4) that remains unpaid by the due date and You fail to pay that amount within 7 days after receiving Our notice requiring payment;
 - (ii) You breach a term of this Contract and that breach is not capable of remedy;
 - (iii) You breach a term of this Contract and You do not remedy that breach within 14 days after We give 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 this 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;
 - (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 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



SUPPLY OF SERVICES CONTRACT

the Service;

- (xi) We or a Related Entity 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 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 this Contract for more than 14 days;
 - (xvi) We reasonably believe a threat or risk exists to the security of 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 this Contract; or
 - (xix) We reasonably consider You a credit risk.
- d) If We suspend the Service under clause 11.1c), then We may later cancel that Service. We may exercise Our rights under clause 11.1c) immediately.

11.2 When You might end the Contract or cancel or suspend a Service

- a) You may cancel the Service without liability by giving Us 30 days' written notice:
 - (i) at any time where no Service Term is specified;
 - (ii) where a Service Term is specified, at any time after the end of the Service Term;
 - (iii) at any time 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 We fail to remedy that breach within 30 days after You give notice requiring Us to do so.
- b) You may cancel the Service before the end of the Service Term by giving Us written notice but You may be required to pay the Break Fee in accordance with clause 12.d)(ii).
- c) You may ask Us, by giving notice, to suspend the Service. 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 in writing by completing a service cancellation form;
 - (ii) provide 30 days' notice; and
 - (iii) pay Us any outstanding charges up to, and including, the 30-day notice period as well as any Break Fee.

12. COSTS INVOLVED IF THERE IS A SUSPENSION OR CANCELLATION OR BOTH

- a) If the Service is suspended in accordance with this Contract, then You do not have to pay any charges for the Service during suspension.
- b) However, if the Service is suspended:
 - (i) where clauses 11.1c)(i), 11.1c)(ii), 11.1c)(iii), 11.1c)(iv), 11.1c)(v), 11.1c)(ix), 11.1c)(x), 11.1c)(xi), 11.1c)(xiv) or 11.1c)(xvii) apply, or



SUPPLY OF SERVICES CONTRACT

- (ii) for an insignificant period where clause 11.1c)(vii) applies,
You must pay all charges (other than usage based charges) arising before, during and after suspension in accordance with this Contract.
- c) If We reconnect a Service that has been cancelled, You may have to pay Us a reconnection charge, unless the Service was cancelled pursuant to clause 11.2a)(iii) or due to Our fault or negligence.
- d) If the Service is cancelled:
 - (i) before the Service Commencement Date, We may charge You any costs We incur by preparing the Service for use;
 - (ii) during the Service Term then You must pay Us the Break Fee; and
 - (iii) You acknowledge that 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.
- e) If the Service is cancelled You must 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, less any amount that You owe Us, such as charges You have incurred before cancellation or any Break Fee owed.
- f) If Your account is in credit 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 We incur to prepare the refund for You. If a cheque or other method of refund is required a Handling Fee is payable.
- g) On cancellation of the Service for any reason You must immediately stop using that Service:
- h) You must, at your cost, immediately stop using and return to Us, or allow Us to remove, any ECN 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;
 - (i) unless this Contract otherwise states, each parties accrued rights and obligations are not affected;
 - (ii) all other agreements and contracts between the parties continue to apply.

13. FEE AND CHARGES TO BE PAID

13.1 Your SCN sets out the fees and charge

- a) Service charges, including any additional charges, are set out in the applicable SCN.
- b) Service charges accrue from the applicable Service Commencement Date. For a current Service, the Service Commencement Date is the Commencement Date.
- c) We may also charge You an additional amount to service, modify, repair or replace the Service or for any equipment used in connection with the Service as a result of one or more of the following:
 - (i) a breach of this 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 agree that:
 - (i) from time to time in order to provide certain Services to You, We enter into 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



SUPPLY OF SERVICES CONTRACT

- (iii) We may pass on to You any additional charges a Supplier charges to Us.
- 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 Us notice (by the time specified under the relevant legislation or if no time is specified under legislation), within 42 days after the date We tell You about the proposed variation.
- f) A change in the charges payable for the Service notified to You in accordance with clause 13.1e) is a variation to the applicable SCN.

13.2 There may be costs incurred at the time you make an Application

- a) You acknowledge that, on and from the issuing of an OAN, We will incur costs and charges.
- b) If an Application is received and for any reason We do not issue You with an SCN for a Service appropriate to that Application, then We may charge You an Order Cancellation Charge which You must pay to Us.
- c) We may issue an Order Cancellation Charge associated with any Application that does not proceed.

14. BILLING AND PAYMENT

14.1 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.
- b) We will bill You in accordance with the charges set out in the applicable SCN. We may also issue an interim bill at any time, or issue more than one invoice in the same month for billing alignment purposes where applicable. If no SCN has been issued, then the charges payable under the OAN will apply.
- c) We may reissue any bill if an 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, We will refund the overpayment at Your request and after deduction of any amounts You owe to Us under this Contract.
- d) Unless clause 14.4 applies, You must pay each amount billed by the due date specified in the bill. On payment of a bill You agree that the charges have been validly incurred and are not in dispute.
- e) We may charge a surcharge for payment made by credit card.
- f) Where a direct debit arrangement has been established, We will effect payment of Our bill on or before the due date. If a direct debit payment request is rejected / dishonoured by Your financial institution, We will charge You an administration fee to cover costs We incur 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 bill, compounding on a monthly basis; and
 - (ii) 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 11.1.



SUPPLY OF SERVICES CONTRACT

- h) If You pay a bill by cheque and the cheque is dishonoured, We may charge You an administration fee to cover any costs We incur as a result.

14.2 Charges not expressed to be GST inclusive

If GST is imposed on any supply We make to You under this Contract and the charges, or other consideration, payable for the supply are not expressed to be inclusive of GST, You must pay 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.

14.3 Bills valid unless disputed

You can dispute a charge in a bill so long as You do so in accordance with this clause, otherwise You agree that any bill issued by Us to You is valid and You must pay any undisputed amount included in the bill in accordance with clause 14.1.

14.4 Raising a bill dispute

- a) You must tell Us about any disputed charge or item in a bill within three months of the date of that bill and provide details which show that a particular charge or item is incorrect.
- b) We will, within a reasonable timeframe, investigate all necessary circumstances with respect to the dispute. At the end of these investigations, if We find that:
- (i) there is an error in the bill, We will give You a corrected invoice or adjustment note and:
 - A. if You have overpaid as a result of the billing error, credit Your account with the overpayment;
 - B. if You have cancelled Your Service with Us, refund the overpayment promptly after deducting of amounts owed by You to Us; or
 - (ii) the bill is correct, You must pay Us any outstanding amount (together with interest on that amount calculated in accordance with clause 14.1g) from the original due date for payment) within 5 Business Days.

15. SECURITY AND THE PPSA FOR CERTAIN CLIENTS

15.1 If We ask You to provide a security for payment

- a) If We request, You must provide financial security for payments due to Us for the Services in a form We require from the Commencement Date or any other time We nominate. If You do not provide the requested financial security, then We can suspend the Service without further notice.
- b) You consent to Us obtaining, from a credit reporting agency, a credit report containing personal credit information about You and 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 where we require a Guarantee.
- c) 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 agree that the terms set out in Schedule 1 will apply to You. You must do any act including executing any document We reasonably require to give effect to the rights and obligations set out in Schedule 1.

16. LEGAL TERMS THAT COVER OUR SERVICES TO YOU

16.1 Indemnity

- a) You indemnify Us against any damages, costs, and liability that may result from Your use of the Services. You further indemnify and hold harmless Us, Our officers, employees and agents from and against any



SUPPLY OF SERVICES CONTRACT

loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by Us arising from any proceedings against Us where such loss or liability was caused by:

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

16.2 Warranties

- a) We provide each of the Services "as is" and, to the extent permitted by law, disclaim 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 16.2b), 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.

16.3 Exclusions limitations and disclaimers

- a) We will exercise all care to provide accurate, complete and timely information but We accept no liability for any errors or omissions in that information. You are responsible for making an independent judgment and assessment of these factors and may not rely upon any opinions, interpretations, statements, assurances or representations that We may give.
- b) In entering this Contract, You agree that You have examined the functionality and capability of the Service and are satisfied that the Service is suitable for You.
- c) You are not relying on any representation given by or on behalf of Us (written or otherwise) other than as contained in this Contract including without limitation any descriptions, illustrations or specifications contained in any document, including manuals, catalogues or publicity materials produced by Us.
- d) We cannot warrant that any Service will be compatible with every computer and operating environment. It is Your responsibility to find out whether the Service is compatible with Your computers and operating environment.
- e) We are not liable for any delay, damage, loss, injury, failure or breakdown that You may suffer as a consequence of any defect or deficiency in the Service, including any delay, damage, loss, injury, failure or breakdown to Your software and equipment.
- f) We do not warrant that each Service will meet Your requirements.
- g) We do not represent and warrant that the use of the Services will reduce the Your costs.
- h) You use the Services entirely at Your own risk.
- i) We are not responsible for any failure, delay or interruption in Your use of the Services, including without limitation:
 - (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.



SUPPLY OF SERVICES CONTRACT

16.4 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 this Contract and We breach them, We accept liability for the breach.
- b) To the maximum extent permitted by law and to the extent that Our liability to You is not excluded by any other term of this Contract, 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.

16.5 Customer Service Guarantee

You may also have certain rights and remedies under the Customer Service Guarantee with respect to minimum connection and fault repair times and We accept any liability We have to You in accordance with, and subject to, the Customer Service Guarantee.

16.6 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 this Contract.

16.7 Consequential Loss

We exclude any liability to You for any Consequential Loss You suffer or incur in connection with the supply or Interruption of any goods or services (including the Service) or with this Contract (whether based in contract, tort (including negligence), statute or otherwise).

16.8 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.

16.9 When We are not liable to You

We are only liable to You in the cases set out in this clause 16. Otherwise, We exclude any liability We might otherwise have to You in connection with this Contract or the Service to the extent that such liability is not expressly accepted by Us.

16.10 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 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.

16.11 Assignment and subcontracting

- a) You may only assign or transfer Your rights and obligations under this Contract if You first obtain Our written consent.
- b) We may at any time assign, to the extent permitted by law:
 - (i) Our rights under this Contract to any person;
 - (ii) Our obligations under this Contract to a Related Entity and if that Related Entity undertakes to



SUPPLY OF SERVICES CONTRACT

perform those obligations, We will not be responsible for performing those obligations from the date of transfer.

- c) We may arrange for any of Our obligations under this Contract to be performed by another person, including a Supplier or a Related Entity.

17. DISPUTE RESOLUTION BY MEDIATION

17.1 Resolution

If any dispute arises under this Contract (whether during the Term or after the Term has ended) (**Dispute**), the parties agree to resolve it in accordance with this clause. No party may commence court proceedings or arbitration with respect to the Dispute unless:

- a) The requirements of this clause have been complied with;
- b) Urgent interlocutory relief is sought by the party wishing to start proceedings; or
- c) Another party has started proceedings other than in accordance with this clause.

17.2 Notice of dispute

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

17.3 Resolution by negotiation

- a) No later than seven Business Days after a Dispute Notice is given (a longer period may be agreed in writing) each party to the Dispute must give all other parties:
 - (i) A brief statement about the issues concerning the Dispute and the reasons why those issues are relevant to the Dispute; and
 - (ii) All information including documents relevant to the issues in the Dispute.
- b) Within seven Business Days after exchanging statements under clause 17.3a), all parties to the Dispute must meet, and use their best endeavours to resolve the Dispute.
- c) Any meeting contemplated under clause 17.3b) must not last more than a total of two Business Days.
- d) If the parties are unable to resolve the Dispute, then clause 17.4 will apply.

17.4 Mediation

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

18. GENERAL

18.1 Changes to this Contract

- a) You agree that We may amend the terms and conditions of this Contract from time to time. We may make changes to this Contract without obtaining Your agreement to those changes.
- b) We will notify You of any changes to this Contract at least 14 days before the proposed change takes effect. We may notify You of these changes by publishing them on Our website's terms and conditions page.

18.2 Telecommunications legislation

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.



SUPPLY OF SERVICES CONTRACT

18.3 Personal Information

- a) Where You provide Us with Personal Information about You, We will deal with that information in accordance with Our Privacy Policy, which is located on Our website.
- b) You acknowledge that the Services may require Us to store on Our servers personal information collected by Us and disclosed to third parties. 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 relating to Your compliance with the Privacy Act 1988 (Cth) requirements.
- c) Nothing in this clause 18.3, obliges Us 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 Us 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.

18.4 Confidentiality

- a) The parties must keep each other's Confidential Information confidential and 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 this Contract;
 - (ii) to the extent 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 this Contract.
- b) We may refer to You as a customer of Ours in Our press releases, Our marketing sales or financial material or reports.

18.5 Notice

- a) A notice or other communication to a party under this Contract must be:
 - (i) where You are the sender, the notice must be sent by an authorised officer; and
 - (ii) addressed as follows:
 - A. if to You, then to the contact email address We have for You on file; or
 - B. if to Us, to invoice@ecn.net.au, or to a substitute address You or We may notify to You or Us.
- 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



SUPPLY OF SERVICES CONTRACT

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.
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18.6 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 Contract, 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 Contract or default under this Contract as constituting a waiver of that right, power, authority, discretion or remedy.

18.7 Further assurance

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

18.8 Severability

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

18.9 Entire understanding

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

18.10 Governing law

- a) This Contract is governed by the laws of Queensland.
- b) You and We submit to the exclusive jurisdiction of the courts of Queensland and waive any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

18.11 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),
 - (iv) except that clauses 11 to 18 of this Contract will always prevail over all other terms in the Contract.

19. FOR OUR RESELLERS AND WHOLESALE PARTNERS

This clause applies where We have provided the Services under this Contract to You and You have contracted with third parties (Your Customers) to acquire all or part of the Services provided, (Reseller).

19.1 Your Customers

- a) Where You are a Reseller and We form 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



SUPPLY OF SERVICES CONTRACT

- (iii) You have become a customer that We consider unsuitable to do further business with;
- b) then You:
 - (i) must do all that We reasonably require You to do to ensure that Your
 - (ii) Customers enter into an arrangement with Us directly to receive and pay Us for the Services;
 - (iii) must execute any document We reasonably require to give effect for Your Customers to assign agreements to Us or Our nominee.;
 - (iv) authorise Us to approach Your Customers directly for any purpose related to Our rights under this clause 19; and
 - (v) must notify Your Customers of either the termination of Your Customers' agreement with You or the transfer of Your Customers' agreements to Us or both.
- c) We may at any time during the term of this Contract require You to obtain an authorisation or other permission or agreement from Your Customers to give effect to Our rights under this clause 19.1.
- d) Your obligations in clause 19.1c) are a Material Term of this Contract and Your failure to comply gives Us the right to terminate this Contract.

19.2 Limited power of attorney to Us

- a) You grant to each of the Our Directors personally a limited power of attorney to sign any document, agreement or undertaking as Your attorney in order to give effect to Our rights under this clause 19.
- b) You must comply with Our request to execute any document We reasonably require to record the power of attorney granted under this clause.

20. DEFINITION AND INTERPRETATION

20.1 Definitions

In this Contract:

Application means Your request to Us for the provision of the Service, made either in writing (including email) or in accordance with the format specified on Our website or any on - line 'portal' We establish.

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 that We approve in writing; and
- b) in a form approved by Us.

Break Fee means a cancellation fee or termination charge (if any) calculated in accordance with the formula stated in the SCN or the amount notified to You in writing from time to time as a genuine estimate of the loss We will incur as a result of the early cancellation.

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 Our fee for providing maintenance services after hours as notified from time to time 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



SUPPLY OF SERVICES CONTRACT

- 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 or 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 payable by You in accordance with this Contract.

Force Majeure Event means any event, outside any 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 We supply to You under this Contract, including any equipment, hardware or software.

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

Guarantor means the person which has given Us a Guarantee in order to secure the payment for a Service or Services.

Handling Fee means a fee We incur when providing 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.



SUPPLY OF SERVICES CONTRACT

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 is a fundamental term of this Contract and Your failure to comply with such a term will be a fundamental breach of this Contract, which entitles Us to terminate this Contract in accordance with clause 11.1(a).

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

OAN or **Order Accepted Notification** means the document We issue to You with the Service requested by You and may include details of the fees, cost and charges payable by You. We may issue a later version of the OAN (**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 ROAN issued by Us replaces any previous OAN or ROAN for that Service.

Order Cancellation Charge means those charges payable by You in the circumstances set out in this Contract.

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 Contract 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 6.4.

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.

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

Reseller has the meaning set out in clause 13(a).

SCN or **OCN** (as the case may be) means the Service Commencement Notification or Order Completion Notice issued by Us to You which 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 to You from time to time. It may also include 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 and as described in the SCN or OCN. It includes any related goods (including equipment) and ancillary services We provide to You in connection with that service. 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 the term specified in the relevant SCN commencing on the Service Commencement Date. Where no term is specified in the SCN, then the term shall be determined in accordance with clause 10.2 of this Contract.

Special Conditions means any conditions stated in a SCN which apply only to that Service.



SUPPLY OF SERVICES CONTRACT

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 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 requires otherwise.

You means the person filling out the Application for the Service (and Your will have a corresponding meaning), unless the context requires otherwise.

20.2 Interpretation

Unless expressed to the contrary:

- a) headings and boldings are for convenience only and do not affect the interpretation of this Contract;
- b) where an expression is defined anywhere in this Contract 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 Contract;
 - (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 Contract, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.
- c) The expressions "We", "Us", "Our", "You" or "Your" will include their respective successors and permitted assigns and novates.
- d) A reference to a person includes a reference to a person, firm, corporation or other legal entity.



SUPPLY OF SERVICES CONTRACT

SCHEDULE 1 – SECURITY INTEREST

- a) The Contract(s) to which this schedule is part of constitutes a security agreement which creates a security interest in favour of Us where:
 - (i) We supply Goods 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 and You are deemed to secure this obligation in your present and after acquired property.
 - (iii) Where clause (a) of this Schedule applies:
- b) You agree to grant a PMSI in the Goods and all future Goods We supply to You during the term of this Contract.
- c) You agree that the PMSI has attached to all Goods now or in the future supplied to You by Us.
- d) 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.
- e) 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.
- f) 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.
- g) 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.
- h) 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.
- i) 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 Schedule.
- j) The parties each agree 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).